



HASA CODE OF ETHICS FOR PRIVATE HOSPITALS

1. Definitions

“Emergency medical condition” means - (The Emergency Medical Treatment and Labour Act, 42 USC Sec. 1395dd.)

(A) A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in -

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) With respect to a pregnant woman who is having contractions;

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

“Emergency medical treatment” means the provision of reasonable and appropriate treatment by a registered health professional as may be required to stabilise the emergency medical condition.

“Kickback” means any form of enrichment offered or given to a health care professional or health care establishment which encourages or incentivises that professional or establishment to act in a manner which is detrimental to the interests of a patient.

Note 1: A kickback as defined above includes any form of enrichment offered or given which encourages either over-servicing or under-servicing of a patient;

Note 2: A kickback includes an offer or the giving of enrichment in terms of the definition above, in the context of both an above board transaction (for example in

the terms of a written contract) or a clandestine transaction between two or more parties.

“Over-servicing” means to supply, provide, administer, use or prescribe any health care service or health care product:

- (a) which is medically or clinically not indicated; or
- (b) which is unnecessary or inappropriate under the circumstances; or
- (c) which is not in accordance with a generally recognised treatment protocol or procedure; or
- (d) without due regard for both the financial and health interests of the patient.

“Under-servicing” means to supply, provide, administer or prescribe any health care service or health care product:

- (a) in a quantity, at a level or to an extent which is inadequate or insufficient to meet the patient’s health care needs;
- (b) in a quantity, at a level or to an extent which is less or lower than the quantity, level or extent required by generally recognised treatment protocols and procedures
- (c) which is inappropriate to or which would generally be considered to be ineffectual in, the treatment of a particular health condition.

“Patient” means a person/user admitted to a private hospital for the purpose of treatment;

“Treatment” means the maintenance, observation, nursing and medical care and supervision of a patient.

“User/Patient” means the person receiving treatment in a private hospital (health establishment), including receiving blood or blood products, or using a health service, and if the person receiving treatment or using a health service is-

- (a) below the age contemplated in section 39(4) of the Child Care Act, 1983 [Act No. 74 of 1983], “patient” includes the person’s parent or guardian or another person authorised by law to act on first mentioned person’s behalf; or
- (b) incapable of taking decisions, “patient” includes the person’s spouse or partner or, in the absence of such spouse or partner, the person’s parent, grandparent, adult child or brother or sister, or another person authorised by law to act on the first mentioned person’s behalf.”(section 1 of the National Health Act, 2003)

2. HASA Application of the Code of Ethics

2.1. All private healthcare establishments which are members of the Hospital Association of South Africa shall adhere to the provisions of this Code of Ethics, as amended from time to time.

2.2. Associate members shall, where applicable, also be bound by the provisions contained in the Ethical Code and Policy Statements of the Association, as amended from time to time.

3. Aims of the Code of Ethics

3.1. This Code of Ethics, as approved by the Board of Directors of the Hospital Association of South Africa, seeks to:

(a) Establish a framework of applicable ethical rules founded on principles of fairness, best practice and acceptable professional conduct.

(b) Describe those responsibilities incumbent upon either the healthcare establishment or group thereof, to ensure that appropriate ethical standards are applied.

3.2. Empower the Hospital Association of South Africa with the right to receive complaints from the public, investigate those complaints and where applicable, institute disciplinary proceedings against any member suspected of violating the Code of Ethics in any way whatsoever.

4. The Role of the Hospital Association of South Africa

4.1. The Association is hereby authorised to publish a Code of Ethics for all members of the Association.

4.2. In addition to such publication, the Association may publish applicable policy statements which provide clarification, interpretation and minimum standards applicable to specific provisions and/or terminology provided for in such Code of Ethics.

4.3. That Code of Ethics and/or policy statement/s may be amended from time to time, and in the event of such amendment being approved by the Board of Directors, the Association shall publish such amendment to all members within 7 (seven) days of such approval.

4.4. The Association may receive complaints and/or requests from either members of the public, users, stakeholders, healthcare professionals or any other interested party with regard to any violation, or suspected violation of this Code of Ethics.

4.5. Upon receipt of such complaint, the Association may request the complainant to provide appropriate and detailed information pertaining to such complaint, and in this regard shall:

(a) Ensure that if such complaint involves or pertains to any user, then such user (where applicable) has authorised the complaint personally.

(b) That any medical and/or personal information pertaining to such user shall be kept private and confidential, and shall not be published outside of any disciplinary proceedings without the written authorisation of that user (where applicable).

4.6. In the event of such a complaint being duly authorised by the complainant, and upon receipt of detailed and appropriate information, the Association may initiate an investigation which shall be conducted in accordance with the Rules and Procedure Manual applicable to Disciplinary Proceedings.

4.7. Upon completion of such an investigation, the Association may initiate disciplinary proceedings against any member, and such member shall in accordance with the Rules and Procedure Manual submit to such proceedings.

4.8. The powers and responsibilities of the Association with regard to such an investigation and disciplinary proceedings shall be provided for in the Rules and Procedure Manual approved in accordance with the Hospital Association of South Africa's Articles of Association.

