

IMPORTANT NOTICE IN RELATION TO THIS MEMORANDUM:

This document is not for publication to the public or to any other entity or person other than the requester of this memorandum. This document is based on the information provided by client. It is also directed by the needs of the client which may differ from one setting to another. We urge that clients do not use the information into other settings without confirming with us. When clients intend using extracts of this document elsewhere, we urge clients to please provide us with such documents, so that we can advise on the appropriate use of our work within such contexts. Extracts or paraphrasing from documents relating to law, ethics and/or health policy may be misunderstood when taken out of context, and may not correspond with our intended interpretation or meaning.

MEMORANDUM:
POWERS OF INSPECTORS UNDER THE HEALTH PROFESSIONS ACT, 1974

January 2024

1. Introduction

Healthcare practitioners, registered at the HPCSA may, from time to time, have inspectors visit their practices, or other places of work. Below we set out the powers of inspectors in terms of the Health Professions Act, and provide a link to the current HPCSA inspectors per region.

Practitioners are entitled to check that inspectors are duly certified, are who they claim they are, and are acting in terms of the provisions of the law, set out below.

2. The law

The Health Professions Act provides for the following powers in terms of the following sections:

- Section 41(2): A professional board may “consult with or seek information” relating to a complaint, charge or allegation. In such a case, the inspector could be requested to come at a time when the practitioner is able to see them. The inspector must state why a consultation or information is sought, i.e. that there is a complaint, charge or allegation about a specific matter or matters.
- Section 41A(2): The Registrar may, “where necessary” to establish “more facts”, appoint an officer of a professional board as an investigating officer. However, in section 41A(4), the Registrar must issue the person thus appointed with a **certificate**, which must be produced on demand. These investigations can take place due to alleged contraventions of the Act by anyone or a registered person or into a charge, complaint or allegation of unprofessional conduct.
- In terms of section 41A(6) and (7), a search warrant (issued by a judge or magistrate) is required when an inspector is requiring of a person to produce any record or article, and answers questions in relation to such an item or items.

A practitioner can ask whether an inspection is about a contravention of the Health Professions Act, and which provision (e.g. on registration, training, etc.), or a complaint about a specific issue (e.g. not keeping adequate records), a charge (in which case a charge sheet should be available), and/or specific unprofessional conduct (e.g. sick certificates, or overservicing as alleged by a medical scheme).

- In terms of section 41A(8), the investigating officer must compile a report for the HPCSA, and further steps could follow (e.g. a section 41 Inquiry or an impaired practitioner investigation in terms of section 51). If the report does not reveal any grounds for action, a copy must be provided to the practitioner who was investigated in terms of section 41A(8)(b)(iii).
- The inspector is obligated to keep all information confidential, and only issue it in the Report in terms of subsection (9) to the HPCSA “registrar, the president, chairperson of a relevant professional board or the public prosecutor concerned in the case of an offence in terms of this Act, or by order of a court”. Patient information can only be disclosed with the consent of the Presiding Officer at an Inquiry, or by order of court.

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One must bear in mind that obstructing a lawful investigation could lead to penalties being imposed, but one has the right to establish that the investigation is indeed lawful and authorised, i.e. in line with the sections in the Act set out above.

3. Inspectors of the HPCSA – names and contact details

The list of HPCSA inspectors per province is available here: <https://www.hpcsa.co.za/?contentId=413> or by:

- Navigating on the top banner categories of the HPCSA website (www.hpcsa.co.za) to “Legal and Regulatory Affairs”;
- On the dropdown menu, click “Inspectorate”
- The names, addresses and contact details of HPCSA staff in the Inspectorate, and Inspectors, are provided per province.

The office phone numbers on that page, or the general telephone nr: +(27) 12-338-9300 could be used to verify the identity and validity of the HPCSA's inspector's mandate and certificate.
