

## **RIGHTS AND RESPONSIBILITIES OF DOCTORS AND PATIENTS**

### **Preamble**

The SA Medical Association affirms the constitutional rights entrenched in Chapter 2 (Bill of Rights) of the South African Constitution (Act 108 of 1996). It realises that both doctors and patients have rights and responsibilities that are exercised in very real life situations. The Association has therefore translated these rights into possible practical situations faced by both doctors and patients on a daily basis.

Thus, both doctors and patients have the rights to

- Equality and non-discrimination [Sec 9]
- Life [Sec 11]
- Freedom and security of the person (i.e. physical integrity) [Sec12]
- Personal privacy and privacy of information [Sec 14]
- Freedom of religion, belief and opinion [Sec15]
- Freedom of expression and speech, within limitations set by relevant regulations [Sec 16]
- Freedom of assembly and association [Sec 17]
- Make political choices and participate in political activities [Sec 19]
- Freedom of movement and residence [Sec21]
- Freedom of trade, occupation and profession, within the limits set by the HPCSA and the law in general [Sec 22]
- Fair labour practices, including the rights to lodge disputes [Sec 23]
- A safe environment, especially where harmful medical equipment, medicines or devices are used [Sec 24]
- Property [Sec 25]
- Access housing [Sec 26]
- Access health care, which government must progressively realise within its available resources [Sec 27]
- Social security, including aspects such as social health insurance [Sec 27]
- Education and training, within existing frameworks [Sec 28]
- Language and culture and the adherence thereto as far as is practicable [Sec 30]
- Access to information held by the state and any other person or private institution, company or organisation [Sec 32]
- Just administrative action, i.e. to be provided for justifiable reasons when action taken affect's one's rights [Sec 33]
- Access to the courts or another appropriate forum [Sec 34]
- Fair treatment in accordance with section 35 of the Constitution when arrested, detained or accused [Sec 35]

Children enjoy special protection in a separate section, and the rights and responsibilities of parents and others dealing with children have to correspond with these basic rights and applicable legislation, such as the Children's Act No 38 of 2005.

All rights may be limited by a law of general application. This law has to be reasonable and justifiable in a democratic society and conform to the requirements set by section 36 of the South African Constitution. The Association recognise that it will not participate in the unlawful limitation of the rights of any person or organisation and will seek to uphold the values entrenched in the Constitution.

<b>Every doctor has the right-</b>	<b>Every doctor has the responsibility-</b>	<b>Every patient has the right-</b>	<b>Every patient has the responsibility-</b>
<p><b>To equal treatment and equal benefit of the law</b> in all applications by and dealings with government, the private sector and others. Substantive equality means that family responsibility, rural areas, historic disadvantage, etc. are relevant factors.</p>	<p>To treat all his/her patients equally and provide them with the same level of concern.</p>	<p>To equal treatment and equal benefit of the law, including provisions relating to medical care, medical schemes, etc.</p>	<p>To pay for the level of care received or to receive assistance in accordance with relevant legislation and policy.</p>
<p><b>Not to be unfairly discriminated against</b> by any patient, medical scheme, medical faculty or school, government, employer or any other person or institution on the basis of their race, gender, origin or any other ground. Doctors have the right not to be harassed.</p>	<p>Although a doctor has the right to choose his/her patients, such choices may never amount to unfair discrimination and emergency treatment may never be refused. Doctors have the duty not to harass patients, colleagues or others on the basis of sex, gender, sexual orientation, race or any (presumed) group characteristic.</p>	<p>Not to be unfairly discriminated against directly or indirectly<sup>1</sup> on the basis of their race, origin, gender, or any other ground. Patients have the right to be free from harassment.</p>	<p>Not to discriminate against any health care worker or the employees of any doctor. Patients have the duty not to harass doctors, their employees or other health care workers.</p>
<p><b>To life</b>, this includes the right not to be placed in disproportional life-threatening situations.</p>	<p>To protect life, within the confines of a patient's right to physical autonomy and decision-making power.</p>	<p>To have his/her life protected by means of the benefits of medicine, when available and when s/he so wishes.</p>	<p>To ensure that his/her illness or incapacity does not endanger the lives of others.</p>
<p><b>To freedom and security of the person</b>, which includes the right to physical autonomy and the right to be free from violence.</p>	<p>To ensure that patients are not subjected to cruel, inhuman or degrading punishment or treatment and to report instances where such occur, especially within the spheres of prison, detention, etc. as well abuse of children and the elderly. Doctors have to ensure that patients part take in all types of research with their full and informed consent.</p>	<p>To be free from cruel, inhuman or degrading treatment; to be free from violence and not to be subjected to medical experiments without informed consent.</p>	<p>To respect the physical and psychological integrity and autonomy of others and not to subject others to any form of violence.</p>
<p><b>To privacy</b>, this includes protection of personal information, communication, family and property.</p>	<p>To protect the privacy and confidentiality of his/her patients and to only disclose health care, treatment, diagnostic and other health information with the patient's informed and written consent or when authorised by law or a court to do so.</p>	<p>To have their privacy respected by those to whom they entrust such information, as well as other health care workers and intermediaries who deal with their health care information.</p>	<p>To respect the privacy of others, including those of their children of 14 years and older, as well as the privacy of their spouses and partners. Patients should also respect the privacy and family life of their doctors.</p>

