

PERVERSE INCENTIVES: SAMA GUIDANCE TO PRACTITIONERS WITH EXAMPLES

Introduction

The aim of this Guideline is to provide information and guidance to SAMA Committee Members as well as SAMA Members in general, on what is deemed to be a perverse incentive and why.

It was decided to put together a Guidance document which highlight the aspects of the HPCSA Guideline which Members had issues with - it does not include review of the entire HPCSA document – due to many queries received from SAMA Members. The examples contained in the SAMA Guidance document is not exhaustive.

Medical practitioners often find themselves in a position where their actions can be deemed to be the result of a perverse incentive, without the practitioners actually being aware of that fact.

The result can be devastating, with doctors then acting in direct contravention of the Health Professions Act and its regulations and official Guidelines of the HPCSA which can lead to disciplinary procedures and possible suspension or removal from the Register, of the medical practitioner.

In order to avoid the pitfalls, we want our SAMA Members to take note of the different definitions and practices which make up the framework of what a perverse incentive is.

The Health Professions Council of South Africa (HPCSA) requires that health care practitioners should at all times act in the best interests of their patients and regard the clinical needs of their patients as paramount. To this end, a health care practitioner should always try to avoid potential conflicts of interest and maintain professional autonomy, independence and a commitment to the relevant professional and ethical rules and policies applicable. Any conflicts of interest, incentives or forms of inducement that threaten such autonomy, independence or commitment to the appropriate professional and ethical rules and policies or that do not accord first priority to the clinical needs of patients, are unacceptable. The ownership and use of high technology equipment creates a special problem, not only because of its inappropriate use by health care practitioners who are not properly qualified, but also due to over-servicing by appropriately qualified health care professionals. In general these guidelines cover the problems related to the use of high technology equipment. In particular, it needs to be emphasised, that over servicing of any kind is unacceptable¹.

The relevant definitions and information contained in the HPCSA Perverse Incentive Guideline which the HRLE Committee deemed appropriate for the purpose of the SAMA document, are included in this document for ease of reference.

In attempting to further assist our members in understanding the different concepts and maintaining the professional boundaries set for them in this regard, the SAMA Guideline Section indicates where the SAMA document differs from the HPCSA Guideline and where, in our view, updates are required in order for the document to remain relevant and current.

¹ HPCSA Booklet 5 - Guidelines regarding overservicing, Perverse Incentives and Related matters concerning health care professionals. May 2008.

HPCSA GUIDELINES SECTION

2. DEFINITIONS

2.1 “**Advertise**” in relation to any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service, means any written, pictorial, visual or other descriptive matter or verbal statement or reference in respect thereof:

2.1.1 Appearing in any newspaper, magazine, pamphlet or other publication; or

2.1.2 Distributed to members of the public; or

2.1.3 Brought to the notice of members of the public in any manner whatsoever, that is intended to promote the sale of that orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or to attract patients to any particular health establishment or health related service.

2.2 “**Complementary medicine**” means any substance, or mixture of substance, which:

2.2.1 Originates from a plant, mineral or animal, and which may be, but is not limited to being classified as herbal, homeopathic, Ayurveda or nutritional; and

2.2.2 Is used or intended to be used for, or manufactured or sold for use in, or purported to be useful in, complementing the healing power of a human or animal body or for which there is a claim regarding its effect in complementing the healing power of a human or animal body in the treatment, modification, prevention of a disease, abnormal physical or mental state or the symptoms thereof in a human being or animal; and

2.2.3 Is used in, but not limited to, the disciplines of Western herbal, African traditional, traditional Chinese, Homeopathy, Ayurveda, Unani, Antroposophy, Aromatherapy and Nutritional supplementation; or

2.2.4 Because of its origin, intended use or use in a discipline, is determined by the Authority, by notice in the Gazette, to be a complementary medicine.

2.3 “**Device**” see definition of “Medical device”.

2.4 “**Endorse**” means any action whereby a person or body attaches approval to or sanctions any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or other health related product or health related service with a view to encouraging or promoting the preferential use or preferential sale thereof for the purpose of financial gain or other valuable consideration.

