

DEPARTMENT OF HEALTH

NO. 916

01 SEPTEMBER 2017

NATIONAL HEALTH ACT, 2003 (ACT NO. 61 OF 2003)

REGULATIONS REGARDING THE RENDERING OF FORENSIC PATHOLOGY SERVICE

The Minister of Health intends to make the Regulations in the Schedule, in terms of section 90(1) of the National Health Act, 2003 (Act No. 61 of 2003), after consultation with the National Health Council.

Interested persons are invited to submit any substantiated comments on the proposed Regulations, or any representations they may wish to make in regard thereto, to the Director-General: Health, Private Bag X828, Pretoria, 0001, Alida.Grove@health.gov.za - for the attention of the Director: Forensic Pathology within three months of this notice.

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates-

“authorised medical practitioner” means a medical practitioner registered as a forensic pathologist or medical practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and who has been authorised in terms of Regulation 11(1) of these Regulations to perform post mortem examinations or autopsies;

“authorised person” means a person employed by the Forensic Pathology Service of the Provincial Department of Health to perform functions within their scope of practice which includes, but is not limited to, forensic pathology officers, forensic pathology specialist investigators, scientists and or any other person appointed in the Forensic Pathology Service to work in a support capacity in a medico-legal mortuary or designated Forensic Pathology Service facility;

“autopsy” means the post mortem dissection of a body so as to determine the cause of death and the nature of injuries and disease processes which may be present;

“body” means a dead human body or the remains thereof and *“corpse”* has a corresponding meaning;

“Correctional Services Act” means the Correctional Services Act, 1998 (Act No. 111 of 1998);

“department” means the Provincial Department of Health;

“designated facility” means a medico-legal mortuary or laboratory specially designed for the medico-legal death investigation processes under the auspices of the department;

“designated vehicle” means a forensic pathology service vehicle, specially adapted in terms of applicable specifications to transport bodies;

“Forensic Pathology Officer” means a person appointed by the department to provide a medico-legal investigation of death service within their scope of practice;

“Head of Department” means the person appointed as the head of the provincial department responsible for health in a particular province;

“Health Professions Act” means the Health Professions Act, 1974 (Act No. 56 of 1974);

“IPID” means the Independent Police Investigative Directorate, established in terms of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);

“Inquests Act” means the Inquests Act, 1959 (Act No. 58 of 1959);

“Investigating Officer” means a member of the South African Police Service appointed in terms of the South African Police Service Act, 1995, (Act No. 68 of 1995), or an employee of the Independent Police Investigative Directorate appointed in terms of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), designated as an investigating officer to investigate the cause and circumstance of death of a particular person;

“medical practitioner” means a person registered as a medical practitioner in terms of the Health Professions Act, 1974(Act No. 56 of 1974);

“medico-legal investigation of death” means the investigation into the circumstances, manner and possible causes of death which are or may have been due to unnatural causes as defined;

“post mortem examination” means an examination of a body, with the purpose of establishing the cause and circumstance of death and factors associated with the death, and in the context of these Regulations, for medico-legal purposes;

“the Act” means the National Health Act, 2003 (Act No. 61 of 2003);

“the Service” means the Forensic Pathology Service in a province, providing medico-legal investigation of death services as defined;

“the South African Police Service” means the police service established in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); and

“unnatural death” for the purposes of the medico-legal investigation of death, the following shall be deemed to be deaths due to unnatural causes, as contemplated in the Inquests Act 1959 (Act No. 58 of 1959)-

- (a) any death due to physical or chemical influence, direct or indirect, or related complications;
- (b) any death, including those deaths which would normally be considered to be a death due to natural causes, which may have been the result of an act of commission or omission which may be criminal in nature;
- (c) any death as contemplated in section 56 of the Health Professions Act, 1974(Act No. 56 of 1974); and
- (d) any death which is sudden and unexpected, or unexplained, or where the cause of death is not apparent.

2. Application

These Regulations are only applicable to deaths that are, or appear to be, due to unnatural causes.

3. Forensic Pathology Service

(1) The relevant Member of the Executive Council of a province must, within national policy and in terms of these Regulations, ensure that a Forensic Pathology Service is established and managed within the Department.

