

**MEDICAL, DENTAL AND SUPPLEMENTARY HEALTH SERVICE PROFESSIONS
ACT, 1974 (ACT No. 56 OF 1974)**

**EXEMPTION OF JURISTIC PERSONS FROM THE OPERATION
OF CERTAIN PROVISIONS OF THE ACT**

By virtue of the powers vested in me by section 54A of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), I, Elizabeth Hendrina Venter, Minister for National Health and Welfare, do hereby, on the recommendation of the South African Medical and Dental Council, exempt any company incorporated and registered as a private company with a share capital in terms of the Companies Act, 1973 (Act No. 61 of 1973), subject to the conditions listed in the Schedule, from the provisions of sections 17, 32 and 36 up to and including 39 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (hereinafter termed the Act), in order to practise the profession of medical practitioner, dentist or psychologist or a supplementary health service profession contemplated in section 32 of the Act.

SCHEDULE

1. The company's memorandum or articles of association shall provide that all present and past directors shall be liable jointly and severally, together with the company, for the debts and liabilities of the company contracted during their period of office.
2. Only natural persons who are registered in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974, (Act No. 56 of 1974), and practise the profession of medical practitioner, dentist or psychologist or a supplementary health service profession contemplated in section 32 of the Act (hereinafter termed a practitioner in each case) or a company all the directors and shareholders of which are practitioners (hereinafter termed a corporate member) shall be shareholders of the company and have an interest in its shares: Provided that a corporate member shall not have an interest in or control, own or acquire more than 24 per cent of the issued share capital of the company.
3. Only a person who is a practitioner shall be a director of the company.
4. If a shareholder of the company or a person with an interest in the shares of the company dies or ceases to conform to any requirement of item 2, his estate or the person concerned, as the case may be, shall for a period of six months from the date on which he dies or ceases so to conform continue to hold the shares or interest concerned or for such longer period as the South African Medical and Dental Council (hereinafter termed the Council) may approve.
5. Any share contemplated in item 4 shall not entail any voting rights and a shareholder mentioned therein shall not act as the director of the company or receive, directly or indirectly, any director's fees or remuneration or share in the income of or profit earned by the company.
6. Only an authorised agent who is a shareholder of the company may speak or vote on behalf of a shareholder at a meeting of the company.
7. Each shareholder may practice personally only the profession in respect of which he is registered in terms of the Act.
8. Each shareholder shall remain subject personally to the provisions of the Act and the disciplinary authority of the Council.
9. No person, whether a natural person or a juristic person, may directly or indirectly in any manner whatsoever share in the profits or income of the company or have an interest therein unless he is a shareholder of the company.
10. If the company at any time neglects or omits to comply with any of the conditions of this Schedule, such neglect or omission shall constitute conduct on the part of the directors or shareholders in respect of which the Council may take disciplinary steps.

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INCORPORATED PRACTICE

As was reported in the April 1994 edition of *Bulletin*, incorporated practice by practitioners who are registered with the SAMDC is now possible. However, inquiries received on a daily basis indicate that there are a number of aspects about which practitioners are uncertain. The following, in general terms, deals with some of them:

Question: We want to practise our profession trading as "City Health Services (Pty) Limited" but the Registrar of Companies refuses to register the company. Why?

Answer: There are a number of points at issue here:

≠# A specific type of company has been catered for, namely a company with unlimited liability; it can never be a "(Pty) Limited" company with the implication that professional responsibility towards recipients of services is curtailed

≠# As is the case with the legal and accounting professions, a trade name cannot be used

≠# The name of a "section 54A company" may only consist of the name or names of some of or all the shareholders, followed by the word "incorporated" or "ingelyf"

≠# If the shareholders are medical practitioners and/or dentists, the title "Dr" may also be used

≠# If required for purposes of registration with the Registrar of Companies, the profession of the practitioners may be indicated (this will naturally only be possible if all the shareholders practise the same profession).

Question: Our company is registered as "A N Other and B Ore Incorporated". Mr Ore is terminating his shareholding. Must we now re-register the company?

Answer: No. It is quite in order for the names of shareholders who die or withdraw, which names were part of the name of the company, to be retained in the company name.

Question: What about the current prohibition on the retention of names of partners who leave the partnership?

Answer: There was such a prohibition. It no longer exists and the name of partners in a partnership may be retained on the same basis as those of shareholders in a company.

Question: Since a "section 54A company" practises the health professions, a pharmacist and a nurse can obviously be shareholders and directors?

Answer: Not so. Apart from the fact that exemption from the registration requirements of the Medical, Dental and Supplementary Health Services Professions Act, 56 of 1974, specifically involves only persons registered with the SAMDC, there are a number of other legal prohibitions on persons who are not so registered to be shareholders.

