



POLICY AND PROCEDURE OF THE PRACTICE OF DR RUDI HAYDEN (henceforth referred to as “the practice”): PRIVACY, CONFIDENTIALITY AND ACCESS TO INFORMATION

1. OBJECTIVE

The objective of this Policy is to:

1.1 Ensure that all staff in the practice, and all contractors are clear as to how information held by the practice, and all information that comes to the knowledge of the practice, are to be handled.

1.2 Ensure that all staff in the practice, and all contractors are clear as to how requests for access to information are to be handled.

1.3 Ensure compliance with the provisions of the National Health Act, the Protection of Personal Information Act (POPI Act), the Promotion of Access to Information Act (PAIA), the Children’s Act and all other laws and ethical rules applicable to information, data, privacy and confidentiality.

2. SCOPE

2.1 This Policy applies to all situations and business processes where information is processed. It also covers situations where information may be passed on to others, or may be accessible to other persons or institutions.

2.2 This Policy also binds contractors, agents and others undertaking work for the practice, such as billing companies, switching houses, etc. irrespective of the duration and contractual nature of such work (all covered under the catch-all phrase of “employees” below).





3. DEFINITIONS

For the purpose of this policy, the following definitions apply:

Business confidential information means without limitation, any and all information, whether oral or written, and irrespective of the format (electronic or hand copy), acquired directly or indirectly by the employees, whether or not such information is labelled or otherwise identified as confidential, including that obtained through documents, observations or discussions, and any copies, notes or summaries made or derived from such information, as well as draft- and final versions of minutes, memoranda, agreements or any documents, and all information relating to, or based on modes of operation and/or business strategies, -models and structures, and other connections, as well as information on services and products, appointment books and practitioner availability and way of working, sales and billing, reimbursement, motivations, appeals and medical schemes, patients and patient profiles, vendor lists, contractor lists, techniques and treatments, staff, financial information, pricing, intellectual property, know-how and all other related and unrelated information of the practice.

Data subject means the person or entity whose information is at stake.

Personal information means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to:

- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, wellbeing, disability, religion, conscience, belief, culture, language and birth of the person;
- (b) information relating to the education or the medical, financial, criminal or employment history of the person;
- (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- (d) the biometric information of the person;
- (e) the personal opinions, views or preferences of the person;
- (f) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the person; and
- (h) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.





Processing means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including:

- (a) the collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form; or
- (c) merging, linking, as well as restriction, degradation, erasure or destruction of information.

Special Personal Information means information relating to a person's:

- (a) religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or
- (b) criminal behavior.

Health information includes ICD-10 codes, details on treatment provided, diagnoses, billing information, health status and the likes.

Personal and health information also includes the fact that the person visited the practice, was in hospital, etc. It is therefore not only the name, health status, treatment, etc. that is confidential. It also includes details on who accompanied the person, who might have visited the person, made enquiries, etc.

4. OVERRIDING GUIDING PRINCIPLES

4.1 All information, whether that relating to the practice, its staff, contractors, vendors, patients and patient associates or family members are to be kept confidential.

4.2 Even inadvertent disclosures could lead to a breach of this contractual duty and render the employee and practice liable.





4.3 Care must therefore be taken not only with what is said, but also with how information is passed on or handled, e.g. forwarding of emails and “reply all”s, storage of records / documents, not regularly changing passwords, etc.

4.4 When requests for disclosures are made, or when disclosures are contemplated (e.g. in response to a telephonic enquiry), employees should err on the side of caution and obtain advice from a senior person in the practice and, if it relates to a patient’s healthcare and health records, obtain advice from the specific treating practitioner before acting.

4.5 Similarly, any requests that could indicate some possible conflict (e.g. a request from a law firm), family disputes (e.g. parents over a child) or a risk to the practice (e.g. a medical scheme forensic investigation), as well as investigations or inquiries by statutory or regulatory bodies (e.g. HPCSA, Medicines Control Council, etc.) should be handled with caution.

4.6 All instances where information was released must be recorded on the Form “RECORD OF DISCLOSURE” and must be placed in the patient file, in the vendor file, etc. as a record that access was granted or refused, and the circumstances around that.

5. POLICY AND PROCEDURE

5.1 Various pieces of legislation apply to the processing of personal information. These include the National Health Act (sections 14 and 15), the Protection of Personal Information Act, 2013 (all sections) and the Children’s Act (section) – all in Annexure A.

