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Setting Up Your Practice For The Long Run Legal Structures and Compliance Made Simple

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Underwriting Managers

Authorised Financial Services Provider • FSP Number 38225

A “practitioner in private practice” means:

Allied Health Professions Council of South Africa (AHPCSA)

“a practice where a practitioner works for his or her own account”

and

Health Professions Council of South Africa (HPCSA)

“the practice of a health practitioner who practices for his or her own account, either in solus practice, or as a partner in a partnership, or as an associate in an association with other practitioners, or as a director of a company established in terms of section 54A of the Health Professions Act”.

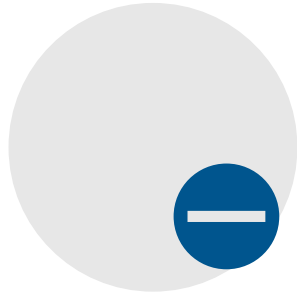
A “practitioner in private practice”

- A practitioner shall use his or her own name or the name of a registered practitioner or practitioners with whom s/he is in partnership or with whom s/he practises as a juristic person, as a name for his/her private practice.
- In every instance, private practitioners are required to register their practice with the Board of Healthcare Funders (“BHF”) who are duly mandated by the Council for Medical Schemes to issue practice numbers (“PCNS”) to every registered practitioner.
- The PCNS must be visible on all formal stationery including all billing documentation and invoices.
- No practitioner may make use of the PCNS of another registered practitioner for the purposes of billing for professional services.

Agenda



What are the legal entities under which a private practitioner registered with the HPCSA or AHPCSA, under the applicable legislation, may operate their private practice?



What are the restrictions on partnerships and associations?



What are the BHF requirements for practitioners operating in the above structures in terms of their practice numbers?



How might the billing occur on behalf of a practice or practitioners in terms of associates or locum practitioners using the PR number of the practice or practitioner?

Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act, 1974 – *Some Important Definitions*

- **Association** = a form of practising where two or more practitioners practice for their own account, but share communal assets or facilities
- **Practitioner** = a person registered as such under the HP Act and, in the application of rules 5, 6 and 9 of the Ethical Rules, also a juristic person exempted from registration in terms of section 54A of the HP Act.
- **Private practice** = the practice of a health practitioner who practices for his own account, either in solus practice, or as a partner in a partnership, or as an associate in an association with other practitioners, or as a director of a company established in terms of section 54A of the HP Act.

Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act, 1974

Section 8(1) provides that:

- 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 the Ethical 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

Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act, 1974

- Section 8(2) states that a practitioner shall practise in or as a juristic person who is exempted from registration in terms of section 54A of the Act only if such juristic person complies with the conditions of such exemption.

54A. Exemption from operation of provisions of Act

- (1) The Minister may in consultation with the council by notice in the *Gazette* exempt any juristic person or class of juristic persons specified in the notice, either generally or subject to such conditions as may be specified in the notice, from the operation of any of the provisions of this Act, so as to enable such juristic person to practise a profession, likewise specified, in respect of which registration in terms of this Act is a prerequisite for practising.

[Subs. (1) amended by s. 54 of Act 89/97]

- (2) Any reference in this Act or any other law to a person registered in terms of this Act to practise a profession referred to in subsection (1) or to a partner of or a partnership in relation to such registered person, shall be deemed to include a reference to a juristic person referred to in subsection (1) or to a member of such a juristic person, as the case may be, unless the context otherwise indicates.
- (3) The Minister may in consultation with the council at any time by notice in the *Gazette* amend or repeal any notice issued under subsection (1).

Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act, 1974

- Section 8(3) states that 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.
- Section 8(4) provides that 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 the Ethical Rules or an annexure to them.

HPCSA Policy Document on Business Practices, 2016

- **Section 2.1** provides that the following are acceptable business models:
 1. Solo Practice
 2. Partnerships/Groups/Organisations
 3. Associations
 4. Personal liability companies (incorporated practices – Inc)
 5. Franchises
- Any of the above who outsourced their administration or established a company to manage the administration provided that such arrangement is not in violation of the established ethical rules of Council.
- Any other business model/formation or structure outside of these models must come to HPCSA for consideration or approval by the HPCSA.

