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## GOVERNMENT NOTICE

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### DEPARTMENT OF HEALTH

No. R. 390

8 April 2008

#### HEALTH PROFESSIONS ACT, 1974: AMENDMENT

#### ETHICAL RULES OF CONDUCT FOR PRACTITIONERS REGISTERED UNDER THE HEALTH PROFESSIONS ACT, 1974: AMENDMENT

The Health Professions Council of South Africa intends, in consultation with the professional boards and with the approval of the Minister of Health under section 61(5) of the Health Professions Act, of 1974 (Act No. 56 of 1974), to amend the Ethical Rules promulgated as Government Notice No.R.717 of 4 August 2006 published in Government Gazette No. 29079 as it appears in the schedule below.

Interested persons are invited to submit any substantiated comments or representations in writing on the proposed amendments to the Registrar, Health Professions Council of South Africa, P.O. Box 205, Pretoria 0001 (for the attention of the Senior Manager: Professional Boards) within two months from date of Publication of this Notice.

#### GENERAL EXPLANATORY NOTE

[ ] Words or phrases in bold type square brackets indicate omissions or deletions from existing enactments; and

\_\_\_\_\_ Words or phrases underlined with a solid line indicate insertion in existing enactments.

#### SCHEDULE

##### Definitions

1. In this Schedule, "**Ethical Rules**" means Ethical Rules of conduct for practitioners registered under the Health Professions Act, 1974 promulgated as Government Notice No. R717 of 4 August 2006 and published in Government Gazette No. 29079, and any word or expression to which a meaning has been assigned in the Ethical Rules shall have that meaning.
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**Amendment of Ethical Rule 1**

2. Ethical Rule 1 is hereby amended:

2.1. by the insertion of the following definition after the definition of “**itinerant practice**”

**'medical device'** means medical device as defined under the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

2.2. by the insertion of the following definition after the definition of “**resident practice**”:

**“rooms”** means a physical structure with exclusive entrance where a practitioner conducts his or her practice and walled all round for the privacy and preservation of patients confidentiality and safe keeping of records ;

2.3. by the substitution for the definition of “**touting**” of the following definition:

**“touting”** means conduct which draws attention, either verbally or by means of printed or electronic media, to one's offers, guarantees or material benefits not falling within the categories of professional services or items.”

**Amendment of Ethical Rule 8**

3. Ethical Rule 8 is hereby amended by the substitution for sub-rule (1) of the following sub-rule:

“(1) A practitioner [**shall**] may practice [**only**] in partnership or association with or employ only a practitioner who is registered under the Act and [**only in respect of the profession for which such practitioner is registered under the Act**] who is not prohibited under any of the Annexure to these rules or ethical rulings, from entering into such partnership or association or being employed: Provided that, in the case of employment, the practitioner thus employed either provides a supportive healthcare service to complete or supplement the employing practitioner's healthcare or treatment intervention or is at the same professional category with the employing practitioner.”

**Insertion of Ethical Rule 8A**

4. The Ethical Rules are hereby amended by the insertion of the following heading and Ethical Rule 8A after Ethical Rule 8:

**“Sharing of Rooms**

“8A. A practitioner shall not share his or her rooms with a person or entity not registered in terms of the Act.”

**Amendment of Ethical Rule 9**

5. Ethical Rule 9 is hereby amended by the substitution for sub-rule (1) of the following sub-rule:-

“(1) A practitioner shall employ as a professional assistant, *locum tenens* or in any other contractual capacity, and in the case of *locum tenens*, for a period not exceeding six month, only a person-

- (a) who is registered under the Act to practise in independent practice;
- (b) whose name currently appears on the register kept by the Registrar under section 18 of the Act; and
- (c) who is not suspended from practising his or her profession.”

**Amendment of Ethical Rule 13**

6. Ethical Rule 13 is hereby amended by the substitution for paragraph (b) of sub-rule (2) of the following paragraph:

“(b) in the case of a minor under the age of [14] 12 years, with the written consent of his or her parents or guardian; or”.

**Amendment of Ethical Rule 23**

7. Ethical Rule 23 is hereby amended:-

7.1. by the substitution for the heading of the following heading:

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**“Medicine and Medical Devices”**

7.2. by the substitution for sub-rule (1) of the following sub-rule:

“(1) A practitioner shall not participate in the manufacture for commercial purposes, or in the sale, advertising or promotion of any medicine or medical device or in any other activity which amounts to trading in medicine or medical devices to the public or keeping an open shop or pharmacy.”

7.3. by the substitution for sub-rule (2) of the following sub-rule:

“(2) A practitioner shall not engage in or advocate the preferential use or prescription of any medicine or medical device, if any valuable consideration is derived from such preferential use or prescription.”

