

LEGAL NOTICE NO. 171

THE MEDICAL PRACTITIONERS AND DENTISTS ACT

*(Cap. 253)*

IN EXERCISE of the powers conferred by section 23(b) of the Medical Practitioners and Dentists Act, the Cabinet Secretary for Health, after consultation with the Council, makes the following Rules

THE MEDICAL PRACTITIONERS AND DENTISTS (INQUIRY  
AND DISCIPLINARY PROCEEDINGS) (PROCEDURE) RULES  
2022

PART I – PRELIMINARY

1. These Rules may be cited as the Medical Practitioners and Dentists (Inquiry and Disciplinary Proceedings) (Procedure) Rules, 2022. Citation.

2. In these Rules, unless the context otherwise requires— Interpretation.

“complainant” means a body or person that makes a complaint of professional misconduct, malpractice or any breach of standards to the Council;

“inquiry” means a disciplinary inquiry held by the Council to determine the complaint made under subsection 20(2) of the Act;

“notice of inquiry” means a written and signed notice from the Council which is sent to medical practitioner or dentist against whom a complaint has been made specifying matters upon which the inquiry is to be held, and stating the date;

“small claim matter” means a complaint of alleged professional misconduct that does not involve clinical management;

“unprofessional conduct” means conduct that falls short of what is reasonably expected of a professional in the course of their practice.

PART II – DISCIPLINARY AND ETHICS COMMITTEE

3. (1) Pursuant to section 4A(1)(b), the Council shall constitute the Disciplinary and Ethics Committee consisting of— The Disciplinary and Ethics Committee.

(a) three members of the Council, one of whom shall be the chairperson;

(b) two other persons whose knowledge and skills are necessary for the proper determination of any matter before it co-opted to the Committee by the Council.

(4) The chairperson of the Committee shall preside over all meetings of the Committee and in the absence of the chairperson, the members of the Council present at the meeting shall elect one of their number to chair the meeting.

(5) A person co-opted under paragraph (1)(b) shall attend the meetings of the Committee and participate in its deliberations.

(6) The decisions of the Committee shall be by consensus.

(7) The Committee shall present its reports to the Council for approval and ratification.

4. (1) The Committee, shall have all the powers necessary for the execution of its functions under section 4A(b) of the Act. Functions of the Disciplinary and Ethics Committee.

(2) Without prejudice to the generality of subsection (1), the Commission shall have powers to—

- (a) conduct inquiries into and hearings over complaints submitted to it at such times and places as the Council shall determine;
- (b) ensure that the necessary administrative and evidential arrangements have been met;
- (c) develop and regularly review the code of professional conduct for ethical and good practice for persons registered under the Act;
- (d) constitute as required sub-committees to inquire into and determine the fitness to practice and operate of persons registered under the Act;
- (e) administer oaths;
- (f) summon persons to attend and give evidence; and
- (g) order for the production of relevant documents.

### PART III — LODGING OF COMPLAINT

5. The provisions of this Part shall apply to proceedings conducted by the Disciplinary and Ethics Committee or with necessary modifications, to an inquiry or hearing held by the Council. Application.

6. The Council may institute an inquiry into the conduct of a registered or licensed person on the Council's own initiative, on matters of public interest that have been brought to the attention of the Council, or upon the receipt of a complaint to the Council, in writing made by or on behalf of a person who is dissatisfied with any professional service offered by a registered or licensed person. Institution of inquiry.

7. (1) Any person who is dissatisfied with any professional service offered, or alleges a breach of standards by a registered or licensed person under this Act, may lodge a complaint in the prescribed form. Complaints.

(2) The complaint shall be accompanied by—

- (a) a statement clearly setting out the particulars of the medical practitioner dentist, community oral health officer or health institution and service complained being complained about and the nature of the complaint; and
- (b) any supporting documentation or evidence.

(3) Upon receipt of a complaint, the officer receiving the complaint shall assign it a reference number, and create a record of the complaint indicating the particulars of the complaint including—

- (a) the particulars of the complainant;
- (b) the particulars of the medical practitioner, dentist, community oral health officer or health institution, complained against;
- (c) the nature of the complaint;

