



GOVERNMENT GAZETTE

OF THE

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No. 711

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 104

1993

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 21 of 1993: Medical and Dental Professions Act, 1993

**MEDICAL AND DENTAL PROFESSIONS
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To provide for the establishment and constitution of professional boards for the medical and dental professions respectively; to define the functions, duties and powers of such boards; to provide for and define the registration, training and qualifications of members of the professions in respect of which such boards have been established; to prohibit the practising of any profession without being registered; and to provide for matters incidental thereto.

(Signed by the President on 12 August 1993)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I**DEFINITIONS**

Definitions.

1. In this Act, unless the context otherwise indicates -

“Board” means the Medical Board or the Dental Board established by section 2, respectively;

“Council” means the Council for Health and Social Services Professions established by section 2 of the Council for Health and Social Services Professions Act, 1993;

“dentist” means any person registered as such under this Act;

“dependence-producing drug” means any dependence-producing drug as defined in the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971);

“dental laboratory” means any place where artificial dentures or other dental appliances are made, repaired, altered or worked upon, or where any apparatus for the manufacture, repair or alterations of or the working upon such dentures or appliances has been installed;

“dental technician”, means any person registered as such under this Act;

“educational institution” means any university, college, technical college, technicon or other similar or related institution where any tertiary education in the field of any profession is provided, irrespective whether such institution conducts examinations or not;

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“improper conduct”, in relation to any profession, means those acts and omissions by registered persons in respect of whom the Board concerned has issued rules under section 29;

“independent contractor”, in relation to a dental technician, means a dental technician who, with due regard to the provisions of this Act, practises the profession of a dental technician for his or her own account or who is a member of a partnership of dental technicians which practises that profession or who is a director of a company which carries on any business in which is performed any act specially pertaining to the profession of a dental technician;

“medical intern” means any person registered as such under this Act;

“medical practitioner” means any person registered as such under this Act;

“medicine” means medicine as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

“Minister” means the Minister of Health and Social Services;

“misconduct” means those acts and omissions by registered persons in respect of whom the Board concerned has issued rules under section 29;

“oral hygienist” means any person registered as such under this Act;

“Permanent Secretary” means the Permanent Secretary: Health and Social Services;

“prescribe” -

(a) in relation to medicine, means the prescription of medicine by a medical practitioner or dentist for consumption by a person, and “prescribed”, “prescribed medicine” or “prescription” shall have a corresponding meaning;

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(b) when not used in relation to medicine, means prescribe by regulation and “prescribed” shall have a corresponding meaning;

“public holiday” means a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1990 (Act 26 of 1990);

“qualification” means any degree, diploma or certificate conferred upon a person after having been examined in respect of his or her competency in his or her field of study;

“register” -

(a) when used as a verb, means to register in terms of section 13, and “registered” and “registration” shall have corresponding meanings;

(b) when used as a noun, means a register referred to in section 14;

“registered person”, in relation to a Board, means any person who is registered under this Act in respect of any profession for which that Board has been established;

“regulation” means any regulation made or in force under this Act;

“rule” means any rule made under this Act;

“scheduled substance” means any medicine or other substance included in any Schedule to the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

“this Act” includes the regulations and rules made or any order issued under this Act.

**MEDICAL AND DENTAL PROFESSIONS
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Establishment of professional boards.

2. (1) There is hereby established a professional board -

- (a) in respect of the profession of medical practitioners to be known as the Medical Board; and
- (b) in respect of the professions of dentists, dental technicians and oral hygienists, to be known as the Dental Board.

(2) Every Board shall be a juristic person.

Objects of Boards.

3. The objects of a Board shall be -

- (a) to assist in the promotion of the health of the population of Namibia;
- (b) subject to the provisions of the Nursing Professions Act, 1993, the Allied Health Services Professions Act, 1993, and the Pharmacy Profession Act, 1993, to control, and to exercise authority in respect of, all matters affecting the training of persons in, and the manner of the exercise of the practices pursued in connection with the diagnosis, treatment or prevention of physical or mental defects, illnesses, diseases or deficiencies in persons in respect of the profession or professions concerned;
- (c) to promote liaison in the field of the training referred to in paragraph (b), both in Namibia and elsewhere, and to promote the standards of such training in Namibia;
- (d) to advise the Minister and the Council on any matter relating to the profession or professions concerned; and
- (e) to communicate to the Minister and the Council information on matters of public interest acquired by a Board in the course of the performance of its functions under this Act.

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General powers of
Boards.

4. A Board may, subject to the provisions of this Act -

- (a) register any person in the profession concerned;
- (b) where authorized by this Act, remove any name from the register concerned or, upon payment of the prescribed fee, restore such name to such register;
- (c) in respect of the profession or professions concerned, appoint examiners and moderators, conduct examinations and grant certificates, and charge such fees in respect of such examinations or certificates as may be prescribed;
- (d) in respect of the profession or professions concerned, approve, on such prescribed conditions as it may deem fit, of educational institutions;
- (e) acquire, hire or dispose of property, borrow money on the security of the assets of such Board or accept and administer any trust or donation;
- (f) consider any matter affecting the profession or professions concerned, and make representations or take such action in connection therewith as such Board deems advisable;
- (g) upon application by any person, recognize any qualifications held by such person in respect of the profession concerned (whether such qualifications have been obtained in Namibia or elsewhere) as being equal, either wholly or in part, to any prescribed qualifications, whereupon such person shall, to the extent to which such qualifications have so been recognized, be deemed to hold such prescribed qualifications;
- (h) appoint such persons at the remuneration and on the other conditions of service which it deems fit for the carrying out of its functions and may dismiss such persons;
- (i) perform such other functions as may be prescribed in respect of such Board,

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and generally, do all such things as such Board deems necessary or expedient in order to achieve the objects of this Act.

Constitution of Boards.

5. (1) Every Board shall consist of so many members, but not less than five and not more than nine, as may be determined by the Minister, of whom shall, subject to the provisions of section 6 -

(a) in the case of the Medical Board, all be medical practitioners;

(b) in the case of the Dental Board, all or any be dentists, dental technicians or oral hygienists.

(2) The members of a Board of which the number thereof has been determined in terms of the provisions of subsection (1), shall be elected in the prescribed manner and in accordance with the prescribed procedures -

(a) in the case of the Medical Board, by the medical practitioners;

(b) in the case of the Dental Board, by the dentists, dental technicians and oral hygienists,

who shall be Namibian citizens or lawfully admitted to Namibia for permanent residence therein, and resident in Namibia.

(3) Notwithstanding any provision to the contrary contained in subsection (2), the meeting for the first election of members of a Board shall be convened and presided over by the Minister or any person designated by the Minister for that purpose, who shall determine the procedures to be followed at such meeting, including the time, date and place of such meeting, notice of such meeting to the persons concerned, the quorum for such meeting, the nomination of candidates, the manner in which the election shall be conducted and any other matter incidental to such election.

(4) Any member of a Board shall hold office for a period of three years and shall, at the expiry of such period, be eligible for re-election.

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(5) The names of the members of a Board and the date of commencement of their term of office shall be published by the secretary of such Board in the *Gazette* as soon as possible after the constitution of such Board.

Disqualifications for
election as members of
Boards.

6. No person -

- (a) who is not a Namibian citizen or not lawfully admitted to Namibia for permanent residence therein, and resident in Namibia;
- (b) who is an unrehabilitated insolvent;
- (c) who in terms of this Act is disqualified from practising his or her profession,

shall be elected as a member of any Board.

Vacation of offices and
filling of vacancies on
Boards.

7. (1) A member of a Board shall vacate his or her office, if -

- (a) he or she becomes subject to any disqualification contemplated in section 6;
- (b) he or she is declared mentally ill under the Mental Health Act, 1973 (Act 18 of 1973);
- (c) he or she in writing under his or her hand, addressed and delivered to the secretary of such Board, resigns from his or her office;
- (d) he or she has been absent from more than two consecutive meetings of such Board without its leave; or
- (e) he or she is convicted of an offence in respect of which he or she is sentenced to imprisonment without the option of a fine.

(2) Any vacancy on a Board arising from any circumstance referred to in subsection (1) or caused by the death of any member of such Board shall be filled by election *mutatis mutandis* in accordance with the provisions of section 5(2), and every member so elected shall hold office for the unexpired portion of the period of office of the vacating member.

Office-bearers of Boards.

8. (1) At the first meeting of every newly constituted Board the members of such Board shall elect from their

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number a president, vice-president, treasurer and secretary.

(2) The president, vice-president, treasurer and secretary shall hold office during their terms of office as members of the Board concerned, unless he or she, as the case may be, sooner resigns or ceases to be a member of such Board.

(3) If for any reason, the president is absent or unable to act as president, the vice-president shall perform all the functions and duties and exercise all the powers of the president.

(4) If both the president and vice-president are absent from any meeting, the members present shall elect one from their number to preside at such meeting and the person so presiding may at such meeting during such absence perform the functions and exercise the powers of the president.

(5) If the office of president, vice-president, treasurer or secretary becomes vacant, the members of a Board shall at the first meeting after such vacancy has occurred, elect from among their number a new president, vice-president, treasurer or secretary, as the case may be, and the member so elected shall hold office for the unexpired portion of the period of office of his or her predecessor.

(6) No person shall hold the office of president or vice-president for longer than two consecutive terms of office: Provided that a portion of a period of office referred to in subsection (5) shall be deemed not to constitute a term of office as contemplated in this subsection.

(7) The president, vice-president, treasurer or secretary may vacate his or her office as president, vice-president, treasurer or secretary, as the case may be, without terminating his or her membership of the Board concerned.

Meetings, quorum and
procedures of Boards.

9. (1) Meetings of a Board shall be held at such times and venues as the president of such Board may determine: Provided that the first meeting of a Board constituted in terms of section 5(1) shall be held at such time and venue as the Minister may determine.

(2) (a) The president of a Board shall, upon a written request signed by at least four members of

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such Board or upon a written request signed by at least one-third of the persons registered in terms of this Act in respect of the profession or professions concerned, convene a special meeting of such Board, to be held within 30 days after the date of receipt of such request, as the case may be, on such date and at such place as he or she may determine.

(b) Such written request shall state clearly the purpose for which the meeting is to be convened.

(3) The majority of the members of a Board shall constitute a quorum for any meeting of such Board.

(4) The decision of the majority of the members of a Board present at any meeting of such Board shall constitute a decision of such Board, and in the event of an equality of votes, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

(5) A Board may make rules in relation to the holding of, and procedures at, meetings of such Board.

(6) A Board and any committee of such Board referred to in section 10 shall cause a record to be kept of the proceedings of its meetings.

(7) (a) Any meeting of a Board where such Board holds an inquiry under Part V or where any committee of such Board referred to in section 10 holds such inquiry under powers assigned or delegated to it by such Board, shall be open to the public, unless such Board or such committee determines, subject to the provisions of the proviso to Article 12(1)(a) of the Namibian Constitution, otherwise.

(b) Any member or former member of a Board or of any committee of such Board referred to in section 10 shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge at or in respect of any meeting of such Board or committee, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or

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custody related to such matter, except in so far as any such communication or document is required by, or may be made in terms of, this Act or any other law, or is required by an order of a court of law.

- (c) Any person who contravenes or fails to comply with any determination referred to in paragraph (a) or with the provisions of paragraph (b) shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Committees of Boards.

10. (1) A Board shall -

- (a) establish a disciplinary committee which shall consist of such number of persons appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee, to investigate and report to such Board on any complaint, charge or allegation referred to in section 30;
- (b) establish an education committee which shall consist of such number of persons, appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee and at least two persons of the profession or professions concerned who have knowledge or experience or are or were involved in the training of persons in such profession or professions, to investigate and report to such Board on any matter relating to any requirement or qualification for registration or training, as the case may be.

(2) The committees established in terms of subsection (1) shall, subject to the provisions of subsection (5), exercise such of a Board's powers and perform such of a Board's functions as such Board may from time to time confer upon or assign to it.

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(3) A Board may from time to time establish such other committees as it may deem necessary, each consisting of such number of persons appointed by such Board, as such Board may determine, but which shall include at least one member of such Board who shall be the chairperson of such committee, to investigate and report to such Board on any matter falling within the scope of such Board's functions under this Act.

(4) A Board may delegate to any committee established in terms of subsection (3), such of its powers, in addition to the powers conferred upon such committee by that subsection, as it may from time to time determine, but shall not be divested of any power so delegated.

(5) No penalty imposed by any committee established in terms of subsection (1) other than a caution or a reprimand or a reprimand and a caution, shall be of force and effect until confirmed by the Board concerned: Provided that an order made by any such committee under section 39(2) shall, if such committee so directs in the public interest, come into operation forthwith, but shall lapse after the expiration of a period of six months unless confirmed within that period by such Board.

Finances of Boards,
keeping of accounts and
submission of reports.

11. (1) The funds of a Board shall consist of the registration and examination fees and any other fees payable under this Act, and such other moneys including assistance referred to in subsection (2), as may in terms of this Act from time to time become payable to such Board, and such Board shall utilize such funds for defraying expenses incurred in connection with the performance of its functions.

(2) The Minister may, in consultation with the Minister of Finance, and subject to such conditions as the Minister may determine, at any time grant to a Board out of moneys appropriated by Parliament such financial assistance as he or she may deem necessary in connection with the performance of its functions.

(3) A Board may invest any unexpended portion of its moneys and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient.

(4) (a) A board shall cause full and correct accounts to be kept of all moneys received or expended by it.

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- (b) A Board shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and shall, after such statement and balance sheet have been audited by an auditor appointed by such Board, cause copies thereof to be transmitted to every member of such Board, and cause a copy thereof to be open or inspection at the office, if any, of such Board and the office of the Council, as the case may be, by any person registered with such Board.
- (c) A Board shall in each year, within six months after the close of its financial year, submit to the Council a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in paragraph (b) in respect of that financial year.
- (d) The financial year of a Board shall end on 30 June of each year, unless such Board, with the approval of the Minister, determines otherwise.

PART III**TRAINING, QUALIFICATIONS AND REGISTRATION**

Control over training.

