
GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 319 OF 2008

NOTICE OF AN APPLICATION FOR AN EXEMPTION IN TERMS OF PART A OF SCHEDULE 1 OF THE COMPETITION ACT 89 OF 1998: HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

An application for an exemption from the provisions of the Competition Act 89 of 1998, as amended ("the Competition Act") has been filed with the Competition Commission of South Africa ("the Commission") by the Health Professions Council of South Africa ("HPCSA"), in terms of Schedule 1 of the Competition Act. The HPCSA is a statutory body established in terms of the Health Professions Act No. 56 of 1974 ("Act 56 of 1974").

The application for exemption is in respect of all of the Ethical Rules of Conduct for Practitioners Registered under the Health Professions Act No. 56 of 1974, as promulgated and published as Government Notice No. R.717 of 04 August 2006 ("the Ethical Rules"), which serve to regulate the conduct of professionals registered with it.

Item (2), Part A of Schedule 1 to the Competition Act states,

"The Competition Commission may exempt all or part of the rules of a professional association from the provisions of Part A of Chapter 2 of this Act for a specified period if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of substantially preventing or lessening competition in a market is reasonably required to maintain –

(a) professional standards; or

(b) the ordinary function of the profession."

The HPCSA submits that certain of its ethical rules may substantially prevent or lessen competition. A summary of the relevant rules appears hereunder:

- a) Rule 3(2) – Restrictive canvassing and touting:-
This rule states that a practitioner shall not canvass (draw attention verbally or by printed or electronic media to one's personal qualities, superior knowledge, quality of service, professional guarantees or best practice) or tout (conduct which draws attention, either verbally or by means of printed or electronic media, to one's offers, guarantees or material benefits), or allow canvassing or touting to be done for patients on his or her behalf.
- b) Rule 4 – Restrictive information to be printed on professional stationery by registered practitioner:-
This rule restricts the type of information that a practitioner may print

on letterheads, account forms and electronic stationery.

- c) Rule 5 - Restrictive naming of practices: -
This rule prohibits the use of any trade name other than the name(s) of the practitioner(s).
- d) Rule 7 - Restrictive fee sharing and acceptance and payment of commission: -
This rule prohibits a practitioner from accepting any commission relating to the purchase, sale or supply of any goods, substances or material used in the conduct of his or her practice or accepting any payment, benefit or material consideration intended to induce said practitioner to act, or not to act, in a particular manner. The rule also prohibits a practitioner from sharing fees with another practitioner who has not taken part in the services for which the fees are charged.
- e) Rule 8(4) - Restrictive formation of other forms of practice models: -
This rule stipulates that a practitioner shall not practise in any other form of practice which has inherent requirements or conditions that violate or potentially may violate one or more of the Ethical Rules or the annexure thereto.
- f) Rule 8A - Restrictive sharing of consulting rooms: -
This rule prohibits practitioners from sharing rooms with persons or entities not registered in terms of Act 56 of 1974.
- g) Rule 10 - Restrictive supersession: -
This rule provides that should a practitioner take over the care of patient, such practitioner has an obligation to inform the erstwhile practitioner, prior to proceeding with any treatment, of such take over.
- h) Rule 18 - Restrictive employment of practitioners: -
According to this rule, a practitioner may only be engaged by employers registered with the HPCSA.
- i) Rule 23 - Restrictive participation in the manufacture for commercial purposes of medicines and medical devices: -
This rule states that a practitioner shall not participate in any activity that amounts to trading in medicine. A practitioner may also not advocate the use of any medication if the said practitioner derives any consideration for such medication.
- j) Amendment Rule 23 A - Restrictive practice relating to shareholding in hospitals or other healthcare institutions: -
This rule restricts the direct or indirect financial interest that a practitioner or a group of practitioners may have in a hospital or any other health care institution to a joint maximum of 26%. Such interest is subject to the prior written approval of the HPCSA.

- k) Annexure 6 – Restrictive formation of partnership and other permissible juristic persons by a certain category of practitioners: -
Rule 3(2) This rule relates to the restriction on the formation of partnerships amongst certain categories of practitioners.

The HPCSA submits that the restrictions contained in the above rules are reasonably required to maintain the objectives set out in Items (2)(a) and (b), Part A of Schedule 1 of the Act.

In accordance with the provisions of Item (3) (a), Part A of Schedule 1 of the Act, notice is hereby given of the above application for exemption. Interested parties can make written submissions to the Commission concerning the application. Such submissions must reach the Commission within 20 (twenty) business days from the date of this Notice and should be directed to:

Ms R. Samdhan-Pillay
Enforcement and Exemptions Division
Competition Commission
Facsimile: 012 – 394 4264
E-mail: RoshikaS@compcom.co.za.

In correspondence, kindly refer to case number 2008JAN3456.