



South African Medico-Legal Association

THE SOUTH AFRICAN MEDICO-LEGAL ASSOCIATION CODE OF CONDUCT FOR MEMBERS

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1. INTRODUCTION

1.1 General Introduction

The South African Medico – Legal Association (“SAMLA”) is a Non Profit Company and subscribes to the highest standards of ethics in conducting business and related activities. SAMLA reaffirms the mission statement contained in its Memorandum of Incorporation which includes *inter alia* the promotion of ethics and competent practice for the benefit of public interests. Besides, SAMLA also subscribes to the highest standards of ethics in conducting business and related activities. It has accepted the rules of ethical conduct of both the medical and legal professions as guidelines in preparing this Code of Ethics (“the code”).

Pursuant to the mission of the South African Medico – Legal Association which includes the advancement and promotion of educational and other similar activities that enhance and complement the interaction between medicine and law within the health profession and legal profession, it seeks to actualise the right to further education as envisaged by the Constitution of the Republic of South Africa, 1996.

1.2 Purpose declaration

The code sets the standard for ethically acceptable behaviour in and by SAMLA. It defines the ethical standards that need to be respected by all members of SAMLA, including Medico - Legal Practitioners that will be enforced by the Association.

The code of conduct has been designed to serve the following general purposes.

- To prevent unethical practices;
- To promote ethical responsibility;
- To promote and oversee accountability;
- To promote the reputation of SAMLA and so instil trust in its business and activities;
- To ensure service excellence is maintained in all activities advanced by SAMLA.

2. DEFINITIONS

In this code, the following meanings are given to the words that follow. Words in this Memorandum denoting the singular shall include the plural and vice versa and words denoting the masculine shall include the feminine gender. Words denoting natural persons shall include legal persons.

2.1 “Advocate” means a legal practitioner who has been admitted and enrolled as such under the Legal Practice Act, No 28 of 2014; :

2.2 “Attorney” means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act, No 28 of 2014;

- 2.3 “Disciplinary body” is a unit created to deal with disciplinary matters as constituted in terms of the disciplinary provisions of the SAMLA Memorandum of Incorporation;
- 2.4 “Healthcare Practitioner” means any person registered in terms of the applicable legislation governing his or her profession and practicing in the area of medico – legal work;
- 2.5 “Medico – Legal” means conduct involving or relating to all areas where healthcare and law interact;
- 2.6 “Medico – Legal Practitioner” is an amalgam of healthcare-, legal- and aligned practitioners and other stakeholders, who pool their expertise, knowledge and experience within their areas of expertise, in furthering the cause of justice in both litigation and mediation, where healthcare and law interact;
- 2.7 “Medico – Legal work” means the generic term used by medico – legal practitioners to describe a field of practice where the healthcare practitioners work with legal practitioners to resolve medical disputes and to further the cause of justice;
- 2.8 “Medico – Legal Ethics” applies to medico-legal practitioners who commit themselves to the ethical behaviour in not only of their own professional codes of conduct but also to this code of conduct designed for medico – legal work. This code however, remains subject to the codes of conduct established by the professional bodies to whom the respective medico-legal practitioners belong;

- 2.9 “Member” means a member of the South African Medico - Legal Association (“SAMLA”);
- 2.10 “Register” when used as a noun, means a register kept in terms of this Code;
- 2.11 “Rule” means rules made under this Code;
- 2.12 “SAMLA” means the South African Medico – Legal Association;
- 2.13 “This Code” includes the rules issued under this Code;
- 2.14 “Unprofessional conduct” means improper or disgraceful or dishonourable or unworthy conduct when medico – legal practitioners engage in medico-legal work.

3. CODE OF CONDUCT: GENERAL PROVISIONS

The provisions of the Code shall apply to, and be observed by, all members of the South African Medico - Legal Association.

