

LAW AND ETHICS IN THE OCCUPATIONAL THERAPY PROFESSION

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PRESENTATION OVERVIEW

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“My people are ruined because they do not know what is right or true”

Definition of a Profession

An occupation whose core element is work based upon the mastery of a **complex body of knowledge and skills**. It is a vocation in which knowledge of some department of science or learning or the practice of an art founded upon **it is used for the service of others**. Its members are governed by **codes of ethics** and profess a commitment to **competence, integrity and morality, altruism, and the promotion of the public good** within their domain. These commitments form the basis of a **social contract** between a profession and society, which in turn grants the profession a **monopoly** over the use of its knowledge bases, the right to considerable **autonomy in practice** and the **privilege of self-regulation**. Professions and their members are accountable to those served and society (Cruess and Cruess, 2004)

- While Universities confer a degree/qualification, the HPCSA confers the professional status attached to that degree or qualification for the holder thereof to be able to practice the profession within the republic.

REGULATION OF THE OCCUPATION THERAPY PROFESSION

- **The Health Professions Council of South Africa is a Statutory body established under the Health Professions Act 56 of 1974 and is mandated to regulate the health professions in the Republic of South Africa and functions through 12 Professional Boards operating under its auspices.**
- **The Professional Boards control the professions falling within their ambit under the overarching coordination and guidance of the HPCSA and are committed to:**
 - **Promoting Quality and Equitable health care to ALL**
 - **Setting health care standards for training and practise of the professions registered with the HPCSA**
 - **Fostering compliance with standards**
 - **Ensuring on-going professional competence of all registered practitioners**
- **Any decision of a Professional Board relating to a matter falling entirely within its ambit is not subjected to ratification by the Council, and Council determines whether a matter falls entirely within the ambit of the Board.**

RESPECT FOR PERSONS

- Health practitioners should respect patients as persons, and acknowledge their intrinsic worth, dignity, and sense of value
- Respect for persons emanates from one of the four ethical principles: Respect for individual's autonomy.
- Health practitioners should recognise that although they are experts in health knowledge and diseases, patients also experts in their illnesses.
- The rights of patients to self determination or to make their own informed choices, and to live their lives by their own beliefs, values and preferences should be honoured.
- Patients should be involved in their own care and health practitioners should empower patients to be active participants in their own care... # paternalistic approach must fall.
- The only way patient can be empowered to be full participants in their own care is through information: **Informed Consent**

INFORMED CONSENT

- **Respect for autonomy places an obligation on health practitioners to disclose information, to probe for and ensure understanding and voluntariness, and to foster adequate and informed decision making.**
- **In order to discharge this obligation, practitioners need to enable patients to overcome their sense of dependence and to achieve as much control of their treatment as they desire.**
- **In South Africa, Informed Consent is not only an ethical issue, but a legal issue.**

INFORMED CONSENT

- The right to informed consent flows from section 12(2) of the South African Constitution: “Everyone has the right to bodily and psychological integrity which include the right to make decisions concerning reproduction, the right to security in and control over their body and the right not to be subjected to medical or scientific experiments without their informed consent”.
- According to section 6(1)(b)&© of the National Health Act, “Every health care provider must inform a user of the **range** of diagnostic procedures and treatment **options** generally available to the user; the benefits, risks, **costs** and consequences associated with **each option**”.
- Ethical Rule 27(A)(d) of the Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act, 1974 states that, “A practitioner shall **at all times** 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 to exercise a choice in terms of treatment and informed decision-making pertaining to his or her health and that of others”.
- According to the National Patients’ Rights Charter (2.8), “Everyone has a right to be given full information about the nature of one’s illness, diagnostic procedures, the proposed treatment and risks associated therewith and the **costs** involved”.

