

A NEW ERA OF CONSUMER PROTECTION: THE CONSUMER PROTECTION ACT 68 OF 2008



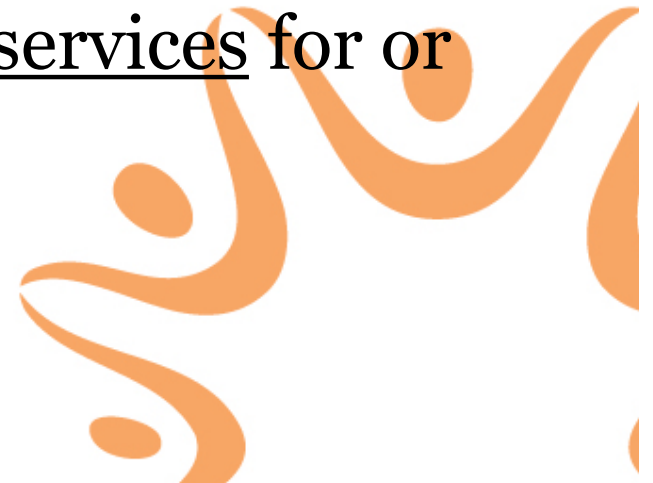
Introduction

- Consumer Protection Act No 68 of 2008 (**CPA**) was published in April 2009
- Staggered operational dates but the entire Act comes into force on 24 October 2010
- The Regulations to the CPA have still not been published



The Relevance to Pharmacists?

- The Act applies to every transaction within the Republic
- Transaction includes the supply of goods to a consumer or the performance of services for or at the direction of a consumer



Very Wide Definitions

Goods includes:

“...(a) anything marketed for human consumption...”

“(b) any tangible product... including any medium on which anything is written or encoded...”



Services Are Also Covered

Services includes:

“...(a) any work or undertaking performed by one person for the direct or indirect benefit of another...”



In Plain English...

- The entire medicine supply chain
- Distribution channel
- Marketing and promotions
- Point of sale to your customers
- Use of medicines by consumers
- ...will be covered by the Act!



What Will Be Covered

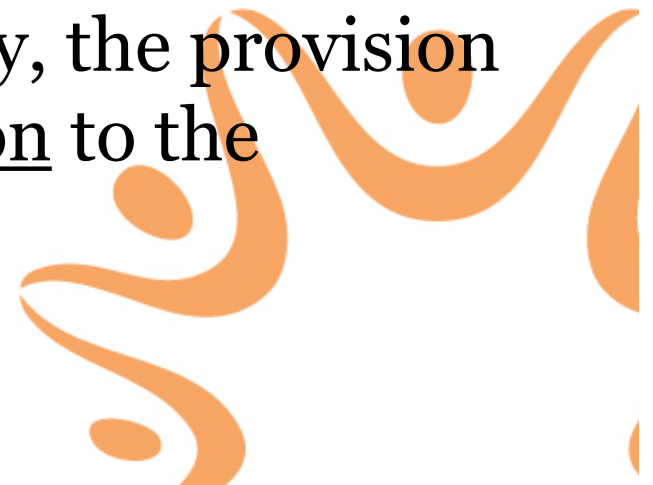
The CPA will apply to:

- Registered medicines
- Unregistered / Complementary medicines
- Advice and recommendations that you provide
- Access to and use of your facilities / premises



But I am already regulated!

- Provisions of both the CPA and your current regulatory legislation (Medicines and Related Substances Act) will apply concurrently
- To the extent of any inconsistency, the provision that extends the greater protection to the consumer will prevail



Significant Implications / Risks

- Medicines – inherent risks with supply
- Packaging and Labels
- Safety, quality and efficacy of the goods
- Purpose for which they are sold



Exclusions to the Act

- Goods or services promoted or supplied to the State
- Juristic Person whose asset value / annual turnover exceeds threshold value (R1 million)
- Credit agreements and services supplied under employment agreements



Industry Wide Exemptions

- Regulatory authorities
- May apply for industry-wide exemptions
- From the provisions of the CPA
- Where they overlap or duplicate a regulatory scheme



Fundamental Consumer Rights


The Consumer's Right to Return Goods: (Section 20)

- Where consumer did not have an opportunity to examine goods before delivery; and
- In those cases where the consumer had agreed to purchase the goods solely on the basis of a description or sample





Right To Return Does Not Apply:

- Public regulation prohibits the return for reasons of public health
 - Goods have been physically altered, joined or added to, blended or combined with other goods
- 

Product Labelling (section 24)

- May not knowingly apply a trade description to goods that is likely to mislead the consumer as to any matter implied or expressed in that trade description
- Trade description includes anything applied to the goods, any covering or label, anything displayed in proximity, signs, advertisements, catalogues, brochures etc.