12. (1) Notwithstanding anything to the contrary in any law contained but subject to the provisions of the Nursing Professions Act, 1993, and the Allied Health Services Professions Act, 1993, no person or educational institution may offer or provide any training having as its object to qualify any person for the practising of any profession to which the provisions of this Act apply or for the carrying on of any other activity directed to the physical examination of any person or to the diagnosis, treatment or prevention of any physical defect, illness, disease or deficiency in persons, unless such training has been approved by the Board concerned.

(2) Any person or educational institution intending to offer such training as is referred to in subsection (1) shall, before offering such training, apply in such form as may be determined by the Minister, to the Board

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concerned in writing for its approval of such training and shall furnish such particulars regarding such training as such Board may require.

(3) (a) A Board may grant or refuse any application made in terms of subsection (2) and having granted such application, may issue a certificate of approval to such person or educational institution in such form, subject to such conditions and for such period as it may determine.

(b) A Board may withdraw a certificate of approval issued in terms of this section if it is satisfied that any person or educational institution issued with such certificate has failed to comply with any conditions determined in terms of paragraph (a).

(4) The Board concerned shall, in writing, notify the person or educational institution concerned of any decision taken under subsection (3).

(5) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition determined under subsection (3) shall be guilty of an offence and on conviction be liable -

(a) in the case of a natural person, to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment; or

(b) in any other case, to a fine not exceeding R50 000.

Registration a prerequisite for practising.

13. (1) Unless otherwise provided in this Act, no person shall be entitled to practise within Namibia -

(a) the profession of a medical practitioner, a dentist, a dental technician or an oral hygienist; or

(b) except in so far as it is authorized by the provisions of the Nursing Professions Act, 1993, the Pharmacy Profession Act, 1993, or the Allied Health Services Professions Act, 1993, for gain any other profession the practice of which mainly consists of -

(i) the physical examination of persons;

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- (ii) the diagnosis, treatment or prevention of physical defects, illnesses, diseases or deficiencies in persons;
- (iii) the giving of advice in regard to such defects, illnesses, diseases or deficiencies; or
- (iv) the prescribing or providing of medicine or any artificial denture or other dental appliance in connection with such defects, illnesses, diseases or deficiencies,

unless such person is registered with the Board concerned.

(2) Every person who desires to be registered in terms of this Act shall in such form as may be determined by the Minister apply to the Board concerned, and shall together with such application submit to such Board proof of the qualification which, in his or her opinion, entitles him or her to registration with such Board, together with such documents or information as may be required by such Board.

(3) When a Board with which the application in terms of subsection (2) has been lodged, is satisfied that the applicant and his or her qualifications comply with the provisions of this Act and with the requirements of such Board, such Board shall, upon payment by the applicant of all prescribed fees, issue a registration certificate in the name of such applicant authorizing the applicant, subject to the provisions of this Act or any other law, to practise the profession specified in such certificate, within Namibia.

(4) If a Board is not satisfied that the qualification or other documents submitted in support of such application comply with the provisions of this Act and with the requirements of such Board, such Board shall refuse to issue a registration certificate to the applicant.

Keeping of registers.

14. (1) The secretary of every Board shall -

- (a) keep a register for the profession concerned, or in the case of two or more professions, separate registers for every profession concerned, and shall enter into such register the name, address, qualifications or such other particulars as may be

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determined by such Board of every person whose application for registration in terms of section 13(2) has been granted; and

- (b) furnish the registrar of the Council with a copy of the registration certificate of every person who has been registered in terms of this Act and such other particulars (if any) as may be required by such registrar.

(2) A secretary of a Board shall keep the register concerned in accordance with the provisions of this Act and shall, subject to any other provisions of this Act, remove therefrom the names of all registered persons who have died or whose period of registration referred to in section 19(1) has expired, and shall from time to time make the necessary alterations in the addresses or qualifications of such persons.

(3) Every registered person who changes his or her address shall in writing and within 30 days after such change notify the secretary of the Board concerned of his or her new address.

(4) The Permanent Secretary: Home Affairs shall, upon receipt of the death registration of a person which indicates that such person immediately prior to his or her death practised a profession which is required to be registered under this Act, forthwith notify the secretary of the Board concerned of such death.

Removal of names from,
and restoration to, re-
gister.

15. (1) A Board may direct its secretary to remove from the register concerned the name of any person -

- (a) who has been, without informing the Board concerned, absent from Namibia during the three years immediately preceding such removal;
- (b) who has failed to notify the secretary concerned in terms of section 14(3) of any change of address and who, within a period of three months after a request by such secretary sent by registered letter to the address of such person appearing in such register to furnish such new address, fails to comply with such request;
- (c) who has requested that his or her name be removed from the register concerned, in which

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case such person may be required to lodge with the secretary concerned an affidavit to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him or her;

- (d) who has failed to pay to the Board concerned, within a period of one month as from the date upon which it became due for payment, the prescribed annual fees;
 - (e) whose name has been removed from the register, record or roll of any educational institution, hospital, society or other body from which such person received the qualification by virtue of which such person was registered in terms of this Act;
 - (f) in respect of whom any entry has been made in error or through misrepresentation or in circumstances not authorized by this Act and the initial registration would not have been made had the correct facts and circumstances been known to the Board concerned;
- (2) (a) Notice of the removal of the name of any person from a register in terms of subsection (1) shall be served by the secretary of the Board concerned or any person designated by such secretary for that purpose on the person whose name has been removed from the register concerned at his or her place of business or residence.
- (b) In the event that a notice referred to in paragraph (a) cannot be served on the person whose name has been removed from the register concerned at his or her place of business or residence, such notice may be served -
- (i) at the place of business of such person upon any partner or employee of such person; or
 - (ii) at the place of residence of such person upon any member of the household or any employee of such person apparently above the age of 16 years; or
 - (iii) by way of registered letter addressed to such person at his or her address which appears in such register,

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(5) The names of the members of a Board and the date of commencement of their term of office shall be published by the secretary of such Board in the *Gazette* as soon as possible after the constitution of such Board.

Disqualifications for
election as members of
Boards.

6. No person -

- (a) who is not a Namibian citizen or not lawfully admitted to Namibia for permanent residence therein, and resident in Namibia;
- (b) who is an unrehabilitated insolvent;
- (c) who in terms of this Act is disqualified from practising his or her profession,

shall be elected as a member of any Board.

Vacation of offices and
filling of vacancies on
Boards.

7. (1) A member of a Board shall vacate his or her office, if -

- (a) he or she becomes subject to any disqualification contemplated in section 6;
- (b) he or she is declared mentally ill under the Mental Health Act, 1973 (Act 18 of 1973);
- (c) he or she in writing under his or her hand, addressed and delivered to the secretary of such Board, resigns from his or her office;
- (d) he or she has been absent from more than two consecutive meetings of such Board without its leave; or
- (e) he or she is convicted of an offence in respect of which he or she is sentenced to imprisonment without the option of a fine.

(2) Any vacancy on a Board arising from any circumstance referred to in subsection (1) or caused by the death of any member of such Board shall be filled by election *mutatis mutandis* in accordance with the provisions of section 5(2), and every member so elected shall hold office for the unexpired portion of the period of office of the vacating member.

Office-bearers of Boards.

8. (1) At the first meeting of every newly constituted Board the members of such Board shall elect from their

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number a president, vice-president, treasurer and secretary.

(2) The president, vice-president, treasurer and secretary shall hold office during their terms of office as members of the Board concerned, unless he or she, as the case may be, sooner resigns or ceases to be a member of such Board.

(3) If for any reason, the president is absent or unable to act as president, the vice-president shall perform all the functions and duties and exercise all the powers of the president.

(4) If both the president and vice-president are absent from any meeting, the members present shall elect one from their number to preside at such meeting and the person so presiding may at such meeting during such absence perform the functions and exercise the powers of the president.

(5) If the office of president, vice-president, treasurer or secretary becomes vacant, the members of a Board shall at the first meeting after such vacancy has occurred, elect from among their number a new president, vice-president, treasurer or secretary, as the case may be, and the member so elected shall hold office for the unexpired portion of the period of office of his or her predecessor.

(6) No person shall hold the office of president or vice-president for longer than two consecutive terms of office: Provided that a portion of a period of office referred to in subsection (5) shall be deemed not to constitute a term of office as contemplated in this subsection.

(7) The president, vice-president, treasurer or secretary may vacate his or her office as president, vice-president, treasurer or secretary, as the case may be, without terminating his or her membership of the Board concerned.

Meetings, quorum and
procedures of Boards.

9. (1) Meetings of a Board shall be held at such times and venues as the president of such Board may determine: Provided that the first meeting of a Board constituted in terms of section 5(1) shall be held at such time and venue as the Minister may determine.

(2) (a) The president of a Board shall, upon a written request signed by at least four members of

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such Board or upon a written request signed by at least one-third of the persons registered in terms of this Act in respect of the profession or professions concerned, convene a special meeting of such Board, to be held within 30 days after the date of receipt of such request, as the case may be, on such date and at such place as he or she may determine.

(b) Such written request shall state clearly the purpose for which the meeting is to be convened.

(3) The majority of the members of a Board shall constitute a quorum for any meeting of such Board.

(4) The decision of the majority of the members of a Board present at any meeting of such Board shall constitute a decision of such Board, and in the event of an equality of votes, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

(5) A Board may make rules in relation to the holding of, and procedures at, meetings of such Board.

(6) A Board and any committee of such Board referred to in section 10 shall cause a record to be kept of the proceedings of its meetings.

(7) (a) Any meeting of a Board where such Board holds an inquiry under Part V or where any committee of such Board referred to in section 10 holds such inquiry under powers assigned or delegated to it by such Board, shall be open to the public, unless such Board or such committee determines, subject to the provisions of the proviso to Article 12(1)(a) of the Namibian Constitution, otherwise.

(b) Any member or former member of a Board or of any committee of such Board referred to in section 10 shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge at or in respect of any meeting of such Board or committee, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or

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custody related to such matter, except in so far as any such communication or document is required by, or may be made in terms of, this Act or any other law, or is required by an order of a court of law.

- (c) Any person who contravenes or fails to comply with any determination referred to in paragraph (a) or with the provisions of paragraph (b) shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Committees of Boards.

10. (1) A Board shall -

- (a) establish a disciplinary committee which shall consist of such number of persons appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee, to investigate and report to such Board on any complaint, charge or allegation referred to in section 30;
- (b) establish an education committee which shall consist of such number of persons, appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee and at least two persons of the profession or professions concerned who have knowledge or experience or are or were involved in the training of persons in such profession or professions, to investigate and report to such Board on any matter relating to any requirement or qualification for registration or training, as the case may be.

(2) The committees established in terms of subsection (1) shall, subject to the provisions of subsection (5), exercise such of a Board's powers and perform such of a Board's functions as such Board may from time to time confer upon or assign to it.

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(3) A Board may from time to time establish such other committees as it may deem necessary, each consisting of such number of persons appointed by such Board, as such Board may determine, but which shall include at least one member of such Board who shall be the chairperson of such committee, to investigate and report to such Board on any matter falling within the scope of such Board's functions under this Act.

(4) A Board may delegate to any committee established in terms of subsection (3), such of its powers, in addition to the powers conferred upon such committee by that subsection, as it may from time to time determine, but shall not be divested of any power so delegated.

(5) No penalty imposed by any committee established in terms of subsection (1) other than a caution or a reprimand or a reprimand and a caution, shall be of force and effect until confirmed by the Board concerned: Provided that an order made by any such committee under section 39(2) shall, if such committee so directs in the public interest, come into operation forthwith, but shall lapse after the expiration of a period of six months unless confirmed within that period by such Board.

Finances of Boards,
keeping of accounts and
submission of reports.

11. (1) The funds of a Board shall consist of the registration and examination fees and any other fees payable under this Act, and such other moneys including assistance referred to in subsection (2), as may in terms of this Act from time to time become payable to such Board, and such Board shall utilize such funds for defraying expenses incurred in connection with the performance of its functions.

(2) The Minister may, in consultation with the Minister of Finance, and subject to such conditions as the Minister may determine, at any time grant to a Board out of moneys appropriated by Parliament such financial assistance as he or she may deem necessary in connection with the performance of its functions.

(3) A Board may invest any unexpended portion of its moneys and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient.

(4) (a) A board shall cause full and correct accounts to be kept of all moneys received or expended by it.

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- (b) A Board shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and shall, after such statement and balance sheet have been audited by an auditor appointed by such Board, cause copies thereof to be transmitted to every member of such Board, and cause a copy thereof to be open or inspection at the office, if any, of such Board and the office of the Council, as the case may be, by any person registered with such Board.
- (c) A Board shall in each year, within six months after the close of its financial year, submit to the Council a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in paragraph (b) in respect of that financial year.
- (d) The financial year of a Board shall end on 30 June of each year, unless such Board, with the approval of the Minister, determines otherwise.

PART III**TRAINING, QUALIFICATIONS AND REGISTRATION**

Control over training.

12. (1) Notwithstanding anything to the contrary in any law contained but subject to the provisions of the Nursing Professions Act, 1993, and the Allied Health Services Professions Act, 1993, no person or educational institution may offer or provide any training having as its object to qualify any person for the practising of any profession to which the provisions of this Act apply or for the carrying on of any other activity directed to the physical examination of any person or to the diagnosis, treatment or prevention of any physical defect, illness, disease or deficiency in persons, unless such training has been approved by the Board concerned.

(2) Any person or educational institution intending to offer such training as is referred to in subsection (1) shall, before offering such training, apply in such form as may be determined by the Minister, to the Board

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concerned in writing for its approval of such training and shall furnish such particulars regarding such training as such Board may require.

(3) (a) A Board may grant or refuse any application made in terms of subsection (2) and having granted such application, may issue a certificate of approval to such person or educational institution in such form, subject to such conditions and for such period as it may determine.

(b) A Board may withdraw a certificate of approval issued in terms of this section if it is satisfied that any person or educational institution issued with such certificate has failed to comply with any conditions determined in terms of paragraph (a).

(4) The Board concerned shall, in writing, notify the person or educational institution concerned of any decision taken under subsection (3).

