

Government Notice

Department of Health NO. R. 495 8 June 2001

Health Professions Act, 1974

Regulations relating to impairment of students and practitioners

The Minister of Health has, under section 51, read with section 61(1) of the Health Professions Act, 1974 (Act No. 56 of 1974), in 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 such meaning, and unless the context otherwise indicates -

- **"assessment"** means the informal process conducted in terms of these regulations to establish whether or not a student or practitioner is impaired;
- **"board"** means a professional board established in terms of section 15(1) of the Act, as published by Government Notice No. R.75 of 16 January 1998; and
- **"chairperson"** means the chairperson of the health committee;
- **"committee of preliminary inquiry"** means a committee established by the relevant board under section 15(5)(f) of the Act to undertake preliminary inquiries into complaints of alleged unprofessional conduct;
- **"health assessor"** means a qualified medical expert appointed by the health committee to advise the health committee on clinical matters during an investigation;
- **"health committee"** means a health committee established by the relevant board under section 15(5)(f) of the Act, and includes a joint standing committee established under section 15B(1)(f) of the Act;
- **"health examiner"** means a practitioner appointed by the chairperson or the health committee, as the case may be, to examine a student or practitioner and report to the health committee on the alleged impairment of that student or practitioner;
- **"investigation"** means the formal process conducted by the health committee -
 - (a) in the absence of the voluntary co-operation of a student or practitioner, to establish whether that student or practitioner is impaired; or
 - (b) to deal with the conditions of registration or practice imposed on a student or practitioner in terms of regulations 5(2), 6, 8(2), 9, 19(4), 19(5) or 22(1);
- **"management"** means the administrative and clinical steps required to be taken by the health committee to implement these regulations;
- **"medical examination"** means a medical evaluation of a person by the appropriate physical, psychiatric and psychosocial means required to determine whether or not the person is impaired;
- **"practitioner"** means a person registered in terms of the Act to practise a profession for which the Act provides;
- **"professional conduct committee"** means a committee established by the relevant board under section 15(5)(f) of the Act to conduct an inquiry into alleged unprofessional conduct;
- **"supervisor"** means a practitioner or a person approved and appointed by the health committee to supervise and report to the health committee in terms of these regulations on a student or practitioner who has been found to be impaired;
- **"student"** means any person registered as a student in terms of the Act, including a student intern;
- **"the Act"** means the Health Professions Act, 1974 (Act No. 56 of 1974);
- **"therapist"** means a medical practitioner or any other professional person who holds the appropriate registration, nominated by an impaired student or practitioner and approved by the health committee to take responsibility for that student or practitioner's treatment and to submit reports to the health committee thereon, as well as on his or her fitness to practise.

ASSESSMENT BY HEALTH COMMITTEE

Information

2. (1) The registrar shall, if he or she receives information regarding a student or practitioner which indicates possible impairment, submit that information in writing to -
- (a) the chairperson during intervals between meetings of the health committee or where the urgency of the matter requires immediate action; or
 - (b) the health committee at its next meeting.
- (2) On receipt of the information referred to in subregulation (1), the chairperson or the health committee may cause such inquiries to be made in relation to the matter as are deemed necessary.

Notification and reports

3. (1) If the chairperson or the health committee deems it necessary to take the matter further, the chairperson or the health committee shall instruct the registrar to notify the student or the practitioner in writing that information had been

received which alleges that he or she may be impaired and:-

- (a) requesting him or her to submit to a medical examination by the health examiner or examiners, as the case may be, who will furnish the health committee with an individual or combined report on the alleged impairment after such examination;
 - (b) informing him or her if the information received by the registrar includes reports on such student or practitioner by one or more medical practitioners who have recently examined him or her and it appears to the chairperson or the health committee that such reports contain sufficient medical evidence that such student or practitioner is impaired;
 - (c) informing him or her that he or she could, in addition to the reports referred to in paragraphs (a) and (b), submit one or more other reports on the alleged impairment by medical practitioners of his or her own choice;
 - (d) inviting him or her to submit any observation or other evidence which he or she may wish to offer regarding the alleged impairment; and
 - (e) informing him or her that, if he or she refuses to be examined or if, after having agreed thereto, he or she subsequently fails to submit to the medical examination referred to in paragraph (a), the matter may be dealt with by the health committee by way of an investigation.
- (2) The registrar shall enclose in the written notification referred to in subregulation (1), a summary of the information received by him or her and may enclose copies of any report referred to in subregulation (1)(b).
4. The registrar shall submit the information and reports referred to in regulations 2 and 3 to the health examiners and request them to report to the health committee –
- (a) on the student or practitioner's alleged impairment;
 - (b) on the fitness of the student or practitioner to practise, either generally or on a limited basis; and
 - (c) on their recommendations, if any, as to the management of the student or practitioner's case.

