



Disciplinary Policy Procedure of SAPIK

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1. Definitions

In these regulations

“the Act” means the SAPIK Ethical Guidelines, and any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and, unless the context otherwise indicates

“appeal committee” means an *ad hoc* committee established by the council in terms of section 9(7) of the Act to deal with appeal matters from a professional conduct committee;

“appellant” means a registered person or the *pro forma* complainant who is aggrieved by a decision and/or penalty of a professional conduct committee and who appeals to the appeal committee;

“complainant” means any natural or juristic person, group or professional body, including a professional association or society, a teaching or training institution, or any health care or related facility, that lodges a complaint against a registered person about alleged unprofessional conduct;

“complaint” means any information in writing regarding alleged unprofessional conduct by a person registered under the Act that comes to the attention of the registrar or the council or a professional board or an ombudsman, or a complaint, charge or allegation of unprofessional conduct against such person;

“ethical committee” means a committee established by the professional board of SAPIK to conduct an inquiry for the preliminary and full investigation of complaints to make a determination thereon;

“inquiry” means an inquiry held by a professional board or the ethical committee of the professional board and these regulations to inquire into a complaint or charge against a registered person;

“legal assessor” means a person versed in law, with at least five years’ experience in the legal field, appointed by the registrar to advise SAPIK and/or the ethical committee on any matter of law and procedure;

“minor transgression” means conduct which, in the opinion of the registrar or the ethical committee, 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;

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

“performance assessment committee” means an *ad hoc* committee established by a SAPIK to inquire into and make a determination on the clinical or related performance of a practitioner against whom the ethical committee found evidence of poor clinical or related performance, or of a pattern of such performance, at an inquiry;

“poor performance” means negligence and conduct on the part of a practitioner which falls short of the required standards or generally acceptable norms in Kinderkinetics and which is found to be due to a lack of related skills or adequate knowledge of the Kinderkinetics field and practices;

“preliminary inquiry” means an inquiry held in terms of these regulations by the ethical committee to consider a complaint against a person registered in the register of the professional board concerned in order to make a determination on the appropriate manner of dealing with such a complaint;

“pro forma complainant” means a person appointed by the registrar to represent the complainant and to present the complaint to the ethical committee;

“respondent” means a person registered under SAPIK whose conduct is the subject of a complaint or an inquiry and these regulations, or a person opposing an appeal in terms of these regulations.

“Registrar” means a person appointed in the SAPIK office who acts as the Registrar of the SAPIK.

2. Lodging of complaints

2.1 To be acted upon your complaint must:

Download the complaint form and send it to

a.) Email: sapikinfo@gmail.com

b.) Fax: (018) 299 1825

c.) Post: SAPIK, p/x 6001, internal box 616, North West University, Potchefstroom Campus, Potchefstroom

2.1.1 State clearly in writing that you wish to lodge a complaint against a Kinderkineticist or an Assistant Kinderkineticist and/or a Kinderkinetics-in-training / Assistant Kinderkineticist-in-training and that SAPIK should investigate your complaint. This complaint must be send directly to SAPIK.

2.1.2 Detail the nature of the complaint, including all relevant information and facts as well as supporting documentation when available.

2.1.3 In all complaint cases the full name of the person who is lodging the complaint must be stated clearly.

2.1.4 When a complaint is addressed to the professional board, it must be submitted to the registrar, for attention to the chairperson of the ethics committee of the SAPIK board.

2.2 The registrar must-

2.2.1 Peruse and analyse all complaints received.

2.2.2 Categorise them according to their significance and seriousness;

2.2.3 Record each complaint against the name of the respondent concerned as it appears in the register kept in SAPIK.

2.2.4 All complaints made are taken seriously and SAPIK is committed to ensuring that both practitioners and the public are protected.

2.2.5 All complaints & information provided will be treated with the strictest confidentiality

3. Preliminary inquiry

After receiving the complaint the process is as follows:

3.1. The registrar;

a) may, after receiving a complaint, call for further information or an affidavit confirming the allegations by the complainant;

b) SAPIK will inform the respondent in writing against whom the complaint is lodged. A copy of the original complaint will be send to the practitioner.

c) SAPIK will request a response where the respondent can set his/her case.

The response can either be send via email to SAPIK or registered post (SAPIK, p/x 6001, internal box 616, North West University, Potchefstroom Campus, Potchefstroom). A timeframe will be set out in which the response must be submitted to SAPIK.

