

Frequently Asked Questions for matters relating to Ethics

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1. What are the compulsory elements of a patient health record?

The following items are compulsory elements for health record:

- a) The personal (identifying) particulars of a patient;
- b) The full biopsychosocial history of a patient, including allergies and idiosyncrasies;
- c) The time, date and place of consultation;
- d) The assessment of the patient;
- e) The proposed management of the patient;
- f) The medication and dosage prescribed;
- g) Details of referrals to specialists and other healthcare professionals;
- h) The patient's response to treatment, including adverse effects;
- i) Investigations ordered and their results;
- j) Details of the times that a patient was booked off work or similar activities and the relevant reasons;
- k) Written proof of informed consent.
- l) Written proof of informed financial consent.

2. Can a Health Practitioner practice more than one profession?

- a) Yes, a health practitioner who holds registration with more than one statutory council or professional board can practice in multiple professions, provided that he/she shall at all times ensure that: -
 - i) no conflict of interest arises from such dual registration in the rendering of health services to patients;
 - ii) patients are clearly informed at the start of the consultation of the profession in which the health practitioner is acting;
 - iii) informed consent regarding the profession referred to in paragraph (b) is obtained from the said patient;

iv) patients are not consulted in a dual capacity or charged fees based on such dual consultation; and

v) the ethical rules applicable at a given moment to the profession in which the health practitioner is acting, are strictly adhered to.

3. Can a health practitioner advertise 'quote comparisons' in a mall or public spaces?

- a) A health practitioner is 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.
- b) Quote comparisons amount to canvassing which is defined as a 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.

4. Can a health practitioner advertise his/her practice on a video/electronic billboard?

- a) Advertising of health services on electronic videos or billboards is not permissible. Similarly, advertising health services using pamphlets (electronic or otherwise) is not a desirable conduct.

5. Does a practice name have to include names of all active partners?

- a) A health practitioner shall use his or her own name or the name of a registered health practitioner or health practitioners with whom he or she is in partnership or with whom he or she practices as a juristic person, as a name for his or her private practice.
- b) 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 is not permissible.

6. Can a practice retain the name of a deceased partner or the name of former partner?

- a) The name of a deceased partner of a practice may be used by a partner of such partnership or member of such juristic person even if such a health practitioner is no longer part of such private practice: provided that the express consent of the health

practitioner or, in the case of a deceased health practitioner the consent of the executor of his or her estate or his or her next-of-kin, has been obtained.

7. Can a health practitioner make use of patient images on a practice's website to advertise his services?

- a) A health practitioner must obtain express consent from his or her patient before publishing personal information about them in media to which the public has access, for example in journals or textbooks, whether or not the health practitioners believe the patient can be identified. Express consent must, therefore, be sought to the publication of patient information, for example case-histories about or photographs of patients.
- b) A health practitioner shall only divulge verbally or in writing information regarding a patient which he or she ought to divulge only: -
 - i) in terms of a statutory provision;
 - ii) at the instruction of a court of law; or
 - iii) where justified in the public interest.
 - iv) with the express consent of the patient;
 - v) 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."

8. Is a medical certificate without the health practitioner's signature valid?

- a) A valid medical certificate must contain the following information: -
 - i) the name, address and qualification of such health practitioner;
 - ii) the name of the patient;
 - iii) the employment number of the patient (if applicable);
 - iv) the date and time of the examination;
 - v) whether the certificate is being issued as a result of personal observations by such health 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;

- vi) 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 health practitioner shall merely specify that, in his or her opinion based on an examination of such patient, such patient is unfit to work;
 - vii) whether the patient is totally indisposed for duty or whether such patient is able to perform less strenuous duties in the work situation;
 - viii) the exact period of recommended sick leave;
 - ix) the date of issue of the certificate of illness; and
 - x) the initial and surname in block letters and the registration number of the health practitioner who issued the certificate.
- c) A certificate of illness referred shall be signed by a health practitioner next to his or her initials and surname printed in block letters.
- d) If pre-printed stationery is used, a health practitioner shall delete words which are not applicable.
- e) A practitioner shall issue a brief factual report to a patient where such patient requires information concerning himself or herself.

