



HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

GUIDELINES FOR GOOD PRACTICE IN THE HEALTH CARE PROFESSIONS

GUIDELINES ON OVERSERVICING, PERVERSE INCENTIVES AND RELATED MATTERS

BOOKLET 11

**PRETORIA
SEPTEMBER 2016**

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THE SPIRIT OF PROFESSIONAL POLICY GUIDELINES

Practice as a health care professional is based upon a relationship of mutual trust between patients and health care practitioners. The term "profession" means "a dedication, promise or commitment publicly made".¹ To be a good health care practitioner, requires a life-long commitment to sound professional and ethical practices and an overriding dedication to the interests of one's fellow human beings and society. In essence, practice as a health care professional is a moral enterprise. In this spirit the HPCSA presents the following ethical policy guidelines to guide and direct the practice of health care practitioners. These guidelines form an integral part of the standards of professional conduct against which a complaint of professional misconduct will be evaluated.

[Note: The term "health care practitioner" in these guidelines refers to persons registered with the HPCSA].

¹ Pellegrino, ED. Medical professionalism: Can it, should it survive? *J Am Board Fam Pract* 2000; 13(2):147-149 (quotation on p. 148).

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GUIDELINES REGARDING OVER SERVICING, PERVERSE INCENTIVES AND RELATED MATTERS CONCERNING HEALTH CARE PROFESSIONALS

APPLICABLE TO ALL HEALTH CARE PROFESSIONALS

PREAMBLE

WHEREAS SECTION 49(1) of the Health Professions Act, 1974 (Act No. 56 of 1974) (“the Act”) provides that the council shall, in consultation with a professional board, from time to time make rules specifying the acts or omissions in respect of which the professional board may take disciplinary steps under this Chapter: Provided that the powers of a professional board to inquire into and deal with any complaint, charge or allegation relating to a health profession under this Chapter, shall not be limited to the acts or omissions so specified;

AND WHEREAS council has made the rules in terms of section 49(1) of the Act;

NOW THEREFORE the HPCSA issues the following guidelines in respect of some of the above rules:

1	INTRODUCTION
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- 1.1 The Health Professions Council of South Africa (HPCSA) requires that health care practitioners should at all times act in the best interests of their patients and regard the clinical needs of their patients as paramount. To this end, a health care practitioner should 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. 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. The ownership and use of high technology equipment creates a special problem, not only because of its inappropriate use by health care practitioners who are not properly qualified, but also due to overservicing by appropriately qualified health care professionals. In general these guidelines cover the problems related to the use of high technology equipment. In particular, it needs to be emphasised, that over servicing of any kind is unacceptable.
- 1.2 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 should not in any way be regarded as an exhaustive list. The principles underlying these listed perverse incentives apply in every case of alleged unprofessional conduct on the part of a health care practitioner, and where breached will lead to an investigation by an appropriate health care authority or the HPCSA.
- 1.3 These guidelines regarding over servicing, perverse incentives and related matters shall be applicable to health care practitioners in both the public and private sectors.
- 1.4 It should further be noted that in terms of these guidelines, it is an offence either to offer a perverse incentive or to accept one.

- 1.5 In addition to any action that the HPCSA may take in terms of other legislation 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 DEFINING OF CONCEPTS

For the purpose of these guidelines, the following concepts will have the meanings described below, unless the context indicates otherwise. It should be noted that these concepts have not been defined for legal purposes, but merely to clarify the meaning of the guidelines. It should further be noted that some of these definitions have been based on those in certain Acts of Parliament in 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 matter 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, Antroposophy, 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” means a situation where a practitioner combines clinical practice in the public service with a clinical practice in the private sector. For practitioners employed in the Public Service, the equivalent of Dual Practice is referred to as Remunerative Work Outside Public Service (RWOPS). For practitioners in Private practice this refers to a

situation where a practitioner is employed in the public service either on sessional or part time basis.

- 2.4 “**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.
- 2.5 “Health care professional” 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 by the Health Professions Council of South Africa. The term also includes registered student health care practitioners.
- 2.6 “Health care practitioner” means any person registered with the HPCSA.
- 2.7 “Health establishment” means an institution, facility, building or place where persons 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, and health spa or hydro.
- 2.8 “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 or diagnostic purposes in connection with human health.
- 2.9 “Improper financial gain or other valuable consideration” means money, or any other form of compensation, payment, reward or 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:
- 2.9.1 Illegal; and/or
- 2.9.2 Contrary to ethical or professional rules; and/or
- 2.9.3 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.
- 2.10 “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.