- Health practitioners are empowered to ask intrusive questions and carry out invasive procedures.
- Patients are in a 'uniquely dependent, anxious, vulnerable and exploitable state.
- Patients must bare their weaknesses, compromise their dignity, and reveal intimacies of body and mind.'
- For this to be permitted, patients must trust that health practitioners will not pursue self-interest but have the patient as their first priority .
- Practitioners should always act in the best interests of their patients even when the interests of the latter conflict with their own personal self-interest.
- In altruism, two ethical principles are satisfied: Beneficence and non-maleficence.

TRUTHFULNESS

- Health practitioners should regard the truth and truthfulness as the basis of trust in their professional relationships with patients.
- The nature of a contract (social contract) that exists between the health professionals and society requires that truth becomes a non-negotiable virtue possessed by health practitioners
- This trust does not only end in a practitioner-patient relationship, but extends to the privilege of self-regulation and the powers given to the health professions to discipline those members of the profession who fail to uphold the ethos and standards of the profession.
- Although there is documented failure of the health professionals to self-regulate, society has in its best interest allowed the health professions to continue with self-regulation.

INTEGRITY

- Like truthfulness, integrity is one of the virtues expected in the health professions.
- Health professionals should incorporate this core ethical value and standard as the foundation for their character and practice as responsible health care professionals.
- Health professionals are expected to demonstrate morality and integrity in their practice, and in their day-to-day lives.
- Becoming a health professional is an invitation for public scrutiny.
- Health professionals who lack morality and integrity will, without question, lose trust, and this will reflect upon the health profession as a whole.

Performance of professional acts

- A practitioner shall perform, except in an emergency, only a professional act –
 - for which he or she is adequately educated, trained and sufficiently experienced;
- and
 - under proper conditions and in appropriate surroundings.

ETHICAL RULE 18: PROFESSIONAL APPOINTMENTS

- 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.
- Generally the employment of practitioners by persons not registered in terms of the Act is not permissible; however the following employment agencies are recognised for the purposes of employing practitioners that are registered under the Health Professions Act:
 - The Public Service; Universities / Training Institutions (only limited for purposes of training and research); Mining companies; & NPOs/NGOs (subject to approval of the relevant professional board;
 - All registered persons within the HPCSA may also employ fellow registered practitioners in accordance with the Ethical rules.
 - A practitioner intending to take up employment with any other agency, institution, company or organisation including Non-governmental Organisations (NGOs) and Non-Profit Organisations (NPOs) must lodge an application with the HPCSA before taking up employment.

- A practitioner shall be allowed to advertise his or her services or permit, sanction or acquiesce to such advertisement: Provided that the advertisement is not unprofessional, untruthful, deceptive or misleading or causes consumers unwarranted anxiety that they may be suffering from any health condition.
- A practitioner shall not canvass or tout or allow canvassing or touting to be done for patients on his or her behalf.

PARTNERSHIP AND JURISTIC PERSON

- A practitioner may practise in partnership or association with or employ only a practitioner who is registered under the Act and who is not prohibited under any of the annexures to these rules or any ethical rulings from entering into such partnership or association or being so employed: Provided that, in the case of employment, the practitioner so employed either provides a supportive health care service to complete or supplement the employing practitioner's healthcare or treatment intervention or is in the same professional category as the employing practitioner. [Subrule (1) substituted by GN R68/2009]
- A practitioner shall practise in a partnership, association or as a juristic person only within the scope of the profession in respect of which he or she is registered under the Act.
- 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 these rules or an annexure to these rules.

ANNEXURE 7 TO GENERIC ETHICAL RULES

- An occupational therapist, occupational therapy assistant, occupational therapy technician, a student in occupational therapy, an arts therapist, student in arts therapy, medical orthotist or prosthetist, an orthopaedic footwear technician, assistant medical orthotist or prosthetist, leatherworker and student in medical orthotics or prosthetics shall adhere to the following rules of conduct in addition to the rules of conduct referred to in rules 2 to 27.
- Failure to comply with the rules of conduct listed shall constitute an act or omission in respect of which the board may take disciplinary steps in terms of Chapter IV of the Act.