Product Labelling cont.

- A person may not alter, deface, cover, remove or obscure a trade description or trade mark applied to any goods in a manner calculated to mislead consumers

... so be careful when applying labels / descriptions to your products!



Right to Fair and Honest Dealings

Unconscionable Conduct (s40) –

A supplier or an agent of a supplier may not use coercion, undue influence, pressure, duress, harassment, unfair tactics or similar conduct in the marketing or supply of goods or services



False, Misleading or Deceptive Representations (section 41)

Supplier may not:

- Use false, misleading, deceptive representations
- Use exaggeration, innuendo or ambiguity
- Represent that goods have ingredients, performance characteristics, uses or benefits that they do not have



Right to Fair Value, Good Quality and Safety

Consumer's rights to safe, good quality goods (section 55) –

- Reasonably suitable for the purposes for which they are intended
- Good quality
- Good working order
- Free of any defects



What Does Defect Mean?

(i) any material imperfection that is less acceptable than what one would reasonably expect;

(ii) any characteristic that renders the goods less useful, practicable or safe than what one would reasonably expect.



Right to Good Quality Goods Includes:

- Useable and durable
- For a reasonable period of time
- Having regard to their use to which they would normally be put and to all the surrounding circumstances of their supply



Implied Warranty of Quality (section 56)

- Goods comply with the requirements and standards contemplated in section 55
- Given by the entire supply chain:
 - Producer
 - Importer
 - Distributor
 - Retailer



When Does The Warranty Not Apply

Goods have been altered –

- Contrary to their instructions; or
- After leaving the control of the party concerned



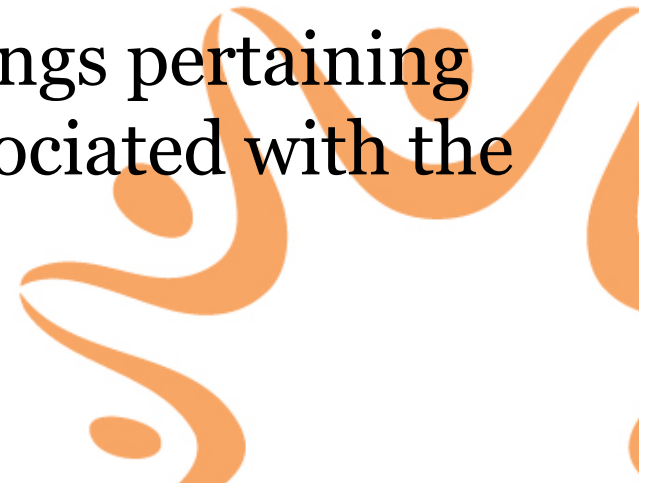
Remedies for Breach of Warranty

- Return goods within six months
- Without penalty and at supplier's risk /expense
- Repair or replace goods
- Refund the price paid
- At the consumer's choice



Strict Liability (section 61)

- Entire supply chain
- Liable for any harm caused
- Supply unsafe goods
- Product failure, defect or hazard
- Inadequate instructions or warnings pertaining to any hazard arising from or associated with the use of the goods



Strict Liability cont.

IRRESPECTIVE of whether the harm resulted from **ANY NEGLIGENCE** on the part of the producer, importer, distributor or retailer



Strict Liability for Products:

If any goods are supplied to any person in terms of a transaction that is exempt from the application of the Act, those goods, the importer, producer, distributor and retailer, respectively, **ARE NEVERTHESS SUBJECT TO SECTION 61**



Strict Liability Does Not Arise...

- Defect attributable to compliance with public regulation
- Defect did not exist at time of sale
- Unreasonable to expect the retailer to have discovered the failure, defect or hazard having regard to that person's role in marketing goods



Damages arising from Strict Liability:

- Death or injury of a person
- Any illness
- Loss or physical damage to property
- Any economic loss



Risk Management

- Defective products due to incorrect temperature control
- Labels – incorrect / misleading descriptions
- Advice – choice of product and intended use
- Misleading claims re make-up / ingredients



Risk Management cont.

- Adequate training of staff
- Sufficient product liability protection
- Tread carefully with unregistered products
- Patient information leaflets – accurate
- Ensure responsible marketing



Shall we talk about the Football?



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