

No. R. 426

18 April 2008

**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 intends, under section 61(1)(h), read with section 61(4) of the Health Professions Act, 1974 (Act No. 56 of 1974)(as amended by Act 29 of 2007), and after consultation with the Health Professions Council of South Africa, to make the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations in writing on the proposed regulations to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Human Resource Stakeholder Relations and Management Services) within three months from 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 word or expression to which a meaning has been assigned in the Act shall bear such meaning, and unless the context otherwise indicates -

**"appellant"** means a registered person who is aggrieved by a decision of a committee of preliminary inquiry, or a practitioner or *pro forma* complainant who is aggrieved by a decision of a professional conduct committee or a professional board and who has submitted an appeal to the appeal committee;

**"committee of preliminary inquiry"** means a committee established by a professional board under section 15 of the Act for the preliminary investigation of complaints and to inquire into minor transgressions including cases of contempt of council and to make determinations thereof;

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

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

**“appeal committee”** means an *ad hoc* committee established by council under section 10(2) of the Act;

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

**“legal assessor”** means a person versed in law appointed by the registrar to guide the professional conduct committee at the inquiry hearing on any matter of law and procedure;

**“minor transgression”** means conduct which, in the opinion of the committee of preliminary inquiry from the documents presented before such committee, is unprofessional, but minor in nature to warrant the holding of a formal professional conduct inquiry;

**“ombudsman”** means a person appointed by the council to deal with complaints received and categorise them according to significance and the seriousness thereof, and refer cases not falling within the jurisdiction of council to appropriate bodies or tribunals and, where appropriate, to mediate and adjudicate on minor cases such as issues of miscommunication between registered practitioners and complainants;

**“performance assessment”** means an assessment conducted by a performance assessment committee to inquire into and make determinations on the clinical and other related performance issues of a practitioner against whom evidence or a pattern of poor clinical or other related performance issues was detected by a committee of preliminary inquiry in cases of minor transgressions or a professional conduct committee for serious transgressions referred for inquiry;

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**"performance assessment committee"** means an *ad hoc* committee established by a professional board under section 15B of the Act to inquire into and make determinations on the clinical or other related performance issues of a practitioner against whom evidence or a pattern of poor clinical or other related performance issues was detected by the committee of preliminary inquiry in cases of minor transgressions or a professional conduct committee for serious transgressions referred for inquiry;

**"poor performance"** means conduct on the part of a practitioner which falls short of the required standards or generally acceptable norms in health care, but not amounting to negligence, due to a lack of clinical or other related performance skills or adequate knowledge in the management of patients or a particular health condition;

**"preliminary inquiry"** means an inquiry held in terms of these regulations by a committee of preliminary inquiry to consider a complaint against a registered person, 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 section 15 of the Act 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 an appeal in terms of these Regulations.

### **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, such complaint must be submitted to the ombudsman within 24 hours of its receipt.

**Ombudsman**

3. (1) The ombudsman must –
- (a) categorise complaints received according to significance, the seriousness thereof, those which are for mediation and adjudication and those which do not fall within the jurisdiction of council;
  - (b) refer significant and serious complaints to the registrar for preliminary investigations within three working days from date of receipt;
  - (c) mediate and adjudicate on minor cases such as issues of miscommunication between practitioners and complainants with a view to resolving such matters;
  - (d) refer cases which could not be resolved through mediation and adjudication to the registrar for preliminary investigation within three working days from date of deadlock; and
  - (e) refer matters not falling within the jurisdiction of the council to appropriate bodies or tribunals and inform the complainant of such referral.
- (2) The ombudsman may, within seven working days from date of receipt of a complaint for mediation and adjudication, call for any information in any manner deemed appropriate from any person that, in his or her opinion, may assist in the mediation and adjudication to resolve such matter.
- (3) The ombudsman must, on receipt of the information referred to in sub-regulation (2), make a determination on the matter, advise the parties of the resolution from such determination and require them to indicate whether they will abide by such resolution or not.
- (4) If the parties agree to abide by the resolution of the ombudsman, such resolution shall be confirmed in writing by the ombudsman and shall be binding on both parties as a final resolution on the matter.
- (5) The information obtained by the ombudsman in terms of sub-regulation (2) is confidential and privileged and cannot be considered by the committee of preliminary inquiry if a matter is referred for preliminary investigation in terms of sub-regulation (1) (d).

