

(20 July 2007 - to date)

NATIONAL HEALTH ACT 61 OF 2003

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REGULATIONS REGARDING THE RENDERING OF FORENSIC PATHOLOGY SERVICE

*Government Notice R636 in Government Gazette 30075 dated 20 July 2007. Commencement date:
20 July 2007.*

The Minister of Health has, in terms of section 90(1)(i) of the National Health Act, 2003 (Act No. 61 of 2003), after consultation with the National Health Council, made the regulations in the Schedule.

SCHEDULE

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1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates -

“authorised person” means a medical practitioner registered as a forensic pathologist or forensic medical officer in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), to perform post mortem examinations or autopsies on a body and appointed in terms of regulation 16 of these regulations;

“autopsy” means the post mortem dissection of a body so as to determine the cause of death and the nature of injuries and disease processes which may be present;

“body” means a dead human body or the remains thereof and “corpse” has a corresponding meaning;

“department” means the relevant provincial Department of Health;

“designated facility” means a medico-legal mortuary specially designed for purposes of storing bodies and where applicable, to perform post mortem examinations and autopsies;

“designated vehicle” means a public mortuary vehicle, specially adapted in terms of applicable specifications to transport bodies;

“Head of Department” means the person appointed as the head of the provincial department responsible for health in a particular province;

“Health Professions Act” means the Health Professions Act, 1974 (Act No. 56 of 1974);

“Investigating Officer” means a member of the South African Police Service appointed in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995), and designated as an investigating officer to investigate the cause of death of a particular person and where possible, to ensure prosecution;

“medical practitioner” means a person registered as a medical practitioner in terms of the Health Professions Act, 1974;

“medico-legal investigation of death” means the investigation into the circumstances and possible cause of death which is or may have been due to unnatural causes, and includes but which are not limited to;

- (a) the obtaining of relevant information at the scene of an accident where necessary;
- (b) the performance of a post mortem examination, which may include an autopsy;
- (c) the requesting and performance of special investigations; or
- (d) the liaison with other relevant parties;

to facilitate the administration of justice;

“medico-legal mortuary” means a laboratory or mortuary of the Forensic Pathology Service that is used for post mortem examination and medico-legal autopsies;

“post mortem examination” means an examination of a body, with the purpose of establishing the cause of death and factors associated with the death, and in the context of these regulations, for medico-legal purposes;

“the Act” means the National Health Act, 2003 (Act No. 61 of 2003);

“the Service” means the Forensic Pathology Service in a province, providing medico-legal investigation of death due to natural or unnatural causes;

“the South African Police Service” means the police service established in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995); and

“unnatural death” ,for the purposes of the medico-legal investigation of death, the following shall be deemed to be deaths due to unnatural causes -

- (a) any death due to physical or chemical influence, direct or indirect, or related complications;
- (b) any death, including those deaths which would normally be considered to be a death due to natural causes, which in the opinion of a medical practitioner, has been the result of an act of commission or omission which may be criminal in nature; or
- (c) where the death is sudden and unexpected, or unexplained, or where the cause of death is not apparent.

2. Application

These regulations are only applicable to deaths that are, or appear to be, due to unnatural causes.

3. Forensic Pathology Service

The relevant member of the Executive Council of a province must within national policy and in terms of these regulations ensure that a Forensic Pathology Service is established within the respective provincial Department of Health.

4. The Service contemplated in regulation 3 includes, but is not limited to, -

- (a) carrying out a scene of death investigation, and where appropriate, in consultation with an investigating officer;
- (b) obtaining information that is relevant to the medico-legal investigation of a death;
- (c) taking responsibility for the collection of a body and removal from the scene;
- (d) taking custody of a body from the scene of death until released for burial or cremation, and the processes attached thereto;
- (e) maintaining evidence relating to a body and any associated items at all times;
- (f) assisting, as far as is possible, the process of identification of the deceased;
- (g) conducting a post mortem investigation, including external and internal examination of a body and harvesting of material, tissue or fluids for evidentiary or diagnostic purposes;
- (h) requesting and conducting appropriate special investigations;

- (i) providing medico-legal reports, expert testimony and opinions;
- (j) archiving documents, specimens and related materials;
- (k) collecting, reviewing and analysing related data to determine trends or prevalence of incidents of unnatural death; and
- (l) providing information and advice to health or other government authorities or departments.

5. Removal and transportation of body

The Service is responsible for the handling and transporting of a body in a designated vehicle to a designated facility.

- 6. A person in charge of a health establishment where a person has been declared dead and the cause of death appears to be unnatural must immediately notify the South African Police Service and the Service of such death.
- 7. The Service may only remove a body from the scene of death or health establishment after the South African Police Service has given written authority for removal of such body by the Service.
- 8.
 - (a) A body may only be removed from one designated facility to another after the written approval of the person in charge of the facility from where a body is being removed.
 - (b) The approval contemplated in paragraph (a) must be given after consultation with the South African Police Service.

