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GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF HEALTH DEPARTEMENT VAN GESONDHEID

No. R. 99

6 February 2009

HEALTH PROFESSIONS ACT, 1974 (ACT 56 of 1974)

REGULATIONS RELATING TO THE REGISTRATION OF STUDENT DENTAL ASSISTANTS: AMENDMENT

The Minister of Health intends, under section 61(5) read with sections 61 (1) (a) of the Health Professions Act, 1974 (Act No. 56 of 1974), and after consultation with the Health Professions Council of South Africa, to amend the regulations promulgated as Government Notice No. R. 581 of 30 May 2008 as reflected in the Schedule.

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

SCHEDULE

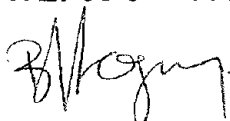
Definitions

1. In this schedule, "**the regulations**" means regulations relating to the registration of student dental assistants as published under Government Notice No. R. 581 of 30 May 2008, and any word or expression to which a meaning has been assigned in the regulations shall have that meaning, and unless the context otherwise indicates.

Amendment of Regulation 2 of the regulations.

2. Regulation 2 of the regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:-

"(2) In the case of persons who have worked as dental assistants prior to date of promulgation of these regulations for a period of less than five (5) years, within four months from a date as may be determined by council and published in the Gazette requiring such registration."

MINISTER OF HEALTH**DATE: 06/01/2009**

No. R. 99

6 Februarie 2009

WET OP GESONDHEIDSBEROEPE, 1974 (WET NO. 56 van 1974)**REGULASIES BETREFFENDE DIE REGISTRASIE VAN STUDENT
TANDHEELKUNDIGE ASSISTENTE: WYSIGING**

Die Minister van Gesondheid is voornemens om kragtens artikel 61(5), gelees met artikel 61(1)(a) van die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974), en na oorleg met die Raad vir Gesondheidsberoepe van Suid-Afrika, die regulasies uitgevaardig by Goewermentskennisgewing No. R. 581 van 30 Mei 2008, te wysig soos weerspieël word in die Bylae.

Belanghebbers word versoek om enige gemotiveerde kommentaar of verhoë oor die voorgestelde wysigings te rig aan die Direkteur-generaal: Gesondheid, Privaat Sak X828, Pretoria, 0001 (vir die aandag van die Direkteur: Mensehulpbronne: Belanghebberverhoudinge en –bestuur), binne drie maande vanaf die datum van publikasie van hierdie kennisgewing.

BYLAE**Woordomskrywing**

1. In hierdie bylae beteken "**die regulasies**" die regulasies betreffende die registrasie van student tandheelkundige assistente soos gepubliseer by

Goewermentskennisgewing No. R. 581 van 30 Mei 2008, en het 'n uitdrukking waaraan daar in die Wet 'n betekenis geheg is, daardie betekenis, tensy uit die samehang anders blyk.

Wysiging van Regulasie 2 van die regulasies

2. Regulasie 2 van die regulasies word hierby gewysig deur subregulasie (2) deur die volgende subregulasie te vervang:

"(2) in die geval van persone wat vir 'n tydperk van minder as vyf jaar as tandheelkundige assistente gewerk het voor die datum van publikasie van hierdie regulasies, binne vier maande vanaf 'n datum soos deur die raad vasgestel en in die *Staatskoerant* gepubliseer wat sodanige registrasie vereis."

MINISTER VAN GESONDHEID

DATUM:

No. R. 100

6 February 2009

HEALTH PROFESSIONS ACT, 1974 (ACT 56 of 1974)**REGULATIONS RELATING TO THE QUALIFICATIONS FOR REGISTRATION OF
DENTAL ASSISTANTS: AMENDMENT**

The Minister of Health intends, under section 61(5) read with sections 24 of the Health Professions Act, 1974 (Act No. 56 of 1974), and after consultation with the Health Professions Council of South Africa, to amend the regulations promulgated as Government Notice No. R. 338 of 15 April 2005 as amended by Government Notice No. R. 580 of 30 May 2008 as reflected in the Schedule.

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

SCHEDULE**Definitions**

1. In this schedule, "**the regulations**" means regulations relating to the qualifications for registration of dental assistants as published under Government Notice No. R.338 of 15 April 2005 as amended by Government Notice No. R.580 of 30 May 2008, and any word or expression to which a meaning has been assigned in the regulations shall have that meaning, and unless the context otherwise indicates.

Amendment of Regulation 2 of the regulations.

2. Regulation 2 of the regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:-

"(2) Notwithstanding anything to the contrary contained in these regulations, any person who worked as a dental assistant, prior to date of publication of these

amendment regulations, for a minimum period of five years without being registered as such may apply to the board for registration as a dental assistant, and the board may at its discretion exempt such person from the requirements of sub-regulation(1): Provided that no person shall qualify for this exemption after six (6) months from date of publication of these amendment regulations."



MINISTER OF HEALTH

DATE: 06/01/2009

WET OP GESONDHEIDSBEROEPE, 1974 (WET NO. 56 VAN 1974)**REGULASIES BETREFFENDE DIE KWALIFIKASIES VIR REGISTRASIE VAN
TANDHEELKUNDIGE ASSISTENTE: WYSIGING**

Die Minister van Gesondheid is voornemens om kragtens artikel 61(5), gelees met artikel 24 van die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974), en na oorleg met die Raad vir Gesondheidsberoepe van Suid-Afrika, die regulasies te wysig wat uitgevaardig is by Goewermentskennisgewing No. R. 338 van 15 April 2005, soos gewysig by Goewermentskennisgewing No. R. 580 van 30 Mei 2008, soos weerspieël in die Bylae.

Belanghebbers word versoek om enige gemotiveerde kommentaar of verhoë oor die voorgestelde wysigings te rig aan die Direkteur-generaal: Gesondheid, Privaat Sak X828, Pretoria, 0001 (vir die aandag van die Direkteur: Menselike hulpbronne: Belanghebbervershoudings en -bestuur), binne drie maande na die datum van publikasie van hierdie kennisgewing.

BYLAE**Woordomskrywing**

1. In hierdie bylae beteken "**die regulasies**" die regulasies betreffende die kwalifikasies vir registrasie van tandheekkundige assistente soos gepubliseer by Goewermentskennisgewing No. R. 338 van 15 April 2005 soos gewysig by Goewermentskennisgewing No. R. 580 van 30 Mei 2008, en het 'n uitdrukking waaraan daar in die regulasies 'n betekenis geheg is, daardie betekenis, tensy uit die samehang anders blyk.

Wysiging van Regulasie 2 van die regulasies

2. Regulasie 2 van die regulasies word hierby gewysig deur subregulasie (2) deur die volgende subregulasie te vervang:

"(2) Ondanks andersluidende bepalings in hierdie regulasies, kan enige persoon wat voor die datum van publikasie van hierdie wysigingsregulasies vir 'n minimum tydperk van vyf jaar sonder registrasie as tandheekkundige assistent gewerk het, aansoek doen by die beroepsraad om registrasie as 'n tandheekkundige assistent, en die beroepsraad kan na goeddunke sodanige persoon van die vereistes van subregulasie (1) vrystel: Met dien verstande dat niemand na ses maande vanaf die datum van publikasie van hierdie wysigingsregulasies vir hierdie vrystelling mag kwalifiseer nie."

MINISTER VAN GESONDHEID**DATUM:**

No. R. 101

6 February 2009

HEALTH PROFESSIONS ACT, 1974**REGULATIONS RELATING TO THE REGISTRATION OF PERSONS WHO HOLD
QUALIFICATIONS NOT PRESCRIBED FOR REGISTRATION**

The Minister of Health has, in terms of section 25, read with section 15B(1)(e), of the Health Professions Act, 1974 (Act No. 56 of 1974), and after consultation with the Health Professions Council of South Africa, made the regulations in the Schedule.

SCHEDULE**Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and, unless the context otherwise indicates—

"board" means a professional board established in terms of section 15(1) of the Act;

"foreign qualification" means a qualification obtained at an educational institution outside the Republic of South Africa;

"foreign qualified person" means a person who obtained a qualification for registration as a health practitioner at an educational institution outside the Republic of South Africa;

"independent practice" means the practising of a health profession by a registered health practitioner for his or her own account in *solus* practice, as a partner in a partnership with another health practitioner or other health practitioners, as an associate in an incorporated association with other health practitioners, or as a director of a company exempted from the provisions of the Act in terms of section 54A of the Act;

"military health service" means a health service rendered by the South African National Defence Force;

"public service" means a service rendered by the state at the national, provincial or local level of government, including organisations that function under the auspices or are largely subsidised by the state or are recognised by the council for the purpose of these regulations;

"supervised practice" means practising a health profession under the supervision of an appropriately qualified health practitioner at an approved facility as determined by the board;

"supervision" means the overseeing of the professional acts of a person registered in the category of supervised practice by a supervising practitioner and the acceptance by that supervising practitioner of liability for such professional acts;

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

"volunteer service" means a service rendered by a South African healthcare provider agency recognised by the council for the purpose of healthcare relief or assistance programmes.

Registration in the categories of internship, public service, supervised practice, education, postgraduate study, military health service and volunteer service

2. (1) The registrar may register a foreign qualified person who does not have any satisfactory proof of having completed internship or a similar training elsewhere in the category of internship in any of the professions registered under the Act to which internship applies, if such a person holds a foreign qualification the education and training standard and the duration of study of which are accepted by the council as

equivalent to the education and training standard and duration of study of a similar qualification awarded by accredited South African educational institutions: Provided that in the case of an application for registration that is based on a qualification not yet accepted by council under this subregulation, the applicant—

(a) shall, before registration, furnish the board with authoritative information on the education, training and duration of study required for that qualification and, if the board considers the standard of such education and training and the duration thereof to be satisfactory, the council may accept such qualification; and

(b) may be required to pass, to the satisfaction of the board, an examination or evaluation in terms of section 25(2) of the Act in the profession for which he or she applies for registration.

(2) The registrar may register a foreign qualified person in the category of public service in any of the professions registered under the Act, if such a person holds a foreign qualification the education and training standard and the duration of study of which are accepted by the council as equivalent to the education and training standard and duration of study of a similar qualification awarded by accredited South African educational institutions: Provided that in the case of an application for registration that is based on a qualification not yet accepted under this subregulation, the applicant—

(a) shall, before registration, furnish the board with authoritative information on the education, training and the duration of study required for that qualification and, if the board considers the standard of such education and training and the duration thereof to be satisfactory, the council may accept such qualification; and

(b) may be required to pass, to the satisfaction of the board, an examination or evaluation in terms of section 25(2) of the Act in the profession for which he or she applies for registration.

(3) The registrar may register a foreign qualified person in the category of public service in terms of a government-to-government agreement entered into by the Republic of South Africa and the country of the applicant, if such person holds a qualification referred to in subregulation (2): Provided that such registration shall be limited to a

period agreed upon by the two countries and the field of practice stipulated in the registration certificate.

(4) The registrar may register a foreign qualified person in the category of supervised practice in any of the professions registered under the Act if such person holds a qualification referred to in subregulation (2) and is required by the board to practise under the supervision of an appropriately qualified practitioner or the practising of his or her profession is limited to supervised practice.

(5) The registrar may register a foreign qualified person in the category of education in any of the professions registered under the Act, if such a person holds a foreign qualification referred to in subregulation (2) and is to be employed as a lecturer, tutor and/or researcher by a higher education and/or research institution approved by the board for education, training or research purposes.

