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REPUBLIEK VAN SUID-AFRIKA

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Oktober

**No. 25554**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

### DEPARTMENT OF HEALTH DEPARTEMENT VAN GESONDHEID

No. 1449

10 October 2003

#### HEALTH PROFESSIONS ACT, 1974 (ACT NO. 56 OF 1974)

#### REGULATIONS RELATING TO THE QUALIFICATIONS FOR REGISTRATION OF ARTS THERAPISTS AND REGISTRATION OF PERSONS QUALIFIED OUTSIDE THE REPUBLIC

The Minister of Health has, in consultation with the Health Professions Council of South Africa, in terms of section 61(1), read with sections 24 and 25 of the Health Professions Act, 1974 (Act No. 56 of 1974), made the regulations in the Schedule.

#### SCHEDULE

##### 1. Definitions

In this Schedule any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise indicates –

**“arts therapist”** means a person registered as such in terms of the Act;

**“board”** means the Professional Board for Occupational Therapy and Medical Orthotics/Prosthetics established in terms of section 15(1) of the Act, as published by Government Notice No. R. 75 of January 1998;

**“foreign qualification”** means a qualification obtained at an educational institution outside the Republic of South Africa;

**“section”** means a section of the Act; and

**“the Act”** means the Health Professions Act, 1974, (Act No. 56 of 1974).

## 2. Registration as an arts therapist

- (1) The registrar may register as an arts therapist any person who obtained one of the following qualifications:

**Examining authority and qualification**

**Abbreviation for registration**

**University of Durban-Westville**

Bachelor of Music (Therapy) .....

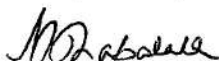
BMus (Ther) - Univ Dbn-Westville

**University of Pretoria**

Master of Music (Music Therapy) .....

MMus (Music Therapy) - Univ of Pretoria

- (2) A person holding a qualification referred to in subregulation (1) shall have trained for a period of at least five years, of which at least two years shall be full time postgraduate study in a training institution approved by the board.
- (3) In the case of an application for registration that is based on a qualification not referred to in subregulation (1), an applicant must furnish the board with authoritative information on the training required for such qualification and, if the standard of such training is considered satisfactory by the board, the board may approve such qualification.
- (4) If the applicant's qualification referred to in subregulation (3) is approved by the board, such applicant must undergo an examination in arts therapy conducted by the board in terms of section 24 or 25.
- (5) The registrar may register as an arts therapist an applicant who has passed the examination referred to in subregulation (4).



**DR M E TSHABALA-MSIMANG**

**MINISTER OF HEALTH**



No. 1449

10 Oktober 2003

**WET OP GESONDHEIDSBEROEPE, 1974 (WET NO. 56 VAN 1974)****REGULASIES BETREFFENDE KWALIFIKASIES VIR DIE REGISTRASIE VAN  
KUNSTERAPEUTE EN DIE REGISTRASIE VAN PERSONE WAT BUITE DIE REPUBLIEK  
GEKWALIFISEER HET**

Die Minister van Gesondheid het, in oorleg met die Raad vir Gesondheidsberoepe, kragtens artikel 61(1), gelees met artikels 24 en 25 van die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974), die regulasies in die Bylae uitgevaardig.

**BYLAE****1. Definisies**

In hierdie Bylae het enige woord of uitdrukking waaraan 'n betekenis in die Wet geheg is, daardie betekenis en, tensy uit die samehang anders blyk, beteken -

**"artikel"** 'n artikel van die Wet;

**"buitelandse kwalifikasie"** 'n kwalifikasie verkry by 'n opleidingsinrigting buite die Republiek van Suid-Afrika;

**"die Wet"** die Wet op Gesondheidsberoepe, 1974 (Wet No. 56 van 1974);

**"kunsterapeut"** 'n persoon wat as sodanig kragtens die Wet geregistreer is;

**"raad"** die Beroepsraad vir Arbeidsterapie en Geneeskundige Ortotika / Protetika wat ingevolge artikel 15 van die Wet ingestel is, soos gepubliseer by Goewermentskennisgewing No. R. 75 van 16 Januarie 1998.

## 2. Registrasie van 'n kunsterapeut

- (1) Die registrateur kan enige persoon wat een van die volgende kwalifikasies verkry het, as 'n kunsterapeut registreer:

<b>Eksaminerende liggaam en kwalifikasie</b>	<b>Afkorting vir registrasie</b>
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<b>Universiteit van Durban-Westville</b> Baccalaureus Musicae (Terapie).....	BMus (Ter) - Univ Dbn-Westville
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<b>Universiteit van Pretoria</b> Magister Musicae (Musiekterapie).....	MMus (Musiekterapie) - Univ van Pretoria
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- (2) 'n Persoon wat 'n kwalifikasie in subregulasie (1) bedoel besit, moet vir 'n tydperk van minstens vyf jaar opleiding ontvang het, waarvan minstens twee jaar voltydse nagraadse studie was aan 'n opleidingsinrigting wat deur die raad goedgekeur is.
- (3) In die geval van 'n aansoek om registrasie wat gebaseer is op 'n kwalifikasie wat nie in subregulasie (1) gelys is nie, moet 'n aansoeker die raad voorsien van gesaghebbende inligting oor die opleiding wat vir sodanige kwalifikasie vereis word en sodanige kwalifikasie kan goedgekeur word indien die raad die standard van sodanige opleiding as bevredigend beskou.
- (4) Indien die aansoeker se kwalifikasie in subregulasie (3) bedoel deur die raad goedgekeur word, moet sodanige aansoeker 'n eksamen in kunsterapie soos afgeneem deur die raad kragtens artikel 24 of 25, ondergaan.
- (5) Die registrateur kan 'n aansoeker wat die eksamen in subregulasie (4) bedoel geslaag het, as 'n kunsterapeut registreer.



**DR M E TSHABALA-MSIMANG**  
**MINISTER VAN GESONDHEID**

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## GENERAL NOTICES

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### NOTICE 2581 OF 2003

#### **PUBLICATION OF EXPLANATORY SUMMARY OF THE TRADITIONAL HEALTH PRACTITIONERS BILL 2003**

The Minister of Health intends to introduce the Traditional Health Practitioners Bill, 2003 ("the Bill") in Parliament in 2003. The explanatory summary of the Bill is hereby published in accordance with rule 241(c) of the Rules of the National Assembly.

The Bill provides for inter alia-

- (d) establishment and governance of Interim Traditional Health Practitioners Council of South Africa;
- (e) appointment of the Registrar, staff of the registrar and registration procedures;
- (f) disciplinary inquiries and investigations by the Council;
- (g) fees charged by registered persons and limitations in respect of unregistered persons; and
- (h) investigation of matters relating to teaching or training.

The Bill, once passed, will bring about a new dispensation of regulating traditional health practitioners. No existing laws will be repealed.

As soon as the Bill is introduced in Parliament, copies can be obtained from-

1. Government Printers (Cape Town & Pretoria)
2. Mr M. Motsapi  
Department of Health  
Room 1609, Civitas Building  
Corner of Andries and Struben Street  
Pretoria

Tel: (012) 312-0571

Fax: (012) 312-0708

Email: [motsam@health.gov.za](mailto:motsam@health.gov.za)

**NOTICE 2582 OF 2003**

**NURSING BILL, 2004**

The Minister of Health intends to table the Nursing Bill, 2004 to Parliament during its first session of 2004.

Interested persons are invited to submit any substantiated comments or representations on the NURSING BILL, 2004 to the Director-General of Health: Private Bag X828, Pretoria, 0001 (for the attention of the Chief Director: Human Resources ) within two months of the date of publication of this notice.

**BILL**

To regulate the profession of nursing and midwifery so as to serve and protect the public through the provision of norms and standards for nursing practice and education; to evaluate and accredit qualifications pertaining to all categories of nurses; to accredit and license nursing education institutions and nursing agencies; to register all categories of nurses; to provide measures for contraventions of the scope of nursing practice and midwifery practice; to provide for public accountability; and to provide for matters incidental thereto.

**RECOGNISING that –**

nursing is the continuous support and care of health care users irrespective of their state of health and through all stages of the life cycle;

the inhabitants of the Republic must be protected from unprofessional conduct by providers of nursing care;

the right of all citizens of the Republic is to receive safe nursing care from competent and compassionate nurse practitioners; and,

there is a need to promote the provision of nursing care in a manner that promotes the optimum health status of health care users and communities in which they reside;

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

**ARRANGEMENT OF SECTIONS**

<b>Section No.</b>	<b>Subject</b>
	<b>CHAPTER 1: DEFINITIONS</b>
1.	Definitions
	<b>CHAPTER 2</b>
	<b>CONTINUED EXISTENCE, OBJECTS, FUNCTIONS AND POWERS OF THE SOUTH AFRICAN NURSING COUNCIL</b>
2.	Continued existence
3.	Objects of the Council
4.	Functions of the Council
5.	Composition and dissolving of the Council
6.	Vacation of office and filling of vacancies
7.	Chairperson and vice-chairperson
8.	Meetings of the Council
9.	Quorum and procedure at meetings
10.	Executive committee
11.	Other committees
12.	Corporate governance
13.	Minister may rectify defects
14.	Appointment of the registrar and staff
15.	Functions of the registrar
16.	Finances of the Council
	<b>CHAPTER 3:</b>
	<b>EDUCATION, TRAINING, RESEARCH, REGISTRATION AND PRACTICE</b>
17.	Scope of the profession and practice of nursing and midwifery
18.	Registration as a prerequisite to practice
19.	Registration of learners
20.	Limited registration
21.	Registration of additional qualifications
22.	Nursing agencies
23.	Custody and publication of registers
24.	Register as proof



- 25. Receipt as proof
- 26. Qualifications prescribed for registration
- 27. Conditions relating to continuous education development
- 28. Community service
- 29. Regulation of research
- 30. Education and training
- 31. Use of certain titles
- 32. Limitation in respect of persons not registered
- 33. Removal of name from register and restoration thereof
- 34. Issue of duplicate registration certificate, certificate of states, extract from register or certificate by registrar

#### **CHAPTER 4**

#### **POWERS OF THE COUNCIL WITH REGARD TO PROFESSIONAL CONDUCT**

- 35. Inquiry by the Council into charges of unprofessional conduct
- 36. Matters for, and procedure at, inquiry by the Council
- 37. Postponement of imposition, and suspension of operation, of penalty
- 38. Suspension or removal from the register related to professional conduct matters
- 39. Cognisance by the Council of conduct of registered persons under certain circumstances
- 40. Unfitness to practise due to impairment
- 41. Investigation of matters relating to the teaching of learners

#### **CHAPTER 5**

#### **OFFENCES BY PERSONS NOT REGISTERED**

- 42. Penalties for practising as professional nurse, midwife, staff nurse, nursing auxiliary or midwifery auxiliary, for performing certain acts while not registered
- 43. Giving false evidence under oath
- 44. Nursing agencies
- 45. Penalty for false representation inducing registration, for false entries in register and for impersonation
- 46. Penalties

#### **CHAPTER 6**

#### **GENERAL AND SUPPLEMENTARY PROVISIONS**

- 47. Special provisions relating to certain nurses
- 48. Appeal against decisions of the Council
- 49. Regulations
- 50. Rules
- 51. Binding on State
- 52. Limitation of liability
- 53. Repeal of laws
- 54. Transitional provisions
- 55. Short title and commencement

#### **CHAPTER 1**

#### **DEFINITIONS**

#### **1. Definitions**

In this Act, unless the context otherwise indicates –

“**accredit**” means to recognise or certify as meeting the prescribed nursing education requirements;

“**accoucheur**” means a person educated and licensed in the practice of midwifery and registered as such under section 18(1) and includes a midwife.