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**Preliminary investigation**

4. (1) The registrar may, -
- (a) within seven working days after he or she has received a complaint from the ombudsman, call for further information or an affidavit with further information 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 a copy of the complaint as well as copies of any further information or affidavit referred to paragraph (a) to him or her-
    - (i) requesting a written response from such respondent within 40 working days or within such further period as may be reasonably allowed by the registrar from date of receipt of such notification, failing which the complaint as well as any further information or affidavit referred to in paragraph (a) must 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 the complaint referred to in subparagraph (i) shall constitute a contempt of council, and that a response includes a written communication to indicate the right to remain silent; and
    - (iii) warning him or her that the 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 paragraph (b) shall be 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 mailed;
  - (c) refer the case directly to the committee of preliminary inquiry or the chairperson of such committee;
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- (d) direct that an investigation in terms of section 41A of the Act be conducted.
- (2) On receipt by the registrar of the further information and a written response referred to in sub-regulation (1) (a) and (b), he or she must submit the complaint, such further information and the 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 sub-regulation (2), direct the registrar to issue a notice in writing to the respondent, to be delivered in the manner contemplated in the proviso to sub-regulation (1) (b) (iii), instructing him or her to appear before the committee of preliminary inquiry at its next meeting to inquire why he or she did not respond to council correspondence and to give his or her 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 by the respondent for failure to respond to council correspondence, that the respondent is in contempt of council, it must-
- (a) make a finding of guilty for contempt of council and impose one or more of the penalties provided for in section 42 (1) (a) and (d) of the Act;
- (c) order the respondent to submit his or her written explanation to the complaint or a written communication to indicate the right to remain silent within such period as may be determined by the committee; and
- (d) direct the registrar to confirm its decision in writing to the respondent stating the reason(s) for such a decision.
- (5) If the respondent fails to attend the meeting of the committee of preliminary inquiry after having been duly sent a written notice to appear before such a committee, the committee may-
- (a) make a finding of guilty for contempt of council and impose one or more of the penalties provided for in section 42 (1) (a) and (d) of the Act;

- (b) order the respondent to submit his or her written explanation to the complaint or a communication to indicate the right to remain silent within such period as may be determined by the committee; and
  - (c) direct the registrar to confirm 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 sub-regulation (4) and (5) is of 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 obtained in terms of sub-regulation (1) (a) and the explanation of the respondent, that there are no grounds for taking further action on the matter, it must note and accept the explanation and give reasons for noting and accepting the explanation 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 obtained in terms of sub-regulation (1) (a) and the explanation of the respondent or no explanation, that there are grounds for the holding of a professional conduct inquiry into the conduct of the respondent, it must direct that an inquiry be held and may allow for an admission of guilt fine to be paid in terms of section 42 (8) and (9) of the Act, and that the registrar communicate its decision in writing to the complainant and the respondent and arrange for the holding of such inquiry.
- (9) If a committee of preliminary inquiry decides, after due consideration of the complaint, any further information which may have been obtained in terms of sub-regulation (1) (a) and the explanation of the respondent, that the respondent acted unprofessionally, but 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) and (d) of the Act and direct the registrar to communicate its decision and the charges in writing to the respondent, stipulating that the penalty must be accepted or rejected within 14 days from date of receipt of the communication: Provided that if the penalty-

- (a) is accepted by the respondent, proof of compliance with such penalty must accompany the notice of acceptance to the registrar and such penalty must be regarded as penalty imposed by the committee of preliminary inquiry, upon which the matter will be regarded as finalized; or
  - (b) is rejected by the respondent or no response is received by the due date, the registrar must arrange for the holding of a professional conduct inquiry into the conduct of the respondent and the penalty so rejected or not responded to and the charges as formulated may no longer be applicable to the matter.
- (10) If a committee of preliminary inquiry decides, after due consideration of the complaint, any further information which may have been obtained in terms of sub-regulation (1) (a) and the explanation of the respondent, that the conduct complained of constitutes a minor transgression which also reveals evidence or a pattern of poor performance on the part of the respondent, it may in addition to the resolution contemplated in sub-regulation (9), direct that the matter be referred for a performance assessment by a performance assessment committee to enquire into the performance of the respondent and make a determination on the appropriate management of the respondent and direct the registrar to communicate its decision in writing to the respondent, stipulating that the decision must be accepted or rejected within 14 days from date of receipt of the communication: Provide that if the decision is:
- (a) accepted by the respondent, the registrar must arrange for the conducting of the assessment and the respondent shall be obliged to submit himself or herself to such assessment and comply with such directives as may be determined by the performance assessment committee; or
  - (b) rejected by the respondent or no response is received by the due date, the registrar must arrange for the matter to be heard by a professional conduct committee.