- 2.11 “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:
- 2.11.1 Treating, preventing or alleviating symptoms of disease, abnormal physical or mental state or the symptoms thereof;
 - 2.11.2 Diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;
 - 2.11.3 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.

And “orthodox medicine” has the same meaning.

- 2.12 “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:
- 2.12.1 In the diagnosis, prevention, monitoring, treatment or alleviation of disease; or
 - 2.12.2 In diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap; or
 - 2.12.3 In investigation, replacement or modification of the anatomy or of a physiological process; or
 - 2.12.4 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.

- 2.13 “Orthodox medicine” see definition of “Medicine”.
- 2.14 “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, without due regard to both the financial and health interests of the patient.
- 2.15 “Perverse incentive” see definition of “improper financial gain or other valuable consideration”.
- 2.16 “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, however, not 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.

- 2.17 “Scheduled substance” means any medicine or other substance prescribed by the Minister under [section 22A](#); of the Medicines and Related Substances Act (Act No. 101 of 1965).
- 2.18 “Spouse” means a person’s partner in marriage and includes for the purpose of this policy statement, a person with whom another person lives as if they were married or with whom one habitually cohabits.
- 2.19 “Trade” means an act or instance of buying, selling or purchasing goods and services for the purpose of financial gain or other valuable consideration.
- 2.20 “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 care practitioner, nor is it ethical for any health related body to encourage health care professionals to engage in any of them:

3.1 OVERSERVICING RULE 7

Health care practitioners 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 care 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: Over servicing by ordering or providing more tests, procedures or care than is strictly necessary, is a common problem in modern medicine. Health care practitioners must therefore not engage in any act that would constitute over servicing of patients].

3.2 MANUFACTURING RULE 23

Health care practitioners 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 care practitioner concerned and where explicit permission was granted to a health care professional by the HPCSA to manufacture or to participate in the manufacture of such medicine, device, substance or product.

3.3 ADVERTISING RULE 3

Health care practitioners shall not 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 in a manner that unfairly promotes the practice of a particular health care practitioner or a health care facility for the purpose of financial gain or other valuable consideration.

3.4 PREFERENTIAL USAGE OR PRESCRIPTIONS RULE 23

Health care practitioners 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 the health care professional.

3.5 REFERRALS RULE 24

3.5.1 Self-referrals

Health care practitioners may only refer their clients or patients to any health establishment in which such health care practitioner or a close family member or business associate has a financial interest or a potential conflict of interest if such interest has been declared to and approved by the HPCSA and 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

Health care practitioners shall not refer their clients or patients to any health establishment or to any other health care professionals if such referral would constitute overservicing.

3.5.3 Practitioners must not consult with one patient in more than one capacity.

3.6 TECHNOLOGICAL EQUIPMENT

3.6.1 Health care practitioners shall only own and use technological equipment if it forms an integral part of their scope of the profession and practice and on condition that the health care practitioner concerned has received appropriate training in using and managing such equipment.

3.6.2 Health care practitioners shall not over-use equipment for procedures, tests and other applications that are not indicated, scientific or based on evidence. This constitutes overservicing and is prohibited.

3.6.3 Health care professionals shall not use technological equipment, 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.

3.7 FINANCIAL INTEREST IN HOSPITALS RULE 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.

3.8 RENTALS AS PERVERSE INCENTIVES

Health care practitioners shall not:

- 3.8.1 Pay rentals in lease agreements between health care practitioners and health establishments that are not market related or are at preferential rates.
- 3.8.2 Enter into lease agreements with health establishments or services that wish to rent their consulting rooms at rates conditional on the health care 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 health establishments or services under financial arrangements that are not openly available to other similarly qualified health care practitioners.

3.9 COMMISSION RULE 7

3.9.1 Accepting commission

Health care practitioners 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

Health care practitioners shall not pay commission or render any financial gain or other valuable consideration to any person for recommending patients.

3.10 CHARGING OR RECEIVING FEES RULE 7

3.10.1 For referring patients

Health care practitioners 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

Health care 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

Health care practitioners shall not charge or receive fees for services not personally rendered by either a health care professional himself or herself or by an unregistered person in his or her employ, except for services rendered by another health care practitioner or person registered in terms of the Health Professions Act (Act No. 56 of 1974), that regulates the particular profession, with whom the health care practitioner is associated as a partner, shareholder or *locum tenens*.

