



SAMA Conference 2015

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Medical Aid Fraud: The Ethical and Legal Principles

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Bonitas stance on healthcare professionals

- Healthcare professionals are key to making quality healthcare affordable.
- Partnership between:
 - Healthcare professional +
 - Patient/member +
 - Bonitas
- Coordination of care = better quality and outcomes + less wastage.

One of Bonitas' highest priorities is to foster close relationships with healthcare professionals.

Medical Aid Fraud – Who and How?

- All parties in the healthcare delivery chain involved.
- Vast majority of healthcare professionals ethical and professional.
- Unfortunately a minority choose not to emulate their colleagues.
- Cost according to KPMG study:
 - ➡ 10% to 20% of total annual healthcare spend
 - ➡ R 11 to R 22 billion per annum
 - ➡ Adds 10% - 20% to medical aid contributions.

Major barrier to achieving the goal of making quality healthcare more affordable.

HPCSA - General Ethical Guidelines for the Health Care Professions

“To be a good health care practitioner, requires a life-long commitment to sound professional and ethical practices and an overriding dedication to the interests of one’s fellow human beings and society. In essence, the practice of health care professions is a moral enterprise”

Duty to Society

“Health practitioners should:

- Deal responsibly with scarce health care resources.*
- Refrain from providing a service that is not needed, whether it provides financial gain or not.*
- **Refrain from unnecessary wastage, and from participating in improper financial arrangements, especially those that escalate costs and disadvantage individuals or institutions unfairly.**“*

Why does fraud occur?

- All parties in delivery chain at all levels.
- Majority not hardened criminals.
- Environment conducive to fraud.
- Difficult financial climate.
- People love to hate medical schemes – perception of being “ripped off.”
- No visible policing.
- Must be consequences.

It is of the utmost importance that investigators maintain a high standard of ethics while adhering to the legal protocols and processes agreed to by the industry.

What is fraud?

Fraud is in unlawfully making, with intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

The crime of fraud consists of the following elements:

- Unlawfulness:
- Misrepresentation
- Intention
- Prejudice:
- Abuse
- Intent
- Unethical behaviour

Theft

- Theft is a continuing crime.
- It continues as long as the stolen property remains in the possession of the thief or of some other person.
- No differentiation is made between the perpetrator and an accessory after the fact on the other.

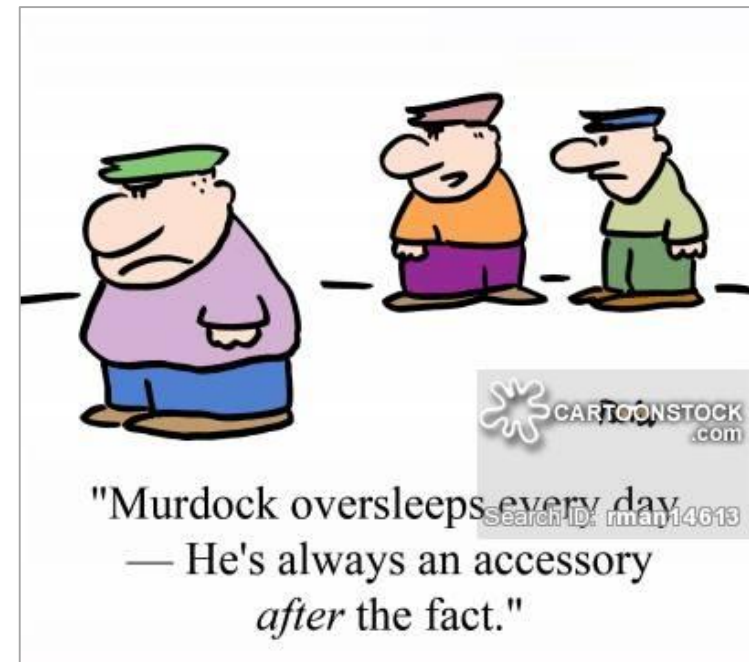
Any person, who assists the original thief is a thief.

Accomplice

- Under South African law, an accomplice is a person, other than the perpetrator and other than the accessory after the fact, who takes part in the commission of a crime.
- A number of requirements:
 - The accessory nature of the accomplice's liability requires the committing of a crime by somebody else.
 - A person must have engaged in conduct in which he furthers the commission of a crime by somebody else.
 - There must be a causal relationship between the accomplice's behaviour and the commission of the crime by the perpetrator.
 - To be liable as an accomplice, a person must have unlawfully and intentionally furthered the crime committed by someone else.

Accessory after the fact

- In South African law, theft is a continuing offence.
- In that context, a person who becomes an accessory by assisting the thief to escape, is guilty of theft itself.
- A person becomes an accessory only by assisting the perpetrator to attempt to evade the legal consequences of an act.
- Sharing in the profits from the crime does not, however, necessarily make a person an accessory.



Investigative Approach and Guidelines

- The uniqueness of the South African private healthcare environment poses many challenges.
- The medical scheme industry operates within a strict legal framework.
- Ensures that investigative techniques do not infringe the rights of individuals. Investigations must therefore be carried out in a fair and transparent manner.
- Guidelines have been drawn up to ensure a fair and transparent.

Grounds for an investigation

- There must be legitimate grounds, justification or reason for conducting the investigation.
- The purpose of the investigation must be clear.
- Reasons for the investigation and allegations documented.
- Important to prevent malicious or cold investigations and targeting of innocent parties.



