

# TAC and SAMA Versus Matthias Rath and the Government of South Africa

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## The Rule of Law and the Scientific Governance of Medicine



*TAC members demonstrating outside court on 13 March against the Minister of Health and Matthias Rath*

On 12 to 14 March 2008, the court action initiated by TAC and the South African Medical Association (SAMA) against Matthias Rath and the Government of South Africa will be heard in the Cape High Court. This court case is critical for the rule of law as it relates to the Medicines Act.

In November 2005, the TAC and SAMA filed court papers against the state, Matthias Rath and others. We have asked the Cape High Court to order the Minister of Health to stop Rath's experiments on humans, his distribution of unregistered medicines and his false claims that vitamin and micronutrient supplements reverse the course of AIDS.

In its response, the state claimed that it conducted an investigation and found no evidence of wrong-doing by the Rath Foundation. We have asked the state for the record of this investigation but it has refused. We have not seen any evidence that any proper investigation has been conducted. For example, the Law Enforcement Unit of the Department of Health has not interviewed any of the witnesses who have deposed written affidavits testifying to the illegal activities of the Rath Foundation.

Rath is the definitive charlatan. With the support of South Africa's Minister of Health, Manto Tshabalala-Msimang, he has sown confusion in South Africa about the treatment and prevention of HIV. The Rath saga demonstrates how damaging politically-supported AIDS denialism is. Rath is one of many charlatans taking advantage of vulnerable people with HIV in the country, but he has been one of the most destructive and almost certainly the richest. This case challenges the impunity with which charlatans have been able to act due to the failure of government to enforce the Medicines Act.

Government has rejected settlement offers by TAC which would require the state to investigate Rath's activities and stops his illegal activities.

### ***Rath's activities***

Rath is a pharmaceutical entrepreneur who claims that his products, high-dose multivitamins, treat AIDS, heart-disease,

cancer, diabetes, bird flu and numerous other diseases. He sells his products on the Internet at exorbitant prices (\$29 per month for the most basic package). His markets appear to have been primarily in Europe and the United States. As far as we can ascertain, he started operating in South Africa in 2004. This is a brief timeline of what he has done in the country since then:

- In 2004, he ran adverts in newspapers making general attacks on pharmaceutical companies and espousing what he termed natural health.
- On 26 November 2004, he ran an advert in the Mail & Guardian claiming that multivitamin supplements treat AIDS and that antiretrovirals make people with AIDS sicker.
- He ran several more advertisements in various newspapers, including the Sowetan, Business Day and Daily Sun, making similar claims. Some newspapers acted ethically and rejected his advertisements.
- Despite an Advertising Standards Authority (ASA) ruling stopping Rath's adverts because his claims were unsubstantiated, Rath and two newspapers violated the ruling in March 2005. Rath placed adverts in the Sowetan and City Vision attacking the ASA and repeating the above claims. These too were ruled against by ASA and subsequently Rath has not been able to advertise in South African newspapers.
- Rath partly sponsored a propaganda video by another charlatan, Tine van der Maas. She and her mother claim that her garlic concoction treats a variety of diseases including AIDS and diabetes. The South African Minister of Health appears in the video apparently supporting van der Maas's efforts.
- In early 2005, Rath and his agents started health facilities in Cape Town townships. He ran a marketing campaign to convince people with HIV to take high-dose multivitamins from his health facilities instead of antiretrovirals from the public health system. His products have never been registered with the Medicines Control Council, despite being eligible for registration.
- On 15 April 2005, Rath ran an advertisement in the Mercury, in which he published the results of what he called a 'clinical pilot study' in Khayelitsha. The study purported to show that multivitamins alone reverse the course of AIDS. Rath had no ethical approval or authorisation for the study. The law requires all clinical trials to be authorised by the Medicines Control Council. Various organisations subsequently documented a number of deaths on the trial. Rath's study has never been published in a peer-reviewed journal. It contained no control arm and a disproportionate number of patients on it appear to have died, including one of Rath's loudest supporters, Marietta Ndziba. In the court papers, two relatives of people who died on the Rath trial have written affidavits.
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Rath also published the supposed findings of his trial in the New York Times, the International Herald Tribune and other newspapers (a shame on these newspapers).

- From late 2004, Rath distributed pamphlets and ran adverts accusing TAC of being a front for the pharmaceutical industry. TAC successfully interdicted Rath in the Cape High Court from making this claim. Rath then published a press statement and distributed a pamphlet falsely representing the court judgment.
- In 2007, Rath published a book titled "End AIDS!?" which compares TAC to Nazis and attacks many of his critics as promoters of the pharmaceutical industry including COSATU (especially its Western Cape leader, Tony Ehrenreich), the South African Council of Churches, the South African Medical Association and its chairperson Kgosi Letlape, the president of the Southern African HIV Clinicians Society Dr Francois Venter, Professor Leslie London (a leading scientist in the University of Cape Town's Department of Public Health), newspaper columnist Terry Bell and many others.

Rath also has numerous rulings and court findings against him in several other countries.

### ***How the Minister of Health, her Director-General and other state officials have protected and supported Rath***

There is a pattern of evidence showing that the Minister of Health and other state officials have protected and supported Rath.