(6) The registrar may register a foreign qualified person in the category of postgraduate study in any of the professions registered under the Act, if such a person holds a foreign qualification and is to be enrolled for postgraduate study and/or research as the holder of an appointment which is of a temporary and supernumerary nature for a period not exceeding five years.

(7) The registrar may register a foreign qualified person in the category of military health service in any of the professions registered under the Act, if such a person holds a foreign qualification referred to in subregulation (2) and is to participate in any military operation at the recommendation of the Surgeon-General of the South African National Defence Force.

(8) The registrar may register a foreign qualified person in the category of volunteer service in any of the professions registered under the Act, if such a person holds a foreign qualification referred to in subregulation (2) and is to participate in a healthcare relief or assistance programme of a temporary nature at the recommendation and under the supervision of a South African healthcare provider agency or any organisation recognised by the professional board concerned.

Registration in the category of independent practice

3. The registrar may register a foreign qualified person in the category of independent practice in any of the professions registered under the Act to which independent practice applies, if such a person has —

- (a) complied with the qualification requirements for registration referred to in regulation 2(2);
- (b)
 - (i) complied with the requirements of section 25(3A) of the Act; or
 - (ii) in the case of a foreign qualified South African citizen, performed community service in terms of section 24A of the Act in respect of a profession to which community service applies;
- (c) passed the applicable examination as determined by the board for registration in the category of independent practice; and
- (d) complied with such other requirements as may be determined by the professional board concerned for registration in the category of independent practice.

Application for registration


4. An application by any foreign qualified person for registration as a health practitioner in any of the professions registered under the Act shall be made on the prescribed application form obtainable from the professional board concerned, and shall be accompanied by —

- (a) a certified copy of the applicant's identity document or passport;
- (b) a copy of the degree certificate or other basic qualification, certified by a notary public, and a sworn translation thereof into English;

- (c) a certified copy of the official and detailed curriculum of the applicant's course of study, the specific courses, the content of education (theory) and training (practical/clinical), and the duration and mode of examination/evaluation;
- (d) such verification of credentials as may be required by the board;
- (e) in the case of an application for registration in a profession for which internship training is a requirement, a certificate of completed training as an intern or of similar training or experience obtained elsewhere and the programme for such training;
- (f) in the case of an application for registration in the category of independent practice, proof of compliance with the requirements of section 25(3A) of the Act;
- (g) an original certificate of good standing, which shall not be more than six months old, issued by the foreign registration authority where the applicant is or was registered;
- (h) a letter of endorsement issued by the national Department of Health for a registration in terms of regulation 2(1), (2), (3) or (4), confirming the employability or placement of the applicant, or a letter of endorsement issued by the prospective employer for a registration in terms of regulation 2(5), (7) or (8), or confirmation of enrolment for postgraduate studies issued by the educational institution concerned for registration in terms of regulation 2(6); and
- (i) the prescribed registration fee.

Repeal

5. Any provision in any of the regulations of the professional boards dealing with the qualifications for registration of foreign qualified persons and the regulations published under Government Notices Nos. R. 821 of 13 May 1977, R. 817 of 20 April 1979, R. 2012 of 24 August 1990, R. 1594 of 27 August 1993, R. 53 of 17 January 1997 and R. 1203 of 28 November 2000 are hereby repealed with effect from date of the coming into operation of these regulations.

**Minister of Health****Date: 06/01/2009**

WET OP GESONDHEIDSBEROEPE, 1974**REGULASIES BETREFFENDE DIE REGISTRASIE VAN PERSONE WAT KWALIFIKASIES BESIT WAT NIE VIR REGISTRASIE VOORGESKRYF IS NIE**

Die Minister van Gesondheid het kragtens artikel 25, gelees met artikel 15B(1)(e), van die Wet op Gesondheidsberoep, en ná oorlegpleging met die Raad vir Gesondheidsberoep van Suid-Afrika, die regulasies in die Bylae uitgevaardig.

BYLAE**Woordomskrywing**

1. In hierdie regulasies het enige woord of uitdrukking waaraan 'n betekenis in die Wet geheg is, daardie betekenis, en, tensy uit die samehang anders blyk, beteken —

"buitelands gekwalifiseerde persoon" 'n persoon wat 'n kwalifikasie vir registrasie as 'n gesondheidspraktisyn verwerf het aan 'n opvoedkundige inrigting buite die Republiek van Suid-Afrika;

"buitelandse kwalifikasie" 'n kwalifikasie verwerf aan 'n opvoedkundige inrigting buite die Republiek van Suid-Afrika;

"die Wet" die Wet op Gesondheidsberoep, 1974 (Wet No. 56 van 1974);

"militêre gesondheidsdiens" 'n gesondheidsdiens gelewer deur die Suid-Afrikaanse Nasionale Weermag;

"onafhanklike praktisering" die beoefening van 'n gesondheidsberoep deur 'n geregistreerde gesondheidspraktisyn vir eie rekening in 'n alleenpraktyk, as 'n vennoot in 'n vennootskap saam met 'n ander gesondheidspraktisyn of ander gesondheidspraktisyns, as 'n genoot in 'n ingelyfde vereniging saam met ander gesondheidspraktisyns, of as 'n direkteur van 'n maatskappy wat vrygestel is van die bepalings van die Wet kragtens artikel 54A van die Wet;

"praktisering onder toesig" die beoefening van 'n gesondheidsberoep onder toesig van 'n paslik gekwalifiseerde gesondheidspraktisyn by 'n goedgekeurde fasiliteit soos bepaal deur die beroepsraad;

"beroepsraad" 'n beroepsraad ingestel kragtens artikel 15(1) van die Wet;

"staatsdiens" 'n diens gelewer deur die staat op nasionale, provinsiale en plaaslike regeringsvlak, en ook deur organisasies wat onder beskerming van die staat funksioneer of grotendeels deur die staat gesubsidieer word of deur die raad erken word vir doeleindes van hierdie regulasies;

"toesig" toesig deur 'n toesighoudende praktisyn oor die professionele handelinge van 'n persoon wat in die kategorie praktisering onder toesig geregistreer is en die aanvaarding deur daardie toesighoudende praktisyn van aanspreeklikheid vir sodanige professionele handelinge; en

"vrywilligerdiens" 'n diens gelewer deur 'n Suid-Afrikaanse gesondheidsorgverskaffingsagentskap wat deur die raad erken word vir die doel van noodlenigings- en bystandsprogramme op die gebied van gesondheidsorg.

Registrasie in die kategorieë internskap, staatsdiens, praktisering onder toesig, onderrig, nagraadse studie, militêre gesondheidsdiens en vrywilligerdiens

2. (1) Die registrateur kan 'n buitelandse gekwalifiseerde persoon wat nie oor genoegsame bewys beskik dat hy of sy 'n internskap of soortgelyke opleiding elders voltooi het nie, in die kategorie internskap registreer in enige beroep wat kragtens die

Wet geregistreer is en waarop internskap van toepassing is, indien sodanige persoon 'n buitelandse kwalifikasie besit waarvan die standaard van onderrig en opleiding en die studietermyn deur die raad aanvaar word as gelykstaande met die onderrig en opleiding en studietermyn van 'n soortgelyke kwalifikasie toegeken deur geakkrediteerde Suid-Afrikaanse opvoedkundige inrigtings: Met dien verstande dat, in die geval van 'n aansoek om registrasie op grond van 'n kwalifikasie wat nog nie kragtens hierdie regulasie deur die raad aanvaar is nie —

(a) die aansoeker voor registrasie die beroepsraad moet voorsien van gesaghebbende inligting oor die onderrig, opleiding en studietermyn wat vir daardie kwalifikasie vereis word, en indien die beroepsraad die standaard van sodanige onderrig en opleiding en die studietermyn voldoende ag, kan die raad daardie kwalifikasie aanvaar; en

(b) die raad van die aansoeker kan vereis om kragtens artikel 25(2) van die Wet 'n eksamen of evaluering in die beroep waarin hy of sy om registrasie aansoek doen, tot tevredenheid van die beroepsraad te slaag.

(2) Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie staatsdiens registreer in enige beroep wat kragtens die Wet geregistreer is, indien sodanige persoon 'n buitelandse kwalifikasie besit waarvan die standaard van onderrig en opleiding en die studietermyn deur die raad aanvaar word as gelykstaande met die onderrig en opleiding en studietermyn van 'n soortgelyke kwalifikasie toegeken deur geakkrediteerde Suid-Afrikaanse opvoedkundige inrigtings: Met dien verstande dat, in die geval van 'n aansoek om registrasie op grond van 'n kwalifikasie wat nog nie kragtens hierdie regulasie deur die raad aanvaar is nie —

(a) die aansoeker voor registrasie die beroepsraad moet voorsien van gesaghebbende inligting oor die onderrig, opleiding en studietermyn wat vir daardie kwalifikasie vereis word, en indien die beroepsraad die standaard van sodanige onderrig en opleiding en die studietermyn voldoende ag, kan die raad daardie kwalifikasie aanvaar; en

(b) die raad van die aansoeker kan vereis om kragtens artikel 25(2) van die Wet 'n eksamen of evaluering in die beroep waarin hy of sy om registrasie aansoek doen, tot tevredenheid van die beroepsraad te slaag.

(3) Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie staatsdiens registreer kragtens 'n tussenregeringsooreenkoms aangegaan tussen die Republiek van Suid-Afrika en die aansoeker se land, indien daardie persoon 'n kwalifikasie bedoel in subregulasie (2) besit. Met dien verstande dat sodanige registrasie beperk word tot 'n tydperk waarop die twee lande ooreengekom het en tot die praktyksveld wat op die registrasiesertifikaat vermeld word.

(4) Die registrateur kan 'n buitelandse gekwalifiseerde persoon registreer in enige beroep wat kragtens die Wet geregistreer is, indien daardie persoon 'n kwalifikasie bedoel in subregulasie (2) besit en die beroepsraad van hom of haar vereis om onder toesig van 'n paslik gekwalifiseerde praktisyn te praktiseer of die beoefening van sy of haar beroep tot praktisering onder toesig beperk word.

(5) Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie onderrig registreer in enige beroep wat kragtens die Wet geregistreer is, indien daardie persoon 'n buitelandse kwalifikasie bedoel in subregulasie (2) besit en in diens geneem staan te word as 'n dosent, tutor en/of navorser deur 'n hoërondewysinrigting en/of 'n navorsingsinrigting wat deur die beroepsraad vir doeleindes van onderrig, opleiding of navorsing goedgekeur is.

(6) Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie nagraadse studie registreer in enige beroep wat kragtens die Wet geregistreer is, indien daardie persoon 'n buitelandse kwalifikasie besit en vir nagraadse studie en/of navorsing ingeskryf staan te word as die bekleër van 'n aanstelling wat van 'n tydelike en totallige aard is en nie 'n tydperk van vyf jaar te bowe gaan nie.

(7) Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie militêre gesondheidsdiens registreer in enige beroep wat kragtens die Wet geregistreer is, indien daardie persoon 'n buitelandse kwalifikasie bedoel in subregulasie (2) besit en op aanbeveling van die Geneesheer-generaal van die Suid-Afrikaanse Nasionale Weermag gaan deelneem aan 'n militêre operasie.

(8) Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie vrywilligerdiens registreer in enige beroep wat kragtens die Wet geregistreer is, indien daardie persoon 'n buitelandse kwalifikasie bedoel in subregulasie (2) besit en op

aanbeveling en onder toesig van 'n Suid-Afrikaanse gesondheidsorgverskaffingsagentskap of enige organisasie wat deur die betrokke beroepsraad erken word, gaan deelneem aan 'n tydelike noodlenigings- en bystandsprogram op die gebied van gesondheidsorg.