3.1 General duties and responsibilities of practitioners

Medico-Legal practitioners shall –

- 3.1.1 Maintain the highest standards of honesty, integrity and ethical conduct;
- 3.1.2 Uphold the Constitution of the Republic and the principles and values enshrined in the Constitution and adhere to the laws of South Africa;
- 3.1.3 Uphold their duty to the court;
- 3.1.4 Act in the interests of members of the public;
- 3.1.5 Act in the interest of justice;
- 3.1.6 Observe the law; and

- 3.1.7 Adhere to ethical standards prescribed by this Code, and by ethical standards generally recognised by the professions to which members also belong;
- 3.1.8 Honour any undertaking given by them in the course of their business or practice, unless prohibited by law or rule of their respective professional bodies to which they belong;
- 3.1.9 Avoid conduct which places or could place them in a position in which their interests conflict with their duties to the Court;
- 3.1.10 Where applicable, retain the independence necessary to serve members of the public with unbiased advice;
- 3.1.11 Carry out work competently and in a timely manner and shall not take on work that they will not be able to carry out in a competent or timely manner;
- 3.1.12 Charge reasonable fees for work carried out and avoid, unreasonable financial benefit, at the expense of members of the public and State Institutions involved in any particular dispute;
- 3.1.13 Remain reasonably abreast of all developments in their respective professions;
- 3.1.14 Treat colleagues with integrity and respect, without any form of discrimination or conduct that is insulting or demeaning;
- 3.1.15 Refrain from doing anything which could bring the legal or healthcare profession into disrepute;
- 3.1.16 Pay promptly membership fees, fines or other amounts due to SAMLA, unless exempted from payment;

3.1.17 Comply with rules, legislation and codes of conduct of their own professions and professional bodies.

3.2 Acquainting themselves with the Code

Medico-legal practitioners shall acquaint themselves with this Code and adhere to the provisions contained therein.

3.3 Report unprofessional conduct

Medico-legal practitioners and SAMLA are encouraged to report unprofessional conduct by colleagues to the committee tasked with disciplinary issues. SAMLA in turn will be obliged to report such unprofessional conduct to the respective professional bodies to whom the medico – legal practitioner belongs.

3.4 Sexual harassment and harassment

No medico-legal practitioner or member of SAMLA shall subject any person to any form of harassment, including sexual harassment. In this regard both harassment and sexual harassment shall encompass the meaning within legislation and any applicable professional codes of conduct.

3.5. Communication and publication

Medico-legal practitioners and other members shall ensure that all correspondence in whatever form shall not be gratuitously abusive, offensive, misleading or bring his or her profession and SAMLA into disrepute.

3.6. Specialisation and experience

Medico - legal practitioners shall only advertise or hold themselves out as being specialists or offer specialist professional services in accordance with the rules and standards of their own professions.

3.7. Integrity in performance of professional services

Medico - legal practitioners shall at all times act with the utmost integrity and avoid through their conduct, reasonable suspicion that their integrity is compromised. To this end, all Medico - legal practitioners shall not contravene any law or give advice to a client which may further a criminal act or conduct in contravention of any law.

3.8. Objectivity and independence

Health care practitioners performing medico –legal work shall at all times when requested to give advice or express an opinion in court or otherwise, give a true account or fair assessment, without being influenced in any way by any party's whims or desires or that of those who instruct them. When uncertain about any conclusion or opinion, medico-legal practitioners shall record their uncertainty.

4. SPECIFIC CONDUCT OF MEDICO - LEGAL PRACTITIONERS

The following specific conduct is expected of Medico – Legal Practitioners in the execution of their duties as members of SAMLA.

4.1 Replying to communications

Medico - Legal Practitioners of SAMLA shall within a reasonable time reply to all queries expeditiously when required to do so, unless good cause is shown to do otherwise.

4.2 Professional Etiquette

4.2.1 Medico - Legal Practitioners shall deal with the Court, colleagues, the court staff and all other persons they deal with in the course of their duties or otherwise, with respect. They should avoid any ill-feelings between opposing Medico – Legal Practitioners and litigants.

4.2.2 Medico – Legal Practitioners shall not engage in making disparaging remarks about Medico – Legal Practitioners whether in court or out of court.