3.2 The registrar will advise him or her that failure to respond to the notification or the complaint as contemplated in subparagraph 3.1 (a)(b) will constitute contempt of board, and that a response may consist of a written communication by the respondent that he or she invokes his or her right to remain silent; and

3.3 Warning him or her that the written response referred to in subparagraph 3.1 (a)(b) may be used as or in evidence against him or her

3.4 Provided that a notification referred to in this paragraph will be deemed to have been received –

- a) on the day such notification is hand-delivered to the registered address of the respondent; or
- b) if such notification is sent by registered post, on the seventh day following the date on which it was so posted; or
- c) on the day such notification is emailed to the given email address of the respondent.

3.5 The registrar may refer the complaint directly to the ethical committee or the chairperson of such committee for instructions on the information required to complete a full investigation of the matter;

3.6 On receipt by the registrar of the further information and written response referred to in sub regulation 3.1 (a) (b), he or she must submit the complaint, such further information and the written response to the ethical committee, and if no further information or written response is received, the registrar must record this fact and report it to the ethical committee.

3.7 The ethical committee may, after due consideration of the matter, direct the registrar of SAPIK to issue a notice in writing to the respondent, to be delivered, instructing him or her to appear in person with his or her legal representative, if any, before the ethical committee at its next meeting to inquire why he or she did not respond to the council correspondence and to give his or her response to the complaint or exercise his or her right to remain silent.

3.8 If the ethical committee decides, after due consideration of the explanation by the respondent for his or her failure to respond to the council correspondence, that the respondent is in contempt of council, it must-

- a) make a finding of guilty of contempt of council and impose one or more of the penalties provided for in section 9.9 (c) of the Act;

- b) order the respondent to submit, within such period as may be determined by the ethical committee, his or her written response to the complaint or a written communication to indicate his or her exercising his or her right to remain silent; and
- c) direct the registrar to confirm its decision in writing to the respondent stating the reason (s) for the decision.

3.9 If the respondent fails to attend the meeting of the ethical committee after having been duly notified in writing to appear before the committee, the committee may –

- a) make a finding of guilty of contempt of council and impose one or more of the penalties provided for in section 9.9 (c) of the Act;
- b) order the respondent to submit, within such period as may be determined by the committee, his or her written response to the complaint or a written response to the complaint or a written communication to indicate his or her exercising his or her right to remain silent; and
- c) direct the registrar to confirm its decision in writing to the respondent stating the reason(s) for the decision.

3.10 The finding made and the penalty imposed by the ethical committee in terms of sub regulation 3.8 or 3.9 is of immediate force and effect, but may be set aside by the High Court if the respondent appeals to the Court.

3.11 If the ethical committee decides, after due consideration of the complaint, any further information which may have been obtained in terms of sub regulation 3.1(a) and the respondent's explanation of the subject matter of the complaint, that there are no grounds for taking further action on the matter, it must note and accept the respondent's explanation and give its reasons for so noting and accepting that explanation and direct the registrar to communicate its decision in writing to the complainant and the respondent stating the reason(s) for the decision.

3.12 If the ethical committee decides, after due consideration of the complaint, any further information which may have been obtained in terms of sub regulation 3.1(a) and the respondent's explanation of the subject matter of the complaint, that the respondent acted unprofessionally, but the conduct in question is found to constitute only a minor transgression, it must determine, as a suitable penalty to be imposed,

one or more of the penalties provided for in the Act and direct the registrar to formulate the charges in writing and communicate the charges and its decision to the respondent, stipulating that the penalty must be accepted or rejected within 14 days from date of receipt of the communication: Provided that if the penalty-

a.) is accepted by the respondent, proof of compliance with such penalty must accompany the notice of acceptance to the registrar, and that penalty must be regarded as a penalty imposed by the ethical committee, whereupon the matter will be regarded as finalized; or

b.) is rejected by the respondent or no response is received by the due date, the registrar must arrange for an inquiry into the professional conduct of the respondent, and the charges so formulated and the penalty so rejected or not responded to may no longer be applied to the matter.

4. Arranging an inquiry

4.1 After receipt of a directive referred to in regulation (3.11) or a notice of rejection of the penalty or if no response is received by the due date as contemplated in regulation (3.9) and (3.12), the registrar must issue a notice, essentially in the form of Annexure A to these regulations, addressed to the respondent, stating the date and time when and the place where the inquiry will be held and enclosing a charge sheet as formulated by the *pro forma* complainant.