5.2 The contractual duty to keep personal information and health information confidential is contained in the practice’s Terms and Conditions (Ts and Cs).

5.3 In general, healthcare information (including patient files, reports, visits, stays, etc.) can only be released under the following circumstances:





5.3.1 With the written consent of the person whose information it is (this includes all adults and all children 12 years and older). For children under 12 years, the parent or guardian must consent to the disclosure.

5.3.2 Where a law clearly authorizes an entity or person to access to information. For example, the Medical Schemes Act compels an ICD-10 code to be provided on an account to a scheme, which means that the patient's diagnosis is revealed.

5.3.3 Where a Court orders the disclosure.

5.4 Even where a law requires the disclosure of such information, the data subject is entitled to know that such information is being disclosed, and the purpose thereof. Employees must be aware of laws that authorize disclosures (see Annexure A).

5.5 The conditions for processing of personal information have to be adhered to:

5.5.1 "Accountability", which means that the Practice and its employees take legal responsibility for the personal information it possesses and processes.

5.5.2 "Processing limitation", which means the data obtained by the practice from any entity can ONLY be processed for the purposes stipulated in the consent, or in a law and all processing is limited to that stipulated purpose. No more than what is required to fulfil that purpose may be processed (e.g. gender, marital status, etc. may not be necessary in some contexts, but necessary in others).

5.5.3 "Purpose specification", which means that blanket consents (i.e. consents that give a general right of disclosure in undefined circumstances and to unidentified persons or entities) would not be permissible when processing and obtaining consent. Why certain information is processed must be disclosed, e.g. "we require your email address in order to provide you with feedback" or "a family member's contact details are required as we may need to track you for accounts purposes and/or to obtain treatment consent when you are unable to" (patients may choose two different persons for these purposes), etc.





5.5.4 “Further processing limitation”, where existing information is processed outside of the initial understanding as to why the information was collected and stored. If client data is, for example, also used to prioritize clients, or to ex post facto analyze their activity, the consent to further processing could include, for example “your information and prescriptions may be analyzed by the practice for business planning and review purposes, [but] will [not] be shared with any third party...”

5.5.5 “Information quality”, which means there is a duty on the practice to ensure that all personal information it processes is always up to date and correct. Patients will be asked each and every time when they visit the practice to look at all their personal information and confirm its correctness (e.g. address, telephone numbers, email addresses, medical scheme numbers and benefit options must be updated regularly).

5.5.6 “Openness”, meaning there is transparency in the fact that specific data is being processed.

5.5.7 “Security safeguards”, meaning that:

5.5.7.1 All information not for public viewing are kept under lock and key. Patient files are never put where they may be accessible to the public, and patient files filing cabinets are locked at all times.

5.5.7.2 Information stored on computers, iPads and the likes are subject to passwords of which a master copy is held by Dr. R Hayden and the receptionist where appropriate. Passwords are changed quarterly.

5.5.7.3 Prescription pads, prescriptions, lab reports, medical scheme motivations, etc. being kept for pick-up by patients are kept in a separate locked drawer and not on the reception desk.

5.5.7.4 All empty practice stationery is stored under lock and key.





5.5.8 “Data subject participation”, which means each person has the right to see and review the information held by the practice on him/her.

5.6 Requests for information by third parties (not the patient him/herself):

5.6.1 Where the identify of the person requesting the information is uncertain, or where requests are made by attorneys, insurance companies or others, such as family members who have not been authorized by the patient in writing to have access to information (“Requester”), the form in Annexure B, which is the legally prescribed form under the Promotion of Access to Information Act (PAIA), must be provided to the Requester.

5.6.2 The completed Requester Form (which also requires a written consent or, for example, a signed contract by the patient that the information could be accessed by the Requester) must be provided to the practitioner (Dr. Rudi Hayden) whose patient it is, or if it is not a patient-related matter, to the practice manager (MFI Bloemfontein) who will consult with the practitioner to review and who will make the decision as to whether access can be granted or not.

5.6.3 A written reply as to whether the information requested will be provided or not, must be given to the Requester within 30 days of the Request being made.

5.6.4 Only the information that is necessary may be provided. Care must be taken that where a file includes information from more than one person, that only the information pertaining to the information of the person requested, is provided. Other information must be blacked out (“severed”).