2.5 “**Health care professional**” means any person registered in terms of the applicable Act which governs the functioning of any of the Councils that form part of the Forum of Statutory Health Councils. This includes persons registered by the Health Professions Council of South Africa. The term also includes registered student health care practitioners.

- 2.6 **“Health care practitioner”** means any person registered with the HPCSA.
- 2.7 **“Health establishment”** means an institution, facility, building or place where persons receive treatment, diagnostic or therapeutic interventions or other allopathic or complementing health services and it includes facilities such as a clinic, mobile clinic, hospital, community health centre, maternity home or unattached delivery suite, convalescent home, consulting room, dispensary of health related treatment or aids and appliances, first aid station, orthopaedic workshop, dental laboratory or workshop, ambulance, unattached operating theatre, sanatorium, laboratory, pharmacy, occupational health clinic, radiological clinic, and health spa or hydro.
- 2.8 **“Health related product”** means any commodity other than orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance which is produced by human effort or some mechanical, chemical, electrical or other human engineered process for medicinal purposes or other preventive, curative, therapeutic or diagnostic purposes in connection with human health.
- 2.9 **“Improper financial gain or other valuable consideration”** means money, or any other form of compensation, payment, reward or benefit which is not legally due or which is given on the understanding, whether express, implied or tacit, that the recipient will engage or refrain from engaging in certain behaviour in a manner which is either:
- 2.9.1 Illegal; and/or
 - 2.9.2 Contrary to ethical or professional rules; and/or
 - 2.9.3 Which, in the opinion of a the HPCSA, may adversely affect the interests of a patient or group of patients, In order to procure some direct or indirect advantage, benefit, reward or payment for the person offering or giving the said money, compensation, payment, reward or benefit, and “perverse incentive” has the same meaning.
- 2.10 **“Medicinal purposes”** in relation to a scheduled substance, means the purpose of treatment or prevention of a disease or some other definite curative or therapeutic purpose, but does not include the satisfaction or relief of a habit or a craving for the substance used or for any other scheduled substance, except where the substance is administered or used in a hospital or similar institution maintained wholly or partly by the Government or a provincial administration, or approved for that purpose by the Minister of Health.
- 2.11 **“Medicine”** means any substance or mixture of substances intended to be used by, or administered to human beings, for any of the following therapeutic purposes, namely:
- 2.11.1 Treating, preventing or alleviating symptoms of disease, abnormal physical or mental state or the symptoms thereof;
 - 2.11.2 Diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;
 - 2.11.3 Otherwise preventing or interfering with the normal operation of physiological function, whether permanently or temporarily and whether by way of terminating, reducing, postponing or increasing or accelerating the operation of that function. And “orthodox medicine” has the same meaning.

- 2.12 **“Medical device”** means any instrument, appliance, material, machine, apparatus, implant or diagnostic reagent or any other article, whether used alone or in combination, including software necessary for its proper application used for or purporting to be suitable for use or manufactured or sold for use in or on a human or animal body:
- 2.12.1 In the diagnosis, prevention, monitoring, treatment or alleviation of disease; or
 - 2.12.2 In diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap; or
 - 2.12.3 In investigation, replacement or modification of the anatomy or of a physiological process; or
 - 2.12.4 In the diagnosis of pregnancy, or the control of conception or termination of pregnancy, and which does not achieve its principal intended action in or on the human body by chemical, pharmacological, immunological or metabolic means, but which may be assisted in its function by such means: and **“device”** has the same meaning.
- 2.13 **“Orthodox medicine”** see definition of “Medicine”.
- 2.14 **“Overservicing”** means the supply, provision, administration, use or prescription of any treatment or care (including diagnostic and other testing, medicines and medical devices) which is medically and clinically not indicated, unnecessary or inappropriate under the circumstances or which is not in accordance with the recognised treatment protocols and procedures, without due regard to both the financial and health interests of the patient.
- 2.15 **“Perverse incentive”** see definition of “improper financial gain or other valuable consideration”.
- 2.16 **“Promote”** means any action taken by a person or body or allowed to be taken by such person or body to further or to encourage the preferential use of any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service or to further or to encourage the preferential sale of any such product or service for the purpose of financial gain or other valuable consideration: This definition does, however, not prohibit the practice of those professions where, in terms of their scopes of practice, it is appropriate to sell such product or service at market related prices.
- 2.17 **“Scheduled substance”** means any medicine prescribed under section 31 of the South African Medicines and Medical Devices Regulatory Authority Act (Act No. 132 of 1998). (Act No. 132 of 1998 has not yet been brought into effect and at present the Medicines and Related Substances Control Act (Act No. 101 of 1965) is still in force).
- 2.18 **“Spouse”** means a person’s partner in marriage and includes for the purpose of this policy statement, a person with whom another person lives as if they were married or with whom one habitually cohabits.
- 2.19 **“Trade”** means an act or instance of buying, selling or purchasing goods and services for the purpose of financial gain or other valuable consideration.

