



HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

GUIDELINES FOR GOOD PRACTICE IN THE HEALTH PROFESSIONS

GUIDELINES ON OVERSERVICING, PERVERSE INCENTIVES AND RELATED MATTERS

BOOKLET 11

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Health Professions Council of South Africa
Post Office Box 205
Pretoria 0001

Telephone: (012) 338 9300

E-mail: professionalpractice@hpcsa.co.za

Website: <http://www.hpcsa.co.za>

THE SPIRIT OF PROFESSIONAL GUIDELINES

High quality clinical outcomes are only achievable when patients and a health practitioner trust each other explicitly. Practice in the health profession is therefore a moral enterprise and demands that health practitioner to have a life-long commitment to sound, ethical professional practice and an unstinting dedication to the interests and wellbeing of society and their fellow human beings.

It is in this spirit, that the HPCSA formulates these ethical guidelines, to guide and direct the practice of health professions. They apply to all persons registered with the HPCSA and are the standard against which professional conduct is evaluated.

[In these guidelines, a health practitioner and a health professional may be used interchangeably referring specifically to persons registered with the HPCSA.]

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1	INTRODUCTION
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- 1.1 The Health Professions Council of South Africa (“HPCSA”) requires that a health practitioner shall at all times act in the best interests of their patient and regard the clinical needs of their patient as paramount. To this end, a health practitioner shall always try to avoid potential conflicts of interest and maintain professional autonomy, independence and a commitment to the relevant professional and ethical rules and policies applicable.
- 1.2 Any conflicts of interest, incentives or forms of inducement that threaten such autonomy, independence or commitment to the appropriate professional and ethical rules and policies or that do not accord first priority to the clinical needs of patients, are unacceptable.
- 1.3 The ownership and use of technology equipments and platforms creates a special problem, not only because it may be inappropriately used by a health practitioner who are not properly qualified, but also due to potential overservicing by appropriately qualified health practitioner.
- 1.4 In general, these guidelines cover the issues relating to the use of technological equipments and platforms, matters of financial interests in health establishments, pharmaceutical and medical technology companies. In particular, it needs to be emphasised, that over servicing of any kind is an unacceptable conduct.
- 1.5 A conflict of interest occurs when a health practitioner’s private interests (financial or otherwise) compete with their professional and ethical responsibilities towards their patients and the profession, and there’s a risk (real or perceived) that the health practitioner will prioritise these interests above the care of patients.
- 1.6 In these guidelines, the HPCSA seeks to identify incentive schemes and forms of inducement that it finds unacceptable. It must be clearly stated that the perverse incentives or potential conflicts of interest set out in this document shall not in any way be regarded as an exhaustive list. The principles underlying the listed perverse incentives apply in every case of alleged unprofessional conduct on the part of a health practitioner, and where breached will lead to an investigation by an appropriate health authority or the HPCSA.

- 1.7 These guidelines are applicable to health practitioners in both the public and private sectors.
- 1.8 It shall further be noted that in terms of these guidelines, it is an offence either to offer perverse incentive or to accept one.
- 1.9 In addition to any action that the HPCSA may institute in terms of other legislations that governs the health professions, the HPCSA may, at its own discretion and where it believes such action is warranted, lay a charge against any person, or corporate body or other legal entity in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) , should the actions or omissions of such person, body or other legal entity be in breach of the provisions of that Act.

2 DEFINITIONS

For the purpose of these guidelines, the following concepts will have the meanings described below, unless the context indicates otherwise. It shall be noted that these concepts have not been defined for legal purposes, but merely to clarify the meaning in these guidelines. It should further be noted that some of these concepts have been defined in various Acts of Parliament, for example the Medicine and Substance Related Act, 1965 (Act No. 101 of 1965).

- 2.1 **“Advertise”** in relation to any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service, means any written, pictorial, visual or other descriptive material or verbal statement or reference in respect thereof:

- 2.1.1 Appearing in any newspaper, magazine, pamphlet or other publication; or
- 2.1.2 Distributed to members of the public; or
- 2.1.3 Brought to the notice of members of the public in any manner whatsoever,

that is intended to promote the sale of that orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or to attract patients to any particular health establishment or health related service.