(5) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition determined under subsection (3) shall be guilty of an offence and on conviction be liable -

(a) in the case of a natural person, to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment; or

(b) in any other case, to a fine not exceeding R50 000.

Registration a prerequisite for practising.

13. (1) Unless otherwise provided in this Act, no person shall be entitled to practise within Namibia -

(a) the profession of a medical practitioner, a dentist, a dental technician or an oral hygienist; or

(b) except in so far as it is authorized by the provisions of the Nursing Professions Act, 1993, the Pharmacy Profession Act, 1993, or the Allied Health Services Professions Act, 1993, for gain any other profession the practice of which mainly consists of -

(i) the physical examination of persons;

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- (ii) the diagnosis, treatment or prevention of physical defects, illnesses, diseases or deficiencies in persons;
- (iii) the giving of advice in regard to such defects, illnesses, diseases or deficiencies; or
- (iv) the prescribing or providing of medicine or any artificial denture or other dental appliance in connection with such defects, illnesses, diseases or deficiencies,

unless such person is registered with the Board concerned.

(2) Every person who desires to be registered in terms of this Act shall in such form as may be determined by the Minister apply to the Board concerned, and shall together with such application submit to such Board proof of the qualification which, in his or her opinion, entitles him or her to registration with such Board, together with such documents or information as may be required by such Board.

(3) When a Board with which the application in terms of subsection (2) has been lodged, is satisfied that the applicant and his or her qualifications comply with the provisions of this Act and with the requirements of such Board, such Board shall, upon payment by the applicant of all prescribed fees, issue a registration certificate in the name of such applicant authorizing the applicant, subject to the provisions of this Act or any other law, to practise the profession specified in such certificate, within Namibia.

(4) If a Board is not satisfied that the qualification or other documents submitted in support of such application comply with the provisions of this Act and with the requirements of such Board, such Board shall refuse to issue a registration certificate to the applicant.

Keeping of registers.

14. (1) The secretary of every Board shall -

- (a) keep a register for the profession concerned, or in the case of two or more professions, separate registers for every profession concerned, and shall enter into such register the name, address, qualifications or such other particulars as may be

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determined by such Board of every person whose application for registration in terms of section 13(2) has been granted; and

- (b) furnish the registrar of the Council with a copy of the registration certificate of every person who has been registered in terms of this Act and such other particulars (if any) as may be required by such registrar.

(2) A secretary of a Board shall keep the register concerned in accordance with the provisions of this Act and shall, subject to any other provisions of this Act, remove therefrom the names of all registered persons who have died or whose period of registration referred to in section 19(1) has expired, and shall from time to time make the necessary alterations in the addresses or qualifications of such persons.

(3) Every registered person who changes his or her address shall in writing and within 30 days after such change notify the secretary of the Board concerned of his or her new address.

(4) The Permanent Secretary: Home Affairs shall, upon receipt of the death registration of a person which indicates that such person immediately prior to his or her death practised a profession which is required to be registered under this Act, forthwith notify the secretary of the Board concerned of such death.

Removal of names from,
and restoration to, re-
gister.

15. (1) A Board may direct its secretary to remove from the register concerned the name of any person -

- (a) who has been, without informing the Board concerned, absent from Namibia during the three years immediately preceding such removal;
- (b) who has failed to notify the secretary concerned in terms of section 14(3) of any change of address and who, within a period of three months after a request by such secretary sent by registered letter to the address of such person appearing in such register to furnish such new address, fails to comply with such request;
- (c) who has requested that his or her name be removed from the register concerned, in which

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case such person may be required to lodge with the secretary concerned an affidavit to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him or her;

- (d) who has failed to pay to the Board concerned, within a period of one month as from the date upon which it became due for payment, the prescribed annual fees;
 - (e) whose name has been removed from the register, record or roll of any educational institution, hospital, society or other body from which such person received the qualification by virtue of which such person was registered in terms of this Act;
 - (f) in respect of whom any entry has been made in error or through misrepresentation or in circumstances not authorized by this Act and the initial registration would not have been made had the correct facts and circumstances been known to the Board concerned;
- (2) (a) Notice of the removal of the name of any person from a register in terms of subsection (1) shall be served by the secretary of the Board concerned or any person designated by such secretary for that purpose on the person whose name has been removed from the register concerned at his or her place of business or residence.
- (b) In the event that a notice referred to in paragraph (a) cannot be served on the person whose name has been removed from the register concerned at his or her place of business or residence, such notice may be served -
- (i) at the place of business of such person upon any partner or employee of such person; or
 - (ii) at the place of residence of such person upon any member of the household or any employee of such person apparently above the age of 16 years; or
 - (iii) by way of registered letter addressed to such person at his or her address which appears in such register,

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and, in the case of subparagraph (i) or (ii), any partner, member or employee upon whom the notice is served shall acknowledge receipt thereof in writing and shall state his or her capacity and, where practicable, his or her age.

(3) As from the date on which a notice referred to in subsection (2) has been served -

- (a) any registration certificate issued in terms of this Act to the person concerned shall be deemed to be cancelled; and
- (b) such person shall cease to practise the profession in respect of which such person was registered or to perform any act which such person, in his or her capacity as a registered person, was entitled to perform,

until such time as the name of such person is restored to the register concerned.

(4) If any person registered in terms of this Act has been declared a mentally ill person under the Mental Health Act, 1973 (Act 18 of 1973), the Registrar of the High Court shall forward a copy of the order declaring such person a mentally ill person to the secretary of the Board concerned who shall, on receipt of such copy, remove the name of such person from the register concerned.

(5) The name of a person which has been removed from a register or any entry removed from a register in terms of subsection (1) may upon application by such person in the form as may be determined by the Minister to the secretary of the Board concerned, be restored to such register by such Board.

(6) The provisions of section 13 shall apply *mutatis mutandis* to an application in terms of subsection (5) as well as any further and other conditions which the Board concerned may impose.

Copy of registers as proof.

16. A copy of any register of a Board and signed by the secretary of such Board shall be *prima facie* proof in all legal proceedings of the facts therein recorded, and the absence of the name of any person from such copy shall be proof, until the contrary is proved, that such person is not registered under the provisions of this Act: Provided that in the case of any person whose name -

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- (a) does not appear in such copy but ought to appear in such register, a certified copy under the hand of such secretary of the entry of the name of such person in such register shall be *prima facie* proof that such person is registered under the provisions of this Act;
- (b) has been removed from such register and has not been restored thereto, a certificate under the hand of such secretary that the name of such person has been removed from such register shall be *prima facie* proof that such person is not registered under the provisions of this Act.

Duplicate registration certificates and extracts from registers.

17. (1) Upon receipt of an application by a registered person and upon payment of the prescribed fee the secretary of a Board may issue to such person a duplicate registration certificate or furnish such person with a certified extract from the register concerned.

(2) A receipt in respect of the payment of annual fees issued to any person by a Board shall in any legal proceedings be *prima facie* proof of such person's registration under this Act.

Qualifications prescribed for registration.

18. (1) Subject to the provisions of subsection (2), the Minister may from time to time, upon the recommendation of the Board concerned, prescribe the qualifications obtained by virtue of examinations conducted by any educational institution or other examining authority, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration under this Act, if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be so prescribed.

(2) No qualification obtained by virtue of examinations conducted by an educational institution or other examining authority situated outside Namibia shall be prescribed under this section unless -

- (a) such qualification entitles the holder thereof to practise such profession in the country or state in which such educational institution or other examining authority is situated; and

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- (b) the Board concerned is satisfied that possession of such qualification is of a standard of professional education not lower than that prescribed in terms of subsection (1) in respect of the profession concerned, within Namibia.

Conditional registration.

19. (1) Any person not in possession of a qualification prescribed in terms of section 18 and who lodges an application for registration with the Board concerned may, subject to the provisions of section 20, be registered by such Board, if -

- (a) such applicant possesses any qualification which the Board concerned is satisfied as indicating a standard of professional education not lower than that prescribed in terms of the said section 18;
- (b) such applicant has received such additional tuition or training, whether within or outside Namibia, as may be prescribed upon the recommendation of the Board concerned; and
- (c) such applicant has passed the additional examinations, whether within or outside Namibia, as may be prescribed upon the recommendation of the Board concerned.

(2) For the purposes of the provisions of paragraphs (b) and (c) of subsection (1), the Board concerned may register such applicant conditionally for such period or periods as such Board may determine and on such conditions subject to which such applicant may practise his or her profession as may be so determined until such time as such applicant has completed the additional tuition or training referred to in the said paragraph (b) or until such time as such applicant has passed the additional examinations referred to in the said paragraph (c).

(3) A Board may, before issuing a conditional registration certificate in terms of subsection (2), require the applicant concerned, at such date and venue as may be determined by such Board, to be examined by examiners appointed by such Board, to ascertain whether such applicant -

- (a) possesses professional knowledge and skill which is of a standard not lower than that required in respect of the profession concerned within Namibia; and

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(b) is proficient in the official language of Namibia.

(4) The Minister may, from time to time and upon the recommendation of the Board concerned, prescribe the examinations to be conducted in terms of subsection (3) and the examination fees payable to such Board by such applicant.

(5) As soon as an applicant has complied with the provisions of subsection (1)(b) and upon expiry of any period determined by the Board concerned in terms of subsection (2), any person in possession of a conditional registration certificate may apply to such Board to sit for the additional examinations prescribed in terms of subsection (1)(c).

(6) Any person who possesses a qualification referred to in paragraph (a) of subsection (1) may, upon application, be exempted by the Minister from any restriction or condition imposed in respect of him or her by or under the provisions of this section.

Issuing of registration certificates replacing conditional registration certificates.

20. Any person to whom a conditional registration certificate has been issued in terms of section 19 may, as soon as such person has complied with the provisions of that section and the conditions determined thereunder by the Board concerned, apply to such Board for registration *mutatis mutandis* in accordance with the provisions of section 13.

Registration of persons for purposes of educational demonstrations.

21. (1) Notwithstanding any provisions of this Act, a Board may, for the purpose of promoting any education in respect of a profession, register any person not permanently resident in Namibia for such period and subject to such conditions as the Board may determine.

(2) Any person registered in terms of subsection (1) may at any institution approved for that purpose by the Board concerned give educational demonstrations relating to such profession.

Registration of persons for purposes of post-graduate studies.

22. (1) Notwithstanding any provisions of this Act, a Board may, for the purpose of subsection (2), register in a profession any person having such training and qualifications as such Board may deem satisfactory.

(2) Any person registered in terms of subsection (1) shall only be entitled to engage in such post-graduate

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studies and at such educational institution as approved by the Board concerned, and subject to such conditions as may be determined by such Board.

Educational institutions to furnish Boards with certain particulars.

23. (1) Every educational institution at which a qualification can be obtained entitling the holder thereof to registration with the Board concerned shall furnish such Board upon its request, with full particulars as to -

- (a) the minimum age and standard of general education required of students for admission to the relevant course or field of study;
- (b) the courses of study, training and examinations required of a student before such qualification is granted;
- (c) particulars of examinations conducted and the results thereof in respect of a specific student or of a specific category of students; and
- (d) such other particulars relating to any of the matters referred to in paragraph (a), (b) or (c) as such Board may from time to time require.

(2) If any educational institution referred to in subsection (1) fails or refuses to furnish the particulars requested by the Board concerned under that subsection or if it appears to such Board that any provision of this Act which applies to such educational institution is not properly being complied with and that such improper compliance is having or may have an adverse effect on the standard of the education in respect of the professional training concerned to be maintained at such educational institution, the Minister may, upon the recommendation of such Board, by notice in the *Gazette* declare that any qualification specified in such notice and granted by such educational institution after a date specified in such notice shall, subject to the provisions of subsection (4), not entitle any holder thereof to registration under this Act.

(3) Upon the recommendation of the Board concerned, the Minister may, when it appears to him or her that satisfactory provision has been made for complying with the requirements of this Act by any educational institution in respect of any qualification which is the subject of a notice issued under subsection (2), repeal or amend any notice published in terms of that subsection.

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(4) Upon the recommendation of the Board concerned, the Minister shall, in the notice published in terms of subsection (3), determine whether or not any qualification granted subsequent to the date specified in the notice published in terms of subsection (2) and granted by the educational institution referred to in such notice, entitles the holder of such qualification to registration in terms of this Act.

(5) A Board may from time to time appoint a person to investigate whether the minimum requirements laid down by such Board are being complied with by an educational institution and to report to such Board thereon.

Registration and use of additional qualifications, and registration of specialities.

24. (1) Every person who desires to have a prescribed qualification registered other than the qualification by virtue of which such person has in the first instance been registered, or to have a prescribed speciality registered shall, -

- (a) upon application in the form determined by the Minister; and
- (b) subject to the provisions of subsection (2), upon payment of the prescribed fee,

be entitled to have such other qualification or such speciality entered in the register concerned.

(2) If a person wishes to register a qualification or speciality not prescribed in terms of this Act, the Board concerned may, before entering such qualification or speciality into the register, require of such applicant to pass an examination prescribed by the Minister upon the recommendation of such Board in order to determine whether the applicant's professional knowledge and skill in the field of his or her qualification or speciality are of such a standard so as to enable such person to practise the profession or speciality concerned.

(3) No registered person shall take, use or publish in any way whatsoever any name, title, description or symbol indicating or calculated to lead persons to infer that such person holds any professional qualification registered in terms of this section which is not shown in the register against the name of such person, nor shall any registered person practise as a specialist or hold himself or herself out

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to be a specialist unless his or her speciality has been registered in terms of this section.

(4) A Board may remove from the register concerned any qualification or speciality registered in terms of this section, if -

- (a) in the case of such qualification, the name of the holder thereof has been removed from the roll or register of the educational institution which had granted such qualification to such applicant;
- (b) the Board concerned is satisfied that such qualification or speciality does not comply with the requirements as prescribed;
- (c) the person in respect of whom a qualification or speciality is registered requests in writing such Board to remove such qualification or speciality from such register.

(5) Any qualification or speciality removed from a register in terms of subsection (4) shall be restored to such register by the secretary of the Board concerned upon such person -

- (a) applying for such restoration in the form and manner determined by the Minister;
- (b) paying the fee prescribed in respect of such restoration; and
- (c) complying with such other requirements (if any) as such Board may determine.

