

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No. 12156/05

In the matter between:

TREATMENT ACTION CAMPAIGN	First Applicant
SOUTH AFRICAN MEDICAL ASSOCIATION	Second Applicant

and

MATTHIAS RATH	First Respondent
DR RATH HEALTH FOUNDATION AFRICA	Second Respondent
SAM MHLONGO	Third Respondent
DAVID RASNICK	Fourth Respondent
ALEXANDRA NIEDWIECKI	Fifth Respondent
ANTHONY BRINK	Sixth Respondent
TREATMENT INFORMATION GROUP	Seventh Respondent
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	Eighth Respondent
DIRECTOR-GENERAL OF HEALTH	Ninth Respondent
CHAIRPERSON, MEDICINES CONTROL COUNCIL	Tenth Respondent
REGISTRAR OF MEDICINES	Eleventh Respondent
MEMBER OF EXECUTIVE	
COUNCIL FOR HEALTH, WESTERN CAPE	Twelfth Respondent

FIRST APPLICANT'S REPLYING AFFIDAVIT

I, the undersigned

NATHAN GEFFEN

hereby affirm and say:

1. I am the co-ordinator of Policy, Research and Communications for the Treatment Action Campaign (TAC). I have previously deposed to an affidavit in this matter.
2. I have read the answering affidavits delivered on behalf of the government respondents, Mr Anthony Brink and the Treatment Information Group. I wish to reply to them on behalf of the TAC, as set out below.
3. The facts contained in this affidavit are within my personal knowledge unless indicated otherwise expressly or by the context. To the best of my knowledge they are true and correct.
4. I deal first with the affidavits filed on behalf of the eighth to twelfth respondents (“the national government respondents”) and then with the affidavits filed by the twelfth respondent, the Western Cape MEC for Health. Thereafter I deal with the affidavit filed by the sixth and seventh respondents, Mr Anthony Brink and the Treatment Information Group. The other respondents have not filed answering affidavits.

**THE AFFIDAVITS FILED ON BEHALF OF
THE NATIONAL GOVERNMENT RESPONDENTS**

INTRODUCTION

5. I respectfully submit that the affidavits filed on behalf of the eighth to eleventh respondents (“the national government respondents”) reveal certain fundamental misconceptions. These misconceptions underlie both the national government’s failure to carry out its legal obligations, and its attitude to this application. They are the following:
- 5.1. whom the applicants are suing in this matter;
 - 5.2. the nature of this dispute;
 - 5.3. the statutory regulatory scheme which the national government is required to administer and enforce;
 - 5.4. the duties of the government in the case of alleged breaches of the law; and
 - 5.5. the nature of the relief which the applicants seek.
6. In order to avoid repetition in my response to specific allegations made on behalf of the national government respondents, I deal first with these issues.

Whom the applicants are suing

7. The national government respondents appear to take the view that the applicants are suing the Minister of Health. It is then asserted that certain matters are beyond the Minister of Health, and fall (for example) within the duties of the South African Police Services or the National Prosecuting Authority; and that on that basis, the applicants are not entitled to the relief they seek.

8. In fact, the applicants are suing (as eighth respondent) the Government of the Republic of South Africa. They seek declarations that the Government of the Republic of South Africa has failed to carry out certain legal obligations, and orders directing the Government of the Republic of South Africa to take certain steps in that regard. I have been advised and respectfully submit that it is the Government of the Republic of South Africa which bears those obligations. The applicants are not concerned through which of its arms the Government carries out its obligations. Their only concern is that the Government does so. The applicants ask this honourable court to order the Government to do so.

The nature of this dispute

9. The national government respondents appear to take the view that this is a private dispute between the TAC and the Rath respondents, in which the TAC is seeking “to use the state machinery to further personal or self interests”. From this, they appear to conclude that it is not appropriate or desirable for them to intervene or act in any proactive manner.

10. This approach is incorrect for three reasons:
11. First, it is not only the TAC which is an applicant in this matter. The South African Medical Association (SAMA) is also an applicant. SAMA is a professional association of medical doctors in South Africa. It has approximately 16 000 members. SAMA sues because it and its members are deeply concerned about the activities of the Rath respondents and their impact on public health, and about the failure of the Government to take effective steps to put an end to these dangerous activities.
12. Secondly, this case is not about furthering the “personal or self interests” of the TAC or SAMA. What it is about, is the obligation on the Government to take effective measures to protect and promote the health and bodily integrity of South Africans. The Government is under a duty to take positive measures in this regard. It can not be a passive bystander where the health of members of the public is threatened.
13. Thirdly, this case is about the duty of the Government to give effect to laws passed by Parliament. The fact that the applicants have an interest in ensuring that the Government carries out that duty, does not detract from the duty.

The statutory regulatory scheme

14. The national government respondents appear to take the view that under the statutory regulatory scheme:

- 14.1. A substance is a medicine only if the Medicines Control Council determines that it is such.

I have been advised and respectfully submit that this is not correct. The meaning of “medicine” is defined in sec 1 of the Medicines Act. If a substance falls within that definition, it is a medicine. The Medicines Control Council does not have any power or discretion to decide whether a substance is a medicine.

- 14.2. A substance is not a medicine if an official of the Department of Health is of the opinion that it is a food supplement or nutritional supplement.

I have been advised and respectfully submit that this is not correct, and that in fact the opposite is true. In terms of the definition of “foodstuff” in sec 1 of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 (“the Foodstuffs Act”), a substance can not be a health supplement if it is a medicine as defined in the Medicines Act. Further and in any event, there is no power or mechanism under the Foodstuffs Act for an official to declare that a substance is a foodstuff or a food supplement.

- 14.3. So-called food supplements in respect of which medicinal claims are made, are not medicines.

I have been advised that any substance in respect of which medicinal claims are made, is a medicine.

The duties of the government in the case of alleged breaches of the law

15. The national government respondents appear to take the view that before government is obliged to take any action with regard to an alleged breach of the law, the person complaining of a breach must provide “independent” evidence, which establishes guilt beyond a reasonable doubt.
16. I have been advised, and respectfully submit, that this misconceives the position. I submit that where a member of the public provides information or evidence which creates reasonable grounds for a suspicion that an offence has been committed, the Government is under a duty to take reasonable measures to investigate and establish whether an offence has been committed, and if so, to take reasonable measures to prevent the continuing commission of that offence.
17. These misconceptions permeate the affidavits filed by the national government respondents. It will be submitted on behalf of the applicants that they have led to a fundamental misdirection by the national government respondents in the exercise of their powers.