5.6.5 Photocopying fees may be charged at R1,10 per page and print-outs at 75c per page. Persons who are requesting the information of another person (e.g. a lawyer) must pay a requester fee of R50 (payable with completed Requester Form in Annexure B to this Policy), where a person personally requests his/her own information, no requester fee may be charged.





5.7 Where the patient requests his/her own information held by the practice, s/he is always entitled to copies thereof. However, if Dr. Rudi Hayden is of the view that the person may not be able to handle the information, the patient must be requested to nominate another healthcare professional to whom the information will be disclosed and who could assist the patient in dealing with the information. (See PAIA Annexure A below).

5.8 All communications to patients and others, e.g. SMS reminders, updates, general health information, newsletters, etc. must include an “opt out” functionality, which has to be adhered to strictly. If a person has indicated an “opt out” this must be noted on the person or entity’s file or other record (e.g. remove person from distribution list).

5.9 Before you provide contact details of a person (“A”) to another person (“B”), make sure that the first person “A” has agreed to that. It may be safer to provide official business telephone numbers and business email addresses, rather than cell phone numbers, for example. The business contact details of other healthcare professionals to whom the Practice refer, may be provided to patients who have been referred to those Practices.

5.10 Where pharmaceutical- or medical device companies render services to patients and/or the practice and it may involve such companies or their staff gaining access to patient- or practice personal information, signed consent forms must be available and kept on file that authorize specific disclosures under specific circumstances. In some circumstances, such as adverse events, product recalls, etc. the practice must, in the best interest of the patients concerned, share and/or report such information. Ensure that if this is done (e.g. an adverse event is reported to the MCC or a name list and product serial numbers are provided to a device company), it is explained to the patient. If patients refuse this, they have to release the practice from any legal liability if they are not contactable should this be necessary.





ANNEXURE A: LEGAL PROVISIONS ON CONFIDENTIALITY, PRIVACY AND ACCESS

These are the actual provisions as they appear in the law:

NATIONAL HEALTH ACT, 2003 (NHA):

14. Confidentiality:

(1) All information concerning a user, including information relating to his or her health status, treatment or stay in a health establishment, is confidential.

(2) Subject to section 15, no person may disclose any information contemplated in subsection (1) 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.

15. Access to health records:

(1) A health worker or any health care provider that has access to the health records of a user may disclose such personal information to any other person, health care provider or health establishment as is necessary for any legitimate purpose within the ordinary course and scope of his or her duties where such access or disclosure is in the interests of the user.

(2) For the purpose of this section, "personal information" means personal information as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

HPCSA ETHICAL RULES, 2006:

13. Professional confidentiality:

(1) A practitioner shall divulge verbally or in writing information regarding a patient which he or she ought to divulge only:

- (a) in terms of a statutory provision;
- (b) at the instruction of a court of law; or
- (c) where justified in the public interest.



(2) Any information other than the information referred to in sub rule (1) shall be divulged by a practitioner only:

(a) with the express consent of the patient;

(b) in the case of a minor under the age of 12 years, with the written consent of his or her parent or guardian; or

(c) in the case of a deceased patient, with the written consent of his or her next-of-kin or the executor of such deceased patient's estate.

PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (PAIA):

61. Access to health or other records:

(1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being:

(a) of the requester; or

(b) if the request has been made on behalf of the person to whom the record relates, of that person, (in this section, the requester and person referred to in paragraphs (a) and (b), respectively, are referred to as the "the relevant person");

is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the head may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.

(2) If the relevant person is:

(a) under the age of 16 years, a person having parental responsibilities for the relevant person must make the nomination contemplated in subsection (1); or

(b) incapable of managing his or her affairs, a person appointed by the court to manage those affairs must make that nomination.

(3) (a) If, after being given access to the record concerned, the health practitioner consulted in terms of subsection (1) is of the opinion that the disclosure of the record to the relevant person, would be likely to cause serious harm to his or her physical or mental health, or well-being, the head may only give access to the record if the requester proves to the satisfaction of the head that adequate provision is made for such counselling or arrangements as are reasonably practicable before, during or after the disclosure of the record to limit, alleviate or avoid such harm to the relevant person.





(b) Before access to the record is so given to the requester, the person responsible for such counselling or arrangements must be given access to the record.

