

**GUIDELINES ON COMMON VIOLATIONS OF THE COUNCIL REGULATIONS AS WELL AS COMMON UNETHICAL CONDUCT BY SOME PRACTITIONERS.**

**Background**

There has been an increasing number of cases brought before the Disciplinary Committee for inquiry on allegations of violating the provisions of the Health Professions Act (Chapter 27:19) and its subsidiary legislation as well as unethical behaviour by some practitioners during the course of their practice. These guidelines will go a long way in educating members of the profession on the commonly violated provisions of the Act and unethical conduct by some members of the Medical and Dental profession.

**Introduction**

Council at its meeting held on 1 April 2014 noted with concern that the most common areas of the said Act that were violated included advertising professional services, practising without registration and in unregistered premises, radio and television interviews, and financial interests in organizations that advertise for patients. In addition there has been a growing number of reports on unethical conduct in areas that include extorting public patients to private rooms and charging patients in order to receive treatment in public institutions. It is against this background that Council at its meeting held on 1 April 2014 **RESOLVED** that guidelines on commonly violated provisions of the Act and its subsidiary legislation be drafted for the information of the members of the medical and dental profession.

**Purpose of the Guidelines**

The purpose of these guidelines is to educate members of the profession on the common ethical transgressions as well as the provisions of the Health Professions Act (Chapter 27:19) and its subsidiary legislation commonly violated by the members of the medical and dental profession.

**SECTION A**

**COMMONLY VIOLATED PROVISIONS OF THE HEALTH PROFESSIONS ACT (CHAPTER 27:19 AND SUBSIDIARY LEGISLATION).**

**1. Advertising Of Professional Services : Section 135 of the Health Professions Act : Statutory Instrument 41 of 2004 : Statutory Instrument 190 of 2001**

The Act provides that advertising includes:-

- a) publishing any statement or claim in a newspaper, magazine, notice, handbill, pamphlet, card or circular; and
- b) broadcasting any statement or claim by electronic or other means.

**No person shall advertise that—**

- a) he is skilled in the practice of any health profession or in any act specially pertaining to any health profession; or



- b) he is willing to practise any health profession or perform any act specially pertaining to any health profession; or
- c) he is competent to teach the practice of any health profession or the performance of any act specially pertaining to any health profession; or
- d) he is seeking or requiring human subjects for any investigation or research involving the practice of any health profession;

except in such manner as may be specified in any regulations or rules made under this Act which define ethical practice or discipline in the health profession concerned.

Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**EXAMPLES OF CASES BROUGHT BEFORE THE COMMITTEE:**

- **Print on calendars about professional services offered**
- **Notice boards with professional services offered**
- **Circular cards with services offered**
- **Claims in the press, magazines, notices boards.**
- **Details of practitioners qualifications and areas of practice, during broadcasting on radio, television or social media.**
- **Practitioners photograph on the social media. Press or any printed material with qualifications and professional services offered.**
- **Pictures of areas of practice such as display of white teeth, or any drawing that depicts the area of practice published**
- **Names of practices**

**2. No practitioner shall collaborate with an unregistered person: Section 15 of Statutory Instrument (S.I.) 41 of 2004**

**EXAMPLES OF CASES:**

- **Registered practitioners who undertake philanthropic work with Unregistered practitioners.**
- **Practitioners who employ persons without valid practising certificates on locum terms, Interns, Post Intern doctors with restricted practising certificate.**

**3. Unregistered persons practising as or representing themselves to be medical practitioners: Section 121 and 122 of the Act:**

**Any person who is not registered as a medical practitioner and who—**

- a) for gain, practises or carries on business as a medical/dental practitioner, whether or not he purports to be registered, or performs or undertakes to perform any act specially pertaining to the practice of a medical/dental practitioner; or



