

GOVERNMENT NOTICE NO.705 Published On 16 November,2018

THE MEDICAL, DENTAL AND ALLIED HEALTH PROFESSIONALS
ACT
(ACT No.11 OF 2017)

REGULATIONS

(Made under sections 42 and 64(1))

THE MEDICAL, DENTAL AND ALLIED HEALTH PROFESSIONALS (INQUIRY)
REGULATIONS, 2018

ARRANGEMENT OF REGULATIONS

Regulation Title

PART I
PRELIMINARY PROVISIONS

1. Short Title.
2. Interpretation.

PART II
LODGING OF COMPLAINTS AND ISSUANCE OF NOTIFICATION

3. Lodging of complaints.
4. Issuance of notification.

PART III
ESTABLISHMENT OF INQUIRY COMMITTEE AND PROCEDURE FOR
INQUIRY

5. Establishment of Inquiry Committee.
6. Acts of minor transgression.
7. Notice of preliminary examination.
8. Procedure for preliminary inquiry.
9. Procedure for conducting full inquiry.
10. Holding of full inquiry.

11. Constitution of full inquiry.
12. Request for additional information.

13. Plea bargain prior to Inquiry.
14. Place of Inquiry and procedures.
15. Notification of decision of Council.
16. Review before Council.

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REGULATIONS, 2018

PART 1
PRELIMINARY PROVISIONS

- Citation 1. These Rules may be cited as the Medical, Dental and Allied Health Professionals (Inquiry) Regulations, 2018.
- Interpretation 2. In these rules unless the context otherwise requires-
- Act No.11 of 2017 “Act” means the Medical, Dental and Allied Health Professionals Act;
“complainant” means any person, professional body professional association or society, a teaching or training Institution, or any health care or related facility, that lodges a complaint against a registered, enrolled or enlisted person alleged of a professional misconduct;
“complaint” means any information filed in writing against a registered, enrolled or enlisted alleged to be unfit to practice under the Act, that comes to the attention of the Registrar or the Council;
“Inquiry Committee” means a Committee established by the Council to hold preliminary inquiry of complaints and make a determination thereon;
“Inquiry” means an inquiry held by the Council into a complaint or charge against a Practitioner;
“minor transgression” means a conduct which, in the opinion of the Council and on the basis of the documents or records submitted to the Council, is unprofessional, but of a minor nature, that does not warrant the

holding of a full inquiry before the Council;

“performance assessment” means an assessment conducted by the council to inquire into and make a determination on the clinical or related performance of a practitioner against whom a professional Conduct Committee found evidence of poor clinical or related performance or of a pattern of such performance at an inquiry;

“preliminary inquiry” means an inquiry held to consider a complaint against a practitioner in order to make a determination on the nature of an offence;

“pro forma complainant means a lawyer or State Attorney appointed by the Registrar to represent the complainant before the Inquiry Committee or the Council;

“Respondent” means a person whose conduct is the subject of a complaint or an inquiry under these Regulations.

PART II

LODGING OF COMPLAINTS AND ISSUANCE OF NOTIFICATION

Lodging of
complaints

3.-(1) A person who is aggrieved by the conduct of a practitioner may lodge a complaint to the Registrar in a form prescribed in the First Schedule to these Regulations.

(2) Without prejudice to subregulation (1), The Council may on its own motion, or upon receipt of information in relation to allegation of professional misconduct in respect of a Practitioner, initiate Preliminary Inquiry against a person whose conduct is being complained of.

- (3) The Registrar shall after receiving the complaints-
- (a) peruse and analyse complaints received;
 - (b) categorise complaints according to their significance and seriousness;
 - (c) record each complaint against the name of the respondent concerned as it appears in the register kept; and
 - (d) refer complaints of minor transgressions to the Council for determination.

Issuance of
notification

4. A notification issued under these Regulations shall be deemed to have been received on the day such notification is hand-delivered to the registered address of the respondent.

PART III

ESTABLISHMENT OF INQUIRY COMMITTEE AND PROCEDURE FOR
INQUIRY

Establishment of
Inquiry Committee

5. There shall be established an Inquiry Committee of the Council, whose membership shall be determined by the Council depending on the nature of the complaint.

