The purpose of the Consumer Protection Act (CPA),[3] in so many words, is to promote and advance the social and economic welfare of consumers in South Africa (SA). Specific protection is given to certain classes of people such as the illiterate, minors, seniors, people living in remote areas and those of low income. Most of the provisions of the Act came into effect on 1 April 2011. The provisions of the Act relating to harm caused to consumers by defective products apply only to goods supplied on or after 1 April 2011.

Interpretation of any law must promote the spirit and the objectives of the Bill of Rights,[4] which protects the fundamental rights of every person in SA, and the CPA is no exception to this rule. For example, a pharmacist may not discriminate unfairly between patients by prioritising supply of medicines, supplying goods or services of different quality, or charging different prices to different patients on the grounds of race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. Furthermore, to protect his or her right to privacy the consumer may refuse to be contacted for purposes of direct marketing through electronic and postal advertising media. The consumer has a right to choose his/her supplier in that a supplier is not permitted to require, as a condition of the supply of any goods or services to a consumer, that the consumer must purchase particular goods either from that supplier or from another party. Such 'bundling' of
goods and services is only permitted if the supplier can show that
the convenience to the consumer outweighs the limitation of the
consumer's right to choice, that the bundling results in economic
benefit for the consumer, or that the bundled goods or services are
also offered separately.

The Act should also be interpreted to give effect to its stated
purposes. However, if there is inconsistency with other acts, such
as the Medicines and Related Substances Act,[1] the two acts will be
applied together and inconsistencies will be dealt with by applying
the provision in whichever of the acts affords greater protection to
the consumer.

Who are the supplier and the consumer?

With certain exceptions, the CPA[1] applies to all transactions entered
into in SA as well as to the promotion and supply of goods and
services. Pharmacies regularly advertise goods and services and enter
into transactions for the supply of services such as blood pressure
monitoring or goods such as medicines, and are therefore deemed to
be suppliers in terms of the Act.

For the purposes of the CPA,[1] a consumer is a 'natural person'
(i.e. a human being) as well as certain 'legal persons' (typically
companies). A consumer is one to whom goods or services are
marketed, and/or who enters into a transaction, and/or who is the
user of goods or the recipient/beneficiary of services. For purposes
of the supplier's liability for harm caused by defective products
(product liability), it is irrelevant whether or not the person who
has been harmed was a party to the transaction in which the
goods or services were procured. The result is that a supplier
(including the manufacturer, an importer, a wholesaler and the
pharmacy) will be liable to the 'consumer' for harm suffered
as a result of defects in the product supplied, for example to a
patient who has received free medication. A pharmacy may also
be considered a consumer because it enters into transactions and
procures medicines and other goods and services from suppliers.
A pharmacy belonging to the government or that is a company and
has an asset value or annual income of ≥R2 000 000 is not regarded
as a consumer.

Protection afforded by the CPA

A consumer may select goods displayed in open shelves and is not
responsible for loss or damage of these goods unless this results
from the consumer's gross negligence, recklessness, or malicious
or criminal behaviour. Generally, goods may not be displayed
for sale unless their prices are also displayed. Prices may be
displayed in various ways, ranging from being applied to goods
to being published in relation to goods in a catalogue indicating a
period during which the prices will be valid. False or misleading
representations concerning the nature, advantages or price of
goods or services are prohibited. The Medicines and Related
Substances Act[1] also deals with false advertisements concerning
medicines.

Information in notices, documents, promotional offers and
loyalty programmes must be provided in plain, understandable
language, taking into account the class of consumer for whom
such a document is intended. The class of consumer is determined
by the literacy skill and minimum experience as a consumer of
the person procuring the goods or services offered. Advantage
may not be taken of consumers suffering from physical or mental
disabilities, and no agreements may be made with persons lacking

legal capacity, such as minors. A consumer must be provided with
a written record of each transaction regarding supplied goods or
services. The supplier may not enter into an agreement to supply
goods/services to a consumer at unfair, unreasonable or unjust
prices or terms.

