
GOVERNMENT NOTICE

DEPARTMENT OF AGRICULTURE, FORESTRY & FISHERIES

No. R.... 2015

VETERINARY AND PARA-VETERINARY PROFESSIONS ACT, 1982

(ACT NO 19 OF 1982)

REGULATIONS RELATING TO SUSPENSIONS, INSPECTIONS & APPEALS

The Minister of Agriculture, Forestry & Fisheries, has after consideration and approval of a relevant recommendation by the South African Veterinary Council, made the following regulations under sections 12A, 28A(2)(c), and 31A(6)(c) respectively, read with section 43, of the Veterinary and Para-Veterinary Professions Act, 1982 (Act No 19 of 1982), as amended by the Veterinary and Para-Veterinary Professions Amendment Act, 2012 (Act No 16 of 2012), as set out in the Schedule.

SCHEDULE

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PART 1

REGULATIONS RELATING TO SUSPENSIONS

Definitions

1. Unless the context indicates otherwise, words and phrases in these regulations, have the meaning assigned thereto in the Act and—

"Act" means the Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982), and any word or expression to which a meaning has been assigned in the Act bears such meaning;

"ad hoc Suspension Committee" means *an ad hoc* committee established by the Council to conduct a suspension hearing;

"complaint" means any information regarding the alleged unprofessional conduct by a person registered under the Act that comes to the attention of the registrar or the Council, or a complaint, charge or allegation of unprofessional conduct against such a person;

"decision" means a decision taken by the Council to institute an inquiry in terms of section 31(1) of the Act or by the registrar to refer the matter for further investigation in terms of section 31A(1) of the Act;

"evidential material" bears its original meaning in terms of the law of evidence of the Republic of South Africa, and includes but is not limited to any document, record, recording, computer disc or tangible information or thing, and any material which, in the opinion of a Committee referred to in these regulations, has probative value;

"Executive Committee" means a Committee appointed by Council in terms of Section 11(1) of the Act to, in terms of Section 11(2), exercise all the powers and perform all the functions of Council during the periods between meetings of the Council;

"Investigation Committee" means a committee established by the Council in terms of Section 12 of the Act to evaluate complaints as contemplated in section 31A of the Act against veterinary professionals and para-veterinary professionals registered or authorised in terms of the Act;

"inquiry" means an inquiry instituted into the conduct of any registered person in terms of section 31 or section 31A(1) of the Act;

"practitioner" means a person who is registered with the Council in a profession registrable in terms of the Act;

"pro forma complainant" means any person appointed by the Council to represent the complainant and to present the complaint at the *ad hoc* Suspension Committee;

"registered person" means a person registered as a student in terms of section 25(1)(i), read with section 25(2) of the Act, or a person authorised by the Council to render a particular service for gain in terms of section 23(1)(c), or a person registered to practise a veterinary or para-veterinary profession for gain in terms of section 25(1)(ii), read with section 25(2), of the Act;

"respondent" means a practitioner registered under the Act against whom a complaint has been made; and

"suspension hearing" means a hearing conducted by an *ad hoc* Suspension Committee to determine whether or not to suspend a practitioner from practising his or her profession pending the institution of an inquiry in terms of section 31(1) of the Act.

Circumstances for suspension

2. Upon receipt of a complaint by the registrar which involves—
- (a) failure to comply with the requirements in respect of continuing professional development (CPD) for three or more consecutive CPD cycles, or by two or more subsequent convictions in respect of CPD;
 - (b) an imminent threat or danger substantiated by a reasonable apprehension of threatened or impending injury or harm for or to the safety of a person, the public or the animals involved;
 - (c) the conduct of the practitioner which can cause serious reputational damage to the relevant profession; or

(d) the circumstance where a complaint, as set out in paragraphs (b) and (c), is laid subsequent to a previous conviction of unprofessional, improper or disgraceful conduct which was serious in nature, the registrar may, subject to regulations 4 and 5, forward such complaint to the *ad hoc* Suspension Committee established by Council to suspend a practitioner from practising his or her profession pending the institution of an inquiry in terms of section 31(1) of the Act.