(2) The committee shall consist of the following members:

- (a) the chairman to be appointed by the Council from amongst its members;
- (b) six other members who are not Council members to be appointed by the Council and may include a representative from professional association.

Acts of minor
transgression

6.-(1) When the inquiry committee is of the opinion that, the complaint amount to an act of minor transgression and the parties agrees to resolve the matter it shall record the resolution and forward the matter to the Council for determination

(2) Where the inquiry committee is of the opinion that, either of the party is not satisfied with the resolution made under subrule (1) it shall recommend the Council to proceed to full Inquiry.

(3) The Inquiry Committee shall after due consideration of the matter it shall recommend to the Council to conduct Full Inquiry or decide otherwise.

Notice of
preliminary
examination

7.-(1) The Registrar shall, within seven working days:

- (a) after receiving a complaint, register it and call for further information on the allegations where necessary;
- (b) issue a notice of preliminary examination to the respondent of the complaints by forwarding a copy of the complaint and request a written response within fourteen working days from the date of receipt of the notification as prescribed in the Second Schedule.

(2) If the respondent fails to respond to the Registrars notice within the specified period, the Registrar shall:

- (a) declare that the respondent is in contempt of Council, and shall order the respondent to submit his response within fourteen days;
- (b) warn the respondent that the written response referred to in paragraph (a) may be used as

evidence against him;

- (c) submit the complaint together with any further information referred to under paragraph (a) and respondents reply to the Council.

(3) Upon receiving information from the Registrar, the Council shall submit to the Committee which shall-

- (a) conduct investigation on the complaints received;
- (b) conduct hearing;
- (c) call witnesses from both parties;
- (d) make recommendation and submit to the Council for determination.

Procedure for conducting preliminary inquiry

8.-(1) The Inquiry Committee after due consideration of the matter and realise that there are no grounds for any inquiry it shall forward its recommendation to the Council for determination.

(2) Subject to subregulation (1), the Council shall direct the Registrar to inform the parties of its decision and stating the reason for such decision.

Procedure for conducting full inquiry

9.-(1) The Council shall where it is of the opinion that a *prima facie case* is established by the inquiry committee, direct full inquiry to be held.

(2) The Council shall give opportunity to the practitioner against whom misconduct is alleged to appear before the Council, and may be represented by a legal representative.

(3) Where a practitioner fails to appear at the inquiry without reasonable excuse and the Council is satisfied that a notice was duly served, the Council may proceed with the inquiry as if the practitioner was present.

(4) The Council may, after due inquiry made in accordance with the provision of this Rule

- (a) order the removal of the name of practitioner from the register, roll or list;
 - (b) order suspension from the practice of the practitioner for such period as the Council may consider necessary;
 - (c) caution, censure or otherwise reprimand the practitioner; or such other punishment as may be prescribed by the Council;
 - (d) order payment of costs involved in the inquiry or such other cost as may be appropriate.
- (5) The Registrar shall, within seven days after the

determination of the inquiry communicate the decision of the Council to the parties stating the reason for the decision.

(6) The Council shall have power to summon any witness and may require such witness to produce any document for the purpose of the inquiry.

Holding of full inquiry

10.-(1) The Council shall, on receipt of the recommendation from the Inquiry Committee, and if there is no response received by the due date as contemplated, direct the Registrar to formulate charge sheet and issue a notice to the respondent stating the date, time and place where full inquiry will be held.

(2) The notice and the charge sheet shall be served on the respondent or his representative by hand, registered post or electronic communication at his address within fourteen days prior to the date of inquiry.

(3) The Notice and charge sheet shall be as prescribed in the Third Schedule to these Regulations.

Constitution of full inquiry

11.-(1) The full inquiry shall constitute the following members:

- (a) Chairman of the Council or a member of the Council appointed by the Chairman to act on his behalf;
- (b) members Council;
- (c) Registrar; and
- (d) Complainant.

(2) The quorum of the Council during Full Inquiry shall be not less than two third of the members.

Request for additional information

12.-(1) A request by the respondent or his legal representative for additional information or particulars of the charges as formulated by the Registrar shall be received by the complainant at least seven days before the date of the inquiry.

