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GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID

No. R. 765

24 August 2001

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA

REGULATIONS RELATING TO THE CONDUCT OF INQUIRIES INTO ALLEGED
UNPROFESSIONAL CONDUCT UNDER THE HEALTH PROFESSIONS ACT, 1974

The Minister of Health has, in consultation with the Health Professions Council of South Africa, under section 61(1)(h), read with section 61(4) of the Health Professions Act, 1974 (Act No. 56 of 1974), made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations "**the Act**" means the Health Professions Act, 1974 (Act No. 56 of 1974), and any word or expression to which a meaning has been assigned in the Act shall bear such meaning, and unless the context otherwise indicates -

"accused" means a person registered under the Act whose conduct is the subject of an inquiry under Chapter IV of the Act and these Regulations;

"appeal committee" means a committee established by a professional board under section 10(2) of the Act for purposes of conducting an appeal against the finding of an inquiry conducted by a professional board or a committee established for such purpose;

"appellant" means an accused or pro forma complainant who is aggrieved by a decision of a professional conduct committee or a professional board and who appeals to the appeal committee;

“committee of preliminary inquiry” means a committee established by a professional board in terms of the Regulations relating to the Functions and Functioning of Professional Boards under Government Notice No. R. 979 of 13 August 1999 for the preliminary investigation of complaints;

“complainant” means any person, group, professional body (including a professional association or society, teaching or training institution, or any other health care or related facility), or the registrar who lodged a complaint against any registered person pertaining to possible unprofessional conduct;

“complaint” means any information regarding the alleged unprofessional conduct by a person registered under the Act, which comes to the attention of the registrar, the council or a professional board, or a complaint, charge or allegation of unprofessional conduct against such person;

“inquiry” means an inquiry held by a professional board or a professional conduct committee under Chapter IV of the Act and these Regulations to inquire into a complaint against a person registered in terms of the Act;

“preliminary inquiry” means an inquiry held in terms of these regulations by a committee appointed by a professional board under section 15(5)(f) of the Act to consider a complaint against a registered person for whom that professional board is responsible in order to resolve on the holding of an inquiry in terms of section 41 of the Act or any other appropriate manner in which to deal with such a complaint;

“professional conduct committee” means a committee established by a professional board under the Regulations relating to the Functions and Functioning of Professional Boards published under Government Notice No. R. 979 of 13 August 1999 to conduct an inquiry;

“pro forma complainant” means a person appointed by a professional board to represent the complainant and to present the complaint to a professional conduct committee;

Lodging of complaints

2. (1) A complaint shall be in writing and be addressed to the registrar or to the council or to a professional board.
- (2) Where a complaint is addressed to and received by the council or a professional board, the council or such professional board shall submit it to the registrar within 24 hours.

Preliminary inquiry

3. (1) The registrar may -
 - (a) Within seven working days after he or she received a complaint, call for further information or an affidavit from the complainant;
 - (b) within seven working days after he or she received a complaint, notify the accused of the complaint or forward particulars of the complaint to him or her -
 - (i) requesting a written response from him or her within 21 working days after receipt of such notification or particulars, failing which the complaint will be forwarded to the preliminary inquiry committee without such written response; and
 - (ii) warning him or her that the written response referred to in subparagraph (i) may be used in evidence against him or her: Provided that a notification referred to in paragraph (b) shall be deemed to have been received -
 - (aa) on the day such notification is hand delivered to the registered address of the accused; or

- (bb) if such notification is sent by registered mail, on the seventh calendar day following the date on which it was posted;
 - (c) refer the case directly to the committee of preliminary inquiry or the chairperson of such committee of the professional board concerned;
 - (d) direct that an inspection be held in terms of section 41A of the Act.
- (2) On receipt by the registrar of further information or a written response referred to in subregulation (1)(a) or (b), the registrar shall submit such further information or written response to the committee of preliminary inquiry and if no further information or written response is received, the registrar shall report this to the committee of preliminary inquiry.
- (3) If a committee of preliminary inquiry decides, after due consideration of the matter, that there are no grounds for an inquiry, it shall direct the registrar to communicate in writing its decision to the complainant and the accused stating the reason(s) for such decision.
- (4) If a committee of preliminary inquiry decides, after due consideration of the matter, that an inquiry must be held into the conduct of the accused, it shall direct the registrar to arrange for the holding of an inquiry.

Inquiry

4. (a) On receipt of a directive referred to in regulation 3(4), the registrar shall issue a notice, which is attached hereto and essentially in the form of Annexure A and addressed to the accused, stating where and when the inquiry will be held and enclosing a charge sheet as formulated by the pro forma complainant.
- (b) The notice referred to in paragraph (a) shall be served on the accused or mailed to him or her at his or her registered address by registered mail at least one month prior to the date of the aforesaid inquiry.

Request for further particulars

5. (1) A request by the accused for further particulars to the charge sheet referred to in regulation 4(a) shall be served on the pro forma complainant at least three weeks before the date of the inquiry.
- (2) The pro forma complainant shall furnish his or her written reply to a request referred to in subregulation (1) to the accused within one week after receipt thereof.

