



DR KURT SCHLEMMER

Ear, nose and throat, head and neck surgeon

MBChB (Pret) DA (SA) FCORL (SA) MMed (UKZN)

PRIVACY NOTICE

1. INTRODUCTION

- 1.1 We are committed to safeguarding the privacy of all our patients.
- 1.2 This notice applies where we are acting as a responsible party; in other words, we determine the purposes and means of the processing of that personal data.
- 1.3 In this notice, "we", "us" and "our" refer to Dr Kurt Schlemmer and all staff employed under Dr Kurt Schlemmer Inc.

2. THE PERSONAL DATA THAT WE COLLECT

- 2.1 In this Section 2, we set out the general categories of personal data that we process [and, in the case of personal data that we did not obtain directly from you, information about the source and specific categories of that data].
- 2.2 We may process data enabling us to get in touch with you ("**contact data**"). The contact data may include your name, email address, telephone number, postal address and/or your Medical aid details.
- 2.3 We may process your website user account data ("**account data**"). [The account data may [include your account identifier, name, email address, business name, account creation and modification dates.
- 2.4 We may process information contained in or relating to any communication that you send to us or that we send to you ("**communication data**"). The communication data may include the communication content and metadata associated with the communication.
- 2.5 We may process data about your use of our website and services ("**usage data**"). The usage data may include [your IP address, geographical location, browser type and version, operating system, referral source, length of visit, page views and website navigation paths, as well as information about the timing, frequency and pattern of your service use].
- 2.6 We may process *Your Medical Aid Information*. [This data may include [Main Member information of your medical aid, Patient and/or dependent information of your Medical aid] [The source of this data is [Main Member, Patient, Referring Specialist and/or From the Hospital where you are admitted].

3. PURPOSES OF PROCESSING AND LEGAL BASES

- 3.1 In this Section 3, we have set out the purposes for which we may process personal data and the legal bases of the processing.
- 3.2 **Operations** - We may process your personal data for processing and fulfilment of orders, providing our services, supplying our goods, generating invoices, bills and other payment-related documentation, and credit control. **The legal basis for this processing is our legitimate interests**, namely the proper administration of our services and business OR the performance of a contract between you and us and/or taking steps, at your request, to enter into such a contract.
- 3.3 **Publications** - We may process account data for the purposes of publishing such data through our services in accordance with your express instructions. The legal basis for this processing is **your written consent or verbal consent when deemed appropriate OR our legitimate interests**, namely the publication of content in the ordinary course of our operations OR the performance of a contract between you and us and/or taking steps, at your request, to enter into such a contract.
- 3.4 **Relationships and communications** - We may process contact data, account data, transaction data and/or communication data for the purposes of managing our relationships, communicating with you (excluding communicating for the purposes of direct marketing) by email, SMS, post and/or telephone, providing support services and complaint handling. The legal basis for this processing is **our legitimate interests**, namely communications with our visitors, service users, individual customers and customer personnel, the maintenance of relationships, and the proper administration of our website, services and business.
- 3.5 **Record keeping** - We may process your personal data for the purposes of creating and maintaining our databases, back-up copies of our databases and our business records generally. The legal basis for this processing is **our legitimate interests**, namely ensuring that we have access to all the information we need to properly and efficiently run our business in accordance with this notice.
- 3.6 **Security** - We may process your personal data for the purposes of security and the prevention of fraud and other criminal activity. The legal basis of this processing is our **legitimate interests**, namely the protection of our website, services and business, and the protection of others.
- 3.7 **Insurance and risk management** - We may process your personal data where necessary for the purposes of obtaining or maintaining insurance coverage, managing risks and/or obtaining professional advice. The legal basis for this processing is our **legitimate interests**, namely the proper protection of our business against risks.
- 3.8 **Legal claims** - We may process your personal data where necessary for [the establishment, exercise or defense of legal claims, whether in court proceedings or in an

administrative or out-of-court procedure. The legal basis for this processing is our **legitimate interests**, namely the protection and assertion of our legal rights, your legal rights and the legal rights of others.

- 3.9 **Legal compliance and vital interests** - We may also process your personal data where such processing is necessary for compliance with a legal obligation to which we are subject or in order to protect your vital interests or the vital interests of another natural person.