2.20 “**Veterinary medicine**” means any substance or mixture of substances intended or manufactured for use in connection with animals for diagnosis, treatment, alleviation, modification or prevention of disease or unhealthy physical conditions, for the improvement of growth, production or working capacity, for the lasting capacity of carcasses, for curing, correcting or modifying behaviour or for humane euthanasia, but does not include foodstuffs.

3. OVERSERVICING, PERVERSE INCENTIVES AND RELATED MATTERS

The following acts or omissions are not permissible for any health care practitioner, nor is it ethical for any health related body to encourage health care professionals to engage in any of them:

3.1 OVERSERVICING

Health care practitioners shall not:

3.1.1 Provide a service or perform or direct certain procedures to be performed on a patient that are neither indicated nor scientific or have been shown to be ineffective, harmful or inappropriate through evidence-based review.

3.1.2 Refer a patient to another health care practitioner for a service or a procedure that is neither indicated nor scientific or has been shown to be ineffective, harmful or inappropriate through evidence-based review.

[Note: Over servicing by ordering or providing more tests, procedures or care than is strictly necessary, is a common problem in modern medicine. Health care practitioners must therefore not engage in any act that would constitute over servicing of patients].

3.2 MANUFACTURING

Health care practitioners shall not manufacture or participate in the manufacture, for commercial purposes or trade, of orthodox medicine, complementary medicine, veterinary medicine, a medical device or a scheduled substance or a health related product, except where such medicine or device or substance or product forms an integral part of the normal scope of practice of the health care practitioner concerned and where explicit permission was granted to a health care professional by the HPCSA to manufacture or to participate in the manufacture of such medicine, device, substance or product.

3.3 ADVERTISING

Health care practitioners shall not advertise or endorse or encourage the use of any health establishment or orthodox medicine, complementary medicine, veterinary medicine, medical device or scheduled substance or health related product or health related service in a manner that unfairly promotes the practice of a particular health care practitioner or a health care facility for the purpose of financial gain or other valuable consideration.

3.4 PREFERENTIAL USAGE OR PRESCRIPTIONS

Health care practitioners shall not engage in or advocate the preferential use of any health establishment or medical device or health related service or prescribe any orthodox medicine,

complementary medicine, veterinary medicine or scheduled substance, if any financial gain or other valuable consideration is derived from such preferential usage or prescription or the advocacy of preferential usage by the health care professional.

3.5 REFERRALS

3.5.1 Self-referrals

Health care practitioners may only refer their clients or patients to any health establishment in which such health care practitioner or a close family member or business associate has a financial interest or a potential conflict of interest if such interest has been declared to and approved by the HPCSA and on condition that such interest is discussed and agreement reached with the patient prior to the referral for the patient's consent.

3.5.2 Other referrals

Health care practitioners shall not refer their clients or patients to any health establishment or to any other health care professionals if such referral would constitute overservicing.

3.6 TECHNOLOGICAL EQUIPMENT

3.6.1 Health care practitioners shall only own and use technological equipment if it forms an integral part of their scope of the profession and practice and on condition that the health care practitioner concerned has received appropriate training in using and managing such equipment.

3.6.2 Health care practitioners shall not over-use equipment for procedures, tests and other applications that are not indicated, scientific or based on evidence. This constitutes overservicing and is prohibited.

