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## CHAPTER 10

### HEALTH OFFICERS AND COMPLIANCE PROCEDURES

#### 90. APPOINTMENT OF HEALTH OFFICER

- (1) Subject to the provisions of any other law -
  - (a) the *Minister* may appoint any person in the employ of the *national department* to be a health officer in respect of the *national department's* functions;
  - (b) the *relevant Member of the Executive Council* may appoint any person in the employ of the *provincial department*, or of a *District Health Authority*, to be a health officer in respect of the *provincial department's* functions.
- (2) The appointment in terms of either subsection (1)(a) or (b) may be general or specific.
- (3) The *relevant Member of the Executive Council* may request the National Commissioner of the South African Police Service to designate a member of that service to be a health officer with general authorisation.
- (4) A document in the *prescribed* form issued by the *Minister* or *relevant Member of the Executive Council* as the case may be, certifying that a person has been appointed to serve as a health officer, is proof of such appointment.

#### 91. FUNCTIONS OF HEALTH OFFICERS

A health officer appointed in terms of section 90 must monitor and enforce compliance with *this Act* or any other law.

#### 92. INSPECTION PROCEDURE FOR MONITORING OR ENFORCING COMPLIANCE

- (1) A health officer must conduct an inspection for purposes of carrying out the functions contemplated in section 91 in accordance with the procedure outlined in sections 93 and 94.
- (2) A health officer who conducts an inspection is obliged to attend to the following -

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- (a) inspect residential and business land or premises;
  - (b) question any person whom he or she believes may have information relevant to the inspection;
  - (c) inspect any document that a person is required to maintain in terms of any law or that may be relevant to the inspection; and
  - (d) take samples of any substance that is relevant to the inspection.
- (3) A health officer who removes any item other than that contemplated in subsection (2)(d) from land or premises being inspected must -
- (a) issue a receipt for it to the owner of or person in control of the premises; and
  - (b) return it as soon as practicable after achieving the purpose for which it was removed.

### **93. ENTRY AND INSPECTION WITH A WARRANT**

- (1) A health officer who is in possession of a warrant duly issued by a magistrate may enter and inspect any residential land or premises for the purpose of carrying out the functions in compliance with this Act.
- (2) A health officer must on entry into premises identify him- or herself by producing a certificate issued in terms of section 90 above, as well as the warrant issued in terms of subsection (1) above.
- (3) A magistrate may issue a warrant to enter and inspect if, from information on oath, there are reasonable grounds to believe that -
  - (a) there is non-compliance with the terms of *this Act* or any other law on the land or those premises; or
  - (b) in the interest of public health, it is necessary to obtain information that cannot be obtained without entering the land or those premises.

- (4) A warrant in terms of subsection (2) may only be carried out between 07:00 and 19:00 unless the magistrate who issued it states in writing that it may be carried out at night or at any other time reasonable in the circumstances.

#### **94. ENTRY AND INSPECTION WITHOUT A WARRANT**

- (1) A health officer appointed in terms of the provisions of this Act is hereby authorised to enter into business land or premises to carry out an inspection contemplated in this Chapter without a warrant of search, if in his or her opinion there is a reasonable belief that the provisions of this Act are being, about to be or have been contravened.
- (2) A health officer who is not in possession of a warrant may enter and inspect any residential land or premises, with the consent of the owner or person in charge of the land or those premises.
- (3) A health officer must on entry into premises identify him- or herself by producing the certificate issued in terms of section 90 above.
- (4) In addition to the entry permitted in terms of subsection (2), a health officer without a warrant may enter any land or premises in respect of which there is an outstanding compliance notice, issued in terms of section 96 below, for the purpose of determining whether that notice has been complied with.
- (5) Upon entering the land or premises in terms of this section, but before an inspection is carried out, a health officer must identify him or herself and show an appointment certificate to the person giving permission for entry to the premises or land.

