



**South African Medical and Dental
HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA**
Ruling on **Sure-Slim Blood Tests**, JUNE 2001, page 51.

CONDUCT & ETHICS
UNDESIRABLE BUSINESS PRACTICE

As a result of the changing socio-economic environment in South Africa and its impact on the provision of health care in the country, the need arose for us to determine what may be regarded as undesirable business practices in the health-care sector in order to protect the public.

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SECTION H: ETHICAL RULES, RULINGS AND GUIDELINES ON CLINICAL PRACTICES, HEALTH CARE SERVICES AND HEALTH CARE STRUCTURE AND FEE ISSUES

1. CLINICAL PRACTICE ISSUES

ADMITTING PATIENTS FOR MAJOR SURGERY

3/1/4/25

The Health Professions Council of South Africa (HPCSA or the Council) is a statutory body, established in terms of the **Health Professions Act No. 56**. We are committed to serving and protecting the public and providing guidance to registered healthcare practitioners.

- b. ***if a health care funder decided to act contrary to such a decision, the health care funder had to be prepared to take full responsibility for that decision.***

MDB, Sept 1999, Item 36

3/1/4/25

RESOLVED that –

- a. in the motion proposed by Dr C M Krüger and seconded by Prof A A Stulting as adopted by the Board be noted (see above);
- b. ***the words “and other investigative procedures” be inserted between the expressions “surgery” and “be left” in paragraph a. in the above motion.***

Exec, Oct 2000, Item 55

3/1/4/25

Resulting from a report set out in MDB 36/March 2001, RESOLVED that the Alliance of Consulting Clinical Specialists be advised that, should a health care funder act as suggested in the following scenario's, such health care funder should be prepared to take full responsibility for its decision, namely –

- a. refusal of diagnostic aprocdures which a medical specialist deemed necessary and essential to establish a diagnosis so that appropriate therapy might be instituted;**
- b. refusal by the funder of appropriate treatment.**

MDB, March 2001, Item 43

ADVERTISING FOR TRIAL SUBJECTS

3/1/4/1

RESOLVED that –

- a. the information provided by the South African Medical Association as set out in MDB 33/March 2001 be noted;
- b. the view of the Association be supported, namely that ***the name of a medical practitioner or dentists should not appear in the advertisement for trial subjects, but that the particulars of a contact person should rather be given;***
- c. Mr B Volschenk be thanked for his input regarding the above matter.

MDB, March 2001, Item 41

ADVERTISING ON ELECTRONIC VIDEO BILLBOARDS

3/1/4/1

RESOLVED that –

- a. advertising on electronic video billboards was not permissible;**
- b. outside signs and nameplates may only be used in accordance with the guidelines as set out in the document entitled Guidelines for making professional service known (Booklet No. 5);**

- c. ***all future requests for rulings with regard to (or complaints about) advertising of professional services should be submitted to the Chairman of the Board for consideration and decision on behalf of the Executive Committee, for confirmation of the Chairman's action by the Committee at its next meeting.***

MDB, March 2001, Item 57

ADVERTISING PROFESSIONAL SERVICES
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RESOLVED that –

- a. the submissions by the South African Medical Association contained in MDB 29/Sept 1999 and MDB 58/Sept 1999 be noted;
- b. with regard to the request in MDB 58/Sept 1999, the Association be informed that –
- i. an anatomical structure was a structure that formed part of the body;*
- ii. a picture or drawing of a sprinting athlete was considered to be a picture or drawing of a human being and, therefore, not an anatomical structure;*
- c. ***the use of photographs in notifications was prohibited in terms of the guidelines;***
- d. the intention was to incorporate the guidelines into the “Ethical Rules” of the Board;
- e. the recommendations by the Executive Committee with regard to advertising professional services as set out in MDB 30/Sept 1999 be confirmed;
- f. the submissions contained in MDB 29/Sept 1999 and MDB 58 Sept 1999 be referred to the Executive Committee for consideration.

MDB, Sept 1999; Item 35

ADVERTISING PROFESSIONAL SERVICES IN AN UNETHICAL MANNER

Resulting from a letter dated 4 September 2000 by Dr M R de Villiers regarding transgression of the guidelines on advertising set out in MDB 107/Sept 2000 RESOLVED that –

- a. the matter be referred to the Senior Manager: Legal Services for possible further action, as the relevant advertisements were unacceptable;
- b. ***transgressions of the Ethical Rules and Rulings of the Board need not necessarily be submitted in the form of a complaint, but could be referred to the Chairperson of the Board or the Registrar to consider, submitting them in the form of complaints or submitting them to the Executive Committee for that purpose.***

MDB, Sept 2000, Item 99.6

ADVERTISING THE NAMES OF MEDICAL PRACTITIONERS WHO WERE WILLING TO TREAT HIV/AIDS PATIENTS

RESOLVED that –

- a. it was expected of all medical practitioners to treat HIV/AIDS patients;
- b. if for some reason, a practitioner was not in a position to treat a HIV/AIDS patient, that practitioner would be expected to refer the patient to a medical practitioner who was prepared to give the required treatment;
- c. advertising the names of medical practitioners who were willing to treat HIV/AIDS patients, however, was not permissible.

MDB, Sept 2000, Item 61

AIDS LAW PROJECT: COMPLAINT AGAINST THE HPCSA BY THE ALP

4/3/1

RESOLVED that –

- a. it be noted that –
 - i. the AIDS Law Project had lodged a complaint against the Board with the Public Protector alleging that the Board was neglecting its

statutory duty of ensuring that disciplinary action was taken against medical practitioners who breached the ethical rule on confidentiality between doctor and patient. Twenty eight cases were reported, but only one was referred for a Professional Conduct Inquiry;

- ii. the Registrar and Chairman of the Board appeared before the Public Protector and provided him with information pertaining to the cases at hand;
 - iii. the Public Protector was to inform the AIDS Law Project accordingly and would revert to the Registrar should further information be required;
 - iv. a report dated 19 July 2001 had now been received from the Office of the Public Protector set out in MDB 86/Sept 2001;
- b. having noted the report, the Board responded as follows:
- i. Medical practitioners and dentists were being educated by the Board on the matter of HIV/AIDS by means of the recently updated *Guidelines pertaining to the Management of Patients with HIV infection or AIDS* (Booklet No. 8);
 - ii. time frames to deal with matters of unprofessional conduct were set out in the *Regulations Relating to Conduct of Inquiries into Alleged Unprofessional Conduct*, recently promulgated under Government Notice No. R. 765 of 24 August 2001;
 - iii. records of the proceedings of Committees of Preliminary Inquiry were being kept by the Department: Legal Services;
 - iv. legislation to make it compulsory for medical practitioners to take out indemnity insurance, was a matter that fell outside the ambit of the Board;
 - v. the appointment of an Ombudsperson had been agreed to by the Board in September 2001 and such a person could fulfil the role of somebody to champion the cause of the complainant at the preliminary inquiry, until such time as alternative arrangements could be made, such as by way of the appointment of a lay screener, as was the case at the General Medical Council of the United Kingdom;

- vi a report by the South African Human Rights Commission pertaining to the complaints by the ALP referred to in the last recommendation by the Public Protector be awaited (see also Section I).

MDB, Sept 2001, Item 77

AUTOLOGUS BLOOD TRANSFUSION SERVICE: APPLICATION TO ESTABLISH: DR J G VOSTER

MP 0352 624

RESOLVED that –

- a. it be noted that –
 - i. this item was related to the issue of the scope of medicine (general practice);
 - ii. relevant documents by the Department of Health, the Chairman of the Board and the Registrar pertaining to the question of whether or not Dr Voster was permitted to establish an autologus blood transfusion service were contained in MDB 20/Sept 2001;
- b. at present, a general medical practitioner was permitted to perform any procedure in the field of medicine as long as he or she was competent to do so in terms of his or her education, training and experience;
- c. the Board, therefore, had no basis on which to decide that Dr Voster could not be involved in the establishment of a blood transfusion service;
- d. it should be noted, however, that a proposal by Profs C J C Nel and S Reid with regard to the development of a system of competency certification for general practitioners and specialists, had been approved in principle by the Executive Committee and had been referred to various stakeholders for consideration and input. If fully developed and implemented in time, that system would specify acts which may or may not be performed by general practitioners;
- e. it be recorded that Dr S J H Hendricks had objected to the resolution by the Board on behalf of the Department of Health in the light thereof that, in his view, it could create a situation whereby incompetent medical practitioners might become involved in the provision of a blood transfusion services and thereby endangering the lives of those who would unknowingly be using such a service.

MDB, Sept, 2001, Item 26

AVAILABILITY OF TOPICAL CORTISONE CREAMS IN SOUTH AFRICA WITHOUT PRESCRIPTION

RESOLVED that –

- a. the availability of topical cortisone creams in South Africa without prescription was a law enforcement issue and not an ethical issue;
- b. the Board was, however, in support of any effort to contribute to the education of people with regard to the destructive effect of topical cortisone creams on the skin;
- c. the matter be referred to the Department of Health for investigation and further action.

MDB, Sept 2000, Item 59

CHARTER OF PATIENTS' RIGHTS

3/1/5/39/1

RESOLVED that –

- a. it be noted that the Charter of Patients Rights had been launched by the Minister of Health in November 1999;
- b. it be noted that the Charter had been included in the *Handbook on Internship Training*;
- c. the Charter of Patients Rights was contained in MDB 62/March 2000. (It was subsequently published as Booklet 13 in the series on Guidelines for Good Practice).

MDB, March 2000, Item 45

CIRCUMCISION PROJECT: HERSCHEL AREA

3/1/5/39/1

RESOLVED that the resolution by the Executive Committee of December 2002 be amended as follows, namely –

- a. ***the Board did not pronounce on matters concerning traditional health activities;***
- b. ***any medical treatment or diagnostic or therapeutic intervention should only be conducted by suitably qualified persons under controlled conditions;***
- c. ***only a medical practitioner or dentist was permitted to prescribe, supply or administer any substance listed in Schedules V, VI or VII of the Medicines and Related Substances Control Act, 1965 (Act No 101 of 1965), after he or she had ascertained through a personal examination of the patient, or by virtue of a report by another practitioner under whose treatment the specific patient was or had been, and provided that he or she was satisfied that such prescription or supply was necessary for the treatment of the patient, except in the case of a repeat prescription for or the supply of such a substance in respect of a patient with a chronic illness.***

MDB, March 2003, Item 59

CLINICAL TRIALS BY MEDICAL PRACTITIONERS, DENTISTS AND MEDICAL SCIENTISTS: ETHICAL GUIDELINES
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3/1/4

RESOLVED that –

- a. the World Medical Association's Declaration of Helsinki on *Ethical Principles for Medical Research Involving Human Subjects* be adopted as the official guidelines of the Board with regard to medical research pertaining to human subjects;
- b. the following sources set out in MDB 73 to 75/Sept 2001 be endorsed by the Board as reference material with regard to medical research, namely –
 - i. Department of Health: *Guidelines for Good Practice in the Conduct of Clinical Trials in South Africa*;
 - ii. Ethical Rulings of the Board pertaining to research;

- iii. General Medical Council: Guidelines on Medical Research: *The Role and Responsibilities of Doctors.*

MDB, Sept 2001, Item 68

CODE OF CONDUCT OF THE NATIONAL PATHOLOGY GROUP
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3/1/4/25/4

After having met a delegation from the National Pathology Group, RESOLVED that –

- a. it be noted that the National Pathology Group had stated that it recognised the legal authority of the Board to take disciplinary action against medical practitioners who made themselves guilty of unprofessional conduct;
- b. the statement by the Group be noted that it did not intend to circumvent the legal authority of the Board and that the Group was willing to adjust its Code of Conduct accordingly;
- c. ***it be recorded that the Board held the view that a distinction should be made between peer review and passing of judgements;***
- d. ***the Board was in favour of a system of peer review whereby professional associations/societies would review the conduct of their members by means of self-regulation and guidance, but could not condone a system which had the intention to discipline members on the basis of disciplinary hearings and the passing of judgements;***
- e. ***professional associations/societies did not have the authority to impose and enforce disciplinary actions against their members;***
- f. ***only the Board had the statutory authority to investigate alleged unprofessional conduct by medical practitioners and dentists and to take disciplinary action in respect thereof***
- g. the Board could not prevent the National Pathology Group from implementing the disciplinary measures which it proposed, but the Board wished to record that it was not prepared to sanction such action by the Group.

MDB, Sept 2001, Item 73

CONSENT OF PATIENTS TO DIVULGE CONFIDENTIAL MEDICAL INFORMATION

3/1/4/16

RESOLVED that, after having debated the request by the General Manager of Nedcare for the wording of a proposed letter of consent to be signed by patients on admission to hospital –

- a. the proposed consent document marked MDB Exec 47/May 2001, was considered to be a blanket consent form and, therefore, not an acceptable format to obtain **informed consent** from a patient;
- b. ***informed consent was to be obtained from a patient for a specific procedure that was to be performed on the patient at a specific time.***

Exec, May 2001, Item 63

CORNEAL TOPOGRAPHY: PHOTOKERATOSCOPY

3/1/4/23

RESOLVED that –

- a. it be noted that –
 - i. the Executive Committee of the S A Medical and Dental Council resolved in September 1991 with regard to ultra-sound and X-ray examinations, that the Committee was of the opinion that a medical practitioner who made use of an ultra-sound or X-ray machine should hand over the slides together with a report to the patient after the examination had been completed or to keep them on record;
 - ii. in January 1992 the said Executive Committee resolved that it be recommended to Council that the resolution of September 1991 be amended to read that a medical practitioner who had done an ultra-sound or X-ray examination, should hand over the slides together with a report to the referring medical practitioner, should there be one, or to the patient after the examination had been completed or to keep the outcome of the examination on record;
- b. corneal topography slides or copies thereof together with a factual report regarding the treatment that the patient had thus far received, should on request be made available to the referring practitioner or to another

ophthalmologist if the patient decided to consult such ophthalmologist for a second opinion.

MDB, Sept 1999, Item 39

CRITICALLY ILL PATIENTS: ADMISSION/NON-ADMISSION TO HOSPITALS

3/1/5/1

RESOLVED that –

- a. it be noted that the Executive Committee of the Interim Council had –
 - i. placed on record that Council found it unacceptable that patients in critical need of attention were not admitted to public hospitals;
 - ii. the matter had been referred to the Department of Health and the Gauteng Health Department;
 - iii. Dr Nieuwoudt, who complained about the situation, had been advised that, should he furnish Council with the names of the practitioners on duty who had turned away patients as set out in his letter, the matter would be further dealt with;
- b. ***it be recorded that the Committee expressed grave concern about the possibility that critically ill patients may be refused essential treatment and eventually die as a result of a policy of the Gauteng Department of Health that patients may not be admitted to and treated by a hospital, if they were not coming from the referral area of that particular hospital;***
- c. it be pointed out that Council/the Board had a specific responsibility towards patients, patient care and the quality of such care;
- d. in view of the above, the Committee was of the opinion that the explanation contained in the letter dated 8 February 1999 which had been signed on behalf of the Superintendent-General, was in direct conflict with the basic ethics of the medical profession;
- e. the matter be referred –
 - i. to the Director-General of Health; and
 - ii. for the personal attention of the Superintendent-General of Health for comments.

Exec, May 1999, Item 37

3/1/5/1

RESOLVED that –

- a. the response of the Gauteng Department of Health with regard to the non-admission of critically ill patients set out in a letter dated 10 December 1999 be noted;
- b. ***a medical practitioner or dentist could be held professionally accountable for refusing for whatever reason to treat a patient in emergency circumstances;***
- c. ***should a critically ill patient, therefore, be referred to a medical practitioner or dentist for treatment, the welfare of such a patient should outweigh any policy decision regarding the treatment of patients by the State or any other health care employer agency and, thus, critically ill patients should appropriately be treated by the medical practitioner or dentist concerned.***

MDB, March 2000, Item 44

CRITICALLY ILL PATIENTS: AFTER HOURS SERVICES: PRACTITIONERS' RESPONSIBILITY

3/1/5/39/1

RESOLVED that it was not possible to provide guidelines for the handling of each and every situation/procedure in a hospital set-up, but the Board wished to record that –

- a. ***a medical practitioner or casualty officer who received a patient, would remain responsible for the safety and well-being of that patient until such time as the patient had been handed over into the care of another medical practitioner who had accepted responsibility for that patient;***
- b. ***a medical practitioner remained personally responsible for the care and treatment of his or her patients for as long as they required such care and treatment;***
- c. ***nevertheless, it was within the professional discretion of a medical practitioner to decide when to leave a patient for whom he or she***

was personally responsible, bearing in mind, however, that should such patient suffer unduly or die as a consequence, the practitioner concerned would be held professionally accountable for his or her actions;

- d. should a critically ill patient, therefore, be referred to a medical practitioner or dentist for treatment, the welfare of such a patient should outweigh any policy decision regarding the treatment of patients by the State or any other health care employer agency and, thus, critically ill patients should appropriately be treated by the medical practitioner or dentist concerned.***

MDB, Sept 2001, Item 62

DEATH CERTIFICATES: DISCLOSURE OF THE DIAGNOSIS OF AIDS
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3/1/5/4

RESOLVED that –

- a. the underlying cause of death should be stated on the death certificate of a deceased patient;***
- b. a death certificate should be completed correctly and comprehensively;***
- c. these resolutions be brought to the attention of the Department of Health and it be recommended to the Department that the existing form B1 16.63 that was used for notifying the cause of death, should be revised in such a manner that doctors would be given a separate means of notifying the cause of death and such information should go to the Department of Health and the Central Statistical Service only.

Exec, Aug 2001, Item 55

DENTAL TREATMENT OF MINORS

RESOLVED that –

- a. the Board would have no objection if authority were to be granted to medical practitioners and dentists to sign consent forms in the case of minors on behalf of the parents or guardian(s) of such minors;

- b. such authority was, however, to be obtained from and granted by the relevant authority in terms of the requirements of the *Child Care Act*, 1983, or other applicable legislation.

MDB, Sept 1999, Item 41

DIAGNOSES/CONDITIONS SPECIFIED ON PRESCRIPTIONS

3/1/4/29

RESOLVED that –

- a. the request by the South African Pharmacy Council for prescribers to specify diagnoses/conditions on prescriptions as set out in MDB 26/March 2000, be noted;
- b. *the proposed practice would be unethical and could, therefore, not be agreed to.***

MDB, March 2000, Item 43

DIGITAL AND ELECTRONIC SIGNATURES BY HEALTH CARE PROFESSIONALS

3/1/5/23

RESOLVED that the resolution by the Executive Committee of December 2002 be confirmed, namely that, on the basis of the legal opinion presented by the Registrar, it be recorded that ***the use of digital and electronic signatures by medical practitioners, dentists and medical scientists would, in terms of the provisions of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), be permissible.***

MDB, March 2003, Item 60

DISPENSING MEDICINES TO NON-MEDICAL AID SCHEME PATIENTS BY PACKAGE DEAL

3/1/4/29

RESOLVED that –

- a. a letter dated 8 November 2002 by Drs J W Banks and M J Stander contained in MDB Exec 29/Dec 2002 be noted;
- b. Drs Banks and Stander be informed that medicine could only be dispensed on the basis of the guidelines of the Board pertaining to the dispensing of medicine as set out in MDB Exec 29A/Dec 2002;
- c. on promulgation of the *Medicines and Related Substances Control Amendment Bill, 2002*, the dispensing of medicine would have to be conducted in terms of the provisions of that Bill/Act.

Exec, Dec 2002, Item 35

DOCTOR SEARCH FACILITY ON WEBSITE: MEDI-CLINIC

3/1/426/2

RESOLVED that –

- a. the response by Medi-Clinic be noted with regard to the concerns expressed by the Committee and its undertaking to advise medical practitioners with links to Medi-Clinic's website that their individual websites should conform to the guidelines of the Board with regard to making known professional services;
- b. Medi-Clinic be thanked for its willingness to adjust its websites to be in line with the guidelines of the Board.

