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## Media Statement

### THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA AND THE PROFESSIONAL BOARD OF PSYCHOLOGY

07 March 2017

For immediate release

Pretoria - On 2 September 2011, the Minister of Health (“**Minister**”) published the Regulations Defining the Scope of the Profession of Psychology (GNR 704 in *Government Gazette* 34581) (“**Regulations**”). Those regulations amended the earlier regulations under the same title (published under GNR 993 of 16 September 2008).

The effect of the amendment was: **(a)** to introduce two new scopes of practice to the psychologists’ profession, namely forensic psychology and neuropsychology; and **(b)** to define the individual scopes of practice for each registration category for psychologists.

The purpose of the Regulations was to address numerous complaints made against psychologists, who had been practising outside the scope of practice of their registered category. At the time, there were only five registration categories, namely: clinical psychologist, counselling psychologist, educational psychologist, industrial psychologist and research psychologist.

The Regulations codified the various functions that each registration category could lawfully perform within their respective scopes of practice. They also expanded the scope of practice for educational psychologists.

During 2014 two parties, instituted court proceedings to challenge the validity of the Regulations, among other things. Those parties were the Recognition of Life Long Learning in

Psychology Action Group Alliance (“**ReLPAG**”) and the Justice Alliance of South Africa (“**JASA**”).

After various interest groups had been admitted as friends of the court and had introduced new evidence into the proceedings, the Minister was of the view that it was preferable to concede the merits of the review, based on narrow procedural defects, which had tainted the process that led to the promulgation of the Regulations.

On 14 November 2016, the Minister, Health Professions Council of South Africa (“**HPCSA**”), Professional Board of Psychology (“**PBP**”), ReLPAG and JASA entered into an agreement, in terms of which:

- (a) the Court would declare the Regulations invalid;
- (b) the Court would suspend the declaration of invalidity for 24 month to afford the Minister, HPCSA and PBP an opportunity to correct the defects; and
- (c) during those 24 months to oblige the HPCSA and PBP to consider, on a case-by-case basis, suspending pending disciplinary proceedings against psychologists, charged with practising outside the scope of practice of their registered category, until the Regulations have been corrected.

That agreement was made an order of court on 14 November 2016. The practical consequences of the order are that all psychologists shall remain bound by the content of the Regulations, despite the declaration of invalidity, for the 24-month period of suspension. Psychologists registered to practise in particular registration categories, therefore, are obliged to regulate their conduct and practices in accordance with the scopes of practice of their respective registration categories, as defined in the Regulations.

If disciplinary proceedings have, as at 14 November 2016, already been brought against a psychologist for practising outside the scope of practice of his or her registered category and are still pending, then the PBP and HPCSA must, in each case, consider whether the alleged breach of the scope of practice warrants suspension of the disciplinary proceedings until such time the new regulations have been put in place. However, the PBP and HPCSA are not obliged to suspend such disciplinary proceedings.

It has come to the HPCSA’s and PBP’s attention that JASA issued a press statement on 15 November 2016, entitled “*A court victory for JASA and ReLPAG as the Cape High Court declares regulations limiting psychologists invalid Medical aids now required to pay*”.

In its press statement, JASA indicated that the Regulations were declared invalid, in terms of the court order of 14 November 2016. However, JASA conspicuously omitted to mention the fact that the declaration of invalidity was suspended for 24 months and, as a consequence, the Regulations remain operative. This omission misrepresents the true position. The order of invalidity was not made with immediate effect.

JASA further stated that “[t]he Board of Healthcare Funders, the fifth respondents, has agreed to abide by the outcome of the case and consequently its members and the other medical aids, many of whom refuse to pay psychologists purportedly working outside the Scope of Practice, will need to resume making payments.”

This statement is also an incorrect portrayal of the legal position, insofar as it suggests that the declaration of invalidity obliges medical aids to pay psychologists, whose claims have been assessed as falling outside the scopes of practice of their registered categories. That was not the effect of the order. The effect of the order was to oblige medical aids to assess all claims for psychological services against the Regulations, which remain in place.

To the extent, however, that any psychologist wishes to dispute non-payment by a medical aid, he or she is free to challenge that decision in the appropriate forum.

All psychologists are cautioned against accepting JASA’s press statement at face value, and instead to have regard to the terms of the order of court itself. Psychologists are also reminded to regulate their conduct in accordance with the scopes of practice of their respective registration categories, as defined in the Regulations, until new regulations have been published.

\*Engagement with stakeholders will be held by the Professional Board in due course.

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### **About the Health Professions Council of South Africa (HPCSA)**

The Health Professions Council of South Africa (HPCSA) also known as Council is a statutory body established under the Health Professions Act 56 of 1974. The HPCSA is committed to protecting the public and guiding the professions. The mission of the HPCSA is quality and equitable healthcare for all.

The HPCSA is mandated to regulate the health professions in the country in aspects pertaining to education, training and registration, professional conduct and ethical behaviour, ensuring continuing Professional Development (CPD), and fostering compliance with healthcare standards.

In order to safeguard the public and indirectly guiding the professions, registration in terms of the Act is a prerequisite for practising any of the health professions registrable with Council.

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