

Ethics Corner

FAQ'S



The Ethics and Standards (ESC) continues to be committed to respond to questions individually, but we often get repeats of the same kind of query. To save time all around, we have compiled some of the most frequent questions and the responses from the ESC into generic FAQs, to *which we will be steadily adding as time passes.*

How can I report unethical practice?

As Speech-Language Therapists, we are obliged to uphold and maintain ethical practices.

Registered practitioners have an ethical obligation to always protect the interests of patients; as such, they should comply with the rules and regulations of the Health Professions Council of South Africa (HPCSA). Unethical practice can include anything from touting, canvassing, malpractice, unregistered and unqualified persons promoting their services as a Speech-Language Therapist, scope infringements, unethical billing/bookings etc...

The HPCSA has no jurisdiction over entities not registered with it, but practitioners who are registered in terms of the Act must abide by the rules that regulate them. Any unprofessional conduct by HPCSA registered practitioners should be reported to the HPCSA for investigation. You may use the online portal or use the attached form (complete relevant sections) and send to legalmed@hpcsa.co.za to formally lay a complaint against the registered practitioner in order to for the matter to be investigated further and the board to make a determination.

If you have any queries pertaining to ethical practice, please contact the Ethics Committee via admin@sashla.co.za. Reporting may be done anonymously.

Do I need to get informed consent from the patient/next of kin for a hospital in patient?

"If a ward patient is referred for a speech therapy assessment by a specialist (who also works at the hospital), do I need to get informed consent from the patient/ next of kin, or do I assume that because the patient has already been admitted and seen by other members of the multi-disciplinary team that consent is covered?"

The following applies to all **private** and **government** patients:

Informed consent must be obtained by the client for any speech therapy assessment and treatment, regardless of the referral pathway, i.e., if the Neurologist refers a CVA inpatient for a speech assessment, and has told the family about the referral, the speech therapist must still obtain informed consent from the client or next of kin. **A doctor cannot provide consent for a client. Informed consent is needed EVERY TIME a health service is provided.**

Can a Speech-Language Therapist and or Audiologist be employed by a school?

The following institutions may employ speech-language therapists and or audiologists as per the Health Professions Act, 1974 ("HPA"):

- The Public Service
- Universities/Training Institutions (for training and research)
- Mining companies & NPO's/NGO's (subject to approval of the relevant professional board)

- All registered persons within the HPCSA may also employ fellow registered practitioners in accordance with the Ethical Rules.

In terms of private practices, the employer and employee should fall within the same professional category. In other words, a speech therapist can only employ speech therapists and an audiologist can only employ an audiologist. No other healthcare practitioners registered with the HPCSA (e.g., physiotherapists, general practitioners, occupational therapists, psychologists, etc.) may employ a speech-language therapist or audiologist. The HPCSA specifically states:

1. "The HPCSA has no jurisdiction over entities not registered with it but the practitioners who are registered in terms of the Act, practitioners have to abide by the rules that regulate them, any unprofessional conduct by HPCSA registered practitioners should be reported to the HPCSA for investigation"
2. "Taking up employment by registered practitioners from employers that are not approved by council is prohibited in terms of ethical rule 18 of the HPCSA, such unprofessional conduct by HPCSA registered practitioners should be reported to the HPCSA for investigation in order for the professional Board to consider the matter and take disciplinary steps."

It is therefore important to note that a speech therapist or audiologist registered with the HPCSA cannot be employed by entities (e.g., schools, hospitals, etc.) to render services unless a joint application has been made by the entity along with the speech therapist or audiologist.

A speech therapist or audiologist may however have an independent practice at the entities listed above, where the practitioner rents space.

May I Work for a School as a Speech Therapist?

The Ethics Committee received the following question:

'I am currently employed in a role at a school as the speech and language therapist...I was meant to be involved in assisting children with difficulties within the classroom as well as helping develop programs and implement them in the class, guiding the curriculum to be more inclusive. The school has however now started to push an individual case load onto me, which [was not] part of the initial job [description]. I have been informed that the school is charging the parents a nominal levy for the individual therapy which I provide. This levy is well below medical aid rates. I am extremely concerned and uncomfortable with this as I am not sure where the ethics stand on this or how to protect myself and the profession in this. Would you be able to provide me with any advice...?'

This member later clarified that the school would be charging the parents a fee per individual therapy session given by the therapist to their children.

Answer:

A speech therapist is not permitted to take on an individual case load for which the school will charge the parents. Clause 8.1 in Booklet 2 makes this very clear:

A practitioner may practise in partnership or association with or employ only a practitioner who is registered under the Act.

How is being employed by a school to take on a caseload different from helping develop programs and implement them in the classroom?

The former is problematic, while the latter is not.

In the first case – assisting children with difficulties within the classroom as well as helping to develop programs and implement them in the classroom – the school is employing the speech therapist to provide services to them (the school). In the second case – taking on an individual caseload for which the school then charges the parents – the school is serving as an intermediary between the clients and the therapist. This situation is problematic according to ethical rules 27A and rule 22.

Ethical Rule 27A

Ethical rule 27a states that a practitioner shall at all times act in the best interests of his or her patients.