PERFORMANCE OF PROFESSIONAL ACTS BY OCCUPATIONAL THERAPISTS

An occupational therapist –

- shall perform professional acts only in the field of occupational therapy in which he or she was educated and trained and in which he or she has gained experience, regard being had to both the extent and the limits of his or her professional expertise;
- shall communicate and cooperate with medical practitioners and other registered health practitioners in the diagnosis and treatment of a patient; and
- in private practice may not employ any person as an occupational therapy assistant or an occupational therapy technician without the prior written approval of the board: Provided that this prohibition shall not apply in the case of a full-time or part-time appointment in the public service.

An occupational therapy assistant –

- shall perform professional acts only under the supervision of an occupational therapist or appropriately qualified registered practitioner: Provided that in the case of supervision under an appropriately qualified registered practitioner, such supervision shall not extend for a period of more than six months;
- shall limit the acts referred to in paragraph above to acts directly related to his or her education and training in his or her discipline of study;
- shall not accept employment without the prior written approval of the board: Provided that this prohibition shall not apply in the case of a full-time or part-time appointment in the public service; and
- shall not conduct a private practice.

According to Section 17(1) of the HPA,1974:

No person shall be entitled to practise within the Republic-

**(a) Any health profession register able in terms of this Act....
Unless he or she is registered in terms of this Act**

- **Practising the profession entails the following:**
 - **The physical and mental examination of persons**
 - **The diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in man/humankind**
 - **The giving of advice in regards to such defects, illnesses or deficiencies; or**
 - **The prescribing or providing of medicine in connection with such defects, illnesses or deficiencies.**

A relevant professional board or committee of a professional board to whom the function has been delegated may authorise the registrar to suspend the registration of any person –

- **Who failed to notify the registrar of his or her present address, within a period of three months from the date of an inquiry sent by the registrar by certified mail, which is returned unclaimed, to the address appearing in the register in respect of such person**
- **Who has failed to pay his or her prescribed annual fee on a date when it became due in terms of section 61A.**
- **Who has been found guilty of unprofessional conduct and on whom a penalty referred to in section 42(1)(b) of the Act is imposed**
- **Who has failed to comply with the requirements in respect of CPD as prescribed in section 26**
- **Who on the basis of a complaint lodged with the council or information available at the disposal of council is posing an imminent threat or danger to the public in terms of his or her professional practice**

RESTORATION TO THE REGISTER

Restoration after Removal or Suspension of name from the register for a period of three years or less

- If a practitioner's name was removed from the register or his or her registration suspended for a period of three years or less – irrespective of whether he or she practised or not - the restoration application will be dealt with administratively subject to submission of the following:
 - Completion of required restoration Form 18
 - Payment of the applicable fees and any other outstanding fees
 - The Board reserves the right to institute disciplinary action against practitioners who had practised their profession in South Africa without being registered.

RESTORATION TO THE REGISTER

Restoration after Removal or Suspension of name from the register for a period of more than three years – (Practising)

- If a practitioner's name was removed from the register or his or her registration suspended for a period of more than three years and he or she was practising the profession (within or outside South Africa) his or her name will be restored without further requirements subject to receipt of the following:
 - Completion of required restoration forms: Form 18 and Form 18 A OCP
 - Payment of the applicable fees and any other outstanding fees
 - A summary of activities during the period of erasure
 - Information regarding employment issued by the relevant employers. Evidence regarding experience and appointments held must specify the exact nature and extent of work performed and the periods during which the appointments were held
 - A summary of CPD activities completed during the period of erasure as per the Continuing Professional Development policy of Council
 - Original documentary evidence of undergraduate and or postgraduate studies since erasure of name from the register (if applicable).
 - If the applicant was registered outside South Africa since erasure of his/her name from the register, an original Certificate of Status(Certificate of Good Standing), issued by the foreign registration authority within the preceding three months.