4.2.3 Medico – Legal Practitioners shall not deliberately engage in trickery or attempt to catch an opposing Medico – Legal Practitioner off – guard. Instead, they must at all times, act honourably and professionally in accordance with the rules of practice and their codes of conduct and the norms and standards of their professions.

4.3 Undertaking to co-operate in disciplinary investigations and hearings

Where a Medico – Legal Practitioner is the subject of a complaint against the said practitioner, he or she undertakes and agrees that they will subject themselves to an investigation and/or a disciplinary hearing and cooperate fully until it is finalised.

4.4 Termination of being a Medico – Legal Practitioner

All Medico – Legal Practitioners who by virtue of their mental or physical impairment are no longer competent to act as such, shall give notice to SAMLA of their inability to function as such and voluntarily take such steps that are appropriate in order to avoid a situation that their professional duties are compromised as a result of such impairment. The membership of any medico – legal practitioner found not to live by the ethos or values of this Code may be terminated unless good cause is shown to the contrary.

5. CONDUCT OF MEDICO – LEGAL PRACTITIONERS IN RELATION TO WRITING MEDICO - LEGAL REPORTS, CONSULTATIONS AND APPEARANCE IN COURT

Medico – Legal Practitioners shall in executing their duties as experts, exercise diligent and reasonable care and skill in relation to writing reports, attending meetings and giving evidence in court. Such duties shall include the following.

5.1 Writing medico – legal reports

- 5.1.1 The overriding duty of the health care practitioner preparing a medico – legal report is to assist the court, and not to any of the parties engaged in the litigation or anyone else. The hallmark of a quality medico – legal report is that it needs to be comprehensive in setting out all the relevant facts, information, opinions, recommendations and reasons for the opinion in a clear manner.

- 5.1.2 Every report should be independently prepared and as far as possible not just copied and pasted from other reports. Any technical terms should be explained and amplified. When preparing their medico – legal reports health care practitioners should not be swayed in any way by financial rewards or otherwise. They should produce honest work, free of bias, independent and free from outside influence.
- 5.1.3 When compiling their reports, health care practitioners are expected to state all the relevant facts and the assumptions upon which they base their opinions. They are also expected to avoid basing their opinions on speculation and conjecture. Health care practitioners should finalise their medico-legal reports as soon as circumstances permit, preferably within 7 days of the consultation, but no later than 30 days after the consultation. When outstanding information (e.g. radiological investigations, interviews with collateral informants or reports of other experts) precludes finalization of a report within 30 days, the practitioner should provide a preliminary report within 30 days, in which the outstanding necessary information is clearly stated, and offer to provide an addendum when such information becomes available.

5.2 Consultations before and during trials

- 5.2.1 Medico – Legal Practitioners should ensure that when they consult that consultations are carried out professionally and effectively and that confidentiality and privacy are observed. The former can be achieved

with practitioners being courteous. Practitioners should instill confidence by making clients aware that they understand the issues at hand, and avoid too frequent interruptions during those consultations.

5.2.2 Medico – Legal Practitioners when called upon to attend pre-trial meetings or joint meetings between experts should readily avail themselves.

5.2.3 When they are engaged in joint meetings with their opponents, every endeavour should be made by experts to narrow the issues as far as possible as a means to ensure fewer issues are referred for adjudication. In respect of opinions on which they do not agree, the reasons of each for such differing opinions should be fully disclosed and discussed before concluding that they cannot find agreement, and the reasons of each expert for the disagreement should be recorded in the minute. A joint minute is a report compiled by two or more expert witnesses.

5.2.4 The minute should clearly set out issues agreed between the experts and those upon which they disagree. The purpose of a joint minute is to achieve a speedier resolution of the disputes between the parties involved in litigation or mediation.

5.2.5 Where a Medico – Legal Practitioner acting as legal practitioner need to consult with the opposing experts, such should be done in

accordance with the Code of Conduct of legal practitioners in terms of the Legal Practice Act.

