



**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL
SCHEMES (SECTION 48 APPEAL)**

**HELD VIA MICROSOFT TEAMS VIDEO AND AUDIO-CONFERENCING
TECHNOLOGY.**

(Instituted in terms of the Medical Schemes Act No 131 of 1998)

In the matter between

Ref number: CMS 87569

Mr. R

Appellant

And

Discovery Health Medical Scheme

Respondent

The Registrar of Medical Scheme

Second Respondent

Panel: Dr K. Chetty; Dr X. Ngobese; Ms P. Beck.

Date of hearing: 8 October 2025.

Date of ruling: 3 November 2025.

RULING AND REASONS

THE PARTIES

1. The Appellant is Mr. R (The “Appellant”).
2. The Respondent is Discovery Health Medical Scheme (The “Appellant or the “Scheme”), registered and regulated under the Medical Schemes Act, Act 131 of 1998 (the “MSA” or “Act”).
3. Ms. Z, Legal Advisor at Discovery Health Medical Scheme (DHMS) appeared for the Appellant.
4. Dr X, Medical Advisor at DHMS, and Ms. Y, Legal Advisor were also present at the hearing.

BACKGROUND

5. The Respondent, Mr. R was a member of the Discovery Health Medical Scheme (DHMS).
6. Mr. R laid a complaint against DHMS involving the termination of his membership due to allegations of non-disclosure regarding a previous medical consultation.
7. Mr. R contends that his membership was unjustly terminated following Discovery’s assertion that he failed to disclose a February 2024 consultation for knee inflammation. He maintains that the consultation, which did not result in a significant diagnosis or treatment, was erroneously considered material information.
8. Discovery states that the termination was warranted, alleging non-disclosure of information deemed material for underwriting purposes. The scheme points to the consultation and administration of a cortisone injection as relevant medical history that should have been disclosed.
9. The Registrar upheld Discovery’s decision, determining that the termination complied with Section 29(2)(e) of the Medical Schemes Act, which permits cancellation of membership for non-disclosure of material facts. The Registrar

denied Mr. R's request for reinstatement and for reimbursement of R48,000 in surgical expenses.

10. Mr. R appealed the ruling, citing procedural unfairness, insufficient evidence of material non-disclosure, and the disproportionate nature of the sanction imposed.

THE REGISTRAR'S RULING

11. The Registrar's Ruling was issued on 19th May, 2025.
12. The Registrar of the Council for Medical Schemes (CMS) ruled that the termination of the membership is both justified and in accordance with Section 29(2)(e) of the Act.
13. The Registrar ruled that the Respondent is not obligated to reimburse the R28,000 for the self-funded procedure
14. The Appellant is now appealing this decision in terms of Section 48 Appeal submitted on 23rd May 2025.

APPLICATION TYPE AND RELIEF SOUGHT

15. This is an appeal under section 48(1) of the Medical Schemes Act (the "MSA or the Act").¹ This section provides that:
 - a. *"(1) Any person who is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to the Council".*
16. The cancellation of the membership by DHMS should be reversed with effect from the original starting date, and the scheme should be directed to reimburse the surgery costs incurred by the Appellant.

¹ Medical Schemes Act 131 of 1998 as amended by Act 55 of 2001; Section 48(1); Proc 13/GG 19725/19990129

RELEVANT STATUTORY AND REGULATORY PROVISIONS

17. The relationship between the Scheme and the Respondent is governed by the terms of the contract (“the schemes rules”) the Scheme concluded with the Respondent. The contract in turn is governed by the “MSA” and the regulations (as amended) made in terms of the Act.
18. This is a wide appeal. The Appeals Committee may consider the matter afresh and is not restricted to the record of proceedings that were before the Registrar.
19. The burden of proof rests on the Appellant who must prove on a balance of probabilities that the appeal should succeed.

THE ISSUE IN DISPUTE

20. The issue in dispute is whether the scheme was correct to terminate the Member’s membership due to non-disclosure of material information.

APPELLANTS SUBMISSION

21. The Appellant, Mr.R, rejoined DHMS in June 2024 after having being out of the country for some time.
22. The Appellant states that on 16th July 2024 he consulted with Dr. N regarding a knee injury which had occurred in June 2024. Dr. N confirmed it to be a meniscus cartilage tear in the member’s knee, based on the doctor’s experience and various examinations performed, excluding radiology procedures.
23. The Appellant stated that in February 2025 he had also consulted with Dr N regarding inflammation and pain which he experienced after walking, and he was administered a steroid injection by Dr. N. He was advised by the doctor to monitor it. He stated that he had experienced Inflammation and pain over a period of time, but that a steroid injections always seemed to help, including when he was outside the country and working abroad.
24. The Appellant states that based on Dr. N’s diagnosis it was his recommendation that he should undergo an arthroscopic meniscus cartilage trimming as the doctor suspected a tear in the cartilage.