4. Providing your personal data to others

- 4.1 Your Contact Data, account data, communication data and Medical aid Information will be stored on the servers of our hosting services providers <https://www3.vericclaim.co.za/>

- 4.2 We may disclose *[Your Contact data and Medical aid information]* to [our suppliers or subcontractors] as reasonably necessary for purposes such Surgery bookings, Ordering of stock/devices, necessary for compliance with a legal obligation to which we are subject or in order to protect your vital interests or the vital interests of another natural person and/or to properly and efficiently run our business in accordance with this notice.

- 4.3 Financial transactions relating to our services are handled by our payment services providers. We will share transaction data with our payment services providers only to the extent necessary for the purposes of processing your payments, refunding such payments and dealing with complaints and queries relating to such payments and refunds. You can find information about the payment services providers' privacy policies and practices at <https://www.zapper.com> ; <https://www.investec.com> ; <https://www.ikhokha.com> .

- 4.4 In addition to the specific disclosures of personal data set out in this Section 4, we may disclose your personal data where such disclosure is necessary for compliance with a legal obligation to which we are subject, or in order to protect your vital interests or the vital interests of another natural person. We may also disclose your personal data where such disclosure is necessary for the establishment, exercise, or defense of legal claims, whether in court proceedings or in an administrative or out-of-court procedure.

5. International transfers of your personal data

- 5.1 We may transfer your personal data from South Africa across borders with your prior written consent.

- 5.2 We will make an adequacy determination with respect to **the data protection laws of each of these countries**. Transfers to each of these countries will be protected by appropriate safeguards, namely the use of standard data protection clauses adopted or approved by the competent data protection authorities, a copy of which can be obtained from *Dr Kurt Schlemmer Inc.*

6. Retaining and deleting personal data

- 6.1 This Section 6 sets out our data retention policies and procedures, which are designed to help ensure that we comply with our legal obligations in relation to the retention and deletion of personal data.
- 6.2 Personal data that we process for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6.3 We will retain your personal data as follows:
- (a) contact data will be retained for a minimum period of 5 years following the date of the most recent contact between you and us, and for a maximum period of 7 years following that date.
 - (b) account data will be retained for a minimum period of 5 years following the date of closure of the relevant account, and for a maximum period of 7 years following that date];
 - (c) [transaction data will be retained for a minimum period of 5 years following the date of the transaction, and for a maximum period of 7 years following that date
 - (d) [communication data will be retained for a minimum period of 5 years following the date of the communication in question, and for a maximum period of 7 years following that date
 - (e) usage data will be retained for 5-7 years following the date of collection.
- 6.4 Notwithstanding the other provisions of this Section 6, we may retain your personal data where such retention is necessary for compliance with a legal obligation to which we are subject, or in order to protect your vital interests or the vital interests of another natural person.

7. Your rights

- 7.1 Your principal rights under data protection law are:
- (a) **the right to access** - you can ask for copies of your personal data;
 - (b) **the right to rectification** - you can ask us to rectify inaccurate personal data and to complete incomplete personal data;
 - (c) **the right to erasure** - you can ask us to erase your personal data;
 - (e) **the right to object to processing** - you can object to the processing of your personal data;
 - (g) **the right to complain to a supervisory authority** - you can complain about our processing of your personal data; and

- (h) **the right to withdraw consent** - to the extent that the legal basis of our processing of your personal data is consent, you can withdraw that consent.

7.3 These rights are subject to certain limitations and exceptions.

7.4 You may exercise any of your rights in relation to your personal data [by written notice to us, using the contact details set out below].

8. Amendments

8.1 We may update this notice from time to time by publishing a new version on our website.

8.2 You should check this page occasionally to ensure you are happy with any changes to this notice.

8.3 We may notify you of significant changes to this notice by one of our communication platforms.

9. Our details

9.2 We are registered in South Africa under registration number 2013/019362/21, and our registered office is at *Suite 109A First Floor Busamed Hillcrest Private Hospital 471 Kassier Road Assagay 3610*.

9.3 Our principal place of business is at *Suite 109A First Floor Busamed Hillcrest Private Hospital 471 Kassier Road Assagay 3610*.

