



# GOVERNMENT GAZETTE

## OF THE

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## Government Notice

### MINISTRY OF HEALTH AND SOCIAL SERVICES

No. 197 2002

#### RULES RELATING TO IMPROPER CONDUCT OR MISCONDUCT BY A MEDICAL PRACTITIONER: MEDICAL AND DENTAL PROFESSIONS ACT, 1993

The Minister of Health and Social Services has under section 29(2) of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993), approved -

- (a) the rules issued by the Medical Board under section 29(1) of that Act as set out in the Schedule; and
- (b) the repeal of the rules published by Government Notice No. R. 2278 of 3 December 1976 in so far as they relate to medical practitioners.

### SCHEDULE

#### Definitions

1. In these rules, any word or expression to which a meaning has been assigned in the Act shall have that meaning and, unless the context otherwise indicates -

“association” means a group of two or more practitioners practising for their own accounts, but sharing facilities or assets for the purpose of conducting their practices;

“Board” means the Medical Board established in terms of section 2 of the Act ;

“health services” means services relating to -

- (a) the physical examination of persons;
- (b) the diagnosis, treatment or prevention of physical defects, illnesses, diseases or deficiencies in persons;
- (c) the giving of advice with regard to physical defects, illnesses, diseases or deficiencies ; or
- (d) the prescription or provision of medicine in connection with physical defects, illnesses, diseases or deficiencies;

“medical practitioner” means a person registered as a medical practitioner under the Act;

“practice” means a business conducted by a practitioner in relation to his or her profession;

“practitioner” means a person who practises for his or her own account and is registered in respect of the profession that he or she practises under -

- (a) the Act;
- (b) the Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);
- (c) the Social and Social Auxiliary Workers’ Professions Act, 1993 (Act No. 22 of 1993);
- (d) the Pharmacy Profession Act, 1993 (Act No. 23 of 1993); or
- (e) the Nursing Professions Act, 1993 (Act No. 30 of 1993);

“the Act” means the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993).

#### **Acts and omissions constituting improper conduct or misconduct**

2. (1) The acts and omissions by a medical practitioner as set out hereunder shall, subject to the provisions of subrules (2) and (3), constitute improper conduct or misconduct in respect of which the Board may take disciplinary steps in terms of Part V of the Act.

(2) The acts and omissions referred to in subrule (1) shall not constitute a complete list of offences, and the Board may inquire into and deal with any complaint, charge or allegation which may be brought before it.

(3) The Board shall not be restricted to act only if a complaint, charge or allegation is brought before it.

#### **Promoting practice in notification of colleagues and public when setting up practice**

3. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner uses a notification to other medical practitioners and the public, when he or she sets up a practice or alters his or her practice address, to commend the quality of his or her services, personal qualities or his or her level of performance.

#### **Advertising, canvassing and touting under certain circumstances**

4. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) advertises or permits, sanctions or acquiesces in the advertisement of his or her professional services in the media, including the internet, and the advertisement -
  - (i) is not factually correct;
  - (ii) is misleading; or
  - (iii) harms the dignity or honour of the medical profession.
- (b) is involved in the canvassing or touting for patients, whether personally, through an agent or in any other manner;
- (c) provides information to a patient, which is incompatible with the requirements set out in these rules;
- (d) in material published by the medical practitioner, refers to the quality of his or her services, personal qualities or level of performance;
- (e) in cases where he or she is aware that material about him or her is to be published, fails to object to the publication of that material, if the material -
  - (i) suggests that the abilities of the medical practitioner concerned are comparably better than those of other medical practitioners;
  - (ii) is to be published in a manner likely to attract patients to the medical practitioner concerned or to promote his or her practice; or
  - (iii) is likely to encourage patients to consult the medical practitioner concerned;
- (f) instigates, sanctions or acquiesces in, or personally arranges, the publication by any other person of any form of material that commends the quality of the services, personal qualities or level of performance of that medical practitioner.

