

Nursing Act, 2005 (Act No. 33 of 2005)**REGULATIONS RELATING TO THE CONDUCTING OF INQUIRIES INTO
ALLEGED UNFITNESS TO PRACTISE DUE TO DISABILITY OR IMPAIRMENT OF
PERSONS REGISTERED IN TERMS OF THE NURSING ACT, 2005 (ACT NO. 33
OF 2005)**

The Minister of Health intends, under section 58(1)(s) read with section 51(1) of the Nursing Act, 2005 (Act 33 of 2005), to make the regulations in the Schedule.

Interested persons are invited to submit substantiated comments or representations on the proposed regulations to the Director-General: Health (for the attention of the Director: Public Entities and Management), Department of Health, Private Bag X828, PRETORIA 0001, within three months from the date of publication of this notice.

SCHEDULE**1. Definitions**

1. In this schedule "**the Act**" means the Nursing Act, 2005 (Act No.33 of 2005), and any expression to which a meaning has been assigned in the Act shall bear such meaning, and, unless the context otherwise indicates—

"appellant" means a registered person or *pro forma* complainant who is aggrieved by any decision of the Impairment Committee and who appeals to the Appeals Committee;

"complaint" means any concern raised regarding the conduct that has been referred to the Impairment Committee due to disability, impairment or both which

comes to the attention of the Registrar or the Council, or a formal complaint, charge or allegation of unfitness to practice against such person;

“disability” means any physical or mental condition/illness that may hamper the ability of the nurse to be fit for practice;

“health examiner” means a practitioner registered in terms of the Health Professions Act, 1974 (Act 56 of 1974), appointed by the chairperson or the Impairment Committee to examine the Respondent and to report to the chairperson or the Impairment Committee whether a Respondent is, due to impairment, unfit to practise in terms of the Act;

“impairment” refers to a condition which renders a practitioner incapable of practising nursing with reasonable skill and safety;

“Impairment Committee” means a committee appointed by the Council in terms of section 51(1) of the Act to conduct an inquiry as to whether or not a person registered in terms of the Act is unfit to practise;

“in camera” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public;

“practitioner” means a person registered in terms of section 31(1) of the Act;

“preliminary assessment meeting” means a fact finding meeting of persons appointed by the Impairment Committee to gather information and assess evidence prior to an inquiry;

“pro forma complainant” means a person appointed by the Council in terms of section 47(2) of the Act

“Respondent” means a person registered in terms of section 31 or 32 of the Act in respect of whom a complaint or an allegation that such a person is or may be unfit to practise has been received by the registrar;

“supervisor” means a person approved and appointed by the Impairment Committee to supervise and report to the Impairment Committee in terms of these regulations regarding a Respondent who was found to be unfit to practise;

“therapist” means a medical practitioner or any other professional person who holds the appropriate registration, nominated by a Respondent and approved by the Impairment Committee to take responsibility for his or her treatment and to submit the required reports thereon and on his or her ability to practise in terms of the Act to the Impairment Committee;

“unfit to practice due to disability or impairment” means that a person registered in terms of the Act is incapacitated as a result of disability or is or may be impaired, whether mentally or otherwise, to such an extent that—

- (a) it would be detrimental to the public interest to allow him or her to continue to practise;
- (b) he or she is unable to practise the profession with reasonable skill and safety; or
- (c) in the case of a learner, has become unfit to continue with the education programme,

Constitution of Impairment Committee

2. (1) The Council must appoint an Impairment Committee whose function is *inter alia* to conduct an inquiry into allegations that a practitioner or learner nurse is unfit to practice due to disability or impairment.
- (2) The Impairment Committee shall be composed of four persons—
 - (a) three of whom must be persons registered in terms of the Act, ; and
 - (b) one of whom shall be the chairperson appointed on account of his or her knowledge of the law.

Lodging of Complaints

3. (1) Any person who has reason to believe that a person registered in terms of the Act may be unfit to practice may submit a complaint in writing to the Registrar or to the Council.
- (2) Where a complaint is addressed to Council and received by a Council member, the member must submit such a complaint to the Registrar within 2 working days of receiving or being aware of such complaint.

