

REGULATIONS REGARDING THE RENDERING OF FORENSIC PATHOLOGY SERVICE

The Minister of Health intends, in terms of section 90(1)(i) of the National Health Act, 2003 (Act No. 61 of 2003), after consultation with the National Health Council, to make the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for attention of the Cluster Manager Non-Communicable Diseases, within three months of the date of publication of this notice.

SCHEDULE

1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –

"autopsy" means a post mortem dissection of a corpse;

"authorised person" means a forensic pathologist, forensic medical officer or medical practitioner qualified to perform post mortem examinations and/or autopsies on human bodies or the remains thereof and appointed in terms of regulation 22(b) of these regulations;

"body" means a dead human body or the remains thereof and "corpse" has a corresponding meaning;

"Code" means a mandatory Code of Forensic Pathology Service drafted and adopted by the Committee, and to be used as a manual for the effective functioning of the service;

"Committee" means the National Forensic Pathology Service Committee established in terms of regulation 55.

"competent person" means –

- (a) in case of conducting postmortem investigation, a person registered in terms of the Health Professions Act, 1974;
- (b) in the case of a finger prick for the withdrawal of a drop of blood for testing purposes, a person mentioned in paragraph (a) or any person who has been appropriately trained to perform such a procedure;

"death due to unnatural causes" include the following:-

- (a) any death due to the application of force, direct or indirect, and its complications;
- (b) any death due to the effects of any chemical or toxic substance, or drug, or any death due to an electrical effect;
- (c) any death where another person, by negligent act or omission can be held responsible for the death;
- (d) any death occurring while the deceased was under the influence of a local or general anaesthetic; and
- (e) where the death is sudden and unexpected or unexplained;

"department" means the relevant provincial Department of Health;

"designated facility" means a medico-legal mortuary specially designed for purposes of storing human bodies and where applicable, to perform post mortem examination and autopsies;

"designated vehicles" means a public mortuary vehicle specially adapted to transport human bodies, that complies with the specifications laid down in the Code.

"exhumation" means the disinterment of a previously buried or interred body;

"forensic pathologist" means a person registered as a forensic pathologist in terms of the Health Professions Act, 1974;

"Forensic Pathology Service" means the service provided for the medico legal investigation of death in terms of the Act;

"Head of Department" means the person appointed as the head of the provincial department responsible for health;

"Health Professions Act" means Health Professions Act, 1974 (Act No 56 of 1974);

"human remains" means any part or parts of a dead human body ;

"Inquest Act" means the Inquest Act, 1959 (Act No 58 of 1959);

"Investigating Officer" means a South African Police Service official appointed as an investigating officer to investigate a particular cause of death and where possible, to ensure prosecution;

"medical practitioner" means a person registered as a medical practitioner in terms of the Health Professions Act, 1974;

"medico-legal mortuary" means a mortuary of the Forensic Pathology Service that is used for post mortem examination of death and medico-legal autopsies;

"Occupational Diseases in Mines and Works Act" means the Occupational Diseases in Mines and Works Act, 1973 (Act No 78 of 1973);

"organ" means any part of the human body adapted by its structure to perform particular vital functions, including the eye and its accessories but excluding any skin and appendages, flesh, bone, bone marrow, body fluid, blood or gamete;

"post mortem examination" means an examination of a human body or the remains thereof, with the purpose of establishing the cause of death and factors associated with the death and may include an autopsy, and in the context of these regulations, for medico-legal purposes;

"the Service" means the provincial Forensic Pathology Service in a province; and

"the Act" means the National Health Act, 2003 (Act No. 61 of 2003).

Forensic Pathology Service

2. The relevant member of the Executive Council must within national policy and in terms of these regulations ensure that there is a Forensic Pathology Service within the respective provincial Department of Health.
3. The Service contemplated in regulation 2 includes, but is not limited to, –
 - (a) where appropriate, commencing with a scene of death investigation in consultation with the Investigating Officer;

- (b) taking responsibility for the collection of the body and removal from the scene;
- (c) securing custodianship of the body from the scene of death until released for burial or cremation, and the processes attached thereto ;
- (d) maintaining the chain of evidence relating to the body and any associated items at all times;
- (e) conducting postmortem investigation, including detailed external and, where required, internal examination of the body and harvesting of evidentiary material;
- (f) conducting appropriate special investigations ;
- (g) producing medico-legal reports, expert testimony and opinions ;
- (h) archiving documents, specimens and related materials;
- (i) collecting, reviewing and analysing related data to determine trends or prevalence of incidents of unnatural death; and
- (j) providing information and advice to health or other government authorities or departments .