RESTORATION TO THE REGISTER

Restoration after Removal or Suspension of name from the register for a period of more than three years – (Non-practising)

If a practitioner's name was removed from the register or his or her registration suspended for a period of more than three years and he or she was not practising the following procedure would apply:

- The practitioner would be restored in the category supervised practice for a period of at least six months (Equivalent to at least 1000 hours)
- Apply to the Board as per the guidelines in Form 18 B OCP for approval of the supervising practitioner by completing and submitting Form 18 C OCP
- Once the Education subcommittee had granted approval of the supervising practitioner the period of supervised practice could commence
- Submission of a report by the supervisor upon completion of period of supervised practice – Form 18 D OCP
 - If the standard of the report is not accepted by the Board a portfolio should be compiled as per Form 18 E OCP
Portfolio Guidelines
 - Submission of the portfolio by the supervising practitioner as per Form 18 F OCP portfolio Submission Form.
 - Upon receipt of a positive supervisory report or portfolio by the supervisor to the satisfaction of the Education Subcommittee, his or her name will be restored to the category of registration that applied prior to the erasure of his or her name from the register.

Any person who is aggrieved by any decision of the council, a professional board or a disciplinary appeal committee, may appeal to the appropriate High Court against such decision

- every person registered under this Act shall, unless circumstances render it impossible for him or her to do so, before rendering any professional services inform the person whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he or she intends to charge for such services:
 - (a) when so requested by the person concerned; or
 - (b) when such fee exceeds that usually charged for such services, and shall in a case to which paragraph (b) relates, also inform the person concerned of the usual fee”
- Any practitioner who in respect of any professional services rendered by him or her claims payment from any person (in this section referred to as the patient) shall, subject to the provisions of the Medical Schemes Act, furnish the patient with a detailed account within a reasonable period.

- The patient may, within three months after receipt of the account referred to in subsection (2), apply in writing to the professional board to determine the amount which in the opinion of the professional board should have been charged in respect of the services to which the account relates, and the professional board shall, as soon as possible after receipt of the application, determine the said amount and notify the practitioner and the patient in writing of the amount so determined: Provided that before the professional board determines the said amount, it shall afford the practitioner concerned an opportunity to submit to it in writing his or her case in support of the amount charged.

A claim which is the subject of an application referred to in subsection (3) of which notice has been given by the professional board or the patient to the practitioner, shall not be recoverable until a determination has been made in terms of that subsection, and when such a determination has been made no amount which exceeds the amount so determined, shall be payable: Provided that if the patient has paid to the practitioner an amount in settlement or part settlement of such claim and such amount exceeds the amount so determined, the practitioner

shall pay the amount by which that payment exceeds the amount so determined back to the patient. [Subs. (4) amended by s. 3 of Act 38/82 and s. 52 of Act

NATIONAL HEALTH ACT 61 OF 2003

- **The NHA provides a framework for a uniform health system in South Africa.**
- **Practitioners should be aware of the relevant provisions of the NHA which affect their practice and these are those dealing with:**
 - 1. Rights and duties of healthcare users and providers (s 19-20)**
 - 2. Informed consent (s 6-8)**
 - 3. Confidentiality (s14)**
 - 4. Access to medical records (s 15-17)**
- **A breach of the provisions of the NHA may result in a criminal offence and/or disciplinary proceedings by the HPCSA**

CHILDREN'S ACT NO 38 OF 2005

- **This act gives effect to the rights of children as contained in the Constitution**
- **It provides detailed requirements concerning consent by or on behalf of children**
- **The regulations to the Children's Act make provision for different forms to be used where children are involved; for example**

Form 16: Application for the registration / conditional registration / renewal of registration of an early childhood development programme

Form 21: Assessment of early childhood development programme

Form 22: Reporting of abuse or deliberate neglect of child

In all matters concerning the care, protection and well-being of a child the standard that the child's best interest is of paramount importance, must be applied.

