

## **BUSINESS PREMISES AND MEDICINE// Sharing of rooms and the HPCSA**

As a result of the strictly regulated medical industry, economic challenges and pressures that we face and the opportunity for various innovative business ventures, we have compiled the below article on the rules and regulations with regards to the sharing of rooms and the HPCSA.

The concept of a medical "one-stop shop", I.e. a medical centre which hosts a variety of doctors and other medically trained individuals- general practitioners, dentists/ other specialists are permitted.

However, is it permitted, for example, for an aesthetic medical practitioner (whom is not registered under the Health Professions Act) to share rooms with other medically trained professionals who are in fact registered?

### **The Law:**

The HPCSA have taken a very strict approach to the concept of the sharing of rooms. Aon's Legal Risk Management team have enquired with the HPCSA's legal department if sharing of rooms would be permitted even on an intermittent/ once a week/ *locum* basis, and their response was that, sharing of rooms with a professional not registered in terms of the Act/ medically trained is strictly prohibited.

In terms of the ethical and professional rules of the Health Professions Council of South Africa as promulgated in Government Gazette R717/2006

- *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.
- The Act referring to is the Health Professions Act, Act No 56 of 1974 (hereinafter referred to as "**the Act**")

This would specifically mean that the onus would be on the doctor/ medically trained professional registered in terms of the Act to verify that the person/persons that they intend sharing office space/practice rooms with, is in fact and remains registered in terms of the act.

The HPCSA also issued a policy document relating to undesirable business practices, in which it is stated, among other things, that if the motive for the proposed employment was to generate income to the employer or to remunerate the employee on a fee-sharing basis, accreditation should not be approved.

In terms of Rule 18 of the Ethical Rules of the HPCSA it is stipulated that an unregistered employer, i.e. hospital chain, should obtain accreditation from the medical body to employ health-care professionals.

This was recently tested by our courts in a matter between a large hospital chain and the HPCSA, where on appeal it was found that: "The criterion that private hospitals should not employ practitioners because of their profit motive, save where the practitioners were employed to undertake emergency services, was possibly unconstitutional as it unfairly discriminated against private hospitals merely because they are profit-driven organizations," the judge is quoted as saying. "Yet, practitioners in private practice who were also profit-driven were allowed to employ other healthcare professionals registered with the HPCSA."

Rule 18 is still in effect; however, what was overturned was the decision of the HPCSA that refused the hospitals application for employment of practitioners registered with the HPCSA.

### **Registration with the HPCSA in terms of the Act:**

Registration with HPCSA is a pre-requisite for all professional practice (Section 17 of the Act). Every person desiring to be registered in terms of the HPCSA shall apply to the registrar and shall submit the qualification which, in his or her submission, may entitle him or her to registration, together with such proof of identity and good character and of the authenticity and validity of the qualifications submitted as may be required by the professional board concerned. In order to practice, a medically trained professional

must apply to the HPCSA for a practice number which then gives them access to registration with the HPCSA.

Below herewith a list of the professional boards that professionals can register with:

- Dental Therapy & Oral Hygiene
- Dietetics & Nutrition
- Emergency Care
- Environmental Health
- Medical & Dental Science
- Medical Technology
- Occupational therapy, Medical Orthodontics, Prosthetics and Arts Therapy
- Optometry & Dispensing opticians
- Physiotherapy, podiatry and Biokinetics
- Psychology
- Radiography & Clinical Technology
- Speech language and hearing professions

In conclusion, when considering the logistics of where and how to practice as a medical professional, it is important to adhere to the specific rules that the HPCSA prescribe in this regard. The reason for the strict regulation seems that the ultimate goal and outcome of medical practitioners should be primarily and among others to provide optimum healthcare and not that of a profit driven entity, the ethics of the medical profession are paramount and need to be upheld.

The HPCSA have further indicated that, should these rules not be adhered to, a fine and or penalty can be imposed as well as deregistration from the register, as determined by the committee.

It is important to take note that each case will be dealt with on the merits and although the PI policy with AON will be triggered by an HPCSA enquiry, should any fine and or penalty be imposed against you that would not be covered as fines and penalties are punitive in nature and cannot be insured, under any policy, anywhere in the world.