Receipts of Complaints

4. (1) The Registrar may, after the receipt of the complaint, and before referring the allegations to an Impairment Committee—
 - (a) call for further information or an affidavit regarding the complaint or allegations from the complainant; or
 - (b) seek further information regarding the allegations from the complainant or from any other person, including the Respondent.
- (2) On receipt of the information referred to in sub-regulation (1), the registrar must submit the complaint or further information to—
 - (a) the Impairment Committee at its next meeting; or
 - (b) the chairperson of the Impairment Committee during intervals between meetings of the Impairment Committee where the urgency of the matter requires immediate action;

Notice of Referral

5. (1) The Registrar must notify the person registered in terms of the Act, hereinafter referred to as “the Respondent” of any complaint or allegation against such Respondent, by serving a notice of referral on the Respondent.
- (2) The notice of referral must—
 - (a) provide the details of the allegation or complaint lodged;
 - (b) inform the Respondent that he or she has a right to be represented by a legal practitioner, medical adviser his or her choice at his or her own cost or union representative and to be accompanied by a family member or friend at the enquiry representative;
 - (c) inform the Respondent of his or her right to be heard by the Impairment Committee;
 - (d) invite the Respondent to submit written representation to the Impairment Committee and state that representations must be submitted by the

Respondent to the Registrar no later than 28 calendar days after the notice has been served;

- (e) request the Respondent to voluntarily submit to examination by a health examiner(s);
 - (f) inform the Respondent that he or she can within the time specified in such notice submit reports from a medical practitioner of his or her own choice to rebut the allegation or complaint that he or she is unfit to practise due to disability or impairment;
 - (g) invite the Respondent to submit within the time specified in such notice any observations or other evidence regarding his or her physical or mental condition which he or she may wish to offer;
 - (h) inform the Respondent that, if he or she refuses to submit voluntarily to examination by a health examiner or if, after having agreed to such examination, he or she subsequently fails to submit to the required examination, the matter may be referred to the Impairment Committee for an inquiry in terms of these regulations;
 - (i) inform the Respondent that the information, reports and other documentation may be submitted to a health examiner for evaluation and a recommendation; and
 - (j) inform the Respondent that the Impairment Committee may seek such further information as it considers necessary for the purposes of carrying out its functions in investigating the allegation from the Respondents' employer, if any, or any other source other than the Respondent.
- (3) The Registrar must furnish the Respondent with the information received and must enclose copies of any medical reports.

Service of Documents

6. (1) Any notice of referral or an inquiry required to be served upon the Respondent, shall be delivered by sending it by registered post or other delivery service in which delivery or receipt is recorded to—

- (a) his or her address in the register of the Council; or

- (b) the address of the employer.
- (2) Any notice is served in terms of these regulations shall be deemed to have been served—
- (a) on the day such notice is hand-delivered to the registered address of the Respondent; or
 - (b) where the notice has been sent by registered mail, on the seventh day following the date the notice was posted

In-Camera meetings and Inquiries

7. All meetings and inquiries before the Impairment Committee shall be conducted *in camera*.

Health examiners

8. (1) The registrar must, at the request of the chairperson or the Impairment Committee, submit the information referred to in regulation 4(1) to the health examiner(s) to evaluate such information and to report to the chairperson or the Impairment Committee—
- (a) on the physical or mental condition of the Respondent;
 - (b) whether in the opinion of the health examiner(s) the Respondent—
 - (i) is fit to practice;
 - (ii) is fit to practice on a limited basis or under direct personal supervision, or both;
 - (iii) is unfit to practice; or
 - (iv) suffers from a recurring or episodic physical or mental condition which, although in remission at the time of the examination, could in future render the Respondent unfit to practice, or unfit to practice except on a limited basis or under direct personal supervision, or both.
- (2) The Impairment Committee may, after due consideration of the matter,

request the health examiner to make recommendations regarding the management of the Respondent to the Impairment Committee.

