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FRAMEWORK & POLICY ON THE PROTECTION OF PERSONAL INFORMATION ACT 04 OF 2013 ("POPI")

Dr JA du Plessis & Kie (The Practice) is an incorporated practice in the field of providing generalised medical care at a general practitioner's level of care. The practice comprises registered healthcare professionals under the Health Professions Act, 1974 (Act No. 56 Of 1974) and Nursing Act, 2005 (Act No. 33 of 2005); and is subject to the rules and regulations of the Health Professions Council of South Africa (HPCSA) and the South African Nursing Council (SANC) insofar as it regulates the privacy and personal information of patients and third parties. In addition, The Practice offers a travel health service where yellow fever vaccinations may be administered, as subject to the International Health Regulations Act, 1975 (Act 28 of 1974).

1. INTRODUCTION

The Protection of Protection of Personal Information Act, 2013 (Act 4 of 2013), ("POPIA/The Act") and the Regulations promulgated thereunder give effect to the right to privacy provided by section 14 of the Bill of Rights of the Constitution of the Republic of South Africa 1996.

The Act and Regulations require the Information Officer as defined under the Act to develop, implement, monitor and maintain a compliance framework, (Regulation 4 of Regulations published under Government Gazette number 42110 dated 14 December 2018).

The Practice has developed this policy in order to comply with the aforesaid requirements and to further demonstrate commitment to the spirit of the Act in respecting the rights of Data Subjects to have their Personal Information protected as set out in the Act.

Forms 1, 2 and 4 of the POPI Regulations are attached to this Policy.

2. SCOPE

This policy applies to all employees of The Practice and anyone who may process Personal Information for and on behalf of The Practice.

This policy applies to all situations and business processes where Personal Information is processed and where such information may be made accessible to third parties. This policy must be read together with the Practice's PAIA Manual.

3. DEFINITIONS

3.1. **"Applicable Legislation"** means all legislation applicable to The Practice; including the Act, the Medicines and Related Substances Act (No. 101 of 1965); the National Health Act (No. 61 of 2003); the Health Professions Act (No. 56 of 1974); the National Archives and Records Service of South Africa Act (No. 43 of 1996); the Income Tax Act (No. 58 of 1962); the Value-Added Tax Act (No. 89 of 1991); the Labour Relations Act (No. 66 of 1995); the Basic Conditions of Employment Act (No. 75 of 1997); the Employment Equity Act (No. 55 of 1998); the Skills Development Levies Act (No. 9 of 1999); the Unemployment Insurance Act (No. 63 of 2001); the Electronic Communications and Transactions Act (No. 25 of 2002); the Telecommunications Act (No. 103 of 1996); the Electronic Communications Act (No. 36 of 2005); the Consumer Protection Act (No. 68 of 2008); the National Credit Act (No. 34 of 2005); and all legislation as listed under clause 7 of The Practice PAIA Manual.

3.2. **"Data Subject"** means the person to whom personal information relates as defined under the Act;

3.3. **"Employee"** means, for the purposes of this policy, any person employed permanently, temporarily, or on a fixed-term contract, and includes contractors that may come into contact with, use, process or otherwise deal with Personal Information.

3.4. **"Office-bearer"** means the members of the Board of Trustees, the Principal Officer, members of Committees of the Scheme, governance secretaries and persons in similar positions.

3.5. **"Operator"** means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party.

3.6. **"Personal information"** shall mean, for purposes of this policy and as defined under the Act, information about an identifiable, natural person, and insofar as it is applicable, including, but not limited to:

- information relating to the race, gender, sex, pregnancy, marital status, national,
- ethnic or social origin, colour, sexual orientation, age, physical or mental health,
- well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- information relating to the education or the medical, criminal or employment history of the person or information relating to financial transactions in which the person has been involved;
- any identifying number, symbol or other particular assigned to the person;
- the address, fingerprints or blood type of the person;
- the personal opinions, views or preferences of the person, except where they are about another individual or about a proposal for a grant, an award of a prize to be made to another individual;
- correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- the views or opinions of another individual about the person;
- the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the person, but excluding the name of the other individual where it appears with the views or opinions of the other individual; and
- the name of the person where it appears with other personal information relating to the person or where the disclosure of the name itself would reveal information about the person;
- but excludes information about a natural person who has been dead, or a juristic person that has ceased to exist, for more than 20 years.

3.7. **"Policy"** means this policy developed in terms of the Act and Regulations thereto;

3.8. **"Processing"** means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including:

- the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- dissemination by means of transmission, distribution or making available in any other form; or

- merging, linking, as well as restriction, degradation, erasure or destruction of information.