**"Council"** means the South African Nursing Council established by section 2;

**"database"** means an integrated system of particulars of persons registered under the Act, nursing education institutions and nursing agencies kept by the Council to meet its information processing and retrieval requirements in terms of the Act;

**"Director-General"** means the Director-General: Health or his or her nominee;

**"dispense"** means "dispense" as defined in regulation 1 of the General Regulations under the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

**"Gazette"** means the Government Gazette;

**"health care user"** means the person receiving treatment in a health establishment or using a health service, and if the person receiving treatment or using a health service is –

- (a) below the age contemplated in section 39(4) of the Child Care Act, 1983 (Act No. 74 of 1983), "health care user" includes the person's parent or guardian or another person authorised by law to act on the first-mentioned person's behalf; or
- (b) incapable of taking decisions, "health care user" includes the person's spouse or partner or, in the absence of such spouse or partner, the person's parent, adult child or brother or sister, or another person authorised by law to act on the first-mentioned person's behalf;

**"health establishment"** means any public or private facility at which any health service is provided including a military health establishment;

**"health service"** means nursing service provided in a health establishment;

**"impairment"** refers to a condition which renders a practitioner incapable of practising nursing or midwifery with reasonable skill and safety;

**"inquiry"** means an inquiry in terms of section 35;

**"learner midwife"** means a person registered as such under section 19;

**"learner nurse"** means a person registered as such under section 19;

**"licensed"** means a person who is registered in terms of section 18 and who has paid his or her annual licence fee;

**"manufacture"** means "manufacture" as defined in regulation 1 of the General Regulations under the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

**"medicine"** means "medicines" as defined in section 1 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

**"member"** means a member of the Council;

**"Mental Health Care Act"** means the Mental Health Care Act, 2002 (Act No. 17 of 2002);

**"midwife"** means a person registered as such under section 18(1) in order to practice the profession of midwifery and includes an accoucheur;

**"midwifery"** refers to a caring profession practised by persons registered under this Act, which

supports and assists the patient and in particular the mother and baby, to achieve and maintain optimum health during pregnancy, all stages of labour and the puerperium;

**"midwifery auxiliary"** means a person registered as such under section 18(1) in order to practice the profession of midwifery and refers to terms previously known as **"enrolled midwife"**, and **"accoucheur auxiliary"**;

**"Minister"** means the Minister of Health;

**"national department"** means the national Department of Health;

**"nurse"** means a person registered in a category under section 18(1) or (2) in order to practice the profession of nursing or midwifery;

**"nursing"** means a caring profession practised by a person registered under section 18, who supports, cares for and treats a health care user at all stages of life, so as to achieve or maintain health and where this is not possible, cares for a health care user so that he or she lives in comfort and with dignity until death;

**"nursing agency"** means any provider of health services other than a health establishment who is licensed by the Council to provide professional nurses, midwives, staff nurses, midwifery auxiliaries or nursing auxiliaries to health establishments or health care users, for the purpose of rendering a nursing service;

**"nursing auxiliary"** means a person registered as such under section 18(1) in order to practice the profession of nursing;

**"nursing education institution"** means any nursing education institution accredited by the Council, with its accredited clinical facilities where persons are educated and trained for the professions of nursing or midwifery;

**"practitioner"** means a nurse, learner nurse or learner midwife;

**"prescribed"** or **"prescribe"** means prescribe or prescribed by regulations in terms of this Act;

**"professional nurse"** means a person registered as such under section 18(1) in order to practice the profession of nursing;

**"register"** when used as a noun, means that part of a database containing the names and particulars of all persons licensed to practise nursing or midwifery which is kept in terms of this Act and, when used as a verb, means to enter into such part of the database;

**"registrar"** means the registrar appointed under section 14 or a person lawfully acting in that capacity;

**"regulation"** means regulations made under this Act;

**"rule"** means any rule made under this Act;

**"section"** means a section of the Act;

**"Scheduled substance"** means "Scheduled substance" as defined in section 1 of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

**"scope of practice"** means the parameters as determined by regulations within which a nurse may practice the profession of nursing or midwifery;

**"staff nurse"** means a person registered as such under section 18(1) in order to practice the profession of nursing and also refers to the term previously known as **"enrolled nurses"**; and

**"unprofessional conduct"** means improper or disgraceful or dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a practitioner, is improper or disgraceful or dishonourable or unworthy.

**"this Act"** includes the regulations.

## CHAPTER 2 CONTINUED EXISTENCE, OBJECTS, FUNCTIONS AND POWERS OF THE SOUTH AFRICAN NURSING COUNCIL

### 2. Continued existence of the Council

- (1) The South African Nursing Council established in terms of section 3 of the Nursing Amendment Act, 1997 (Act No. 19 of 1997) will continue to exist and be a juristic person.
- (2) The head office of the Council shall be situated in Pretoria.

### 3. Objects of the Council

The objects of the Council are to -

- (a) serve and protect the public in matters involving health services;
- (b) exercise its powers and discharge its responsibilities in the best interest of the public and in accordance with national health policy as determined by the Minister;
- (c) promote the provision of nursing care to the inhabitants of the Republic that -
  - (i) complies with universal norms and values;
  - (ii) establishes, improves and controls standards of nursing or midwifery education and training; and
  - (iii) maintains professional conduct and practice standards for practitioners within the ambit of applicable legislation;
- (d) promote and maintain liaison and communication regarding health standards and in particular standards of nursing education and training and professional conduct and practice both in and outside the Republic;
- (e) register persons in terms of sections 18, 19 and 20 of this Act;
- (f) advise the Minister on the amendment or adaptation of this Act regarding matters pertaining to nursing and midwifery;
- (g) be transparent and accountable to the public, in achieving its objectives, performing its functions and executing its powers; and
- (h) uphold and maintain the standard of the nursing or midwifery profession.

**4. Functions of the Council****(1) The Council shall -**

- (a) in all its decisions take cognisance of national health policy as determined by the Minister and implement such policy as it pertains to the practice of nursing and midwifery;
- (b) where authorised by this Act, enter, remove from or restore to the register the name of a person;
- (b) conduct examinations, appoint examiners and moderators, grant diplomas and certificates, in respect of such examinations;
- (c) accredit nursing education institutions and nursing education programmes in accordance with this Act or any other law;
- (d) carry out quality promotion and assurance visits in accordance with the prescribed conditions;
- (e) inspect nursing education institutions, nursing education programmes, health establishments and nursing agencies in order to ensure compliance with this Act and the rules and standards determined by the Council in terms of this Act;
- (f) investigate any health establishment for the quality of its nursing or midwifery service;
- (g) subject to the prescribed conditions and upon payment of a prescribed fee, issue or renew a licence to carry on the business of a nursing agency, and, in the prescribed circumstances, suspend or cancel a licence to carry on the business of a nursing agency;
- (h) subject to prescribed conditions and upon payment of a prescribed fee, issue a licence for a professional nurse to conduct a private practice;
- (i) consider matters affecting the nursing or midwifery profession and make representations to the Minister and Director-General or take such action in connection therewith as the Council may deem advisable;
- (j) evaluate qualifications in accordance with prescribed requirements;
- (k) require accredited nursing education institutions to submit annual returns of learner nurses and learner midwives and any information required;
- (l) require employers to submit annual returns of nurses in their employ and any other information required;
- (m) investigate and take action against non-accredited nursing education institutions;
- (n) determine -
  - (i) the scopes of practice of nurses,
  - (ii) the conditions under which nurses may practice their profession;



- (iii) the acts or omissions in respect of which the Council may take steps against nurses; and,
  - (iv) the requirements for any nurses to remain competent in the manner prescribed;
  - (o) determine prescribed licence or registration fees, payable under this Act;
  - (p) appoint a registrar in consultation with the Minister;
  - (q) establish and administer a pension or provident fund for the employees of the Council;
  - (r) recommend to the Minister regulations relating to any matter under this Act which may be prescribed;
  - (s) submit to the Minister-
    - (i) a 5-year strategic plan within six months of the Council coming into office;
    - (ii) a report once in six months on the status of nursing and on matters of public importance acquired by the Council in the course of the performance of its functions under this Act; and
    - (iii) an annual report at least four months after the end of the financial year; and
  - (t) perform such other functions as may be prescribed, and, generally, do all such things as it may deem necessary or expedient to achieve the objects of this Act.
- (2) The Council may -
- (a) print and publish copies of the register;
  - (b) make extracts from the register;
  - (c) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept or make any donation and administer any trust;
  - (d) institute or defend any legal action in its name;
  - (e) appoint and determine duties of such other persons as the Council may require to fulfill its functions;
  - (f) delegate to any person or organisation any function referred to in this section, but shall not be divested of any function so delegated; or
  - (g) withdraw or suspend accreditation of a nursing education institution or nursing education programme if the education or training provided does not comply with the prescribed requirements.

## 5. Composition and dissolving of the Council

- (1) The Council shall consist of not more than 25 members appointed by the Minister taking into account the interests of the public in nursing and midwifery, nursing or midwifery education, the need for representation from the provinces and knowledge and expertise or

experience in nursing, midwifery, pharmacy, law, financial matters or consumer affairs.

- (2) The members shall be appointed by the Minister on the basis of nominations by interested parties, invited by notice in the *Gazette*.
- (3) The following persons shall be appointed by the Minister as members of the Council, namely -
  - (a) 12 persons registered in terms of section 18 (1) (a) comprising of persons with expertise in nursing education as well as in the areas of nursing, midwifery, community health, primary health care, occupational health and mental health;
  - (b) 2 persons registered in terms of section 18 (1) (c) and (d)
  - (c) 1 person who shall be an officer of the national department;
  - (d) 1 person who shall have special knowledge of the law;
  - (e) 1 person who shall have special knowledge of finances;
  - (f) 1 person who shall have special knowledge of pharmaceuticals;
  - (g) 1 person who shall have special knowledge of education;
  - (h) 1 person representing consumer affairs;
  - (i) 5 persons representing communities from rural and urban areas;
- (4) The chairperson of the Council shall be appointed by the Minister and may be removed from office as chairperson by the Minister where this is in the public interest, without necessarily being removed from membership of the Council.
- (5) The name of the members, the dates of commencement of their terms of office and the periods for which they have been appointed, must be published as soon as possible after their appointment by the Minister by notice in the *Gazette*.
- (6) A member may hold office for a period of not longer than five years reckoned from the date of commencement of his or her term of office as reflected in the notice contemplated in subsection (5) provided that the Minister may, at his or her discretion, reappoint a member for one further period not longer than five years.
- (7) Each member shall, on assumption of office, sign a declaration to abide by the provisions of the Act.
- (8) The Minister may make regulations relating to any matter pertaining to the composition of the Council.
- (9) The Minister may dissolve the Council if the Council fails to comply with the provisions of section 4 of the Act.

#### **6. Vacation of office and filling of vacancies**

- (1) No person who -
  - (a) is an unrehabilitated insolvent;

- (b) is disqualified from practising his or her profession under this Act;
- (c) is not a South African citizen permanent resident of the Republic;
- (d) is a patient as defined in section 1 of the Mental Health Care Act;
- (e) has been removed from an office of trust on account of misconduct;
- (f) has at any time been convicted, whether in the Republic or elsewhere, of an offence for which he or she is sentenced to imprisonment without the option of a fine or been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty;

may be appointed as a member.

(2) A member shall vacate his or her office if -

- (a) his or her estate is sequestrated;
- (b) he or she is or becomes disqualified from practising his or her profession under this Act;
- (c) he or she becomes a patient as defined in section 1 of the Mental Health Care Act;
- (d) he or she is convicted of an offence involving dishonesty or an offence in respect whereof he or she is sentenced to imprisonment without the option of a fine;
- (e) he or she ceases to be a South African citizen;
- (f) he or she has been absent from more than two consecutive ordinary meetings of the Council without the Council's leave;
- (g) he or she was appointed by the Minister and tenders his or her resignation to the Minister and the Minister accepts his or her resignation;
- (h) is convicted in the Republic or elsewhere of an offence for which he or she is sentenced to imprisonment without the option of a fine or is convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Corruption Act, 1992 (Act No. 94 of 1992), or any offence involving dishonesty;
- (i) he or she ceases to hold any qualification necessary for his or her appointment or tenders his or her resignation in writing to the Minister and the Minister accepts his or her resignation; or
- (j) the Minister, in public interest, terminates his or her membership.

(3) Every vacancy on the Council arising from a circumstance referred to in subsection (2) and every vacancy caused by the death of a member shall be filled by appointment by the Minister in terms of section 5(2), and every member so appointed shall hold office for the unexpired portion of the period for which the vacating member was appointed.

**7. Chairperson and vice-chairperson of the Council**

- (1) The chairperson and vice-chairperson shall hold office for the duration of the term of office for which he or she has been appointed by the Minister to the Council unless the chairperson or vice-chairperson resigns or ceases to be a member prior to the expiry of his or her term of office as a member.
- (2) In the absence of the chairperson or in the event that the chairperson is for any reason unable to act as chairperson, the vice-chairperson shall have the authority to perform all of the functions and exercise all of the powers of the chairperson.
- (3) If both the chairperson and the vice-chairperson are absent from any meeting, the members present shall elect one of their number to preside at that meeting and, until the chairperson or vice-chairperson resumes duty, perform all of the functions and exercise all of the powers of the chairperson.
- (4) If both the chairperson and the vice-chairperson have been given leave of absence, the members shall elect one of their number to act as chairperson until the chairperson or the vice-chairperson resumes duty or vacates office.
- (5) If the office of the chairperson becomes vacant, the Minister shall appoint as chairperson, at his or her discretion, a person from among the remaining members of the Council, or any other person, in terms of section 5(1) and the person so appointed shall hold office for the unexpired portion of the period for which his or her predecessor was appointed.
- (6) If the office of the vice-chairperson becomes vacant, the members shall, at the first meeting after such vacancy occurs or as soon as thereafter as may be convenient, elect from among themselves a new vice-chairperson and the member so elected shall hold office for the unexpired portion of the period for which his or her predecessor as appointed.
- (7) A chairperson or vice-chairperson may vacate office as such without such vacation by itself terminating his or her membership of the Council provided that should a chairperson vacate office without terminating his or her membership of the Council, the Minister shall appoint a new chairperson from amongst the members of the Council in terms of section 5(1).

