



HEALTHCARE & LIFE SCIENCES

Back to the Future – Amendment of Rule 18 of the Ethical Rules leaves practitioners in uncertain territory

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On 21 November 2025, the Health Professions Council of South Africa (“HPCSA”) published Board Notice 856 of 2025 (“BN 856”), which significantly amends rule 18 of the Ethical Rules of Conduct for Practitioners Registered Under the Health Professions Act No. 56 of 1974, published under GN R717 in GG 29079 of 4 August 2006 (“Ethical Rules”).

Rule 18 of the Ethical Rules governs the conditions under which a registered practitioner may accept a professional appointment or employment by a non-registered person, such as a private company.

Although the amended rule 18 is unfortunately brief, the shift it introduces is material. The amended rule alters the requirements for employment relationships between practitioners and non-registered healthcare enterprises.

The amendment of rule 18 also has the potential to cause severe prejudice to those entities and practitioners who structured their operations based on the provisions of rule 18, which were in force prior to the 2025 amendment.

The amended rule 18, as published in BN 856, provides as follows –

“A practitioner shall accept a professional appointment or employment from employers approved by the [HPCSA] only in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession.”

The pre-approval requirement for such appointments and employment relationships is not new. The HPCSA's approval was historically required in order for non-registered entities to appoint or employ registered persons. However, an amendment which took effect on 17 November 2023 changed the position dramatically, and permitted practitioners to “accept a professional appointment or employment from employers in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession”. This was subject to the proviso that “the health practitioner ensures that the employment contract has as its primary aim the enhancement of the quality of health-care services to patients, is structured to contain costs, enhance access to appropriate, high quality health-care services or products to patients, and is not designed to extract profit for the benefit of the practitioner or their employer to the detriment of patients”.

Therefore, during the approximately two-year period between 17 November 2023 and 21 November 2025 (“the Interim Period”), non-registered entities such as private companies were lawfully permitted to employ registered practitioners without the HPCSA's approval, provided that the appointment or employment was in accordance with a written contract drawn up on a basis which was in the interest of the public and the profession. Several such entities, accordingly, proceeded on this basis, relying on the HPCSA's stated position that applications for approval were not required – and would not be considered.

The now amended rule 18 reintroduces the pre-approval requirement for non-registered entities to employ registered practitioners. This has the potential severely to impact business structures involving non-registered entities, which had become viable during the Interim Period. The question, accordingly, arises as to what the impact of the amended rule 18 will be on healthcare enterprises which lawfully contracted with registered practitioners during the Interim Period without the HPCSA's approval.

In this regard, the amended rule 18 does not state that it operates retrospectively. The well-established principle of legality and the rule of law, which is a founding value of the Constitution of the Republic of South Africa, 1996, arguably militate against retrospective application of the rule. In this regard, the Constitutional Court has recognised that non-retrospectivity of the law is a tenet of the principle of legality, and “[e]veryone deserves protection from retroactivity of the law where the result of retroactivity would be prejudicial” to any person or group of persons.^[1] That court has also held that the rule of law “embraces some internal qualities of all public law: that it should be certain, that is ascertainable in advance so as to be predictable and not retrospective in its operation”.^[2]

The principle of legality also underpins the common-law presumption that statutes, which would include amended rule 18, do not apply retrospectively, and that retrospective interference with vested rights acquired under existing laws, or the creation of new obligations and the imposition of new duties by the legislature in regard to past events, should not be lightly assumed.^[3] The retrospective application of the amended rule 18 would be manifestly prejudicial to entities and practitioners who structured their affairs in a manner which complied with the Ethical Rules during the Interim Period.

Should the HPCSA nevertheless adopt the view that the amended rule 18 applies retrospectively, granting entities, which lawfully employed registered persons during the Interim Period, a reasonable grace period within which to regularise their employment relationships – alternatively, creating a dispensation for the recognition of existing employment relationships in line with the applicable labour and employment laws – would go a long way to minimise such prejudice. The HPCSA has, however, to date, not provided any guidance as to the way forward for the now affected practitioners and entities.

The latest amendment to rule 18 marks a decisive reversion toward tighter regulatory oversight of practitioners' employment, and, again, places the HPCSA at the centre of decision-making regarding who may employ practitioners and under what contractual terms.

Regardless of the lack of clarity regarding retrospective application and existing employment relationships, it may reasonably be assumed that non-registered employers who have not yet received the requisite approval from the HPCSA should commence taking steps to submit the necessary application to the HPCSA for the approval of any intended employment relationships to avoid adverse regulatory consequences.

[1] *Phaahla v Minister of Justice and Correctional Services and Another* 2019 (2) SACR 88 (CC) at paragraph 49.

[2] *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) at paragraph 39.



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