

## Consumer legislation: implications for health practices

The Consumer Protection Act (CPA) and the regulations thereto came into effect on 1 April 2011. It applies to **all services** rendered by healthcare practitioners, as well as to the goods (medicines, devices, consumables, spectacles, etc.) recommended, prescribed or used by the practitioner (such as diagnostic tools or prostheses) when servicing a patient or client. All patients and clients are “consumers” in terms of the CPA.

The duties found in the CPA can be summarised as ensuring that all patients -

- receive honest and complete information on services and goods, as well as pricing,
- are allowed to make choices based on the information they received,
- enter into agreements that they understand,
- are informed of risks,
- receive clear instructions, and
- receive goods and services that are safe, of good quality and present good value.

To give effect to these duties, the CPA provides further guidance as to what healthcare professionals have to do. Some CPA requirements could affect the contracts one has in place with suppliers of equipment, and require one to critically look at the documents, forms and leaflets one has, and train staff, such as reception-, sales- and accounts staff on how to ensure CPA compliance.

The **first instance** where the CPA should be considered is in **marketing and advertising**. Even where another entity (such as a franchisor or a company managing the practice or health facility) takes charge of this, the specific practice could be in trouble if the marketing is found to be misleading or false (such as making promises on treatments, pricing, specific services or successes). Health practices should in any event also verify that all marketing is in line with, for example, the HPCSA rules on “making professional services known”.

The **second instance** where the CPA applies is when patients or clients **make an appointment**. The CPA requires services to be provided at the place, date and time as agreed. It is therefore important for reception staff to make it clear that practices may, for reasons beyond the professional’s control, run behind. It has to be made clear how such situations will be handled. Financial arrangements should also be set out up front. Reception staff can therefore say something along the lines of-

*“Ms Sebeko, your appoint is on Friday, 10 January at 15:00. If we run late, we will give you a call - what is your preferred number? Also remember that we normally charge a fee of Rx for this type of service, but that if other services are required when you are here, the dr/optometrist/physiotherapist will inform you. Remember to bring your debit card or cash - we do not submit accounts to medical schemes.”*

By doing this, the healthcare practice is also complying with the CPA by stating its fees and its billing policy. Some practices put their billing policy on a poster, on their website or on leaflets provided to patients when they come for their appointments.

The **third instance** is when the patient or client **visits the practice**. The consumer must be informed of the terms and conditions associated with the services that s/he is to receive. This often takes the form of the consumer having to complete a form with certain details, such as family members' details (often to be contacted if the account is in arrears), medical scheme details and some information on what would happen if the account is not paid. Other pieces of key information that should form part of the terms and conditions form are -

- The billing policy, including when payment has to be made and when and how legal action could be taken and that medical scheme reimbursement and provider fees may not necessarily be the same;
- Statements relating to the fact that healthcare is not an exact nature, that outcomes and successes may differ and be different to what patients may expect;
- That the patient should ask questions if they require more information or are concerned about anything;
- Contact details of bodies such as the Council for Medical Schemes and the National Consumer Commission;
- How the practice will deal with patient information, i.e. how privacy will be protected and specific formal consent forms if, for example, patient data is sold to third parties or if the patient's information will be used in ensuring reimbursement by a medical scheme;
- A statement that the patient has understood the terms and conditions.

Most important, the patient should get a copy of this form so that there are no disputes in future as to whether the patient knew about the terms and conditions. Where exact prices cannot be provided, a quotation should be provided to the patient before s/he consents. This quotation should make clear what factors could lead to the end-price being higher than quoted.

**Fourthly**, the right to fair and honest dealings in the CPA prohibits the use of coercion, force, pressure, etc. to get a consumer (patient) to accept any service or product. Professionals should therefore abide by the requirements of **informed consent**, i.e. provide the patient with the options, as well as the benefits, risks and costs of each, and allow the patient to make the decision based on the information that is provided.

With all of your documents (including leaflets and forms), the CPA requirement that all information should be in **plain language**, should be remembered. The documents, notices, etc. should not contain any terms or phrases that a normal person would not understand. Many documents currently being used in healthcare practices could do with a revision to remove all legal and medical jargon.

A **fifth** instance relates to circumstances where goods, or goods and services are **bundled**. Buy-one-get-one-free deals (e.g. buy a pair of spectacles and get a pair of sunglasses free) are a form of bundling, as are so-called "global fees" and designated service providers

(certain providers bundled with certain medical scheme options). In all these cases the practice should be able to justify the bundling as either convenient to the consumer, which convenience outweighs the limitation on choice, or be able to say that the goods and/or services give the patient an economic benefit, or provide the bundled goods separately as well.

In the **sixth instance** professionals who sell goods (such as prosthetics, supplements and/or medicines, spectacles and other health products / equipment) are at risk of patients / consumers demanding to return such goods and to receive refunds for such **returns**. All products should do what they promise to do, and if not, the consumer is entitled to return the product. Products should also be reasonably durable. It is therefore important to make sure that any promises made, are set within the context of, for example, correct use, patient choice, etc. Care should be taken where consumers react on direct marketing, as they do have the right to cancel the agreement within five business days. Where health regulations prohibit returns, the practice may refuse to accept a product for return. The CPA also gives suppliers a choice of either repairing or replacing the products. The CPA also allows suppliers to deduct for costs resulting from the use, misuse or abuse of a product by the consumer. Due to the many types of situations that can arise within different types of healthcare businesses, it is advisable that the practice adopts a returns policy relevant to its specific circumstances, in line with the various provisions of the CPA.

A **last** very important consideration relates to the quality and safety of products and equipment practices use and sell. The CPA creates so-called **“strict liability”** for any harm caused by such goods. Before buying, recommending or selling goods and equipment the practitioner should make sure that the goods are safe (e.g. that they comply with international- and/or local regulatory standards) and are of good quality. If an inferior product is prescribed, used or provided, the professional could be held legally liable with the manufacturer or importer of the product. Practitioners can ask suppliers to warrant that their products are CPA compliant.

It is also very important for practitioners to issue **clear instructions and warnings** and to correct misapprehensions. Where a patient takes a risk that is “unusual” or serious s/he should consent to it in writing and his/her attention must be drawn to the risk. Similarly, practitioners should ensure that patients use products- or care for them as instructed.

The contact details of the **National Consumer Commission** are:

**Tel:** 086 026 6786 **Fax:** 086 151 5229 **Email:** NNetshitomboni@thncc.co.za

Complaints can also be logged on-line at [www.nccsa.org.za](http://www.nccsa.org.za)



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*Should you require further assistance in: Reviewing / redrafting your policies, contracts and forms to be CPA-compliant; and/or Creating a CPA SOP (standard operating procedure); and/or Staff and group training sessions on the CPA, including case studies and “how to’s”; please contact EKC per email (at the top of this article). A cost estimate will be provided and has to be accepted before any work (e.g. telephonic consultations, advice, queries, review, drafting, etc.) will commence.*