**8. Meetings of the Council**

- (1) The registrar shall, in consultation with the chairperson, convene the meetings of the Council on such a time and date determined by him or her to dispatch its business.
- (2) The Council shall meet not less than four times annually for the purpose of conducting its business: Provided that the Council may in addition hold such further meetings as it may from time to time determine.
- (3) A special meeting of the Council -
  - (a) may be convened by the chairperson at any time;
  - (b) shall be convened by the chairperson at such place and on such date as he or she may determine within thirty days of the receipt by him or her of written request by the Minister or of a written request signed by at least six of the members: Provided that such written request shall state clearly the purpose for which the meeting is to be convened.

**9. Quorum and procedure at meetings**

- (1) Half of the total number of members plus one additional member constitutes a quorum for the purposes of any meeting of the Council.
- (2) Subject to the provisions of subsection (6), at all meetings of the Council each member present shall have one vote on a question before the Council.
- (3) All matters, acts or things authorised or required to be done by the Council shall be decided by a majority vote at a meeting of the Council at which a quorum is present.
- (4) For the purposes of this Act, the majority of members or any of its committees is one half of the total number of the members present plus one.
- (5) Only members have voting rights on any matter in which the Council is required to make a decision.
- (6) A decision of the majority of the members present at any meeting constitutes the decision of the Council: Provided that in the event of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.
- (7) No decision taken by the Council or act performed under the authority of the Council is invalid by reason only of an interim vacancy on the Council or of the fact that a person who is not entitled to sit as a member, sat as member at a time when the decision was taken or the act was authorised, if the decision was taken or the act was authorized by the requisite majority of the members who were present at the time and entitled to sit as members.

**10. Executive Committee**

- (1) The Council shall have an executive committee consisting of not more than 8 members, being the chairperson, the vice-chairperson and six other members one of whom shall be an employee of the national department, one of whom shall be a person who has knowledge of the law and four others who are elected by the council from amongst its members.
- (2) In the event that there are an equal number of votes on any matter in which the executive committee is required to take a decision, the chairperson has a casting vote.
- (3) The term of office of the Executive Committee shall be 18 months.
- (4) The executive committee may, subject to the directives of the Council, exercise all the powers, other than a power referred to in Chapter 3, and perform all the functions of the Council during periods between meetings of the Council, but shall not have the power, save in so far as the Council otherwise directs, to set aside or amend the decisions of the Council;
- (5) Any act performed or decision taken by the executive committee shall be of force and effect unless it is set aside or amended by the Council at its next meeting.

**11. Other Committees**

- (1) The Council may from time to time establish such committees, including disciplinary committees, as it may deem necessary, to investigate and report to the Council on any matter falling within the scope of its functions.



- (2) Each committee appointed in terms of subsection (1) consists of so many persons appointed by the Council as the Council may determine but shall include, except in the case of a disciplinary appeal committee referred to in subsection (3), at least one member who shall be the chairperson of such committee.
- (2) The Council may, subject to the provisions of subsection (4), delegate to any committee established in terms of subsection (1), or to any person such of its powers as it may from time to time determine, but the Council will not be divested of any power so delegated and may amend or set aside any decision of such committee made in the exercise of any such power.
- (3) The Council shall from time to time as the need arises, establish *ad hoc* disciplinary appeal committees, each consisting of, as chairperson, a retired judge or retired senior magistrate, or an attorney with at least 10 years experience as such and not more than two registered persons who have professional qualifications that are the same as those of the person who is subject to the disciplinary proceedings.
- (4) A disciplinary appeal committee referred to in subsection (3) has the power to vary, confirm or set aside a finding of a disciplinary committee established in terms of subsection (1) or to refer the matter back to the disciplinary committee with such instructions as it may deem fit.
- (5) A decision of a disciplinary committee, unless appealed against, is of force and effect from the date determined by the disciplinary committee.
- (6) Where a matter has been considered by a disciplinary appeal committee, the decision of the disciplinary appeal committee, unless appealed against to the Council, is of force and effect from the date determined by the disciplinary appeal committee.

## 12. Corporate governance

- (1) The registrar is the accounting officer of the Council.
- (2) The registrar shall-
  - (a) keep full and proper records of all moneys received and expenses incurred by, and of all assets, liabilities and financial transactions of, the council and the registrar; and
  - (b) as soon as is practicable, but not later than four months after the end of each financial year, prepare annual financial statements in respect of the financial year in question;
  - (c) ensure that that the Council has and maintains-
    - (ii) effective, efficient and transparent systems of financial and risk management and internal control;
    - (iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
    - (iv) a system for properly evaluating all projects involving expenditure of capital prior to a final decision on the project;
  - (d) ensure the effective, efficient, economical and transparent use of the resources of the Council;

- (e) take effective and appropriate steps to-
  - (i) collect all money due to the Council;
  - (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
  - (iii) manage available working capital efficiently and economically;
- (f) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the registrar's responsibilities are considered, and when necessary, bring those considerations to the attention of the Council;
- (g) be responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities, of the Council;
- (h) settle all contractual obligations and pay all money owing by the Council within 30 days of due date or within a period to which the relevant creditor has agreed;
- (i) ensure that expenditure of the Council is in accordance with the decisions of the Council and that effective and appropriate steps are taken to prevent unauthorised expenditure;
- (j) keep full and proper records of the financial affairs of the Council in accordance with any prescribed norms and standards;
- (k) prepare financial statements for each financial year in accordance with generally recognized accounting practice;
- (l) submit the financial statements within two months after the end of the financial year to an independent auditor for auditing;
- (m) submit within five months of the end of a financial year to the Minister-
  - (i) an annual report on the activities of the Council during that financial year;
  - (ii) the financial statements for that financial year after those statements have been audited; and
  - (iii) an independent auditor's report on those statements.
- (3) The Council shall ensure that the requirements of subsection (2) are met and properly fulfilled.
- (4) Any person who obstructs the registrar or the Council in fulfilling the requirements of subsections (2) or (3) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 2 years to both such a fine and such imprisonment.

### 13. Minister may rectify defects

If anything required to be done under this Act in connection with the appointment of any member is omitted or not done within the time or in the manner required by this Act, the Minister may order all such steps to be taken as may be necessary to rectify the omission or error or may validate

anything done in an irregular manner or form, in order to give effect to the objects of this Act.

**14. Appointment of the registrar and staff**

- (1) The Minister shall, after consultation with the Council, appoint a person to be the registrar of the Council to carry out its functions under this Act and the Minister may, after consultation with the Council, dismiss such person.
- (2) The Minister may, after consultation with the Council, appoint one or more deputy registrars to assist or support the registrar in the performance of his or her functions under this Act and may, after consultation with the Council, dismiss a deputy registrar.
- (3) The term of office of a registrar and a deputy registrar is five years: Provided that the Minister may, after consultation with the Council, renew the registrar's or deputy registrar's term of office for such further period as he or she deems appropriate.
- (4) The registrar may appoint such other persons, subject to the policies and guidelines of the Council, as he or she may deem necessary for carrying out the functions specified in this Act and the registrar may dismiss any of such other persons.

**15. The functions of the registrar**

- (1) The registrar shall –
  - (a) act as the chief executive officer of the Council and manage daily the affairs of the Council;
  - (b) perform such functions and duties as are assigned or imposed upon him or her in terms of this Act as well as any functions and duties assigned to or imposed upon him or her by the Council;
  - (c) keep registers in respect of practitioners and shall on the instructions of the Council enter in the appropriate register the name, physical address, qualifications, date of initial registration and such other particulars, including, where applicable, the details of the practitioner's, learner midwife's or learner nurse's category, as the Council may determine of every person whose application for registration in terms of this Act has been granted;
  - (d) keep the registers correctly and in accordance with the provisions of this Act and remove therefrom the names of all practitioners who have died or whose names have to be removed in terms of this Act and shall from time to time make the necessary alterations in the addresses or qualifications of registered persons;
  - (e) convene meetings of the Council and any committee thereof and maintain the records of any such meetings;
  - (f) advise the Council as to its obligations in terms of this Act and any other law and ensure that the Council fulfils such obligations.
- (2) The registrar may in writing authorise any member of his or her staff to exercise or perform any power, duty or function conferred or imposed on him or her by or in terms of this Act.

**16. Finances of Council**

- (1) All registration, licensing and examination fees and any other fees payable under this Act,

shall be paid to the Council and shall constitute its funds and the Council shall utilise its funds for defraying expenses incurred in connection with the performance of its functions.

- (2) The Council may invest any portion of its moneys and may establish such reserve funds, and pay such amounts, as it may deem necessary.
- (3) The Council shall -
  - (a) establish a finance committee from amongst its members to ensure that there are sound financial controls within the Council;
  - (b) approve a budget at least 30 days prior to the commencement of the next financial year;
  - (c) appoint an independent auditor to audit its financial affairs not later than 30 June of each year;
  - (d) approve within four months after the end of the financial year the audited financial statement; and
  - (e) submit the audited financial statement to the Minister and publish such statement in the Gazette within six months after the end of the financial year.

### CHAPTER 3

## EDUCATION, TRAINING, RESEARCH, REGISTRATION AND PRACTICE

### 17. Scope of the profession and practice of nursing and midwifery

- (1) A professional nurse is a person educated to independently practise the full scope of nursing in the manner and to the level prescribed and who is capable of assuming responsibility and accountability for such practice;
- (2) A midwife is a person educated to independently practise midwifery in the manner and to the level prescribed and who is capable of assuming responsibility and accountability;
- (3) A staff nurse is a person educated to practise general basic nursing in the manner and to the level prescribed;
- (4) An nursing auxiliary is a person educated to provide fundamental nursing care in the manner and to the level prescribed;
- (5) A midwifery auxiliary is a person educated to provide basic midwifery in the manner and to the level prescribed;
- (6) The Minister may prescribe scopes of profession and practice for other categories of nurses contemplated in section 18(2).

### 18. Registration as a prerequisite to practise

- (1) Before a person may practice nursing or midwifery within South Africa, he or she must register in at least one of the following categories in accordance with his or her professional scope as contemplated in section 17 -
  - (a) professional nurse;

- (b) midwife or accoucheur;
  - (c) staff nurse;
  - (d) nursing auxiliary;
  - (e) midwifery auxiliary.
- (2) The Minister may by notice in the *Gazette* create such other categories of persons to be registered to practice nursing or midwifery as he or she considers necessary in the public interest.
- (3) No-one may be employed or retained for the purpose of the performance of functions which fall within the scope of a profession in terms of this Act unless he or she is registered as a nurse in a category referred to in subsection (1) or (2) and has the necessary qualifications to perform such functions.
- (4) No person may use as a title any of the categories contemplated in subsection (1) or (2) unless he or she is registered as such in terms of this section.
- (5) Any person who wishes to register as a nurse, as the case may be, shall apply to the registrar of the Council and submit with his or her application –
- (a) proof of identity, citizenship, good character and the authenticity and validity of qualification submitted;
  - (b) the prescribed registration fee;
  - (c) such further documents and information in relation to his or her application as may be required by the registrar on the instructions of the Council.
- (6) If the registrar is satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, upon receipt of the prescribed registration fee, he or she shall issue a registration certificate authorizing the applicant, subject to the provisions of this Act, to practise or engage in the profession of nursing or midwifery within the Republic.
- (7) If the registrar is not satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, he or she shall refuse to issue a registration certificate to the applicant, but shall, if so required by the applicant, submit the application to the Council for a decision.
- (8) The registrar may only register a person as a nurse if the registrar is satisfied that the person applying for registration is suitably qualified or if the Council is so satisfied.
- (9) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act may be removed from the register and a record of the reason for every such removal shall be made in the register and the person in respect of whose entry such removal has been made shall be notified thereof in writing and any certificate issued in respect of the registration in question shall be deemed to be cancelled as from the date on which notice has so been given.
- (10) The registrar shall delete from the register the name of the nurse or mark in the register the name of any person suspended from practice and shall notify such person in writing accordingly.



- (11) Any person who contravenes the provisions of subsections (1), (3) or (4) shall be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.
- (12) Any person who has completed a programme qualifying him or her for registration in another category must apply to have his or her entry in the register altered accordingly.
- (13) Any person who completed a programme leading to registration in a higher category shall, upon application and after evaluation by the Council, have his or her entry in the register altered accordingly.
- (14) A nurse shall notify the registrar in writing of any change of particulars within 30 days after such change.

