

# Record-Keeping Policy of Samantha Jane Leeferink Physiotherapy

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## 1. PURPOSE OF POLICY

Samantha Jane Leeferink Physiotherapy (“the Practice”) follows sound procedures for the creation, maintenance, retention and disposal of all records, including electronic records to ensure the protection, privacy and confidentiality of its records. The record management procedures comply with legal requirements, including those for the provision of evidence. The Practice has performance measures in place for all record management functions and reviews compliance with these measures regularly.

The purpose of this Policy is to outline the periods for how long records, most notably those containing personal information, which have been created by or are otherwise in the possession or under the control of the Practice, are kept, and what happens to those records on expiry of these periods. The Policy is intended to protect the Practice from exposure to legal liability.

## 2. OTHER POLICIES

This Policy must be considered in conjunction with other policies and documents of the Practice related to the processing of personal information by the Practice.

## 3. DEFINITION OF TERMS

The definitions of the following terms as defined in Protection of Personal Information Act 4 of 2013 (“POPIA”) should be noted in particular when interpreting this Policy:

3.1 **“Data subject”** refers to the person to whom the personal information relates.

Data subjects in the practice setting include patients, their next-of-kin or persons who may act on their behalf, practitioners, employees, referring doctors and any other individual or entity of which the Practice has personal information in its possession or under its control.

3.2 **“De-identify”**, in relation to personal information of a data subject, means to delete any information that—

3.2.1 identifies the data subject;

3.2.2 can be used or manipulated by a reasonably foreseeable method to identify the data subject; or

3.2.3 can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and “de-identified” has a corresponding meaning.

3.3 **“Personal Information”** refers to information relating to identifiable, living, natural persons as well as identifiable, existing juristic persons, and includes, but is not limited to -

- 3.3.1 information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- 3.3.2 information relating to the education or the medical, financial, criminal or employment history of the person;
- 3.3.3 any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- 3.3.4 the biometric information of the person;
- 3.3.5 the personal opinions, views or preferences of the person;
- 3.3.6 correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 3.3.7 the views or opinions of another individual about the person; and
- 3.3.8 the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

The personal information of both living natural persons (i.e. human beings) and juristic persons (e.g. companies, regulators and medical schemes) that are in existence is protected under POPIA.

3.4 **“Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including -

- 3.4.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- 3.4.2 dissemination by means of transmission, distribution or making available in any other form;
- or
- 3.4.3 merging, linking, as well as restriction, degradation, erasure or destruction of information.

For purposes of this Policy, ‘processing’ includes any activity that can be undertaken in respect of personal information.

3.5 **“Record”** means any recorded information—

3.5.1 regardless of form or medium, including any of the following—

3.5.1.1 writing on any material;

3.5.1.2 information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;

3.5.1.3 label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;

3.5.1.4 book, map, plan, graph or drawing;

3.5.1.5 photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

3.5.2 in the possession or under the control of a responsible party;

3.5.3 whether or not it was created by a responsible party; and

3.5.4 regardless of when it came into existence.

3.6 **“Re-identify”**, in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that—

3.6.1 identifies the data subject;

3.6.2 can be used or manipulated by a reasonably foreseeable method to identify the data subject; or

3.6.3 can be linked by a reasonably foreseeable method to other information that identifies the data subject,

and **“re-identified”** has a corresponding meaning.

3.7 **“Responsible party”** means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information.

The Practice is a ‘responsible party’ as defined in POPIA.

#### 4. SCOPE

This Policy applies to all records containing personal information in the possession or under the control of the Practice.

## 5. INFORMATION OFFICER

The Information Officer of the Practice is:

**Name:** Samantha Jane Leeferink

**Position:** Owner

**Contact telephone number:** 0842700833

**E-mail address:** samantha@sjlphysio.co.za

The Information Officer is, amongst others, responsible for:

- the implementation of this Policy;
- staff awareness regarding this Policy;
- the management of all records according to the record management principles contained in this Policy and relevant legislation; and
- the determination of retention periods in consultation with the users of the information and records and taking into account the functional, legal and historical needs of the Practice to maintain records of transactions.

