



GOVERNMENT GAZETTE

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Government Notice

MINISTRY OF HEALTH AND SOCIAL SERVICES

No. 138

2015

REGULATIONS RELATING TO INVESTIGATION OF ALLEGED UNPROFESSIONAL CONDUCT BY REGISTERED PERSON, AND INSTITUTING AND CONDUCTING OF PROFESSIONAL CONDUCT INQUIRY: SOCIAL WORK AND PSYCHOLOGY ACT, 2004

Under section 56 of the Social Work and Psychology Act, 2004 (Act No. 6 of 2004), read with section 39 of that Act and on the recommendation of the Social Work and Psychology Council of Namibia, I have made the regulations set out in the Schedule.

B. HAUFIKU

MINISTER OF HEALTH AND SOCIAL SERVICES

Windhoek, 19 June 2015

SCHEDULE

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FORM 1: Notice to Accused to Attend Professional Conduct Inquiry

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Definitions

1. In these regulations, a word or an expression to which a meaning has been assigned in the Act has that meaning, unless the context indicates otherwise-

“accused registered person” means the registered person against whom a complaint has been lodged or in respect of whom the Council is conducting an inquiry under Part V of the Act;

“complaint” means a complaint or charge of unprofessional conduct against a registered person lodged with the registrar or an allegation of unprofessional conduct made against or in respect of that registered person;

“Pro forma complaint” means a person appointed by the council in terms of section 46(1) of the Act;

“party” means the accused or the pro forma complainant; and

“the Act” means the Social Work and Psychology Act, 2004 (Act No. 6 of 2004).

Lodging of complaint

2. A complaint referred to in section 38(1)(a) of the Act against the registered person must be in writing and addressed to, and lodged with the registrar at the office of the registrar.

Procedures on receipt of complaint

3. (1) On receipt of a complaint referred to in section 38 (1), paragraph (a) of the Act or when becoming aware of any allegation referred to in paragraph (b) of that subsection, the Council must conduct, under Part V of the Act and these regulations, an inquiry into that complaint or allegation.

(2) For the purposes of section 38(4)(a) of the Act, the Council may, by written notice, call for further information from the person who lodged the complaint or made the allegation or any other person, to be submitted to the Council in the form of an affidavit or in the manner that the Council may require and specify in that written notice.

(3) Before conducting an inquiry referred to in subregulation (1), the Council must -

(a) notify the registered person against whom a complaint was lodged or in respect of whom an allegation of unprofessional conduct was made, in writing of the complaint or allegation and furnish particulars to that registered person;

(b) notify the registered person referred to in paragraph (a) that he or she may furnish the Council with a written explanation relating to that complaint or allegation before a date specified by the Council in the written notice under that paragraph; and

- (c) inform that registered person that any explanation furnished by him or her in terms of paragraph (b) may be used as evidence against him or her in any professional conduct inquiry conducted by the Council.

(4) Despite this regulation, the Council, in concurrence with the president and without complying with subregulation (2) or subregulation (3) (b) and (c), may refer, under regulation 4, the complaint directly to the chairperson of the preliminary investigation committee.

Procedures on receipt of further information or explanation

4. On receipt of further information or an explanation referred to in regulation 3, the Council must submit the complaint and the further information or explanation to the chairperson of the preliminary investigation committee for the conducting of a preliminary investigation into the matter by that committee under section 12(5)(b) of the Act.

Further investigation and legal advice

5. The preliminary investigation committee or the chairperson of that committee, in addition to the conducting of a preliminary investigation under section 12(5)(b)(i) of the Act, may seek, in concurrence with the registrar, legal advice or other assistance relating to the complaint under investigation.

Preliminary investigation committee decision

6. If the preliminary investigation committee, after conducting a preliminary investigation under section 12(5)(b) of the Act, finds that the complaint or allegation under investigation -

- (a) even if substantiated -
- (i) does not appear to constitute unprofessional conduct by that accused registered person; or
- (ii) for any other reason must not be the subject of an inquiry by the Council,
- the committee may recommend to the Council that a disciplinary inquiry under Part V of the Act into the conduct of that accused registered person must not be conducted; or
- (b) appears to constitute unprofessional conduct by the accused registered person and that the Council must conduct a disciplinary inquiry under Part V of the Act into the alleged unprofessional conduct of that registered person, the committee may recommend to the Council that a disciplinary inquiry must be conducted,

and must specify in writing the grounds for its findings and recommendations.

