



## AMENDMENTS TO THE HPCSA RULES OF ETHICAL CONDUCT

On the 17<sup>th</sup> November 2023, the Registrar of the Health Professions Council of South Africa (HPCSA) published certain amendments to the Ethical Rules for the Conduct of Practitioners Registered under the Health Professions Act, 1974 (GNR 717, dated 4<sup>th</sup> August 2006) (The Ethical Rules). The amendments are entitled “Proposed Amendments to the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act, 1974” and were published in Board Notice 510 in GG 49720 (The Amendment Notice). Although the title of the Amendment Notice refers to “Proposed Amendments”, the Registrar of the HPCSA has since confirmed that the amendments are indeed final. The Amendment Notice has the effect of fundamentally changing the landscape in which healthcare “practitioners”, as that term is defined in the Ethical Rules, may collaborate with others.

While this is not intended to be a complete analysis, the following changes are believed to be of particular importance:

### Introduction of New Concepts

The amended Ethical Rules of Conduct contemplate the following new concepts:

- **Multidisciplinary Healthcare:** Defined as healthcare delivery that involves multiple health practitioners from different professions of healthcare. The health practitioners often work as a team to provide wholesome healthcare services for the benefit of the patient’.
- **Quality Healthcare Services:** Defined as the delivery of health care that is effective, safe and people centred, aimed at achieving desirable outcomes using evidence-based healthcare services to all who could benefit.
- **Appropriate Healthcare:** Defined as healthcare delivery which is expected to deliver clinical benefits of care that outweigh the expected negative effects to such an extent that the treatment is justified.
- **Collaborative Practices:** Defined as the practices that occur when multiple health practitioners, from different professional backgrounds, work together with patients, families, carers and communities to deliver the highest quality of care across settings.

The information below aims to summarise and highlight those amendments believed to be of most relevance to our professions of Speech-Language Therapy and Audiology.

### 1. Fees and Commission

Previous Rule	Amended Rule
Prior to the publication of the Amendment Notice, practitioners were only entitled to receive fees for services personally rendered, or for the services rendered by someone in their employment. This prevented certain alternative	<u>Rule 7 (6):</u> Notwithstanding anything contained in sub-rules (4) and (5), a practitioner may share, charge, or receive fees from another practitioner. This can only be done provided that, in such an instance, there is an express agreement,



models of reimbursement, including global fee agreements. The Amendment Notice has now introduced rule 7 (6) of the Ethical Rules, which provides that:

Ethical Rule 7, dealing with Fees and Commissions, provided at sub-rules (4) and (5) that:

(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/her employment, or with whom he/she is associated as a partner, shareholder, or locum tenens.

arrangement or model of rendering multi-disciplinary based health-care services to patients which is structured, provides high quality health-care services or products, contains costs of rendering health-care services, and enhances access to appropriate healthcare.

#### **NOTE:**

***Rule 7 (1) and 7 (2) have not changed.***

- Paying commission, other than that which forms part of an employee's salary structure, is still not allowed.
- Rule 7 (6), relating to 7 (4) and 7 (5), refers to the sharing of fees. It only allows sharing of fees in a multi-disciplinary model of practice. There must be a formal agreement in place which states:
  - How this model benefits patients, i.e. saving costs and improving the quality of care.
  - How the fees are shared by practitioners who are collaborating to offer services in this manner.

Essentially, Rule 7 (6) provides an exception under which fees can be shared, in a multi-disciplinary model, so that a patient can receive holistic care and be charged one single fee to see, for example, an Audiologist, Occupational Therapist, Physiotherapist, Dietician and/or Speech Language Therapist. The participating practitioners will share the charged fee, according to the formal agreement that is in place.

Based on the amendments to Rule 7, further opportunities appear to now be available to practitioners to extend the way they collaborate, and consequently bill, for healthcare services.

#### **Do's**

You may now share fees with another healthcare professional but only if:

- There is an upfront agreement in place in this regard,
- the treating healthcare professional is receiving appropriate compensation for their work, and
- this arrangement enhances the clients' access to appropriate healthcare.



**Note: You are only permitted to employ a healthcare professional registered with the same Professional Board**, since Ethical Rule 8 has not been amended and is still in place. Fee sharing is, however, permitted across categories as per the addition of clause 7.6 as above.

### Don'ts

You may not share fees if:

- The other healthcare professional has not agreed to this upfront,
- this arrangement will compromise the quality of healthcare,
- this arrangement will escalate costs for patients (clients).

## 2. Partnerships and Juristic Persons

Previous Rule	Amended Rule
Rule 8 deals with partnerships and juristic persons in the context of practitioners. In particular, Rule 8 restricts practitioners to practicing only in partnerships with each other, or in associations where the practitioners concerned are not prohibited, in terms of the Ethical Rules, from entering into such partnerships or associations.	<p>The Amendment Notice now introduces a new <u>Rule 8 (5)</u>. This rule provides that, notwithstanding anything contained in this rule, a practitioner may provide health-care services with other registered practitioners, persons registered in terms of the Act, or in terms of another legislation regulating health profession. These health-care services can only be provided if:</p> <ul style="list-style-type: none"><li>• The primary aim will be to enhance the quality of health-care services to patients, and</li><li>• 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.</li></ul>

Rule 8 (5), now authorises collaboration between practitioners in different registration categories.

