

DEPARTMENT OF HEALTH


NO. 3758

4 August 2023

PHARMACY ACT, 1974 (ACT NO. 53 OF 1974)

REGULATIONS RELATING TO THE ELECTION OF MEMBERS OF THE SOUTH
AFRICAN PHARMACY COUNCIL:
AMENDMENT

The Minister of Health, in consultation with the South African Pharmacy Council and in terms of section 49(1)(a) and (3), read with section 5 of the Pharmacy Act, 1974 (Act No. 53 of 1974), intends to make the Regulations in the Schedule.



DR MJ PHAAHLA, MP

MINISTER OF HEALTH

DATE: 13/07/2023

SCHEDULE

GENERAL EXPLANATORY NOTE:

- _____ Words underlined with a solid line indicate insertions in existing enactments.
[] Words in brackets indicate deletion in existing enactments

Definition

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

“Regulations” means the Regulations relating to the election of members of the South African Pharmacy Council, published under Government Notice No. R. 823 of 19 June 1998.

Amendment of regulation 1 of Regulations

2. Regulation 1 of the Regulations is hereby amended —

- (a) by the insertion of the following definitions:

“electronic” means any form of electronic technology that generates, stores, and processes data;

‘electronic voting’ means voting that uses electronic means to manage casting and counting ballots;

- (b) by the insertion after the definition of **“returning officer”** of the following definition:

“‘signature’ means inputting a signature or name or initials, including an electronic image of a signature or electronic signature appended by way of inserting a relevant code, password or personal identification number, including but not limited to, a one-time-pin (OTP), and sign shall bear the same meaning;”

Amendment of regulation 2 of the Regulations

3. Regulation 2 of the Regulations is hereby amended by substitution for sub-regulation (4) of the following sub-regulation:

“(4) The returning officer, the officers appointed by him or her and the members of the body contemplated in sub-regulation (3) shall make a declaration on oath or affirmation in a form as determined by the returning officer.”

Amendment of regulation 3 of the Regulations

4. Regulation 3 of the Regulations is hereby amended by the deletion in sub-regulation (1) of the words “in the form set out in Annexure B”.

Amendment of regulation 4 of the Regulations

5. Regulation 4 of the Regulations is hereby amended—

(a) by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) Each candidate shall be nominated on a nomination form, as determined by council, and nominations must reach the returning officer not later than the time and date determined by the returning officer in that form.”

(b) by the substitution for sub-regulation (4) for the following sub-regulation:

“(4) Simultaneously with the lodging of a nomination, or not later than the time and date contemplated in regulation (1), a candidate shall lodge the following documentation with the returning officer:

- (a) His or her consent to the nomination;
- (b) proof, to the satisfaction of the returning officer, of South African citizenship;
- (c) a curriculum vitae of not more than 400 words in English; and
- (d) an electronic, head and shoulders passport photograph.

(c) by the substitution in sub-regulation (5) for paragraph “(c)” of the following paragraph:

“(c) If a validly nominated candidate dies before the date of publication of the list of candidates in the Gazette, his or her nomination shall lapse, provided the returning officer is satisfied of the fact of the death of the candidate.”

Insertion of Regulation 5A in the Regulations

6. The following Regulation is hereby inserted after regulation 5 of the Regulations:

“Election of Council members

5A. The election of council members in terms of the Pharmacy Act, 53 of 1974 shall be conducted by way of an electronic election system or any other form of election system as determined by council as published by way of notice.”.

Substitution of regulation 6 of the Regulations

7. The following Regulation is hereby substituted for Regulation 6 of the Regulations:

“Procedure for election

6. (1) If, at the time and date contemplated in regulation 4(1), the number of validly nominated candidates exceeds the number of members to be elected—
- (a) the returning officer shall, by notice in the *Gazette*, and on the official website of council —
- (i) list the names of the validly nominated candidates in alphabetical order;
- (ii) determine a time and date, not earlier than one month after the date of publication of such notice, by which each pharmacist eligible to vote shall be entitled to lodge a ballot [paper];
- (b) the returning officer shall, at least one month before the date contemplated in sub-regulation (1)(a)(ii), transmit the following to the registered **[address]** electronic contact details of each pharmacist eligible to vote whose name appeared in the register at the time and on the date contemplated in regulation 4(1):
- (i) a **[ballot paper in the form set out in Annexure D]** list of nominated candidates;
- (ii) a **[printed identification envelope in the form set out in Annexure E]** secured mechanism as determined by council to cast his or her ballot; and
- (iii) the *curricula vitae* and photographs referred to in regulation 4(4)(c) and (d).

(2) Nothing contained in this regulation shall preclude the council from providing access to the electronic election system to pharmacists in terms of an electronic management approach, provided such access shall include an authentication process for persons who wish to cast their vote”.