9. Admission of body

The Service may not admit a body to a designated facility unless -

- (a) such body is certified dead or it is in such a state that it is accepted with certainty that the person is dead;
- (b) an individual case file is opened for such body and a register number assigned; and
- (c) such a body is provisionally identified either by name or register number contemplated in paragraph (b).

- 10.** The person in charge of a designated facility to which a body has been admitted in accordance with regulation 9, must ensure that -

- (a) a photograph of the face of the deceased is taken; and
- (b) all fingerprints of the deceased are taken.

11. Storage of body

- (a) The person in charge of a designated facility must ensure that a refrigerated facility, maintained at a set temperature, is used to store all bodies.
- (b) All bodies must be labelled with a registration number and each body must be enclosed in a bag made for that purpose.

- 12.** The person in charge of a designated facility must ensure that the temperature of each fridge that contains a body is recorded on a graph at least twice per day.

- 13.** The person in charge of a designated facility must set up control measures to ensure that only authorized persons have access to bodies, areas related to post mortem examinations and to the storage facility in which bodies are kept.

- 14.** The official authorised to admit or remove a body must record any removal of a body in an incident log, including its identity, where available, date, time and purpose of such removal.

15. Medicolegal Post Mortem Examination

A post mortem examination must only be conducted at a designated facility or institution.

16. Practitioners authorised to conduct post mortem examination

A post mortem examination must only be performed by an authorised person who has been appointed by the Head of Department for this purpose.

- 17.** An authorised person may consult with other qualified professionals and request such professionals to participate in the post mortem examination and contribute to the further examination of such a body.

- 18.** A student or trainee personnel in forensic pathology may participate in a post mortem examination, but only under the direct guidance and supervision of an authorised person.

19. Additional evidence at post mortem examination

Subject to any other law, an authorised person may submit for examination, or cause to be submitted for examination, any tissue, fluid, object, or thing related to a body, to an authorised institution, for purposes of establishing the cause and circumstance of a death of a person or for furthering the administration of the processes and administration of justice.

20. An authorised person is the only person who has the authority to decide to dissect a body, remove or cause to be removed, any part, organ or contents of a body for a special investigation.

21. Practitioners authorised to observe post mortem examination

Any person other than -

- (a) the investigating officer investigating the cause of death; or
- (b) an authorized person,

but who can demonstrate a material interest in the outcome of a particular post mortem examination, may apply to the magistrate within whose jurisdiction the cause of death is being investigated or to the authorised person, to allow his or her independent forensic pathologist, forensic medical officer or medical practitioner to attend on his or her behalf, and observe, that post mortem examination.

22. The consideration of the application referred to in regulation 21 must not unduly delay the post mortem examination.
23. Notwithstanding regulation 21, an authorised person may allow certain authorised officers of the designated facility where a post mortem examination is to be held, to assist him or her with such post mortem examination and perform certain functions connected therewith.
24. Where the authorised person has declined the request contemplated in regulation 21, written reasons must be forwarded to the person concerned within 72 hours of such request being declined.
25. Any person aggrieved by the decision of the authorised person may appeal to the Head of Department within 48 hours of being notified of the decision to decline the request contemplated in regulation 21.

26. Protection of Records

- (1) The person in charge of a designated facility where a post mortem examination was conducted must set up control measures in order to ensure only authorized access to records relating to post mortem examinations and to the storage facility in which records are kept.
- (2) Any person who -

- (a) fails to perform a duty imposed on them in terms of subregulation (1);
- (b) falsifies any record by adding to or deleting or changing any information contained in that record;
- (c) creates, changes or destroys a record without authority to do so;
- (d) fails to create or change a record when properly required to do so;
- (e) provides false information with the intent that it be included in a record;
- (f) without authority, copies any part of the record;
- (g) without authority, connects the personal identification elements of a body's record with any element of that record that concerns the body's history;
- (h) gains unauthorised access to a record or record-keeping system, including intercepting information being transmitted from one person, or one part of a record-keeping system, to another;
- (i) without authority, connects any part of a computer or other electronic system on which records are kept to -
 - (i) any other computer or electronic system; or
 - (ii) any terminal or other installation connected to or forming part of any other computer or electronic system; or
- (j) without authority, modifies or impairs the operation of -
 - (i) any part of the operating system of a computer or other electronic system on which a body's records are kept; or
 - (ii) any part of the programme used to record, store, retrieve or display information on a computer or other electronic system on which a body's records are kept,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year or both a fine and such imprisonment.

