

Considerations to be made in the constitution of the Health Professions Council of South Africa to commence its term in November 2025: Law v. practice law

The Health Professions Council of South Africa (HPCSA) is a statutory body established in terms of section 2 of the Health Professions Act No. 56 of 1974, as amended (the Act). The members of council hold office for a period of 5 years,^[1] and the registrar is responsible for publishing the names of the members of the council and the date of commencement of their term of office in the Government Gazette as soon as possible after the constitution of council.^[2] On 29 October 2015, the registrar published a board notice in terms of the Act and determined the date of commencement of the term of office for members to be 1 October 2015 to 30 September 2020.^[3] On 15 December 2020, the registrar published a board notice in terms of the Act, and determined the new date of commencement of the term of office for members to be 16 November 2020 to 15 November 2025.^[4] This means that the HPCSA had a governance lacuna between 1 October 2020 and 16 November 2020.

The question to be asked is whether the legislative authority could not foresee the possibility of a governance lacuna, and prevent it while enacting the Act. In this editorial, I demonstrate that the legislative authority had foreseen that delays in the constitution of the new professional boards may be a possibility, and empowered the professional boards to designate people to constitute council, no less than 3 months prior to the date of expiry of the term of office of the members of the council.

Constitution of council

Section 5 of the Act stipulates how the council should be constituted. The constitution of council is a multiparty responsibility, with the Minister of Health ultimately being given the power to constitute the council if the other parties fail in their responsibility. The council is constituted as follows:

Persons designated by the professional boards

The 12 professional boards are entitled to designate 16 people, proportional to the number of people registered to practise the professions falling under each professional board.^[5] It is important to note that the Act only refers to the current professional boards, and not specifically to newly constituted professional boards. Furthermore, the Act does not state that a person or persons designated by the professional boards is to be from among the professional board members, but a person or persons registered to practise the profession falling under the professional board in terms of the Act. This means that the designation among the newly constituted professional board members is a matter of practice and not of law.

Considering that the term of office of the current professional boards is from 1 November 2020 to 31 October 2025, the current professional boards should inform the registrar of the person designated by them not later than 15 August 2025. Should the registrar not receive names

of the people designated by the professional boards to constitute council, he or she should inform the health minister to exercise his or her power in terms of section 5(6).^[2]

Persons designated by designating/appointing bodies/persons

The Minister of Education and Training and the Minister of Defence are each required to appoint one person in the employment of their departments.^[6] Universities South Africa is required to appoint three persons to constitute the council.^[7] These three entities also have a duty to inform the registrar of the person appointed by them to constitute the HPCSA not later than 15 August 2025, and should they fail to do so, the registrar should inform the health minister, who should exercise his or her power in terms of section 5(6).

Appointments by the Minister of Health

The Minister of Health appoints nine community representatives,^[8] a person in the employment of the Department of Health^[9] and a person versed in law.^[10] The Act only states that the minister should inform the registrar of his or her appointments as soon as possible after the professional boards and other people/bodies have exercised their powers as stated above, without prescribing the timelines. Should the professional boards and/or other entities fail to designate or appoint persons to constitute the council accordingly, the minister has the power to make the necessary designations or appointments, and any designation or appointment made by the minister is deemed to have been properly made in accordance with section 5(1).^[11]

Duties of the registrar

Besides receiving the names of designated or appointed persons, the registrar is responsible for publishing the names of the members of council, and the date of commencement of their term of office, in the Government Gazette, as soon as possible after the constitution of the council (s5(6)). The registrar convenes the first meeting of the council in terms of section 1 of the Act.

Conclusion

If all the parties involved in the multi-party constitution of the council, including the minister, play their role or exercise their powers in terms of the Act, there can never be a governance lacuna of the HPCSA. Existence of any governance lacuna can only be a creation of practices that are not provided for in the Act.

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1. South Africa. Health Professions Act No. 56 of 1974. S5(2).

2. South Africa. Health Professions Act No. 56 of 1974. S5(6).

3. South Africa. Government Gazette, 39335. Board Notice 239 of 2015. https://www.gov.za/sites/default/files/gcis_document/201510/39335bn239 (accessed 16 June 2024).
4. South Africa. Government Gazette, 43998. Board Notice 164 of 2020. <https://www.gov.za/sites/default/files/gcisdocument/202012/43998bon164> (accessed 16 June 2024).
5. South Africa. Health Professions Act No. 56 of 1974. S5(1)(a).
6. South Africa. Health Professions Act No. 56 of 1974. S5(1)(c) and (e).
7. South Africa. Health Professions Act No. 56 of 1974. S5(1)(f).
8. South Africa. Health Professions Act No. 56 of 1974. S5(1)(d).
9. South Africa. Health Professions Act No. 56 of 1974. S5(1)(b).
10. South Africa. Health Professions Act No. 56 of 1974. S5(1)(i).
11. South Africa. Health Professions Act No. 56 of 1974. S5(5).

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