Repeal of regulation 7 of the Regulations

8. Regulation 7 of the Regulations is hereby repealed.

Amendment of regulation 8 of the Regulations

9. The following Regulation is hereby substituted for Regulation 8 of the Regulations:

“Voting, counting of, and announcement of results

8. (1) The returning officer shall determine a place, time and date for the commencement of voting, which duration for voting shall be no more than 72 hours.

(2) Within five (5) days of the close of the voting, the independent monitoring body as appointed in terms of regulation 2(3), shall provide a validation report of the election results to the returning officer, which report shall be made available to all candidates.

(3) Within one (1) day after the release of the validation report in terms of sub-regulation 8(2) the returning officer shall announce the results of the election.

(4) The returning officer shall declare the candidates for whom the greatest number of votes have been cast to be elected members of the council; provided that, if the number of votes cast for any two or more candidates is found to be equal and if this equality of votes affects the result of the election, the returning officer shall, in the presence of the independent monitoring body, immediately determine by lot which candidate shall be declared elected.

(5) (a) Any pharmacist may lodge with the returning officer a substantiated, written objection regarding the election process with the returning officer.

(b) If an objection referred to in paragraph (a) is not resolved before the next phase of the electoral process, the next phase shall not commence until an independent arbitrator has resolved the issue.

(c) When an objection is lodged during the counting process, all counting shall be discontinued immediately until the objection is resolved.

(d) If an objection referred to in paragraph (c) is not resolved within one (1) day of it being declared, an independent arbitrator shall be called to resolve the issue”.

Insertion of Regulation 8A in the Regulations

10. The following Regulation is hereby inserted after Regulation 8 of the Regulations:

“Offence

8A. Any person who wilfully interrupts, obstructs or disturbs the proceedings of the elections shall be guilty of an offence and, on conviction, be liable to a fine not exceeding R2 000 or imprisonment for a period not exceeding two years.”.

Amendment of regulation 9 of the Regulations

11. The Regulation 9 is hereby amended by substitution for sub-regulation (2) of the following sub-regulation

“(2) The returning officer shall keep all **[ballot boxes]** election records in safe custody.”

Repeal of Regulation 10 of the Regulations

12. Regulation 10 of the Regulations is hereby repealed.

Amendment of regulation 11 of the Regulations

13. The Regulations 11 is hereby amended by substitution for sub-regulation (2) is for the following sub-regulation:

“(2) If a person who carries out his or her duties under the Act or who is **[present at the counting of votes]** part of the election process, obtains knowledge as to the candidate for whom any person has voted, he or she shall not, except in answer to a question lawfully put to him or her in the course of proceedings in a competent court of law, disclose such knowledge to any other person.”.

Amendment of regulation 12 of the Regulations

14. Regulation 12 is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) The returning officer shall retain all election **[documents]** records for a period of 5 years from the date of the declaration of the result of an election and he or she shall thereafter destroy the **[documents]** records, unless a competent court of law directs otherwise.”.

Substitution of regulation 13 of the Regulations

15. The following Regulation is hereby substituted for Regulation 13 of the Regulations:

“Penalties

13. Any person who—

- (a) induces or procures or attempts to induce or procure any other person to become a candidate or to withdraw as a candidate in any election in consideration of payment or for consideration of any nature;
- (b) becomes a candidate or withdraws as a candidate in any election as a result of payment or consideration of any nature;
- (c) publishes a false statement of the withdrawal of a candidate in an election, knowing such statement to be false;
- [(d) with the intent to cheat, destroys a ballot paper or identification envelope]**
- (e) without due authority supplies **[a ballot paper or identification envelope]** access to voting to any person;
- (f) withholds or attempts to withhold **[the ballot paper]** access to voting of any voter, or prevents or attempts to prevent any voter from obtaining **[a ballot paper]** access to voting;
- (g) with the intent to cheat, votes more than once at any election;
- [(h) with the intent to cheat, brings about or attempts to bring about the issuing of a ballot paper or an identification envelope in terms of regulation 6 (2);]**
- (i) induces or procures or attempts to induce or procure any other person to bring about, with the intent to cheat, the issuing of **[a ballot paper] or an identification envelope]** access to voting in terms of regulation 6 **[(2)] (1)**;
- (j) interferes with or attempts to interfere with a voter when that voter is marking a vote, or otherwise attempts to obtain information as to the candidate for whom any voter is about to vote or has voted;
- (k) directly or indirectly, personally or through any other person—
 - (i) makes use or threatens to make use of any force or violence against;
 - (ii) inflicts or threatens to inflict any physical or psychological harm upon; or

(iii) does or, threatens to do anything to the disadvantage of, a person in order to induce or compel that person to vote or refrain from voting for a particular candidate or candidates, shall be guilty of an offence and on conviction to a fine of R2 000 or to imprisonment for a period not exceeding two years.”.

Repeal of Regulation 14 of the Regulations

16. Regulation 14 of the Regulations is hereby repealed.

Short title

17. These Regulations are called Regulations Relating to the Election of Members of the South African Pharmacy Council Amendment, 2023