- 5.2.6 Medico-Legal Practitioners acting as expert witnesses are duty bound to disclose to the court any scientific information or learning which opposes his or her opinion even if the opposition fails to disclose the same in order to place the Court in a position to judge fairly and justly on the most appropriate conclusion on the issues at hand.
- 5.2.7 Similarly Medico-Legal Practitioners acting as legal practitioners are duty bound to disclose to the Court any legal literature, whether local or foreign, and/or decided case law, both reported and unreported, contrary to his or her argument in order to facilitate a proper ventilation of the disputes.

5.3 Giving evidence in court

- 5.3.1 The health care practitioner when coming to court to give expert evidence does so as a witness of the court and not as an advocate for any of the parties involved in the litigation. They are to be independent, objective and uninfluenced. They should not provide dishonest or biased evidence.
- 5.3.2 The health care practitioner, when acting as an expert witness should bring to court his or her specialised knowledge. To this end, as an expert, he or she should confine their testimony to the area of his or her expertise. When giving evidence, they should present their

testimony with clarity and precision. They should avoid obfuscation and vagueness.

5.3.3 As an objective expert, the health care practitioner should not omit to consider material facts which could detract from his or her opinion. Their evidence should be based on relevant facts, sound scientific knowledge and logical reasoning.

5.3.4 Where a legal practitioner acts as Counsel in a trial involving medical experts, he or she shall always treat the expert witnesses with respect, including when cross-examining the said witness in accordance with the prescripts of the law and the Code of Conduct for legal practitioners.

6. PROFESSIONAL COMPETENCE AND SELF-IMPROVEMENT

6.1 Medico – Legal Practitioners should continually through self - knowledge and – awareness, determine whether they fall short of the expected standard and shall endeavour to attain the highest level of knowledge and skills within their area of practice and in the execution of doing medico – legal work.

6.2 Health care practitioners should by self – motivation and at regular intervals enhance their competency levels by adding to their knowledge,

understanding and experience in the role as an expert witness in litigation and mediation. Such competency levels include but are not limited to logical reasoning, the relevance of facts specific to a case, general scientific knowledge and conclusions drawn by logical reasoning and expressing opinions, and advanced academic training in medico-legal practice.

7. DUTIES AND RESPONSIBILITIES OF EDUCATORS ENGAGED BY SAMLA

SAMLA is a premier provider of vocational training in medico – legal practice. The primary aim is to promote practice efficiency. To this end, regular seminars, workshops and other forms of training are provided to update the skills of its members as well as non – members from other professionals in both the medical and legal professions. To this end SAMLA encourages its own members who through their experience, knowledge and expertise have excelled in their respective professions, to act as educators. However, where the need arises non-members, with the same qualities are engaged. In order to maintain the honour and dignity of the professions, those engaged, undertake to discharge the following duties and responsibilities:

- 7.1 Acknowledging the noble calling of their own profession and that of SAMLA to educate and develop those who wish to further their careers;
- 7.2 Acknowledging that only the correct attitude, dedication and self-discipline determine the success of the training programmes;

- 7.3 Respect the dignity and rights of all persons, without prejudice as to race, religion, colour, sex, age, ethnicity and/or sexual orientation and any other differences protected by the Constitution;
- 7.4 Promote the growth of collegial relationships based on mutual respect free of any improper association with any particular individuals;
- 7.5 Commit not to show undue favour or disfavour towards any attendees at any conference, seminar or workshop arranged by SAMLA.

8. ACCEPTANCE OF THE CODE

A draft of the Code of Conduct was circulated to the Board and all interested parties were invited to deliver their comments in writing by 18 June 2019. Their comments were considered and a final version has been adopted.

Signed on behalf of the South African Medico – Legal Association

A handwritten signature in black ink, appearing to read 'C. J. Claassen', written in a cursive style.

The Hon. Mr Justice C. J. Claassen (Retired)

Date: 18 June 2019

Name: Cornelis Johannes Claassen

Designation; Chairperson: South African Medico – Legal Association (SAMLA)

REFERENCES:

Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities Published in the Government Gazette 42337 Published 29 March 2019.

HPCSA Guidelines for Good Practice in the Health Care Professions Booklet 1 May 2008.

Code of Medical Ethics De Espana 2018.

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