The Investigation

- Objectivity critical to a successful outcome.
- Investigators must be sufficiently removed from the issues and people under investigation,
- Must be conducted in as short a period as possible - especially in cases where payment has been suspended.
- Difficult to set a specific time limit but may be necessary due to legal requirements.
- Certain allegations may also require that regulators, law enforcement, insurers, or external auditors be notified.
- Important to inform the subject of an investigation as soon as possible
- Information gathered must be kept confidential.
- Investigations should comply with applicable laws and rules regarding gathering information and interviewing witnesses.
- Evidence must be protected.
- If a decision has been made to suspend payment, the person must be informed in writing of this decision.
- Medical may have the right to approach members to verify claims.

Probes - guidelines

- To make sure the probe is legal and fair and in line with the Constitution, the following guidelines are followed:
 - The provisions of law must be obeyed at all times.
 - There must be a reasonable basis for the investigation.
 - The evidence to be gathered through the probe should not be reasonably obtainable through other means.
 - During the probe, no enticement should take place, nor should the individual under investigation be placed under any duress.
 - During the probe there must not be incitement of the provider to commit a crime of any kind.
 - The objective of a probe is purely to test allegations and to try and establish whether fraudulent activities take place under normal circumstances.
 - Should any incitement occur or the healthcare provider be placed under duress to provide services or items not covered by a medical scheme, it can then be classified as entrapment.
 - Evidence is automatically admissible if the conduct of the person concerned goes no further than providing an opportunity to commit the offence.

Probes - guidelines continued

- If the conduct goes beyond that, the court must enquire into the methods by which the evidence was gathered.
- The probe should be repeated at least twice in order to confirm a positive outcome.
- All steps should be clearly documented through affidavits
- The chain of evidence should be documented and protected at all times
- Medicines obtained by a probe from any healthcare practitioner should be identified by a qualified healthcare
- Remuneration for a probe should not be on a basis that is conducive to the making of false accusations by the person conducting the probe
- When taking the investigator's affidavit, it must be explained what actually happened at the practice.
- As far as possible, other medical schemes need to be included in investigations to increase evidence and/or make it more cost effective.

Steps to be taken following an investigation

- After investigation - a decision must be made as to how to proceed.
- The case could follow one, or a combination of the following routes –
 - Administrative
 - Professional
 - Criminal Civil.
- If administrative route chosen with a view to seek a settlement agreement, a meeting with the healthcare professional is convened.
- The healthcare provider must always be given the option of having representation of his/her choice present at a meeting.
- Unless there is a legal obligation to do so, it may not be appropriate to report certain cases to the SAPS or a statutory body.
- It may be appropriate to deal with these cases at administrative level - **this ties in with the philosophy of rehabilitation.**

Meetings with the healthcare professional

- The objective of a meeting is to:
 - Ensure a fair and transparent process
 - Expedite the conclusion of an investigation
 - Facilitate the recovery of monies lost
 - Facilitate rehabilitation
 - Determine how best to proceed with a matter



Sanctions: Healthcare Professionals

- Sanctions vary according to the role of the perpetrators but in the case of healthcare professionals, once fraud has been established, a number of sanctions may be imposed.
- These include:
 - Reversal of all irregular transactions (e.g. claims);
 - placing a healthcare professional on indirect payment from the date the scheme approves the recommended sanction;
 - reporting a provider to the relevant regulatory body;
 - recovery of losses through civil or criminal process; or
 - proceeding with a criminal case, depending on the medical scheme's decision;
 - removal of the healthcare professional from the medical scheme's network for a period of 12 months; and
 - blacklisting healthcare professionals from participation in provider networks.

State Crime Agencies

- The Constitution of the Republic of South Africa created a single National Prosecution Authority which is governed by the National Prosecuting Authority Act.
- The Constitution, read with this Act, provides the NPA with the power to institute criminal proceedings on behalf of the State, to carry out any necessary functions incidental to institution of criminal proceedings and to discontinue criminal proceedings.
- The NPA is accountable to the Minister of Justice and Correctional Services.



Healthcare Forensic Management Unit (HFMU)

- Healthcare Forensic Management Unit (HFMU) established by the Board of Healthcare Funders of Southern Africa (BHF).
- Information and resource sharing group which includes:
 - Most medical schemes
 - Administrators,
 - Management and administration entities
 - Some insurers.

Core focus:

To facilitate a unified approach to the reduction of fraud wastage and abuse in the medical schemes environment.

- Achieved by sharing information regarding fraud, over billing, over servicing and other forms of abuse in order to minimise fraud and other

Medical Aids and Fraud Detection

- Medical aids also have a responsibility to protect members from fraud
- All medical schemes, including Bonitas also have a complementary range of strategies in place to deal with fraud.
- As fraud increases and becomes more sophisticated so should the methods to combat it.
- Bonitas has entered into a partnership with Helios IT Solutions and FICO's Insurance Fraud Manager solution.
- A quantum leap forward in detecting fraud and potential fraud will make a significant impact on mitigating the financial losses caused by fraud.



The Role of Healthcare Professionals

- Fraud has a negative impact on the entire healthcare industry that cannot be ignored.
- It demands an overarching approach from all stakeholders.
- Thank you to the various healthcare professional bodies, including SAMA, for working closely with medical schemes and the HFMU to develop a common approach to combatting fraud.

To reiterate:

One of Bonitas' highest priorities is to foster close relationships with healthcare professionals.



Thank you



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