3.9. **"Purpose"** means The Practice's purpose to processing of Personal Information as set out under The Practice's PAIA Manual;

3.10. **"Responsible Party"** means, for purposes of this policy, all persons to whom this policy applies, who, whether alone or in conjunction with others, determines the purpose and means of processing Personal Information.

3.11. **"Special Personal Information"** means information relating to a person's (a) religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or (b) criminal behavior, as defined under the Act.

4. THE PRACTICE REQUIREMENTS FOR PROCESSING PERSONAL INFORMATION

- All Processing of Personal Information must be done after a written and signed consent, in a form developed and approved by The Practice, has been received from the Data Subject.
- Where there is a legal requirement to disclose Personal Information to authorities, and consent is not required by law, the Data Subject must still be notified of such disclosure, unless the Applicable Law provides otherwise.

5. NOTIFICATIONS

- The Practice will inform all persons whose information is being processed of that fact.
- This is done via the Practice's Terms and Conditions, on specific consents to disclosure, and, where bulk-mailers or communications are sent out, with a statement relating to the rights of the Data Subject, attached thereto.
- The rights of Data Subjects are as follows:
  - Notification when personal information is being collected, the type of information collected, for what purpose, whether the information is to be supplied voluntarily or is collected mandatory, and whether the information would be transferred to a third country and the protections afforded there;
  - Notified if there has been unlawful access or acquisition of his/her personal information;
  - Request a record of your Personal Information;
  - Request the correction, deletion and/or destruction of your Personal Information;
  - Object to the processing of your Personal Information;
  - Exercise the right to withdraw the consent to processing, if voluntarily given;
  - Not be subjected to unsolicited electronic communication, unless you are our customer and we have sold goods or services to you, or where you have consented to the communication and you had and have the opportunity to object to the communication;
  - Not to be subjected to automated decision-making based on the personal information in contravention of section 71 of the Act;
  - Submit a complaint to the Information Regulator at https://inforegulator.org.za/; and
  - Institute civil proceedings regarding an alleged interference with their personal information in terms of section 99 of the Act.
- The details of the Information Officer, or the responsible Deputy Information Officer will also be included in all Notifications, and also appear on the PAIA Manual / Guide.

6. CONDITIONS OF LAWFUL PROCESSING OF PERSONAL INFORMATION

Section 4(1) of the Act requires that all Processing of Personal Information be done in a lawful manner. Anyone who processes Personal Information for and on behalf The Practice must do so in terms of the below conditions in order to ensure compliance with the Act:

- Ensure that all the conditions and measures giving effect to conditions of the lawful processing of Personal Information as set out in the Act and this policy are complied with at the time of the determination of the purpose and means of the Processing and during the Processing.

- Personal Information must only be processed with the consent of the Data Subject, for a specific, explicit and lawfully defined purpose, related to the functions and activities of The Practice, or if under a statutory obligation, with a notification to the person of the specific statutory mandate (quote Act, section and/or Regulation and number thereof).
- All **consents to processing** and/or **notifications of processing** will be reviewed by responsible employees or office bearers to ensure that it is specific. In cases of uncertainty, the Information Officer will be contacted for support. Where standard consents or notifications have been developed, employees and office-bearers are obligated to use those.
- In the event of a requirement to use Personal Information outside the consented purpose (**"further processing"**), an additional consent for the further processing must be obtained from the Data Subject prior thereto.
- Personal Information must be collected directly from the Data Subject. Should there be a need to collect the information from another source, the consent of the Data Subject must be obtained prior thereto. Where databases are provided by a third party, a **warranty** must be included in the contract that such databases have been compiled in compliance with POPIA.
- Only up to date and correct Personal Information can be processed, and Data Subjects must request the correction of their Personal Information on Form 2 as set out in Regulations published under Government Gazette number 42110 dated 14 December 2018. All consents, notifications and contracts must include a hyperlink to, or attach Form 2.
- The Responsible Persons must ensure that the security measures put in place by The Practice for every database and type or category of personal information processed, to protect against:
    - **Unauthorised Access**; which means that access privileges must be stipulated and indicated in documents, minutes, etc; for example: *Accessible by: Public/Board/Administrative staff authorised to work with such structures/Practice committee/All Practice and Facility stakeholders/Top management/ Designated employees/All employees/Supplier/Vendor/Contractor/Consultant/Ect.*
    - **Loss and/or Damage**
    - **Archiving and Destruction** will only take place in accordance with the Practice / Facility's Document Retention and Destruction policy and guide, and all archiving and destruction will be documented in the registers kept on the practice's premises by the administrative staff.
- No Practice / Facility database, list, personal information of any person in its, or any staff member or office bearer's possession may be used, made known and/or distributed without the concerned Data Subjects' consent. In case of doubt, the advice of the Information Officer will be sought.
- Only relevant Personal Information required for the specified purpose should be collected - nothing in excess of that. The data fields in all existing and new databases and types of information will be evaluated as to whether that specific data field is:
    - Necessary, given the specific purpose for which the personal information will be used.
    - Relevant for that purpose.
- All communications of a marketing or general communications nature must be subject to an "opt out" functionality, which has to be adhered to strictly by The Practice or anyone processing Personal Information for and on behalf of The Practice. The Data Subject's consent must be obtained on Form 4 as set out in the Regulations published under Government Gazette number 42110 dated 14 December 2018. Information related to changes to practice policies, etc. or any right or legitimate expectation of a staff member or a supplier / vendor cannot be opted out of. Neither can they opt out of statements and similar information directly related to their contractual or other legal relationship with the Practice.
- All requests for Personal Information and other information from any person or entity whatsoever shall be dealt with in accordance with the provisions of The Practice's PAIA Manual and in line with this policy.
- The Data Subject must be provided access to their Personal Information related upon written request, while any other request for access to personal and other information from any person or entity must be dealt with in terms of The Practice's PAIA Manual and in line with this policy.
- All processing of Personal Information must immediately cease, in the event that the Data Subject withdraws its consent to the processing or objects to the processing of Personal Information in the manner prescribed by law, except where The Practice is by law obliged to continue with such processing. Such requests must be made on **Form 1** of the POPI Regulations.
- Personal Information must be corrected or deleted as requested by the Data Subject as per Form 2.