25. After submitting the documents to DHMS he was advised that Dr N would have to submit a personal medical assessment (PMA) to DHMS, which was subsequently done. He was thereafter contacted on 22nd July by DHMS and advised that his authorisation was declined and that his medical aid was cancelled due to the fact that he did not disclose he had visited an orthopedic surgeon in February 2024.
26. Mr. R maintains that his membership was terminated unjustly, and that the February consultation did not result in a significant diagnosis or treatment and contends that its classification as material information was erroneous.
27. Following the Registrars Ruling, Mr. R lodged an appeal, arguing that the proceedings were procedurally unfair, that there was insufficient evidence of material non-disclosure, and that the sanction imposed was disproportionate to the alleged transgression. He referenced legal precedent, notably Swanepoel N.O v Profmed Medical Scheme, in support of his position and sought reinstatement of his membership as well as reimbursement for the surgery costs.
28. A legal opinion has been put forward in support of Mr. R's appeal. This opinion highlights procedural deficiencies, a potential misinterpretation of what constitutes material non-disclosure, and the severity of the sanction applied. It recommends that the Registrar's decision be set aside, that Mr. R's membership be reinstated, and that the costs of his surgery be reimbursed.

RESPONDENTS SUBMISSION

29. The Appellant Mr. R's applied to join the Scheme on June 4, 2024, with an effective date of June 1, 2024, which was done through a telephonic application.
30. The Respondent states that in Mr. R's application, he only disclosed a fractured radius (2017) and bronchiectasis (2020). Based on the answers provided, the membership was activated immediately with no waiting periods on the Classic Smart Plan.
31. Six weeks after membership began, on July 16, 2024, the Appellant consulted with Orthopaedic Surgeon Dr N and was diagnosed with a meniscus cartilage

tear on his left knee and an authorisation request for arthroscopic meniscus surgery was submitted on 18 July 2024 for a procedure scheduled for 25 July 2024.

32. The Scheme initiated a non-disclosure investigation and on 19th July 2024 the Scheme obtained a Personal Medical Assessment (PMA) from Dr. N.
33. The PMA confirmed that the member's pain in his left knee started in January 2024, with an initial consultation with Dr. N in February 2024, where a cortisone injection was administered. It was also noted that the Appellant had also had prior consultations in Nigeria for bursitis of the left knee in respect of the left knee (within the 12 months prior to application).
34. On 22 July 2024 the Scheme sent a membership cancellation letter, which the member appealed on 23 July 2024. The procedure was done on 25 July 2024 which the member self-funded.
35. The Scheme argues that the Appellant's failure to disclose this history of symptoms and treatment for the left knee constituted material non-disclosure.
36. The Scheme argues that the non-disclosure was material because, had the information been provided, the Scheme would have been entitled to impose a waiting period on the condition.
37. The Scheme asserts it is lawfully entitled to cancel the membership where material information is withheld, whether intentionally or not, in terms of Section 29(2) of the Medical Schemes Act.
38. The Scheme states that the non-disclosure pertained to a pre-existing condition for which the Appellant received a diagnosis and treatment within the 12-month period before the application. The Scheme further argues that Bursitis, particularly when recurrent affecting the same joint, may indicate underlying joint instability or chronic inflammation which can predispose to further structural damage such as a meniscus tear. In this case the Appellant had already received cortisone injections for Bursitis in the same knee suggesting a pattern of ongoing joint pathology.
39. It argues the sanction of termination is proportionate and justified, especially since the Appellant claimed for surgery two months after joining.
40. The Scheme contests the Appellant's reliance on administrative law principles, who claims procedural unfairness, maintaining that its decision to cancel the membership was made pursuant to a private contractual relationship governed

by statutory frameworks. Further the Respondent states that the Appellant was given numerous opportunities to respond.

41. The Respondent also argues that an applicant does not have the prerogative to be selective about which information should be disclosed and which should not be. The Respondent avers that if an applicant does not disclose information requested from them, then regardless of whether such non-disclosure was *bona fide* or *mala fide*, a scheme has a legitimate reason to review any contract which may have been entered into between the member, and it based on an assumption of full disclosure.
42. Finally, the Scheme indicated that it did make an offer to reinstate membership subject to that any outstanding premium must be settled and a declaration of health form must be completed. The Appellant did not accept the offer as he did not want to repay the outstanding premiums.
43. The Appellant declined the Schemes offer and confirmed that he would be proceeding with the appeal

DISCUSSION AND ANALYSIS

The Appeals Committee considered papers filed in this appeal; the further submissions the party's made; the relevant provisions of the Medical Schemes Act; and the Rules of the Scheme.

