



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 1 August 2009

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## Government Notice

### MINISTRY OF HEALTH AND SOCIAL SERVICES

No. 161 2009

REGULATIONS RELATING TO APPEAL TO, AND CONDUCTING OF APPEAL  
BY, APPEAL COMMITTEE OF ALLIED HEALTH PROFESSIONS COUNCIL  
OF NAMIBIA: ALLIED HEALTH PROFESSIONS ACT, 2004

Under section 55 of the Allied Health Professions Act, 2004 (Act No. 7 of 2004), and on the recommendation of the Allied Health Professions Council of Namibia, I have made the regulations set out in the Schedule.

**R.N. KAMWI**  
**MINISTER OF HEALTH AND SOCIAL SERVICES**

Windhoek, 13 July 2009

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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 52(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;

“notice of appeal” means a notice of appeal to the committee prescribed by the Annexure;

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

“party” means either the appellant or the respondent,

“respondent” means the Council; and

“the Act” means the Allied Health Professions Act, 2004 (Act No. 7 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 he or she has appointed a legal practitioner to represent him or her, 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 it, by or to that legal practitioner;
- (c) to the committee, must be given or submitted to the registrar, at his or her address as it appears on the notice of appeal.

(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 must not be taken into account.

## PART II NOTICE AND CONDUCTING OF APPEAL

### **Notice of appeal to appeal committee**

2. (1) A notice of appeal to the committee contemplated in section 52(1) of the Act must be substantially 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 offices of the registrar, during his or her normal 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 thereof, which copy must be handed to the person lodging the notice of appeal with the registrar.

### **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 52 of the Act, by delivering to the chairperson -
  - (i) the notice of appeal lodged with the registrar in accordance with regulation 3(1); 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, as the case may be, 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 thereof 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 for the commencement of the hearing of the appeal determined under subregulation (1) not less than 30 days before the date so determined.

### **Submission of documents, records and things to the appellant**

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

### **Request for further particulars**

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

- (a) the appellant to furnish the committee with further particulars relating to -
- (i) any particulars submitted with, or statement made in, his or her notice of appeal lodged with the registrar;
  - (ii) his or her 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, as the case may be, 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 conducted by the committee.

### **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 determined under regulation 5(1), the appellant must submit to the registrar and to the respondent one copy of a concise and succinct statement of the main points (without elaboration) which he or she 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 referred to in paragraph (a), the respondent must submit to the registrar and to the appellant one copy of a concise and succinct 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 he or she 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**

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

- (a) “appellant” includes the legal practitioner representing him or her; and
- (b) “representative of the respondent” means a person appointed by the respondent for the purpose of representing the respondent at the hearing of the appeal, and includes the legal practitioner representing the respondent.

(2) The chairperson must preside at the hearing of an appeal in accordance with section 52 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 paragraphs (a) or (b) of subregulation (1) of regulation 8.

(6) The representative of the respondent or the appellant, as the case may be, may reply to the address of the appellant or the representative of the respondent, as the case may be, 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) allow, on the application by any party to the appeal, 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 relating to the appeal, 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 any member of the community may cross-examine that witness; and
  - (b) that witness is entitled to all the privileges that a witness giving evidence in the High Court of Namibia 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, notwithstanding 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 of time 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 of time 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 of time determined under paragraph (a) of subregulation (3) for the lodging of the submissions.

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

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

(7) The registrar must deliver, within a period of 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 him or her in accordance with this regulation.

(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 it in accordance with subregulation (7) of this regulation, without requiring the parties to submit to the committee their main points of argument in accordance with regulation 8 or 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 52 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 52 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 52(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 of Namibia.

(5) The chairperson of the committee must tax a bill of costs in accordance with the Rules of the High Court of Namibia 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 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 his or her staff, at the offices of the registrar at the address specified in the Annexure.

#### **Application of Rules of High Court of Namibia**

**15.** When conducting an appeal in accordance with section 52 of the Act, the committee may apply any of the Rules of the High Court of Namibia, 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

NOTICE OF APPEAL TO THE APPEAL COMMITTEE  
(Regulation 2)

THE ALLIED HEALTH PROFESSIONS ACT, 2004 (ACT NO. 7 OF 2004)

In the matter between

..... Appellant

and

THE ALLIED HEALTH PROFESSIONS COUNCIL OF NAMIBIA Respondent

To: The Respondent,  
C/o the Office of the Registrar of the Allied Health Professions Council of Namibia,  
No. 36/37 Schönlein Street,  
Windhoek West  
WINDHOEK.

In accordance with section 52(1) of the Allied Health Professions Act, 2004 (Act No. 7 of 2004), the Appellant appeals to the -

APPEAL COMMITTEE OF THE ALLIED HEALTH PROFESSIONS 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**

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.)

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

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

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 Allied Health Professions Council of Namibia:

Date: .....

Time: .....

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

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

.....

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

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

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

\*(cc) 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.)

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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.)

\_\_\_\_\_