3.6.3 Health care professionals shall not use technological equipment, health care products or devices for profiteering and must refrain from charging patients fees for the use of such products or devices that are not market related.

3.7 FINANCIAL INTEREST IN HOSPITALS

A practitioner may have a direct or indirect financial interest or shares in a hospital or any other health care institution: Provided that –

- (a) such interests or shares are purchased at market-related prices in arm's length transactions;
- (b) the purchase transaction or ownership of such interest or shares does not impose conditions or terms upon the practitioner that will detract from the good, ethical and safe practice of his or her profession;
- (c) the returns on investment or payment of dividends is not based on patient admissions or meeting particular targets in terms of servicing patients; (d) such practitioner does not over-service patients and to this end establishes appropriate peer review and clinical governance procedures for the treatment and servicing of his or her patients at such hospital or health care institution;

- (e) such practitioner does not participate in the advertising or promotion of the hospital or health care institution, or in any other activity that amounts to such advertising or promotion;
- (f) such practitioner does not engage in or advocate the preferential use of such hospital or health care institution;
- (g) the purchase agreement is approved by the council based on the criteria listed in paragraphs (a) to (f) above; and
- (h) such practitioner annually submit a report to the council indicating the number of patients referred by him or her or his or her associates or partners to such hospital or health care institution and the number of patients referred to other hospitals in which he or she or his or her associates or partners hold no shares.

3.8 RENTALS AS PERVERSE INCENTIVES

Health care practitioners shall not:

- 3.8.1 Pay rentals in lease agreements between health care practitioners and health establishments that are not market related or are at preferential rates.
- 3.8.2 Enter into lease agreements with health establishments or services that wish to rent their consulting rooms at rates conditional on the health care practitioner achieving a certain turnover or targets such as admission of a specific number of patients at a private health care facility.
- 3.8.3 Rent consulting rooms from health establishments or services under financial arrangements that are not openly available to other similarly qualified health care practitioners.

3.9 COMMISSION

3.9.1 Accepting commission

Health care practitioners shall not accept commission or any financial gain or other valuable consideration from any person or body or service in return for the purchase, sale or supply of any goods, substances or materials used by the health care professional in his or her practice.

3.9.2 Paying commission

Health care practitioners shall not pay commission or render any financial gain or other valuable consideration to any person for recommending patients.

3.10 CHARGING OR RECEIVING FEES

3.10.1 For referring patients

Health care practitioners shall not charge a fee or receive any financial gain or other valuable consideration for referring patients to the other health professional or for participation in drug trials or other research trials of a similar nature.

3.10.2 For seeing representatives

Health care practitioners shall not charge a fee or receive any financial gain or other valuable consideration for seeing medical representatives.

3.10.3 For services not personally rendered

Health care practitioners shall not charge or receive fees for services not personally rendered by either a health care professional himself or herself or by an unregistered person in his or her employ, except for services rendered by another health care practitioner or person registered in terms of the Health Professions Act (Act No. 56 of 1974), that regulates the particular profession, with whom the health care practitioner is associated as a partner, shareholder or *locum tenens*.

3.11 SHARING OF FEES

Health care practitioners shall not share fees with any person or health care professional who has not taken a commensurate part in the service for which the fees are charged.

3.12 CONTRACTS

3.12.1 Health care practitioners shall not enter into a contract to work in a particular health establishment or service on the understanding that the health care professional generates a particular amount of revenue for such health establishment or service.

[Note: A health establishment or service that equips a theatre, ward or other facility for a specific health care practitioner according to his or her specifications may enter into a contractual agreement with such health care professional on condition that such health establishment or service may not stipulate any turnover targets for the health care practitioner concerned].

3.13 CONTINUING PROFESSIONAL DEVELOPMENT

With regard to continuing professional development (CPD), the HPCSA wishes to state the following:

3.13.1 Collaborative efforts

Historically there has been a close collaboration between health care practitioners and the pharmaceutical and health supply industry that extended particularly to CPD. Health care is to a large extent self-governing and practitioners must ensure that their participation in such collaborative efforts is in keeping with their ethical duties towards patients and society.