- (3) The registrar must submit copies of the reports received from the health examiner(s), if applicable, and all the information referred to in regulation 4, to—
- (a) the Impairment Committee at its next meeting; or
 - (b) the chairperson during intervals between meetings of the Impairment Committee.

Temporary suspension

9. The Impairment Committee may, any time, after receiving the documents contemplated in regulation 4, for a period not exceeding 90 days, temporarily suspend a Respondent from practicing on such terms or conditions as the Impairment Committee may deem fit, pending an assessment or investigation in terms of these regulations, if such suspension would be in the public's interest: Provided that the Respondent is entitled to request the Impairment Committee or Council to suspend the suspension subject to such terms as the Council may deem fit, upon proof to the satisfaction of the Impairment Committee or Council that the suspension is not necessary.

Preliminary Assessment

10. (1) Notwithstanding regulation 9, the Impairment Committee may, after due consideration of the matter referred to it in terms of regulation 4(2), schedule a preliminary assessment meeting and determine whether the matter should be referred for an inquiry.
- (2) At the preliminary assessment meeting, the Impairment Committee may—
- (a) invite the Respondent to make representations to the Impairment Committee in person;
 - (b) invite the Respondent, at the cost of the Council, to submit to medical examination by health examiner appointed by the Council;

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- (c) consult with or seek further information regarding the complaint from any person, including the Respondent.
- (3) A preliminary assessment meeting may after due consideration of the matter, decide to—
- (a) dismiss the complaint or allegation;
- (b) refer the allegation to the Professional Conduct Committee to be dealt with in terms of the regulations relating to professional conduct enquiries, except where it appears that the Respondent may be a regular offender which may necessitate an investigation into possibility of impairment;
- (c) refer the allegation for an inquiry in terms of these regulations; or
- (d) temporarily suspend the Respondent from practice pending such an inquiry.
- (4) The Impairment Committee may adjourn its consideration of such an allegation—
- (a) until such time as any further information has been obtained, or
- (b) where the Respondent has undertaken an assessment or medical examination, a report on him or her has been prepared, or the Impairment Committee was notified that the Respondent is not mentally fit to stand for assessment.
- (5) If preliminary assessment meeting 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 Respondent stating the reason(s) for such decision.
- (6) If the preliminary assessment meeting decides, after due consideration of the matter, that an inquiry must be held in terms of section 51 of the Act, it must direct the Registrar who must communicate the decision to the Respondent and then arrange for the holding of an inquiry.

Enquiry by the Impairment Committee

11. On receipt of a directive referred in regulation 10(6) the Registrar must issue a notice to the Respondent—

(1) The notice must—

- (a) state the date, time and venue of the inquiry;
- (b) indicate the physical or mental condition by reason of which it is alleged that he or she is unfit to practice;
- (c) contain the decision of the preliminary assessment meeting, a copy of the finding or provisional suspension previously made, and the reasons for making that decision;
- (d) inform the Respondent of his or her right to attend, and to be represented by a legal practitioner, medical adviser or union representative and to be accompanied by a family member or friend at the enquiry;
- (e) inform the Respondent that if he or she fails to present himself or herself before the Impairment Committee at the place and on the date and time determined by the Registrar in the notice, the Impairment Committee may proceed with the inquiry in his or her absence;
- (f) inform the Respondent of his or her right to provide evidence in support of his or her case, including medical reports from her medical practitioners;
- (g) inform the Respondent of his or her right to call witnesses, and to cross examine any witnesses called by the Impairment Committee;
- (h) be accompanied by a copy of these regulations where they have not previously been sent to the Respondent;
- (i) advise the Respondent of the findings that the Impairment Committee can make in terms of fitness to practice or limitations.

(2) The chairperson may appoint one or more assessors to the Impairment Committee to advise on any relevant clinical matter.