### Appeal

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



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- (2) The appellant must notify the registrar in writing of his or her intention to appeal 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 indulgence stating the reasons for the late submission of the notice of appeal, which must be considered by the appeal committee before the appeal on the merits on the date set down for the hearing of the appeal.
  - (3) The registrar must provide the appellant with copies of the documents that served before the committee of preliminary inquiry, the relevant extract of the minutes of the meeting and written reasons for the decision in terms of regulation 4 (4) or (5) within 14 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 sub-regulation (3), submit to the registrar six copies of his or her papers and one copy to the respondent setting out the grounds for 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 submitted his or her papers with the registrar, submit six copies of the documents referred to in sub-regulation (3) and the reply to the grounds of appeal and summary of argument referred to in sub-regulation (4) with the registrar and one copy to the appellant.
  - (6) The registrar must, after the expiry of the 14 days referred to in sub-regulation (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 sub-regulations (4) and (5), allow for oral representations and arguments by both parties or their legal representatives, deliberate on the matter in camera and advise the parties of its findings within such period as may be determined by the committee.
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- (8) Unless determined otherwise by the appeal committee, its decision is of immediate force and effect and may be set aside by the High Court if approached in terms of section 20 of the Act.

#### **Arrangement for inquiry hearing**

6. (1) On receipt of a directive referred to in regulation 4(8), a notice, no response rejecting the penalty or directives in terms of regulation 4(9)(b) or 4(10)(b) respectively, the registrar must issue a notice, which is attached hereto and essentially in the form of Annexure A, 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 notices referred to in sub-regulation (1) must be served on the respondent by hand or mailed to him or her at his or her registered address by a registered mail, at least 60 days prior to the date of the inquiry.

#### **Constitution of professional conduct committee**

7. (1) The registrar must, with the approval of the chairperson of a professional board, appoint a professional conduct committee at least seven days before the inquiry.
- (2) The professional conduct committee must comprise of, at least the following persons-
- (a) two public representatives, of whom one must be the chairperson;
  - (b) two persons registered in the profession in which the respondent is registered, and at least one of them registered in the same discipline as the respondent;
  - (c) one member of the board; and
  - (d) one person versed in law with at least five years' experience in the legal field, as a legal assessor

- (3) A person who served as a member of a committee of preliminary inquiry that referred a matter to an inquiry may not be appointed to the professional conduct committee to preside over that same matter.

#### **Request for further particulars**

8. (1) A request by the respondent or his or her legal representative for further particulars to the charge sheet as formulated by *pro forma* complainant must be received by the *pro forma* complainant at least 30 days before the date of the inquiry.
- (2) The *pro forma* complainant must furnish his or her written reply to a request for further particulars referred to in subregulation (1) to the respondent or his or her legal representative within 14 days from date of receipt of the request.
- (3) Any request for further particulars received by the *pro forma* complainant less than 30 days before the inquiry may not be responded to.

#### **Pre-inquiry conference**

9. (1) In order to determine the issues in dispute at an 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 or 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 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 or evidence;
  - (f) a summary of the opinion of an expert witness that a party intends using at the inquiry must be furnished to the other party; and
  - (g) any other aspect concerning the inquiry is resolved.
- (2) A pre-inquiry minute must be kept and signed by both parties or their legal representatives for submission to the professional conduct committee at the hearing.
- (3) The professional conduct committee may order a party who failed to attend a pre-inquiry conference to attend such 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 request 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 sheet, the chairperson of the professional conduct committee must record such refusal or failure, and a plea of not guilty must be entered.
- (3) If the respondent pleads guilty to the charge(s), the professional conduct committee may ask the respondent questions to clarify that all the elements of the charge(s) are admitted.
- (4) If the professional conduct committee is satisfied that all the elements of the charge(s) are admitted, the *pro forma* complainant must address the professional conduct committee and indicate whether the plea of guilty is accepted.

