



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$2.00

WINDHOEK - 27 March 2009

No. 4232

CONTENTS

Page

GOVERNMENT NOTICE

No. 41	Regulations Relating to Appeal, and Conducting of Appeal by, Appeal Committee of Medical and Dental Council of Namibia: Medical and Dental Act, 2004	1
--------	--	---

Government Notice

MINISTRY OF HEALTH AND SOCIAL SERVICES

No. 41 2009

REGULATIONS RELATING TO APPEAL,
AND CONDUCTING OF APPEAL BY, APPEAL COMMITTEE OF
MEDICAL AND DENTAL COUNCIL OF NAMIBIA:
MEDICAL AND DENTAL ACT, 2004

Under section 59 of the Medical and Dental Act, 2004 (Act No. 10 of 2004), and on the recommendation of the Medical and Dental Council of Namibia, I have made the regulations set out in the Schedule.

R.N. KAMWI
MINISTER OF HEALTH AND SOCIAL SERVICES

Windhoek, 12 March 2009

SCHEDULE
ARRANGEMENT OF REGULATIONS
PART I
PRELIMINARY

1. Definitions

PART II
NOTICE AND CONDUCTING OF APPEAL

2. Notice of appeal to appeal committee
3. Lodging of appeal
4. Referral of notice of appeal to appeal committee
5. Hearing of appeal
6. Submission of documents, records and things to appellant
7. Request for further particulars
8. Submission of main points of argument
9. Conducting of appeal by appeal committee
10. Calling of witnesses and submission of documents, books or records

PART III
CONDUCTING OF APPEAL ON WRITTEN SUBMISSIONS

11. Conducting of appeal on written submissions

PART IV
FINDINGS OF APPEAL COMMITTEE

12. Findings of appeal committee

PART V
GENERAL

13. Granting of extension and condonation of failure
14. Service of notices on respondent
15. Application of the Rules of the High Court of Namibia

ANNEXURE

PART I
PRELIMINARY

Definitions

1. (1) In these regulations, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and -

“appellant” means the person who appeals to the Appeal Committee in accordance with section 56(1)(a) of the Act.

“chairperson” means the chairperson of the Committee;

“committee” means the Appeal Committee;

“parties to the appeal” means the appellant and the respondent, and “parties” has a corresponding meaning;

“party” means either the appellant or the respondent, as the case may be;

“respondent” means the Council; and

“the Act” means the Medical and Dental Act, 2004 (Act No. 10 of 2004).

- (2) Any notice or particulars that must be given or submitted in accordance with these regulations -
- (a) by or to the appellant, must be given or submitted by or to the appellant, or if the appellant has appointed a legal practitioner to represent appellant, by or to that legal practitioner;
 - (b) by or to the respondent, must be given or submitted by or to the registrar, or if the respondent has appointed a legal practitioner to represent respondent, by or to that legal practitioner;
- (3) For the purpose of the calculation of any period of time prescribed by these regulations, the calculation does not include a Saturday, Sunday or public holiday.

PART II NOTICE AND CONDUCTING OF APPEAL

Notice of appeal to the appeal committee

2. (1) A notice of appeal to the Committee contemplated in section 56(1) of the Act must be in the form of the Annexure.

Lodging of appeal

3. (1) A notice of appeal must be lodged with the registrar at the head offices, during office hours.

(2) The registrar, or a member of the staff of the registrar, must acknowledge receipt of the notice of appeal by signing and dating a copy of the notice, which copy must be handed to the person lodging the notice.

Referral of notice of appeal to the Appeal Committee

4. The registrar must -

- (a) refer the notice of appeal to the committee in accordance with paragraph (d) of subsection (1) of section 56 of the Act, by delivering to the chairperson a copy of -
 - (i) the notice; and
 - (ii) the minutes of the meeting of, or of the inquiry conducted by, the Council at which the finding, decision or penalty appealed against was made, taken or imposed, together with a copy of every document, book, record or thing submitted to the Council relating to that finding, decision or penalty, or which forms part of those minutes; and
- (b) deliver to every member of the Committee a copy of every document, book, record or thing referred to in paragraph (a).

Hearing of appeal

5. (1) The chairperson must determine a date and time for the commencement of the hearing of the appeal and notify the registrar in writing not less than 40 days before the date for the commencement of the hearing.

(2) The registrar must notify the appellant of the date and time not less than 30 days before the commencement of the hearing of the appeal determined under subregulation (1).

Submission of documents, records and things to the appellant

6. The registrar must deliver to the appellant, at the appellant's written request, a copy of every document, book, record or thing referred to in regulation 4(a).

Request for further particulars

7. (1) The chairperson, after receipt of the copies of the documents, books, records and things referred to in regulation 4, may request in writing -

- (a) the appellant to furnish the Committee with further particulars relating to -
 - (i) any particulars submitted with, or statement made in, the appellant's notice of appeal;
 - (ii) appellant's grounds for appeal;
- (b) the respondent to furnish the Committee with further particulars relating to the minutes of the meeting or of the inquiry delivered to the Committee in accordance with regulation 4(a)(ii).

