

Amended
by GG No 2637
Nov. 2001
Notice 218
Rule 7(a)

067 - 222439
Dr Kroege - 220108



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$1.38

WINDHOEK - 31 July 2001

No.2590

CONTENTS

Page

GOVERNMENT NOTICE

✓ No. 151 Rules relating to the acts or omissions constituting improper conduct or misconduct in respect of which the Dental Board may conduct inquiries and take disciplinary steps: Medical and Dental Professions Act, 1993 (Act No. 21 of 1993) 1

Government Notice

MINISTRY OF HEALTH AND SOCIAL SERVICES

No. 151

2001

**RULES RELATING TO THE ACTS OR OMISSIONS CONSTITUTING
IMPROPER CONDUCT OR MISCONDUCT IN RESPECT OF WHICH THE
DENTAL BOARD MAY CONDUCT INQUIRIES AND TAKE DISCIPLINARY
STEPS: MEDICAL AND DENTAL PROFESSIONS ACT, 1993
(ACT NO. 21 OF 1993)**

The Minister of Health and Social Services has under section 29(2) of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993) approved -

- (a) the rules issued by the Dental Board under section 29(1) of the said Act as set out in the Schedule below; and
- (b) the repeal of the rules published in Government Notice No. R 2278 of 3 December 1976 in so far as it relates to the dental profession.

SCHEDULE

Definitions

1. In these rules, unless the context otherwise indicates, any word or expression defined in the Act has that meaning and -

“association” means a form of practising where two or more dental practitioners practice for their own account but share communal assets;

2 { “dental practitioner” means a dentist or dental specialist, as the case may be, and in the applying of rules 5 to 9 of this Schedule, includes a juristic person in the form of a group practice or a company;

“other practitioner” means a person, other than a dental practitioner, registered and authorized to practice under the -

- (a) Allied Health Services Professions Act, 1993 (Act No. 20 of 1993);
- (b) Medical and Dental Professions Act, 1993 (Act No. 21 of 1993);
- (c) Pharmacy Profession Act, 1993 (Act No. 23 of 1993);
- (d) Nursing Professions Act, 1993 (Act No. 30 of 1993);

“professional acts” for the purpose of rule 21, means medical or dental acts in general as the case may be;

“the Act” means the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993).

Acts or omissions constituting improper conduct or misconduct

2. (1) The acts or omissions by a dentist or dental specialist as set out in these rules are, subject to the provisions of subrules (2) and (3) of this rule, deemed to constitute improper conduct or misconduct in respect of which the Board may take disciplinary steps in terms of Part V of the Act.

(2) The acts or omissions contemplated in subrule (1) do not constitute a complete list of offences, and the Board may inquire into and deal with any complaint, charge or allegation which may be brought before it.

(3) Notwithstanding subrule (2), the Board may act upon any conduct or behaviour of any dental practitioner, regardless of whether a complaint, charge or allegation is laid before it.

Advertising, canvassing and touting in certain circumstances

3. The following acts or omissions regarding advertising, canvassing and touting constitutes improper conduct or misconduct -

- (a) the advertising of the professional services of a dental practitioner in a manner which -
 - (i) is not factually correct;
 - (ii) is misleading; or
 - (iii) harms the dignity or honor of the profession;
- (b) the permitting, sanctioning or acquiescing of such advertisement referred to in paragraph (a); or
- (c) the canvassing or touting for patients, whether personally, through an agent or in any other manner.

Itinerant practice in certain circumstances

4. The carrying on of a regularly recurring itinerant practice at a place where another dental practitioner is established, constitutes improper conduct or misconduct, unless the dental practitioner concerned renders in such itinerant practice the same service to a patient and at the same cost as the service he or she would render in the area in which he or she is resident.

Using of other names in practice name

5. The use in the name of a practice -
- (a) of any name or expression, except the name of the dental practitioner, or if the practice is a partnership, the names of the dental practitioners concerned; or
 - (b) of the word "hospital" or "clinic" or any other words which may give the impression that such practice forms part of or is in association with a hospital or clinic,

constitutes improper conduct or misconduct.

Information on professional stationary in certain circumstances

6. The following acts regarding information on professional stationary constitutes improper conduct or misconduct -

- (a) the printing of, or having printed on letterheads and account forms, any information other than -
 - (i) the dental practitioner's name, profession and specialty (if applicable);
 - (ii) his or her registered qualifications, academic qualifications (other than professional qualifications) and honorary degrees in abbreviated form; and
 - (iii) his or her addresses, telephone numbers, hours of consultation and practice number; or
 - (iv) information that a group of dentists are practising in partnership or association as the case may be.
- (b) the use of prescription forms and envelopes on which the name and address of any medical practitioner or pharmacist is printed.

