

GOVERNMENT NOTICE
DEPARTMENT OF HEALTH

No. R. 717

4 August 2006

as amended by Government Notice No. R 68 of 2 February 2009.

HEALTH PROFESSIONS ACT, 1974 (ACT NO. 56 OF 1974)

**ETHICAL RULES OF CONDUCT FOR PRACTITIONERS REGISTERED UNDER THE HEALTH
PROFESSIONS ACT, 1974**

The Health Professions Council of South Africa, in consultation with the professional boards and with the approval of the Minister of Health, has, under section 49 read with section 61(2) and 61A (2) of the Health Professions Act, 1974 (Act No. 56 of 1974), made the rules in the Schedule.

SCHEDULE

Definitions

1. In these rules, any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context indicates otherwise -

“Act” means the Health Professions Act, 1974 (Act No. 56 of 1974);

“annexure” means an annexure to these rules;

“association” means a form of practising where two or more practitioners practise for their own account, but share communal assets or facilities;

“board” means a professional board established in terms of section 15 of the Act;

“canvassing” means conduct which draws attention, either verbally or by means of printed or electronic media, to one’s personal qualities, superior knowledge, quality of service, professional guarantees or best practice;

“close collaboration” means consultation by a practitioner at one stage or another in the treatment of a patient with another practitioner and the furnishing by the latter practitioner, at the end of such treatment, of a report on the treatment to the practitioner whom he or she consulted;

“dental specialist” means a dentist who has been registered as a specialist in a speciality or subspeciality in dentistry in terms of the Regulations relating to the Specialities and Subspecialities in Medicine and Dentistry, published under Government Notice No. R. 590 of 29 June 2001;

“dispensing optician” means a person registered as such in terms of the Act and the Rules for the registration of Dispensing Opticians, published under Government Notice No. R. 2339 of 3 December 1976;

“impairment” means a mental or physical condition which affects the competence, attitude, judgement or performance of professional acts by a registered practitioner;

“independent practice” means a practice where a registered health profession is conducted by a health practitioner without the supervision of another health practitioner;

“itinerant practice” means a practice which a practitioner conducts on a regular basis at a location other than at his or her resident practice address;

"medical device" means a medical device as defined in section 1 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

"medical scientist" means a person registered under the Act as a biomedical engineer, clinical biochemist, genetic counsellor, medical biological scientist or medical physicist;

"medical specialist" means a medical practitioner who has been registered as a specialist in a speciality or subspeciality in medicine in terms of the Regulations relating to the Specialities and Subspecialities in Medicine and Dentistry, published under Government Notice No. R. 590 of 29 June 2001;

"optometrist" means a person registered as such under the Act;

"pharmaceutical concern" means a company registered as such under the Pharmacy Act, 1974 (Act No. 53 of 1974);

"practitioner" means a person registered as such under the Act and, in the application of rules 5, 6 and 9 of these rules, also a juristic person exempted from registration in terms of section 54A of the Act;

"private practice" means the practice of a health practitioner who practises for his or her own account, either in *solus* practice, or as a partner in a partnership, or as an associate in an association with other practitioners, or as a director of a company established in terms of section 54A of the Act;

"public company" means a company registered as such under the Companies Act, 1973 (Act No. 61 of 1973);

"public service" means a service rendered by the state at the national, provincial or local level of government and includes organizations which function under its auspices or are largely subsidized by the state or recognized by a board for the purposes of these rules;

"resident practice" means a place where a registered health practitioner conducts his or her practice on a daily basis;

"rooms" means a physical structure, with an exclusive entrance and walled all round for the privacy of patients, the preservation of their confidentiality and the safe keeping of records, where a practitioner conducts his or her practice;

"section" means a section of the Act;

"specialist" means a practitioner who is registered as a specialist in a speciality or subspeciality (if any) in terms of the Regulations relating to the Specialities and Subspecialities in Medicine and Dentistry, published under Government Notice No. R. 590 of 29 June 2001, and who confines his or her practice to such speciality or subspeciality;

"supervision" means the acceptance of liability by a supervising practitioner for the acts of another practitioner; and

"touting" means conduct which draws attention, either verbally or by means of printed or electronic media, to one's offers, guarantees or material benefits that do not fall in the categories of professional services or items, but are linked to the rendering of a professional service or designed to entice the public to the professional practice.