Action following reports on medical examination

5. (1) The registrar shall submit copies of the reports by the health examiners referred to in regulation 3(1)(a), including any reports by medical practitioners referred to in regulation 3(1)(a), (b) or (c), to –
 - (a) the chairperson during the intervals between the meetings of the health committee or where the urgency of the matter requires immediate action; or
 - (b) the health committee at its next meeting.
- (2) If the health examiners and medical practitioners referred to in regulation 3 –
 - (a) report unanimously that the student or practitioner –
 - (i) is impaired and not fit to practise;
 - (ii) is impaired and not fit to practise except on a limited basis or under supervision or both; or
 - (iii) suffers from a recurring or episodic physical or mental condition which, although in remission at the time of the medical examination, may be expected in future to render him or her unfit to practise or unfit to practise except on a limited basis or under supervision or both, the chairperson or the health committee shall make a finding on the matter and resolve on the further management of the case and, there-

upon, direct the registrar to inform the student or practitioner in writing accordingly;

- (b) do not report unanimously as referred to in paragraph (a), the chairperson or the health committee shall make a finding on the matter that he or it deems fit in the light of the balance of opinion in the reports submitted and resolve on the further management of the case, including any limitations on the student or practitioner's registration or practice, and thereupon direct the registrar to inform the student or practitioner in writing accordingly;
- (c) report unanimously that the student or practitioner is not impaired, the health committee shall make a finding on the matter and direct the registrar to inform the student or the practitioner in writing accordingly.

Findings of chairperson or health committee

6. In the event of a finding referred to in regulation 5(2)(a) and (b), the registrar shall request the student or practitioner to state in writing before a date determined by the registrar whether he or she is prepared to undertake voluntarily to comply with the resolutions of the chairperson or the health committee on the management of his or her case, including any limitations on his or her registration or practice which the chairperson or the health committee may have imposed.

Confirmation by health committee

7. Any matter which has been dealt with by the chairperson in accordance with regulation 5(1)(a) shall be submitted to the health committee by the registrar at its next meeting for confirmation of the chairperson's actions or such amendment thereof as the health committee deems fit.

Compliance by student or practitioner

8. (1) If by the date referred to in regulation 6 the student or practitioner has indicated that he or she undertakes to comply with the resolutions regarding the management of his or her case, including any limitations imposed on his or her registration or practice, the health committee may, if it is satisfied that the undertaking is being observed by the student or practitioner, postpone further action on the case and cause the student or practitioner to be informed accordingly.
- (2) If the student or practitioner –
 - (a) has by the date referred to in regulation 6 or such further period as the registrar may allow, failed to indicate that he or she undertakes to comply with the resolutions regarding the management of his or her case, including any limitations on his or her registration or practice; or
 - (b) has by the date referred to in regulation 6 failed to reply to any letter sent to him or her for the purpose of that regulation; or
 - (c) has refused or failed to subject him or her to the medical examination referred to in regulation 3(1)(a), the health committee may order the registrar to arrange for an investigation.

