

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH

NO. R. 2915

30 December 2022

ALLIED HEALTH PROFESSIONS ACT, 1982

REGULATIONS RELATING TO DISCIPLINARY INQUIRIES UNDER THE ALLIED HEALTH PROFESSIONS ACT

The Minister of Health intends, under section 23(1A) read with section 38(1)(s) and (4) of the Allied Health Professions Act, 1982 (Act No. 63 of 1982), on the recommendation of the Allied Health Professions Council, to make the regulations as set out in the Schedule.

Any person wishing to comment on or make representations with regard to the proposed amendments to the Regulations is hereby invited to do so within one month of the date of publication of this notice. All such comments and representations must be submitted in writing By post to: The Director-General, Department of Health, Private Bag X828, Pretoria, ,0001, and to Director Public Entities: MushwM@health.gov.za.



Dr MJ PHAAHLA

MINISTER OF HEALTH, MP

DATE

14/11/2022

SCHEDULE

Definitions

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—

"accused" means a person registered under the Act against whom a complaint has been made;

"address" means the postal address, residential address, business or practice address, or fax number or electronic email address of a practitioner or student as recorded in the register;

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

"complainant" means any natural or juristic person, group or professional body, including a professional association or society, a teaching or training institution, or any health care or related facility that lodges a complaint against a person registered under the Act relating to unprofessional conduct;

"inquiring body" means the council, the professional board, a committee of the council or a committee appointed by a professional board, which is conducting an inquiry contemplated in either section 23(1) or 23(1A) of the Act;

"pro forma complainant" means a person appointed by the council or the professional board to represent the complainant and to present the complaint to an inquiring body;

"Regulations of 1982" means the regulations made under section 38 of the Act, as published under Government Notice No. R.2610 of 03 December 1982 and amended by Government Notice Nos. R. 870 of 29 April 1983, Government Notice No. R. 1196 of 10 June 1983, Government Notice No. R. 1745 of 12 August 1983, Government Notice No. R. 2322 of 26 October 1984, Government Notice No. R. 2712 of 14 December 1984, Government Notice No. R. 1083 of 18 May 1985, Government Notice No. R. 2394 of 21 November 1986, Government Notice No. R. 1622 of 31 July 1987, Government Notice No. R. 2366 of 23 October 1987, Government Notice No. R. 629 of 31 March 1988, Government Notice No. R. 2439 of 2 December 1988, Government Notice No. R. 2855 of 07 December 1990, Government Notice No. R. 3089 of 20 December 1991, Government Notice No. R. 2900 of 16 October 1992, Government Notice No. R. 203 of 04 February 1994, Government Notice No. R. 1700 of 25 October 1996; and as repealed in part (Chapters 1,2,3,4,5,6,7,9,10,12 and 15) by Government Notice No. R. 127 of 12 February 2001;

"the Act" means the Allied Health Professions Act, 1982 (Act No. 63 of 1982).

Purpose and Application

2. (a) The purpose of these regulations is to provide for the institution of and procedure at a disciplinary inquiry contemplated in section 23 of the Act.
- (b) These regulations apply to an inquiry into unprofessional conduct under the Act.

Manner in which complaint may be lodged against accused

3. (1) A complaint against an accused must be in writing, and where possible in the form of an affidavit, and addressed to the registrar.
- (2) A complaint must describe the conduct in question, and the complainant must, if so requested, give oral evidence in support of his or her complaint at a disciplinary inquiry before the inquiring body.
- (3) The registrar must—
 - (a) peruse and analyse all complaints received;
 - (b) categorise complaints according to their significance and seriousness;
 - (c) record each complaint against the name of the accused as it appears in the register;
 - (d) investigate the complaints and where appropriate, refer them to the council's duly appointed external legal

counsel for advice or a recommendation in respect of such transgression and/or investigate further and/or appoint an investigating person to investigate the complaint;

(e) inform the accused of the advice, investigation or recommendation contemplated in paragraph (d) and, on the basis of such advice or recommendation, issue a request or directive to the accused;

(f) in the event that an accused refuses to accede to or comply with the request or directive of the registrar contemplated in paragraph (e) or the complaint is of such a nature that it cannot be resolved, refer the matter to the chairperson of the council for consideration.