Preliminary procedure

3. (1) The registrar must, within fourteen (14) days of receiving a complaint, request the complainant to confirm the contents of such complaint under oath.

(2) The registrar may, within ten (10) days of receiving a complaint affidavit, call for further particulars to such complaint in the form of supplementary statements, affidavits or supporting documentation from the complainant and may cause further investigation to be made.

(3) The registrar may—

- (a) take or cause to be taken an affidavit from any witness or potential witness able to provide relevant information or evidence pertaining to the complaint;
- (b) call upon any person (including the respondent) to produce for inspection before or at a suspension hearing, evidential material in his or her possession which the registrar considers to be of potential relevance in relation to a complaint, and

(c) issue a summons to a witness or potential witness, essentially in the form of Annexure A.

(4) The registrar must as soon as possible forward a complaint, together with any evidential material, to the chairperson of the Investigation Committee for further consideration.

(5) If the chairperson of the Investigation Committee is of the opinion that the complaint, together with any evidential material, reveals *prima facie* evidence of unprofessional conduct of the nature referred to in regulation 2 and that the matter should be considered further, he or she must refer the matter to an *ad hoc* Suspension Committee and instruct the registrar to appoint the pro forma complainant to present the case before the *ad hoc* Suspension Committee.

(6) An *ad hoc* Suspension Committee referred to in sub-regulation (5) established for the purpose of deciding whether or not to suspend a practitioner from practising his or her profession pending the institution of an inquiry contemplated in section 31(1) of the Act, must consist of at least three registered members of such profession and the chairperson, who must be a member of the Council contemplated in section 5(2)(d) of the Act.

(7) The registrar and the chairperson of an *ad hoc* Suspension Committee, and having regard to the degree of seriousness and urgency of the matter, must determine the date, time and place of a hearing for consideration of the matter by such an *ad hoc* Suspension Committee.

(9) When the date, time and place referred to in sub-regulation (7) has been determined, the registrar must—

(a) issue a notice, essentially in the form of Annexure B, and send it to the respondent at his or her last known address registered with the Council, by

prepaid registered post, provided that the respondent is alerted by telephone or by e-mail to such posting, or by e-mail, if so agreed in writing, or through service by the Sheriff of the High Court at his or her residential address or place of business or employment informing the respondent of the following—

- (i) the date, time and place of the suspension hearing; and
 - (ii) the purpose of such suspension hearing, namely, to consider whether the respondent should be suspended from practising his or her profession, pending the institution of an inquiry contemplated in section 31(1) of the Act;
- (b) provide the respondent simultaneously with particulars of the complaint and copies of any available statement, affidavit, opinion or any other evidential material in support of the complaint;
- (c) inform the respondent of his or her right to obtain legal representation; and
- (d) inform the respondent of his or her right to make written representations in person or through a legal representative in the form of an answering affidavit to the complaint and other evidential material in support thereof, within a period of fifteen (15) days from the date of service of the notice referred to in sub-paragraph (a) or within such period as may be determined by the registrar, having regard to the degree of seriousness and urgency of the matter, and such written representations are to be delivered at the office of the registrar in Pretoria not later than 10:00 am three (3) days before the date of the suspension hearing.

(10) If the notice referred to in sub-regulation (9)(a) is sent by prepaid registered post, it shall be deemed to have been served, received and to have come to the knowledge of the respondent within a period of 10 days after the date upon

which it was dispatched at the post office to his or her last known address registered with the Council.

(11) The notice referred to in sub-regulation (9)(a) may call upon the respondent to make available at the suspension hearing all records in his or her possession pertaining to his or her practice or to any patients or former patients who are the subject of a complaint or whose records are relevant to a complaint.

(12) The registrar must thereupon provide each member of the *ad hoc* Suspension Committee with copies of the notice, including all particulars of the complaint, and copies of all statements, opinions, affidavits and other evidential material referred to in sub-regulation (9), and of any representations received from the respondent or his or her legal representative.

(13) The record, or any portion thereof, of a lawfully constituted court, inquest inquiry or other statutory body or tribunal must be regarded as *prima facie* evidence for purposes of a suspension hearing, if it has been certified to be a true copy.

