

**DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID**

No. R. 887

21 September 2001

HEALTH PROFESSIONS ACT, 1974 (ACT NO. 56 OF 1974)

REGULATIONS RELATING TO THE SUSPENSION OF PRACTITIONERS

The Minister of Health intends to, in terms of section 61(1), read with section 15B(1)(a) of the Health Professions Act, 1974 (Act No. 56 of 1974), make the regulations in the Schedule hereto.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director- General of Health, Private Bag X828, Pretoria, 001 (for the attention of the Director: Human Resource Development), within two months of the date of publication of this notice.

SCHEDULE

Definitions

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

"accused" means a practitioner registered under the Act against whom a complaint has been made;

"ad hoc committee" means an ad hoc committee established by the relevant professional board in terms of the Regulations relating to the Functions and Functioning of Professional Boards published under Government Notice No. R.979 of 13 August 1999 to conduct a suspension hearing;

“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 published under Government Notice No. R.979 of 13 August 1999 for the preliminary investigation of complaints during a conduct of inquiry held in terms of Chapter IV of the Act and the Regulations relating to the Conduct of Inquiries into Alleged 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;

“evidential material” bears its original meaning in terms of the laws of evidence of the Republic of South Africa and include, but not limited to any document, record, recording, computer disc or tangible information or thing and includes any evidential material which in the opinion of a professional board or committee referred to in these regulations has probative value;

“practitioner” means a person who is registered with the council in a profession registrable in terms of the Act;

“suspension hearing” means a hearing conducted by an ad hoc committee to determine whether or not to suspend a practitioner from practising his or her profession pending the institution of a formal inquiry in terms of section 41 of the Act;

Circumstances for suspension

2. (1) Upon receipt of a complaint by the registrar which, given the nature of such complaint:
 - (a) is of a serious and urgent nature having regard to:
 - (i) promotion of health of the population of the Republic;

- (ii) the dignity of the profession and integrity of persons practicing the profession; or
 - (iii) the protection of the public or any member thereof, including but not limited to the protection of life, physical or mental health, and bodily integrity of any member of the public;
- (b) requires special and expeditious consideration;

the registrar may forward such complaint to the relevant professional board or to any committee established by such professional board in terms of section 15(5)(f) of the Act to exercise its power in terms of section 15B(1)(a) of the Act by suspending a practitioner from practicing his or her profession pending the institution of a formal inquiry in terms of section 41 of the Act.

- (2) (a) The procedures referred to in regulations 3 and 4 may only be departed from if it is reasonable and justifiable in the circumstances of the particular matter and to the extent that is necessary, having regard to any of the considerations referred to in subregulation (1)(a)(iii) and (b).
- (b) A departure from the procedures referred to in paragraph (a) shall include but is not limited to a departure from the stipulated time frames referred to in regulations 3 and 4.

Preliminary procedure

3. (1) The registrar shall within three (3) working days after he or she received a complaint, request the complainant to confirm the contents of such complaint under oath.

- (2) The registrar may, within five (5) working days after he or she received a complaint, call for further particulars to such complaint in the form of supplementary statements, affidavits or supporting documentation from the complainant and may cause further investigation to be made.
- (3) The registrar may take or cause to be taken an affidavit from any witness or potential witness able to provide relevant information or evidence pertaining to the complaint, and may call upon any person (including the accused) to produce for inspection before or at a suspension hearing evidential material in his or her possession which the registrar considers to be of potential relevance in relation to a complaint and may for the aforesaid purpose issue a summons to a witness or potential witness which is attached hereto and essentially in the form of Annexure A.
- (4) The registrar shall forward a complaint, together with any evidential material as soon as possible to the chairperson of the professional board established for the profession in respect of which the practitioner against whom a complaint has been made, is registered, for further consideration.
- (5) If the chairperson of the relevant professional board is of the opinion that the complaint together with any evidential material reveals *prima facie* evidence of unprofessional conduct of the nature referred to in regulation 2 and that the matter is to be considered further by such professional board, he or she shall refer the matter to an ad hoc committee of such professional board.
- (6) An ad hoc committee referred to in subregulation (5) established for the purpose of deciding whether or not to suspend a practitioner from practicing his or her profession pending the institution of a formal inquiry in terms of section 41 of the Act shall comprise of at least three (3) registered members of the profession of which the chairperson shall be a member of the relevant professional board.