The nature of the relief which the applicants seek

18. The government respondents appear to take the view that what the applicants are seeking is a criminal conviction of the Rath respondents, and that there is therefore an onus on the applicants to prove, beyond a

reasonable doubt, the commission of the offences in question. I submit that this is misconceived.

19. The applicants have, I submit, produced evidence that shows that at least on the face of it, the Rath respondents have acted unlawfully. The government respondents do not put up any evidence to the contrary.
20. That being so, I have been advised and respectfully submit that the applicants are entitled at least to an order interdicting the Rath respondents from acting unlawfully, and ordering the government to take reasonable measures to enforce the law, which includes taking reasonable measures to investigate the matters in issue.
21. I now proceed to deal with the detail of the affidavits delivered by the national government respondents.

AD THE AFFIDAVIT OF THAMSANQA DENNIS MSELEKU**Ad paragraph 3**

22. I wish to point out that Mr Mseleku is not an expert in any of the technical or scientific matters which are dealt with in this application, and does not claim any such expertise. He is not a doctor, a medical scientist, an ethicist, a pharmacologist, or a statistician. I do not know in what field he studied before he became a public servant, but I believe that before he held his present position, he was Director-General of the Department of Education. I have been advised and submit that his expressions of opinion with regard to technical or scientific matters are therefore pure hearsay, and are to be disregarded.

Ad paragraph 5

23. As I have stated above, Mr Mseleku has misconceived the nature of this application. It is certainly true that the TAC has been engaged in an ongoing struggle to attempt to ensure that the Rath respondents do not carry on unlawful activities which endanger the health of members of the public. We have been compelled to do so by the failure of the government to carry out its duty to intervene and stop these activities.

Ad paragraph 6

24. It will be submitted on behalf of the applicants that the affidavit of Mr Mseleku and the annexures thereto demonstrate that he and the Minister have an

impoverished and legally inadequate understanding of the nature and extent of the constitutional obligations of the government, and that the government has failed to carry out these duties to safeguard and promote the health of the public.

Ad paragraph 7

25. Neither Mr Mseleku nor Mr Du Toit provides any of the following information:

25.1. When was Mr Du Toit asked to investigate “the allegations of the applicants”, and in particular was this was before or after the launching of these proceedings?

25.2. Which of the allegations did he investigate?

25.3. When and in what manner were the allegations “looked into”? For example, whom did he interview? He did not contact representatives of the Treatment Action Campaign, which made the complaint. They do not say whether he contacted any of the many other persons who could have provided him with important and relevant information if he was engaging in a serious and good faith investigation – for example the people who have made affidavits as to their treatment by the Rath respondents; the many doctors who have made complaints about the activities of the Rath respondents; the people working at the Rath clinic in Khayelitsha; the South African Medical Association; Medecins Sans Frontieres; Ms Joubert, whose extensive

article in Fair Lady (attached to the affidavit of Mr Uys as PU4) was sent to the MCC by Mr Uys, the Twelfth Respondent; Health-e News Service; and the other journalists whose work is referred to in these papers.

- 25.4. Did Mr Du Toit carry out any investigation into the contents of the products distributed by the Rath respondents and if so, what investigations were carried out in this regard?
- 25.5. What evidence did he find which he regarded as either not suitably “independent” or not “sustainable”, and why that evidence was not “independent” or “sustainable”?
- 25.6. What sort of evidence would Mr Du Toit regard as “independent”?
- 25.7. What efforts were made to obtain such “independent” evidence?
- 25.8. What evidence would Mr Du Toit regard as “sustainable”?
- 25.9. What efforts were made to obtain such “sustainable” evidence?
- 25.10. On what basis did Mr Du Toit arrive at any conclusions which he formed?
26. Neither Mr Mseleku nor Mr Du Toit has provided this honourable Court with any information whatsoever as to what investigation Mr Du Toit carried out,

and what facts he found through that investigation. All that is provided is an opinion that “he was unable to find any independent or sustainable evidence of unlawful activities”.

27. I submit that this bald statement of an opinion or conclusion, without the provision of any underlying facts, fails in any way to meet the applicants’ complaint that the government authorities have failed to take reasonable and effective steps to stop the unlawful activities of the Rath respondents.
28. Further, neither Mr Mseleku nor Mr Du Toit sets out any factual basis for his opinion that the TAC “has attempted to use the Law Enforcement Unit to its advantage in its battles with some of the first to seventh respondents”, as opposed to concluding that the TAC has attempted to persuade the government to act against activities which appear to be unlawful and harmful to the health of the public. The unsupported insinuation that the TAC is acting out of some hidden agenda is unfounded, and unworthy of the head of a government department.

Ad paragraph 13

29. As I have stated, the national government deponents have misconstrued the basis of this application. The eighth respondent is the national government. It has been joined and cited as a respondent because of its failure, through its various ministries, departments and agencies, to carry out its legal obligations. The Minister of Health is identified, correctly I submit, as the person in that government with the most direct responsibility for the matters to which this application refers. She is however not the eighth respondent:

the national government is. I have been advised and respectfully submit that it is well established in our law that it is permissible to cite and join the government instead of a particular Minister.

Ad paragraph 15

30. Mr Mseleku implicitly rejects my characterisation of HIV/AIDS as a “major public health crisis”, preferring to use the term “challenge”. His attempt to underplay the scale and nature of the problem is unfortunate and inexplicable. It is his own Department and a previous Minister of Health who said, as quoted in the judgment of the Constitutional Court in Minister of Health v Treatment Action Campaign:

“The HIV/AIDS pandemic in South Africa has been described as “an incomprehensible calamity” and “the most important challenge facing South Africa since the birth of our new democracy” and government’s fight against “this scourge” as “a top priority”. It “has claimed millions of lives, inflicting pain and grief, causing fear and uncertainty, and threatening the economy”.

Ad paragraph 16

31. I do not understand Mr Mseleku’s reference to an effective “conventional” treatment regime, which seems to imply that there are effective “non-conventional” treatment regimes. To date, there is no scientific evidence that anything other than a treatment regime involving the use of ARV medicines is effective in treating HIV infection. The MCC has registered only ARV medicines for this purpose, as is the case with all other national drug

regulatory authorities. This is explained in paragraphs 15 to 35 of Dr Venter's affidavit (NG4), which is not disputed by Mr Mseleku.

Ad paragraph 17

32. It is remarkable that Mr Mseleku declines to either admit or deny the allegations contained in paragraphs 25 and 26 of my founding affidavit, which are at the core of this case.

