

## DEPARTMENT OF HEALTH

NO. 1066

22 October 2021

## HEALTH PROFESSIONS ACT, 1974

**REGULATIONS RELATING TO THE CONDUCT OF INQUIRIES INTO ALLEGED  
UNPROFESSIONAL CONDUCT UNDER THE HEALTH PROFESSIONS ACT, 1974:  
AMENDMENT**

The Minister of Health intends, in terms of section 61(1)(h) of the Health Professions Act, 1974 (Act No. 56 of 1974), 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 on the proposed regulations to the Director-General of Health, Private Bag X828, Pretoria, 0001 (for attention of the Director: Public Entities Governance), mihloti.mushwana@health.gov.za; within three months of the date of publication of this Notice.

  
DR M.J PHAAHLA, MP  
MINISTER OF HEALTH

DATE: 09/09/2021

## SCHEDULE

### Definition

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context indicates otherwise-  
“**Regulations**” means the Regulations relating to the Conduct of Inquiries into Alleged Unprofessional Conduct made under the Health Professions Act, 1974 (Act No. 56 of 1974), and published under Government Notice No. R. 102 06 February 2009 and amended by Government Notice No. 53 in Government Gazette No. 42980 of 31 January 2020; and  
“**the Act**” means the Health Professions Act, 1974 (Act No. 56 of 1974).

### Amendment of regulation 3 of the Regulations

2. Regulation 3 of the Regulations is hereby amended by substitution of the following –

#### “3. Mediation

- (1) The chief mediator must -
  - (a) mediate in the case of minor transgressions referred to him or her for mediation in terms of regulation 2(3)(d) with a view to resolving such matters;
  - (b) refer cases that could not be resolved through mediation to the registrar for preliminary investigation; and
  - (c) refer matters not falling under the jurisdiction of the council to appropriate bodies or tribunals and inform the complainant of such referral.
- (2) The chief mediator may, after receiving a complaint for mediation, call for further information in any manner he or she deems appropriate from any person who, in his or her opinion, may assist in the mediation to resolve the matter.

- (3) The chief mediator must, after receiving the information referred to in subregulation (2), consider the matter and mediate between the parties with a view to making a determination to resolve the matter between the parties, advise the parties of his or her determination on the matter and require them to indicate whether or not they will abide by the determination.
- (4) If the parties agree to abide by the determination, the chief mediator must confirm the determination in writing and the determination will then be binding on both parties as a final resolution of the matter.
- (5) If either party does not agree to abide by the determination, the matter must be referred to the registrar for preliminary investigation.
- (6) The information obtained by the chief mediator in terms of subregulation (2) is confidential and privileged and, if a matter is referred for preliminary investigation in terms of subregulation (5), such information may not be considered by the preliminary committee of inquiry."

#### **Insertion of regulation 4A in the regulations**

3. The Regulations are hereby amended by insertion of regulation 4A after regulation 4 of the regulations-

#### **"4A Appeal**

- (1) A complainant who is aggrieved by the decision of the Preliminary Committee of Inquiry may appeal to the appeals committee of the relevant professional board against such decision.
- (2) Notice of appeal must be submitted within 30 days from the date on which such decision was made or from the date the complainant becomes aware of such decision."

**Amendment of regulation 5 of the regulations**

4. Regulation 5 of the Regulations is hereby amended by substitution for the following –

**“5. Arranging an inquiry**

- (1) After receipt of a directive referred to in regulation 4(8) or a notice of rejection of the penalty or if no response is received by the due date as contemplated in regulation 4(9)(6), the registrar must issue a notice, essentially in the form of Annexure A to these regulations, addressed to the respondent, stating the date and time when and the place where the inquiry will be held and enclosing a charge sheet as formulated by the pro forma complainant.
- (2) The formulation of a charge sheet by the pro forma complainant shall not be subject to the approval of the preliminary committee of inquiry or the approval of the chairperson of the preliminary committee of inquiry.
- (3) The registrar must serve the notice and the charge sheet referred to in sub regulation (1) at the address of the respondent at least 30 days prior to the date of the inquiry, and a copy of the notice and charge sheet must be served at the address of the respondent's legal representative, if appointed at the time of service to the respondent.
- (4) The pro forma complainant may, at any time, effect immaterial amendments to a charge sheet without the approval of the preliminary committee of inquiry or the approval of the chairperson of the preliminary committee of inquiry”

**Amendment of regulation 7 of the Regulations**

5. Regulation 7 of the Regulations is hereby amended by substitution for the following-

**“7. Exchange of documents**

- (1) The *pro forma* complainant and the Respondent or his or her legal representative must, 30 days before the inquiry, exchange all documents which they intend using during the hearing of the complaint by the professional conduct committee.
- (2) The *pro forma* complainant must initiate the exchange of documents in terms of sub regulation (1).
- (3) The respondent or his or her legal representative must, 30 days before the inquiry, indicate the exceptions, objections (including an objection to the jurisdiction of a professional conduct committee to inquire into the matter) or points *in limine* he or she intends to raise”

#### **Amendment of regulation 8 of the regulations**

6. Regulation 8 of the regulations is hereby amended by the substitution for sub regulation (1) of the following sub regulation:

- “(1) In order to determine the issues in dispute, the *pro forma* complainant must arrange a pre-inquiry conference, which must be attended by both parties or their legal representatives, if any, on any date at least seven days before the date of the inquiry at a mutually convenient time and venue, at which conference-
- (a) the respondent or his or her legal representative must indicate the exceptions, objections (including an objection to the jurisdiction of a professional conduct committee to inquire into the matter) or points *in limine* he or she intends to raise;
  - (b) the respondent or his or her legal representative must indicate how he or she intends to plead to the charge or charges;
  - (c) copies of all documents, reports, notes, X-rays or any other exhibits which became available after the exchange of documents in terms of regulation 7 and which a party intends to use at the inquiry must be furnished to the other party;
  - (d) perusal of the originals of the documents, reports, notes, X-rays or other exhibits referred to in paragraph (c) is allowed;

- (e) admissions may be made by both parties with regard to allegations or exhibits; and
- (f) any other matter concerning the inquiry must be resolved”.

#### **Amendment of regulation 11 of the regulations**

7. Regulation 11 of the regulations is hereby amended by the substitution for sub regulation (1) of the following sub regulation –

“(1) The respondent or the pro forma complainant may, after the imposition of a penalty on the respondent, appeal to the appeal committee against the findings or penalty of the professional conduct committee or both such finding and such penalty.”

#### **Amendment of regulation 13 of the regulations**

8. Regulation 13 of the regulations is hereby amended by insertion of subregulation (5) after subregulation (4)-

“(5) The pre-inquiry conference and the professional conduct inquiry may be conducted through video conferencing of any form including but not limited to microsoft teams, skype, or webex”.

#### **Short title**

9. These Regulations are called Regulations Relating to the Conduct of Inquiries into Alleged Unprofessional Conduct Under the Health Professions Act, 1974: Amendment, 2021.