Procedure at suspension hearing

4. (1) An *ad hoc* Suspension Committee must ensure that the respondent has been properly notified of the suspension hearing in terms of regulation 3 (9).

(2) (a) At any stage during a suspension hearing, the *ad hoc* Suspension Committee may, for the purpose of deciding any issue and at its discretion, call upon any person, including the respondent, to give oral evidence

under oath or affirmation, provided that if the respondent is called upon to give evidence, he or she may elect not to give evidence.

(b) If a respondent, after having been called upon to give evidence under oath or affirmation, elects not to give any evidence under oath or affirmation, the chairperson of the *ad hoc* Suspension Committee shall advise the respondent that the matter will be decided without such evidence.

(3) (a) For the purpose of a suspension hearing, an *ad hoc* Suspension Committee may take evidence and may, under the hand of the chairperson of such *ad hoc* Suspension Committee or the registrar, summon witnesses and require the production of any book, record, document or thing, and may, through the chairperson of such *ad hoc* Suspension Committee, administer an oath to any witness or accept an affirmation from him or her, and may examine any book, record, document or thing which any witness has been required to produce.

(b) A summons, essentially in the form of Annexure A, to appear before an *ad hoc* Suspension Committee as a witness or to produce any book, record, document or thing must be signed by the chairperson of such *ad hoc* Suspension Committee or the registrar and must be served either by registered letter sent through the post or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court, unless it is agreed in writing between the registrar and the person concerned that the summons may be served by e-mail.

(c) Every person summoned in terms of this sub-regulation is bound to obey the summons and any person who, has been duly summoned—

(i) refuses, or without sufficient cause fails, to attend and to give evidence relevant to the suspension hearing at the time and place specified in the summons;

- (ii) refuses to take the oath or to make an affirmation when required by the chairperson of an *ad hoc* Suspension Committee to do so; or
- (iii) refuses, or without sufficient reason fails, to produce any book, record, document or thing which he or she has in terms of the summons been required to produce;

is guilty of an offence and on conviction liable to a fine not exceeding R5000.00 (five thousand rand): Provided that every person so summoned is entitled to all privileges to which a witness subpoenaed to give evidence before a provincial division of the High Court is entitled.

(4) If any person, including the respondent, is called upon by an *ad hoc* Suspension Committee to give evidence under oath on any matter determined by such committee, any member of such committee or any legal representative appointed by such committee for this purpose may ask the respondent questions in the order determined by the chairperson of such committee.

(5) The respondent or his or her legal representative must be afforded an opportunity to ask questions or to cross-examine any person called upon by the *ad hoc* Suspension Committee to give evidence under oath.

(6) The chairperson of the *ad hoc* Suspension Committee must administer any oath or affirmation.

(7) The *ad hoc* Suspension Committee, after having afforded the pro forma complainant and the respondent or his or her legal representative an opportunity to address such committee on the merits of the suspension application, must deliberate *in camera* and inform the respondent of its decision to suspend or not to suspend the respondent.

(8) If the *ad hoc* Suspension Committee is not in a position to make a decision immediately after the suspension hearing, it may reserve its decision and inform the respondent or his or her legal representative that he or she will be notified in writing of such committee's decision as to whether to suspend or not to suspend the respondent.

(9) If the *ad hoc* Suspension Committee decides that the respondent is to be suspended from practising his or her profession, pending the institution of an inquiry contemplated in section 32 of the Act, the respondent must be notified verbally of such decision and the reasons therefore at the suspension hearing, which must subsequently be confirmed in writing by the registrar.

(10) The respondent must be informed of his or her right to appeal and his or her right to judicial review of the decision.

(11) An order of suspension from practice in terms of section 28A of the Act shall remain in operation pending an appeal against or application to review the decision.

(12) If the *ad hoc* Suspension Committee decides to suspend the respondent, it must, after such decision direct the registrar to proceed to act in accordance with the rules to the Inquiries into alleged unprofessional conduct under the Act.