Ad paragraph 18

33. I deny the correctness of the allegations contained in this paragraph, for the reasons which I have already given. Argument will be addressed on behalf of the applicants in this regard.

Paragraph 19

34. I have already dealt with the inadequate and unsubstantiated allegation that Mr Du Toit of the Law Enforcement Unit carried out an "investigation". This general allegation by Mr Mseleku takes the matter no further. If (as appears) this is all that has been done to pursue and investigate the serious allegations which have been made, then I submit that this confirms that the government authorities have failed to take reasonable and effective measures to investigate the matter and to enforce the law.

Ad paragraph 23

35. Mr Mseleku apparently "does not agree" that the TAC campaigns to bring down medicine prices, but declines to say why this is so. I must say that I

find this quite extraordinary, as the TAC's position on this is a matter of public record. The TAC's position is well known through both its public campaigning work, and through the litigation in which it has been involved.

36. For example, in previous litigation in the Transvaal Provincial Division of the High Court, in which multinational pharmaceutical companies challenged the validity of legislation which would have the effect of bringing down the price of medicines, the TAC intervened in support of the government's position to defend the legislation. More recently, the TAC participated as an *amicus curiae* in the Constitutional Court in the *New Clicks* case, and stated that it supported the government in its wish to bring down medicine prices. I do not attach the papers in those cases because they are voluminous, and because the Minister was a party to the cases, but I tender to make them available to the respondents on request. Those papers point out that the TAC has also sought to increase access to medicines by actively making use of the existing (albeit imperfect) statutory framework to achieve a reduction in the price of medicines used to treat HIV-infection and AIDS-related illnesses and opportunistic infections.

Ad paragraph 24

37. Mr Mseleku's apparent scepticism about the scientific validity of highly qualified expert evidence put up by the first applicant, while he is unwilling to engage on this issue and is in any event unqualified to express any opinion in this regard, gives cause for concern as to his and the Minister's commitment to science and ensuring the proper implementation of the ARV treatment plan.

38. Of course I am aware that some people do not believe what is set out in paragraphs 44.1 to 44.3 of my founding affidavit. The evidence in this case shows that these are fringe views which have no credible scientific basis. Mr Mseleku provides no evidence to show the contrary.
39. Mr Mseleku again misconceives the nature of this application. The applicants do not seek this honourable Court's intervention to resolve a disagreement between scientists. They seek to ensure that government acts reasonably in applying and enforcing the law in an important public health matter.

Ad paragraph 25

40. I have been advised and respectfully submit that Mr Mseleku has misconceived the nature of the Medicines Act and regulations. They provide a system for the registration of all medicines, of whatever kind. A "food supplement in respect of which medicinal claims are made" is a medicine.
41. In this regard I annex (NG75), a report that appeared in the Cape Times on 4 July 2006 which quotes Professor Peter Eagles, the tenth respondent, saying the following about another product purporting to be a treatment for AIDS:
- "You have a legal obligation, if you make claims about cures, to have substantiated proof. You can't market it as a drug before the MCC has looked at it and registered it. This is to protect the public."

Ad paragraph 26

42. I respectfully submit that the question which Mr Mseleku is required to address is not whether Mr Du Toit has reported that the Rath respondents have acted unlawfully. The question is whether the Rath respondents have acted in the manner set out in the affidavits attached to my supporting affidavit, and what investigation has been undertaken to establish whether this is so. Mr Mseleku fails to address these issues at all.

Ad paragraph 28.2

43. I have been advised and respectfully submit that to the extent that the 2002 notice superseded the 1985 call-up notice, it is in any event, on its own terms, a notice issued in terms of 14(2) of the Medicines Act, which is a determination that the classes and categories of medicines listed therein are subject to registration in terms of the Act.

44. I have been advised and respectfully submit that to the extent that the 2002 notice purports to be something other than what sec 14(2) authorises, namely a notice of a determination of medicines which are subject to registration, it is invalid and of no force or effect whatsoever.

45. Argument will be addressed in this regard at the hearing of this matter.

Ad paragraph 28.3

46. I have been advised and respectfully submit that the intention of the 2002 notice, which is subordinate legislation, has to be determined from its content, and not from what Professor Eagles or anyone else says it is.

47. I have been further advised and submit that the content and legal consequences of the notice are inconsistent with what Mr Mseleku and Professor Eagles say is the intention of the notice. Argument will be addressed on behalf of the applicants in this regard.

Ad paragraph 28.4 and 28.5

48. I have already referred to Mr Mseleku's fundamental misconceptions that:

48.1. the MCC has the power to declare what is and what is not a medicine;

48.2. an official of his Department has the legal power to declare that a substance is a food supplement, and that consequent upon such a declaration, it ceases to be a medicine.

49. Those misconceptions are vividly demonstrated in these paragraphs of his affidavit.

50. The Department of Health has specific responsibilities with regard to the enforcement of the Medicines Act. For this purpose, the legislature has given it broad powers of investigation (including the search and seizure provisions in sec 28(1) of the Act). The Department simply refuses to exercise its powers in a reasonable manner. In any event, it is the duty of

the eighth respondent (the national government), acting through its various agencies, to investigate the matter properly and act reasonably in enforcing the law. It has failed and continues to fail to do so.

Ad paragraph 28.6

51. I agree that the fact that a product contains a schedule 2 substance does not necessarily make it a medicine. However, whether or not it is a medicine, it may only be dispensed by the persons described in sec 22A(5) of the Act.
52. Attached to my founding affidavit were affidavits which stated that the Rath respondents have dispensed schedule 2 substances under circumstances which strongly suggest that the dispensing was in contravention of sec 22A(5) of the Act.
53. It appears that in his letter to the MCC on behalf of the First Respondent (TDM4), the Seventh Respondent admits that their pharmaceutical products (which he describes as micronutrients) are donated and distributed through a civic organisation. On the face of it, this is an admission that the products are distributed without supervision by a pharmacist or even a nutritionist.
54. Remarkably, despite the evidence which strongly suggests that there is a continuing breach of the Medicines Act, Mr Mseleku and the national government have taken no steps whatsoever, or no effective steps, to stop these activities or even to investigate the matter.
55. Mr Mseleku seems to suggest that it is for the applicants to establish, beyond a reasonable doubt, that products containing a schedule 2

substance have indeed been dispensed in contravention of section 22A(5) of the Medicines Act. In so doing, he once again misconstrues the nature of his functions and of this application. The applicants have not brought a private prosecution against the Rath respondents. They are seeking to ensure that the national government acts reasonably when allegations of apparently unlawful conduct are brought to its attention, and enforces the law.