<sup>1</sup> Indirect discrimination refers to where a neutral measure, such as "medical scheme patients" versus "cash patients" results in a physical division of patients on the basis of race in, for example, waiting rooms.

<b>Every doctor has the right-</b>	<b>Every doctor has the responsibility</b>	<b>Every patient has the right-</b>	<b>Every patient has the responsibility-</b>
<p><b>To freedom of religion, belief and opinion</b>, which includes the right of doctor to act in accordance with their beliefs. Doctors have the right to reasonable accommodation of their religious beliefs, short of undue hardship to others. Doctors also have the right to clinical independence.</p>	<p>To respect the religion, beliefs and opinions of their patients, even if it differs from their own, and not to force any patient or colleague to prescribe to any religious practice, belief or opinion. Doctors have the responsibility to respect the clinical independence of their colleagues and not to succumb to pressures of dual loyalty.</p>	<p>To have their freedom of religion, belief and opinion respected by doctors. This includes indigenous belief systems, religious dress and rules in relation to modesty, as well as certain medical procedures, such as blood transfusions.</p>	<p>To respect the religion, belief and opinion of doctors and others and not to force any doctor or other person to act according to a certain set of beliefs.</p>
<p><b>To freedom of expression</b>, this includes the right to express themselves and their opinions without victimisation. Doctors have the right to notify their patients of their services according to the rules of the HPCSA.</p>	<p>Not to practice hate speech or to subscribe to expression that is harmful to others or is aimed at inciting harm or violence. Doctors have a responsibility to listen to their patients and take their views into consideration. Doctors have the responsibility not to advertise in an unprofessional- or comparative manner.</p>	<p>To express themselves and to have their freedom of expression respected especially where their health care is concerned. This includes the right of patients to complain.</p>	<p>Patients have the responsibility to follow the advice given by their practitioners and to regularly and openly communicate with their doctors on matters affecting their health care.</p>
<p><b>To freedom of assembly, demonstration, picketing and to present petitions, without victimization.</b></p>	<p>To exercise their rights to assembly, demonstration, picketing and petitions to such an extent that it does not affect the health care of their patients.</p>	<p>To assemble, demonstrate, picket and present petitions in relation to health care issues.</p>	<p>To exercise their rights to assembly, demonstration and picketing in such a manner that it does not affect health care delivery and that it does not violate any law.</p>
<p><b>To freedom of association</b>, which includes the right to voluntarily form, join and participate in any association or to disassociate. It includes the unfettered right to choose life partners and friends.</p>	<p>Not to exercise his/her association in such a manner that it discriminates against any other person, amounts to supporting any scheme providing perverse incentives or - to a denial or exclusion of the rights or benefits potentially due to other doctors or others.</p>	<p>To associate with any group, club, scheme or project, as long as it is within the boundaries of the law.</p>	<p>To respect the rights of doctors and others to associate and to respect the duties flowing from their own free association.</p>
<p><b>To make political choices</b> and participate in political activities without any victimisation.</p>	<p>To ensure that any political affiliation and activities does not interfere with his/her duties to good patient care.</p>	<p>To make political choices and to participate in political activities without victimisation or detriment in terms of health care.</p>	<p>To tolerate the political activities and viewpoints of others.</p>
<p><b>To freedom of movement and residence</b>, which includes not to be subjected to unreasonable limitations in terms of where doctors must live and work.</p>	<p>Not to interfere with the rights of movement and residence of others and to, as far as possible, accommodate patients whose residence may cause difficulty in accessing health care.</p>	<p>To freedom of movement and residence.</p>	<p>To permit others freedom of movement and residence and to respect regulation by law in this regard.</p>