PART IV**OFFENCES BY UNREGISTERED PERSONS**

Penalties for practising as medical practitioner or as medical intern or for performing certain other acts, while unregistered.

25. (1) Subject to the provisions of subsections (2) and (3), any person not registered as a medical practitioner or as a medical intern, who -

- (a) for gain practises as a medical practitioner, whether or not purporting to be registered as such;

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(b) for gain -

- (i) physically examines any person;
 - (ii) performs any act of diagnosing, treating or preventing any physical defect, illness, disease or deficiency in respect of any person;
 - (iii) advises any person on his or her physical condition;
 - (iv) on the ground of information provided by any person or obtained from such person in any way whatsoever -
 - (aa) diagnoses such person's physical condition;
 - (bb) advises such person on his or her physical condition; or
 - (cc) supplies or sells to or prescribes for such person any medicine or treatment;
 - (v) prescribes or provides any medicine, drug or similar substance or preparation;
 - (vi) performs any act prescribed as an act which may be performed only by a medical practitioner or a medical intern; or
 - (vii) performs any other act, whether defined in this Act or not, specially pertaining to the profession of a medical practitioner;
- (c) except in accordance with the provisions of the Public Health Act, 1919 (Act 36 of 1919), the Nursing Professions Act, 1993, the Allied Health Services Professions Act, 1993, the Pharmacy Profession Act, 1993, or of this Act, performs any act whatsoever having as its object -
- (i) the diagnosing, treating or preventing of any physical defect, illness, disease or deficiency in any person; and

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- (ii) by virtue of the performance of such act the obtaining, either for himself or herself or for any other person, of any benefit by way of any profit from the sale or disposal of any medicine, foodstuff or substance or by way of any donation or gift or by way of the provision of accommodation, or the obtaining of, either for himself or herself or for any other person, any other gain whatsoever;
- (d) pretends, or by any means whatsoever holds himself or herself out to be a medical practitioner or a medical intern whether or not purporting to be registered, or a healer, of whatever description, of physical defects, illnesses, diseases or deficiencies in any person;
- (e) uses the name or title of medical practitioner, medical intern, healer or doctor or any name, title, description or symbol indicating or calculated to lead persons to infer that such person is the holder or is entitled to be the holder of any qualification entitling such person to practise as a medical practitioner, physician, surgeon, gynaecologist, obstetrician or medical intern, or of any other qualification enabling such person to diagnose, treat or prevent physical defects, illnesses or deficiencies in persons in any way whatsoever, or that such person is registered under this Act as a medical practitioner or medical intern;
- (f) except in accordance with the provisions of the Public Health Act, 1919, the Nursing Professions Act, 1993, the Allied Health Services Professions Act, 1993, the Pharmacy Profession Act, 1993, or of this Act, by word, conduct or demeanor holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent physical defects, illnesses, diseases or deficiencies in persons, or to prescribe or supply any medicine, drug or similar substance or preparation in respect of such defects, illnesses, diseases or deficiencies, shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

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(2) The provisions of subsection (1) shall not prohibit -

(a) a medical intern from -

- (i) performing any function or issuing any certificate or other document which in terms of any law other than this Act may be or is required to be performed or issued by a medical practitioner, whether described in such other law as a medical practitioner or by any other name or designation; or
- (ii) describing himself or herself as a medical practitioner in connection with the performance of such function or the issuing of any such certificate or other document,

and any reference in such other law to such a medical practitioner shall be deemed to include a reference to a medical intern;

(b) a student medical intern in the course of his or her training from -

- (i) performing under the supervision of a medical practitioner or a medical intern any act defined in subsection (1)(b); or
- (ii) issuing in connection with the performing of that act in the educational institution where such student is undergoing his or her training, any document required in respect of the performing of that act;

(c) a pharmacist registered under the Pharmacy Profession Act, 1993, from performing any act falling within the scope of his or her profession as contemplated in that Act;

(d) a dentist from performing any act falling within the scope of his or her profession as contemplated in this Act or from using any name, title, description or symbol normally associated with such profession.

(3) The provisions of subsection (1)(b) and (f) shall not apply in respect of -

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(5) The names of the members of a Board and the date of commencement of their term of office shall be published by the secretary of such Board in the *Gazette* as soon as possible after the constitution of such Board.

Disqualifications for
election as members of
Boards.

6. No person -

- (a) who is not a Namibian citizen or not lawfully admitted to Namibia for permanent residence therein, and resident in Namibia;
- (b) who is an unrehabilitated insolvent;
- (c) who in terms of this Act is disqualified from practising his or her profession,

shall be elected as a member of any Board.

Vacation of offices and
filling of vacancies on
Boards.

7. (1) A member of a Board shall vacate his or her office, if -

- (a) he or she becomes subject to any disqualification contemplated in section 6;
- (b) he or she is declared mentally ill under the Mental Health Act, 1973 (Act 18 of 1973);
- (c) he or she in writing under his or her hand, addressed and delivered to the secretary of such Board, resigns from his or her office;
- (d) he or she has been absent from more than two consecutive meetings of such Board without its leave; or
- (e) he or she is convicted of an offence in respect of which he or she is sentenced to imprisonment without the option of a fine.

(2) Any vacancy on a Board arising from any circumstance referred to in subsection (1) or caused by the death of any member of such Board shall be filled by election *mutatis mutandis* in accordance with the provisions of section 5(2), and every member so elected shall hold office for the unexpired portion of the period of office of the vacating member.

Office-bearers of Boards.

8. (1) At the first meeting of every newly constituted Board the members of such Board shall elect from their

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number a president, vice-president, treasurer and secretary.

(2) The president, vice-president, treasurer and secretary shall hold office during their terms of office as members of the Board concerned, unless he or she, as the case may be, sooner resigns or ceases to be a member of such Board.

(3) If for any reason, the president is absent or unable to act as president, the vice-president shall perform all the functions and duties and exercise all the powers of the president.

(4) If both the president and vice-president are absent from any meeting, the members present shall elect one from their number to preside at such meeting and the person so presiding may at such meeting during such absence perform the functions and exercise the powers of the president.

(5) If the office of president, vice-president, treasurer or secretary becomes vacant, the members of a Board shall at the first meeting after such vacancy has occurred, elect from among their number a new president, vice-president, treasurer or secretary, as the case may be, and the member so elected shall hold office for the unexpired portion of the period of office of his or her predecessor.

(6) No person shall hold the office of president or vice-president for longer than two consecutive terms of office: Provided that a portion of a period of office referred to in subsection (5) shall be deemed not to constitute a term of office as contemplated in this subsection.

(7) The president, vice-president, treasurer or secretary may vacate his or her office as president, vice-president, treasurer or secretary, as the case may be, without terminating his or her membership of the Board concerned.

Meetings, quorum and
procedures of Boards.

9. (1) Meetings of a Board shall be held at such times and venues as the president of such Board may determine: Provided that the first meeting of a Board constituted in terms of section 5(1) shall be held at such time and venue as the Minister may determine.

(2) (a) The president of a Board shall, upon a written request signed by at least four members of

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such Board or upon a written request signed by at least one-third of the persons registered in terms of this Act in respect of the profession or professions concerned, convene a special meeting of such Board, to be held within 30 days after the date of receipt of such request, as the case may be, on such date and at such place as he or she may determine.

(b) Such written request shall state clearly the purpose for which the meeting is to be convened.

(3) The majority of the members of a Board shall constitute a quorum for any meeting of such Board.

(4) The decision of the majority of the members of a Board present at any meeting of such Board shall constitute a decision of such Board, and in the event of an equality of votes, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

(5) A Board may make rules in relation to the holding of, and procedures at, meetings of such Board.

(6) A Board and any committee of such Board referred to in section 10 shall cause a record to be kept of the proceedings of its meetings.

(7) (a) Any meeting of a Board where such Board holds an inquiry under Part V or where any committee of such Board referred to in section 10 holds such inquiry under powers assigned or delegated to it by such Board, shall be open to the public, unless such Board or such committee determines, subject to the provisions of the proviso to Article 12(1)(a) of the Namibian Constitution, otherwise.

(b) Any member or former member of a Board or of any committee of such Board referred to in section 10 shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge at or in respect of any meeting of such Board or committee, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or

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custody related to such matter, except in so far as any such communication or document is required by, or may be made in terms of, this Act or any other law, or is required by an order of a court of law.

- (c) Any person who contravenes or fails to comply with any determination referred to in paragraph (a) or with the provisions of paragraph (b) shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Committees of Boards.

10. (1) A Board shall -

- (a) establish a disciplinary committee which shall consist of such number of persons appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee, to investigate and report to such Board on any complaint, charge or allegation referred to in section 30;
- (b) establish an education committee which shall consist of such number of persons, appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee and at least two persons of the profession or professions concerned who have knowledge or experience or are or were involved in the training of persons in such profession or professions, to investigate and report to such Board on any matter relating to any requirement or qualification for registration or training, as the case may be.

(2) The committees established in terms of subsection (1) shall, subject to the provisions of subsection (5), exercise such of a Board's powers and perform such of a Board's functions as such Board may from time to time confer upon or assign to it.

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(3) A Board may from time to time establish such other committees as it may deem necessary, each consisting of such number of persons appointed by such Board, as such Board may determine, but which shall include at least one member of such Board who shall be the chairperson of such committee, to investigate and report to such Board on any matter falling within the scope of such Board's functions under this Act.

(4) A Board may delegate to any committee established in terms of subsection (3), such of its powers, in addition to the powers conferred upon such committee by that subsection, as it may from time to time determine, but shall not be divested of any power so delegated.

(5) No penalty imposed by any committee established in terms of subsection (1) other than a caution or a reprimand or a reprimand and a caution, shall be of force and effect until confirmed by the Board concerned: Provided that an order made by any such committee under section 39(2) shall, if such committee so directs in the public interest, come into operation forthwith, but shall lapse after the expiration of a period of six months unless confirmed within that period by such Board.

Finances of Boards,
keeping of accounts and
submission of reports.

11. (1) The funds of a Board shall consist of the registration and examination fees and any other fees payable under this Act, and such other moneys including assistance referred to in subsection (2), as may in terms of this Act from time to time become payable to such Board, and such Board shall utilize such funds for defraying expenses incurred in connection with the performance of its functions.

(2) The Minister may, in consultation with the Minister of Finance, and subject to such conditions as the Minister may determine, at any time grant to a Board out of moneys appropriated by Parliament such financial assistance as he or she may deem necessary in connection with the performance of its functions.

(3) A Board may invest any unexpended portion of its moneys and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient.

(4) (a) A board shall cause full and correct accounts to be kept of all moneys received or expended by it.

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- (b) A Board shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and shall, after such statement and balance sheet have been audited by an auditor appointed by such Board, cause copies thereof to be transmitted to every member of such Board, and cause a copy thereof to be open or inspection at the office, if any, of such Board and the office of the Council, as the case may be, by any person registered with such Board.
- (c) A Board shall in each year, within six months after the close of its financial year, submit to the Council a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in paragraph (b) in respect of that financial year.
- (d) The financial year of a Board shall end on 30 June of each year, unless such Board, with the approval of the Minister, determines otherwise.

PART III**TRAINING, QUALIFICATIONS AND REGISTRATION**

Control over training.

12. (1) Notwithstanding anything to the contrary in any law contained but subject to the provisions of the Nursing Professions Act, 1993, and the Allied Health Services Professions Act, 1993, no person or educational institution may offer or provide any training having as its object to qualify any person for the practising of any profession to which the provisions of this Act apply or for the carrying on of any other activity directed to the physical examination of any person or to the diagnosis, treatment or prevention of any physical defect, illness, disease or deficiency in persons, unless such training has been approved by the Board concerned.

(2) Any person or educational institution intending to offer such training as is referred to in subsection (1) shall, before offering such training, apply in such form as may be determined by the Minister, to the Board

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concerned in writing for its approval of such training and shall furnish such particulars regarding such training as such Board may require.

(3) (a) A Board may grant or refuse any application made in terms of subsection (2) and having granted such application, may issue a certificate of approval to such person or educational institution in such form, subject to such conditions and for such period as it may determine.

(b) A Board may withdraw a certificate of approval issued in terms of this section if it is satisfied that any person or educational institution issued with such certificate has failed to comply with any conditions determined in terms of paragraph (a).

(4) The Board concerned shall, in writing, notify the person or educational institution concerned of any decision taken under subsection (3).

(5) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition determined under subsection (3) shall be guilty of an offence and on conviction be liable -

(a) in the case of a natural person, to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment; or

(b) in any other case, to a fine not exceeding R50 000.

Registration a prerequisite for practising.

13. (1) Unless otherwise provided in this Act, no person shall be entitled to practise within Namibia -

(a) the profession of a medical practitioner, a dentist, a dental technician or an oral hygienist; or

(b) except in so far as it is authorized by the provisions of the Nursing Professions Act, 1993, the Pharmacy Profession Act, 1993, or the Allied Health Services Professions Act, 1993, for gain any other profession the practice of which mainly consists of -

(i) the physical examination of persons;

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- (ii) the diagnosis, treatment or prevention of physical defects, illnesses, diseases or deficiencies in persons;
- (iii) the giving of advice in regard to such defects, illnesses, diseases or deficiencies; or
- (iv) the prescribing or providing of medicine or any artificial denture or other dental appliance in connection with such defects, illnesses, diseases or deficiencies,

unless such person is registered with the Board concerned.

(2) Every person who desires to be registered in terms of this Act shall in such form as may be determined by the Minister apply to the Board concerned, and shall together with such application submit to such Board proof of the qualification which, in his or her opinion, entitles him or her to registration with such Board, together with such documents or information as may be required by such Board.

(3) When a Board with which the application in terms of subsection (2) has been lodged, is satisfied that the applicant and his or her qualifications comply with the provisions of this Act and with the requirements of such Board, such Board shall, upon payment by the applicant of all prescribed fees, issue a registration certificate in the name of such applicant authorizing the applicant, subject to the provisions of this Act or any other law, to practise the profession specified in such certificate, within Namibia.