- 27.** The person in charge of a designated facility must keep a register in which any file or any part thereof, that is removed from the storage facility is recorded, and in which he or she must enter all particulars of the person authorised to remove such file or any part thereof, purpose, date and time removed and returned and information extracted therefrom.

28. Identification of body

A body must only be identified by a spouse, partner, major child, parent, guardian, major brother, major sister, care-giver or any person with personal knowledge of the deceased and is in possession of such deceased person's authentic identification document.

- 29.** The personal effects of the deceased must be handed to the person contemplated in regulation 28 if the authorised person who conducted the post mortem examination and the Investigating Officer are satisfied that such personal effects are not required as evidence.

30. Release of body

A body must only be released from the Service after -

- (a) the spouse, partner, major child, parent, guardian, major brother, major sister, care-giver has given written consent, or by order of the Court;
 - (b) the authorised person, after consultation with the investigating officer, has given approval for such release of the body; and
 - (c) where necessary, an appropriate tissue or blood sample has been procured or other investigations done, in order to assist with the medico-legal investigation and to facilitate the scientific identification of the deceased.
- 31.** Where the person giving consent as contemplated in regulation 30[^] is unable to pay for the burial of the body, the local municipality having jurisdiction of the area where the body was stored, must provide for a pauper burial or cremation of such a body.

32. Unidentified body

A body that has not been identified must be moved to a freezer within seven days of admission, and if such body remains unidentified for 30 days, the local municipality under whose jurisdiction the designated facility is, must provide for a pauper burial or cremation of such a body.

- 33.** The Director-General may donate a body referred to in regulation 32 or any part of that body, to any institution for any purpose contemplated in section 62(3) of the Act.

34. Death of detained person

The provincial head of the Service must be immediately notified when a facility is requested to admit a body of a person who died of unnatural causes whilst detained by the South African Police Service or the Department of Correctional Services as an awaiting-trial or convicted prisoner.

35. When necessary, a post mortem examination to determine the cause of death of an awaiting trial or convicted prisoner, may only be performed -

- (a) by an authorized person specifically appointed by the provincial head of the Service;
- (b) in case of death whilst detained by the South African Police Service, after the Independent Complaints Directorate has been informed of such post mortem examination; and
- (c) in case of death whilst detained by the Department of Correctional Services as a sentenced inmate, after the Inspecting Judge referred to in the Correctional Services Act, 1998 (Act No. 111 of 1998), has been informed of such post mortem examination.

36. Medico Legal Investigation of Specific Categories of Unnatural Deaths

- (1) In case of death or deaths associated with aircraft accidents, mass disasters and scuba- or other diving-related incidents, the South African Police Service must immediately notify the Chief Specialist: Forensic Pathologist of a province where such death or deaths occurred.
- (2) The post mortem examination of the deaths contemplated in sub- regulation (1) must only be performed by a registered forensic pathologist, as designated by the Chief Specialist of such a province.
- (3) The investigation of specific categories of unnatural deaths must be managed in consultation with the Chief Specialist: Forensic Pathologist of the province where such death or deaths occurred.

37. National Forensic Pathology Service Committee

The Minister must, in terms of section 91(1) of the Act, establish an advisory committee known as the National Forensic Pathology Service Committee to advise the Minister on -

- (a) policy concerning any matter that will ensure, promote, improve or maintain forensic pathology services;
- (b) norms, standards and guidelines for the rendering of forensic pathology services, including health and safety standards and the minimum standards for accreditation of forensic mortuaries; and
- (c) any technical matter related to forensic pathology services that may have an impact on health policies and strategies.

38. Accounting and Reporting Requirements

The Head of Department must submit annual returns of statistics and reports to the Director-General in a format determined by the Director-General from time to time.

39. Offences

Any person who fails to comply with any of the provisions of these regulations is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

40. Delegation

- (1) The Head of Department or the provincial head of the Service may, in writing, and on such conditions as he or she may determine, delegate or assign any power or duty to an official of the provincial department or staff of the designated facility, as the case may be, unless there is a specific prohibition of such delegation or assignment.
- (2) A delegation or assignment made under sub-regulation (1) does not -
 - (a) divest the Head of Department or the provincial head of the Service of the responsibility or accountability concerning the performance of the function involved; orduty to an official of the provincial department or staff of the designated facility, as the case may be, unless there is a specific prohibition of such delegation or assignment.
- (2) A delegation or assignment made under sub-regulation (1) does not -
 - (a) divest the Head of Department or the provincial head of the Service of the responsibility or accountability concerning the performance of the function involved; or
 - (b) prohibit the performance of the function involved by the Head of Department or the provincial head of the Service.
- (3) The Head of Department or the provincial head of the Service may amend or set aside any decision taken by a person in the exercise of any such power delegated to that person.

(Signed)

M.E.TSHABALALA-MSIMANG, MP
MINISTER OF HEALTH