MEDICAL SCHEMES ACT NO 31 OF 1998

- **This Act consolidates the laws relating to registered medical schemes and provides for the establishment of the Council for Medical Schemes**
- **Practitioners in private practice need to be aware of certain condition of the Medical Schemes Act including its regulations as they set the conditions under which they will be re-imbursed for services rendered to the members of the medical schemes**
- **Section 59(1) of the Medical Schemes Act states as follows: “A supplier of a service who has rendered any service to a member or to a dependant of such a member in terms of which an account has been rendered shall, notwithstanding the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be prescribed”.**

Section 59(2) of the Medical Schemes Act states that, “ A supplier of a service who has rendered any service to a member or to a dependant of such a member in terms of which an account has been rendered shall, notwithstanding the provisions of any other law, furnish to the member concerned an account or statement reflecting such particulars as may be prescribed”.

Accounts by suppliers of services.

The account or statement contemplated in section 59 (1) of the Act must contain the following—

- (a) The surname and initials of the member;
- (b) the surname, first name and other initials, if any, of the patient;
- (c) the name of the medical scheme concerned;
- (d) the membership number of the member;

REGULATION 5 OF THE MSA

- (e) the practice code number, group practice number and individual provider registration number issued by the registering authorities for providers, if applicable, of the supplier of service and, in the case of a group practice, the name of the practitioner who provided the service;
- (f) the relevant diagnostic and such other item code numbers that relate to such relevant health service;
- (g) the date on which each relevant health service was rendered;
- (h) the nature and cost of each relevant health service rendered, including the supply of medicine to the member concerned or to a dependant of that member; and the name, quantity and dosage of and net amount payable by

Prescribed Minimum Benefits

Subject to the provisions of this regulation, any benefit option that is offered by a medical scheme must pay in full, without co-payment or the use of deductibles, the diagnosis, treatment and care costs of the prescribed minimum benefit conditions.

REGULATION 8 OF THE MSA

the rules of a medical scheme may, in respect of any benefit option, provide that—

(a) the diagnosis, treatment and care costs of a prescribed minimum benefit condition will only be paid in full by the medical scheme if those services are obtained from a designated service provider in respect of that condition; and

(b) a co-payment or deductible, the quantum of which is specified in the rules of the medical scheme, may be imposed on a member if that member or his or her dependant obtains such services from a provider other than a designated service provider, provided that no co-payment or deductible is payable by a member if the service was involuntarily obtained from a provider other than a designated service provider.

22C. Dispensing License

the Director-General may on application in the prescribed manner and on payment of the prescribed fee issue to a medical practitioner dentist, practitioner, nurse or other person registered under the Health Professions Act, 1974, a licence to compound and dispense medicines, on the prescribed conditions;

- Section 33 of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair, and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- PAJA aims to give effect to the Constitution by:
 1. Promoting an efficient administration and good governance
 2. Creating a culture of accountability, openness and transparency in the public administration or in the exercise of a public power or the performance of a public function

- An examples of administrative decision is: When a person applies for disability grant
- Practitioners should note that if they refuse to comply with the patients' s requests they may be required to give reasons in writing for their decision

- In terms of this Act, Health practitioners are suppliers or service providers and patients are consumers.
- Section 17 of the CPA give rise to the patient's rights to cancel advanced reservation, booking or order
- A practitioner may impose a reasonable charge for cancellation of the order or reservation.
- A charge is unreasonable if it exceeds a fair amount in the circumstances having regard to:
 1. the nature of the goods or services that were reserved or booked;
 2. the length of notice of cancellation provided by the consumer;
 3. the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
 4. the general practice of the relevant industry.

- ***“Ignorantia juris non excusat” = Ignorance of the law excuses not***
- ***“ignorantia legis neminem excusat“ = Ignorance of law excuses no one***

THE END

THANK YOU

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