(4) If a Board is not satisfied that the qualification or other documents submitted in support of such application comply with the provisions of this Act and with the requirements of such Board, such Board shall refuse to issue a registration certificate to the applicant.

Keeping of registers.

14. (1) The secretary of every Board shall -

- (a) keep a register for the profession concerned, or in the case of two or more professions, separate registers for every profession concerned, and shall enter into such register the name, address, qualifications or such other particulars as may be

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determined by such Board of every person whose application for registration in terms of section 13(2) has been granted; and

- (b) furnish the registrar of the Council with a copy of the registration certificate of every person who has been registered in terms of this Act and such other particulars (if any) as may be required by such registrar.

(2) A secretary of a Board shall keep the register concerned in accordance with the provisions of this Act and shall, subject to any other provisions of this Act, remove therefrom the names of all registered persons who have died or whose period of registration referred to in section 19(1) has expired, and shall from time to time make the necessary alterations in the addresses or qualifications of such persons.

(3) Every registered person who changes his or her address shall in writing and within 30 days after such change notify the secretary of the Board concerned of his or her new address.

(4) The Permanent Secretary: Home Affairs shall, upon receipt of the death registration of a person which indicates that such person immediately prior to his or her death practised a profession which is required to be registered under this Act, forthwith notify the secretary of the Board concerned of such death.

Removal of names from,
and restoration to, re-
gister.

15. (1) A Board may direct its secretary to remove from the register concerned the name of any person -

- (a) who has been, without informing the Board concerned, absent from Namibia during the three years immediately preceding such removal;
- (b) who has failed to notify the secretary concerned in terms of section 14(3) of any change of address and who, within a period of three months after a request by such secretary sent by registered letter to the address of such person appearing in such register to furnish such new address, fails to comply with such request;
- (c) who has requested that his or her name be removed from the register concerned, in which

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case such person may be required to lodge with the secretary concerned an affidavit to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him or her;

- (d) who has failed to pay to the Board concerned, within a period of one month as from the date upon which it became due for payment, the prescribed annual fees;
 - (e) whose name has been removed from the register, record or roll of any educational institution, hospital, society or other body from which such person received the qualification by virtue of which such person was registered in terms of this Act;
 - (f) in respect of whom any entry has been made in error or through misrepresentation or in circumstances not authorized by this Act and the initial registration would not have been made had the correct facts and circumstances been known to the Board concerned;
- (2) (a) Notice of the removal of the name of any person from a register in terms of subsection (1) shall be served by the secretary of the Board concerned or any person designated by such secretary for that purpose on the person whose name has been removed from the register concerned at his or her place of business or residence.
- (b) In the event that a notice referred to in paragraph (a) cannot be served on the person whose name has been removed from the register concerned at his or her place of business or residence, such notice may be served -
- (i) at the place of business of such person upon any partner or employee of such person; or
 - (ii) at the place of residence of such person upon any member of the household or any employee of such person apparently above the age of 16 years; or
 - (iii) by way of registered letter addressed to such person at his or her address which appears in such register,

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and, in the case of subparagraph (i) or (ii), any partner, member or employee upon whom the notice is served shall acknowledge receipt thereof in writing and shall state his or her capacity and, where practicable, his or her age.

(3) As from the date on which a notice referred to in subsection (2) has been served -

- (a) any registration certificate issued in terms of this Act to the person concerned shall be deemed to be cancelled; and
- (b) such person shall cease to practise the profession in respect of which such person was registered or to perform any act which such person, in his or her capacity as a registered person, was entitled to perform,

until such time as the name of such person is restored to the register concerned.

(4) If any person registered in terms of this Act has been declared a mentally ill person under the Mental Health Act, 1973 (Act 18 of 1973), the Registrar of the High Court shall forward a copy of the order declaring such person a mentally ill person to the secretary of the Board concerned who shall, on receipt of such copy, remove the name of such person from the register concerned.

(5) The name of a person which has been removed from a register or any entry removed from a register in terms of subsection (1) may upon application by such person in the form as may be determined by the Minister to the secretary of the Board concerned, be restored to such register by such Board.

(6) The provisions of section 13 shall apply *mutatis mutandis* to an application in terms of subsection (5) as well as any further and other conditions which the Board concerned may impose.

Copy of registers as proof.

16. A copy of any register of a Board and signed by the secretary of such Board shall be *prima facie* proof in all legal proceedings of the facts therein recorded, and the absence of the name of any person from such copy shall be proof, until the contrary is proved, that such person is not registered under the provisions of this Act: Provided that in the case of any person whose name -

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- (a) does not appear in such copy but ought to appear in such register, a certified copy under the hand of such secretary of the entry of the name of such person in such register shall be *prima facie* proof that such person is registered under the provisions of this Act;
- (b) has been removed from such register and has not been restored thereto, a certificate under the hand of such secretary that the name of such person has been removed from such register shall be *prima facie* proof that such person is not registered under the provisions of this Act.

Duplicate registration certificates and extracts from registers.

17. (1) Upon receipt of an application by a registered person and upon payment of the prescribed fee the secretary of a Board may issue to such person a duplicate registration certificate or furnish such person with a certified extract from the register concerned.

(2) A receipt in respect of the payment of annual fees issued to any person by a Board shall in any legal proceedings be *prima facie* proof of such person's registration under this Act.

Qualifications prescribed for registration.

18. (1) Subject to the provisions of subsection (2), the Minister may from time to time, upon the recommendation of the Board concerned, prescribe the qualifications obtained by virtue of examinations conducted by any educational institution or other examining authority, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration under this Act, if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be so prescribed.

(2) No qualification obtained by virtue of examinations conducted by an educational institution or other examining authority situated outside Namibia shall be prescribed under this section unless -

- (a) such qualification entitles the holder thereof to practise such profession in the country or state in which such educational institution or other examining authority is situated; and

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- (b) the Board concerned is satisfied that possession of such qualification is of a standard of professional education not lower than that prescribed in terms of subsection (1) in respect of the profession concerned, within Namibia.

Conditional registration.

19. (1) Any person not in possession of a qualification prescribed in terms of section 18 and who lodges an application for registration with the Board concerned may, subject to the provisions of section 20, be registered by such Board, if -

- (a) such applicant possesses any qualification which the Board concerned is satisfied as indicating a standard of professional education not lower than that prescribed in terms of the said section 18;
- (b) such applicant has received such additional tuition or training, whether within or outside Namibia, as may be prescribed upon the recommendation of the Board concerned; and
- (c) such applicant has passed the additional examinations, whether within or outside Namibia, as may be prescribed upon the recommendation of the Board concerned.

(2) For the purposes of the provisions of paragraphs (b) and (c) of subsection (1), the Board concerned may register such applicant conditionally for such period or periods as such Board may determine and on such conditions subject to which such applicant may practise his or her profession as may be so determined until such time as such applicant has completed the additional tuition or training referred to in the said paragraph (b) or until such time as such applicant has passed the additional examinations referred to in the said paragraph (c).

(3) A Board may, before issuing a conditional registration certificate in terms of subsection (2), require the applicant concerned, at such date and venue as may be determined by such Board, to be examined by examiners appointed by such Board, to ascertain whether such applicant -

- (a) possesses professional knowledge and skill which is of a standard not lower than that required in respect of the profession concerned within Namibia; and

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(b) is proficient in the official language of Namibia.

(4) The Minister may, from time to time and upon the recommendation of the Board concerned, prescribe the examinations to be conducted in terms of subsection (3) and the examination fees payable to such Board by such applicant.

(5) As soon as an applicant has complied with the provisions of subsection (1)(b) and upon expiry of any period determined by the Board concerned in terms of subsection (2), any person in possession of a conditional registration certificate may apply to such Board to sit for the additional examinations prescribed in terms of subsection (1)(c).

(6) Any person who possesses a qualification referred to in paragraph (a) of subsection (1) may, upon application, be exempted by the Minister from any restriction or condition imposed in respect of him or her by or under the provisions of this section.

Issuing of registration certificates replacing conditional registration certificates.

20. Any person to whom a conditional registration certificate has been issued in terms of section 19 may, as soon as such person has complied with the provisions of that section and the conditions determined thereunder by the Board concerned, apply to such Board for registration *mutatis mutandis* in accordance with the provisions of section 13.

Registration of persons for purposes of educational demonstrations.

21. (1) Notwithstanding any provisions of this Act, a Board may, for the purpose of promoting any education in respect of a profession, register any person not permanently resident in Namibia for such period and subject to such conditions as the Board may determine.

(2) Any person registered in terms of subsection (1) may at any institution approved for that purpose by the Board concerned give educational demonstrations relating to such profession.

Registration of persons for purposes of post-graduate studies.

22. (1) Notwithstanding any provisions of this Act, a Board may, for the purpose of subsection (2), register in a profession any person having such training and qualifications as such Board may deem satisfactory.

(2) Any person registered in terms of subsection (1) shall only be entitled to engage in such post-graduate

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studies and at such educational institution as approved by the Board concerned, and subject to such conditions as may be determined by such Board.

Educational institutions to furnish Boards with certain particulars.

23. (1) Every educational institution at which a qualification can be obtained entitling the holder thereof to registration with the Board concerned shall furnish such Board upon its request, with full particulars as to -

- (a) the minimum age and standard of general education required of students for admission to the relevant course or field of study;
- (b) the courses of study, training and examinations required of a student before such qualification is granted;
- (c) particulars of examinations conducted and the results thereof in respect of a specific student or of a specific category of students; and
- (d) such other particulars relating to any of the matters referred to in paragraph (a), (b) or (c) as such Board may from time to time require.

(2) If any educational institution referred to in subsection (1) fails or refuses to furnish the particulars requested by the Board concerned under that subsection or if it appears to such Board that any provision of this Act which applies to such educational institution is not properly being complied with and that such improper compliance is having or may have an adverse effect on the standard of the education in respect of the professional training concerned to be maintained at such educational institution, the Minister may, upon the recommendation of such Board, by notice in the *Gazette* declare that any qualification specified in such notice and granted by such educational institution after a date specified in such notice shall, subject to the provisions of subsection (4), not entitle any holder thereof to registration under this Act.

(3) Upon the recommendation of the Board concerned, the Minister may, when it appears to him or her that satisfactory provision has been made for complying with the requirements of this Act by any educational institution in respect of any qualification which is the subject of a notice issued under subsection (2), repeal or amend any notice published in terms of that subsection.

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(4) Upon the recommendation of the Board concerned, the Minister shall, in the notice published in terms of subsection (3), determine whether or not any qualification granted subsequent to the date specified in the notice published in terms of subsection (2) and granted by the educational institution referred to in such notice, entitles the holder of such qualification to registration in terms of this Act.

(5) A Board may from time to time appoint a person to investigate whether the minimum requirements laid down by such Board are being complied with by an educational institution and to report to such Board thereon.

Registration and use of additional qualifications, and registration of specialities.

24. (1) Every person who desires to have a prescribed qualification registered other than the qualification by virtue of which such person has in the first instance been registered, or to have a prescribed speciality registered shall, -

- (a) upon application in the form determined by the Minister; and
- (b) subject to the provisions of subsection (2), upon payment of the prescribed fee,

be entitled to have such other qualification or such speciality entered in the register concerned.

(2) If a person wishes to register a qualification or speciality not prescribed in terms of this Act, the Board concerned may, before entering such qualification or speciality into the register, require of such applicant to pass an examination prescribed by the Minister upon the recommendation of such Board in order to determine whether the applicant's professional knowledge and skill in the field of his or her qualification or speciality are of such a standard so as to enable such person to practise the profession or speciality concerned.

(3) No registered person shall take, use or publish in any way whatsoever any name, title, description or symbol indicating or calculated to lead persons to infer that such person holds any professional qualification registered in terms of this section which is not shown in the register against the name of such person, nor shall any registered person practise as a specialist or hold himself or herself out

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to be a specialist unless his or her speciality has been registered in terms of this section.

(4) A Board may remove from the register concerned any qualification or speciality registered in terms of this section, if -

- (a) in the case of such qualification, the name of the holder thereof has been removed from the roll or register of the educational institution which had granted such qualification to such applicant;
- (b) the Board concerned is satisfied that such qualification or speciality does not comply with the requirements as prescribed;
- (c) the person in respect of whom a qualification or speciality is registered requests in writing such Board to remove such qualification or speciality from such register.

(5) Any qualification or speciality removed from a register in terms of subsection (4) shall be restored to such register by the secretary of the Board concerned upon such person -

- (a) applying for such restoration in the form and manner determined by the Minister;
- (b) paying the fee prescribed in respect of such restoration; and
- (c) complying with such other requirements (if any) as such Board may determine.

PART IV**OFFENCES BY UNREGISTERED PERSONS**

Penalties for practising as medical practitioner or as medical intern or for performing certain other acts, while unregistered.

