

GOVERNMENT NOTICE
DEPARTMENT OF HEALTH

NO. R

.....2005

HEALTH PROFESSIONS ACT, 1974
(Act 56 of 1974)

**REGULATIONS RELATING TO IMPAIRMENT OF STUDENTS AND PRACTITIONERS
REGISTERED UNDER THE ACT**

The Minister of Health intends, in terms of section 51, read with section 61(1) and (2) of the Health Professions Act, 1974 (Act No. 56 of 1974), and in consultation with the Health Professions Council of South Africa, to make the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director-General: Health, Private Bag X 828, Pretoria, 0001 (for the attention of the Director: Human Resource Development), within one month of the date of publication of this notice.

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 a formal process conducted in terms of these regulations to establish whether or not a student or practitioner is impaired, or to review the condition of an impaired practitioner or student as well as conditions of registration or practice imposed in terms of these regulations;

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

“**chairperson**” means the chairperson of the health committee;

“**clinical examination**” means a professional assessment and evaluation of a student or practitioner by the appropriate physical, psychiatric and psychosocial means required to determine whether or not the person is impaired;

“**committee of preliminary inquiry**” means 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 assessment hearing committee**” means a committee established under section 10 (1) of the Act and these regulations to conduct a formal assessment into alleged impairment of a student or practitioner.

“health committee” means a committee established by the council under section 10(1) of the Act to consider cases of impairment of practitioners in terms of these regulations;

“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;

“management” means administrative and clinical steps required to be taken by the health committee to implement the conditions of registration or practice imposed on a student or practitioner under these regulations;

“medical adviser” means a person appointed by the student or the practitioner to advise him/her on clinical matters during an examination or assessment in terms of these regulations;

“practitioner” means a person registered in terms of the Act to practice 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); and

“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 practice.

Information

2. (1) The Registrar shall, if he/she receives information regarding a student or practitioner which indicates possible impairment, submit that information 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 sub-regulation (1), the chairperson or the health committee may cause such inquiries to be made in relation to the matter as is deemed necessary.
- (3) If in the opinion of the chairperson, the alleged impairment of the student or practitioner is such that continued practicing of his/her profession poses an imminent danger or

threat of danger to the public or to the practitioner him/herself, the chairperson may obtain further collateral information and if still of the same opinion, he may direct that the student or practitioner be suspended from performing acts pertaining to his/her profession pending an examination or assessment in terms of these regulations and instruct the Registrar to inform the student or the practitioner accordingly: Provided that the health committee shall confirm the chairperson's decision and make its determination on impairment within six (6) weeks from date of suspension.

- (4) The chairperson or the health committee may instruct the Registrar to notify the student or the practitioner in writing of the allegations and to advise him/her to submit to a voluntary examination, within 21 days from date of the notice by a health examiner to be appointed by the health committee and to direct such examiner to submit a report to the health committee on the alleged impairment: Provided that the student or the practitioner shall be entitled to also submit a report of a medical adviser of his /her choice to the health committee.
- (5) The notice referred to in sub-regulation (4) shall direct the student or the practitioner to indicate, within 5 days upon receipt of such notice his/her willingness to submit to a voluntary clinical examination by a health examiner, and the name of the medical adviser appointed by him/her.
- (6) The notice referred to in sub-regulation (4) shall further require the student or the practitioner to indicate that he/she shall abide by the recommendations in the report by the health examiner and the subsequent findings of the health committee.
- (7) The Registrar shall submit the report(s) referred to in sub-regulation (4) of these regulations to the chairperson or the health committee, which report(s) shall detail as a minimum, the following:
 - (a) the student or practitioner's alleged impairment;
 - (b) the fitness of the student or the practitioner to practice, either generally or on a limited basis, his/her profession; and
 - (c) the recommendations, if any, by the health examiner as to the management of the student or the practitioner's case.
- (8) The health committee shall make a determination on the report of the health examiner, and direct the Registrar to inform the student or the practitioner on the findings made and the decision taken.

