



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS SURVIVING IN TERMS OF

Health Professions Act 16 of 2024

section 95(10)

Regulations made under the Medical and Dental Professions Act, 1993 (Act 21 of 1993)

Government Notice 31 of 2001

(GG 2489)

came into force on date of publication: 28 February 2001

These regulations, which relate to complaints and disciplinary inquiries by the Medical Board, were originally made, on the recommendation of the Medical Board, in terms of section 50 of the Medical and Dental Professions Act 21 of 1993, which was repealed by the Medical and Dental Act 10 of 2004. Pursuant to section 65(2) of the Medical and Dental Act 10 of 2004, the regulations were deemed to have been made under that Act. The Medical and Dental Act 10 of 2004 was then repealed by the Health Professions Act 16 of 2024. Pursuant to section 95(10) of the Health Professions Act 16 of 2024, the regulations are deemed to have been made under that Act.

The Government Notice which published these regulations revokes the regulations contained in RSA GN R.2268/1976 (RSA GG 5349). These previous regulations were made in terms of the RSA Medical, Dental and Supplementary Health Service Professions Act 56 of 1974. They survived in terms of section 52(2) of the Medical and Dental Professions Act 21 of 1993, and section 65(2) of its successor, the Medical and Dental Act 10 of 2004.

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Definitions

1. In these regulations, unless the context otherwise indicates, any word or expression defined in the Act shall have that meaning, and -

“Board” means the Medical Board, and in respect of the conducting of an inquiry by the Board itself, the members of the Board who are not members of the committee of preliminary inquiry;

“committee of preliminary inquiry” means a committee established by the Board in terms of the section 10(3) of the Act to investigate into a complaint;

“complaint” means a complaint, charge or allegation or improper conduct or misconduct against a registered person;

“disciplinary committee” means the disciplinary committee established under section 10(1)(a) of the Act, and includes the Board if itself holds an inquiry;

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

“inspector” means a person appointed by the Board in terms of section 23(5) of the Act;

“member” means a member of the Board;

“president” means the president of the Board;

[The definition of “president” should end with a full stop rather than a semicolon. It is the last definition in the list.]

Lodging of complaint

2. A complaint must be in writing and be addressed to the secretary.

Procedure on receipt of complaint

3. (1) On receipt of a complaint the secretary may call for further information from the complainant to be furnished either by affidavit or otherwise as the secretary may require.

(2) The secretary shall in writing advise the registered person concerned of the complaint and the particulars thereof and request a written explanation from him or her before a date specified by the secretary, and warn the person that such explanation may be used in evidence against him or her.

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(3) Notwithstanding subregulations (1) and (2) the secretary in consultation with the president, may refer the case direct to the chairperson of a committee of preliminary inquiry for consideration by the committee.

Procedure on receipt of further information or explanation

4. If further information or an explanation has been called for in terms of regulation 3(1) or (2), the secretary must on receipt of such information or explanation, submit the complaint and such information or explanation to the chairperson of the committee of preliminary enquiry, for consideration by that committee.

Further investigation or legal advice

5. The secretary, the committee of preliminary inquiry concerned or the chairperson of such committee may at any stage cause further investigation to be made and seek such legal advice or other assistance as may be necessary in relation to the complaint.

Decision of committee of preliminary inquiry

6. (1) If, upon consideration of a complaint, it appears to the committee of preliminary investigation -

(a) that the complaint, even if substantiated -

(i) does not constitute improper conduct or misconduct; or

(ii) for any other reason should not be the subject of an inquiry,

the committee may report to the Board that no disciplinary inquiry should be held and state its reasons therefor; or

(b) that an inquiry should be held into the conduct of the registered person, direct the secretary to arrange for the holding of a disciplinary inquiry.

Disciplinary inquiry

7. (1) The notice referred to in section 31(4) of the Act must be substantially in the form of Form 1 set out in the Annexure and must be accompanied by a charge formulated by the *pro forma* complainant with the said notice.

(2) If witnesses are to be summoned at the instance of the person charged, the secretary may require that person to deposit a sum of money sufficient to cover the costs in connection therewith and the secretary may pay such costs from the amounts so deposited.

[The word “sufficient” is misspelt in the *Government Gazette*, as reproduced above.]

Procedure at disciplinary inquiry

8. (1) (a) The person charged or, if he or she is not present, his or her legal representative, shall be asked by the chairperson of the disciplinary committee to plead guilty or not guilty to the charge and the plea shall be so recorded.

