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GOVERNMENT NOTICE

DEPARTMENT OF HEALTH

No. R. 68

2 February 2009

HEALTH PROFESSIONS ACT, 1974

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

The Health Professions Council of South Africa has, in consultation with the professional boards and with the approval of the Minister of Health, in terms of section 61(5) of the Health Professions Act, 1974 (Act No. 56 of 1974), amended the Ethical Rules published under Government Notice No. R. 717 of 4 August 2006 as set out in the Schedule.

SCHEDULE

1. In this Schedule "**Ethical Rules**" means the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act, 1974, published under Government Notice No. R. 717 of 4 August 2006, and any word or expression to which a meaning has been assigned in the Ethical Rules shall have that meaning, unless the context otherwise indicates.

Amendment of rule 1

2. Rule 1 of the Ethical Rules is hereby amended —

- (a) by the insertion of the following definition after the definition of "**itinerant practice**":

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

- (b) by the insertion of the following definition after the definition of "**resident practice**":

"'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;"; and

- (c) by the substitution for the definition of **"touting"** of the following definition:

"'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."

Amendment of rule 8

4. Rule 8 of the Ethical Rules is hereby amended by the substitution for subrule (1) of the following subrule:

"(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."

Insertion of rule 8A

5. The Ethical Rules are hereby amended by the insertion of the following heading and rule after rule 8:

"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."

Amendment of rule 9

6. Rule 9 of the Ethical Rules is hereby amended by the substitution for subrule (1) of the following subrule:

"(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 —

- (a) who is registered under the Act to practise in independent practice;
- (b) whose name currently appears on the register kept by the registrar in terms of section 18 of the Act; and
- (c) who is not suspended from practising his or her profession."

Amendment of rule 13

7. Rule 13 of the Ethical Rules is hereby amended by the substitution for paragraph (b) of subrule (2) of the following paragraph:

"(b) in the case of a minor under the age of 12 years, with the written consent of his or her parent or guardian; or"

Amendment of rule 23

8. Rule 23 of the Ethical Rules is hereby amended—

- (a) by the substitution for the heading of the following heading:

"Medicine and medical devices";

- (b) by the substitution for subrule (1) of the following subrule:

"(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."

(c) by the substitution for subrule (2) of the following subrule:

"(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.";

(d) by the substitution for subrule (4) of the following subrule:

"(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

(e) by the substitution for subrule (5) of the following subrule:

"(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.".

Insertion of Rule 23A

9. The Ethical Rules are hereby amended by the insertion of the following heading and rule after rule 23:

"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."

Amendment of rule 24

10. Rule 24 of the Ethical Rules is hereby amended—

(a) by the substitution for the heading of the following heading:

"Referral of patients to hospitals"

(b) by the substitution for subrule (1) of the following subrule:

"(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."; and

(c) by the deletion of subrules (2), (3), (4) and (5).

Insertion of rule 27A

11. The Ethical Rules are hereby amended by the insertion of the following heading and rule after rule 27:

"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."

Amendment of Annexure 2 to the Ethical Rules

12. Annexure 2 to the Ethical Rules is hereby amended by the substitution for paragraph (a) of rule 4 of the following paragraph:

"(a) shall confine himself or herself to the performance of professional acts in the field of nutrition in which he or she was educated and trained and in which he or she has gained experience; and"

Amendment of Annexure 5 to the Ethical Rules

13. Annexure 5 to the Ethical Rules is hereby amended by the substitution for paragraph (c) of rule 1 of the following paragraph:

- "(c) shall, if he or she does not comply with the provisions of paragraph (b), perform professional acts only under the direction of a medical practitioner or a medical technologist who complies with the provisions of paragraph (b) and is registered in the relevant discipline: Provided that this prohibition shall apply only to acts excluded by the board."

Amendment of Annexure 6 to the Ethical Rules

14. Annexure 6 to the Ethical Rules is hereby amended —

(a) by the substitution for paragraph (d) of rule 3(2) of the following paragraph:

"(d) the only exception to the restriction pertaining to radiology referred to in paragraph (b) hereof shall be that a radiologist shall be permitted to form an incorporated practice, partnership or association with a nuclear physician or a radiographer registered in the relevant discipline, in view of the fact that the said professions are related to each other in terms of the nature of their field of professional practice.";

(b) by the addition of the following heading and rule after rule 8:

"Performance of professional acts by a clinical associate

9. A clinical associate—

- (a) shall perform professional acts only under the supervision of a medical practitioner;
- (b) shall limit the acts referred to in paragraph (a) to acts related to his or her education and training;
- (c) shall not conduct a private practice; and
- (d) shall not act as a *locum tenens*."

Amendment of Annexure 7 to the Ethical Rules

15. Annexure 7 to the Ethical Rules is hereby amended—

- (a) by the substitution for the name of the professional board at the top of the Annexure of the following name:

"PROFESSIONAL BOARD FOR OCCUPATIONAL THERAPY, MEDICAL ORTHOTICS AND PROSTHETICS, AND ARTS THERAPY"; and

- (b) by the substitution for the heading under the name of the professional board of the following heading:

"RULES OF CONDUCT PERTAINING SPECIFICALLY TO THE PROFESSION OF OCCUPATIONAL THERAPY, MEDICAL ORTHOTICS AND PROSTHETICS, AND ARTS THERAPY".

Amendment of Annexure 8 to the Ethical Rules

16. Annexure 8 to the Ethical Rules is hereby amended by the insertion of the following subrules in rule 1:

- "(3) Subject to the provisions of generic rule 6, an optometrist may conduct vision screening at an industrial, corporate, community or school centre: Provided that—
- (a) the screening is conducted as an entry investigative procedure to identify individuals in need of referral for a comprehensive eye examination;
 - (b) no definitive diagnosis is made, management is prescribed or prescription is given at the screening centre;
 - (c) the outcomes of the screening process, including referral notes for the individuals identified as requiring further eye examination and statistical reports for the centre concerned, are recorded;
 - (d) no canvassing of or touting for patients is done by or on behalf of the screening practitioner; and
 - (e) patients are not misled into believing that the screening is compulsory.

- (4) Subject to the provision of generic rules 6 and 10, an optometrist may conduct a mobile practice in areas where optometric services are not readily available: Provided that—
- (a) the practice operates in a defined area only;
 - (b) the equipment used for a comprehensive visual examination in that practice is as defined in the guidelines issued by the board from time to time;
 - (c) optical appliance dispensing is conducted by the practitioner at the site visited;
 - (d) the practitioner operating the practice also has an established practice from which the mobile practice is operated;
 - (e) patients are informed of the contact details of the established practice and of the nearest health facility with which the practitioner has made arrangements for emergency ocular health care; and
 - (f) prior written approval to conduct such mobile practice is obtained from the board."

Amendment of Annexure 9 to the Ethical Rules

17. Annexure 9 of the Ethical Rules is hereby amended by the addition of the following heading and rule after rule 8:

"Sharing of rooms

9. Notwithstanding rule 8A of the generic ethical rules, it is permissible for a physiotherapist, biokineticist or podiatrist to have rooms in or an entrance through the business of an institution such as a gymnasium or wellness or fitness club: Provided that the prior written approval of the board is obtained."



MINISTER OF HEALTH
DATE: 29/01/2009