

No. R. 426

18 April 2008

**HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA****REGULATIONS RELATING TO THE CONDUCT OF INQUIRIES INTO ALLEGED UNPROFESSIONAL CONDUCT UNDER THE HEALTH PROFESSIONS ACT, 1974**

The Minister of Health intends, under section 61(1)(h), read with section 61(4) of the Health Professions Act, 1974 (Act No. 56 of 1974)(as amended by Act 29 of 2007), and after consultation with the Health Professions Council of South Africa, to make the regulations in the Schedule.

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

**SCHEDULE****Definitions**

1. In these regulations **"the Act"** means the Health Professions Act, 1974 (Act No. 56 of 1974), 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 -

**"appellant"** means a registered person who is aggrieved by a decision of a committee of preliminary inquiry, or a practitioner or *pro forma* complainant who is aggrieved by a decision of a professional conduct committee or a professional board and who has submitted an appeal to the appeal committee;

**"committee of preliminary inquiry"** means a committee established by a professional board under section 15 of the Act for the preliminary investigation of complaints and to inquire into minor transgressions including cases of contempt of council and to make determinations thereof;

**“complainant”** means any person (natural or juristic), group, professional body (including a professional association or society, teaching or training institution, or any other health care or related facility), or the office of the registrar who lodged a complaint against a registered person pertaining to unprofessional conduct;

**“complaint”** means any information in writing regarding the alleged unprofessional conduct by a person registered under the Act, which comes to the attention of the registrar or the council or a professional board or ombudsman, or a complaint, charge or allegation of unprofessional conduct against such person;

**“appeal committee”** means an *ad hoc* committee established by council under section 10(2) of the Act;

**“inquiry”** means an inquiry held by a professional board or a professional conduct committee of the professional board under Chapter IV of the Act and these Regulations to inquire into a complaint or charge against a registered person;

**“legal assessor”** means a person versed in law appointed by the registrar to guide the professional conduct committee at the inquiry hearing on any matter of law and procedure;

**“minor transgression”** means conduct which, in the opinion of the committee of preliminary inquiry from the documents presented before such committee, is unprofessional, but minor in nature to warrant the holding of a formal professional conduct inquiry;

**“ombudsman”** means a person appointed by the council to deal with complaints received and categorise them according to significance and the seriousness thereof, and refer cases not falling within the jurisdiction of council to appropriate bodies or tribunals and, where appropriate, to mediate and adjudicate on minor cases such as issues of miscommunication between registered practitioners and complainants;

**“performance assessment”** means an assessment conducted by a performance assessment committee to inquire into and make determinations on the clinical and other related performance issues of a practitioner against whom evidence or a pattern of poor clinical or other related performance issues was detected by a committee of preliminary inquiry in cases of minor transgressions or a professional conduct committee for serious transgressions referred for inquiry;

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**"performance assessment committee"** means an *ad hoc* committee established by a professional board under section 15B of the Act to inquire into and make determinations on the clinical or other related performance issues of a practitioner against whom evidence or a pattern of poor clinical or other related performance issues was detected by the committee of preliminary inquiry in cases of minor transgressions or a professional conduct committee for serious transgressions referred for inquiry;

**"poor performance"** means conduct on the part of a practitioner which falls short of the required standards or generally acceptable norms in health care, but not amounting to negligence, due to a lack of clinical or other related performance skills or adequate knowledge in the management of patients or a particular health condition;

**"preliminary inquiry"** means an inquiry held in terms of these regulations by a committee of preliminary inquiry to consider a complaint against a registered person, in order to make a determination on the appropriate manner in which to deal with such a complaint;

**"professional conduct committee"** means a committee established by a professional board under section 15 of the Act to conduct a professional conduct inquiry;

**"pro forma complainant"** means a person appointed by the registrar to represent the complainant and to present the complaint to a professional conduct committee; and

**"respondent"** means a person registered under the Act whose conduct is the subject of a complaint or an inquiry under Chapter IV of the Act and these Regulations, or a person opposing an appeal in terms of these Regulations.

## **Lodging of complaints**

2. (1) A complaint must be in writing and be addressed to the ombudsman, the registrar, the council or to a professional board.
- (2) Where a complaint is addressed to and received by the council, a professional board or the registrar, such complaint must be submitted to the ombudsman within 24 hours of its receipt.

**Ombudsman****3. (1) The ombudsman must –**

- (a) categorise complaints received according to significance, the seriousness thereof, those which are for mediation and adjudication and those which do not fall within the jurisdiction of council;
- (b) refer significant and serious complaints to the registrar for preliminary investigations within three working days from date of receipt;
- (c) mediate and adjudicate on minor cases such as issues of miscommunication between practitioners and complainants with a view to resolving such matters;
- (d) refer cases which could not be resolved through mediation and adjudication to the registrar for preliminary investigation within three working days from date of deadlock; and
- (e) refer matters not falling within the jurisdiction of the council to appropriate bodies or tribunals and inform the complainant of such referral.

- (2) The ombudsman may, within seven working days from date of receipt of a complaint for mediation and adjudication, call for any information in any manner deemed appropriate from any person that, in his or her opinion, may assist in the mediation and adjudication to resolve such matter.
- (3) The ombudsman must, on receipt of the information referred to in sub-regulation (2), make a determination on the matter, advise the parties of the resolution from such determination and require them to indicate whether they will abide by such resolution or not.
- (4) If the parties agree to abide by the resolution of the ombudsman, such resolution shall be confirmed in writing by the ombudsman and shall be binding on both parties as a final resolution on the matter.
- (5) The information obtained by the ombudsman in terms of sub-regulation (2) is confidential and privileged and cannot be considered by the committee of preliminary inquiry if a matter is referred for preliminary investigation in terms of sub-regulation (1) (d).

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**Preliminary investigation**

4. (1) The registrar may, -
- (a) within seven working days after he or she has received a complaint from the ombudsman, call for further information or an affidavit with further information from the complainant;
  - (b) subject to paragraph (a), within seven working days after he or she received a complaint from the ombudsman, notify the respondent about the complaint and forward a copy of the complaint as well as copies of any further information or affidavit referred to paragraph (a) to him or her-
    - (i) requesting a written response from such respondent within 40 working days or within such further period as may be reasonably allowed by the registrar from date of receipt of such notification, failing which the complaint as well as any further information or affidavit referred to in paragraph (a) must be forwarded to the committee of preliminary inquiry without such written response;
    - (ii) warning him or her that failure to respond to the notification or the complaint referred to in subparagraph (i) shall constitute a contempt of council, and that a response includes a written communication to indicate the right to remain silent; and
    - (iii) warning him or her that the written response referred to in subparagraph (i) may be used as or in evidence against him or her: Provided that a notification referred to in paragraph (b) shall be deemed to have been received -
      - (aa) on the day such notification is hand delivered to the registered address of the respondent; or
      - (bb) if such notification is sent by registered mail, on the seventh day following the date on which it was mailed;
  - (c) refer the case directly to the committee of preliminary inquiry or the chairperson of such committee;
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