- 2.2 **“Complementary medicine”** means any substance, or mixture of substance, which:

- 2.2.1 Originates from a plant, mineral or animal, and which may be, but is not limited to being classified as herbal, homeopathic, ayurvedic or nutritional; and

- 2.2.2 Is used or intended to be used for, or manufactured or sold for use in, or purported to be useful in, complementing the healing power of a human or animal body or for which there is a claim regarding its effect in complementing the healing power of a human or animal body in the treatment, modification, alleviation or prevention of a disease, abnormal physical or mental state or the symptoms thereof in a human being or animal; and
- 2.2.3 Is used in, but not limited to, the disciplines of Western herbal, African traditional, traditional Chinese, Homeopathy, Ayurveda, Unani, Anthroposophy, Aromatherapy and Nutritional supplementation; or
- 2.2.4 Because of its origin, intended use or use in a discipline, is determined by the Authority, by notice in the Gazette, to be a complementary medicine.

2.3 **“Device”** see definition of “medical device”.

2.4 **“Dual Practice”** may also mean a health practitioner who holds registration with more than one statutory council, professional board or professional category and practice on multiple professional designations.

2.5 **“Endorse”** means any action whereby a person or body attaches approval to or sanctions any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or other health related product or health related service with a view to encouraging or promoting the preferential use or preferential sale thereof for the purpose of financial gain or other valuable consideration.

2.6 **“Health practitioner”** means any person registered in terms of the applicable Act which governs the functioning of any of the Councils that form part of the Forum of Statutory Health Councils. This includes persons registered with the HPCSA. The term also includes registered student health practitioner.

2.7 **“Health establishment”** means whole or part of an institution, facility, building or place, whether for profit or not, that is operated or designed to operate an inpatient or outpatient treatment where a person receive treatment, diagnostic or therapeutic interventions or other allopathic or complementing health services and it includes facilities such as a clinic, mobile clinic, hospital, community health centre, maternity home or unattached delivery suite, convalescent home, consulting room, dispensary of health related treatment or aids and appliances, first aid station, orthopaedic workshop, dental laboratory or workshop, ambulance, unattached operating theatre, sanatorium, laboratory, pharmacy, occupational health clinic, radiological clinic, mental health facility etc.

2.9 **“Health related product”** means any commodity other than orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance which is produced by human effort or some mechanical, chemical, electrical or other human engineered process for medicinal purposes or other preventive, curative, therapeutic, diagnostic, or assessment purposes in connection with human health.

2.10 **“Improper financial gain or other valuable consideration”** means money, or any other form of compensation, payment, reward or material benefit which is not legally due, or which is given on the understanding, whether express, implied or tacit, that the recipient will engage or refrain from engaging in certain behaviour in a manner which is either:

2.10.1 Illegal; and/or

2.10.2 Contrary to ethical or professional rules; and/or

2.10.3 Which, in the opinion of a the HPCSA, may adversely affect the interests of a patient or group of patients,

in order to procure some direct or indirect advantage, benefit, reward or payment for the person offering or giving the said money, compensation, payment, reward or benefit, and “perverse incentive” has the same meaning.

2.11 **“Medicinal purposes”** in relation to a scheduled substance, means the purpose of treatment or prevention of a disease or some other definite curative or therapeutic purpose, but does not include the satisfaction or relief of a habit or a craving for the substance used or for any other scheduled substance, except where the substance is administered or used in a hospital or similar institution maintained wholly or partly by the government or a provincial administration, or approved for that purpose by the Minister of Health.

2.12 **“Medicine”** means any substance or mixture of substances intended to be used by, or administered to human beings, for any of the following therapeutic purposes, namely:

2.12.1 Treating, preventing or alleviating symptoms of disease, abnormal physical or mental state or the symptoms thereof;

2.12.2 Diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;

2.12.3 Otherwise preventing or interfering with the normal operation of physiological function, whether permanently or temporarily and whether by way of terminating, reducing, postponing or increasing or accelerating the operation of that function.