Ad paragraph 30

56. Mr Mseleku again misconceives the issue. The Rath respondents make medicinal claims on behalf of their products. This has the consequence that they are medicines within the definition in the Act. The MCC does not determine what is and what is not a medicine.

57. As the political and administrative heads of the Department of Health, the Minister and Mr Mseleku have a duty to ensure that the powers conferred upon their officials are used reasonably to protect the health of the public. I submit that they have self-evidently failed to do this.

Ad paragraph 31 and 32

58. Mr Mseleku does not only “neither agree nor disagree” that the Rath respondents continuously publish advertisements in breach of sections 14 and 20 of the Medicines Act. He displays a studied lack of interest in the matter which, I submit, demonstrates a failure to act reasonably in the exercise of his powers and functions.

59. If there is insufficient evidence available to Mr Mseleku to make a finding in this regard, his responsibility is to ensure that the matter is properly investigated. Instead of doing this, he has washed his hands of the matter. The consequence is that the national government has failed to carry out its obligation to enforce the law. This has come about because the institution with primary responsibility for enforcing compliance with the Medicines Act, namely the Department of Health, has failed to act.

Ad paragraph 34

60. Numerous rulings, findings, statements, investigations and warnings have been made against Rath, by a variety of highly reputable bodies. Serious complaints have been made about his activities in South Africa. I submit that under those circumstances, any reasonable and responsible official would ensure that the Rath activities are properly investigated. Mr Mseleku has failed to do this.

Ad paragraphs 37 and 38

61. I submit that Mr Mseleku's response to the evidence of unlawful clinical trials verges on the frivolous. The Rath respondents actually say that they have conducted clinical trials. Mr Mseleku's response is, in effect, to say that:

61.1. he does not know whether they are telling the truth;

61.2. he does not know whether the trials took place in South Africa - whereas the Rath respondents say that they were conducted in Khayelitsha;

- 61.3. he does not know whether the products were tested on humans - which the Rath respondents plainly say was the case;
- 61.4. he does not know whether the substances tested were Rath products – which is entirely irrelevant if the trials were not authorised.
62. There is any number of simple investigative steps which could have been taken to establish whether unlawful clinical trials have taken place. Mr Mseleku apparently considers that a letter of enquiry from the MCC, followed by the unquestioning acceptance of a reply which is patently incorrect as to the requirements of the law, constitutes a sufficient investigation and enforcement of the law. I submit that it is not.

Ad paragraph 39.1

63. The question is not whether the advertisements “provide clear and unambiguous evidence of unlawful clinical trials for humans”, as I submit they indeed do. The question is whether on the face of it they show that unlawful clinical trials have been or may have conducted. In that event, the government is obliged to take appropriate action to enforce the law, if necessary after further and effective investigation. I submit that on the face of the advertisements they do show that unlawful clinical trials have been conducted on humans. The government has done nothing, not even conduct an investigation.

Ad paragraph 39.2

64. Mr Mseleku does not suggest why the Rath respondents' claims to be doing something which on its face is unlawful, should not be taken seriously.

Ad paragraph 39.3

65. I do not know to what correspondence between Dr Zokufa and the TAC Mr Mseleku is referring. Neither the request nor the reply is attached, and Dr Zokufa has not made an affidavit. Mr Mseleku's statements about what Dr Zokufa told him are therefore not only hearsay, but they are so vague that I can not answer them directly.
66. As I stated in my founding affidavit, on 17 May 2005 I sent a detailed affidavit (NG61) to Mr Snyman of the Department's Law Enforcement Unit. The information in the affidavit and its numerous annexures strongly suggested that the Rath respondents were carrying out unauthorised clinical trials. It provided a very adequate basis for anyone who genuinely wanted to investigate the matter, to do so. The government, which has a duty to enforce the law, has not done so.
67. The allegations I provided can not fairly or honestly be described as vague. The type of evidence that Mr Mseleku seems to demand of the first applicant is that which the state would obtain through a proper investigation. I repeat that it is not for an organ of civil society to do the work that the law empowers and requires the government to do. In this case, the applicants – and in particular the first applicant – went far beyond the duties of civil

society organisations in seeking to assist the state to discharge its obligations.

Ad paragraph 39.5

68. In this paragraph Mr Mseleku repeats the misconceptions to which I referred at the beginning of this affidavit. I do not traverse them yet again. The matter will be addressed in argument on behalf of the applicants.

Ad paragraph 40

69. The applicants have placed more than enough evidence before the Department such that any reasonable and responsible government would have cause for concern, and investigate whether or not the first and second respondents operate health facilities in the Western Cape. It has failed to do so.

Ad paragraphs 41 and 42

70. The attitude of Mr Mseleku is remarkable: any evidence produced by people aligned with or sympathetic to the TAC is inherently suspect, but he and his Department will not take any effective steps to collect any other evidence.

71. Mr Mseleku says that the Law Enforcement Unit “sought, and, thus far, could not find” any “objective” evidence of unlawful activity. He does not say what investigation they conducted, beyond writing a letter. They did not even take the elementary step of interviewing the people who had provided affidavits,

to find out how reliable their evidence was. One can only conclude that in truth there was no investigation at all, and certainly no proper investigation.

72. In this regard I attach affidavits by Ms Nandipha Ntsholo (NG76), Mr Zukile Ngqase (NG77) and Dr Kevin Rebe (NG78) who have previously made affidavits in this matter. I also attach affidavits by Dr David Pienaar (NG79) and Ms Pearlie Joubert (NG80). All five have been clearly identified as people who could provide the government with further information. None of them has been contacted by anyone on behalf of the government. I have not been able to obtain affidavits from the many other people who are listed in the papers as having information which would be relevant to any serious investigation. Neither Mr Mseleku nor Mr Du Toit suggests that any of them has been contacted in the course of Mr Du Toit's "investigation".

Ad paragraph 43

73. Mr Mseleku's admission that he still does not know whether any of the Rath respondents are running clinics speaks to the inadequacy of the so-called investigation, and to his lack of concern about the matter.

Ad paragraph 45

74. Mr Mseleku's inability to comment on the correctness or otherwise of paragraphs 121 to 131 of my founding affidavit, which deal with the consequences of the actions of the Rath respondents, display an attitude and lack of concern that are not those of a responsible and reasonable official.