5. The Code of Ethics

5.1. Access:

5.1.1. Private health establishments recognise that the right to access healthcare is a progressive right founded in the Constitution of the Republic of South Africa.

5.1.2. In accordance with that right, private healthcare establishments may:

(a) Partner with other healthcare providers and/or stakeholders in the development and/or delivery of programmes designed to ensure appropriate access to healthcare.

(b) Promote shared economic programmes amongst national and/or provincial government, healthcare providers, employers, medical schemes and users which work to address the need for improved access and service delivery.

(c) Undertake the above provided that such programs are ethical, quality driven and based on sound economic principles which neither undermine nor jeopardise the economic integrity and/or sustainability of the private healthcare establishment/s concerned.

5.2. Emergency medical treatment:

5.2.1. Where a healthcare establishment has an emergency unit, and is able to render 'emergency medical treatment', then such a healthcare establishment shall:

(a) If any user comes to, or presents him or herself at the emergency unit of that healthcare establishment, and a request is made, or such a request is made on the patient's behalf for examination or treatment for an emergency medical condition, then the healthcare establishment shall provide for an appropriate medical screening examination within the capability of the healthcare establishment's emergency unit, including ancillary services routinely available to that emergency unit, to determine whether or not an emergency medical condition exists.

(b) Should such an 'emergency medical condition' be determined to exist by such medical screening and/or examination, then the healthcare establishment shall provide the necessary and appropriate stabilising treatment for such an emergency condition.

5.2.2. No person, regardless of one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth shall be denied emergency medical treatment for any emergency condition.

5.2.3. Emergency medical treatment in situations deemed to be mental health emergencies shall be in accordance with:

(a) Section 9(1)(c) of the Mental Health Care Act, 2002, which provides for emergency situations in mental health care, and stipulates in 9(1)(c) that an 'emergency' is when, due to mental illness, any delay in providing care, treatment and rehabilitation services or admission may result in the (i) death or irreversible harm to the health of the user; (ii) user inflicting serious harm to himself or herself or others; or (iii) the user causing serious damage to or loss of property belonging to him or her or others.

(b) Section 9 (2) read together with regulation 8 of the General Regulations, provides that when such an emergency (as contemplated in section

9(1)(c) of the Act exists, and the patient is in need of admission, then the person or health establishment that provides such treatment and/or rehabilitation, must report such to the relevant review board.

5.2.4. No private health establishment shall delay an appropriate triage for an emergency condition in order to establish the patient's payment and/or insured status.

5.2.5. The private health establishment shall have the right to reasonable compensation for any and all emergency medical treatment rendered to a patient in terms of section 27(3) of the Constitution of the Republic of South Africa.

5.3. Tendering for emergency medical treatment services:

5.3.1. Private health establishments may tender for appropriate emergency healthcare services provided that those tenders:

(a) Are ethical both in terms of this Code of Ethics, as well as those ethics' codes applicable to healthcare professionals as published and amended from time to time by the Health Professions Council of South Africa.

(b) Are based on appropriate and quality driven standards of healthcare.

(c) Ensure that appropriately qualified healthcare professionals are involved in that service delivery, and that internationally accepted standards of triage are adhered to.

6. Responsibilities of the Hospital Manager

6.1. The hospital manager shall-

(a) Ensure that a copy of this Code of Ethics is made available to all members of staff, as well as healthcare professionals working with that healthcare establishment.

(b) That the conduct of all employees and healthcare professionals working in or with that healthcare establishment is based on the principles of ethical conduct, integrity, the best interests of users and appropriate standards.

(c) That he/she and his/her employees comply with all laws and regulations pertaining to healthcare establishments and healthcare service delivery.

(d) Maintain competent and proficient healthcare workers, professionals and other staff working in or with such healthcare establishment.

(e) Ensure that the rights of users are adequately provided for in his/her healthcare establishment, and in doing so may publish appropriate standards and employment conditions binding on all staff and personnel working in and with that health establishment provided that such standards and employment conditions are based on applicable law, standards and ethical codes.

(f) Refrain from any activity which would either impugn the dignity of the healthcare establishment or bring the healthcare professional into disrepute.

6.2. In particular, the hospital manager shall ensure that policy is enacted pertaining to the following user rights as recognised in law, although not limited to:

- (a) The right to informed consent, as provided for in section 6,7 and 8 of the National Health Act, 2003.
- (b) The right to have his/her medical and personal information treated as confidential and private, as provided for in section 14 and 15 of the National Health Care Act, 2003.
- (c) The right to a healthy and safe environment.
- (d) The right to information pertaining to his/her medical treatment, health insurance and the right to challenge any decision with the appropriate authority pertaining to such.
- (e) The right to choose his/her health establishment and/or medical treatment.
- (f) The right to be treated by a healthcare professional who is clearly identifiable.
- (g) The right to refuse medical treatment.
- (h) The right to a second opinion.
- (i) The right to complain.

7. Informed Consent

7.1. All procedures which are performed in a private health establishment shall be compliant with the National Health Act, 2003 (hereinafter referred to as the Act).

