



Government Gazette

REPUBLIC OF SOUTH AFRICA

Regulation Gazette

No. 8306

Vol. 483

Pretoria 9 September 2005

No. 27992



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**DEPARTMENT OF HEALTH
DEPARTEMENT VAN GESONDHEID**

No. R. 875

9 September 2005

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

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

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

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Human Resource Development), within two months of the date of publication of this notice.

SCHEDULE

Definitions

1. In this Schedule, “**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 that meaning, and unless the context otherwise indicates –

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

“**appellant**” means the respondent or pro forma complainant who is aggrieved by a decision of a committee of preliminary inquiry, 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 published under the Government Notice No. R 979 of 13 August 1999 for the preliminary investigation of complaints and determination thereof;

"complainant" means any natural or juristic person, group, registrar or professional body including a professional association or society, teaching or training institution, or any other health care or related facility which has lodged a complaint against a 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 person;

"minor transgression" means unprofessional conduct which, in the opinion of the committee of preliminary inquiry based on the documents presented before that committee, is trivial in nature to warrant the holding of a professional conduct inquiry;

"ombudsman" means a person appointed by the council to screen complaints received as per categorisation of significance and the seriousness of the complaint by the council, and where appropriate to mediate and adjudicate minor issues of miscommunication between practitioners and complainants;

"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 make a determination on the 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 a professional conduct inquiry;

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

“respondent” means a person registered under the Act whose conduct is the subject of a complaint or an inquiry under Chapter IV of the Act and these regulations or a person opposing the appeal.

Lodging of complaints

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

Ombudsman

3. The ombudsman must -
 - (a) screen the complaints as per categorisation of significance and the seriousness of the complaint and refer them to the registrar for preliminary investigations;
 - (b) mediate and adjudicate minor issues of miscommunication between practitioners and complainants; and
 - (c) refer matters not falling within the jurisdiction of the council to appropriate bodies or tribunals and inform the complainant about such referral.

Preliminary Inquiry

4. (1) The registrar may –

- (a) within seven working days after he or she received a complaint from ombudsman, call for further information or an affidavit from the complainant;
 - (b) subject to paragraph (a), within seven working days after he or she received a complaint from the ombudsman, notify the respondent about the complaint and forward particulars of the complaint to him or her,-
 - (i) requesting a written response from such respondent within **21** working days after receipt of such notification or particulars, failing which the complaint will be forwarded to the committee of preliminary inquiry without such written response;
 - (ii) warning him or her that failure to respond **to** the notification or particulars referred to in subparagraph (i) constitutes a contempt of council, and that a response includes a communication to indicate the right to remain silent; and
 - (iii) warning him or her that a written response referred to in subparagraph (i) may be used as or in evidence against him or her: Provided that a notification referred to in this paragraph is deemed to have been received -
 - (aa) on the day such notification is hand delivered to the registered address of the respondent; or
 - (bb) if such notification is sent by registered mail, on the seventh 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; and
 - (d) direct that an inspection be held in terms of section 41A of the Act.
- (2) On receipt by the registrar of further information and a written response referred to in subregulation (1) (a) and (b), he or she must submit such further information and a written response to the committee of preliminary inquiry, and if no further information or written response is

received, the registrar must record this fact and report to the committee of preliminary inquiry.

- (3) The committee of preliminary inquiry may, after due consideration of the matter referred to it in terms of subregulation (2), direct the registrar to summon the respondent to appear before the committee of preliminary inquiry at its next meeting to answer why he or she did not respond to the council's correspondence and to give his explanation to the complaint or exercise his or her right to remain silent.
- (4) If the committee of preliminary inquiry decides, after due consideration of the explanation given by the respondent for failure to respond to the correspondence of the council, that the respondent is in contempt of council, it must make a finding of guilty for contempt of council and impose one or more of the penalties provided for in section 42(1) (a), (b), (e) and (f) of the Act, order the respondent to submit his or her explanation to the complaint within such period as may be determined by the committee and direct the registrar to communicate its decision in writing to the respondent stating the reason(s) for such decision.
- (5) If the respondent fails to attend a meeting of the committee of preliminary inquiry after having been duly sent a summons to appear before such a committee, the committee may make a finding of guilty for contempt of council and impose one or more of the penalties provided for in section 42(1) (a), (b), (e) and (f) of the Act, order the respondent to submit his or her explanation to the complaint within such period as may be determined by the committee and direct the registrar to communicate its decision in writing to the respondent stating the reason(s) for such a decision.
- (6) The finding made and the penalty imposed by the committee of preliminary inquiry in terms of subregulation (4) and (5) has immediate force and effect.
- (7) If a committee of preliminary inquiry decides, after due consideration of the complaint, any further information which may have been received in terms of subregulation (1) (a) and the explanation of the respondent, that there are no grounds for taking further action on the matter, it must note

the explanation and give reasons and direct the registrar to communicate its decision in writing to the complainant and the respondent stating the reason(s) for such a decision.