Removal of body

- 4. The Service may only remove a body from the scene of death after the Investigating Officer has given authority for such removal of the body by the Service.
- 5. The handling of the body by the Service must be as prescribed by the Code.

Transportation of body

- 6. The Service is responsible for the handling and transporting of a body to the forensic pathology mortuary or any other designated facility .
- 7. The Service may only transport a body in a manner stipulated in the Code and must use designated vehicles for transportation contemplated in regulation 6 .
- 8. A person in charge of a health establishment where a person has died of unnatural causes must immediately notify the South African Police Service and the Service of such death .
- 9. For purposes of regulation 8, death in transit to or on arrival at, a health establishment must be reported by the person in charge of that health establishment.

10. The Service, after authorization by the Investigating Officer, must then remove the body as prescribed by the Code, to the designated facility.

Admission of body

11. The admission requirements and processes stipulated in the Code must be adhered to whenever a body is admitted by the Service.
12. The Service must not admit a body from another designated facility without the proper approval by the person in charge of the designated facility from where the body was removed.
13. A photograph of the face of the deceased and fingerprints of the deceased must be taken of every body admitted to the Service within two days after admission.

Storage of bodies

14. The Service must ensure that a refrigerated facility is used to store all bodies at a prescribed temperature and in accordance with the prescribed procedure.
15. The Service must ensure that the temperature of each fridge that contains a body is recorded on a graph at least twice per day.
16. Access to the fridges must be controlled and every removal of a body must be recorded in an incident log.
17. A body may only be removed from one facility to another after the express approval of the person in charge of the facility from where the body is being removed.
18. The approval contemplated in regulation 17 must indicate the injuries, if any, that the body may have sustained or the marks that may have been imposed during storage. Storage in this regard includes conduction of a post mortem examination.

Medico-legal Post Mortem Examination

19. A post mortem examination may only be conducted –
- (a) in terms of these regulations, provisions of the Act, the Inquest Act, 1959 and any other relevant Act;
 - (b) at a designated facility or institution; and

- (c) with the express request of the Investigating Officer investigating the death, or the authorization of the magistrate in whose district such post mortem examination is intended to be performed.
- 20. In instances where a death occurred due to natural causes or communicable diseases, the head of forensic pathology in a province may order that tissue or blood sample be extracted for purposes of laboratory testing, and the determination of the cause of such death.
- 21. Medico-legal post mortem examinations must be conducted without undue delay.

Practitioners authorised to conduct post mortem examination

- 22. A post mortem examination on a body or the remains of a body may only be performed by an authorised person who is-
 - (a) registered as such with the Health Professions Council of South Africa; and
 - (b) has been appointed by the Head of Department for this purpose.
- 23. An authorised person contemplated in regulation 22 may consult with appropriately qualified professionals and request such professionals to participate in the post mortem examination and contribute to the further examination of such body or the remains of such body: Provided that the authorised person retains the right to over-rule the conclusion of such professionals after duly considering their conclusion.
- 24. Students and trainee personnel may only participate in a post mortem examination under the direct guidance and supervision of an authorised person contemplated in regulation 22.

Additional evidence at post mortem examination

- 25. Subject to any other relevant law, an authorised person contemplated in regulation 22, may submit for examination, or cause to be submitted, any tissues, fluids, object, or things related to such human remains, for purposes of establishing the cause and circumstance of death or for furthering the administration of the processes of justice.
- 26. Subject to the Act, an authorised person is the only person who has the authority to decide to dissect a body, or remove any part, organ or contents of such body for a special investigation.

Persons authorised to assist with post mortem examination

27. The Head of Department or the person to whom such function has been delegated, may authorize any other person other than an authorised person, to participate in a post mortem examination.