75. Instead, Mr Mseleku chooses to mischaracterise the issue once more. The issue in this case is not that the Rath respondents “highlight what they believe to be the toxic nature of ARVs”. The case is also not about any legal obligation on the part of the state “to proclaim the benefits of ARVs.” The issue is a systematic campaign of unlawful action that places the health of the public at risk.

Ad paragraph 47

76. Mr Mseleku fails to provide any evidence as to what investigation was undertaken, or what findings were reached, other than the wholly unsupported and vague assertion that the investigation “did not confirm the allegations of the first applicant”.
77. Mr Mseleku does not say where, when or how Dr Zokufa requested that the first applicant provide the MCC with “greater detail” regarding the allegations, and I therefore am not able to answer this assertion (which is also hearsay), except to deny it. I submit that the events described in my founding affidavit show that the TAC has gone to extraordinary lengths to collect relevant information and provide it to government. The TAC has never refused and would never purposefully refuse to provide information in this regard, and I deny that we did not respond to any such request. I submit further that the record shows that the first applicant furnished the MCC with more than sufficient information for it to be able to discharge its statutory role. In this respect, I refer to NG61 attached to my founding affidavit, which contains the evidence submitted to the Law Enforcement Unit, and to which Dr Zokufa would have had access.

Ad paragraph 49

78. Mr Mseleku fails to explain, beyond a bare denial, why the Minister's conduct (which I describe in detail in my founding affidavit) has not encouraged the Rath respondents to continue their unlawful activities. I submit that it plainly has done so, both on the probabilities and on the demonstrated facts.
79. Mr Mseleku's statement that in promoting the government programme, "it is clearly not for ... [the Minister] to prescribe any particular treatment" shows a startling failure to appreciate the importance of accurate and consistent public health messages from the authorities. It also shows a lack of confidence by the government in its own programme. The inadequacy of this response is illustrated by (for example) the government's tuberculosis programme. The Minister and the Department actively encourage people with tuberculosis to use the prescribed medicines, and provide people known as DOTS supporters to monitor that patients take the medicines prescribed.

Ad paragraphs 50 and 51

80. Mr Mseleku and the Minister have deliberately avoided obtaining the knowledge which would enable them to conclude that the Rath respondents have acted unlawfully. They simply and deliberately fold their arms. I deny that there is anything malicious in the allegations made by the applicants regarding the Minister's effective support for the Rath respondents.

Ad paragraph 52

81. I have been advised and submit that the powers of the Unit are anything but narrow. In this matter, they have simply refused to exercise them. Mr Mseleku does not suggest that the Department has sought the assistance of the SAPS and/or the NPA in taking action against any or all of the Rath respondents.

Ad paragraph 53

82. Mr Mseleku again reveals his fundamental misconception that the MCC has the power to determine whether a substance is a medicine.

Ad paragraph 63

83. Mr Mseleku here at last reveals the nature of the investigation which Mr Du Toit undertook. I respectfully submit that it is self-evidently inadequate given the nature of the complaints.

Ad paragraph 65 and 66

84. Argument will be addressed at the hearing of this matter as to the nature of the obligation of the Department and its officials to act in an accountable manner.

85. Mr Mseleku does not explain on what possible rational basis, Mr du Toit concluded that this is really a private dispute between the TAC and the Rath respondents, and what possible rational basis there is for his own apparent acceptance of this conclusion.

Ad paragraph 67

86. It is hardly unreasonable to expect a Minister of Health to criticise the activities of a person who is acting unlawfully and in a manner which undermines public health, including the government's own public health programme.
87. It is clear from what Mr Mseleku says, that Mr Rasnick and Prof Mhlongo did indeed make a presentation to the National Health Council at the invitation of the Minister. All he denies is that they presented findings of a clinical trial.

Ad paragraph 68

88. The contents of this paragraph are not irrelevant. They indicate that the Minister has indeed promoted – and continues to promote – the use of nutrition as appropriate treatment for HIV infection, in the absence of any scientific evidence to support such a conclusion. They are the truth, which Mr Mseleku does not deny. If the truth causes embarrassment to the Minister, the first applicant can not be blamed for that.
89. Mr Mseleku accuses the applicants and me of “trying to embarrass the Minister”, and states that first applicant has made it its special interest to ensure that the Minister is embarrassed, insulted and lampooned as much as possible. The first applicant certainly criticises the Minister vigorously when we believe that is appropriate. We are not alone in this, and I submit that our criticism is legitimate. In this regard, I attach (NG81) a copy of the recent judgment of a full bench of the Transvaal Provincial Division of the

High Court in Costa Gazidis v Minister of Public Service and Administration
(case no A2050/04).

Ad paragraph 69, 71 and 73

90. Mr Mseleku and the Minister have not taken the action sought by the applicants, precisely because they are unwilling to advocate and promote evidence-based treatment for HIV infection. Instead of doing this, Mr Mseleku and the Minister hide behind the rhetoric of free choice, and promote the dangerous illusion of an equivalence between evidence-based treatments, and treatments for which there is no proven basis. Mr Mseleku's open acknowledgment that he has never said that people should take ARV's, when that is the only evidence-based and MCC-approved treatment for a potentially fatal disease, is truly shocking.

Ad paragraph 76

91. The opinion of the Directorate of Food Control regarding the nature of VitaCell is irrelevant for the purpose of determining whether it is a medicine.

Ad paragraph 77

92. Mr Mseleku again reveals the national government's failure to understand the regulatory system. The MCC does not designate products as medicines.

Ad paragraph 88

93. The affidavits make out a case that a serious offence is being committed on a continuing basis. If the government believes that the affidavits must be

treated with caution because of the deponents' relationship with the first applicant, and that they contain hearsay, it should have investigated the matter itself. It has simply failed and refused to do so. The statement that Mr du Toit took the statements "very seriously" is, with due respect, absurd, given the failure of the government either to take action or to investigate the matter itself.

Ad paragraph 89

94. The failure of the government to take any effective action is all the more inexcusable in the light of the serious allegations made by a medical practitioner who is directly engaged in treating people for this widespread and potentially fatal disease.