MDB, March 2001, Item 58

EMERGENCY TREATMENT OF PATIENTS

RESOLVED that –

- a. it be recorded that ***a medical practitioner or casualty officer who received such a patient, would remain responsible for the safety and well-being of that patient until such time as the patient had been handed over into the care of another medical practitioner who had accepted responsibility for that patient;***
- b. each hospital should develop its own protocol(s) to deal with the emergency treatment of patients in its unique circumstances.

MDB, Sept 1999, Item 38

FACILITATED INTERNET CONSULTATION SYSTEM

3/14/25/3

RESOLVED that –

- a. it be recorded that it would not be permissible for a medical practitioner or dentist to prescribe or supply any substance listed in Schedule 5, 6 or 7 of the *Medicines and Related Substances Control Act*, 1965, unless he or she had ascertained through a personal examination of the patient, or by virtue of a report by another practitioner under whose treatment the specific patient was or had been, that such prescription or supply was necessary for the treatment of the patient, except in the case of a repeat prescription for or the supply of such a substance in respect of a patient with a chronic illness;
- b. Dr V I Koekemoer be advised that ***an internet consultation system with a facilitator (WebCamMed) was not permissible;***
- c. disciplinary steps would be instituted against practitioners who were involved in such a service;
- d. clear guidelines to be compiled for the rendering of services via the internet by medical practitioners;
- e. the involvement of the internet system in the rendering of medical services could severely compromise patient care in South Africa;
- f. the draft guidelines of the Federation of State Medical Boards of the United States on the appropriate use of the internet in medical practice as set out in MDB Exec 38/Aug 2002 be referred to the Committee for General Practice to consider adapting those guidelines to suit the requirements of the Board (see Section J, Annexure 6).

Exec, Aug 2002, Item 62

FOREIGN DATA BASE

3/1/4/16

RESOLVED that it be recorded that the Board would have no objection if medical practitioners were to share the medical profiles of patients in the protected system of an organisation based in Rome, with the proviso that such medical

profiles were stored and accessed with the informed consent of the patients concerned and that all medical practitioners in South Africa would have equal opportunity to participate fully in the system.

MDB, Sept 2002, Item 73

FULL PARTICULARS/MOTIVATION TO BE GIVEN FOR X-RAY EXAMINATIONS AND OTHER PROCEDURES
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3/1/4/23

RESOLVED that –

- a. it was accepted medical practice that the clinical history of a patient be made available to a diagnostic radiologist on request;
- b. it was furthermore considered normal practice for health care professionals to willingly be subject to peer reviews;
- c. clinical evaluations should be done by suitably qualified medical practitioners with the informed consent of the patient and with due regard to patient confidentiality.

Exec, May 2001, Item 59

GOOD PRACTICE IN MEDICINE, DENTISTRY AND MEDICAL SCIENCES: GUIDELINES
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3/1/4

RESOLVED that –

- a. the above resolutions by the Committee for Human Rights, Ethics and Professional Practice be confirmed, namely that –
 - i. the General Ethical Guidelines for doctors, dentists, as well as medical scientists and health researchers be approved;
 - ii. the Chairperson of the Board be requested to draft the “Message from the Medical and Dental Professions Board” for inclusion in the guidelines (Booklet 1);

- iii. the Registrar be asked to arrange a press conference in order to publicise the existence of the said guidelines to stakeholders and the public;
 - iv. Mr Rode, Senior Manager, Professional Boards: Group A, be asked to attend to arrangements pertaining to publishing the guidelines;
 - v. it be recommended to the Executive Committee that the Department: Information Technology be asked to investigate the possibility of adding an online question and answer section to the website of the HPCSA;
- b. the manner and format in which to publish the *Guidelines on Good Practice in Medicine, Dentistry and Medical Sciences* and those for Health Researchers, as well as the relevant issue specific booklets to be decided upon by the Registrar in liaison with the Chairman of the Board, the Chairperson of the Committee for Human Rights, Ethics and Professional Practice and the Senior Manager: Professional Boards: Group A, who was in the process of compiling relevant guidelines for distribution to newly registered medical practitioners, dentists and medical scientists (subsequently published as the *Handbook: Guidelines for Good and Ethical Practice in Medicine, Dentistry and Medical Sciences*);
 - c. the guidelines and booklets to be clearly numbered and dated in order to ensure that it would be possible to make a distinction between “old” and “updated” or “new” versions of the booklets;
 - d. a detailed breakdown in respect of the cost relating to the publication of the booklets to be available at the March 2002 meeting of the Board;
 - e. a press statement at the appropriate time to be released in the above regard;
 - f. it be noted that copies of all the Booklets that had been compiled to date were handed to members during the meeting;
 - g. members to submit appropriate comments in respect of the Booklets to Mr Rode for further handling.

MDB, March 2002, Item 62

HIV/AIDS AND CHILDBIRTH

3/1/4

RESOLVED that –

- a. correspondence regarding the above matter set out in MDB 65/Sept 2002, be noted, as well as inputs received from Dr F Randerer and Profs Y Veriava, L H Becker and M R de Villiers, a summary of which was also set out in MDB 65/Sept 2002;
- b. it be noted that the issue at hand related to an obstetrician who “accidentally” performed an HIV test on a pregnant patient which proved to be positive. The patient, when subsequently asked whether she wanted to know her HIV status, responded negatively;
- c. MacRoberts Attorneys be referred to the Board’s *Guidelines on the Management of Patients with HIV infection or AIDS*.

MDB, Sept 2002, Item 70

HIV/AIDS COMPUTER NETWORK IN SOUTH AFRICA: INTEGRATED MEDICAL/SCIENTIFIC NETWORK

3/1/4

RESOLVED that –

- a. it be noted that details of the integrated medical/scientific HIV/AIDS computer network in South Africa were set out in MDB 68/Sept 2002;
- b. involvement by the Board in systems of whatever nature fell outside of the mandate of the Board, since the Board was not involved in the practical aspects of medicine, but that the major function of the Board was to regulate the professions of medicine, dentistry and medical science in terms of registration and educational requirements, as well as matters of ethical and professional conduct.

MDB, Sept 2002, Item 74

HIV/AIDS: SCIENTIFIC EVIDENCE OF THE CAUSE AND APPROPRIATE CLINICAL TREATMENT OF: SUPPORT BY THE BOARD

2/5/3

RESOLVED that the following motion proposed by Prof J P van Niekerk and seconded by Prof J F Klopper pertaining to a media statement in the above regard be adopted:

“In view of speculations which may have arisen out of recent reports in the media, the Medical and Dental Professions Board re-states its support of the scientific evidence pertaining to the cause and appropriate treatment of HIV/AIDS. The Board does not support the views of the so-called ‘dissidents’”.

MDB, March 2002, Item 50

HIV INFECTION OR AIDS: GUIDELINES FOR THE MANAGEMENT OF PATIENTS

3/1/5/4

RESOLVED that –

- a. the resolution by the Executive Committee to amend the said guidelines and to obtain comments thereon from various stakeholders be confirmed;
- b. the guidelines be referred to the HPCSA in order to be referred to other Professional Boards for consideration and possible adoption;
- c. they also be displayed on the Website of the HPCSA, if it had not already been done.

MDB, Sept 2001, Item 60

HIV: MOTHER-TO-CHILD TRANSMISSION – AZT

3/1/4

Resulting from a recommendation by the Committee for Human Rights, Ethics and Professional Practice, subsequently agreed to by the Management Committee and the Executive Committee, the Board –

- a. confirmed the resolutions by the Executive Committee in the above regard;
- b. noted that a draft media statement as set out in MDB 29/March 2002 regarding the outcome of the Workshop on HIV/AIDS which had as yet not been released to the media by the HPCSA;
- c. considered the following motion which was proposed by Prof M R Price and seconded by Prof J P van Niekerk, namely that –
 - i. the HIV/AIDS pandemic in South Africa be noted, and also the urgent need for a coordinated national response;
 - ii. it was the Medical and Dental Professions Board's mandate to advise the Minister of Health on medical and health care matters;**
 - iii. it was also the duty of the Board to give advice and guidance to members of the professions for which the Board provided;**
 - iv. the discussions and recommendations of the *Workshop on HIV/AIDS: Human Rights Challenges* which was held by the Health Professions Council of South Africa on 7 February 2002, be noted;
- d. in view of the above, it be RESOLVED that –
 - i. this Board recognised the positive policies and efforts of the Department of Health with regard to the holistic approach to the problem and its focus on prevention and the promotion of care for HIV/AIDS victims. The Board, furthermore, urged medical and dental practitioners to support the Government in such approaches and urged the Department of Health to strengthen the infrastructure and resources for caring for people infected and those affected by HIV/AIDS, in particular the care of orphans;
 - ii. the Board wished to advise medical practitioners and dentists of South Africa that the Board unequivocally supported the use of Nevirapine for preventing mother-to-child transmission and the use of anti-retroviral treatment for survivors of rape and sexual assault. The Board would seek a meeting with the Minister to discuss its intended directives to the members of the professions, the implications thereof for State employed doctors and to urge the Department of Health to make these treatments immediately available to all such patients and victims;**

- iii. a Task Group be appointed by the Board to investigate the two cases of doctors recently disciplined by Provincial Departments of Health for supporting the treatment of HIV positive pregnant women and rape survivors, to establish whether that entailed inappropriate interference by the State as employer in those medical practitioners' duties to their patients. Depending on the outcome of that investigation, the Bard should provide support to those and other practitioners who were placed in serve ethical conflict situations as a result of official policies which were in conflict with and against their professional duty to provide available treatment in the best interests to their patients. The Board would engage the Minister of Health on ways and means of dealing with such issues in future.

MDB, March 2002, Item 58

HIV POSITIVE PATIENTS AND HIV TESTING PRIOR TO MAJOR BLOOD TRANSFUSION: PROPOSED PROTOCOLS FOR HANDLING
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3/1/5/4

RESOLVED that –

- a. the Professional Board's *Guidelines for the Management of Patients with HIV infection or AIDS* were ethically and legally binding and based upon internationally accepted standards of good practice;
- b. *infection control procedures, aimed at minimising the risk of infection, should be practiced at all times, with special reference to the statement in the Guidelines that "health care workers and patients are exposed not only to HIV infection, but also to Hepatitis B which poses a far greater risk";***
- c. *the guiding principle in all surgery should always be to serve the best interests of and achieve the best outcomes for the patient, regardless of HIV infection. Thus, if the patient had an opportunistic infection that might complicate or adversely affect surgery, a postponement could be countenanced;***
- d. it was clearly stated in the South African Constitution that all people had a right of access to health care services and that "no one may be refused emergency medical treatment";

- e. the proposals by Dr J J Viljoen, as reflected in MDB 64 to 67/Sept 2001, concerning confidentiality would have the effect of stigmatising people with HIV and making people afraid to utilise public health services.

MDB, Sept 2001, Item 61

HIV: PROHIBITION ON TESTING: REQUEST THAT THE BOARD'S POSITION BE CLARIFIED

3/1/5/4

RESOLVED that it be recorded that the Committee was in support of the view that the testing of HIV/AIDS patients could only be conducted with the informed consent of the patients concerned. (However, also see the resolution on emergencies such as needle stick injuries.)

Exec, May 2001, Item 41

HIV/AIDS: PUBLIC CONTROVERSY

RESOLVED that –

- a. an interview with the Minister of Health be requested to obtain mutual clarification on the different viewpoints expressed on the causes of AIDS;
- b. the Management Committee of the Board be mandated to meet with the Minister.

MDB, Sept 2000, Item 99.5

HIV TESTING IN CASES OF NEEDLE STICK INJURIES

3/1/5/4

RESOLVED that –

- a. the following questions by Dr L I Robertson be noted, namely –
 - i. whether, in the case of a needle stick injury during surgery, a blood sample could be drawn from the patient in order to

determine as rapidly as possible whether such patient was HIV positive; or

- ii. whether the responsible doctor(s) should wait for the full recovery of the patient and then to pre-counsel the patient in the hope that he or she would give permission for the drawing of a blood sample;
- b. it be noted that, according to Dr Robertson, it would be unreasonable to tell the practitioners concerned to start anti-retroviral therapy straight away as the drug had severe side-effects. Even if the patient was negative, there was still the window period to be concerned about;
- c. ***a blood sample could be drawn from a patient while he or she was anaesthetised;***
- d. ***when the patient was awake he or she should be informed that a needle stick injury had occurred and that a blood sample had been drawn for the purpose of managing the injury;***
- e. ***if the patient wanted an HIV test to be done, another blood sample should be drawn and the whole process repeated.***

Exec, Aug 2001, Item 50

HIV TESTING KITS: CATEGORIES OF PROFESSIONALS WHO MAY LEGALLY PERFORM SUCH TESTING

3/1/4

RESOLVED that it be recorded ***that screening tests could be done by qualified nursing personnel, appropriately trained counsellors and lay-counsellors under a programme which provided for supervision, subject thereto that the reading of such tests should only be undertaken by qualified and registered laboratory personnel in appropriately equipped laboratories.***

Exec, Oct 2002, Item 31

HUMAN MATERIAL FOR TEACHING PURPOSES AND EXTENDING SUCH SERVICE TO OTHER TEACHING INSTITUTIONS

RESOLVED that the Director of Pathology, University of Transkei, be informed that *it would be permissible to make slides of human material for teaching purposes and to make such slides available to other teaching and training institutions, provided that no financial gain was derived from such activity.*

MDB, Sept 2000, Item 51

HUMAN ORGANS AND BLOOD: TRADING IN

3/1/4/25/3

RESOLVED that, with reference to the letter dated 1 October 1999 (see MDB 40/March 2000) Ms M Slabbert be advised that the official viewpoint of the Board with regard to matters such as trade in human organs and blood was to abide by the laws of the Country.

MDB, March 2000, Item 51

HUMAN ORGANS: RETENTION WITH INFORMED CONSENT ONLY

3/1/4/25/4

After having noted the recommendation that it would be considered unprofessional conduct for a medical practitioner or dentist to divulge verbally or in writing any information which ought not to be divulged regarding the ailments of a patient or to retain the organs of such a patient during an autopsy, except with the prior expressed and informed consent of the patient or, in the case of a minor, with the informed consent of his or her parent or guardian or, in the case of a deceased patient, with the informed consent of his or her next-of-kin or the executor of his or her estate, the Board RESOLVED that the recommendation be confirmed in principle, but that it be referred back to the Executive Committee of the Board for the purpose of redrafting the wording pertaining to the provision of informed consent in retaining the organs of a patient during an autopsy.

MDB, Sept 2001, Item 59

3/1/4/25/4

RESOLVED that the resolution pertaining to the retention of human organs during an autopsy be reworded as follows:

“A practitioner shall retain the organs of a deceased person during an autopsy only for research, educational or training purposes and with the express written consent of the patient, given by him or her during his or her lifetime, or, in the case of a minor under the age of 14 years, with the written consent of his or her parent or guardian, or, in the case of a deceased patient who had not previously given such written consent, with the written consent of his or her next-of-kin or the executor of his or her estate.”

MDB, March 2002, Item 54

ILLEGIBLE HANDWRITING OF MEDICAL PRACTITIONERS

RESOLVED that in future it be required of medical practitioners and dentists for identification purposes, that their initials and surnames should appear in block letters next to their signature on all prescriptions, medical certificates, as well as hospital and other reports regarding patient care.

MDB, Sept 1999, Item 34

INFORMATION: RELEASE TO THIRD PARTIES SUCH AS EMPLOYERS, INSURANCE COMPANIES OR LAWYERS

3/1/4/16

RESOLVED that it was not permissible for a medical practitioner or dentist to divulge any confidential and privileged information to a third party, except with the express consent of the patient or, in the case of a minor under the age of 14 years, with the written consent of his or her parent or guardian or, 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.

Exec, May 2001, Item 64

INSTALLING CLOSE CIRCUIT TV CAMERAS IN A SURGERY

3/1/4

RESOLVED that –

- a. a letter dated 17 April 2002 by Dr F J Kotze of Westering Medicross, be noted in which he asked for a ruling on whether it would be permissible to install close circuit TV cameras in surgeries in an effort to prevent burglaries, which had occurred on many occasions during the past number of years;
- b. ***it would be permissible to install close circuit TV cameras in medical and dental surgeries, provided that –***
 - i. ***the cameras would not be directed at examination areas;***
 - ii. ***the cameras should be fixed in such a manner that the privacy of the patients was protected at all times;***
 - iii. ***all patients should be informed accordingly.***

MDB, Sept 2002, Item 77

INTERNET AND E-MAIL PRESCRIPTIONS

3/1/4/290

RESOLVED that, in view of MDB 37/March 2001 –

- a. ***no medical practitioner or dentist may issue a prescription, unless he or she had ascertained through a personal examination of the patient, or by virtue of a report by another practitioner under whose treatment the specific patient was or had been, that such prescription or supply was necessary for the treatment of the patient, except in the case of a repeat prescription for, or the supply of a substance in respect of a patient with a chronic illness;***
- b. ***only prescriptions issued by a medical practitioner or dentist registered in terms of the Health Professions Act, 1974, may be recognised as valid for dispensing purposes;***
- c. this matter be referred to the Dispensing Practitioners Association for consideration and comment;

- d. the Executive Committee of Council be asked to also refer this matter to the Forum of Statutory Health Councils for consideration and a recommendation.

MDB, March 2001, Item 44

ISSUING OF SICK CERTIFICATES BY PHARMACISTS

RESOLVED that –

- a. ***the Board held the view that only sick certificates issued by medical practitioners or dentists registered in terms of Act No. 56 of 1974, were to be recognised;***
- b. it was the prerogative of the recipient of a sick certificate to accept or not to accept such certificate;
- c. the Board could not express a view on the legality or validity of sick certificates issued by health care professionals registered with other Councils or Boards;
- d. pharmacists were not considered by the Board to be adequately qualified to issue sick certificates in the case of many of the identified conditions (i.e. conditions specified by the pharmacy authorities);
- e. ***sick certificates should be issued on the basis of a proper medical examination and diagnosis of the patient's condition and not on the mere observation of the patient;***
- f. the debate between the Board and the Pharmacy Council on the issuing of sick certificates be re-opened;
- g. it be recommended to Council that, with regard to the recommendation in subparagraph f, the matter be referred to the Forum of Statutory Health Councils for debate and input.

MDB, Sept 2000, Item 64

MANAGEMENT OF HEALTH CARE WASTE BY MEDICAL PRACTITIONERS, DENTISTS AND MEDICAL SCIENTISTS: GUIDELINES

3/1/4

RESOLVED that –

- a. ***the proposed guidelines pertaining to the management of health care waste be adopted;***
- b. an article on the safe disposal of health care waste set out in MDB 27/March 2002 be published in the *South African Medical Journal*, as well as in *MedicDent News*;
- c. the said guidelines were now to be regarded as the official guidelines of the Board on health care waste management;
- d. it be noted that these guidelines were contained in Booklet 6 in the series on *Good Practice in Medicine, Dentistry and Medical Sciences*.