3.10.4 Charging consultation fee for an appointment that was not honoured (Rule 7)

A practitioner shall not charge or receive fees for services not rendered. An appointment that was not honoured by the patient is equivalent to services not rendered, and for that, a practitioner may not charge or receive fees

3.11 SHARING OF FEES

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

3.12 CONTRACTS

3.12.1 Health care practitioners shall not enter into a contract to work in a particular health establishment or service on the understanding that the health care professional 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 care practitioner according to his or her specifications may enter into a contractual agreement with such health care professional on condition that such health establishment or service may not stipulate any turnover targets for the health care practitioner concerned].

3.13 CONTINUING PROFESSIONAL DEVELOPMENT

With regard to continuing professional development (CPD), the HPCSA wishes to state the following:

3.13.1 Collaborative efforts

Historically there has been a close collaboration between health care practitioners and the pharmaceutical and health supply industry that extended particularly to CPD. Health care is to a large extent self-governing and practitioners must ensure that their participation in such collaborative efforts is in keeping with their ethical duties towards patients and society.

3.13.2 Educational needs of targeted group

Continuing professional development activities should address the educational needs of the targeted health care group.

3.13.3 Health care provider organisations

The decision on content and choice of continuing professional development activities, as well as funding arrangements lies ultimately with the health care provider organisations such as professional associations, their branches and groups who should not be in a position of conflict of interest by virtue of any relationship with the funding body. The organisers may acknowledge financial or other aid received, but should not identify any specific products. Generic names of products should be used rather than trade names in the course of continuing professional development activities.

3.13.4 Funding

Funds for continuing professional development activities should preferably be in the form of an educational grant payable to the health care provider organisation arranging the activity.

3.13.5 Travel, lodging and other expenses with regard to the attendance of CPD events

No travel or lodging costs or other expenses should be paid by the industry directly to the individual health care practitioners to attend a CPD event. However indirect funding or scholarship of CPD events may be permissible in instances where, such sponsorships are paid to the organisers of the CPD events who in turn will identify, through a transparent selection process, deserving candidates based on such factors as historically disadvantaged individuals status, gender, geographical location in terms of rural and inaccessible locations, young practitioners and developing practitioners etc. The organisers may extend reasonable honoraria and imbursement for travel, lodging and meal expenses to speakers. The principal event should at all times centre around education and not around meals, entertainment or other hospitality, the cost of which should not exceed that level at which the recipients might reasonably be expected to incur for themselves under similar circumstances.

3.13.6 Travel, lodging and other expenses with regard to the attendance of international conferences

3.13.6.1 It is a well established practice and an acknowledged fact that health care practitioners and educators should be exposed to new knowledge and insights into their respective professions and disciplines by attendance at international conferences, either locally or overseas. It is, however, also of the utmost importance that young and upcoming health care practitioners and educators and those from disadvantaged backgrounds be given an equal opportunity to expand their knowledge and understanding with regard to their respective professions and disciplines by attendance at international conferences.

3.13.6.2 It will, therefore, be permissible for companies to sponsor delegates to attend international conferences, either directly or through professional associations or societies, with the proviso that a fair and transparent process should be followed in the election and sponsoring of delegates to attend such events, especially with regard to the attendance of such conferences by young and upcoming health care professionals and educators and those from disadvantaged backgrounds.

3.13.6.3 Sponsorships should be earmarked for specific educational events and conferences and not for holiday purposes.

3.13.7 Distinction between education, training and product promotion

A distinction should be made between education and training on the one hand and product promotion on the other. Health care practitioners cannot earn CEUs for attending product launches or other product promotion events. No travel, lodging or other expenses of health care practitioners should be paid for attendance at product promotion events or product launches. However, modest meals may be provided.

3.14	Dual Practice
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3.14.1 Health Care PR actioners employed in the Public Service place their undivided attention, time and skills at the disposal of the Public Service as employer. Practitioners engaging in Remunerative Work Outside Public Service (RWOPS) shall do so in line with the approval by the executing authority; and in so doing, practitioners place the health and wellbeing of their patients as first priority.

3.14.2 Practitioners abusing RWOPS must be reported to Council.