<b>Every doctor has the right-</b>	<b>Every doctor has the responsibility-</b>	<b>Every patient has the right-</b>	<b>Every patient has the responsibility-</b>
<p><b>To freedom of trade, occupation and profession</b>, including choices in relation to specialisation where positions exist. This includes the rights of doctors to take part in economic endeavours.</p>	<p>To ensure that they exercise their occupation within the limits set by the HPCSA and the law. This also means that economic endeavours should not amount to perverse activities (as set out by the HPCSA policy on perverse incentives) or part-take in activities that undermine the best possible patient care.</p>	<p>To be subjected to medical treatment by suitably qualified doctors in respect of every aspect of their health care.</p>	<p>To respect the occupation of medicine.</p>
<p><b>To fair labour practices</b>, including fair dispensations of overtime, leave and working conditions and the right to have their grievances taken up at appropriate forums. Doctors have the right to be assisted in disciplinary enquiries, to state their side of the case and to an impartial chairperson. Doctors have the right to work in an environment that is not hostile in terms of sex, gender, sexual orientation or (presumed) race or ethnicity. Doctors have the right to post-exposure prophylactics in cases of occupational exposure to HIV.</p>	<p>To fulfil their employment duties. The heads of facilities have the responsibility to facilitate and harmonise the employment rights of doctors employed by them. Doctors who are HIV positive have the duty to modify their practice of medicine to such an extent so as not to endanger the lives of their patients.</p>	<p>Not to have their employment relationships jeopardised by unlawful disclosures or any unauthorised participation in any aspect of their employment relationship with an employer.</p>	<p>To respect doctors exercising their employment rights in, for example, the form of leave. Employers have the duty not to place doctors in ethically difficult positions in relation to their employees who are patients as such doctors.</p>
<p><b>To an environment</b> that is not harmful to their health or wellbeing, including appropriate management of stressful situations and supervision/ assistance of junior doctors.</p>	<p>To ensure that medical waste are disposed off appropriately and that appropriate protocols are followed in terms of infectious disease control. Doctors have the responsibility to inform their patients of the harmful effects of medicines and how to store and use it properly.</p>	<p>To an environment that is not harmful to their health or wellbeing, including a setting that is conducive for recovery.</p>	<p>To create an environment that is not detrimental to the health and wellbeing of others, by ensuring that medicines are stored safely and used correctly, as indicated by their doctors.</p>
<p><b>To property</b>, which includes the right to be paid a fair remuneration for services rendered and not to have any unlawful interference with these and other property rights. Doctors have the right not to be taxed more or targeted exclusively based on their assumed financial status.</p>	<p>To pay their dues, to fairly remunerate their own employees and to respect the property of others.</p>	<p>To pay a fair amount for services rendered by doctors, not to be over-served or overcharged and to make enquiries in relation to accounts.</p>	<p>To pay for services rendered by doctors and to take personal responsibility for accounts, even where a medical scheme is involved. Where a patient is unable to pay immediately, s/he has to make appropriate arrangements with the doctor so as to repay any debts.</p>

