

## ISSUES IN MEDICINE

# Appointment cancellations and no shows: To charge or not to charge?

A Barit, MB ChB, MPhil (Medical Law and Ethics)

PhD candidate, Faculty of Law, University of Pretoria, South Africa

Corresponding author: A Barit (tirab18@gmail.com)

Every day patients make appointments with doctors in order for both to be able to schedule their time accordingly. All is well unless one of the parties cancels the appointment. In the case of a cancellation that is within 2 hours of a general practitioner visit or 24 hours of a specialist visit, the patient is usually charged for either the full consultation or part thereof. Doctors may also have reasons to cancel and rearrange their appointments with patients, yet there is no penalty placed on the doctor for such behaviour. There appears to be a mismatch between the disincentives for the patient not to cancel v. those of the doctor not to cancel. In this article, the legal and ethical aspects of charging for a missed appointment will be dealt with in order to determine the current situation in South Africa. Furthermore, research into missed appointments will be discussed to ascertain the major causes and provide recommendations to prevent missed appointments from occurring.

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The doctor-patient interaction is generally preceded by the scheduling of an appointment by the patient for a specific date and time. What does not attract much attention is the legal situation resulting from cancellation of the appointment by either of the parties. This article will analyse the legal and ethical position in both situations, whether there is a difference between the doctor v. the patient cancelling, and if so a possible remedy to this situation.

## When the patient cancels the appointment

The Consumer Protection Act<sup>[1]</sup> (referred to hereafter as the CPA) regulates commercial transactions between a 'consumer', such as a patient, and a 'supplier', such as a medical practitioner.<sup>[2]</sup> In terms of section 17 of the CPA, the consumer has a right to cancel an advance reservation, booking or order (s 17(2)). However, upon such cancellation the supplier may impose a 'reasonable charge' on the consumer (s 17(3)). This charge would be 'unreasonable' if:

- 'it exceeds a fair amount in the circumstances having regard to –
- a. The nature of the services that were served and booked;
- b. The length of notice of cancellation provided by the consumer;
- c. The reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
- d. The general practice of the relevant industry.<sup>[1]</sup>

In contradistinction, 'reasonable' is defined as: (i) according to reason; sensible; not foolish; and (ii) not asking too much; fair; just.<sup>[3]</sup> It is not reasonable to ask a patient who cannot attend an appointment to pay the full amount for such even though no actual service was rendered, especially if there are no guidelines as to when and what may be charged.

A cancellation charge may not be imposed if the reason for cancellation is the 'death or hospitalisation of the person for whom, or for whose benefit the booking, reservation or order was made'

(s 17(5)).<sup>[1]</sup> However, the CPA does give a doctor the right to charge a reasonable cancellation fee with regard to a patient cancelling (or dishonouring) an appointment in other circumstances.

Cancellation charges may differ according to the industry involved, and section 4(d) of the CPA states that the charges would be unreasonable if they exceed a fair amount given 'general practice of the relevant industry'. The general practice may be determined with regard to the Health Professions Council of South Africa (HPCSA) Ethical Guidelines.<sup>[4]</sup> The current HPCSA ethical ruling<sup>[5]</sup> states that:

'A patient reserves the right to cancel a medical or dental appointment, and a medical or dental practitioner may not charge a consultation fee or a procedure fee for such a cancelled appointment unless:

1. A cancellation was made less than 24 hours for a specialist appointment and less than 2 hours for a general practitioner appointment, before the appointment time.
2. A practitioner can provide evidence of failure to find an alternative patient between the time of receiving the cancellation notice and the time of the cancelled appointment.
3. The practitioner can provide sufficient proof that the patient was informed about the cancellation of appointments policy.
4. The practitioner has first established the reasons for the patient's failure to cancel or honour the appointment.<sup>[5]</sup>

The HPCSA statement<sup>[5]</sup> states further that at the time when a patient makes an appointment, the patient should be advised that charges will be incurred for failing to arrive. It is submitted that the ethical ruling directly reflects the criteria provided for an 'unreasonable' cancellation charge as described in the CPA. The HPCSA, in parts of this rule, is dealing with perverse incentives. One of these incentives would be doctors being paid for work that they do not in fact do. The fact that a doctor could get paid something for doing nothing is not in keeping with the ethical guidelines of rendering a service for payment. These guidelines are legally binding, as can be seen from case law, e.g. the case of *Jansen van Vuuren v Kruger and Another*

*NNO v Kruger*,<sup>61</sup> where it was held that patients have a right to expect that their medical practitioner complies with the professional guidelines.

The time periods given for a cancellation by the patient can be seen to be reasonable given the amount of time that a general practitioner or specialist would need to manage their schedules effectively and perhaps schedule an appointment with a patient on a waiting list or a walk-in case. Both the CPA and the HPCSA are in agreement that if another patient is seen the doctor's time was not wasted, and no cancellation fee should be charged. The practitioner would also not be able to charge a no-show fee unless the reason for the no-show has been ascertained, which would allow the doctor to find out if it was because of hospitalisation or death of the patient.

