



**RULES OF PROCEDURE FOR THE
SECTION 59 INVESTIGATION PANEL
APPOINTED BY
THE COUNCIL FOR MEDICAL SCHEMES**



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1. Background

- 1.1. As set out in **Circular 45 of 2019: Terms of Reference for the Section 59 Investigation Panel (“the Terms of Reference”)**, an Investigation Panel is appointed by the Council of Medical Schemes (CMS) in accordance with the power of the CMS to protect the interests of members at all times; make recommendations to the Minister of Health (“**the Minister**”) on the quality of health care services provided for by medical schemes; investigate complaints and settle disputes in relation to the affairs of medical schemes as provided for in the Medical Schemes Act, 1998 (Act 131 of 1998) (“**the Act**”); and advise the Minister on any matter concerning medical schemes.

2. Purpose

- 2.1. The purpose of the Rules of Procedure is to:
- 2.1.1. inform investigation participants, the subject(s) of an investigation and other stakeholders about the investigative process, and
 - 2.1.2. Guide the investigative process to ensure that investigation activities are conducted in a procedurally fair manner, thoroughly, objectively and effectively, in accordance with professional standards and best practice.

3. Legal Jurisdiction

- 3.1. The Investigation Panel¹ (“**the Panel**”) will act in accordance with the Constitution of the Republic of South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (“**the Equality Act**”), and inter alia sections 7(d) and (g), 43 and 47 of the Act.

4. The Nature and Objective of the Investigation

- 4.1. The Panel shall function as an inquisitorial body and not as an adjudicative body and will make recommendations to the CMS as envisaged in the Terms of Reference.
- 4.2. Recommendations to the CMS will be made by a unanimous decision or a majority decision of the Panel. Should a unanimous decision not be reached, a dissenting Panellist may author a separate recommendation to the CMS.

¹ Adv Tembeka Ngcukaitobi (chair), Adv Adila Hassim and Adv Kerry Williams.



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- 4.3. In keeping with the principle of open justice the Investigation will be a public process. However, upon request and if reasonably necessary, the Panel may protect the identity of persons furnishing information or protect confidential information.

5. The Standard of Proof and Treatment of Evidence

- 5.1. The Panel will observe the principles of natural and open justice. The investigation is not a criminal process; accordingly, the standard of proof is a civil standard.
- 5.2. Consistent with the inquisitorial nature of the investigation, the progression of the investigation will depend upon the facts that are gathered in the course of the investigation.
- 5.3. Evidence that is presented to the Panel will be attested to by affidavit or an oral oath/affirmation. Should a person choose to submit evidence by way of affidavit, then the Panel may question such person.
- 5.4. The Panel will conduct its investigation through a combination of public hearings, bilateral private interviews and an evaluation of written and oral evidence.
- 5.5. The Panel will conduct interviews with any relevant party that may assist the Panel in fulfilling its mandate.
- 5.6. All interviews and public hearings will be recorded so that there is a full record of the proceedings. Bilateral interviews shall be transcribed where necessary and anonymised if reasonably requested by a person being interviewed. Electronic recordings will be saved in a secure location as determined by the Panel.

6. Rights and Obligations of Participants in the Investigation

Rights

- 6.1. Persons against whom written allegations or complaints are made will have an opportunity to respond to such allegations or complaints. They may do so by way of affidavit or oral evidence.



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- 6.2. Persons interviewed publicly or privately by the Panel will be provided with the details of any complaints or allegations made against them one week (7 days) in advance of the interview or hearing.
- 6.3. Any implicated party or potentially implicated party may be present in any of the public hearings. If an allegation is made against any person during the public hearings, then they may respond to the allegations on a date to be arranged with the Chair of the Panel. The response may be by way of affidavit or by way of oral evidence.
- 6.4. If any allegation is made against a party in a private bilateral hearing the Panel will notify such implicated party of the allegation, which/who will in turn have an opportunity to respond to the allegation by way of affidavit or private bilateral hearing.
- 6.5. Any person appearing before the Panel may be assisted by an attorney or an advocate, but evidence will be presented through questions by members of the Panel.

Obligations

- 6.6. Persons against whom written allegations or complaints are made and participants shall not interfere with the investigation and shall abstain from withholding, destroying or tampering with evidence, and from influencing, coaching or intimidating the complainant and/or witnesses. Any such actions will be investigated by the Panel and appropriate action will be taken, which may include a recommendation for referral to national prosecuting authorities for criminal investigation.

7. Technical Support and Information

- 7.1. The Panel may:
 - 7.1.1. engage experts to assist the Panel in performing its functions;
 - 7.1.2. request further information from any relevant party that may assist the Investigation Panel in fulfilling its mandate. Such information may include documents, correspondence and data which will inform a better understanding of the issues raised by complainants and those implicated;
 - 7.1.3. Upon receipt of written submissions, require any person to appear before the Panel to be interviewed on specified aspects of the Terms of Reference. The Investigation Panel may issue directions regarding such oral evidence.



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7.2. The Panel will be assisted by a Secretariat. All inquiries, submissions and other correspondence to the Panel must be addressed to the Secretariat, c/o Hogan Lovells (SA) Inc, Attention: SJ Thema/ Ushir Ahir/ Nonkululeko Ngele: [sj.thema@hoganlovells.com/ushir.ahir@hoganlovells.com/Nonkululeko.ngele@hoganlovells.com].

7.3. Any person assisting the Panel will be required to make a declaration in order to give effect to paragraph 9.

8. Reporting Technical Support and Information

8.1. The Panel shall provide a draft interim report of its investigation and recommendations to the Chair of the CMS by 1 November 2019. Parties will be given an opportunity to comment by 30 November 2019. The Panel will provide a final report to the CMS by 21 December 2019.

8.2. The Panel will simultaneously make its report public by publishing it on the website dedicated to the Panel's investigation.

9. Confidentiality

9.1. Any person assisting the Panel shall preserve the confidentiality of information that comes to the knowledge of such person in the performance of his or her duties relating to the function of the Panel, except in so far as the publication of such information is necessary in order to further the functions of the Panel.

[ENDS]