- (d) a record of the accompanying documents; and
- (e) such other particulars as the Council may specify.
8. The Council may, where it considers it expedient, make such interim orders as may be necessary for the preservation of patient safety. Interim orders.
9. (1) The Council shall review a complaint to determine whether they are within the mandate of the Council. Assessment of the complaint.
10. The Council shall within seven days of receipt of a complaint serve the complaint upon the medical practitioner or dentist against whom a complaint has been made by post or by any other means approved by the Council. Service of complaint.
11. A medical practitioner or dentist upon whom a complaint was served under paragraph 10 shall within fourteen days of service, of a complaint file a response. Response to a complaint.
12. Where a medical practitioner or a dentist served with summons fails to file a response within the time specified in regulation 8,—
- (a) the inquiry may proceed in his or her absence; and
- (b) the medical practitioner or a dentist commits an act of professional misconduct or an offence under the Act. Failure to respond.
13. (1) Where it is determined that a complaint is within the mandate of the Council, the complaint shall be referred to the Committee to inquire into the complaint, to verify the facts and other details of the complaint in order to determine the action to be taken. Reference of complaint.
- (2) The Committee may after the review of a complaint
- (a) hear and determine the complaint; or
- (b) refer the complaint to the Council or other Committee together with its findings and recommendations; or
- (c) refer the complaint for alternative dispute resolution.
14. The Committee shall summon before it every person against whom a complaint is made to appear before a the Committee for the purpose of inquiry and may require such person to produce any document in his possession or under his control that in any way relate to the complaint or inquiry and may hear any evidence and inspect any document which the complainant or the party complained against may desire to adduce. Appearance before the Committee.
15. The Committee may determine a complaint or issues arising therefrom without an oral hearing. Power to determine complaint without hearing.
- #### PART IV — HEARING PROCEDURE
16. In the determination of complaints under these Rules, the Committee shall be guided by the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law. Guiding principles.

17. A person against whom the complaint is made shall have the right to appear before the Committee to be heard either personally or through his advocate and may call such evidence and produce such documents as may be relevant to the inquiry. Right to appear before the Committee.
18. (1) The Committee shall, after the respondent has filed a response to the complaint, fix a time, date and place for the hearing of the complaint and notify the parties. Hearing Notice.
- (2) Unless the parties to the complaint otherwise agree, each party shall be entitled to not less than seven days' notice of the time, date and place fixed for the hearing.
19. (1) The Committee may issue summons, to any person to attend as a witness or to produce any documents. Summons and orders.
- (2) A person summoned to give evidence before the Committee shall be given at least seven days' notice of the hearing unless the person has informed the Committee that he or she accepts a shorter notice if given.
20. (1) The Committee may on its own motion or on application by a party to the proceedings give directions, including directions for the furnishing of further particulars or supplementary statements, as may be necessary to enable the parties prepare for the hearing or assist the Committee determine the issues related to the hearing before it. Pre-hearing directions.
- (2) The Committee may take into account the need to protect any matter that relates to the intimate, personal or financial circumstance of any party, consists of information communicated or obtained in confidence, or concerns national security and may order that all or part of the evidence of a person be heard in private or prohibit or restrict the publication of that evidence.
- (3) An application for directions shall be made to the Committee, in writing, and shall, unless accompanied by the written consent of all parties, be served on all other parties to the proceedings by the party seeking directions.
- (4) The Committee shall consider an objection to the application for directions, if any party objects the application, and give the parties an opportunity to appear and the objection heard where the Committee considers it necessary.
21. (1) Where a person fails to comply with directions given under these rule 20, the Committee may, before or at the hearing of the complaint— Failure to comply with directions.
- (a) dismiss the whole or part of the complaint, where the failure to comply is by the complainant;
  - (b) strike out the whole or part of a respondent's reply where the respondent; or
  - (c) direct that the person who has failed to comply be excluded from participating in the hearing.
- (2) The Committee shall not dismiss, strike out or give any directions under subrule (1) unless it has served a notice on the party

who has failed to comply with the directions and has given the party an opportunity to be heard.

22. (1) The Committee shall conduct its proceedings in English or Kiswahili.

Language of proceedings

(2) The Committee may allow an application lodged in any other language by persons or a group of persons directly affected by the subject matter of the application, and require such persons or group of persons to provide a translation within a reasonable time.

(3) The Committee shall, taking into account all the circumstances, provide a competent interpreter to a party or witness who does not speak or understand English or Kiswahili at the hearing.

(4) The rulings of the Committee shall be prepared in the English language but may be translated, on request by a party, into the Kiswahili.

23. (1) Where a person without reasonable excuse, fails to appear either personally or by his or her representative at the time and place fixed in the notice of hearing served on him—

Non-appearance by the Respondent.

- (a) the inquiry may proceed in his or her absence; and
- (b) the person commits an act of professional misconduct or offence under the Act.

(2) If a person appearing at the inquiry or hearing, without reasonable excuse—

- (a) refuses or fails to be sworn or affirmed;
- (b) refuses or fails to answer a question that he or she is required, by the Chair of the Committee, to answer; or
- (c) refuses or fails to produce a document that he or she was required to produce by a summons served, on him or her,

the Committee may make such directions as it may consider necessary and appropriate under the circumstances of the case.