#### **19. Registration of learners**

- (1) A person undergoing education or training in nursing or midwifery must be registered as a learner midwife or a learner nurse.
- (2) The Council shall register as a learner nurse or learner midwife, any person who has complied with the prescribed conditions and has furnished the prescribed particulars, for an accredited nursing training programme at an accredited nursing education institution.
- (3) A learner nurse or learner midwife shall, on commencing or resuming education and training at an accredited nursing education institution, apply for registration in terms of this section with the Council.
- (4) The person in charge of an accredited nursing education institution shall, within thirty days, notify and furnish the prescribed information to the Council in respect of each learner nurse or learner midwife who has commenced, completed, transferred or abandoned a nursing education and training programme.
- (5) A person who fails to furnish the Council within a period of ninety days, with the required particulars for the registration of a learner nurse or learner midwife as contemplated in subsection (4) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months or to both a fine and such imprisonment.
- (6) A health establishment shall not allow access to clinical facilities for training purposes to anyone who is not registered as a learner midwife or learner nurse in terms of this Act.
- (7) The registrar shall delete from the register the name of a learner midwife or a learner nurse or mark in the register the name of any person suspended from study and shall notify such person in writing accordingly.

#### **20. Limited registration**

- (1) The Council may provide limited registration to a person to practise as a nurse or midwife who holds a qualification other than a qualification contemplated in section 26 if he or she -
  - (a) has a qualification that does not meet all the required standards of education and training;
  - (b) does not have all the required professional knowledge, skills and ability; or

- (c) is in the Republic for a limited period for the purpose of practice, research or education.
- (2) Any person registered under subsection (1) as a nurse may only be entitled to practise -
  - (a) for such period as the Council may determine, but not exceeding two years; and
  - (b) under conditions determined by the Council.
- (3) Any person registered under this section who practises in contravention of the provisions of subsection (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

#### **21. Registration of additional qualifications**

- (1) Subject to the provisions of subsection (2), on payment of the prescribed fee, the Council shall register the additional qualification of a person who is registered under section 18 and who applies in writing for such registration, if he or she complies with the prescribed conditions and furnishes the prescribed particulars.
- (2) Only such qualifications as are prescribed may be registered under this section.

#### **22. Nursing agencies**

- (1) No-one may establish a nursing agency without first obtaining a licence from the Council.
- (2) An application to the Council for the licence contemplated in subsection (1) shall be in writing accompanied by the prescribed information.
- (3) If the Council is satisfied that all the prescribed conditions are met, the Council may issue the licence contemplated in subsection (1) upon payment of the prescribed fee.
- (4) If an applicant does not meet the conditions referred to in subsection (2) for the establishment of a nursing agency, the Council may refuse such application or grant a conditional licence.
- (5) Once a licence has been granted in terms of subsections (3) or (4) a nursing agency shall pay a prescribed annual licensing fee.
- (6) The Council may cancel the licence of a nursing agency if -
  - (a) the conditions referred to in subsection (2) are not fulfilled;
  - (b) the conditions applicable to a conditional licence referred to in subsection (4) are not fulfilled;
  - (c) the prescribed requirements for nursing agencies are not adhered to; or
  - (d) the annual licensing fee is not paid within the prescribed period.

#### **23. Custody and publication of registers**

The registers shall be kept at the office of the registrar, and the Council may, at intervals determined by it, cause copies of the registers or supplementary lists showing additions, removals, amendments, or revisions effected since the last publication of copies of the completed

registers, to be printed and published.

#### 24. Register as proof

- (1) A copy of the last published issue of a register or any supplementary list purporting to be printed and published on the authority of the Council 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 according to the provisions of this Act: provided that in the case of any person whose name-
  - (a) does not appear in such copy, or whose name has been added to the register after the date of the last published issue thereof, a certified copy under the hand of the registrar of the entry of the name of such person in the register shall be proof that such person is registered under the provisions of this Act;
  - (b) has been removed from the register since the date of the last published issue thereof and has not been restored thereto, a certificate under the hand of the registrar that the name of such person has been removed from the register shall be proof that such person is not registered according to the provisions of this Act.
- (2) A certificate of registration shall be evidence of registration for a period of one year only and thereafter an annual practising certificate which shall be issued upon payment of the prescribed annual fee and the submission of such information as may be required by the council to enable to keep accurate statistics on human resources in the health field, shall be regarded as proof of registration.

#### 25. Receipt as proof

A receipt issued by or on behalf of the Council in respect of the payment of licensing fees will be proof in legal proceedings that such person is registered according to the provisions of this Act but in the case of any person whose name –

- (a) appears in such register who is unable to produce such receipt, certification under the hand of the registrar will be proof that such person is registered under the provisions of this Act; or
- (b) has been removed from the register since the date of issue of such receipt and has not been restored to the register, certification by the registrar that the name of such has been removed from the register, shall be proof that such person is not registered under the provisions of this Act.

#### 26. Qualifications prescribed for registration

The Minister may, on the recommendation of the Council, prescribe qualifications obtained by virtue of examinations conducted by an accredited nursing education institution in the Republic, which, held singly or conjointly with any other qualification shall entitle any holder thereof to registration in terms of 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 prescribed.

#### 27. Conditions relating to continuing development

The Council may from time to time with regard to a profession under its jurisdiction make rules which determined –

- (a) conditions relating to continuing professional development to be undergone by practitioners in order to retain such registration;
- (b) the nature and extent of continuing professional development to be undergone by practitioners; and
- (c) the criteria for recognition by the Council of continuing professional development activities and of providers offering such activities.

#### **28. Community Service**

- (1) Any person registering for the first time to practice a profession in a prescribed category must perform remunerated community service for a period of one year.
- (2) The Minister may, after consultation with the Council, make regulations concerning the performance of the service contemplated in subsection (1), including but not limited to –
  - (a) the place at which such service is to be performed;
  - (b) the conditions of employment pertaining to persons who perform such service;
  - (c) the categories of registration excluded from such service.

#### **29. Regulation of research**

The Council shall ensure that the prescribed ethical conduct pertaining to research related to the practice of nursing and midwifery are adhered to and may take reasonable and appropriate disciplinary action against persons who act in contravention of such rules.

#### **30. Education and training**

- (1) An institution intending to conduct a nursing or midwifery education or training programme in order to prepare persons for practice in any one of the categories contemplated in section 18 shall first –
  - (a) Apply to the Council in writing for approval and submit information on –
    - (i) the education or training programme to be provided;
    - (ii) how it will meet the prescribed standards for education or training; and
  - (b) furnish the Council with any additional information required by the Council for purposes of accreditation or approval of the education or training programme.
- (2) The Council may refuse any application made in terms of subsection (1) or grant conditional approval.
- (3) If all the prescribed conditions are met and upon payment of a prescribed fee, the Council shall issue an accreditation certificate for a nursing education institution and for each nursing programme offered by that nursing education institution.
- (4) Any person who contravenes a provision of this section is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period of not more than two years or to both a fine and such imprisonment.

**31. Use of certain titles**

- (1) A person whose is registered in one of the categories contemplated in section 18 may use, the title "Registered Professional Nurse", "Registered Midwife", "Registered Accoucheur", "Registered Staff Nurse", "Registered Midwifery Auxiliary" or "Registered Nursing Auxiliary", as the case may be or the abbreviations "RPN", "RM", "RA", "RSN", "RMA", or "RNA" respectively.
- (2) A person who is following a programme of study in an accredited nursing education and training institution may use one of the following titles "Learner Nurse", "Learner Midwife" or "Learner Accoucheur" as the case may be or the abbreviations "LN", "LM" or "LA" respectively.

**32. Limitations in respect of persons not registered**

- (1) A person who is not registered in terms of this Act shall not perform any function pertaining to the profession of nursing or midwifery.
- (2) An employer shall not employ or retain in employment any person to perform the functions pertaining to the profession of nursing or midwifery, other than a person who holds the necessary qualification(s) and who is registered under section 18 of this Act.
- (3) No health establishment shall allow access to clinical facilities for training of a learner nurse or learner midwife who is not registered under section 19.
- (4) Any person who contravenes the provisions of subsection (1), (2) or (3) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period of 5 years or both a fine and such imprisonment.

**33. Removal of name from register and restoration thereof**

- (1) The Council may instruct the registrar to remove from the register the name of any practitioner -
  - (a) who has died;
  - (b) who has ceased to be a citizen or permanent resident of the Republic and has permanently left the Republic;
  - (c) who has been absent from the Republic for a continuous period of more than three years;
  - (d) who has failed to pay any relevant prescribed fee;
  - (e) who has failed to notify the registrar of any change in residential and postal address or the address of his or her practice within six months after any such change;
  - (f) who has requested that his or her name be removed from the register, in which case he or she may be required to lodge with the registrar an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are being or are likely to be instituted against him or her;
  - (g) who has been found guilty of unprofessional conduct in terms of this Act;



- (h) whose name has been removed from the register, record or roll of any university, hospital, college, society or other body from which he or she received the qualification by virtue of which he or she was registered;
  - (i) who has failed to furnish the registrar, within a period to be determined by the council, with such information as the registrar may require under this Act;
  - (j) whose registration is proved to the satisfaction of the Council to have been made in error or through fraudulent misrepresentation or concealment of material facts or information or in circumstances not authorised by this Act;
  - (k) who is suffering from a mental illness or who becomes a patient as defined in the Mental Health Care Act or its successor.
- (2) If –
- (a) it appears to a judge from the documents submitted to him or her in terms of the Mental Health Care Act or its successor, or it is brought to his or her notice in any other manner, that the person to whom the documents relate is a person registered under this Act and that such person is mentally ill in terms of the said Mental Health Care Act or its successor; or
  - (b) it is brought to the notice of a court that an accused person appearing before it is registered in terms of this Act, and the court in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act No 51 of 1977) directs that the accused person be detained pending the signification of the decision of the President,
- then, the judge or the court, as the case may be, must direct that a copy of the order declaring the person concerned mentally ill, or of the direction that the accused person be detained pending the signification of the decision of the President, be transmitted to the registrar and the registrar must on receipt of the copy remove the name of the person concerned from the register.
- (3) Notice of the removal in terms of subsection (1) by virtue of the provisions of any of paragraphs (b) up to and including (l) of subsection (1) of a person's name from the register must be given by the registrar to the person concerned by registered mail addressed to such person at the address of such person as it appears in the register.
- (4) As from the date on which notice was given in terms of subsection (3) -
- (a) any registration certificate issued in terms of this Act to the person concerned will be deemed to have been cancelled; and
  - (b) a person whose name has been removed from the register must cease to practise as a practitioner and must not perform any act which he or she, in his capacity as a registered person, was entitled to perform until such time as his or her name or the entry removed from the register as the case may be, is restored to the register.
- (5) The name of a person whose name has in terms of this section been removed from the register must be restored to the register by the registrar if the person concerned -
- (a) applies on the prescribed form for restoration of his or her name to the registrar; and
  - (b) pays the prescribed fee, if any; and



- (c) complies with such other requirements as the council may from time to time determine.

**34. Issue of duplicate registration certificate, certificate of status, extract from register or certificate by registrar**

- (1) The registrar may, on application by a practitioner, issue a duplicate certificate of registration if:
  - (a) he or she is satisfied as to the identity of the applicant; and
  - (b) the applicant has produced an affidavit certifying that the certificate of registration has been lost or destroyed;
  - (c) the applicant has paid any prescribed fee determined by the council.
- (2) The registrar may, upon payment of the prescribed fee, issue to any registered person a certificate of status containing particulars relating to such person's registration as well as a statement to the effect that the said person is not disqualified from practising his or her occupation and that no disciplinary steps are pending against him or her in terms of this Act.
- (3) The registrar may issue a certified extract from the register or a certificate referred to in subsection (2) under his hand to any person upon payment of the prescribed fee.
- (4) A certificate may be issued subject to certain conditions imposed by the council and such conditions shall be indicated on the certificate.

**CHAPTER 4**

**POWERS OF THE COUNCIL WITH REGARD TO PROFESSIONAL CONDUCT**

**35. Inquiry by Council into charges of unprofessional conduct**

- (1) The Council may institute an inquiry into any complaint, charge or allegation of unprofessional conduct against a practitioner or a director, manager or owner of an agency established in terms of this Act, or a juristic person entitled to practise a profession in terms of this Act and, on finding such person guilty of such conduct, may impose any of the penalties referred to in section.
- (2) A practitioner may be dealt with in terms of the provisions of the regulations governing the practice of a profession by a juristic person or the carrying on of the business of a nursing agency as the case may be.
- (3) In the absence of a complaint, charge or allegation, the Council may institute an inquiry into any alleged unprofessional conduct, which comes to its notice.
- (4) The Council may if in doubt about holding an inquiry, consult with, or seek information from, any person, including the person against whom the complaint, charge or allegation of alleged unprofessional conduct has been lodged.
- (5) The Council shall have jurisdiction to act in terms of this Chapter, after an alleged unprofessional conduct has come to its notice, that a person whose name has been removed from the register in terms of section 34(1)(b), (c), (d), (e), (f) or (j) the Act, is alleged to have committed unprofessional conduct before the removal of his or her name from the register.