Code of Ethics In Terms of Section 54(9) Of Regulations No.R.127 of 12 February 2001
To The Allied Health Professions Act, Act 63 Of 1982, as amended including
Guidelines For Good Practice and Guidelines For Making Professional Services Known

- A practitioner may not use as a name for a private practice –
- (a) any name or expression, except the name of the practitioner or where practitioners practise in partnership or as a juristic person, the names of such practitioners; or
- (b) the expression “hospital” or “medical clinic” or any other special term in a way that could create the perception that such a practice forms a part of, or is in association with, a medical hospital, medical clinic or similar institution.



What are the legal entities under which a private practitioner registered with the HPCSA or AHPCSA, under the applicable legislation, may operate their private practice?

What are the legal entities under which a private practitioner registered with the HPCSA or AHPCSA, under the applicable legislation, may operate their private practice?

Sole Proprietor



Partner in a Partnership



Private Company



Personal Liability Company



Sole Proprietorship



PROS	CONS
Simplest and most common structure	
Single owner ("sole proprietor" or "sole trader") who: <ul style="list-style-type: none">operates the business under own name or trade name<ul style="list-style-type: none">may have employeescan carry on most types of business	
Owner acquires all the profits	Owner bears all the risk – persona liability
Does not have the operating expenses of other entities	Success dependant on owner and his creditworthiness and ability to run the business
No formalities needed to create and operate	No separate legal personality
Relatively easy to establish as it need not be legally registered	No perpetual succession
	Owner is taxed in personal capacity on a sliding scale of 18% to 45%.

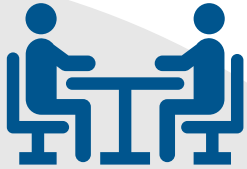
Partnership



= A legal relationship which arises contractually between at least two persons, in terms of which:

- they all agree to contribute to a common business (money, labour, or skill) and
- to carry on business with the object of making a profit
- for their joint benefit.

Partnership



PROS	CONS
Same as partnership, but with two or more owners	
Partners: <ul style="list-style-type: none">operates the business under own names or trade name<ul style="list-style-type: none">may have employeescan carry on most types of business	
Partners acquires all the profits	Partners bear all the risk – joint and several liability
Does not have the operating expenses of other entities	Success dependant on partners and their creditworthiness and ability to run the business
No formalities needed to create and operate it	No separate legal personality
Relatively easy to establish as it need not be legally registered	No perpetual succession
Potentially messy if any partner departs, dies or is sequestrated as this results in the dissolution of the partnership	Partners are each taxed in personal capacities on a sliding scale of 18% to 45%.
Can litigate in its own name (for convenience)	Cannot sell shares or interests in the business

2024 tax year (1 March 2023 – 29 February 2024)

22 February 2023 – See changes from last year:

Taxable income (R)	Rates of tax (R)
1 – 237 100	18% of taxable income
237 101 – 370 500	42 678 + 26% of taxable income above 237 100
370 501 – 512 800	77 362 + 31% of taxable income above 370 500
512 801 – 673 000	121 475 + 36% of taxable income above 512 800
673 001 – 857 900	179 147 + 39% of taxable income above 673 000
857 901 – 1 817 000	251 258 + 41% of taxable income above 857 900
1 817 001 and above	644 489 + 45% of taxable income above 1 817 000

Taxable Income = Income – Business Expenses

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Private Company



= A profit company whose Memorandum of Incorporation (“MOI”) prohibits the offering or sale of its shares to the public and restricts the transferability of its shares

Its name must end with “Proprietary Limited” or the abbreviation “(Pty) Ltd” and if there are special conditions in the MOI that restrict its capacity, the letters “RF” (meaning “ring-fenced”) must appear after its name to bring attention to the special conditions

Private Company



PROS	CONS
At least 1 director	
Taxed at a flat rate of 28%	
Can have any number of shareholders	Cannot offer shares to public
Perpetual succession	Stringent and costly formalities in setting up
Separate legal personality	Must be registered with CIPC
Reduced risk of personal liability	Greater administrative burden
Higher business profile	
Protected business name	

Private Company



- However, healthcare practitioners retain direct liability for the treatment they provide.
- Therefore, they cannot hide behind their private company when a patient sues them for malpractices.
- In the event of a legal claim, the company structure will not protect a healthcare practitioner from personal liability.
- However, his tax rate of 28% will remain uninterrupted.