Further investigation

9. (1) If it appears to the health committee from the reports of the health examiners referred to in regulation 4 and any medical practitioner referred to in regulation 3(1)(c), or from any other information which the health committee

has received, that the condition of the student or practitioner is such that he or she would not be able to give the undertaking referred to in regulation 8, or that he or she could not be relied on to comply with such an undertaking, the health committee may –

- (a) order the registrar to arrange for an investigation; or
- (b) decide to deal with the matter in any other appropriate fashion.
- (2) If, as a result of a report from a therapist, a supervisor or from other information, it appears to the health committee that the resolutions referred to in regulation 5(2) with which a student or practitioner has undertaken to comply, should be amended or should cease to apply, the health committee may amend its resolutions as it deems fit or may direct that they be revoked and inform the student or practitioner in writing accordingly.
- (3) If, as a result of a report from a therapist, a supervisor or from other information, it appears to the health committee either that the student or practitioner has ceased to comply with an undertaking referred to in regulation 8, or that his or her physical or mental condition has otherwise deteriorated, the health committee may –
 - (a) order the registrar to arrange for an investigation; or
 - (b) decide to deal with the matter as it deems fit.

Committee of preliminary inquiry or professional conduct committee

- 10.(1) If the health committee, as a result of a report or other information, is of the opinion that there are sufficient reasons to suspect that a student or practitioner may be guilty of unprofessional conduct and that it is therefore necessary to refer the matter to the committee of preliminary inquiry, the health committee may direct the registrar to submit the case to that committee.
- (2) If a case has been referred to the health committee by a committee of preliminary inquiry or a professional conduct committee, the health committee may, if it deems fit, direct the registrar to request the student or practitioner to submit to a medical examination referred to in regulation 3(1), before his or her case is considered by the health committee in terms of these regulations.
- (3) If a student or practitioner agrees to subject himself or herself to a medical examination referred to in regulation 3(1), the registrar shall submit to the health committee any reports received, together with the information on which the committee of preliminary inquiry or the professional conduct committee, as the case may be, decided to refer the case.

INVESTIGATION BY HEALTH COMMITTEE

Notice of investigation

11. Within 28 days after a case has been referred for an investigation, the registrar shall serve on the student or practitioner concerned a notice which shall –
 - (a) indicate the physical or mental condition by reason of which it is alleged that he or she is impaired;
 - (b) inform him or her that the matter has been referred to the health committee to determine whether he or she is so impaired and, if so, to take appropriate action for the management of his or her case;

- (c) state the day, time and place of the investigation; and
- (d) request the student or practitioner to attend the investigation and inform him or her that he or she may be represented by his or her legal representative, medical adviser or both.

Postponement of investigation

- 12.(1) The chairperson may, if he or she deems fit, postpone the investigation to such later date or later meeting of the health committee as he or she may determine.
- (2) The registrar shall, within 14 days, notify the student or practitioner in writing of any decision to postpone an investigation and shall inform him or her at that time but not later than 28 days after the chairperson's decision of the revised arrangements for the investigation.

Circulation of evidence

13. Before the meeting of the health committee, the registrar shall send to each member of the committee a copy of –
 - (a) the notice referred to in regulation 11; and
 - (b) the information referred to in regulation 2 and the documents referred to in regulation 3.

Health assessors

14. The chairperson may instruct the registrar to arrange for one or more health assessors to attend any meeting of the health committee where a case is being considered in accordance with these regulations, in order to advise the health committee on any relevant clinical matter.

Accessibility of investigation

- 15.(1) The health committee shall sit *in camera*.
- (2) The student or practitioner shall be entitled to be present while his or her case is being considered and may be represented by his or her legal representative, medical adviser or both, and may be accompanied by any member of his or her family or by a friend: Provided that this regulation shall not entitle the student or practitioner to be accompanied into the room where the meeting takes place by any person from whom oral evidence may be required.

Procedure

16. Where the student or practitioner is neither present nor represented, the health committee may –
 - (a) proceed with the investigation if the health committee is satisfied that all reasonable efforts have been made in compliance with regulation 11 to serve the notice concerned;
 - (b) consider the student or practitioner's alleged impairment on the basis of the reports, written statements and other documents circulated to members in accordance with regulation 13.

Adjournment for further medical reports

17. The health committee may adjourn an investigation in order to refer the allegedly impaired student or practitioner for a medical examination and to obtain further medical reports or other information as to his or her physical or mental condition or in relation to his or her fitness to practise.

Postponement of finding

18. The health committee may, in its own discretion, postpone the making of a finding on the student or practitioner's impairment or fitness to practise and may specify the conditions of such postponement.

