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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF HEALTH DEPARTEMENT VAN GESONDHEID

No. R. 1356

1 November 2002

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

REGULATIONS RELATING TO THE SUSPENSION OF PRACTITIONERS

The Minister of Health has, in consultation with the Health Professions Council of South Africa, under section 61(1), read with section 15B(1)(a), of the Health Professions Act, 1974 (Act No. 56 of 1974), made the regulations in the Schedule hereto.

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 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 under the Health Professions Act, 1974, published under Government Notice No. R. 765 of 24 August 2001;

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

"evidential material" bears its original meaning in terms of the law of evidence of the Republic of South Africa, and includes but is not limited to any document, record, recording, computer disc or tangible information or thing, and any 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;

"pro forma complainant" means any person appointed by a professional board or the registrar to represent the complainant and to present the complaint to the *ad hoc* committee;

"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 involves -
 - (a) actual physical or mental abuse of a patient by a practitioner, or a substantial risk of such physical or mental abuse;

- (b) harm or injury to a patient as a result of unsafe professional practices or a substantial risk of such harm or injury;
- (c) evidence of substance abuse by a practitioner that impairs such practitioner's ability to render professional services;
- (d) any act by a practitioner that, in the opinion of the professional board, substantially lowers the dignity or damages the reputation of persons practicing the profession; or
- (e) any other act or omission on the part of a practitioner that, in the opinion of the professional board, indicates that the physical or mental health or bodily integrity of any member of the public might be at risk should the practitioner continue to practise his or her profession,

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 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.

- (2) (a) The procedures referred to in regulations 3 and 4 may be departed from only if this is reasonable and justifiable in the particular circumstances and only to the extent that is necessary.
- (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 of receiving a complaint, request the complainant to confirm the contents of such complaint under oath.

- (2) The registrar may, within five (5) working days of receiving 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, essentially in the form of Annexure A, which is attached hereto.
- (4) The registrar shall as soon as possible forward a complaint, together with any evidential material, 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 should be considered further by such professional board, he or she shall refer the matter to an *ad hoc* committee of such professional board and instruct the registrar to appoint the pro-forma complainant to present the case before the *ad hoc* committee.
- (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 consist of at least three (3) registered members of such profession, and the chairperson shall be a member of the relevant professional board.

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- (7) The chairperson of the relevant professional board shall, in consultation with the registrar and the chairperson of an *ad hoc* committee, and 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, essentially in the form of Annexure B, which is attached hereto, and send it to the accused at his or her last known address registered with the council, by prepaid 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 copies of any available statement, affidavit, opinion or 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 10:00 on the day before the date of the suspension hearing.
- (10) If the notice referred to in subregulation (9)(a) is sent by prepaid registered post, it 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 any patients or former patients who are the subject of a complaint or whose records are 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, and copies of all statements, opinions, affidavits and other evidential material referred to in subregulation (9), and of any representations 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) (a) At any stage during a suspension hearing, the *ad hoc* committee may, for the purpose of deciding any issue and at 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, elects not to give any evidence under oath or affirmation, the chairperson of the *ad hoc* committee shall advise the accused that the matter will be decided without such evidence.
- (3) (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, essentially in the form of Annexure A, which is attached hereto, to appear before an *ad hoc* committee as a witness or to produce 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 been 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 to 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; or
- (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 not exceeding R5 000: 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 High Court is entitled.

- (4) If any person, including the accused, is called upon by an *ad hoc* committee to give evidence under oath on any matter determined by such committee, any member of such committee or any legal representative appointed by such committee for this purpose may ask the accused questions in the order determined by the chairperson of such committee.
- (5) 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.
- (6) The chairperson of the *ad hoc* committee shall administer any oath or affirmation.

- (7) The *ad hoc* committee, after having afforded the *pro forma* complainant and the accused or his or her legal representative an opportunity to address such committee on the merits of the suspension application, shall deliberate *in camera* and inform the accused of its decision to suspend or not to suspend the accused.
- (8) 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.
- (9) 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 reasons therefore at the suspension hearing and by subsequent confirmation in writing under the hand of the registrar.
- (10) 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.
- (11) 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.
- (12) If the *ad hoc* committee decides to suspend the accused, it shall after such decision direct the registrar to proceed to act in accordance with the Regulations relating to the Conduct of Inquiries into Alleged Unprofessional Conduct under the Health Professions Act, 1974.
- (13) 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.

- (14) 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 the Conduct of Inquiries into Alleged Unprofessional Conduct under the Health Professions Act, 1974.
- (15) 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 the Conduct of Inquiries into Alleged Unprofessional Conduct under the Health Professions Act, 1974, and to refer the transcript of the record of the suspension hearing, the complaint, any affidavits, representations and other evidential material to a committee of preliminary inquiry.

Access 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 and at the discretion of the *ad hoc* committee, be heard *in camera*; and
 - (c) the *ad hoc* committee may, on good cause shown, order that no person may at any time or in any manner publish any information that may reveal the identity of a particular person, other than 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 records of all suspension hearings shall be kept by the council and a copy of such records shall, upon written request and payment of the actual cost of making a copy, 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.



DR M E TSHABALALA-MSIMANG

MINISTER OF HEALTH

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
.....
.....
.....

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

(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 NOTE of the following:

1. The Professional Board for has received a complaint against you of unprofessional conduct of a nature that 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").
2. A suspension hearing will be held into whether you should be suspended from practising your profession pending the institution of a formal inquiry in terms of section 41 of the Act.
3. You are called upon to appear at said hearing at (time) on (date) at (place).
4. You have the right to be represented by a duly qualified legal representative.

5. The following evidential material, of which copies are enclosed, will be considered at the suspension hearing:

- (1)
(2)
(3)
(4)
(5)

(give name or description of documents or other evidential material)

6. 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 to the offices of the registrar of the Health Professions Council of South Africa, 553 Vermeulen Street, Arcadia, Pretoria, within* days from the date of receipt or service of this notice, and not later than 10:00 on the day prior to the date of the suspension hearing.

7. You are required to make the following records and/or documents available at the suspension hearing:

- (1)
(2)
(3)

(state particulars of records and/or documents)

Signed at Pretoria on this day of

.....
(Name and surname)
REGISTRAR

* The period is fifteen (15) days unless specified otherwise.