Personal Liability Company



- More commonly known as an incorporation or association
- Similar to a private company, but its MOI must state that it is a personal liability company, and its name must end with “Incorporated” or the abbreviation “Inc”
- Commonly formed by certain professions, such as attorneys, doctors, and accountants

Personal Liability Company

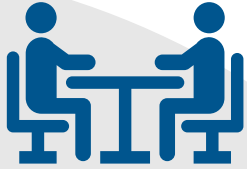


PROS	CONS
At least 1 director	
Taxed at a flat rate of 28%	
Can have any number of shareholders	Directors and former directors are jointly and severally liable, together with the company, for the company's debts and liabilities incurred during their respective periods of office
Perpetual succession	Cannot offer shares to public
Separate legal personality	Stringent and costly formalities in setting up
Higher business profile	Must be registered with CIPC
Protected business name	Greater administrative burden



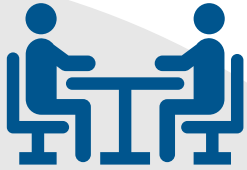
What are the restrictions on
partnerships and associations?

Partnership



- Must comply with all the general requirements for a valid contract:
 1. Parties to the agreement must have contractual capacity
 2. Parties must reach agreement
 3. Contract must be lawful, and it must be possible to render performance in terms of the contract
 4. If any formalities are prescribed for the contract, whether by law or by the parties themselves, these must be adhered to
- Can be concluded orally, in writing or through the conduct of the partners.
- However, a written contract is advisable

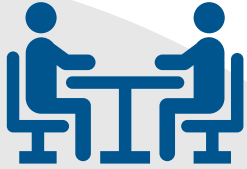
Partnership



The judgment of **Joubert v Tarry and Company** set out the four essential requirements of a partnership a long time ago.

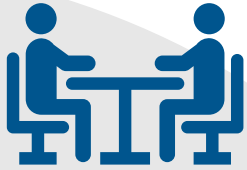
1. Each of the partners should make a contribution to the partnership, or bind themselves to contribute something to it, such as money, labour, or skill.
2. The partnership should be carried on for the joint benefit of the partners.
3. The object of the partnership should be to make a profit.
4. The contract should be lawful.

Partnership



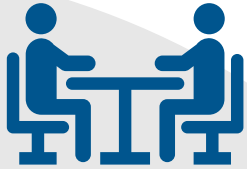
- Joint and several liability
- A change of partner (by death or otherwise) will terminate the partnership.
- The partnership cannot hold assets in its own name, nor conclude contracts.
- The partners own the property as co-owners.

Partnership



- Section 13(1) of the Insolvency Act provides that sequestration of a partnership estate is to be treated as separate from the estates of the individual partners.
- If the partnership estate is sequestrated, the estate of every member of that partnership shall be sequestrated simultaneously.
- However, the creditors of the partnership can only prove claims against the partnership estate, and creditors of the partners can only prove claims against the personal estate of the partners only.
- Any balance that is left over from a partner's personal estate will be available to the trustees of the partnership estate for distributions amongst the partnership's creditors, but only where necessary and only after all the private creditors of the partner have been paid in full.
- Likewise, any balance in the partnership estate will pass to the trustee of the individual partner's estate in so far as that partner would have been entitled to the balance had his or her estate not been sequestrated.

Partnership



- Another exception exists when a claim is made either by or against the partnership.
- Rule 14 of the Uniform Rules of Court and Rule 54 of the Magistrates' Courts Act provide that a partnership can now litigate (sue or be sued) in its own name.

