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**GOVERNMENT NOTICE  
GOEWERMENTSKENNISGEWING**

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**DEPARTMENT OF HEALTH  
DEPARTEMENT VAN GESONDHEID**

No. R. 765

24 August 2001

**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 consultation with the Health Professions Council of South Africa, under section 61(1)(h), read with section 61(4) of the Health Professions Act, 1974 (Act No. 56 of 1974), 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 such meaning, and unless the context otherwise indicates -

**"accused"** means a person registered under the Act whose conduct is the subject of an inquiry under Chapter IV of the Act and these Regulations;

**"appeal committee"** means a committee established by a professional board under section 10(2) of the Act for purposes of conducting an appeal against the finding of an inquiry conducted by a professional board or a committee established for such purpose;

**"appellant"** means an accused or pro forma complainant who is aggrieved by a decision of a professional conduct committee or a professional board and who appeals to the appeal committee;

**“committee of preliminary inquiry”** means a committee established by a professional board in terms of the Regulations relating to the Functions and Functioning of Professional Boards under Government Notice No. R. 979 of 13 August 1999 for the preliminary investigation of complaints;

**“complainant”** means any person, group, professional body (including a professional association or society, teaching or training institution, or any other health care or related facility), or the registrar who lodged a complaint against any registered person pertaining to possible unprofessional conduct;

**“complaint”** means any information regarding the alleged unprofessional conduct by a person registered under the Act, which comes to the attention of the registrar, the council or a professional board, 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 under Chapter IV of the Act and these Regulations to inquire into a complaint against a person registered in terms of the Act;

**“preliminary inquiry”** means an inquiry held in terms of these regulations by a committee appointed by a professional board under section 15(5)(f) of the Act to consider a complaint against a registered person for whom that professional board is responsible in order to resolve on the holding of an inquiry in terms of section 41 of the Act or any other appropriate manner in which to deal with such a complaint;

**“professional conduct committee”** means a committee established by a professional board under the Regulations relating to the Functions and Functioning of Professional Boards published under Government Notice No. R. 979 of 13 August 1999 to conduct an inquiry;

**“pro forma complainant”** means a person appointed by a professional board to represent the complainant and to present the complaint to a professional conduct committee;

**Lodging of complaints**

2. (1) A complaint shall be in writing and be addressed to the registrar or to the council or to a professional board.
- (2) Where a complaint is addressed to and received by the council or a professional board, the council or such professional board shall submit it to the registrar within 24 hours.

**Preliminary inquiry**

3. (1) The registrar may -
  - (a) Within seven working days after he or she received a complaint, call for further information or an affidavit from the complainant;
  - (b) within seven working days after he or she received a complaint, notify the accused of the complaint or forward particulars of the complaint to him or her -
    - (i) requesting a written response from him or her within 21 working days after receipt of such notification or particulars, failing which the complaint will be forwarded to the preliminary inquiry committee without such written response; and
    - (ii) warning him or her that the written response referred to in subparagraph (i) may be used in evidence against him or her. Provided that a notification referred to in paragraph (b) shall be deemed to have been received -
      - (aa) on the day such notification is hand delivered to the registered address of the accused; or

- (bb) if such notification is sent by registered mail, on the seventh calendar day following the date on which it was posted;
- (c) refer the case directly to the committee of preliminary inquiry or the chairperson of such committee of the professional board concerned;
- (d) direct that an inspection be held in terms of section 41A of the Act.
- (2) On receipt by the registrar of further information or a written response referred to in subregulation (1)(a) or (b), the registrar shall submit such further information or written response to the committee of preliminary inquiry and if no further information or written response is received, the registrar shall report this to the committee of preliminary inquiry.
- (3) If a committee of preliminary inquiry decides, after due consideration of the matter, that there are no grounds for an inquiry, it shall direct the registrar to communicate in writing its decision to the complainant and the accused stating the reason(s) for such decision.
- (4) If a committee of preliminary inquiry decides, after due consideration of the matter, that an inquiry must be held into the conduct of the accused, it shall direct the registrar to arrange for the holding of an inquiry.

#### **Inquiry**

4. (a) On receipt of a directive referred to in regulation 3(4), the registrar shall issue a notice, which is attached hereto and essentially in the form of Annexure A and addressed to the accused, stating where and when the inquiry will be held and enclosing a charge sheet as formulated by the pro forma complainant.
- (b) The notice referred to in paragraph (a) shall be served on the accused or mailed to him or her at his or her registered address by registered mail at least one month prior to the date of the aforesaid inquiry.