- (8) If a committee of preliminary inquiry decides, after due consideration of the complaint, any further information which may have been received in terms of subregulation (1) (a) and the explanation of the respondent, that there are grounds for the holding of a professional conduct inquiry into the conduct of the respondent, it must direct the registrar to communicate its decision in writing to the complainant and the respondent, and to arrange for the holding of such inquiry.
- (9) If committee of preliminary inquiry decides, after due consideration of the complaint, any further information which may have been received in terms of subregulation (1) (a) and the explanation of the respondent, that the respondent acted unprofessionally and the conduct in question constitutes a minor transgression, it must determine as a suitable penalty to be imposed one or more of the penalties provided for in section 42 (1) (a), (d), (e) and (9) of the Act, and direct the registrar to draft the charges to be sent with a communication of its decision in writing to the complainant and the respondent stating the time within which the penalty has to be accepted or rejected: Provided that if the penalty –
- (a) is accepted by the respondent, proof of compliance with such penalty has to accompany the notice of acceptance to the registrar and such penalty is regarded as penalty imposed by the committee of preliminary inquiry; or
- (b) is rejected by the respondent, the registrar must arrange for the holding of a professional conduct inquiry into the conduct of the respondent and the penalty so rejected shall no longer be applicable to the matter.

Appeal

5. (1) The respondent may appeal against the finding or the penalty of the committee of preliminary inquiry made in terms of regulation 4 (4) and (5) to the appeal committee or both such a finding and such penalty.

- (2) The appellant must notify the registrar of his or her intention to appeal against the decision of the committee of preliminary inquiry within **21** days from the date of receipt of the communication referred to in regulation 4 (4) and (5): Provided that an appeal lodged after 21 days may only be considered if accompanied by an application for condonation stating reasons for the late filing of the notice of appeal, which shall be considered by the appeal committee before the appeal on the merits.
- (3) The registrar must provide the appellant with copies of the document that served before the committee of preliminary inquiry and of the relevant portion of the minutes of the meeting within seven days from the date on which the registrar received a written notice of appeal.
- (4) The appellant must, within 21 days from the date on which he or she received copies of the documents referred to in subregulation (3), file with the registrar six sets of copies of his or her papers setting out the grounds of appeal and containing his or her summary of argument.
- (5) The chairperson of the committee of preliminary inquiry must, within **14** days from the date on which the appellant filed his or her papers with the registrar, file six sets of copies of the documents that served before the committee of preliminary inquiry and the reply to the summary of argument referred to in subregulation (4) with the registrar.
- (6) The registrar must, after the expiry of 14 days referred to in subregulation (5), advise both parties in writing of the date on which the appeal will be heard by the appeal committee.
- (7) The appeal committee must consider the appeal on papers referred to in subregulation (4) and (5), deliberate on the matter and advise the parties of its findings within five days of the date of appeal.
- (8) The decision of the appeal committee is of force and effect from the date determined by such committee, and may be set aside by the High Court on review

Inquiry

6. (1) On receipt of a directive referred to in regulation 4 (8) or a notice rejecting the penalty in terms of regulation 4 (9) (b), the registrar must issue a notice, which is attached hereto and essentially in the form of Annexure A and addressed to the respondent, stating the time and place where the inquiry will be held and enclosing a charge sheet as formulated by the *pro forma* complainant.
- (2) The notice referred to in subregulation (1) shall be served on the respondent or mailed to his or her registered address by a registered mail at least 30 days prior to the date of the aforesaid inquiry.

Constitution of the professional conduct committee

7. (1) The registrar must, with the approval of the chairperson of the professional board, appoint the professional conduct committee.
- (2) The professional conduct committee must comprise of the following persons –
- (a) The chairperson who is a member of the board or council;
 - (b) two persons registered in the profession in which the respondent is registered;
 - (c) one person representing the community; and
 - (d) one person as legal assessor.