Partnership



Compensation

Share in the profits

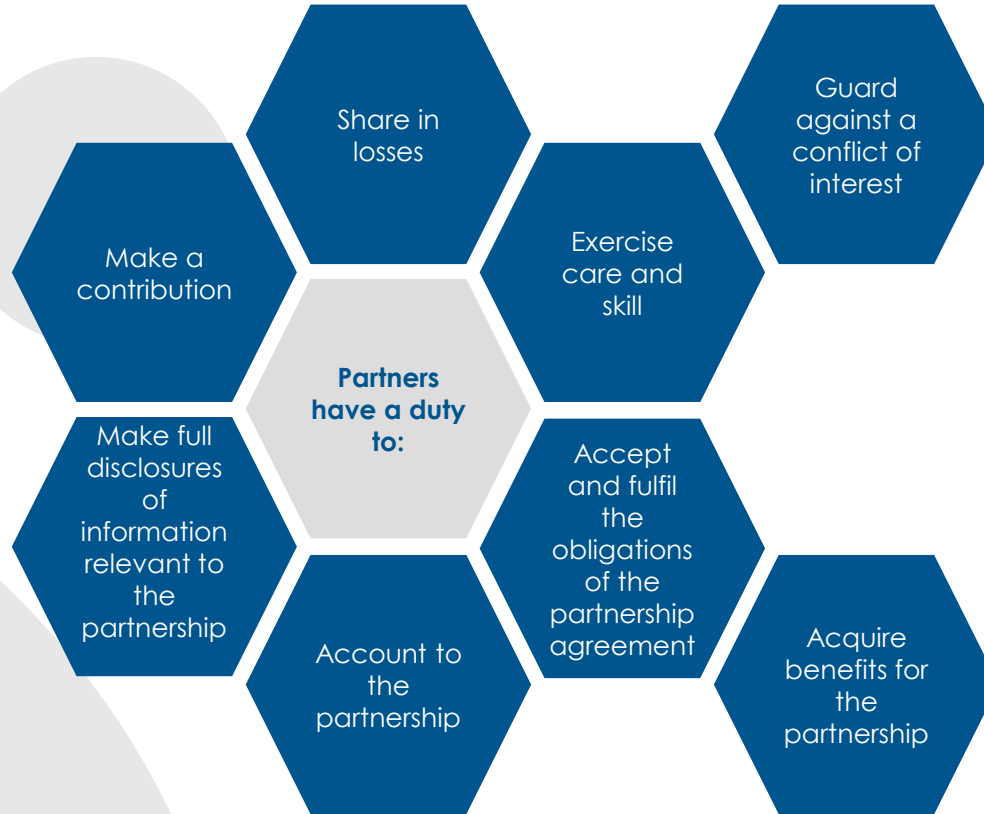
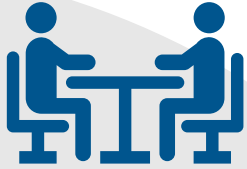
Participate in management

Partners have the right to:

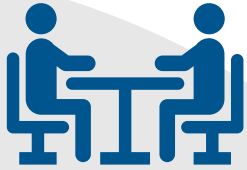
Inspect the partnership books

A distribution of assets on dissolution

Partnership

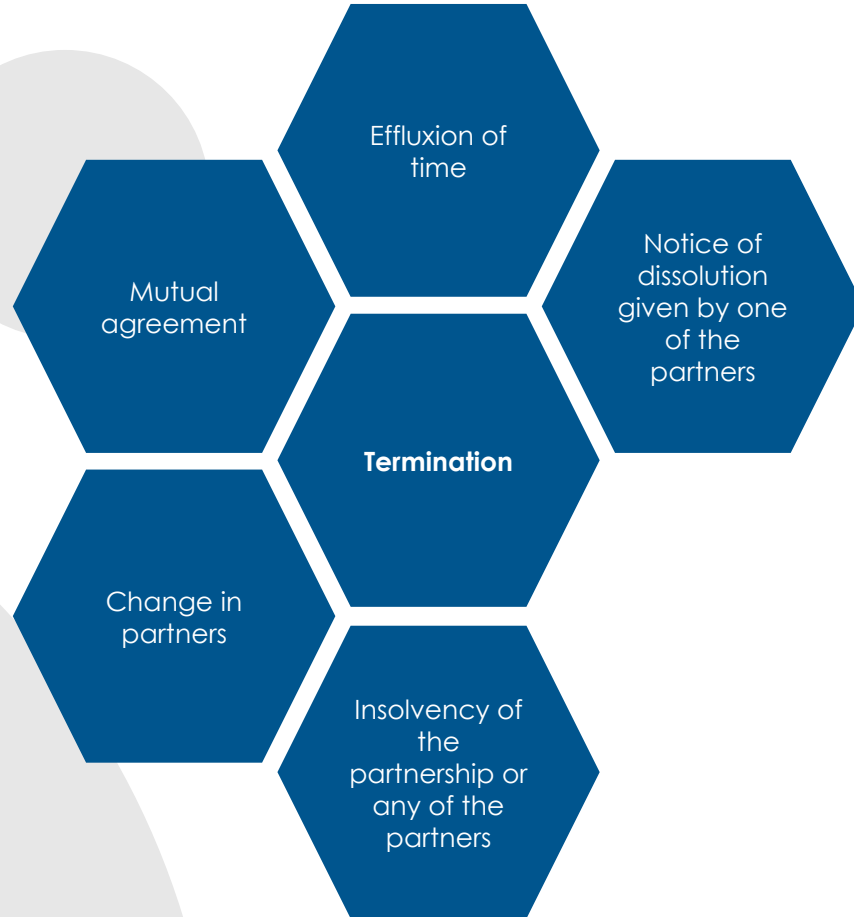
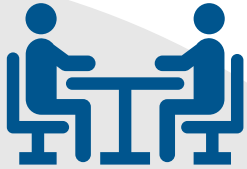


Partnership



- When a partner contracts on behalf of the partnership, he acts both as principal in relation to himself, and as an agent (representative) of the other partners, provided that he acts within the scope of his authority.
- The risk here is that a partner's liability will arise not only from his own acts but also from the acts and mistakes of co-partners over whom he has no control.
- This may discourage partners from undertaking risky ventures that have potential to grow the business.

Partnership



- The restriction here is that a partnership will suffer a limited lifespan and will eventually terminate.
- However, a new partnership can be created thereafter.

Personal Liability Company



- Many legal requirements - more difficult to establish
- MOI must state that it is a personal liability company
- Name must end with “Incorporated” or “Inc”.
- Prohibited from offering any of its shares to the public and is restricted in how it transfers its shares.
- Directors and past directors are jointly and severally liable, together with the company, for the company’s debts and liabilities incurred during their respective periods of office.
- Directors will also be held liable for knowingly participating in the carrying on of business in a reckless or fraudulent manner.
- At least one director on the board of directors (or any other minimum number stipulated in its MOI).

Personal Liability Company



- This company structure better provides for health practitioners' direct liability for the treatments they provide to their patients.
- To protect themselves against liability and malpractice claims, they must:
 - Adhere to their financial reporting responsibilities
 - Make sure they are fully compliant in respect of record keeping
 - Only work within the rules of the HPCSA
 - Ensure they are protected with sufficient insurance and malpractice cover

Personal Liability Company




- Must be registered, at a cost, as a personal liability company with the Companies and Intellectual Property Commission (“CIPC”).
- It can do so by:
 1. Reserving a corporate name, in the absence of which the company will be registered with its enterprise number.
 2. Submitting the following forms and documents when making the application:
 - a. CoR9.4 - Confirmation of notice of name reservation, if applicable;
 - b. CoR15.1B or its own draft MOI;
 - c. Applicant’s certified identity copy;
 - d. Certified identity copy of all incorporators and directors; and
 - e. Power of attorney, if applicable.

Personal Liability Company



- The company is subjected to double taxation – on the taxable income and Standard Tax on Companies (“STC”) payable on declared dividends.
- A meeting cannot begin and/or a matter cannot be debated until at least three shareholders are present.
- Sufficient persons must be present at the meeting to exercise in aggregate at least 25% of all the voting rights, which must be determined by the MOI.
- All distributions to shareholders require board approval and need to satisfy the solvency and liquidity tests.
- Annual financial statements must be prepared but are not required to be lodged with the CIPC.