Ad paragraph 90

95. I submit that Mr Mseleku's cavalier dismissal of the evidence of Mr Gray, on the sole basis that his evidence is based on substances made available by people connected with the first applicant, is by itself sufficient evidence that the government has not properly considered and investigated this matter.

paragraph 91

96. Prof London is an expert in the field of clinical trials. Mr Mseleku is not. Mr Mseleku dismisses the evidence of Prof London on transparently contrived and spurious grounds - for example, that Prof London accepted that the Rath respondents had done what they publicly said they had done; that it is not shown that the trials were conducted on humans; that it is not shown that the trials were conducted in South Africa; and that the Rath advertisements

are not academic publications. Submissions will be made in argument as to the conclusions and inferences which should be drawn from the attitude of the national government as represented by Mr Mseleku.

AD THE AFFIDAVIT OF PETER EAGLES**Ad Paragraphs 1 to 4**

97. I do not admit that the contents of the affidavit of Prof Eagles are the truth.

Ad Paragraph 6

98. Serious allegations have been made against the Rath respondents. The MCC is the responsible regulatory body. The sole action it has taken is to send a letter to the Rath respondents to enquire whether they are acting unlawfully.

Ad Paragraph 7

99. The applicants' attorneys have asked the State Attorney for access to the tape recording of the MCC meeting at which Mr Du Toit made his report. The government respondents have, through the State Attorney, refused this. Application will be made in due course in this regard.

Ad Paragraph 8

100. I do not understand what Professor Eagles means by the statement that the MCC "will continue to look at the matter". The evidence so far does not suggest that it will do anything effective, that is, if it does anything at all.

Ad Paragraph 11

101. I submit that it is neither lawful nor reasonable to withhold from the applicants information as to the nature and progress of the investigation.

Ad Paragraph 12

102. Professor Eagles is disingenuous here, in that he is not disclosing the full facts. He fails to disclose that through its attorneys, the MCC sent a letter of demand to the Second Respondent. I attach a copy of that letter (NG82). He also does not disclose why the MCC did not proceed with the threatened legal action.

103. I dispute the correctness of the statement that the Minister did not nor ever has interfered in the affairs of the MCC. I have been advised that it is not necessary or appropriate for me to enter into that question here.

Ad Paragraph 13.1

104. I note that Professor Eagles concedes what Mr Mseleku and the national government do not understand, namely that the Medicines Act does not distinguish between orthodox and complementary medicines. The MCC is under a duty to give effect to, and implement, the Act.

Ad Paragraph 13.2-13.4

105. I have already dealt with the meaning and effect of the 2002 Notice. This matter will be addressed further in argument.

106. I now deal with the affidavits filed on behalf of the provincial government (the twelfth respondent).

**THE AFFIDAVITS FILED ON BEHALF OF
THE PROVINCIAL GOVERNMENT**

AD THE AFFIDAVIT OF PIERRE UYS

Ad Paragraph 7

107. I regret to have to say that Mr Uys is being disingenuous here.
108. According to the provincial government statement (NG40), it was issued because “misinformation is being spread in respect of the use of antiretroviral medication”. It expresses “concern about the possibility that the [government] programme is being undermined by the distribution of information, which creates any confusion about the benefits and risks associated with antiretroviral treatment”.
109. The statement was issued on 23 March 2005. It is common cause that just 13 days earlier, on 10 March 2005, a delegation of the TAC had met Mr Uys and Prof Househam, had raised the distribution of the Rath pamphlets, and asked that the provincial government intervene and issue a statement condemning Dr Rath’s misleading publicity. The papers in this case show that at this time there was widespread publication of the Rath pamphlets and advertisements.

110. Mr Uys does not suggest that any other persons were spreading the misinformation to which the provincial government statement refers. One has to ask why it is that he is so coy about whose statements and misinformation were causing concern.

Ad Paragraph 8

111. Dr Rebe was identified, in the annexures to PU3, as a medical practitioner who had reported cases of patient confusion, and who could be contacted by investigators. No-one contacted him for this purpose.

Ad Paragraph 9

112. Mr Uys's annexures PU3 and PU4 are correspondence to the then Registrar of Medicines, Dr Zokufa. They contain documentation demonstrating that Dr David Pienaar and Ms Pearlie Joubert had information relevant to the investigation. Neither of them was contacted by government authorities.

Ad Paragraph 10

113. Mr Uys previously did not provide any substantive response to the question from the applicants' attorneys (NG72) as to what action he had taken or would take to ensure that Dr Rath and his Foundation cease their unlawful activities. While I welcome the fact that Mr Uys passed on the complaints he had received to Dr Zokufa, I submit that the record shows that this was as a matter of fact not effective in bringing an end to the unlawful Rath activities.

Ad Paragraphs 14-15

114. I submit that Mr Uys's defence of his answers in the Provincial Legislature on 23 September 2005 (NG70) can not be sustained in the light of the record in this matter. If necessary (in the light of the fact that the applicants do not seek any relief against the twelfth respondent), this matter will be addressed in argument.

Ad Paragraph 17.1

115. I acknowledge that the Western Cape provincial government competently implemented a comprehensive HIV/AIDS prevention and treatment programme. Regrettably, it has not been effective in its response to the activities of the Rath respondents, which have been focused in the Western Cape, and which have led directly to the suffering and death of HIV positive people.

Ad Paragraph 17.2

116. I agree that a co-operative relationship among all sectors is essential in order to deal effectively with HIV/AIDS. Doctors, the TAC, and other members of civil society have placed information before the authorities to bring to their attention the damaging and unlawful activities of the Rath respondents, and to enable them to take effective action in this regard. The authorities' failure to respond is the cause of this application.

AD THE AFFIDAVIT OF KEITH CRAIG HOUSEHAM**Ad Paragraph 5-6**

117. The applicants do not “purport not to ask for relief against the twelfth respondent”. They do not ask for relief against the twelfth respondent.
118. As I have stated in my response to the affidavit of Mr Uys, it is our view that the record shows that as a matter of fact, the response of the provincial government to the Rath activities has not been effective. The fact is that the activities have continued. In our view the twelfth respondent could and should have done more, and could and should have acted more effectively. However, the applicants accept that it is the national government which carries the principal burden and obligation in this regard. It is for this reason that no relief is sought against the twelfth respondent. There was and is no need for the twelfth respondent to enter the matter.

Ad Paragraph 8-30

119. I repeat that the first applicant acknowledges that the Western Cape government competently implemented a comprehensive programme to address the HIV epidemic. Our complaint is the failure of government to respond effectively to the unlawful activities of the Rath respondents, which in fact undermine and impede that programme. The extensive evidence submitted by Dr Househam as to the contents of the programme is not relevant to the applicants’ complaint and these proceedings, as it does not address any of the matters which are in issue.

