

CHAPTER 233

HEALTH PROFESSIONS

**HEALTH PROFESSIONS (COMPLAINTS AND
DISCIPLINARY PROCEEDINGS) REGULATIONS,
2000**

SI 76/2000

(SECTION 20)

*[Commencement 23rd August, 2006]***PART I
PRELIMINARY**

1. (1) These Regulations may be cited as the Health Professions (Complaints and Disciplinary Proceedings) Regulations, 2000.

Citation and commencement

(2) These Regulations shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. In these regulations —

Interpretation

“disciplinary committee” means the committee appointed by the Council under section 15(2) of the Act;

“investigator” means a person appointed under regulation 12;

“investigating committee” means the committee appointed under section 15(1) of the Act.

**PART II
COMPLAINTS**

3. (1) The register shall contain —

Contents of Register

(a) each health professional’s name, business address and business telephone number;

(b) each health professional’s special qualifications;

(c) the terms, conditions and limitations imposed on each certificate of registration;

- (d) a notation of every revocation and suspension of a certificate of registration which is in effect;
- (e) the result of every disciplinary and incapacity proceeding within six years before the time the register was prepared or last updated;
- (f) the result of every disciplinary and incapacity proceeding with respect to sexual abuse;
- (g) where findings of the disciplinary committee are appealed, a notation that they are under appeal.

(2) The Council may refuse to allow a person to obtain a member's business address and business telephone number if the Council has reasonable grounds to believe that disclosure of the information may jeopardise the member's safety.

(3) For the purpose of this regulation, "result" when used in reference to a disciplinary or incapacity proceeding, means the disciplinary committee's finding, particulars of the grounds for the findings, and the penalty imposed.

Complaints of improper conduct.

4. A complaint that a health professional has been guilty of dishonesty, negligence or incompetence in the performance of his functions or of serious professional misconduct may be made to the Council and shall be accompanied by such statements and affidavits as may be prescribed by the Council.

Investigation of Complaints.

5. The investigating committee shall investigate a complaint filed with the Council regarding the conduct or actions of a health professional.

Complaint must be recorded.

6. The investigating committee shall not conduct an investigation unless the complaint is in writing or is recorded on a tape, film, disk or other medium.

Notice to health professional.

7. The Council shall give the health professional who is the subject of a complaint notice of the complaint and notice that the health professional may make written submissions to the investigating committee within thirty days after receiving notice of the complaint.

Consideration by the investigating committee.

8. The investigating committee, after investigating a complaint regarding the conduct or actions of a health professional, considering the submissions of the health professional and considering or making reasonable efforts to consider all records and documents it considers relevant

to the complaint, may make any one or more of the following recommendations to the Council —

- (a) that no further action be taken;
- (b) that specified allegations of the health professional's incapacity, incompetence or misconduct be referred to the disciplinary committee if the allegations relate to the complaint;
- (c) that the health professional be cautioned; or
- (d) that other action which is consistent with the Act be taken.

9. (1) If the investigating committee considers a complaint to be frivolous, vexatious, made in bad faith or otherwise an abuse of process, it shall give the complainant and the health professional notice that it intends to take no action with respect to the complaint and that the complainant and the member have a right to make written submissions within 30 days after receiving the notice.

Frivolous/
vexatious
complaints.

(2) If the investigating committee is satisfied, after considering the written submissions of the complainant and the health professional that a complaint was frivolous, vexatious, made in bad faith or otherwise an abuse of process, the investigating committee shall not take action with respect to the complaint.

10. Following consideration of the recommendations of the investigating committee, the council shall give the complainant and the health professional who is the subject of the complaint —

Notice of
decision by
council.

- (a) a copy of its decision; and
- (b) a copy of its reasons unless the Council decided to refer specified allegations of professional misconduct to the disciplinary committee.

11. The investigating committee shall dispose of a complaint within 180 days after the filing of the complaint.

Timely disposal.

12. The Chairman may appoint one or more investigators to determine whether a health professional has committed an act of professional misconduct if —

Investigators.

- (a) the Chairman believes on reasonable and probable grounds that the health professional has committed an act of professional misconduct or is incapacitated or incompetent and the Council approves of the appointment; or

- (b) the Chairman has received a written complaint about a health professional and has requested the investigating committee to conduct an investigation.

Powers of investigators.

13. (1) An investigator may inquire into and examine the practice of the health professional being investigated.

(2) An investigator may on the production of his or her instrument of appointment, enter at any reasonable time the business premises of the member and may examine anything found there that is relevant to the investigation.

Obstruction prohibited.

14. (1) No person shall obstruct an investigator or withhold or conceal from him or destroy anything that is relevant to the investigation.

(2) This regulation applies despite any provision in any Act relating to the confidentiality of health records.

Entries and searches.

15. A Magistrate may, on the application of the investigator, issue a warrant authorizing an investigator to enter and search a place and examine anything that is relevant to the investigation if the Magistrate is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds for believing that —

- (a) the member being investigated has committed an act of professional misconduct or is incapacitated or incompetent; and
- (b) there is something relevant to the investigation at the place.

Searches by day unless stated.

16. A warrant issued under regulation 15 does not authorize an entry or search after sunset and before sunrise unless it is expressly stated in the warrant.

Assistance and entry by force.

17. An investigator entering and searching a place under the authority of a warrant issued under regulation 15 may be assisted by other persons and may enter a place by force.