Registrasie in die kategorie onafhanklike praktisering

3. Die registrateur kan 'n buitelandse gekwalifiseerde persoon in die kategorie onafhanklike praktisering registreer in enige beroep wat kragtens die Wet geregistreer is en waarop onafhanklike praktisering van toepassing is, indien daardie persoon —

- (a) voldoen het aan die kwalifikasievereistes vir registrasie bedoel in regulasie 2(2);
- (b)
 - (i) voldoen het aan die vereistes van artikel 25(3A) van die Wet; of
 - (ii) in die geval van 'n buitelandse gekwalifiseerde Suid-Afrikaanse burger, gemeenskapsdiens ingevolge artikel 24A van die Wet verrig het ten opsigte van 'n beroep waarop gemeenskapsdiens van toepassing is;
- (c) geslaag het in die toepaslike eksamen wat die beroepsraad vir registrasie in die kategorie onafhanklike praktisering gestel het; en
- (d) voldoen het aan sodanige ander vereistes as wat die betrokke beroepsraad vir registrasie in die kategorie onafhanklike praktisering gestel het.

Aansoek om registrasie

4. Aansoek deur 'n buitelandse gekwalifiseerde persoon om registrasie in enige beroep wat kragtens die Wet geregistreer is, moet gedoen word op die voorgeskrewe aansoekvorm wat verkrygbaar is by die betrokke beroepsraad, en die aansoek moet vergesel gaan van —

- (a) 'n gewaarmerkte afskrif van die aansoeker se identiteitsdokument of paspoort;
- (b) 'n afskrif van die graadsertifikaat of ander basiese kwalifikasie, gewaarmerk deur 'n notaris, en 'n beëdigde vertaling daarvan in Engels;
- (c) 'n gewaarmerkte afskrif van die amptelike en gedetailleerde kurrikulum van die aansoeker se studiekursus, die spesifieke kursusse, die inhoud van die onderrig (teorie) en opleiding (prakties/klinies), en die duur en wyse van eksaminering/evaluering;
- (d) sodanige verifiëring van getuigskrifte as wat die beroepsraad vereis;
- (e) in die geval van 'n aansoek om registrasie in 'n beroep waarvoor internskapsopleiding 'n vereiste is, 'n sertifikaat van voltooide opleiding as 'n intern of van soortgelyke opleiding of ervaring elders opgedoen, tesame met die program vir sodanige opleiding;
- (f) in die geval van 'n aansoek om registrasie in die kategorie onafhanklike praktisering, bewys van voldoening aan die vereistes van artikel 25(3A) van die Wet;
- (g) 'n oorspronklike goeienaam-sertifikaat van hoogstens ses maande oud, uitgereik deur die buitelandse registrasie-owerheid waarby die aansoeker geregistreer is of was;
- (h) 'n ondersteunende brief uitgereik deur die nasionale Departement van Gesondheid in die geval van 'n registrasie kragtens regulasie 2(1), (2), (3) of (4), waarin die indiensneembaarheid of plasing van die aansoeker bevestig word, of 'n ondersteunende brief uitgereik deur die voornemende werkgever in die geval van 'n registrasie kragtens regulasie 2(5), (7), of (8), of bevestiging van inskrywing vir nagraadse studie uitgereik deur die betrokke opvoedkundige inrigting in die geval van 'n registrasie kragtens regulasie 2(6); en
- (i) die voorgeskrewe registrasiegeld.

Herroeping

5. Enige bepaling in enige van die regulasies van die beroepsrade wat handel oor die kwalifikasies vir registrasie van buitelands gekwalifiseerde persone, en die regulasies gepubliseer by Goewermentskennisgewings Nos. R. 821 van 13 Mei 1977, R. 817 van 20 April 1979, R. 2012 van 24 Augustus 1990, R. 1594 van 27 Augustus 1993, R. 53 van 17 Januarie 1997 en R. 1203 van 28 November 2000 word hierby herroep met ingang van die datum van inwerkingtreding van hierdie regulasies.



Minister van Gesondheid

Datum: 06/01/2009

HEALTH PROFESSIONS ACT, 1974

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 has, in terms of section 61(1)(h), read with section 61(4), of the Health Professions Act, 1974 (Act No. 56 of 1974), and after consultation with the Health Professions Council of South Africa, made the regulations in the Schedule.

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 that meaning, and, unless the context otherwise indicates —

"appeal committee" means an *ad hoc* committee established by the council in terms of section 10(2) of the Act to deal with appeal matters from a professional conduct committee;

"appellant" means a registered person or the *pro forma* complainant who is aggrieved by a decision and/or penalty of a professional conduct committee and who appeals to the appeal committee;

"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 registered person about alleged unprofessional conduct;

"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;

"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, with at least five years' experience in the legal field, appointed by the registrar to advise the professional conduct committee on any matter of law and procedure;

"minor transgression" means conduct which, in the opinion of the registrar or preliminary committee of inquiry, on the basis of the documents submitted to the registrar or such committee, is unprofessional, but of a minor nature, and does not warrant the holding of a formal professional conduct inquiry;

"ombudsman" means a person appointed by the council to mediate in the case of minor transgressions referred to him or her by the registrar for mediation;

"performance assessment" means an assessment conducted by a performance assessment committee to inquire into and make a determination on the clinical or related performance of a practitioner against whom a professional conduct committee found evidence of poor clinical or related performance, or of a pattern of such performance, at an inquiry;

"performance assessment committee" means an *ad hoc* committee established by a professional board in terms of section 15(5)(f) of the Act to inquire into and make a determination on the clinical or related performance of a practitioner against whom a professional conduct committee found evidence of poor clinical or related performance, or of a pattern of such performance, at an inquiry;

"poor performance" means negligence and conduct on the part of a practitioner which falls short of the required standards or generally acceptable norms in health care and which is found to be due to a lack of clinical or related skills or adequate knowledge of the management of patients or a particular health condition;

"preliminary committee of inquiry" means a committee established by a professional board in terms of section 15(5)(f) of the Act for the preliminary investigation of complaints to make a determination thereon;

"preliminary inquiry" means an inquiry held in terms of these regulations by a preliminary committee of inquiry to consider a complaint against a person registered in the register of the professional board concerned in order to make a determination on the appropriate manner of dealing with such a complaint;

"professional conduct committee" means a committee established by a professional board in terms of section 15(5)(f) of the Act to conduct an 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;

"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 lodged in writing and be addressed to the registrar, the council or a professional board.

(2) When a complaint is addressed to the council or a professional board, it must be submitted to the registrar.

(3) The registrar must —

- (a) peruse and analyse all complaints received;
- (b) categorise them according to their significance and seriousness;
- (c) record each complaint against the name of the respondent concerned as it appears in the register kept in terms of section 18 of the Act; and
- (d) refer complaints of minor transgressions and matters not falling under the jurisdiction of the council to the ombudsman for mediation or referral to the relevant authorities, respectively.

Mediation by ombudsman

3. (1) The ombudsman 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 ombudsman 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 ombudsman 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 ombudsman 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 ombudsman 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.

Preliminary inquiry**4. (1) The registrar —**

- (a) may, after receiving a complaint, call for further information or an affidavit confirming the allegations by the complainant;
- (b) must, subject to paragraph (a), after receiving a complaint, register the complaint and notify the respondent of the complaint by forwarding a copy of the complaint, together with copies of any further information or affidavits referred to in paragraph (a), to him or her —
 - (i) requesting a written response from him or her within 40 working days from the date of receipt of the notification by the respondent, or within such further period as the registrar may reasonably allow, failing which the complaint, together with any further information or affidavit referred to in paragraph (a), must be submitted to the preliminary committee of inquiry without the respondent's written response;
 - (ii) advising him or her that failure to respond to the notification or the complaint as contemplated in subparagraph (i) will constitute contempt of council, and that a response may consist of a written communication by the respondent that he or she invokes his or her 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 this paragraph will 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 post, on the seventh day following the date on which it was so posted;

- (c) may refer the complaint directly to the preliminary committee of inquiry or the chairperson of such committee for instructions on the information required to complete a full investigation of the matter;
- (d) may direct that an investigation in terms of section 41A of the Act be conducted.

(2) On receipt by the registrar of the further information and written response referred to in subregulation (1)(a) and (b), he or she must submit the complaint, such further information and the written response to the preliminary committee of inquiry, and if no further information or written response is received, the registrar must record this fact and report it to the preliminary committee of inquiry.

(3) The preliminary committee of inquiry may, after due consideration of the matter referred to it in terms of subregulation (2), direct the registrar to issue a notice in writing to the respondent, to be delivered in the manner contemplated in the proviso to subregulation (1)(b), instructing him or her to appear in person with his or her legal representative, if any, before the preliminary committee of inquiry at its next meeting to inquire why he or she did not respond to the council correspondence and to give his or her response to the complaint or exercise his or her right to remain silent.

(4) If the preliminary committee of inquiry decides, after due consideration of the explanation by the respondent for his or her failure to respond to the council correspondence, that the respondent is in contempt of council, it must—

- (a) make a finding of guilty of contempt of council and impose one or more of the penalties provided for in section 42(1)(a) and (d) of the Act;
- (b) order the respondent to submit, within such period as may be determined by the committee, his or her written response to the complaint or a written communication to indicate his or her exercising his or her right to remain silent; and
- (c) direct the registrar to confirm its decision in writing to the respondent stating the reason(s) for the decision.

(5) If the respondent fails to attend the meeting of the preliminary committee of inquiry after having been duly notified in writing to appear before the committee, the committee may—

- (a) make a finding of guilty of contempt of council and impose one or more of the penalties provided for in section 42(1)(a) and (d) of the Act;
- (b) order the respondent to submit, within such period as may be determined by the committee, his or her written response to the complaint or a written communication to indicate his or her exercising his or her right to remain silent; and
- (c) direct the registrar to confirm its decision in writing to the respondent stating the reason(s) for the decision.

(6) The finding made and the penalty imposed by the preliminary committee of inquiry in terms of subregulation (4) or (5) is of immediate force and effect, but may be set aside by the High Court if the respondent appeals to the Court in terms of section 20 of the Act.

(7) If a preliminary committee of inquiry decides, after due consideration of the complaint, any further information which may have been obtained in terms of subregulation (1)(a) and the respondent's explanation of the subject matter of the complaint, that there are no grounds for taking further action on the matter, it must note and accept the respondent's explanation and give its reasons for so noting and accepting that explanation and direct the registrar to communicate its decision in writing to the complainant and the respondent stating the reason(s) for the decision.

(8) If a preliminary committee of inquiry decides, after due consideration of the complaint, any further information which may have been obtained in terms of subregulation (1)(a) and the respondent's explanation of the subject matter of the complaint or the lack of such explanation, that there are grounds for a professional conduct inquiry into the conduct of the respondent, it must direct that an inquiry be held and that the registrar communicate its decision in writing to the complainant and the respondent and arrange for the holding of such inquiry, or it may allow the respondent to pay an admission of guilt fine in terms of section 42(8) and (9) of the Act,.