- In 2004, Rath made a deal with South Africa's Medical Research Council (MRC) via its head, Anthony Mbewu, to run a series of workshops, which were essentially marketing events. Rath paid the MRC R200,000. The MRC eventually kept about R60,000 of this money because only some of the planned workshops took place. The minutes of the meetings between Rath and Mbewu record that Mbewu accused TAC of being a pharmaceutical front. Mbewu also recommended that Rath work with NAPWA, an organisation whose leadership consistently supported pseudo-scientific approaches to HIV and that nevertheless received substantial funding from the Department of Health. NAPWA's leadership has since supported Rath in another court case brought against him by TAC. NAPWA has also distributed Rath's products.
- In February 2005, TAC lodged a complaint against Rath with the Medicines Control Council and subsequently the Department of Health. Despite numerous letters sent and a plethora of evidence supplied, the Department of Health has never properly investigated Rath's activities. On the contrary, senior officials in the Department of Health have treated with contempt TAC's efforts to get Rath investigated. This is described in detail in our court papers. Government's failure to investigate Rath is the reason we have taken legal action.
- In April 2005, the Minister of Health had a one-on-one meeting with Rath. She has admitted this in Parliament. On the same day, at a meeting in Khayelitsha in which Rath sat in the audience, the Minister refused to condemn Rath despite being asked to do so by numerous members of the audience.
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In a written answer to Parliament, the Minister stated that she would "only distance [herself] from Dr Rath if it can be demonstrated that the Vitamin supplements that he is prescribing are poisonous for people infected with HIV.?"

- On 23 September 2005, the Minister of Health allowed two of Rath's agents, David Rasnick (a well-known AIDS denialist who has worked with the notorious Peter Duesberg) and the now deceased Sam Mhlongo, to present to the National Health Council on Rath's clinical trial. We are unaware of a real HIV scientist ever having the privilege of doing this in front of the National Health Council.
- In 2006, the Director-General of Health instructed the Port Authorities to release Rath's medicines which they had impounded. It is our view that this was an illegal action by the Director-General. It was also an action that is only understandable in the context of the Director-General protecting Rath.
- The ANC has never come to the defence of Member of Parliament and former Cabinet Minister Kader Asmal for his criticisms of Rath which prompted Rath to sue him for defamation. It is highly unusual for the ANC not to defend its leaders.
- The court papers have revealed that the Department of Health sent a letter to Rath's company asserting that one of his products was a food substance, as opposed to a medicine. They had no authority to do so, because whether or not something is a medicine is determined by law in South Africa, not the opinion of Department of Health officials. This explains why one of Rath's pamphlets states "The Dr. Rath Health Foundation Africa has the support of our Minister of Health and our Government. The vitamin programmes used are qualified as food and nutrition. As opposed to toxic ARV drugs, these programmes are safe because they are natural. Don't fall for the dirty tricks of the Drug Cartel: trust our Government and those who support it.?"  
The state has never distanced itself from statements like this by Rath.
- Despite several attacks on its alliance partner COSATU, the ANC has never condemned Rath.
- In February 2008 TAC members met with the Provincial Minister of Health for Kwazulu-Natal, Ms Peggy Nkonyeni. They were astounded to find copies of Rath's book "End AIDS?" in her waiting room. During the meeting, Nkonyeni kept a copy of Rath's book on her desk and at one point referred to it. Nkonyeni has made several pseudo-scientific comments about HIV. Kwazulu-Natal has more people with HIV than any other South African province.

### ***Why this case is important***

Many people in South Africa still present far too late to the public health system, with advanced AIDS. Many patients try all kinds of alternative remedies before finally seeking help from their local clinics. Many never take the opportunity to live longer, healthier lives by using scientifically proven antiretroviral medicines because they are hoodwinked into trying unproven elixirs. Charlatans and quacks abound; some of the more notorious ones are Zeblon

Gwala who distributes Ubhejane, Tine van der Maas who claims garlic and an African potato solution treat numerous diseases, Freddie Isaacs who distribute Comforters' Healing Gift and Stephen Leivers who distributes Secomet. In the centre of Cape Town and other cities, numerous unproven remedies are sold as cures for AIDS, including one called Ozone Rectal Therapy. The Minister of Health has fostered this situation by creating the illusion that people with HIV have a reasonable choice to make between antiretrovirals versus alternative remedies and by failing to enforce the Medicines Act.

Charlatans operate in every society, but they usually operate on the fringes. In South Africa, charlatanism has become mainstream. This case aims to establish that the Minister of Health has a duty to enforce the Medicines Act and to uphold the scientific governance of medicine. Her failure to enforce the act has hampered the rollout of antiretroviral treatment and resulted in many deaths.

***What can your organisation do?***

We call on organisations concerned about access to health-care and the scientific governance of medicine to condemn the South African government's support of charlatans. Demand that the South African government settles the court case on the reasonable terms offered by TAC.

For details on Rath's wrongdoings and the case against him, go to:

<http://www.tac.org.za/community/rath>

- [Experiments on People Interdict](#)
- [Quackery](#)
  
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