4.2 The notice and the charge sheet referred to in sub regulation (3.1) must be served on the respondent by hand or by registered post at his or her registered address or by email, at least 60 days prior to the date of the inquiry, and a copy of the notice and charge sheet must be served or posted to the respondent's legal representative, if appointed at the time of service or posting to the respondent.

5. Request for further particulars

5.1 A request by the respondent or his or her legal representative for further particulars about the charges as formulated by the *pro forma* complainant must be received by the *pro forma* complainant at least 30 days before the date of the inquiry.

5.2 The *pro forma* complainant must furnish his or her written reply to a request for further particulars referred to in sub regulation (5.1) to the respondent or his or her legal representative within 14 days from date of receipt of the request.

5.3 The *pro forma* complainant need not respond to any request for further particulars received less than 30 days before the inquiry.

6. Pre-inquiry conference

6.1 In order to determine the issues in dispute, the *pro forma* complainant must arrange a pre-inquiry conference, which must be attended by both parties and their legal representatives, if any, on any date at least seven days before the date of the inquiry at a mutually convenient time and venue, at which conference-

- (a) the respondent or his or her legal representative must indicate the exceptions, objections (including an objection to the jurisdiction of the ethical committee to inquire into the matter) or points *in limine* he or she intends to raise;
- (b) the respondent or his or her legal representative must indicate how he or she intends to plead to the charge or charges;
- (c) copies of all documents, reports, notes, X-rays or any other exhibits which a party intends to use at the inquiry must be furnished to the other party;
- (d) perusal of the originals of the documents, reports, notes, X-rays or 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 must be furnished to the other party; and
- (g) any other matter concerning the inquiry must be resolved.

6.2 Minutes of the pre-inquiry conference must be kept and signed by both parties or their legal representatives for submission to the ethical committee at the hearing.

6.3 The ethical committee may order a party who failed to attend the pre-inquiry conference to attend such a conference and to pay the costs the registrar may determine in respect of the day so wasted because the hearing could not proceed.

7. Procedure at inquiry

7.1 The chairperson of the ethical committee must ask the respondent or his or her legal representative, if the respondent is represented, to plead to the charge, which plea must be recorded.

7.2 If the respondent, or his or her legal representative, refuses or fails to plead directly to the charge(s), the chairperson of the ethical committee must record this and enter a plea of not guilty.

7.3 If the respondent pleads guilty to the charge(s), the ethical committee must ask the respondent or his or her legal representative such questions as are necessary to determine whether all the elements of the charge(s) are admitted.

7.4 If the ethical committee is satisfied that all the elements of the charge(s) are admitted, the *pro forma* complainant must address the ethical committee and indicate whether the plea of guilty is accepted.

7.5 If the plea of guilty is accepted, the chairperson of the ethical committee must make a finding of guilty and allow the parties to address the committee in accordance with sub regulation (7.22).

7.6 If the respondent pleads not guilty or if a plea of not guilty is entered in terms of sub regulation (7.2) or if a plea of guilty is not accepted by the *pro forma* complainant, the chairperson must allow the *pro forma* complainant to address the ethical committee, lead evidence in support of his or her case, re-examine witnesses after cross-examination by the respondent or his or her legal representative and thereafter close his or her case.

7.7 The respondent or his or her legal representative may apply for his or her discharge after the *pro forma* complainant has closed his or her case.

7.8 The chairperson of the ethical committee must give the *pro forma* complainant the opportunity to reply to the application for a discharge by the respondent or his or her legal representative.

7.9 The ethical committee must then consider the application in camera and thereafter give its decision to the parties.

7.10 If the application for a discharge is dismissed, the respondent or his or her legal representative may address the ethical committee and lead evidence in support of his or her case, re-examine witnesses after cross-examination by the *pro forma* complainant and thereafter close his or her case.

7.11 The professional conduct committee may, on application, allow any of the parties to lead further evidence or to recall a witness after their cases have been closed, and the other party must be given the opportunity to cross-examine such witness.

7.12 The chairperson and the other members of the ethical committee may ask a witness questions for the sake of clarity on issues arising from such witness's evidence.

7.13 The chairperson of the ethical committee must allow further cross-examination and re-examination of a witness on matters arising from the questions by the chairperson and other members of the ethical committee.

7.14 After all the evidence has been adduced; the *pro forma* complainant and the respondent or his or her legal representative may address the ethical committee on the evidence and the legal position.

7.15 The *pro forma* complainant may reply to any matter of law raised by the respondent or his or her legal representative in his or her address and may, with leave of the ethical committee, reply to any matter raised by the respondent or his or her legal representative in his or her address.