## 6. INFORMATION TECHNOLOGY SUPPORT

IT support ("IT Support") at / to the Practice is provided by:

**Name:** Graeme Stewart

**Contact telephone number:** 0823302904

**E-mail address:** graeme@interquip.co.za

IT Support is, amongst others, responsible for the day-to-day maintenance of electronic systems that store records. IT Support must conduct its responsibilities related to record-keeping in conjunction with the Information Officer to ensure that records are properly managed, protected and appropriately preserved for as long as they are required for business, legal and other lawful purposes.

## 7. STANDARDS FOR RECORD-KEEPING

Various laws prescribe the details and format of records that must be kept. These laws should be considered to ensure that accurate, comprehensive and valid records are kept by the Practice.

The Practice must use systems and procedures, which ensure that its electronic records are:

- authentic;
- not altered or tampered with;
- auditable; and
- produced in systems, which utilise security measures to ensure their integrity.

#### 8. PROTECTION OF PERSONAL INFORMATION ACT (“POPIA”)

POPIA contains provisions related to the keeping of records, which contain personal information, and restrictions that must be imposed when records may no longer be kept. These provisions must be considered when determining for how long records must be kept.

The time periods for which records must be kept as provided for in section 14 can be summarised as follows:

JUSTIFICATION	TIME PERIOD
<b>Purpose of collection</b>	As long as necessary for achieving the purpose for which the information was collected
<b>Law</b>	In accordance with the period stipulated in a law
<b>Lawful purpose</b>	As long as necessary as reasonably required for lawful purposes related to the functions or activities of a responsible party (e.g. the Practice)
<b>Contract</b>	In accordance with the period stipulated in a contract between parties
<b>Consent</b>	In accordance with the period to which the data subject (e.g. patient) or competent person on behalf of a child consents
<b>Historical, statistical or research</b>	Records may be retained for historical, statistical or research purposes if the responsible party has implemented appropriate safeguards to ensure that the records are not being used for any other purpose
<b>Decision about data subject</b>	<p>If the responsible party has used the record to make a decision about the data subject, the retention period is as follows:</p> <ul style="list-style-type: none"> <li>• as prescribed by law or a code of conduct; or</li> <li>• in absence of a law or a code, for a period which will afford the data subject a reasonable opportunity to request access to the record, taking all considerations relating to the use of the personal information into account.</li> </ul>

## **9. RECORD RETENTION PRINCIPLES**

- 9.1 Records must at all times be protected against unauthorised access and tampering to protect their authenticity and reliability as evidence.
- 9.2 Records storage areas must at all times be protected against unauthorised access. The following applies:
  - 9.2.1 record storage areas must be locked when not in use;
  - 9.2.2 access to electronic records must be password-controlled; and
  - 9.2.3 access to server rooms and storage areas for electronic records must be managed with key card access.
- 9.3 When records of personal information may no longer be kept by the Practice, it must as far as possible be de-identified by an authorised person unless otherwise required by legislation. Where de-identification is not possible, it must be destroyed by an authorised person in a secure manner in accordance with the procedure adopted by the Practice at the time and which procedure must meet the requirements of POPIA, i.e. not being capable of reconstruction in an intelligible form. Only the Information Officer has the authority to dispose of or authorise the disposal of records or to ensure that they are de-identified.
- 9.4 No record may be destroyed without the approval of the Information Officer.
- 9.5 Records may not be destroyed when legislation requires otherwise.
- 9.6 Where records of personal information are retained for historical, statistical or research purposes, safeguards must be implemented to ensure that the records are not being used for any other purpose. The safeguards will depend on whether the records are in electronic or hard copy form. The Information Officer must oversee this process in conjunction with IT Support.
- 9.7 When the processing of personal information is restricted as set out in the Personal Information Management Policy, the relevant records must still be stored.