- (7) The chairperson of the relevant professional board shall in consultation with the registrar and the chairperson of an ad hoc committee, having regard to the degree of seriousness and urgency of the matter determine the date, time and place of a hearing for consideration of the matter by such ad hoc committee.
- (8) The chairperson of the relevant professional board or the chairperson of an ad hoc committee may appoint a person with sufficient experience in the administration of justice to advise such professional board or ad hoc committee before or during a suspension hearing on any aspect of law, procedure or evidence.
- (9) When the date, time and place referred to in subregulation (7) has been determined, the registrar shall:
 - (a) issue a notice which is attached hereto and essentially in the form of Annexure B and addressed to the accused at his or her last known address registered with the council by pre-paid registered post, or through service by the sheriff of the High Court at his or her residential address or place of business or employment informing the accused of the following:
 - (i) the date, time and place of the suspension hearing; and
 - (ii) the purpose of such suspension hearing, namely to consider whether the accused should be suspended from practicing his or her profession, pending the institution of a formal inquiry in terms of section 41 of the Act;
 - (b) provide the accused simultaneously with particulars of the complaint and any available statement affidavit, opinion or copies of any other evidential material in support of the complaint;

- (c) inform the accused of his or her right to obtain legal representation; and
 - (d) inform the accused of his or her right to make written representations in person or through a legal representative in the form of an answering affidavit to the complaint and other evidential material in support thereof, within a period of fifteen (15) days from the date of service of the notice referred to in paragraph (a) or within such period as may be determined by the chairperson of the relevant professional board having regard to the degree of seriousness and urgency of the matter and such written representations are to be delivered at the office of the registrar in Pretoria not later than 10h00 on the day before the date of the suspension hearing.
- (10) The notice referred to in subregulation (9)(a) sent by pre-paid registered post, shall be deemed to have been served, received and to have come to the knowledge of the accused within a period of five (5) days after the date upon which it was dispatched at the post office to his or her last known address registered with the council.
- (11) The notice referred to in subregulation (9)(a) may call upon the accused to make available at the suspension hearing all records in his or her possession pertaining to his or her practice or to a patient(s) or former patient(s) being the subject of, or relevant to a complaint.
- (12) The registrar shall thereupon provide each member of the ad hoc committee with copies of the notice including all particulars of the complaint, statements, opinion(s), affidavits and other evidential material referred to in subregulation (9) and copies of any representatives received from the accused or his or her legal representative.
- (13) The record, or any portion thereof, of a lawfully constituted court, inquest court or other statutory body or tribunal shall be regarded as *prima facie*

evidence for purposes of a *suspension* hearing, if it has been certified to be a true copy.

Procedure at suspension hearing

4. (1) An ad hoc committee shall ensure that the accused has been properly notified of the suspension hearing in terms of regulation 3(9).
- (2) If no notice has been given in terms of regulation 3(9), the registrar shall inform the ad hoc committee of such fact and the reasons for the departure of any provisions pertaining to notice to a respondent.
- (3) If an ad hoc committee is of the opinion that a departure from the notice requirements referred to in regulation 3(9) –
 - (a) is not reasonable and justifiable in the circumstances of a particular matter as envisaged by regulation 2, it may issue any order to the registrar pertaining to the form, content and period of a notice and may postpone the suspension hearing to a date pending compliance of any orders of such ad hoc committee; or
 - (b) is reasonable and justifiable in the circumstances of the particular matter as envisaged by regulation 2, it may proceed to consider and to decide the matter without notice to an accused.
- (4) An ad hoc committee, if it is satisfied after having considered any statement or affidavit in support of a complaint and after having considered the representations made by or on behalf of the accused, that a *prima facie* case of unprofessional conduct of the nature referred to in regulation 3 has been established which warrants a suspension of the accused from practising his or her profession, pending the institution of a formal inquiry in terms of section 41, inform such accused or his legal representative of its view and afford the accused an opportunity, either in person or through his or her legal representative to present argument or furnish any further

reasons in person in front of such ad hoc committee before a final decision is made by such ad hoc committee as to whether or not to proceed with a suspension hearing.