MDB, March 2002, Item 55

MEDICAL AID SCHEMES ACTING CONTRARY TO PRESCRIPTIONS AND ADVICE OF MEDICAL PRACTITIONERS IN RESPECT OF TREATMENT OF PATIENTS

3/1/4/25

RESOLVED that –

- a. it be noted that –
 - i. ***the decision as to when a patient should be admitted for elective surgery should be left to the discretion of the doctor concerned, subject to peer review norms;***
 - ii. if a health care funder decided to act contrary to paragraph i., such health care funder had to be prepared to take full responsibility for that decision;
- b. a request by the Alliance of Consulting Clinical Specialists had been received for a ruling as to whether the resolutions in paragraph i. were also applicable to –
 - i. diagnostic procedures which a medical specialist deemed necessary and essential to establish a diagnosis so that appropriate therapy may be instituted;
 - ii. refusal of treatment by the funder;

- c. in a letter dated 11 February 2002, the Board was asked whether the above resolutions would also be applicable in respect of the decision by Goldfields Health Services that only generic equivalent medication may be prescribed by medical practitioners and that prior authorisation should be obtained in the case of the prescription of all other medication;
- d. ***should a health care funder act contrary to the scenario's set out in paragraphs b.i. and ii., such health care funder would have to be prepared to take full responsibility for that decision;***
- c. ***it be confirmed that the above resolutions would also be applicable in respect of the decision by Goldfields Health Services.***

MDB, Sept 2002, Item 71

MAKING MEDICAL REPORTS AVAILABLE FOR EMPLOYMENT PURPOSES TO PROSPECTIVE EMPLOYERS
--

RESOLVED that the following resolution by the Interim Council of February 1995 regarding the responsibility of medical practitioners and dentists pertaining to the disclosure of information be confirmed:

“Council regards the maintenance of confidentiality as a cornerstone in the doctor/patient relationship, which confidentiality may only be breached in circumstances where the good of the community on reasoned grounds outweighs the good of the individual. In the event that an ailment of a patient becomes known to a practitioner and the nature thereof is such that the practitioner is of the opinion that this knowledge is information that ought to be divulged in the interest of the public at large, such information may be divulged. However, every effort should first be made by the practitioner to persuade the patient to agree to disclosure or, where appropriate, to be transferred to some other occupation where he or she would not endanger the lives of others. If the patient cannot be persuaded and the practitioner decides in good faith and on reasonable grounds that his or her duty to the community outweighs that to the patient and that the information should be divulged, it is unlikely that Council would hold the practitioner accountable should a charge, allegation or complaint be received.”

MDB, Sept 2000, Item 63

**MEDICAL RESEARCH: THE ROLE AND RESPONSIBILITIES OF DOCTORS:
GENERAL MEDICAL COUNCIL GUIDELINES**

3/1/4

RESOLVED that –

- a. a letter be addressed to the General Medical Council (GMC) expressing the Board's appreciation for the document contained in MDB 72/Sept 2001 and informing the said Council that the document would be used by the Board as a source of reference with regard to medical research;
- b. the General Medical Council's guidelines on *Medical Research: The Role and Responsibilities of Doctors* be adopted by the Board as a source of reference with regard to medical research.

MDB, Sept 2001, Item 67

**MEDICAL THERAPIST: USE OF THE TERM BY A GENERAL MEDICAL
PRACTITIONER**

3/1/4/3

RESOLVED that –

- a. the request by MacRobert Inc. for a ruling on the use of the term "Medical Therapist" by a general medical practitioner set out in MDB Exec 79/April 2000 be noted;
- b. ***the said firm be informed that the use of the term "Medical Therapist" by a general medical practitioner was not permissible.***

Exec, April 2000, Item 52

MEDICAL VIDEOS

RESOLVED that it be recorded that ***the making of medical and dental videos and their screening for educational purposes on the internet would be permissible on the following conditions:***

- a. ***Such videos be available for viewing only to medical and dental practitioners.***

b. Permission be obtained from the patient concerned prior to the making and screening of such videos.

c. The patient be impossible to identify.

MDB, Sept 1999, Item 40

MINI-LAPAROTOMY UNDER LOCAL ANAESTHESIA IN SOUTH AFRICA

3/1/4/25/3

RESOLVED that –

a. the Board would have no objection to the performance of a mini-laparotomy under local anaesthesia, provided that such procedure only be performed by well qualified and competent health care professionals;

d. the Deans of Faculties of Medicine/Health Sciences be informed of the ruling of the Board in a.

MDB, March 2000, Item 46

MINIMUM REQUIREMENTS FOR MEDICAL PERSONNEL TO PERFORM CAESARIAN SECTIONS INDEPENDENTLY

RESOLVED that –

a. this matter be referred back to the Executive Committee for re-consideration in view thereof that *the approach by the College of Obstetricians and Gynaecologists to set minimum requirements for the independent performance of caesarian sections was supported;*

b. the proposed minimum requirement of performing 15 caesarean sections under supervision prior to performing caesarean sections independently be supported;

c. the President: College of Obstetricians and Gynaecologists, be advised of the resolution in paragraphs a. and b. above and that the Board appreciated the fact that guidelines had been compiled for medical personnel to perform caesarian sections independently;

d. a small Committee to be appointed by the Executive Committee for the purpose of clearly defining the competencies required to perform

specific procedures (eventually leading to the Technical Committee initially chaired by Prof C J C Nel).

MDB, Sept 2000, Item 54

MUSCULOSKELETAL ULTRASOUND PRACTICE BY “UNQUALIFIED” GENERAL MEDICAL PRACTITIONERS

RESOLVED that Prof J W Brighton be advised that the Board was in the process of drafting policies for minimum requirements/competencies to perform particular procedures (the Technical Committee referred to in the previous paragraph).

MDB, Sept 2000, Item 55

NON-MEDICALLY QUALIFIED REPRESENTATIVES IN THEATRE DURING SURGERY

RESOLVED that the recommendation by the Executive Committee with regard to non-medically qualified representatives in theatre during surgery be confirmed, namely that the resolution by the Interim Council, as amended, be adopted as follows:

Non-medically qualified representatives of companies marketing sophisticated equipment for use during surgery may attend during surgery to offer advice on the use and monitoring of equipment: Provided that –

- a. the presence of such a representative was the responsibility of the surgeon, anaesthetist, or theatre assistant, depending on the nature of the service to be rendered and the field in which the representative would be working;***
- b. the assistance of such representatives would be limited to the assembly or disassembly of instrumentation;***
- c. the patient’s consent was obtained and recorded in writing beforehand.***

MDB, Sept 1999, Item 37

OPHTHALMIC MEDICAL OFFICERS/OPHTHALMOLOGISTS ADMINISTERING LOCAL ANAESTHETICS WITHOUT SUPERVISION OF AN ANAESTHESIOLOGIST: LEGAL POSITION

3/1/4/29/2

RESOLVED that –

- a. ***it was permissible for ophthalmic medical officers or ophthalmologists to administer a local anaesthetic without supervision of an anaesthesiologist;***
- b. Prof A A Stulting be advised of the above ruling.

MDB, March 2000, Item 50

ORTHODONTIC TREATMENT: SUSPENSION DUE TO NON-PAYMENT OF ACCOUNTS

RESOLVED that Prof S J P Nel be informed that –

- a. ***a medical practitioner or dentist had the right to refuse treatment to a patient, but he or she could be held professionally accountable should that patient unduly suffer or die due to his or her refusal to treat the patient concerned;***
- b. possible complications of interrupted treatment, especially of a child, should be fully explained to the patient or parent;
- c. a doctor may consider legal remedy to encourage a patient to pay his or her outstanding account, but the consequence of such action should be fully explained to the patient;
- d. ***a medical practitioner or dentist may under no circumstances refuse to treat a patient in an emergency.***

MDB, Sept 2000, Item 56

OVERTIME DUTIES BY HEALTH CARE WORKERS/PRACTITIONERS

3/1/4/14/2

RESOLVED that –

- a. it was the considered opinion of the Board that overtime duties of medical health care workers/practitioners was a labour relations matter between the relevant employer and employees;**
- b. the Board could not be seen to intervene in the domestic affairs of another Statutory Body, except when patient care was compromised;**
- c. it be pointed out, however, that a medical practitioner remained personally responsible for the care and treatment of his or her patients for as long as they required such care and treatment;**
- d. it was within the professional responsibility and discretion of a medical practitioner to decide when to leave a patient for whom he or she was personally responsible, bearing in mind, however that should such a patient suffer unduly or die as a consequence, the practitioner concerned would be held professionally accountable for his or her actions.**

MDB, March 2000, Item 55

PATHOLOGISTS: REFUSAL TO HAND TEST RESULTS TO PATIENTS

RESOLVED that –

- a. pathologists should exercise discretion in deciding whether test results or reports should be made available to any person other than the referring doctor and that the ethical rules on confidentiality should serve as guiding principles;
- b. Rule 16 of the Ethical Rules promulgated on 3 December 1976 (Government Notice No. R. 4478) stipulated that it would constitute an act in respect of which the Board might take disciplinary steps, should a medical practitioner or dentist divulge information regarding a patient which ought not to be divulged, except with the express consent of the patient or, in the case of a minor under the age of 14 years, with the written consent of his or her next-of-kin or the executor of his or her estate.

MDB, Sept 2000, Item 62

PATHOLOGY: SELF-REFERRAL OF PATIENTS FOR TESTING AND MANAGEMENT

3/1/4/25/4

RESOLVED that, in view of questions raised in MDB 64/Sept 2002, the National Pathology Group be informed that –

- a. pathology or other tests on a patient could only be performed if such patient was referred to a specific medical practitioner for that purpose, indicating the specific tests that were to be undertaken;
- b. the results of tests that were to be undertaken in respect of a patient at the request of a specific medical practitioner, whether in writing or verbally, should be referred back to that practitioner and should not be given to the patient.

MDB, Sept 2002, Item 69

PATIENT RECORDS: KEEPING OF

In the case of Dr S Ismail, it was RESOLVED that the recommendations by the Professional Conduct Committee as to the finding be adopted and he be found not guilty in respect of subparagraphs 2 and 4 of count 15 of the charge, but that ***statutory regulations were to be promulgated by the Board with regard to the keeping by practitioners of proper records and/or copies of sick-leave certificates.***

MDB, Sept 1999, Item 53.1.8

PATIENT RECORDS: KEEPING OF: GUIDELINES FOR GOOD PRACTICE: BOOKLET 11

3/1/4

RESOLVED that the guidelines on the keeping of patient records (Booklet 11) as amended by the Committee for Human Rights, Ethics and Professional Practice, be agreed to, but be referred back to that Committee and also to the Department of Health, the South African Medical and Dental Associations, the Hospital Association and the Hospice Association of South Africa for the purpose of providing inputs pertaining to the following matters:

- a. With reference to paragraph 7.1 of the guidelines, what would be the case where a practitioner was for one or other reason not capable of retaining patient records. Should such records be destroyed or be handed over to the patients concerned for safe keeping.
- b. Should such records be handed over to patients for safe keeping, what steps should be taken by the practitioner concerned to ensure that he or she would have easy access to the said patient records in cases of an emergency or when the medical practitioner was taken to court by the patient who was in possession of his or her medical records.
- c. Should a practitioner close down his or her practice for whatever reasons, who should be informed about such closing down – all patients or only established patients, excluding new patients.
- d. In what manner should patients be informed about the closing down of a practice – by personal letters to their postal addresses or would a notice in the local newspaper be sufficient.
- e. With reference to paragraph 7.2 of the guidelines, in what manner should patients have access to files that were kept by public and private hospitals.
- f. With reference to paragraph 8.1 of the guidelines, should the phrase “of age 16 years and older” not read “of age 14 years and older”.

Exec, Dec 2002, Item 42

PATIENT RECORDS: RETENTION BY BLOOD TRANSFUSION SERVICES

RESOLVED that the Blood Transfusion Service be informed that the proposed guidelines which were submitted as MDB 4/Sept 2000 were acceptable, but that a special confidentiality clause would have to be inserted with regard to sensitive information which could involve patients such as HIV positive patients.

MDB, Sept 2000, Item 52

PATIENT RECORDS: RETENTION ON COMPUTER DISC

3/1/4/16

RESOLVED that the proposed guidelines for the retention of the patient's records on CD as amended by the South Africa Dental Association in MDB 68/Sept 2001, be adopted with the following addition, namely that –

- a. ***confidential patient information could be transferred to computer disc;***
- b. ***effective safeguards against unauthorised use or retransmission of confidential patient information to be assured before such information was entered onto computer disc – the right of the patient to privacy, security and confidentiality should be protected at all times.***

MDB, Sept 2001, Item 64

POINT OF SERVICE PATHOLOGY LABORATORIES: PROPOSED GUIDELINES

2/2/2

RESOLVED that –

- a. a verbal report by the Chairman be noted that the Executive Committee of Council in November 2002, resolved as follows regarding the above matter, namely that –
 - i. Prof L H Becker and Prof J V Van der Merwe be appointed to formulate a policy on undesirable business practices by registered persons;
 - ii. the draft guidelines to be submitted to all relevant groups and stakeholders for consideration and input;
 - ii. the responses to be considered at a meeting with all the stakeholders / interested parties;
 - iv. the following Council members be nominated to represent Council during the discussions with the stakeholders / interested parties:

Prof L H Becker
Dr V I McCusker

Prof Y K Seedat
Mr S Kriel
Prof N Padayachee
Prof J V van der Merwe

- v. the final draft guidelines to be submitted to Council for consideration and decision;
- b. having noted the above resolutions by Council and the comments by the South African Medical Association and the National Pathology Group, the guidelines pertaining to point of service pathology laboratories as set out in MDB Exec 30/Dec 2002 be approved in principle, but also be referred to Profs L H Becker and J V van der Merwe for consideration and input in terms of their mandate to formulate a policy on unacceptable business practices by registered persons.

Exec, Dec 2002, Item 36

PRE-HOSPITAL EMERGENCY MEDICAL CARE SERVICES

1/2/10

RESOLVED that –

- a. the comments by Prof I D Couper with regard to the proposed *Regulations on Pre-Hospital Emergency Medical Care Services* as set out in MDB 71/Sept 2003 be noted;
- b. with regard to regulation 5(h), it be brought to the attention of the Department of Health that the policy of the Board with regard to a situation where the issue of assumption of control and responsibility for a patient arose, was that –
 - i. in the event of an emergency, a medical practitioner automatically assumed control and responsibility of the patient;
 - ii. when a practitioner had taken over a case, he or she should inform the emergency personnel present at the scene of his or her intention to do so and accordingly identify himself or herself;
 - iii. emergency care personnel should introduce themselves to a medical practitioner present at an accident scene by means of their identifying emblems;

- iv ambulance personnel would be obliged to carry out the written instructions of a medical practitioner regarding medical treatment;
 - v. the patient had to be taken to a specific medical facility on the written instructions of the medical practitioner;
 - vi. in the absence of a medical practitioner, the patient should be taken to the nearest appropriate medical facility;
 - vii. the prescribed forms were to be completed;
- c. the resolutions under paragraph b.i. to vii, first be submitted to the Professional Board for Emergency Care Practitioners to determine whether that Board was in agreement with the contents thereof;
 - d. that comments be forwarded to the Department of Health for the attention of Mr Fuhri (member of the said Board and responsible for emergency services at the Department of Health).

MDB, Sept 2002, Item 76

PRESCRIBING AND DISPENSING BY GENERAL MEDICAL PRACTITIONERS
--

RESOLVED that Dr J A van Zyl be informed that –

- a. dispensing of medicine should occur in terms of the official guidelines set out in MDB 47/Sept 2000;
- b. a medical practitioner or dentist could only prescribe medicine under his or her own name;
- c. it was permissible for general practitioners to prescribe and dispense medicine on the prescription of a specialist, (provided they were in the same practice) (words in brackets were rescinded);
- d. it be published in *Meddent News* that a general practitioner could dispense medicine on the prescription of a specialist, provided the prescription was for a *bona fide* patient of that general practitioner;
- e. the matter be referred back to the Executive Committee in the light of section 52(1)(a) of the *Health Professions Act, 1974*;
- f. this ruling be referred to the Board of Healthcare Funders.

MDB, Sept 2000, Item 57

3/1/4/29/1

RESOLVED that, with reference to the Board's resolution of September 2000, the comments by Dr C M Krüger be noted and the phrase, "...provided they were in the same practice" in paragraph a. be deleted, should such deletion be in line with the legal requirements for the dispensing of medicine.

MDB, March 2001, Item 59

PRESCRIBING OF MEDICINES BY PODIATRISTS

The Board -

- a. NOTED that –
 - i. the Executive Committee of Council in August 2003 NOTED –
 - aa. the contents of HPC Exec 35/Aug 2003 (now MDB 57/Sept 2003);
 - bb. a concern regarding the education and training received by podiatrists;
 - cc. that the scope of the profession should be defined by Council;
 - ii. the Committee then RESOLVED that –
 - aa. the matter be referred to the Medical and Dental Professions Board for an opinion, as well as to the South African Pharmacy Council;
 - bb. Council should establish whether there were Councils in other countries who had done the same;
 - cc. a thorough motivation be obtained from the relevant Professional Board;
- b. RESOLVED that the matter be referred to the Executive Committee for consideration.

MDB, Sept 2003, Item 69

PRESCRIPTION RIGHTS FOR PSYCHOLOGISTS
--

RESOLVED that –

- a. the Board was in agreement with the Society of Psychiatrists of South Africa that the prescription of high (powerful) scheduled drugs by non-medically qualified persons such as psychologists, would endanger the lives of patients;
- b. the *Medicines and Related Substances Control Act, 1965* (Act No. 101 of 1965), be obtained and submitted to Council;
- c. this matter be referred to Council for consideration and decision;
- d. the matter of a crash course to train non-medically qualified health care professionals in Psychopharmacology on the internet to enable such persons to prescribe scheduled drugs, be referred to the Forum of Statutory Health Councils for consideration and decision;
- e. Council be asked to facilitate a meeting between a delegation of this Board and the Professional Board for Psychology with a view to arriving at a mutually acceptable agreement between the two Boards.

MDB, Sept 1999, Item 45

3/1/4/29

RESOLVED to refer the memorandum and proposals as set out in MDB 38-39/ March 2001, to the Society of Psychiatrists of South Africa and to the Committee for General Practice for their professional opinions, whereafter the matter would be further considered.

MDB, March 2001, Item 45

3/1/4/29

RESOLVED that –

- a. it be noted that the Executive Committee in February 2002 –

- i. expressed the views that –
 - aa. legislation had been promulgated whereby provision was made for professions registered in terms of the *Health Professions Act, 1974* (Act No. 56 of 1974), to prescribe and dispense medicine, subject to obtaining a license from the Department of Health and on the successful completion of an examination to be set by the South African Pharmacy Council;
 - bb. no provision was made in section 37 of Act No. 56 of 1974 that prescription rights be given to psychologists. However, such prescription rights had allegedly now been given to psychologists in terms of the Regulations relating to the *Medicines and Related Substances Control Act, 1965*, (Act No. 101 of 1965);
 - cc. in the light thereof that no prescription rights were given to psychologists in terms of the *Health Professions Act, 1974*, (Act No. 56 of 1974), the question was raised whether it was legally sound that such rights be given to psychologists by draft Regulation (i.e. Regulations made under the *Medicines and Related Substances Control Act, 1965*);
 - dd. should prescription rights be granted to psychologists, the question arose whether such rights should not be limited to a level that would not cause the lives of patients to be endangered due to a lack of clinical knowledge;
 - ee. according to a verbal report by the Registrar, discussions were underway with the appropriate authorities to consider amending Act No. 101 of 1965, in order to make provision that medical practitioners and dentists would be examined by the Medical and Dental Professions Board for the purpose of dispensing medicine;
- ii. resolved that –
 - aa. the previous resolution by the Executive Committee adopted in October 2001 be reaffirmed, namely ***that it was still the considered opinion of the Board that limited prescription rights should not be given to psychologists since patient safety could be compromised and that this view be conveyed to the HPCSA and the Department of Health;***

- bb. this matter and the relevant documents pertaining to prescription rights to psychologists be urgently referred to Prof T Zabow to provide the Board on behalf of the Association of Psychiatrists of South Africa, with a further professional opinion with special reference to the issues raised by members of the Executive Committee;
- b. the above resolutions by the Executive Committee be confirmed;
- c. a verbal report by Adv P Coppin be noted, namely that the *Medicines and Related Substance Control Amendment Act, 1965*, had been put on hold and that it might even be repealed;
- d. Adv Coppin be asked to provide the Secretariat with full information pertaining to the statement in c. above;
- e. the Chairman to obtain a further legal opinion regarding the granting of prescription rights to psychologists.

MDB, March 2002, Item 49

3/1/4/29

NOTED that the application by the Professional Board for Psychology was defeated by 22 to 14 votes in a vote by closed ballot, with one abstention during the meeting of Council in November 2002.