“Orthodox medicine” has the same meaning.

2.13 **“Medical device”** means any instrument, appliance, material, machine, apparatus, implant or diagnostic reagent or any other article, whether used alone or in combination, including software necessary for its proper application used for or purporting to be suitable for use or manufactured or sold for use in or on a human or animal body:

2.13.1 In the diagnosis, prevention, monitoring, treatment or alleviation of disease; or

2.13.2 In diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap; or

2.13.3 In investigation, replacement or modification of the anatomy or of a physiological process; or

2.13.4 In the diagnosis of pregnancy, or the control of conception or termination of pregnancy, and which does not achieve its principal intended action in or on the human body by chemical, pharmacological, immunological or metabolic means, but which may be assisted in its function by such means: and **“device”** has the same meaning.

2.14 **“Orthodox medicine”** see definition of **“Medicine”**.

2.15 **“Overservicing”** means the supply, provision, administration, use or prescription of any treatment or care (including diagnostic and other testing, medicines and medical devices) which is medically and clinically not indicated, unnecessary or inappropriate under the circumstances or which is not in accordance with the recognised treatment protocols and procedures, or without due regard to both the financial and health interests of the patient.

2.16 **“Perverse incentive”** see definition of **“improper financial gain or other valuable or material consideration”**.

2.17 **“Promote”** means any action taken by a person or body or allowed to be taken by such person or body to further or to encourage the preferential use of any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service or to further or to encourage the preferential sale of any such product or service for the purpose of financial

gain or other valuable consideration: This definition does not, however, prohibit the practice of those professions where, in terms of their scopes of practice, it is appropriate to sell such product or service at market related prices.

- 2.18 **“Scheduled substance”** means any medicine or other substance prescribed by the Minister under section 22A of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965).
- 2.19 **“Family Member”** means the individual’s spouse and the spouse’s grandparents, parents, siblings, children, nieces, nephews, aunts, uncles, and first cousins, any other person who shares the same household with the individual, including the person whom one habitually cohabits.
- 2.20 **“Trade”** means an act or instance of buying, selling or purchasing goods and services for the purpose of financial gain or other valuable consideration.
- 2.21 **“Veterinary medicine”** means any substance or mixture of substances intended or manufactured for use in connection with animals for diagnosis, treatment, alleviation, modification or prevention of disease or unhealthy physical conditions, for the improvement of growth, production or working capacity, for the lasting capacity of carcasses, for curing, correcting or modifying behaviour or for humane euthanasia, but does not include foodstuffs.

3 OVERSERVICING, PERVERSE INCENTIVES AND RELATED MATTERS

The following acts or omissions are not permissible for any health practitioner, nor is it ethical for any health-related body to encourage health practitioners to engage in any of them:

3.1 OVERSERVICING

A health practitioner shall not:

- 3.1.1 Provide a service or perform or direct certain procedures to be performed on a patient that are neither indicated nor scientific or have been shown to be ineffective, harmful or inappropriate through evidence-based review.
- 3.1.2 Refer a patient to another health practitioner for a service or a procedure that is neither indicated nor scientific or has been shown to be ineffective, harmful or inappropriate through evidence-based review.

[Note: Overservicing by ordering or providing more tests, procedures or care than is strictly unnecessary, is a common problem in modern medicine. Health practitioners must therefore not engage in any conduct that would constitute overservicing of patients].

3.2 MANUFACTURING

A health practitioner shall not manufacture or participate in the manufacture, for commercial purposes or trade, of orthodox medicine, complementary medicine, veterinary medicine, a medical device or a scheduled substance or a health-related product, except where such medicine or device or substance or product forms an integral part of the normal scope of practice of the health practitioner concerned.

3.3 ADVERTISING

It is not allowed for a health practitioner to advertise or endorse or encourage the use of any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service if any financial gain or other valuable consideration is derived by the health practitioner from such usage.