24. (1) The chairperson shall, at the commencement of the hearing, explain the order of proceedings which the Committee proposes to adopt.

Hearing procedure.

(2) The Committee shall conduct the hearing in such manner as it considers suitable for the determination of the application or the clarification of issues before it and generally for the just handling of the proceedings and shall, in so far as it may be appropriate, avoid legal technicality and formality in its proceedings.

(3) The parties shall be heard in such order as the Committee shall determine, and shall be entitled to give evidence, call a witness, and address the Committee on both evidence and generally on the subject matter of the application or matter before the Committee.

(4) The parties and their witnesses may give evidence before the Committee orally, on oath or after affirmation or, if the Committee so

orders, by affidavit or written statement, but the Committee may at any stage of the proceedings require the personal attendance of any deponent or author of a written statement.

(5) The Committee may receive evidence of any fact, which appears to it to be relevant to the matter or an application before the Committee.

(6) The Committee may, during the hearing and if it satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in the party's notice of application or, as the case may be, the party's reply and to adduce any evidence not earlier presented to the Committee.

(7) The Committee shall grant to any party a reasonable opportunity—

- (a) to be heard, submit evidence and make representations; and
- (b) to cross-examine witnesses to the extent necessary to ensure fair hearing.

(8) The Committee may, at the request of any party and upon payment of charges, provide visual demonstration facilities for the display of any maps, charts, diagrams, illustrations or texts and documents, which that party intends to exhibit during the hearing.

(9) If a person appearing at the inquiry or hearing, without reasonable excuse—

- (a) refuses or fails to take the oath or affirmation;
- (b) refuses or fails to answer a question that he or she is required, by the chairperson of the Committee, to answer; or
- (c) refuses or fails to produce a document that he or she was required to produce by a summons served, on him or her,

the Committee may make such directions as it may consider necessary and appropriate under the circumstances of the case.

25. (1) Where a party fails to attend or be represented at a hearing of which he has been duly notified, the Committee may—

- (a) unless it is satisfied that there is sufficient reason for the absence of the party, hear and determine the application or matter before it in the absence of that party; or
- (b) adjourn the hearing, and may make such orders as to costs as it considers fit.

(2) Before determining an application or matter under sub-rule (1)(a), the Committee shall consider any representations submitted by that party, in writing, in response to the hearing notice for the matter or an application.

(3) Where a person against whom a complaint has been made fails to appear either personally or by his or her representative at the

Hearing and determination of matters in the absence of parties.

time and place fixed in the notice of hearing served on upon the medical practitioner or dentist without reasonable excuse —

- (a) the inquiry may proceed in his or her absence; and
- (b) the person commits an act of professional misconduct or offence under the Act.

26. The Committee may, upon giving the parties concerned an opportunity to be heard, order the consolidation of any proceedings before it where complaints have been filed in respect of the same matter or in respect of several interests in the same subject of complaint.

Consolidation of proceedings.

27. Without prejudice to any other powers it may have, the Committee may exclude from the hearing or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Committee, to disrupt the hearing.

Exclusion of persons disrupting the proceedings.

28. (1) The Committee may of its own motion, or upon the application of any party, adjourn the inquiry or hearing upon such terms as it thinks fit.

Adjournment of proceedings.

(2) Notice of an adjournment of the inquiry shall be given to the persons involved in the proceedings in writing by the Committee.

29. (1) For the purpose of these Rules, the Committee may receive oral, documentary or other evidence of any fact or matter which appears to it to be relevant to the inquiry into any matter before it.

Evidence.

(2) The Committee may, if satisfied that the interests of justice will not be prejudiced, admit in evidence without strict proof, copies of documents which are themselves admissible, maps, plans, recorded tapes, photographs, certificates of conviction and sentence, certificates of birth and marriage and death, the records including records of the Ministry of Health and other Government Ministries, records of private practitioners, health institutions and any other relevant sources, the notes and minutes of proceedings before the Council and before other tribunals and courts.

(3) The Committee may take note without strict proof thereof of the professional qualifications, the address and the identity of the medical practitioner or dentist or community oral health practitioner.

(4) The Committee may accept and act on admissions made by any party and may in such cases dispense with proof of the matters admitted.

30. The Committee may receive or obtain information from such other persons who possess knowledge, information or experience in matters relating to the complaint before it as it may consider necessary for the purposes of determining an inquiry.

Information.

31. The Committee may allow any amendments to the statements of complaint or response at any stage of the proceedings, provided that such amendment shall be for the interest of justice and is aimed at aiding the determination of the proceedings upon fair notice to the other party.