PROMOTION OF PERSONAL INFORMATION (POPI) ACT, 2013:

LINK TO GAZETTE:

http://www.gov.za/sites/www.gov.za/files/37067_26-11_Act4of2013ProtectionOfPersonalInfor_correct.pdf

CHILDREN'S ACT, 2005:

133. Confidentiality of information on HIV/AIDS status of children:

(1) No person may disclose the fact that a child is HIV-positive without consent given in terms of subsection (2), except:

- (a) within the scope of that person's powers and duties in terms of this Act or any other law;
- (b) when necessary for the purpose of carrying out the provisions of this Act;
- (c) for the purpose of legal proceedings; or
- (d) in terms of an order of a court.

(2) Consent to disclose the fact that a child is HIV-positive may be given by:

(a) the child, if the child is:

- (i) 12 years of age or older; or
- (ii) under the age of 12 years and is of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(b) the parent or care-giver, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;

(c) a designated child protection organization arranging the placement of the child, if the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure;



(d) the superintendent or person in charge of a hospital, if:

(i) the child is under the age of 12 years and is not of sufficient maturity to understand the benefits, risks and social implications of such a disclosure; and

(ii) the child has no parent or care-giver and there is no designated child protection organization arranging the placement of the child; or

(e) a children's court, if:

(i) consent in terms of paragraph (a), (b), (c) or (d) is unreasonably withheld and disclosure is in the best interests of the child; or

(ii) the child or the parent or care-giver of the child is incapable of giving consent.

ANNEXURE B: Form C: REQUEST FOR ACCESS TO RECORD OF PRIVATE BODY

(Section 53 (1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000))

[Regulation 10]

A. Particulars of private body (the practice)

The Head: _____

B. Particulars of person requesting access to the record from the practice

- (a) *The particulars of the person who requests access to the record must be given below.*
- (b) *The address and/or fax number in the Republic to which the information is to be sent must be given.*
- (c) *Proof of the capacity in which the request is made, if applicable, must be attached.*





Full names and surname: _____

Identity number: _____

Postal address: _____

Fax number: _____

Telephone number: _____

E-mail address: _____

Capacity in which request is made, when made on behalf of another person: _____

C. Particulars of person on whose behalf request is made

This section must be completed ONLY if a request for information is made on behalf of another person.

Full names and surname: _____

Identity number: _____





D. Particulars of record

- (a) Provide full particulars of the record to which access is requested, including the reference number if that is known to you, to enable the record to be located.
- (b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. **The requester must sign all the additional folios.**

1. Description of record or relevant part of the record: _____

2. Reference number, if available: _____

3. Any further particulars of record: _____

E. Fees

- (a) A request for access to a record, other than a record containing personal information about yourself, will be processed only after a **request fee** has been paid.
- (b) You will be notified of the amount required to be paid as the request fee.
- (c) The fee payable for access to a record depends on the form in which access is required and the reasonable time required to search for and prepare a record.
- (d) If you qualify for exemption of the payment of any fee, please state the reason for exemption.

Reason for exemption from payment of fees: _____





F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 hereunder, state your disability and indicate in which form the record is required.

Disability: _____

Form in which record is required: _____

Mark the appropriate option with an X.

NOTES:

- (a) Compliance with your request in the specified form may depend on the form in which the record is available.*
- (b) Access in the form requested may be refused in certain circumstances. In such a case you will be informed if access will be granted in another form.*
- (c) The fee payable for access to the record, if any, will be determined partly by the form in which access is requested.*

1. If the record is written or printed form:

copy of record* _____ inspection of record _____

2.If record consists of visual images (this includes photographs, slides, video, recordings, computer generated images, sketches, etc.):

view the images _____ copy of the images* _____ transcription of the images* _____





3. If record consists of recorded words or information which can be reproduced in sound:

listen to the soundtrack (audio cassette) _____

transcription of soundtrack* (written or printed document) _____

4. If record is held on computer or in an electronic or machine-readable form:

printed copy of record* _____ printed copy of information derived from the record* _____

copy in computer readable form* (memory stick or compact disc) _____

*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? YES _____ / NO _____

(Postage is payable).

G. Particulars of right to be exercised or protected:

If the provided space is inadequate, please continue on a separate folio and attach it to this

form. The requester must sign all the additional folios. _____





1. Indicate which right is to be exercised or protected: _____

2. Explain why the record requested is required for the exercise or protection of the aforementioned right:

H. Notice of decision regarding request for access

You will be notified in writing whether your request has been approved/denied. If you wish to be informed in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at _____ on this day of _____

SIGNATURE OF REQUESTER/PERSON

ON WHOSE BEHALF REQUEST IS MADE