7.16 If the respondent is not present at the inquiry after having been duly notified, the inquiry may proceed in his or her absence after the chairperson of the ethical committee has entered a plea of not guilty on behalf of the respondent, unless the respondent has pleaded guilty in writing: Provided that the ethical committee may consider the postponement of the inquiry if the respondent's absence is due to bona fide reasons.

7.17 All oral evidence must be taken under oath or on affirmation administered by the chairperson of the ethical committee.

7.18 Evidence on affidavit is admissible: Provided that the opposing party may require the deponent of such affidavit to be present for purposes of cross-examination.

7.19

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

(b) If it is practicable and appears just to the ethical committee, it 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.

7.20 At the conclusion of the hearing, the ethical committee must deliberate *in camera* and then inform the parties of its findings within such period as may be determined by the committee.

7.21 The findings of the ethical committee may include a finding of poor performance on the part of the respondent, in which case the committee must require the *pro forma* complainant and the respondent or his or her legal representative to address the committee on the appropriateness of the full or partial referral of the matter to a performance assessment committee to inquire into the performance of the respondent and make a determination on the appropriate management thereof.

7.22

(a) If the respondent is found guilty of unprofessional conduct, the *pro forma* complainant must address the committee and furnish details of previous convictions of the respondent on unprofessional conduct under the Act, if any.

(b) The *pro forma* complainant may also address the ethical committee on a suitable penalty and lead evidence in support of imposing such penalty.

(c) The respondent or his or her legal representative may thereafter address the ethical committee on the personal circumstances of the respondent and a suitable penalty to be imposed and lead evidence in support of such penalty and in mitigation of the penalty recommended by the *pro forma* complainant, where after the *pro forma* complainant may reply in aggravation of the penalty.

(d) The ethical committee must deliberate *in camera* on the appropriate penalty to be imposed, where after the chairperson must inform the parties of the penalty decided on.

(e) The finding made and penalty imposed by the ethical committee shall be of force and effect from the date determined by the committee.

7.23 If the ethical committee finds that the evidence before it points to poor performance on the part of the respondent, it may, in addition to imposing a penalty where the evidence also points to unprofessional conduct, impose practice restrictions and refer the matter, with its findings on poor performance on the part of the respondent, to a performance assessment committee to inquire into the performance of the respondent and make a determination on the appropriate management thereof and direct the registrar to arrange the performance assessment within such period as may be determined by the ethical committee.

8. Arrangement of a performance assessment

8.1 On receipt of a directive referred to in regulation (7.23), the registrar must in consultation with the chairperson of the professional board concerned, within 30 days from date of the finding by the ethical committee, appoint a performance assessment committee composed of three registered practitioners from the same discipline as the respondent and issue a notice, which must essentially be in the form of Annexure B to these regulations, addressed to the respondent stating the date and time when and the place where the assessment will be held and the areas of poor performance identified by the professional conduct committee to be assessed by the performance assessment committee.

8.2 The notice referred to in sub regulation (3.1) must be served on the respondent by hand or posted to him or her at his or her registered address by a registered post or by email at least 21 working days prior to the date set for the performance assessment.

8.3 The performance assessment committee must determine the manner of conducting the assessment of the areas of poor performance identified by the ethical committee and its duration, and communicate this to the respondent together with the notice referred to in sub regulation (3.1).

8.4 At the conclusion of the assessment the committee must make a determination on the appropriate management of the respondent's poor performance and give directives to be adhered to by the respondent to improve on his or her performance within such period as may be determined by the committee, and require the respondent to submit such reports as may be determined by the committee to make a final determination on the performance of the respondent.

8.5 The respondent must adhere to the directives given by the performance assessment committee, failing which the committee may direct the registrar to suspend the respondent from practising his or her profession until such time as he or she has fully complied with the directives.

8.6 When the respondent has complied with the directives and the performance assessment committee has received the required reports referred to in sub regulation (3), the committee must consider the reports to ascertain if the respondent has acquired the required skills to enable him or her to perform optimally in practising his or her profession.

8.7 If the performance assessment committee, on the grounds of the reports submitted, is satisfied that the respondent has acquired the required skills to practise his or her profession with reasonable skill, it may lift the practice restrictions imposed by the professional conduct committee in terms of regulation (7.23) and finalize the matter.

8.8 If the performance assessment committee, on the grounds of the reports submitted, is not satisfied that the respondent has acquired the required skills to practise his or her profession, the committee must determine the skills the respondent requires to be able to practise his or her profession with reasonable skill.