(13) A decision of an *ad hoc* Suspension Committee to suspend a person from practising his or her profession in terms of section 28A of the Act shall be deemed to be a directive of an Investigation Committee to the Registrar to arrange for the holding of an inquiry contemplated in section 31(1) of the Act.

(14) If a registered person has been suspended from practising his or her profession, pending the institution of an inquiry contemplated in section 31(1) of

the Act, the matter must further be given priority in terms of the rules relating to the conduct of inquiries into unprofessional conduct under the Act.

(15) If an *ad hoc* Suspension Committee decides after a suspension hearing that the matter does not warrant the suspension of the respondent, such Committee must inform the respondent of its decision and direct the registrar to act further in accordance with the rules relating to the inquiries into unprofessional conduct under the Act and to refer the transcript of the record of the suspension hearing, the complaint, any affidavits, representations and other evidential material to an Investigation Committee.

Access to suspension hearing

5. (1) The proceedings at a suspension hearing will be held *in camera*.

(2) Notwithstanding sub-regulation (1):

(a) the *ad hoc* Suspension Committee may, on good cause shown, order that no person may at any time or in any manner publish any information that may reveal the identity of a particular person, including the name of the respondent: Provided that such information

may be published if a person is suspended and the *ad hoc* Suspension Committee has approved such publication.

(3) Any person who infringes or fails to comply with an order made in terms of sub-regulation (2) is guilty of an offence and liable on conviction in a court of law to a fine not exceeding R5 000-00 (five thousand rand).

(4) Typed records of all suspension hearings must be kept by the Council for a period of three (3) years and a copy of such records must, upon written

request and payment of the actual cost of making a copy, be made available to the complainant, respondent or any other party who, in the opinion of the registrar, has a substantial interest in the matter.

Condonation

6. (1) Any irregularity resulting from a failure to comply with any provisions of these Regulations before the Investigating Committee or *ad hoc* Suspension Committee has reached its decision does not in itself render the proceedings void;

(2) Any clerical mistake or error may be regularised by the chairperson of the Investigation Committee or *ad hoc* Suspension Committee, provided that it does not unduly prejudice the respondent.

(3) The *ad hoc* Suspension Committee must rule on any application for condonation in terms of this regulation.

PART 2

REGULATIONS RELATING TO INSPECTIONS

Appointment of persons

7. (1) The Investigation Committee must make a recommendation to the Executive Committee to appoint an investigating officer on a case by case basis based on that person's knowledge and experience of the following:

(a) Investigative skills;

- (b) Relevant legislation;
- (c) Law of evidence; and
- (d) Legal procedure in a criminal court or civil proceedings.

(2) The Executive Committee must consider the recommendation and approve or disapprove it.

(3) Should the recommendation from the Investigation Committee be approved by the Executive Committee, the decision must be ratified at the next Council meeting.

Duties of persons appointed

8. (1) The investigating officer, in investigating persons registered or authorised in terms of the Act, must—

- (a) collaborate with other regulatory bodies, as and when required;
- (b) inspect the premises or veterinary facility and records in accordance to the Rules promulgated under the Act;
- (c) submit regular written reports to the registrar regarding progress in the investigation;
- (d) collate all the substantive and admissible evidence, including witness statements under oath, as well as all data relating to the alleged matter;
- (e) submit a written report to the registrar in respect of all the evidence gathered during the investigation; and
- (f) obtain a warrant for the search of premises in terms of section 31B(4) of the Act, if required.

- (2) The investigating officer, when investigating a lay person allegedly contravening the Act, must—
- (a) collaborate with other regulatory bodies, as and when required;
 - (b) inspect the premises or veterinary facility and records in accordance to the Rules promulgated under the Act;
 - (c) submit regular written reports to the registrar regarding progress in the investigation;
 - (d) collate all the substantive and admissible evidence, including witness statements under oath, as well as all data relating to the alleged matter;
 - (e) submit a written report to the registrar in respect of all the evidence gathered during the investigation;
 - (f) submit a charge against the person investigated, should circumstances warrant it;
 - (g) render assistance to the South African Police Services, should it be required; and
 - (h) meet with the National Prosecuting Authority to work towards a successful criminal prosecution.