**36. Matters for, and procedure at, inquiry by Council**

- (1) A nurse who, after inquiry is found guilty of unprofessional conduct by the professional conduct committee, is liable to one of the following penalties—
  - (a) a reprimand
  - (b) suspension for a specified period from practicing or performing acts specially pertaining to his or her profession; or in the case of a midwife learner or nurse learner, extension or suspension for a specified period of the prescribed period of education and training;
  - (c) removal of his or her name from the register; or
  - (d) a prescribed fine.
- (2) The Council shall appoint a pro-forma complainant to act in terms of this chapter.
- (3) The preliminary investigating committee appointed by the Council may -
  - (a) investigate all matters of professional misconduct;
  - (b) based on evidence, determine whether the case should be referred for a professional conduct inquiry; and
  - (c) in the case of a minor offence, recommend a prescribed fine instead of a full professional conduct inquiry.
- (4) The registrar may then issue a summons on the prescribed form against the defendant carrying an endorsement by the committee of preliminary investigation that the defendant may admit that he or she is guilty of unprofessional conduct and that he or she may pay the fine, specified in the summons, without having to appear at an inquiry in terms of section 35.
- (5) If a summons referred to in subsection (4) is issued against a defendant, he or she may, without appearing at an inquiry in terms of section 35, admit that he or she is guilty of unprofessional conduct by paying the prescribed admission of guilt fine to the Council on or before the date specified in the summons.
- (6)
  - (a) Any penalty imposed under this section, excluding an admission of guilt fine, shall be effective within 14 days after notification.
  - (b) The imposition of a fine under this section shall have the effect of a judgement in civil proceedings in the magistrate's court of the district in which the inquiry in question under section 35 took place or the district wherein the defendant is subsequently resident or employed.
- (7) No penalty imposed by the professional conduct committee referred to in subsection (1) or the preliminary investigation committee referred to in subsection (3), other than a reprimand, shall be effective until confirmed by the Council: Provided that a penalty imposed by the professional conduct committee referred to in subsection (1) or any order made by such committee under subsection (1) shall, if such committee so directs in the public interest, come into operation forthwith, and shall then lapse after expiry of a period of six months unless confirmed by the Council within that period.

- (8) (a) During an inquiry in terms of this section, the defendant shall be afforded an opportunity of pleading to the charge and of being heard in his or her defence.
- (b) Any party in a professional conduct hearing has the right to be represented by a person of his or her choice: Provided that such representative shall adhere to the prescribed procedure pertaining to such inquiry.
- (c) Despite the plea of guilty by the defendant, the Council or the professional conduct committee referred to in subsection (1) may require the pro-forma complainant or defendant to lead evidence.
- (9) Any penalty imposed under subsection (1) shall be reduced to writing, and signed by the president of the Council and dealt with in the prescribed manner.
- (10) (a) The Council or the professional conduct committee may take evidence from any witness who has been subpoenaed by the registrar, and may administer an oath to, or make an affirmation from, any witness, and may examine any book, record, document or thing which a witness has been required to produce.
- (b) A subpoena to appear before the Council or the professional conduct committee as a witness or to produce any book, record, document or thing shall be in the prescribed form and shall be served either by registered letter sent through the post or in the same manner as a subpoena issued by a magistrate's court.
- (c) Any person subpoenaed under this subsection, who -
- (i) refuses, or without sufficient cause fails to attend and give evidence relevant to the inquiry at the time and place specified in the subpoena;
  - (ii) refuses to take the oath or to make an affirmation when required by the president or the chairperson to do so;
  - (iii) refuses to produce any book, record, document or thing which he or she has in terms of the subpoena been required to produce;
  - (iv) wilfully misleads the Council or the professional conduct committee referred to in subsection (1); or
  - (v) refuses to answer any question that is not self-incriminatory, or to answer to the best of his or her knowledge and belief, any question lawfully put to him or her,
- is guilty of an offence and on conviction liable to a prescribed fine.
- (d) A person so subpoenaed shall be entitled to all the privileges to which a witness subpoenaed to give evidence before a Magistrate's Court is entitled.
- (11) The chairperson of the professional conduct committee may appoint assessors to advise the Council or such committee on matters of law, procedure or evidence when holding an inquiry.

### **37. Postponement of imposition, and suspension of operation, of penalty**

- (1) Where the professional conduct committee finds a person guilty of unprofessional conduct, it may -

- (a) postpone the imposition of a penalty for such period and on such conditions as it may determine; or
  - (b) impose any penalty mentioned in section 36(1)(b) or (c) but order the execution of the penalty to be suspended for such period and on such conditions as it may determine.
- (2) The Council shall if -
- (a) satisfied that a person has met all the relevant conditions of a penalty imposed in accordance with subsection (1)(a) or (b), inform such a person at the end of the stipulated period that no penalty shall be imposed.
  - (b) the person concerned fails to observe any of the conditions of suspension in terms of subsection (1)(b) put the penalty into operation unless the non-compliance of the conditions were due to circumstances beyond the individuals control.

**38. Suspension or removal from the register related to professional conduct matters**

- (1) Any person suspended or whose name is removed from the register in terms of section 36, is disqualified from practising the profession and his or her registration certificate is deemed to be withdrawn until the period of suspension has expired or until his or her name is restored to the register.
- (2) The name of the person removed from the register in terms of section 36(1)(c) or restored to the register in terms of subsection (3)(b), shall be published in the Gazette.
- (3) The Council may on such conditions as it may determine -
  - (a) terminate any suspension referred to in subsection (1) before the expiry of the specified period; or
  - (a) restore to the register the name which has been removed: Provided that such restoration shall not be considered within twelve months of removal.

**39. Cognisance by Council of conduct of registered persons under certain circumstances**

- (1)
  - (a) A person registered in terms of the Act who, either before or after registration, is convicted or charged of any offence by a court of law in the Republic or elsewhere, may be dealt with by the Council in terms of the provisions of this Chapter.
  - (b) If such offence constitutes unprofessional conduct referred to in section 35(1), such person registered in terms of the Act shall be liable on proof of conviction of one or more penalties referred to in section 36.
  - (c) The person registered in terms of the Act concerned shall be afforded an opportunity to present an explanation to the Council.
- (2) The Magistrate or court shall direct to the Council a copy of the record of all proceedings of a person registered in terms of the Act appearing in criminal or inquest proceedings.

**40. Unfitness to practise due to impairment**

- (1) Whenever it appears to the Council that a person registered in terms of the Act is or may

be incapacitated as a result of disability or is or may be impaired to such an extent that –

- (a) it would be detrimental to the public interest to allow him or her to continue to practise;
- (b) he or she is unable to practise the profession with reasonable skill and safety; or
- (c) in the case of a learner, has become unfit to continue with the educational programme,

the Council shall if necessary, appoint a committee to conduct an inquiry in the prescribed manner.

- (2) If the Council, after holding an inquiry finds the person registered in terms of the Act incapacitated or impaired as referred to in subsection (1), the Council may-
  - (a) allow such person registered in terms of the Act to continue practising the profession and in the case of a learner, to continue with the educational programme under such conditions as it may deem fit; or
  - (b) suspend for a specified period or stop such person from practising the profession and in the case of a learner, from continuing with his or her educational or training programme.
- (3) If a person referred to in subsection (2) applies for re-instatement, the Council shall evaluate the person's ability to continue practising and may extend or withdraw the period of operation of the suspension.
- (4) The provisions of section 38 shall, with the necessary changes, apply in respect of any person suspended in terms of subsection (2).
- (5) Any person registered under this Act who contravenes or fails to comply with the provisions of subsection (2)(a) or (b), commits an offence.
- (6) The committee referred to in subsection (1) may appoint persons with relevant expertise and experience as assessors to advise such committee.

#### **41. Investigation of matters relating to the teaching of learners**

- (1) Despite anything to the contrary contained in any law, any person who has been authorised by the Council in writing, may enter any institution or premises where learners are trained and confiscate any document or object relevant to such education or training for purposes of -
  - (a) inspecting or accrediting such institution or premises for the quality of nursing service in relation to its professional conduct function; or
  - (b) investigating any matter relating to the education or training of learners for the qualification to practise the profession of nursing or midwifery in terms of this Act .
- (2) Any person who prevents or hinders an authorised person referred to in subsection (1), is guilty of an offence.



## CHAPTER 5 OFFENCES BY PERSONS NOT REGISTERED

### 42. Penalties for practising as professional nurse, midwife, staff nurse, nursing auxiliary or midwifery auxiliary, for performing certain acts while not registered

- (1) Any person registered under this Act who misrepresents or practises in a capacity that he or she is not registered for, is guilty of an offence.
- (2) The provisions of subsection (1) shall not apply with reference to -
  - (a) a learner nurse or learner midwife registered under section 19, while acting in the course of his or her education and training;
  - (b) a learner nurse or learner midwife who has taken or will at the first available opportunity after such completion take the final examination for a qualification which, if obtained by him or her would entitle him or her to be registered until such time as he or she is advised that he or she has failed the said examination or that he or she has been registered with the Council;
  - (c) a person rendering assistance in a case of emergency; or
  - (d) to any other class or classes of persons determined by the Council.
- (3) A person referred to in paragraph (2)(b) shall, for the purposes of this Chapter, be deemed to be registered.

### 43. Giving false evidence under oath

- (1) Any person who gives false evidence on oath or affirmation at an inquiry held under Chapter 3, knowing such evidence to be false, is guilty of an offence and liable on conviction to the penalties that apply in respect of the crime of perjury.
- (2) Any person who omits any information or gives false information to the effect that no professional conduct proceedings are being or are likely to be taken against him or her, is guilty of an offence.
- (3) The Council shall have the power to refuse a request by a person referred to in subsection (1) or (2) that his or her name be removed from the register in the event of such person refusing or failing to submit an affidavit or affirmation or omits any information or gives false information in such affidavit or affirmation.

### 44. Nursing Agencies

Any person who carries on the business of a nursing agency without a licence as required by this Act, is guilty of an offence and liable on conviction to a prescribed fine or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

### 45. Penalty for false representation inducing registration, for false entries in register and for impersonation

- (1) Any person who -
  - (a) procures for himself or herself or any other person registration under this Act, or any diploma, certificate, licence, receipt or order referred to in this Act by means of a



false representation;

- (b) makes or causes to be made any unauthorised entry or alteration in or removal from a register or certified copy thereof or extract therefrom or on any diploma, certificate, licence or receipt issued under this Act;
- (c) wilfully destroys or damages or renders illegible or causes to be destroyed, damaged, or rendered illegible, any entry in the register or, without the permission of the holder thereof, any diploma, certificate, licence or receipt issued under this Act;
- (d) forges or, knowing it to be forged, uses any document purporting to be a diploma, certificate, licence or receipt issued under this Act; or
- (e) impersonates any person registered in terms of this Act,

is guilty of an offence and on conviction liable to a prescribed fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

#### **46. Penalties**

- (1) A person registered under this Act who in any way takes, uses or publishes any name, title, description or symbol which indicates, or which is calculated to lead persons to infer, that he or she holds a registered professional qualification which is not shown in the register in connection with his or her name, is guilty of an offence and liable on conviction to a prescribed fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (2) Any person who contravenes or fails to comply with any provision of this Act, is guilty of an offence and, save where a penalty is expressly provided, liable on conviction to a prescribed fine or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

### **CHAPTER 6 GENERAL AND SUPPLEMENTARY PROVISIONS**

#### **47. Special provisions relating to certain nurses**

- (1) Notwithstanding the provision of this Act or any other law, the Council may register a person who is registered in terms of section 18(1)(a), (b) or (c) to assess, diagnose, prescribe treatment, keep and supply medication for prescribed illnesses and health related conditions: Provided that such person –
  - (a) provides proof of completion of a prescribed qualification and training; and
  - (b) pay the prescribed registration fee.
- (2) The Council shall issue a registration certificate to a person who complies with the requirements referred to in subsection (1).
- (3) The registration certificate referred to in subsection (2) shall be valid for a period of 3 years.
- (4) The Council may renew a registration certificate referred to in subsection (2) subject to prescribed conditions.
- (5) A person registered in terms of subsection (1) may -

- (a) acquire, use, possess, manufacture or supply medicine subject to the provisions of section 22A; and
  - (b) dispense medicines subject to the provisions of section 22C,
- of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965).
- (6) Notwithstanding the provisions of this Act, the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), the Pharmacy Act, 1974 (Act No. 53 of 1974) and the Health Professions Act, 1974 (Act No. 56 of 1974), a nurse who is in the service of:
- (a) the National Department of Health,
  - (b) a provincial department of health,
  - (c) a municipality; or
  - (d) an organisation performing any health service designated by the Director-General after consultation with the South African Pharmacy Council referred to in section 2 of the Pharmacy Act, 1974 (Act No. 53 of 1974)
- and who has been authorised thereto by the said Director-General, the head of a provincial department of health, the medical officer of health of such municipality or the medical practitioner in charge of such organisation, as the case may be, may in the course of such service perform with reference to -
- (i) the physical examination of any person;
  - (ii) the diagnosing of any physical defect, illness or deficiency in any person;;
  - (iii) the keeping of prescribed medicines and the supply, administering or prescribing thereof on the prescribed conditions; or
  - (iv) the promotion of family planning,
- any act which the said Director-General, head of the provincial department of health, medical officer of health or medical practitioner, as the case may be after consultation with the Council, determine in general or in a particular case or in cases of a particular nature: Provided that the services of a medical practitioner or pharmacist, as the circumstances may require, are not available.
- (7) A professional nurse, midwife or staff nurse shall not be entitled to keep an open shop or pharmacy.
- (8) For the purpose of subsection (3) "open shop" means a situation where the supply of medicines and scheduled substances to the public is not done by prescription by a person authorized within the scope of practice concerned to prescribe medicine.

