



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS SURVIVING IN TERMS OF

Nursing Act 8 of 2004
section 65(2)

**Nursing Professions Act, 1993:
Regulations relating to the Lodging of Complaints, Charges
or Allegations against Registered or Enrolled Persons
and the Conducting of Inquiries**

Government Notice 12 of 1999

(GG 2040)

came into force on date of publication: 28 January 1999

These regulations were made on the recommendation of the Nursing Board in terms of section 48 of the Nursing Professions Act 30 of 1993, which was repealed by the Nursing Act 8 of 2004.

Pursuant to section 65(2) of the Nursing Act 8 of 2004, any regulation made under the repealed legislation must be regarded as having been made in terms of the corresponding provision of the Nursing Act 8 of 2004, insofar as it is not inconsistent with that Act.

ARRANGEMENT OF REGULATIONS

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APPENDIX

[These regulations use both “proforma” (one word not italicised) and “*pro forma*” (two words italicised).]

Definitions

1. In these regulations, unless the context otherwise indicates, an expression defined in the Act has a corresponding meaning, and -

“accused” means a person registered or enrolled under section 13, against whom a complaint, charge or allegation has been made or laid, to the Board;

“chairperson” means the chairperson of the disciplinary committee;

“disciplinary committee” means a committee established by the Board in terms of section 10(1)(a);

“inquiry” means a disciplinary inquiry held by the Board or a disciplinary committee in terms of Part V of the Act and these regulations;

“investigating committee” means a committee established by the Board under section 10(3) of the Act to investigate any complaint made, charge laid or allegation made against an accused;

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“secretary” means the secretary of the Board;

“section” means a section of the Act;

“the Act” means the Nursing Professions Act, 1993 (Act No. 30 of 1993).

[The Nursing Professions Act 30 of 1993 has been replaced by the Nursing Act 8 of 2004.]

Lodging of complaints, charges or allegations

2. A person who makes a complaint, lays a charge or makes an allegation against an accused on the ground of an alleged act or omission shall -

- (a) make the complaint, lay the charge or make the allegation, in writing and address and deliver it to the secretary;
- (b) after delivering his or her complaint, charge or allegation to the secretary in terms of paragraph (a), confirm such complaint, charge or allegation in an affidavit or solemn declaration, if requested to do so by the secretary; and

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- (c) if he or she makes the complaint, lays the charge or makes the allegation in terms of paragraph (a), be prepared to give evidence in the event of an inquiry being held.

Procedure on receipt of complaint, charge, allegation or record

3. On receipt of a complaint, charge or allegation or of a copy of a record transmitted in terms of section 35(2), the secretary shall, on his or her own motion or in consultation with the president of the Board -

- (a) seek further information regarding the complaint, charge, allegation or record;
- (b) advise the accused in writing of the nature of the complaint, charge or allegation, and afford the accused an opportunity to explain his or her conduct within 21 days, or such further period as the secretary may permit and shall inform the accused that such explanation may be used as evidence in an inquiry; or
- (c) refer the matter with the relevant documents to the investigating committee.

Reference of matter to investigating committee

4. The secretary shall, on receipt of the explanation referred to in regulation 3(b), or, if no such explanation is received within the period laid down in that regulation, refer the matter, together with the relevant documents, to the investigating committee.

Action by investigating committee

5. The investigating committee shall, after the matter has been referred to it by the secretary in terms of regulation 4 -

- (a) cause further investigation to be made or seek legal or other advice;
- (b) if it is of the opinion that an inquiry would not be appropriate, submit a recommendation together with the relevant documents, to the Board which shall accept such recommendation; or
- (c) decide that an inquiry should be held by the disciplinary committee.

Legal representation of accused

6. An accused may be represented by a legal practitioner in all proceedings under these regulations, and, if he or she is so represented, shall, in writing and before the commencement of the proceedings, inform the secretary of the name of that legal practitioner.

Power of Board to deal with matters

7. Nothing contained in these regulations shall prevent the Board from dealing with any matter without referring that matter to a committee, and if the Board deals with any matter without referring it to a committee, these regulations shall apply *mutatis mutandis*.

Procedure in case of an inquiry

8. If the investigating committee decides, in terms of regulation 5, that an inquiry should be held, the secretary shall -

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- (a) determine the date, time and venue for the inquiry; and
- (b) in writing, inform the members of the disciplinary committee of its decision and of the date, time and venue for that inquiry and shall furnish the members with the relevant documents.