- (5) (a) At any stage during a suspension hearing the ad hoc committee may for the purpose of deciding any issue, in its discretion call upon any person, including the accused, to give oral evidence under oath, provided that if the accused is called upon to give evidence, he or she may elect not to give evidence.
- (b) If an accused after having been called upon to give evidence under oath or affirmation elect not to give any evidence under oath or affirmation, the chairman of the ad hoc committee shall advise the accused that the matter will be decided without such evidence.
- (6) (a) For the purpose of a suspension hearing, an ad hoc committee may take evidence and may, under the hand of the chairperson of such ad hoc committee or the registrar, summon witnesses and require the production of any book, record, document or thing, and may, through the chairperson of such ad hoc committee or the person presiding at the suspension hearing, administer an oath to any witness or accept an affirmation from him or her, and may examine any book, record, document or thing which any witness has been required to produce;
- (b) A summons which is attached hereto and essentially in the form of Annexure A to appear before an ad hoc committee as a witness or to produce to it any book, record, document or thing shall be signed by the chairperson of such ad hoc committee or the registrar and shall be served either by registered letter sent through the post or in the same manner as it would have served if it were a subpoena issued by a magistrate's court.

(c) Every person summoned in terms of this subregulation shall be bound to obey the summons and any person who, having duly been summoned -

- (i) refuses, or without sufficient cause fails, to attend and give evidence relevant to the suspension hearing at the time and place specified in the summons;
- (ii) refuses to take the oath or to make an affirmation when required by the chairperson of an ad hoc committee or the person presiding at the suspension hearing to do so;
- (iii) refuses to produce any book, record, document or thing which he or she has in terms of the summons been required to produce;

shall be guilty of an offence and on conviction liable to a fine as determined by the Minister in consultation with the Minister of Justice by notice in the Gazette: Provided that every person so summoned shall be entitled to all privileges to which a witness subpoenaed to give evidence before a provincial division of the Supreme Court is entitled.

- (7) If any person, including the accused, is called upon by an ad hoc committee to give evidence under oath on any issue as determined by such committee, any member of such committee or any legal representative appointed by such committee for this purpose may ask questions to the accused in the order determined by the chairperson of such committee.
- (8) The accused shall be afforded an opportunity to ask questions or to cross-examine any person called upon by the ad hoc committee to give evidence under oath.

- (9) Any oath or affirmation shall be administered by the chairperson of the ad hoc committee.
- (10) If the ad hoc committee is satisfied that sufficient evidence exists to enable it to make a decision and after having afforded the accused or his or her legal representative an opportunity to address such committee on the merits of the matter, such committee shall deliberate in camera and inform the accused or his or her legal representative of its decision as to whether to suspend or not to suspend the accused.
- (11) If the ad hoc committee is not in a position to make a decision immediately after the suspension hearing, it may reserve its decision and inform the accused or his or her legal representative that he or she will be notified in writing of such committee's decision as to whether to suspend or not to suspend the accused.
- (12) If the ad hoc committee decides that the accused is to be suspended from practising his or her profession, pending the institution of a formal inquiry in terms of section 41 of the Act, the accused shall be notified verbally of such decision and the reason(s) therefore at the suspension hearing and by subsequent confirmation in writing under the hand of the registrar.
- (13) If an ad hoc committee is of the view that an accused is to be suspended from practising his or her profession, pending the institution of a formal inquiry in terms of section 41 of the Act, under circumstances where no notice has been given in terms of regulation 3(9) and where such committee is satisfied that a departure from the notice requirements in terms of regulation 3(9) was reasonable and justifiable in the circumstances of the matter, such committee shall direct the registrar to immediately notify the accused of its decision which it intends to implement and inform the accused of his or her right to make representations to such committee within a period stipulated by such committee, and to advance reasons as to why the decision of such committee shall not be made final. If the ad hoc committee is thereupon satisfied that the accused has been

afforded an opportunity to make representations to such committee, such committee shall make a final decision.