## **10. CHANGES TO RECORDS OF PERSONAL INFORMATION**

Changes may not be made to records of personal information unless authorised by the Information Officer or it is in accordance with the Personal Information Management Policy or a standard operating procedure ("SOP") of the Practice, which must comply with relevant legislation.

## **11. RECORD RETENTION PERIODS**

Where a record is subject to different terms under different laws, the most stringent requirement will be applied. Where time periods have not been specified in the legislation and no other regulatory guidance is available and records are required to be kept, the records must be kept indefinitely (i.e.

for as long as the Practice exists). Where an interpretation must be made for how long a record must be kept, for example, as contemplated in section 14(3) of POPIA where a record of personal information has been used to make a decision concerning a data subject, prescription periods can be considered to determine an appropriate record retention timeframe.

### 11.1 Practice Records

#### Legal framework:

- Companies Act 71 of 2008 (Sections 24 and 50)
- Common law
- POPIA

DOCUMENT	PRESCRIBED RETENTION PERIOD	RETENTION PERIOD BY THE PRACTICE	JUSTIFICATION FOR PRACTICE RECORD-KEEPING PERIOD
<b>If the Practice is a sole proprietor business</b>			
Records of owner	Indefinite	Indefinite	As per guidelines
Copies of accounting records and annual financial statements	Indefinite	Indefinite	As per guidelines

### 11.2 Health and Safety Records

#### Legal framework:

- Compensation for Occupational Injuries and Diseases Act 130 of 1993 (Section 81)
- Occupational Health and Safety Act 85 of 1993 (Section 20)
  - General Administration Regulations of 2003 (Regulations 5(1) and 9(1))
  - Hazardous Biological Agents Regulations of 2001 (Regulation 9(1) and (2))
  - Hazardous Chemical Substance Regulations of 1995 (Regulation 9)
  - Ergonomics Regulations of 2019 (Regulation 10)
- POPIA

<b>DOCUMENT</b>	<b>PRESCRIBED RETENTION PERIOD</b>	<b>RETENTION PERIOD BY THE PRACTICE</b>	<b>JUSTIFICATION FOR PRACTICE RECORD-KEEPING PERIOD</b>
Register or other record of the earnings and other prescribed particulars of all the employees	4 years after last date of entry	4 years after last date of entry	As per guidelines
Health and safety committee records of recommendations made to employers related to the health of employees and reports made to inspectors	3 years	3 years	As per guidelines
Records of incidents reported at work	3 years	3 years	As per guidelines
<b>Ergonomics Records</b>	If employer ceases activities, all records must be handed over to chief director: provincial operations		
Ergonomic risk assessment and medical surveillance records	40 years	40 years	As per guidelines
Risk controls	3 years	3 years	As per guidelines
Employee training programs	Length of time employee remains at workplace	Length of time employee remains at workplace	As per guidelines

### **11.3 Patient Records**

#### Legal framework:

- National Health Act 61 of 2003 (Section 13)
  - Regulations: Cancer Registration of 2011
  - Norms and Standards Regulations Applicable to Different Categories of Health Establishments of 2017
  - Regulations Relating to the Surveillance and the Control of Notifiable Medical Conditions of 2017
- Children's Act 38 of 2005

- Disaster Management Act 57 of 2002
- HPCSA’s Ethical Rules of Conduct for Practitioners registered under the Health Professions Act
- HPCSA’s Guidelines for Good Practice in the Health Care Professions:
  - Guidelines on the Keeping of Patient Records. Booklet 9. September 2016
  - Confidentiality: Protecting and Providing Information. Booklet 5. September 2016
  - Ethical Guidelines for Good Practice with regard to HIV. Booklet 6. September 2016
- POPIA

DOCUMENT	PRESCRIBED / RECOMMENDED RETENTION PERIOD	RETENTION PERIOD BY THE PRACTICE	JUSTIFICATION FOR PRACTICE RECORD- KEEPING PERIOD
Health records of adults, who are compos mentis	At least 6 years from becoming dormant	At least 6 years from becoming dormant	As per guidelines
Minors	Until they turn 21 years	Until they turn 21 years	As per guidelines
Patients who are non compos mentis	For the lifetime of the patient	For the lifetime of the patient	As per guidelines
For conditions that take a long time to develop	25 years	25 years	As per guidelines
Injury on duty	25 years	25 years	As per guidelines

