

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT**NOTICE 554 OF 2021****VETERINARY AND PARA-VETERINARY PROFESSIONS ACT, 1982, AS AMENDED
ACT No. 19 OF 1982, AS AMENDED****DRAFT RULES RELATING TO THE DISCIPLINARY PROCESSES AGAINST THE VETERINARY
AND PARA-VETERINARY PROFESSIONS- COMMENTS INVITED**

The South African Veterinary Council, with the approval of the Minister of Agriculture, Land Reform & Rural Development, intends to promulgate the rules for the disciplinary process against the veterinary and the para-veterinary professions, as per the Schedule to this Notice. All interested parties who have any comments to the proposed amendments are called upon to submit such comments to the SAVC: Director Legal Affairs within thirty (30) days from the date of publication of this Notice to: Mrs D Stoltz at e-mail address director.legalaffairs@savc.org.za (Telephone number [012] 345-6360/083-632-3904), with a copy to legalsecretary@savc.org.za.

Schedule**1. Definitions**

"Inquiry Body" means an ad hoc committee of the Council acting under powers delegated to it by the Council in terms of section 12 of the Act to preside at inquiries;

"Investigation Committee" means a committee appointed by Council in terms of Section 12 of the Veterinary Act to evaluate and screen complaints against professionals;

PROCEDURE AT INQUIRIES INTO PROFESSIONAL CONDUCT**2. Lodging of complaints**

- (1) A complaint must be in writing in the form of a sworn affidavit, signed in the presence of a commissioner of oaths or police officer and be addressed to the Registrar.
- (2) No complaint which is submitted more than twelve (12) months after the date on which the complaint arose, will be considered.
- (3) A person who submits a complaint more than twelve (12) months after the date on which the complaint arose may apply for condonation of the late submission of the complaint to the Investigation Committee.
- (4) The application for condonation must be substantiated.
- (5) The decision of the Investigation Committee regarding the condonation application is final.
- (6) No complaint will be considered, unless the account of the veterinary technologist against whom the complaint is filed, is fully paid.
- (7) The Registrar may, in his/her discretion, request that the complaint be mediated, if both parties to the complaint agree to such mediation.
- (8) If the mediation is successful, the complaint file will be closed.
- (9) If the mediation is not successful, the complaint must be investigated and considered by the Investigation Committee.

- (10) Information provided by the respondent during a mediation, must be kept confidential.

3. Preliminary investigation

- (1) On receipt of a complaint, the Registrar must advise the respondent of the complaint and forward a copy thereof to the respondent.
- (2) The Registrar must inform the respondent that he/she may furnish a typewritten explanation, in the form of a sworn and signed affidavit, before a date, not earlier than thirty (30) days from the date of the request, **or as otherwise agreed on request of the respondent upon substantiation**, to the Council.
- (3) The respondent must be warned that such an explanation may be used in evidence against him/her.
- (4) The respondent must be informed of his/her right to refuse to answer any allegations, which might incriminate him/her;
- (5) The respondent must be informed that he/she is entitled to seek legal representation prior to filing such an affidavit.
- (6) On receipt by the Registrar of an answering affidavit, it must be submitted to the complainant, who has the right to file a replying affidavit within ten (10) working days of receipt of the answering affidavit.
- (7) A copy of the replying affidavit must be submitted to the respondent.
- (8) On receipt by the Registrar of a replying affidavit, a bundle of all the documentation submitted must be collated for consideration by the Investigation Committee.
- (9) If no answering affidavit is received, the Registrar must report this to the Investigation Committee, who may then consider the complaint on the evidence available to it.
- (10) The Registrar or the investigation committee may at any stage cause further investigation to be made or request any additional documentation or evidence to be submitted.
- (11) If further information is sought from the respondent, he/she must be advised of –
- (a) his/her right to refuse to answer any questions and furnish any information which might incriminate him/her; and
 - (b) that he/she is entitled to legal representation during such consultation or discussion.
- (12) If the Investigation Committee resolves that a complaint, even if substantiated, does not constitute unprofessional, improper or disgraceful conducts it must take such action as it may think fit and report such action to the Council.
- (13) If the complainant is not satisfied with the outcome of the Investigation Committee's preliminary finding, the evidence at hand must be referred to Council for a decision whether or not an inquiry into professional conduct should be held. The Council's decision is final.
- (14) Excluding criminal acts and gross misconduct, investigations should centre around the main complaint.
- (15) If the main complaint is not substantiated, and peripheral misconduct is evident, guidance should be provided as to how to deal with it (correct the behaviour), subject to sub-rule (14).
- (16) If it appears to the Investigation Committee that an inquiry should be held into the conduct of a respondent, it must direct the Registrar to arrange for the holding of an inquiry into professional conduct.
- (17) If it appears to the Investigation Committee that a complaint can be mediated, it may request the Registrar to arrange for a mediation.

- (18) Should the mediation be unsuccessful, the matter must be referred to the Investigation Committee for its further consideration.
- (19) Information provided by the respondent during a mediation, must be kept confidential.