(2) The appellant or the respondent must furnish the further particulars requested under subregulation (1) to the chairperson within 10 days after receipt of the request.

(3) Further particulars furnished in accordance with subregulation (2) form part of the record of the appeal.

Submission of main points of argument

8. (1) Not less than -

- (a) 21 days before the date for the commencement of the hearing of the appeal, the appellant must submit to the registrar and to the respondent one copy of a concise statement of the main points (without elaboration) which the appellant intends to argue on appeal, including a list of the authorities to be presented in support of each of those arguments; and
- (b) 15 days before the date of the commencement of the hearing of the appeal, the respondent must submit to the registrar and to the appellant a copy of a concise statement of the reply of the respondent (without elaboration) to the main points of argument of the appellant contemplated in paragraph (a), and the main points (without elaboration) which the respondent intends to argue on appeal, including a list of the authorities to be presented in support of each of those arguments.

(2) The registrar must deliver, not less than 12 days before the date determined under regulation 5(1) for the commencement of the hearing of the appeal, a copy of each of the statements submitted to the registrar in terms of subregulation (1), to the chairperson and to every member of the Committee.

Conducting of appeal by Appeal Committee

9. (1) In this regulation, and in regulations 10, 11 and 12, the -

- (a) “appellant” includes the legal practitioner representing the appellant; and
 - (b) “representative of the respondent” means a legal practitioner or any other person appointed by the respondent to represent the respondent at the hearing of the appeal.
- (2) The chairperson must preside at the hearing of an appeal in accordance with section 56 of the Act and these regulations.
- (3) The appellant may address the Committee on the main points of argument submitted to the registrar in terms of regulation 8(1)(a).
- (4) The representative of the respondent may address the Committee on the respondent’s reply and main points of argument submitted to the appellant in terms of regulation 8(1)(b).
- (5) Despite subregulations (3) and (4), the appellant or the representative of the respondent may address the Committee, with the consent of the Committee, on any matter relevant to the appeal not specified in the statements contemplated in regulation 8(1)(a) or (b).
- (6) The representative of the respondent or the appellant may reply to the address of the appellant or the representative of the respondent made in terms of subregulation (5).

Calling of witnesses and submission of documents, books or records or things

- 10.** (1) The committee may -
- (a) instruct the appellant or the respondent, at any time during the hearing of the appeal, to call witnesses to give evidence before the Committee on any issue relevant to the appeal to be determined by the Committee;
 - (b) on the application of any party, allow that party to call a witness or submit to the Committee a copy of any document, book, record or thing not submitted to the Council, if the committee is satisfied that -
 - (i) the party was not aware, and could not reasonably have been aware, of the existence of that witness, document, book, record or thing at the time when the Council made the decision appealed against; and
 - (ii) it would not be reasonable, under the circumstances, to deny that party the opportunity to call that witness or submit that document, book, record or thing to the Committee for consideration.
- (2) If a party calls a witness to testify in accordance with subregulation (1)
- (a) the other party and the Committee may cross-examine that witness; and
 - (b) that witness is entitled to all the privileges that a witness giving evidence in the High Court is entitled to.

PART III CONDUCTING OF APPEAL ON WRITTEN SUBMISSIONS

Conducting of appeal on written submissions

- 11.** (1) The committee, at any time after the receipt by all the members thereof of the notice of appeal referred to the Committee by the registrar under regulation 4, may decide,

despite Part II, but subject to this regulation, to conduct the appeal on written submissions by the parties, if the Committee is satisfied that it is appropriate and fair to both parties, in the circumstances of the case, to so conduct the appeal.

(2) For the purposes of this regulation, “written submission” means a written submission by a party as contemplated in subregulation (4).

(3) If the Committee decides under subregulation (1) to conduct the appeal on written submissions by the parties -

- (a) it must determine a reasonable period within which the parties must lodge their written submissions with the Committee; and
- (b) the registrar must inform the parties in writing -
 - (i) of the decision of the Committee to conduct the appeal on written submissions; and
 - (ii) the period determined under paragraph (a) within which the parties must lodge their written submissions.

(4) A written submission by a party to the Committee contemplated in this regulation must -

- (a) set out the arguments of that party relating to the appeal, with an elaboration on each one of those arguments, including a list of the authorities in support of the arguments;
- (b) be lodged with the registrar within the period determined under regulation (3)(a).

(5) The registrar must deliver a copy of a written submission lodged by a party in accordance with paragraph (b) of subregulation (4)(b) to the other party within seven days after the receipt thereof.

(6) A party may lodge with the registrar, a written reply within 14 days after receipt of the copy of the written submission delivered to that party by the registrar in accordance with subregulation (5).

