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Amy Kallenbach Speech Therapists

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AMY KALLENBACH SPEECH THERAPISTS **(THE “PRACTICE” AND/OR THE “THERAPIST”)**

RETENTION OF DOCUMENTS POLICY (THE “POLICY”)

Amy Kallenbach

BA (Sp and H Therapy) Wits, MA (Speech-Language Pathology) Wits

Practice Number: 0891177

HPCSA No: STA 0024317



1. Retention and confidentiality of documents, information, and electronic transactions

1.1. Purpose and scope

The purpose of this Policy is to exercise effective control over the retention of documents, information, and electronic transactions, as prescribed by legislation and as dictated by business practice.

Documents must be retained in accordance with legislation to prove the existence of facts and to exercise the rights of the Therapist. Documents are also necessary for defending legal action, for establishing what was said or done in relation to the functions of the Therapist, and to mitigate the Therapist's reputational risks.

This Policy also helps to ensure that the Therapist's interests are protected and that the Therapist's and clients' rights to privacy and confidentiality are not breached. The Policy applies to all documents, information and electronic transactions generated within and/or received by the Therapist.

Queries may be referred to the Information Officer (see the Protection of Personal Information Policy).

1.2. Legislative framework

The reference to legislation, subordinate legislation and supervision documents includes amendments made from time to time.

- Protection of Personal Information Act 4 of 2014 (the "POPI Act")
- Promotion of Access to Information Act 2 of 2000 (the "PAIA")
- Health Professions Act 56 of 1974
- National Health Act 61 of 2003
- Medical Schemes Act 121 of 1998
- Children's Act 38 of 2005
- Mental Healthcare Act 17 of 2002
- The Companies Act 71 of 2008
- Labour Relations Act 66 of 1995,
- Basic Conditions of Employment Act 75 of 1997,
- Employment Equity Act 55 of 1998,
- Skills Development Levies Act 9 of 1999,
- Unemployment Insurance Act 63 of 2001,
- Electronic Communications and Transactions Act 25 of 2002
- Telecommunications Act 103 of 1996
- Electronic Communications Act 36 of 2005
- Consumer Protection Act 68 of 2008
- Broad-based Black Economic Empowerment Act 53 of 2003,
- National Credit Act 34 of 2005
- Income Tax Act 58 of 1962
- Constitution of the Republic of South Africa, 1996 (the "Constitution").

1.3. Definitions

The below definitions, which are not elsewhere included in this Policy, are relevant.

- 1.3.1. **Clients** includes, but is not limited to, persons that the Therapist has business relationships with, persons to whom the Therapist provides products or services, shareholders, debtors, creditors, as well as the affected employees and/or departments, relating to the functions of the Therapist;
- 1.3.2. **Confidential information** refers to all information, or data, disclosed to, or obtained by, the Therapist, by any means whatsoever;
- 1.3.3. **Data** refers to electronic representations of information, in any form;
- 1.3.4. **Documents** includes books, records, security, or accounts, and any information that has been stored, or recorded, electronically, magnetically, mechanically, electromechanically, or optically, or in any other form;
- 1.3.5. **Electronic communication** refers to a communication by means of data messages;
- 1.3.6. **Electronic signature** refers to data attached to, incorporated in, or logically associated with, other data, and which is intended by the user/person to serve as a signature;
- 1.3.7. **Electronic transactions** include emails sent and received.

1.4. Access to documents

- 1.4.1. All Therapist and client information must be dealt with in the strictest confidence and may only be disclosed, without fear of redress, in the following circumstances:
 - where disclosure is compulsory, in terms of legislation;
 - where there is a duty to the public, to disclose;
 - where the interests of the Therapist require disclosure; and
 - where disclosure is made with the express, or implied, consent, of the client.

