



GNR.1159 of 20 November 2000: Regulations relating to the management of a person registered in terms of the Pharmacy Act, 1974, unfit to practise for reasons other than unprofessional conduct

DEPARTMENT OF HEALTH

The Minister of Health has, in consultation with the South African Pharmacy Council, in terms of sections 4, 38 and 49 (1) (q) of the Pharmacy Act, 1974 (Act 53 of 1974), as amended, made the regulations in the Schedule.

M. TSHABALALA-MSIMANG
Minister of Health

SCHEDULE

ARRANGEMENT OF REGULATIONS

1. Definitions

CHAPTER I

2. Information or allegation regarding respondent
3-4. Assessment by the health committee
5-6. Health examiner(s)
7. Temporary suspension
8-13. Findings by the health committee following an assessment
14. Review of temporary suspension by the council

CHAPTER II

- 15-19. Investigation by the health committee
20-21. Findings by the health committee following an Investigation

CHAPTER III

- 22-25. Monitoring and review
26-27. General

1. Definitions.—In these regulations, unless the context otherwise indicates—

“**Act**” means the Pharmacy Act, 1974, (Act 53 of 1974), as amended, and regulations;

“assessment” means the voluntary informal process to establish whether a person registered in terms of the Act is unfit to practise as defined in these regulations;

“assessor” means the person appointed by the registrar to advise the health committee on any relevant clinical matter;

“chairperson” means the chairperson of the health committee;

“health committee” means a committee appointed by the council in terms of section 4 (o) of the Act to investigate in terms of these regulations whether a respondent is unfit to practise;

“committee of preliminary investigation” means a committee appointed in terms of section 4 (o) of the Act to investigate complaints against persons registered in terms of the Act;

“direct personal supervision” means guidance and support by a pharmacist, whilst physically present in a pharmacy;

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

“investigation” means the formal process conducted by the health committee in terms of Chapter II of these regulations to establish whether a respondent is unfit to practise;

“management reports” means the reports compiled by a supervisor or therapist in respect of a respondent;

“practise” means to perform one or more or all of the acts specially pertaining to the scope of practice of a respondent;

“register” means a register established and kept by the registrar in terms of section 14 of the Act;

“respondent” means a natural person registered in terms of the Act in respect of whom information or an allegation that such a person is or may be unfit to practise has been received by the registrar;

“supervisor” means a pharmacist or another person approved and appointed by the health committee to supervise and report to the health committee in terms of these regulations regarding a respondent who was found to be unfit to practise;

“therapist” means a medical practitioner or another professional person who holds appropriate registration, nominated by a respondent and approved by the chairperson or the health 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 chairperson or the health committee;

“unfit to practise” means incapable, incompetent, or unsuitable—

- (a) to be registered in terms of the Act; or
- (b) to perform acts forming part of the scope of practice of his or her category of registration,

as a result of a physical or mental condition and **“fit to practise”** has the opposite meaning.

CHAPTER I

2. Information or allegation regarding respondent.—

- (1) Where information or an allegation is received by the registrar that a person registered in terms of the Act may be unfit to practise, the registrar must—
 - (a) submit such information to the health committee at its next meeting; or
 - (b) submit such information to the chairperson of the health committee during intervals between meetings of the health committee where the urgency of the matter requires immediate action.
- (2) On receipt of the information referred to in subregulation (1), the chairperson or the health committee may cause such inquiries to be made in relation to the matter as is deemed necessary and, if needed, request the respondent to agree to mutually acceptable arrangements pending an assessment in terms of these regulations.

3. Assessment by the health committee.—Unless it appears to the chairperson or the health committee that the matter need not proceed further, the registrar must be directed to write to the respondent—

- (1) notifying the respondent that information had been received which alleges that he or she may be unfit to practise in terms of the Act;
- (2) requesting the respondent to voluntarily submit to examination by a health examiner(s): provided that if the information received by the registrar includes reports from one or more medical practitioners who examined such person recently and if it appears to the chairperson or the health committee that such reports contain sufficient medical evidence that the person being assessed is unfit to practise, the registrar must inform the respondent accordingly;
- (3) informing the respondent that he or she can within the time specified in such notice submit additional reports from medical practitioners of his or her own choice to rebut the allegation that he or she is unfit to practise;
- (4) inviting the respondent to submit within the time specified in such invitation any observations or other evidence regarding his or her physical or mental condition which he or she may wish to offer;
- (5) informing the respondent that, if he or she refuses to submit voluntarily to examination by a health examiner(s) 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 health committee for an investigation in terms of these regulations; and
- (6) informing the respondent that the information, reports and other documentation may be submitted to a health examiner(s) for evaluation and a recommendation.