(2) The Registrar shall furnish his written reply to a request for further particulars to the respondent or his legal representative within seven days from date of receipt of the request.

(3) The Registrar shall not respond to any request for further particulars received out of seven days stated.

Plea bargain prior to Inquiry

13.-(1) In order to determine the issues in dispute, the Registrar shall arrange a pre-hearing session, which shall be attended by both parties or their legal representatives at least

three days before the date of the inquiry.

(2) The issues in dispute shall be determined as follows:

- (a) the respondent or his legal representative shall indicate issues admitted and disputed;
- (b) the respondent or his legal representative shall indicate how he intends to plead to the charges;
- (c) copies of all documents, reports, notes, and any other exhibits which either party intends to use at the inquiry shall be furnished to the other party;
- (d) perusal of the originals of the documents, reports, notes, and any other exhibits referred to in paragraph (c) is allowed;
- (e) admissions may be made by both parties with regard to allegations or exhibits;
- (f) a summary of the opinion of an expert witness that a party intends to call at the inquiry shall be furnished to the other party; and
- (g) any other matter concerning the inquiry shall be resolved.

(2) Minutes of the pre-hearing session shall be kept and signed by both parties or their legal representatives for submission to the Council at the inquiry.

Place of Inquiry
and procedures

14.-(1) The place where the inquiry is held shall be open to the public provided that the Council, if it thinks fit, may at any stage of inquiry exclude the public generally or any particular person.

(2) The chairperson of the Council shall ask the respondent or his legal representative, to plead to the charge and the plea shall be recorded.

(3) If the respondent is not present at the inquiry after having been duly notified, the Council shall enter a plea of not guilty and proceed with inquiry:

Provided that, the Council may adjourn the hearing if the respondent's absence is duly known to the Council and is due to bona fide reasons.

(4) If the respondent or his legal representative refuses or fails to plead to the charge, the Council shall enter a plea of not guilty.

(5) If the respondent pleads guilty to the charge, the Council shall ask the respondent or his legal representative such questions as are necessary to determine whether all the elements of the charge are admitted.

(6) If the Council is satisfied that all the element of the charges are admitted, the pro forma complainant shall address the Council and indicate whether the plea of guilty is accepted.

(7) If the plea of guilty is accepted, the chairman of the Council shall make a finding of guilty and allow the parties to address the Council in accordance with subrule (4).

(8) If the respondent pleads not guilty or if a plea of not guilty is entered and if a plea of guilty is not accepted by the pro forma complainant, the Chairman shall allow the pro forma complainant to address the Council and conduct examination in chief and produce evidence in support of his case and re-examine witnesses after cross-examination by the respondent or his legal representative or complainant and thereafter close his case.

(9) The respondent or his legal representative may make a submission of no case to answer after the pro forma complainant has closed his case.

(10) The chairman shall give the pro forma complainant the opportunity to reply to the submission of no case to answer.

(11) The Council shall consider the application in camera and there after give its decision or ruling to the parties.

(12) If the submission of no case to answer is dismissed, the respondent or his legal representative may address the Council and lead evidence in support of his case, re-examine witnesses after cross-examination by the pro-forma complainant and thereafter close his case.

(13) The Council may, on application allow any of the parties to lead further evidence or to recall a witness after his discharge and the other party shall be given an opportunity to cross-examine such witness.

(14) The Chairman and members of the Council may ask a witness questions for clarity on issues arising from witness's evidence.

(15) After all the evidence has been adduced, the pro-forma complainant and the respondent or his legal representative shall address the Council and make summation on the evidence and the legal position.

(16) The pro forma complainant may reply to any matter of law raised by the respondent or his legal representative in his address and may, with leave of the Council, reply to any matter raised by the respondent or his legal representative in his address.

(17) Oral evidence shall be taken under oath or on affirmation administered by the chairman.

(18) Evidence on affidavit is admitted by the Council:

Provided that, the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.

(19) The record or any portion thereof of a lawfully constituted court, inquest court or disciplinary tribunal from any jurisdiction shall be accepted as prima facie evidence if it has been certified to be a true copy by that court or disciplinary tribunal.