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What are the BHF requirements for practitioners operating in the above structures in terms of their practice numbers?

What is BHF?

- Representative organisation to the healthcare funding industry which medical schemes may belong to voluntarily.
- **Vision:** “a member-centric healthcare system that is affordable and accessible to the ‘healthcare citizen’”.
- Appointed by the Council for Medical Schemes (“CMS”) to administer the issuing of practice code numbers.



What is the practice code numbering system?

- The Practice Code Numbering System (“PCNS”) of the BHF is a list of unique practice billing codes for providers of healthcare services in South Africa, Namibia, and Lesotho.
- Promotes a uniform, national and legally constituted identifier for billing purposes.
- The practice code number (“PCN”), allocated to all registered healthcare providers, is a legal requirement for the process of reimbursement of a claim to either a medical scheme member or healthcare service provider.

- The PCNS division, under the auspices of the BHF, allocates the PCNs by conducting a rigorous assessment process of all relevant health service providers applying for a PCN.
- The applicant's licensing or registration for independent practice is also verified with the appropriate licensing authority or statutory body.
- The purpose of the PCN is to:

Identify the type of healthcare service being rendered

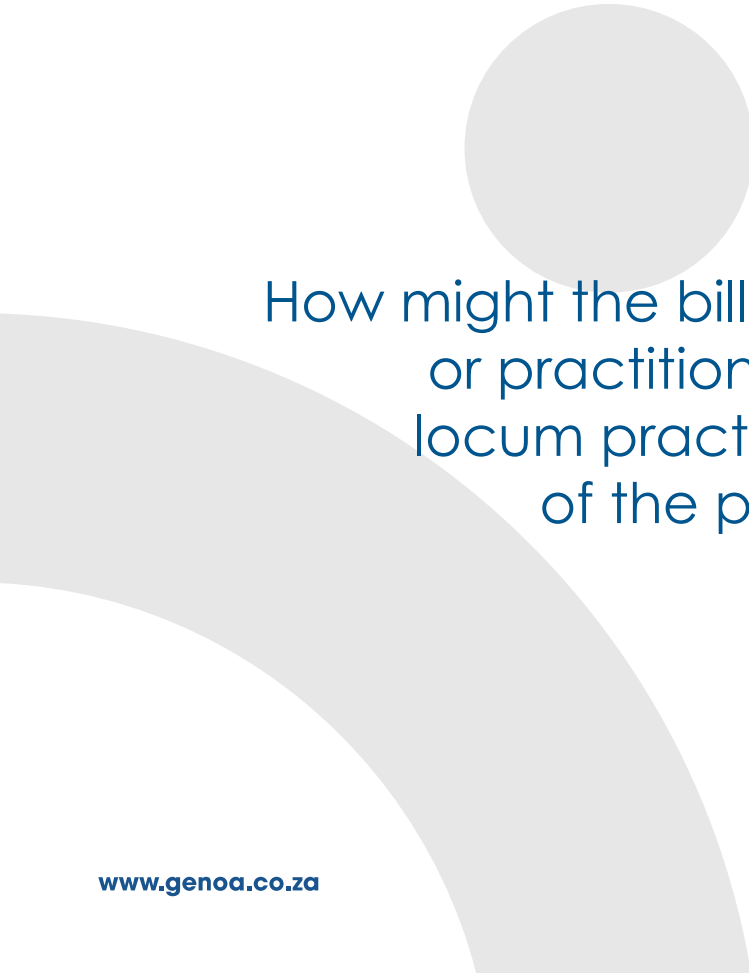
Ensure that the supplier of service has the required valid accreditation from the relevant authorities as assurance of legitimacy of claims submitted against the PCN

Promote a uniform, national and accredited health service provider identifier for billing purposes

Ensure the utilisation of and access to the PCNs is transparent, fair and equitable.