MDB, March 2003, item 58

PRESCRIPTIONS: HANDWRITTEN AND TYPED TO BE ALLOWED FOR SPECIFIC TYPES OF MEDICINE
--

3/1/4/29

RESOLVED that the following ethical rule be adopted:

- a. ***A practitioner shall be allowed to issue typewritten, computer-generated and pre-typed, pre-printed or standardised prescriptions up to and including schedule IV medicine, subject thereto that such prescriptions were issued only under the personal and original signature of the medical practitioner or dentist concerned.***

- b. Prescriptions above schedule IV medicine shall be issued in written format and under the personal and original signature of the medical practitioner or dentist concerned.**

MDB, March 2002, Item 51

PRINCIPAL FIELD OF INTEREST ON STATIONERY: MANNER TO INDICATE

3/14/1

RESOLVED that Dr B C Botha, with reference to his request, be advised that the examples of indicating a special field of interest on stationery which he submitted (see MDB 30-31/March 2001), would not be permissible in view of the fact that the impression was being created that he was registered as a specialist in occupational medicine.

MDB, March 2001, Item 40

PSYCHOMETRIC TESTING

18/11/B

RESOLVED that, with reference to its enquiry, the Professional Board for Psychology be informed that –

- a. psychometric testing was not part of the competence which medical practitioners obtained during their undergraduate and postgraduate education and training;
- b. a separate Register was, therefore, not kept of practitioners who might have acquired such competencies by some other means;
- c. the Board would, however, also refer the matter to the Society of Psychiatrists of South Africa to determine whether that Society kept a record of medical practitioners who might be involved in psychometric testing;
- d. the matter would also be brought to the attention of practitioners via the forthcoming issue of *MedicDent News*.

Exec, Oct 2002, Item 30

PSYCHOSOCIAL REHABILITATION OF PERSONS AFFECTED BY MENTAL DISABILITY: POLICY GUIDELINES: DRAFT 4

3/1/4/25/3

RESOLVED that –

- a. the policy guidelines for psychosocial rehabilitation of persons affected by mental disability contained in MDB Exec 9/Aug 2002 be supported and endorsed by the Board;*
- b. the Board supported a comprehensive biopsyo-social approach to rehabilitation as the preferred approach to patient care.*

Exec, Aug 2002, Item 69

RECRUITING OF DOCTORS BY E-MAIL TO PARTICIPATE IN PHARMACEUTIAL RESEARCH VIA THE INTERNET

3/1/4

RESOLVED that *e-mail recruiting of doctors to participate in pharmaceutical research via the internet would be permissible on condition that –*

- a. the clinical trials pertaining to the research project to be undertaken had been passed by an academically recognised Research Ethics Committee;*
- b. only health care professionals with demonstrated research capabilities should be recruited to conduct the required research;*
- c. the researchers recruited would be held accountable for anything that could go wrong during the research due to unethical behaviour on their part.*

MDB, Sept 2001, Item 65

REFRESHMENT STATIONS IN WAITING ROOMS

3/4/1

Resulting from a request by Dr R van Wyk, **RESOLVED** that *setting up a refreshment station in the waiting room of a medical practitioner or dentist*

would be permissible with the proviso that the said facility should only be available to the patients of that medical practitioner or dentist and not to the public at large.

Exec, May 2001, Item 70

REPORTING BY HEALTH CARE PROFESSIONALS TO THE POLICE ON ASSAULTS OR OTHER CRIMINAL ACTS
--

RESOLVED that –

- a. a medical practitioner or dentist could only report cases of assault or other criminal conduct to the police if the patient who was the victim of such assault or other criminal acts agreed to such report in view of the fact that the rights of the patient had to be respected;***
- b. it would, nevertheless, be expected of medical practitioners and dentists to also be guided by the stipulations of the Child Care Act, 1983, (Act No. 74 of 1983), and the Prevention of Domestic Violence Act, 1998, (Act No. 116 of 1998).***

MDB, Sept 2000, Item 53

RESEARCH, DEVELOPMENT AND USE OF CHEMICAL, BIOLOGICAL AND NUCLEAR CAPABILITIES OF THE STATE: A POLICY ON THE INVOLVEMENT OF MEDICAL PRACTITIONERS, DENTISTS AND MEDICAL SCIENTISTS

3/1/4/15

RESOLVED that –

- a. the September 1998 resolution by the Executive Committee of the Interim Council be confirmed, namely that the World Medical Association's Declaration on Chemical and Biological Weapons set out in MDB 71/Sept 2001 be adopted as the official guidelines of the Board with regard to the involvement of medical practitioners, dentists and medical scientists in the research, development and use of the chemical, biological and nuclear capabilities of the State;***
- b. any medical practitioner, dentist or medical scientist who was or who became involved in the relevant type of chemical and biological research in terms of the provisions of applicable international***

treaties and/or conventions to which South Africa is a signatory, should obtain prior permission from the Board to conduct such research, giving full particulars regarding the nature and scope of the envisaged research to be conducted and whether the clinical trials pertaining to that research had been passed by a recognised Research Ethics Committee;

- c. the Registrar to obtain and to study the TRC transcripts on Chemical and Biological Warfare to determine whether there were any grounds for laying a charge of unprofessional conduct in respect thereof against any particular medical practitioner, dentist or medical scientist or other professional registered with Council;
- d. should any grounds be found by the Registrar to lay a charge against any member of professions referred in c, the Registrar to also formulate the process to be followed for lodging such complaints;
- e. the Ethical Rules of the Board be amended in view of a. and b. above.

MDB, Sept, 2003, Item 66

RIFE RESONATOR BIO-ACTIVE FREQUENCY INSTRUMENT

3/1/4/25/3

RESOLVED that –

- a. Mr D Noome be informed that the Board had no evidence of the effectiveness of the said instrument as a method of treating diseases or other ailments;
- b. the matter also be referred to the relevant technology unit of the Department of Health for further attention.

MDB, March 2000, Item 49

SEXUAL OFFENCES AGAINST CHILDREN: REPORT BY THE HUMAN RIGHTS COMMISSION
--

3/1/4

RESOLVED that –

- a. the report on the inquiry by the South African Human Rights Commission into sexual offences against children set out in MDB 27/March 2003, be noted;
- b. the resolutions by the Executive Committee of December 2002 be confirmed, namely that –
 - i. the resolutions by the Committee for Continuing Professional Development, the Education and Registration Management Committee and the Committee for Human Rights, Ethics and Professional Practice, as minuted, be confirmed;
 - ii. the South African Human Rights Commission be informed accordingly;
 - iii. the Senior Manager: Public Relations and Service Delivery to urgently arrange for a media statement to be drafted and submitted to Prof Mariba, President of Council, for consideration and input, on the position of Council regarding the sexual abuse of women and children and to pertinently draw the attention of practitioners to their responsibilities pertaining to the treatment and care of all patients and, therefore, also those who were victims of sexual abuse.

MDB, March 2003, Item 39

SICK-LEAVE CERTIFICATES: DRAFT GUIDELINES SUBMITTED BY THE SOUTH AFRICAN SOCIETY OF OCCUPATIONAL MEDICINE
--

3/14/17

RESOLVED that a description of the illness, disorder or malady in layman's language may be provided by a medical practitioner or dentist on a medical certificate, but only with the informed consent of the patient. If a patient was not prepared to give consent, the medical practitioner or dentist should indicate that, in his or her opinion, based on examination, the patient was unfit for work.

MDB, Sept 2001, Item 63

SICK-LEAVE: PERIOD FOR WHICH A MEDICAL PRACTITIONER MAY BOOK A PATIENT OFF

RESOLVED that the firm MAN, as well as the South African Medical Association be informed that –

- a. ***it was within the discretion of a medical practitioner in view of his or her education, training and clinical experience to determine the period for which a patient under his or her care and treatment was to be granted sick leave and this would depend on the nature of the patient's illness or injury;***
- b. the Board was not in a position to pronounce on the legal position in terms of the relevant legislation as regards an employer accepting or refusing to accept a certificate of illness;
- c. ***nevertheless, the Board was of the opinion that an employer did have the right to refuse to accept a medical certificate where circumstances existed (whether of a medical or another nature) which justified such refusal. Naturally, such a refusal, involving the exercising of a discretion, had to be judicially exercised;***
- d. regard should also be had to the exact wording of such a certificate;
- e. if any employer was of the opinion that a registered person acted unprofessionally in any manner, that employer was at liberty to lodge a complaint against the specific person registered with the Board;
- f. ***this ruling was*** not in any manner intended to undermine the value of medical certificates, but rather ***to emphasise the need for responsible exercising of the duty to issue medical certificates.***

MDB, Sept 2000, Item 65

SUPPLEMENTARY COLON THERAPY PERFORMED SEPARATELY FROM AN EXISTING GENERAL PRACTICE

RESOLVED that Dr L H Boshoff be informed that –

- a. ***it was not permissible to give a descriptive name such as "Top Health" to a practice;***

- b. it was not permissible for a medical practitioner or dentist to employ a person not registered in terms of the Act to perform health related duties;**
- c. performing a supplementary procedure such as colon therapy concurrently with an existing practice was not permissible.**

MDB, Sept 2000, Item 58

SURE-SLIM BLOOD TESTS

3/1/4/25/3

RESOLVED that –

- a. it be noted that –
 - i. some members of the Bariatric Interest Group of the South African Society for the Study of Obesity, raised the following concerns, namely –
 - aa. the demand for compulsory blood tests before a prospective client could join **Sure-Slim**;
 - bb. that these blood tests were requested by “lay people”;
 - cc. that their *modus operandi* were contradictory to the proven, cost effective and traditional medical consultation model to determine the diagnosis, treatment and prognosis;
 - dd. concerning the blood test itself, a number of specific blood tests were needed to exclude co-morbidities (syndrome X) in the obese patient;
 - ee. the clinical examination would determine whether the other tests were indicated;
 - ii. full details were set out in MDB Exec 24/June 2001;
- b. the above procedure was not permissible in that a patient should first be examined by a medical practitioner before relevant tests could be requested;**

- c. ***a medical practitioner was not permitted to work in association with a non-medically qualified person or body as was the case in this instance;***
- d. ***the above views be conveyed to **Sure-Slim** and the said Society.***

Exec, June 2001, Item 32

SURGEONS: RESPONSIBILITY FOR CONTROL OF SPONGES, NEEDLES AND INSTRUMENTS DURING OPERATIONS: GUIDELINES

3/1/4/17/2

RESOLVED that –

- a. it be noted that the Association of Surgeons of South Africa advised in the above regard as follows:
 - i. ***The responsibility for counting and checking all instruments, needles and swabs at the start of a surgical procedure was that of the scrub sister who was taking the case.***
 - ii. ***At the completion of the operation, the correctness or otherwise of the instruments, needles and swab count was to be reported to the surgeon in charge.***
 - iii. ***The surgeon had to acknowledge the report and, if the count was reported as being incorrect, was to take all necessary measures to rectify the count, but did not bear responsibility for an incorrect count.***
- b. The above guidelines be agreed to with the provision that it be added that ***it was the responsibility of the surgeon to ensure that the counting and checking of all instruments, needles and swabs had been undertaken by the scrub sister at the start and conclusion of a surgical procedure.***

Exec, May 2001, Item 46

TELEPHONE DIAGNOSES BY NON-REGISTERED PERSONS EMPLOYED BY MEDICAL AID SCHEMES

3/1/4/16

In view of a meeting with Dr A Dasso, Chief Executive Officer, Board of Healthcare Funders (BHF) of South Africa, the Executive Committee –

- a. NOTED the following comments raised during the discussions, namely that –
 - i. it was the policy of the Board that –
 - aa. only a medical practitioner or dentist could make a telephone diagnosis and such practitioner could be held accountable for his or her actions;**
 - bb. a first consultation with a patient regarding a specific complaint where a diagnosis was to be made, could not be conducted telephonically, but required a physical examination of the patient;**
 - ii. there was agreement that administrative staff or even nurses were not suitably qualified to make clinical judgments on prescribed treatment, procedures and the authorisation thereof;
 - iii. it was the policy of the BHF that only appropriately qualified health care practitioners may give telephone pre-authorisation on the basis of clinical information received from the treating health care practitioner;
 - iv. in practice, it often happened that medical practitioners instructed their administrative staff to obtain pre-authorisation for particular treatment or procedures;
 - v. similarly, medical aid schemes often did not have appropriate health care practitioners available to consider applications for pre-authorisation;
- b. RESOLVED that –
 - i. the Committee was in agreement that a system of pre-authorisation was a necessary part of managed health care, but that the qualifications of the persons involved and the interaction between the treating practitioner and medical aid schemes needed serious review;**

- ii. guidelines be drafted by the Secretariat of the Board pertaining to pre-authorisation by medical aid schemes for the performance of prescribed treatment or procedures by medical practitioners and dentists.*

Exec, June 2000, Item 29

ULTRASOUND IMAGES AND RADIOGRAPHS: OWNERSHIP

3/1/4/23

RESOLVED that -

- a. the original radiographs/ultrasound images were the property of the medical practitioner or dentist concerned and could be retained by him or her, but that a copy thereof should be given to the patient or referring practitioner on request;
- b. the patient may be charged the appropriate fee for such copies.

Exec, Dec 2000, Item 45

RESOLVED that the recommendation by the Executive Committee of December 2000 be referred back to that Committee in order to consider whether those resolutions should not also be applicable to medical practitioners.

MDB, March 2001, Item 42

3/1/4/23

RESOLVED that –

- a. it be noted that the Executive Committee recommended that a previous resolution (of December 2000) of that Committee be reworded to read that –
 - i. the original ultrasound images or radiographs were the property of the medical practitioner or dentist concerned and may be retained by him or her, but that a copy thereof should be given to the patient or referring practitioner on request;
 - ii. the patient may be charged the appropriate fee for such copies;

- b. the above resolutions by the Executive Committee be referred back to that Committee for reconsideration in the light thereof that the Board was of the opinion that –
 - i. original radiographs or ultrasound images in respect of patients that came to see a medical practitioner should not be retained by that practitioner, but should be given to the patient concerned for safe keeping;
 - ii. the report by the diagnostic radiologist should be kept by the medical practitioner for future reference;
- c. ultrasound images or radiographs made by hospitals were and remained the property of the hospital;
- d. the Board raised the question whether or not there should exist a difference in this regard between the medical and dental practice.

MDB, March 2002, Item 47

3/1/4/23

The Board –

- a. NOTED the recommendations by the Committee for Human Rights, Ethics and Professional Practice and the Executive Committee; but
- b. RESOLVED that the Committee for Human Rights, Ethics and Professional Practice be requested to review the policy regarding the retention of radiographs since it appeared that, if patients of private practitioners had to pay for radiographs and be allowed to retain such records, the same principle should apply to private hospitals.

MDB, March 2003, Item 50

3/1/4/23

The Board –

- a. NOTED that –

- i. the Executive Committee in October 2001 RESOLVED that the resolution of the Executive Committee in December 2000 be reworded to read that –
 - aa. the original radiographs/ultrasound images were the property of the medical practitioner or dentist concerned and could be retained by him or her, but that a copy thereof should be given to the patient or referring practitioner on request;
 - bb. the patient could be charged the appropriate fee for such copies;
 - ii. the Board in March 2003 resolved that the Committee for Human Rights, Ethics and Professional Practice be asked to review the policy regarding the retention of radiographs, since it appeared that if patients had to pay for radiographs and be allowed to retain such records, the same principle should also apply to private hospitals;
 - iii. the Committee for Human Rights, Ethics and Professional Practice in May 2003 RESOLVED that it be recommended to the Board that the previous resolutions of the Executive Committee of October 2001 be confirmed;
- b. RESOLVED that it be confirmed that –
- i. in the case of public hospitals, where radiographs were the property of the hospital, such original radiographs/ultrasound images should be retained by the hospital or medical practitioner involved. Copies could, however, be made available to the patient or referring practitioner on request for which a fee could be charged;
 - ii. in cases where patients were required to pay for radiographs/ultrasound images (private patients/hospitals) such patients should be allowed to retain such records; unless the practitioner deemed it necessary to retain such records for purposes of monitoring treatment for a given period. Should the patient, however, require the radiographs/ultrasound images for any reason such as consulting with another practitioner, he or she should be allowed to obtain the original images.

MDB, Sept 2003, Item 51

VENESECTION: WHO MAY PERFORM

3/1/4/25/3

RESOLVED that Prof J J F Taljaard be advised that –

- a. the Board would have no objection if Venesections were to be performed by a qualified and experienced staff nurse;
- b. he should approach the South African Nursing Council to establish whether or not the performance of Venesection would form part of the scope of practice of a staff nurse.

MDB, March 2000, Item 48

**WITHHOLDING AND WITHDRAWING LIFE-PROLONGING TREATMENT:
GUIDELINES: BOOKLET 16**

3/1/4/25/3

RESOLVED that –

- a. the second draft of the proposed guidelines be approved with the amendment that a preface be compiled by Prof Veriava;
- b. the proposed guidelines be referred to the following stakeholders for consideration and input, namely –
 - i. the Department of Health;
 - ii. the South African Medical Association;
 - iii. the Hospital Association of South Africa;
 - iv. the Hospice Association of South Africa.

Exec, Dec 2002, Item 43

ZERO TOLERANCE OF THEFT OF PHARMACEUTICALS

3/1/4/29

In view of the request in MDB 35/March 2000, ***RESOLVED that it be recorded that the Board was in full support of a policy of zero tolerance with regard to the theft of pharmaceuticals.***

MDB, March 2000, Item 47

2. HEALTH CARE ISSUES

ACCOMMODATING EMERGENCY PATIENTS FOR SHORT PERIODS UNDER SUPERVISION IN A RURAL SURGERY FACILITY

RESOLVED that Dr R Barnard, with reference to his enquiry in MDB 60/Sept 2000, be informed that the Board would recommend to the Board of Healthcare Funders ***that it should be permissible for a medical practitioner or dentist in rural circumstances to accommodate patients in an emergency for a short period of time under supervision in a facility in the practitioner's surgery and to submit a medical aid claim in respect thereof.***

MDB, Sept, 2000, Item 67

ADVERTISING OF BREAKFAST CEREALS

RESOLVED that Dr A Dhansay be informed that participation in the manufacturing for commercial purposes, the sale, advertising or promotion of breakfast cereals, other related products or any other activity which amounted to "trading in" such products, was not permissible.

MDB, Sept 2000, Item 77

ADVERTISING ON ELECTRONIC VIDEO BILLBOARDS

3/1/4/1

In view of a request RESOLVED that –

- a. advertising on electronic video billboards was not permissible;***
- b. outside signs and nameplates may only be used in accordance with the guidelines as set out in the document entitled Guidelines for making professional service known (now Booklet No 5).***

MDB, March 2000, Item 57

ALLEGED UNETHICAL PROCEDURE FOLLOWED IN DISABILITY GRANT ASSESSMENTS

RESOLVED that –

- a. the Director-General: Department of Social Development be advised that, ***should a disability grant be recommended by a particular medical practitioner on the grounds of a physical examination and diagnosis of the patient concerned, such a recommendation should be upheld and should only be overturned by another medical practitioner in the employ of the Department of Social Development, if it was accompanied by substantiated reasons specific to the case based on a comprehensive and thorough evaluation;***
- b. the dual loyalties of medical practitioners in the employ of the Department of Social Development be referred for further attention to the Human Rights Group under the Chairmanship of Prof L London;
- c. the dual loyalties of medical practitioners in the employ of the Department of Social Development be referred to the Department of Health to provide those practitioners with appropriate training with regard to the ethical aspects of their roles and functions in the Department of Social Development;
- d. this matter be referred back to the Committee for Human Rights, Ethics and Professional Practice for discussion with the Director-General: Department of Social Development.

MDB, Sept 2000, Item 75

APRIL: HEALTH MONTH

NOTED that the theme for April Health Month 2003 had not yet been released by the Department of Health.