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- (b) In the absence of the person charged a plea of guilty shall be entered only if that person has clearly and in writing under his or her own signature informed the secretary accordingly prior to the commencement of the inquiry.
 - (c) If the person charged or his or her legal representative refuses or fails to plead to the charge it must be so recorded and a plea of not guilty be entered, and a plea so entered has the same effect as if it had so been pleaded by that person.
- (2) If a plea of guilty is entered the disciplinary committee must decide whether or not evidence is to be led and if a plea of not guilty is entered evidence must be led.
- (3) (a) The *pro forma* complainant must be given the opportunity of stating the case against the person charged and of leading evidence in support thereof, whereafter the person charged has the right of stating his or her case and of leading evidence in support thereof.
 - (b) If the person charged is neither present or represented at the inquiry 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 must be submitted to the disciplinary committee.
 - (c) The case of the *pro forma* complainant and the person charged shall be closed after evidence has been led as contemplated in paragraph (a).
- (4) The chairperson of the disciplinary committee may allow further evidence to be led or witnesses to be recalled by either the *pro forma* complainant or the person charged or by both after their cases have been closed.
- (5) (a) After the evidence of a witness has been given, the other party has the right to cross-examine that witness, whereafter the chairperson, and members of the disciplinary committee, may put questions to the witness.
 - (b) Further cross-examination shall be allowed on any matter arising from questions put by the chairperson or any other member of the disciplinary committee.
 - (c) After cross-examination of a witness, the party by whom the witness is called has the right to re-examine that witness, but re-examination is confined to matters raised in cross-examination and questions posed in terms of paragraph (a).
- (6) (a) Oral evidence must be taken on oath or affirmation by the chairperson of the disciplinary committee.
 - (b) The disciplinary committee may decline to admit evidence when a witness is not available for cross-examination or refuses to submit thereto.
 - (c) Written evidence given by way of affidavit or a solemn declaration by a witness who is not personally present is admissible with the consent of the opposing party.
 - (d) An appropriately authenticated copy of the record of proceedings before a court of law is on its mere production admissible as evidence at an inquiry and any non-rejected evidence reflected in such record constitutes *prima facie* evidence of issue concerned.

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- (e) The disciplinary committee may, if practicable and if it appears necessary, for the purposes of further examination or cross-examination, call a witness whose evidence appears in a record referred to in paragraph (d).

(7) After the parties have closed their cases the disciplinary committee may of its own accord call further witnesses or recall a witness to be questioned by the members of the committee and thereafter by the *pro forma* complainant and the person charged or his or her legal representative.

- (8) (a) After all evidence has been given, the *pro forma* complainant has the right to address the disciplinary committee on the evidence and any legal questions involved.

- (b) Thereafter the person charged or his or her legal representative likewise has the right to address the disciplinary committee on the evidence and any legal question involved.

- (c) The *pro forma* complainant has the right to reply to points of law raised by the person charged or his or her legal representative in his or her address.

- (9) (a) The disciplinary committee shall after the conclusion of a case deliberate thereon in *camera*.

- (b) If the person charged is found not guilty the disciplinary committee must advise him or her accordingly and report its decision to the Board.

- (c) The disciplinary committee may make a finding of not guilty to the charge even if a person charged has pleaded guilty.

- (d) If the person charged is found guilty the disciplinary committee must decide whether the act or omission concerned constitutes improper conduct or misconduct, and must announce its finding to the parties accordingly forthwith and make its recommendation to the Board in this regard.

- (10) (a) After a finding of guilty the *pro forma* complainant must furnish details to the disciplinary committee of any previous convictions, of the person charged under the Act or any law repealed by the Act.

- (b) Proof of previous convictions referred to in paragraph (a) may be adduced by means of a certificate under the hand of the secretary indicating the nature of the conviction, the date thereof and the penalty imposed.

- (c) If a person charged challenges the correctness of a certificate referred to in paragraph (b) a copy of the relevant record and a copy of the minutes of the Board or other competent body which the finding and the penalty were confirmed must be produced, after which the fact of conviction shall be regarded as proved.

- (11) (a) The *pro forma* complainant and the person charged, or his or her legal representative, may make representation to the disciplinary committee and lead evidence, either orally or in writing, regarding a suitable penalty to be imposed, and may adduce evidence in support of the representations made.

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- (b) If the person charged is neither present nor represented, any written representations, statements made by him or her or on his or behalf or explanations, if any, which have a bearing on a penalty must be taken into account.
- (c) A witness called in connection with a suitable penalty may be questioned by the other party and by the members of the disciplinary committee.
- (12) (a) The disciplinary committee shall deliberate in *camera* upon the penalty to be imposed.
- (b) A penalty being a caution, a reprimand or a caution and a reprimand, must immediately be imposed by the disciplinary committee, and reported to the Board.
- (c) If the disciplinary committee decides to recommend a penalty other than that referred to in paragraph (b) -
 - (i) the penalty recommended must immediately be communicated to the parties concerned with reference to the rights of the accused in terms of subparagraph (iii);
 - (ii) the disciplinary committee must submit all relevant documents and the record of its inquiry together with its finding and recommendation to the Board;
 - (iii) the person charged is entitled to make, within 14 days after the finding of guilty by the disciplinary committee, concise written representations to the secretary for submission to the Board; and
 - (iv) if the Board decides to follow the recommendation of the disciplinary committee its decision must be communicated to the person charged forthwith.