7. SECURITY AND ACCESS

The Practice uses the following security measures to secure Personal Information in its possession:

- Electronic information is secured by firewalls, anti-virus and password secured access;
- Electronic information on shared drives operate on passwords and access control and permissions. Accidental access must be reported to the Information Officer and Practice Manager.
- No information may be downloaded from shared drives onto device hard drives or any external device.
- Physical records are kept at the office and protected by a foot thick vault door with key-required access; the key only being accessible by staff members. These are physical files of patients still attending the practice that are still to be kept; and physical copies of radiological investigations with or without their reports that were not collected by patients despite being requested to do so.
- The practice has an external gate in front of the front entrance, unlockable by key. Only designated staff members have access to these keys.
- The administration office has a lock on the door, only unlockable by key. Only staff members have access to this key.
- The office building is accessed through an electronic gate that is only operable by 1) those with the correct access control remotes, 2) those authorised with the linked access control mobile phone application, or 3) those knowledgeable of the key-pad combination of the gate's physical key-pad. This gate is closed at night. The security company contracted does not act as an Operator as they do not process any Personal Information.
- Regular assessment of the safeguards in place to assure effective implementation, and continually assess and respond to any new risks or deficiencies;
- Notification in writing to the affected Data Subjects and reporting to the Information Regulator, should the Personal Information relating to the Data Subject be compromised or should there be a suspicion that the Personal Information is compromised.

8. STORAGE AND DESTRUCTION

- All Personal Information in the possession of The Practice must be stored, retained and destroyed in accordance with the legislation applicable to the specific information and according to the Practice Document Retention and Destruction Policy.
- Personal Information shall not be retained longer than required to fulfil the purpose for the Processing or longer than required by Applicable Legislation.
- Once the purpose for Processing or the retention period provided under Applicable Legislation expires, the Personal Information must be destructed and/or deleted and/or returned to the Data Subject as may be required by the Applicable Law and in a manner that complies with such.
- Retention periods, and the destruction of personal information, must be specified in consents and notifications.

9. COLLECTION OF PERSONAL INFORMATION

The Practice collects Personal Information from various Data Subjects for varying purposes, but mainly from patients, e.g. for patient treatment, submission of claims to medical schemes, etc. Such information must be collected in accordance with the provisions of the Act and this policy.

Personal information is also collected from staff for employment purposes, such as payroll, tax and deductions, leave administration, etc. Information on staff interviews and applications are also kept until no longer needed.

Personal information from the representatives, staff, agents or contractors of vendors and suppliers are also processed for purposes of facilitating the goods and services to be rendered. The information of persons responsible for accounts / finances, repair persons, key account managers and the likes are processed by the practice for legitimate business purposes only.

10. PURPOSE AND USE OF PERSONAL INFORMATION

When Processing Personal Information as part of any activity, the Responsible Party must:

10.1. Identify the nature and extent to which one will deal with (a) Personal Information and (b) Special Personal Information and amend its processing accordingly.
10.2. Identify the types of processing to occur.
10.3. Identify the purpose for which the specific processing is undertaken, clearly indicating whether such purpose is permitted by a law (e.g. invoicing requiring a VAT number).
10.4. Confirm that consent has been obtained from the Data Subjects, whose consent shall constitute a contract between The Practice and the Data Subject and shall describe:
- the purpose of the Processing or further processing of the Personal Information;
- the type of Processing of the Personal Information;
- timelines related to the Processing;
- destruction or storage of the personal information; and
- security assurances and measures undertaken by The Practice to protect the data and Personal Information.