**48. Appeal against decisions of the Council**

- (1) Any person aggrieved by a decision of the Council may within the prescribed period and in the prescribed manner appeal against such decision to an appeal committee appointed by the Minister for the purpose of the appeal concerned.
- (2) An appeal committee shall consist of -
  - (a) a retired judge or an advocate of the Supreme Court of South Africa who has practised as such for a period of at least five years, and who shall be the chairperson of such committee; and
  - (b) a nurse.
- (3) An appeal under subsection (1) shall be heard on the date and at the place and time fixed by the appeal committee, which shall previously in writing notify the appellant as well as the Council thereof.
- (4) The appeal committee may for the purposes of an appeal lodged with it -
  - (a) summon any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who it believes has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the appeal, to appear before it at a time and place specified in the summons, to be interrogated or to produce that document, and retain for examination any document so produced;
  - (b) administer an oath to or accept affirmation from any person called as a witness at the appeal; and
  - (c) call any person present at the hearing of the appeal as a witness and interrogate him and require him or her to produce any document in his or her possession or custody or under his or her control.
- (5) The procedure at the hearing of an appeal shall be determined by the chairperson of the appeal committee.
- (6) The appeal committee may after hearing the appeal -
  - (a) confirm, set aside or vary the relevant decision of the Council; and
  - (b) direct the Council to execute the decision of the appeal committee in connection therewith.
- (7) The decision of the appeal committee shall be in writing, and a copy thereof shall be furnished to the appellant as well as to the Council.
- (8) The members of the appeal committee who are not in the full-time employment of the State may be paid such remuneration and allowances as the Minister determines with the concurrence of the Minister of Finance.

**49. Regulations**

- (1) The Minister may, after consultation with the Council, make regulations relating to -
  - (a) the appointment of members of the Council in terms of section 5(1) and the requirements for a valid nomination of a candidate for appointment or election as a member of the Council;

- (b) the register to be kept, and the diplomas and certificates that may be issued, in terms of this Act, the information which shall be recorded in the register and the manner in which alterations may be effected in the register;
  - (c) the conditions under which extracts from the register may be made;
  - (d) the particulars to be furnished to the Council to enable it to keep the register;
  - (e) the registration of an additional qualification;
  - (f) the qualifications, and the conditions to be complied with, which entitle a person to be registered under section 18;
  - (g) accreditation of institutions as nursing education institutions;
  - (h) identification symbols provided by the Council that a practitioner may use at a fee determined by the Council from time to time;
  - (i) the instituting and holding of professional conduct inquiries;
  - (j) the conditions under which the business of a nursing agency may be carried on;
  - (k) the circumstances, in which any name may be removed from, or restored to a register;
  - (l) the manner of instituting, and the procedure to be followed at an appeal hearing in terms of section 48 of this Act and any other matter incidental thereto;
  - (m) mandatory supplementary training or refresher courses to be undergone or taken by persons registered under this Act, the provision of and control over such training or courses, the intervals between such training or courses and sanctions for failure to undergo such training;
  - (n) the performance of community service;
  - (o) ethical conduct for research;
  - (p) conditions for limited registration in terms of section 20;
  - (q) the scopes of practice of practitioners;
  - (r) the fees and fines payable in terms of this Act; and
  - (s) generally, any matter which in terms of this Act is required or may be done, that the Minister considers necessary or expedient to prescribe, in order that the purposes of this Act is achieved.
- (2) The Minister may, after consultation with the Council, amend or repeal any regulation made in terms of subsection (1).
- (3) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith.

- (4) Any notice issued or regulation or order made under this Act may from time to time be amended or revoked by the authority which issued or made it.
- (5) The Minister shall, not less than three months before any regulation is made under subsection (1), cause the text of such regulation to be published in the *Gazette* together with a notice declaring his or her intention to make such regulations and inviting interested persons to furnish him or her with any comments thereon or representations they wish to make in regard thereto.
- (6) The provisions of subsection (5) shall not apply in respect of -
  - (a) any regulation which, after the provisions of subsection (5) have been complied with, has been amended by the Minister in consequence of representations received by him or her in pursuance of the notice issued thereunder; and
  - (b) any regulation where in the opinion of the Minister, it is in the public interest that such regulation is made without delay.

## 50. Rules

- (1) The Council may make rules relating to -
  - (a) conditions relating to continuing professional development to be undergone by practitioners in order to retain such registration;
  - (b) the nature and extent of continuing professional development to be undergone by practitioners;
  - (c) the criteria for recognition by the Council of continuing professional development activities and of providers offering such activities; and
  - (d) any matter which in terms of the Act is required to be or may be promulgated as rules.
- (2) The Council shall, not less than three months before any rule is made in terms of the Act, cause the text of such rule to be published in the *Gazette* together with a notice declaring the Council's intention to make such rule and inviting interested persons to furnish the Council with any comments thereon or any representations they wish to make in regard thereto.

## 51. Binding on State

Despite anything to the contrary contained in any law, this Act binds the State.

## 52.. Limitation of liability

Any person generally or specifically authorised to perform any function in terms of this Act, is not, in his or her personal capacity, liable for anything done in good faith under this Act.

## 53.. Repeal of laws

- (1) The laws set out in the first and second column of the Schedule are repealed to the extent set out in the third column of the Schedule.
- (2) The repeal does not affect the transitional arrangements contained in section 54.

**54. Transitional Provisions**

- (1) Any proclamation, notice, regulation, authorisation, or order issued, made or granted, or any registration or enrolment, or any removal from a register or roll, or any appointment or any other thing done, in terms of a provision of any law repealed by section 53(1) shall, unless inconsistent with any provision of this Act, be deemed to have been issued, made, granted or done under the corresponding provision of this Act.
- (2) The members of the Council as constituted immediately prior to the commencement of this Act shall continue to be members thereof, and the Council is deemed to be validly constituted in terms of this Act, until a date determined by the Minister and published in the Gazette.
- (3) If any member referred to in subsection (2) vacates his office, the Council must, until the date referred to in that subsection, consist of the remaining members.
- (4) Despite the provisions of subsection (1) and subject to the provisions of subsection (5), the Council shall have the power to institute or conclude disciplinary proceedings under the relevant provisions of the repealed laws in accordance with the procedures as prescribed by regulations made under such repealed laws, against any person who, at any time prior to the first meeting of the Council, is alleged to have committed an act which may have constituted improper or disgraceful conduct in terms of the provisions of the repealed laws or any regulation made there under.
- (5) The Council shall not institute proceedings referred to in subsection (4) against any person, unless the nature of the contravention which such person is alleged to have committed in terms of the repealed laws or any regulation made there under, is substantially the same as that of a contravention referred to in the corresponding provisions this Act or of any regulation made there under.

**55. Short title and commencement**

This Act is called the Nursing Act, 2004 and comes into operation on a date fixed by the President by proclamation in the Gazette.



**Schedule**  
**LAWS REPEALED BY SECTION 53.**

No. and year	Short Title	Extent of Repeal
No. 50 of 1978	Nursing Act	The Whole
No. 71 of 1981	Nursing Amendment Act	The Whole
No. 70 of 1982	Nursing Amendment Act	The Whole
No. 97 of 1986	Transfer of Powers and Duties of the State President Act	The Whole
No. 56 of 1987	Nursing Amendment Act	The Whole
No. 94 of 1991	Medicines and Related Substances Control Amendment Act	The Whole
No. 21 of 1992	Nursing Amendment Act	The Whole
No. 23 of 1993	Medical Schemes Amendment Act	The Whole
No. 145 of 1993	Nursing Amendment Act	The Whole
No. 5 of 1995	Nursing Amendment Act	The Whole
No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act	The Whole
No. 19 of 1997	Nursing Amendment Act	The Whole
No. 45 of 1997	Extension of Terms of Office of Members of Certain Councils Act	The Whole

- \* Objects, functions and composition of the Nursing Council (draft sections 3,4 and 5);
- \* Vacation of office and filling of vacancies on Nursing Council (draft section 6);
- \* Chairperson and vice-chairperson (draft section 7);
- \* Meetings and quorum and procedure at such meetings (draft sections 8 and 9);
- \* Executive committee and other committees (draft sections 10 and 11);
- \* Corporate governance (draft section 12);
- \* Rectifying of defects by Minister (draft section 13);
- \* Appointment and functions of registrar (draft sections 14 and 15);
- \* Finances of Nursing Council (including establishing finance committee) (draft section 16);

### **Chapter 3: Education, training, research, registration and practice**

- \* Scope of profession and practice of nursing and midwifery (draft section 17);
- \* Registration as a prerequisite to practise (draft section 18);
- \* Registration of learners (draft section 19);
- \* Limited registration (draft section 20);
- \* Registration of additional qualifications (draft section 21);
- \* Nursing agencies (draft section 22);
- \* Custody and publication of registers (draft section 23);
- \* Register and receipt as proof (draft sections 24 and 25);
- \* Qualifications prescribed for registration (draft section 26);
- \* Conditions relating to continuing development (draft section 27);
- \* Community service (draft section 28);
- \* Regulation of research (draft section 29);
- \* Education and training (draft section 30);
- \* Use of certain titles (draft section 31);
- \* Limitation in respect of persons not registered (draft section 32);
- \* Removal of name from register and restoration thereof (draft section 33);
- \* Issue of duplicate registration certificate, certificate of states, extract from register or certificate by registrar (draft section 34);

### **Chapter 4: Powers of the Nursing Council with regard to unprofessional conduct**

- \* Inquiry by the Nursing Council into charges of unprofessional conduct (draft section 35);
- \* Matters for, and procedure at, inquiry by the Nursing Council (draft section 36);

- \* Postponement of imposition, and suspension of operation, of penalty (draft section 37);
- \* Suspension or removal from the register related to professional conduct matters (draft section 38);
- \* Cognisance by the Nursing Council of conduct of registered persons under certain circumstances (draft section 39);
- \* Unfitness to practise due to impairment (draft section 40);
- \* Investigation of matters relating to the teaching of learners (draft section 41);

#### **Chapter 5: Offences by persons not registered**

- \* Penalties for practising as professional nurse, midwife, staff nurse, nursing auxiliary or midwifery auxiliary, for performing certain acts while not registered (draft section 42);
- \* Giving false evidence under oath (draft section 43);
- \* Nursing agencies (draft section 44);
- \* Penalty for false representation inducing registration, for false entries in register and for impersonation (draft section 45);
- \* Penalties (draft section 46);

#### **Chapter 6: General and supplementary provisions**

- \* Special provisions relating to certain nurses (draft section 47);
- \* Appeal against decisions of the Nursing Council (draft section 48);
- \* Regulations (draft section 49);
- \* Rules (draft section 50);
- \* Binding on State (draft section 51);
- \* Limitation of liability (draft section 52);
- \* Repeal of laws (draft section 53);
- \* Transitional provisions (draft section 54); and
- \* Short title and commencement (draft section 55).

### **5. ORGANIZATIONAL AND PERSONNEL IMPLICATIONS**

None.

### **6. FINANCIAL IMPLICATIONS**

The Bill has no financial implications for the State in addition to the publication cost.

**7. COMMUNICATION IMPLICATIONS**

Subject to approval of this Cabinet Memorandum by Cabinet, the Bill will be published for comment for a period of 2 months.

**8. CONSTITUTIONAL IMPLICATIONS**

The Department of Health is of the opinion that the Bill is not in conflict with any provisions of the Constitution.