MDB, March 2003, Item 47

CANVASSING OF PATIENTS FROM ABROAD

3/1/4/1

RESOLVED that –

- a. the guidelines for the canvassing of patients from abroad set out in MDB 24/March 2000, be approved;
- b. an additional rule be added in order to provide that canvassing of patients from abroad should conform to the Board's guidelines for making professional services known and to the Ethical Rules of the Board.

MDB, March 200, Item 41

3/1/4/1

RESOLVED that –

- a. an additional rule be added to the guidelines for the canvassing of patients abroad, namely that such canvassing should conform to the Board's *Guidelines for Making Professional Services Known* and to the Ethical Rules of the Board;
- b. the amended guidelines be referred to the Director-General, Department of Health for consideration and comment.

Exec, April 2000, Item 56

3/1/4/1

RESOLVED that –

- a. the guidelines on the canvassing of patients from abroad be amended to indicate that –
 - i. ***it was not permissible for medical practitioners and dentists to become personally involved in the canvassing of patients, whether locally or from abroad;***
 - ii. ***in the event of patients being canvassed from abroad by private organisations or health providers, such canvassing should be undertaken on the basis of the guidelines set out in MDB Exec 15/Dec 2001 (see Booklet 12);***
- b. the matter also be referred to Council's Committee of Experts for consideration and input.

MDB, March 2002, Item 64

CHEMICAL AND BIOLOGICAL WARFARE

The following motion pertaining to biological and chemical warfare was proposed by Dr M B Kistnasamy and supported in principle by Dr D P Knobel, namely -

- a. the Board having noted –
 - i. the destabilising and devastating consequences of war and other conflicts on the health of populations;
 - ii. the involvement of health professionals (including medical scientists) in the development and use of offensive weapons capabilities, especially as it relates to biological and chemical weapons;
- b. RESOLVED to –
 - i. condemn the involvement of health professionals in such activities;
 - ii. investigate and consider relevant actions against those individuals who may be involved in such activities;
 - iii. develop a code of conduct to prevent such occurrences in future;
 - iv. provide guidelines for the involvement of health professionals (including medical scientists) in the development and use of defensive chemical and biological weapons capacity;
 - v. refer this matter to other relevant forums (professional associations, statutory bodies and government).

Resulting from the said motion, the Board RESOLVED that –

- a. the comments of members pertaining to the said motion, namely that –
 - i. the Board should pronounce on issues pertaining to biological and chemical warfare;
 - ii. the Board should bear the Declaration of the World Medical Association on Chemical and Biological Weapons in mind;
 - iii. any motion with regard to the matter of chemical and biological warfare should be worded in such a manner that it did not prevent the development and production of such capabilities for peaceful purposes;

- b. the motion with regard to chemical and biological weapons be referred to the Executive Committee for consideration and recommendation;
- c. Dr Knobel be asked to provide relevant documentation on chemical and biological weapons to the administration for the purpose of paragraph b. above;
- d. this matter be dealt with by the Board at its next meeting in view of paragraphs b. and c (see also Section I).

MDB, June 1999, Item 39.4

COMMUNITY SERVICE: PROTECTION OF PATIENTS IN TERMS OF THE QUALITY AND SAFETY OF HEALTH CARE
--

11/2/1

RESOLVED that –

- a. it be noted that a number of letters had been received from community service doctors, as well as representations from the Rural Doctors Association of South Africa (RUDASA), whilst members of various Committees of the Board expressed concern about what they viewed as a lack of adequate supervision of community service doctors as it seemed that those doctors were exposed to inadequate support and supervision by experienced practitioners;
- b. ***it had been submitted that, in as much as community service remained the responsibility of the Department of Health, where issues of patient care and quality of professional practice became an issue, the Board and the HPCSA could not argue that they were not involved. It then became an issue of public protection and the Board would be expected to ensure that structures and measures were in place to ensure protection of the public by means of quality and safe patient health care;***
- c. this matter be referred back to the Executive Committee of the Board to arrange an indaba with the Department of Health, RUDASA, the South African Medical Association, JUDASA and other relevant role-players in the field of health care provision with a view to finding acceptable ways and means of appropriately addressing and dealing with the concerns regarding the provision of proper health care services in rural areas and coping with the needs of community service practitioners, including the need for supervision by senior practitioners.

MDB, Sept 2002, Item 72

CRISES IN STAFFING OF RURAL HOSPITALS: POSITION PAPER BY THE RURAL DOCTORS ASSOCIATION OF SOUTH AFRICA (RUDASA)

3/1/5/39/1

RESOLVED that –

- a. the position paper by RUDASA as contained in MDB 25/March 2002 be noted;
- b. the position paper by RUDASA be brought to the attention of the Minister of Health;
- c. it be recommended to the Deans of Faculties of Medicine/Health Sciences that those practitioners who had served an extra three years in a rural or underserved area be given special consideration for specialist education and training posts as registrars, as they had been relatively disadvantaged by their willingness to offer their services away from major academic centers;
- d. a verbal report by Dr S J H Hendricks be noted that incentive packages would in future be offered by the Department of Health to medical practitioners who would be willing to work in rural hospitals, irrespective of whether they were in possession of foreign or South African qualifications;
- e. it be noted that no details had as yet been provided on the “incentive packages” to which reference was made.

MDB, March 2002, Item 53

EXPECTED LEVEL OF SERVICE TO BE RENDERED BY MEDICAL PRACTITIONERS AND DENTISTS AFTER HOURS AND DURING PUBLIC HOLIDAYS

RESOLVED that Dr M J Hartman –

- a. ***be informed that it was expected of a medical practitioner or dentist to have an after-hours service available for his or her patients and to arrange that his or her patients would be taken care of by a locum***

during his or her absence from practice or when he or she would be away on leave;

- b. be requested to give permission that his letter, without his name, be referred to the South African Dental Association for publication;
- c. the letter by Dr Hartman and the resolution of the Committee be referred to the South African Dental Association, for publication in the *SADJ*, when the required permission had been obtained.

MDB, Sept 2000, Item 74

FRESH BREATH CLINICS: ESTABLISHMENT IN SOUTH AFRICA
--

RESOLVED that –

- a. it was the view of the Board that all treatment modalities and scientific knowledge of disease treatment should be made available to all health care professionals and not only to a select few;
- b. in terms of the Ethical Rules of the Board, a medical practitioner or dentist may not be involved in the promotion of any health care product;
- c. the establishment of fresh breath clinics in South Africa was, therefore, not permissible.

MDB, Sept 2000, Item 76

HANDLING AND DISPOSAL OF HEALTH CARE WASTE: ILLEGAL DUMPING: CODE OF PRACTICE
--

RESOLVED that –

- a. concern be expressed regarding the increasing tendency amongst health care professionals in South Africa to dump health care waste illegally;
- b. ***it be recorded that it was the responsibility of all medical practitioners and dentists to have a health care waste management system in place or to have access to such a system;***
- c. a need existed for minimum requirements to be developed with regard to health care waste management;

- d. provincial health authorities be asked to inform private health care professionals in their jurisdiction about the fact that a health care waste system was in place, was accessible to those health care professionals and to provide the health care professionals concerned with the names of contact persons in regard thereto;
- e. the Professional Board for Environmental Health Practitioners be asked to assist in drafting appropriate guidelines for medical practitioners and dentists on health care waste management.

MDB, Sept 2000, Item 66

3/1/5/14

RESOLVED that the resolution by the Executive Committee to confirm the following resolution of the Committee for Human Rights, Ethics and Professional Practice be agreed to, namely that –

- a. the Standard SABS 0248:1998 would not be published in Booklet 6: *Guidelines for the Management of Health Care Waste*, but the Booklet would inform the practitioner about the different issues contained therein, and that the standard could be obtained from the SABS;
- b. Prof L London be proposed as a representative of the Board on the SABS Technical Committee responsible for revising the said Standard;
- c. the SABS be advised that Prof London, Vice Chairman of the Committee for Human Rights, Ethics and Professional Practice, was particularly suited to assist in view of his special interest in and knowledge of community, public and environmental health and professional ethics.

MDB, March 2003, Item 49

LICENCING OF PRIVATE MEDICAL PRACTICES

RESOLVED that this matter, raised by Dr M R de Villiers, be deferred until the next meeting of the Board.

MDB, Sept 1999, Item 54.3

LIMITING SCRIPT FRAUD IN SOUTH AFRICA: PROPOSAL

3/1/4/29

RESOLVED that –

- a. the proposal by Dr C Kapnias submitted in MDB 30/March 2003 be noted;
- b. to confirm that the Board did not wish to express an opinion regarding the proposal since the Board or Committees of the Board could not be seen to favour or endorse particular products or services of whatever nature in the open market.

MDB, March 2003, Item 48

MANAGED HEALTH CARE: DRAFT POLICY GUIDELINES

3/1/4/26/2

Resulting from a draft policy on Managed Health Care which served before Council and was approved as a working document, RESOLVED that –

- a. the resolutions by the Executive Committee be confirmed, namely that –
 - i. the inputs by the Management Committee be agreed to;
 - ii. Prof J F M Hugo, at his request, be asked to submit the draft Guidelines on Managed Health Care, which contained the inputs by the Management Committee, to the person who was considering the guidelines on behalf of the Committee for General Practice for consideration and input;
 - iii. the matter thereafter to be submitted to the next meeting of the Executive Committee of Council for consideration and decision;
- b. Prof M R Price to urgently provide Mr Rode, for the attention of the Chairman, with his written comments pertaining to the draft policy guidelines as set out in MDB 31/March 2002.

MDB, March 2002, Item 67

MULTI-DISCIPLINARY GROUP PRACTICES/THERAPEUTIC ALLIANCES

3/1/4/26/3

RESOLVED that the above matter be referred to Council with the recommendation that this was a matter to be considered further by the Forum of Statutory Health Councils with a view to adopting a position paper in respect thereof, which could then be referred to all Professional Boards of the HPCSA for consideration and input.

MDB, March 2002, Item 68

3/1/4/26/3

RESOLVED that –

- a. it be noted that in August 2002 the Executive Committee of Council RESOLVED that –
 - i. ***the Committee supported the principle of multi-disciplinary group practices/therapeutic alliances in order to provide for health care in the country;***
 - ii. the matter be submitted to Professional Boards for comment based on the resolution of the Interim Council of July 1996;
 - iii. the matter be submitted to Council for consideration during its next meeting;
- b. the Executive Committee be authorised to investigate all aspects pertaining to a system of multi-disciplinary group practices/therapeutic alliances, both positive and negative, and to make a recommendation in respect thereof to the Executive Committee of Council;
- c. Council be asked to delay a final decision on the matter until such time that a recommendation in respect thereof had been received from the Executive Committee of the Medical and Dental Professions Board.

MDB, Sept 2002, Item 80

NAMING OF GROUP PRACTICE

3/1/4/26/3

RESOLVED that Dr Gerhardt Smidt of NiteDoc be informed that, in terms of the Ethical Rules of the Board, ***a practitioner shall only use a name for a private practice –***

- a. ***which shall be his or her own name or the names of the registered persons with whom he or she was in partnership or with whom he or she practiced in the manner of a juristic person (as provided for in section 54A of the Act), and could retain the name of such a practice even if the original practitioner or practitioners, partner or partners, or members of a juristic person were no longer part of such a practice;***
- b. ***which did not include the expression “hospital” or “clinic” or any other special term which could create the impression that such a practice formed part of, or was in association with, a hospital, clinic or similar facility.***

Exec, Dec 2001, Item 41

PATHOLOGY LABORATORIES: ACCREDITATION

RESOLVED that –

- a. it be noted that the Executive Committee of the Interim Council had resolved that –
 - i. the agreement between the South African National Accreditation System (SANAS) and the interim National Medical and Dental Council in terms of which SANAS would be managing the accreditation of medical testing laboratories on behalf of Council, be signed by the President on behalf of Council;
 - ii. Prof J J F Taljaard be appointed as Council's representative on the South African Accreditation System (SANAS);
- b. a letter dated 18 May 1999 by Prof Taljaard regarding his continued representation of the Board on the Representative Advisory Accreditation Forum (RAAF) be noted;
- c. Prof Taljaard be re-appointed as the Board's representative on the Forum.

MDB, Sept 1999, Item 42

RESOLVED that –

- a. the report by Prof J J F Taljaard on medical laboratory accreditation in South Africa as set out in MDB 53/March 2001 be noted;
- b. Prof Taljaard –
 - i. be asked to keep the Board informed about further developments and progress pertaining to the accreditation of pathology laboratories in South Africa;
 - ii. be thanked for his contribution and assistance in this undertaking.

MDB, March 2001, Item 55

<p>POOR STATE OF SERVICE DELIVERY BY PROVINCIAL HOSPITALS: ALLEGED DETERIORATION IN THE QUALITY OF PATIENT TREATMENT AND CARE: TYGERBERG HOSPITAL</p>
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RESOLVED that –

- a. this matter be referred to the Department of Health for investigation and comment;
- b. the attention of the Department be drawn to the fact that –
 - i. in terms of the Constitution of the RSA and also the Patients' Rights Charter, a patient was entitled to affordable health care;*
 - ii. medical practitioners registered with Council had a duty to comply with the requirement of providing health care to patients;*
 - iii. a medical practitioner was placed in a very difficult and untenable position if he or she was forced to deny patients the opportunity to have access to health care.*

MDB, Sept 2000, Item 71

**POOR STATE OF SERVICE DELIVERY BY PROVINCIAL HOSPITALS:
FACILITIES FOR AND TREATMENT OF PSYCHIATRIC PATIENTS: THEMBA
HOSPITAL**

RESOLVED that –

- a. it be noted that in 1998 the Subcommittee for Internship Training -
 - i. expressed grave concern about the conditions under which psychiatric patients, who were seen to be a particularly vulnerable group amongst the consumers of health services, were being held and treated/managed;
 - ii. stated that the Subcommittee for Internship Training was increasingly highlighting matters relating to mental health issues and the protection of the patients suffering from mental ill health which fell within the Board's mandate to protect patient interests;
 - iii. suggested that it be considered setting up some process or structure within the Board that would begin to deal with human rights, patient privileges or patient rights issues and the violation thereof;
- b. the MEC for Health and Welfare, Mpumalanga Provincial Government be advised of the dismal conditions regarding care and management of psychiatric patients at Themba Hospital;
- c. the personal intervention by the MEC be enlisted to ensure that the said conditions at Themba Hospital be rectified;
- d. the said MEC be asked for comments and be advised that the next inspection at Themba Hospital would be held by the Board in the year 2000.

Exco, Aug 1999, Item 48

**POOR STATE OF SERVICE DELIVERY BY PROVINCIAL HOSPITALS:
GAUTENG**

In the case of the inquiry into the professional conduct of F van der Schyff,
RESOLVED that –

- a. it be noted that a reading of the record of the inquiry had revealed incidents and comments such as the following:
- i. There occurred significant delays in arranging for emergency transfer of a patient from a private practice to a state hospital due to the fact that a state ambulance at times could take almost *three hours* to arrive at the private practice concerned.
 - ii. Admission of referred patients into a state hospital could apparently at times be equally problematic, even to the point that a *terminally ill patient could be refused admission* into such hospital (pp 30 and 92).
 - iii. A critically ill patient could not receive the best treatment due to unavailability of a bed for that patient (p93).
 - iv. There was a perception amongst practitioners that it was easier or less cumbersome to get a patient admitted into a state hospital if such a patient could produce a referral letter from a specialist, which of course was not always a possible or affordable option to patients (p 137);
- b. the alleged inadequacy of provincial hospitals as referred to above be referred to the Superintendent-General, Department of Health, Gauteng Provincial Government for investigation, for further handling and comments.

Exec, Aug 1999, Item 65.2

POOR STATE OF SERVICE DELIVERY BY PROVINCIAL HOSPITALS: HELEN JOSEPH HOSPITAL
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In the case of the professional conduct of M Farooq, RESOLVED that –

- a. it be noted that –
- i. a patient with a history of diabetes, hypertension, gastric bleeding and with a blood pressure of 100/70 was apparently *discharged* from a state hospital *without adequate treatment* (p26);
 - ii. a patient was admitted to the trauma unit of J G Strydom (now Helen Joseph) Hospital and apparently left without medical care whilst he was *bleeding profusely* (p36);

- iii. even though the bleeding of the patient referred to in paragraph ii was reported to the doctor in charge, the patient was apparently discharged with the directive that he should only be brought back if he *bleeds continuously* to the extent where a pad was required (p 38);
 - iv. it was *impossible for interns to do a proper assessment* of a patient because they were working under constant pressure such as being in and out of theatre and having to learn to handle various emergencies and crises (p 107);
- b. the alleged poor state of service delivery at Provincial Hospitals be referred to the Superintendent-General, Department of Health, Gauteng Provincial Government for investigation, further handling and comments.

Exec, Aug 1999, Item 65.1

<p>POOR STATE OF SERVICE DELIVERY BY PROVINCIAL HOSPITALS: KWAMASHU POLI-CLINIC</p>
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RESOLVED that –

- a. it be noted from the inspection report marked MDB Exec 45/Aug 1999 that –
 - i. the environment in which this facility was situated was *particularly dangerous*;
 - ii. the quality of patient care was *totally inadequate* and *needed urgent attention*;
 - iii. *no doctors* could be traced *during the inspection*;
 - iv. *patients had to provide their own meals* due to complete absence of catering services;
- b. the Department of Health, Kwazulu-Natal, be advised of the above and its response be required urgently;
- c. the matter be referred to the MEC for Health of the Kwazulu-Natal Provincial Government for investigation and urgent comment;
- d. a copy of the letter to the MEC for Health *be referred to* Dr R W Green-Thompson for information.

Exec, Aug 1999, Item 47

POOR STATE OF SERVICE DELIVERY: DETERIORATING SITUATION IN TRAUMA UNITS IN SOUTH AFRICA: WORLD MEDICAL ASSOCIATION STATEMENT ON PATIENT ADVOCACY AND CONFIDENTIALITY

RESOLVED that –

- a. ***it be recorded that the Board was in agreement with and committed to the World Medical Association's Statement on Patient Advocacy and Confidentiality;***
- b. the Department of Health be informed that the Board –
 - i. was concerned about the deteriorating provision for health care delivery in South Africa as outlined in MDB 66/Sept 2000;
 - ii. appreciated the financial constraints experienced by health authorities in South Africa, but despite this fact, every possible step should be taken to improve the availability and quality of health care delivery in South African hospitals.

MDB, Sept 2000, Item 72

PROFESSIONAL SKILLS OF MEDICAL PRACTITIONERS IN DELIVERING DISTRICT HOSPITAL SERVICES IN THE WESTERN CAPE: RESEARCH REPORT

3/1/5/39/1

RESOLVED that –

- a. Prof M R de Villiers be congratulated on the report contained in MDB Exec 22/Aug 2002, which was considered to be well researched and containing very relevant recommendations on the professional skills of medical practitioners in delivering services in district hospitals in the Western Cape;
- b. the report to be referred to the Education and Registration Management Committee, the Subcommittee for Internship Training, the Subcommittee for Undergraduate Education and Training and the Deans of Faculties of Medicine/Health Sciences for consideration and appropriate action.

Exec, Aug 2002, Item 41

PROVISION OF X-RAY SERVICES/EMPLOYMENT OF A RADIOGRAPHER BY AN ORTHOPAEDIC SURGEON

3/1/4/23

RESOLVED that –

- a. the resolution by the Executive Committee be noted that Dr J R Domingo, with reference to his letter of 13 November 2001 (see MDB 30/March 2002), be advised that it would be permissible for him to provide X-ray services in his practice and for that purpose to have a radiographer in his employ, provided that such services would only be provided to his own patients; but
- b. the above resolution by the Executive Committee be not agreed to in the light thereof that –
 - i. there were radiographers in that area who could be required to provide X-ray services;
 - ii. Dr Domingo was not an expert in radiography/radiology.