(4) Subject to subregulation (3)(d), (e) and (f), the complaint together with any accompanying documentation must be submitted by the registrar to the chairperson of the council, who must direct the registrar, as he or she sees fit—

(a) to call for further information from the complainant if necessary;

(b) to forward to the accused copies of the documents received from the complainant or to inform the accused of the nature of such complaint, calling upon him or her for a written explanation with regard thereto and warning him

- or her that such explanation may be used in evidence against him or her during a disciplinary inquiry; or
- (c) to refer the complaint to the relevant professional board and delegate to the professional board the power the investigate such complaint further.
- (5) The accused (who may be legally represented) must, within 15 days from the date that a copy of the complaint was sent to his address (which address may include an email address) as reflected in the council's records, provide—
- (a) a written explanation concerning the complaint; or
- (b) a written confirmation that he or she does not want to provide any explanation with regard to the complaint at this time; or
- (c) a written admission of guilt with regard to the complaint.
- (6) On receipt of the response contemplated in subregulation 5, the registrar must submit such a response to the chairperson of the council or, if no response is received, the registrar must report such fact to the chairperson of the council.
- (7) The chairperson of the council must, taking into consideration the response of the accused contemplated in subregulation 5, together with the results of any investigation by the professional

board if applicable, and make his or her recommendation regarding the complaint.

- (8) If so instructed by the chairperson of the council, the registrar must refer to the council or the relevant professional board for consideration the chairperson's recommendation contemplated in subregulation (7) regarding the complaint together with all other documents concerning the case.
- (9) If the council or a professional board, on the strength of the information submitted to it by the registrar, resolves that the conduct forming the subject of the complaint does not constitute unprofessional conduct or for any other reason should not be subjected to an inquiry, it must inform the chairperson of the council accordingly and take such action as it deems fit.
- (10) If a professional board resolves that information submitted to it by the registrar in terms of subregulation 8, constitutes *prima facie* evidence of unprofessional conduct, it must—
 - (a) advise the council accordingly so that the council may conduct an inquiry contemplated in section 23(1) of the Act; or
 - (b) where the council has in terms of section 23(1A) of the Act delegated to the professional board the power to conduct the inquiry, arrange for such inquiry to be held.
- (11) If a disciplinary inquiry is to be held—
 - (a) the council or the professional board, as the case may be, must with due regard to the provisions of section

24(5) of the Act, appoint a *pro forma* complainant to act at such inquiry: Provided that no member of a professional board may be so appointed; and

(b) the chairperson of the council or the chairperson of the professional board, or the registrar on behalf of the council or the professional board, must with due regard to the provisions of section 24(9) of the Act, issue a summons in the form of Annexure A to these regulations, addressed to the accused and informing him or her—

- (i) of the date, time and venue of such inquiry;
- (ii) of the particulars of the complaint or charge or allegation; and
- (iii) that he or she may answer in writing to the complaint set forth in the summons, but warning him or her at the same time that any such answer may be used in evidence against him or her.

(12) The summons referred to in suregulation (11)(b) must be served on the accused at his or her registered address as reflected in the council's records or forwarded through the post to him or her at the registered address by registered letter or emailed to him or her at the email address that he or she has provided to the council.

- (13) A person who has been duly summoned in terms of these regulations must appear in person at the time and place specified in the summons, unless before the inquiry he or she informs the registrar in writing personally signed by him or her, that he or she admits guilt in respect of the complaint.
- (14) A person who has been duly summoned in terms of these regulations and who fails or refuses without cause acceptable to the inquiring body to appear at the time and place specified in the summons is guilty of an offence and liable to a fine as prescribed in the regulations and determined by the Inquiring body.
- (15) (a) In the event that the accused provides an admission of guilt as contemplated in subregulation (5)(c) or (13), the inquiring body, if satisfied that the accused is guilty of the offence to which he or she admitted guilt, may proceed with or without a hearing and invite the accused and the *pro forma* complainant to make written submissions, within such time limits as may be imposed by the inquiring body, regarding a suitable sanction to be imposed.
- (b) In the event that the *pro forma* complainant or the accused does not comply with the time limits contemplated in paragraph (a), the inquiring body must deal with the matter as if such accused elected not to make a submission in respect of a suitable sanction;