#### **Articles, books and appearances in the media by medical practitioners**

5. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) writes a book or article or participates in a presentation or discussion of health issues through the media or before lay audiences, without possessing the necessary knowledge and skill in respect of the field of medicine to which the presentation or discussion relates;
- (b) in the book, article or at a presentation or discussion referred to in paragraph (a), gives particulars relating to the medical practitioner, other than -
  - (i) the name;
  - (ii) current appointment and qualifications; and
  - (iii) factual references to publications, whether forthcoming or past;
- (c) presents information to the public about his or her professional standing, which implies that he or she is the only, the best or the most experienced person practising in his or her particular field;
- (d) if he or she speaks about the management of health conditions on a public media programme, refers to his or her practice or discredits other medical practitioners;

- (e) does not ensure that, if he or she regularly writes articles or columns offering advice on common health conditions in magazines or journals addressed to the public, or participates in a regular series of television or radio programmes dealing with such matters, that it is stated explicitly in that article, column or programme that he or she does not offer individual advice or see patients as a result of offering advice in the article, column or programme.

**Printing information on professional stationary, signs or nameplates under certain circumstances**

6. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) prints or causes to be printed on his or her letterheads, account forms or name plates any information in respect of the medical practitioner other than -
  - (i) the name;
  - (ii) the profession, registered category and speciality (if applicable);
  - (iii) registered qualifications;
  - (iv) academic qualifications (other than professional qualifications);
  - (v) honorary degrees in abbreviated form;
  - (vi) addresses, including e-mail addresses, and telephone and fax numbers;
  - (vii) hours of consultation and the practice number; and
  - (viii) information referred to in subparagraphs (i) to (vii) in relation to practitioners with whom the medical practitioner is practising in a partnership or an association;
- (b) in respect of the name of his or her practice, uses a name other than -
  - (i) his or her name;
  - (ii) in the case of a partnership, the names of the partners or the name of the medical practitioner together with the words "and partners";
- (c) uses the word "hospital", "clinic" or "health facility", or any other word, as part of the name of his or her practice and that word may create the impression that the practice forms part of or is associated with a hospital, clinic or any other health facility;
- (d) places on signs, which indicate the existence of his or her practice at a certain location, more information than a description of the field of practice of the medical practitioner, accompanied by an arrow, if necessary;
- (e) uses a nameplate for his or her practice, which is of a size larger than 500mm x 250mm;
- (f) in the case of a change of the location of his or her practice, displays the name and new address of the practice at the vacated location for longer than six months;
- (g) in the case of a change in the membership of a partnership, in which he or she conducts his or her practice, displays a nameplate for longer than six months after the change has occurred, without reflecting that change on the nameplate;

- (h) uses a name for a private health facility, which may be interpreted as implying that services to be provided have received some official recognition not extended to other medical practitioners;
- (i) uses prescription forms or envelopes on which the name and address of a pharmacist are printed.

#### **Carrying on itinerant practice under certain circumstances**

7. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner carries on a regular itinerant practice at a place where another medical practitioner is established, unless -

- (a) the medical practitioner renders in such itinerant practice the same service to a patient, and at the same cost, as the service he or she would render in the area in which he or she is resident; and
- (b) is able to render an equivalent service to that of the established medical practitioner.

#### **Accepting or receiving fee or commission**

8. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) accepts a commission from any person in return for the purchase, sale or supply of any goods, substances or materials used by the medical practitioner in the conduct of his or her practice;
- (b) pays a commission or any other form of reward to any person for recommending the medical practitioner to patients or for referring patients to the medical practitioner;
- (c) shares fees received for the provision of health services with any person, except -
  - (i) with a practitioner with whom he or she is in an association with regard to the provision of the health services; or
  - (ii) with a medical practitioner, who is a *locum tenens* or with whom he or she is in a partnership with regard to the provision of the health services; or
- (d) charges or receives fees for the provision of health services not personally rendered, except for services rendered by -
  - (i) a practitioner with whom he or she is in an association with regard to the provision of the health services; or
  - (ii) a medical practitioner, who is a *locum tenens* or with whom he or she is in a partnership with regard to the provision of the health services.

#### **Practising in a partnership under certain circumstances**

9. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner practises in a partnership, which is concerned with the provision of health services, with a person who is not registered as a medical practitioner.