- (3) Before commencement of the inquiry by the Impairment Committee, the registrar must furnish each member of the Impairment Committee and the Respondent copies of the notice of enquiry and all documents referred to in regulations 4 and 8, and all medical reports and any observations or other documents submitted by the Respondent.
- (4) The *pro forma* complainant must read the notice addressed to the Respondent.
- (5) Where the Respondent or his or her representative is not present at the inquiry after having been duly informed and without having notified the Registrar at least seven days before the commencement of the inquiry, the inquiry shall proceed in the absence of the Respondent.
- (6) Where the Respondent is present or represented the chairperson of the Impairment Committee must enquire from the Respondent or his or her representative whether they admit or deny the allegations contained in the notice.
- (7) In cases where the Respondent admits the allegations and that his or her fitness to practise is impaired, and the Impairment Committee is of the opinion that further information is required for purposes of making a finding as to whether the complaint renders the Respondent unfit to practice, the Impairment Committee may call any witness summoned before the Impairment Committee by the *pro forma* complainant or the Respondent to give oral evidence under oath and may accept such documentary evidence relevant to the complaint as it deems necessary, before making a finding that the Respondent is unfit to practise.
- (8) Any person called to give evidence must take an oath or make an affirmation before giving evidence at the enquiry.
- (9) After all evidence has been adduced, the *pro forma* complainant and the Respondent or his or her legal representative may address the Impairment Committee on the evidence and the legal position.
- (10) In coming to a decision the Impairment Committee shall consider the reports, written statements, other documents circulated to members in accordance with sub-regulation 4, oral representations made and

question any person present called to give evidence or who has submitted a report.

Findings by the Impairment Committee

12. (1) The Impairment Committee may—

- (a) postpone the inquiry to such later date as the Impairment Committee might determine;
- (b) adjourn the inquiry in order to refer the Respondent for examination(s) or to obtain further medical reports or other information as to his or her physical or mental condition or with regard to her ability to practise in terms of the Act;
- (c) make a finding on whether—
 - (i) the Respondent is fit to practise;
 - (ii) the Respondent is not fit to practice except on terms or conditions as may be determined by the Impairment Committee;
 - (iii) the Respondent is unfit to practise; or
 - (iv) the Respondent suffers from a recurring or episodic physical or mental condition/illness which, although in remission at the time of the examination, may be expected in future to render him or her unfit to practise or fit to practise subject to such terms or conditions as may be determined by the Impairment Committee and provide reasons for such a finding; or
- (d) recommend to Council that the Respondent be suspended from practicing for a determinate period with such conditions as the Impairment Committee may deem fit.

(2) Where, after announcing its finding, the Impairment Committee considers that it may be appropriate to provisionally suspend the Respondent pending the outcome of any appeal, the Impairment Committee shall—

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- (a) invite representations from the parties (where present) on whether or not the Respondent should be provisionally suspended;
 - (b) take any representations received into account before deciding whether or not to provisionally suspend;
 - (c) deliberate in private; and
 - (d) announce its decision in the presence of the parties (where present), and shall give reasons for its decision.
 - (3) Notwithstanding the decision on provisional temporary suspension set out in sub-regulation (2), the Impairment Committee may allow the parties to make additional submissions.
 - (4) If the Impairment Committee after holding the enquiry finds the Respondent unfit for practice as referred to in section 51(1) of the Act, the Impairment Committee may—
 - (a) allow the Respondent to continue practising the profession and in the case of a learner to continue with the education programme under such conditions as it may deem fit;
 - (b) remove the Respondent's name from the register; or
 - (c) invoke Section 49 of the Act, with the necessary changes, in respect of a practitioner suspended in terms of these regulations.
 - (5) If conditions or limitations to practise are imposed on a Respondent—
 - (a) the supervisor or therapist must submit regular reports to the Impairment Committee to determine whether there is compliance with the stated conditions or limitations;
 - (b) such conditions or limitations must be reviewed by the Impairment Committee at least once every six months until the Impairment Committee decides on whether the Respondent is fit to be practice.
 - (6) The Impairment Committee must report its finding, the penalty imposed to the Council.

- (7) The Respondent must be informed of his or her right to appeal against the finding of the Impairment Committee to the Appeal Committee established in terms of section 57(1) of the Act.