(2) The Service contemplated in sub-regulation (1) includes, but is not limited to -

- (a) where appropriate, commencing with a scene of death investigation in consultation with the investigating officer and or appropriate South African Police Service member who is on the scene, which includes but is not limited to, taking notes, questioning family and other witnesses, examining the death scene and photographing the deceased or any exhibit or specimens;

- (b) obtaining any information that is relevant to the medico-legal investigation of a death, including medical and social history, records, as well as taking witness statements;
- (c) taking responsibility for the collection of a body and its removal from the scene;
- (d) taking responsibility for the custody of a body from the scene of death until released for burial or cremation, and the processes attached thereto;
- (e) taking into custody, thoroughly documenting and maintaining evidence and specimens relating to a body and any associated items or articles at all times;
- (f) assisting, as far as is possible, with the process of identification of the deceased;
- (g) conducting a post mortem investigation, including external and internal examination of a body and retaining of material, tissue or fluids for evidentiary or diagnostic purposes;
- (h) requesting and conducting appropriate special investigations;
- (i) providing medico-legal reports, chain of custody statements, expert testimony and opinions;
- (j) archiving documents, specimens and related materials;
- (k) collecting, reviewing and analysing related data; and
- (l) providing information and advice to health or other government authorities or departments.

4. Referral of unnatural cases

All cases of unnatural death as defined in these Regulations must be referred to the Service.

5. Attending to Death Scene

The Service is responsible for attending and participating in the death scene investigation, which may include, but is not limited to:

- (a) Managing a request for forensic pathology service response.
- (b) Assessing the scene of death in a given situation, this may include any private, public or business premises, vessel, train, motor vehicle or aircraft, where death has occurred for the purposes of conducting a comprehensive death scene investigation.
- (c) Performing forensic pathology activities associated with the scene of death in terms of the relevant scope of practice including:
 - (i) Declaring death in the following obviously dead cases - decapitation, gross mutilation, putrefaction, and charring;
 - (ii) Examining the body on scene and recording of the incident for the purposes of forensic investigation which includes but may not be limited to photography, sketching, and documentation;
 - (iii) Interviewing any relevant party, including the next of kin and recording the medical history and relevant information pertaining to the deceased;
 - (iv) Obtaining medical records of the deceased from any party or source where relevant; and
 - (v) Asses, handle, collect, preserve and record evidence in line with forensic pathology service procedural requirements.

6. Unnatural Deaths in Health Establishments

(1) A person in charge of a health establishment, where a person has been declared dead and the cause of death appears to be due to unnatural causes must:

- (a) immediately notify the South African Police Service and the Service of such death;
- (b) preserve, provide access to and or make available of all the relevant medical paraphernalia, exhibits and applicable specimens, especially biological fluid specimens in the case of suspected toxicology cases;
- (c) ensure access to and availability of all the deceased's full medical records including laboratory and investigative reports;

- (d) not hand over the body or items referred to in paragraphs (b) and (c) to an undertaker.

(2) The medical records and or relevant completed clinical Forms must accompany the deceased to the designated facility.

7. Removal and transportation of body

(1) The Service may only remove a body from the scene of death or health establishment after the South African Police Service has given written authority for removal of such body by the Service by means of a completed and prescribed SAPS 180 Form.

(2) A body may only be removed from one designated facility to another, after the written approval of the person in charge of the facility from where a body is being removed.

8. Admission of body

(1) The Service may not admit a body to a designated facility unless-

- (a) such body is certified dead or it is in such a state that it is accepted with certainty that the person is dead;
- (b) a SAPS CAS number is assigned to the case;
- (c) an individual facility case file is opened for such body and a register number assigned; and
- (d) such a body is provisionally identified either by name or register number contemplated in paragraph (c).

(2) The person in charge of a designated facility to which a body has been admitted in accordance with sub-regulation (1), must ensure that-

- (a) a clear photograph of the face of the deceased, or remains as may be appropriate, is taken; and

- (b) all fingerprints (where it is possible) of unidentified deceased are taken within seven days.

9. Storage of body

- (1) The person in charge of a designated facility must ensure that a refrigerated facility, maintained at a set temperature, is used to store all bodies.
- (2) A body must at the time of collection by the Service be in a closed sealable bag made for that purpose.
- (3) The body must, upon admission to the Service Facility be labelled with a registration number.
- (4) The person in charge of a designated facility must ensure that there is efficient refrigeration of bodies at all times.
- (5) The person in charge of a designated facility must set up control measures to ensure that only authorized persons have access to bodies, to documents related to bodies, to areas where post mortem examinations are performed and to the storage unit in which bodies are kept.
- (6) The official authorised to admit or remove a body to a facility must record any removal of a body in an incident log, including date, time and purpose of such removal and where available, its identity.

10. Medico-legal post mortem examination

A post mortem examination must only be conducted at a designated facility or at an institution to which the Service has referred the body.

11. Practitioners authorised to conduct or assist with post mortem examination

(1) A post mortem examination must only be performed by an authorised medical practitioner who has been appointed in the Service for such purposes.

(2) Assistance at a post mortem examination may only be rendered by authorised forensic pathology officers who have been appointed in the Service for such purposes, within their scope of practice.

(3) An authorised medical practitioner may consult with other qualified professionals and request such professionals to participate in the post mortem examination and contribute to the further examination of such a body.