3.4 PREFERENTIAL USAGE OR PRESCRIPTIONS

A health practitioner shall not engage in or advocate the preferential use of any health establishment or medical device or health related service or prescribe any orthodox medicine, complementary medicine, veterinary medicine or scheduled substance, if any financial gain or other valuable consideration is derived from such preferential usage or prescription or the advocacy of preferential usage by a health practitioner.

3.5 REFERRALS

3.5.1 Self-referrals

- a) Self-referral of patients or clients or patients to own health establishment in which such health practitioner or a close family member or business associate has a financial interest or a potential conflict of interest on condition that such interest is discussed, and agreement reached with the patient prior to the referral for the patient's consent.

3.5.2 Other referrals

- a) A health practitioner shall not refer their clients or patients to any health establishment or to any other health practitioners if such referral would constitute overservicing.

- 3.5.3 It is prohibited for a health practitioner to consult with one patient in more than one capacity as it contravenes the ethical rules of conduct.

3.6 TECHNOLOGICAL EQUIPMENT AND PLATFORMS
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- 3.6.1 A health practitioner shall only own and use technological equipment or platforms if it forms an integral part of their scope of the profession and practice and on condition that the health practitioner concerned has received appropriate training in using and managing such equipment.
- 3.6.2 Over-use of medical equipment for procedures, tests and other applications that are not indicated, scientific or based on evidence is prohibited. This constitutes overservicing and is prohibited.
- 3.6.3 Usage of technological equipments or platforms, health care products or devices for profiteering and must refrain from charging patients' fees for the use of such products or devices that are not market related is also prohibited.

3.7 FINANCIAL INTEREST IN HEALTH ESTABLISHMENTS
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A health practitioner may have a direct or indirect financial interest or shares in a hospital or any other health care institution: Provided that -

- 3.7.1 such interests or shares are purchased at market-related prices in arm's length transactions;
- 3.7.2 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;
- 3.7.3 the returns on investment or payment of dividends are not based on patient admissions or meeting particular targets in terms of servicing patients;
- 3.7.4 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;
- 3.7.5 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;
- 3.7.6 such practitioner does not engage in or advocate the preferential use of such hospital or health care institution;

- 3.7.7 the purchase agreement is approved by the council based on the criteria above as listed in paragraphs (a) to (f) of ethical rule 23A; and
- 3.7.8 such practitioner annually submits 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.

3.8 RENTALS AS PERVERSE INCENTIVES

A health practitioner shall not:

- 3.8.1 Pay rentals in lease agreements between health practitioners and health establishments that is not market related, not in arm's length transaction or are at preferential rates.
- 3.8.2 Enter into lease agreements with a health establishment or services that wish to rent their consulting rooms at rates conditional on the health practitioner achieving a certain turnover or targets such as admission of a specific number of patients at a private health care facility.
- 3.8.3 Rent consulting rooms from a health establishment or services under financial arrangements that are not openly available to other similarly qualified health practitioners or against the provisions of the ethical rules of conduct.

3.9 COMMISSION

3.9.1 Accepting commission

A health practitioner shall not accept commission or any financial gain or other valuable consideration from any person or body or service in return for the purchase, sale or supply of any goods, substances or materials used by the health care professional in his or her practice.

3.9.2 Paying commission

Payment of or receipt of commission or any financial gain or other valuable consideration to or from any person recommending patients is prohibited.

3.10 CHARGING OR RECEIVING FEES

3.10.1 For referring patients

A health practitioner shall not charge a fee or receive any financial gain or other valuable consideration for referring patients to the other health professional or for participation in drug trials or other research trials of a similar nature.

3.10.2 For seeing representatives

A health practitioners shall not charge a fee or receive any financial gain or other valuable consideration for seeing medical representatives.

3.10.3 For services not personally rendered

Charging or receiving of fees for services not personally rendered by either a health practitioner himself or herself or by an unregistered person in his or her employ, is prohibited, except for services rendered by another health practitioner with whom the health practitioner is associated as a partner, shareholder or *locum tenens*.