7.4. by the substitution for sub-rule (4) of the following sub-rule:

“(4) A practitioner referred to in subrule (3) shall display a conspicuous notice in his or her waiting room and also, if appropriate, verbally inform his or her patient about the fact that he or she-

(a) owns shares in a listed public company which manufactures or markets the medicine or medical devices prescribed to such patient; or

(b) is in the employ of the pharmaceutical concern which manufactures such medication or medical devices.”

7.5. by the substitution for subrule (5) of the following subrule:

“(5) A practitioner may prescribe or supply medication or medical devices to a patient:

Provided that such a practitioner has ascertained the diagnosis of the patient concerned through a personal examination of such patient or by virtue of a report by another practitioner under whose treatment such patient is or has been and such medication or medical device is

clinically indicated taking into account the diagnosis and the individual prognosis of the patient.”

#### **Insertion of a heading and Ethical Rule 23A**

8. The Ethical rules are hereby amended by the insertion of the following heading and Ethical Rule 23A after Ethical Rule 23:-

#### **“Financial interest in hospitals and other health care institutions.”**

“23A.(1) A practitioner may have a direct or indirect financial interest in a hospital or any other health care institution up to a joint maximum of 26% interest in the entity owning the hospital or health care institution and such interest may only be held subject to the prior written approval of the council to hold such an interest.

(2) A practitioner who wishes to have a financial interest in hospital or any other health care institution shall apply in writing to the council for approval and shall submit such application on a prescribed form obtainable from the council together with the following particulars:

- (a) A written summary of the proposed acquisition of the financial interest which must set out the nature of the commercial transaction, full details of the parties to the transaction, percentage shareholding of the applicant, the total aggregate percentage interest of all practitioners holding or applying to have an interest in the hospital or health care institution, the purchase price or other consideration to be paid or exchanged in return for the acquisition of the financial interest, how the acquisition of the financial interest is to be funded and whether there are other ancillary contractual relationships between all the parties to the transaction or with related parties or entities and if so, the nature of such contractual relationships;

- (b) Copies of all the proposed underlying written agreements which have been concluded or to be concluded by the parties to the proposed acquisition of the financial interest;
- (c) Copies of any other agreements concluded or to be concluded between the applicant and the other parties to the transaction or alternatively with related parties of the applicant or the other contracting parties;
- (d) Copies of the audited financial statements of the legal entity that owns the hospital or health care institution for the two years preceding the proposed acquisition or alternatively, if the said entity has not yet commenced business, then a business plan incorporating its financial projections for the first 24 months of its business operations;
- (e) Memorandum and Articles of Association of the companies which own the hospital or health care institution and of any subsidiary companies, and if any of the shares in the companies are held by a Trust, the Trust Deed of such a Trust;
- (f) Policies or protocols for admission of patients into such hospital or health care institution and quality monitoring mechanisms which serve to ensure that the practitioner complies with the ethical rules of council; and
- (g) Any other information or documents which the council may deem relevant.

(3) The application referred to in sub-rule (2) shall be considered by council or its duly appointed committee taking into account the following factors:

- (a) whether the acquisition of the financial interest is at fair undiscounted market value and without any conditions or terms which may detract from good ethical and safe practice of a profession;

- (b) whether the financial interest is to be acquired for purposes of establishing a new hospital or health care institution in a geographical area classified as under-developed, rural or socially disadvantaged;
- (c) the location of other health facilities in the proposed geographical area in which the hospital or health care institution is to be established;
- (d) the individual and aggregate shareholding percentage of practitioners who are applying to have an interest in the hospital or health care institution;
- (e) the measures and protocols to be implemented by the practitioner and the hospital or health care institution to prevent over-servicing and unnecessary referral of patients for admission to the hospital or health care institution;
- (f) whether a peer review mechanism of the practitioner's admission patterns will be implemented by the practitioner and the hospital or health care institution and the details of such peer review mechanism; and
- (g) any other factor which in the opinion of the council is deemed relevant.

(4) The council may grant or refuse any application made in terms of sub-rule (2) and, having granted such application, may prescribe such conditions and requirements for the acquisition of the financial interest as it may at its discretion deem fit.

(5) A practitioner applying to council for approval to have a financial interest in a hospital or any other health care institution must sign a pledge which will serve as a declaration that he or she shall be held personally liable for any ethical transgressions that may occur within that hospital or institution and to openness and co-operation which would entitle the council to monitor admission of patients and quality trends at that hospital or institution, including the authorization of the council to access the premises and conduct investigations in terms of the provisions of Chapter IV of the Act.