(9) If a preliminary committee of inquiry decides, after due consideration of the complaint, any further information which may have been obtained in terms of subregulation (1)(a) and the respondent's explanation of the subject matter of the complaint, that the respondent acted unprofessionally, but the conduct in question is found to constitute only a minor transgression, it

must determine, as a suitable penalty to be imposed, one or more of the penalties provided for in section 42(1)(a) and (d) of the Act and direct the registrar to formulate the charges in writing and communicate the charges and its decision to the respondent, stipulating that the penalty must be accepted or rejected within 14 days from date of receipt of the communication: Provided that if the penalty—

- (a) is accepted by the respondent, proof of compliance with such penalty must accompany the notice of acceptance to the registrar, and that penalty must be regarded as a penalty imposed by the preliminary committee of inquiry, whereupon the matter will be regarded as finalized; or
- (b) is rejected by the respondent or no response is received by the due date, the registrar must arrange for an inquiry into the professional conduct of the respondent, and the charges so formulated and the penalty so rejected or not responded to may no longer be applied to the matter.

Arranging an inquiry

5. (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)(b), 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 notice and the charge sheet referred to in subregulation (1) must be served on the respondent by hand or by registered post at his or her registered address, at least 60 days prior to the date of the inquiry, and a copy of the notice and charge sheet must be served or posted to the respondent's legal representative, if appointed at the time of service or posting to the respondent.

Constitution of the professional conduct committee

6. (1) The chairperson of the professional board must, at the request of the registrar, appoint a professional conduct committee at least seven days before the inquiry.

(2) The professional conduct committee must be composed of at least—

- (a) two public representatives, one of whom must be the chairperson;
- (b) two persons registered in the profession in which the respondent is registered, at least one of whom registered in the same discipline as the respondent;
- (c) one member of the board; and
- (d) one legal assessor.

(3) A person who served as a member of the preliminary committee of inquiry that referred a matter for inquiry may not be appointed to the professional conduct committee dealing with that same matter.

Request for further particulars

7. (1) A request by the respondent or his or her legal representative for further particulars about the charges as formulated by the *pro forma* complainant must be received by the *pro forma* complainant at least 30 days before the date of the inquiry.

(2) The *pro forma* complainant must furnish his or her written reply to a request for further particulars referred to in subregulation (1) to the respondent or his or her legal representative within 14 days from date of receipt of the request.

(3) The *pro forma* complainant need not respond to any request for further particulars received less than 30 days before the inquiry

Pre-inquiry conference

8. (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 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;
- (f) a summary of the opinion of an expert witness that a party intends to call at the inquiry must be furnished to the other party; and
- (g) any other matter concerning the inquiry must be resolved.

(2) Minutes of the pre-inquiry conference must be kept and signed by both parties or their legal representatives for submission to the professional conduct committee at the hearing.

(3) The professional conduct committee may order a party who failed to attend the pre-inquiry conference to attend such a conference and to pay the costs the registrar may determine in respect of the day so wasted because the hearing could not proceed.

Procedure at inquiry

9. (1) The chairperson of the professional conduct committee must ask the respondent or his or her legal representative, if the respondent is represented, to plead to the charge, which plea must be recorded.

(2) If the respondent, or his or her legal representative, refuses or fails to plead directly to the charge(s), the chairperson of the professional conduct committee must record this and enter a plea of not guilty.

(3) If the respondent pleads guilty to the charge(s), the professional conduct committee must ask the respondent or his or her legal representative such questions as are necessary to determine whether all the elements of the charge(s) are admitted.

(4) If the professional conduct committee is satisfied that all the elements of the charge(s) are admitted, the *pro forma* complainant must address the professional conduct committee and indicate whether the plea of guilty is accepted.

(5) If the plea of guilty is accepted, the chairperson of the professional conduct committee must make a finding of guilty and allow the parties to address the committee in accordance with subregulation (22).

(6) If the respondent pleads not guilty or if a plea of not guilty is entered in terms of subregulation (2) or if a plea of guilty is not accepted by the *pro forma* complainant, the chairperson must allow the *pro forma* complainant to address the professional conduct committee, lead evidence in support of his or her case, re-examine witnesses after cross-examination by the respondent or his or her legal representative and thereafter close his or her case.

(7) The respondent or his or her legal representative may apply for his or her discharge after the *pro forma* complainant has closed his or her case.

(8) The chairperson of the professional conduct committee must give the *pro forma* complainant the opportunity to reply to the application for a discharge by the respondent or his or her legal representative.

(9) The professional conduct committee must then consider the application *in camera* and thereafter give its decision to the parties.

(10) If the application for a discharge is dismissed, the respondent or his or her legal representative may address the professional conduct committee and lead evidence in support of his or her case, re-examine witnesses after cross-examination by the *pro forma* complainant and thereafter close his or her case.

(11) The professional conduct committee may, on application, allow any of the parties to lead further evidence or to recall a witness after their cases have been closed, and the other party must be given the opportunity to cross-examine such witness.

(12) The chairperson and the other members of the professional conduct committee may ask a witness questions for the sake of clarity on issues arising from such witness's evidence.

(13) The chairperson of the professional conduct committee must allow further cross-examination and re-examination of a witness on matters arising from the questions by the chairperson and other members of the professional conduct committee.

(14) After all the evidence has been adduced, the *pro forma* complainant and the respondent or his or her legal representative may address the professional conduct committee on the evidence and the legal position.

(15) The *pro forma* complainant may reply to any matter of law raised by the respondent or his or her legal representative in his or her address and may, with leave of the professional conduct committee, reply to any matter raised by the respondent or his or her legal representative in his or her address.

(16) If the respondent is not present at the inquiry after having been duly notified, the inquiry may proceed in his or her absence after the chairperson of the professional conduct committee has entered a plea of not guilty on behalf of the respondent, unless the respondent has pleaded guilty in writing: Provided that the professional conduct committee may consider the postponement of the inquiry if the respondent's absence is due to *bona fide* reasons.

(17) All oral evidence must be taken under oath or on affirmation administered by the chairperson of the professional conduct committee.

(18) Evidence on affidavit is admissible: Provided that the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.

(19) (a) The record, or any portion thereof, of a lawfully constituted court, inquest court or disciplinary tribunal from any jurisdiction is acceptable as *prima facie* evidence if it has been certified to be a true copy by that court or disciplinary tribunal.

(b) If it is practicable and appears just to the professional conduct committee, it may, on application by either party and for the purpose of cross-examination, order the attendance of a witness whose evidence appears in a record of a court or disciplinary tribunal and which is presented as *prima facie* evidence.

(20) At the conclusion of the hearing, the professional conduct committee must deliberate *in camera* and then inform the parties of its findings within such period as may be determined by the committee.

(21) The findings of the professional conduct committee may include a finding of poor performance on the part of the respondent, in which case the committee must require the *pro forma* complainant and the respondent or his or her legal representative to address the committee on the appropriateness of the full or partial referral of the matter to a performance assessment committee to inquire into the performance of the respondent and make a determination on the appropriate management thereof.

- (22) (a) If the respondent is found guilty of unprofessional conduct, the *pro forma* complainant must address the committee and furnish details of previous convictions of the respondent on unprofessional conduct under the Act, if any.
- (b) The *pro forma* complainant may also address the professional conduct committee on a suitable penalty and lead evidence in support of imposing such penalty.
- (c) The respondent or his or her legal representative may thereafter address the professional conduct committee on the personal circumstances of the respondent and a suitable penalty to be imposed and lead evidence in support of such penalty and in mitigation of the penalty recommended by the *pro forma* complainant, whereafter the *pro forma* complainant may reply in aggravation of the penalty.
- (d) The professional conduct committee must deliberate *in camera* on the appropriate penalty to be imposed, whereafter the chairperson must inform the parties of the penalty decided on.
- (e) The finding made and penalty imposed by the professional conduct committee shall be of force and effect from the date determined by the committee.

(23) If the professional conduct committee finds that the evidence before it points to poor performance on the part of the respondent, it may, in addition to imposing a penalty where the evidence also points to unprofessional conduct, impose practice restrictions and refer the matter,

with its findings on poor performance on the part of the respondent, to a performance assessment committee to inquire into the performance of the respondent and make a determination on the appropriate management thereof and direct the registrar to arrange the performance assessment within such period as may be determined by the professional conduct committee.

Arrangement of a performance assessment

10. (1) On receipt of a directive referred to in regulation 9(23), the registrar must in consultation with the chairperson of the professional board concerned, within 30 days from date of the finding by a professional conduct committee, appoint a performance assessment committee composed of three registered practitioners from the same discipline as the respondent and issue a notice, which must essentially be in the form of Annexure C to these regulations, addressed to the respondent stating the date and time when and the place where the assessment will be held and the areas of poor performance identified by the professional conduct committee to be assessed by the performance assessment committee.

(2) The notice referred to in subregulation (1) must be served on the respondent by hand or posted to him or her at his or her registered address by a registered post at least 21 working days prior to the date set for the performance assessment.

(3) The performance assessment committee must determine the manner of conducting the assessment of the areas of poor performance identified by the professional conduct committee and its duration, and communicate this to the respondent together with the notice referred to in subregulation (1).

(4) At the conclusion of the assessment the committee must make a determination on the appropriate management of the respondent's poor performance and give directives to be adhered to by the respondent to improve on his or her performance within such period as may be determined by the committee, and require the respondent to submit such reports as may be determined by the committee to make a final determination on the performance of the respondent.

(5) The respondent must adhere to the directives given by the performance assessment committee, failing which the committee may direct the registrar to suspend the respondent from practising his or her profession until such time as he or she has fully complied with the directives.

(6) When the respondent has complied with the directives and the performance assessment committee has received the required reports referred to in subregulation (4), the committee must consider the reports to ascertain if the respondent has acquired the required skills to enable him or her to perform optimally in practising his or her profession.

(7) If the performance assessment committee, on the grounds of the reports submitted, is satisfied that the respondent has acquired the required skills to practise his or her profession with reasonable skill, it may lift the practice restrictions imposed by the professional conduct committee in terms of regulation 9(23) and finalize the matter.

(8) If the performance assessment committee, on the grounds of the reports submitted, is not satisfied that the respondent has acquired the required skills to practise his or her profession, the committee must determine the skills the respondent requires to be able to practise his or her profession with reasonable skill.

Appeal

11. (1) The respondent or the *pro forma* complainant may appeal to the appeal committee against the findings or penalty of the professional conduct committee or both such finding and such penalty.

(2) The appellant must, within 21 days from the date of the decision of the professional conduct committee, submit to the registrar a written notice of his or her intention to appeal: Provided that a notice of intention to appeal submitted after 21 days may be considered by the appeal committee if it is accompanied by an application for indulgence stating the reasons for the delay, and the appeal committee must, on the date set down for the appeal, consider such application before the appeal on merits.

(3) The registrar must provide the appellant with a copy of the transcript of the proceedings of the inquiry within 60 days from the date on which the registrar received the written notice of intention to appeal referred to in subregulation (2): Provided the appellant pays the reasonable costs of making such a copy of the transcript.

(4) The appellant must deliver six copies of his or her papers, setting out the grounds of appeal and containing a summary of arguments, by hand or registered post to the registrar and

one copy to the other party within 30 days from the date on which he or she received the copy of the transcript referred to in subregulation (3).

(5) The other party must deliver six copies of his or her reply to the appellant's papers referred to in subregulation (4), containing his or her summary of arguments, by hand or registered post to the registrar and one copy to the appellant within 30 days from the date on which the appellant delivered his or her papers to the registrar.

(6) If either party fails to submit the copies referred to in subregulations (4) and (5) within the prescribed period, that party may be allowed to submit such copies: Provided that such copies are accompanied by an application for indulgence for late submission, which must be considered by the appeal committee, before the appeal on the merits, on the date set down for the appeal hearing.

(7) The appellant must, within 14 days from the date on which the other party submitted his or her reply, deliver six copies of his or her reply to that of the other party to the registrar and one copy to the other party.