9. Period for which a health practitioner may book off patients on sick leave.

- a) It is within the discretion of an authorised health practitioner to book the patient off in terms of his or her education, training, and clinical experience to determine the period that a patient under his or her care and treatment was to be booked off from work.

10. Who is allowed to book off patients?

- a) Only certificates of illness issued by medical practitioners or dentists registered in terms of Act No. 56 of 1974, or any authorised health practitioner can be recognised, and it is the prerogative of the recipient of a certificate of illness to accept or not to accept such certificate.

- b) The HPCSA is unable to express a view on the legality or validity of certificates of illness issued by healthcare professionals registered with other councils.

11. Can a health practitioner issue a medical certificate without examining the patient?

- a) Yes, a health practitioner who issues a medical certificate shall make it clear that it is being issued as a result of personal observations or as a result of a report from another health practitioner, or as a result of information which has been received during a consultation from the patient, and which is based on acceptable medical grounds.

12. Can a practitioner consult a patient using telehealth platform?

- a) Yes, telehealth should preferably be practised in circumstances where there is an already established practitioner-patient relationship. Where such a relationship does not exist, health practitioners may still consult using telehealth provided that such consultation is in the best clinical interest of patient.

13. Can a health practitioner stop or refuse treatment of certain patients until accounts which are overdue, had been brought up to date?

- a) Except in emergency, a health practitioner is at liberty to decide to whom he or she wished to render services or not. However, a health practitioner may be called upon to justify his or her action in the event of unnecessary suffering or death resulting from refusal to render assistance to a patient.
- b) It is not recommended to cease consultation because of finances. A health practitioner is advised to utilise legal debt collection mechanisms to recover the debt.

14. Can a health practitioner share a profit or receive gratuitous payment with persons not registered with HPCSA?

- a) A health practitioner shall not accept commission from a person or another health practitioner 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 or pay commission to any person for recommending patients.
- b) Fees shall not be shared with any person or health practitioner who has not taken a commensurate part in the services for which those fees are charged, and fees shall not be charged by health practitioner not personally rendered service, except those in partnerships.

15. Can a health practitioner charge a patient for services not rendered or can a patient pay in advance?

- a) Advance payment of professional fees by patients for services not rendered is prohibited.
- b) Advanced payment of fees to health practitioner would only be acceptable when such payment relates only to the co-payments of medical aid reimbursement, is for the costs of prostheses or purchase of custom-made medical devices.

16. What is split billing and is it acceptable?

- a) Split billing occurs when a patient is billed separately for the amount to be paid by the patient or member which the scheme does not cover, and the medical scheme is billed separately in line with the medical scheme tariff amount. In other words, the account to the patient reflects only the amount for which the patient is responsible, while the claim or account to the medical scheme reflects only the amount equal to the benefits the medical scheme is prepared to pay for the service rendered and does not reflect the out-of-pocket payment by the patient. Split billing is an unethical conduct, and health practitioners shall refrain from such a practice.

17. How much should a health practitioner charge for a consultation?

- a) The HPCSA does not prescribe the tariffs for services rendered.

18. Can a health practitioner charge fees for a telehealth consultation?

- a) Yes, fees can be charged for professional services rendered through a telehealth platform.

19. Can a health practitioner prescribe the medicine or a medical device which s/he owns or holds shares?

- a) Although a health 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, the health practitioner is not prohibited to dispense such medicine or medical device in terms of a licence issued in terms of the Medicines and Related Substances Act, 1965. The health practitioner must display a conspicuous notice in his or her waiting room to inform patients and

also obtain informed consent from patients prior to prescribing such medicine or medical device.

20. Can a health practitioner keep an open shop?

- a) A health practitioner is prohibited from participating 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, medicine or medical devices.

21. How much leave can a Community Service Practitioner take?

- a) If a period of community service is broken or interrupted, such period shall consist of periods which, when added together are not less than one calendar year in total, including periods of approved leave: Provided that community service shall be completed within a maximum period of two years.