- To get a PCN, healthcare service providers must be registered as an independent practitioner, practice or agency with the relevant statutory council and their scope of practice must be corroborated by the BHF in accordance with the accreditation requirements.
- The relevant application forms can be downloaded from the PCNS website (<https://www.pcns.co.za/ApplicationForms>) and once completed, all forms and required documentation should be returned to the BHF offices by registered mail or overnight courier, together with the applicable registration fee of proof of payment thereof via bank EFT.

- The accreditation process takes between 10 to 20 working days on average.
- Once completed, the BHF will issue and award a unique practice number to the applicant.
- All medical schemes on the PCNS database will be notified electronically.
- This practice number must appear on all official documentation and communications of the practitioner, and the PCNS registration must be renewed every year by 31 March.

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How might the billing occur on behalf of a practice or practitioners in terms of associates or locum practitioners using the PR number of the practice or practitioner?

Health Professions Act 56 of 1974

- **Section 53(1)** states that every practitioner shall:
- unless the circumstances make it impossible for him to do so,
- before rendering any professional services
- inform the person to whom the services are rendered (“patient”) or any person responsible for the maintenance of such person,
- of the fee which he intends to charge for such services
- when so requested by the person concerned
- or when such fee exceeds that usually charged for such services, in which case the practitioner shall also inform the person concerned of the usual fee.

Health Professions Act 56 of 1974

- **Section 53(2)** adds that any practitioner who claims payment from a patient for any professional services rendered by him shall, subject to section 32 of the Medical Schemes Act, furnish the patient with a detailed account within a reasonable period.

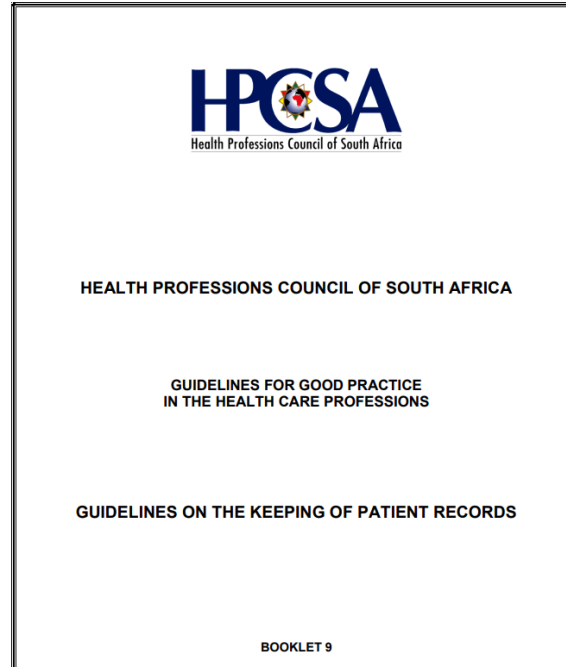
Health Professions Act 56 of 1974

- Section 53(3)(a) states that a patient may, within 3 months after receiving the aforementioned account, apply in writing to the relevant professional board to determine the amount which it believes 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 this amount and notify the practitioner and patient thereof in writing, provided that it affords the practitioner concerned an opportunity to first submit to it a written case in support of the amount charged.
- Section 53(3)(d) empowers a professional board to determine and publish the fees used by it as a norm for the determination of these amounts from time to time. After consulting with the council, the Minister may make necessary regulations regarding the procedure which the professional board shall follow in disposing of the application.

The above provisions are mirrored in section 38A of the AHP Act.

Guidelines on the Keeping of Patient Records

- Rule 10.7 of the HPCSA's Guidelines on the Keeping of Patient Records provides that billing records should be kept separate from patient care records.



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Conclusion

- The practice is a saleable commodity
 - You must do everything required to ensure that it will achieve and retain its value as a saleable commodity at the end of your career
- Contracts must be concluded when the sun is shining – everyone is happy and everything is clear and simple
 - When the rain comes (and it will), you will have an umbrella ready
- The practice is a commercial commodity
 - You must everything that is required is in place to ensure that it retains not only its value, but also its function, throughout the entity's lifespan

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Questions

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