(8) If no reply is submitted by the appellant within the period referred to in subregulation (7), the registrar must advise both parties in writing that no reply was submitted by the appellant in terms of subregulation (7) and of the date on which the matter will be heard by the appeal committee.

(9) The appeal committee must consider the appeal on the papers referred to in subregulations (4), (5), (6) and (7), allow representations and arguments from both parties or their legal representatives, deliberate on the matter *in camera* and thereafter advise the parties of its findings, which must be confirmed by the registrar in writing.

(10) Each party is responsible for his or her own costs occasioned by the preparation for and finalization of the appeal.

(11) The decision of the appeal committee will be of force and effect from the date determined by the committee and may be set aside by a High Court if approached in terms of section 20 of the Act.

Continuation of inquiry

12. (1) If a member of the professional conduct committee is unable to serve at any time after a plea has been entered, the inquiry must proceed, provided that at least four of the original members are available to continue with the inquiry.

(2) If the chairperson is unable to serve at any time after a plea has been entered, the inquiry may proceed with the remaining public representative as the new chairperson.

Accessibility of an inquiry

13. (1) The proceedings at an inquiry are open to the public.

(2) Notwithstanding subregulation (1)—

(a) the professional conduct committee may take any decision in respect of any point arising in connection with, or in the course of, an inquiry *in camera*;

(b) the professional conduct committee may hear any evidence adduced during an inquiry may, on good cause shown or at the discretion of the committee, *in camera*; and

(c) the professional conduct committee may, on good cause shown, order that no person may at any time and in any manner publish any information which is likely to reveal the identity of any particular person other than the respondent.

(3) Any person who contravenes or fails to comply with an order made in terms of subregulation (2)(c) is guilty of an offence and liable on conviction in a court of law to a fine not exceeding R5 000 or imprisonment not exceeding six months or both such a fine and imprisonment.

(4) The council must keep recordings of all inquiries and a copy of the transcription of such a recording must, on written request and on payment of the actual cost of making such a copy, be made available to the complainant, the respondent or any other party who, in the opinion of the registrar, has a substantial interest in the matter.

Publication in the *Gazette*

14. The registrar must, after finalizing the matter in terms of these regulations, publish in the *Gazette* the name of the respondent, the charge(s) on which he or she has been found guilty and the penalty that has been imposed.

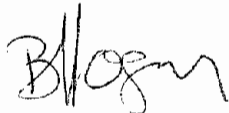
Subpoena

15. A summons for attendance as a witness before a professional conduct committee to give oral evidence or to produce any book, record, document or thing must substantially be in the form set out in Annexure B to these regulations.

Repeal

16. (1) The regulations published under Government Notice No. R.765 of 24 August 2001 are hereby repealed.

(2) An inquiry or appeal in terms of the regulations referred to in subregulation (1) pending before a professional conduct committee of a professional board or a disciplinary committee of council, respectively, immediately prior to the commencement of these regulations must be conducted and finalized under the procedures prescribed by those regulations as if they have not been repealed.



MINISTER OF HEALTH

DATE: 06/01/2009

ANNEXURE A

**NOTICE TO APPEAR BEFORE A PROFESSIONAL CONDUCT COMMITTEE OF THE
PROFESSIONAL BOARD FOR**

You,,

(name of person and his or her address)

are hereby given notice that an inquiry into your professional conduct will be held by the
professional conduct committee of the Professional Board for

..... at

.....(place)

on (date) at (time).

The charge sheet as formulated by the *pro forma* complainant is enclosed.

You may be legally represented at the inquiry. You are advised to make timeous arrangements for
such representation. If you and/or your legal representative fail to attend the inquiry on the
stipulated date, the inquiry may proceed in your absence.

Given under my hand, this

day of 20.....

.....
REGISTRAR

ANNEXURE B

**SUBPOENA TO APPEAR BEFORE A PROFESSIONAL CONDUCT COMMITTEE OF THE
PROFESSIONAL BOARD FOR**

You,

(name of person summoned and his or her address)

are hereby summoned to appear at(place) on

..... (date) at (time) before the professional conduct

committee of the Professional Board for

established in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), to give evidence in

respect of.....

.....

.....

.....

(if the person subpoenaed is to produce any book, record, document or thing, add:)

and you are hereby directed to produce:

.....

.....

(specify the book, record, document or thing concerned)

Given under my hand, this.....day of

.....20...

.....

REGISTRAR

ANNEXURE C**NOTICE TO APPEAR BEFORE A PERFORMANCE ASSESSMENT COMMITTEE OF THE
PROFESSIONAL BOARD FOR**

You,,

(name of person and his or her address)

are hereby given notice that a performance assessment of your professional performance will be
conducted by the performance assessment committee of the Professional Board for

..... at

.....(place)

on (date) at (time).

The following professional skills, or such other skills as may be identified by the committee during
your performance assessment, will be assessed:

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

Given under my hand, this

day of 20.....

.....

REGISTRAR

WET OP GESONDHEIDSBEROEPE, 1974

RAAD VIR GESONDHEIDSBEROEPE VAN SUID-AFRIKA

REGULASIES BETREFFENDE DIE INSTELLING VAN 'n ONDERSOEK NA BEWEERDE ONPROFESSIONELE GEDRAG KRAGTENS DIE WET OP GESONDHEIDSBEROEPE, 1974

Die Minister van Gesondheid het kragtens artikel 61(1)(h), gelees met artikel 61(4), van die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974), en ná oorlegpleging met die Raad vir Gesondheidsberoepe van Suid-Afrika, die regulasies in die Bylae uitgevaardig.

BYLAE

Woordomskrywing

1. In hierdie regulasies beteken "**die Wet**" die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974), en het enige woord of uitdrukking waaraan 'n betekenis in die Wet geheg is, daardie betekenis, en, tensy uit die samehang anders blyk, beteken—

"**appèlkomitee**" 'n *ad hoc*-komitee ingevolge artikel 10(2) van die Wet deur die raad ingestel om appèlaangeleenthede vanaf 'n professionele gedragskomitee te hanteer;

"**appellant**" 'n geregistreerde persoon of die *pro forma*-klaer wat veronreg voel deur 'n beslissing en/of straf deur 'n professionele gedragskomitee en na die appèlkomitee appelleer;

"**geringe oortreding**" gedrag wat, na die mening van die registrateur of die voorlopige komitee van ondersoek op grond van die dokumente wat aan die registrateur of daardie komitee voorgelê is, onprofessioneel is, maar van 'n geringe aard is en nie die hou van 'n formele professionele gedragsondersoek regverdig nie;

"**klaer**" 'n natuurlike of regspersoon, groep of professionele liggaam, met inbegrip van 'n professionele vereniging, 'n onderrig- of opleidingsinrigting, of 'n gesondheidsorg- of verwante

fasiliteit, wat 'n klag teen 'n geregistreerde persoon indien in verband met beweerde onprofessionele gedrag;

"klagte" enige skriftelike inligting met betrekking tot beweerde onprofessionele gedrag deur 'n persoon wat kragtens die Wet geregistreer is, wat onder die aandag van die registrateur of die raad of 'n beroepsraad of 'n ombudsman kom, of 'n klagte, beskuldiging of bewering van onprofessionele gedrag teen sodanige persoon;

"ombudsman" iemand deur die raad aangestel om in die geval van geringe oortredings wat deur die registrateur vir bemiddeling na hom of haar verwys is, te bemiddel;

"ondersoek" 'n ondersoek deur 'n beroepsraad of 'n professionele gedragskomitee van die beroepsraad kragtens Hoofstuk IV van die Wet en hierdie regulasies gehou om 'n klagte of beskuldiging teen 'n geregistreerde persoon te ondersoek;

"prestasië-evaluering" 'n evaluering gedoen deur 'n prestasië-evalueringskomitee om ondersoek in te stel na en 'n beslissing te gee oor die kliniese of verwante prestasië van 'n praktisyn teen wie 'n professionele gedragskomitee in 'n ondersoek getuienis van swak kliniese of verwante prestasië gevind het, of van 'n patroon van sodanige prestasië;

"prestasië-evalueringskomitee" 'n *ad hoc*-komitee kragtens artikel 15(5)(f) van die Wet deur 'n beroepsraad ingestel om ondersoek in te stel na en 'n beslissing te gee oor die kliniese of verwante prestasië van 'n praktisyn teen wie 'n professionele gedragskomitee in 'n ondersoek getuienis van swak kliniese of verwante prestasië gevind het, of van 'n patroon van sodanige prestasië;

"pro forma-klaer" iemand deur die registrateur aangestel om die klaer te verteenwoordig en die klagte aan die professionele gedragskomitee te stel;

"professionele gedragskomitee" 'n komitee kragtens artikel 15(5)(f) van die Wet deur 'n beroepsraad ingestel om 'n ondersoek te hou;

"regsassessor" iemand vertrouwd met die reg wat minstens vyf jaar ervaring op die terrein van die reg het en deur die registrateur aangestel is om die professionele gedragskomitee van raad te dien oor enige regs- of prosedurele aangeleentheid;

"respondent" iemand kragtens die Wet geregistreer wie se gedrag die onderwerp van 'n klagte of 'n ondersoek kragtens Hoofstuk IV van die Wet en hierdie regulasies is, of iemand wat 'n appèl kragtens hierdie regulasies teenstaan;

"swak prestasie" nalatigheid en gedrag deur 'n praktisyn wat nie voldoen aan die vereiste standaarde of algemeen aanvaarde norme in gesondheidsorg nie en wat bevind is te wyte te wees aan 'n gebrek aan kliniese of verwante vaardighede of toereikende kennis van die bestuur van pasiënte of 'n bepaalde gesondheidstoestand;

"voorlopige komitee van ondersoek" 'n komitee kragtens artikel 15(5)(f) van die Wet deur 'n beroepsraad ingestel om die voorlopige ondersoek na die klagtes in te stel ten einde 'n beslissing daaroor te maak; en

"voorlopige ondersoek" 'n ondersoek gehou kragtens hierdie regulasies deur 'n voorlopige komitee van ondersoek om 'n klagte teen 'n persoon wat in die register van die betrokke beroepsraad geregistreer is, te oorweeg ten einde 'n beslissing te maak oor die gepaste wyse om die klagte te hanteer.

Aanhangig maak van klagtes

2. (1) 'n Klagte moet skriftelik aanhangig gemaak word en moet gerig wees aan die registrateur, die raad of 'n beroepsraad.

(2) Indien 'n klagte aan die raad gerig word, moet dit by die registrateur ingedien word.

(3) Die registrateur moet—

(a) alle klagtes wat ontvang word, deurlees en ontleed;

(b) die klagtes kategoriseer volgens die belangrikheid en erns daarvan;

(c) elke klagte aanteken teen die naam van die betrokke respondent soos dit verskyn in die register gehou ingevolge artikel 18 van die Wet; en

- (d) klagtes wat geringe oortredings behels en aangeleenthede wat nie binne die jurisdiksie van die raad val nie, na die ombudsman verwys vir onderskeidelik bemiddeling of verwysing na die betrokke owerhede.

Bemiddeling deur ombudsman

3. (1) Die ombudsman moet—

- (a) in die geval van geringe oortredings wat kragtens regulasie 2(3)(d) vir bemiddeling na hom of haar verwys is, bemiddel ten einde die aangeleentheid by te lê;
- (b) gevalle wat nie deur bemiddeling bygelê kon word nie, na die registrateur verwys vir voorlopige ondersoek; en
- (c) aangeleenthede wat nie binne die jurisdiksie van die raad val nie, na die gepaste liggame of tribunale verwys en die klaer van sodanige verwysing in kennis stel.