**Request for further particulars**

5. (1) A request by the accused for further particulars to the charge sheet referred to in regulation 4(a) shall be served on the pro forma complainant at least three weeks before the date of the inquiry.
- (2) The pro forma complainant shall furnish his or her written reply to a request referred to in subregulation (1) to the accused within one week after receipt thereof.

**Discussion prior to inquiry**

6. In order to determine the issues in dispute at an inquiry, the parties shall, at least seven days prior to the inquiry, arrange a conference with each other at a mutually convenient time and venue, where -
- (a) the accused and/or his or her legal representative shall indicate what exceptions, objections (including the objection to jurisdiction of a professional conduct committee to inquire into the matter) or points *in limine* he or she intends raising;
  - (b) the accused and/or his or her legal representative shall indicate how he or she intends pleading to the charge sheet;
  - (c) copies of all documents, reports, notes, X-rays and any other exhibits which a party intends using at the inquiry are furnished to the other party;
  - (d) perusal of the originals of the documents, reports, notes, X-rays and other exhibits referred to in paragraph (c) is allowed;
  - (e) admissions are made by both parties with regard to allegations and/or exhibits;
  - (f) a summary of the opinion of an expert witness that a party intends using at the inquiry is furnished to the other party; and

- (g) any other aspect concerning the inquiry is resolved.,,

### **Procedure at inquiry**

7. (a) The accused or, if he or she is not present, his or her legal representative shall be asked by the chairperson of the professional conduct committee to plead to the charge, which plea shall be so recorded.
- (b) If the accused, or his or her legal representative, refuses or fails to plead directly to the charge sheet, this shall be recorded by the chairperson and a plea of not guilty shall be entered.
- (c) The pro forma complainant may address the professional conduct committee and he or she may lead evidence in support of his or her case.
- (d) The accused or his or her legal representative may apply for his or her discharge after the pro forma complainant has closed his or her case. The pro forma complainant may then reply.
- (e) The professional conduct committee shall then consider the application and may grant or refuse such application.
- (f) After the pro forma complainant has closed his or her case, the accused or his or her legal representative may address the professional conduct committee and he or she may lead evidence in support of his or her case.
- (g) The professional conduct committee may allow the pro forma complainant or the accused or his or her legal representative to lead further evidence or to recall a witness after their cases have been closed.
- (h) After evidence of a witness has been given, the opposing party may cross-examine the witness.

- (i) The chairperson of the professional conduct committee may examine a witness who has given evidence and allow other members of the professional conduct committee to examine the witness.
- (j) Further cross-examination shall be allowed arising from the examination by the chairperson and other members.
- (k) The person who led the evidence may thereafter re-examine the witness, but shall confine his or her re-examination to matters on which the witness was cross-examined or on which the chairman or other members examined the witness.
- (l) After the parties have closed their cases the professional conduct committee may call and examine further witnesses or recall and re-examine a witness whereafter the pro forma complainant and the accused or his or her legal representative shall also be entitled to examine the witness.
- (m) After all evidence has been adduced, the pro forma complainant and the accused or his or her legal representative may address the professional conduct committee on the evidence and the legal position.
- (n) The pro forma complainant may reply on any matter of law raised by the accused in his or her address and may, with the leave of the professional conduct committee, reply on any matter or fact raised by the accused in his or her address.
- (o) If the accused or his or her legal representative is not present at the inquiry after having been duly informed, the inquiry shall proceed in the accused's absence and a plea of not guilty shall be entered, unless the accused has in writing pleaded guilty. If the accused's absence is however due to bona fide circumstances, the professional conduct committee will consider the postponement of the inquiry.

- (p) All oral evidence shall be taken on oath or affirmation administered by the chairperson of the professional conduct committee.
- (q) Evidence on affidavit shall be admissible: Provided that the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.
- (r) (i) The record, or any portion thereof, of a lawfully constituted court, inquest court or statutory body from any jurisdiction shall be accepted as prima facie evidence if it has been certified to be a true copy by that court and/or jurisdiction.
- (ii) If it is practicable and appears just the professional conduct committee may, for the purpose of cross-examination, order the presence of a witness whose evidence appears in such record and is presented as prima facie evidence.
- (s) Upon the conclusion of a case the professional conduct committee shall deliberate thereon in camera and shall thereafter announce its finding.
- (t) The professional conduct committee may make a finding of not guilty even if the accused has pleaded guilty.
- (u) (i) If the accused is found guilty the pro forma complainant shall furnish details to the professional conduct committee of previous convictions of the accused under the Act, if any.
- (ii) The pro forma complainant may address the professional conduct committee and lead evidence regarding a suitable penalty to be imposed.
- (iii) The accused or his or her legal representative may thereafter address the professional conduct committee and adduce evidence in mitigation of the penalty to be imposed whereafter the pro forma complainant may reply.