3.13.2 Educational needs of targeted group

Continuing professional development activities should address the educational needs of the targeted health care group.

3.13.3 Health care provider organisations

The decision on content and choice of continuing professional development activities, as well as funding arrangements lies ultimately with the health care provider organisations such as professional associations, their branches and groups who should not be in a position of conflict of interest by virtue

of any relationship with the funding body. The organisers may acknowledge financial or other aid received, but should not identify any specific products. Generic names of products should be used rather than trade names in the course of continuing professional development activities.

3.13.4 Funding

Funds for continuing professional development activities should preferably be in the form of an educational grant payable to the health care provider organisation arranging the activity.

3.13.5 Travel, lodging and other expenses with regard to the attendance of CPD events

No travel or lodging costs or other expenses should be paid by the industry directly to the individual health care practitioners to attend a CPD event. However indirect funding or scholarship of CPD events may be permissible in instances where, such sponsorships are paid to the organisers of the CPD events who in turn will identify, through a transparent selection process, deserving candidates based on such factors as historically disadvantaged individuals status, gender, geographical location in terms of rural and inaccessible locations, young practitioners and developing practitioners etc. The organisers may extend reasonable honoraria and imbursement for travel, lodging and meal expenses to speakers. The principal event should at all times centre around education and not around meals, entertainment or other hospitality, the cost of which should not exceed that level at which the recipients might reasonably be expected to incur for themselves under similar circumstances.

3.13.6 Travel, lodging and other expenses with regard to the attendance of international Conferences

3.13.6.1 It is a well-established practice and an acknowledged fact that health care practitioners and educators should be exposed to new knowledge and insights into their respective professions and disciplines by attendance at international conferences, either locally or overseas. It is, however, also of the utmost importance that young and upcoming health care practitioners and educators and those from disadvantaged backgrounds be given an equal opportunity to expand their knowledge and understanding with regard to their respective professions and disciplines by attendance at international conferences.

3.13.6.2 It will, therefore, be permissible for companies to sponsor delegates to attend international conferences, either directly or through professional associations or societies, with the proviso that a fair and transparent process should be followed in the election and sponsoring of delegates to attend such events, especially with regard to the attendance of such conferences by young and upcoming health care professionals and educators and those from disadvantaged backgrounds.

3.13.6.3 Sponsorships should be earmarked for specific educational events and conferences and not for holiday purposes.

3.13.7 Distinction between education, training and product promotion

A distinction should be made between education and training on the one hand and product promotion on the other. Health care practitioners cannot earn CEUs for attending product launches or other product promotion events. No travel, lodging or other expenses of health care practitioners should be paid for attendance at product promotion events or product launches. However, modest meals may be provided.

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INCENTIVE

A payment or concession to stimulate greater output or investment.

Example: Medical Practitioner using instruments or products for specific procedures, which are provided by a Medical representative, with the aim of advertising their product to encourage possible investment in the product.

ACCEPTABLE FINANCIAL GAIN OR OTHER VALUABLE CONSIDERATION

Any form of payment, reward or remuneration legally due to a medical practitioner through legally accepted process and completed in line with all ethical or professional rules, will be acceptable. It is however important that, in the opinion of the HCPSA, such financial gain or other valuable consideration will not adversely affect the interests of a patient or group of patients.

Example:

When a medical practitioner e.g. sponsor a cricket team and his/her name is listed as one of the sponsors.

IMPROPER FINANCIAL GAIN OR OTHER VALUABLE CONSIDERATION AS A PERVERSE INCENTIVE

Medical practitioners must refrain from engaging, whether in an expressed, implied or tacit manner, in certain behaviour in a manner which is either illegal and/or contrary to the relevant ethical rules and legislation.

This can be explained in more detail as follows:

Money, or any other form of compensation, payment, reward or benefit which is not legally due will be deemed improper. Where any of the last mentioned are given on the understanding (whether express, implied or tacit) that the recipient will engage/refrain from engaging in certain behaviour in an illegal manner and/or contrary to the ethical/professional rules and/or which, in the opinion of the HCPSA, may adversely affect the interests of a patient or group of patients, such behaviour will be deemed improper.