(2) Die ombudsman kan, ná ontvangs van 'n klagte vir bemiddeling, nadere inligting aanvra op enige wyse wat hy of sy gepas ag, van enigiemand wat na sy of haar mening in die bemiddeling kan help om die aangeleentheid by te lê.

(3) Die ombudsman moet, ná ontvangs van die inligting bedoel in subregulasie (2), die aangeleentheid oorweeg en tussen die partye bemiddel met die oog daarop om 'n beslissing te gee wat die aangeleentheid tussen die partye sal bylê, die partye in kennis stel van sy beslissing oor die aangeleentheid en van hulle vereis om aan te dui of hulle hulle by die beslissing sal berus.

(4) Indien die partye instem om by die beslissing te berus, moet die ombudsman die beslissing skriftelik bevestig en die beslissing is dan bindend vir albei partye as die finale skikking van die aangeleentheid.

(5) Indien enigeen van die twee partye nie instem om by die beslissing te berus nie, word die aangeleentheid na die registrateur verwys vir voorlopige ondersoek.

(6) Die inligting wat die ombudsman kragtens subregulasie (2) bekom het, is vertroulik en geprivilegeerd, en indien die aangeleentheid kragtens subregulasie (5) vir voorlopige

ondersoek verwys word, mag sodanige inligting nie deur die voorlopige komitee van ondersoek oorweeg word nie

Voorlopige ondersoek

4. (1) Die registrateur—

- (a) kan, ná ontvangs van 'n klagte, nadere inligting of 'n beëdigde verklaring aanvra wat die beweringe deur die klaer bevestig;
- (b) moet, behoudens paragraaf (a), ná ontvangs van 'n klagte die klagte aanteken en die respondent van die klagte verwittig deur 'n afskrif van die klagte, tesame met afskrifte van enige nadere inligting of beëdigde verklarings bedoel in subregulasie (a), aan hom of haar te stuur—
 - (i) en van hom of haar 'n skriftelike antwoord aanvra binne 40 werksdae vanaf die datum van ontvangs van die verwittiging, of binne sodanige langer tydperk as wat die registrateur redelikerwys toelaat, by gebreke waarvan die klagte, tesame met enige nadere inligting of beëdigde verklaring bedoel in paragraaf (a), aan 'n voorlopige komitee van ondersoek voorgelê moet word sonder die respondent se skriftelike antwoord;
 - (ii) en hom of haar inlig dat versuim om op die verwittiging of klagte te antwoord soos bedoel in subparagraaf (i), minagting van die raad uitmaak en dat 'n antwoord kan bestaan uit 'n skriftelike mededeling deur die respondent dat hy of sy sy of haar reg om te swyg uitoefen;
 - (iii) en hom of haar waarsku dat die skriftelike antwoord bedoel in subparagraaf (i) gebruik kan word as of in getuienis teen hom of haar:

Met dien verstande dat 'n verwittiging bedoel in hierdie paragraaf geag word ontvang te wees—

- (aa) op die dag dat sodanige verwittiging per hand afgelewer is by die geregistreerde adres van die respondent; of
 - (bb) indien sodanige verwittiging per geregistreerde pos versend is, op die sewende dag ná die datum waarop dit aldus gepos is;
- (c) kan die klagte regstreeks na die voorlopige komitee van ondersoek of die voorsitter van sodanige komitee verwys vir opdragte rakende die inligting wat vereis word om 'n volledige ondersoek na die aangeleentheid af te handel;
- (d) kan gelas dat 'n ondersoek kragtens artikel 41A van die Wet gehou word.

(2) By ontvangs deur die registrateur van die nadere inligting en skriftelike antwoord bedoei in subregulasie (1)(a) en (b), moet hy of sy die klagte, sodanige nadere inligting en die skriftelike antwoord aan die voorlopige komitee van ondersoek voorlê, en indien geen nadere inligting of skriftelike antwoord ontvang word nie, moet die registrateur daardie feit aanteken en dit by die voorlopige komitee van ondersoek aanmeld.

(3) Die voorlopige komitee van ondersoek kan, ná behoorlike oorweging van die aangeleentheid wat kragtens subartikel (2) na hom verwys is, die registrateur gelas om 'n skriftelike kennisgewing aan die respondent uit te reik, wat afgelewer moet word op die wyse beoog in die voorbehoudsbepaling by subregulasie (1)(b), waarby hy of sy opdrag gegee word om persoonlik, saam met sy of haar regsverteenwoordiger, as daar een is, op die eersvolgende vergadering voor die voorlopige komitee van ondersoek te verskyn sodat vasgestel kan word waarom hy of sy nie op die raadskorrespondensie gereageer het nie en om sy of haar antwoord op die klagte te gee of sy of haar reg om te swyg uit te oefen.

(4) Indien die voorlopige komitee van ondersoek, ná behoorlike oorweging van die respondent se verduideliking van sy of haar versuim om op die raadskorrespondensie te antwoord, beslis dat die respondent die raad geminag het, moet die komitee—

- (a) 'n bevinding van skuldig aan minagting van die raad doen en een of meer van die strawwe oplê waarvoor artikel 42(1)(a) en (d) van die Wet voorsiening maak;

(b) die respondent beveel om binne die tydperk wat die komitee bepaal, sy of haar skriftelike antwoord op die klagte of 'n skriftelike mededeling dat hy of sy sy of haar reg om te swyg uitoefen, in te dien; en

(c) die registrateur gelas om die komitee se beslissing skriftelik aan die respondent te bevestig, met vermelding van die rede(s) vir die beslissing.

(5) Indien die respondent versuim om die vergadering van die voorlopige komitee van ondersoek by te woon nadat hy of sy behoorlik skriftelik verwittig is om voor die komitee te verskyn, kan die komitee—

(a) 'n bevinding van skuldig aan minagting van die raad doen en een of meer van die strawwe opleë waarvoor artikel 42(1)(a) en (d) van die Wet voorsiening maak;

(b) die respondent beveel om binne die tydperk wat die komitee bepaal, sy of haar skriftelike antwoord op die klagte of 'n skriftelike mededeling dat hy of sy sy of haar reg om te swyg uitoefen, in te dien; en

(c) die registrateur gelas om die komitee se beslissing skriftelik aan die respondent te bevestig, met vermelding van die rede(s) vir die beslissing.

(6) Die bevinding gedoen en die straf opgelê deur die voorlopige komitee van ondersoek ingevolge subregulasie (4) of (5), is onmiddellik van krag, maar kan deur die Hoë Hof ter syde gestel word indien die respondent kragtens artikel 20 van die Wet na die Hof appelleer.

(7) Indien 'n voorlopige komitee van ondersoek, ná behoorlike oorweging van die klagte, enige nadere inligting wat bekom is kragtens subregulasie (1)(a) en die respondent se verduideliking rakende die onderwerp van die klagte, beslis dat daar geen gronde vir verdere stappe is nie, teken hy die beslissing en die respondent se verduideliking aan en verstrek sy redes vir daardie aantekening en aanvaarding, en gelas die registrateur om die komitee se beslissing skriftelik aan die klaer en die respondent mee te deel, met vermelding van die rede(s) vir die beslissing.

(8) Indien 'n voorlopige komitee van ondersoek, ná behoorlike oorweging van die klagte, enige nadere inligting wat bekom is kragtens subregulasie (1)(a) en die respondent se verduideliking rakende die onderwerp van die klagte, of die gebrek daaraan, beslis dat daar gronde vir 'n professionele gedragsondersoek is, moet hy gelas dat 'n ondersoek gehou word en dat die registrateur die komitee se beslissing skriftelik aan die klaer en die respondent oordra en die

reëlings vir die hou van so 'n ondersoek tref, of kan hy toelaat dat die respondent 'n skulderkenningsboete kragtens artikel 42(8) en (9) van die Wet betaal.

(9) Indien 'n voorlopige komitee van ondersoek, ná behoorlike oorweging van die klagte, enige nadere inligting wat bekom is kragtens subregulasie (1)(a) en die respondent se verduideliking rakende die onderwerp van die klagte, beslis dat die respondent onprofessioneel opgetree het, maar dat die betrokke gedrag slegs 'n geringe oortreding uitmaak, moet hy een of meer van die strawwe waarvoor artikel 42(1)(a) en (d) van die Wet voorsiening maak, aanwys as 'n gepaste straf om op te lê en die registrateur gelas om die beskuldigings op skrif te stel en die beskuldigings en die komitee se beslissing aan die respondent mee te deel, met die bepaling dat die straf binne 14 dae vanaf die datum van ontvangs van die mededeling aanvaar of verwerp moet word: Met dien verstande dat indien die straf—

(a) deur die respondent aanvaar word, die kennisgewing van aanvaarding aan die registrateur vergesel moet gaan van bewys van nakoming van die straf, en daardie straf moet beskou word as 'n straf opgelê deur die voorlopige komitee van ondersoek, waarna die aangeleentheid as afgehandel beskou word; of

(b) deur die respondent verwerp word of geen antwoord teen die keurdatum ontvang is nie, die registrateur reëlins moet tref vir 'n ondersoek na die professionele gedrag van die respondent, en die beskuldiging aldus op skrif gestel en die straf aldus verwerp of aldus onbeantwoord gelaat, mag dan nie meer op die aangeleentheid toegepas word nie.

Reëlins vir 'n ondersoek

5. (1) Ná ontvangs van 'n lasgewing bedoel in regulasie 4(8) of van 'n kennisgewing van verwerping van die straf of indien geen antwoord teen die keurdatum ontvang is nie soos bedoel in regulasie 4(9)(b), moet die registrateur 'n kennisgewing, wesenlik in die vorm van Aanhangsel A by hierdie regulasies, gerig aan die respondent uitreik waarin die datum en tyd waarop en die plek waar die ondersoek gehou gaan word, vermeld word en waarby die klagstaat soos opgestel deur die *pro forma*-klaer ingesluit is.

(2) Die kennisgewing en die klagstaat bedoel in subregulasie (1) moet, minstens 60 dae voor die datum van die ondersoek, per hand of per geregistreerde pos by sy of haar geregistreerde adres aan die respondent beteken word, en 'n afskrif van die kennisgewing en klagstaat moet aan die respondent se regsverteenvoordiger beteken of gepos word indien die

regsverteenwoordiger reeds aangestel is wanneer die kennisgewing en klagstaat aan die respondent beteken of gepos word.

Samestelling van die professionele gedragskomitee

6. (1) Die voorsitter van die beroepsraad moet, op versoek van die registrateur, minstens sewe dae voor die ondersoek 'n professionele gedragskomitee aanstel.

(2) Die professionele gedragskomitee moet saamgestel word uit minstens—

- (a) twee openbare verteenwoordigers, van wie een die voorsitter moet wees;
- (b) twee persone geregistreer in die beroep waarin die respondent geregistreer is, van wie minstens een in dieselfde dissipline as die respondent geregistreer moet wees;
- (c) een lid van die raad; en
- (d) een regsassessor.

(3) Iemand wat gedien het as 'n lid van die voorlopige komitee van ondersoek wat 'n aangeleentheid vir ondersoek verwys het, mag nie in die professionele gedragskomitee wat daardie aangeleentheid hanteer, dien nie.

Versoek om nadere besonderhede

7. (1) 'n Versoek deur die respondent of sy of haar regsverteenwoordiger om nadere besonderhede oor die beskuldigings soos deur die *pro forma*-klaer gestel, moet die *pro forma*-klaer minstens 30 dae voor die datum van die ondersoek bereik.