Ad Paragraph 35.2

120. I first saw the letter given to Ms Majali of the TAC Western Cape office, when I read Dr Househam's affidavit. This was probably due to an internal administrative error in the TAC, and I apologise for this. However I repeat that this response of the provincial government was as a matter of fact not effective in bringing an end to the unlawful Rath activities.

Ad Paragraph 49

121. I raised this matter on a number of occasions with Dr Fareed Abdullah, who was until fairly recently the Deputy Head of Dr Househam's Department, and the person who headed the provincial government's AIDS programme.

122. I now reply to the answering affidavit filed on behalf of the sixth respondent (Anthony Brink) and the seventh respondent (the Treatment Information Group).

**THE AFFIDAVIT FILED ON BEHALF OF
THE SIXTH AND SEVENTH RESPONDENTS**

AD THE AFFIDAVIT OF ANTHONY BRINK

123. I have been advised that it is not necessary for me to reply to most of Mr Brink's affidavit, which consists principally of polemic, unqualified statements of opinion, other forms of hearsay, conclusions without any evidence of fact, and assertions without any evidence of fact. Most of the affidavit is in any event irrelevant to the issues which this honourable Court is required to decide.

Introduction: Mr Brink's opinions on matters of science

124. Mr Brink purports to give evidence on matters of science. I have been advised and submit that his statements of opinion with regard to scientific matters are inadmissible hearsay, as he is not qualified to give evidence in this regard as an expert.

125. I submit, too, that even on its own terms, the nature and content of Mr Brink's affidavit disqualifies his evidence as that of an expert on whom a court could or should place any reliance.

126. Mr Brink makes wide and far-reaching assertions and propositions with regard to science and scientific knowledge.
127. I attach (NG83) an affidavit by Professor George Ellis, who is one of South Africa's most eminent scientists. Professor Ellis explains how one is to go about assessing claims to scientific knowledge. I submit that applying the tests set out by Professor Ellis, the statements by Mr Brink can not by any stretch be accepted as scientific statements on which any reliance can be placed. They can most charitably be described as the sincerely and passionately held beliefs of a person whose opinions may be interesting to some, but do not constitute expert scientific knowledge and opinion.
128. Mr Brink seeks to dismiss the opinions of highly qualified experts such as Professor Dorrington and Dr Venter on the basis of the assertion that they have an indirect association with pharmaceutical companies. He dismisses the entire World Health Organisation on the basis of its association with pharmaceutical companies. I have to say that this is highly ironic. Mr Brink was until very recently actually employed by the Dr Rath Health Foundation Africa. Dr Rath is a pharmaceutical product proprietor. The Foundation promotes and distributes his products. If even an indirect association with a pharmaceutical company is a disqualification for providing expert opinion on scientific matters, then Mr Brink is entirely disqualified in this regard.
129. I do not respond to Mr Brink's assertions as to the history and functioning of the TAC and NAPWA. His description is distorted and erroneous. As this matter is entirely irrelevant to this case, and his allegations are in any event not based on any material which has any evidential value, I will not further

burden the record by addressing it. This also applies to his assertions as to how TAC is run, its democratic functioning and its political affiliations; and also to his digression on the question of traditional medicines, which are not the subject of this case.

130. In relation to the attacks which Mr Brink makes on Professor Dorrington and Dr Venter, I attach affidavits by them (NG84 and NG85 respectively). I do not repeat their contents here. I submit however that they demonstrate that Mr Brink:

130.1. is not qualified to state the opinions which he does;

130.2. is factually wrong in a number of material respects; and

130.3. is reckless as to the truth, including as to the truth of the abuse which he heaps on those with whom he disagrees.

131. I now deal with certain of the specific allegations made by Mr Brink.

Ad Paragraph 23

132. Mr Brink states that it is only on matters of pricing that the TAC criticizes pharmaceutical companies. He is wrong. The following are four examples of instances in which the TAC has tackled pharmaceutical companies on non-pricing issues (more could be given):

132.1. I attach (NG86) a statement which the TAC issued on 11 August 2004. In that statement, the TAC criticised the pharmaceutical company Cipla for its failure to conduct

adequate bio-equivalence tests for some of its antiretroviral medicines.

- 132.2. I attach (NG87) an extract from the July 2005 issue of Equal Treatment, which is a magazine published by the TAC. That article accuses one of the world's largest pharmaceutical companies of fraud for its failure to disclose risks associated with its medicine (rofecoxib, also known by its trade name Vioxx). The extract includes a piece titled "The lessons of the Vioxx scandal" which states "Drug companies and regulatory authorities are not to be blindly trusted. Consumer bodies must be vigilant and demand operational data on all medicines."
- 132.3. In 2003, and on behalf of the TAC, I assisted a group of patients who were being sold unregistered and improperly tested antiretroviral medicines by a Swaziland company. In this regard I attach (NG88) a newspaper report on that matter.
- 132.4. This very case is an instance of TAC attempting to halt the unethical practices of a pharmaceutical entrepreneur, namely Matthias Rath.
133. Even on Mr Brink's version, materials published by the TAC describe the side-effects of medicines. We repeatedly explain in our materials and training workshops that antiretroviral medicines are associated with side effects.

Ad Paragraph 57

134. Mr Brink refers to a recent case in this court in which the TAC sought an interim interdict against the first and second respondents in this matter. Mr Brink has attached to his affidavit (as AB7) only three pages of this judgment. The last page creates the impression that the court found that “The applicant [TAC] targets poor communities as a market for the drug industry in order to promote the interests of pharmaceutical companies.”
135. In fact, the court interdicted the respondents from making statements to this effect. I attach (NG89) the full judgment, which shows that the court ordered an interim interdict as follows:

“1. The respondents are interdicted, pending the final determination of an action which the applicant has instituted against the respondents for a final interdict, for an apology, and for damages, from publishing any statement which alleges that

1.1 The applicant is a front for pharmaceutical companies or the pharmaceutical industry, or the 'Trojan horse' of that industry, or the 'running dog' of that industry

1.2 The applicant is funded by pharmaceutical companies or the pharmaceutical industry;

1.3 The applicant receives funds from pharmaceutical front organisations in return for promoting antiretroviral drugs;

1.4 The applicant targets poor communities as a market for the drug industry in order to promote the interests of pharmaceutical companies. “

Ad Paragraph 59

136. Jonathan Berger holds no office in the TAC. He is neither a member of the TAC National Executive Committee nor a staff member. He is a member of TAC. Mr Brink is reckless as to the truth of statements which he makes under oath.