**Employing, or consulting with, certain persons**

10. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) employs a person as an assistant or *locum tenens* who is not registered as a medical practitioner;
- (b) employs, co-operates or consults with, or in any way assists, a person, who provides health services and is not a practitioner;
- (c) assists a practitioner in respect of an illegal conduct in relation to the practice of that practitioner.

**Superseding a medical practitioner under certain circumstances**

11. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) is aware that a patient seeking treatment is treated by another medical practitioner; and
- (b) supersedes the other medical practitioner without taking reasonable steps to inform that other medical practitioner of the supersession.

**Impeding a patient**

12. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner prevents a patient, or someone acting on behalf of a patient, from obtaining the opinion of, or treatment from, another medical practitioner.

**Making unfounded allegations regarding professional reputation of colleagues**

13. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner makes unfounded allegations regarding the probity or professional reputation or skill of any medical practitioner.

**Divulging information regarding a patient under certain circumstances**

14. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner divulges to any person confidential information regarding a patient, except -

- (a) with the express consent of the patient;
- (b) in the case of a minor, with the written consent of his or her parent or guardian;
- (c) in the case of a deceased patient, with the written consent of his or her next-of-kin or executor of his or her estate; or
- (d) in a court of law, when instructed by the presiding officer.

**Granting certificate of indisposition under certain circumstances**

15. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner grants a certificate of indisposition to a patient and that certificate does not contain -

- (a) the name, address and qualifications of the medical practitioner who issued the certificate;

- (b) the name of the patient;
- (c) the employment reference number of the patient (if applicable);
- (d) the date and time of the examination;
- (e) an indication of whether the certificate is being issued as a result of personal observations by the medical practitioner during an examination or as the result of information received from the patient, which is based on acceptable medical grounds;
- (f) a description of the illness or disorder in laymen's language;
- (g) an indication of whether or not the patient is completely indisposed for duty or whether or not the patient is able to perform less strenuous duties in his or her work situation;
- (h) the exact period of recommended sick leave;
- (i) the date of issue of the certificate of indisposition.

**Omitting to delete inapplicable words from stationary or refusing to issue report**

16. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) uses reprinted stationary and omits to delete words from that stationary, which are not applicable; or
- (b) refuses to issue a brief and factual report to a patient, which the patient requires on reasonable grounds.

**Accepting professional appointment under certain circumstances**

17. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner accepts any appointment relating to the medical profession in circumstances where the contract of appointment is not -

- (a) in writing;
- (b) available to the Board on request; or
- (c) drawn up with due regard to the interests of the public and the medical profession.

**Making use of secret remedies**

18. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner in the conduct of his or her practice makes use of -

- (a) any form of treatment, apparatus or technical process, which is secret or is claimed to be secret; or
- (b) any apparatus which proves upon investigation by, or on the request, of the Board to be incapable of fulfilling the claims made in regard to that apparatus.

**Sharing consulting rooms or waiting rooms under certain circumstances**

19. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner, in relation to his or her practice, shares consulting or waiting rooms with, or utilises the entrance or has a nameplate at the entrance of the consulting or waiting rooms of, any person who is not a practitioner.

**Taking radiographs under certain circumstances**

20. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner takes or causes to be taken radiographs for persons not registered in terms of the Act or for the purpose of reporting on the radiographs to those persons.

**Communicating with certain persons or preventing Board or member of the Board from carrying out statutory duties**

21. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) communicates with any person, whom the medical practitioner knows to be a witness in a disciplinary inquiry held or to be held into the conduct of the medical practitioner, about any aspect of evidence to be given by that witness at the inquiry or permits, sanctions or acquiesces in such communication on behalf of the medical practitioner; or
- (b) knowingly commits an act or omission that prevents or is calculated to prevent the Board or any member of the Board from carrying out a statutory duty.

**Performing professional acts under certain circumstances**

22. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner performs, except in an emergency, professional acts -

- (a) in respect of which he or she is inadequately trained or insufficiently experienced; or
- (b) under improper conditions or in improper surroundings.