MDB, March 2002, Item 59

SCOPE OF PRACTICE OF MEDICINE AND DENTISTRY: REVIEW

3/1/5/42

RESOLVED that –

- a. the recommendation by the *Ad Hoc* Committee regarding the development of the scope of the profession of medicine be confirmed, namely that –
 - i. during the process of defining the generic competencies of practitioners at different levels of their career (e.g. internship, general practice, family practice, specialist and subspecialist), as well as those competencies that could only be acquired by appropriate education and training during each of the above career levels, the scope of practice of the profession of medicine would clearly be identified;

- ii. a similar process as indicated above would have to be followed in respect of dentists in order that the scope of practice of that profession could also be identified;
- b. it be agreed that similar projects for the identification of the specific competencies of general practitioners and specialists in dentistry be undertaken, as well as the identification of the scope of the profession of dentistry;
- c. this matter also be referred to the Subcommittee for Postgraduate Education and Training (Dental) for consideration and appropriate action with special reference to the profession of dentistry.

MDB, March 2002, Item 66

3. HEALTH CARE STRUCTURE AND FEE ISSUES

APPLICATIONS TO BE EXEMPTED AS A JURISTIC PERSON FROM THE PROVISIONS OF SECTION 54A OF ACT NO. 56 OF 1974 IN ORDER TO PRACTISE A PROFESSION FOR WHICH REGISTRATION IN TERMS OF THE ACT WAS A REQUIREMENT

3/1/4/26/3

RESOLVED that –

- a. the applications to be exempted as a juristic person from the provisions of section 54A of Act No. 56 of 1974 in order to practice a profession for which registration in terms of the Act was a requirement as set out in MDB 40 to 42/March 2001 be approved;
- b. the applicants be advised that the above approval was subject to appropriate guidelines being developed and approved;
- c. the application for exemption under section 54A of Act No. 56 of 1974 be submitted to the Minister of Health for approval.

MDB, March 2001, Item 46

“BAD DEBT” PATIENTS: LISTING BY PRACTITIONERS

RESOLVED that –

- a. it be noted that the Executive Committee had resolved that –
 - i. the previous resolutions of the Interim Council regarding the listing of “bad debt” patients by practitioners registered in terms of Act No. 56 of 1974 be confirmed as follows:

“There was no objection to a practitioner subscribing (i.e. receiving on a regular basis upon payment or otherwise) to lists, published by any agency, of persons who represented a bad risk financially, in view thereof that a practitioner was free to decide to whom he wanted to render his services. A practitioner could, however, be called upon to justify his action in the event of unnecessary suffering or death resulting from his refusal to render help to a patient. A practitioner was

also obliged to render assistance under all circumstances in emergencies. However, it was only permissible for practitioners to furnish information on their own “bad debt” patients to agencies for inclusion in a list if such a list was intended solely for circulation amongst members of the practitioner’s own profession, since this could be regarded as being of inter-collegial interest and assistance”;

- ii. patients could, therefore, only be listed on a “closed user group” database at the request of a particular practitioner if such a list was intended solely for circulation amongst practitioners registered with Council;
 - iii. should a practitioner decide to list a “bad debt” patient on a “closed user group” database, such patient should be informed in writing of such action by the “listing agency” concerned;
 - iv. should there be a dispute between the practitioner and the patient concerned regarding an outstanding debt, such patient should not be listed until the dispute had first been settled;
- b. it be NOTED that the following comments were raised in the discussion of this matter, namely that –
- i. if patients were to know that their names would be listed on a “bad debt” database which would be accessible to the wider business population, they would pay their outstanding medical debts in order not to lose their credit worthiness;
 - ii. the idea of listing “bad debt” patients on a database that would be accessible to the wider business population would never be permitted to result in the refusal of treatment to needy or critically ill patients;
 - iii. the diagnoses of patients or other information relating to their health status would not be revealed on such listing;
- c. the resolutions by the Executive Committee be noted and be referred back to the Committee for further debate and that representatives of the Medical and Dental Associations be given an opportunity to make oral presentations to the Executive Committee regarding this matter.

MDB, June 1999; Item 30

RESOLVED that –

- a. the following comments by members be noted, namely that –
 - i. the reasons given by the Executive Committee for not supporting the listing of “bad debt” patients on a general list were considered to be illogical and not plausible in that no confidential information of patients would be revealed in such listing since this did not deal with hospitals, but with individual practitioners;
 - ii. a medical practitioner or dentist should make full details available to the patient regarding the cost of treatment;
 - iii. medical practitioners and dentists did not have the possibility of repossession, i.e. to take away treatment already given and, therefore, were unable to use that method to enforce settlement of outstanding accounts;
 - iv. some patients withheld the money received from their medical aid scheme to use for their own purposes;
 - v. circulating of a list of “bad debt” patients amongst medical practitioners and dentists could signal the message to practitioners that such patients should not be treated due to non-payment of accounts;
- b. the matter be referred back to the Executive Committee for further consideration and recommendation in the light of comments by members of the Board;
- c. representatives from the following stakeholders be invited to participate in the debate regarding the listing of “bad debt” patients, namely –
 - i. community representatives on the Board and Council;
 - ii. the relevant Consumer Rights’ Protection Group;
 - iii. relevant Trade Unions;
- d. the Senior Manager: Legal Services be asked for a legal opinion on the legality of making lists of “bad debt” patients available to the wider business fraternity.

MDB, Sept 1999; Item 44

RESOLVED that –

- a. the previous resolutions of the Interim Council regarding the listing of “bad debt” patients by practitioners registered in terms of Act No. 56 of 1974 be confirmed (see MDB, June 1999, Item 30);
- b. ***patients could, therefore, only be listed on a “closed user group” database at the request of a particular practitioner if such a list was intended solely for circulation amongst practitioners registered with Council;***
- c. ***should a practitioner decide to list a “bad debt” patient on a “closed user group” database, such patient should be informed in writing regarding such action by the “listing agency” concerned;***
- d. ***should there be a dispute between the practitioner and the patient concerned regarding an outstanding debt, such patient should not be listed until the dispute had first been settle.***

MDB, March 2000, Item 39

RESOLVED that –

- a. with reference to a request by Electronic Health Network for a ruling on the proposed listing of “bad debt” patients on a website as set out in MDB 52/March 2001, such listing was not permissible;
- b. the above resolution by the Executive Committee be confirmed with the addition, however, that ***should the listing of “bad debt” patients on a website be accessible only to medical practitioners and dentists by means of a password, then such listing would be permissible.***

MDB, March 2001, Item 54

CANCELLATION OF APPOINTMENTS

3/1/4/8/1

RESOLVED that –

- a. it be noted that –

- i. the Secretariat received regular calls from members of the public and the medical and dental profession on what the policy of the Board was with regard to the cancellation of appointments with medical practitioners and dentists;
- ii. the policy guidelines of the South African Medical Association on cancellation of appointments were brought to attention which stipulated that –
 - aa. **“unless timely steps were taken to cancel an appointment for a consultation, the relevant consultation fee could be charged.” In the case of a general practitioner timely shall mean two hours and in the case of a specialist, twenty-four (24) hours prior to the appointment. Each case shall, however, be considered on merit and, if circumstances warranted, no fee would be charged;**
 - bb. **“if a patient had not turned up for a procedure, each member of the surgical team would be entitled to charge for a consultation at or away from the rooms of the doctor concerned”;**
- b. the above policy of the South African Medical Association be noted;
- c. it be recorded that the Board would have no objection if the above policy guidelines pertaining to the cancellation of appointments by patients would be applied in practice by medical practitioners and dentists.

MDB, March 2002, Item 52

CESSION OF BOOK DEBTS

3/1/4/8/4

RESOLVED that the ruling on the cession of book debts by registered persons be approved as follows:

A practitioner would remain responsible for his or her own accounts in respect of professional services rendered by him or her, including the collection of monies from patients in settlement of such accounts, whether or not a cession of the whole or a portion of such practitioner’s book debts had been affected. The Board does not express a view on financial arrangements which practitioners make with financial institutions in respect of such accounts, save to record

that the practitioner would remain personally and professionally responsible and accountable to the Board and to his or her patients in respect of these accounts.

MDB, March 2000, Item 54

3/4/8/6

RESOLVED that the resolution of December 2002 by the Executive Committee be confirmed, namely that Dr R Williams be informed that it would be permissible for book debts to be ceded to financial institutions other than banks, subject thereto that such cession of book debts would fully comply with the ethical requirements of the Board as set out in the resolution marked MDB, March 2000, Item 54.

MDB, March 2003, Item 54

CHANGE OF STATUS OF AN INCORPORATED PRACTICE FROM A PRIVATE COMPANY TO A PUBLIC COMPANY
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3/1/4/25/4

RESOLVED that the legal advice by the Department: Legal Services be adopted, namely that ***it would not be permissible to change the status of an incorporated practice from a private company to a public company in order that more than fifty persons could become shareholders in such a company.***

Exec, Aug 2001, Item 82

CODE OF CONDUCT OF THE NATIONAL PATHOLOGY GROUP
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3/1/4/25/4

RESOLVED that –

- a. it be noted that in view of the Code of Conduct of the National Pathology Group set out in MDB 81/Sepot 2001, the Committee for Human Rights, Ethics and Professional Practice had resolved that –
 - i. concern be expressed about the intention by the National Pathology Group to take on disciplinary functions which belonged to the Board;

- ii. it be brought to the attention of the said Group that the Board was the only statutory body to investigate complaints of alleged unprofessional conduct by the medical profession and to take disciplinary action in respect thereof;
 - iii. the Code of Conduct of the National Pathology Group could, therefore, not be supported with specific reference to the section entitled: "OBJECTS AND FUNCTIONS OF THE GROUP";
- b. a meeting had been held between the Executive Committee and a delegation of the said Group in June 2001;
 - c. it be noted that it had been stated by the National Pathology Group that they recognised the legal authority of the Board to take disciplinary action against medical practitioners who made themselves guilty of unprofessional conduct;
 - d. the statement by the Group be noted, namely that they did not intend to circumvent the legal authority of the Board and that the Group was willing to adjust its Code of Conduct accordingly;
 - e. ***it be recorded that, in the opinion of the Board, a distinction should be made between peer review and passing of judgements;***
 - f. ***the Board was in favour of a system of peer review whereby professional associations/societies would review the conduct of their members by means of self-regulation and guidance, but could not condone such a system if the intention was to discipline their members on the basis of disciplinary hearings and the passing of judgements;***
 - g. professional associations/societies did not have the statutory authority to impose and to enforce disciplinary actions against their members;
 - h. only the Board had the statutory authority to investigate alleged unprofessional conduct by medical practitioners and dentists and to take disciplinary action in respect thereof;
 - i. the Board could not prevent the National Pathology Group from implementing the disciplinary measures which it proposed, but the Board wished to record that it was not prepared to sanction such action by the Group.

MDB, Sept 2001, Item 73

CONDITIONS UNDER WHICH CLOSED CORPORATIONS COULD BE ESTABLISHED BY MEDICAL PRACTITIONERS AND DENTISTS
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RESOLVED as follows:

- a. Practitioners may conduct their practices in the following manner:**
 - i. As a solus practice**
 - ii. As a partnership**
 - iii. As an incorporated company (exempted in terms of section 54A of the Act)**
 - iv. As an association**
 - v. As a trust under the same conditions as in the case of an incorporated practice.**
- b. It followed that a practice may not be conducted in any other form such as a closed corporation with lay persons. Practitioners may not form any of the above entities with persons not registered under the Health Professions Act, 1974.**
- c. However, a practitioner could form an entity to manage and administer his or her practice and/or to own assets used by the practice. In that case the practice would be renting services, such as the administration or property from that entity. Such an entity could be a closed corporation which had to be administered separately from the practice established to render patient related services.**
- d. Closed corporations could, therefore, be utilised by practitioners registered under the Act to render non-patient related services. Non-patient related services included, amongst others, the renting of rooms, leasing of vehicles and office equipment, payment of staff salaries and maintenance of buildings.
- e. It would be possible for practitioners to form a closed corporation (or any other entity) with a clinic for purposes of owning the equipment in question. The closed corporation was not to operate the unit as that was being regarded as conducting a practice. It could operate the unit in an ownership and administrative sense and let the unit to a practitioner who wished to utilise it.

- f. No provision had 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 closed corporation could not bill patients and had to collect rent from practitioners utilising the unit. The practitioner had to bill the patient for the fee to which he or she was entitled.

Exec, Aug 2001, Item 79

CREATION OF A PRIVATE COMPANY “HEALTH ENTERPRISES AT UNIVERSITY OF PRETORIA (PTY) LTD” FOR TRAINING PURPOSES AND FOR PROVIDING PATHOLOGY SERVICES

3/1/4/25/4

The Board –

- a. NOTED detailed information regarding the creation of the Health Enterprises Private Company by the University of Pretoria as set out in MDB 21/March 2001;
- b. after having debated the matter with due regard to a presentation made by Prof H Vermaak and Mr J Nel of the said University, RESOLVED that –
- i. although the involvement of academic medicine with private medicine should be encouraged, the incorporation of private medical practitioners with a private company that was owned by the University of Pretoria would not be permissible in the light thereof that such venture would create opportunities for the exclusive referral of patients by those private medical practitioners to the private company of the University and *vice versa*; for the payment or receipt of perverse incentives; while it might also lead to the inappropriate ownership and use of technological equipment by medical practitioners, which actions were considered by the Board to be unethical;
- ii. it was considered unethical for medical practitioners in solus practice, associations, partnerships, trusts or incorporated practices to enter into sole mandate agreements with a medical aid scheme;
- iii. it be recommended to the University that it should rather consider establishing a section 21 company for non-profit purposes.

MDB, March 2001, Item 30

DESCRIPTIVE TRADE NAMES FOR THE PRACTICES OF MEDICAL PRACTITIONERS AND DENTISTS IN SOLUS PRACTICES, PARTNERSHIPS, ASSOCIATIONS OR INCORPORATED PRACTICES

RESOLVED that –

- a. on the basis of the professional opinions received from Profs F F W Van Oosten and S A Strauss, the use of trade names of a descriptive nature by practitioners in solus practice, partnerships, associations or incorporated practices be approved;
- b. the matter be referred to the Executive Committee of the Board for the purpose of drafting appropriate guidelines in respect of descriptive trade names.

MDB, Sept 2000, Item 83

3/1/4/26/3

RESOLVED that –

- a. it be noted that –
 - i. in September 2000 the Board resolved as set out above;
 - ii. in view of the Board's resolution of September 2000, an *Ad Hoc* Committee consisting of Prof L H Becker (Chairman), Mr E Helberg (Office of the Registrar of Companies), Mr P Govan (SADA), Mr A Volschenk (SAMA) and Prof S A Strauss (Professor of Law) considered the issue of descriptive trade names in February 2001 and recommended to the Executive Committee of the Board that the guidelines on descriptive trade names for the practices of medical practitioners and dentists in solus practice, partnerships, associations and incorporated practice as set out in MDB 79/Sept 2001 be adopted;
 - iii. the Executive Committee in May 2001 resolved that –
 - aa. the proposed guidelines be noted;
 - bb. the Board be asked to re-consider its approval of the use of descriptive trade names in view of wide-ranging problems

which such names may cause in practice and in the administration thereof;

- b. the Board rescinded its September 2000 decision to approve the use of descriptive trade names, in view of the concerns expressed in MDB 78/Sept 2001 and that such names, therefore, not be used by medical practitioners and dentists in solus practices, partnerships, associations and incorporated practices;**
- c. medical practitioners and dentists in any of the types of practices referred to above would, however, be permitted to name such practices after their own name or the names of their associates or partners, without limitation on the duration thereof, for example the name or names of a partner or associate could be retained by the practice even after the death of such a partner or associate.**

MDB, Sept 2001, Item 70

DISCLOSURE OF DIRECTORSHIP OF A COMPANY FUNCTIONING AS A “MANAGED HEALTH CARE ORGANISATION” IN ADDITION TO ITS OTHER BIOTECHNOLOGICAL ENDEAVOURS

3/1/4/26/4

RESOLVED that Dr D C Attfield be informed that –

- a. what he was proposing in his letter dated 9 September 2002 was unacceptable practice in terms of the Ethical Rules of the Board;
- b. the advice that he had been given by Mr Jacob Makgolane, namely that it would be acceptable and reasonable to collect a global fee for islet transplantation from various funding structures, was incorrect.

Exec, Dec 2002, Item 50

ELECTIVE LIFESTYLES FINANCING

The Board –

- a. NOTED that –
 - i. Elective Lifestyles Financing was a private company which *inter alia* would act as a broker for negotiating loans with a banking institution on behalf of patients (see MDB 36/Sept 2003);

- ii. the service rendered by the practitioner would be funded by the Company;
- iii. in addition, Elective Lifestyles would be prepared to render certain administrative services to the practitioner in return for the payment of an administrative fee;
- iv. Elective Lifestyle Financing had been informed by e-mail dated 9 May 2003 that it appeared that the following ethical rules were directly or indirectly transgressed:
 - aa. Sharing of fees with any person or practitioner who has not taken a commensurate part in the services for which those fees were charged.
 - bb. Charging or receiving of fees for services not personally rendered, except for services rendered by another practitioner with whom the practitioner was associated as a partner, shareholder or *locum tenens*.
 - cc. Partnerships and juristic persons.
 - dd. Professional confidentiality;
- b. RESOLVED that Mr T Stander of Elective Lifestyles Financing be advised ***that the Board supported the principle that patients should have access to financing through commercial banks or other financial institutions. Practitioners should, however, not in any way be involved in the transaction or receive any payment relating to such transactions since such involvement would contravene the policy statement of the Board on perverse incentives and health practitioners involved would be contravening a number of ethical rules if they participated in the proposed structure.***

MDB, Sept 2003, Item 53

<p>EMPLOYMENT OF GENERAL PRACTITIONERS BY SPECIALISTS: GUIDELINES</p>
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3/1/5/25

RESOLVED that –

- a. draft guidelines as set out in MDB 69/Sept 2002 be noted;

- b. the matter be referred back to the Executive Committee of the Board to review the correctness or relevance of the statement in paragraph 1.e. thereof which reads “It should be noted that ‘field of practice’ was not the same as ‘field of interest’. Specification of a ‘field of practice’ was only permissible if a practitioner limited, or for the most part limited, his or her practice to a specific ‘field of practice’”.

MDB, Sept 2002, Item 75

3/1/5/25

RESOLVED that the recommendation by the Executive Committee be confirmed to delete paragraph 1.e. of the proposed guidelines as set out in MDB, 29/March 2003.

MDB, March 2003, Item 46

EMPLOYMENT OF MEDICAL PRACTITIONERS VIA A LABOUR BROKER

3/4/1

RESOLVED that it be recorded that it was the policy of the Board that all medical and dental vacancies should be advertised in the open labour market in order that all medical practitioners or dentists would have an equal opportunity to apply for such posts.

Exec, May 2001, Item 54

FEEES: ADVANCE PAYMENT

3/1/4/8/6

RESOLVED that the previous resolutions of the Interim Council regarding the matter of advance payment of fees be confirmed, namely that –

- a. ***it be placed on record that the advance payment of fees by patients for services rendered by practitioners would be acceptable to Council, provided that such payment related only to the co-payments at medical aid rates required from patients and that a practitioner would be called upon to justify his or her action in the event of unnecessary complications, suffering or deaths resulting from the practitioner’s refusal to treat a patient for not paying in advance;***

- b. should the S A Medical Association wish to draft a policy statement on the advance payment of fees by patients, Council would wish to see such statement prior to its dissemination.