- b) pretends or, by any means whatsoever, holds himself out to be a medical /dental practitioner, whether or not purporting to be registered; or
- c) uses the title of medical/dental practitioner or any name, title, description or symbol indicating or calculated to lead persons to infer that he possesses a degree, diploma or other qualification as a medical/dental practitioner, doctor of medicine, physician or surgeon or that he is registered as a medical/dental practitioner under this Act;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

**EXAMPLES:**

- **Members of the public who carry on the business of a medical/dental practitioner**
- **Practitioners who come to do philanthropic work in the areas of**
- **Teaching and clinical work and medical outreach work without registration.**
- **Practitioners who continue to practise without registration and valid practising certificate**

**4. Health institutions to be registered: Section 99 of the Act;**

No—

- a) person shall operate or carry on a health institution;
- b) health practitioner shall practise his profession or calling in or from any health institution;

unless he knows or has reason to believe that the health institution is registered in the register of health institutions.

Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**EXAMPLES:**

- **Practising in unregistered health institutions.**

**5. Dental Auxiliaries :Statutory Instrument 165 of 1998 ( Dental Therapists, Dental Technicians and Dental Hygienists)**

- a) A dental Therapist shall not establish his/her own dental practice.
- b) A Dental Therapist shall perform dental work only under the supervision of a registered Dental Practitioner.
- c) A Dental Therapist employed by a private Dental Practitioner shall work for at least one full day a week under the direct supervision of the dental practitioner who is on the premises at which the Dental Therapist is performing dental work at the time at which it is being performed.



**EXAMPLES:**

- **Dental therapists who work in private practice without the supervision of a dental practitioner.**

**6. Home page : Section 7 of Statutory Instrument 190 of 2001**

No practitioner shall set up a homepage internet service/website without the approval of the dental subcommittee of the Council:

**EXAMPLES:**

- **Social media with pictures of practitioners and professional services offered;**
- **Question and answer sections on home page**
- **Pictures of equipment**

**7. Specialist Practice: Section 7 of the Specialist Register Rules**

- a) No practitioner shall practice a speciality for which one is not registered.
- b) No specialist shall take over patients from another practitioner or another specialist without the consent of the practitioner.
- c) No Specialist shall practice in partnership with a practitioner or any specialist who is registered in any other specialty.
- d) A Specialist when consulted by a patient, or treats a patient, should take all reasonable steps to ensure the collaboration of the medical or dental practitioner, as the case may be of that patient if any.

**EXAMPLES:**

- **Specialists who take over patients from the Specialist on call in private casualty departments;**
- **Practitioners who call themselves specialists for which they are not registered**
- **Specialists who do not collaborate/communicate with the referring practitioner**
- **Specialists who hold on to patients**

**8. Stationery**

No Practitioners shall allow anything to be printed on stationery for use in connection with his practice except in case of –

- a) Letter-paper, prescription forms, account forms or appointment cards-
  - (i) the name, address and telephone number of the practitioner and of any partner who is a practitioner; and
  - (ii) his consulting hours; and
  - (iii) his professional qualifications, registered with the Council, civil honours and honorary degrees in an abbreviated form;
- b) An envelope, his address.

**EXAMPLES:**

- **Practitioners who endorse pictures on their area of practice on stationery;**
- **Practitioners who endorse information about their stationery**

**9. Prescriptions**

- a) No Practitioner shall use a prescription form or envelop which bears the name or address of a pharmacist.
  - b) No practitioner shall issue a prescription using any code or cipher.
  - c) No practitioner shall direct or cause to be directed, a prescription to a specific pharmacy or pharmaceutical chemist except at the request of the patient.
1. No practitioner shall have a financial interest in –
    - (a) A medical aid society; or
    - (b) A sick benefit scheme; or
    - (c) A clinic or nursing home; or
    - (d) Any other association;which advertises for patients

**EXAMPLES:**

- **Practitioners employed by medical aid societies that advertise for patients;**
- **Practitioners employed by private hospitals that advertise for patients**

**10. Issue of Medical Certificates**

No practitioner shall issue a medical certificate unless he is satisfied, from a personal observation, that the facts are correctly stated therein:

Provided that, if the facts are communicated by the patient or some other competent person to the practitioner, the certificate shall be qualified by words "as I was informed by the patient" or similar comment.

