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DEPARTMENT OF HEALTH

NO. R. 2961 **27 January 2023**

THE SOUTH AFRICAN DENTAL TECHNICIANS' COUNCIL

REGULATIONS RELATING TO THE INSTITUTION OF INQUIRIES HELD IN TERMS OF SECTION 50(1)(K) OF THE DENTAL TECHNICIANS ACT, 1979 (Act No. 19 of 1979)

The Minister of Health, in terms of section 50(1)*(k)* of the Dental Technicians Act, 1979 (Act No. 19 of 1979), and on the recommendation of the South African Dental Technicians Council, hereby makes the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments or representations on the proposed regulations to the Director-General of Health, Private Bag X828, Pretoria, 0001 (for attention of the Director: Public Entities Governance; mihloti.mushwana@health.gov.za within three months of the date of publication of this notice.

DR M.J. PHAAHLA, MP
MINISTER OF HEALTH
DATE: 14/11/2022

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and unless the context indicates otherwise —

"body conducting the inquiry" means the council or a disciplinary committee appointed in terms of section 11(1)*(a)* of the Act;

"improper or disgraceful conduct" means ....

"president" means the president of the council;

"registered person" means a person registered in terms of section 18 or section 19 of the Act;

"the Act" means the Dental Technicians Act, 1979 (Act No. 19 of 1979).

Purpose

2. The purpose of these regulations is to provide for the institution of, and the procedure to be adopted at a disciplinary inquiry into improper or disgraceful conduct of a registered person.

Lodging of complaint

3. A person aggrieved by improper or disgraceful conduct of a registered person may lodge a complaint with the council in writing, and where appropriate, in the form of an affidavit, detailing the specific conduct complained of, and may be required to give oral evidence in support thereof at a disciplinary inquiry, if any.

Appointment of *pro forma* prosecutor

4.(1) If the council institutes a disciplinary inquiry, the executive committee of the council shall, appoint a *pro forma* prosecutor to present evidence to the body conducting the inquiry: Provided that a member of the council may not be appointed as a *pro forma* prosecutor.

(2) The *pro forma* prosecutor must—

(a) determine a date, time and venue for the inquiry;

(b) prepare a notice to be issued by the President in a format substantially the same as the Form contained in Annexure A notifying the registered person of the decision of the council to institute a disciplinary inquiry against him or her, and to attend a formal inquiry at a time, on a date and at a venue indicated in the notice.

Notice of disciplinary inquiry

5. A notice referred to in regulation 4(2)(b) must be served on the registered person personally or by registered post at least … days before the date of the inquiry at his or her last known registered address and must contain the following information:

(a) The date, time and venue of the inquiry;

(b) full particulars of the charge or charges brought against him or her;

(c) the right to be legally represented in the inquiry;

(d) the right to cross examine any witnesses called to give evidence against him or her;

(e) the right to present his or her case and to testify in his or her defence;

(f) that if the registered person absconds or refuses to attend the disciplinary inquiry, a plea of not guilty shall be entered on his or her behalf and that the inquiry will proceed in his or her absence

(g) that on being found guilty of misconduct, his or her disciplinary record may be taken into account, and that section 36(1)*(a)* of the Act is applicable to him or her,

Subpoena of witnesses

6. In all cases where the *pro forma* prosecutor or the registered person requires the attendance of a person as a witness at the inquiry, the registrar must summon such person in terms of section 36(4)*(b)* of the Act by using the form in Annexure B.

Postponement of proceedings

7. The body conducting the inquiry may, of its own accord, or at the request of any of the parties, postpone an inquiry to a date and time and place as such body may determine or as the registrar may determine, and inform the parties and witnesses concerned by registered post.

Procedure at inquiry

8.(1) The president of the council or the chairperson of the disciplinary committee, shall read the charge or charges referred to in regulation 5(b).

(2) The registered person shall be required to plead "guilty" or "not guilty" to the charge or charges against him or her.

(3) If the registered person refuses to enter a plea, the body conducting the inquiry shall make a note thereof and enter a plea of "not guilty" and continue with the inquiry.

Procedure after plea of guilty

9.(1) If a plea of guilty is entered, the body conducting the inquiry may ask such questions as are necessary to satisfy itself that the registered person intends to plead guilty to the charges brought against him or her.

(2) If a plea of guilty is entered and the body conducting the inquiry is of the opinion that further information is required for purposes of making a finding as to whether the conduct complained of constitutes improper or disgraceful conduct, it may call any witness summoned on behalf of either party to give oral evidence under oath or affirmation and may accept such documentary evidence relevant to the complaint as it deems necessary, before making a finding.

(3) If the body conducting the inquiry is satisfied that the conduct complained of constitutes improper or disgraceful conduct, the registered person may be found guilty as charged and the procedure set out in regulation 16 must be followed.

Procedure after plea of not guilty

10.(1) If the registered person pleads "not guilty", the body conducting the inquiry shall enquire from the registered person or his or her legal representative whether he or she wishes to give an explanation of his or her plea of not guilty, but that he or she is not obliged to do so.

(2) The parties may be afforded an opportunity to address the body conducting the inquiry on agreed facts and facts in dispute: Provided that any admissions made by or on behalf of the registered person shall be so recorded and admitted into evidence without further proof.

Case against the registered person

11.(1) The *pro forma* prosecutor may lead the evidence, of the complainant and any other witnesses in support of the case.

(2) The registered person, or his or her legal representative may cross examine the witnesses called by the *pro forma* prosecutor.

(3) The members of the body conducting the inquiry may, with the leave of the chairperson of the body conducting the inquiry, put questions to witnesses to clarify issues arising from the evidence led.

