



South African Medico-Legal Association
In Pursuit of Excellence

DISCIPLINARY AND APPEALS POLICY

Policy date approved: _____

Policy date revised _____ **9 July 2024** _____

1. PURPOSE OF THE POLICY

In terms of the South African Medico-Legal Association (SAMLA) Code of Conduct designed for its members, a disciplinary and appeal policy is indicated for the Association. The idea is to ensure that SAMLA members practice medico-legal matters in terms of the goals and philosophy of the Association as defined in the Memorandum of Incorporation (commonly known as “MOI”) which provides “SAMLA subscribes to the highest standards of ethics in conducting business and related activities. SAMLA reaffirms the mission statement contained in its Memorandum of Incorporation which includes inter alia the promotion of ethics and competent practice for the benefit of public interests...”

2. DISCIPLINARY PROCESS

2.1 The disciplinary jurisdiction of the South African Medico-Legal Association

Members of SAMLA acknowledges the disciplinary jurisdiction of the South African Medico-Legal Association and its authority to enquire into and deal with any complaint of misconduct or otherwise in terms of the Memorandum of Incorporation and the SAMLA Code of Conduct for members.

The SAMLA Code of Conduct and the MOI apply to all members of the Association and must be adhered to. Members, in turn, must comply with the Uniform Rules of Professional Conduct of the SAMLA MOI as well as the Code of Conduct for members.

2.2 Complaints lodged

SAMLA is obliged to take cognizance of and enquire into any complaint lodged against any SAMLA member. SAMLA shall also have the right to enquire into the conduct of any member, irrespective of whether or not a complaint has been lodged. SAMLA, through its disciplinary committee, shall communicate in writing to the complaint, alternatively the conduct investigated by the committee against a member by communicating same to the member affected. Consequently, the member involved shall be afforded an opportunity to reply in writing his or her response in writing, to the disciplinary committee. SAMLA shall determine the manner in which and the procedure by which such an enquiry shall be conducted, provided that the member concerned, shall be given an opportunity to raise any defense in writing, he or she may have or any mitigating circumstances, which he or she may wish to place before the Disciplinary Committee.

2.3 The formation and composition of the disciplinary committee

Members of the disciplinary committee are formed by the Non-Executive President, National Chairperson and the two National deputy chairpersons. The disciplinary committee shall elect its own chairperson.

The SAMLA disciplinary committee will consider and investigate all complaints received against members of the Association.

2.4 Role of the disciplinary committee

2.4.1 Part of the function of the Disciplinary Committee is to gather evidence referred to by the Legal and Ethics committee, any SAMLA member(s) or otherwise. The Disciplinary Committee shall as part of its investigation, invite the member against whom a complaint is lodged, to give a written response to the Disciplinary Committee to the complaint within a reasonable period as determined by the Committee.

- 2.4.2 Should the Disciplinary Committee after consideration of all the evidence conclude that the complaint warrants a hearing, it shall appoint, both the initiator and a disciplinary panel consisting of three committee members to conduct the hearing.
- 2.4.3 In the case of a disciplinary hearing against a senior member, the Disciplinary Committee shall assign a senior initiator, and the panel shall consist of three senior members of the Association, comprising of members of the Disciplinary Committee or outside the Committee or a combination thereof.
- 2.4.4 Notwithstanding the above-mentioned provisions, SAMLA may in its discretion appoint an *ad hoc* Disciplinary Panel consisting of a senior paid-up member, a senior who is a member of another Association, including the advocates affiliated to the General Council of the Bar of South Africa (GCB) or the attorneys affiliated to the Legal Practice Council, a judge or retired judge, provided that SAMLA shall consider any decision by the *ad hoc* Disciplinary Panel to ensure it complies with the provisions of SAMLA's MOI and Code of Conduct.

2.5 The hearing

- 2.5.1 A Disciplinary Panel shall appoint its own Chairperson for the purpose of the hearing.
- 2.5.2 The disciplinary hearing must take place in the presence of the member concerned after the member was timeously provided with particulars of all allegations and charges against him or her and the date, time and venue of such hearing.
- 2.5.3 When an enquiry is held into a member's alleged misconduct, the member charged may be represented by a fellow member or members of the Association. Where appropriate circumstances exist, the member charged may be entitled to be legally represented at such disciplinary hearing.
- 2.5.4 Should the member not attend after having been so advised the committee shall, at its discretion, be entitled to proceed with the hearing in the absence of such member.