- (iv) The professional conduct committee shall deliberate in camera upon the penalty to be imposed whereafter the chairperson of the professional conduct committee shall inform the accused of the penalty decided on.
- (v) The finding made and penalty imposed by the professional conduct committee shall be of immediate force and effect.

## Appeal

- 8. (1) The accused or pro forma complainant may appeal against the finding and/or penalty of the professional conduct committee to the appeal committee.
- (2) The appellant shall inform the registrar by notice within three weeks from the date of the professional conduct committee's decision of his or her intention to appeal against the finding and/or penalty.
- (3) The registrar shall provide the appellant with a copy of a transcript of the proceedings at the inquiry within one month from the date on which the registrar received a written notice of appeal.
- (4) The appellant shall file six copies of his or her papers setting out the grounds for appeal and containing heads of argument with the registrar within one month from the date on which he or she received a copy of the transcript referred to in subregulation (3).
- (5) The appeal shall only be heard on the papers referred to in subregulation (4).
- (6) The other party shall file six copies of his or her reply to the appellant's papers referred to in subregulation (4) with the registrar within one month from the date on which the appellant filed his or her papers with the registrar.
- (7) The appellant shall file six copies of his or her reply to the other party's reply referred to in subregulation (6) with the registrar within two weeks from the date on which the other party filed his or her reply.

(8) If no reply is filed by the appellant within the period referred to in subregulation (7), the registrar shall after the aforesaid period has lapsed advise both parties in writing of the date on which the matter will be heard by the appeal committee.

(9) After the appellant and the other party addressed the appeal committee on the merits and/or grounds of appeal at the hearing, the appeal committee shall deliberate, in camera, on the matter and advise the parties of its findings.

(10) Each party shall be responsible for his or her own costs occasioned by the preparation for and/or the finalisation of the appeal.

(11) The decision of the appeal committee shall be of force and effect from the date determined by such committee, unless set aside by the appropriate high court.

#### **Continuation of inquiry**

9. (1) If one or more member(s) of the professional conduct committee is unable to serve at any time after a plea has been lodged, the inquiry shall proceed provided that not less than two of the original members are available to continue with the inquiry.

(2) If a chairperson is unable to serve at any time after a plea has been lodged, the matter may proceed with a new chairperson provided that such a chairperson be granted the opportunity to re-examine witnesses who had already testified if he or she deems it necessary.

#### **Accessibility of an inquiry**

10. (1) The proceedings at an inquiry shall be open to the public.

(2) Notwithstanding subregulation (1) -

- (a) any decision of the professional conduct committee in respect of any point arising in connection with, or in the course of, an inquiry may be arrived at in camera;
  - (b) any evidence adduced during an inquiry may on good cause shown in the discretion of the professional conduct committee be heard in camera.
  - (c) the professional conduct committee may on good cause shown order that no person shall at any time and in any manner publish any information which will likely reveal the identity of any particular person other than that of the respondent.
- (3) Any person who infringes or fails to comply with an order made in terms of subregulation (2) shall be guilty of an offence and liable on conviction in a court of law to a fine not exceeding R5 000.
- (4) Typed recordings of all inquiries shall be kept by the council and upon written request, a typed written copy of such recording shall be made available to the complainant, accused or any other party who in the opinion of the registrar has a substantial interest in the matter upon payment of the actual cost for making such a written copy.

### **Subpoena**

11. 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 shall substantially be in the form as set out in Annexure B attached hereto.

### **Repeal**

12. (1) The regulations published under Government Notice No. R. 2303 of 28 September 1990 and Government Notice No. R. 874 of 26 April 1991 are hereby repealed.

- (2) An inquiry in terms of the Regulations referred to in subregulation (1) pending before a professional conduct committee of the council or a professional board immediately prior to the commencement of these Regulations shall be conducted and finalised under the procedures prescribed by those regulations as if such regulations had not been repealed.

*Mohabala*

MINISTER OF HEALTH

DATE: 12/8/2001

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**ANNEXURE A**

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

.....

(name of person and his or her address)

is 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 and time).

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

You may be legally represented at the inquiry. You should, however, timeously make arrangements in this regard. 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 the hand of the Registrar, this .....  
day of .....20.....

.....

**REGISTRAR**

**ANNEXURE B**

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

.....  
(name of person summoned and his or her address)

is hereby summoned to appear at ..... (place) on  
..... (date and 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 summoned 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 the hand of the Registrar, this ..... day of  
.....

