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# GOVERNMENT NOTICE

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## DEPARTMENT OF HEALTH

No. R. 172

8 March 2013

### NURSING ACT, 2005 (ActNo. 33 of 2005)

#### REGULATIONS REGARDING AN APPEAL AGAINST DECISIONS OF THE SOUTH AFRICAN NURSING COUNCIL

In terms of Section 58 (1) (l) of the Nursing Act, 2005 (Act No. 33 of 2005) and after consultation with the South African Nursing Council, the Minister of Health intends to make the following regulations as per the Schedule.

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



**DR A MOTSOLEDI**  
**MINISTER OF HEALTH**

## SCHEDULE

### Definitions

1. In these regulations **“the Act”** means the Nursing Act, 2005 (Act No. 33 of 2005), 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:

**“appeal committee”** means a committee established by the Minister as contemplated in Section 57 (2) of the Act for purposes of conducting an appeal against the decisions of the Council.

**“working day”** means any day other than Saturdays, Sundays or public holidays, as defined in Section 1 of the Public Holidays Act, 1994 (Act No. 36 of 1994).

### Notice of right of appeal

2. When notifying a person or institution of any decision made by the Council other than the outcome of a professional conduct hearing, a preliminary investigation or an impairment inquiry, the Registrar shall at the same time inform such person or institution of his or her right to appeal against a decision of Council in accordance with Section 57 of the Act.

### Lodging an appeal

3. (1) Any person or institution aggrieved by any decision of the Council, hereinafter referred to as the Appellant, shall within fifteen (15) working days following the date of receipt of correspondence from the Council informing the person or institution of the decision, notify the Registrar of his or her intention to appeal against the decision by filing a notice of appeal.
- (2) The notice of appeal shall be in writing and addressed to the Registrar, containing the following information:
  - (a) The Council decision against which an appeal is lodged;
  - (b) The grounds for appeal against the Council decision;
  - (c) The relief the Appellant is seeking.
- (3) The Council, hereinafter referred to as the Respondent, may reply to the Appellant's notice of appeal referred to in sub-regulation (2) and file with the Registrar and the Appellant within ten (10) working days from the date on which the Appellant filed his or her papers with the Registrar.

- (4) The Appellant may reply to the Respondent's reply referred to in sub-regulation (3) and file with the Registrar within ten (10) working days from the date of receipt of Respondent's reply.
- (5) Any reply to the notice of appeal by the Respondent must be served on the Appellant by registered post or any other delivery service in which delivery or receipt is recorded.
- (6) If no reply is filed by the Respondent or Appellant within the period referred to in sub-regulation (3) and (4) respectively, the Registrar shall submit the notice of appeal, together with reply documents if any, and all supporting documentation lodged, to the chairperson of the appeal committee within ten (10) working days following the date of receipt of the notice of appeal or reply, if any.
- (7) Heads of argument may be compiled and filed with the Registrar by either party ten (10) working days prior to the date determined by the chairperson of the appeal committee for the appeal hearing and the Registrar shall submit same to the chairperson of the committee within two (2) working days of receipt.
- (8) A Council decision against which an appeal has been lodged remains to be in force and effect unless varied or rescinded by the appeal committee or by the High Court.

#### **Appointment of an appeal committee**

4. (1) The Minister shall appoint an appeal committee to consider appeals submitted to the Council as contemplated in the Act consisting of—
  - (a) a retired judge or magistrate or an advocate or attorney of the High Court of South Africa who has practised as such for a period of at least five years, who must be the chairperson of such committee; and
  - (b) a nurse with expertise and experience in the field of which the appeal has been lodged.
- (2) The members of the appeal committee who are not in the fulltime employment of the State may be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

#### **Procedure for appeal hearing**

5. (1) The chairperson must convene a committee for purposes of hearing the appeal and—

- (a) any nurse appointed to serve on the committee must be appropriately qualified to hear the particular case under appeal; and
  - (b) no member of the appeal committee so appointed may be a member of the committee from which the original decision emanated or may have been involved in the process leading to the decision.
- (2) After receipt the notice of appeal, the chairperson of the appeal committee shall determine a date, place and time of hearing.
  - (3) The chairperson of the committee shall inform the Appellant and the Council of the date, place and time of the appeal hearing at least fourteen (14) working days before the appeal is heard.
  - (4) The committee may, for the purposes of an appeal lodged with it, subpoena any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who it believes has in his or her possession or custody or under his or her control any document which has bearing upon the subject of the appeal to appear before it at a time and place specified in the subpoena, to be interrogated or to produce that document, and may retain for examination any document so produced.
  - (5) The chairperson of the committee must determine the procedure to be followed during the appeal hearing and notify the Appellant and the Council of such determined procedure.
  - (6) The chairperson may, for the purposes of an appeal lodged, administer an oath to or accept affirmation from any person called as a witness at the appeal hearing.
  - (7) The parties may address the appeal committee on the merits at the hearing, and thereafter the appeal committee shall deliberate in camera on the matter.
  - (8) The committee must consider the findings, recommendations or decisions of the Council together with any representations made by the Appellant and decide in terms of the provisions of the Act and advise the parties of its findings.
  - (9) Each party shall be responsible for its own costs occasioned by the preparation for and the finalisation of the appeal.

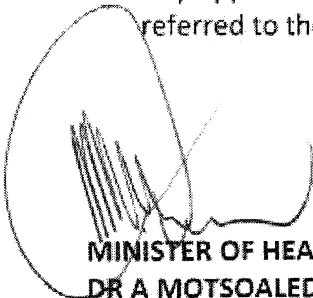
#### **Findings of the appeal committee**

- 6. (1) The appeal committee may, after hearing the appeal—

- (a) confirm the Council decision; or
  - (b) set aside the Council decision; or
  - (c) vary the relevant decision of the Council; and
  - (d) direct the Council to execute the decision of the appeal committee in that regard.
- (2) The decision of the appeal committee must be in writing and a copy must be furnished to the Appellant as well as to the Council within fourteen (14) working days from the date on which a finding was made.
- (3) The decision of the appeal committee shall be in force and effect from the date determined by the committee, unless set aside by the High Court.
- (4) A person or institution who is aggrieved by the decision of the committee, may appeal to the High Court against the whole or any part of the decision.
- (5) A decision against which an appeal is lodged continues to be in force and effect unless the High Court orders otherwise.

#### **Transitional arrangements**

7. Any appeals lodged and not considered before these regulations are promulgated will be referred to the committee after appointment by the Minister.



**MINISTER OF HEALTH**  
**DR A MOTSOLEDI**