Practitioners authorised to observe post mortem examination

28. Any person other than –

- (a) the Investigating Officer investigating the cause of death;
- (b) an authorized person; or
- (c) a person contemplated in regulation 27,

may apply to the magistrate within whose jurisdiction the cause of death is being investigated or to the authorised person, to be present at the post mortem examination.

29. The person referred to in regulation 28 must demonstrate a material interest in the outcome of such post mortem examination, to the magistrate or authorised person concerned.

30. The person referred to in regulation 28 may request the authorised person to allow an independent forensic pathologist, forensic medical officer or medical practitioner to attend on his or her behalf, as long as:

- (a) such forensic pathologist, forensic medical officer or medical practitioner does not participate in the post mortem examination; and
- (b) such request does not cause undue delay in the conducting of the post mortem examination.

31. Where the authorised person has declined the request contemplated in regulation 30, written reasons must be forwarded to the person concerned.

32. Any person aggrieved by the decision of the authorised person may appeal to the Head of Department within 48 hours of being notified of the decision to refuse such attendance.

Special investigations

33. A post mortem examination in respect of a special investigation must be carried out as prescribed by the Act and the Code.

Reporting and consultation

34. No person is allowed to make copies of any documentation relating to a post mortem examination without prior written approval of the person in charge of that designated facility.
35. No person may release information or documentation, original or copied, pertaining to any post mortem examination to any other person unless duly authorised by the person in charge of the designated facility where such post mortem examination was conducted.
36. When any copy is made or document removed from a post mortem file, a record must be made on the cover of the file indicating -
- (a) the name and signature of the person who made the copy or removed the document;
 - (b) the name of the document copied or removed;
 - (c) whether the document was copied or removed;
 - (d) the number of copies made;
 - (e) the purpose for which the copies were made, including reference to the letter for any official request;
 - (f) the date and time the document was copied or removed; and
 - (g) whether written approval contemplated in regulation 34 was given.
37. When any file is removed, whether for court appearance, studying its contents or for any other purpose, a record must be made in a Forensic Pathology Service Register of files indicating the-
- (a) name and signature of the person who removed the file;
 - (b) date and time of removal;
 - (c) purpose of the removal; and
- when the file is returned -
- (d) date and time of the return; and
 - (e) name and signature of the person returning the file.
38. A forensic pathologist, forensic medical officer or medical practitioner that copies or removes any documentation relating to a post mortem examination, must return all

such documentation, original or copied, that is no longer required for academic or consultative purposes, to the file immediately.

Identification of body

39. A body may only be identified by a parent, guardian, care-giver, spouse, partner, major child or any person who has proven to know the identity of such body.
40. The personal effects of the deceased must be handed to the person contemplated in regulation 39 if the authorised person who conducted the postmortem examination and the Investigating Officer are satisfied that such personal effects are not required as evidence.

Release of body

41. A body may only be released from the Service to a registered undertaker after –
- (a) the parent, guardian, spouse, caregiver, partner, major child or the Court has given written consent;
 - (b) the authorised person has given approval for such release of the body; and
 - (c) a tissue or blood sample for DNA analysis has been collected and appropriately archived.
42. Where the person giving consent as contemplated in regulation 41(a) is unable to pay for the burial of the body, the municipal council having jurisdiction of the area where the body was stored, must provide for a pauper burial.

Unidentified body

43. A body not identified must be moved to a freezer within seven days of admission, and if such body remains unidentified for 30 days, the municipal council under whose jurisdiction the designated facility is, must ensure that a pauper burial for such body is undertaken.

44. The person in charge of a facility where there is an unidentified body, must ensure that complete details of such body, including a photograph, fingerprints and blood or tissue sample, are taken from the body and archived.
45. Under exceptional circumstances and subject to the provisions of the Act, the provincial head of the Service, in consultation with the Head of Department, may release an unidentified body to an institution of higher learning for specific purposes .

Death of detained person

46. The provincial head of the Service must be immediately notified when a facility is requested to admit the body of a person who died of natural or unnatural causes whilst detained by the South African Police Service or the Department of Correctional Services as an awaiting-trial or convicted prisoner.
47. A post mortem examination, if necessary, to determine the cause of death contemplated in regulation 46 may only be performed -
- (a) by an authorized person specifically appointed by the provincial head of the Service;
 - (b) in case of death whilst detained by the South African Police Service, after the Independent Complaints Directorate has authorised such post mortem examination; and
 - (c) in case of death whilst detained by Correctional Services, after the Inspecting Judge referred to in the Correctional Services Act, 1998 (Act No. III of 1998), has authorised such post mortem examination.