Ad Paragraphs 74-78

137. Mr Brink was the principal deponent for the respondents in the interdict proceedings to which I have referred. As appears from NG89, the court held as follows

“The respondents' allegations with regard to the pharmaceutical industry and the TAC are premised upon conjecture and inferences and, it seems, are underpinned by a conspiracy involving several players. It is an unlikely scenario and no evidence has been disclosed which supports the respondents' position on the TAC's funding. The TAC, on the other hand, has made full disclosure of its income and their source. Moreover, several local and international deponents have confirmed the TAC's policy and

practices in respect of its finances. The respondents' allegations are not supported on the available evidence and the contrary appears to be more likely...."

"The TAC's members, staff and donors - including fraternal organizations overseas - are aware of the TAC's policy not to accept money from drug companies and comply with it. The evidence shows that as a matter of deliberate policy the applicant has not received money from drug companies either directly or indirectly and it has implemented mechanisms to preclude any such eventuality.

Save for the speculation or conjecture to which I have already referred, the respondents have produced no factual material to advance a sustainable defence in respect of these defamatory allegations."

138. Mr Brink must be aware of this. Nevertheless, he persists in making unfounded allegations and insinuations with regard to the TAC's source of funds.
139. Unlike the TAC, the sixth and seventh respondents do not make public disclosure of their sources of funds.

Ad paragraph 79

140. There is much in Mr Brink's affidavit that is racist, prejudiced and xenophobic. This will, if necessary, be dealt with in argument. However I do wish to respond to this paragraph.

141. I am a South African citizen. I was born here and grew up here. Mr Brink's statements under oath as to my origins are not only irrelevant, they are also false.
142. I take particular offence at Mr Brink's assertion that "none of the TAC's driving political energy is authentically African" as well as his assertion that the "Africans hired by the TAC to give colour to its administration are conspicuously mere ciphers echoing their master's voice, with the letters sent out in their name seemingly ghost-written for them." These statements are false, racist and paternalistic. Mr Brink offers no evidence to support them.
143. Mr Brink attached to his affidavit, as AB10AA, an article in the City Press newspaper, the contents of which (I have been advised) are hearsay and inadmissible. The article refers to the decision by Siphokazi Mthathi of the TAC not to participate as part of the country delegation in a meeting of United Nations General Assembly Special Session (UNGASS).
144. In this regard I attach (NG90) an affidavit by Siphokazi Mthathi, who is the General Secretary of the TAC and my supervisor. Ms Mthathi says the following with regard to the City Press article:
- 144.1. She declined the offer to participate in the UNGASS meeting as a member of the country delegation for the reasons set out in the letter which is attached to her affidavit. The letter was made public by the TAC.

- 144.2. She wrote a letter to City Press, pointing out the errors in the article to which Mr Brink refers. City Press published an edited version of the letter.
145. Ms Mthathi describes her qualifications. Contrary to Mr Brink's racist assumptions, she does not need assistance to write a letter. The letters were not ghost-written, they were written by her.
146. The City Press report implies that the TAC did not want to send an African person to UNGASS unless she was accompanied by non-Africans. That this is simply wrong is demonstrated by the fact that the TAC members who went to the UNGASS meeting were Ms Mthathi, Nkhensani Mavasa (deputy chairperson) and Vuyiseka Dubula (TAC Western Cape Treatment Literacy Co-ordinator). All three are Africans.
147. Ms Mthathi was the most senior TAC member in UNGASS and led the delegation. She is not a person living with HIV, whereas Ms Mavasa is. At Ms Mthathi's suggestion, the TAC therefore nominated Ms Mavasa to address UNGASS.
148. A major thrust of Mr Brink's affidavit is the assertion (which is both irrelevant and unsupported by any evidence) that the TAC purports to speak on behalf of Africans. As Ms Mthathi points out, this assertion is somewhat ironic, as it is Mr Brink who purports to speak on behalf of Africans.

Ad paragraph 81

149. Mr Brink accuses the World Health Organisation of being “essentially the executive arm of the pharmaceutical industry”. This absurd accusation underlies his fundamental view that most people who disagree with him are part of or are controlled by the pharmaceutical industry.
150. As I have pointed out this is ironic, given that the First Respondent is a pharmaceutical entrepreneur, the Second Respondent is a pharmaceutical organization, and several of the Rath Respondents (including Mr Brink himself) work or have worked for or with the Second Respondent.

Ad Paragraphs 94-122

151. Mr Brink makes several statements regarding the health of Zackie Achmat. He pronounces on this matter without having a medical qualification or having examined Mr Achmat. I submit that Mr Achmat's health is irrelevant to this matter. The same allegations were made in the interdict application in this court, and rebutted there. I attach (NG91) an affidavit by Zackie Achmat, dealing with his health. He explains that his health has improved as a consequence of his having taken ARVs, and that Mr Brink misrepresents the state of his health.

Ad Paragraph 161

152. Mr Brink makes allegations about the TAC's approach to traditional medicines. I am advised that this is irrelevant to this matter. Nevertheless, I ask the court to read annexures AB27 and AB28, which Mr Brink cites in support of his allegations, to see that he has distorted TAC's approach to this issue.

Ad Paragraph 308

153. Mr Brink here admits that he has a "fundamental" disagreement with the fourth respondent, Dr David Rasnick as to whether HIV has even been shown to exist. Mr Brink does not believe there is sufficient evidence demonstrating the existence of HIV. Dr Rasnick does believe that HIV exists, but believes that it does not cause AIDS. However the first respondent, Dr Rath, appears to believe that HIV both exists and causes AIDS. In this regard, I attach (NG92) marketing material of the first respondent distributed in the United States of America which contains diagrams purporting to show how HIV causes AIDS, and how micronutrients prevent HIV from multiplying.

154. It is striking that when certain people - who are well qualified as experts - make statements which disagree with the opinions of Mr Brink, he dismisses those statements on the basis that they are in the pay of the pharmaceutical industry. He does not take the same approach when Dr Rasnick and Dr Rath (himself a pharmaceutical entrepreneur) disagree with him.

NATHAN GEFFEN

I CERTIFY THAT THE DEPONENT ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION, THAT HE HAS CONSCIENTIOUS OBJECTIONS TO TAKING THE PRESCRIBED OATH AND CONSIDERS THIS AFFIRMATION BINDING ON HIS CONSCIENCE. SIGNED AND AFFIRMED TO BEFORE ME AT CAPE TOWN ON THIS ____ DAY OF JULY 2006.

COMMISSIONER OF OATHS