Request for further particulars

8. (1) A request by the respondent for further particulars to the charge sheet referred to in regulation 6 (1) must be served on the *pro forma* complainant at least 14 days before the date of the inquiry.
- (2) The *pro forma* complainant must furnish his or her written reply to a request referred to in subregulation (1) to the respondent within seven days after receipt of the request.
- (3) Any request for further particulars served on the *pro forma* complainant less than 14 days before the date of the inquiry may not be responded to.

Discussion prior to inquiry

9. (1) In order to determine the issues in dispute at the inquiry, the *pro forma* complainant must, at least seven days prior to the inquiry, arrange a pre-inquiry conference which must be attended by both parties and their legal representatives, if any, at a mutually convenient time and venue, where –
- (a) the respondent or his or her legal representative must indicate the 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 to raise;
 - (b) the respondent or his or her legal representative must indicate how he or she intends to plead to the charge sheet;
 - (c) copies of all documents, reports, notes, x rays and any other exhibits which a party intends to use at the inquiry are furnished to the other party;
 - (d) perusal of the originals of the documents, reports, notes, x rays and any other exhibits referred to in paragraph (c) is allowed;
 - (e) admissions are made by both parties with regard to allegations or exhibits;
 - (f) a summary of the opinion of an expert witness a party intends to use at the inquiry is furnished to the other party; and
 - (g) any other aspect concerning the inquiry is resolved.
- (2) A pre-inquiry minutes must be signed by both parties and must be kept for submission to the professional conduct committee at the hearing.

- (4) The professional conduct committee may order a party who failed to attend a pre-inquiry conference to attend such a conference and also to pay the wasted costs of the day for the hearing.

Procedure at inquiry

10. (1) The chairperson of the professional conduct committee must ask the respondent or his or her legal representative, if represented, to plead to the charge, which plea must be recorded.
- (2) If the respondent or his or her legal representative refuses or fails to plead to the charge, this must be recorded by the chairperson of the professional conduct committee and enter a plea of not guilty.
- (3) The *pro forma* complainant may address the professional conduct committee on the plea tendered and he or she may lead evidence in support of his or her case.
- (5) The respondent or his or her legal representative may apply for his or her discharge after the *pro forma* complainant has closed his or her case.
- (5) The *pro forma* complainant will be given an opportunity to reply to respondent's application for discharge.
- (6) The professional conduct committee must then consider the application and give its decision.
- (7) If the application for a discharge is dismissed, the respondent may address the professional conduct committee and he or she may lead evidence in support of his or her case.
- (8) The professional conduct committee may allow any of the parties to lead further evidence or to recall a witness after their cases have been closed, and the other party will be given the opportunity to cross-examine such witness.

- (9) The chairperson of the professional conduct committee and the other members of the professional conduct committee may examine a witness who has given evidence.
- (10) Further cross-examination and re-examination of a witness shall be allowed on matters arising from the examination by the chairperson and other members of the professional conduct committee.
- (11) 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 parties or their legal representatives are entitled to cross-examine or re-examine the witness.
- (12) After all the evidence has been adduced, the parties may address the professional conduct committee on the evidence and the legal position.
- (13) The *pro forma* complainant may reply to any matter of law raised by the respondent or his or her legal representative in his or her address and may, with the leave of the professional conduct committee, reply to any matter or fact raised by the respondent in his or her address.
- (14) If the respondent is not present at the inquiry after having been duly notified, the inquiry may proceed in the respondent's absence and a plea of not guilty shall be entered, unless the respondent has, in writing, pleaded guilty: Provided that the professional conduct committee may consider the postponement of the inquiry if the respondent's absence is due to bona fide circumstances.
- (15) All oral evidence must be taken under oath or affirmation administered by the chairperson of the professional conduct Committee.
- (16) Evidence of affidavit is admissible: Provided that the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.
- (17) (a) The record or a portion of the record of a lawfully constituted court, inquest court or any disciplinary tribunal from any jurisdiction is acceptable as *prima facie* evidence if it has been certified to be a true copy by that court or disciplinary tribunal.

- (b) If it is practicable and appears just, the professional conduct committee may, for the purpose of cross-examination, order the attendance of a witness whose evidence appears in such record and which is presented as prima facie evidence.
- (18) Upon the conclusion of a case, the professional conduct committee must deliberate thereon in camera and must inform the respondent of the penalty decided on.
- (19) The professional conduct committee may make a finding of not guilty even where the respondent has pleaded guilty if the professional conduct committee is not satisfied from the plea that the respondent is guilty.
- (20) (a) If the respondent is found guilty, the pro forma complainant shall furnish details of previous unprofessional conduct of the respondent under the **Act**, if any, to the professional conduct committee.
- (b) The *pro forma* complainant may address the professional conduct committee and lead evidence regarding a suitable penalty to be imposed.
- (c) The respondent 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.
- (d) The finding made and penalty imposed by the professional conduct committee is of immediate force and effect unless a date is determined by the professional conduct committee.