#### **95. HEALTH OFFICER MAY BE ACCOMPANIED**

During an inspection, a health officer may be accompanied by either an interpreter or any other person reasonably required to assist in conducting the inspection, or both.

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**96. COMPLIANCE NOTICES**

- (1) A health officer who discovers that any provision of *this Act* has not been complied with may issue a compliance notice to the owner or person in charge of any relevant land or premises.
- (2) A health officer who is satisfied that the owner or person in charge of any land or premises has satisfied the terms of a compliance notice may issue a compliance certificate.
- (3) A compliance notice remains in force until a health officer issues a compliance certificate in respect of that notice.

**97. MISCELLANEOUS PROVISIONS RELATING TO HEALTH OFFICERS, INSPECTORS AND COMPLIANCE PROCEDURES**

For the purposes of *this Act* the heads of *national* and *provincial departments*, manager of a *health district* and the head of a health department of a *municipality* is deemed to be -

- (a) the owner and occupier of any land or premises that the department occupies or uses to the exclusion of any other person; and
- (b) the employer of persons in the service of that department if, as an employer, the department -
  - (i) bears any duty imposed by *this Act*; or
  - (ii) exercises any power conferred by *this Act*.

**98. OFFENCES PERTAINING TO HEALTH OFFICERS AND THEIR FUNCTIONS**

It is an offence for any person -

- (a) to refuse a health officer acting in terms of this Act access to land or premises ;
- (b) to obstruct or hinder a health officer who is carrying out a duty under *this Act*;

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- (c) to refuse to provide a health officer any information that the person is required to provide under *this Act*;
  - (d) to knowingly give false or misleading information to a health officer;
  - (e) to unlawfully prevent the owner of any land or premises, or a person working for that owner, from entering the land or premises in order to comply with a requirement of *this Act*;
  - (f) to impersonate a health officer;
  - (g) to falsify a warrant, compliance notice, compliance or appointment certificate contemplated in this Chapter;
  - (h) to fail to comply with a compliance notice;
  - (i) to act contrary to the terms of a warrant issued in accordance with the provisions of this Chapter; or
  - (j) who, in the performance of any function or exercise of any power in terms of *this Act*, acquires any information relating to the financial or business affairs of any person, discloses that information except -
    - (i) to a person who requires that information in order to perform a function or exercise a power in terms of *this Act*;
    - (ii) if the disclosure is ordered by a court of law; or
    - (iii) if the disclosure is in compliance with the provisions of any law.

## ***CHAPTER 11***

### ***REGULATIONS***

#### **99. GENERAL REGULATIONS**

The *Minister*, after consultation with the *National Health Authority*, may issue regulations on any matter in order to achieve the purpose of *this Act*, including the following:

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- (a) Procedure for determining policy contemplated in section 29(2)(a);
  - (b) Payment of fees of **public health establishments** for services rendered;
  - (c) Norms, standards, use, cleaning and disposal of specified types of protective clothing;
  - (d) Development of an essential drugs and medical and other assistive devices list;
  - (e) Human resource development;
  - (f) Integration of private care providers and **private health establishments** into the national health system;
  - (g) Returns, registers, records, documents and forms in the **national department, provincial departments**, district health authorities or **public health establishments**;
  - (h) Functions of persons who render voluntary, charitable or similar services with a **public health establishment**;
  - (i) Rendering of forensic pathology, forensic medicine and related laboratory services including the provision of medico-legal mortuaries and medico-legal services;
  - (j) Control on human bodies and tissue;
  - (k) All aspects of the management, treatment, control, prevention, notification, information, restrictions, reporting, surveillance, obligations and any other matter regarding certain **communicable diseases**;
  - (l) Actions required in a specific area in terms of the International Health Regulations Act, 1974 (Act 28 of 1974);
  - (m) The import and export of pathogenic micro-organisms;
  - (n) Health laboratory services including –
    - (i) Classification, accreditation and licensing of health laboratories;
    - (ii) Setting, monitoring and enforcing quality control standards applicable to health laboratories; and

- (o) Prevention, intervention and treatment of *non-communicable diseases*.