Interpretation and application

2. (1) Failure by a practitioner to comply with any conduct determined in these rules or an annexure to these rules shall constitute an act or omission in respect of which the board concerned may take disciplinary steps in terms of Chapter IV of the Act.
- (2) Conduct determined in these rules or an annexure to these rules shall not be deemed to constitute a complete list of conduct and the board concerned may therefore inquire into and deal with any complaint of unprofessional conduct which may be brought before such board.
- (3) At an inquiry referred to in subrule (2) the board concerned shall be guided by these rules, annexures to these rules, ethical rulings or guidelines and policy statements which the board concerned or council makes from time to time.

Advertising and canvassing or touting

3. (1) A practitioner shall be allowed to advertise his or her services or permit, sanction or acquiesce to such advertisement: Provided that the advertisement is not unprofessional, untruthful, deceptive or misleading or causes consumers unwarranted anxiety that they may be suffering from any health condition.
- (2) A practitioner shall not canvass or tout or allow canvassing or touting to be done for patients on his or her behalf.

Information on professional stationery

4. (1) A practitioner shall print or have printed on letterheads, account forms and electronic stationery information pertaining only to such practitioner's –
 - (a) name;
 - (b) profession;
 - (c) registered category;
 - (d) speciality or subspeciality or field of professional practice (if any);
 - (e) registered qualifications or other academic qualifications or honorary degrees in abbreviated form;
 - (f) registration number;
 - (g) addresses (including email address);
 - (h) telephone and fax numbers;
 - (i) practice or consultation hours;
 - (j) practice code number; and
 - (k) dispensing licence number (if any).
- (2) A group of practitioners practising as a juristic person which is exempted from registration in terms of section 54A of the Act or a group of practitioners practising in partnership, shall print or have printed on letterheads, account forms and electronic stationery information pertaining only to such juristic person or partnership practitioners' -
 - (a) name;
 - (b) profession;
 - (c) registered category;
 - (d) speciality or subspeciality or field of professional practice (if any);
 - (e) registered qualifications or other academic qualifications or honorary degrees in abbreviated form;
 - (f) registration number;
 - (g) addresses (including email address);
 - (h) telephone and fax numbers;
 - (i) business hours;
 - (j) practice code number;
 - (k) exemption from registration in terms of section 54A of the Act; and
 - (l) dispensing licence number (if any).
- (3) A practitioner shall not use prescription forms or envelopes on which the name or address of a pharmacist is printed.

Naming of a practice

5. (1) A practitioner shall use his or her own name or the name of a registered practitioner or practitioners with whom he or she is in partnership or with whom he or she practises as a juristic person, as a name for his or her private practice.
- (2) A practitioner referred to in subrule (1) may retain the name of such private practice even if another practitioner, partner of such partnership or member of such juristic person is no longer part of such private practice: Provided that the express consent of the past practitioner or, in the case of a deceased practitioner the consent of the executor of his or her estate or his or her next-of-kin, has been obtained.
- (3) A practitioner shall not use, in the name of his or her private practice, the expression "hospital", "clinic" or "institute" or any other expression which may give the impression that such private practice forms part of, or is in association with, a hospital, clinic or institute.

Itinerant practice

6. A practitioner may conduct a regularly recurring itinerant practice at a place where another practitioner is established if, in such itinerant practice, such practitioner renders the same level of service to patients, at the same fee as the service which he or she would render in the area in which he or she is conducting a resident practice.

Fees and commission

7. (1) A practitioner shall not accept commission or any material consideration, (monetary or otherwise) from a person or from another practitioner or institution in return for the purchase, sale or supply of any goods, substances or materials used by him or her in the conduct of his or her professional practice.
- (2) A practitioner shall not pay commission or offer any material consideration, (monetary or otherwise) to any person for recommending patients.
- (3) A practitioner shall not offer or accept any payment, benefit or material consideration (monetary or otherwise) which is calculated to induce him or her to act or not to act in a particular way not scientifically, professionally or medically indicated or to under-service, over-service or over-charge patients.
- (4) A practitioner shall not share fees with any person or with another practitioner who has not taken a commensurate part in the services for which such fees are charged.
- (5) A practitioner shall not charge or receive fees for services not personally rendered, except for services rendered by another practitioner in his or her employment or with whom he or she is associated as a partner, shareholder or locum tenens.

Partnership and juristic persons

8. (1) A practitioner may practise in partnership or association with or employ only a practitioner who is registered under the Act and who is not prohibited under any of the annexures to these rules or any ethical rulings from entering into such partnership or association or being so employed: Provided that, in the case of employment, the practitioner so employed either provides a supportive health care service to complete or supplement the employing practitioner's healthcare or treatment intervention or is in the same professional category as the employing practitioner.
- (2) A practitioner shall practise in or as a juristic person who is exempted from registration in terms of section 54A of the Act only if such juristic person complies with the conditions of such exemption.
- (3) A practitioner shall practise in a partnership, association or as a juristic person only within the scope of the profession in respect of which he or she is registered under the Act.
- (4) A practitioner shall not practise in any other form of practice which has inherent requirements or conditions that violate or potentially may violate one or more of these rules or an annexure to these rules.