Cancelling or not honouring an appointment is the least beneficial of all options open to the patient and the doctor. It is therefore prudent for the doctor to do what is possible to help the patient to show up for the appointment. South African (SA) research shows that the main reason for patients failing to honour a doctor's appointment was that they simply forgot that they had the appointment.<sup>7,81</sup> The second most common reason was that the patient was out of town at the time. Non-attendance for appointments, especially in private practice, may have financially deleterious consequences for the medical practitioner.<sup>91</sup> One of the quickest and most cost-effective ways to reduce cancellations and no-shows has been found to be sending reminders and calling patients to remind them of their upcoming appointments.<sup>10,111</sup> Even if the patient does cancel when he or she receives the reminder, the doctor would be able to manage his or her time better, as the cancellation has been done in advance. The sending of reminders is not a catch-all solution, however, as the penetration rate of cellphones in SA is only 68%, and probably much lower in impoverished areas, where the patients may not have access to a landline or cellphone to receive reminders.<sup>121</sup> The efficacy of sending reminders could be researched further by monitoring and assessing patients based on different interventions such as a phone call, message or other means of contact.

### When the doctor cancels the appointment

From the above we can see that both the CPA<sup>111</sup> and the HPCSA Ethical Guidelines<sup>41</sup> allow for suppliers such as doctors to charge reasonable cancellation fees when patients cancel appointments. However, the legal and ethical position when the medical practitioner cancels the appointment is different.

The HPCSA Guidelines do not cover what should be done in this instance. However, section 47 of the CPA,<sup>111</sup> titled 'Over-selling and over-booking', does provide a remedy for the consumer 'patient'. Specifically, the remedy takes effect when the doctor accepts an appointment and at the date and time of the appointment is unable to honour it. In such a case the doctor must refund the patient any amount already paid for the appointment plus interest until the date of refund, and 'compensate the consumer for costs directly incidental to the supplier's breach of the contract' (s 47(3)(a) and (b)).

However, the remedy is not available if the doctor 'offered to supply or procure another person to supply a consumer with comparable goods or services of the relevant kind to satisfy the consumer's request' (s 47(4)(a)), and the patient has accepted and been supplied with such comparable service, or unreasonably refused such offer (s 47(4)(b)). The comparable service would be a doctor of the same expertise as the contracting doctor. Furthermore, directly incidental costs will not be recoverable if the doctor could not honour the appointment owing to circumstances beyond his or her control, and took reasonable steps to inform the consumer of the cancellation as

soon as practicable in the circumstances (s 47(5)(a) and (b)). Such circumstances could be illness, death, or having to deal with an emergency involving another patient.

Again here I find the words reasonable. It would be debatable as to what such steps, i.e. time, and by what methods the doctor should inform the patient; however, it could be submitted that the same timeframe should be used that the doctor gives to the patient to cancel (24 hours for a specialist and 2 hours for a GP).

### Commentary

The problem with the situation outlined above is that the doctor may charge the patient for cancelling an appointment, and yet the patient has no reciprocal remedy. There is a mismatch of disincentives between the doctor and the patient. The medical professional can cancel the appointment at will without having to face paying monetary compensation to the client, while the patient has to pay the doctor if the cancellation is from his or her side. This scenario has been referred to by Nassim Nicholas Taleb<sup>131</sup> as having a mismatch of 'Skin in the Game' between the two parties, specifically with regard to 'symmetry in human affairs, that is, fairness, justice, responsibility, and reciprocity'.

In this situation, the HPCSA Ethical Guidelines could reduce the mismatch and promote the doctor-patient relationship as being between parties on an equal standing, rather than between the paternal doctor and the submissive patient. The effects of penalties for cancellations should also be assessed to determine whether penalties do indeed act as a disincentive to doctors and patients not cancelling or not showing up for appointments.

It should be kept in mind that both sides must attempt to maintain the doctor-patient relationship. Some solutions to a doctor cancelling on a patient could be that the patient is given the next available time that is open, or receives a discounted appointment in the future. This would recognise that the patient was inconvenienced and would create goodwill between the patient and doctor for future appointments.

### Conclusions

Healthcare interactions between doctors and patients may be cancelled by either party. However, whereas if the patient cancels an appointment the doctor may legally and ethically charge a reasonable cancellation fee, the converse is not true. In terms of the CPA, the only realistic remedy the patient has is to recover any prepayment for the appointment that has been made. An ethical rule to encourage doctors to avoid cancelling appointments unless exceptional circumstances exist is needed to plug the gap. It is to be hoped that the HPCSA will address this deficiency and make a ruling in accordance with the CPA. The best outcome would be for the doctor and the patient to help each other maintain their appointments. This is best achieved through good reciprocal communication between the parties, the importance of which cannot be overstated.

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