4. Inquiry into professional conduct

- (1) On receipt of a directive to hold an inquiry the Registrar must summons the respondent by means of a notice addressed to the respondent stating where and when the inquiry into the professional conduct will be held and enclosing a charge as approved by the Investigation Committee.
- (2) The notice must be served on the respondent or mailed to him/her at his/her registered address by prepaid registered post, delivery by the sheriff of the Court or if agreed in writing, served by e-mail, provided that receipt of the summons is telephonically confirmed.
- (3) If witnesses are summoned at the instance of the respondent the Registrar may require the respondent to deposit a sum of money sufficient to cover the costs thereby entailed, and the Registrar may pay such costs from the amount deposited.
- (4) Should the respondent be found not guilty, the full deposit in rule (3) above must be refunded to the respondent.
- (5) The administration must prepare a bundle of documents and a list of witnesses to be utilised at the inquiry which must be submitted to the respondent or his/her legal representative ten (10) working days prior to the date of the inquiry.
- (6) The bundle of documents will be submitted to the Inquiry Body at least three (3) working days prior to the date of the inquiry to facilitate the process at the inquiry.
- (7) The respondent and/or his/her legal representative must submit any additional documents to be utilised at the inquiry and a list of witnesses to be called to the administration within three (3) working days of receipt of the bundle of documents, failing which no further documentation may be admitted into evidence or further witnesses called, unless approved on application by the Inquiry Body. Adequate reasons for failing to submit the documents in the discovery process or advising of the witness to be called must be provided to the Inquiry Body.
- (8) Should a respondent object to the submission of the bundle of documents to the Inquiry Body, the respondent must object in writing and must give reasons for the objection.
- (9) Should the Registrar deem it necessary due to the complexity of a complaint, a pre-inquiry meeting must be held between the pro forma complainant and the legal representative of the respondent or the respondent in person to agree on common cause facts and facts in contention, as well as which points *in limine* are to be argued.

5. Procedure at Inquiry into professional conduct

- (1) In an inquiry into professional conduct held in terms of Section 31 of the Act the procedure must be as follows -
 - (a) The respondent or, if he/she is not present, his/her legal representative must be asked by the chairperson of the inquiry body to plead guilty or not guilty to the charge and that plea must be so recorded;

- (b) If the respondent, or his/her legal representative, refuses or fails to plea directly to the charge, this must be recorded and a plea of not guilty must be entered, and a plea so entered must have the same result as if it had in fact been so pleaded;
 - (c) The pro forma complainant must be given the opportunity of stating his/her case and of leading evidence in support thereof;
 - (d) The respondent must thereafter be given the opportunity of stating his/her case and of leading evidence in support thereof;
 - (e) The inquiry body may, in its discretion, allow further evidence to be led or a witness to be recalled by either the pro forma complainant or the respondent or by both after their cases have been closed;
 - (f) After the parties have closed their cases, the inquiry body may in its discretion call further witnesses or recall a witness to be questioned by the members of the inquiry body and thereafter by the pro forma complainant and then by the respondent or his/her legal representative;
 - (g) After all evidence were presented, the pro forma complainant must be allowed to address the inquiry body on the evidence and the legal position;
 - (h) Thereafter the respondent must likewise be allowed to address the inquiry body, where after the pro forma complainant must be allowed to address the inquiry body in reply;
 - (i) After the evidence of a witness has been given, the opposing party is entitled to cross-examine the witness, where after the chairperson of the inquiry body may put questions to the witness and allow other members of the inquiry body to put questions to the witness;
 - (j) Before re-examination, further cross-examination must be allowed arising from questions put by the chairperson and other members;
 - (k) The person who led the evidence must thereafter be entitled to re-examine the witness, but must confine his/her re-examination to matters on which the witness was cross examined or on which the chairperson or other members put questions to the witness;
 - (l) If the respondent and his/her legal representative are not present at the inquiry into professional conduct, it must proceed in the respondents' absence and a plea of not guilty must be entered, unless the respondent has in writing pleaded guilty to the charge against him/her, in which event it must be entered as his/her plea;
 - (m) All oral evidence must be taken on oath or affirmation by the chairperson of the inquiry body;
 - (n) The witnesses concerned may be questioned by the respondent and members of the inquiry body. The members of the enquiry body are not restricted to questions for purposes of clarification only.
 - (o) Evidence on affidavit may be admissible: Provided that the opposing party may object to such evidence if he/she is not given the opportunity of cross-examining the witness.
- (2) Upon the conclusion of a case the inquiry body must deliberate thereon *in camera*.
 - (3) If the respondent is found not guilty of the charge against him/her, he/she must be advised accordingly.
 - (4) The inquiry body may make a finding of not guilty even if the respondent has pleaded guilty.

- (5) If the inquiry body has, regarding any charge, determined that sufficient facts have been proved to its satisfaction to support the charge, it must decide whether the charge so supported constitutes unprofessional, improper or disgraceful conduct and it must announce its finding.
- (6) If the respondent is found guilty the pro forma complainant must furnish details to the inquiry body of previous convictions of the respondent under the Act, if any and may address the inquiry body and lead evidence regarding a suitable penalty to be imposed.
- (7) The respondent may thereafter address the inquiry body and adduce evidence in mitigation of the penalty to be imposed and the witnesses concerned may be questioned by the pro forma complainant and members of the inquiry body.
- (8) Thereupon the inquiry body must deliberate in camera upon the penalty to be imposed, and the chairperson must then inform the respondent of the inquiry body's decision regarding the penalty.

6. Accessibility to Inquiry into professional conduct

- (1) The proceedings at an inquiry into professional conduct is open to the public, provided that:
 - (a) Any decision of the inquiry body in respect of any point arising in connection with or in the course of an inquiry must be arrived at *in camera*;
 - (b) Any evidence adduced during an inquiry into professional conduct may, on good cause shown, in the discretion of the inquiry body, be heard *in camera*;
 - (c) The inquiry body may, on good cause shown, in its discretion, order that no person may at any time in any way publish any information, which would probably reveal the identity of any particular person other than the respondent, and
 - (d) The inquiry body may order any person who creates a disturbance or obstructs the process at the inquiry, to leave immediately.