Question: Our company will only involve two practitioners. A close corporation (CC) is therefore the answer, being a much simpler juristic entity than a company, but the Registrar of Close Corporations refuses to register it. Why?

Answer: A close corporation has limited liability and is therefore not acceptable, for the reasons set out above. It has therefore not been included in the legislation exempting juristic persons from the registration requirements of Act 56 of 1974.

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INCORPORATED PRACTICE A REALITY

It gives me great pleasure to be able to announce that it is now possible for practitioners registered with the Council to practise as an incorporated, private company. Some years ago, in recognizing the advent of proliferation of various forms of managed health care delivery systems, the Council also identified the need for private practitioners to be able to band together in order to compete with such health care delivery systems. One of the ways in which the playing fields could be levelled was to enable practitioners to practise together as an incorporated company.

Such an incorporated practice also presents other advantages to shareholder practitioners, for example in its tax structure, ownership of expensive equipment, and the possibility to create retirement and other benefits.

The Council then embarked upon the process of submitting amending legislative proposals to Parliament and the Medical, Dental and Supplementary Health Services Professions Act, 56 of 1974 (the "Medical Act") was amended in 1992, *inter alia* by the introduction of a new section 54A which created the possibility of exempting certain juristic persons from the registration requirements of the Act by way of publication in the Government Gazette of a notice setting out the requirements for such exemption.

Following the amendment to the Act, a draft notice was duly prepared and submitted to the Department of Health. After an unfortunate delay arising from the conflicting interpretations of certain technical provisions, the notice was published in the Government Gazette shortly before the publication of this edition of Bulletin.

Very briefly, the following conditions apply to incorporated practice:

- ≠ Only a company incorporated and registered with the Registrar of Companies as a private company in terms of the Companies Act, 1973, may practise the profession of medical practitioner, dentist or psychologist or a supplementary health service profession.
- ≠ Only natural persons who are registered with the SA Medical and Dental Council ("practitioners") or another company all the directors of which are practitioners may be shareholders of the company.
- ≠ Only a person who is a practitioner may be a director of the company.
- ≠ Each shareholder may practise personally only the profession in respect of which he or she is registered with the Council.
- ≠ Each shareholder remains subject personally to the provisions of the Medical Act and the disciplinary authority of the Council.
- ≠ No person, whether a natural person or a juristic person, may directly or indirectly in any manner whatsoever share in the profits or in the income of the company or have any interest therein unless such person is a shareholder of the company.
- ≠ If the company at any time neglects or omits to comply with any of the conditions as stipulated, such neglect or omission shall constitute conduct on the part of the directors or shareholders in respect of which the Council may take disciplinary steps.

It must be emphasised that only persons registered with the Council may be shareholders of or be employed by such a "section 54A company" in their professional capacity; thus persons registered with other statutory bodies in terms of other acts of Parliament, for example the Pharmacy Act, or the Nursing Act, cannot be shareholders.

It should also be noted that the company is a private, incorporated company registered in terms of the Companies Act: it cannot be a close corporation.

In closing I wish to point out that the Council has accepted that partnerships of practitioners - "practitioners", once again, being persons registered with the Council - must be able to function in the same way as incorporated companies in terms of section 54A of the Medical Act.

The establishment of such partnerships has therefore also now become possible with the publication of the "section 54A notice".

(Extract from *Bulletin*: April 1994)

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**WET OP GENEESHERE, TANDARTSE EN AANVULLENDE GESONDHEIDSDIENS-
BEROEPE, 1974 (WET No. 56 VAN 1994)**

**VRYSTELLING VAN REGSPERSONE VAN DIE TOEPASSING VAN
SEKERE BEPALINGS VAN DIE WET**

Kragtens die bevoegdheid my verleen by artikel 54A van die Wet op Geneeshere, Tandartse en Aanvullende Gesondheidsdiensberoepe, 1974 (Wet No. 56 van 1974), stel ek, Elizabeth Hendrina Venter, Minister van Nasionale Gesondheid en Welsyn, op aanbeveling van die Suid-Afrikaanse Geneeskundige en Tandheelkundige Raad, hierby 'n maatskappy wat ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), ingelyf en geregistreer is as 'n private maatskappy met 'n aandeelkapitaal, onderworpe aan die voorwaardes in die Bylae vermeld, vry van die bepalinge van artikels 17, 32 en 36 tot en met 39 van die Wet op Geneeshere, Tandartse en Aanvullende Gesondheidsdiensberoepe, 1974 (hierna die Wet genoem), ten einde die beroep van geneesheer, tandarts of sielkundige of 'n aanvullende gesondheidsdiensberoep beoog in artikel 32 van die Wet te beoefen.