Exhumation

48. A body may be exhumed only with the written permission of the provincial head of the Service or a court order.
49. An exhumation must be done in accordance with the Code and the relevant legislation.

Accident involving more than one person

50. In cases of any fatal accident involving more than one person, the head of the national Forensic Pathology Service or the person to whom he or she has delegated this function, must co-ordinate the processing of bodies in terms of these regulations and ensure collaboration with the South African Police Service or any other relevant structure.
51. The head of the national Forensic Pathology Services or the person to whom he or she has delegated this function, must ensure –
 - (a) that an authorised person attends the accident scene with a Forensic Investigator; and
 - (b) a post mortem examination is performed in terms of these regulations by a Chief Specialist Forensic Pathologist, or his her designate, on every body removed from the accident.

Unnatural death of South African citizen outside national boundaries

52. A Head of Department may direct an authorised person to attend a post mortem examination, in a watching brief, of a South African citizen whose death is deemed to be due to unnatural causes, in any other country, if the Head of Department is of the opinion that such attendance will further the administration of justice.
53. Any natural or juristic person who has demonstrated a material interest in a particular death of a South African citizen, may request the assistance of the provincial department for representation at the post mortem examination outside the borders of the Republic.
54. Any death due to unnatural causes in an aircraft prior to its landing in South African must be deemed to have occurred at the port of entry and must be investigated by the Service in whose province such port of entry is situated.

National Forensic Pathology Service Committee

55. A committee known as the National Forensic Pathology Service Committee is hereby established.
56. The Committee must consist of –

- (a) the manager from the national Department of Health responsible for Forensic Pathology Services as the chairperson ;
- (b) the manager from each provincial Department of Health responsible for Forensic Pathology Services;
- (c) one representative from each university Academic Forensic Pathology department in South Africa; and
- (d) any other person that the Committee may want to include in order to achieve its objects.

57. The Committee must advise the Minister on –

- (a) policy concerning any matter that will ensure, promote, improve or maintain Forensic Pathology Services, including –
 - (i) a uniform system of service delivery ,
 - (ii) the efficient, accountable, and accessible provision of Forensic Pathology Services ,
 - (iii) interventions to prevent unnatural death ,
 - (iv) relevant education, training and research, and
 - (v) establishment and maintenance of data collection and processing
- (b) proposed legislation or amendment to an existing legislation that pertains to Forensic Pathology Services,
- (c) norms, standards and guidelines for the rendering of Forensic Pathology services, including health and safety standards and the minimum standards for accreditation of forensic mortuaries to be collated into a National Code of Forensic Pathology Service; and
- (d) any technical matter related to Forensic Pathology Service that may have an impact on health policies and strategies.

58. The Committee must ensure that national guidelines on the collaboration with the South African Police Services in the investigation of unnatural deaths are drafted and adhered to.

59. The Committee must perform any other function that may be referred to it by the Minister or the Director-General.

60. For purposes of performing its functions, the Committee may, at its discretion, consult or receive representations from any knowledgeable person or expert, body or authority.

Accounting and Reporting Requirements

61. The Head of Department must submit annual returns of statistics and reports to the Director General in a format to be determined by the Director General from time to time.

Contravention of Regulations and penalties

62. Any person who fails to comply with the provisions of these regulations commits an offence and if convicted, liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Delegation

63.(1) The Head of Department or the provincial head of the Service may, in writing, and on such conditions as he or she may determine, delegate or assign any power or duty to an official of the provincial department or staff of the designated facility, as the case may be, unless there is a specific prohibition of such delegation or assignment.

(2) A delegation or assignment made under sub-regulation (1) does not-

- (a) divest the Head of Department or the provincial head of the Service of the responsibility or accountability concerning the performance of the function involved; or
- (b) prohibit the performance of the function involved by the Head of Department or the provincial head of the Service.

(3) The Head of Department or the provincial head of the Service may amend or set aside any decision taken by a person in the exercise of any such power delegated to that person.

Dr. **M.E. TSHABALALA-MSIMANG**

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