Sharing of Rooms

8A. A practitioner shall not share his or her rooms with a person or entity not registered in terms of the Act.

Covering

9. (1) A practitioner shall employ as a professional assistant or locum tenens, or in any other contractual capacity and, in the case of locum tenens for a period not exceeding six months, only a person -
- who is registered under the Act to practise in independent practice;
 - whose name currently appears on the register kept by the registrar in terms of section 18 of the Act; and
 - who is not suspended from practising his or her profession.
- (2) A practitioner shall help or support only a person registered under the Act, the Pharmacy Act, 1974 (Act No. 53 of 1974), the Nursing Act, 1978 (Act No. 50 of 1978), the Social Service Professions Act, 1978 (Act No. 110 of 1978), the Dental Technicians Act, 1979 (Act No. 19 of 1979), or the Allied Health Professions Act, 1982 (Act No. 63 of 1982), if the professional practice or conduct of such person is legal and within the scope of his or her profession.

Supersession

10. A practitioner shall not supersede or take over a patient from another practitioner if he or she is aware that such patient is in active treatment of another practitioner, unless he or she -
- takes reasonable steps to inform the other practitioner that he or she has taken over the patient at such patient's request; and
 - establishes from the other practitioner what treatment such patient previously received, especially what medication, if any, was prescribed to such patient and in such case the other practitioner shall be obliged to provide such required information.

Impeding a patient

11. A practitioner shall not impede a patient, or in the case of a minor, the parent or guardian of such minor, from obtaining the opinion of another practitioner or from being treated by another practitioner.

Professional reputation of colleagues

12. A practitioner shall not cast reflections on the probity, professional reputation or skill of another person registered under the Act or any other Health Act.

Professional confidentiality

13. (1) A practitioner shall divulge verbally or in writing information regarding a patient which he or she ought to divulge only -
- in terms of a statutory provision;
 - at the instruction of a court of law; or
 - where justified in the public interest.
- (2) Any information other than the information referred to in subrule (1) shall be divulged by a practitioner only -
- with the express consent of the patient;
 - in the case of a minor under the age of 12 years, with the written consent of his or her parent or guardian; or
 - in the case of a deceased patient, with the written consent of his or her next-of-kin or the executor of such deceased patient's estate.

Retention of human organs

14. (1) A practitioner shall only for research, educational, training or prescribed purposes retain the organs of a deceased person during an autopsy.
- (2) The retention of organs referred to in subrule (1) shall be subject -
- (a) to the express written consent given by the patient concerned during his or her lifetime;
 - (b) in the case of a minor under the age of 14 years, to the written consent of such minor's parent or guardian; or
 - (c) in the case of a deceased patient who had not previously given such written consent, to the written consent of his or her next-of-kin or the executor of his or her estate.

Signing of official documents

15. A student, intern or practitioner who, in the execution of his or her professional duties, signs official documents relating to patient care, such as prescriptions, certificates (excluding death certificates), patient records, hospital or other reports, shall do so by signing such document next to his or her initials and surname printed in block letters.

Certificates and reports

16. (1) A practitioner shall grant a certificate of illness only if such certificate contains the following information -
- (a) the name, address and qualification of such practitioner;
 - (b) the name of the patient;
 - (c) the employment number of the patient (if applicable);
 - (d) the date and time of the examination;
 - (e) whether the certificate is being issued as a result of personal observations by such practitioner during an examination, or as a result of information which has been received from the patient and which is based on acceptable medical grounds;
 - (f) a description of the illness, disorder or malady in layman's terminology with the informed consent of the patient: Provided that if such patient is not prepared to give such consent, the practitioner shall merely specify that, in his or her opinion based on an examination of such patient, such patient is unfit to work;
 - (g) whether the patient is totally indisposed for duty or whether such patient is able to perform less strenuous duties in the work situation;
 - (h) the exact period of recommended sick leave;
 - (i) the date of issue of the certificate of illness; and
 - (j) the initial and surname in block letters and the registration number of the practitioner who issued the certificate.
- (2) A certificate of illness referred to in subrule (1) shall be signed by a practitioner next to his or her initials and surname printed in block letters.
- (3) If preprinted stationery is used, a practitioner shall delete words which are not applicable.
- (4) A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself.