Inquiry by Council into complaint of unprofessional conduct

7. (1) The notice to the accused registered person contemplated in section 39(4) of the Act must be -

- (a) substantially in the form set out in Form 1 in the Annexure;
- (b) accompanied by a charge sheet formulated by the pro forma complainant and setting out in full the alleged unprofessional conduct that the accused registered person is accused of; and

- (c) delivered to that accused registered person in accordance with subsection (5) or (6) of that section, whichever may be applicable.

(2) If a witness must be summoned at the instance and request of the accused registered person referred to in subregulation (1), the Council may require that accused to deposit with the Council an amount determined by the registrar, which amount must be sufficient to cover the costs in connection with the summoning of the witness.

(3) The Council must pay the costs referred to in subregulation (2) from the amounts deposited in terms of that subregulation.

Procedures at professional conduct inquiry conducted by Council

8. (1) In this regulation, unless the context otherwise indicates -

- (a) “inquiry” means a professional conduct inquiry conducted by the Council under sections 38 and 39 of the Act; and
- (b) “accused” means the registered person in respect of whom the Council conducts a professional conduct inquiry under Part V of the Act and these regulations, whether or not he or she is present at the inquiry.

(2) At an inquiry -

- (a) the pro forma complainant must read the charge sheet to the accused or if the accused is not present at the inquiry, to his or her legal representative;
- (b) the person presiding at the inquiry must ask the accused or if he or she is not present at the inquiry, his or her legal representative, to plead guilty or not guilty to the charge referred to in paragraph (a) and the plea must be so recorded in the minutes of the inquiry; or
- (c) if neither the accused nor his or her legal representative is present at the inquiry, the procedures specified by section 39(7) of the Act must be complied with.

(3) If the accused is not present at the inquiry, a plea of guilty must be entered only if the accused, prior to the commencement of the inquiry, has clearly and in writing under his or her signature, informed the Council accordingly.

(4) If the accused or his or her legal representative fails to plead to the charge it must be so recorded and a plea of not guilty be entered and a plea so entered has the same effect as if the accused had pleaded not guilty.

(5) If -

- (a) a plea of guilty is entered, the Council must decide whether or not any evidence must be led; and
- (b) a plea of not guilty is entered, evidence in support of the case against the accused must be led.

(6) The pro forma complainant must state the case against the accused and lead evidence in support, where after the accused has the right to state his or her case and to lead evidence in support.

- (7) If the accused is neither present nor represented at the inquiry, the Council may proceed with the inquiry under section 39(7) of the Act in the absence of the accused.
- (8) The case of the pro forma complainant and the accused must be regarded as closed after evidence has been led as contemplated in subregulations (6) and (7).
- (9) The person presiding at the inquiry may allow further evidence to be led or witnesses to be called or recalled by either the pro forma complainant or the accused, or by both, after their cases have been closed.
- (10) After the evidence of a witness has been given, the other party has the right to cross-examine that witness, and then any member of the Council may put questions to the witness.
- (11) Further cross-examination of a witness may be allowed on any matter arising from questions put by any member of the Council.
- (12) After the cross-examination of a witness, the party by whom the witness is called has the right to re-examine that witness, but re-examination must be confined to matters raised in cross-examination and questions posed in terms of subregulation (11).
- (13) Oral evidence must be taken on oath or affirmation by the person presiding at the inquiry.
- (14) Any person giving evidence at an inquiry is subject to section 39(9) of the Act.
- (15) The Council may decline to admit evidence given at an inquiry when the witness who gave the evidence is not available for cross-examination or refuses to submit to cross-examination.
- (16) Written evidence given by way of an affidavit or a solemn declaration by a witness who is not present at the inquiry is admissible only with the consent of the opposing party.
- (17) A copy of the transcript of proceedings before a court of law, authenticated to the satisfaction of the Council, is on its mere production admissible as evidence at an inquiry and proof of the facts recorded.
- (18) The Council, if practicable and if it appears necessary, may call any witness whose evidence appears in a record referred to in subregulation (17) for the purposes of further examination or cross-examination.
- (19) After the parties have closed their cases, the Council may, on its own accord and at any time, call further witnesses or recall any witness to be questioned by the members of the Council, and thereafter by the pro forma complainant and the accused or his or her legal representative.
- (20) After all evidence has been given at the inquiry, the pro forma complainant, and thereafter the accused or his or her legal representative, may address the Council on the evidence and on any legal question involved.
- (21) After the accused or his or her legal representative addressed the Council in terms of subregulation (20), the pro forma complainant may reply to points of law raised by the accused or his or her legal representative in his or her address.
- (22) After the parties have addressed the Council in terms of subregulation (20) and the pro forma complainant has replied in terms of subregulation (21), the Council may deliberate on the case in camera.