Form of notice

9. A notice referred to in section 30(4), to a person in respect of whom an inquiry is to be held in terms of section 29 and these regulations shall -

- (a) be in Form 1 set out in the Appendix to these regulations; and
- (b) be accompanied by a copy of these regulations.

Witnesses and fees

10. (1) An accused may request the secretary to summon witnesses to testify on behalf of the accused during the inquiry, but the secretary shall not comply with such request unless the accused deposits an amount sufficient to cover the costs involved in the summoning of the witnesses.

(2) The secretary shall pay witness fees according to the tariff applicable to criminal cases in a magistrate's court and those fees shall be borne -

- (a) if the witness was summoned to testify on behalf of the accused, by the accused; or
- (b) if the witness was summoned to testify on behalf of the Board or the disciplinary committee, by the Board.

Summons to appear before the Board or the disciplinary Committee as a witness or to produce any book, document, record or other thing

11. A summons in terms of section 30(8) to appear as a witness before the Board or the disciplinary committee, or to produce any book, record, document or thing shall be as nearly as practicable in Form 2 set out in the Appendix to these regulations.

Chairperson

12. The president of the Board, or in his or her absence, the vice-president, or in the absence of both the President and the vice-president, a chairperson appointed by the disciplinary committee from amongst its members shall act as the chairperson of that committee.

Procedure at inquiry

13. (1) The disciplinary committee shall conduct inquiries in public, but may direct that the whole or any part of the proceedings be conducted *in camera*.

(2) The secretary shall at an inquiry read out the notice delivered to the accused in terms of section 30(4), but shall not do so if the accused is absent or the accused or the legal practitioner representing the accused indicates that it is not necessary to read out the notice.

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(3) The chairperson shall ask the accused, or in the absence of the accused, the legal practitioner representing the accused, to plead either guilty or not guilty to each charge and the plea shall be recorded.

(4) The chairperson shall not, in the absence of the accused, enter a plea of guilty unless the accused has clearly and in writing under his or her own signature, informed the secretary of that plea prior to the commencement of the inquiry.

(5) If an accused or the legal practitioner representing him or her refuses or fails to plead directly to a charge, the secretary shall record that fact and shall enter a plea of not guilty which plea shall have the same effect as if the accused had pleaded not guilty.

(6) If a plea of guilty is entered the disciplinary committee shall decide whether or not evidence is to be led.

(7) If a plea of not guilty is entered, the disciplinary committee shall order that evidence should be led.

(8) The disciplinary committee shall afford the proforma complainant appointed in terms of section 36 an opportunity to state his or her case, either orally or in writing, and to lead evidence, after which his or her case shall be closed.

(9) After the proforma complainant has closed his or her case, the disciplinary committee shall afford the accused or the legal practitioner representing him or her an opportunity to state his or her case, either orally or in writing, and to lead evidence, after which his or her case shall be closed.

(10) If an accused is neither present nor represented, his or her written defence, statements made by him or her or on his or her behalf or explanations, if any, shall constitute his or her defence and shall be submitted to the disciplinary committee.

(11) The chairperson may permit the proforma complainant and the accused or the legal practitioner representing the accused to lead further evidence even after the proforma complainant and the accused have closed their cases.

(12) The person, other than the person who led the evidence, shall be entitled to cross-examine the witness called by the person who led the evidence after that witness has testified.

(13) The chairperson, or with the permission of the chairperson, the members of the disciplinary committee, may question a witness after the cross-examination referred to in subregulation (12).

(14) The person who led the evidence shall be entitled to re-examine the witness, but shall confine his or her re-examination to matters raised in cross-examination and questions put to the witness in terms of subregulation (13).

(15) Oral evidence shall be given on oath or affirmation, and the chairperson shall, at the inquiry, administer an oath to a witness in Form 3 set out in the Appendix to these regulations.

(16) If a witness objects to the taking of the oath, he or she shall make an affirmation that he or she shall speak the truth.

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(17) The chairperson shall warn a witness who is making an affirmation that such affirmation has the same effect as an oath.

(18) The disciplinary committee may refuse to admit evidence when a witness is not available for cross-examination or refuses to submit to the cross-examination.

(19) Subject to subregulation (18), if evidence is to be led in the absence of a witness that evidence shall be in the form of an affidavit or solemn declaration, and the opposing party may object to the admission of that evidence if he or she is not afforded the opportunity to cross-examine the witness.

(20) If any information or accusation is based on the record of a legally constituted court or on an inquest, the disciplinary committee shall accept such record as *prima facie* evidence if it is certified as a true copy.