Fees payable to persons appointed

9. The fees payable to persons appointed in terms of these regulations must be determined by Council annually at its first meeting of each consecutive year.

Service of report

10. (1) A report that does not reveal any prima facie information must be served on the respondent by registered mail to the registered address, or may be delivered by hand to the physical address of the respondent, or may be sent by telefax to the telefax address, or may be forwarded by electronic mail to the relevant address, as recorded by the registrar.

(2) The report is deemed to have been properly served, received and to have come to the notice of the addressee—

- (a) within ten (10) days after the day on which the notice or document was sent by pre-paid registered post, if posted;
- (b) within one (1) day after the date and at the time (if any) which appears on the acknowledgement of receipt of the notice or document, if delivered by hand;
- (c) within three (3) days after the date appearing on the telefax control sheet of the sender, if sent by telefax; or
- (d) within three (3) days after the date appearing on the electronic mail message, if sent by electronic mail, provided that the person sending the electronic mail message confirmed receipt of such electronic mail by telephone.

PART 3

REGULATIONS RELATING TO APPEALS

Lodging an appeal

11. (1) An appellant must lodge his or her or its notice to appeal against a decision of an inquiry instituted in terms of section 31 of the Act within twenty (20)

days after notice of such decision in writing is deemed to have come to the notice of the appellant in terms of regulation 16.

(2) The notice of appeal must be in writing and under oath, stating in full the decision against which the appeal is lodged, the grounds on which such appeal is lodged and all relevant arguments, information and documentation, including the transcript of the inquiry, in support thereof.

(3) An appellant who fails to lodge an appeal within the period contemplated in subsection (1) may apply to the *ad hoc* Appeal Committee for condonation for the late filing of the notice to appeal: Provided that the application for condonation—

- (a) is in writing and is lodged simultaneously with a duly completed Notice of Appeal; and
- (b) must be accompanied by a supporting affidavit setting out the reasons for the late filing of the notice to appeal with the documentation relating thereto.

(4) The chairperson must, subject to the requirements of the application for condonation referred to in subsection (3), consider such application prior to the hearing of the appeal.

(5) A ruling by the Chairperson to condone an appellant's late filing of a Notice of Appeal allows the appeal to proceed as if it was filed in accordance with Regulation 16.

Right to representation

12. (1) An appellant has the right to appear in person and may be legally represented in proceedings before the *ad hoc* Appeal Committee, should he or she so choose.

(2) A representative contemplated in sub-regulation (1) must be an admitted attorney or admitted advocate.

Procedural steps

13. (1) The notice to appeal must be lodged with the registrar together with—

- (a) payment of the fee as determined by Council; and
- (b) four copies of the record of appeal consisting of the decision appealed against, the written reasons for such decision, including the transcript of the inquiry and all relevant documents, duly indexed and paginated.

(2) The registrar must, within fifteen days of receipt of the notice of submit the appeal, together with all the documentation lodged with the appeal, to the chairperson of an inquiry contemplated in section 31(1) of the Act and must request the chairperson of such inquiry to furnish their comments to the registrar within twenty days after receipt of the request from the registrar.

Procedure at *ad hoc* Appeal Committee proceedings

14. (1) The registrar must submit the appeal, together with all supporting documentation, as well as the comments referred to in Regulation 13(2) to the *ad hoc* Appeal Committee for consideration.

(2) The registrar must then, in consultation with the members of the Appeal Committee, determine a date and a venue for considering the appeal.

(3) Preliminary issues or points *in limine*, if any, must be heard and decided prior to the presenting of arguments.

(4) The appellant and his or her legal representative, if a legal representative is appointed, must be given the opportunity to argue his or her case.

(5) If the appellant and his or her legal representative are not present at the appeal proceeding, it must proceed in the appellants' absence.

(6) Upon the conclusion of a case, the *ad hoc* Appeal Committee must deliberate thereon *in camera*.

(7) The *ad hoc* Appeal Committee may reserve judgment for a reasonable period, provided that the estimated date on which the judgment will be made available is specified at the conclusion of the appeal procedure.