13.(13) Any decision of the disciplinary committee in regard to any issue arising in connection with or in the course of an inquiry must be communicated to the person charged during such inquiry.

[This subregulation should be labelled “(13)” instead of “13.”.]

14.(14) The disciplinary committee may of its own accord or at the request of the *pro forma* complainant or of the person charged or his or her legal representative, adjourn an inquiry to such date, time and place as it may determine or as the secretary may by registered post communicate to the parties concerned.

[This subregulation should be labelled “(14)” instead of “14.”.]

Consideration by Board of recommendation of disciplinary committee

9. (1) The Board may vary, confirm or refuse to confirm the recommendation of the disciplinary committee or refer the case to the disciplinary committee for further consideration and report.

(2) The finding and the penalty (if any) confirmed by the Board on the person charged must be communicated to the parties in accordance with section 33(4) of the Act.

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(3) The secretary must cause to be published in the *Gazette* any finding of guilty and the associated penalty with reference to the name of the person charged, the contravention and the penalty imposed on him or her.

Accessibility to disciplinary inquiry

10. (1) The proceedings at an inquiry is open to the public, but -

[The verb “is” should be “are” to be grammatically correct.]

- (a) any point arising in connection with or in the course of a disciplinary inquiry may be decided by the disciplinary committee in *camera*;
- (b) any evidence adduced at an inquiry may on good cause shown in the discretion of the disciplinary committee be heard in *camera*;
- (c) the disciplinary committee may on good cause shown in its discretion order that no person shall at any time in any way publish any information which would probably reveal the identity of any particular person, other than the person charged.

(2) A person who infringes or fails to comply with an order made under subregulation (1) is guilty of an offence and liable on conviction to a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Subpoena

11. A summons to appear as a witness before the disciplinary committee or to produce any book, record, document or thing must be substantially in the form of Form 2 set out in the Annexure and contain the information required therein.

Inquiry conducted in terms of section 39 of the Act

12. The procedures prescribed in these regulations shall, with the necessary changes, apply to an inquiry conducted in terms of section 39 of the Act.

ANNEXURE

To view content without printing, scroll down.

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



GN 31/2001
Annexure

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ANNEXURE

FORM 1

REPUBLIC OF NAMIBIA

MEDICAL AND DENTAL PROFESSIONS ACT, 1993:
FORM OF NOTICE TO ATTEND A DISCIPLINARY INQUIRY

(Section 31(4) of Act)

Dear Mr./Mrs./Miss

I have been directed to inform you that the complaint/charge/allegation* that you, being a

.....

.....

(state profession of registered person)

Duly registered as such under the Medical and Dental Professions Act, 1993 (Act 21 of 1993), are guilty of improper conduct or misconduct in that you

.....

.....

.....

has been 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)

You are hereby requested to appear before the inquiry to establish any defence which you may wish to offer, but if you should decide not to do so, the Board/the disciplinary committee* may consider and deal with the charge in your absence in accordance with the regulations governing the conduct of disciplinary inquiries, a copy of which is enclosed.

If you wish your letter of to constitute your defence, please notify me accordingly in writing within 14 days of the date of this letter.

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If you wish to submit any further statement please do so in writing within 14 days of the date of this letter. Please note that any such further statement may be used in evidence at the inquiry.

You are also informed of your rights in terms of section 31(10) of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993), which reads as follows:

“Every person whose conduct is the subject of an inquiry under section 30 shall, if such person is present at such inquiry, have the right, by himself or herself or through a legal representative, to answer any complaint, charge or allegation against him or her and to be heard in his or her defence, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;
- (d) to examine witnesses testifying against him or her.”.

Signature of Secretary

Date

Delete whichever does not apply

FORM 2

REPUBLIC OF NAMIBIA

**MEDICAL AND DENTAL PROFESSIONS ACT, 1993: NOMINATION
FORM OF SUMMONS TO APPEAR BEFORE MEDICAL BOARD
OR DISCIPLINARY COMMITTEE OF THE BOARD**

To:
(full names and surname)

.....
(registered address)

You are hereby summoned to appear at
on the day of 20..... at h
Before the Medical Board/a disciplinary committee of the Medical Board* established
in terms of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993), to give
evidence in respect of the following conduct
.....
of
registered under the said Act as

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and you are hereby directed to bring with you and then produce at the time and place as aforesaid the several books, records, documents and things specified in the list below, and then and there to testify all and singular things you know in relation to the said inquiry.

Give under the hand of the Board this day of Two Thousand and

.....
Signature of President/Secretary

.....
Date

* Delete whichever does not apply.

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

.....

.....

.....

.....

.....

.....

Note: Your attention is directed to section 21(8)(c) of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993), which reads as follows:

“(c) Any person who, having been duly summoned -

- (i) refuses, or without sufficient cause fails to attend the inquiry in question 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.”