3.11 SHARING OF FEES

A health practitioners shall not share fees with any person or health professional who has not taken a commensurate part in the service for which the fees are charged.

3.12 CONTRACTS

3.12.1 A health practitioners shall not enter into a contract to work in a particular health establishment or service on the understanding that the health practitioner generates a particular amount of revenue for such health establishment or service.

[Note: A health establishment or service that equips a theatre, ward or other facility for a specific health practitioner according to his or her specifications may enter into a contractual agreement with such a health practitioner on condition a health practitioner may not enter into such an agreement if such health establishment stipulate any turnover targets for the health practitioner concerned].

3.13 DUAL PRACTICE

3.13.1 A health practitioner who holds registration with more than one professional board, professional category or statutory council or practices in alternative healing methods shall ensure at all times that patients are clearly informed at the start of the consultation of the profession in which the practitioner is acting, and that patients are not consulted in a dual capacity or charged fees based on such dual consultation.

3.14 MANAGING POTENTIAL CONFLICTS OF INTEREST

- 3.14.1 A health practitioner shall avoid conflicts of interest where possible and be open about their financial interest with their patients.
- 3.14.2 All financial or commercial arrangements that relate to products, services, companies, or devices which health practitioners communicate about in a public domain shall be declared.
- 3.14.3 It is critical to consider the potential impact of the health practitioner's responsibilities before investing in, agreeing to, or undertaking any financial interests that may affect or be seen to affect their clinical decisions and the way they practise their profession.
- 3.14.4 A health practitioner shall declare conflicts of interest to their patient and not abuse their position for financial gain. When interests compete, prioritisation of patient care is critical.

3.15 ALTERNATIVE OPTIONS AND RESPECTING THE RIGHT OF PATIENTS TO CHOOSE

- 3.15.1 A health practitioner is required to be transparent with his or her patient regarding any interests that could influence their treatment recommendations, ensuring that patients are fully informed about all available options, including the choice to refuse treatment.
- 3.15.2 A health practitioner is required to disclose any knowledge of alternative treatments that could be more beneficial to patients and not mislead them about the accessibility of these alternatives.
- 3.15.3 If a treatment option proposed by a health practitioner involves a personal interest, such must be disclosed, and further explain the rationale for the recommendation, present information on other suitable options, and ensure the patient understands their right to make decisions and to seek a second opinion.
- 3.15.4 It is imperative that a health practitioner does not attempt to sway patients' choices for personal, employer, or related party gain, and that they do not recommend unnecessary treatments to meet targets or for financial advantage. Any discussions about conflicts of interest should be documented in the patient's medical record.
- 3.15.5 A health practitioner shall not entice patients with discounted services in return for advertisement of their services.

Ethical guidelines for good practice in the health care professions

The following Booklets are separately available:

- Booklet 1: General ethical guidelines for health care professions**
- Booklet 2: Ethical and professional rules of the health professions council of South Africa as promulgated in government gazette R717/2006**
- Booklet 3: National Patients' Rights Charter**
- Booklet 4: Seeking patients' informed consent: The ethical considerations**
- Booklet 5: Confidentiality: Protecting and providing information**
- Booklet 6: Guidelines for the management of chronic diseases**
- Booklet 7: Guidelines withholding and withdrawing treatment**
- Booklet 8: Guidelines on Reproductive Health management**
- Booklet 9: Guidelines on Keeping of Patient Records**
- Booklet 10: Guidelines for the practice of Telehealth**
- Booklet 11: Guidelines on over servicing, perverse incentives and related matters**
- Booklet 12: Guidelines for the management of health care waste**
- Booklet 13: General ethical guidelines for health researchers**
- Booklet 14: Ethical Guidelines for Biotechnology Research in South Africa**
- Booklet 15: Research, development and the use of the chemical, biological and nuclear weapons**
- Booklet 16: Ethical Guidelines on social media**
- Booklet 17: Ethical Guidelines on Palliative Care**
- Booklet 19: Ethical guidelines on matters relating to ethical billing practices**