9. Appeal process

Procedure for lodging an internal appeal:

9.1. The complainant (appellant) may appeal to the appeal committee against the findings or penalty of the ethical committee or both such finding and such penalty.

9.2 The appellant must, within 21 days from the date of the decision of the ethical committee, submit to the registrar a written notice of his or her intention to appeal: Provided that a notice of intention to appeal submitted after 21 days may be considered by the appeal committee if it is accompanied by an application for indulgence stating the reasons for the delay, and the appeal committee must, on the date set down for the appeal, consider such application before the appeal on merits.

9.3 The appeal committee must provide the appellant with a copy of the transcript of the proceedings of the inquiry within 60 days from the date on which the appeal committee received the written notice of intention to appeal referred to in sub regulation (9.2). Provided the appellant pays the reasonable costs of making such copy of the transcript.

9.4 The appellant must deliver a copy of his or her papers, setting out the grounds of appeal and containing a summary of arguments, via email or registered post to the appeal committee and one copy to the other party (ethical committee) within 30 days from the date on which he or she received the copy of the transcript referred to in sub regulation (9.3).

9.5 The other party must deliver a copy of his or her reply to the appellant's papers, containing his or her summary of arguments, via email or registered post to the appeal committee and one copy to the appellant within 30 days from the date on which the appellant delivered his or her papers to the appeal committee.

9.6 The appellant must, within 14 days from the date on which the other party submitted his or her reply, deliver a copy of his or her reply to that of the other party to the appeal committee and one copy to the other party.

* All above documentation can either be sent via email or registered post (The Register office of SAPIK, P.O. Box 6001, internal box 616, North West University, Potchefstroom Campus, Potchefstroom).

9.7 The appeal committee set out by SAPIK will study the complaint separately and must consider all the above documentation by die appellant and the other party.

9.8 The appeal committee set out by SAPIK must allow representations and arguments from both parties or their legal representatives, deliberate on the matter on camera and thereafter advise the parties of its findings, which must be confirmed by the appeal committee in writing.

* Each party is responsible for his or her own costs occasioned by the preparation for and finalization of the appeal.

9.9 The decision of the appeal committee will be of force and effect from the date determined by the committee and may be set aside by a High Court if approached.

The appeal committee may decide on any of the following procedures:

- (a) Should the appeal committee find the appeal and explanation of the appellant sufficient the practitioner will be notified and the case will be seen as completed.
- (b) Should the appeal committee decide that there were grounds for complaint and the practitioner was found guilty of misconduct, the decision is final.
- (c) A practitioner found guilty of professional misconduct may be subject to the following penalties:
 - A caution or a reprimand or both as seen fit by the appeal committee.
 - A fine may be given according to the severity of the complaint or indiscretion.

- Removal of his/her name from the SAPIK register for a period of time or permanent removal
- Payment of the costs of the proceedings.

10. Continuation of inquiry

10.1 If a member of the ethical committee is unable to serve at any time after a plea has been entered, the inquiry must proceed, provided that at least two of the original members as well as the president, vice-president and/or the immediate past president of SAPIK are available to continue with the inquiry.

10.2 If the chairperson is unable to serve at any time after a plea has been entered, the inquiry may proceed with a new representative appointed from the ethical committee as the new chairperson for the remainder of that inquiry.

11. Accessibility of an inquiry

11.1 The proceedings at an inquiry are not open to the public.

11.2 Notwithstanding sub regulation (1)-

- (a) the ethical committee may take any decision in respect of any point arising in connection with, or in the course of, an inquiry *in camera*;
- (b) the ethical committee may hear any evidence adduced during an inquiry may, on good cause shown or at the discretion of the committee, *in camera*; and
- (c) the ethical committee may, on good cause shown, order that no person may at any time and in any manner publish any information which is likely to reveal the identity of any particular person other than the respondent.

11.3 Any person who contravenes or fails to comply with an order made in terms of sub regulation (11.2)(c) is guilty of an offence and to a fine not exceeding R5 000.

11.4 The council must keep recordings of all inquiries and a copy of the transcription of such a recording must, on written request and on payment of the actual cost of making such a copy, be made available to the complainant, the respondent or any other party who, in the opinion of the registrar, has a substantial interest in the matter.

12. Subpoena

A summons for attendance as a witness before the ethical committee to give oral evidence or to produce any book, record, document or thing must substantially be in the form set out in Annexure B to these regulations.