**Permitting exploitation**

23. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner permits himself or herself to be exploited in a manner detrimental to the public or professional interest.

**Manufacturing, selling, advertising or promoting medicine under certain circumstances**

24. Subject to section 41 of the Act, a medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner participates in -

- (a) the manufacture for commercial purposes or the sale, advertisement or promotion of any medicine as defined in the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965); or
- (b) any other activity, which amounts to trading in, engaging in or advocating the preferential use or prescription of, any medicine, if any valuable consideration is derived from such preferential use or prescription, but the provisions of this paragraph do not prohibit a medical practitioner -
  - (i) from owning shares in a public company manufacturing or marketing medicine;
  - (ii) subject to the provisions of the Pharmacy Profession Act, 1993 (Act No. 23 of 1993), from being the owner or part-owner of a pharmacy; or
  - (iii) whilst employed by a pharmaceutical concern in any capacity, from performing such duties as are normally performed in accordance with such employment.



**Dispensing under certain circumstances**

25. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) subject to paragraph (b), dispenses medicine for patients other than on a prescription by the medical practitioner;
- (b) in circumstances where there is a pharmacy, which provides adequate dispensing services in the neighbourhood of the medical practitioner's practice, dispenses medicine other than in a case of emergency; or
- (c) dispenses medicine in such a way that the dispensing forms the major part of his or her practice.

**Prescribing or supplying medicine under certain circumstances**

26. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner prescribes or supplies any substance listed in Schedules 5, 6 or 7 of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), to a patient -

- (a) unless the medical practitioner has ascertained through a personal examination of the patient, or by virtue of a report by another medical practitioner, who has treated or is treating that patient, that such prescription or supply is necessary for the treatment of the patient; or
- (b) except in the case of a repeating prescription for, or the supply of, a substance in respect of a patient with a chronic illness.

**Failing to disclose financial interest in hospital or clinic**

27. A medical practitioner is guilty of improper conduct or misconduct, if the medical practitioner refers patients to a private hospital or private health facility as defined in section 1 of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994), in which he or she, or a partner with whom he or she is associated in respect of a practice, has a financial interest, without displaying a conspicuous notice in his or her waiting rooms indicating that he or she, or that partner, has a financial interest in that hospital or clinic.

**Relationship with private hospital and private health facility**

28. A medical practitioner, who has a financial interest in a private hospital or private health facility and is a manager of a private hospital or private health facility as defined in section 1 of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994), is employed by such private hospital or private health facility to perform health services or accepts for examination or treatment patients referred to him or her by such private hospital or private health facility, is guilty of improper conduct or misconduct, if the medical practitioner -

- (a) irrespective of whether or not the owners of the private hospital or private health facility, or persons operating as partners in respect of the private hospital or private health facility, are themselves medical practitioners, fails to satisfy himself or herself, before he or she associates himself or herself with the private hospital or private health facility -
  - (i) that any advertisements, which the private hospital or private health facility releases or permits to be released-
    - (aa) are factual;

- (bb) do not refer to the quality of the service or the personal qualities of individual medical practitioners associated with it; and
- (cc) do not make invidious comparisons to the services of the State, other private hospitals or private health facilities or other medical practitioners;
- (ii) that the private hospital or private health facility discourages patients from making use of its services without the patients first consulting their medical practitioners; and
- (iii) that the private hospital or private health facility does not pay, or causes to be paid on its behalf, a commission or other consideration for the referral of patients to that private hospital or private health facility;
- (b) becomes personally involved in promoting the services of a private hospital or private health facility;
- (c) permits the use of his or her professional qualifications and status in the promotional activities of the private hospital or private health facility concerned; or
- (d) permits the use of his or her personal addresses or telephone numbers as an inquiry point on behalf of the private hospital or private health facility concerned.

#### **Repeal of rules**

**29.** The Rules Specifying the Acts or Omissions in respect of which the Council may Take Disciplinary Steps promulgated by Government Notice No. R 2278 of 3 December 1976 are repealed in so far as they relate to medical practitioners.

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