4. The registrar must furnish the respondent with the information received and may enclose copies of any reports referred to in the *proviso* to subregulation (3) (2).

5. Health examiner(s).—The registrar must, at the request of the chairperson or the health committee, submit the information referred to in regulation 2 to the health examiner(s) to evaluate such information and to report to the chairperson or the health committee—

- (1) on the physical or mental condition of the respondent;

- (2) whether in the opinion of the health examiner(s) the respondent—
 - (a) is fit to practise;
 - (b) is fit to practise on a limited basis or under direct personal supervision, or both;
 - (c) is unfit to practise; or
 - (d) 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 practise, or unfit to practise except on a limited basis or under direct personal supervision, or both; or
- (3) on his, her or their recommendation(s), if any, as to the management of the respondent.

6. The registrar must submit copies of the reports received from the health examiner(s), if applicable, and all the information referred to in regulation 2, to—

- (1) the health committee at its next meeting; or
- (2) the chairperson during intervals between meetings of the health committee,

and the health committee or chairperson must recommend to council any appropriate action it, he or she deems necessary.

7. Temporary suspension.—The council, after receiving the recommendation contemplated in regulation 6 may, for a period not exceeding 90 days, temporarily suspend a respondent from practising on such terms or conditions as the council may deem fit, pending an assessment or investigation in terms of these regulations: provided that the respondent is entitled to request the council to suspend the suspension subject to such terms and conditions as the council may deem fit, upon proof to the satisfaction of the council that the suspension is not necessary.

8. Findings by the health committee following an assessment.—Notwithstanding regulation 7, the council may, after receipt of the recommendation referred to in regulation 6, make a finding on the matter and determine the further requirements for management of the respondent and direct the registrar to inform the respondent of such finding and the reasons therefore in writing, and if the finding is that the respondent is unfit to practise or fit to practise on a limited basis or under direct personal supervision or both, the registrar must request the respondent to undertake within a specified period and in writing, that he or she is prepared to voluntarily comply with the findings and rulings of the council on the management of his or her case, including any limitations on his or her ability to practise which may be imposed and to nominate a therapist, if applicable.

9. If a respondent, who is declared unfit to practise, undertakes to comply with the requirements as to the management of his or her case, including any imposed limitations on his or her ability to practise, then the council may postpone further action: provided that imposed limitations and conditions are complied with and management reports, if applicable, are submitted by the therapist nominated by the respondent and approved by the council as required.

10. If the respondent refuses or fails to submit to the required examinations referred to in subregulation 3 (2), or does not by the specified return date (or such further period as the registrar may allow), undertake to accept the resolutions as to the management of his or her case, including

any limitations on his or her right to practise, the council may direct the registrar to arrange for an investigation in terms of Chapter II of these regulations.

11. If it appears to the council from the reports of the health examiner(s) or any medical practitioners referred to in subregulation 3 (3), or from any other information which the chairperson or the health committee has received, that the condition of the respondent is such that he or she is not able to give an undertaking as contemplated in regulation 8 or 9, or that he or she could not be relied upon to comply with such an undertaking, the council must—

- (1) direct the registrar to arrange for an investigation; or
- (2) suspend the respondent from practising pending an investigation in terms of Chapter II of these regulations: provided that the respondent must be entitled to request the council to suspend the suspension subject to such terms and conditions as the council may deem fit, upon proof to the satisfaction of the council that the suspension is not necessary.

12. The council may amend or withdraw the requirements for management referred to in regulation 7 or 8 if, as a result of a report from a therapist, supervisor or any other information, it appears to the health committee that such requirements should be amended or should cease to apply.

13. The chairperson or the health committee, as the case may be, must report to council with regard to any recommendations made in terms of Chapter 1.