Resolutions of the health committee

- 19.(1) The health committee shall make a finding as to whether or not the student or practitioner is impaired by reason of his or her physical or mental condition.
- (2) In reaching its finding, the health committee shall be entitled to regard as an impairment –
- (a) the student or practitioner's current physical or mental condition;
 - (b) recurring or episodic physical or mental condition; or
 - (c) a condition which, although currently in remission, may be expected to cause a recurrence of the impairment.
- (3) Where a student or practitioner has refused or, in the opinion of the health committee, has failed to submit to a medical examination referred to in regulation 3(1) the health committee may find that the student or practitioner is impaired on the basis of the information before the health committee referred to in regulation 16(b).
- (4) If the health committee finds the student or practitioner to be impaired by reason of his or her physical or mental condition, the health committee shall consider and determine whether to resolve that his or her registration and the practising of his or her profession should be conditional for the protection of patients or in his or her own interests and what the nature of such conditions will be.
- (5) If the health committee is of the opinion that the imposition of conditions on the student or practitioner's registration or the practising of his or her profession is insufficient, the health committee may resolve that the registration of the student or practitioner be suspended and shall determine the period of that suspension and the conditions thereof.
- (6) Where, in a case referred to the health committee by a professional conduct committee, an order has been made by a professional conduct committee regarding interim suspension or interim conditions of registration or practice, or where an order made under these regulations by a professional conduct committee is in force, the health committee may –
- (a) revoke such order; or
 - (b) revoke or amend any condition of registration or practice imposed by such order.

Notification of decisions of health committee

20. After the health committee has made a finding, adopted a resolution or amended or revoked a resolution under these regulations, the chairperson shall direct the registrar to inform the student or practitioner thereof in writing and of his or her right to appeal against that finding, resolution or both.

Health examiners and health assessors

21. In choosing health examiners or health assessors in relation to particular cases, the chairperson or the health committee shall have regard to the nature of the physi-

cal or mental condition which is alleged to cause the impairment of the student or practitioner.

Powers of health committee

- 22.(1) The health committee may –
- (a) make a finding on whether or not a student or practitioner is impaired, based on an assessment or investigation in terms of these regulations;
 - (b) resolve on the management of a student or practitioner who has been found to be impaired with a view to the securing of patient safety and the treatment or rehabilitation of such student or practitioner; and
 - (c) impose any condition of registration or practice which the health committee may deem to be appropriate to achieve the objects referred to in paragraph (b), which may include conditions with regard to –
 - (i) his or her status as a registered person;
 - (ii) the locality of his or her practice;
 - (iii) the scope of his or her practice;
 - (iv) permission to handle scheduled substances such as the purchasing, acquiring, keeping, using, administering, prescribing, ordering, supplying or possessing of any or all of the substances scheduled in terms of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965);
 - (v) the prohibition of the use or abuse of dependence-producing substances scheduled in the Regulations made under the Prevention and Treatment of Drug Dependency Act, 1992 (Act No. 20 of 1992) promulgated by Government Notice No. R. 721 of 30 April 1993, including drugs other than medicine;
 - (vi) ensuring and securing the treatment and rehabilitation of the impaired student or practitioner;
 - (vii) securing supervision of the fitness to practise and the performance of the impaired student or practitioner.
- (2) A condition which is imposed by the health committee on a student or practitioner who has been found to be impaired shall be subject to –
- (a) reports to be submitted by the relevant therapist or supervisor or both to the health committee at the intervals determined by the health committee to ensure that the objectives referred to in subregulation (1) are being achieved;
 - (b) review by the health committee, and the position of each impaired student or practitioner shall be so revised at least every three years.
- (3) A review of the conditions of registration or practice referred to in subregulation (2) may at any time be –
- (a) requested by the impaired student or practitioner;
 - (b) recommended by the impaired student or practitioner's supervisor or therapist; or
 - (c) brought about by the health committee itself on the basis of reports referred to in subregulation (2)(a).

Signed

MINISTER OF HEALTH

DATE: 25/05/2001

Amended as per the Government Notice published in Government Gazette No. 22351