25. (1) Subject to the provisions of subsections (2) and (3), any person not registered as a medical practitioner or as a medical intern, who -

- (a) for gain practises as a medical practitioner, whether or not purporting to be registered as such;

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(b) for gain -

- (i) physically examines any person;
 - (ii) performs any act of diagnosing, treating or preventing any physical defect, illness, disease or deficiency in respect of any person;
 - (iii) advises any person on his or her physical condition;
 - (iv) on the ground of information provided by any person or obtained from such person in any way whatsoever -
 - (aa) diagnoses such person's physical condition;
 - (bb) advises such person on his or her physical condition; or
 - (cc) supplies or sells to or prescribes for such person any medicine or treatment;
 - (v) prescribes or provides any medicine, drug or similar substance or preparation;
 - (vi) performs any act prescribed as an act which may be performed only by a medical practitioner or a medical intern; or
 - (vii) performs any other act, whether defined in this Act or not, specially pertaining to the profession of a medical practitioner;
- (c) except in accordance with the provisions of the Public Health Act, 1919 (Act 36 of 1919), the Nursing Professions Act, 1993, the Allied Health Services Professions Act, 1993, the Pharmacy Profession Act, 1993, or of this Act, performs any act whatsoever having as its object -
- (i) the diagnosing, treating or preventing of any physical defect, illness, disease or deficiency in any person; and

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- (ii) by virtue of the performance of such act the obtaining, either for himself or herself or for any other person, of any benefit by way of any profit from the sale or disposal of any medicine, foodstuff or substance or by way of any donation or gift or by way of the provision of accommodation, or the obtaining of, either for himself or herself or for any other person, any other gain whatsoever;
- (d) pretends, or by any means whatsoever holds himself or herself out to be a medical practitioner or a medical intern whether or not purporting to be registered, or a healer, of whatever description, of physical defects, illnesses, diseases or deficiencies in any person;
- (e) uses the name or title of medical practitioner, medical intern, healer or doctor or any name, title, description or symbol indicating or calculated to lead persons to infer that such person is the holder or is entitled to be the holder of any qualification entitling such person to practise as a medical practitioner, physician, surgeon, gynaecologist, obstetrician or medical intern, or of any other qualification enabling such person to diagnose, treat or prevent physical defects, illnesses or deficiencies in persons in any way whatsoever, or that such person is registered under this Act as a medical practitioner or medical intern;
- (f) except in accordance with the provisions of the Public Health Act, 1919, the Nursing Professions Act, 1993, the Allied Health Services Professions Act, 1993, the Pharmacy Profession Act, 1993, or of this Act, by word, conduct or demeanor holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent physical defects, illnesses, diseases or deficiencies in persons, or to prescribe or supply any medicine, drug or similar substance or preparation in respect of such defects, illnesses, diseases or deficiencies, shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

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(2) The provisions of subsection (1) shall not prohibit -

(a) a medical intern from -

- (i) performing any function or issuing any certificate or other document which in terms of any law other than this Act may be or is required to be performed or issued by a medical practitioner, whether described in such other law as a medical practitioner or by any other name or designation; or
- (ii) describing himself or herself as a medical practitioner in connection with the performance of such function or the issuing of any such certificate or other document,

and any reference in such other law to such a medical practitioner shall be deemed to include a reference to a medical intern;

(b) a student medical intern in the course of his or her training from -

- (i) performing under the supervision of a medical practitioner or a medical intern any act defined in subsection (1)(b); or
- (ii) issuing in connection with the performing of that act in the educational institution where such student is undergoing his or her training, any document required in respect of the performing of that act;

(c) a pharmacist registered under the Pharmacy Profession Act, 1993, from performing any act falling within the scope of his or her profession as contemplated in that Act;

(d) a dentist from performing any act falling within the scope of his or her profession as contemplated in this Act or from using any name, title, description or symbol normally associated with such profession.

(3) The provisions of subsection (1)(b) and (f) shall not apply in respect of -

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- (a) any act performed by any person in the course of *bona fide* research at any educational institution approved for that purpose by the Minister;
- (b) any act performed by a pharmacist registered under the Pharmacy Profession Act, 1993, or by an employee of such pharmacist acting within the scope of his or her employment for the purposes of selling or promoting the sale of any medicine to any other pharmacist or to any medical practitioner; or
- (c) the sale of any medicine by a pharmacist referred to in paragraph (b) to any person in pursuance of a written prescription of a medical practitioner.

Penalties for practising as dentist or for performing certain other acts, while unregistered.

26. (1) Subject to the provisions of subsection (3) and sections 27 and 28, any person not registered as a dentist, who -

- (a) for gain practises as a dentist, whether or not purporting to be registered, or performs any act specially pertaining to the practice of dentistry or takes in the mouth of any person any impression or bite in connection with or tries in or fits in the mouth of any person any artificial denture or other similar dental appliance for the purpose of manufacturing, repairing or supplying any such denture or dental appliance or manufactures, repairs or supplies any artificial denture or other similar dental appliance, if for the purpose of such manufacturing, repairing or supplying any impression or bite had been taken, or any trying in or fitting had been done in the mouth of any person by any person not registered as a dentist; or
- (b) pretends or by any means whatsoever holds himself or herself out to be a dentist, whether or not purporting to be registered, or to be entitled to practise dentistry, or uses the name of a dentist or any name, title, description or symbol indicating or calculated to lead any person to infer that such person is the holder of any qualification as a dentist or that such person is registered as a dentist or entitled to practise dentistry under this Act,

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shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(2) For the purposes of this Act, the practise of dentistry means the performance of any operation or the giving of any such treatment or advice as is usually performed or given by a dentist or any operation, treatment or advice preparatory to or for the purpose of or in connection with the manufacturing, repairing, supplying, fitting or insertion of artificial denture or similar dental appliances.

(3) Nothing in this section shall be construed as prohibiting -

(a) a medical practitioner from performing, in the course of his or her practice, acts pertaining to the practice of dentistry in cases of emergency or where no dentist is readily available;

(b) any dental technician -

(i) from being employed by any dentist for the purpose of manufacturing or repairing, on the instructions and to the order of such dentist, of artificial denture or other dental appliance; or

(ii) from manufacturing, repairing or supplying any artificial denture or other dental appliance as an independent contractor, provided such manufacturing, repairing or supplying is carried out on the instructions and to the order of a dentist,

and does not include the taking of any impression or bite or any trying or fitting in the mouth;

(c) any oral hygienist from performing on the instructions of a dentist any prescribed acts pertaining to the practice of dentistry;

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- (d) anything necessary or required to be performed by -
 - (i) a student or trainee dental technician in the course of and for the purposes of his or her studies or training, provided it is performed by such student or trainee under the supervision of a dentist or dental technician; or
 - (ii) a student or trainee oral hygienist in the course of and for the purposes of his or her studies or training provided it is performed by such student or trainee under the supervision of a dentist or oral hygienist;
- (e) any unregistered person from being employed as a dental laboratory assistant in a dental laboratory for the purpose of manufacturing or repairing, under the supervision of a dentist or dental technician, of any artificial denture or other dental appliance.

Penalties for practising as dental technician or for performing certain other acts, while unregistered.

27. (1) Subject to the provisions of subsection (3) and section 26, any person not registered as a dental technician, who -

- (a) for gain, practises as a dental technician whether or not purporting to be registered, or performs any act specially pertaining to the practise of a dental technician; or
- (b) pretends or by any means whatsoever holds himself or herself out to be a dental technician, whether or not purporting to be registered, or to be entitled to practise as a dental technician, or who uses the name of dental technician or any name, title, description or symbol indicating or calculated to lead persons to infer that he or she is the holder of any qualifications as a dental technician or that he or she is registered as a dental technician or entitled to practise as a dental technician under this Act,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

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(2) For the purposes of this section, the manufacturing, repairing or supplying of any artificial denture or other dental appliance performed in the circumstances referred to in section 26(3)(b) shall be deemed to be acts specially pertaining to the profession of a dental technician.

(3) Nothing in this section contained shall be construed as prohibiting any person from performing any act specially pertaining to the profession of a dental technician, if -

- (a) he or she is a dentist; or
- (b) he or she is a student or trainee dental technician acting in the circumstances referred to in section 26(3)(d)(i); or
- (c) he or she is a dental laboratory assistant performing any act referred to in section 26(3)(e) in the circumstances referred to in that section.

Penalties for practising as oral hygienist or for performing certain other acts, while unregistered.

28. (1) Subject to the provisions of subsection (3) and section 26, any person not registered as an oral hygienist, who -

- (a) for gain, practises as an oral hygienist, whether or not purporting to be registered, or performs any act specially pertaining to the profession of an oral hygienist; or
- (b) pretends or by any means whatsoever holds himself or herself out to be an oral hygienist, whether or not purporting to be registered, or to be entitled to practise as an oral hygienist or who uses the name of oral hygienist or any name, title, description or symbol indicating or calculated to lead persons to infer that he or she is the holder of any qualifications as an oral hygienist, or that he or she is registered as an oral hygienist or entitled to practise as an oral hygienist under this Act,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

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(2) For the purposes of this section, any act prescribed as contemplated in section 26(3)(c), shall be deemed to be an act specially pertaining to the profession of an oral hygienist.

(3) Nothing in this section contained shall be construed as prohibiting -

(a) any dentist; or

(b) any student or trainee oral hygienist in the circumstances referred to in section 26(3)(d)(ii),

from performing any act referred to in subsection (2).

PART V**DISCIPLINARY POWERS OF BOARDS**

Rules by Boards relating to improper conduct or misconduct.

29. (1) A Board shall from time to time issue rules specifying the acts or omissions by registered persons which constitute improper conduct or misconduct and in respect of which such Board may conduct inquiries and may take disciplinary steps in terms of the provisions of this Part.

(2) No rules issued in terms of subsection (1) or any amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published in the *Gazette*.

(3) The provisions of this section shall not prohibit a Board from conducting an enquiry into any conduct or behaviour of any registered person, whether or not such conduct or behaviour is an act or omission referred to in subsection (1).

Inquiries by Boards into complaints, charges or allegations of improper conduct or misconduct.

30. (1) A Board shall have power to inquire -

(a) into any complaint or charge; or

(b) whether or not a complaint or charge has been lodged with the Board concerned, into any allegation,

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of improper conduct or misconduct against any person registered with the Board concerned, and on finding such person guilty of such conduct, to impose any of the penalties prescribed by section 33: Provided that in the case of a complaint, charge or allegation which forms or is likely to form the subject of a criminal case in a court of law, such Board may postpone the holding of an inquiry until such case has been disposed of.

(2) A Board may -

- (a) when it is in doubt as to whether an inquiry should be held in connection with the complaint, charge or allegation in question, consult with or seek information from any person, including the person against whom the complaint, charge or allegation has been lodged;
- (b) for the purpose of an inquiry in terms of subsection (1) permit or request any person to give evidence at such inquiry or to advise the Board concerned on any matter in respect thereof.

Procedures at inquiries.

31. (1) Any inquiry in terms of section 30 shall, subject to the provisions of this section, be conducted in accordance with the prescribed procedures.

(2) The proceedings at such inquiry shall, in so far as is practicable, be minuted *verbatim* and the minutes of such inquiry shall be certified by the members of the Board concerned present at such meeting as being a true and accurate account of the evidence given at such inquiry, the exhibits presented and of the decision of such Board.

(3) The minutes of an inquiry referred to in subsection (2) shall for a period of at least five years be kept in safe-custody by the secretary of the Board concerned and shall for the purpose of an appeal in terms of section 53 be *prima facie* proof of the proceedings at such inquiry and the decisions taken by such Board as a result of such inquiry.

(4) Any person in respect of whom an inquiry in terms of section 30 is to be held shall be notified in writing of such inquiry at least 21 days before the date of commencement of such inquiry by the delivery to such person of a notice in the prescribed form informing such person of the intended inquiry and obtaining from such

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person an acknowledgement of receipt stating the date, place and time of the service of such notice.

(5) Service of a notice in terms of subsection (4) shall be performed by the secretary of the Board concerned or by a person designated for such purpose by the secretary.

(6) In the event of the secretary or the person designated in terms of subsection (5) certifying that -

- (a) the person upon whom the notice is to be served cannot be traced;
- (b) such person refuses to accept such notice; or
- (c) such person refuses to sign the required acknowledgement of receipt,

the secretary may send such notice by registered letter to such person to his or her address as it appears in the register of such Board: Provided that such notice shall be so sent not less than 14 days prior to the date of the intended inquiry.

(7) In the event of a person served with a notice in terms of subsection (4) or to whom a notice has been sent in terms of subsection (6), not being present at the commencement of an inquiry, the president of the Board concerned may at his or her discretion have such inquiry conducted in the absence of such person.

- (8) (a) For the purpose of an inquiry in terms of section 30 the Board concerned may summon witnesses to appear at a specified date, place and time to give evidence before such Board and to submit to such Board any document, book, record or other thing relevant to the inquiry.
- (b) A summons to appear before a Board as a witness or to produce to it any document, book, record or thing referred to in paragraph (a), shall be substantially in the prescribed form and signed by the president or secretary of such Board, and shall be served either by registered letter or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.

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(c) Any person who, having duly been summoned -

- (i) refuses, or without sufficient cause fails, to attend the inquiry in question at the time and place specified in the summons; or
- (ii) refuses to take the prescribed oath or to make an affirmation when required by the person presiding at such inquiry to do so; or
- (iii) leaves the inquiry in question without the consent of the person presiding at such inquiry, whether or not such person has given evidence; or
- (iv) refuses to give evidence before the Board concerned or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any document, book, record or thing which such person has in terms of the summons been required to produce,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(9) Every person summoned in terms of subsection (8) shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court is entitled.

(10) Every person whose conduct is the subject of an inquiry in terms of section 30 shall, if such person is present at such inquiry, have the right, by himself or herself or through a legal representative, to answer to any complaint, charge or allegation against him or her and to be heard in his or her defense, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;

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(d) to examine witnesses testifying against him or her.

(11) The president of the Board concerned, where such Board itself holds an inquiry in terms of section 30, or the chairperson of a committee of a Board, where such committee holds an inquiry under powers assigned or delegated to it by such Board, may appoint a person with adequate experience in the administration of justice to be present as an assessor at such an inquiry and to advise such Board or such committee, as the case may be, on matters of law, procedure or evidence.

(12) For the purpose of the computation of any period referred to in subsections (4) and (6), no Saturday, Sunday or public holiday shall be regarded as a day referred to in those subsections.

Penalty for false evidence.

32. Any person who gives false evidence on oath at any inquiry held under this Part, knowing such evidence to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for the crime of perjury.

Penalties to be imposed by Boards.

33. (1) Every person registered under this Act with a Board, who, after an inquiry held by such Board, is found guilty of improper conduct or misconduct, shall be liable to any one or more of the following penalties, namely -

- (a) a caution or a reprimand or a reprimand and a caution; or
- (b) suspension for a specified period from practising or performing acts specially pertaining to the profession of such person; or
- (c) removal of the name of such person from the register concerned,

and such Board may in lieu of or in addition to any such penalty impose a fine not exceeding R2 000: Provided that, before imposition of any penalty such person shall, by himself or herself or through his or her legal representative, be afforded an opportunity of tendering an explanation to such Board in extenuation of the conduct in question.

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(2) Any fine imposed under subsection (1) may be recovered and shall be dealt with in the manner prescribed.