- (c) The sanction recommended by the inquiring body must be communicated in writing to the *pro forma* complainant and the accused.
- (16) The fees payable to witnesses subpoenaed by the inquiring body to give evidence at a disciplinary inquiry must be in accordance with the tariff applicable to witnesses giving evidence before a division of the High Court.
- (17) A summons for attendance as a witness at a disciplinary inquiry in terms of this Act, or for the production of any book, record, document or thing at such disciplinary inquiry must be substantially in the form of Annexure B hereto.

Procedure at a disciplinary inquiry

- 4. (1) Subject to the provisions of section 24 of the Act, the procedure at a disciplinary inquiry must be as follows:
 - (a) The inquiry must be conducted by the council or the professional board, or a committee of the council or professional board, as the case may be, in terms of the powers delegated by the council to such professional board or committee.
 - (b) Where a professional board or the council appoints a committee to conduct the inquiry, such committee must be composed of at least—

- (i) two public representatives, one of whom must be the chairperson of the inquiring body;
 - (ii) two persons registered in the profession and in the same discipline in which the accused is registered;
 - (iii) one member of the council; and
 - (iv) one assessor appointed in terms of section 24(4) of the Act.
- (c) If the summons contemplated in regulation 3(11)(b) has been served on or forwarded to the accused as contemplated in regulation 3(12) and the accused fails to attend the disciplinary inquiry, the inquiring body may—
 - (i) proceed with the disciplinary inquiry even if the accused is not present if there is no good cause shown for the accused's absence; or
 - (ii) postpone the hearing and, if it deems fit, summarily suspend the accused from practising until the finalisation of the matter.
- (d) If a summons is found to be defective, the inquiring body may allow the *pro-forma* complainant to amend the summons at the inquiry so that the inquiry may proceed, subject to the accused having the right to respond or modify his or her response to the summons as amended if necessary.

- (e) The failure of an accused, or a witness who is a member of a profession regulated by the Act, to attend a disciplinary inquiry constitutes unprofessional conduct.
 - (f) If the accused is present, the *pro-forma* complainant must read out such complaint as is contained in the summons addressed to the accused.
 - (g) If an inquiring body has been established specifically to deal with a complaint, the accused may be held liable for payment of the costs associated with the establishment and procedures of such inquiring body.
- (2)
- (a) Except where the accused has already provided to the registrar a personally signed letter before the hearing admitting guilt concerning the complaint, the chairperson of the inquiring body must ask the accused to plead guilty or not guilty to the complaint against him or her.
 - (b) If the accused refuses or fails to plead directly to the complaint, or if the accused is absent and if a summons has been served on or forwarded to him as contemplated in regulation 3(12) and he or she has not notified the registrar in writing of his or her admission of guilt as contemplated in regulation 3(5)(c), the chairperson of the inquiring body must make a note of such fact and enter a plea of not guilty on behalf of the accused, and a plea so entered has the same result as if it had in fact been so pleaded.

- (c) Subject to the provisions of section 24(1) of the Act, if the accused pleads guilty, the inquiring body may decide whether or not to hear evidence regarding the complaint.
- (3)
 - (a) Where evidence pertaining to any complaint needs to be adduced either because the accused has pleaded not guilty or because the inquiring body has decided that evidence should be adduced, the *pro-forma* complainant must be given the opportunity of stating his or her case and thereafter of leading evidence in support thereof.
 - (b) The accused must be allowed to cross-examine every witness giving evidence on behalf of the *pro forma* complainant provided that questions addressed to the *pro forma* complainant are relevant to the complaint.
 - (c) The *pro forma* complainant may re-examine the witness, if necessary, after the cross-examination provided that the questions addressed are relevant clarity and not to introduce new evidence.
 - (d) Upon conclusion of the giving of evidence, cross-examination and re-examination of the witnesses called by the *pro forma* complainant, the *pro forma* complainant's statement of his or her case shall be closed.
- (4)
 - (a) If the accused is present or is represented by a legal

