

## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

### DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

#### NOTICE 2557 OF 2024

##### VETERINARY AND PARA-VETERINARY PROFESSIONS ACT, ACT No. 19 OF 1982, AS AMENDED

##### RULES RELATING TO THE DISCIPLINARY PROCESSES AGAINST THE VETERINARY AND PARA-VETERINARY PROFESSIONS

It is hereby made known for general information that:

- (a) The South African Veterinary Council has under section 30(1) of the Veterinary and Para-Veterinary Professions Act, 1982 (Act No.19 of 1982), made the disciplinary rules in the Schedule relating to the practising of the veterinary and para-veterinary professions;
- (b) The Minister of Agriculture, Land Reform & Rural Development, has under section 30(3) of the said Act approved the repeal of the rules for the veterinary and para-veterinary professions published on 9 December 2022 in Government Gazette number 47665, Notice number 1490 of 2022;
- (c) The Minister of Agriculture, Land Reform & Rural Development, has under section 30(3) of the said Act approved the said rules in (a) above; and
- (d) The rules shall come into operation on the date of publication in the Government Gazette.

**MR MA MENYE**

**Registrar: South African Veterinary Council**

#### Schedule

##### Definitions

“**Act**” means the Veterinary and Para-Veterinary Professions Act, 1982 (Act No.19 of 1982);

“**Council**” means the council established by section 2 of the Act;

“**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 Act to evaluate and screen complaints against professionals.

#### PROCEDURE AT INQUIRIES INTO PROFESSIONAL CONDUCT

##### 1. 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, unless the allegations are in the public domain or are referred to Council by a court, or another tribunal/forum or the complaint is initiated by Council.
- (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) The Registrar may, in his/her discretion, request that the complaint be mediated, if both parties to the complaint agree to such mediation.
- (7) If the mediation is successful, the complaint file will be closed.
- (8) If the mediation is not successful, the complaint must be investigated and considered by the Investigation Committee.
- (9) Information provided by the respondent during a mediation, must be kept confidential.

## **2. Preliminary investigation**

- (1) If the registrar deems it necessary for the achievement of the objects of this Act and/or to establish more facts, he or she may institute or cause to be instituted an investigation –
  - (a) into any alleged contravention of, or failure to comply with, any provision of the Act;
  - (b) in order to determine if any provision of the Act applies to or has been contravened by any registered person; and
  - (c) into any charge, complaint, or allegation of unprofessional conduct by any registered person.
- (2) Depending on the alleged misconduct and or circumstances around the allegation, the registrar for preliminary investigation, can advise either of the two methodologies outlined in Investigative Methodology A referred to in Rule 3 or Investigative Methodology B referred to in Rule 4.

## **3. Investigative Methodology A**

- (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 copies of the relevant clinical records within 72 hours.
- (3) Further that a typewritten explanation, in the form of a sworn and signed affidavit must be filed, before a date, not later than thirty (30) days from the date of the request, or as otherwise agreed on request of the respondent upon substantiation, to the Council.
- (4) The respondent must be warned that such an explanation may be used in evidence against him/her.
- (5) The respondent must be informed of his/her right to refuse to answer any allegations, in which case the complaint will be evaluated on the complainant's version only.
- (6) The respondent must be informed that he/she is entitled to seek legal representation prior to filing such an affidavit.

- (7) 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.
- (8) A copy of the replying affidavit must be submitted to the respondent.
- (9) 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.
- (10) 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.

#### 4. Investigative Methodology B

- (1) The registrar or the investigating committee may at any stage, *mero-motu* or as a result of a complaint lodged, appoint an investigating officer in terms of section 31A (2) (a) or (b) of the Act, to conduct an investigation if he/she deems it necessary for purposes of establishing more facts.
- (2) The investigation officer appointed in terms of section 31A (2), shall when exercising such power or performing any function in terms of this Act, do so under authority of a certificate of appointment issued in terms of section 31A (4) of the Act and shall produce that certificate to any person who is affected by his or her action.
- (3) Such Investigating officer shall exercise all such powers and functions as are conferred in terms of section 31A and 31B of the Act, including:
  - (a) to enter upon and search any premises or veterinary facility where clinical veterinary services are rendered;
  - (b) request any person who has or is suspected on reasonable grounds of having in his or her possession or custody or under his or her control any records or electronic data or both relating to the matter which is being investigated to produce such records;
  - (c) take possession of, examine, and make extracts from and copies of such records and/or electronic data relating to, or which he or she on reasonable grounds believes to relate to, the matter under investigation; and
  - (d) interview and obtain statements and/or explanation from any person who he on reasonable grounds suspects of having knowledge of or any information that is material to the investigations.
- (4) The Investigating officer shall upon conclusion of the investigation, compile and submit an investigation report to the registrar.
- (5) If such report:
  - (a) reveals *prima facie* evidence of unprofessional conduct as contemplated in the Act and no complaint or charge has been lodged or laid or no allegation regarding the conduct in question has been made for the purpose of an inquiry in terms of section 31, such report shall be deemed to be a complaint made for that purpose, and the registrar shall serve a copy thereof on the registered person concerned;
  - (b) reveals *prima facie* evidence which makes it desirable that an inquiry in terms of section 31 be instituted, the registrar shall forward a copy thereof to a committee established in terms of section 12(1) of the Act to further investigate and deal with the matter in terms of the Act; and
  - (c) If such report does not reveal any *prima facie* evidence of unprofessional conduct contemplated in the Act, the registrar shall serve a copy thereof on the registered person concerned in the prescribed manner.