(3) A Board shall set out fully and in writing its findings and the penalty imposed (if any), and shall make such findings and penalty known to any other prescribed bodies or persons.

(4) A person who has been found guilty of improper conduct or misconduct shall, whether or not such person was present at the inquiry in question -

- (a) in the case of a penalty imposed under subsection (1)(a), be informed of the findings of the Board and penalty concerned by forwarding a copy of such findings and penalty duly signed by the person presiding at the inquiry, by registered letter to such person at his or her address as it appears in the register of such Board;
- (b) in the case of a penalty imposed under subsection (1)(b) or (c), be informed of the findings of the Board and the penalty concerned by the serving *mutatis mutandis* in accordance with the provisions of section 15(2), of a copy of such findings and penalty duly signed by the person who presided at the inquiry.

(5) When a person has been found not guilty of improper conduct or misconduct the secretary of the Board concerned shall by registered letter addressed to such person at his or her address as it appears in the register of such Board inform such person of the findings of such Board.

(6) A Board may, if it deems fit and subject to such conditions, if any, as it may determine -

- (a) terminate any suspension under subsection (1) before the expiry of the specified period; or
- (b) on payment of the prescribed fee, restore to the register of such Board any name which has been removed therefrom.

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Postponement of imposition of penalties and suspension of execution of penalties.

34. (1) When a Board finds a person guilty of improper conduct or misconduct it may -

- (a) postpone for such period and on such conditions as may be determined by it, the imposition of the penalty; or
 - (b) impose any penalty mentioned in paragraph (b) or (c) of section 33(1), but order the execution of such penalty to be suspended for such period and on such conditions as may be determined by it.
- (2) (a) If at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1)(a) the Board concerned is satisfied that the person concerned has observed all the relevant conditions, such Board shall inform such person that no penalty will be imposed upon him or her.
- (b) If the execution of a penalty has been suspended in terms of subsection (1)(b) and -
- (i) the Board concerned is satisfied that the person concerned has observed all relevant conditions throughout the period of suspension, such Board shall inform such person that such penalty will not be executed;
 - (ii) the person concerned fails to observe any of the conditions of suspension, the Board concerned shall put such penalty into operation, unless such person satisfies such Board that the non-observance of the condition concerned was due to circumstances beyond his or her control.

Effect of suspension or removal from registers.

35. Every person who has been suspended or whose name has been removed from the register concerned in terms of section 33 shall be disqualified from carrying on his or her profession and his or her registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his or her name has been restored to such register by the Board concerned.

Cognizance by Boards of conduct of registered persons under certain circumstances.

36. (1) Every registered person who, either before or after registration, has been convicted of any offence by a court of law may be dealt with by the Board concerned in

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terms of the provisions of this Part, if such Board is of the opinion that such offence constitutes improper conduct or misconduct, and such person shall be liable upon proof of such conviction, to any one or more of the penalties referred to in section 33: Provided that, before imposition of any penalty, such person shall, by himself or herself or through his or her legal representative, be afforded an opportunity of tendering an explanation to such Board in extenuation of the conduct in question.

(2) When in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of improper conduct or misconduct on the part of a registered person, the court shall direct that a copy of the record of such proceedings or such portion thereof as is material to such conduct, be transmitted to the Board concerned.

Appointment of *pro forma* complainants.

37. (1) If a Board exercises the powers conferred upon it by section 30, it shall appoint any person as *pro forma* complainant to present the case to such Board: Provided that the secretary for the time being or any member of such Board shall not be so appointed.

(2) A Board may, subject to the provisions of the proviso to subsection (1), appoint any other person to institute proceedings or to continue proceedings if the person appointed under that subsection is for any reason unable to do so.

Limitation of liability.

38. No Board or committee thereof or any member of such Board or committee shall be liable in respect of anything done or omitted in good faith and not attributable to negligence in the exercise of a power or the carrying out of a duty or the performance of a function under or by virtue of the provisions of this Part or in respect of anything that may result therefrom.

Restriction in, or suspension from, practice of incapable, unfit or incompetent registered persons.

39. (1) When it appears to a Board that any registered person -

- (a) has become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow such person to continue to practise;
- (b) has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply or possess any scheduled substance;

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(c) has, subject to the provisions of subsection (6), used, possessed, prescribed, administered or supplied any scheduled substance for any purpose other than a medicinal purpose as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965); or

(d) has become addicted to any scheduled substance or dependence-producing drug,

such Board shall cause the matter to be investigated and may, if it deems it necessary, conduct an inquiry *mutatis mutandis* in accordance with the provisions of this Part in respect of such person.

(2) If the Board concerned, after having conducted an inquiry referred to in subsection (1), finds that any of the circumstances contemplated in paragraph (a), (b), (c) or (d) of that subsection exist in respect of such person, such Board may, by order -

(a) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (a) of subsection (1) exist -

(i) suspend such person for such period and subject to such conditions as such Board may determine from practising his or her profession or performing any act specially pertaining to his or her profession; or

(ii) impose such restrictions and conditions as such Board may deem fit, subject to which such person shall be entitled to continue practising his or her profession; or

(b) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (b), (c) or (d) of subsection (1) exist -

(i) impose upon such person any of the penalties referred to in section 33;

(ii) prohibit such person from purchasing, acquiring, keeping, using, administering, prescribing, ordering, supplying or possessing any scheduled substance; or

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(iii) prohibit, for such period and on such conditions as such Board may impose, such person from purchasing, acquiring, keeping, using, administering, prescribing, ordering, supplying or possessing any scheduled substance.

(3) A Board may at any time withdraw or extend the period of or amend any order made by it under subsection (2).

(4) The provisions of section 35 shall apply *mutatis mutandis* in respect of any person who has been suspended or whose name has been removed from the register concerned by virtue of any provision of subsection (2).

(5) Any person registered under this Act who contravenes or fails to comply with any order made under subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(6) The provisions of subsection (1)(c) shall not apply if any scheduled substance is administered -

- (a) in terms of an authority granted by the Minister;
- (b) subject to such conditions as may be stated in such authority; and
- (c) to the particular person mentioned in such authority.

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Authorization to practise
professions in employ-
ment of State.

40. (1) Notwithstanding anything to the contrary in this Act or in any other law contained, but subject to the provisions of this section, the Minister may, on application of any person who is not registered under this Act to practise as a medical practitioner, dentist, dental technician, oral hygienist or medical intern, but who -

- (a) in terms of the laws of any other country or state approved by the Minister for that purpose, is entitled to practise as a medical practitioner, dentist, dental technician or oral hygienist without further examination in that country or state; or
- (b) although he or she is not entitled to practise as contemplated in paragraph (a), at any educational institution situated outside Namibia obtained a qualification or received education in the medical or dental profession which in the opinion of the Minister indicates a satisfactory standard of professional education,

and complies with such further conditions or requirements as the Minister may determine, grant a written authority to such person to practise the profession of a medical practitioner, dentist, dental technician or oral hygienist or to practise as a medical intern, as the case may be.

(2) Any person to whom a written authority has been granted under subsection (1) -

- (a) shall be entitled to practise the profession of a medical practitioner, dentist, dental technician or oral hygienist or to practise as a medical intern, as the case may be -
 - (i) only in the employment of the State and in such hospital, clinic or similar institution within Namibia;
 - (ii) for the period; and

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(iii) subject to -

(aa) such restriction in respect of his or her professional activities; and

(bb) such further conditions, including the condition that he or she may only practise as such subject to such supervision,

as may be determined by the Minister and specified in such written authority;

(b) shall, subject to any restriction or condition imposed in respect of him or her under the provisions of paragraph (a), be competent and entitled to perform any act falling within the scope of the profession of a person who is registered under this Act as a medical practitioner, dentist, dental technician, oral hygienist or medical intern, as the case may be, and which he or she could have performed if he or she had been registered as such under this Act.

(3) The Minister may, at his or her discretion -

(a) at any time amend or revoke any restriction or condition imposed under subsection (2);

(b) at any time impose such further and additional restrictions and conditions as he or she may determine;

(c) extend from time to time the period for which such authority has been granted;

(d) at any time suspend, for such period and subject to such conditions as he or she may determine, any written authority granted under subsection (1); or

(e) at any time withdraw any such authority.

(4) Any person who desires to obtain a written authority under the provisions of subsection (1), shall apply therefor in such form and such manner as may be determined by the Minister, and such application shall be accompanied by -

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- (a) proof of the qualification or qualifications on account of which the applicant so applies;
- (b) such proof of the applicant's identity and good character and of the fact that he or she is entitled to practise the profession of a medical practitioner, dentist, dental technician or oral hygienist or to practise as a medical intern and any qualification or qualifications which may be required by the Minister, including the authenticity and validity thereof as may be so required;
- (c) such application fees as may be determined by the Minister; and
- (d) any further documents or information as may be required by the Minister.

(5) No application referred to in subsection (1) shall be granted unless the Board concerned has been consulted by the Minister in regard thereto.

(6) Before granting an application referred to in subsection (1), the Minister may require of the applicant concerned to sit for any examination before an examiner or examiners appointed by the Minister for the purpose of ascertaining whether the applicant, to the satisfaction of the Minister, possesses sufficient professional knowledge and skill.

- (7) (a) The provisions of Part IV and of section 48 shall *mutatis mutandis* apply to or in relation to any person authorized under this section to practise the profession of a medical practitioner, dentist, dental technician or oral hygienist or to practise as a medical intern as if such person were registered under this Act as such.
- (b) Any reference in the provisions referred to in paragraph (a) to a medical practitioner, dentist, dental technician, oral hygienist or medical intern shall be construed as including a reference to any person authorized under this section to practise as such, but subject to any condition or restriction imposed by or under this section.

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(8) For the purposes of the provisions of any other law, a medical practitioner, dentist, dental technician, oral hygienist or medical intern shall be construed as including a reference to a person authorized under this section to practise as such, but subject to any condition or restriction imposed by or under this section.

Preparation and supply of
medicine by medical
practitioners or dentists.

41. (1) Any medical practitioner or dentist shall be entitled to personally compound, prepare or supply medicine for or to a patient under treatment when such medicine is prescribed for such patient by such medical practitioner or dentist or a medical practitioner or dentist with whom he or she is practising in partnership or who is his or her principal, assistant or *locum tenens*: Provided that such medical practitioner or dentist shall not be entitled to keep an open shop or pharmacy in relation to such medicine.

(2) The Permanent Secretary may, if he or she is of opinion that the consulting rooms of a medical practitioner or dentist is not situated within reasonable distance from a retail pharmacy, authorize, subject to such conditions as he or she may determine, a nurse registered or enrolled under the Nursing Professions Act, 1993, and who is in the employ of such medical practitioner or dentist, to supply any medicine mentioned in Schedule 1, 2, 3 or 4 of the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965), to any person under treatment of such medical practitioner or dentist: Provided that such medicine shall only be supplied in accordance with the directions of such medical practitioner or dentist and from his or her consulting rooms.

(3) A medical practitioner or dentist who intends supplying medicine to patients or persons in terms of subsection (1) or (2), shall inform the professional board established for pharmacists under any law, of such intention.

Tariffs of fees.

42. (1) A Board may, after consultation with the Council and with the approval of the Minister, determine a tariff of fees which may be charged for professional services rendered by persons registered under this Act.

(2) A Board may from time to time, in a like manner, repeal or amend such tariff of fees.

(3) The tariff of fees referred to in subsection (1) and any repeal or amendment thereof in terms of subsection

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(2), shall have no force and effect unless published by the secretary of the Board concerned in the *Gazette*.

Charges by registered persons.

43. (1) Every registered person (in this section referred to as the practitioner) shall, unless the circumstances render it impossible for him or her to do so, before rendering any professional services inform the person to whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he or she intends to charge for such services -

(a) when so requested by the person concerned; or

(b) when such fee exceeds that determined under section 42 or, if no such fee is so determined, that usually charged for such services,

and shall in a case to which paragraph (b) relates, also inform the person concerned of the fee so determined or the usual fee, as the case may be.

(2) Any practitioner who in respect of any professional services rendered by him or her claims payment from any person (in this section referred to as the patient) shall furnish the patient with a detailed account within the prescribed period.

(3) A patient may, whether or not he or she has settled an account referred to in subsection (2), in writing and within the prescribed period request the Board with whom the practitioner is registered, to determine the amount which in the opinion of such Board should have been charged in respect of the services to which the account relates and such patient shall at the same time by registered letter inform the practitioner concerned of such request.

(4) On receipt of a request referred to in subsection (3), the Board concerned shall request the practitioner concerned to submit to it in writing and within the prescribed period any representations in support of the amount charged in the account rendered by such practitioner.

(5) The Board concerned shall within one month after receipt of the practitioner's representations referred to in subsection (4), or if no such representations have been submitted within the period referred to in that

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subsection, within one month after the expiration of that period, determine the amount payable by the patient to the practitioner and shall in writing inform such practitioner and such patient of the amount so determined.

(6) The determination of the amount payable in terms of this section by the patient to the practitioner shall be binding upon both the practitioner and the patient.

(7) Until such time as the Board concerned has in terms of subsection (5) made a determination in respect of any account referred to it in terms of subsection (3), no practitioner shall institute legal proceedings in any court of law against a patient for recovery of any amount owing in respect of such account.

(8) The provisions of subsection (7) shall not be construed so as to prohibit a practitioner from instituting proceedings for the recovery of any amount owing and which has not in terms of subsection (3) been referred to the Board concerned or in respect whereof such Board has already made a determination in terms of subsection (5), irrespective of whether such patient has in terms of subsection (3) referred any other account or any other or further part of such practitioner's account to such Board.

(9) If a patient has settled an account referred to in subsection (3) before the Board concerned has determined that the amount payable by the patient concerned is actually less than the amount which such patient has paid, the practitioner concerned shall, after such determination -

- (a) credit the account of such patient with the deficiency between the amount actually paid and the amount which such Board has so determined; or
- (b) at the request of such patient, refund to him or her the amount of the deficiency referred to in paragraph (a).

(10) This section shall be deemed not to divest a Board of any of its powers or functions under Part V with regard to acts or omissions in respect of which it may take disciplinary steps.