Issuing of prescriptions

17. (1) A practitioner authorized in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), to prescribe medicines shall issue typewritten, handwritten, computer-generated, pre-typed, pre-printed or standardized prescriptions for medicine scheduled in Schedules 1, 2, 3 and 4 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), subject thereto that such prescriptions may be issued only under his or her personal and original signature.
- (2) A practitioner authorized in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), to prescribe medicines shall issue handwritten prescriptions for medicine scheduled in

Schedules 5, 6, 7 and 8 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), under his or her personal and original signature.

Professional appointments

18. (1) A practitioner shall accept a professional appointment or employment from employers approved by the council only in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession.
- (2) A written contract of appointment or employment referred to in subrule (1) shall be made available to the council at its request.

Secret remedies

19. A practitioner shall in the conduct and scope of his or her practice, use only –
- (a) a form of treatment, apparatus or health technology which is not secret and which is not claimed to be secret; and
- (b) an apparatus or health technology which proves upon investigation to be capable of fulfilling the claims made in regard to it.

Defeating or obstructing the council or board in the performance of its duties

20. A practitioner shall at all times cooperate and comply with any lawful instruction, directive or process of the council, a board, a committee of such board or an official of council and in particular, shall be required, where so directed to –
- (a) respond to correspondence and instructions from the council, such board, a committee of such board or an official of council within the stipulated time frames; and
- (b) attend consultation at the time and place stipulated by the council, such board, a committee of such board or an official of council.

Performance of professional acts

21. A practitioner shall perform, except in an emergency, only a professional act –
- (a) for which he or she is adequately educated, trained and sufficiently experienced; and
- (b) under proper conditions and in appropriate surroundings.

Exploitation

22. A practitioner shall not permit himself or herself to be exploited in any manner.

Medicine and medical devices

23. (1) A practitioner shall not participate in the manufacture for commercial purposes, or in the sale, advertising or promotion of any medicine or medical device or in any other activity that amounts to selling medicine or medical devices to the public or keeping an open shop or pharmacy,
- (2) A practitioner shall not engage in or advocate the preferential use or prescription of any medicine or medical device which, save for the valuable consideration he or she may derive from such preferential use or prescription, would not be clinically appropriate or the most cost-effective option.
- (3) The provisions of subrules (1) and (2) shall not prohibit a practitioner from –
- (a) owning shares in a listed company;
- (b) manufacturing or marketing medicines whilst employed by a pharmaceutical concern;
- (c) whilst employed by a pharmaceutical concern in any particular capacity, performing such duties as are normally in accordance with such employment; or
- (d) dispensing in terms of a licence issued in terms of the Medicines and Related Substances Act, 1965.

- (4) A practitioner referred to in subrule (3) shall display a conspicuous notice in his or her waiting room and also duly inform his or her patient about the fact that he or she -
(a) owns shares or has a financial interest in a listed public company that manufactures or markets the medicine or medical device prescribed for that patient; or
(b) is in the employ of or contractually engaged by the pharmaceutical or medical device company that manufactures such medicine or medical device, and shall, subject to subrule (5), obtain the patient's informed written consent prior to prescribing such medicine or medical device for that patient."; and
- (5) A practitioner may prescribe or supply medicine or a medical device to a patient: Provided that such practitioner has ascertained the diagnosis of the patient concerned through a personal examination of the patient or by virtue of a report by another practitioner under whose treatment the patient is or has been and such medicine or medical device is clinically indicated, taking into account the diagnosis and the individual prognosis of the patient, and affords the best possible care at a cost-effective rate compared to other available medicines or medical devices and the patient is informed of such other available medicines or medical devices,
- (6) In the case of a patient with a chronic disease the provision of subrule (5) shall not apply.

Financial interests in hospitals

23A. A practitioner may have a direct or indirect financial interest or shares in a hospital or any other health care institution: Provided that -

- (a) such interests or shares are purchased at market-related prices in arm's length transactions;
- (b) the purchase transaction or ownership of such interest or shares does not impose conditions or terms upon the practitioner that will detract from the good, ethical and safe practice of his or her profession;
- (c) the returns on investment or payment of dividends is not based on patient admissions or meeting particular targets in terms of servicing patients;
- (d) such practitioner does not over-service patients and to this end establishes appropriate peer review and clinical governance procedures for the treatment and servicing of his or her patients at such hospital or health care institution;
- (e) such practitioner does not participate in the advertising or promotion of the hospital or health care institution, or in any other activity that amounts to such advertising or promotion;
- (f) such practitioner does not engage in or advocate the preferential use of such hospital or health care institution;
- (g) the purchase agreement is approved by the council based on the criteria listed in paragraphs (a) to (f) above; and
- (h) such practitioner annually submit a report to the council indicating the number of patients referred by him or her or his or her associates or partners to such hospital or health care institution and the number of patients referred to other hospitals in which he or she or his or her associates or partners hold no shares.