BYLAE

1. Die maatskappy se akte van oprigting of statute moet bepaal dat die direkteure en gewese direkteure gesamentlik en tesame met die maatskappy, aanspreeklik is vir die skulde en laste van die maatskappy wat gedurende hul ampstermyn aangegaan word of is.
2. Slegs natuurlike persone wat ingevolge die Wet op Geneeshere, Tandartse en Aanvullende Gesondheidsdiensberoepe, 1974 (Wet 56 van 1974), geregistreer is en die beroep van geneesheer, tandarts of sielkundige of 'n aanvullende gesondheidsdiensberoep beoog in artikel 32 van die Wet beoefen (hierna elk 'n praktisyn genoem), of 'n maatskappy waarvan al die direkteure en aandeelhouers praktisyns is (hierna 'n maatskappylid genoem), is aandeelhouers van die maatskappy en het 'n belang in die aandeel: Met dien verstande dat 'n maatskappylid in nie meer as 24 persent van die uitgereikte aandeelkapitaal van die maatskappy 'n belang het of nie meer as dit beheer, besit of verkry nie.
3. Slegs 'n persoon wat 'n praktisyn is, is 'n direkteur van die maatskappy.
4. Indien 'n aandeelhouer van die maatskappy of 'n persoon wat 'n belang in die aandeel van die maatskappy het, sterf of ophou om aan 'n vereiste genoem in item 2, te voldoen, gaan sy boedel of die betrokke persoon, na gelang van die geval, voort om die betrokke aandeel of belang te hou vir 'n tydperk van ses maande vanaf die datum waarop hy te sterwe kom of ophou om aldus te voldoen of vir die langer tydperk wat die Suid-Afrikaanse Geneeskundige en Tandheelkundige Raad (hierna die Raad genoem) goedkeur.
5. 'n Aandeel beoog in item 4 bring geen stemreg mee nie en 'n aandeelhouer daarin genoem, tree nie as 'n direkteur van die maatskappy op of ontvang nie regstreeks of onregstreeks, direkteursgelde of vergoeding of deel nie in die inkomste van of winste verwerf deur die maatskappy nie.
6. Slegs 'n gevolmagtigde wat 'n aandeelhouer van die maatskappy is, mag op 'n vergadering van die maatskappy names 'n aandeelhouer teenwoordig wees, praat of stem.
7. Elke aandeelhouer mag slegs die beroep ten opsigte waarvan hy ingevolge die Wet geregistreer is, beoefen.
8. Elke aandeelhouer bly persoonlik onderworpe aan die bepalinge van die Wet en die tugbevoegdheid van die Raad.
9. Geen persoon, hetsy 'n natuurlike persoon of 'n regspersoon, mag regstreeks of onregstreeks op enige wyse hoegenaamd in die winste of inkomste van die maatskappy deel of 'n belang daarin hê nie tensy hy 'n aandeelhouer van die maatskappy is.
10. Indien die maatskappy te eniger tyd versuim of nalaat om aan enige van die voorwaardes in hierdie Bylae te voldoen, stel dit optrede van die kant van die direkteure en die aandeelhouers daar ten opsigte waarvan die Raad tugstappe kan doen.

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HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

ESTABLISHMENT OF PRACTICES AND CLOSE CORPORATIONS

Practitioners who are registered with the Health Professions Council of South Africa may conduct their practices in the following manner:

- Solus practice
- Partnership
- Incorporated company (Exempted in terms of Section 54A of the Act)
- Association

It follows that a practice may not be conducted in any other form such as a close corporation or trust with so-called lay persons. They may not form any of the above entities with persons not registered with the Health Professions Council of South Africa.

However, a practitioner may form an entity to manage and administer the practices and/or to own assets used by the practice. In this sense the practice is renting services, such as administration, or property from that entity. Such an entity may be a close corporation which must be administered separate from the practice established to render patient related services.

Close corporations could, therefore, be utilised by practitioners registered with the Council to render non-patient related services. Non-patient related services include, amongst others, the renting of rooms, leasing of vehicles and office equipment, payment of staff salaries and maintenance of buildings.

It will be possible for practitioners to form a close corporation (or any other entity) with a clinic for purposes of owning the equipment in question. The close corporation may not operate the unit as that is regarded as conducting a practice. It may operate the unit in an ownership and administrative sense and rent the unit to the practitioner who wishes to utilise it.

Unfortunately no provision has been made for an entity, other than a hospital, to collect fees from patients for the use of equipment such as X-Ray units owned by the hospital (the one third principle). Therefore, the close corporation may not bill patients and must collect rent from practitioners utilising the unit. The practitioner has to bill the patient for the full amount to which he/she is entitled.

HEALTH PROFESSIONS ACT, 1974 (ACT 56 OF 1974)

Exemption from operation of provisions of Act

54A. (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.

[Sub-s. (1) substituted by s. 54 (a) of Act 89 of 1997.]

(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).

[Sub-s. (3) substituted by s. 54 (b) of Act 89 of 1997.]

[S. 54A inserted by s. 16 of Act 58 of 1992.]