#### **100. CONTENT OF REGULATIONS**

In any regulation made in terms of *this Act*, the *Minister* or *relevant Member of the Executive Council*, as the case may be, may -

- (a) designate as authoritative any published methodology, procedure, practice or standard that is generally recognised as authoritative within the relevant profession; and
- (b) require any person or body to comply with that designated methodology, procedure, practice or standard.

#### **101. PROCEDURE FOR ISSUING REGULATIONS**

The *Minister* must give notice for comment in the *Government Gazette* of the proposed Regulation, not less than three months before its promulgation.

## **CHAPTER 12**

### **GENERAL PROVISIONS**

#### **102. ESTABLISHMENT OF ADVISORY OR TECHNICAL COMMITTEES OR ANY OTHER BODY ESTABLISHED UNDER THE PROVISIONS OF THIS ACT**

- (1) The *Minister* may, with the concurrence of the *National Health Authority*, appoint any advisory or technical committees for purposes of achieving the objectives of *this Act*.
- (2) When appointing an advisory or technical committee, the *Minister*, by regulation, may determine -
  - (a) its composition, functions, and working procedure;
  - (b) the terms, conditions, remuneration and allowances applicable to its members; and

- (c) any other incidental matters relating to it.

### **103. ASSIGNMENT AND DELEGATION OF POWERS**

Subject to the provisions of sections 36 and 49 of the Public Finance Management Act (Act No.1 of 1999),

- (a) the **Minister**, in writing, may delegate any power conferred on the **Minister** by **this Act** or any other Act, to -
  - (i) any person in the employ of the State; or
  - (ii) any board or body established in terms of **this Act**; and
- (b) the **relevant Member of the Executive Council**, in writing, may delegate any power conferred on that member by **this Act**, the **Minister**, or any other law, to any person or body mentioned in subsection (1)(a)(i) or (ii); or
- (c) the head of a **provincial department** may delegate, in writing, any power conferred on her or him in terms of **this Act**, to an official in the employment of that **provincial department**.

### **104. REQUIREMENTS FOR LEGAL LIABILITY**

- (1) At least one month before instituting legal proceedings against any person in respect of any act or omission in terms of **this Act**, a claimant must serve written notice of intention to institute proceedings on -
  - (a) the **Minister**,
  - (b) the **relevant Member of the Executive Council** in the province in which the cause of action arose; or
  - (c) the defendant concerned.
- (2) Notice in terms of subsection (1) to the **Minister** or a **relevant Member of the Executive Council** is deemed to be notice to the defendant concerned.

- (3) If the *Minister*, or a *relevant Member of then Executive Council*, is the defendant or respondent in any proceedings contemplated in subsection (1), any process by which those proceedings are initiated may be served on the *Minister* or *relevant member of Executive Council*, as the case may be.
- (4) A court may dispense with the requirements of subsections (1) if the interests of justice require.

#### **105. RESTRICTION OF LIABILITY**

- (1) The State Liability Act 1957 (Act No 20 of 1957) applies, with the changes required by context, to each body established in terms of *this Act*, though the reference in that Act to "the *Minister* of the Department concerned" must be interpreted as referring to the Chairperson or head of the relevant body.
- (2) No member of staff, person or contractor of a body listed in subsection (1) is liable for any report, finding, point of view, or recommendation that is given in good faith and submitted to the *Minister*, Parliament or published generally in terms of *this Act*.

#### **106. PENALTIES**

Any person who upon being charged is found guilty of an offence in terms of *this Act*, is liable to a fine or imprisonment for a period not exceeding five years, or both a fine and imprisonment.

#### **107. SHORT TITLE AND COMMENCEMENT**

*This Act* is called the National Health Act, 2000, and comes into operation on a date fixed by proclamation in the *Gazette*.