Since medicines are inherently unsafe, instructions and warnings
are extremely important. Information requirements in terms of
labelling information, package inserts and patient information
leaflets are laid down in the Regulations to the Medicines and Related
Substances Act.[3] Furthermore, staff members of a pharmacy dealing
with consumers should be sufficiently trained before they are allowed
to advise consumers, as is also recommended in the Good Pharmacy
Practice guidelines[5] provided by the South African Pharmacy
Council.

Any consumer has the right to the good-quality service that
people are generally entitled to expect. The Good Pharmacy
Practice guidelines[5] also deal with this issue and should be applied.
If a pharmacy fails to supply good service, the consumer may insist
on such service or ask for a reasonable refund, depending on the
extent to which the pharmacy failed. Furthermore, a consumer also
has the right to good-quality, safe goods without defects, which
are suitable for the intended purpose and durable. In the situation
where a consumer communicated the need for goods suitable
for a particular purpose to the pharmacy and after delivery finds
the goods unsuitable, they may be returned for a refund within
10 business days. The refund price may be reduced, for example
due to consumption, but no reduction is allowed when goods are
returned unopened and in the original packaging. The CPA[1] will
not apply in the above circumstances if the return of goods holds a
threat to public health or is prohibited by a public regulation. The
return of medicines is not prohibited by the Medicines and Related
Substances Act.[4]

Unsafe and defective goods may be returned within 6 months
for repair, replacement or refund without penalty under all
circumstances. These returned goods can be sent back by the
pharmacy to the distributors or to other entities in the supply chain
if the pharmacy meets the requirements of being a consumer. This
is possible because of an implied warranty of quality that is embodied
in any transaction or agreement pertaining to the supply of goods
to a consumer. It is also in line with the Medicines and Related
Substances Act.[5] However, if the original goods were tampered with,
for example repackaged in the pharmacy, return to the other entities
in the distribution chain will probably not be possible. It must be
noted that the Good Pharmacy Practice guidelines[5] as well as the
Regulations to the Medicines and Related Substances Act[4] do allow
repacking if certain requirements are fulfilled. In terms of returned
goods, it is clear from the Code of Conduct for Pharmacists[4] and the
Good Pharmacy Practice guidelines[5] that medicines that have been
in a patient’s possession and returned must not be redispensed.

A reasonable deposit may be charged in advance for procured
goods to be collected or delivered at a later date. Advance
reservations, bookings or orders may be cancelled by a consumer,
with the exception of special-order goods, such as medicine, that
the pharmacy was required or expected to procure to satisfy the
consumer's requirements and that it does not ordinarily stock. A
reasonable cancellation fee may be charged depending on factors such
as the nature of the goods and the length of notice, except in cases of
death or hospitalisation of the consumer.

Goods must be delivered and services supplied on the date
agreed upon between the pharmacist and the patient, or within a
reasonable time, at the agreed place, as is also clear from the Good Pharmacy Practice guidelines.\textsuperscript{[5]} Goods must be delivered at the cost of the pharmacy unless expressly otherwise agreed, according to the CPA.\textsuperscript{[1]} If delivery takes place on a date or at a place not agreed upon, the consumer may require that the delivery takes place as agreed upon or cancel the agreement without penalty. The person delivering goods to the consumer must be identifiable or provide suitable identification. If goods are substituted by other goods, the transaction will apply to the substituted goods from the date of their delivery and the sales record will have to be amended.

Safety monitoring and recall of goods also forms part of the CPA.\textsuperscript{[1]} The Consumer Commission will play a role in the development of codes of practice for the investigation of defects of goods, warning of the public against these goods, and recall of goods.

**Liabilities and remedies**

The producer, importer, distributor and retailer of goods are all liable if the goods supplied by them were unsafe, defective or hazardous, or if inadequate instructions or warnings were provided to the consumer. They will be liable for harm in the form of death, injury, illness, loss or damage of property, or any economic loss experienced by the consumer arising therefrom. Consumers may claim from them separately or jointly. It is irrelevant whether they were negligent or not. This is often referred to as ‘no-fault liability’ or ‘strict liability’.

Complaints of infringement of consumer rights may be lodged by any person acting on behalf of him/herself, on behalf of another person who cannot act in his/her own name, as a member of, or in the interests of, a group or class making class actions possible, or in the public interest. An association can act in the interests of its members.


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