(23) The Council may find the accused not guilty of any of the charges even if he or she has pleaded guilty.

(24) If the Council finds an accused -

(a) not guilty of unprofessional conduct, the registrar, under section 42(7) of the Act, must inform the accused of that finding;

(b) guilty of unprofessional conduct -

(i) the pro forma complainant -

(aa) and the accused or his or her legal representative, may make representations to the Council, either orally or in writing, regarding a suitable penalty to be imposed and may adduce evidence in support of the representations made; and

(bb) must prove to the Council the previous convictions, if any, of the accused on any charge of unprofessional conduct, and the penalties imposed on him or her by any health or social services professions Council or Board or other competent body or authority that so convicted the accused, by means of the submission to the Council of a certificate, signed by the person presiding at the inquiry where the accused had been so convicted or by the registrar of that Council or Board or other competent authority, confirming the previous convictions and penalties imposed under the Act or any other law;

(ii) the Council, after having heard the pro forma complainant and the accused or his or her legal representative -

(aa) must deliberate in camera upon the penalty to be imposed on the accused; and

(bb) may impose on the accused any one or more of the penalties specified by subsection (1) of section 42, subject to section 43, of the Act.

(25) A certificate submitted to the Council by the pro forma complainant under subregulation (24)(b)(i)(bb) must be regarded, until the contrary is proven, as proof of the stated facts.

(26) If the accused is not present nor represented at the inquiry, any written representation or explanation or statement made by him or her or on his or her behalf, if any, that have any bearing on a penalty must be taken into account by the Council when considering the imposition of a penalty.

(27) A witness called under subregulation (24)(b)(i)(aa) may be questioned by the other party and by the members of the Council.

(28) The Council may on its own accord or at the request of the pro forma complainant or of the accused or his or her legal representative, adjourn an inquiry to a date, time and place that it may determine and inform the parties at the inquiry, or it may communicate to the parties by registered post.

Notification of accused to attend inquiry and summoning of witnesses**9. A -**

(1) notification under section 39(4) of the Act to an accused to attend a professional conduct inquiry must be substantially in the form set out in Form 1; and

(2) summons under section 39(8)(b) of the Act to a witness to appear at a professional conduct inquiry must be substantially in the form set out in Form 2,

in the Annexures.

Access to disciplinary inquiry

10. (1) The proceedings at a professional conduct inquiry under Part V of the Act is open to the public, but -

(a) any point arising in connection with or in the course of or evidence adduced at a disciplinary inquiry may be discussed and decided by the Council at its discretion in camera;

(b) the Council may, on good cause shown and at its discretion, order that no person at any time and in any manner, must publish any information that may probably reveal the identity of any particular complainant, witness or other person involved with the inquiry in any manner, other than the accused.

(2) A person who contravenes or fails to comply with an order made under subregulation (1) commits an offence and on conviction is liable to a fine not exceeding N\$ 4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Obstruction or interruption of proceedings at inquiry

11. (1) Any person who obstructs or interrupts the proceedings at a professional conduct inquiry or insults a member of the Council or the professional conduct committee or misbehaves at the inquiry in any other way -

(a) may be removed from the venue of the inquiry by order of the person presiding at the inquiry; and

(b) commits an offence and on conviction is liable to a fine not exceeding N\$ 4000 or a period of imprisonment not exceeding 12 months, or both such fine and such imprisonment.

(2) If the accused is removed from the inquiry under subregulation (1)(a), the person presiding at the inquiry may direct that the inquiry proceed in his or her absence.

Procedures at professional conduct inquiry conducted by professional conduct committee

12. When the Council, under section 39(1)(b) of the Act, delegates to the professional conduct committee, established under section 12(2)(a) of the Act, its powers to conduct a professional conduct inquiry under Part V of the Act, these regulations apply, with the necessary changes, to a professional conduct inquiry conducted by that committee under that Part.

Ratification by Council of decision of professional conduct committee

13. (1) The Council may vary, ratify or refuse to ratify the decision of the professional conduct committee submitted to the members of the Council under paragraph (k), (l) or (m) of section 12(2) of the Act.

(2) The finding and penalty, if any, imposed on the accused person charged, if ratified by the Council, must be communicated to that person in accordance with section 42(4) of the Act.