Elsabe Klink – a lawyer who specialises in medical law, policy and ethics – has this to say regarding this rule, which is highly relevant in this case:

The Speech Therapist must at all times act in the best interest of the patient and respect patient confidentiality, choices regarding confidentiality and also dignity. To act in the best interest of the patient also includes that **no third party may interfere with the clinical independence of the Speech Therapist. An entity like a school is not authorised or competent to make assessments as to the appropriateness of the acts of the Speech Therapist.**

In the event that an employment relationship exists between an entity, e.g. school and a Speech Therapist, extra caution should be taken to ensure clinical independence is maintained at all times. This includes taking into account the fact that the employment relationship by its very nature, would require the employee (the Speech Therapist) to take all reasonable and lawful instructions from the employer. This could have a negative impact on the clinical independence of the Speech Therapist. Hence the necessity for the joint application made to the HPCSA.

Ethical Rule 22

Ethical rule 22 states that a practitioner **shall not permit himself or herself to be exploited in any manner**. Low cost speech therapy may become a competitive advantage for this school which is then 'exploiting' the labour of the speech therapist.

Are a Locum and a part time employee synonymous?

No, they are two very distinct modes of employment.

Locum: A therapist who is employed on a temporary basis to stand in for somebody on leave. If working more than 24hrs a month then all basic conditions of employment, as per the SA Basic Conditions of Employment Act, apply. A **Locum cannot be employed for more than 6 months. At that time a permanent or part-time contract position must be offered.**

Fixed-Term Employment: A therapist is employed (full-time or part-time) and paid a set salary. The contract has a specified start and end date whereafter the contract is terminated. Basic conditions of employment are applicable if the contract (full time or part time) constitutes more than 24 hours per month. Fixed term contracts are not encouraged.

Permanent (Part-Time or Full-Time) Employment: A therapist is employed in a part-time or full-time capacity and paid a set salary. Basic conditions of employment are applicable. They are not a stand-in for another therapist.

- Part-time employment carries fewer hours per week/month than a full-time job.
- Part-time number of hours per month would be based on the needs of the practice and what is agreed between the employer and employee.
- Full-time and part-time employment would be an open ended position, only terminated if there is retrenchment, disciplinary action taken by the employer or resignation by the employee.

Also refer to <https://www.legalwise.co.za/help-yourself/legal-articles/rights-employees>

What are the requirements for doing teletherapy with a client in another country?

Therapists are bound by the legal and regulatory requirements of the country in which they reside and practise. As long as they are compliant with those regulations, it doesn't matter in which country the patient receiving intervention is at the time of the online therapy, as neither the therapist nor the patient has any relationship with the health authorities in that country regarding that intervention. However, the therapist must ensure that the contract with the patient clearly stipulates the billing and payment procedures for the sessions. Therapists must also be aware that they will not be covered for malpractice for teletherapy conducted on a patient in another country; no insurer will provide cover for this.

May a therapist own a practice at which they don't practice themselves?

A therapist may only own and employ a practice in which they are providing an active service.

1. In relation to remote/satellite practices, ethical rule 8 states: "...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", this essentially means that the employed practitioner supports or helps the employing practitioner in a service that he or she is already rendering.
2. If a registered practitioner is not available for a limited period and requires **covering** (i.e., temporarily holding a place when one is not available), such is regulated in terms of ethical rule 9, in that such covering or employment may not exceed a period of 6 (six) months. It is advised that the practitioner should sell or close their practice in the event that they are not able to continue running such a private practice for any reason; see attached for your reference.

Can I sell my Speech therapy practice?

Selling a speech therapy practice

- A therapist may not
 - o Sell a client base
 - o Sell a referral base i.e. Physicians, schools, teachers, GP's etc.
 - o Sell their practice by calculating an amount based on past earnings
 - o Sell a rental contract to the incoming therapist where private practices are within a school setting, a private hospital setting or a room in a therapy centre, as the landlord may terminate and recommence another rental agreement with whomever they choose.
- A therapist may sell
 - o Resources, furniture, equipment, owned assets etc.
 - o Negotiated goodwill if you have a confirmed referral trail

According to the "Guidelines for good practice in the health care professions"

1. It is indeed unethical to attach any type of monetary value or receive material benefit for the referral or referral base of patients in terms of ethical rule 7 (2): see attached ethical rules for your reference.
2. 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.
3. A practitioner shall not pay commission or offer any material consideration, (monetary or otherwise) to any person for recommending patients.
4. 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.

May I offer a discount for therapy?

1. Registered practitioners are permitted to charge fees for services they render, and such fees should be agreed to prior to service rendering in terms of ethical rule 7 of the HPCSA, however the HPCSA does not prescribe how much a practitioner charges for their professional services, but such fees should be reasonable in respect of the professional service rendered.
2. It is advised that registered practitioners charge the same fees for the similar professional services; this is **regardless of the mode of payment or payment arrangement, or the medical aid to which the patient may belong or its conditions**. You may not advertise as "charging medical aid rates"
3. You may, however, negotiate a discount based on the patient's specific socio-economic needs. This may not be advertised.
4. You may not advertise a discount for bulk – e.g. "buy 5 sessions and get the next one free" etc.
5. The determination of whether fees are reasonable or not can only be resolved by the professional board concerned for that specific profession, after a thorough investigation is conducted, should a complaint be leveled against a registered practitioner.