Discussion prior to inquiry

6. In order to determine the issues in dispute at an inquiry, the parties shall, at least seven days prior to the inquiry, arrange a conference with each other at a mutually convenient time and venue, where -
 - (a) the accused and/or his or her legal representative shall indicate what exceptions, objections (including the objection to jurisdiction of a professional conduct committee to inquire into the matter) or points *in limine* he or she intends raising;
 - (b) the accused and/or his or her legal representative shall indicate how he or she intends pleading to the charge sheet;
 - (c) copies of all documents, reports, notes, X-rays and any other exhibits which a party intends using at the inquiry are furnished to the other party;
 - (d) perusal of the originals of the documents, reports, notes, X-rays and other exhibits referred to in paragraph (c) is allowed;
 - (e) admissions are made by both parties with regard to allegations and/or exhibits;
 - (f) a summary of the opinion of an expert witness that a party intends using at the inquiry is furnished to the other party; and

- (g) any other aspect concerning the inquiry is resolved, ..

Procedure at inquiry

7. (a) The accused or, if he or she is not present, his or her legal representative shall be asked by the chairperson of the professional conduct committee to plead to the charge, which plea shall be so recorded.
- (b) If the accused, or his or her legal representative, refuses or fails to plead directly to the charge sheet, this shall be recorded by the chairperson and a plea of not guilty shall be entered.
- (c) The pro forma complainant may address the professional conduct committee and he or she may lead evidence in support of his or her case.
- (d) The accused or his or her legal representative may apply for his or her discharge after the pro forma complainant has closed his or her case. The pro forma complainant may then reply.
- (e) The professional conduct committee shall then consider the application and may grant or refuse such application.
- (f) After the pro forma complainant has closed his or her case, the accused or his or her legal representative may address the professional conduct committee and he or she may lead evidence in support of his or her case.
- (g) The professional conduct committee may allow the pro forma complainant or the accused or his or her legal representative to lead further evidence or to recall a witness after their cases have been closed.
- (h) After evidence of a witness has been given, the opposing party may cross-examine the witness.

- (i) The chairperson of the professional conduct committee may examine a witness who has given evidence and allow other members of the professional conduct committee to examine the witness.
- (j) Further cross-examination shall be allowed arising from the examination by the chairperson and other members.
- (k) The person who led the evidence may thereafter re-examine the witness, but shall confine his or her re-examination to matters on which the witness was cross-examined or on which the chairman or other members examined the witness.
- (l) After the parties have closed their cases the professional conduct committee may call and examine further witnesses or recall and re-examine a witness whereafter the pro forma complainant and the accused or his or her legal representative shall also be entitled to examine the witness.
- (m) After all evidence has been adduced, the pro forma complainant and the accused or his or her legal representative may address the professional conduct committee on the evidence and the legal position.
- (n) The pro forma complainant may reply on any matter of law raised by the accused in his or her address and may, with the leave of the professional conduct committee, reply on any matter or fact raised by the accused in his or her address.
- (o) If the accused or his or her legal representative is not present at the inquiry after having been duly informed, the inquiry shall proceed in the accused's absence and a plea of not guilty shall be entered, unless the accused has in writing pleaded guilty. If the accused's absence is however due to bona fide circumstances, the professional conduct committee will consider the postponement of the inquiry.

- (p) All oral evidence shall be taken on oath or affirmation administered by the chairperson of the professional conduct committee.
- (q) Evidence on affidavit shall be admissible: Provided that the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.
- (r) (i) The record, or any portion thereof, of a lawfully constituted court, inquest court or statutory body from any jurisdiction shall be accepted as prima facie evidence if it has been certified to be a true copy by that court and/or jurisdiction.
- (ii) If it is practicable and appears just the professional conduct committee may, for the purpose of cross-examination, order the presence of a witness whose evidence appears in such record and is presented as prima facie evidence.
- (s) Upon the conclusion of a case the professional conduct committee shall deliberate thereon in camera and shall thereafter announce its finding.
- (t) The professional conduct committee may make a finding of not guilty even if the accused has pleaded guilty.
- (u) (i) If the accused is found guilty the pro forma complainant shall furnish details to the professional conduct committee of previous convictions of the accused under the Act, if any.
- (ii) The pro forma complainant may address the professional conduct committee and lead evidence regarding a suitable penalty to be imposed.
- (iii) The accused or his or her legal representative may thereafter address the professional conduct committee and adduce evidence in mitigation of the penalty to be imposed whereafter the pro forma complainant may reply.

- (iv) The professional conduct committee shall deliberate in camera upon the penalty to be imposed whereafter the chairperson of the professional conduct committee shall inform the accused of the penalty decided on.
- (v) The finding made and penalty imposed by the professional conduct committee shall be of immediate force and effect.