Action following reports on clinical examination by the health examiner(s)

3. (1) In the case where the report of the health examiner reveals that impairment of the student or the practitioner is such that continued practice of his/her profession poses an imminent danger to the public or to the student or practitioner himself/herself, the chairperson after due inquiry, may suspend the student or the practitioner from practicing his/her profession and instruct the Registrar to inform the student or the practitioner accordingly: Provided that the health committee shall in the case of a suspension by the chairperson, confirm the chairperson's decision and make its determination on impairment within six (6) weeks from the date of suspension.

- (2) The student or the practitioner shall be required to indicate his/her willingness to comply with the findings of the health committee within 15 days from date of receipt of the letter from the Registrar informing him/her of the health committee's findings.

Powers of the Health Committee

4. (1) The health committee may, after due consideration of the student or the practitioner's condition:
- (a) make a finding on whether or not such student or practitioner is impaired;
 - (b) resolve on the management of the case of such 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 purpose referred to in paragraph (b), which may include conditions with regard to-
 - (i) his/her status as a registered person;
 - (ii) the locality of his/her practice;
 - (iii) the scope his/her practice;
 - (iv) permission to handle scheduled substances such as 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) 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 practice and the performance of the impaired student or practitioner;
 - (viii) referral of the impaired student or practitioner to relevant public or private institutions or facilities for statutory or non-statutory treatment, rehabilitation or support.
- (2) A condition which is imposed by the health committee on a student or a 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 sub-regulation (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 sub-regulation (2) (b) 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 the reports referred to in sub-regulation (2) (a).

Compliance by the student or the practitioner

5. (1) If the student or the practitioner has, by the date referred to in regulation 3 (2), indicated that he/she undertakes to comply with the findings of the health committee regarding the management of his/her case, including any limitations imposed on his/her registration or practice, the health committee may, if it is satisfied that the undertaking is being observed by the student or the practitioner, postpone further action on the case and cause the student or the practitioner to be informed accordingly.
- (2) If the student or the practitioner-
- (a) has refused or failed to submit him/herself to voluntary clinical examination referred to in regulation 2(4); or
 - (b) his/her alleged impairment is such that he/she could not be relied upon to comply with such undertaking, or
 - (c) has by the date referred to in regulation 3 (2) failed to reply to any letter or notice sent to him/her for the purpose of that regulation,
- the chairperson or the health committee shall instruct the Registrar to summon the student or the practitioner to attend a health assessment hearing within the time frames that the chairperson or the health committee may determine.
- (3) If, as a result of a report from a therapist, a supervisor or from other information, it appears to the health committee that the findings referred to in regulation 3 (2) with which a student or a practitioner has undertaken to comply with, should be amended or should cease to apply, the health committee may amend its findings as it deems necessary or may direct that they be revoked and inform the student or the practitioner in writing accordingly.
- (4) 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 the practitioner has ceased to comply with an undertaking referred to in regulation 3 (2), or that his/her physical or mental conditions has otherwise deteriorated to the extent that compliance is not possible, the health committee may direct the Registrar to arrange for the appointment

of health assessment hearing committee to conduct a health assessment hearing for the purpose of deciding on any other appropriate manner of dealing with the matter.

Confirmation by the Health Committee

6. Any matter which has been dealt with by the chairperson in accordance with these regulations, shall be submitted to the health committee at its next meeting by the Registrar for ratification of the chairperson's actions or such amendment thereof as the health committee deems necessary.

Committee of Preliminary Inquiry or Professional Conduct Committee

7. (1) If the health committee, as a result of a report or other information, is of the opinion that there is sufficient ground to suspect that a student or a practitioner may be guilty of unprofessional conduct and that it is therefore necessary to refer the matter to a preliminary committee, 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 deems necessary, direct the Registrar to advise the student or the practitioner to submit to a clinical examination in terms of regulation 2(4).
- (3) If a student or a practitioner agrees to submit him/herself to a clinical examination in terms of regulations 2 (4), the Registrar shall submit to the chairperson or 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.
- (4) If the student or the practitioner refuses or fails to comply with the requirement in terms of sub-regulation (2) the provisions of regulation 5(2) shall *mutatis mutandis* apply.