### Do's

You may now render services in collaboration, and together with, other members of the multidisciplinary team, provided that:

- There is a formal agreement in place with respect to the model or structure of the multidisciplinary healthcare services,
- the services rendered are of the same, or higher quality, and are more accessible than they would be if they were rendered individually, and
- the cost of these services is not higher than if they were rendered individually, instead of in a multidisciplinary model.



### 3. Sharing of Rooms

Previous Rule	Amended Rule
Prior to the enactment of the Amendment Notice, Rule 8A provided that “[a] practitioner shall not share his/her rooms with a person or entity not registered in terms of The Act”. This was interpreted as precluding registered persons from having medical rooms in the same establishment as that of a non-registered entity or person.	<u>Rule 8A</u> has been substituted and now reads as follows: “A practitioner may share his/her rooms with a person registered in terms of The Act, or in terms of any other legislation regulating health professions”.

This new rule once again appears to support the establishment of multidisciplinary services, which may now operate together in the same premises.

#### Note

- “A person registered in terms of the Act” refers to the Health Professions Act,
- “any other legislation regulating health professions” refers to professionals such as e.g. nurses, pharmacists, social workers, chiropractors etc, who our professions were previously excluded from being able to share rooms with as they are registered with a different regulatory healthcare body.
- As such, a service provider who is not registered in terms of any health act would not be permitted to share rooms with a healthcare worker who is registered with a healthcare body.
- Persons registered with SACE are registered in terms of the South African Council for Educators Act No. 31 of 2000 and may thus NOT share rooms with a registered healthcare worker.

#### **Do's**

You may now share rooms with any healthcare professional provided that:

- They are registered with any healthcare regulatory body in terms of the Health Professions Act.

#### **Don'ts**

You may not share rooms with:

- Anyone who is not a healthcare worker,
- an unregistered healthcare worker, such a foreign-qualified healthcare worker who has not registered with the appropriate regulatory body in South Africa.

### 4. Professional Appointments

Previous Rule	Amended Rule
One of the most significant changes to the Ethical Rules pertains to Rule 18, dealing with the professional appointment (including employment)	<u>Rule 18(1)</u> has been revised as follows: A practitioner shall accept a professional appointment or employment from employers in



of healthcare practitioners. Rule 18 used to read as follows:

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.

Accordingly, prior to the amendment, Rule 18, prescribed that a non-registered person or entity could only employ registered practitioners if the non-registered entity obtained permission from the HPCSA to do so, and pursuant to a contract that aligns with the interests of the public and the profession.

accordance with a written contract of appointment of employment which is drawn up on a basis which is in the interest of the public and the profession, provided that:

- The health practitioner ensures that the employment contract has, as its primary aim, the enhancement of the quality of healthcare services to patients,
- is structured to contain costs, enhance access to appropriate, high quality healthcare services or products to patients, and
- is not designed to extract profit for the benefit of the practitioner of their employer to the detriment of the patients.

Therefore:

“18(1) A practitioner can accept a professional appointment or employment from employers only in accordance with a written contract of appointment or employment, which is drawn up on a basis which is in the best interest of the public and the profession.

(2) A written contract of appointment of employment referred to in subrule (1) shall be made available to the council at its request”.

## Do's

We understand that the position of the HPCSA is that:

- Non-registered persons are no longer required to apply for approval from the HPCSA to employ registered practitioners to perform clinical services.
- You may accept employment from a business/organisation that has not received explicit permission from the HPCSA to employ you.
- Practitioners must ensure that they only accept employment contracts that are aligned with the Basic Conditions of Employment Act and the Ethical Rules provided by the HPCSA. This includes rule 2.4 in the HPCSA Policy on Business Practices which states that:


4. *Clinical Independence of Practitioner:* Practitioners should refrain from engaging in practices that would compromise patient care or in services not indicated in order to acquire financial or material benefit. No undue influence should be exerted on a practitioner to compromise his/her clinical independence.


5. *Method of Remuneration:* There should be no Perverse Incentives. This is an undesirable practice involving enriching a practitioner either financially or in kind at the cost of a payer for professional practice with no evidence based scientific basis or




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cost-effective considerations.

### **Don'ts**

You may not accept such employment if the arrangement will:

- Increase costs for the patients,
- reduce the quality of the healthcare services, or
- benefit the employer but be to the detriment of the patients.

The amendment to Rule 18, goes a long way towards increasing the potential collaboration between registered and non-registered persons, where the aim is to enhance access to, and the quality of, healthcare services to patients. It is also structured to contain costs as opposed to extracting profit for the benefit of the practitioner or their employer, to the detriment of the patients