



FACTSHEET: HPCSA COMPLAINTS

What is an HPCSA complaint?

An HPCSA complaint is a formal investigation into any complaint, charge or allegation of unprofessional conduct against any person registered with Health Professions Council of South Africa ("HPCSA").

The HPCSA has the power to institute disciplinary proceedings if a registered practitioner is alleged to have transgressed the rules as laid down by the Board, and the practitioner will be subjected to a disciplinary process in terms of the regulations¹.

Generally, there are two forms of complaint which a practitioner may receive:

- a) a complaint from the Office of the Ombudsman; or
- b) a complaint from the Complaints Handling Unit and Investigations Office.

The Registrar must categorise complaints according to their significance and seriousness and refer complaints of minor transgressions and matters not falling under the jurisdiction of the Council to the Ombudsman for mediation or referral to the relevant authorities, respectively.

In the case of an Ombudsman Complaint, the Ombudsman mediates in the case of minor transgressions² referred to the office for mediation in terms of regulation 2(3)(d) with a view of resolving such matters. The mediation process is done without prejudice with a view to making a determination to resolve the matter between the parties, advise the parties of the determination on the matter and require them to indicate whether they will abide by the determination as the determination will then be binding on both parties as a final resolution of the matter. If either party does not agree to abide by the determination, the matter will be referred for preliminary investigation.

In the case of a complaint from the Complaints Handling Unit and Investigations Office, the Registrar forwards the complaint to the healthcare professional concerned and requests a written explanation from him/her before the matter is placed before the Council's Committee of Preliminary Inquiry for consideration.

In either case, always obtain professional advice with regard to preparing an explanation to any HPCSA related complaint, since your response can be used as evidence at a later stage, either in subsequent disciplinary proceedings or in another forum such as legal proceedings.

¹ See the REGULATIONS RELATING TO THE CONDUCT OF ENQUIRIES INRO ALLEGED UNPROFESSIONAL CONDUCT UNDER THE HEALTH PROFESSIONS ACT, 1974

² "minor transgression" means conduct which, in the opinion of the registrar or preliminary committee of inquiry, on the basis of the documents submitted to the registrar or such committee, is unprofessional, but of a minor nature, and does not warrant the holding of a formal professional conduct inquiry

(Note: that the healthcare professional may refuse or be advised not to provide an explanation).

The letter of complaint together with the explanation (if submitted) is referred to the Professional Board concerned for consideration. Should the Board decide that there are grounds for complaint, a Professional Conduct Committee will hold a professional conduct inquiry, during which oral evidence is presented, often including independent, expert witnesses. Should the professional conduct inquiry find the healthcare professional guilty of misconduct, the committee's decision is final, unless either party lodges an appeal. A healthcare professional found guilty of professional misconduct may be subject to the following penalties:

- a) A caution or a reprimand or both;
- b) A fine;
- c) Suspension for a specified period from practicing his/her profession;
- d) Removal of his/her name from the relevant register;
- e) A compulsory period of professional service; or
- f) Payment of the costs of the proceedings.

What to do first?

Broadly speaking, the same complaints procedure applies to either complaint type. There are some differences with respect to the time frames for responses to a complaint.

1. Diarise the due date for the submission of your explanation.
2. Contact your professional indemnity insurers immediately.

What are the next steps

1. Should you receive a formal complaint, be sure to check the details of the complainant and/or the patient to ensure that you are the correct recipient of the complaint.
2. When you receive a copy of the complaint, be sure to check if reference is made in the complaint form to any supporting or accompanying documents or affidavits.
3. Ensure that you understand the nature of the complaint, identify the concerns that have been raised by the patient and prepare a draft response to the complaint. It is often helpful to set out an account of what took place, even if this is background information
4. Review important information like all relevant dates and supporting documentation;

5. Establish the facts before attempting to provide a full response to a complaint. In particular, if relevant medical records are no longer with the practice, obtain copies thereof.
6. Likewise, if you will be making reference to any other individual whose comments are required, obtain those comments wherever possible.
7. Be aware of patient confidentiality. Not all complaints are made by the patient personally.
8. Try to be sympathetic and understanding. Offer condolences if these are due. Do not be afraid of apologising if an error has been made.
9. Avoid blaming or judging others.
10. Avoid jargon – use plain language.

A separate file must be kept for complaints records, and these should not be included in the patient's medical records.

If you are unsure or need advice, urgently contact your professional indemnity provider for further guidance.