**EXAMPLES:**

- **Practitioners who issue medical certificates at the request of the patient to cover up the period that the patient was absent from work without any notable follow up by the doctor. (fraudulent medical certificates)**



## 11. Commission

No practitioner shall by way of commission, accept monies or articles of any nature whatsoever from-

- a) a pharmacist; or
- b) a manufacturer or dealer in surgical or medical appliances or materials; or
- c) any person in return for recommending or sponsoring dental or medical articles or services to the public or any member thereof:

Provided that a practitioner may receive remuneration from a manufacturer in connection with any surgical or medical or dental appliances or invented by the practitioner.

No practitioner shall pay, by way of commission, any moneys or articles of any nature whatsoever to any person in return for recommending that patients should seek that professional advice of such a practitioner.

No practitioner shall share his fees with any person who has not taken part in the services for which the fees are charged:

Provided that a practitioner may share his fees with a partner or professional assistant employed by him.

### EXAMPLES:

- **practitioners who promote medical/dental equipment by manufactures.**
- **Practitioners employed by drug manufacturing companies to promote the drugs or equipment.**

## 12. Obstruction of Council

No practitioner shall-

- a) Prevent, hinder or obstruct Council or any employee acting on its behalf, from carrying out duties;
- b) Fail to comply with any notice or directions issued by the Council in terms of the Act;
- c) Fail to respond to Council inquiries within a reasonable time given by the Council.

### EXAMPLES:

- **Practitioners who fail to respond to Council investigations within a given time.**
- **Practitioners who fail to respond to council communication within a given time.**
- **Practitioners who hinder or obstruct Council employees from carrying out their duties;**
- **Practitioners who misrepresent to Council with a view to protect the other practitioner**

### **13. Adequate experience for treatment**

No practitioner shall, except in an emergency, perform any operation or other professional act for which he is inadequately trained or insufficiently experienced.

#### **EXAMPLES:**

- **Practitioners who practise in areas that they are not competent. Council will judge them in the same manner as the specialist practitioner would be charged.**

#### **SECTION B:**

#### **COMMON ETHICAL TRANSGRESSIONS**


- Practitioners demanding cash upfront before offering their services in an emergency situation.
- Refusal by government specialists to treat patients and refer them to private practice  
It is important to note that section 18(a) of the Medical Services Government and Private hospitals Regulations published in Statutory Instrument 208 of 2001, mandates every responsible authority and member in government or a private hospital to ensure that the an individual has access to competent health care. It is also against the precept of the ethical norm. **DO NO HARM, PATIENT INTEREST FIRST.**
- The rampant but difficult to prove practice by some practitioners who charge exorbitant fees to their patients.
- Practitioners who extort money from the patients.
- The failure by some practitioners to conduct post-mortems on maternal and table deaths that occur within 24 hours of an operative procedure. This is a legal requirement.
- The failure by some practitioners to report the maternal and table deaths that occur within 24 hours of an operative procedure. Statutory 93 of 93 obliges every health institution and practitioner to report such deaths to the Council.
- Improper or disgraceful relations with patients are dangerous pitfalls for any practitioner.

**Members of the medical and dental profession are urged to familiarise themselves with the contents of this document.**

#### **Sources**

- *Health Professions Act Cap 27:19*
- *Medical Practitioners (Professional Conduct) Regulations - Statutory Instrument 41 of 2004*
- *Dental Practitioner (Professions Conduct) Regulations - Statutory Instrument 190 of 2001*
- *Dental Auxiliaries (Amendment) Regulations - Statutory Instrument 165 of 1998*
- *Medical, Dental and Allied Professions (Specialist Register) Rules - Statutory Instrument 838 of 1981*

**Approved by EXCOM 5/8/2014**

  
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