Acceptance or receiving of fees and commission

7. The following acts regarding fees and commission, constitute improper conduct or misconduct -

- (a) the acceptance of commission from any person or other dental practitioner in return for the purchase, sale or supply of any goods, substances or materials used by a dental practitioner in the conduct of his or her professional practice;
- (b) the paying of commission to any person for recommending patients to a dental practitioner;
- (c) the sharing of fees with any person who has not taken a commensurate part in the services for which the fees are charged; or

- (d) the charging or receiving of fees for services not personally rendered, except for services rendered by another dental practitioner with whom he or she is associated as a ~~shareholder, partner, member of a close corporation or as a locum tenens.~~

deletion
GG 1 Nov 2001, 2637

Practicing as partner in certain circumstances

8. The practicing as a dental practitioner in a partnership with any person not registered in terms of the Act constitutes improper conduct or misconduct.

Supersession of dental practitioner in certain circumstances

9. The superseding of another dental practitioner without taking reasonable steps to inform the dental practitioner originally in charge of the patient, in cases where he or she should be made aware that the patient is under the treatment of another dental practitioner, constitutes improper conduct or misconduct.

Impeding of patient

10. The impeding of a patient or someone acting on behalf of a patient from obtaining the opinion or treatment of another dental practitioner constitutes improper conduct or misconduct.

Making of unfounded allusions regarding professional reputation of colleagues

11. The making of unfounded allusions regarding the probity or professional reputation or skill of -

- (a) any dental practitioner registered under the Act;
- (b) any other practitioner; or
- (c) any person registered under the Social and Social Auxilliary Workers' Professions Act, 1993 (Act No. 22 of 1993).

constitutes improper conduct or misconduct.

Divulging of patient information in certain circumstances

12. The divulging of any information whether in writing or otherwise regarding a patient which ought not to be divulged, constitutes improper conduct or misconduct, except where such information is divulged -

- (a) with the express consent of the patient;
- (b) in the case of a minor, with the written consent of his or her parent or guardian;
- (c) in the case of a deceased patient, with the written consent of his or her next-of-kin or the executor of his or her estate; or
- (d) in a court of law, when instructed by the presiding officer to do so.

Certificate and reports

13. The following acts or omissions regarding certificates and reports constitute improper conduct or misconduct -

- (a) the granting of a certificate of illness without such certificate containing -
 - (i) the name, address and qualifications of the dental practitioner;

- (ii) the name of the patient;
 - (iii) the employment number of the patient (if applicable);
 - (iv) the date and time of the examination;
 - (v) information as to whether the certificate is being issued as a result of personal observations by the dental practitioner during an examination, or as the result of information received from the patient and which is based on acceptable medical grounds;
 - (vi) a description of the illness, disorder or malady in laymen's language;
 - (vii) information as to whether the patient is totally indisposed for duty or whether the patient will be able to perform less strenuous duties in the work situation;
 - (viii) the exact period of recommended sick leave;
 - (ix) the date of issue of the certificate of illness; and
 - (x) the signature of the dental practitioner who issued the certificate.
- (b) the neglecting if preprinted stationery is used, to delete words not relevant.
- (c) the refusal to issue a brief, factual report to a patient where such patient on reasonable grounds requires information concerning himself or herself.

Acceptance of professional appointments in certain circumstances

14. The acceptance of any professional appointment unless the contract of appointment -

- (a) is in writing;
- (b) is available to the Board on request; and
- (c) is not drawn up on a basis inimical to the interests of the public or the dental profession,

constitutes improper conduct or misconduct.

Secret remedies

15. The making use in the conduct of the practice of a dental practitioner -

- (a) of any form of treatment, apparatus or technical process which is secret or is claimed to be secret; or
- (b) of any apparatus which proves upon investigation to be incapable of fulfilling the claims made in regard thereto,

constitutes improper conduct or misconduct.

Sharing of consulting or waiting rooms in certain circumstances

16. The sharing of consulting or waiting rooms with any person not registered in terms of the Act or having an entrance through or a name-plate at the entrance of such person's consulting or waiting rooms or business, constitutes improper conduct or misconduct.

Preventing of Board or office-bearer from carrying out statutory duties or communicating with certain persons

17. The following acts or omissions constitute improper conduct or misconduct -
- (a) the performance of any willful act or omission which prevents or is calculated to prevent the Board or any office-bearer of the Board from carrying out its or his or her statutory duties.
 - (b) communication by a dental practitioner, against whom a disciplinary inquiry is being held, with any person whom such dental practitioner knows or should reasonably know to be a witness in such disciplinary inquiry on any aspect of evidence to be given by such witness at the inquiry, or permitting, sanctioning or acquiescing in such communication on his or her behalf.