.....  
**REGISTRAR**

**RAAD VIR GESONDHEIDSBEROEPE VAN SUID-AFRIKA****REGULASIES BETREFFENDE DIE INSTELLING VAN ONDERSOEKE NA BEWEERDE ONPROFESSIONELE GEDRAG KRAGTENS DIE WET OP GESONDHEIDSBEROEPE, 1974**

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

**BYLAE****Woordomskrywings**

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 van die Wet geheg is, daardie betekenis, en, tensy uit die samehang anders blyk, beteken -

**"appèlkomitee"** 'n komitee deur 'n beroepsraad ingestel kragtens artikel 10(2) van die Wet vir doeleindes van instelling van 'n appèl teen die bevinding van 'n ondersoek gehou deur 'n beroepsraad of 'n komitee ingestel vir sodanige doel;

**"appellant"** die respondent of pro forma-klaer wat gegrief is deur 'n besluit van 'n komitee vir professionele gedrag of 'n beroepsraad en wat na die dissiplinêre appèlkomitee appelleer;

**"beskuldigde"** 'n persoon wat kragtens die Wet geregistreer is en wie se gedrag die onderwerp is van 'n ondersoek kragtens Hoofstuk IV van die Wet en hierdie Regulasies;

**“klaer”** 'n persoon, groep, beroepsliggaam (met inbegrip van 'n beroepsvereniging, onderrig- en opleidingsinstelling, of enige ander gesondheidsorg- of aanverwante fasiliteit), of die registrateur wat teen 'n geregistreerde persoon 'n klagte ingedien het wat op moontlike onprofessionele gedrag betrekking het;

**“klagte”** enige inligting betreffende die beweerde onprofessionele gedrag deur 'n persoon wat kragtens die Wet geregistreer is, wat onder die aandag van die registrateur, die raad of 'n beroepsraad kom, of 'n klagte, aanklag of bewering van onprofessionele gedrag teen sodanige persoon;

**“komitee vir professionele gedrag”** 'n komitee deur 'n beroepsraad ingestel kragtens die Regulasies betreffende die Werkzaamhede en Funkzionering van Beroepsrade gepubliseer ingevolge Goewermentskennisgewing No. R. 979 van 13 Augustus 1999 om 'n ondersoek te lei;

**“komitee van voorlopige ondersoek”** 'n komitee ingestel deur 'n beroepsraad kragtens die Regulasies met betrekking tot die Werkzaamhede en Funkzionering van Beroepsrade ingevolge Goewermentskennisgewing No. R. 979 van 13 Augustus 1999 vir die voorlopige ondersoek van klagtes;

**“ondersoek”** 'n ondersoek wat kragtens Hoofstuk IV van die Wet en hierdie Regulasies uitgevoer word deur 'n beroepsraad of komitee vir professionele gedrag, om 'n klagte te ondersoek teen 'n persoon wat ingevolge die Wet geregistreer is;

**“pro forma klaer”** 'n persoon wat deur 'n beroepsraad aangestel is om die klaer te verteenwoordig en die klagte aan die komitee vir professionele gedrag voor te dra;

**“voorlopige ondersoek”** 'n ondersoek kragtens hierdie regulasies gehou deur 'n komitee wat ingevolge artikel 15(5)(f) van die Wet deur 'n beroepsraad aangestel is om 'n klagte te oorweeg teen 'n geregistreerde persoon vir wie daardie beroepsraad verantwoordelik is ten einde 'n besluit te neem oor die hou van 'n ondersoek kragtens artikel 41 van die Wet of enige gepaste wyse waarop sodanige klagte gehanteer kan word;

### Indiening van klagtes

2. (1) 'n Klagte moet skriftelik wees en aan die registrateur of aan die raad of aan 'n beroepsraad gerig word.
- (2) Waar 'n klagte geadresseer is aan en ontvang is deur die raad of 'n beroepsraad, moet die raad of sodanige beroepsraad dit binne 24 uur aan die registrateur voorlê.

