Taking medicolegal mediation from principle to practice: A South African venture

To the Editor: Medical negligence litigation in South Africa (SA) is increasing at an exponential rate (Table 1).[1] The prevailing legal culture defaults to resolving medicolegal disputes through litigation, which is primarily adversarial, egregiously costly and time-consuming and does not address extra-legal imperatives for reconciliation. This conventional approach demonstrates little appreciation for alternative dispute resolution (ADR) strategies that may be better suited to the SA context.[2]

Mediation may offer a non-adversarial ADR strategy that proves to be cost- and time-efficient. It creates a conciliatory environment that fosters open and honest communication, allowing clarification of events, extending apologies and identifying durable and mutually acceptable non-monetary solutions. Socioeconomic benefits include decongested court rolls, freeing resources for healthcare, reducing medical insurance premiums and minimising defensive medical practices.[3-5]

In theory, this should promote the use of mediation as the preferred dispute resolution mechanism, but in practice, it has not been the case, despite impetus from the legislature and the judiciary. Effective from 22 April 2025, the Gauteng High Court issued a practice directive introducing mandatory mediation in both the divisions of that court.[6] The directive is intended to ensure access to justice and effective litigation services within reasonable timelines. It applies to all civil trials and contains a detailed protocol that guides the process of conducting court-annexed mediation.[6] Reports from the Gauteng Department of Health indicate significant reductions between the initial amounts claimed and the amounts settled upon after mediation.[7] This demonstrates how cultural, institutional and individual change is necessary to take medicolegal mediation from principle to practice (information on file with the corresponding author).

Research and education offer an opportunity for engaging stakeholders from an impartial perspective, informing the transformation of cultural norms and values. In SA, empirical data on perceptions of the use of mediation to resolve medicolegal matters, mediation training curricula, statutory regulation of mediation and mediation outcomes are virtually non-existent.

The MPS (Medical Protection Society) Foundation is funding a research initiative from the University of the Free State (UFS) Mediation Working Group comprising members of the UFS's Faculty of Law, School of Clinical Medicine and a private sector liaison, who are currently investigating the influence of knowledge, attitudes and behaviour of healthcare professionals, legal practitioners, private healthcare institutions, medical professional indemnifiers and accredited mediator training programme directors around mediation in SA. The information acquired in the process, specifically exploring an acceptable mandatory pre-mediation clause, will be tendered for universal inclusion in informed patient consent forms – further pioneering empirical research in this area.

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Table 1. Summary of medicolegal claims per province

	Standing Committee on Appropriations[1]						National Department of Health*	
	Total value of medicolegal claims (in thousands), ZAR			Total value of claim payments made (in thousands), ZAR			Active claims, *n*	ZAR value of active claims
Province	**2023**	**2022**	**2021**	**2023**	**2022**	**2021**	**As at 31 May 2025**	**As at 31 May 2025**
Eastern Cape	26 345 655	25 076 798	38 608 606	350 685	38 683	866 144	2 330 (from 2004)	22 688 662 483.24
Free State	5 130 112	4 663 463	4 501 077	9 863	8 831	584	441 (from 2014)	5 824 190 958.68
Gauteng	18 152 738	17 542 171	24 494 229	512 203	369 697	392 000	707 (from 2020) 1 397 (dormant from 2007) 2104	6 900 014 324.23 14 071 521 706.40 20 971 536 030.63
KwaZulu-Natal	7 342 190	13 180 222	25 244 438	162 682	265 884	92 882	1 442 (from 2002)	17 381 118 309.14
Limpopo	Outstanding	8 334 914	11 939 334	35 500	77 665	72 776	1 768 (from 2007)	12 077 471 223.00
Mpumalanga	7 049 098	7 716 031	9 543 267	163 489	39 640	18 632	1 075 (from 2007)	7 052 569 434.07
Northern Cape	600 611	1 520 424	1 656 795	12 293	59 413	229 814	91 (from 2014)	1 344 283 389.33
North West	3 393 104	3 589 144	5 582 950	62 708	18 539	44 856	316 (from 2011)	3 749 193 046.22
Western Cape	0	186 532	229 655	143 549	47 642	31 990	263	486 397 728.56
Total	68 013 508	81 809 699	121 800 351	1 452 972	925 994	1 749 678	9 567 (1 397 dormant)	91 090 025 324.33 (including dormant)

*Unpublished data presented by Adv. L Makhosi, National Department of Health, at the Free State Provincial Medicolegal Workshop, 13 - 14 August 2025, University of the Free State, Bloemfontein campus.

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