<b>Every doctor has the right-</b>	<b>Every doctor has the responsibility-</b>	<b>Every patient has the right-</b>	<b>Every patient has the responsibility-</b>
<b>Of access to housing</b> , especially where doctors are fulfilling training requirements, community service, or contributing to alleviate the plight in rural areas.	To take care of state housing provided to them and not to refuse housing (to let or sell) to any person based on a prohibited ground of discrimination.		
<b>Of access to health care</b> , where reasonably possible within the state's available resources. The duty to realise this right rests on the state that has to proof the reasonability of their measures and laws in that regard. The state has to ensure that appropriate systems are in place for medico-legal work, such as cases of rape, domestic violence, abuse, assault, drunken driving, etc.	Not to unreasonably refuse a patient's access to health care, especially where there are no state facilities available to assist patients. Doctors may not refuse emergency treatment to patients. Doctors have a responsibility to assist in realising the right of access to health care, which may include issuing prescriptions ensuring access to the best available treatment.	Of access to health care and to obtain a second opinion. This includes access to the best available treatment and medicines, which have to be progressively realised by the state. The state has to ensure that everybody has at least access to primary health care facilities in their immediate vicinity.	To pay for health care services received, where such services cannot be provided for free in terms of the public- or a charitable system. Patients have the duty to follow the advice of their doctors and to fully inform their doctors of their health status.
<b>Of access to social security</b> , this includes access to insurance and social assistance. Social security institutions have to remunerate doctors fairly and timely.	To ensure that medical reports are fair and accurate, and that only particulars that are authorised by law are disclosed to insurance and assistance agencies.	Of access to social security, including occupational health schemes, medical schemes, private insurance, road accident funds, social grants, etc.	To make provision for their own social security, to ensure that their dependants are covered and to pay the required premiums or contributions, where applicable.
<b>Children's Rights</b>	All doctors have the responsibility to see that the rights of children that they deal with is protected in terms of informed consent (see Children's Act), children's participation in decisions affecting them, that child abuse is reported and that every child is afforded access to health care. Doctors should ensure that the privacy of children is respected in accordance with their age and maturity. Doctors should take heed of the International Convention on the Rights of the Child.	Obtain health care for their children or to properly mandate persons <i>in loco parentis</i> to assist children to obtain access to health care.	Of seeing to their children obtaining access to health care and to assist health care workers in affording health care to their children. Parents must respect their children's right to privacy, especially where the child could independently consent to treatment. [Sec 129 (2) & (3) of Children's Act]
<b>To education and further education</b> , which includes access to CPD activities. Private institutions must maintain standards not inferior to that of public institutions.	To ensure that s/he is informed about the latest developments in their fields and take part in educational activities.	To seek and receive education on public and private health matters.	To act in accordance with public and private education received.

<b>Every doctor has the right-</b>	<b>Every doctor has the responsibility-</b>	<b>Every patient has the right-</b>	<b>Every patient has the responsibility-</b>
<b>To language and culture</b> , which includes the right to converse in the language of one's choice, where practicable.	To tolerate and respect linguistic and cultural diversity. Doctors have to recognise that language and culture may serve as barriers in health care.	To language and culture, this includes the right to converse in the language of one's choice, where practicable. Patients also have the right to take part in cultural practices.	To tolerate and respect linguistic and cultural diversity and to speak out when these constitute barriers to good health care. Authorities and individuals have the responsibility to ensure that their cultural practices are not detrimental to the subjects thereof.
<b>Of access to information</b> held by the state and/or private institutions.	To provide access to information requested by their patients and to ensure that health data is stored safely and not sold or passed on without the patient's informed consent. Doctors may only withhold information on the limited grounds listed by the Promotion of Access to Information Act of 2000.	To obtain copies of all health information held on him/her.	To respect the privacy and information belonging to others, including family members. Patients have to deal with their health information in a responsible manner and realise that they may need expert advice on the interpretation thereof.
<b>To just administrative action</b> , which includes the right to reasons in writing where a doctor's rights or interests are affected/threatened. This includes action taken by the HPCSA and government.	To ensure that the principles of administrative justice are adhered to if they are in positions of authority, policy-making and decision-making that affects people.	To receive reasons where their rights/interests in relation to health care benefits, such as by medical schemes, are affected.	
<b>Of access to the courts.</b> It includes the right to have their justifiable disputes heard in a court of law or other appropriate forum. Doctors who act as witnesses in cases have the right to be fairly remunerated for their services.	To assist in legal proceedings when called upon as expert witnesses. Doctors have a particular responsibility in relation to crimes such as child abuse, domestic violence and abuse of the elderly.	To take legal action to enforce their rights in the health care setting.	Not to be vexatious in taking doctors to court.
<b>Not to be arrested, detained or accused</b> in contravention with section 35 of the Constitution. Doctors have the right not to be forced to take part in any unlawful (bodily) search or seizure and have the right to enquire as to the status of the subject brought to them, as well as the legislation in terms of which this is done.	To assist in the realisation of the right of access to health care of all arrested, detained and accused persons and to bring to the attention of the authorities or inspecting judge any irregularities or needs in relation to health care.	To medical care when in detention and to raise concerns in relation to health issues, either to the relevant health care workers or to the authorities, and to have such concerns addressed expeditiously.	To look after his/her own health and to ensure that s/he is not endangering the health of others when in detention.