- representative, the accused or the legal representative must be given the opportunity of stating his or her case and thereafter of leading evidence in support of it.
- (b) If the accused has already admitted guilt and pleaded guilty, the accused or his or her legal representative may present a written statement to the inquiring body and such statement must be read to the inquiring body and must be received as evidence.
- (c) The *pro forma* complainant must be allowed to cross-examine every witness giving evidence on behalf of the accused provided that questions addressed to the witnesses are relevant to the complaint, charge or allegation against the accused.
- (d) The accused or his or her legal representative may re-examine the witness if necessary after the cross-examination provided that the questions addressed are relevant for clarity and not to introduce new evidence.
- (e) After the accused or his or her legal representative has led evidence in terms of paragraph (a), or has presented and read his or her statement as contemplated in paragraph (b), his or her statement of his or her case shall be closed.
- (5) The chairperson of the inquiring body and the other members of the inquiring body may, through the chairperson, at any time question the *pro-forma* complainant, the accused or his or her

legal representative or witnesses giving evidence at a disciplinary inquiry.

- (6) (a) If the inquiring body deems it necessary for further evidence to be adduced in order to enable it to arrive at a just, reasonable and fair decision, it may allow further evidence to be led by either the *pro forma* complainant or the accused, or his or her legal representative, or by both after their case has been closed.
- (b) Only if exceptional circumstances exist and a written application is made to the inquiring body indicating cogent reasons therefor, may an inquiring body allow a *pro forma* complainant or the accused to reopen the case in order to submit further evidence.
- (7) After all the evidence has been given, the *pro forma* complainant must be allowed to address the inquiring body on the evidence and the relevant law and this must be allowed whether or not the accused has led evidence.
- (8) After the *pro forma* complainant has addressed the inquiring body as contemplated in subregulation (7), the accused or his or her legal representative, if present, must be allowed to make a closing argument in which he or she addresses the inquiring body on the evidence and relevant questions of law, except where the accused has admitted guilt.

- (9) If it sees fit, the inquiring body may allow the *pro forma* complainant to reply to questions of law which the accused or his or her legal representative raises in the address contemplated in subregulation (8).
- (10) If the accused is present and the complainant is not present but has filed an affidavit, the accused or his or her legal representative may answer to the affidavit so as to enable the inquiring body to deal with or to dispose of the matter as necessary.
- (11) All oral evidence must be taken on oath or affirmation and the inquiring body may decline to admit the evidence of any witness or deponent to a document who is not available for cross-examination or declines to submit thereto.
- (12)
 - (a) The statement of a complainant or an accused who is not present in person, or of any witness in support of the complaint or an accused who is not present in person must be in the form of an affidavit.
 - (b) Any party may object to the statement referred to in paragraph (a) if he or she is not given the opportunity to cross-examine the witness.
 - (c) Where the information or complaint is based on records of a lawfully constituted court, such records must be accepted as *prima facie* evidence provided they have been certified as being a true copy of the original or

provided the acceptance thereof is agreed upon by both the complainant and the accused.

(d) If it is practicable and appears just, the inquiring body may postpone the inquiry in order to subpoena, for the purposes of cross-examination, the witnesses whose evidence appears in the statement contemplated in paragraph (a).

(13) Upon the conclusion of the hearings, the inquiring body must deliberate thereon in camera and once a decision has been reached, the parties must be recalled and the chairperson of the inquiring body must announce the verdict.

(14) Where the accused or his or her legal representative is not present at the inquiry, the accused must be notified in writing of the inquiring body's verdict and the reasons thereof as soon as reasonably possible.