Health Assessment Hearing Committee

8. The chairperson or the health committee shall instruct the Registrar to appoint three persons to serve as the health assessment hearing committee, one of whom shall be a member of the professional board on which the student or the practitioner is registered and serve as the chairperson of such committee, and the remaining two persons shall be registered practitioners with special knowledge in the relevant field of impairment under consideration of the student or practitioner concerned.

Notice of Health Assessment Hearing

9. Within 15 days after a case has been referred for health assessment hearing, the Registrar shall serve on the student or the practitioner concerned a notice which shall -
 - (a) indicate the physical or mental condition by reason of which it is alleged that he/she is impaired;

- (b) inform him/her that the matter has been referred to the health assessment hearing committee to determine whether he/she is so impaired, and to take appropriate action for the management of his/her case;
- (c) state the day, time and place of the hearing; and
- (d) summon the student or the practitioner to attend the hearing and inform him/her that he/she may be represented by his/her legal representative or medical adviser.

Postponement of Health Assessment Hearing

- 10. (1) The chairperson of the health assessment hearing committee may, if he/she deems it necessary, postpone the hearing to such later date as he/she may determine.
- (2) The Registrar shall, within 7 days notify the student or the practitioner in writing of any decision to postpone the health assessment hearing and shall inform him or her at that time, or not later than 15 days after the chairperson's decision, of the revised arrangements for the hearing.

Circulation of Evidence

- 11. Before the meeting of the health assessment hearing committee, the Registrar shall send to each member of such a committee a copy of-
 - (a) the notice referred to in regulation 9; and
 - (b) the information referred to in regulation 2.

Accessibility of Health Assessment Hearing

- 12. (1) The health assessment hearing committee shall sit in camera.
- (2) The student or practitioner shall be entitled to be present while his/her case is being conducted and may be represented by his/her legal representative: Provided that this regulation shall not entitle the student or the practitioner to be accompanied into the examination room by any person from whom oral evidence may be required.
- (3) The proceedings at a health assessment hearing shall follow the procedure of a general clinical examination of a patient suffering from the same condition as the practitioner or student under normal doctor and patient relationship.

Procedure in *Absentia*

- 13. Where the student or the practitioner is neither present nor represented, the health assessment hearing committee may-
 - (a) proceed with the hearing if the committee is satisfied that all reasonable efforts have been made in compliance with regulation 9 to serve the notice concerned; and

- (b) consider the student or the practitioner's alleged impairment on the basis of the reports, written statement and other documents circulated to members in terms of regulation 11.

Report by the Health Assessment Hearing Committee

14. The health assessment hearing committee shall, on completion of its hearing on the student or the practitioner's case, submit a report in writing on its findings and any conditions that may have been imposed to the Registrar who shall in turn submit it to the chairperson or the health committee.

Powers of the Health Assessment Hearing Committee

15. The powers of the health assessment hearing committee shall be the same as the powers of the health committee referred to in regulation 4 of these regulations.

Notification of Decisions by the Health Committee

16. After the health committee or the health assessment hearing committee has made a finding under these regulations, the chairperson shall direct the Registrar to inform the student or the practitioner in writing of the finding made, and of his/her right to appeal against that finding.

Appeal

17. If the practitioner or the student is not satisfied with the findings of the health committee or the health assessment hearing committee, such practitioner or student may lodge an appeal against those findings with the Council *ad hoc* appeal's committee within three (3) weeks from date of receipt of the notice referred to in regulation 16 or by way of a review to the High Court.

Repeal

18. The regulations published under Government Notice No. R 495 of 08 June 2001 are hereby repealed.

MINISTER OF HEALTH

DATE :

2005

Jacobm/Regs/Tuesday, September 13,