22. Can a practitioner perform a procedure on a patient without their consent?

- a) It is the responsibility of the treating health practitioner to ensure that all attempts to obtain informed consent are exhausted, and when the patient is unable to offer consent, the next of kin shall be consulted. The medical superintendent, as a first point of escalation of a hospital, for hospitalised patients, may be consulted regarding the consent for medical treatment of a minor under the circumstances where all efforts made to trace the legal guardian were unsuccessful.

23. What acts is the practitioner allowed to perform?

A health practitioner is only allowed to 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.

24. What can a health practitioner do if the employer is forcing them to perform acts that are not within my scope of profession

- a) Inform the employer that it is against the regulations defining scope of profession and practice to perform acts not within the limits of their education, training and experience.

Liaise with the HPCSA to determine if acts are within the professional scope of practice.

25. What practice limitations do I have as a supervised medical practitioner.

- a) The supervised health practitioners can perform professional duties provided that he/she shall have nominated the supervisor who will confirm that he/she will be readily available to allow for regular interaction with the candidate and face-to-face contact and attendance of on-site observations or interventions with patients at least regularly.

26. If I open my private practice, which business models are acceptable with the HPCSA

- a) Solo Practice
- b) Partnerships/Groups/Organisations
- c) Associations
- d) Personal liability companies (incorporated practices – Inc.)
- e) Franchises (subject to compliance with the ethical rules)

Any other business model/formation or structure outside of these models must come to HPCSA for consideration or approval by the HPCSA.

27. Are non-registered persons allowed to operate medical device in South Africa

- a) The Health Professions Act prohibit performance of certain defined acts by unregistered persons deemed to pertain to health professions registrable in terms of this Act, bearing in mind that there are other Statutory Council the republic where health professionals are also bound to their scope, where scope may overlap.

28. Is it unethical to pay a management fee to a practice management company or trust based on a set percentage of turnover of the practice?

- a) It is unacceptable for a health practitioner to receive payment and commission payment based on the proportion of the percentage of the capital amount collected revenue.

29. Who is authorised to prescribe medication?

- a) Any health practitioner licensed in terms of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) may prescribe medicine according to the approved terms and conditions.

30. Can the patient report be submitted to a third party without patient consent?

- a) A health practitioner is obligated to safeguard the confidential information obtained in the course of his or her practice, teaching, research or other professional duties, subject only to such exceptions to the requirement of confidentiality as may be determined by law or a court of law. Confidential information may only be disclosed to other persons (third party) only with the written informed consent of the patient concerned is provided, when there is a court order, law authorising such release or when there it is in the interest of the public.

31. Can a health practitioner sign his family's death certificate?

- a) In terms of an "Ordinance 70" the confirmatory medical certificate required in terms of ordinance 65(c), if not given by the medical referee, shall be given by a medical practitioner of not less than five years' standing who is neither a relative of the deceased, nor a relative, partner or assistant of the medical practitioner furnishing the medical certificate required in terms of ordinance 65(b).

32. What happens to patient files when a health practitioner in private practice decides to sell or close the practice for any reason?

- a) The health practitioner shall within three months of closure or sale inform all their patients in writing that:
 - i. The practice is being closed as from a specific date;
 - ii. Requests may be made that patient health records are transferred to other health care practitioners of a patient's choice.
- b) After the date of closure, the patient's health records must be kept in safe keeping for a period of at least twelve (12) months by an identified health practitioner or health institution with full authority to deal with the files as they may deem appropriate, provided the provisions of the rules on professional confidentiality and keeping of patient health records are observed".

- c) Registered practitioners have an ethical obligation to ensure that patients are not abandoned and their right to continuity of care is protected.

33. In the event of the death of a practitioner in private practice (both in a single practice and in a partnership) what happens to the patient files in the practice?

The patient health records, as part of the estate, are administered by the executor of the estate in the following manner:

- a) Should a practice be taken over by another health practitioner, the executor shall carry over the patient health records to the new health care professional, The new health practitioner is obliged to take reasonable steps to inform all patients regarding the change in ownership and that the patient could remain with the new health care practitioner or could request that their patient health records be transferred to another health care practitioner of their choice.
- b) Should the practice not be taken over by another health practitioner the executor should inform all patients in writing accordingly and transfer those patient health records to other health care practitioners as requested by individual patients.
- c) The remaining patient health records should be kept in safe keeping by the executor for a period of at least twelve (12) months with full authority to further deal with the files as he or she may deem appropriate, provided the provisions of the rules on professional confidentiality are observed.