**9. OTHER BODIES CONSULTED**

The Bill was drafted by the Nursing Council of South Africa in conjunction with the National Department of Health. The consultation process will take place once the Bill is published for public comment.

**10. RECOMMENDATION**

That the Cabinet approve that the Bill be published for comment for a period of two months.

**11. CONTACT PERSON**

Director-General	OR	Director-General
For attention: Mrs JC van Zyl		Ms Mdlalose
Legal Administration Officer		Director: Human Resources Development
Department of Health: Legal Services		Department of Health: Human Resources
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**12. AUTHORISATION FOR PROCESSING THE MEMORANDUM**

Contact person:

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**NOTICE 2583 OF 2003****HEALTH PROFESSIONS AMENDMENT BILL, 2003**

The Minister of Health intends to table the Health Professions Amendment Bill, 2004 to Parliament during its first session of 2004.

Interested persons are invited to submit any substantiated comments or representations on the Health Professions Amendment Bill, 2004 to the Director-General of Health: Private Bag X828, Pretoria, 0001 (for the attention of Chief Director: Human Resources) within two months of the date of publication of this notice.

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

To amend the Health Professions Act, 1974, as amended, so as to provide for some definitions, to provide for the general powers of the council, to provide for the constitution of the council, to provide for the requirements for removal of members from the office, to provide for the absence of the president from council meetings, to provide for the appointment of registrar and staff, to provide for the establishment of professional boards, to provide for the investigation of members whose names have been removed from the register, to provide for the control over education and training, to provide for the registration as a prerequisite for practise, to provide for the keeping of register by the registrar, to provide for the removal and restoration of names from the register, to provide for the publication of register by electronic means, to provide for the particulars to be contained in the certificate of status for registration to be issued by the registrar, to provide for qualifications prescribed for registration and for registration of persons holding qualifications not prescribed for registration, to provide for compliance of conditions relating to continuing professional development as a prerequisite, to provide for the registration and use of additional qualifications, registration of specialities, professional categories and additional professional categories, to provide for penalties for medical practitioners or interns while unregistered, to provide for penalties for practising as a registered counsellor, to provide for the penalties for dental prosthesis, who practise whilst unregistered, to provide for inquiry by professional boards into charges of unprofessional conduct, to provide for the Minister to make regulations relating to unprofessional conduct, to provide for the death of a person undergoing a procedure of a therapy, diagnose or palliation, to provide for the regulations relating to professional boards, educational institution and facilities, to provide for the rules relating to fees payable in terms of this Act.

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:-

**Amendment of section 1 of Act 56 of 1974 as amended by section 24 of Act 94 of 1991, section 1(c) of Act 58 of 1992, section 1(a) of Act 18 of 1995, section 1(a) of Act 89 of 1997 and section 1 of Act 1 of 1998**



1. Section 1 of the Health Professions Council Act, 1974 (hereinafter referred to as the principal Act), is hereby amended:
  - (a) by the insertion after the definition of "Director-General" of the following definition:

"health profession" means any profession for which a professional board has been established in terms of section 15 and includes any category or group of persons provided for by such a board"
  - (b) by the substitution in section (1) for the definition of "impaired" of the following definition:

"[impaired]" "impairment" means a mental or physical condition, or the abuse of or dependence on chemical substances, which affects the competence, attitude, judgement or competence of [a student or a] any person registered in terms of this Act".
  - (c) by the deletion in section (1) after the definition of "impaired" of the definition of "Interim National Medical and Dental Council of South Africa"
  - (d) by the substitution in section (1) for the definition of "intern" of the following definition:

"intern" means a person registered as such under this Act in a profession which provides for internship training".
  - (e) by the substitution in subsection (1) for the definition of "member" of the following definition:

"member" means a member of the council or of a professional board".
  - (f) by the substitution in section (1) for the second definition of the "register" of the following definition:

"register" when used as a noun, means a register kept in accordance with the provisions of this Act, and when used in relation to any [class] registration category or a member of any [class] such category of persons in respect of which a register is kept, means a register kept for that [class] category".
  - (g) by the insertion in section (1) after the definition of "professional board" of the following definition:

"professional categories" means the division or subdivision of field in which any other registered health professions may be practised;

- (h) by the substitution in section (1) for the definition of "scheduled substance" of the following definition:  
"scheduled substance" means a scheduled substance as defined in section 1 of the Medicines and Related Substance Control Act, 1965 (Act No. 101 of 1965)"
- (i) by insertion in section (1) after the definition of "scheduled substance" of the following definition:  
"section" means a section of this Act".
- (j) by the substitution in section (1) of the definition of "speciality" of the following definition:  
"speciality" in relation to a **[medical practitioner, dentist or psychologist,]** person registered in respect of any profession under this Act, means any particular discipline, division or subdivision of a profession which is recognised under this Act as a speciality in which such **[medical practitioner, dentist or psychologist]** person specialises or intends to specialise".

**Amendment of the heading in Chapter 1 of Act 56 of 1974 as amended by section 2 of Act 18 of 1995 and section 2 of Act 89 of 1997.**

2. The heading in Chapter 1 of the principal Act is hereby amended by the substitution for the existing heading of the following heading:

**"ESTABLISHMENT, OBJECTS, FUNCTIONS AND POWERS OF THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA AND OF PROFESSIONAL BOARDS".**

**Amendment of section 3 of Act 56 of 1974 as amended by section 2 of Act 58 of 1992, section 4 of Act 18 of 1995, section 3 of Act 45 of 1997 and substituted by section 4 of Act 89 of 1997**

3. Section 3 of the principal Act is hereby amended-

- (a) by the substitution for paragraph (b) of the following paragraph:

"(b) to promote and to regulate interprofessional liaison between **[registered]** the health professions in the interest of the public"

- (b) by the substitution for paragraph (c) of the following paragraph:

"(c) to determine strategic policy, and to make decisions in terms thereof, with regard to the professional boards and **[registered]** the health professions, for matters such as finance, education, training, registration, ethics and professional conduct, disciplinary procedure, scope of the professions, interprofessional matters and maintenance of professional competence."

- (c) by substitution for paragraph (f) of the following paragraph:

"(f) subject to the provisions of section 15A of this Act, the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health **[Services]** Professions Act, 1982 (Act No. 63 of 1982), and the Pharmacy Act, 1974 (Act No. 53 of 1974), to control and to exercise authority in respect of all matters affecting the education and 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 or deficiencies in humankind."

- (d) by substitution for paragraph (g) of the following paragraph:

"(g) to promote liaison in the field of education and training referred to in paragraph (f), both in **[the Republic]** South Africa and elsewhere, and to promote the standards of such education and training in **[the Republic]** South Africa and elsewhere."

**Amendment of section 4 of Act 56 of 1974 as substituted by section 5 of Act 89 of 1997**

4. Section 4 of the principal Act is hereby amended-

- (a) by the substitution for paragraph (c) of the following paragraph:

"(c) consider, in consultation with the relevant professional board, any matter affecting the health professions **[registrable]** registerable **[with the council]**

under this Act [generally], and make representations or to take such action in connection therewith as the council deems **[advisable]** necessary."

- (b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) delegate to any professional board or committee or any person such of its powers as it may from time to time determine, but shall not be divested of any power so delegated; and."

**Amendment of section 5 of Act 56 of 1974 as amended by section 2(1) of 1978, section 2 of Act 58 of 1984, section 1(1) of Act 79 of 1990, and section 3 of Act 58 of 1992, substituted by section 5 of Act 18 of 1995, amended by section 4 of Act 45 of 1997 and section 1 of Act 1 of 1998 and substituted by section 6 of Act 89 of 1997**

**5. Section 5 of the principal Act is hereby amended-**

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) not more than **[25]** 16 persons designated by the professional boards, on a basis proportional to the number of persons registered to **[practise]** practice the professions falling under each professional board: Provided that one of the persons so designated, shall be the chairperson of the professional board and that each professional board shall be proportionally represented and be entitled to designate at least one other person [registered in terms of this Act]"

- (b) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) one person from the South African **[Medical Services]** Military Health Service, appointed by the Minister of Defence."

- (c) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) three persons appointed by the **[Committee of University Principals]**  
**South Africa University Vice-Chancellors' Association.**"

- (d) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

"(h) nine public representatives, one from each province, appointed by the Member of the Executive Council responsible for health in each province: Provided that such representatives shall not be persons registered in terms of this Act; and"

**Amendment of section 6 of Act 56 of 1974 as amended by section 46 of Act 97 of 1986 and by section 6 of Act 18 of 1995 and substituted by section 7 of Act 89 of 1997**

**6. Section 6 of the principal Act is hereby amended-**

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) he or she has been absent without leave by the president or by the chairperson, as the case may be, for more than two consecutive ordinary meetings of the council **[without the council's leave]** or of a committee established by the council."

- (b) by the deletion in paragraph (c) of subsection (1)

- (c) by the substitution for paragraph (c) of subsection (1) of the following paragraph

"(c) he or she has been found guilty of unprofessional conduct at an inquiry held in terms of section 41 and penalised with one or more of the penalties as specified in section 42(1)."

- (d) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) he or she becomes a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973) or becomes impaired as prescribed in the regulations made in terms of section 51 of the Act"

- (e) by the insertion for paragraph (i) in subsection (1) of the following paragraph:

"(i) he or she deliberately acts either by commission or omission in a manner that will prejudice the interests of the council or violate the Charter of the counsellors".

**Amendment of section 7 of Act 56 of 1974**

7. Section 7 of the principal Act is hereby amended-

- (a) by the substitution for subsection (3) of the following subsection:

"(3) The vice –president may, if the president is absent or for any reason unable to act as president, perform all the functions and exercise all the powers of the president: ~~Provided that if both the president and vice-president are temporarily absent for any reason, the president or vice – president, as the case may be, may appoint another member of the executive committee of the council to act in their stead during their absence.~~"

- (b) by the substitution for subsection (5) of the following subsection:

"(5) If both the president and vice –president [**have been given leave of absence**] ~~are absent~~, the members of the council shall elect one of their number to act as a president until the president or vice- president resumes duty or vacates office."

**Amendment of section 8 of Act 56 of 1974**

8. The following section is hereby substituted for section 8 of the principal Act:

"(8) The president may at any time convene a special meeting of the council, to be held on such a date and at such place as he may determine and he shall, upon a written request by the Minister or a written request signed by at least one third of the total number of members, convene a special meeting to be held, within thirty days after the date of receipt of the request, on such a date and at such a place as he may



determine: Provided that such written request shall state clearly the purpose for which the meeting is to be convened."

**Amendment of section 10 of Act 56 of 1974 as amended by section 3 of Act 58 of 1984, section 5 of Act 58 of 1992, section 8 of Act 18 of 1995 and substituted by section 8 of Act 9 of 1997**

9. Section 10 of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) The council may from time to time establish such committees, **[including disciplinary committees,]** as it may deem necessary, each consisting of so many persons, appointed by the council, as the council may determine but including, except in the case of **[a disciplinary]** an appeal committee referred to in subsection (2), at least one member of the council, who shall be the chairperson of such committee."

(b) by the substitution for subsection (2) of the following subsection:

"(2) The council shall from time to time, as the need arises, establish *ad hoc* **[disciplinary]** appeal committees, each consisting of, as chairperson, a **[retired judge or retired senior magistrate, or an attorney or advocate]** person vest in law with at least ten years' experience, not more than two registered persons drawn from the profession of the registered person in respect of whose conduct a **[discipline]** professional conduct committee of a professional board had held an inquiry, and the member of the council appointed to represent the community **[, which member shall not be a registered person].**"

(c) by the substitution for subsection (3) of the following subsection:

"(3) **[A]** An **[disciplinary]** appeal committee referred to in subsection (2) shall have the power to vary, confirm or set aside a finding of a **[disciplinary]** professional conduct committee established in terms of **[subsection (1)]** section 15(5)(f) or to refer the matter back to the **[disciplinary]** professional conduct committee with such instructions as it may deem fit."

- (d) by the substitution of subsection (4) of the following subsection:

"(4) A decision of a **[disciplinary committee]** professional conduct committee **[unless appealed against,]** shall be of force and effect from the date determined by the disciplinary committee.

- (e) by the substitution for subsection (5) of the following subsection:

"(5) Where a matter has been considered by **[a disciplinary]** an appeal committee, the decision of the **[disciplinary]** appeal committee **[unless appealed against,]** shall be of force and effect from the date determined by the **[disciplinary]** appeal committee."

**Amendment of section 12 of Act 56 of 1974 as substituted by section 9(b) of Act 18 of 1995 and section 10(a) of Act 89 of 1997**

10. Section 12 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) The council shall appoint a registrar and the registrar may appoint such other persons as **[it]** he or she may deem necessary for carrying out **[its]** the functions specified under this Act, and the registrar may dismiss any of such other persons."