2.5.5 At the hearing, all evidence placed before the panel shall be recorded in a manner deemed fit by the Chairperson of the panel.

2.5.6 It shall be the duty of every SAMLA member, when called upon to do so by the initiator, to furnish the Disciplinary Committee, any *ad hoc* Disciplinary Panel or any Disciplinary Panel or the SAMLA Board with all such information as he or she may be called upon to furnish in furtherance of the disciplinary hearing and to produce all such books, documents or other records as he or she may be called upon to produce by the initiator and/or Chairperson of the Committee, Panel or Board.

2.6 Sanctions if found guilty

In the event of a member being found guilty of the misconduct or matter he or she has been charged with or a lesser charge by a Disciplinary Panel, the said panel will have the powers to (i) admonish the member, (ii) alternatively, temporarily suspend or (iii) alternatively, terminate a member's membership.

3. APPEAL PROCESS

3.1 Rights of the member

3.1.1 Right to appeal

A member shall have the right to appeal to the SAMLA Board in respect of a decision of a Disciplinary Panel provided the appeal shall be lodged in writing to the Chairperson of the panel within 14 (fourteen) days after the sanction was imposed.

3.1.2 The right to legal representation

The member concerned, shall have the right personally or through a legal representative, to address the SAMLA Board by way of written or oral representations.

3.1.3 No member of the SAMLA, unless upon good reason shown, shall be disqualified from taking part in any SAMLA activity during the disciplinary process.

3.1.4 No member of SAMLA shall be denied his or her SAMLA membership unless he or she

has been subjected to a fair hearing and his or her right to appeal has been exhausted and the appeal process has reached finality.

3.2 Role of the Board

3.2.1 Decision by a Disciplinary Panel

Any decision by a Disciplinary Panel to temporarily suspend or terminate a member's membership in terms of the Code of Conduct and MOI, the suspension or termination will only take effect after having been considered by the SAMLA Board in camera and endorsed.

3.2.2 Board may call on additional evidence

Whenever the SAMLA Board considers a decision of an *ad hoc* Disciplinary Panel or any Disciplinary Panel previously appointed to conduct a hearing and who resolved to suspend or terminate a member's membership in compliance with SAMLA's MOI and the Code of Conduct, the Board consider the matter and deal with the matters at hand as it gleans from the record that formed part of the proceedings during the hearing, provided that the SAMLA Board may, in its discretion, allow further evidence or recall any witness as it deems fit and in the interest of justice.

3.2.3 Ratification, amend or replace the decision of the ad hoc Disciplinary Panel

The SAMLA Board may ratify, amend or replace the decision of the *ad hoc* Disciplinary Panel or any other Disciplinary Panel, including the admonishment, the temporary suspension or termination of a member's membership, provided the temporary suspension or termination of membership shall only take effect, upon the ratification of a two thirds majority of the SAMLA Board.

4. GENERAL

SAMLA Members are ethically bound in terms of the Code of Conduct and SAMLA MOI to report any misconduct which they become aware of, to the SAMLA Director for Administration as soon as reasonably possible.

Any matter adversely affecting the South African Medico-Legal Association, or any SAMLA member's misconduct must be brought to the Association via the SAMLA Director for Administration in writing, by any person who has the interests and values of the

Association, at heart. SAMLA may in turn, subject to the provisions of SAMLA's MOI and Code of Conduct, take such action thereon as it shall deems fit.

5. REPORTING MISCONDUCT TO THE PROFESSIONAL BODIES

SAMLA is Constitutionally and Statutorily bound to report any serious misconduct by any of its members where such conduct may be deemed to bring the healthcare profession or legal profession in disrepute to *inter alia* the Health Professions Council of SA, the South African Nursing Council, any other Healthcare Body and the Legal Professions Council.

Approved by SAMLA Board: 9 July 2024_____

Signed:



Prof E Stellenberg
National Chairperson

Date: 24 January 2025