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- (b) in another province *with the concurrence of* the head of that other **provincial department**,
- (2) A transfer as contemplated in sub-section (1) may only be done if it is necessary for the care, treatment and *rehabilitation* of the *state patient* concerned.
- (3) Notwithstanding the *national department's* determination as contemplated in **section 42 (3)**, a relevant **Mental Health Review Board** may order the *state patient* to be transferred to another designated *health establishment* designated in terms of section 41 with maximum security facilities.
- (4) An order contemplated in subsection (3) may only be given –
- (a) if the *state patient* has been or is likely to inflict harm on others; and
- (b) upon receipt of a written application from head of the *health establishment* at which the *state patient* is located setting out the facts on which the request is based.
- (5) Upon issuing the order contemplated in **subsection (3)**, the **Mental Health Review Board** concerned must forward a copy of the order concerned to the head of the *national department*.
- (6) Within two weeks of receiving the order, the head of the *national department* must
- (a) determine the *health establishment* at which the *state patient* must be transferred to; and
- (b) ensure that the necessary arrangements are made with the appropriate *health establishment* to effect the transfer as ordered.
- (7) The *head of a health establishment* may *with the concurrence of* the head of the *health establishment* with maximum security facilities, effect the transfer pending the decision of the **Mental Health Review Board** if the conduct of the *state patient* has or is likely to give rise to an emergency.
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44. **STATE PATIENTS WHO ABSCOND**

- (1) If a **state patient** has absconded or has been deemed to have absconded, the head of the relevant designated **health establishment** must by written notice –
 - (a) immediately inform the South African Police Service of this fact and request it to locate and return the patient to the **health establishment** concerned; and
 - (b) inform the Registrar or Clerk of the relevant **Court** concerned and the **official curator ad item** of this fact in writing within two weeks of having notified the South African Police Service.
- (2) The South African **Police** Service is obliged to accede to the request for assistance made in terms of this section.
- (3) When requesting the assistance, the estimated **level** of dangerousness of the **state patient** must be conveyed to the member of the South African Police Service providing the assistance.

45. **LEAVE OF ABSENCE FROM DESIGNATED HEALTH ESTABLISHMENTS**

- (1) The **head of a health establishment** designated in terms of **section 41**, may in writing grant a leave of absence to the **state patient** from the designated **health establishment** concerned on such terms and conditions that they deem appropriate.
- (2) The written notice must **specify** –
 - (a) the commencement and return period of the leave; and
 - (b) the terms and conditions to be adhered to by the **state patient** during the **period of leave**.
- (3) At any stage during the period of leave, the **head of the health establishment** concerned may cancel the leave and require the **state patient** to return to the designated **health establishment** if the head has reason to believe that the relevant **state patient** is not complying with the terms and conditions applicable to the leave.

- (4) The cancellation notice referred to in **subsection (3)** must specify the date by which the *state patient* must return to the designated *health establishment*.
- (5) If the *state patient* fails to return to the designated *health establishment* concerned on the return date specified in the notices referred to in **subsection (2)** and **(3)**, the patient will be deemed to have absconded.

46. **PERIODICAL REPORTS ON STATE PATIENTS**

- (1) Upon the expiry of six months after the date on which care, treatment or *rehabilitation* services was commenced on a *state patient* and after every 12 months thereafter whilst the *user* is a *state patient*, the head of the relevant designated *health establishment* at which the *state patient* was admitted, must cause the *mental health status* of that *user* to be reviewed.
- (2) The review must concern itself with -
 - (a) the *mental health status* of the *state patient*; and
 - (b) making recommendations regarding -
 - (i) a plan for further care, treatment and *rehabilitation* for the *state patient*;
 - (ii) the merits of granting the *state patient* leave of absence; and/or
 - (iii) the discharge of the *state patient*.
- (3) A synopsis of the review must be -
 - (a) contained in a report; and
 - (b) submitted to -
 - (i) the head of the *national (Department)*; and
 - (ii) the *official curator ad litem* and if appointed, the *administrator*.