1.5. Disclosure to third parties

- 1.5.1. Employees have a duty of confidentiality to the Therapist and its clients. Independent Contractors must have appropriate clauses inserted into the agreements between the Practice/Therapist and the Independent Contractor to ensure the adequate protection of the Practice/Therapist's clients personal information.
- 1.5.2. The Therapist's clients' right to confidentiality is protected in the Constitution, and in terms of the ECTA. Information may only be given to a third party if the client has consented, in writing, to that person receiving the information.

Requests for the Therapist's information are dealt with in terms of the PAIA, which gives effect to the constitutional right of access to information held by the State, or any person (natural and juristic), that is required for the exercise, or protection, of rights. However, private bodies, like the Therapist, must refuse access to records, if disclosure would constitute an action of breaching the duty of secrecy owed to a third party.

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1.5.3. Requests must be made in writing, on the prescribed form, to the compliance function, or the information officer. The requesting party must state the reason for wanting the information and must pay a prescribed fee.

1.5.4. Confidential Therapist and/or business information may not be disclosed to third parties, as this may constitute industrial espionage. The affairs of the Therapist must always be kept strictly confidential.

1.5.5. The Therapist views any contravention of this Policy very seriously, and employees who are guilty of contravening the Policy will be subject to disciplinary procedures, which may lead to the dismissal of any guilty party.

1.6. Retaining documents

Certain legislation specifies requirements for documents that must be retained, as well as how long those documents must be retained, some of which are detailed below.

1.6.1. HPCSA guidance

- Records should be kept for at least 6 years after they become dormant
- The records of minors should be kept until the minor's 21st birthday, subject to the ordinary dormancy requirements above once the 21-year threshold is met
- The records of patients who are mentally impaired should be kept until the patient's death
- In terms of the Occupational Health and Safety Act (Act No. 85 of 1993) health records must be kept for a period of 20 years after treatment of an associated injury.

1.6.2. Companies Act

- **7 YEARS:** Hard copies of the following documents must be retained:
 - Any documents, accounts, books, writing, records, or other information, that a Therapist is required to keep, in terms of the Act
 - Notice and minutes of all shareholder meetings, including resolutions adopted and documents made available to holders of securities
 - Copies of reports presented at the annual general meeting of the Therapist
 - Copies of annual financial statements, required by the Act
 - Copies of accounting records, required by the Act
 - Records of directors and past directors, after the director has retired from the Therapist
 - Written communication to holders of securities
 - Minutes and resolutions of directors' meetings, audit, and risk committee, meetings.

- **INDEFINITELY:** Copies of the following documents must be retained:
 - Registration certificate
 - Memorandum of Incorporation and alterations and amendments thereto
 - Rules of the Therapist (if applicable)
 - Securities register and uncertified securities register
 - Register of Therapist secretary and auditors
 - Register of disclosure of persons who hold a beneficial interest equal to, or in excess of, 5% of the securities of that class issued (for regulated companies, i.e., companies to which chapter 5, part B, C and Takeover Regulations apply).

1.6.3. Tax administration Act

- **5 YEARS:**
 - Taxpayers that have submitted a return (from date of submission)
 - Taxpayers who were not required to submit a return, but received income, had capital gains/losses, or engaged in any other activity that is subject to tax, or would be subject to tax, but for the application of a threshold, or exemption (from the end of the relevant tax period)
- **INDEFINITE:** Taxpayers who were meant to submit a return, but have not for that period (until the return is submitted, then 5 years)
- **UNTIL AUDIT IS CONCLUDED, OR ASSESSMENT, OR DECISION, BECOMES FINAL (IN ADDITION TO 5-YEAR RULE)**
 - A person who has been notified of, or is aware that the records are subject to, an audit, or investigation. The extended retention period will apply irrespective of whether the assessments have prescribed.
 - A person who has lodged an objection, or appeal, against an assessment, or decision.
- **UNTIL BASE COST CALCULATION MUST BE PROVED TO SARS FOR CAPITAL GAIN/LOSS**
 - A taxpayer bears the onus of proving a valuation, an exemption, and a deduction, where any of these items form part of a calculation, for purposes of calculating the base cost for capital gains tax purposes, it is recommended that a taxpayer retain records for a longer period, because will enable the taxpayer to discharge this onus.