10.5. If processing is mandated by law, describe in a notification what that specific law says, and how processing will take place.

11. PERSONAL INFORMATION OF CHILDREN AND SPECIAL PERSONAL INFORMATION:

- The Practice does hold the personal information of children (persons until the age of 18).
- The Practice also holds information of "child-dependents" – those older than 18, but who are still dependent on their parents. Such persons are handled, for POPIA purposes, the same as any adult.
- The information of children under the age of 12, or between 12 and 18 years of age, must be processed in terms of the Children's Act (No. 38 of 2005), the HPCSA and SANC Ethical Rules, and the Medicines and Related Substances Act (No. 101 of 1965).
- The Practice will take all reasonable measures to protect the confidentiality of adult dependents and children who has the right to confidentiality, but acknowledge the limitations of a medical schemes system that obligates, under regulation 5 to the Medical Schemes Act (No. 131 of 1998), the inclusion of diagnostic (ICD 10) codes on accounts to medical schemes, and thus on statements issued by schemes to main members.

12. INFORMATION SHARED BY MANAGED CARE ORGANISATIONS OR PURSUANT TO A MANAGED CARE ARRANGEMENT:

This includes personal information included in a referral letter, ICD 10 codes provided to a phlebotomist or similar allied health practitioner, or information provided in a motivation letter written for and submitted on behalf of a patient. These are used to aid in the continuity of care, streamline both care and claims processes, facilitate speedy responses and appropriate fund allocation by medical schemes.

13. INFORMATION SHARED BY THE PRACTICE

The Practice will only share information with third parties:

- as described above, or
- upon the specific consent of the Data Subject in terms of the Act and on written declaration that such third parties comply with the Act and related data legislation and regulations (e.g. life insurance or disability claims)
- if otherwise required to do so by any Applicable Law.

14. REVIEW AND AMENDMENT

This policy shall be reviewed every two years or more frequently as may be required and may be amended from time to time as may be required by law, including for corrections of material errors, as the case may be.

15. TRAINING AND COMMUNICATION

All existing employees, contractors, vendors, practitioners, and operators shall be trained on an annual basis on this policy and underlying legal sources on which it is based. The training will also form part of new employee induction.

16. COMPLIANCE

The Information Officer of the Practice is Dr Albert Visagie

The Information Officer shall maintain a report in relation to POPI and PAIA regarding steps and remedial steps taken in instances of non-compliance, including but not limited to:

- Rewording of consents, standard clauses and notifications.
- Reporting loss, breach and/or unauthorized access of Personal Information to relevant authorities, recommending disciplinary action, etc.
- The destruction of personal information.
- The de-identification of personal information.
- The implementation of specific security measures.
- The implementation of access control measures.
- The implementation of consents or notifications *ab initio*.
- Research and verification of legislative mandates.
- Addenda to contracts and service level agreements within business activities and/or with third parties.
- Amendments to contract templates.
- Disciplinary action against employees violating this policy.
- Action against office bearers violating this policy.
- Requirements on the submission of progress reports.
- Obtaining expert assistance, where required.
- Undergoing additional or further training on POPI and PAIA.

17. INFORMATION OFFICE

This office houses the Information Officer:

Dr JA du Plessis & Kie
29 Joubert Street
Middelburg

The following may be directed to the Information Officer in writing to admin@familydoc.co.za.

18. COMPLAINTS

Any complaints by any person including patients, employees, office-bearers, third parties or any regulator, on any allegation or actual violation of this policy or data privacy, may be directed to the Information Officer, who will handle the complaint in line with the principles of natural justice, and apply this policy, as well as the applicable laws and related policies of the Practice, when doing so.

The Information Office may constitute a Committee to investigate the matter, and to make findings on the complaint, and recommend action by the relevant departments, units or structures of the Practice.

19. POPI ACT: OBJECTIONS, WITHDRAWALS, AMENDMENTS, AND DELETIONS

Any person can object to the processing of Personal Information, withdraw a consent to processing, request amendments or deletion of personal Information, as permitted by law.

The forms used to object, change or request destruction of personal information are attached to this Policy, as prescribed by the Regulations to the POPI Act published under Government Gazette number 42110 dated 14 December 2018; and are available at the Practice's offices.

Signed on this _____ day of _____ 20__ by:

_____

The Practice Information Officer

Dr Albert Visagie

Forms 1, 2, and 4 follow over the next pages