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(11) For the purpose of this section "professional services" shall include the supply of any artificial part for, and the fitting of such part to, the human body.

Offences relating to registration, registers and impersonation.

44. Any person who -

- (a) procures or attempts to procure for himself or herself or for any other person registration under this Act or any certificate, order or prescription referred to in this Act by means of a false representation, whether verbally or in writing, or aids and abets any person in so doing; or
- (b) makes or causes to be made any unauthorized entry or alteration in or removal from, a register or certified copy thereof or extract therefrom, or on any certificate issued under this Act; or
- (c) makes or causes to be made a false statement in connection with the identity or qualifications of himself or herself or any other person applying for registration in terms of this Act; or
- (d) except upon the directions of the Council or of the Board concerned, wilfully renders illegible or damages or destroys or causes to be rendered illegible, damaged or destroyed any entry in a register or a certificate issued under this Act; or
- (e) forges, or knowing it to be forged utters any document purporting to be a document authorized or issued under this Act; or
- (f) impersonates any registered person; or
- (g) supplies or offers to supply to any person not registered under this Act, the Nursing Professions Act, 1993, or the Allied Health Services Professions Act, 1993, any instrument or appliance which can be used, or is claimed to be effective, for the purpose of diagnosing, treating or preventing physical defects, illnesses, diseases or deficiencies in persons, knowing that such instrument or appliance will be used by such unregistered person for the purpose of performing for gain an act which such unregistered person is in terms of this Act or the said Nursing Professions Act, 1993, or the said Allied Health

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Services Professions Act, 1993, prohibited from performing for gain,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Death of persons under anaesthetic.

45. The death of a person while such person is under the influence of a general or local anaesthetic or of which the administration of an anaesthetic has been a contributory cause shall be deemed not to be a death from natural causes as contemplated in the Inquests Act, 1959 (Act 58 of 1959), or the Births, Marriages and Deaths Registration Act, 1963 (Act 81 of 1963).

Commission on prescriptions.

46. (1) No medical practitioner or dentist shall accept or obtain from a pharmacist any commission or other reward in connection with any prescription given by such medical practitioner or dentist.

(2) Any medical practitioner or dentist who contravenes the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Onus of proof.

47. (1) In any criminal proceedings against any person appearing upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person who is not registered or who is not in possession of any document specified in the charge-sheet, such person shall, until the contrary is proved, be deemed to have been unregistered or not to have been in possession of such document at the time of the commission of the alleged offence.

(2) In any criminal proceedings against any person appearing upon a charge of having performed an act which constitutes an offence under this Act, if performed by him or her for gain, the accused shall be deemed to have performed such act for gain if he or she has accepted any consideration of whatsoever nature in respect of such act.

Limitations in respect of unregistered persons.

48. (1) No remuneration shall be recoverable in respect of any act specially pertaining to the profession of a registered person when performed by a person who is not registered under this Act to perform such act for gain.

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(2) No person other than a registered person holding the necessary qualifications shall be eligible for or entitled to hold any appointment to any establishment, institution, body, organization or association, whether public or private, if such appointment involves the performance of any act which an unregistered person in terms of the provisions of this Act may not perform for gain: Provided that nothing in this subsection contained shall be construed as prohibiting the training of medical or dental students under the supervision of a medical practitioner or dentist, as the case may be.

Investigation of matters relating to training of certain persons.

49. (1) Notwithstanding anything to the contrary in this Act or in any other law contained, any person who has been authorized in writing by the Board concerned to investigate any matter relating to the tuition or training of any person registered under this Act, which tuition or training shall have the purpose of qualifying such person for the practising of a profession in respect of which a Board has been established, may, for the purpose of such investigation and upon the producing of such written authorization, enter any premises or institution utilized in the tuition or training of such person.

(2) Any person who prevents any person authorized in terms of subsection (1) from entering any premises or institution referred to in that subsection or hinders such person in such investigation shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Regulations.

50. (1) The Minister may, on the recommendation of such Board, make regulations in relation to such Board relating to -

- (a) the entering into of agreements by or on behalf of such Board, the handling of funds by and the bookkeeping of such Board;
- (b) the allowances payable to members of such Board or a committee thereof for services rendered for and on behalf of such Board or committee: Provided that -
 - (i) the allowances payable to a member who is in the full-time employment of the State shall not exceed the allowances payable to such member under the Public Service Act, 1980 (Act 2 of 1980);

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- (ii) no such member shall be required to pay into the State Revenue Fund any allowances paid to him or her in terms of any regulations made under this paragraph;
- (c) except as provided otherwise in this Act, any fees payable under this Act and the exemption from payment of any such fees;
- (d) the form of the registers and certificates to be kept or which may be issued in terms of this Act and the manner in which alterations may be effected to such registers;
- (e)
 - (i) the registration by such Board of students studying or training at an educational institution and the fees payable to such Board in respect of such registration;
 - (ii) the removal from the register by such Board of the names of students;
 - (iii) the standards or nature of education or training required of such students as a condition precedent to registration;
 - (iv) the duration of the curricula, courses or training to be followed by such students at such educational institution;
 - (v) the minimum requirements of the curricula and the standards or nature of education or training and examinations which shall be maintained by every educational institution at which education or training in a profession is provided in order to comply with the requirements of such Board for recognition of the qualifications for the purpose of registration under this Act;
- (f)
 - (i) the nature and duration of the training to be completed by any person who has obtained a qualification prescribed for registration before such person may be registered;
 - (ii) the circumstances under which any person referred to in subparagraph (i) shall be

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exempted from such training and the manner in which such person has to apply for such exemption;

- (g) the minimum ages of persons eligible for registration in the respective professions;
- (h) the registration of interns and student-interns, the recording of particulars regarding their training and any matter incidental to the registration and training of interns and student-interns in the respective professions;
- (i) the qualifications which may be registered as additional qualifications in terms of section 24, including the curricula, the period and nature of tuition and training, the examinations to be passed, and the educational institutions where such training may be completed;
- (j)
 - (i) the registration of specialities in terms of section 24;
 - (ii) the requirements to be complied with, including the experience to be obtained, the nature and duration of the training to be completed and the qualifications to be held by persons registered in any profession before any speciality may be registered;
 - (iii) the circumstances in which any applicant for the registration of a speciality may be exempted from any of such requirements; and
 - (iv) conditions in respect of the practice of registered persons whose specialities have been registered, including conditions restricting the practice of such person to the speciality registered in his or her name;
- (k) the professional practice, ethical standards and the scope of any profession concerned;
- (l) supplementary training or refresher courses to be completed by persons registered under this Act and the conducting and control of such supplementary training and refresher courses;

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- (m) (i) the convening of meetings and the manner of conduct of and the procedures for any election of members of such Board; and
 - (ii) the requirements for a quorum of any meeting and the valid nomination of a candidate for any election as member of such Board;
- (n) the instituting and conducting of an inquiry under section 30, including -
 - (i) the procedure for lodging a complaint, charge or allegation against registered persons of such Board;
 - (ii) the procedures for informing any person against whom a complaint, charge or allegation has been lodged of such complaint, charge or allegation and the particulars thereof and the securing at an inquiry of the presence of witnesses;
 - (iii) the taking of evidence, recording of the procedures and action against any person who refuses to answer questions or who in any way obstructs, disturbs or disrupts any proceedings; and
 - (iv) any other matter relating to the institution and conduct of such an inquiry;
- (o) the manner in which such Board may perform or execute any power or function in terms of this Act; and
- (p) generally all other matters which are by this Act required or permitted to be prescribed or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

(2) Any regulation made under this section may, except as provided otherwise in this Act, prescribe a fine not exceeding R2 000 or a period of imprisonment not exceeding six months as a penalty for the contravention of such regulation or failure to comply therewith or both such fine and such imprisonment.

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Levying of annual fees on
registered persons.

51. (1) The Minister may, upon the recommendation of a Board, by notice in the *Gazette* determine the fees to be paid annually to such Board by all registered persons: Provided that in determining such fees the Minister may differentiate between persons or categories of persons according to whether they have been registered before or after a date specified in the notice.

(2) If any person liable to pay any annual fee prescribed in terms of subsection (1) fails or refuses to pay such fee within the period specified in the notice in question, the Board concerned may recover such fee by action in a competent court, whether or not such person's name has been removed from the register concerned.

(3) If any person whose name has been removed from a register in terms of this Act applies for the restoration of his or her name to such register, the Board concerned shall not consider such application for restoration until such time as the applicant has paid in full all amounts payable by him or her to such Board under this Act.

(4) A Board may exempt any person in part or fully from payment to such Board of any annual fee determined in terms of subsection (1).

Delegation of powers.

52. (1) The Minister may, on such conditions as he or she may deem fit, in writing delegate any power conferred upon him or her by this Act to the Permanent Secretary, excluding any power conferred by section 50.

(2) The Permanent Secretary may, on such conditions as he or she may deem fit and with the approval of the Minister, delegate any power conferred upon or entrusted to him or her in terms of this Act, to any officer in the Ministry of Health and Social Services.

Right of appeal to Council.

53. (1) Any person aggrieved by a Board's decision or finding -

- (a) to refuse to register him or her or to enter in, or to restore to, the appropriate register any degree, diploma, certificate, additional qualification or speciality which he or she desires, and maintains he or she is entitled, to have it so entered in terms of the provisions of this Act;

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- (b) to remove from a register his or her name or any degree, diploma, certificate, additional qualification or speciality which he or she maintains he or she is entitled to have it entered in such register, in terms of the provisions of this Act;
- (c) to impose any penalty or fine on him or her or, by order, any restriction in, or condition on, or suspension from, practice of him or her,

shall have the right, within a period of 30 days from the date on which the decision or finding was made, to by notice in writing appeal to the Council against such decision or finding, as the case may be: Provided that the Council may on good cause shown, allow an appeal to be lodged after such period.

(2) Unless otherwise provided in this Act, the right of appeal to the Council referred to in subsection (1) shall be subject to the provisions of any law which prescribe the procedures which have to be followed in the exercise of such right and which regulate the proceedings of the Council in respect of appeals to it.

(3) The Council may dismiss such appeal or, if it is of the opinion that a Board has not acted in accordance with the provisions of this Act, may make an order reversing or modifying such Board's decision or finding or it may remit the matter to such Board for further consideration or make such other order, including an order as to costs, as it may deem appropriate.

Existing professions.

54. (1) Any person who, immediately prior to the commencement of this Act, was registered or authorized to practise as a medical practitioner, dentist or oral hygienist under any law repealed by this Act, shall, subject to the provisions of subsections (3) and (4) and to any restriction, condition or penalty imposed upon him or her in relation to his or her profession, and provided such person is resident in Namibia at such commencement, be deemed to have been registered as a medical practitioner, dentist or oral hygienist under this Act.

(2) Any person who was practising as a dental technician or dental mechanic within Namibia immediately prior to the commencement of this Act, whether under the supervision of a dentist or as an independent contractor, shall, subject to the provisions of subsections (3) and (4)

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and provided such person is resident in Namibia at such commencement, be deemed to have been registered as a dental technician under this Act.

(3) Any person referred to in subsection (1) or (2) shall, within a period of 90 days from the date of the constitution of the Board concerned as contemplated in section 5(3), or such further period as such Board may on good cause shown allow, apply to such Board in the manner and form determined by the Minister for his or her registration with such Board and submit together with such application his or her present certificate of registration or authorization or, in the case of the person referred to in the said subsection (2), his or her certificate authorizing or purporting to authorize him or her to practise as such, and thereupon such person shall be entitled to registration as such: Provided that nothing in this subsection contained shall be construed as prohibiting the Minister, in the circumstances referred to in section 55, from exercising any power conferred on him or her under that section, to so register any such person as such as if the Minister were such Board.

(4) Any person referred to in subsection (1) or (2) shall, upon the expiry of the period or further period referred to in subsection (3), as from the date of such expiry or the date on which any application for registration referred to in the said subsection (3) has been disposed of, whichever date is the later date, be deemed not to be registered as contemplated in the said subsection (1) or (2), as the case may be.

(5) The provisions of subsections (1), (3) and (4) of this section shall apply *mutatis mutandis* in respect of -

- (a) any additional qualification or speciality registered in respect of any person referred to in those provisions;
- (b) a medical intern.

Minister temporarily to exercise powers and perform functions and duties of Boards.

55. (1) Subject to the provisions of subsection (3), the Minister may, until a Board has been constituted in respect of a profession or professions in terms of section 5(3), exercise any of the powers and perform any of the functions and duties of such Board conferred or imposed upon it in terms of this Act.

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(2) The Minister may, when he or she exercises any of the powers and performs any of the functions and duties referred to in subsection (1), appoint not more than four persons, resident in Namibia and registered in respect of the profession or professions concerned, as may be determined by the Minister, to assist or advise him or her in relation to the exercise or performance of such powers, duties and functions.

(3) Any power exercised or any function or duty performed by the Minister by virtue of the provisions of this section, shall be deemed to have been so exercised or performed by the Board concerned.

Repeal of laws and
savings.

56. (1) Subject to the provisions of subsections (2) and (3), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Any notice, regulation, rule, authorization, order or approval issued, made or granted or any appointment or any other thing done in terms of a provision of any law repealed by subsection (1) shall, except in so far as may be otherwise required by this Act, be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act.

(3) The provisions of any law repealed by subsection (1) relating to any psychology profession (excluding the profession of clinical psychologist), shall continue to apply to any such psychology profession as if the provisions of that subsection had not been passed.

Short title and com-
mencement.

57. This Act shall be called the Medical and Dental Professions Act, 1993, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

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(Section 56(1))**

No. and year of law	Short title	Extent of repeal
Act 56 of 1974	Medical, Dental and Supplementary Health Service Professions Act, 1974.	The whole
Act 57 of 1975	General Law Amendment Act, 1975	Sections 46, 47 and 48
Act 33 of 1976	Medical, Dental and Supplementary Health Service Professions Amendment Act, 1976	The whole
Act 36 of 1977	Health Laws Amendment Act, 1977	Sections 12 to 18 inclusive
Proclamation AG. 70 of 1989	Health Service Professions Proclamation, 1989	The whole