(20) If it is practicable and appears just, the Council may, on application by either party and for the purpose of cross-examination, order the attendance of a witness whose evidence appears in a record of a court or disciplinary tribunal and which is presented as prima facie evidence.

(21) At the conclusion of the hearing, the Council shall deliberate in camera and then inform the parties of its findings within seven days. The findings of Council may include a finding of poor performance on the part of the respondent, in which case the Council shall refer the matter to the performance assessment committee to inquire into the performance of the respondent and make a determination on the appropriate management thereof.

(22) Where the respondent is found guilty of professional misconduct-

(a) the pro-forma complainant shall address the Council and furnish details of previous convictions of the respondent on professional misconduct;

(b) the pro-forma complainant may address Council on a suitable penalty and lead evidence in support of imposing such penalty;

(c) the respondent or his legal representative may thereafter mitigate to the Council and the Council shall deliberate in camera and make Verdict on the appropriate penalty to be imposed, and thereafter the Chairman shall proceed to pronounce the decision to the respondent;

(d) Where the respondent is absent on the day of pronouncement of the verdict, the Council shall direct the Registrar to communicate the decision to the respondent.

(23) The verdict made and penalty imposed by the

Council shall be in force and take effect from the date delivered.

(24) Proceedings of the Inquiry shall be recorded in writing or any other form of recording, and may be taken by a person appointed by the Council for that purpose and shall be kept as true records of the Inquiry; provided that in deliberation held in Camera, the members present shall determine mode of taking such records.

Notification of
decision of
Council

15. After the conclusion of an Inquiry, the Registrar shall serve notice of the decision of the Council to the respondent within seven days after conclusion of an inquiry.

Review before
Council

16.-(1) At any time within fourteen days of service of notice any party aggrieved by the decision of the Council may apply in writing to the Council for review of its decision, and shall state points of law or facts that if properly considered could have lead to a contrary findings or verdict.

(2) A person intending to apply for review shall issue a written Notice to the Registrar within seven days after completion of Inquiry or delivery of a verdict of his intention to seek redress by way of review before the Council.

(3) Failure to comply with the requirements set under these Rules shall warrant the Council to reject the application.

(4) A person who was a party to the Inquiry before the Council, and who is aggrieved by the decision of the Council upon pronouncement of a verdict or after review by the Council may file appeal to the Minister within forty five days.

(5) The decision of the Minister shall be final.

FIRST SCHEDULE

(Made under regulation 3(1))

COMPLAINT FORM

(to be filled by the complainant and submitted to the Office of the Registrar)

1. Personal Details:

Name:

Address:

Phone number(s):

2. Are you the patient in the complaint? Yes [] No []

3. Are you complaining on someone else behalf? Yes [] No []

If 'Yes' what is your relationship to the patient?

Wife [] Husband [] Son [] Daughter [] Sister [] Brother [] etc.

4. Details of the Doctor(s)

- Full name of each doctor you are complaining about
- The address each doctor works at (if you know) or the address where you (or the patient) saw each doctor.

Dr.....

...

.....

....

Dr.....

...

.....

....

Dr.....

...

.....

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5. Give details of your complaint

Please describe your complaint, and state exactly what happened and, if possible include: dates, time and place of incident

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6. Do you have any documents (for example, letters or medical records) which might back up your complaint? If you do, please send us copies and list them below. If you ask us to, we will return all original documents after taking copies.

7. Are there any other people who saw or heard the things you are complaining about? If so, please give their names below, and how they were involved with events.

8. Would those people be prepared to make written statements to us?
Yes [] No []

9. We try to deal with most complaints through correspondence but, if it becomes necessary, are you prepared to be a witness at an inquiry into your complaint?
Yes [] No []

10. Have you complained to any other organisation about this matter (example where the doctor works?). If 'Yes', please say which organisation you have complained to.

11. Give us brief details of what happened to your complaint, and send us copies of any letters between you and that organisation.

12. Declaration

I hereby certify that the information I have given in this form is complete and accurate, and I solemnly make this declaration, conscientiously believing the same to be true.