9.4 You can contact us:

- (a) by post, to the postal address given above;
- (b) using our website www.drkurtschlemmer.com
- (c) by telephone, on contact number 031 768 8142 also published on our website; or
- (d) by email, using the email address welcome@drkurtschlemmer.com also published on our website.

10. Information Officer

10.1 Our Information Officer's contact details are: *Dr Kurt Schlemmer 031 7688142*

Date

11.1 Date last reviewed 28 June 2021

ADDENDUM LEGITIMATE INTEREST

INTERPRETATION OF TERM “LEGITIMATE INTEREST”

Relying on the “*legitimate interests*” defence of the data subject, the responsible party or a third party may thus find a way to get around some of the more restrictive provisions of POPI, when coming under scrutiny for seemingly not adhering to certain sections. It will be up to the Regulator to determine the interpretation and scope of the term “*legitimate interests*” and it seems likely that it will seek guidance from the European Unions’ General Data Protection Regulation 2016/679 (GDPR). The GDPR is a regulation in EU law on data protection and privacy, but unlike POPI, it is limited to the protection of natural persons and does not extend to juristic persons.

Section 233 of the Constitution of the Republic of South Africa, 1996 provides for the consideration of relevant international law in interpreting areas of uncertainty in South African law. Such guidance will be essential, especially since the term “*legitimate interest*” is not defined in POPI and, as the relevant provision will only commence on 1 July 2020, no case law on this POPI related issue exists.

Although there has been much speculation regarding the issue of “*legitimate interests*”, the South African Law Society has noted that much of this is based on an interpretation in favour of the data processor, rather than the data subject and have put forward the view that this approach is contrary to the provisions of the GDPR and is unlikely to find favour with the Regulator.

In its guidelines issued during 2018, the Law Society submitted that when considering the legitimate interests of a responsible- or third party, the data subject’s constitutional right to privacy must be balanced with the rights of the processor. The fact that the right to privacy is expressly protected in the South African Bill of Rights is an important consideration when undertaking this balancing of rights.

The GDPR has established a three-pronged test in interpreting “*legitimate interests*”, which is derived from Article 6(1)(f) of the GDPR and it is likely that the Regulator will, at least in the beginning, follow a similar approach. This test, which makes provision for three key elements of legitimate interests has been developed and confirmed by the Court of Justice in the European Union in the *Rigas* case C-13/16, 4 May 2017. The test looks at purpose, necessity and balance. It first asks, “*Is there a legitimate reason or purpose for the processions?*”, secondly “*Is processing the information necessary for that purpose?*” and thirdly “*Is the legitimate interest overridden by the interests of the data subject?*” Only once all three these questions have been answered, will a determination be made on “*legitimate interest*”.

In addition to seeking guidance from the GDPR, the Regulator might also start looking to industry specific code, such as those developed by companies in line with the Consumer Protection Act 68 of 2008. If such industry code is subsequently accepted by the Regulator, it may become part of POPI.

Practical consequences

The approach to interpreting “*legitimate interest*” laid out above is admittedly quite a technical one and each case will likely have to be dealt with on its own merits. There are however, certain examples where it seems likely that the Regulator will find the defense of legitimate interests to prevail.

One such example would be where parties enter into a credit agreement and the one party defaults on its payments. Using the defaulting party’s personal information, without their consent, to track them and collect the debt owed would likely be justified by a “*legitimate interest*” defense. Another example would be where a user has requested deletion of their data, or to unsubscribe from a website or mailing list. In order to ensure that such a user remains unsubscribed, or that their email address is not used by another person, a data processor may retain only the details necessary for furthering those legitimate interests of the person.

A less clear cut example is a situation where a company uses a customer’s data to personalise their websites content by giving them more suitable recommendations. They could potentially argue that this will improve the customer experience and is thus in the legitimate interest of the customer.

Conclusion

Given the uncertainty regarding the way in which the Regulator will approach the interpretation of “*legitimate interests*”, we recommend that companies rather err on the side of caution. Instead of relying on the possible defense, it would be prudent to first attempt to comply with the provisions of POPI, especially those relating to consent and notification of the data subject. As companies have been given a period of one year to ensure that they comply with the provisions of POPI, there might be some guidance published by the Regulator during the course of this one year period. However, when in doubt it is always advisable to consult a legal practitioner to ensure compliance with the new act.