### Voorlopige ondersoek

3. (1) Die registrateur kan -
  - (a) binne sewe werksdae nadat hy of sy 'n klagte ontvang het, vra vir verdere inligting of 'n verklaring van die klaer;
  - (b) binne sewe werksdae nadat hy of sy 'n klagte ontvang het, die beskuldigde in kennis stel van die klagte of besonderhede van die klagte aan hom of haar stuur -
    - (i) en 'n skriftelike antwoord van hom of haar versoek binne 21 werksdae na ontvangs van sodanige kennisgewing of besonderhede, by versuim waarvan die klagte aan die voorlopige ondersoekkomitee gestuur sal word sonder sodanige skriftelike antwoord; en
    - (ii) en hom of haar waarsku dat die skriftelike antwoord bedoel in subparagraaf (i) as bewys teen hom of haar gebruik kan word: Met dien verstande dat 'n kennisgewing in paragraaf (b) bedoel, geag word ontvang te wees -
      - (aa) op die dag waarop sodanige kennisgewing handafgelewer is by die geregistreerde adres van die beskuldigde; of

- (bb) indien sodanige kennisgewing per geregisteerde pos gestuur is, op die sewende kalenderdag na die dag waarop dit gepos is;
  - (c) die saak direk na die komitee van voorlopige ondersoek of die voorsitter van sodanige komitee van die betrokke beroepsraad verwys.
  - (d) aandui dat 'n inspeksie gehou word kragtens artikel 41A van die Wet.
- (2) By ontvangs deur die registrateur van verdere inligting of 'n skriftelike antwoord bedoel in subregulasie (1)(a) of (b), moet die registrateur sodanige verdere inligting of skriftelike antwoord aan die komitee van voorlopige ondersoek voorlê en indien geen verdere inligting of skriftelike antwoord ontvang is nie, moet die registrateur dit aan die komitee van voorlopige ondersoek rapporteer.
- (3) Indien 'n komitee van voorlopige ondersoek besluit, na behoorlike oorweging van die saak, dat daar geen gronde is vir 'n ondersoek nie, moet dit die registrateur versoek om ~~in skrif~~ sy besluit aan die beskuldigde en die klaer skriftelik mee te deel met vermelding van die rede(s) vir sodanige besluit.
- (4) Indien 'n komitee van voorlopige ondersoek besluit, na behoorlike oorweging van die saak, dat 'n ondersoek gehou moet word oor die gedrag van die beskuldigde, moet dit die registrateur versoek om 'n ondersoek te hou.

#### Ondersoek

4. (a) Na ontvangs van 'n lasgewing bedoel in regulasie 3(4), moet die registrateur 'n kennisgewing uitreik wat hierby aangeheg en in hoofsaak in die vorm van Aanhangsel A, aan die beskuldige gerig is waarin vermeld word waar en wanneer die ondersoek sal plaasvind en 'n klagstaat soos deur die pro forma-klaer geformuleer, daarby aanheg.
- (b) Die kennisgewing bedoel in paragraaf (a) moet aan die beskuldigde beteken word of per aangetekende pos aan hom of haar by sy of haar geregistreeerde

adres gestuur word minstens een maand voor die datum van bogemelde ondersoek.

#### **Versoek om nadere besonderhede**

5. (1) 'n Versoek deur die aangeklaagde om nadere besonderhede van die klagstaat in regulasie 4(a) bedoel, moet aan die pro forma-klaer beteken word ten minste drie weke voor die datum van die ondersoek;
- (2) Die pro forma-klaer moet sy of haar skriftelike antwoord op die versoek in subregulasie (1) bedoel aan die beskuldigde binne een week na die ontvangs daarvan verskaf.

#### **Samesprekings voor ondersoek**

6. Ten einde die geskilpunte by 'n ondersoek te bepaal, moet die partye ten minste sewe dae voor die ondersoek 'n konferensie met mekaar op 'n wedersyds geleë tyd en plek reël waartydens -
- (a) die beskuldigde en/of sy of haar regsverteenvoerder(s) moet aandui welke eksepsies, besware (insluitend die beswaar oor jurisdiksie van 'n komitee vir professionele gedrag om 'n saak te ondersoek) of aspekte *in limine* hy of sy voornemens is om te opper;
- (b) die beskuldigde en/of sy of haar regsverteenvoerder(s) moet aandui hoe hy of sy voornemens is om te pleit op die klagstaat;
- (c) afskrifte van alle dokumente, verslae, notas, X-strale en enige ander bewysstukke wat 'n party van voorneme is om by die ondersoek te gebruik, aan die ander party oorhandig word;
- (d) insae in die oorspronklike dokumente, verslae, notas, X-strale en ander bewysstukke bedoel in paragraaf (c) toelaatbaar is;

- (e) erkennings deur beide partye ten opsigte van bewerings en/of bewysstukke gemaak word;
- (f) 'n opsomming van die mening van 'n deskundige getuie wat 'n party beplan om by die ondersoek te gebruik, aan die ander party oorhandig word;
- (g) enige ander aspek betreffende die ondersoek uitgeklaar word.