- (14) The accused shall further be informed of his or her right to appeal in terms of section 20 of the Act and his or her right to judicial review of the decision.
- (15) An order of suspension from practice in terms of section 15B(1)(a) of the Act shall remain in operation pending an appeal against or application to review the decision.
- (16) The ad hoc committee shall after its decision direct the registrar to proceed to act in accordance with the Regulations relating to Conduct of Inquiries into Alleged Unprofessional Conduct under the Act.
- (17) A decision of an ad hoc committee to suspend a person from practising his or her profession in terms of section 15B(1)(a) of the Act shall be deemed to be a directive of a committee of preliminary inquiry to the registrar to arrange for the holding of a formal inquiry in terms of section 41 of the Act.
- (18) If a registered person has been suspended from practising his or her profession, pending the institution of a formal inquiry in terms of section 41, the matter shall further be given priority in terms of the Regulations relating to Conduct of Inquiries into Alleged Unprofessional Conduct under the Act.
- (19) If an ad hoc committee decides after a suspension hearing, that the matter does not warrant the suspension of the accused, such committee shall inform the accused of its decision and direct the registrar to act further in accordance with the Regulations relating to Conduct of Inquiries into Alleged Unprofessional Conduct under the Act and to refer the transcription of the record of the suspension hearing, the complaint, any affidavits, representations and other evidential material to a committee of preliminary inquiry.

Accessibility to suspension hearing

5. (1) The proceedings at a suspension hearing shall be open to the public;
- (2) Notwithstanding subregulation (1) -
- (a) any decision of the ad hoc committee in respect of any point arising in connection with, or in the course of, a suspension hearing may be arrived at *in camera*;
 - (b) any evidence adduced during a suspension hearing may on good cause shown in the discretion of the ad hoc committee be heard *in camera*.
 - (c) the ad hoc 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 accused.
- (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 suspension hearings 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.


MINISTER OF HEALTH

DATE: 10 September 2001

ANNEXURE A

**SUMMONS TO APPEAR BEFORE AN AD HOC 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 an ad hoc 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 or thing, add)
and you are hereby directed to produce:

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

Signed at Pretoria on this day of

.....
(Name and surname)

CHAIRPERSON OF AD HOC COMMITTEE OR REGISTRAR

ANNEXURE B

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

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

.....
 (registered or residential or employment address)

(by prepaid registered post or by service of the Sheriff of the High Court)

PLEASE TAKE NOTICE that the Professional Board for
 has received a complaint against you of unprofessional conduct of a nature which requires
 consideration in terms of section 15B(1)(a) of the Health Professions Act, 1974 (Act No.
 56 of 1974) (hereinafter referred to as "the Act"), namely whether you should be
 suspended from practising your profession pending the institution of a formal inquiry in
 terms of section 41 of the Act.

PLEASE TAKE FURTHER NOTICE that you are called to appear for the aforesaid
 purpose at a suspension hearing on (date) at
 (time) at
 (place).

PLEASE TAKE FURTHER NOTICE that you have the right to be represented by a duly
 qualified legal representative.

PLEASE TAKE FURTHER NOTICE that particulars of the complaint and other evidential material as detailed below and of which copies are enclosed are to be considered at the suspension hearing:

1.
2.
3.
4.
5.

(describe name or nature of document or other evidential material)

PLEASE TAKE FURTHER NOTICE that you have the right to make written representations in the form of an answering affidavit to the complaint and other evidential material attached which representations are to be delivered within *..... days from the date of receipt or service of this notice at the offices of the registrar of the Health Professions Council of South Africa, 553 Vermeulen Street, Arcadia, Pretoria and not later than 10h00 on the day prior to the date of the suspension hearing.

PLEASE TAKE FURTHER NOTICE that you are required to make available at the suspension hearing the following records and/or documents:

1.
2.
3.

(state particulars of records and/or documents)

Signed at Pretoria on this day of

.....
(Name and surname)
REGISTRAR

* Period is fifteen (15) days unless specified otherwise