- (4) Within one month after receipt of the report, the head of the *national department* must –
- (a) cause the report to be considered, obtain **information from the** person making the report and make recommendations concerning the -
 - (i) further care, treatment and *rehabilitation* for the *state patient*;
 - (ii) granting the *state patient* a leave of absence; and/or
 - (iii) the discharge of the *state patient*.
 - (b) send a written notice of its recommendation to the *head of the health establishment* concerned.

47. APPLICATIONS FOR DISCHARGE OF STATE PATIENTS

- (1) Any one of the following persons may apply to a High Court Judge for the discharge of a *state patient* –
- (a) the *state patient*;
 - (b) the *official curator ad litem* or if appointed the *administrator*;
 - (c) the *head of the health establishment* at which the *state patient* has been admitted to;
 - (d) the *medical practitioner* responsible for administering care, treatment and *rehabilitation* services to a *state patient*;
 - (e) a spouse, *associate* or the next of kin of a *state patient*; or
 - (f) any other **person authorised to act on behalf of the state patient**.
- (2) Subject to subsection (3), the application must set out or contain -
- (a) the reasons for the application;

- (b) a report from a *clinical psychologist* if the *state patient* has been assessed by such a person;
 - (c) in the case where the applicant is the *official curator ad litem* or the *administrator*, the application must contain a report containing a history of the *state patient's mental health status* and a prognosis concerning the patient's *mental health status* from –
 - (i) the head of the relevant designated *health establishment* at which the *state patient* has been admitted; and
 - (ii) two *mental health practitioners* at least one of whom must be a *psychiatrist*.
 - (d) in the case where the applicant is not an *official curator ad litem* or *administrator* an indication of whether the current curators may have a conflict of interest with the *state patient* and supply proof that a copy of the application has been given to the curators concerned;
 - (e) in the case where the applicant is an *associate* or the person contemplated in **paragraph (d)**, the nature of the substantial or material interest **or the nature of the conflict**;
 - (f) all information or reports relevant to the application that are in the possession of the applicant; and
 - (g) if known, the details of any prior application for the discharge of the *state patient*.
- (3) In the case where the applicant is not the *official curator ad litem* or *administrator*, the **Registrar of the High Court** must submit a copy of the application to the *official curator ad litem* or if appointed the *administrator* concerned. The curator or *administrator* as the case may be, must within 30 days of receipt of the application, submit to the High Court judge concerned a written report **which –**
- (a) must **set out and contain a history** of the *state patient's mental health status* and a prognosis concerning the patient's *mental health status* from –

- (i) the head of the designated *health establishment* at which the *state patient* has been admitted; and
 - (ii) two *medical practitioners* at least **one of whom must be a psychiatrist**; and
- (b) must **contain** a report from a *clinical psychologist* if the *state patient* has been assessed by such a person;
- (c) must indicate whether an application has been made for the discharge of the *state patient* concerned within a period of 12 months preceding the present applicant and if so, indicate the status of that application; and
- (d) must set out recommendations on whether the present application should be granted and the basis for the recommendation.
- (4) When considering an application made in terms of this section, the High Court Judge –
- (a) must establish whether an application for the discharge of the *state patient* concerned is pending or had been considered within a period of 12 months preceding the present application, in which case, the present application must be dismissed;
 - (b) must establish whether the current *administrator* has a conflict of interest with the *state patient*, in which case request the Master of the High Court to appoint another *administrator* to assist in the processing of the present application: and
 - (c) may call for further information and assistance from the applicant, mental health practitioner or a relevant curator. as may be necessary to process the application.
- (5) The *administrator* appointed in terms of subsection 4(b) -
- (a) must adduce any available evidence relevant to the application:

- (b) **must perform the functions and duties as required by the High Court Judge concerned to process the application; and**
 - (c) **is entitled to be remunerated by the *national department responsible* for justice in accordance with the tariff and scale of benefits and allowances determined for this purpose by the member of cabinet responsible for Justice.**
- (6) **Upon considering the application, the High Court Judge may order that the *state patient* –**
- (a) **remain a *state patient*;**
 - (b) **be reclassified and be dealt with as a voluntary, assisted or *involuntary mental health care user* in terms of Chapter V;**
 - (c) **be discharged unconditionally; or**
 - (d) **be discharged conditionally.**