**5. Powers and Functions of the Investigation Committee**

- (1) The Investigating Committee is a committee of Council and exercises its' powers and functions in terms of rule 40 of the Rules relating to the practicing of veterinary professions.
- (2) The Committee is responsible for the evaluation of the evidentiary material and/or report(s) and is empowered to take the following decision(s):
  - (a) refer matters back to the Administration to obtain further information;
  - (b) dismiss the matters as there are no grounds to pursue the matter and/or there is insufficient evidence on which to base a decision;
  - (c) there is no basis for the complaint and where the Committee deems it fit to caution the respondent in terms of rule 40 (9);
  - (d) refer the complaint for mediation; and/or
  - (e) refer matters to Disciplinary Hearings.
- (3) If the complainant is not satisfied with the outcome of the Investigation Committee's finding, the evidence at hand must be referred to the Council for a decision whether or not an inquiry into professional conduct should be held. The Council's decision is final. The respondent must be notified of the referral to Council and be allowed to make any submissions they may wish to make, for council's consideration.
- (4) Excluding criminal acts and gross misconduct, investigations should center around the main complaint.
- (5) If the main complaint is not substantiated, but a possible incidental/peripheral unprofessional conduct arises out of the main complaint, such possible incidental/peripheral unprofessional conduct must be referred to the respondent for him/her to provide an answer.
- (6) 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.
- (7) If it appears to the Investigation Committee that a complaint can be mediated, it may request the Registrar to arrange for a mediation.
- (8) Should the mediation be unsuccessful, the matter must be referred to the Investigation Committee for its further consideration.
- (9) Information provided by the respondent during a mediation, must be kept confidential.

**6. 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) The administration must prepare a bundle of documents and a list of witnesses to be called 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.
- (4) 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.

- (5) 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.
- (6) 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.
- (7) 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.
- (8) The respondent is responsible for securing the presence of his/her own witnesses at his/her own cost at the inquiry. The option of electronic attendance of a witness is available at no cost to the respondent.

## 7. Procedure at Inquiry into professional conduct

- (1) In an inquiry into professional conduct held in terms of Section 31 of the Act, the procedure is 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 plead 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) After the evidence of a witness has been given, the opposing party is entitled to cross-examine the witness, whereafter 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;
  - (f) Before re-examination, further cross-examination must be allowed arising from questions put by the chairperson and other members;
  - (g) 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;
  - (h) 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;
  - (i) 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;



- (j) After all evidence is presented, the pro forma complainant must be allowed to address the inquiry body on the evidence and the legal position;
  - (k) Thereafter the respondent must likewise be allowed to address the inquiry body, whereafter the pro forma complainant must be allowed to address the inquiry body in reply;
  - (l) If the respondent and his/her legal representative are not present at the inquiry into professional conduct, the enquiry 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; and
  - (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.

## 8. 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 individual seeking public access to the inquiry attends the meeting physically or in person, as no public access will be allowed on virtual platforms;

- (d) 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;
- (e) the inquiry body may order any person who creates a disturbance or obstructs the process at the inquiry, to leave the inquiry immediately;
- (f) No recording devices and/or cell phones are allowed in the room the inquiry is held, except for the official recording made by Council; and
- (g) If a journalist wishes to attend an inquiry, that journalist must, at least five working days prior to the inquiry, formally apply to the inquiry body, to attend the inquiry. Such application must include a valid reason for attending the inquiry, which will be considered by the inquiry body.

**9. Short title**

These Rules shall be called the Rules relating to the disciplinary processes against the veterinary and para-veterinary professions.