Referral of patients to hospitals

24. (1) A practitioner who has a direct or indirect financial interest or shares in a private clinic or hospital shall refer a patient to such clinic or hospital only if a conspicuous notice is displayed in his or her waiting room indicating that he or she has a financial interest or shares in that clinic or hospital and the patient is duly informed about the fact that the practitioner has an interest or shares in the clinic or hospital to which the patient is referred and the patient's informed written consent is obtained prior to such referral.
- (2) Deleted
 - (3) Deleted
 - (4) Deleted
 - (5) Deleted
 - (6) A practitioner may admit a patient to such private clinic or hospital: Provided that such practitioner -

- (a) has ascertained the diagnosis of the patient concerned through a personal examination of such patient or by virtue of a report by another practitioner under whose treatment such patient is or has been;
- (a) has informed such patient that such admission in such private clinic or hospital was necessary for his or her treatment; and
- (b) has obtained such patient's consent for admission to such private clinic or hospital.

Reporting of impairment or of unprofessional, illegal or unethical conduct

25. (1) A student, intern or practitioner shall -
- (a) report impairment in another student, intern or practitioner to the board if he or she is convinced that such student, intern or practitioner is impaired;
 - (b) report his or her own impairment or suspected impairment to the board concerned if he or she is aware of his or her own impairment or has been publicly informed, or has been seriously advised by a colleague to act appropriately to obtain help in view of an alleged or established impairment, and
 - (c) report any unprofessional, illegal or unethical conduct on the part of another student, intern or practitioner.

Research, development and use of chemical, biological and nuclear capabilities

26. (1) A practitioner who is or becomes involved in research, development or use of defensive chemical, biological or nuclear capabilities shall obtain prior written approval from the board concerned to conduct such research, development or use.
- (2) In applying for written approval referred to in subrule (1), such practitioner shall provide the following information to the board concerned:
- (a) Full particulars of the nature and scope of such research, development or use;
 - (b) whether the clinical trials pertaining to such research have been passed by a professionally recognized research ethics committee;
 - (c) that such research, development or use is permitted in terms of the provisions of the World Medical Association's Declaration on Chemical and Biological Weapons; and
 - (d) that such research, development or use is permitted in terms of the provisions of the applicable international treaties or conventions to which South Africa is a signatory.

Dual registration

27. A health practitioner who holds registration with more than one statutory council or professional board shall at all times ensure that -
- (a) no conflict of interest arises from such dual registration in the rendering of health services to patients;
 - (b) patients are clearly informed at the start of the consultation of the profession in which the practitioner is acting;
 - (c) informed consent regarding the profession referred to in paragraph (b) is obtained from the said patient;
 - (d) patients are not consulted in a dual capacity or charged fees based on such dual consultation; and
 - (e) the ethical rules applicable at a given moment to the profession in which the practitioner is acting, are strictly adhered to.

Main responsibilities of health practitioners

- 27A. A practitioner shall at all times
- (a) act in the best interests of his or her patients;
 - (b) respect patient confidentiality, privacy, choices and dignity;
 - (c) maintain the highest standards of personal conduct and integrity;

- (d) provide adequate information about the patient's diagnosis, treatment options and alternatives, costs associated with each such alternative and any other pertinent information to enable the patient to exercise a choice in terms of treatment and informed decision-making pertaining to his or her health and that of others;
- (e) keep his or her professional knowledge and skills up to date;
- (f) maintain proper and effective communication with his or her patients and other professionals;
- (g) except in an emergency, obtain informed consent from a patient or, in the event that the patient is unable to provide consent for treatment himself or herself, from his or her next of kin; and
- (h) keep accurate patient records.

Repeal

28. The Rules Specifying the Acts or Omissions in respect of which Disciplinary Steps may be taken by a Professional Board and the Council, published under Government Notice No. R. 2278 of 3 December 1976 and Government Notice No. R. 1379 of 12 August 1994, as amended by Government Notice No. R. 1405 of 22 December 2000 are hereby repealed.

ME TSHABALALA-MSIMANG
MINISTER OF HEALTH