#### Prosedure by 'n ondersoek

- 7. (a) Die beskuldigde of, indien hy of sy nie teenwoordig is nie, sy of haar regsverteenwoordiger word deur die voorsitter van die komitee vir professionele gedrag gevra om te pleit op die klag welke pleit aldus aangeteken word.
- (b) Indien die beskuldigde of sy of haar regsverteenwoordiger weier of in gebreke bly om regstreeks op die klagstaat te pleit, maak die voorsitter 'n aantekening daarvan en word 'n pleit van onskuldig aangeteken.
- (c) Die pro forma-klaer kan die komitee vir professionel gedrag toespreek en hy of sy kan getuienis ter staving van sy of haar saak lei.
- (d) Die beskuldigde of sy of haar regsverteenwoordiger kan aansoek doen om sy of haar ontslag nadat die pro forma-klaer sy of haar saak gesluit het. Die pro forma-klaer kan dan hierop antwoord.
- (e) Die komitee vir professionel gedrag moet dan die aansoek oorweeg en kan sodanige aansoek toestaan of weier.
- (f) Nadat die pro forma-klaer sy of haar saak gesluit het, moet die beskuldigde of sy of haar regsverteenwoordiger die komitee vir professionele gedrag toespreek en kan hy of sy getuienis ter staving van sy of haar saak lei.

- (g) Die komitee vir professionele gedrag kan die pro forma-klaer of die beskuldigde of sy of haar regsverteenwoordiger toelaat om verdere getuienis te lei of 'n getuie terug te roep nadat hulle sake gesluit is.
- (h) Nadat die getuienis van 'n getuie gelewer is, kan die teenparty die getuie kruisondervra.
- (i) Die voorsitter van die komitee vir professionele gedrag kan 'n getuie ondervra wat getuienis afgelê het en die ander lede van die komitee vir professionele gedrag toelaat om die getuie te ondervra.
- (j) Verdere kruisondervraging moet toegelaat word voortspruitend uit die ondervraging deur die voorsitter of ander lede.
- (k) Die persoon wat die getuienis gelei het, kan daarna die getuie herondervra, maar hy of sy moet sy of haar herondervraging beperk tot aangeleenthede waarvoor die getuie gekruisondervra is of waarvoor die voorsitter of ander lede die getuie ondervra het.
- (l) Nadat die partye hulle sake gesluit het, kan die komitee vir professionele gedrag verdere getuies roep en ondervra of 'n getuie terugroep en herondervra waarna die pro forma-klaer en die beskuldigde of sy of haar regsverteenwoordiger ook daarop geregtig is om die getuie te ondervra.
- (m) Nadat alle getuienis voorgelê is, kan die pro forma-klaer en die aangeklaagde of sy of haar regsverteenwoordiger die komitee vir professionele gedrag toespreek oor die getuienis en die regsposisie.
- (n) Die pro forma-klaer kan op enige juridiese aangeleentheid geopper deur die beskuldigde in sy of haar betoog en kan, met verloop van die komitee vir professionele gedrag, op enige aangeleentheid of feit geopper deur die beskuldigde in sy of haar betoog, reageer.

- (o) Indien die beskuldigde of sy of haar regsverteenwoordiger nie by die ondersoek teenwoordig is nie nadat hulle behoorlik ingelig is, word die ondersoek in die beskuldigde se afwesigheid voortgesit en word 'n pleit van onskuldig aangeteken, tensy die respondent skriftelik skuldig gepleit het. Indien die beskuldigde se afwesigheid egter as gevolg van bona fide-omstandighede is, moet die komitee vir professionele gedrag die uitstel van die ondersoek oorweeg.
- (p) Alle mondelinge getuienis moet onder eed of bevestiging afgeneem deur die voorsitter van die komitee vir professionele gedrag, afgelê word.
- (q) Getuienis by wyse van beëdigde verklaring word toegelaat: Met dien verstande dat die teenparty die teenwoordigheid van die deponent van sodanige verklaring kan versoek vir doeleindes van kruisondervraging.
- (r) (i) Die oorkonde, of enige deel daarvan, van 'n wetlik ingestelde hof, hof vir geregtelike doodsondersoeke of statutêre liggaam van enige jurisdiksie moet as *prima facie*-getuienis aanvaar word indien dit deur daardie hof en/of jurisdiksie as 'n ware kopie gesertifiseer is.
- (ii) As dit uitvoerbaar is en regverdig blyk, kan die komitee vir professionele gedrag vir doeleindes van kruisondervraging die teenwoordigheid van 'n getuie wie se getuienis in sodanige oorkonde verskyn en as *prima facie*-getuienis aangebied word, gelas.
- (s) Na afloop van 'n saak moet die komitee vir professionele gedrag in camera daarvoor bedraadslaag en daarna sy bevinding bekend maak.
- (t) Die komitee vir professionele gedrag kan 'n bevinding van onskuldig maak selfs al het die beskuldigde skuldig gepleit.
- (u) (i) Indien die beskuldigde skuldig bevind word, moet die pro forma-klaer besonderhede van vorige skuldigbevindings van die beskuldigde ingevolge die Wet, as daar is, aan die komitee vir professionele gedrag voorlê.