- (5) If the plea of guilty is accepted, the chairperson of the professional conduct committee must make a finding of guilty and allow the parties to address the committee in terms of sub-regulation (22).
- (6) If the respondent pleads not guilty or a plea of not guilty is recorded in terms of sub-regulation (2), the *pro forma* complainant may address the professional conduct committee and lead evidence in support of his or her case.
- (7) 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.
- (8) The *pro forma* complainant must be given an opportunity to reply to the application for a discharge by the respondent or his or her legal representative.
- (9) The professional conduct committee must then consider the application in camera and thereafter give its decision to the parties.
- (10) If the application for a discharge is dismissed, the respondent or his or her legal representative may address the professional conduct committee and lead evidence in support of his or her case.
- (11) The professional conduct committee may, on application, allow any of the parties to lead further evidence or to recall a witness after their cases have been closed, and the other party must be given an opportunity to cross-examine such witness.
- (12) The chairperson of the professional conduct committee and the other members of the professional conduct committee may ask a witness questions for clarity purposes relating to the issues arising out of such witness' evidence.
- (13) Further cross-examination and re-examination of a witness must be allowed on matters arising from the questions by the chairperson and other members of the professional conduct committee.
- (14) After all the evidence has been adduced, the *pro forma* complainant and the respondent or his or her legal representative may, respectively address the professional conduct committee on the evidence and the legal position.

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- (15) 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 leave of the professional conduct committee, reply to any matter raised by the respondent or his or her legal representative in his or her address.
- (16) If the respondent is not present at the inquiry after having been duly notified, the inquiry may proceed in his or her absence and a plea of not guilty must 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.
- (17) All oral evidence must be taken on oath or affirmation administered by the chairperson of the professional conduct committee.
- (18) Evidence on affidavit is admissible: Provided that the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.
- (19) (a) The record, or any portion thereof, 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 a record of a court or disciplinary tribunal and which is presented as *prima facie* evidence.
- (20) Upon the conclusion of a case, the professional conduct committee must deliberate thereon in camera and must inform the parties of its findings within such period as may be determined by the committee.
- (21) The findings of the professional conduct committee may include a referral of part of or all the complaints to the performance assessment committee to determine the appropriateness of the performance on the part of the respondent, in which case the committee must require the *pro forma* complainant and the respondent or his or her legal representative to address the committee on the appropriateness of complete or partial referral of the matter to a performance

assessment committee to enquire into the performance of the respondent and make determination on the appropriate management of the respondent.

- (22) The professional conduct committee may make a finding of not guilty even where the respondent has pleaded guilty, if the committee is not satisfied from the evidence that the respondent is guilty.
- (23) (a) If the respondent is found guilty of unprofessional conduct, the *pro forma* complainant must furnish details of previous unprofessional conduct by 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 lead evidence in mitigation of the penalty to be imposed, whereafter the *pro forma* complainant may reply in aggravation of the penalty.
- (d) The professional conduct committee must deliberate in camera on the appropriate penalty to be imposed, whereafter the chairperson of the professional conduct committee must inform the parties of the penalty decided on.
- (f) The finding made and penalty imposed by the professional conduct committee is of immediate force and effect, unless determined otherwise by the professional conduct committee.
- (24) If the professional conduct committee finds that the evidence before it points to some elements of poor performance on the part of the respondent, it may, in addition to imposing a penalty where the evidence also points to unprofessional conduct, impose practice restrictions and refer the matter to a performance assessment committee to enquire into the performance of the respondent and make a determination on the appropriate management of the respondent and direct the registrar to arrange for conducting of the performance assessment.

**Arrangement for a performance assessment**

11. (1) On receipt of a directive referred to in regulation 4(10)(a) or 10(24), the registrar must in consultation with the Chairperson of the professional board appoint a performance assessment committee comprising of three registered practitioners falling within the same discipline as the respondent and issue a notice, which is attached hereto and essentially in the form of Annexure C, addressed to the respondent stating the time and place where the assessment will be held and the areas where a lack of professional skills to be assessed has been identified by the committee of preliminary inquiry or professional conduct committee and any other area of lack of professional skills as may be identified during the assessment.
- (2) The notice referred to in sub-regulation (1) must be served on the respondent by hand or mailed to him or her at his or her registered address by a registered mail at least 21 working days prior to the date of the performance assessment.
- (3) The performance assessment committee must determine the manner of conducting the assessment and the duration thereof, which must be communicated to the respondent together with the notice referred to in sub-regulation (1).
- (4) Upon conclusion of the assessment, the committee must make a determination on the appropriate management of the respondent and impose directives to be adhered to by the respondent to improve on his or her identified lack of skills within a specified period as may be determined by the committee, and submit reports as may be required by the committee to make a final determination on the performance of the respondent.
- (5) The respondent must adhere to the directives imposed by the performance assessment committee, failing which, the committee may direct the registrar to suspend the respondent from practising his or her profession until such time that compliance with the directives has been fully achieved.
- (6) Upon completion of the directives and receipt of the required reports referred to in sub-regulation (4), the performance assessment committee must consider the reports to ascertain if the respondent has acquired the required performance



skills to enable him or her to perform optimally in the practice of his or her profession.