Procedure after a finding by an inquiring body

5. (1) After an announcement of a guilty finding has been made, or in the event that the accused has pleaded guilty and the inquiring body has decided that it is not necessary to lead evidence, the chairperson of the inquiring body must afford—
- (a) the *pro-forma* complainant an opportunity to make a submission regarding a suitable sanction to be imposed; and

- (b) the accused, or the accused's legal representative, as the case may be, an opportunity to make a submission in mitigation of the sanction to be imposed.
- (2) Any submission made by the *pro forma* complainant as contemplated in subregulation (1)(a) in respect of proof of previous convictions under the Act must be adduced by means of a certificate issued under the hand of the registrar: Provided that—
 - (a) such certificate specifies the complaint brought against the accused and the time, the finding, the date thereof and the penalty imposed; and
 - (b) the accused is entitled to challenge the correctness of such certificate in which case a certified copy of the minutes of the previous inquiry must be produced, or if such minutes have been destroyed, the relevant notice published in the *Gazette* in terms of section 24(2) of the Act must be produced.
- (3) After the submissions contemplated in subregulations (1) have been made, the inquiring body must deliberate in camera or by way of electronic communication, as it deems fit, upon the sanction to recommended to be imposed by the council.
- (4) If the inquiring body has determined regarding any complaint that there are in its opinion insufficient facts to support such complaint, it shall make a recommendation of a finding of not guilty.

- (a) A finding of not guilty shall be regarded as a recommendation, which final decision still needs to be made by council.

Procedure for approval of the recommended sanction

- 6. (1) Where a committee of a professional board makes a finding in a disciplinary inquiry, its recommendations regarding such finding and, where applicable, a sanction, must be forwarded to the professional board for consideration and the committee must submit all relevant documents together with the record of the evidence and its findings to the professional board for consideration and subsequent recommendation to the council.
- (2) Where a committee of the council makes a finding in a disciplinary inquiry, its recommendations regarding its findings and, where applicable, a sanction, must be forwarded to the council for consideration and approval.
- (3) Where a professional board makes a finding in a disciplinary inquiry, the recommendations concerning its findings and, where applicable, a sanction must be forwarded to the council for consideration and approval.
- (4) On submission of any recommendation to the council for consideration and approval in terms of subregulation (1), (2) or (3), the relevant committee or the professional board must submit all relevant documents together with the record of the evidence and its findings to the council for consideration and approval.

- (5) The accused must be informed that he or she may make further submissions in respect of mitigation of the sanction for the attention of the council regarding a recommended sanction, within a reasonable time limit set by the relevant committee or the professional board.
- (6) In the event that the accused does not comply with the set time limits, or confirms in writing before the expiration of the set time limit that he or she elects not to make any further submissions, the council must proceed to make a final decision regarding the guilt or innocence of the accused and, where applicable, a suitable sanction.
- (7) The final decision determined by the council as contemplated in subregulation (6) must be communicated in writing to the *pro forma* complainant and the accused.

Costs

- 7. (1) An inquiring body may make any costs order it deems appropriate in relation to the conduct of a disciplinary inquiry.
- (2) The accused must in his or her submissions to the council regarding a sanction clearly state why he or she should not be liable for any costs associated with the disciplinary inquiry.

Sanctions

- 8. Sanctions, including orders as to costs, are only final and binding only when approved and confirmed by the council.

Time limits

9. (1) The time limits determined under these regulations begin from the day after that on which notification by the inquiring body or professional board is received and public holidays and weekend days are included in the calculation of time limits.
- (2) If a communication required by these regulations is sent before midnight on the day on which a time limit expires, it complies with the time limit: Provided that if the last day of the time limit is a public holiday or a non-business day in the location from which the document is sent, the time limit shall expire at the end of the first subsequent business day.
- (3) The inquiring body or the professional board may, where the time limit initially specified has not already expired, extend the time limits it has set in terms of these regulations as it deems necessary and appropriate in the circumstances.