- (ii) Die pro forma-klaer kan versoë tot die komitee vir professionele gedrag rig en getuienis aanvoer betreffende die oplegging van 'n gepaste straf.
- (iii) Die beskuldigde of sy of haar regsverteenvoerder kan daarna versoë tot die komitee vir professionele gedrag rig en getuienis voorlê ter versagting van die straf wat opgelê staan te word, waarna die pro forma-klaer geleentheid kry vir repliek.
- (iv) Die komitee vir professionele gedrag moet *in camera* beraadslaag oor die straf wat opgelê moet word, waarna die voorsitter van die komitee vir professionele gedrag die beskuldigde moet inlig oor die straf wat op besluit is.
- (v) Die bevinding gemaak en die straf wat deur die komitee vir professionele gedrag opgelê is, is onmiddellik van krag en tree onmiddellik in werking.

### Appèl

- 8. (1) Die beskuldigde of pro forma-klaer kan teen die bevinding en/of straf van die komitee vir professionele gedrag appelleer na die appèlkomitee.
- (2) Die appellant moet binne drie weke na die datum van die besluit deur die komitee vir professionele gedrag die registrator by wyse van kennisgewing in kennis stel van sy of haar voorneme om teen die bevinding en/of straf te appelleer.
- (3) Die registrator moet binne een maand vanaf die datum waarop die registrator 'n skriftelike kennisgewing van appèl ontvang het, 'n kopie van 'n transkripsie van die verrigtinge by die ondersoek aan die appellant verskaf.
- (4) Die appellant moet binne een maand vanaf die datum waarop hy of sy 'n kopie van die transkripsie bedoel in subregulasie (3) ontvang het, ses kopieë van sy of

haar stukke wat die gronde vir appèl uiteensit en betooghoofde bevat by die registrateur indien.

- (5) Die appèl word slegs op die stukke bedoel in subregulasie (4) beslis.
- (6) Die ander party moet binne een maand vanaf die datum waarop die appellant sy of haar stukke by die registrateur ingedien het, ses kopieë van sy of haar antwoord op die appellant se stukke bedoel in subregulasie (4) by die registrateur indien.
- (7) Die appellant moet binne twee weke vanaf die datum waarop die ander party sy of haar antwoord ingedien het, ses kopieë van sy of haar repliek op die ander party se antwoord in subregulasie (6) bedoel, indien.
- (8) Indien geen repliek deur die appellant ingedien word binne die tydperk bedoel in subregulasie (7) nie, moet die registrateur na die verstryking van genoemde tydperk beide partye skriftelik in kennis stel van die datum waarop die aangeleentheid voor die appèlkomitee sal dien.
- (9) Nadat die appellant en die ander party die appèlkomitee toegesprek het oor die meriete en/of gronde vir appèl, moet die appèlkomitee die aangeleentheid, *in camera*, oorweeg en die partye oor sy bevindinge inlig.
- (10) Elke party is verantwoordelik vir sy of haar eie onkoste aangegaan ter voorbereiding en/of afhandeling van die appèl.
- (11) Die besluit van die appèlkomitee is van krag vanaf die datum deur sodanige komitee bepaal, tensy dit deur die toepaslike hoër hof tersyde gestel is.

#### **Voortsetting van ondersoek**

9. (1) Indien een of meer lede van die komitee vir professionele gedrag te eniger tyd nadat 'n pleit ingedien is, nie meer kan dien nie, moet die ondersoek voortgaan mits ten minste twee van die oorspronklike lede beskikbaar is.

- (2) Indien 'n voorsitter nie meer kan dien nadat 'n oënskiet ingedien is nie, kan die aangeleentheid voortgaan met 'n nuwe voorsitter, met dien verstande dat sodanige voorsitter die geleentheid gegee word om die getuies wat alreeds getuienis afgele het, te herondervra, indien hy of sy dit nodig ag.