Permitting of exploitation

18. A dental practitioner is guilty of improper conduct or misconduct, if he or she permits himself or herself to be exploited in a manner detrimental to the public or professional interest.

Financial interest in hospitals or clinics

19. The referring of patients to a hospital or clinic in which the dental practitioner has a financial interest, without displaying a conspicuous notice in his or her waiting rooms indicating that he or she has a financial interest in such clinic or hospital, constitutes improper conduct or misconduct.

Employment of and consultation with certain persons

20. (1) The following acts regarding the employment of and consultation with certain persons, constitutes improper conduct or misconduct -

- (a) the employment as a *locum tenens* of any person who is not registered in terms of the Act and, where applicable, who is not deemed by the Board to be competent to practice independently;
- (b) the employment of unregistered health service staff or co-operating or consulting with any person not so registered; or
- (c) the consulting with or in any way assisting or supporting of any person who is not registered in terms of the Act, and who is in practice or who performs an act on a regular basis regarding -
 - (i) the diagnosis, treatment or prevention of physical or mental disabilities, illnesses or defects in any other person;
 - (ii) any operation, treatment or advice usually performed or given by a doctor or dentist; or
 - (iii) any operation, treatment or advice performed or given in preparation of or for the purpose of or regarding the manufacture, repair, supply, fitting, insertion or fixing of dentures or other similar dental apparatus.

(2) Notwithstanding subrule (1), the following acts do not constitute improper conduct or misconduct -

- (a) assistance given to any other person in an emergency where the dental practitioner informs the Board of such emergency act; or

- (b) consultation with or assistance to persons or organisations approved by the Board.

Performance of professional acts in certain circumstances

21. The following acts or omissions regarding the performance of professional acts constitute improper conduct or misconduct -

- (a) the performance, except in an emergency, of professional acts -
 - (i) for which the dental practitioner is inadequately trained or insufficiently experienced;
 - (ii) under improper conditions;
 - (iii) in improper surroundings; or
 - (iv) where conditions calling for medical attention are observed or suspected;
- (b) failure to -
 - (i) confine himself or herself to clinical diagnosis and practice in the field of dentistry in which he or she has been 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;
 - (ii) communicate and co-operate, where necessary, with other practitioners in the diagnosis and treatment of a patient; or
 - (iii) refer a patient to an appropriate other practitioner when the patient's problems and needs are beyond the scope of dentistry,

which failure may result in the dignity of the dental profession being harmed or potentially harmed.

Taking of radiographs

22. (1) The taking of radiographs for or to request the taking of such radiographs for, or the reporting thereon to, persons not registered in terms of the Act, the Allied Health Service Professions Act, 1993 (Act No. 20 of 1993), the Pharmacy Profession Act, 1993 (Act No. 23 of 1993), the Social and Social Auxiliary Workers' Professions Act, 1993 (Act No. 22 of 1993), or the Nursing Professions Act, 1993 (Act No. 30 of 1993), constitutes improper conduct or misconduct.

(2) Notwithstanding subrule (1), a registered dental practitioner may take radiographs for and furnish reports thereon when requested by a patient to do so: Provided, the dental practitioner is satisfied that such radiographs and reports are not intended for use by unregistered persons as contemplated in terms of subrule (1).

Medicines

23. The following acts or omissions regarding medicines, constitutes, subject to section 41 of the Act, improper conduct or misconduct -

- (a) (i) the participating in the manufacture for commercial purposes, or the sale, advertising or promotion of any medicine as defined in the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), or any other activity which amounts to trading in medicines; or

- (ii) the engagement in, or advocating of, the preferential use or prescription of any medicine, if any valuable consideration is derived from such preferential use or prescription, but the provisions of this paragraph shall not prohibit a dental practitioner from owning shares in a public company manufacturing or marketing medicines.
 - (b) (i) the prescription or supply of any substance listed in Schedule 5, 6 or 7 of the Medicines and Related Substances Control Act, 1965, (Act No. 101 of 1965) -
 - (aa) unless he or she has ascertained through a personal examination of the patient; or
 - (bb) by virtue of a report by another dental practitioner under whose treatment the specific patient is or has been,that such prescription or supply is necessary for the treatment of the patient; and
 - (ii) notwithstanding paragraph (a), the repetitive prescription or supply of any Schedule 5, 6 or 7 medicines by a dental practitioner, constitutes improper conduct or misconduct, but for the purposes of this rule does not constitute improper conduct or misconduct where the prescription or supply of such medicine is made in accordance with section 22A of the Medicines and Related Substances Control Act, 101 of 1965, and after consultation with and upon the recommendation of or by virtue of a report by such patient's medical or dental practitioner as the case may be.
-