(3) The Council must publish in the Gazette any finding of guilty and the associated penalty with reference to the name of the person charged, the contravention and the penalty imposed on him or her.

(4) If the Council fails to ratify a decision made or penalty imposed by the professional conduct committee, the Council must proceed with the matter under section 39(15) of the Act.

ANNEXURES

Form 1

**SOCIAL WORK AND PSYCHOLOGY COUNCIL OF NAMIBIA:
NOTICE IN TERMS OF SECTION 39(4) OF THE SOCIAL WORK AND
PSYCHOLOGY ACT, 2004 TO ATTEND A DISCIPLINARY INQUIRY CONDUCTED
BY THE COUNCIL OR A DISCIPLINARY COMMITTEE OF THE COUNCIL
(Regulation 9(a))**

To: Mr/Mrs/Miss*

Identity Number :

Address :

.....

I have been directed to inform you that a complaint/charge/allegation* has been lodged with or came to the attention of the Social Work and Psychology Council, that you, being a person registered as a under the SOCIAL WORK AND PSYCHOLOGY ACT, 2004 (ACT NO. 6 OF 2004), according to which complaint/charge/allegation* you are accused of unprofessional conduct in that you

.....

.....

.....

.....

which complaint/charge/allegation* will be considered at an inquiry conducted by the Council/a disciplinary committee of the Council* to be commenced with

at

(venue)

on

(date)

at

(time).

.....
Signature of President / Registrar*

.....
Date

ACKNOWLEDGEMENT OF RECEIPT

I,a person duly registered as a under the SOCIAL WORK AND PSYCHOLOGY ACT, 2004 (ACT NO. 6 OF 2004), do hereby acknowledge receipt of a copy of this Notice.

.....
Signature

.....
Date, time and place

* Delete whichever does not apply.

Form 2

**SOCIAL WORK AND PSYCHOLOGY COUNCIL OF NAMIBIA:
SUMMONSE IN TERMS OF SECTION 39(8)(b) OF THE SOCIAL WORK AND
PSYCHOLOGY ACT, 2004 TO APPEAR AS A WITNESS AT A DISCIPLINARY
INQUIRY CONDUCTED BY THE COUNCIL OR A DISCIPLINARY COMMITTEE
OF THE COUNCIL***

(Regulation 9(b))

To :
(name)

.....
(occupation)

of
(business address)

.....
(residential address)

are hereby summoned to appear aton the.....
..... day of 20....., at
, before the SOCIAL WORK AND PSYCHOLOGY COUNCIL OF NAMIBIA / a disciplinary
committee of that Council established under the Social Work and Psychology Act, 2004 (Act No. 6
of 2004), * to give evidence in respect of the following conduct

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

of

registered/enrolled* under that Act as
and you are directed to produce at the time and place aforementioned the books, records, documents
and things specified in the list below, and then and there to give evidence in relation to that inquiry.

Given under the hand of the
of the Council this day of 20

.....
Signature of the President / Registrar*

* Delete whichever does not apply.

List of books, records, documents and things to be produced:

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

NOTE 1 : Your attention is directed to section 39(8) of the SOCIAL WORK AND PSYCHOLOGY ACT, 2004 (ACT NO. 6 OF 2004), which provides as follows :

- “(8) (a) For the purpose of an inquiry in terms of this PART, the Council or the professional conduct committee may summons any witness to appear at a specified date, time and venue to give evidence before the Council or the professional conduct committee, as the case may be, and to submit to it any document, book, record, or other thing relevant to the inquiry and specified in such summons.
- (b)
- (c) Any person who has been duly summonsed in accordance with this subsection to appear before the Council or the professional conduct committee, as the case may be, for the purpose of an inquiry in terms of this PART, and who -
- (i) refuses or fails, without sufficient cause, to attend the inquiry concerned at the date, time and venue specified in the summons; or
- (ii) refuses to take the prescribed oath or to make an affirmation when required by the person presiding at such inquiry to do so; or
- (iii) leaves the inquiry concerned without the consent of the person presiding at such inquiry, whether or not that person has given evidence; or
- (iv) refuses to give evidence before the Council or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her, or refuses to produce any document, book, record or thing which that person has in terms of the summons been required to produce,

is guilty of an offence and on conviction liable to the penalties specified in section 58(a).”

NOTE 2: Section 58(a) provides for a fine not exceeding N\$ 6 000 or for imprisonment for a period not exceeding 18 months or both such fine and imprisonment.