14. Review of temporary suspension by the council.—The council, if approached by the respondent in terms of the provisions to regulation 7 or 11 (2), may—

- (1) terminate the suspension in whole or in part upon proof to the satisfaction of the council that the suspension is not necessary; or
- (2) uphold the suspension; or
- (3) amend or withdraw the conditions or terms of the suspension.

CHAPTER II

15. Investigation by the health committee.—As soon as practicable after a case has been referred for investigation in terms of Chapter 1 of these regulations, the registrar must serve on the respondent a notice, which must—

- (1) indicate the physical or mental condition by reason of which it is alleged that he or she is unfit to practise;
- (2) inform him or her that the matter is being referred to the health committee for investigation in terms of these regulations;
- (3) state the date, time and place of the investigation;

- (4) call on the respondent to attend the investigation;
- (5) inform the respondent that he or she may be represented by a legal representative, medical adviser or both, and be accompanied by a family member or friend; and
- (6) inform the respondent that if he or she is not present, the investigation may be continued and concluded in his or her absence.

16. The chairperson may direct the registrar to appoint one or more assessors to the health committee to advise the committee on any relevant clinical matter.

17. Before commencement of the investigation by the committee, the registrar must furnish each member of the health committee and the respondent with copies of the notice of investigation, and all documents referred to in regulations 2 and 6, and all medical reports received and any observations or other documents submitted by or on behalf of the respondent.

18. Where the respondent is neither present nor represented, the health committee may—

- (1) proceed with the investigation if the health committee is satisfied that the notice contemplated in regulation 15 of investigation has come to the notice of the respondent, his or her representative, medical advisor or a close relative;
- (2) only consider the reports, written statements and other documents circulated to members in accordance with regulation 17; or
- (3) question any person who is present or has submitted a report.

19. The health committee in coming to a finding is entitled to regard a current physical or mental condition, or a continuing and episodic condition, or a condition which, although currently in remission, may be expected to recur.

20. Findings by the health committee following an investigation.—The health committee—

- (1) may postpone the investigation to such later date or such later meeting of the committee as it may determine;
- (2) may adjourn an investigation 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 his or her ability to practise in terms of the Act;
- (3) must, if the respondent was not present, direct the registrar, as soon as practicable, to notify the respondent that the investigation has been postponed and must inform the respondent of the date, time and place for the continuation of the investigation and may specify the conditions of such postponement;
- (4) may postpone the making of a finding;
- (5) may make a finding on whether—
 - (a) the respondent is fit to practise;
 - (b) the respondent is not fit to practise except on terms or conditions as may be determined by the health committee;

- (c) the respondent is unfit to practise; or
 - (d) the respondent suffers from a recurring or episodic physical or mental condition 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 health committee; or
- (6) may recommend to the council that—
- (a) the respondent be suspended from practising; or
 - (b) the period of suspension be suspended in whole or in part, and the conditions of such suspension.

21. The registrar must advise the respondent in writing of the decision of the health committee and of the respondent's right to appeal against the finding.

CHAPTER III

22. Monitoring and review.—If conditions or limitations to practise are imposed on a respondent—

- (1) the supervisor or therapist must submit regular reports to the health committee to determine whether there is compliance with the stated conditions or limitations;
- (2) such conditions or limitations must be reviewed by the health committee at least every 12 months.

23. A respondent may in writing request a review by the health committee of the conditions under which he or she may practise: provided that such a review is both recommended and supported by his or her supervisor or therapist, where applicable.

24. The health committee may—

- (1) amend the existing conditions of suspension or revoke such order, if the health committee deems it fit; or
- (2) amend the existing limitations imposed or the conditions of suspension; or
- (3) amend the existing conditions for the management of the respondent.

25. The respondent has a right of appeal against the decision of the health committee or the council, which appeal must be processed in accordance with the provisions of Chapter XIII of the Regulations Relating to the Registration of Persons and the Maintenance of Registers: provided that if the rights of the respondent will be detrimentally affected, he or she must be offered an opportunity of stating his or her case to the council.

26. General.—In appointing health examiners or assessors for a particular matter, the chairperson or health committee shall have regard to the nature of the assessment or investigation and the nature of the practice and registration of the respondent.

27. Any proceedings or actions in terms of these regulations must be conducted with due consideration of a person's right to privacy.