1.6.4. Income Tax Act (additional to the Tax administration Act retention requirements)

- **5 YEARS FROM DATE OF SUBMITTING EMP201 & EMP501:**
 - For each employee, the employer must keep a record of:
 - 1.6.4...1. amount of remuneration paid, or due, by him, to the employee;
 - 1.6.4...2. amount of employees' tax deducted, or withheld, from the remuneration paid, or due;
 - 1.6.4...3. income tax reference number of that employee;
 - 1.6.4...4. any further prescribed information

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- **5 YEARS FROM DATE OF SUBMISSION, OR FROM END OF TAX YEAR (as applicable):**
 - Registered micro businesses must only retain records of:
 - 1.6.4...1. amounts received during a year of assessment;
 - 1.6.4...2. dividends declared during a year of assessment;
 - 1.6.4...3. each asset as at the end of a year of assessment with a cost price of more than R10 000;
 - 1.6.4...4. each liability as at the end of a year of assessment that exceeded R10 000

1.6.5. Value Added Tax Act (additional to the Tax administration Act retention requirements)

- **5 YEARS FROM SUBMISSION DATE:**
 - Where the zero rate is applied by any vendor, documentary proof must be obtained, and retained, to substantiate the entitlement to the zero rate
 - Where a vendor's basis of accounting is changed, the vendor must prepare lists of debtors, and creditors, showing the amounts owing by the debtors, and owing to the creditors, at the end of the tax period immediately preceding the changeover period
 - record of all goods, and services, supplied by, and to, the vendor, showing the goods, and services, the rate of tax applicable to the supply, and the suppliers, or their agents, in sufficient detail, to enable the goods, and services, the rate of tax, the suppliers, or the agents, to be readily identified by the Commissioner, and all invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists, and paid cheques
 - record of all importation of goods
 - documentary proof, where tax fractions apply, and alternative documentary proof (where applicable)
 - charts, and codes, of account, the accounting instruction manuals, and the system, and programme, documents, which describes the accounting system used for each tax period, in the supply of goods, and services;
 - any list required to be prepared (i.e., vendor's basis of accounting is changed)
 - any documentary proof (i.e., zero rate is applied)

1.7. Destruction of documents

1.7.1. Documents may be destroyed after the termination of the retention period specified in the relevant legislation.

1.7.2. Each department is responsible for attending to the destruction of its documents, which must be done regularly. Files must be checked, to ensure that the documents may be destroyed, and to ascertain whether there are important original documents in the file. Original documents must be returned to the holder thereof, failing which, they should be retained by the Therapist, pending return.

1.7.3. After performing this process, the head of the relevant department shall, in writing, authorise the removal and destruction of the documents in the authorisation document

1.7.4. The documents are then made available for collection by the removers of the Therapist's documents, who also ensure that the documents are shredded before disposal. This helps to ensure confidentiality of information.

1.7.5. Documents may also be stored off-site, in storage facilities, approved by the Therapist, as long as the relevant authorities are informed thereof.

2. Consequences of non-compliance with the policy

2.1. All employees are obliged to comply with the Policy, and it is a condition of employment. Non-compliance is a breach of their employment contract, and is an action of misconduct, so employees may be subject to disciplinary action, which may lead to dismissal. Non-compliance by an employee will be dealt with according to the Therapist's disciplinary policy. For assessing, and addressing, the non-compliance, reports made by the compliance officers, internal audit, external audit, and the Authorities, will be considered, for appropriate action to be taken.

3. Policy review

3.1. The policy will be reviewed annually, updated, if necessary, and the latest version will be adopted, and approved, by the Therapist.

4. Policy approval and information

Policy owner	Amy Kallenbach
Policy type	Compliance
Approved by (this version)	Amy Kallenbach
Approval date (this version)	September 2021
Version number	V1

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