- (7) If the performance assessment committee is satisfied from the reports submitted that the respondent has acquired the required performance skills and is fit and proper to practice his or her profession, it may direct the registrar to uplift the practice restrictions as imposed by the professional conduct committee under regulation 10 (24) and finalize the matter.
- (8) If the performance assessment committee is not satisfied from the reports submitted that the respondent has acquired the required performance skills and therefore is not fit and proper to practice his or her profession, it must direct him or her to submit to a further performance assessment until such time that the required performance skills are acquired and the respondent is fit and proper person to practice his or her profession.

#### **Appeal**

12. (1) The respondent or *pro forma* complainant may appeal to the appeal committee against the findings or penalty of the professional conduct committee or both such finding and penalty.
- (2) The appellant must submit the written notice of his or her intention to appeal to the registrar within 21 days from the date of the decision of the professional conduct committee: Provided that a notice of intention to appeal submitted after 21 days may only be considered by the appeal committee if accompanied by an application for indulgence stating the reasons for the delay, and such application must be considered by the appeal committee before the appeal on merits on the date set down for the appeal.
- (3) The registrar must provide the appellant with a copy of a transcript of the proceedings at the inquiry within 60 days from the date on which the registrar received a written notice of appeal referred to in sub-regulation (2): Provided the appellant pays the costs of making such a copy of the transcript.
- (4) The appellant must submit six copies of his or her papers setting out the grounds of appeal and containing summary of arguments by hand or registered mail with

the registrar and one copy with the respondent 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 submit six copies of his or her reply to the appellant's papers referred to in subregulation (4) with the registrar and one copy to the appellant by hand or registered mail within 30 days from the date on which the appellant submitted his or her papers with the registrar.
- (6) The appellant must, within 14 days from the date on which the respondent submitted his or her reply, submit six copies of his or her reply to that of the respondent with the registrar and one copy with the respondent.
- (7) If no reply is submitted 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), (5) and (6), allow for representations and arguments from both parties, deliberate on the matter *in camera* and thereafter advise the parties of its findings.
- (9) Each party is responsible for his or her own costs occasioned by the preparation for and finalization of the appeal.
- (10) Unless determined otherwise by the appeal committee, its decision is of immediate force and effect and may be set aside by the High Court if approached in terms of section 20 of the Act.

#### **Continuation of inquiry**

13. (1) If one or more members of the professional conduct committee is unable to serve at any time after a plea has been tendered, the inquiry must proceed provided that at least four of the original members are available to continue with the inquiry.
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- (2) If a chairperson is unable to serve at any time after a plea has been tendered, the matter may proceed with the remaining public representative assuming the chairmanship.

#### **Accessibility of inquiry**

14. (1) The proceedings at an inquiry are 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 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 not exceeding R5000 or imprisonment not exceeding six months or both such a fine and imprisonment.
- (4) Recordings of all inquiries must be kept by the council and upon written request, a typed written copy of such recordings must be made available to the complainant, respondent 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 copy.

**Publication in the Government Gazette**

15. The registrar must, upon finalization of the matter in terms of these regulations, publish in the Government Gazette the name of the respondent, charge(s) on which he or she has been found guilty and the penalty that has been imposed.

**Subpoena**

16. 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**

17. (1) The regulations published under Government Notice No. R. 765 of 24 August 2001 are hereby repealed.
- (2) An inquiry or appeal, in terms of the Regulations referred to in subregulation (1), pending before a professional conduct committee of a professional board or disciplinary appeal committee of council respectively, immediately prior to the commencement of these Regulations must be conducted and finalized under the procedures prescribed by those regulations as if such regulations had not been repealed.

**MINISTER OF HEALTH****DATE: 8-4-2008**

**ANNEXURE A**

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

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(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 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**

**ANNEXURE C**

**NOTICE TO APPEAR BEFORE A PERFORMANCE ASSESSMENT COMMITTEE OF THE  
PROFESSIONAL BOARD FOR .....**

.....

(name of person and his or her address)

is hereby given notice that a performance assessment into your professional skills will be  
conducted by the performance assessment committee of the Professional Board for .....

..... at .....

.....(place)

on .....(date and time).

The following professional skills or any other skills which may be identified by the committee during  
assessment in your performance shall be assessed:

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

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

day of ..... 20.....

.....

**REGISTRAR**