(21) The disciplinary committee may, if practicable and if it considers it necessary to do so, summon witnesses whose evidence appears in a record referred to in subregulation (20) for purposes of further examination and cross-examination.

(22) The disciplinary committee shall -

- (a) after all evidence has been given, give the *pro forma* complainant an opportunity to make a submission to the disciplinary committee on the evidence and the legal position, and shall be given this opportunity whether or not the accused has led evidence;
- (b) after the *pro forma* complainant has made a submission in terms of paragraph (a), give the accused or the legal practitioner representing the accused, if present, an opportunity to make a submission to the disciplinary committee; and
- (c) after the accused or the legal practitioner representing him or her has made a submission, give the *pro forma* complainant an opportunity to reply to points of law raised by the accused or the legal practitioner representing the accused in his or her submission.

(23) The disciplinary committee shall, after the close of a case, go into committee and consider the evidence led, with a view to a finding.

(24) If after the finding referred to in subregulation (23) the disciplinary committee finds that the accused is not guilty, it shall immediately inform, him or her, in writing of that finding and report its action to the Board.

(25) The disciplinary committee may make a finding of not guilty even where the accused has pleaded guilty.

(26) If the accused is found guilty the disciplinary committee shall decide whether the complaint, charge or allegation of which the accused is found guilty constitutes improper conduct or misconduct, and the parties concerned shall be informed, in writing, of that decision immediately.

(27) The *pro forma* complainant shall, after the accused has been found guilty furnish details to the disciplinary committee of previous convictions, if any, of the accused under the Act or any law repealed by the Act, but he or she may do so only if notice was given to the

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accused prior to the commencement of the inquiry that this would be done in the event of a finding of guilty.

(28) Proof of previous convictions referred to in subregulation (27) shall be by means of a certificate under the hand of the secretary indicating the nature of the conviction, the date of the conviction and the penalty imposed.

(29) If the accused challenges the correctness of the certificate referred to in subregulation (28), a copy of the relevant record and a copy of the minutes of the meeting of the Board or other competent body at which the finding and the penalty were made or confirmed shall be produced, after which the fact of conviction shall be regarded as proved.

(30) The *pro forma* complainant shall be afforded the opportunity of making representations or leading evidence, either orally or in writing, regarding a suitable penalty, after which the accused or the legal practitioner representing the accused shall be afforded the same opportunity, including the adducing of evidence in mitigation of the penalty to be imposed.

(31) If an accused is neither present nor represented, any written representations or statements made by him or her or on his or her behalf or explanations, if any, and which have a bearing on a penalty shall be taken into account.

(32) The disciplinary committee shall, before imposing a penalty on an accused, go *in camera* and deliberate upon the imposition of a penalty and shall immediately after such deliberation inform the accused, in writing, of the penalty imposed.

(33) If the penalty imposed is a caution, a reprimand or a caution and a reprimand, such penalty shall immediately be imposed by the disciplinary committee, which shall report its action to the Board.

(34) If the disciplinary committee decides on a penalty other than that referred to in subregulation (33) -

- (a) the penalty decided upon shall immediately be communicated, in writing, to all the parties concerned with reference to the rights of the accused in terms of paragraph (c);
- (b) the disciplinary committee shall submit all relevant documents and the record of its inquiry together with its finding and recommendation to the Board, which may confirm or vary such finding and the penalty recommended;
- (c) the accused shall be entitled, within 14 days after the finding of guilty by the disciplinary committee, to make representations, in writing, to the secretary for submission to the Board; and
- (d) the Board shall, if it decides to accept the recommendation of the disciplinary committee, communicate that decision to the accused immediately.

(35) The secretary shall -

- (a) reduce the decision of the disciplinary committee or of the Board to writing, have it signed by the president of the Board or the vice-president of the Board and file it on the file of the accused;

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- (b) cause a finding of guilty and the penalty imposed to be published in the *Gazette* and in the report of the Board, if any, and shall state the name of the accused, the contravention and the penalty; and
- (c) communicate a decision of the disciplinary committee relating to any point arising in connection with or in the course of an inquiry and which concerns any person not present or represented at the inquiry, to the person concerned.

(36) After deliberating *in camera* the disciplinary committee may of its own accord or at the request of the *pro forma* complainant or of the accused or the legal practitioner representing the accused, adjourn any inquiry being held in terms of these regulations, to be resumed at such date, time and place as the disciplinary committee may determine or as the secretary may by registered post communicate to all parties concerned.

(37) The procedure prescribed in these regulations shall apply *mutatis mutandis* to any inquiry conducted in terms of section 38 of the Act.

(38) In this regulation “competent body” means any body which has powers to inquire into any complaint, charge or allegation under the Act.

Obstruction or interruption of proceedings

14. Any person who obstructs or interrupts the proceedings at an inquiry, insults a member or official of the Board or of the disciplinary committee or misbehaves in any other way -

- (a) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment; and
- (b) may be removed from the proceedings by the chairperson by order of the chairperson.

Submission of minutes of inquiry to the Board

15. If the disciplinary committee has conducted an inquiry the chairperson shall submit to the Board a copy of the minutes of the inquiry.

Repeal of regulations

16. The regulations promulgated by Government Notices R.373 of 13 March 1970, R.1737 of 29 September 1972 and R.1707 of 27 September 1974 are hereby repealed.

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APPENDIX
Forms

To view content without printing, scroll down.

To print at full scale (A4), double-click the icon below.



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Appendix - Forms

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APPENDIX
(Regulations 9, 11 and 13)

FORM 1
(Regulation 9)

**NURSING BOARD: NOTICE IN TERMS OF SECTION 30(4) OF THE
NURSING PROFESSIONS ACT, 1993 (ACT NO. 30 OF 1993) OF A
DISCIPLINARY INQUIRY BY THE BOARD**

To Mr/Mrs/Miss*

I have been directed to inform you that the complaint/charge/allegation* that you, being a registered nurse/registered midwife/enrolled nurse/enrolled midwife/enrolled nursing auxiliary*, duly registered/enrolled as such under the Nursing Professions Act, 1993 (Act No. 30 of 1993), are guilty of improper conduct or misconduct, in that you

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

has been lodged with or brought before the Board, and will be considered at an inquiry of the Board/a disciplinary committee of the Board* to be held

at(place)

on(date)

at (time).

.....
Signature of Secretary

.....
Date

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ACKNOWLEDGEMENT OF RECEIPT

I registered nurse/registered midwife/
enrolled nurse/enrolled midwife/enrolled nursing auxiliary* duly registered/enrolled
under the Nursing Professions Act, 1993 (Act No. 30 of 1993), do hereby acknowledge
receipt of this Notice.

.....
Signature

.....
Date

* Delete whichever does not apply.

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FORM 2
(Regulation 11)

**NURSING BOARD: SUMMONS IN TERMS OF SECTION 30(8) OF THE
NURSING PROFESSIONS ACT, 1993 (ACT NO. 30 OF 1993)
TO APPEAR AS A WITNESS AT AN INQUIRY BY THE BOARD
OR A COMMITTEE OF THE BOARD***

You,
(name)
.....
(occupation)
of
(business address)
.....
(residential address)

are hereby summoned to appear at
on the day of
199, at h, before the Nursing Board/a disciplinary
committee of the Board established in terms of the Nursing Professions Act, 1993,
(Act No. 30 of 1993),* to give evidence in respect of the following conduct

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

of
registered/enrolled* under the said Act as a

and you are directed to produce at the time and place aforesaid the books, records,
documents and things specified in the list below, and then and there to give evidence
in relation to the said inquiry.

Given under the hand of the
of the Board this day of
199

.....
Signature of President/Secretary*

* Delete whichever does not apply.

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

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

Note: Your attention is directed to section 30(8)(c) of the Nursing Professions Act, 1993 (Act No. 30 of 1993), which reads as follows:

- "(c) Any person who, having been duly summoned -
- (i) refuses or without sufficient cause fails to attend and give evidence relevant to the inquiry at the time and place 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 in question without the consent of the person presiding at such inquiry, whether or not such person has given evidence; or
 - (iv) refuses to give evidence before the Board 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 book, record, document or thing which such person has in terms of the summons been required to produce.

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment."

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FORM 3
(Regulation 13(15))

NURSING BOARD: OATH BY A WITNESS

Chairperson: What are your full names?

Witness: [States his or her name]

Chairperson: Do you have any objection to taking the prescribed oath?

Witness: [If no objection] : No!
[If he or she has no objection] : Yes!

Chairperson: Do you swear to tell the truth, the whole truth and nothing but the truth?
[Only if the witness has no objection]

Witness: Yes!

Chairperson: Say: "So help me God."

Witness: So help me God.

Note: If the witness has an objection against the taking of the prescribed oath, he or she will only have to confirm that he or she will tell the truth.