Exec, May 1999, Item 31

33/2/4

RESOLVED that -

- a. the request of Dr A A Visser of Oranjemed in his letter dated 17 September 1999 for a relaxation of the ruling of the Interim Council on the advance payment of fees with specific reference to foreign patients (MDB 41/March 2000) be noted;
- b. should a medical practitioner or dentist and a patient come to an agreement regarding the quantum of the fees to be charged for services to be rendered, it was unlikely that the Board would take cognisance of the fees, but this would not preclude the Board from inquiring into an allegation of excessive fees having been charged;
- c. ***it was not permissible to render an account for services still to be provided by such practitioners. However, in the event of services to be rendered to foreign patients, the Board could see no objection to an arrangement whereby a financial institution, acting on behalf of the patient, guaranteed payment of an account to be rendered;***
- d. ***it be placed on record that the advance payment of fees by patients for services rendered by practitioners would be acceptable to the Board, provided that such payment related only to the co-payments at medical aid rates required from patients and that a practitioner would be called upon to justify his or her action in the event of unnecessary complications, suffering, or deaths resulting from the practitioner's refusal to treat a patient for not paying in advance.***

MDB, March 2000, Item 52

3/1/4/8/6

RESOLVED that –

- a. it be noted that, the Executive Committee of the Interim Council with regard to the advance payment of fees had resolved that it be placed on record that the advance payment of fees by patients for services rendered

- by practitioners would be acceptable to Council, provided that such payment related only to the co-payments at medical aid rates required from patients and that a practitioner would be called upon to justify his or her action in the event of unnecessary complications, suffering or deaths resulting from the practitioner's refusal to treat a patient for not paying in advance;
- b. a request by Dr R J C Koenig be noted, as to whether it was permissible to apply the resolution on advance payment of fees as set out above to cardiac rehabilitation programmes (Codes 1431 and 1432);
 - c. the proposed arrangement was not permissible.

MDB, March 2001, Item 53

FEES: ADVANCE PAYMENT FOR MEDICO-LEGAL SERVICES
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3/4/8/6

In view of a request by Prof A A Stulting on behalf of the Ophthalmological Society of South Africa **RESOLVED that it be pointed out that the restriction on charging of fees by practitioners prior to a service being rendered, related to patient care and was not meant to be applied in the case of medico-legal services.**

MDB, Sept 2001, Item 69

FEES: ADVANCE PAYMENT IN RESPECT OF FOREIGN PATIENTS

3/4/3/6

RESOLVED that –

- a. ***it would be permissible for a medical practitioner to withhold medical results in the case of foreign patients until such time as the account had been settled in full;***
- b. ***medical results of foreign patients were, however, not to be withheld in the case of an emergency;***
- c. ***proof of payment of accounts by foreign patients should at all times be kept on file.***

Exec, May 2002, Item 62

FEES AND COMMISSION: REQUEST TO REVIEW ETHICAL RULE

3/1/4/8/6

RESOLVED that, resulting from a meeting in May 2002 with a delegation from the South African Dental Association, the following resolutions by the Executive Committee of December 2002 be confirmed, namely that –

- a. since the rule prohibiting payment of commission applied both to independent practitioners and those practicing in association as partners, shareholders and *locum tenens*, allegations of discrimination against independent practitioners were unfounded;
- b. ***practitioners practicing in association or in partnership, as a section 54A incorporated company or a locum tenens, were entitled to share fees;***
- c. ***the rule pertaining to the sharing of fees did not include or provide for the payment of commission;***
- d. ***the ruling of the Board that it was not permissible to pay commission in lieu of a salary to oral hygienists in the employ of dentists was, therefore, confirmed.***

MDB, March 2003, Item 55

FEE CHARGING: DENTAL THERAPISTS/DENTISTS

RESOLVED that dentists and dental therapists working in the same practice should in future clearly specify on accounts issued by them, the teeth which had been extracted and fillings done by them individually. Should such procedures have been done by a dental therapist, the fee charged for such procedure should be that for the dental therapy profession and vice versa.

MDB, Sept 2000, Item 99.2

FEES CHARGING: FOR BOTH CLINICAL AND PATHOLOGY EXAMINATIONS: CLINICAL HAEMATOLOGY

RESOLVED that standard fees for all consultations and procedures should be charged by all specialists and subspecialists.

MDB, Sept 2000, Item 70

GENERAL DENTISTS EMPLOYED BY ORTHODONTISTS

RESOLVED that –

- a. it was permissible for a dental specialist to employ a general dentist;***
- b. it was, however, not permissible for such general practitioner to charge specialist fees for services rendered or for his or her name to appear on the stationery of the specialist concerned;***
- c. there was growing concern about general practitioners being employed by specialists to perform duties belonging to the field of a specialist and thus misleading the public;
- d. accounts rendered for medical/dental services –***
 - i. should be rendered under the name of the practitioner who actually rendered the service;***
 - ii. should specify on the account the category in which the practitioner holds registration under the Health Professions Act, 1974;***
- e. in view of the Board's concern, this matter be referred back to the Executive Committee for further consideration of –
 - i. the need for a specialist to employ a general practitioner;
 - ii. the concerns raised in paragraphs c. and d. above.

MDB, Sept 2000, Item 84

3/1/5/25

RESOLVED that –

- a. draft guidelines pertaining to the employment of a general dentist by a dental specialist, contained in MDB 82/March 2002, be noted;
- b. the guidelines be amended as follows:
 - i. Item c: To be reworded as follows: ***“A general practitioner may not be required to perform procedures for which he or she was not qualified”.***
 - ii. Item e: To be rewritten as follows: ***“In the event of a general practitioner who had been in the employ of a specialist previously, who received in-service training in the field of a recognised speciality and who made known that he or she practised in the field of that speciality, assumed legal and ethical responsibility for having acquired a level of professional competence in such speciality which had to be professionally demonstrable and acceptable. It should be noted that “field of practice” was not the same as “field of interest”. Specification of a “field of practice” was only permissible if a practitioner limited, or for the most part, limited his or her practice to a specific “field of practice” (see Section J, Annexure 5).***

MDB, March 2002, Item 61

IDENTIFICATION BY PATIENTS OF HEALTH CARE PROFESSIONALS IN PARTNERSHIPS, ASSOCIATIONS OR INCORPORATED PRACTICES
--

3/1/4/26/3

Having noted that it was not always possible for patients to identify a particular health care professional practising in a partnership, association or incorporated practice, RESOLVED that ***each health care professional should be identified by means of a notice in the rooms of that health care professional, which should also specify his or her profession or discipline e.g. Dr XXX Wilson, Physician; Dr YYY de Klerk, Obstetrician and Gynaecologist; Mr ZZ du Toit, Psychologist, etc.***

MDB, Sept 2001, Item 81

**INCORPORATED COMPANIES OR PARTNERSHIPS “PRACTISING AS ...”
OR “TRADING AS ...”**

3/1/4/26/3

RESOLVED that, in view of a recommendation by the *Ad Hoc Committee* consisting of Prof L H Becker, Messrs E Helberg, P Govan, A Volschenk and Prof S A Strauss ***it be impermissible for incorporated companies or partnerships to be identified as “practising as ...” or “trading as ...”.***

MDB, Sept 2001, Item 71

JOINT VENTURE WITH HOSPITAL

3/1/4/26/3

RESOLVED that –

- a. a request by De Broglio Wolfson Attorneys be noted, namely that –
 - i. their client was operating a diagnostic radiology practice at Umhlanga Hospital and was about to conclude a joint venture with Umhlanga Hospital Limited for the acquisition of a MRI Scanner;
 - ii. a joint venture already existed in regard to the radiology practice itself in that the practice rented premises and equipment owned by the hospital in return for a consultancy fee and *share of the profits*;
 - iii. the proposed joint venture which was to acquire the MRI Scanner would have a forty five and a fifty five percent shareholder agreement;
 - iv. persons not registered as diagnostic radiologists would not be permitted to participate in the proposed joint venture;
- b. RESOLVED that De Broglio Wolfson Attorneys be advised that it had been agreed that ***their clients could enter into a private company involving both the relevant diagnostic radiologists and the hospital group. That company could together own the proposed equipment which would then be leased or let to the practice of their client on the same terms and conditions as would apply to a financial institution funding such undertaking. The condition of such lease or rental would be that the tariff of such lease or rent would be on a fixed basis and would in no way be linked to the client’s patient turnover.***

Exec, Feb 2002, Item 2.1.2

LABORATORY DIAGNOSTIC SERVICES: PROVISION OF

RESOLVED that –

- a. the request by the Laboratory Manager at Golden VETLAB Pty Ltd, for a ruling with regard to tests done in veterinary laboratories on human specimens be noted;
- b. a report by Prof L H Becker be noted that, in previous discussions with the South African Veterinary Council, ***an agreement had been reached that tests could not be done on animal specimens in human laboratories;***
- c. ***after consultation with the said Council, it was agreed that it was not permissible for a medical practitioner or dentist to conduct tests on human specimens in a veterinary laboratory.***

MDB, Sept, 2000, Item 68

LIFECARE SPECIAL HEALTH SERVICES

The Board –

- a. NOTED that –
 - i. Lifecare Special Health Services was a private company which provided and managed hospitals under the auspices of the State. The services were provided on contract with provincial Departments of Health and/or Social Development;
 - ii. RESOLVED that the matter be referred to the Executive Committee for consideration on the basis of further information to be provided by Lifecare Special Health Services on *inter alia* fee structures.

MDB, Sept 2003, Item 54

MEDCRED (PTY) LTD

3/1/4/8

The Board NOTED that –

- a. in May 2003 the Executive Committee NOTED that Messrs Bernardt, Vukic, Potash and Getz Attorneys applied in MDB 33/Sept 2003 on behalf of MEDCRED (Pty) Ltd to establish a business to facilitate finance for patients for treatment not covered by medical aid schemes, including elective procedures. Further consideration of the matter was then deferred;
- b. the Executive Committee in August 2003 RESOLVED that Messrs Bernardt, Vukic, Potash and Getz Attorneys be advised that the Executive Committee supported the principle that patients should have access to financing through commercial banks or other financial institutions. However, practitioners should not in any way be involved in the transaction or receive any payment relating to such transactions since such involvement would contravene the policy statement on perverse incentives and the health practitioner involved would be contravening a number of ethical rules if he or she participated in the proposed structure.

MDB, Sept 2003, Item 52

MEDICAL CONSULTATION AND SALE OF PRESCRIPTION MEDICINE ON-LINE

RESOLVED, with reference to an enquiry by the Pharmaceutical Manufacturers' Association of South Africa, that –

- a. the previous resolution of the Interim Council with regard to the diagnoses of patients on computer, be confirmed, namely that ***a medical practitioner or dentists was personally responsible for his or her diagnoses, irrespective of what facilities he or she used to aid him or her;***
- b. ***medicine could only be prescribed on the basis of a physical examination of the patient;***
- c. this matter also be referred to the South African Pharmacy Council and the Pharmaceutical Unit of the Department of Health for information.

MDB, Sept 2000, Item 82

MULTISCIPLINARY GROUP PRACTICES: GLOBAL FEES

3/1/4/8

RESOLVED that –

- a. the proposed guidelines with regard to the establishment of multidisciplinary group practices and the charging of global fees by such practices as set out in MDB 25/March 2000 be noted;
- b. the *status quo* be maintained, namely that incorporated companies consisting of registered practitioners be established and conducted in terms of the provisions of section 54A of the Act;
- c. the Board did not wish to prescribe to the various professions what their fee structure should be with regard to services rendered by them in solo practice or in the form of a group practice.

MDB, March 2000, Item 42

MULTIDISCIPLINARY GROUP PRACTICES/THERAPEUTIC ALLIANCES

NOTED that –

- a. Prof L H Becker and Prof J V van der Merwe had been appointed by Council to develop guidelines on unacceptable business practices by practitioners and that such draft guidelines would be submitted to the Executive Committee of Council for consideration and decision;
- b. the draft guidelines would thereafter be referred by the Executive Committee of Council to all Professional Boards and other relevant stakeholders for consideration and input;
- c. those guidelines would then also be referred to the Committee for General Practice for consideration and input, as had been requested by that Committee in October 2002;
- d. the Department of Health would be considered as one of the stakeholders once the draft guidelines had been compiled.

MDB, March 2003, Item 52

OPENING OF A NEW PRACTICE BY A LOCUM

3/1/4/21

RESOLVED that –

- a. a letter be noted in which Dr M E Laher advised that he was practising as a locum, but now wanted to open his own practice some 300 metres from the practice where he was performing locum services. He asked for advice as to whether he –
 - i. may resign as a locum and open his own practice;
 - ii. if so, how far from the place where he was performing locum services may he open his own practice;
 - iii. whether there was a waiting period before he could resign;
- b. it was the policy of the Board not to become involved in financial arrangements between two or more medical practitioners or dentists;
- c. the issues raised by Dr Laher, were legal issues that should be regulated by means of a written agreement or contract between a medical practitioner or dentist owning a practice and a locum who was in the employ of that medical practitioner or dentist;
- d. the South African Medical Association and the South African Dental Association be asked to advise their members to enter into appropriate agreements or contracts with regard to the employment of a locum.

MDB, March 2001, Item 51

OWNERSHIP OF SHARES BY HEALTH CARE PROFESSIONALS

3/1/4/26/4

RESOLVED that –

- a. the shareholders be asked to each complete the questionnaire pertaining to declaration of shareholding status, whereafter the matter would be further considered;

- b. in the meantime the matter be referred to the Management Committee for consideration and to compile criteria by which to fairly and speedily assess applications for shareholding in private hospitals;
- c. Prof J V van der Merwe be invited to assist the Management Committee in the above regard.

Exec, Dec 2002, Item 49.1

<p>PARTNERSHIPS/ASSOCIATIONS AND OTHER EMPLOYMENT ARRANGEMENTS AMONGST HEALTH CARE PROFESSIONALS REGISTERED FOR DIFFERENT PROFESSIONS UNDER THE ACT OUTSIDE THE PROVISIONS OF SECTION 54A, THE PRESCRIBING AND DISPENSING OF MEDICINE AND CHARGING FEES IN RESPECT THEREOF</p>

3/1/4/26/3

RESOLVED that –

- a. *if a patient was seen by both a medical or dental specialist and a general medical practitioner or dentists, the fee of either the general medical practitioner or general dentist should be charged and not that of the specialist;*
- b. *if a patient was seen by only a medical or dental specialist, the appropriate specialist fee could be charged;*
- c. *specialists who practise one of the related medical pathologies, were to be excluded from the concession to form an incorporated practice in terms of section 54A of the Act or to form a partnership or association with a general practitioner or specialist in medicine, or another health professional registered under the Act, who did not practise in one of the related specialities in medical pathology;*
- d. *specialists who practise in diagnostic radiology, were to be excluded from the concession to form an incorporated practice in terms of section 54A of the Act, or to form a partnership or association with a general practitioner or specialist in medicine, or another health professional registered under the Act, who did not practise in the speciality diagnostic radiology;*
- e. *the only exception to the above restriction pertaining to diagnostic radiologists was that diagnostic radiologists would be permitted to form an incorporated practice, partnership or association with nuclear physicians in view of the fact that the said two specialities*

were related to each other in terms of the nature of their field of professional practice;

- f. the reason why it should not be permissible for medical pathologists or diagnostic radiologists on the one hand and other medical practitioners or members of other health professions on the other hand to practise in an incorporated practice, partnership or association, was to prevent –
 - i. the exclusive referral of patients between members of the said practices, partnerships or associations;
 - ii. the possibilities for over or under servicing;
 - iii. the possibilities for the payment or receipt of perverse incentives;
- g. it be recommended to Council that the *Regulations Regarding the Formation of Incorporated Practices* be amended to include the resolutions as set out in paragraphs a. to d. above;
- h. rule 2(10) to (12) of the “Ethical Rules” of the Board which still need to be promulgated, to be appropriately amended in the light of the above.

MDB, March 2001, Item 50

PARTNERSHIPS OF MEDICAL PRACTITIONERS AND DENTISTS IN MORE THAN ONE INCORPORATED PRACTICE: “ PAPER PARTNERS”

3/1/4/26/3

In view of MDB 44/March 2001, RESOLVED that the South African Medical Association be advised that the establishment of “paper partnerships” by medical practitioners or dentists was not permissible.

MDB, March 2001, Item 48

3/1/4/26/4

RESOLVED that the South African Medical Association be informed that –

- a. paper partners by medical practitioners and dentists were not permissible, as confirmed by the Executive Committee in December 2000;***

- b. *shareholding by a medical practitioner or dentist in another incorporated company would only be permissible if the said medical practitioner or dentist was active in such other incorporated practice;***
- c. in terms of the “Ethical Rules” of the Board it was not permissible for a practitioner to share fees with any person or practitioner if he or she had not taken a commensurate part in the service for which those fees were charged;
- d. *in terms of section 36 of Act No. 56 of 1974, only medical practitioners and dentists registered with Council could use the (professional) title “doctor”.***

Exec, Dec 2002, Item 52

RESOLVED that, in response to a letter by the South African Medical Association of 5 November 2002, the resolutions by the Executive Committee of December 2002 be confirmed.

MDB, March 2003, Item 53

PARTNERSHIP WITH INCORPORATED COMPANY
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3/1/4/26/3

RESOLVED that, on the basis of the legal opinion as set out in MDB 43/March 2001, partnerships with incorporated companies be agreed to.

MDB, March 2001, Item 47

PERVERSE INCENTIVES: POLICY STATEMENT
--

RESOLVED that –

- a. the resolutions by the Multi-Professional Peer Review Committee of the Forum of Statutory Health Councils be noted, but the following amendments be proposed:
 - i. The Policy Statement pertaining to Perverse Incentives that was approved by the Board in September 2000 be amended with regard

to the ownership and use of technological equipment by health care professionals.

- ii. The use of technological equipment by “inappropriately qualified” medical practitioners or dentists was considered to be a matter that should be investigated and acted upon by the Board in terms of the scope of practice of the said professions and the relevant legislation of the Board.
 - iii. The Committee further be advised that the scope of practice of health care professionals should be clearly defined, especially with regard to the use of technological equipment.
- b. The Multi-Professional Peer Review Committee be advised that it was not sufficient to only deal with the matter of inappropriate ownership and the use of technological equipment in the preamble to the Policy Statement on Perverse Incentives, but that it should in addition be clearly stated in the details of the policy document that such ownership and use by health care professionals were not permissible.
 - c. The Board would take immediate and appropriate action in the case of any reported cases of the ownership and use of technological equipment by inappropriately qualified medical practitioners or dentists.
 - d. It was impossible to define the scope of practice of all health care professionals in such fine detail so as to, for example regulate the use of technological equipment by health care professionals.

MDB, March 2001, Item 56

3/4/1

RESOLVED that –

- a. the resolution of the Multi-Professional Peer Review Committee of May 2001 be noted, namely that –
 - i. the use of technological equipment had become an integral part of health care and that it had made a significant contribution to the rendering of accurate and high standards of healthcare in modern times;
 - ii. new technological equipment was being introduced by manufacturers on an ongoing basis and a niche in clinical medicine

was subsequently being sought in respect thereof. Aggressive marketing campaigns had, as a result, become rife;

- iii. technological equipment should only be owned and used by a health care professional if it formed an integral part of the scope of practice of that health care professional and on condition that the health care professional concerned had received appropriate training in using and managing such equipment;
 - iv. health care professionals should exercise particular care not to over service, since such action would be in direct conflict with clause 3.1 of the policy statement pertaining to perverse incentives;
- b. the amended policy statement be approved with the proviso that it be clearly stated in the body of the said guidelines that “***The ownership and use of technological equipment by health care professionals outside of their scopes of practice and without the necessary training in the use of such equipment was not permissible. Over servicing with regard to such equipment was to be regarded as being in direct conflict with clause 3.1 of this policy statement***”.

MDB, Sept 2001, Item 74

PERVERSE INCENTIVES: POLICY STATEMENT: CONCERNS EXPRESSED BY SAMA
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3/1/4

RESOLVED that –

- a. a letter dated 15 May 2002 by the Human Rights, Law and Ethics Unit of the South African Medical Association be noted, which indicated that -
 - i. the Board’s policy on perverse incentives had been debated at a workshop organised by SAMA of which the most pertinent areas of concern were highlighted in the attached report contained in MDB Exec 61/Aug 2002;
 - ii. a further matter of concern related to the *Marketing Code of Ethics* which would be issued as Regulations in terms of the 1997 *Amendment Act to the Medicines and Related Substances Control Act, 1965*;
 - iii. the issue of incentive-driven underservicing had also come to the fore in the context of managed health care;

- b. the Senior Manager: Professional Boards: Group A, be asked to appropriately amend the guidelines on perverse incentives on the basis of the inputs made by the South African Medical Association as set out in MDB Exec 61/Aug 2002.