Name: _____

Signature: _____

Date: _____

SECOND SCHEDULE

(Made under Regulations 7(1)(b))



MEDICAL COUNCIL OF TANGANYIKA

Guiding the profession, Protecting the public
(Communications to be addressed to THE REGISTRAR)

P.O. Box 9083 Dar es Salaam, Tanzania
Tel: +255 22 2120261-7 Ext. 1721
Direct Line: +255 22 21126673
Fax: + 255 22 2112731
Email: mcouncil@mohi.go.tz

Address.....

Date:

.....

RE: NOTICE OF PRELIMINARY EXAMINATION

(Made under Regulation 10(3))

Medical, Dental And Allied Health Professionals (Inquiry

GN. NO. 705 (Contd)

On behalf of the Chairman of the Medical Council of Tanganyika, I hereby give you notice that information and evidence have been received by the Council from the Permanent Secretary, Name of the Ministry, from which it is alleged that between dates, being a registered/ Enrolled or Enlisted Medical, Dental or Allied Health Practitioner,.....

In relation to the facts so alleged, you are liable for professional misconduct, and I undertake to hold Preliminary Examination in respect thereof.

You are therefore required to answer in writing the above allegations levelled against you and attach therewith any document or evidence, which you intend to produce as defence thereto.

You are further required to avail to your answers to the office of the Registrar within seven (7) days from the date of receipt of this notice.

Note that failure to respond as herein required shall warrant the Council to proceed with the inquiry against you in your absence.

REGISTRAR

C.C

THIRD SCHEDULE

(Made under Regulation 10(3))



MEDICAL COUNCIL OF TANGANYIKA

Guiding the profession, Protecting the public
(Communications to be addressed to THE REGISTRAR)

P.O. Box 9083 Dar es Salaam, Tanzania
Tel: +255 22 2120261-7 Ext.1721
Direct Line: +255 22 21126673
Fax: + 255 22 2112731
Email: mcouncil@moh.go.tz

Ref.

Date.

INQUIRY NO.OF(year)

IN THE MATTER OF

NAME OF registered, enrolled or enlisted practitioner)

AND

IN THE MATTER OF MEDICAL, DENTAL AND ALLIED HEALTH PROFESSIONALS ACT, NO.11
OF 2017

TO: name of complainant/defendant

NOTICE OF DATE OF HEARING

TAKE NOTICE that, the above Inquiry relating to complaint by,, regarding your failure to observe the Code of Ethics and Professional Conduct in Tanzania, and thereby at has been fixed for hearing date, Month, Year Time before the Medical Council of Tanganyika.

You are required to appear before the Council sitting at the Town and Venue, without fail. You are urged to bring your witnesses and documents you intend to rely upon in support of your case.

TAKE NOTE that, failure to appear as hereby required shall warrant the Council to proceed with the matter and decide upon the charge in your absence.

GIVEN under my hand and the Seal of the Council on this date day of Month, Year

REGISTRAR



MEDICAL COUNCIL OF TANGANYIKA

Guiding the profession, Protecting the public
(Communications to be addressed to THE REGISTRAR)

P.O. Box 9083 Dar es Salaam, Tanzania
Tel: +255 22 2120261-7 Ext.1721
Direct Line: +255 22 21126673
Fax: + 255 22 2112731
Email: mcouncil@moh.go.tz

RE: CHARGE SHEET

(Made under Regulation 10(3))

INQUIRY NO. OF

IN THE MATTER OF

(DR, MR(REGISTERED, ENROLLED, ENLISTED
MEDICAL, DENTAL OR ALLIED HEALTH PRACTITIONER)

AND

IN THE MATTER OF MEDICAL, DENTAL AND ALLIED HEALTH PROFESSIONS
ACT, 2017

CHARGE

STATEMENT OF OFFENCE

Failure to exercise due diligence hence, infamous conduct in terms of Section
of the Medical, Dental and Allied Health Professions Act, 2017

PARTICULARS OF OFFENCE

Dr/Mr.on or about the..... being a fully registered
Medical, Dental or Allied Health Practitioner stationed at within
.....you acted negligently bythus causing permanent
disability.

Dated at Dar es Salaam this day of, 20.....

.....
REGISTRAR

Dodoma,

UMMY A. MWALIMU

23rd October, 2018

*Minister for Health, Community
Development Gender, Elderly and Children*