7.2. In accordance with sections 6, 7 and 8 of the National Health Act, no health service shall be performed without first having obtained informed consent from the patient concerned.

7.3. It shall be the responsibility of the treating healthcare professional to obtain informed consent from his/her patient.

7.4. Informed consent shall apply equally to all medical and surgical procedures.

7.5. Failure to obtain informed consent may be considered an assault against the bodily integrity of the patient, and could expose both the health professional and the health establishment to potential liability. For this reason the health establishment shall confirm that informed consent has been obtained, and this shall form part of the admission policy applicable to all patients.

7.6. Informed consent in situations deemed as a medical emergency: Informed consent is not necessary in those cases which constitute an emergency, and where

any delay would jeopardise the patient further, the health professional (treating practitioner) and staff employed by the health establishment may provide whatever health services are necessary to stabilise the patient.

7.7. Informed consent and mental health: Section 9(1) of the Mental Health Care Act stipulates that treatment, care and/or rehabilitation may only be provided to mental healthcare users with their informed consent. In particular, section 9(1)(a) stipulates that: A health care provider or a health establishment may provide care, treatment and rehabilitation services to or admit a mental health care user only if (a) the user has consented to the care, treatment and rehabilitation services or to admission.

8. Confidentiality and Privacy

8.1. All employees, healthcare professionals and healthcare workers working for or with the health establishment are obliged to protect the privacy and confidentiality of all medical records and/or information pertaining to any user admitted either as an inpatient or outpatient, including any personal information belonging to that user.

8.2. Any and all disclosure of confidential information concerning a user shall be in accordance with section 14(2) of the National Health Act, and no information shall be disclosed unless:

- (a) the user consents to that disclosure in writing;
- (b) a court order or any law requires that disclosure; or
- (c) non-disclosure of the information represents a serious threat to public health.

8.3. A health worker, employee, healthcare professional or agent of the hospital that has access to the health records of a user may disclose such personal information to any other person, healthcare provider or health establishment as is necessary for any legitimate purpose within the ordinary scope and practise of his or her duties where such access or disclosure is in the interests of the user. This includes, but is not limited to, disclosure internally between health professionals, pharmacists and nursing staff.

9. Perversity and Undesirable Business Practises

9.1. The activities listed below are regarded as unethical behaviour on the part of hospitals and/or hospital management. It is also unethical for any healthcare professional or other healthcare establishment to encourage a hospital to engage in these same activities.

9.1.1. The purchase from any healthcare professional of any orthodox medicine, complimentary medicine, medical device or scheduled substance or health related

product for use within a private hospital or in the treatment of a patient of a private hospital where:

(a) such medicine, device, substance or product does not form an integral part of the scope of practice of that healthcare professional; or

(b) where that healthcare professional participates in the manufacture, for commercial purposes or trade, of such medicine, device, substance or product without the explicit permission of the relevant professional board.

9.1.2. Permitting a healthcare professional to bring into the hospital, for use either within the hospital or in the treatment of a patient of that hospital, any orthodox medicine, complimentary medicine, medical device or scheduled substance or health related product where:

(a) such medicine, device, substance or product does not form an integral part of the scope of practice of that health professional; or

(b) where that healthcare professional participates in the manufacture, for commercial purposes or trade, of such medicine, device, substance or product without the explicit permission of the relevant professional board.

9.1.3. Advertising or encouraging the use of the services of any healthcare professional in a manner:

(a) which would constitute a violation of the ethical rules of the healthcare profession to which that healthcare professional belongs had the healthcare professional so advertised or encouraged the use of his services himself.

(b) which unfairly promotes the services of a particular healthcare professional or which is detrimental to the interests of other healthcare professionals in pursuing their profession.

9.1.4. Engaging in or advocating the preferential use of any medical device, the services of any healthcare professional or any medicine or other health-related product where such activity is based on the expectation of, or is in return for, a kickback.

9.1.5. Over-servicing or directly or indirectly, assisting, encouraging or pressurising, healthcare professionals to over-service patients.

9.1.6. Under-servicing or directly or indirectly assisting, encouraging or pressurising healthcare professionals to under-service patients.

9.1.7. Renting out premises to a healthcare professional at a reduced or zero rental on the understanding, whether express or implied, that such a healthcare professional will achieve a certain turnover.

9.1.8. Unfairly discriminating between one healthcare professional and another in terms of rentals charged by a hospital for premises occupied by these individuals.

9.1.9. Sharing of fees or profits with healthcare professionals who have not rendered any service in respect of which those fees were charged or profits were earned except where that healthcare professional owns shares or has some other financial interest in the hospital which is not contrary to the professional and ethical rules of his profession.

9.1.10. Contracting with healthcare professionals to work in a hospital or service offered by that hospital on the condition or understanding that the healthcare professional generates a particular amount of revenue for such a hospital or service.

9.1.11. Engaging in any activity which directly or indirectly encourages, assists or pressurises a healthcare professional or healthcare establishment to further that professional's or establishment's own interests in a way which is detrimental to the interests of a patient