Repeal

10. Regulations 12 through 22 in Chapter 8 of the Regulations of 1982 are hereby repealed.

Short Title

11. These regulations are called the Regulations Relating to the Institution of a Disciplinary Inquiry, 2018.

**ANNEXURE A
FORM OF SUMMONS**

SUMMONS

**(Issued in terms of section 24(9) of the Allied Health Professions Act, 1982
(Act No. 63 of 1982) read with regulation 3(11)(b) to attend a disciplinary
inquiry)**

TO:

(Full names).....

Physical Address.....

Postal Address

Email address (if available)

You are hereby summoned to appear in person at an inquiry in connection with a complaint, charge or allegation of unprofessional conduct to be held in terms of the Allied Health Professions of South Africa Act, 1982 (Act No. 63 of 1982) (hereinafter referred to as the "Act") and the regulations thereto on the date and time and at the place specified below:

DATE: PLACE: TIME:

NAMES OF ACCUSED:

NAMES OF COMPLAINANT:

PARTICULARS OF COMPLAINT:

.....
.....

NOTE:

In terms of section 1 of the Act, unprofessional conduct is defined as meaning *“improper, disgraceful, dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy”*.

Should you desire that your written response dated to the complaint, or any other written communication you may wish to make, constitutes your explanation, defence or any preliminary points with regard to the complaint, please notify us to that effect as soon as possible but not later than **(Specify a date at least 10 days from the date on which the summons is served).**

If you intend to raise any point *in limine*, you are requested to advise us of such no later than **(Specify a date at least 10 days from the date on which the summons is served).**

You are hereby advised that any such communication may be used in evidence against you.

You are obliged to appear at the inquiry unless, before the date of the hearing, you plead guilty in a letter signed by you personally and addressed to the registrar or the council. Kindly note that you may still be held liable for costs relating to the inquiry.

If you are unable to attend the inquiry, you are requested to inform us accordingly within 48 hours of receipt of this Summons and to provide reason(s), together with any available documentary proof thereof, for your absence.

If you fail or refuse to attend the inquiry without a cause acceptable to the inquiring body you may be guilty of an offence and on conviction be liable to a fine or to imprisonment not exceeding three (3) months or to both such fine and such imprisonment in terms of regulation 3(14).

If you do not inform us of your inability to attend within 48 hours after receipt hereof and cause any unnecessary delays in the proceedings of the disciplinary inquiry, you may be held liable for the associated costs.

In terms of section 24(6) of the Act you are entitled, either personally or through your legal representative, to answer to the complaint at the inquiry and be heard in your defence.

You are also entitled to call witnesses in your defence but must secure their presence at the inquiry yourself.

LIST OF DOCUMENTS ATTACHED HERETO (IF ANY):

.....
.....
.....

Given under the hand of.....on
this.....day of20.....

.....Chairperson / Registrar

Name:

ANNEXURE B FORM OF SUMMONS

SUMMONS

**(Issued in terms of section 24(3)(a) of the Allied Health Professions Act,
1982 (Act No. 63 of 1982) read with regulation 3(17) to appear as a witness
at a disciplinary inquiry)**

To:

.....

.....

(name of person summoned and his or her address)

You are hereby summoned to appear before an inquiring body established under the Allied Health Professions Act , 1982 (Act No. 63 of 1982), at

.....**(place)** on theday of

..... 20.....at**(time)** in respect of a complaint against:

.....**(names of**

accused)

(a) to give evidence as a witness regarding the said complaint;and

(b) to bring with you the following book, document, record or thing:

.....

.....

Note:

In terms of section 24(3)(c) of the Act, if you—

(a) refuse, or without sufficient cause fail, to attend at the time and place specified in this Summons and give evidence relevant to the inquiry;

- (b) refuse to take the oath or to make affirmation when required to do so by the chairperson concerned;
- (c) refuse to produce any book, record, document or article which this Summons requires you to produce; or
- (d) attend before the council or the committee concerned but refuse to answer or to answer fully and satisfactorily and to the best of your knowledge and belief any question lawfully put to you,

you are guilty of an offence and on conviction liable to a fine, or to imprisonment for a period not exceeding three months.

Given under the hand ofthisday
of 20.....

.....
Chairperson/Registrar*

* Delete what does not apply