Appeal

- 11. (1) The respondent or pro forma complainant may appeal to the appeal committee against the finding or penalty imposed or both such a finding and penalty by the professional conduct committee.

- (2) The appellant must file the notice of his or her intention to appeal with the registrar within **21** days from the date of the decision of the professional conduct committee: Provided that a notice of intention to appeal filed after **21** days may only be considered by the appeal committee if accompanied by an application for condonation stating the reasons for the delay; and such application must be considered by the appeal committee before the appeal on the merits.
- (3) The registrar must provide the appellant with a copy of a transcript of the proceedings at the inquiry within 30 working days from the date on which he or she received a notice of appeal referred to in subregulation (2): Provided the appellant pays the costs of such a copy of a transcript.
- (4) The appellant must file six sets of copies of his or her papers setting out the grounds for appeal, and containing heads of argument] with the registrar within 30 days from the date on which he or she received a copy of the transcript referred to in subregulation (3).
- (5) The respondent must file six sets of copies of his or her reply to the appellant's papers referred to in subregulation (4) with the registrar within 30 days from the date on which the appellant filed his or her papers with the registrar.
- (6) The appellant must, within **14** days from the date on which the respondent filed his or her reply referred to in subregulation (5), file six sets of copies of his or her reply to that of the respondent.
- (7) If no reply is filed by the appellant within the period referred to in subregulation (6), the registrar must then advise both parties in writing of the date on which the matter will be heard by the appeal committee.
- (8) The appeal committee must consider the appeal on the papers referred to in subregulation (4) and (5), deliberate on the matter and advise the parties of its findings.
- (9) Each party is responsible for his or her own costs occasioned by the preparation for and finalisation of the appeal.

- (10) The decision of the appeal committee is of force and effect from the date determined by such committee, and may be set aside by the High Court on review.
- (11) Notwithstanding the provisions of subregulation (10), a penalty of suspension or removal of the name from the register will have immediate effect.

Continuation of inquiry

12. (1) If one or more members of the professional conduct committee is unable to serve at any time after a plea has been lodged, the inquiry must proceed provided that at least two of the original members are available to continue with the inquiry.
- (2) If a chairperson is unable to serve at anytime after a plea has been lodged, the matter may proceed with a new chairperson provided that such a chairperson is given the opportunity to re-examine witnesses who have already testified if he or she deems it necessary.

Accessibility of an inquiry

13. (1) The proceedings at the inquiry are open to the public.
- (2) Notwithstanding the provisions of 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 or in the discretion of the professional conduct committee, be heard in camera; and
- (c) the professional conduct committee may, on good cause shown, order that no person may at any time and in any manner publish any information which is likely to 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)(c) is guilty of an offence and liable on conviction in a court of law to a fine or imprisonment not exceeding ~~six~~ months or both such a fine or such imprisonment.
- (4) Recordings of all inquiries must ~~be~~ kept by the council and upon written request, a typed written copy of such recording must be made available to the complainant, respondent or any other person who in the opinion of the registrar has a substantial interest in the matter upon payment of the actual cost for making such a copy.

Publication in the *Government Gazette*

14. The registrar must arrange for the publication in the *Government Gazette* of the name of the respondent, a summary of the complaint or charge on which he or she has been found guilty and the penalty which has been imposed in terms of regulation 4(9)(a) or regulation 10(18) of these regulations.

Subpoena

15. 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 must substantially be in the form as set out in Annexure B attached hereto.

Repeal

16. (1) The regulations published under Government *Notice No. R. 765 of 24 August 2001* 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 must be conducted and finalised under the procedures prescribed by those regulations as if such regulations had not been repealed.


Dr ME Tshabalala-Msimang, MP

Minister of Health
28-8-2005

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** represented by an attorney, advocate or any other person appointed by yourself at the inquiry. **You** should, however, timeously make arrangements in this regard. If you and/or your representative fail to attend the inquiry on the stipulated date, the inquiry may be proceeded with in your absence.

Given under the hand of the Registrar, this

day of 20.....

.....

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 or 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