(4) The *pro forma* prosecutor may re-examine the witnesses with regard to the matters on which the witness was cross-examined or questioned in terms of subregulation (3).

(5) The *pro forma* prosecutor may close his or her case—

(a) after the cross-examination of his or her witnesses; or

(b) after the re-examination of his or her witnesses.

Registered person's case

12.(1) The registered person or his or her legal representative may, at the end of the *pro* forma prosecutor's case, state his or her case and lead evidence in support thereof.

(2) The procedure contemplated in regulation 11 shall, with the necessary changes, be applicable to the registered person's case.

Further evidence

13. In exceptional circumstances, the chairperson of the body conducting the inquiry may, after the parties have closed their cases and upon request and good cause shown—

(a) allow further evidence to be led;

(b) recall any witness who has testified.

Procedure after closure of prosecution and defence cases

14.(1) After closure of the defence case—

(*a*) the *pro forma* prosecutor shall address the body conducting the inquiry on the evidence led and any legal arguments raised;

(*b*) the registered person or his or her legal representative may thereafter

address the body conducting the inquiry; and

(*c*) the *pro forma* prosecutor may reply to any legal arguments raised by or on behalf of the registered person.

(2) At the conclusion of the procedure contemplated in regulations 11 and 12 the body conducting the inquiry may request the parties to submit their closing arguments in writing and adjourn the inquiry.

Decision of body conducting inquiry

15.(1) If the body conducting the inquiry finds the registered person not guilty the parties must be informed of such decision and the reasons for the decision.

(2) If the body conducting the inquiry finds the registered person guilty of improper or disgraceful conduct the reasons for the decision must immediately be given.

(3) If the procedure contemplated in regulation 14(2) is followed the registrar shall inform the parties in writing of the decision of the body conducting the inquiry and the reasons for the decision.

Procedure after guilty verdict

16.(1) Upon a finding of guilty, the *pro forma* prosecutor may introduce evidence of previous convictions under the Act in the form of a certificate issued by the registrar.

(2) The certificate contemplated in subregulation (1) must contain the particulars of the previous conviction or convictions under the Act.

(3) The registered person may dispute the correctness of the certificate introduced by the *pro forma* prosecutor.

(4) In the case where the correctness of a certificate contemplated in subregulation (1) is disputed the *pro forma* prosecutor may introduce a copy of the record of the previous proceedings to substantiate the contents of the certificate.

Evidence in aggravation or mitigation of penalty

17.(1) The *pro forma* prosecutor may lead evidence in aggravation of the penalty and may address the body conducting the inquiry with regard to the penalty that must be imposed in terms of the Act.

(2) The registered person or his or her legal representative must be afforded the opportunity to cross examine any witness called to testify in aggravation of the penalty.

(3) The registered person may lead evidence in mitigation of the penalty and may address the body conducting the inquiry with regard to the penalty that must be imposed in terms of the Act.

(4) The *pro forma* prosecutor must be afforded the opportunity to cross examine any witness called to testify in mitigation of the penalty.

(5) The body conducting the inquiry may request the parties to submit written arguments on the penalty to be imposed and adjourn the inquiry.

Penalty

18.(1) The body conducting the inquiry may impose any of the penalties provided for in section 36(1) of the Act at the conclusion of the inquiry.

(2) In the case where the procedure in regulation 17(5) is followed the registrar must in writing inform the parties of the penalty imposed.

Reporting of findings and penalty to council

19. If the inquiry has been held by a disciplinary committee it shall report its finding and the penalty, if any, to the council.

Repeal

20. The regulations published in Proclamation R..... of are hereby repealed.

ANNEXURE A

NOTICE

To

.....

1. You are hereby notified that the South African Dental Technicians Council intends to hold a disciplinary inquiry in terms of section 35(1) of the Dental Technicians Act at ..... (place) on .....(date and time) on the following charge (s):

   1.1.....

   1.2.....

   (state the improper or disgraceful conduct complained of and the section of the prescript contravened, i.e. code of conduct or ethics code and the like).

2. In terms of section 36(2) of Act you are entitled to attend the inquiry and to answer the charge and be heard in your defence.
3. Should you fail to appear at the hearing, the disciplinary committee will enter a plea of not guilty on your behalf and proceed with the inquiry in your absence and you will be advised of the outcome thereof by registered post.
4. You are entitled to be represented at the inquiry by a legal representative of your choice.
5. You have the right to cross examine any witnesses called to give evidence against you.
6. You have the right to present your case and testify in your defence or call witnesses.
7. In the event of your being found guilty of the conduct with which you are charged-

7.1 evidence of your previous convictions under the Act may be adduced;

7.2 you will be liable to the penalties set out in section 36(1) of the Act.

A copy of the regulations and section 36(4)(c) of the Act are enclosed herein.

Given under the hand of the ..... of the Council this .....day of .....20.....

.....

President

ANNEXURE B

SUMMONS TO APPEAR BEFORE THE SOUTH AFRICAN DENTAL TECHNICIANS COUNCIL OR A COMMITTEE OF THE COUNCIL

To

.....

.....

(name and address of person summoned)

You are hereby summoned to appear at ..... (place) on .....(date and time) before the South African Dental Technicians Council or a disciplinary committee of the Council, established in terms of the Dental Technicians Act, 1979 (Act No. 19 of 1979), to give evidence in respect of..... and you are required to bring with you .....

(specify the book, document, record or thing)

Your attention is drawn to the provisions of section 36(4)*(a)* and *(c)* of the Act, a copy of which is enclosed herein.

Given under the hand of the ..... of the Council, this ..... day of.....20.....

.....

President

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