4s. ***CONDITIONAL DISCHARGE OF STATE PATIENTS, AMENDMENTS TO CONDITIONS OR REVOCATION OF CONDITIONAL DISCHARGE***

- (1) **If the High Court Judge orders that the *state patient* be discharged conditionally as contemplated in **Section 47(6)(d)**, the written order contemplated in that section, must specify the terms and conditions of the discharge and the period of the conditional discharge.**
- (2) **In respect of the *state patients who* have been conditionally discharged, the *head of the health establishment* at which the *state patient* was admitted must -**
 - (a) **cause their *mental health status* to be monitored at that *health establishment*; or**
 - (b) **arrange for another *health establishment* to monitor the *state patient* if the conditional discharge requires that the *state patient* present him/herself at that *health establishment* for care, treatment or *rehabilitation*.**

- (3) The person conducting the monitoring must submit a written report to the *head of the health establishment* at which the *state patient* was originally admitted to –
- (a) in accordance with any term and condition that may be applicable to the conditional discharge;
 - (b) at least at the end of every six month period from the date of the conditional discharge being ordered; and
 - (c) at the end of the conditional discharge period.
- (4) If at the end of the conditional discharge period, the head of the *health establishments* concerned, is satisfied that the *state patient* has materially complied with the terms and conditions applicable to the discharge, and that the *mental health status of the state patient* has not deteriorated the head must –
- (a) immediately unconditionally discharge the *state patient*; and
 - (b) in writing accordingly inform the *state patient* and the Registrar of the Court concerned.
- (5) If upon considering any report submitted in terms of subsection (2), the head of the *health establishment* concerned has reason to believe that the *state patient* has not materially complied with any term or condition applicable to the discharge, or that the *mental health status of the state patient* has deteriorated, the head may apply to the Registrar or the High Court concerned for an order amending the conditions or revoking the conditional discharge and forward a copy of this application to the *official curator ad litem*.
- (6) A *state patient who* has been discharged conditionally may at any time after six months have elapsed from the date of the order and at intervals of no less than six months thereafter, apply in the *prescribe/* manner to the High Court concerned for –
- (a) an amendment of the conditions applicable to the discharge: or
 - (b) an unconditional discharge.

- (7) The application for the amendment of a conditional or an unconditional discharge, must set out –
- (a) the **condition to be amended**;
 - (b) the **duration of the condition**: and
 - (c) the **reasons** for the amendment or revoking the conditional discharge.

CHAPTER VII

PRISONERS WHO ARE MENTALLY ILL

49. DESIGNATION OF HEALTH ESTABLISHMENTS FOR PRISONERS WHO ARE MENTALLY ILL

The head of the *national department* must *with the concurrence of* the heads of the *provincial departments* by regulation designate the *health establishments*, which may admit, care for, treat and provide *rehabilitation services* to *mentally ill prisoners*.

50. ENQUIRY INTO THE HEALTH MENTAL STATUS OF A CONVICTED PRISONER

- (1) If it appears to the head of a *prison*, either through personal observation or by means of information provided, that a prisoner may be *mentally ill*, the head of the *prison* must cause the *mental health status* of the prisoner to be enquired into by –
- (a) a *psychiatrist*; or
 - (b) where a *psychiatrist* is not readily available, by –
 - (i) a *medical practitioner*; and
 - (ii) a *mental health care practitioner*.
- (2) Upon completion of the enquiry, the person(s) conducting the enquiry must submit a written report to the head of the *prison*. The written report must specify –

- (a) the *mental health status* of the convicted prisoner: and
- (b) a plan for the care, treatment and *rehabilitation* of that prisoner,

52. ***CARE FOR, TREATMENT AND REHABILITATION OF PRISONERS WITH MENTAL ILLNESSES***

If the person(s) conducting the enquiry referred to in section 50 finds that the *mental illness* of the prisoner is of such a nature that the prisoner concerned could appropriately be cared for, treated or *rehabilitated* in the *prison*, the head of the *prison* must take the necessary steps to ensure that the required levels of care, treatment and *rehabilitation* services are provided to the prisoner concerned.