Investigator to show identification.

18. An investigator entering and searching a place under the authority of a warrant issued under regulation 15 shall produce his identification, on request, to any person at the place.

19. (1) An investigator may copy, at the Council's expense, a document or object that is relevant to an investigation. Documents and objects.

(2) An investigator may remove a document or object relevant to an investigation if —

- (a) it is not practicable to copy it in the place where it is examined; or
- (b) a copy of it is not sufficient for the purposes of the investigation.

(3) A document or object removed under this regulation, shall be returned by the investigator within a reasonable time.

(4) In this regulation, “document” means a record of information in any form and includes any part of it.

20. The Council shall report the results of an investigation to the investigating committee if the investigator was appointed at the request of the investigating committee. Report of investigation.

21. The Council may refer a specified allegation of a health professional's incapacity, incompetence or misconduct to the disciplinary committee following an investigation conducted under regulation 5. Council referral to the disciplinary committee following self-initiated investigation.

PART III DISCIPLINARY PROCEEDINGS

22. The disciplinary committee shall hold a hearing of allegations of a health professional's incapacity, incompetence or misconduct referred to it by the Council. Hearing required.

23. A member of the disciplinary committee who ceases to be a member after a hearing of a matter has commenced shall be deemed, for the purposes of dealing with that matter, to remain a member of the disciplinary committee until the final disposition of the matter. Committee members deemed to continue.

24. The disciplinary committee may at any time permit a notice of hearing of allegations against a health professional to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so and the committee may make any order it considers necessary to prevent prejudice to the health professional. Amendment of notice of hearing.

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- Parties. **25.** The Council and the health professional against whom allegations have been made are parties to a hearing.
- Non-party participation in hearings. **26.** The disciplinary committee may allow a person who is not a party to participate in a hearing if —
- (a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or
 - (b) the participation of the person, would, in the opinion of the disciplinary committee, be of assistance to the committee.
- Extent of participation. **27.** The disciplinary committee shall determine the extent to which a person who is allowed to participate may do so and, without limiting the generality of this, the disciplinary committee may allow the person to make oral or written submissions, to lead evidence and to cross examine witnesses.
- Evidence admissible subject to conditions. **28.** (1) Evidence against a health professional is not admissible at a hearing of allegations against the member unless the member is given, at least ten days before the hearing —
- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
 - (b) in the case of evidence of an expert, the identity of the expert and a copy of the expert’s written report; if there is no written report, a written summary of the evidence; or
 - (c) in the case of evidence of a witness the identity of the witness.
- (2) The disciplinary committee may, in its discretion, allow the introduction of evidence that is inadmissible under paragraph (1) and may make directions it considers necessary to ensure that the health professional is not prejudiced.
- (3) Evidence of an expert led by a person other than the Council is not admissible unless the person gives the Council, at least ten days before the hearing, the identity of the expert and a copy of the expert’s written report, or, if there is no written report, a written summary of the evidence.

(4) The disciplinary committee may, in its discretion, allow the introduction of evidence that is inadmissible under this regulation and may make directions it considers necessary to ensure that the Council is not prejudiced.

29. No member of the disciplinary committee holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication.

No communication by panel members.

30. If the disciplinary committee obtains legal advice with respect to a hearing, it shall make the nature of the advice known to the parties and they may make submissions with respect to the advice.

Legal advice.

31. Disciplinary hearings shall be closed to the public unless the parties to the hearings consent in writing to the hearing being open to the public.

Hearings *in camera*.

32. The disciplinary committee holding a hearing shall ensure that —

Transcript of hearings.

- (a) the-oral evidence is recorded; and
- (b) copies of the transcript of the hearing are available to a party on the party's request at the party's expense.

33. If a transcript of a hearing is filed with a court in respect of proceedings, only the court and the parties to the proceedings may examine it unless the court orders otherwise.

Transcripts filed with court.

34. Nothing is admissible at a hearing that would be inadmissible in a court in a civil action and the findings of the disciplinary committee shall be based exclusively on evidence admitted before it.

Admissibility of evidence.

35. Only the members of a disciplinary panel who were present throughout a hearing shall participate in the committee's recommendations to Council.

Members of committee who participate.

36. In making an order under section 16 of the Act, the Council may specify criteria to be satisfied for the removal of a suspension.

Orders.

Costs if
proceedings
unwarranted.

37. If the disciplinary committee is of the opinion that the commencement of proceedings against a health professional was unwarranted, it may make a recommendation to Council that the Council pay all or part of the health professional's legal costs.

Council's costs.

38. In an appropriate case, the disciplinary committee may make a recommendation to Council that a health professional whom the committee finds has committed an act of professional misconduct or is incapacitated or incompetent pay all or part of the following costs and expenses —

- (a) the Council's legal costs and expenses;
- (b) the Council's costs and expenses incurred in investigating the matter;
- (c) the Council's cost and expenses incurred in conducting the hearing.

Decision to
complainant.

39. The Council shall give its decision and reasons in writing to the parties and, if the matter had been referred to the disciplinary committee based on the recommendation of the investigating committee, to the complainant in the matter.

Release of
evidence.

40. The Council shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined.

Publication of
decisions.

41. The Council shall publish its disciplinary decisions and reasons, or a summary of its reasons, in its annual report to the Minister.