(2) Die *pro forma*-klaer moet sy of haar skriftelik antwoord op die versoek om nadere besonderhede bedoel in subregulasie (1), binne 14 dae vanaf die datum van ontvangs van die versoek aan die respondent of sy of haar regsverteenwoordiger verstrek.

(3) Die *pro forma*-klaer hoef nie op enige versoek om nadere besonderhede wat minder as 30 dae voor die ondersoek ontvang word, te antwoord nie.

Vooronderzoekkonferensie

8. (1) Ten einde vas te stel wat die geskilpunte is, moet die *pro forma*-klaer 'n vooronderzoekkonferensie reël vir 'n datum minstens sewe dae voor die datum van die ondersoek en op 'n wedersyds gerieflike tyd en plek, wat deur albei partye of hulle regsverteenvoerders, as daar is, bygewoon moet word, op welke konferensie—

- (a) die respondent of sy of haar regsverteenvoerder die eksepsies, besware (met inbegrip van 'n beswaar teen die jurisdiksie van 'n professionele gedragskomitee om die aangeleentheid te ondersoek) of punte *in limine* wat hy of sy beoog om te opper, moet aandui;
- (b) die respondent of sy of haar regsverteenvoerder moet aandui hoe hy of sy beoog om op die beskuldiging of beskuldigings te pleit;
- (c) afskrifte van alle dokumente, verslae, aantekeninge, X-straalplate of ander bewysstukke wat 'n party beoog om in die ondersoek te gebruik, aan die ander party verskaf moet word;
- (d) insae in die oorspronklikes van die dokumente, verslae, aantekeninge, X-straalplate of ander bewysstukke bedoel in paragraaf (c) toegelaat word;
- (e) erkennings met betrekking tot die bewerings of bewysstukke deur albei partye gemaak kan word;
- (f) 'n opsomming van die oordeel van 'n deskundige wat 'n party beoog om in die ondersoek te roep, aan die ander party verskaf moet word; en
- (g) enige ander aangeleentheid met betrekking tot die ondersoek bygelê moet word.

(2) Notule van die vooronderzoekkonferensie moet gehou word en deur albei partye of hulle regsverteenvoerders onderteken word vir voorlegging aan die professionele gedragskomitee by die verhoor.

(3) Die professionele gedragskomitee kan 'n party wat versuim het om die vooronderzoekkonferensie by te woon, beveel om so 'n konferensie by te woon en om die koste wat die registrateur bepaal ten opsigte van die dag wat aldus vermors is omdat die verhoor nie kon voortgaan nie, te betaal.

Prosedure by ondersoek

9. (1) Die voorsitter van die professionele gedragskomitee moet die respondent of sy of haar regsverteenwoordiger, indien die respondent verteenwoordig word, vra om op die beskuldiging te pleit, welke pleit aangeteken moet word.

(2) Indien die respondent, of sy of haar regsverteenwoordiger, weier of versuim om regstreeks op die beskuldiging(s) te pleit, moet die voorsitter van die professionele gedragskomitee dit aanteken en 'n pleit van onskuldig aanteken.

(3) Indien die respondent op die beskuldiging(s) skuldig pleit, moet die professionele gedragskomitee die respondent of sy of haar regsverteenwoordiger sodanige vrae vra as wat nodig is om vas te stel of al die elemente van die beskuldiging(s) erken word.

(4) Indien die professionele gedragskomitee oortuig is dat al die elemente van die beskuldiging(s) erken word, moet die *pro forma*-klaer die komitee toespreek en aandui of die pleit van skuldig aanvaar word.

(5) Indien die pleit van skuldig aanvaar word, moet die voorsitter 'n bevinding van skuldig doen en die partye die geleentheid gee om voor die komitee betoog te lewer ooreenkomstig subregulasie (22).

(6) Indien die respondent onskuldig pleit of indien 'n pleit van onskuldig aangeteken word ingevolge subregulasie (2) of indien 'n pleit van skuldig nie deur die *pro forma*-klaer aanvaar word nie, moet die voorsitter die *pro forma*-klaer die geleentheid gee om voor die professionele gedragskomitee betoog te lewer, getuies aan te bied ter ondersteuning van sy of haar saak, getuies te herondervra ná kruisondervraging deur die respondent of sy of haar regsverteenwoordiger, en daarna sy of haar saak sluit.

(7) Die respondent of sy of haar regsverteenwoordiger kan om sy of haar ontslag aansoek doen nadat die *pro forma*-klaer sy of haar saak gesluit het.

(8) Die voorsitter van die professionele gedragskomitee moet die *pro forma*-klaer die geleentheid gee om te antwoord op die aansoek om ontslag deur die respondent of sy of haar regsverteenwoordiger.

(9) Die professionelegegedragskomitee moet dan die aansoek *in camera* oorweeg en daarna sy beslissing aan die partye oordra.

(10) Indien die aansoek om ontslag van die hand gewys word, kan die respondent of sy of haar regsverteenwoordiger voor die professionelegegedragskomitee betoog lewer en getuienis aanbied ter ondersteuning van sy of haar saak, getuies herondervra ná kruisondervraging deur die *pro forma*-klaer, en daarna sy of haar saak sluit.

(11) Die professionelegegedragskomitee kan op aansoek enige van die partye toelaat om verdere getuienis aan te bied of om 'n getuie terug te roep nadat hulle hul onderskeie sake gesluit het, en die ander party moet dan die geleentheid kry om sodanige getuie te kruisondervra.

(12) Die voorsitter en die ander lede van die professionelegegedragskomitee kan vrae aan 'n getuie stel om duidelikheid te kry oor aangeleenthede wat uit daardie getuie se getuienis voortspruit.

(13) Die voorsitter van die professionelegegedragskomitee moet verdere kruisondervraging en herondervraging van 'n getuie toelaat oor aangeleenthede wat voortspruit uit die vrae wat die voorsitter of ander lede van die komitee gestel het.

(14) Nadat al die getuienis aangebied is, kan die *pro forma*-klaer en die respondent of sy of haar regsverteenwoordiger voor die professionelegegedragskomitee betoog lewer oor die getuienis en die regsposisie.

(15) Die *pro forma*-klaer mag op enige regsangeleentheid wat die respondent of sy of haar regsverteenwoordiger in sy betoog geopper het, repliek lewer en mag, met verlof van die professionelegegedragskomitee, repliek lewer op enige aangeleentheid wat die respondent of sy of haar regsverteenwoordiger in sy betoog geopper het.

(16) Indien die respondent nie by die ondersoek aanwesig is nadat hy of sy behoorlik daarvan in kennis gestel is nie, kan die ondersoek in sy of haar afwesigheid voortgaan nadat die voorsitter van die professionelegegedragskomitee 'n pleit van onskuldig namens die respondent aangeteken het, tensy die respondent skriftelik skuldig gepleit het. Met dien verstande dat die professionelegegedragskomitee die uitstel van die ondersoek kan oorweeg indien die respondent se afwesigheid aan *bona fide*-redes toe te skryf is.

(17) Alle mondelinge getuienis moet gelewer word onder eed of bevestiging afgeneem deur die voorsitter van die professionelegegedragskomitee.

(18) Getuienis by beëdigde verklaring is toelaatbaar: Met dien verstande dat die opponerende party kan vereis dat die deponent van die beëdigde verklaring aanwesig moet wees vir kruisondervraging.

(19) (a) Die oorkonde, of enige gedeelte daarvan, van 'n wettig saamgestelde hof, geregtelike doodsondersoek of tugtribunaal van enige jurisdiksie is aanvaarbaar as *prima facie*-getuienis indien dit deur daardie hof of tribunaal as 'n ware afskrif gewaarmerk is.

(b) Indien dit uitvoerbaar is en na die oordeel van die professionele gedragskomitee billik is, kan hy, op versoek van enigeen van die twee partye en vir doeleindes van kruisondervraging, beveel dat 'n getuie wie se getuienis in die oorkonde van 'n hof of tugtribunaal vervat is en wat as *prima facie*-getuienis aangebied word, by die ondersoek aanwesig moet wees.

(20) Aan die einde van die verhoor moet die professionele gedragskomitee *in camera* beraadslaag en dan binne die tydperk wat die komitee bepaal, die partye van sy bevindinge in kennis stel.

(21) Die bevindinge van die professionele gedragskomitee kan 'n bevinding van swak prestasie aan die kant van die respondent insluit, in welke geval die komitee van die *pro forma*-klaer en die respondent of sy of haar regsvertegenwoordiger moet vereis om betoog te lewer oor die gepastheid van volle of gedeeltelike verwysing van die aangeleentheid na 'n prestasie-evalueringskomitee om ondersoek in te stel na die prestasie van die respondent en 'n beslissing te gee oor die gepaste bestuur daarvan.

(22) (a) Indien die respondent skuldig bevind word aan onprofessionele gedrag, moet die *pro forma*-klaer voor die komitee betoog lewer en besonderhede verskaf van vorige skuldigbevindings aan onprofessionele gedrag ingevolge die Wet, as daar is.

(b) Die *pro forma*-klaer kan die professionele gedragskomitee ook toespreek oor 'n gepaste straf en getuienis aanbied ter ondersteuning van sodanige straf.

- (c) Die respondent of sy of haar regsverteenwoordiger kan daarna die professionelegegedragskomitee toespreek oor die persoonlike omstandighede van die respondent en 'n gepaste straf om op te lê en getuienis aanbied ter ondersteuning van sodanige straf en ter versagting van die straf aanbeveel deur die *pro forma*-klaer, waarna die *pro forma*-klaer repliek kan lewer ter strafverswaring.
- (d) Die professionelegegedragskomitee moet *in camera* beraadslaag oor die gepaste straf om op te lê, waarna die voorsitter die partye moet inlig oor die straf waarop besluit is.
- (e) Die bevinding gedoen en die straf opgelê word van krag op die datum wat die komitee bepaal.

(23) Indien die professionelegegedragskomitee bevind dat die getuienis voor hom op swak prestasie deur die respondent dui, kan hy, benewens die oplegging van 'n straf indien die getuienis ook op onprofessionele gedrag dui, praktiseringsbeperkings oplê en die aangeleentheid, tesame met sy bevindings oor swak prestasie deur die respondent, na 'n prestasie-evalueringskomitee verwys om ondersoek na die prestasie van die respondent in te stel en 'n beslissing te gee oor die gepaste bestuur daarvan, en die registrateur gelas om reëlings te tref vir die prestasie-evaluering binne die tydperk bepaal deur die professionelegegedragskomitee.

Reëlings vir 'n prestasie-evaluering

10. (1) Ná ontvangs van 'n lasgewing bedoel in regulasie 9(23) moet die registrateur, in oorleg met die voorsitter van die betrokke beroepsraad, binne 30 dae vanaf die datum van die bevinding deur 'n professionelegegedragskomitee 'n prestasie-evalueringskomitee aanstel wat bestaan uit drie geregistreerde praktisyns uit dieselfde dissipline as die respondent en 'n kennisgewing, wesenlik in die vorm van Aanhangsel C by hierdie regulasies, aan die respondent rig wat die datum, tyd en plek vermeld waarop die evaluering sal plaasvind, asook die terreine van swak prestasie wat die professionelegegedragskomitee geïdentifiseer het en deur die prestasie-evalueringskomitee geëvalueer moet word.

(2) Die kennisgewing bedoel in subregulasie (1) moet, minstens 21 werksdae voor die datum bepaal vir die prestasie-evaluering, per hand aan die respondent beteken word of per geregistreerde pos aan hom of haar gestuur word by sy of haar geregistreerde adres.