52. ***TRANSFER OF PRISONERS WHO ARE MENTALLY ILL TO A DESIGNATED HEALTH ESTABLISHMENT***

If the person(s) conducting the enquiry referred to in section 50. finds that the *mental illness* of the convicted prisoner is of such a nature that the prisoner concerned ought to be cared for and treated in a *health establishment* designated in terms of section 49, the head of the *prison* must request a magistrate to cause a subsequent enquiry to be conducted into the *mental health status* of the prisoner for purposes of establishing whether a transfer to a *health establishment* designated in terms of section 49 would be appropriate. This enquiry must be conducted in accordance with the procedure outlined in section 50.

53. ***MAGISTERIAL ENQUIRY CONCERNING TRANSFER TO DESIGNATED HEALTH ESTABLISHMENT***

- (1) When initiating the subsequent enquiry contemplated in section 52, the head of the *prison* must forward to the magistrate a report containing the written reports referred to in Section 50 (2).
- (2) Upon receipt of this report. the magistrate must commission two *mental health care practitioners* at least one of whom must be a *psychiatrist, clinical psychologist* or a *medical practitioner with special training* in mental health to

enquire into the *mental health status* of the prisoner concerned and make recommendations on whether the prisoner concerned should be transferred to a *health establishment* designated in terms of **section 49**,

- (3) If the *mental health care practitioners* recommend that –
- (a) the prisoner should be cared for and treated in a *health establishment* designated in terms of **section 49**, the magistrate must issue a written order to the head of the *prison* to transfer the prisoner concerned to that *health establishment* in accordance with the procedure outlined in **section 54**; or
 - (b) the prisoner need not be cared for and treated in a *health establishment* designated in terms of **section 49**, but instead be cared for and treated in the *prison* at which the convicted prisoner is located, the magistrate must issue a written order to the head of the *prison* to take the necessary steps to ensure that the required levels of care and treatment are provided to the prisoner concerned.

S4. PROCEDURE TO TRANSFER MENTALLY ILL PRISONERS TO A DESIGNATED HEALTH ESTABLISHMENT

- (1) When an order to transfer a *mentally ill* prisoner to a *health establishment* designated in terms of **section 49** has been received by the head of the *prison*, the head must forward a copy of the order to –
 - (a) the *administrator* if appointed; and
 - (b) the head of the *national department* together with a request that the *mentally ill prisoner* be transferred to the *health establishment* designated in terms of **section 49**.
- (2) As soon as it is practicable after receipt of the order, the head of the *national department* must -
 - (a) determine the *health establishment* at which the *mentally ill prisoner* must be transferred;

- (b) ensure that arrangements are made to effect the transfer of the *mentally ill prisoner* to the appropriate *health establishment* designated in terms of section 49: and
 - (c) in writing convey the details of the transfer to the head of the *prison* and the *administrator*, if appointed in respect of that prisoner.
- (3) Within two weeks of being notified of the transfer, the head of the *prison* must cause the *mentally ill prisoner* to be transferred to the *health establishment* identified in the notice.
- (4) Whenever a transfer is effected in terms of this section, the *head of the health establishment* receiving the *mentally ill prisoner* is –
- (a) deemed to be in lawful custody of the prisoner concerned only upon receiving the prisoner concerned: and
 - (b) responsible for the safe custody of the prisoner concerned.

55. ***TRANSFER OF MENTALLY ILL PRISONERS BETWEEN DESIGNATED HEALTH ESTABLISHMENTS***

- (1) The head of the *national department* may at any time transfer a *mentally ill prisoner* to another *health establishment* designated in terms of section 49.
- (2) A transfer as contemplated in subsection (1) may only be done if it is necessary for the care, treatment and *rehabilitation of the mentally ill prisoner*.
- (3) Notwithstanding the *national department's* determination as contemplated in section 54(2) or a transfer effected in terms of that section, a relevant *Mental Health Review Board* may order the *mentally ill prisoner* to be transferred to another *health establishment* designated in terms of section 49 with maximum-security facilities.
- (4) An order contemplated in subsection (3) may only be given –