Appeal

- 8. (1) The accused or pro forma complainant may appeal against the finding and/or penalty of the professional conduct committee to the appeal committee.
- (2) The appellant shall inform the registrar by notice within three weeks from the date of the professional conduct committee's decision of his or her intention to appeal against the finding and/or penalty.
- (3) The registrar shall provide the appellant with a copy of a transcript of the proceedings at the inquiry within one month from the date on which the registrar received a written notice of appeal.
- (4) The appellant shall file six copies of his or her papers setting out the grounds for appeal and containing heads of argument with the registrar within one month from the date on which he or she received a copy of the transcript referred to in subregulation (3).
- (5) The appeal shall only be heard on the papers referred to in subregulation (4).
- (6) The other party shall file six copies of his or her reply to the appellant's papers referred to in subregulation (4) with the registrar within one month from the date on which the appellant filed his or her papers with the registrar.
- (7) The appellant shall file six copies of his or her reply to the other party's reply referred to in subregulation (6) with the registrar within two weeks from the date on which the other party filed his or her reply.

- (8) If no reply is filed by the appellant within the period referred to in subregulation (7), the registrar shall after the aforesaid period has lapsed advise both parties in writing of the date on which the matter will be heard by the appeal committee.
- (9) After the appellant and the other party addressed the appeal committee on the merits and/or grounds of appeal at the hearing, the appeal committee shall deliberate, in camera, on the matter and advise the parties of its findings.
- (10) Each party shall be responsible for his or her own costs occasioned by the preparation for and/or the finalisation of the appeal.
- (11) The decision of the appeal committee shall be of force and effect from the date determined by such committee, unless set aside by the appropriate high court.

Continuation of inquiry

9. (1) If one or more member(s) of the professional conduct committee is unable to serve at any time after a plea has been lodged, the inquiry shall proceed - provided that not less than two of the original members are available to continue with the inquiry.
- (2) If a chairperson is unable to serve at any time after a plea has been lodged, the matter may proceed with a new chairperson provided that such a chairperson be granted the opportunity to re-examine witnesses who had already testified if he or she deems it necessary.

Accessibility of an inquiry

10. (1) The proceedings at an inquiry shall be open to the public.
- (2) Notwithstanding subregulation (1) -

- (a) any decision of the professional conduct committee in respect of any point arising in connection with, or in the course of, an inquiry may be arrived at in camera;
 - (b) any evidence adduced during an inquiry may on good cause shown in the discretion of the professional conduct committee be heard in camera.
 - (c) the professional conduct committee may on good cause shown order that no person shall at any time and in any manner publish any information which will likely reveal the identity of any particular person other than that of the respondent.
- (3) Any person who infringes or fails to comply with an order made in terms of subregulation (2) shall be guilty of an offence and liable on conviction in a court of law to a fine not exceeding R5 000.
- (4) Typed recordings of all inquiries shall be kept by the council and upon written request, a typed written copy of such recording shall be made available to the complainant, accused or any other party who in the opinion of the registrar has a substantial interest in the matter upon payment of the actual cost for making such a written copy.

Subpoena

11. A summons for attendance as a witness before a professional conduct committee to give oral evidence or to produce any book, record, document or thing shall substantially be in the form as set out in Annexure B attached hereto.

Repeal

12. (1) The regulations published under Government Notice No. R. 2303 of 28 September 1990 and Government Notice No. R. 874 of 26 April 1991 are hereby repealed.

- (2) An inquiry in terms of the Regulations referred to in subregulation (1) pending before a professional conduct committee of the council or a professional board immediately prior to the commencement of these Regulations shall be conducted and finalised under the procedures prescribed by those regulations as if such regulations had not been repealed.

M. H. M. M. M.

MINISTER OF HEALTH

DATE: 12/8/2001

ANNEXURE A

NOTICE TO APPEAR BEFORE A PROFESSIONAL CONDUCT COMMITTEE OF THE PROFESSIONAL BOARD FOR

.....
(name of person and his or her address)

is hereby given notice that an inquiry into your professional conduct will be held by the professional conduct committee of the Professional Board for
..... at
..... (place)
on (date and time).

The charge sheet as formulated by the pro forma complainant is enclosed.

You may be legally represented at the inquiry. You should, however, timeously make arrangements in this regard. If you and/or your legal representative fail to attend the inquiry on the stipulated date, the inquiry may proceed in your absence.

Given under the hand of the Registrar, this
day of20.....

.....
REGISTRAR

ANNEXURE B

SUMMONS TO APPEAR BEFORE A PROFESSIONAL CONDUCT COMMITTEE OF THE PROFESSIONAL BOARD FOR

.....
(name of person summoned and his or her address)

is hereby summoned to appear at (place) on
..... (date and time) before the professional conduct
committee of the Professional Board for
established in terms of the Health Professions Act, 1974 (Act No.56 of 1974), to give
evidence in respect of

.....
.....
(if the person summoned is to produce any book, record, document of thing, add)
and you are hereby directed to produce:

.....
.....
(specify the book, record, document or thing concerned)

Given under the hand of the Registrar, this day of
.....

.....
REGISTRAR