Example:

Where a Medical practitioner accepts money from another medical practitioner or specialist to refer a patient to that medical practitioner or specialist.

PERVERSE INCENTIVE

A perverse incentive is an incentive that has an unintended and undesirable result which is contrary to the interests of the incentive makers. Perverse incentives are a type of negative unintended consequence which, in terms of the professional rules and/or in HPCSA opinion, is adverse and could be illegal.

Example:

If you own shares in a hospital (or any other health care institution) and the return (through dividends or profit share) is linked directly or indirectly to patient admissions, you will then only receive funds once a particular annual or monthly target has been met.

This is a perverse incentive if a medical practitioner then admits more patients despite the fact that they might not require admission and the medical practitioner only admits them in order to qualify to receive the funds.

UNINTENDED CONSEQUENCE/ADVERSE CONSEQUENCE

The unplanned or unintended effect, result or meaning following from an action or inaction.

Example:

If you own shares in a hospital (or any other health care institution) and the return (through dividends or profit share) is linked directly or indirectly to patient admissions, you will then only receive funds once a particular annual or monthly target has been met.

This action would be a Perverse Incentive and the unintended consequence would be that there is a lower quality of care because the patients' stay might be reduced in order to push for higher number of admissions.

RENTALS AS INCENTIVES FOR MEDICAL PRACTITIONERS

Health care practitioners are allowed to:

- Rent consulting rooms from health establishments or services under financial arrangements that are openly available to other similarly qualified health care practitioners.

They will also be allowed to: -

- Pay rentals in lease agreements between health care practitioners and health establishments that are market related or are at non-preferential rates;

RENTALS AS PERVERSE INCENTIVES FOR MEDICAL PRACTITIONERS

Health care practitioners must also refrain from entering into lease agreements with health establishments or services that wish to rent their consulting rooms at rates conditional on the health care practitioner achieving a certain turnover or targets such as admission of a specific number of patients at a private health care facility.

Example: If market related rates per square meter is R150/sqm, an incentive would be to offer this to a practitioner at R120/sqm.

A perverse incentive for example, would be to *further* create a discount to R100/sqm over and above the offer of R120/sqm if admissions/utilisation exceed a particular agreed upon target.

PROVIDING MEDICAL CARE AT SCHOOLS AS A PERVERSE INCENTIVE

A school is not a “Health Establishment” in terms of the definition as provided by the HPCSA. In this regard, medical practitioners working at schools and providing medical care at school events, must take care in the manner how they are providing this service.

If the medical practitioner provides this service in return for financial gain or some other valuable consideration, whether in an expressed, implied or tacit manner, which is either illegal and/or contrary to the relevant ethical rules and legislation it will be deemed a perverse incentive.

Example:

If a medical practitioner provides health care services to a school or at a school event with the requirement that his/her child is included in the first rugby team or must be made a Prefect.

OUTCOME

EFFECT OF ACCEPTING AND/OR TAKING PART IN AN ACTIVITY WHICH CONSTITUTES A “PERVERSE INCENTIVE”

The professional rules and HPCSA guidelines indicate that it is an offence to either offer or accept a perverse incentive and if the professional rules and guidelines in this regard is breached, the conduct will be investigated by the HPCSA or another appropriate authority in order to determine if any underlying principles were contravened.

It is the duty of every SAMA Member, be it in their capacity as Committee Members within the SAMA structures, or members practicing in the Private and Public sector, to ensure their conduct always remain in accordance with the ethical requirements in this regard.

We continue to advise that our members refrain from any activity which may be deemed a Perverse Incentive and confirm that, should any medical practitioner who is a member of SAMA, be found guilty of this offence, SAMA will not be able to assist them as this will be deemed unethical conduct which is in contravention of the Health Professions Act 56 of 1974, as well as the Ethical rules under the Act and the HPCSA Professional Guidelines.

SAMA adheres strictly to the ethical requirements as set out in the Health Professions Act and the HPCSA Guidelines and Regulations, as such, it will not endorse any activity which may fall outside the requirements as stated above.