#### **11.4 Staff Records**

##### Legal framework:

- Basic Conditions of Employment Act 75 of 1997 (Sections 29 and 31) (“BCEA”)
- Employment Equity Act 55 of 1998 (Sections 21 and 26)
  - Employment Equity Regulations of 2014 (Regulations 9(3) and 10(9))
  - Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices
- Labour Relations Act 66 of 1995 (Section 205, Schedule 8)
- Unemployment Insurance Act 63 of 2001 (Section 56) (“UIA”)

- POPIA

DOCUMENT	PRESCRIBED RETENTION PERIOD	RETENTION PERIOD BY THE PRACTICE	JUSTIFICATION FOR PRACTICE RECORD-KEEPING PERIOD
<b>BCEA</b>			
Written particulars of employment	3 years after termination of employment	3 years after termination of employment	As per guidelines
Record with employee information as prescribed in section 31 of BCEA: (a) The employee's name and occupation; (b) the time worked by each employee; (c) the remuneration paid to each employee; (d) the date of birth of any employee under 18 years of age; and any other prescribed information.	3 years from the date of the last entry in the record	3 years from the date of the last entry in the record	As per guidelines
<b>Employment Equity Act</b>			
Records in respect of the workforce, the employment equity plan and other records relevant to compliance with the Employment Equity Act	Reasonable period / 5 years after expiry of plan	Reasonable period / 5 years after expiry of plan	As per guidelines
A designated employer must submit a report to the Director General ("DG") once every year	5 years after submission to DG	5 years after submission to DG	As per guidelines
Recruitment and probation records	None	None	As per guidelines

Records that an employer is required to keep in compliance with any applicable - <ul style="list-style-type: none"> <li>• collective agreement;</li> <li>• arbitration award;</li> <li>• determination made in terms of the Basic Conditions of Employment Act / Labour Relations Act</li> </ul>	3 years from the date of the event or end of the period to which they relate	3 years from the date of the event or end of the period to which they relate	As per guidelines
Prescribed details of any strike, lock-out or protest action involving employees	None	None	As per guidelines
Records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions	None	None	As per guidelines
<b>Unemployment Insurance Act</b>			
Personal records of current employees containing the following information: <ul style="list-style-type: none"> <li>(a) names</li> <li>(b) identification numbers</li> <li>(c) monthly remuneration</li> <li>(d) the address at which the employee is employed</li> </ul>	None	None	As per guidelines

### 11.5 Financial Records

#### Legal framework:

- Tax Administration Act 28 of 2011 (Sections 29, 32, 102)
- Income Tax Act 58 of 1962 (4<sup>th</sup> and 6<sup>th</sup> Schedules)
- Value Added Tax Act 89 of 1991 (Sections 15, 16, 55) (VAT Act)

- POPIA
- SARS Guidance:
  - <https://www.sars.gov.za/ClientSegments/Businesses/SmallBusinesses/StratingBusiness/Record-keeping/Pages/default.aspx>
  - <https://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-TAdm-PN-2012-01%20-%20Notice%20787%20GG%2035733%201%20October%202012.pdf>
  - <https://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-TAdm-PN-2016-05%20-%20Notice%201334%20GG%2040375%2028%20October%202016.pdf>
- SAICA Guidance:
  - [https://www.saica.co.za/Portals/0/Documents/Retention\\_of\\_Records\\_guide\\_updated\\_2019\\_16\\_April\\_2019.pdf](https://www.saica.co.za/Portals/0/Documents/Retention_of_Records_guide_updated_2019_16_April_2019.pdf)