(8) The judgment and the reasons for it must be provided to the appellant in writing, once it has been finalised.

Powers of *ad hoc* Appeal Committee

15. (1) Any irregularity resulting from a failure to comply with any provisions of these Regulations before the *ad hoc* Appeal Committee has reached its decision does not in itself render the proceedings void.

(2) Any clerical mistake or error may be regularised by the Chairperson of the *ad hoc* Appeal Committee, provided that it does not unduly prejudice the respondent.

(3) The *ad hoc* Appeal Committee must rule on any application for condonation of any irregularity.

(4) The *ad hoc* Appeal Committee may—

- (a) confirm the decision;
- (b) amend, vary or set aside the decision;
- (c) remit the matter back to the inquiry contemplated in section 31(1) of the Act with instructions if it deems appropriate; or
- (d) make any other order, including an order for costs in terms of section 32(9), as it considers appropriate.

Notice

16. Any notice to be given in terms these regulations—

- (a) must be in writing and addressed to and may be sent by registered mail to the registered address, provided that the respondent is alerted by telephone or e-mail to such posting, or may be delivered by hand to the physical address, or

may be sent by telefax to the telefax address, or by e-mail, if so agreed in writing; and

- (b) shall be deemed to have been properly given and to have been received and to have come to the notice of the addressee—
- (i) within ten (10) days after the day on which the notice or document was sent by pre-paid registered post, if posted;
 - (ii) within one (1) day after the date and at the time (if any) which appears on the acknowledgement of receipt of the notice or document, if delivered by hand;
 - (iii) within three (3) days after the date appearing on the telefax control sheet of the sender, if sent by telefax;
 - (iv) within one (1) day after the date appearing on the electronic mail message, if sent by electronic mail, provided that the person sending the electronic mail message confirmed receipt of such e-mail by telephone.

Annexure A

<p>SUMMONS TO APPEAR BEFORE AN <i>AD HOC</i> COMMITTEE OF THE SOUTH AFRICAN VETERINARY COUNCIL</p>

(name of person summoned and his or her address)

is hereby summoned to appear at

(place) on

(date and time) before an *ad hoc* Committee of the

SOUTH AFRICAN VETERINARY COUNCIL, established in terms

The Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982), to give evidence in respect of

and you are hereby directed to produce the following

(if the person summoned is to produce any book, record, document or thing):

(specify the book, record, document or thing concerned)

Signed at Pretoria on this the day of

(Name and Surname)

REGISTRAR

Annexure B

<p>NOTICE TO APPEAR BEFORE AN <i>AD HOC</i> COMMITTEE OF THE SOUTH AFRICAN VETERINARY COUNCIL</p>
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(name of person and his or her address)

(registered or residential or employment address)

(by prepaid registered post or by service of the Sheriff of the High Court)

PLEASE TAKE NOTE of the following:

1.

The South African Veterinary Council
has received a complaint
against you of unprofessional conduct of a nature that requires
consideration in terms of section 28A of the Veterinary and Para-Veterinary
Professions Act, 1982 (Act No. 19 of 1982), (hereinafter referred to as “the
Act”).

2.

A suspension hearing will be held into whether you should be
suspended from practising your profession pending the institution of a
formal inquiry in terms of section 32 of the Act.

3.

You are called upon to appear at said hearing at

(time)

on

(date) at

(place).

4.

You have the right to be represented by a duly qualified legal representative.

5.

The following evidential material, of which copies are enclosed, will be considered at the suspension hearing:

(1)

(2)

(3)

(4)

(5)

(give name or description of documents or other evidential material)

6.

You have the right to make written representations in the form of an answering affidavit to the complaint and other evidential material attached, which representations are to be delivered to the offices of the Registrar of the South African Veterinary Council within

*days from the

date of receipt or service of this notice, and not later than 10:00 three days prior to the date of the suspension hearing.

7.

You are required to make the following records and/or documents available at the suspension hearing:

(1)

(2)

(3)

(state particulars of records and/or documents)

Signed at Pretoria on this day of

(Name and surname)

REGISTRAR

*The period is fifteen (15) days unless specified otherwise.