



# **PROFESSIONAL CONDUCT INQUIRY GUIDELINES**



# Professional Conduct Inquiry Guidelines

## Guidelines for Chairpersons and Committee Members

1. An invitation to sit in a disciplinary inquiry should not be accepted in the following circumstances, since it may result in an application for your recusal or review applications:
  - (a) If you have prior knowledge of the matter;
  - (b) If you have a personal relationship with the respondent (medical practitioner); or
  - (c) If there is/was any conflict between you and the respondent.
2. Familiarise yourself in advance of the following:
  - (a) The charge sheet and annexures thereto;
  - (b) The disciplinary rules and regulations of Council;
  - (c) The Health Professions Act, 1974 (Act No 56 of 1974) as amended (in particular sections 41 and 42);
  - (d) The agenda and procedure at an inquiry (chairpersons only).
3. Once you have accepted appointment and received the documents, you should refrain from discussing the merits of the matter with friends or colleagues outside the hearing.
4. Upon arrival at the venue of the inquiry, extend greetings to all parties present including the defence representatives.
5. Do not pre-judge the issue(s) but listen to all evidence and arguments and thereafter make up your mind.
6. Before the inquiry or during breaks, but before the final verdict, do not discuss the merits or any aspect of the inquiry separately with the pro forma complainant or his/her representatives or with the respondent or his/her representatives. It is inadvisable to display familiarity to any party, even if you know him/her well. All discussions should occur with your co-committee members only.
7. At disciplinary inquiries held away from home, it is sometimes unavoidable that all parties travel together or are accommodated at the same venue; take care not to discuss the case during this time.
8. At the inquiry itself –
  - (a) Do not display any bias against either the respondent or the pro-forma complainant or their respective witnesses (bear in mind that many issues are highly sensitive and that relatives of the parties and the press or members of the public may be present at the hearing);
  - (b) Do not ask leading questions (stated in a manner which suggests the answer) as it may influence witnesses;
  - (c) Do not cross-examine a witness, especially the respondent – only ask questions to clarify issues;
  - (d) Do not make any pronouncements at the stage when evidence is adduced that you disbelieve the witness's version or find it ridiculous – if you, however, have expert knowledge on the particular matter which differs from the witness's version, you should put it to the witness in order for him/her to respond to the difference in opinion;



- (e) Do not suggest answers to any witness;
- (f) Do not harass or intimate a witness or the respondent even if you do not believe his/her version;
- (g) As a committee, stick to the rules of evidence – do not allow hearsay, irrelevant evidence or unfair questions to be put to witnesses, etc. (be guided by the legal assessor in this regard);
- (h) Do not ask the respondent any questions relating to his/her previous disciplinary matters with Council, or any other previous convictions of whatever nature, or any matter not strictly relevant to the issues involved in the inquiry;
- (i) If an application for your recusal is made by the defence or the pro forma complainant, you alone must decide – the golden rule here is when in doubt better recuse yourself;
- (j) When in doubt about any question in issue, you should consult the legal assessor – he/she is on the committee exactly for this purpose;
- (k) Avoid any possible perception that you believe, disbelieve, favour, or disfavour any of the two parties before the inquiry is finalised;
- (l) Do not create the impression that you have lost interest in the proceedings by being indifferent, engage in private discussion with your co-committee member(s) or fall asleep during the testimony of a witness or a legal representative addressing the committee;
- (m) As a committee member you have the collective responsibility to furnish written reasons for any decision you make, especially at the conclusion of the inquiry. In terms of the new regulations (to be promulgated), both the respondent and the pro-forma complainant have the right to take your decisions on appeal to the Appeal Committee;
- (n) Do not be intimidated by legalistic or bombastic terms used by the respondent's or pro forma complainant's legal representatives during pre-trial or *in limine* applications, or by threats to take your decision(s) on appeal or review. You are not acting in your personal capacity but as a committee member within course and scope of the functions of Council;
- (o) Do not be misled into believing that you can be divested of any of your functions, powers or discretion, e.g. the final decision on accepting testimony of an expert witness rests with the committee as such;





- (p) The normal procedure at disciplinary inquiries involves that all witnesses are sworn in, give evidence and be cross-examined whilst standing in the witness stand, whereas the respondent occupies another stand. It is sheer courtesy on the part of the committee to allow a witness or respondent to deviate from the above procedure;
- (q) Do not be seen to 'persecute' the respondent unduly; neither should the complainant be made to feel that he/she is now the respondent – always strive to extend a fair trial to the respondent and a fair hearing to the complainant and his/her witnesses;
- (r) A Chairperson should not 'bulldoze' other committee members into accepting his/her decision – rather reach it by consensus based on the facts. Also, do not allow a request that a finding be made and reasons given within a limited time period, e.g. late afternoon;
- (s) Committee members should draw a clear distinction between the finding and the imposition of the penalty. The finding precedes the penalty and the evaluation of the facts should not be contaminated by thoughts of what the possible penalty may be. The latter can only be arrived at once all the evidence relating to factors in mitigation or otherwise have been dealt with;
- (t) At the conclusion of the inquiry, do not congratulate either of the parties, as it is inadvisable, even at that stage, to display familiarity – always keep your distance;
- (u) Furnish reasons for any of the committee's decisions as it is the collective responsibility of the committee, guided largely by the legal assessor; it is not the function of the pro forma complainant;
- (v) Always have your diary available at inquiries should a partly heard case be postponed.