(3) Die prestasie-evalueringskomitee moet die wyse bepaal waarop die evaluering van die terreine van swak prestasie geïdentifiseer deur die professionele gedragskomitee gedoen gaan word, asook die duur daarvan, en moet dié inligting aan die respondent meedeel tesame met die kennisgewing bedoel in subregulasie (1).

(4) Aan die einde van die evaluering moet die komitee 'n beslissing gee oor die gepaste bestuur van die respondent se swak prestasie en opdragte gee wat die respondent moet nakom om sy of haar prestasie te verbeter binne sodanige tydperk as wat die komitee bepaal, en van die respondent vereis om sodanige verslae in te dien as wat die komitee bepaal ten einde 'n finale beslissing te gee oor die prestasie van die respondent.

(5) Die respondent moet die opdragte nakom wat die prestasie-evalueringskomitee gee, by gebreke waarvan die komitee die registrateur kan gelas om die respondent uit die beoefening van sy of haar beroep te skors tot tyd en wyl hy of sy die opdragte volledig nagekom het.

(6) Wanneer die respondent die opdragte nagekom het en die prestasie-evalueringskomitee die vereiste verslae bedoel in subregulasie (4) ontvang het, moet die komitee die verslae oorweeg om vas te stel of die respondent die nodige vaardighede verwerf het om hom of haar in staat te stel om optimaal in die beoefening van sy of haar beroep te presteer.

(7) Indien die prestasie-evalueringskomitee, op grond van die ingediende verslae, oortuig is dat die respondent die nodige vaardighede verwerf het om sy of haar beroep met redelike vaardigheid te beoefen, kan hy die praktiseringsbeperkings kragtens regulasie 9(23) deur die professionele gedragskomitee opgelê, ophef en die aangeleentheid afhandel.

(8) Indien die prestasie-evalueringskomitee op grond van die ingediende verslae nie oortuig is dat die respondent die nodige vaardighede verwerf het om sy of haar beroep te beoefen nie, moet die komitee die vaardighede bepaal wat die respondent nodig het om sy of haar beroep met redelike vaardigheid te beoefen.

Appel

11. (1) Die respondent of die *pro forma*-klaer kan na die appelkomitee appelleer teen die bevindinge of straf van die professionele gedragskomitee of teen sowel sodanige bevinding as sodanige straf.

(2) Die appellant moet, binne 21 dae vanaf die datum van die beslissing van die professionele gedragskomitee, die registrateur skriftelik kennis van voorneme om te appelleer gee: Met dien verstande dat kennis van voorneme om te appelleer wat ná 21 dae gegee word, deur die appèlkomitee oorweeg kan word indien dit vergesel gaan van 'n aansoek om vergunning waarin die redes vir die vertraging vermeld word, en die appèlkomitee moet, op die datum vasgestel vir die appèl, sodanige aansoek oorweeg voor die appèl op meriete.

(3) Die registrateur moet, binne 60 dae ná ontvangs van die skriftelike kennisgewing van voorneme om te appelleer bedoel in subregulasie (2), die appellant voorsien van 'n afskrif van die transkripsie van die verrigtinge van die ondersoek: Met dien verstande dat die appellant die redelike koste van sodanige afskrif van die transkripsie betaal.

(4) Die appellant moet, binne 30 dae vanaf die datum waarop hy of sy die afskrif van die transkripsie bedoel in subregulasie (3) ontvang, ses afskrifte van sy of haar dokumente wat die gronde vir die appèl uiteensit en 'n samevatting van betoë bevat, per hand of per geregistreerde pos aan die registrateur en een afskrif daarvan aan die ander party aflewer.

(5) Die ander party moet, binne 30 dae vanaf die datum waarop die appellant sy of haar dokumente aan die registrateur afgelewer het, ses afskrifte van sy of haar antwoord op die appellant se dokumente bedoel in subregulasie (3), wat sy of haar samevatting van betoë bevat, per hand of per geregistreerde pos aan die registrateur en een afskrif daarvan aan die appellant aflewer.

(6) Indien enigeen van die partye versuim om die afskrifte bedoel in subregulasies (4) en (5) binne die voorgeskrewe tydperk af te lewer, kan daardie party toegelaat word om sodanige afskrifte in te dien: Met dien verstande dat daardie afskrifte vergesel gaan van 'n aansoek om vergunning vir laat indiening, en die appèlkomitee moet, op die datum vasgestel vir die appèl, sodanige aansoek oorweeg voor die appèl op meriete.

(7) Die appellant moet, binne 14 dae vanaf die datum waarop die ander party sy of haar antwoord ingedien het, ses afskrifte van sy of haar repliek op die ander party se antwoord aan die registrateur aflewer en een afskrif aan die ander party.

(8) Indien geen repliek deur die appellant afgelewer word binne die tydperk bedoel in subregulasie (7) nie, stel die registrateur albei partye skriftelik in kennis dat geen repliek deur die appellant kragtens subregulasie (7) ingedien is nie en van die datum waarop die aangeleentheid deur die appèlkomitee aangehoor sal word.

(9) Die appèlkomitee moet die appèl oorweeg op grond van die dokumente bedoel in subregulasies (4), (5), (6) en (7), vertoë en betoë deur albei partye of hulle regsverteenvoerders toelaat, *in camera* oor die aangeleentheid beraadslaag en dan die partye in kennis stel van sy bevindinge, wat skriftelik deur die registrateur bevestig moet word.

(10) Elke party is verantwoordelik vir sy of haar eie koste wat voortspruit uit voorbereiding vir en die afhandeling van die appèl.

(11) Die beslissing van die appèlkomitee word van krag vanaf die datum deur die komitee bepaal en kan deur 'n Hoë Hof tersyde gestel word indien hy kragtens artikel 20 van die Wet genader word.

Voortsetting van ondersoek

12. (1) Indien 'n lid van die professionele gedragskomitee te eniger tyd nadat 'n pleit aangeteken is, nie meer in staat is om in die komitee te dien nie, moet die ondersoek voortgaan, mits minstens vier van die oorspronklike lede beskikbaar is om met die ondersoek voort te gaan.

(2) Indien die voorsitter te eniger tyd nadat 'n pleit aangeteken is, nie meer in staat is om te dien nie, kan die ondersoek voortgaan met die ander openbare verteenwoordiger as die nuwe voorsitter.

Toeganklikheid van 'n ondersoek

13. (1) Die verrigtinge by 'n ondersoek is oop vir die publiek.

(2) Ondanks subregulasie (1)—

(a) mag die professionele gedragskomitee 'n beslissing ten opsigte van enige punt wat uit of in die loop van 'n ondersoek ontstaan, *in camera* neem;

(b) mag die professionele gedragskomitee, by aanvoering van grondige redes of na goeie dinge, enige getuigenis wat gedurende 'n ondersoek aangebied word, *in camera* aanhoor; en

- (c) mag die professionele gedragskomitee, by aanvoering van grondige redes, beveel dat geen persoon te eniger tyd en op enige wyse inligting bekend mag maak wat waarskynlik die identiteit van 'n bepaalde persoon, behalwe die respondent, aan die lig sal bring nie.

(3) Enige persoon wat 'n bevel gegee kragtens subregulasie (2)(c) veronagsaam of versuim om dit na te kom, begaan 'n misdryf en is by skuldigbevinding in 'n geregshof strafbaar met 'n boete van hoogstens R5 000 of met gevangenisstraf van hoogstens ses maande of met sowel sodanige boete as sodanige gevangenisstraf.

(4) Die raad moet opnames van alle ondersoeke hou en 'n afskrif van die transkripsie van so 'n opname moet, op aanvraag en by betaling van die werklike koste van die maak van die afskrif, aan die klaer, die respondent of enige ander party wat na die mening van die registrateur 'n wesenlike belang by die aangeleentheid het, beskikbaar gestel word.

Publikasie in die *Staatskoerant*

14. Die registrateur moet ná die afhandeling van die aangeleentheid ooreenkomstig hierdie regulasies die naam van die respondent, die beskuldiging(s) waaraan hy of sy skuldig bevind is en die straf wat opgelê is, in die *Staatskoerant* laat publiseer.

Getuiedagvaarding

15. 'n Dagvaarding om as 'n getuie voor 'n professionele gedragskomitee te verskyn om mondeling getuienis te lewer of 'n boek, rekord, dokument of ding voor te lê, moet wesenlik in die vorm van Aanhangsel B by hierdie regulasies wees.

Herroeping

16. (1) Die regulasies gepubliseer by Goewermentskennisgewing No. R.765 van 24 Augustus 2001 word hierby herroep.

(2) 'n Ondersoek of appèl kragtens die regulasies genoem in subregulasie (1) wat onmiddellik voor die inwerkingtreding van hierdie regulasies voor onderskeidelik 'n professionele gedragskomitee of 'n appèlkomitee hangende is, word gevoer en afgehandel ooreenkomstig die prosedures voorgeskryf by daardie regulasies asof dit nie herroep is nie.



MINISTER VAN GESONDHEID

DATUM: 06/01/2009

AANHANGSEL A

KENNISGEWING OM VOOR 'n PROFESSIONELEGEDRAGSKOMITEE VAN DIE
BEROEPSRAAD VIR

TE VERSKYN

U,,

(naam van persoon en sy of haar adres)

word hiermee kennis gegee dat 'n ondersoek na u professionele gedrag deur die
professionele gedragskomitee van die Beroepsraad vir

gehou sal word om (tyd) op (datum)

te (plek).

Die klagstaat soos opgestel deur die *pro forma*-klaer is hierby ingesluit.

U mag by die ondersoek deur 'n regsverteenwoordiger verteenwoordig word. U word aangeraai om
vroegtydig reëlins vir sodanige verteenwoordiging te tref. Indien u en/of u regsverteenwoordiger
versuim om by die ondersoek aanwesig te wees, kan die ondersoek in u afwesigheid voortgaan.

Gegee onder my hand op hede die

dag van 20.....

.....
REGISTRATEUR

AANHANGSEL B

**DAGVAARDING OM VOOR 'n PROFESSIONELEGEDRAGSKOMITEE VAN DIE
BEROEPSRAAD VIR****TE VERSKYN**

U,,

(naam van persoon en sy of haar adres)

word hiermee gedagvaar om op (datum) om (tyd)
te (plek)

voor die professionele gedragskomitee van die Beroepsraad vir,
ingestel kragtens die Wet op Gesondheidsberoep, 1974 (Wet No. 56 van 1974), te verskyn om
getuienis te lewer ten opsigte van

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

(indien die persoon 'n boek, rekord, dokument of ding moet voorlê, voeg by:)

en u word hiermee gelas om die volgende voor te lê:

.....
.....

(spesifiseer die betrokke boek, rekord, dokument of ding)

Gegee onder my hand op hede die

dag van 20.....

.....

REGISTRATEUR

AANHANGSEL C

**KENNISGEWING OM VOOR 'n PRESTASIE-EVALUERINGSKOMITEE VAN DIE
BEROEPSRAAD VIR****TE VERSKYN**

U,,

(naam van persoon en sy of haar adres)

word hiermee kennis gegee dat 'n prestasie-evaluering van u professionele prestasie deur die
prestasie-evalueringskomitee van die Beroepsraad vir
gedoen sal word om (tyd) op (datum)
te(plek).

Die volgende professionele vaardighede, of sodanige ander vaardighede as wat die komitee
gedurende u prestasie-evaluering identifiseer, sal geëvalueer word:

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

Gegee onder my hand op hede die
dag van 20.....

.....

REGISTRATEUR