- (a) if the *mentally ill prisoner* has been or is likely to inflict harm to others; and
 - (b) upon receipt of a written application from head of the *health establishment* at which the *mentally ill prisoner* is located setting out the facts on which the request is based.
- (5) Upon issuing the order contemplated in ~~subsection (3)~~, the *Mental Health Review Board* concerned must forward a copy of the order concerned to the head of the *national department*.
- (6) Within two weeks of receiving the order, the head of the *national department* must
- (a) determine the *health establishment* at which the *mentally ill prisoner* must be transferred to; and
 - (b) ensure that necessary arrangements are made with the appropriate *health establishment* or *correctional facility* to effect the transfer as ordered.
- (7) The *head of a health establishment* concerned may with the concurrence of the *head of the health establishment* with maximum security facilities may effect transfer, pending the decision of the *Mental Health Review Board* if the conduct of the *mentally ill prisoner* has or is likely to give rise to an emergency,
- (8) Whenever a transfer is effected in terms of this section –
- (a) the person or body ordering the transfer must in writing notify the relevant head of the *prison* of the details of the transfer. within two weeks of the transfer; and
 - (b) the *head of the health establishment* receiving the *mentally ill prisoner* is -
 - (i) deemed to be in lawful custody of the prisoner concerned only upon receiving the prisoner concerned; and
 - (ii) is responsible for the safe custody of the prisoner concerned.

56. **PERIODIC REPORTS ON THE MENTAL HEALTH STATUS OF MENTALLY ILL CONVICTED PRISONERS**

- (1) Every six months after the date on which care, treatment and **rehabilitation** was commenced on a **mentally ill prisoner** and whilst the prisoner is **mentally ill**, the head of the relevant designated **health establishment** must cause the **mental health status** of that **mentally ill prisoner** to be reviewed.
- (2) The review must concern itself with –
 - (a) the **mental health status** of the **mentally ill prisoner**; and
 - (b) making recommendations regarding –
 - (i) a plan for further care, treatment and **rehabilitation** for the **mentally ill prisoner**; and/or
 - (ii) the merits of returning the **mentally ill prisoner** to the **prison** from which the prisoner was initially transferred.
- (3) A synopsis of the review must be –
 - (a) contained in a report; and
 - (b) submitted to the
 - (i) **Mental Health Review Board**
 - (ii) the relevant magistrate;
 - (iii) the **administrator**, if appointed; and
 - (iv) the head of the relevant **prison**;
- (4) Within one month after receipt of the report, the **Mental Health Review Board** must –
 - (a) consider the report including obtaining information from any relevant person and make a recommendation regarding –

- (i) a plan for further care, treatment and *rehabilitation* for the *mentally ill prisoner*; and/or
 - (ii) the return of that prisoner to the *prison* from which the prisoner was initially transferred: and
- (b) send a written notice of its recommendation to the *mentally ill prisoner* or the *administrator* if appointed, the head of the relevant designated *health establishment*, the head of the *national department* and the magistrate. The notice must also provide the reasons for the recommendation.

57. RECOVERY OF MENTAL HEALTH STATUS OF MENTALLY ILL PRISONERS

- (1) If the *head of a health establishment* has reason to believe from personal observation or from information obtained, that a *mentally ill prisoner* has recovered from the *mental illness* to such an extent that the prisoner no longer requires care and treatment or that the requisite care and treatment can appropriately be given at a *prison*, the head must –
- (a) compile an appropriate discharge report:
 - (b) return the prisoner to the *prison* from which the prisoner was initially transferred; and
 - (c) inform the relevant magistrate of this fact in writing.

58. MENTALLY ILL PRISONERS WHO ABSCOND FROM A DESIGNATED PSYCHIATRIC FACILITY OR DESIGNATED HEALTH ESTABLISHMENT

- (1) If a *mentally ill prisoner* has absconded, the head of the relevant designated or designated *health establishment* must by written notice –
- (a) immediately inform the South African Police Service of this fact and request them to locate and return the *mentally ill prisoner to the health establishment concerned*: