



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Nursing Act 8 of 2004
section 59

**Regulations relating to Appeal to, and Conducting of Appeal
by, Appeal Committee of the Nursing Council of Namibia**

Government Notice 117 of 2009

(GG 4264)

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The Government Notice which publishes these regulations notes that they were
made on the recommendation of the Nursing Council of Namibia.

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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, in accordance with section 56(1)(a) of the Act, to the appeal committee against a finding or decision of, or a penalty imposed by, the Council, or its failure to make a finding or decision;

“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 Nursing Act, 2004 (Act No. 8 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;

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- (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;
- (c) to the committee, must be given or submitted to the registrar.

(3) For the purpose of the calculation of any period 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 appeal committee

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

Lodging of notice of appeal

3. (1) A notice of appeal must be lodged with the registrar at the head offices, during office hours, at the address of the registrar as it appears in the prescribed notice of appeal.

(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 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 -
 - (i) the notice; and
 - (ii) a copy of 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 so determined.

(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).

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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 or 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 a period of 10 days after receipt of the request.

(3) The 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 (without elaboration) of the main points 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 determined for 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 him or her in terms of subregulation (1) of this regulation, to the chairperson and to every member of the committee.

Conducting of appeal by appeal committee

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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 but 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, 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 by 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 making the application 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.

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**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) the Committee 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 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

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with regulation 4, and the arguments raised in the submissions delivered to it in accordance with subregulation (7) of this regulation, 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, the chairperson may make known the findings of the committee relating to the appeal, 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

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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 the Rules of the High Court of Namibia

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

To view content without printing, scroll down.

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



GN 117/2009
Annexure

[Although the first page of the Annexure is entitled “Annexures”, there is only one Annexure containing the Notice of Appeal to Appeal Committee.]

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

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

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.....

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

Received this Notice of Appeal:

Signature of recipient

For and on behalf of the registrar of the Nursing 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.)

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*(Delete whatever is or are not applicable.)

GROUND S THAT APPEAL IS BASED ON

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

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