Amendment of pleadings.



32. The Committee may extend the time for doing anything under this Part on such terms as the Committee thinks fit. Extension of time.

33. (1) The Committee may take judicial notice of— Judicial notice

- (a) facts that are publicly known; and
- (b) generally recognized facts and any information, policy or rule that is within its specialized knowledge.

(2) Before the Committee takes notice of any fact, information, opinion, policy or unwritten rule under subrule (1), it shall notify the parties of its intention and afford them a reasonable opportunity to make representations with respect thereto.

#### PART V – DECISIONS OF THE COMMITTEE

34. (1) After the hearing the complaint, the Committee may— Decisions of the Committee.

- (a) dismiss the complaint;
- (b) if the person is found guilty the Committee may order one or more of the sanctions specified under section 20 of the Act; or
- (c) recommend to the Director of Public Prosecutions to initiate criminal proceedings against the person found guilty where necessary;
- (d) make such order as the Committee considers fit; or
- (e) make such recommendations to the Council as the Committee considers fit.

(2) The decision of the Committee shall as far as possible be by consensus.

(3) The decision of the Committee may be given orally at the end of the hearing or may be reserved and shall—

- (a) be reduced to writing whether there has been a hearing or not; and
- (b) shall be signed and dated by the chairperson.

(4) A dissenting opinion may be pronounced separately by the member who wrote it and shall be dated and signed by that member.

(5) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the applicant.

(6) Every order or determination of the Committee shall be made under the hand of chairperson or in his or her absence by the person chairing the meeting at which the order or determination is made.

(7) Every order or determination of the Committee bearing the signature of the person chairing shall be prima facie evidence that the order or determination is that of the Committee.

35. The Committee shall give reasons for reaching its decision, and each decision shall include—
- Reasons of decisions.
- (a) a statement of the findings of fact made from the evidence adduced, including, where applicable, any relevant government policy, international best practice or published scientific research; and
  - (b) a statement of the laws and rules of law applied, and the interpretation thereof.
36. Any party to the proceedings shall, on application and upon payment of the prescribed fee, be furnished with a certified copy of the proceedings or determination or finding of the Council or other documents.
- Taking proceedings.
37. A person dissatisfied with the decision of the Committee, which no appeal has been preferred, and who from the discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of that person or could not be produced by the time the decision was made, or on account of an error apparent on the face of the record, or for any other sufficient reason desires a review may apply to the Council for review, without unreasonable delay.
- Review.
38. A person aggrieved by a decision of the Committee may appeal to the High Court as provided under section 20(9) of the Act.
- Appeal.
39. (1) An application for restoration of the name of a person or the restoration of a license after removal or cancellation pursuant to sections 20 of the Act shall be in the prescribed form and accompanied by the prescribed fee.
- Application for restoration to the register.
- (2) All applications for restoration of the name on the register shall be accompanied by a certificate of identity and good character and signed by a medical practitioner or dentist or community oral health officer, as the case may be, of at least ten years' standing.
  - (3) A person making an application under subrule (1) shall give the names of three referees, two of whom shall be medical practitioners or dentists of consultant status or of at least ten years' experience or a senior community oral health officer of at least ten years' experience and of good repute and standing and one of whom shall be a non-medical person of good repute and social status, to whom the Council can send a request for information about the character, habits and conduct of the applicant during the period of suspension.
  - (4) At the hearing of the application the following procedure shall be followed—
    - (a) the Registrar shall state to the Council the circumstances in which the applicant's name was removed or erased from the register or the license cancelled and shall adduce evidence as to the conduct of the medical practitioner or dentist or community oral health officer since that time;
    - (b) the chairperson shall then invite the applicant to address the Council if he so wishes, and adduce evidence as to his

conduct since his name was erased from the register or the license was cancelled;

- (c) the Council may, if it thinks fit, receive oral or written observation on the applicant from anybody or person whose complaint resulted in the applicant's name being erased from the register or license being cancelled.

(5) At the close of the proceedings under this rule the Council shall record and the Chair shall pronounce the finding or determination of the Council.

(6) Subject to the provision of this rule, the proceedings of the Council in connection with applications for restoration of the name of a medical practitioner or dentist or community oral health officer on the register or restoration of a licence after cancellation, as the case may be, shall be such as the Council may determine.

40. The Medical Practitioners and Dentists (Disciplinary Proceedings) (Procedure) Rules, 1979 are revoked.

Revocation.  
LN 157/1979.

Made on the 5th August, 2022.

MUTAHI KAGWE,  
*Cabinet Secretary for Health.*

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