34. Can the Memorandum of Incorporation or partnership agreement of a professional practice make provision for the transfer of shares of a deceased/ retired health practitioner to an unregistered person?

- a) Partnership agreements may make specific provision for the management of a deceased partner's share in the partnership after the death of a partner, however In terms of the Business Practices Policy, A person (whether a natural person or a juristic person) who is not registered in terms of the Health Professions Act (Act No.) does not qualify to, directly or indirectly, in any manner whatsoever, share in the profits or income of such a professional practice and which, without limiting the generality of the foregoing, may take the form of:
 - i) transferring the income stream (or any part thereof) generated in respect of patients from the practice to such a person.

- ii) giving (directly or indirectly) shares or an interest similar to a share in the professional practice to such a person

35. Is it permissible for an incorporated Practice or Personal Liability Practice to own shares in another Personal Liability or Incorporated Practice?

- a) It is permissible for a Personal Liability or Incorporated Practice to be a shareholder in another practice provided both practices concerned consist of natural persons, who are registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and practise a registerable profession or a company all the directors and shareholders of which are practitioners (hereinafter termed a corporate member) shall be shareholders of the company and have an interest in its shares: Provided that a corporate member shall not have an interest in or control, own or acquire more than 24 per cent of the issued share capital of the company.
- b) The above (a) is also applicable to juristic persons or class of juristic person who have been exempted in terms of Section 54A of the Health Professions Act, 1974 (Act No. 56 of 1974), by the minister of health.

36. Under the current Ethical Rules, is it permissible for general practitioners and medical specialist practitioners to jointly hold directorship and ownership of a professional practice?

- a) In terms of ethical Rule 8(3) of the ethical rules of conduct for registered health practitioners (Rules): '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 Health Professions Act (No.56 of 1974).
- b) Notwithstanding the above (a), Rule 8(5) further states that: A health practitioner may provide healthcare services with other practitioners, persons registered in terms of the Act provided that the primary aim will be to enhance the quality of health-care services to patients, and further that there is an express agreement, arrangement or model of rendering multi-disciplinary based health-care services to patients which provides high quality healthcare services or products to patients, structured to contain costs, and enhance access to appropriate healthcare.
- c) The Regulations Relating to The Specialities and Subspecialities in Medicine and Dentistry (Regulations) state that A medical practitioner who holds registration as a specialist in terms of the Health Professions Act shall in the case of a speciality, confine

his or her practice to the speciality or related specialities in which he or she is registered.'

- d) The Regulations further provide that a specialist may charge fees for examinations or procedures which usually pertain to some other speciality only if such examinations or procedures are also recognised in his or her speciality, related specialities or subspeciality as generally accepted practice: Provided that such fees shall not be higher than those charged by general practitioners for the same examinations or procedures and that such examinations or procedures shall be carried out only for his or her bona fide patients.
- c) Partnership between general practitioners and specialist is neither prohibited nor discouraged. However, should the practitioner registered in the specialist category wish to practice in a partnership arrangement, they would have to confine their practice to the registered speciality. In such instance where they wish to practice in partnership with general practitioners, The fee charged must not be higher than what a general practitioner (GP) would charge for the same procedure. this prevents specialists from charging premium rates for procedures that are not considered part of their core specialized service.

37. Can health practitioners practise in a partnership, association or as a juristic person with another health practitioner/(s) practicing under a different scope of profession in respect of which he or she is registered under the Act.

- a) In terms of Ethical Rule 8(5) a health practitioner may provide health-care services with other registered health practitioners, persons registered in terms of the Act, Provided that the primary aim will be to enhance the quality of health-care services to patients, and further that there is an express agreement, arrangement or model of rendering multi-disciplinary based health-care services to patients which provides high quality health-care services or products to patients, structured to contain costs, and enhance access to appropriate healthcare.
 - b) The above is also subject to the proposed partnership not being prohibited in the Annexures to the Rules.
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