(4) A student or trainee personnel in the Service may participate in a post mortem examination, but only under the direct guidance and supervision of an authorised person.

(5) A forensic pathology officer may remove a specimen or exhibit from the deceased under the instruction and supervision of an authorised medical practitioner.

(6) Where necessary, an authorised medical practitioner may authorise the removal of a fluid or tissue specimen by a forensic pathology officer or by a member of the SAPS Victim Identification Centre, prior to such removal.

(7) During the performance of post mortem examinations, the forensic pathology officer may perform eviscerations and organ removals under the supervision of an authorised medical practitioner and assist him or her with such post mortem examination and perform certain functions connected therewith, as contained within their scope of practice and job descriptions.

12. Additional evidence at post mortem examination

(1) Subject to any other law, an authorised medical practitioner may submit for examination, or cause to be submitted for examination, any tissue, fluid, object, or thing

related to a body, to an appropriate institution, for purposes of establishing the cause and circumstance of a death of a person or for furthering the processes and administration of justice.

(2) Any party must, when requested by an authorised medical practitioner, provide full and appropriate information without delay pertaining to circumstances of death, including relevant medical records and or history.

(3) The authorised medical practitioner has the authority to decide to dissect a body, remove or cause to be removed, any part, organ or contents of a body for the purpose of determining the cause, manner and circumstance of death.

(4) The forensic pathologist in charge of the Service in that area may direct the attending authorised medical practitioner, to perform the post mortem examination in a manner which is appropriate to the case.

13. Practitioners authorised to observe post mortem examinations other than those contemplated in these Regulations

(1) Any person who demonstrates a material interest in the outcome of a particular post mortem examination, may apply to the magistrate within whose jurisdiction the case is being investigated or to the authorised medical practitioner, to allow an independent forensic pathologist or medical practitioner to attend and observe, that post mortem examination on behalf of the interested party.

(2) The consideration of the application referred to in sub-regulation (1), may not unduly delay the post mortem examination.

14. Protection of Records

(1) The person in charge of a designated facility must set up control measures in order to ensure that only authorised persons have access to records relating to post mortem examinations and to the storage facility in which records are kept.

- (2) A person shall be guilty of an offence if he or she:-
- (a) fails to perform a duty imposed on them in terms of sub-regulation(1);
 - (b) falsifies any record by adding to or deleting or changing any information contained in that record;
 - (c) creates, changes or destroys a record without the authority to do so;
 - (d) fails to create or change a record when properly required to do so;
 - (e) provides false information with the intent that it be included in a record;
 - (f) without authority, copies any part of the record;
 - (g) without authority, connects the personal identification elements of a body's record with any element of that record that concerns the body's history;
 - (h) gains unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person or one part of a record-keeping system, to another;
 - (i) without authority, connects any part of a computer or other electronic system on which records are kept; or any other computer or electronic system;
 - (j) without authority, connects any part of a computer or any terminal or other installation connected to or forming part of any other computer or electronic system; or
 - (k) without authority, modifies or impairs the operation of any part of the operating system of a computer or other electronic system on which a body's records are kept; or
 - (l) without authority, connects any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a body's records are kept;
 - (n) without authority, divulges or supply any type information about the death investigation processes and decedents to unauthorised parties including the media.

(3) The person in charge of a designated facility must keep a register in which any file or any part thereof, that is removed from the storage facility is recorded, and in which he or she must enter all particulars of the person authorised to remove such a file or any part thereof, purpose, date and time he or she removed and returned it.

15. Identification of body

(1) A body must, where visual identification is possible, only be identified by a spouse, partner, major child, parent, guardian, major brother, major sister, care-giver or any person with personal knowledge of the deceased and is in possession of his or her own authentic identification document and that of the deceased, validated by the Department of Home Affairs or the deceased person's consulate or embassy or country of origin.

(2) Where visual identification is not possible, scientific means of identification must be instituted by the authorised medical practitioner, supported by the South African Police Service.

(3) If the person identifying the body is not a relative as listed per sub-regulation (1), the appointed person must either have a letter from such a relative authorising them to proceed with the identification or must be accompanied by the family member(s). The correct contact details and address of that family member must be contained in the authorisation letter.

(4) Persons may not identify a deceased if:-

- (a) The informant appears to be under the influence of alcohol or an intoxicating substance;
- (b) The informant is a minor; or
- (c) A dispute arises between parties with regard to the custody of the body.

(5) The personal effects of the deceased may be handed to the person contemplated in sub-regulation (1), if the authorised person who conducted the post mortem examination is satisfied that such personal effects are not required as evidence or pose a health risk.