DOCUMENT	PRESCRIBED RETENTION PERIOD	RETENTION PERIOD BY THE PRACTICE	JUSTIFICATION FOR PRACTICE RECORD-KEEPING PERIOD
Where the Practice has submitted a return	5 years from date of submission	5 years from date of submission	As per guidelines
Where the Practice is required to submit a return, but have not for that period	Indefinite until return is submitted then 5 years from date of submission	Indefinite until return is submitted then 5 years from date of submission	As per guidelines
Where the practice was 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	5 years from the end of the relevant tax period	5 years from the end of the relevant tax period	As per guidelines
In the event of an audit, investigation, objection or appeal	None	None	As per guidelines
Documentary evidence to enable the Practice to prove	None	None	As per guidelines

<p>(a) that an amount, transaction, event or item is exempt or otherwise not taxable</p> <p>(b) that an amount or item is deductible or may be set off</p> <p>(c) the rate of tax applicable to a transaction, event, item or class of taxpayer</p> <p>(d) that an amount qualifies as a reduction of tax payable</p> <p>(e) that a valuation is correct;</p> <p>whether a 'decision' that is subject to objection and appeal under a tax Act, is incorrect.</p>			
<p>Employee information as specified in Schedule 4:</p> <p>(a) the amounts of remuneration paid or due to the employee</p> <p>(b) the amount of employees' tax deducted or withheld from the amounts of remuneration contemplated in item (a)</p> <p>(c) the income tax reference number of that employee where that employee is registered as a taxpayer in terms of section 67 and such further information as the Commissioner may prescribe.</p>	<p>5 years from the date of submission of the return evidencing payment (i.e. EMP201) and 5 years from the date of submission of the return required by gazette (i.e. EMP501)</p>	<p>5 years from the date of submission of the return evidencing payment (i.e. EMP201) and 5 years from the date of submission of the return required by gazette (i.e. EMP501)</p>	<p>As per guidelines</p>
<p>Records as prescribed in the VAT Act</p>	<p>5 years from date of submission of the return</p>	<p>5 years from date of submission of the return</p>	<p>As per guidelines</p>

### 11.6 Service Provider / Vendor / Supplier Records

Legal framework:

- Common law
- POPIA

DOCUMENT	PRESCRIBED RETENTION PERIOD	RETENTION PERIOD BY THE PRACTICE	JUSTIFICATION FOR PRACTICE RECORD-KEEPING PERIOD
Records containing contact details	As per guidelines	As per guidelines	As per guidelines
Agreements	As per guidelines	As per guidelines	As per guidelines

### 12. ACCESS TO RECORDS

Requests for access to records must be made in accordance with the requirements of POPIA and the Promotion of Access to Information Act 2 of 2000 (“PAIA”). The process for obtaining access is set out in the PAIA Manual of the Practice.

### 13. COMPLAINTS

Any complaint, concern or question regarding the retention of records, which contain personal information, must be submitted in writing to the Information Officer.

### 14. VERIFICATION OF COMPLIANCE WITH POLICY AND AUDIT

The Information Officer must verify compliance with this Policy and the law from time to time through any appropriate mechanism.

### 15. NON-COMPLIANCE WITH THIS POLICY

15.1 Any non-compliance with this Policy or any relevant legislation will result in an investigation of the non-compliance or alleged non-compliance.

15.2 Any violation of this Policy or any relevant legislation will be dealt with in terms of applicable employee policies or another appropriate mechanism, including disciplinary action, as may be

available and applicable.

**16. IMPLEMENTATION OF THIS POLICY**

The Information Officer must ensure that all practitioners and employees are provided with a copy of or access to this Policy and are trained in every aspect of this Policy.

**17. EFFECTIVE DATE OF POLICY**

This Policy comes into operation on the date of approval by the Managing Director / Partners / Head of the Practice and supersedes all other policies and related documents on the subject matter from the effective date.

**18. POLICY REVISION**

This Policy must be reviewed and updated at least on an annual basis.

  
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Signature of the Head of the Practice

  
\_\_\_\_\_

Signature of the Information Officer

Date of Approval: 01/06/2021