44. It is common cause that:
 - a. The Respondent applied to be a member of the Bestmed Medical Scheme on 4 June 2024, effective from 1 June, 2024.
 - b. The Member's membership was terminated on 22 July 2024 for non-disclosure of material information.
45. Section 29(2) of the Medical Schemes Act² states:

A medical scheme shall not cancel or suspend a member's membership or that of any of his or her dependents, except on the grounds of –

- (a) failure to pay within the time allowed on the medical scheme's rules, the membership fees required in such rules;

² Medical Schemes Act 131 of 1998

- (b) failure to repay any debt due to the medical scheme;
 - (c) submission of fraudulent claims;
 - (d) committing any fraudulent act; or
 - (e) the non-disclosure of material information
46. The Scheme relied upon section 29(2)(e) for termination of membership.
47. The issue that needs to be determined is whether there was non-disclosure and whether that non-disclosure was material.
48. Section 29A(7) of the Medical Schemes Act indicates that: “*A medical scheme may require an applicant to provide the medical scheme with the medical report in respect of any proposed beneficiary only in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within the 12-month period ending on the date on which an application for membership was made.*”
49. The Scheme alleges that in his application form Mr. R misrepresented himself by not disclosing recurrent symptoms and treatment for the left knee by both the treating orthopaedic surgeon and in Nigeria, both of which was within a 12-month period.
50. The Scheme further argues that Bursitis, particularly when recurrent affecting the same joint, may indicate underlying joint instability or chronic inflammation which can predispose further structural damage such as a meniscus tear. In this case the Appellant had already received cortisone injections for Bursitis in the same knee suggesting a pattern of ongoing joint pathology.
51. The Appellant argues that “*when asked about any previous procedures in the last year it was my understanding that this was a medical intervention procedure and for that reason I said I had not undergone any procedures*”.
52. The Respondent rightly argues that whether the omission was intentional or unintentional it nevertheless remains a non-disclosure, and further an applicant does not have the prerogative to be selective about which information to reveal. There is, therefore, no doubt that there was no disclosure of the recurrent left knee problem, which happened within the 12-month period.
53. The next issue is to determine if the non-disclosure was material or not.

54. The Constitutional Court of South Africa³ cited that the test for materiality is thus:

“Materiality of the non-disclosure lies in the fact that the Scheme was denied the opportunity to make an accurate assessment and mitigate its risk by imposing a statutorily empowered condition specific waiting period if it had been aware of the pre-existing medical condition.”

55. The non-disclosure was material as the Scheme has further argued that *“Bursitis, particularly when recurrent affecting the same joint, may indicate underlying joint instability or chronic inflammation which can predispose to further structural damage such as a meniscus tear”*. The sequence of events provides further collaboration: the member received a cortisone injection in February 2024, enrolled in the Scheme in June 2024, sustained an injury within that same month, and was subsequently scheduled for surgery six weeks post-enrolment.

56. The test of materiality of the non-disclosure lies with the Scheme being given the opportunity to make an accurate assessment and mitigate its risk by imposing a statutorily empowered condition specific waiting period⁴. The Scheme could not do this as the information was not disclosed and therefore could not mitigate its risks.

FINDING

57. The Appellant had an obligation to disclose all medical information. By omitting to disclose a consultation and intervention in February 2024 and in Nigeria within the 12-month period is non-disclosure.

58. The non-disclosure is material as the condition can predispose to further structural damage.

³ Swanepoel NO (Executor in the Estate Late Mignon Adelia Steyn) v Profmed Medical Scheme [2024] ZACC 23

⁴ Section 1 Definition: “condition-specific waiting period means a period during which a beneficiary is not entitled to claim benefits in respect of a condition for which medical advice, diagnosis, care or treatment was recommended or received within a twelve-month period ending on the date on which an application for membership was made”.

59. The Appeal Committee finds that the Scheme's decision to terminate membership of Mr. R due to material non-disclosure was justified and in accordance with Section 29(2)(e).
60. The Respondent is under no obligation to reimburse the amount of R48,000 for the self-funded procedure.

ORDER

61. Having considered the matter the Appeals Committee orders that:
 - b. The appeal is dismissed.
 - c. The decision of the Registrar is upheld.
 - d. There is no order to costs.

Dated at Johannesburg on 3 November 2025

Dr KS Chetty (For and on behalf of the Appeals Committee)

Concurring:

Dr X. Ngobese

Ms P. Beck