16. Release of body

(1) A body may only be released from the Service after -

- (a) the medico-legal investigation of death has been concluded;
- (b) where necessary, an appropriate tissue or blood sample has been harvested or other investigations done, in order to assist with the medico-legal investigation and to facilitate the scientific identification of the deceased;
- (c) the authorised medical practitioner has given approval for such release of the body; or
- (d) the spouse, partner, major child, parent, guardian, major brother, major sister, care-giver or duly authorised party has given a written consent for release of a body to a third party, or by an order of the Court.

(2) Where the person giving consent, as contemplated in sub-regulation(1), is unable to pay for the burial of the body, the local authority having jurisdiction of the area where the body was found, must provide for a pauper burial or cremation of such a body.

17. Unidentified body

(1) A body that has not been identified must be moved to a freezer within seven days of admission (after a set of fingerprints have been taken), and if such a body remains unidentified for 30 days and all prescribed steps to identify it have been followed, the local authority in which the body was found, must provide for a pauper burial of such a body.

(2) The Director-General may donate a body referred to in sub-regulation (1) or any part of that body, to any authorised institution for any purpose contemplated in section 62(3) of the Act.

18. Medico legal investigation of specific categories of unnatural deaths

(1) The South African Police Service must immediately notify the Head of the Clinical Department or Unit: Forensic Pathology of the region or province, of the following fatalities:-

- (a) fatalities associated with aircraft accidents, mass disasters, scuba- or other diving-related incidents;

- (b) the deaths of persons who die whilst detained by the South African Police Service or who died as a result of police action; and
- (c) the deaths of persons who die of unnatural causes whilst in the custody of the Department of Correctional Services.

(2) The post mortem examination of the deaths contemplated in sub-regulation(1), may only be performed by a registered forensic pathologist, as designated by the Head of Clinical Department or Unit: Forensic Pathology.

(3) The post mortem examination of persons contemplated in sub-regulation (1)(ii), may only be performed after the Independent Police Investigative Directorate have been informed of that death.

(4) The investigation of the following specific categories of unnatural deaths must be managed in consultation with a regional specialist forensic pathologist:-

- (a) acts of terrorism;
- (b) suspected Sudden Unexpected Death in Infants (SUDI);
- (c) the death of a child due to suspected non-accidental injury or neglect;
- (d) the presumed homicidal death of any member of the South African National Defence Force and South African Police Service;
- (e) fatalities where sexual assault is suspected;
- (f) the death of a person while attending a traditional initiation school;
- (g) the unnatural death of any resident in public or private institution, which includes but is not limited to: psychiatric facilities; places of safety; drug and addiction rehabilitation facilities; refugee facilities; older persons care facilities; facilities for the physically and mentally challenged.

19. National forensic pathology service committee

(1) The Minister must, in terms of section 91(1) of the Act, establish an advisory committee known as the National Forensic Pathology Service Committee to advise the Minister on:

- (a) policy concerning any matter that will ensure, promote, improve or maintain forensic pathology services;
- (b) norms, standards and guidelines for the rendering of forensic pathology services, including health and safety standards and the minimum standards for accreditation of forensic mortuaries;
- (c) any technical matter related to forensic pathology services that may have an impact on health policies and strategies; and
- (d) any other aspect impacting on the rendering of a forensic pathology service.

20. Accounting and reporting requirements

The Provincial Head of Department must submit annual returns of statistics and reports related to the Service to the National Director-General in a format determined by the National Director-General from time to time.

21. Offences

(1) Any person who fails to comply with any of the provisions of these Regulations is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(2) Any person that interferes with an authorised person in the execution of his or her duties is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

22. Delegation

(1) The Head of Department or the Provincial Head of the Service may, in writing, and on such conditions as he or she may determine, delegate or assign any power or duty to an official of the provincial department or staff of the designated facility, as the case may be, unless there is a specific prohibition of such delegation or assignment.

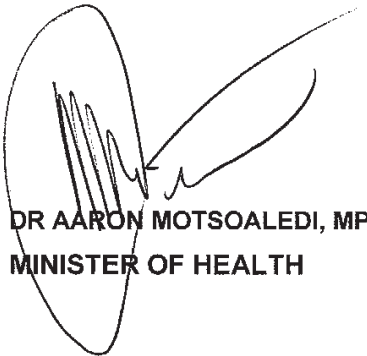
(2) A delegation or assignment made under sub-regulation (1) does not-

- (a) divest the Head of Department or the provincial head of the Service of the responsibility or accountability concerning the performance of the function involved; or
- (b) prohibit the performance of the function Involved by the Head of Department or the provincial Head of the Service.

(3) The Head of Department or the Provincial Head of the Service may amend or set aside any decision taken by a person in the exercise of any such power delegated to that person.

23. Short title

These Regulations are called the Regulations Regarding the Rendering of Forensic Pathology Service, 2017.



DR AARON MOTSOLEDI, MP
MINISTER OF HEALTH