(7) The registrar must deliver, within three days after the expiry of the period of 14 days prescribed by subregulation (6), to the chairperson and to every member of the Committee, a copy of every written submission, and of every reply to a written submission, lodged with the registrar.

(8) The Committee may conduct, and take a decision on, the appeal on the contents of the notice of appeal, minutes, documents, books, records and things delivered to it in accordance with regulation 4, and the arguments raised in the submissions delivered to the Committee in accordance with subregulation (7), without requiring the parties -

- (a) to submit to the Committee their main points of argument in accordance with regulation 8; or
- (b) to address the Committee in accordance with regulation 9.

PART IV
FINDINGS OF APPEAL COMMITTEE

Findings of appeal committee

12. (1) After having conducted an appeal in accordance with section 56 of the Act and these regulations, but subject to subregulation (2), the chairperson may make known the findings of the Committee, or may postpone the announcement of those findings until a date and time determined by the Committee.

(2) The chairperson of the Committee must make known in writing -

(a) the findings of; and

(b) any orders made by, the Committee under section 56 of the Act, and must submit a copy of the findings and orders to the registrar.

(3) The registrar must deliver a copy of the findings and orders contemplated in subregulation (2) to the appellant.

(4) When making an order as to the payment of costs under section 56(2)(b)(v) of the Act, the Committee may award costs in accordance with the fees that may be charged by legal practitioners as prescribed by the Rules of the High Court.

(5) The chairperson of the Committee must tax a bill of costs in accordance with the Rules of the High Court referred to in subregulation (4), with the necessary changes.

PART V
GENERAL

Granting of extension and condonation of failure

13. (1) Despite any provision of these regulations, the Committee may grant, on good cause shown and subject to such conditions as the Committee may determine, to any of the parties to the appeal an extension of time for the lodging of any document in terms of, or condone any failure by a party to comply with, any of these regulations.

(2) The conditions determined by the Committee under subregulation (1) may include an order as to the payment of costs by the party who is granted an extension of time or whose failure is condoned.

Service of notices on the respondent

14. A notice to the respondent in terms of any of the provisions of these regulations must be served upon the registrar or a member of the staff of the registrar, at the offices of the registrar at the address specified in the Annexure.

Application of Rules of the High Court

15. When conducting an appeal in accordance with section 56 of the Act, the committee may apply any of the Rules of the High Court, as it may determine and with the necessary changes, to any matter not provided for in the Act or these regulations, and if the Rules so applied are not inconsistent with the Act or these regulations.

ANNEXURE

**MEDICAL AND DENTAL ACT, 2004
(ACT NO. 10 OF 2004)**

**NOTICE OF APPEAL TO THE APPEAL COMMITTEE
(Section 56, Regulation 2)**

In the matter between Appellant

And

THE MEDICAL AND DENTAL COUNCIL OF NAMIBIA Respondent

To:

The Respondent,
C/o the Office of the Registrar of the Medical and Dental Council of Namibia,
No. 36/37 Schönlein Street,
Windhoek West
WINDHOEK.

In accordance with section 56(1) of the Medical and Dental Act, 2004 (Act No. 10 of 2004), the Appellant appeals to the -

APPEAL COMMITTEE OF THE MEDICAL AND DENTAL COUNCIL OF NAMIBIA

against -

- *(a) the finding or decision by the Respondent as set out below;
- *(b) the penalty imposed by the Respondent as set out below; or
- *(c) the refusal or failure of the Respondent to make a finding or take a decision as set out below.

*(Delete whatever is or are not applicable.)

Dated at this day of 20

.....
***Signature of Appellant
or of his or her Legal Practitioner**

Full names and surname, identity number and profession of the Appellant:

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

Registration number of the Appellant with the Council (if any):

Physical address of *Appellant or of his or her Legal Practitioner for service of notices and documents:

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

(This address for service must be located within a distance of ten kilometres from the Office of the Registrar aforementioned.)

Received this Notice of Appeal:

.....
Signature of recipient

For and on behalf of the registrar of the Medical and Dental Council of Namibia:

Date:

Time:

PARTICULARS OF FINDING OR DECISION, OR PENALTY IMPOSED, OR REFUSAL OR FAILURE BY COUNCIL, APPEALED AGAINST:

* (a) Date of finding or decision, or penalty imposed, if applicable:

.....

* (b) Particulars of finding or decision, or penalty imposed, by the Respondent:

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

(If this space is insufficient, add a schedule setting out particulars.)

* (c) Particulars of the refusal or failure of the Respondent to make a finding or take a decision:

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

(If this space is insufficient, add a schedule setting out particulars.)

*(Delete whatever is or are not applicable.)

GROUNDS THAT APPEAL IS BASED ON

Set out in full the grounds that the appeal is based on:

.....

.....

.....

.....

.....

.....

.....

.....

.....

(If this space is insufficient, add a schedule setting out the particulars.)