Exec, Aug 2002, Item 89

POLICY OF MEDICAL AID SCHEME THAT PATIENTS MAY ONLY USE CERTAIN GENERAL PRACTITIONERS AND SPECIALISTS
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3/1/4/26/2

RESOLVED that the South African Medical Association: OFS Goldfields Branch be advised that –

- a. it was the free choice of a patient to decide which medical practitioner or dentist to consult, bearing in mind that it may cost the patient more;
- b. medical practitioners or dentists in the area should be informed that they could apply to be preferred providers for a particular medical aid scheme and no practitioner may unreasonably be excluded from being a preferred provider for such a medical aid scheme;
- c. the Board could not prescribe ethical rules of conduct to organisations such as a medical aid scheme, but could do so for medical practitioners or dentists in the employ of such organisations.

MDB, Sept 2000, Item 80

POSSESSION OF BLANK SIGNED STATEMENTS
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3/1/4/8/2

RESOLVED that, in view of the submission by Mr H E Janzen, Legal Advisor: Department: Legal Services, ***it be recorded that it was not permissible for a medical practitioner or dentist to keep blank signed statements under any circumstances.***

MDB, March 2000, Item 58

PREFERENTIAL MEDICAL SERVICE PROVIDERS OF MEDICAL AID SCHEMES: APPOINTMENT

RESOLVED that it be pointed out to Dr A F van Dyk that –

- a. ***it was not permissible to practise as a (Pty) Ltd Company and that such irregularity should be rectified without delay;***
- b. the Board could not prescribe ethical rules of conduct to private concerns such as medical aid schemes, but only to the medical practitioners in the employ of such private concerns;
- c. the Board could, therefore, not prescribe to medical aid schemes in what manner they should advertise matters pertaining to the appointment of preferential medical service providers;
- d. Dr Van Dyk's attention be drawn to the guidelines specified in 1993, namely that –
 - “i. all doctors in the area(s) concerned are to be informed that they can apply to be preferred providers for the scheme. Furthermore, that no practitioner is unreasonably excluded from being a preferred provider for that scheme;***
 - “ii. the patient is not deprived of his right of freedom of choice of medical practitioner, albeit that it may cost the patient more;***
 - “iii. in so notifying its members, exact details of the agreement with preferred providers (e.g. the extent of discounts or comparative details of costs) are not furnished. However, members may be informed in general terms that the use of preferred providers would result in greater benefits to them;***
 - “iv. practitioners who are approached to enter into preferred provider arrangements with any organisation are obliged to ascertain that the provision of paragraph i. above had been complied with”;***
- e. this matter also be referred to the Council for Medical Schemes for consideration and comment.

A similar reply was sent to Dr T A Mabin with reference to preferred providers in Pathology.

MDB, Sept 2000, Item 79 and 81

PUBLIC/PRIVATE PARTNERSHIPS IN THE HEALTH SECTOR: DRAFT POLICY FRAMEWORK

1/5/8

RESOLVED that the draft policy framework with regard to public/private partnerships in the health sector set out in MDB 31/March 2000 be noted.

MDB, March 2000, Item 45.1

RECOVERY OF DEBT COLLECTORS' FEES

3/1/4/4/4

The Board –

a. NOTED that –

- i. the Executive Committee in December 1999, *inter alia*, confirmed that practitioners could recover collection fees, provided that persons collecting outstanding debts on behalf of medical practitioners, dentists and medical scientists were registered as such in terms of the *Debt Collectors Act*, 1998, provided further that the fees charged by such collectors were in accordance with the provisions of the said Act;
- ii. the Executive Committee in May 2003 resolved that the South African Medical Association and the South African Dental Association be advised that Registered Debt Collectors could be utilised to collect outstanding fees in view of the fact that, in terms of the *Debt Collectors Act*, 1998, Debt Collection was now a regulated profession;
- iii. Mr P Govan, Legal Advisor of the South African Dental Association enquired whether, subject to the stipulations of the Board, practitioners could henceforth claim collection costs from patients in addition to consultation fees. He further indicated that there were presently no companies offering exclusive closed user-group lists for the listing of bad debt patients. According to him, patients would continue to ignore their financial commitments to practitioners.

b. RESOLVED that the previous resolution on the matter be re-iterated.

MDB, Sept 2003, Item 56

RECOVERY OF DEBT COLLECTORS' FEES BY DENTISTS

3/1/4/8/4

RESOLVED that –

- a. the resolution by the Executive Committee of the South African Medical and Dental Council adopted in April 1981, be rescinded in the light of the promulgation of the *Debt Collectors Act, 1998*;
- b. ***practitioners be permitted to recover collection fees, provided that –***
 - i. ***persons collecting outstanding debts on behalf of medical practitioners, dentists and medical scientists were registered as such in terms of the Debt Collectors Act, 1998;***
 - ii. ***the fees charged by such collectors were in accordance with the provisions in the said Act.***

MDB, March 2000, Item 53

RESOLVED that –

- a. ***it was not permissible for medical practitioners or dentists to recover collection fees other than those of an attorney;***
- b. subsequent to the promulgation of the *Debt Collectors Act, 1998*, practitioners would be permitted to recover collection fees only as resolved in MDB, March 2000, Item 53.

MDB, Sept 2000, Item 78

SERVICE CHARGE PAYABLE BY PRACTITIONERS

3/1/4/8

The Board noted that –

- a. according to documents submitted by Mrs H Huysamen, member of the Professional Board for Physiotherapy and Biokinetics and Chairperson of the PhysioFocus Tariff Committee –

- i. Promedis (Pty) Ltd, an agency that assisted patients who had claims in terms of injuries on duty, especially from abroad, required of practitioners to levy an additional 30% on top of the agreed professional fee for a specific service which was then deducted from the payment to the practitioner as a service levy;
 - ii. a similar situation was reflected in a letter by Polmed in terms of which a service fee, as set out on page 2 of that letter, was charged (see MDB Exec 42/Aug 2001);
- b. RESOLVED that –
- i. it be recorded that the above practices were considered by the Committee to be not permissible;
 - ii. the said two companies be advised accordingly.

Exec, Aug 2001, Item 80

SPLIT VS BALANCED BILLING

3/1/4/8/6

Resulting from discussions with a delegation from the South African Medical Association, RESOLVED that –

- a. the following proposal by the South African Medical Association be noted, namely that two separate accounts be rendered as follows:

i. **THE PATIENT ACCOUNT**

The account to the patient should reflect the full amount charged, the medical aid scheme's liable amount, and the member's liable amount. The full disclosure to the patient was necessary as legally the contract for the services rendered was between patient and doctor and, thus, it was the patient and not the medical aid scheme who was ultimately liable for settlement of the account rendered by the practitioner.

ii. **THE MEDICAL AID SCHEME ACCOUNT**

The account for the medical aid scheme should reflect the amount for which the scheme was liable and no more. The scheme should undertake to reimburse certain benefits against defined services and not claim to accept responsibility for reimbursement of the full

fee. For that reason, all that needed to be disclosed to the medical aid scheme was the amount for which that scheme accepted liability;

- b. the South African Medical Association be advised –
 - i. to negotiate with the Council of Medical Schemes that the *Medical Schemes Act*, 1998 (Act No. 131 of 1998), be appropriately amended to make provision for the rendering of two (2) separate accounts as proposed by the Association in paragraphs a.i and ii;
 - ii. to negotiate with the Board of Healthcare Funders of South Africa that the rules of that Board pertaining to the Scale of Benefits be amended for the same reason as indicated above;
- c. the matter thereafter to be further considered by the Board.

MDB, Sept 2002, Item 81

TREATMENT OF DEPENDANTS AND RENDERING OF ACCOUNTS IN RESPECT THEREOF

RESOLVED that the previous rulings by the South African Medical and Dental Council and Interim Council be confirmed, namely that ***it was permissible for a practitioner to treat his or her immediate dependants, but that it was not permissible for a practitioner to render accounts for services provided to such dependants, except in the case of laboratory fees and material for which it would be permissible to render an account.***

MDB, Sept 1999, Item 43

3/1/4/8

RESOLVED that –

- a. in view of the resolution in MDB, Sept 1999, Item 43, it be noted that Discovery Health in a letter dated 13 January 2001, asked for clarification as to whether “material” as referred to in the above resolution included “dispensary pharmaceuticals”;
- b. ***the expression “material” as referred to in the above resolution, could include “dispensary pharmaceuticals”.***

The Board –

a. NOTED that –

- i. the Board in September 1999 resolved that the following resolutions by the Executive Committee regarding the treatment of dependants and the rendering of accounts in respect thereof be confirmed:
 - aa. The Committee was of the view that it was permissible for a practitioner to treat his or her immediate dependants, but that it was not permissible for a practitioner to render accounts for services rendered to such dependants, except in the case of laboratory fees and material for which it would be permissible to render an account.
 - bb. The expression “material” referred to above, could be interpreted to include “dispensing of pharmaceuticals”;
- ii. resolved that the matters contained in MDB Exec 11/May 2003, received from Medihelp be referred to the Committee for Human Rights, Ethics and Professional Practice and the Health Committee for submission of recommendations on the appropriateness of self-treatment, the treatment of dependants and the rendering of accounts for such services, as well as the rendering of accounts for laboratory fees, materials and pharmaceuticals dispensed;
- iii. Mr R van de Venter, Senior Manager: Internal Audit of Medihelp requested the Committee to clarify the following:
 - aa. Whether a practitioner may dispense medication for himself and submit the claim to a medical aid scheme for reimbursement.
 - bb. Whether it was ethical for a practitioner who was self-dispensing to claim medication prescribed to immediate dependants at a mark-up price;
- iv. the Committee for Human Rights, Ethics and Professional Practice in May 2003 resolved that Mr R van de Venter be informed as follows:

- aa. The Committee recommended that it was not advisable for practitioners to treat their families in cases of serious illnesses.
 - bb. The matter of charging patients should be viewed in the same light as treating any ordinary patient.
 - cc. In order for a practitioner to avoid being suspected of abusing his or her rights, it was always advisable to request a colleague to oversee treatment of his or her immediate family;
 - v. the Executive Committee in August 2003 resolved that it be confirmed that –
 - aa. it was not advisable for practitioners to treat their families in cases of serious illnesses;
 - bb. the matter of charging for services rendered to immediate family, should be viewed in the same light as treating any ordinary patient;
 - cc. in order for a practitioner, treating immediate family to avoid being suspected of unfair financial gain or of abusing his or her rights, it was preferable for practitioners to rather request a colleague to oversee the treatment of his or her immediate family;
 - dd. this ruling be made known to the professions through the *MedicDent News* and Council's *Bulletin*.
- b. RESOLVED that the previous policy of the Board regarding the treatment of dependants and the rendering of accounts in respect thereof be confirmed, namely that –
 - i. ***it was permissible for a practitioner to treat his or her immediate dependants, but that it was not permissible for a practitioner to render accounts for services rendered to such dependants, except in the case of laboratory fees and material for which it would be permissible to render an account;***
 - ii. ***the expression “material” as referred to above could be interpreted to include “dispensing of pharmaceuticals”.***

MDB, Sept 2003, Item 50

TRUSTS: WHETHER MEDICAL PRACTITIONERS AND DENTISTS MAY FORM TRUSTS AND, IF SO, WHETHER THE SAME RULES AS FOR INCORPORATED PRACTICES WOULD APPLY

3/14/26/3

RESOLVED that, although trusts were normally reserved for the protection of assets, the formation thereof for the running of a medical or dental practice would be permissible, subject to the same rules as applied in the case of incorporated practices.

MDB, March 2001, Item 49

UNDESIRABLE BUSINESS PRACTICES: CORPORATE INVOLVEMENT IN PRIVATE PRACTICES OF HEALTH PRACTITIONERS: DISCOUNTED SHARE OFFER TO PRACTITIONERS

The Board –

- a. NOTED that –
 - i. Dr S Divaris, Diagnostic Radiologist and Mr B Volschenk of the South African Medical Association had attended the meeting of the Executive Committee on 4 August 2003 at 12:00. After they addressed the meeting and responded to questions from members of the Committee, they left the meeting;
 - ii. the Executive Committee then NOTED the report by Dr S Divaris and Mr B Volschenk regarding the discounted share offer by Netcare to registered health practitioners which appeared to be in conflict with the Regulations and policies of the Board;
 - iii. the Executive Committee then resolved that –
 - aa. an opinion from Senior Counsel be obtained on whether the Board and Council could obtain an interdict against private companies and corporates enticing registered persons to enter into agreements and share offerings, which arrangement, if concluded, would be in breach of the Regulations and policies of the Board and Council;

- bb. the Department of Health be advised that the involvement of private companies and corporate businesses in the practices of registered persons had reached such an extent of extortion of registered persons, that it was the considered opinion of the Board that private hospitals had to be regulated as a matter of urgency;
 - cc. the Health Systems Trust be requested to advise the Board on the relationship between corporate businesses active in health service delivery and registered health professionals in view of cases of extortion reported to the Board, regarding registered health practitioners being forced to agree to contractual arrangements with corporates in contravention of the Ethical Rules, Regulations and policies of the Board and Council.
- b. also NOTED –
- i. the report by the Chairman, Prof L H Becker, regarding the developments on the alleged discounted share offer by Netcare to medical practitioners through the vehicle of Nedpartner Investment Limited, which would allow medical practitioners who had subscribed to the share-offer access to certain groups of patients on a capitation basis;
 - ii. medical practitioners who did not participate in the share issue, would have to pay a subscription fee, should they wish to have access to groups of patients in the Netcare stable;
 - iii. the matter was referred by the Executive Committee to Senior Counsel for a legal opinion on whether the proposed discounted share offer contravened the Regulations and policies of the Board and the HPCSA;
 - iv. in the interim a press release was made on 20 August 2003 (MDB 36B/Sept 2003) advising practitioners not to participate in the scheme until a further statement was made by the Board and the HPCSA;
 - v. Dr J Schevel, CEO of Netcare subsequently requested a meeting with the Executive Committee of the Board which took place on 22 August 2003, whereafter a further press release (MDB36C/Sept 2003) was made on 22 August 2003;
 - vi. subsequent to the aforementioned, a legal opinion (MDB36D/Sept 2003) was received from Adv J Ströh (SC) which confirmed that,

subject thereto that any medical practitioner or health professional who wished to acquire shares or any financial interest in Netpartner, applied to the Board (in the prescribed format) for approval of the ownership of the shares or other financial interest, it could be concluded that there was NO impediment or Ethical Rule or policy requirement of the Board or the HPCSA, preventing them from doing so;

- vii. the presentation by the Registrar and Adv J Ströh, following further meetings held with representatives of Netcare on the alleged discounted share offer to registered health professionals by Netpartner Investments Limited;
 - viii. the responses provided by the Registrar and Adv Ströh to questions put by members of the Board on the Managed Health Care model proposed by Netcare;
- c. after careful consideration, the Board RESOLVED that –
- i. a further press release be made as per the draft (as amended) submitted by the Registrar as contained in MDB 36E/Sept 2003;
 - ii. the letter addressed to members of the Executive Committee by the Registrar be referred to the Executive Committee of the Board for consideration of the salient points contained therein.

MDB, Sept 2003, Item 55

UNDESIRABLE BUSINESS PRACTICES: WORKSHOP

2/2/2

NOTED a report by the Chairman that –

- a. a meeting of the Multi-Disciplinary Task Team of Council had been held on 13 February 2003; and
- b. a workshop on undesirable business practices was intended to be held with stakeholders in May 2003.

MDB, March 2003, Item 45

USE BY A SPECIALIST OF THE ROOMS OF A GENERAL PRACTITIONER

RESOLVED that Dr E K Duku be informed that –

- a. a health care practitioner registered with Council could share rooms with any other health care professional registered with Council;***
- b. a general medical practitioner or dentist registered with Council could, therefore, share rooms with a medical or dental specialist;***
- c. the impression should, however, not be created that such a general practitioner was also a specialist;***
- d. patients who were referred to a specialist sharing rooms with a general practitioner, should after treatment be referred back to their referring practitioner.***

MDB, Sept 2000, Item 69

4. APPLICATIONS FOR APPROVAL OF OWNERSHIP OF SHARES

APPLICATION: APPROVAL OF OWNERSHIP OF SHARES OR OTHER FINANCIAL INTEREST IN PRIVATE COMPANY WHICH CONDUCTS THE BUSINESS OF A PRIVATE HOSPITAL (OPCO AND PROPCO)

RESOLVED that Mr J M Bortz and Ms T Waksman of Werksmans Attorneys with reference to their application as contained in MDB 52/Sept 2003 be informed that their application had not been agreed to in view of *inter alia* the stipulation in paragraph 10.1.1 of the proposed subscription agreement.

MDB, Sept 2003, Item 63.1

APPLICATION: DRS HAUMANN AND PARTNERS, MEDICLINIC, G10 BLOEMFONTEIN

RESOLVED that Dr W M van Tonder be informed that his application for the retention of shares in Upington Private Hospital (Pty) Ltd as contained in MDB 53/Sept 2003 had been agreed to.

MDB, Sept 2003, Item 63.2

APPLICATION: OWNERSHIP OF SHARES HELD BY HEALTH CARE PROFESSIONALS IN TZANEEN HOSPITAL

3/1/4/26/4

The Board –

- a. NOTED that –
 - i. in a fax message dated 20 June 2002, Dr I M Jansen van Rensburg, Director and Chairman of Neomed Independent Practice Association, was applying on behalf of shareholders of Tzaneen Private Hospital (Pty) Ltd for approval of ownership of shares held by health care professionals;
 - ii. details regarding the matter were contained in MDB Exec 16/Dec 2002;

- iii. in October 2002 the Committee for Human Rights, Ethics and Professional Practice RESOLVED that this matter be referred to the Executive Committee for consideration and decision;
- iv. the Executive Committee in December 2002 resolved that –
 - aa. every shareholder of Tzaneen Private Hospital be asked to each complete the questionnaire pertaining to declaration of shareholding status, whereafter the matter would be further considered;
 - bb. the matter in the meantime be referred to the Management Committee for consideration and to compile criteria by which to fairly and speedily assess applications for shareholding in private hospitals;
 - cc. Prof J V van der Merwe be invited to assist the Management Committee in the above regard'
- b. RESOLVED that Dr I M Jansen van Rensburg be informed that the application for the retention of shares by shareholders in Tzaneen Private Hospital as contained in MDB 54/Sept 2003 had been agreed to.

MDB, Sept 2003, Item 63.3

APPLICATION: OWNERSHIP OF SHARES HELD IN PRIVATE HOSPITALS

3/1/4/26

The Board –

- a. NOTED that -
 - i. Dr Jacques du Plessis (MP 0258202) in his letter was asking for advice on whether or not the number of shares held in a hospital was such that it could be regarded to be unethical in terms of the guidelines for the Board pertaining to perverse incentives (see MDB Exec 17/Dec 2002);
 - ii. the Committee for Human Rights, Ethics and Professional Practice in October 2002 resolved that the matter be referred to the Executive Committee for consideration and decision;
 - iii. the Executive Committee in December 2002 RESOLVED that -

- aa. Dr Du Plessis be asked to complete the questionnaire pertaining to declaration of shareholding status, whereafter the matter would be further considered;
 - bb. the matter also to be referred to the Management Committee for consideration and to compile criteria by which to fairly and speedily assess applications for shareholding in private hospitals;
 - iii. Prof J V van der Merwe be invited to assist the Management Committee in the above regard;
- b. Dr Du Plessis be informed that his application for the retention of shares in terms of the principles outlined in his letter as contained in MDB 55/Sept 2003 had been agreed to.

MDB, Sept 2003, Item 63,4

H L RODE/L Smith
August 2004