Mitigation of findings

13. (1) The Impairment Committee—

- (a) may invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Impairment Committee may direct, and
- (b) shall invite representations from the Respondent as to any mitigating circumstances which may affect the Impairment Committee's finding and conditions, if any, to be made.
- (2) The *pro forma* complainant may, after the Respondent has addressed the Impairment Committee or adduced evidence in mitigation of the findings to be made, make representations to the Impairment Committee or lead evidence, orally or in writing, regarding a suitable penalty to be imposed.

Appeal process

14. The Respondent or the *pro forma* complainant may appeal against the finding and/or penalty of the Impairment Committee to the Appeal Committee appointed by the Minister in terms of section 57(1) of the Act.
15. The appellant must inform the Registrar by written notice within fourteen (14) calendar days from the date of the Impairment Committee's decision of his or her intention to appeal against the finding and/or penalty.
16. In the event that a Respondent has been provisionally suspended, such suspension is effective until the appeal is finalised.

Recording of proceedings and outcomes

17. (1) The Council must ensure that all proceedings of the preliminary assessment meeting, enquiry and appeal are recorded in electronic form and transcribed.

- (2) Transcribed records will be case coded for the purpose of anonymity.
- (3) Any party to the proceedings shall, on application to the Council, be furnished with a transcript of the record of any part of the inquiry or preliminary assessment meeting at which he or she was entitled to be present.
- (4) Subregulation (1) and (3) shall not apply to the private deliberations of the Impairment Committee.

Referral of allegation from the Impairment Committee to the Professional Conduct Committee

18. Where the Impairment Committee is considering an allegation or complaint referred to it in terms of these regulations and the Impairment Committee—
 - (a) at a preliminary assessment meeting held in accordance with regulation 10; or
 - (b) at the commencement of or during the inquiry by the Impairment Committee;

it appears that the allegation would be better dealt with by the Professional Conduct Committee; the Impairment Committee may refer the allegation to the Professional Conduct Committee, and shall suspend its consideration of the allegation and accordingly inform the Respondent and the complainant, if any.
19. Where the Impairment Committee refers an allegation to the Professional Conduct Committee under sub-regulation (1); and the Professional Conduct Committee determines, after the close of the Council's case, that the allegation is not well founded, or that the allegation has not been proved, the Impairment Committee may resume its consideration of the allegation.
20. Subject to sub-regulation (2), where the Impairment Committee refers an allegation to the Professional Conduct Committee under paragraph (1); and the Professional Conduct Committee makes a decision on the sanction the Impairment Committee shall have no further function in relation to the allegation.

Burden of Proof

21. Where facts relating to an allegation are in dispute, the burden of proving such facts must rest on the Council.

Evidence

22. (1) A certificate relating to a determination about a Respondent's fitness to practise made by a licensing body elsewhere, signed by an officer authorised by the body to sign such certificates, shall be admissible as evidence of the facts referred to in the determination.

(2) In determining whether a Respondent's fitness to practise is impaired by reason of physical or mental health or disability or both, the Impairment Committee may take into account, amongst other matters—

- (a) a refusal by the Respondent to submit to medical examination;
- (b) the Respondent's current physical or mental condition;
- (c) any continuing or episodic condition suffered by the Respondent; and
- (d) a condition/illness suffered by the Respondent which, although currently in remission, may be expected to cause a recurrence of the impairment of the Respondent's fitness to practise

Postponements and adjournments

23. (1) The Impairment Committee may of its own accord or at the request of the *pro forma* complainant or of the defendant or his or her legal representative, adjourn any inquiry being held in terms of these regulations to be resumed on such date and at such time and place as the Impairment Committee may determine or as the Impairment Committee may by registered post communicate to the parties concerned.

(2) In considering whether or not to grant a request for postponement or adjournment, the Impairment Committee shall, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
- (c) fairness to the Respondent.

Transitional arrangements

24. An inquiry or appeal pending before an Impairment Committee or a Professional Conduct Committee of the Council, respectively, immediately prior to the commencement of these regulations must be conducted and finalized under the procedures prescribed by the regulations in force when such inquiry or appeal was commenced.

DR. A MOTSOLEDI, MP

MINISTER OF HEALTH