### Toeganklikheid by 'n ondersoek

10. (1) Die verrigtinge by 'n ondersoek is vir die publiek toeganklik;
- (2) Ondanks subregulasie (1) -
- (a) kan enige besluit van die komitee vir professionele gedrag ten opsigte van enige aangeleentheid wat in verband met of gedurende 'n ondersoek ontstaan, *in camera* geneem word;
- (b) kan enige getuienis voorgelê gedurende 'n ondersoek by voorlegging van gegronde redes in die diskresie van die komitee vir professionele gedrag *in camera* aangehoor word;
- (c) kan die komitee vir professionele gedrag by aanvordering van goeie redes beveel dat niemand te eniger tyd en op enige wyse enige manier enige inligting publiseer wat die identiteit van 'n bepaalde persoon, uitgesonderd dié van die respondent, moontlik aan die lig sal bring nie.
- (3) Enige persoon wat 'n bevel kragtens subregulasie (2) uitgevaardig, oortree of versuim om dit na te kom, is aan 'n misdryf skuldig en by skuldigbevinding in 'n geregshof strafbaar met 'n boete van hoogstens R5 000.
- (4) Getikte opnames moet van alle ondersoeke deur die raad gehou word en 'n getikte weergawe van daardie opname moet, op skriftelike versoek en teen betaling van die geld deur die registrateur bepaal, beskikbaar gestel word aan

die klaer, beskuldigde of enige ander party wat volgens die mening van die registrateur wesenlike belang het in die aangeleentheid.

### Getuiedagvaardiging

11. 'n Dagvaardiging om as 'n getuie voor 'n komitee vir professionele gedrag te verskyn om mondelingse getuienis af te lê of enige boek, aantekening, dokument of voorwerp voor te lê, moet in hoofsaak in die vorm soos uiteengesit in Aanhangsel B wees.

### Herroeping

12. (1) Die regulasies afgekondig by Goewermentskennisgewing No. R. 2303 van 28 September 1990 en Goewermentskennisgewing No. R. 874 van 26 April 1991 word hierby herroep.
- (2) 'n Ondersoek kragtens die regulasies in subregulasie (1) bedoel, wat onmiddellik voor die inwerkingtreding van hierdie Regulasies voor 'n komitee vir professionele gedrag van die raad of 'n beroepsraad hangend is, word kragtens die prosedures by daardie Regulasies voorgeskryf, uitgevoer en afgehandel asof sodanige regulasies nie herroep is nie.

*M. M. M. M. M.*

MINISTER VAN GESONDHEID

DATUM: 12. 8. 2001

**AANHANGSEL A****KENNISGEWING OM VOOR 'N KOMITEE VIR PROFESSIONELE GEDRAG  
OF DIE BEROEPSRAAD VIR  
..... TE VERSKYN**

.....  
(naam van persoon en sy of haar adres)

word hierby kennis gegee dat 'n ondersoek na u gedrag deur 'n komitee vir  
professionele gedrag van die Beroepsraad vir .....  
..... gehou gaan word op .....  
(plek) ..... (tyd en datum).

Die klagstaat soos geformuleer deur die pro forma-klaer, is aangeheg.

U mag regsverteenvoording by die ondersoek hê. U moet egter in hierdie  
geval betyds reelings tref. Indien u en/of u regsverteenvoordiger versuim om die  
ondersoek op die gemelde datum by te woon, kan die ondersoek in u  
afwesigheid voortgaan.

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

.....  
**REGISTRATEUR**

**AANHANGSEL B**

<p><b>DAGVAARDING OM VOOR 'n KOMITEE VIR PROFESSIONELE GEDRAG OF DIE BEROEPSRAAD VIR .....</b></p> <p><b>TE VERSKYN</b></p>	
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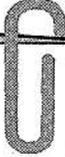
.....  
(naam van gedagvaarde en sy of haar adres)

word hierby gedagvaar om op ..... (plek) om  
..... (tyd en datum) te verskyn voor 'n komitee vir  
professionele gedrag van die Beroepsraad vir ..... ingestel  
krachtens die Wet op Gesondheidsberoepes, 1974 (Wet No.56 van 1974) , om  
getuienis af te lê aangaande .....

.....  
.....  
(as die gedagvaarde 'n boek, rekord, dokument of voorwerp moet voor lê, voeg  
daaraan toe) en u word hierby gelas om .....  
..... voor te lê.  
(vermeld die betrokke boek, aantekening, dokument of voorwerp)

Gegee onder die hand van die Registrateur op hede die .....  
dag van .....

.....  
**REGISTRATEUR**



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