(6) Any agreements or arrangements which have been entered by a practitioner on the date of promulgation of these amendments in terms of which such a practitioner have acquired a financial interest in a hospital or health care institution shall be deemed to be valid for a period of six months from date of coming into operation of the these amendment ethical rules or for such extended period as may be agreed to in writing by the council.

(7) The practitioner referred to in sub-rule (6) shall submit an application to have a direct or indirect financial interest in a hospital or health care institution in the manner prescribed in sub-rule (2).

(8) The provisions of this rule shall not apply to a practitioner whose name appears in the register for non-clinical practice or who is not in active practice.

#### **Amendment of Ethical Rule 24**

9. Ethical Rule 24 is hereby amended by the substitution for the heading of the following heading:-

**[Financial interest in hospitals] Referral of patients to hospitals or private clinics**

#### **Insertion of heading and Ethical Rule 27A**

10. The Ethical Rules are hereby amended by the insertion of the following heading and Ethical Rule 27A:-

##### **“Main Responsibilities of Health Practitioners”**

“27A. A Practitioner must at all times :-

- (1) act in the best interests of his or her patients.
- (2) respect patient confidentiality, privacy, choices and dignity.
- (3) keep the highest standards of personal conduct and integrity
- (4) provide adequate information about the patient’s diagnosis, treatment options and alternatives, costs associated with each such alternative and any other pertinent information to enable the patient exercise his or her choice in terms of treatment as well as informed decision-making pertaining to his or her health and that of others;
- (5) keep his or her professional knowledge and skills up to date.
- (6) maintain proper and effective communication with patients and other professionals.
- (7) except in an emergency, obtain informed consent from a patient or his or her next-of-kin in the event that the patient is unable to provide that consent him or herself for treatment.
- (8) keep accurate patient records.



**Amendment of Annexure 2 to the Ethical Rules.**

11. Annexure 2 to the Ethical Rule is hereby amended by the substitution for paragraph (a) of Rule 4 of the following paragraph:

“4. A nutritionist-

- (a) **[shall perform professional acts only under the supervision of a registered practitioner and shall limit such acts to acts directly related to his or her education and training]** shall confine himself or herself to the performance of professional acts in the field of nutrition in which he or she was educated and trained and in which he or she has gained experience; and”

**Amendment of Annexure 5 to the Ethical Rules.**

12. Annexure 5 to the Ethical Rules is hereby amended by the substitution for paragraph (c) of Rule 1 of the following paragraph:-

“(c) shall, if he or she does not comply with provisions of paragraph (b), perform professional acts only under the direction of a medical practitioner or a medical **[scientist]** technologist who complies with the provisions of paragraph (b) [who is] and registered in the relevant discipline: Provided that this prohibition shall apply only to acts excluded, as determined by the board.”

**Amendment of Annexure 6 to the Ethical Rules**

13. Annexure 6 to the Ethical Rules is hereby amended by the substitution for paragraph (d) of Rule 3 (2) of the following paragraph:

“(d) the only exception to the restriction pertaining to radiology referred to in paragraph (b) hereof shall be that a radiologist shall be permitted to form an incorporated practice, partnership or association with a nuclear physician or a radiographer registered in the relevant discipline in view of the fact that the said **[two medical]** professions are related to each other in terms of the nature of their field of professional practice”

**Amendment of Annexure 7 to the Ethical Rules**

14. Annexure 7 to the Ethical Rules is hereby amended:-

14.1. by the substitution for the name of the professional board at the top of the Annexure of the following name:

**“PROFESSIONAL BOARD FOR OCCUPATIONAL THERAPY [AND],  
MEDICAL ORTHOTICS/PROSTHETICS AND ARTS THERAPY”**

14.2. by the substitution for the heading under the name of the professional board of the following heading:

**“RULES OF CONDUCT PERTAINING SPECIFICALLY TO THE PROFESSION OF  
OCCUPATIONAL THERAPY [AND], MEDICAL ORTHOTICS/PROSTHETICS AND ARTS  
THERAPY”**

**Amendment of Annexure 9 to the ethical Rules**

15. Annexure 9 of the Ethical Rules is hereby amended by the addition of the following heading and ethical rule 9 after ethical rule 8:

**“Sharing of rooms**

9. Notwithstanding the provisions of Ethical Rule 8A of the generic ethical rules, the Council may authorise a physiotherapist, biokineticist or podiatrist to have rooms in or have an entrance through the business of an institution such as gymnasium or wellness or fitness club.”

  
**DR ME TSHABALALA-MSIMANG**

**MINISTER OF HEALTH**

**Date: 26-3-2008**

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