- (b) by the substitution for subsection (2) of the following subsection:

"(2) The registrar shall be the secretary of the council and of each professional board and he or she shall perform the functions and carry out the duties assigned to or imposed upon him or her in terms of this Act as well as such functions and duties as may from time to time as assigned to or imposed upon him or her by the council or a professional board or a committee established in terms of section 10."

**Amendment of section 13 of Act 56 of 1974, as substituted by section 4 of Act 52 of 1978, as amended by section 3 of Act 79 of 1990 and substituted by section 11 of Act 89 of 1997**

11. Section 13 of the principal Act is hereby amended by—

(a) the substitution for the existing heading of the following heading:

**“Corporate finance and governance”:**

(b) the substitution for subsection (1) of the following subsection :

“(1) All registration **[and]** , examination, **[fees]** annual and any other fees payable under this Act shall, unless otherwise provided, be paid to the council and shall constitute its funds and the council shall utilize its funds for defraying expenses incurred in connection with the performance of its functions and those of professional boards.”;

(c) the addition of the following subsection :

“(3) The registrar, as the accounting officer, must-

(a) keep full and proper records of all moneys received and expenses incurred by, and of all assets, liabilities and financial transactions of, the council and the registrar;

(b) as soon as is practicable, but not later than four months after the end of each financial year, prepare annual financial statements in respect of the financial year in question;

(c) ensure that the council has and maintains-

(i) effective, efficient and transparent systems of financial and risk management and internal control;

(ii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; and

(iii) a system for properly evaluating all projects involving expenditure of capital prior to a final decision on the project;

- (d) ensure the effective, efficient, economical and transparent use of the resources of the council;
- (e) take effective and appropriate steps to-
  - (i) collect all money due to the council;
  - (ii) prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
  - (iii) manage available working capital efficiently and economically;
- (f) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the registrar's responsibilities are considered, and when necessary, bring those considerations to the attention of the council;
- (g) be responsible for the management, including the safeguarding and maintenance of the assets, and for the management of the liabilities, of the council;
- (h) settle all contractual obligations and pay all money owing by the council within 30 days of due date or within a period to which the relevant creditor has agreed;
- (i) ensure that expenditure of the council is in accordance with the decisions of the council and that effective and appropriate steps are taken to prevent unauthorized expenditure;
- (j) keep full and proper records of the financial affairs of the council in accordance with any prescribed norms and standards;
- (k) prepare financial statements for each financial year in accordance with generally recognized accounting practice;

- (l) submit the financial statements within two months after the end of the financial year to an independent auditor for auditing; and
- (m) submit within five months of the end of a financial year to the Minister-

- (i) an annual report on the activities of the council during that financial year;
- (ii) the financial statements for that financial year after those statements have been audited; and
- (iii) an independent auditor's report on those statements."

(d) by the addition of the following subsection:

"(4) The council must ensure that the requirements of section (3) are met and properly fulfilled."

(e) by the addition of the following paragraph:

"(5) If an accounting officer is unable to comply with any of the responsibilities determined in subsection (3), he or she must promptly report the inability, together with reasons, to the Minister and the council."

(f) by the addition of the following paragraph:

"(6) Any person who obstructs the registrar or the council in fulfilling the requirements of subsections (3) and (4) is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment."

**Amendment of section 15 of Act 56 of 1974 as amended by section 46(1) of Act 57 of 1975, section 11 of Act 18 of 1995 and substituted by section 12 of Act 89 of 1997**

12. Section 15 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) The Minister shall, on the recommendation of the council, establish a professional board with regard to any health profession in respect of which a register is kept in terms of this Act, or with regard to two or more such health professions."

- (b) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may, on the recommendation of the council, change the professional boards with regard to the health professions for which the boards have been established, and establish other boards."

- (c) by the substitution for paragraph (a) of subsection (5) of the following paragraph:

"(a) the majority of the members of a professional board to be elected by the members of the health profession or professions involved."

- (e) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

"(b) persons representing the community to comprise not less than 20 per cent of the membership of a professional board, with a minimum of one such representative for every **[profession]** professional board: Provided that such representatives shall not be persons registered with that board."

- (f) by the addition of paragraph (fA) in subsection (5) of the following paragraph:

"(fA) the establishment by a professional board of professional conduct committees as it may deem necessary, each consisting of so many persons appointed by the board as the board may determine, but including at least one member of the board, a former member of the board or an appropriately qualified member of the council."

- (g) by the deletion of "and" at the end of the sentence in paragraph (h)

"the election of a chairperson and vice –chairperson by the members of a professional board and the powers and functions of such a chairperson and vice-chairperson" **[and]**



- (h) by the substitution in paragraph (i) of subsection (5) of the following subsection:

"(i) the term of office of the members of a professional board[.];and

- (i) by the insertion for paragraph (j) in subsection (5) of the following paragraph:

"(j) the vacation of office and the filling of vacancies on a professional board."

**Amendment of section 15A as inserted by section 13 of Act 89 of 1997**

**13. Section 15A of the principal Act is hereby amended-**

- (a) by the substitution for paragraph (c) of the following paragraph:

"(c) subject to the provisions of section 3 of this Act, the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health [Service] Professions Act, 1982 (Act No. 63 of 1982), and the Pharmacy Act, (Act No. 53 of 1974), to control and to exercise authority in respect of all matters affecting the education, training and registration of persons in, and the manner of the exercise of the practices pursued in connection with, any health profession falling within the ambit of the professional board."

- (b) by substitution for paragraph (d) of the following paragraph:

"(d) to promote liaison in the field of the education and training contemplated in paragraph (c), both in [the Republic] South Africa and elsewhere, and to promote standards of such education and training in [the Republic,] South Africa."

- (c) by substitution for paragraph (e) of the following paragraph:

"(e) to [advise] make recommendations to the council in order for the council to advise the Minister on any matter falling within the scope of this Act as it relates to any health profession falling within the ambit of the professional board in order to support the universal norms and values of [the] such profession or professions, with greater emphasis on professional practice, democracy, transparency, equity accessibility and community involvement."

- (d) by the substitution for paragraph (f) of the following paragraph:

"(f) to make recommendations to the council in order for the council to make recommendations [communicate] to the Minister information on matters of public importance acquired by the professional board in the course of the performance of its functions under this Act;

- (e) by substitution for paragraph (g) of the following paragraph:

"(g) to maintain and enhance the dignity of the relevant health profession or professions and the dignity of the persons practising [the] such profession or professions; and."

- (e) by substitution for paragraph (h) of the following paragraph:

"(h) to guide the relevant health profession or professions and to protect the public."

**Amendment of section 15B of Act 56 of 1974 as inserted by section 13 of Act 89 of 1997**

**14. Section 15B of the principal Act is hereby amended-**

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) in circumstances as may be prescribed, or where otherwise authorised by this Act, remove any name from a register or, upon payment of the prescribed fee, restore thereto, or suspend a registered person from practising his or her profession pending the institution of a formal inquiry in terms of section 41 or investigation in terms of section 51."

- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) appoint examiners and moderators, conduct examinations [and] or evaluations, grant certificates, and charge such fees in respect of such examinations, evaluations or certificates as may be prescribed."

- (c) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) subject to the prescribed accreditation process and conditions, [approve training schools] including the submission of a report or reports by accreditation teams or inspectors appointed by the professional board, accredit teaching institutions and training facilities.”

- (d) by the insertion in paragraph (d) of subsection (1) of the word “health” after the words “any.”

- (e) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) upon application by any person, recognise any qualification held by him or her (whether such qualification has been obtained in **[the Republic] South Africa** or elsewhere) as being equal, either wholly or in part, to any prescribed qualification, where upon such person shall, to the extent to which the qualification has been recognised, be deemed to hold such prescribed qualification and upon compliance with any other additional requirements as may be determined by the professional board, register such person.”

- (f) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) perform such other functions as may be prescribed, and generally, do all such things as the professional board deems necessary or expedient to achieve the objects of this Act in relation to **[a] the health profession or professions** falling within the ambit of the professional board.”

#### **Amendment of the heading of Chapter II of Act 56 of 1974**

15. The following heading of chapter ii is hereby substituted for the following heading:

**“EDUCATION, TRAINING AND REGISTRATION”**

**Amendment of section 16 of Act 56 of 1974 as substituted by section 7 of Act 8 of 1992 and amended by section 14(a)(b) of Act 89 of 1997**

## 16. Section 16 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading

**"16. Control over education and training"**

- (b) by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything contrary in any other law **[contained]** but subject to the provisions of the Nursing Act, 1978 (Act No. 50 of 1978), no person or educational institution or training facility, **[excluding a university or technikon,]** may offer or provide any education or training having as its object to qualify any person for the practising of any health profession to which the provisions of this Act apply or for the **[carrying on]** performance of any other activity directed to the mental or physical examining of any person or to the diagnosis, treatment or prevention of any mental or physical defect, illness or deficiency in **[man]** humankind, unless such education and training has been **[approved]** accredited by the professional board concerned as being appropriate education and training for such purposes."

- (c) by the substitution for subsection (2) of the following subsection:

"(2) Any person or educational institution or training facility wishing to offer such education or training as is referred to in subsection (1) shall, before offering such education or training, apply to the professional board concerned in writing for its **[approval]** accreditation of such education or training, **[and]** shall furnish such particulars regarding such education or training as the professional board concerned may require and pay the accreditation fees and /or annual fee to remain accredited which the professional board may prescribe."

- (d) by the substitution for subsection (3) of the following subsection"

"(3) The professional board concerned may grant or refuse any application made in terms of subsection (2) and, having granted such application, may prescribe such conditions and requirements as it may deem fit subject to which the education or training in question may be provided."

- (e) by the substitution for subsection (5) of the following subsection"

"(5) Any person who contravenes or fails to comply with any provisions of this section shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding **[six] twelve** months or both such fine and such imprisonment."

- (f) by the addition of the following subsection:

"(6) The council shall be education and training quality assurer for the health professionals registered under this Act, in terms of South African Qualifications Authority Act, (Act No. 58 of 1995)."

**Amendment of section 17 of Act 56 of 1974 as substituted by section 47(1) of Act 57 of 1975, section 2 of Act 33 of 1976, amended by section 8 of Act 58 of 1992 and substituted by section 15 of Act 89 of 1997**

17. Section 17 of the principal Act is hereby amended-

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

**"(a) [the profession of the medical practitioner, dentist, psychologist or as an intern or an intern-psychologist or] any health profession registrable in terms of this Act; or**

- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

**"(b) except in so far as it is authorised by the provisions of the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), the Pharmacy Act, 1974 (Act No. 53 of 1974), and section 33, 34 and 39 of this Act, **[for gain]** any **[other]** health profession the practice of which mainly consists of –**

- (i) the physical or mental examination of persons;
- (ii) the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in **[man;] humankind;**
- (iii) the giving of advice in regard to such defects, illnesses or deficiencies; or

- (iv) the prescribing or providing of medicine in connection with such defects, illnesses or deficiencies,

unless he or she is registered in terms of this Act[.]Provided that the provisions of paragraph (b) shall not be construed as permitting the performance of any act by persons registered under any of the Acts referred to in that paragraph which is not performed in the ordinary course of the practising of his or her profession."

- (c) by the substitution for subsection (2) of the following subsection:

"(2) Every person desiring to be registered in terms of this Act shall apply to the registrar and shall submit the qualification which, in his or her submission, **[entitles]** may entitle him or her to registration, together with such proof of identity and good character and of the authenticity and validity of the qualifications submitted as may be required by the professional board concerned."

- (d) by the substitution for subsection (3) of the following subsection:

"(3) If the registrar is satisfied that the qualifications and the other documents submitted in support of the application satisfy the requirements of this Act, he shall, upon payment by the applicant of the prescribed registration fee, issue a registration certificate authorising the applicant, subject to the provisions of this Act or of any other law, to practise the health profession in respect whereof he has applied for registration, within **[the Republic]** South Africa."

- (e) by the addition of the following subsection:

"(5) Any person who practises a health profession in contravention of this section or who pretends to hold such registration, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding twelve months or both such fine and such imprisonment."



**Amendment of section 18 of Act 56 of 1974 as substituted by section 48 of Act 48(1) of Act 57 of 1975, section 3 of Act 33 of 1976, section 13 of Act 36 of 1977, section 9 of Act 58 of 1992 and section 16 of Act 89 of 1997**

18. Section 18 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

**"(1) [The registrar shall keep registers in respect of medical practitioners, dentists, interns, student interns, medical students, dental students, psychologists, intern-psychologists and psychology students or any other health professionals as determined by council and persons doing community services in terms of section 24A and shall, on the instructions of the professional board, enter in the appropriate register the name, physical address, qualifications, date of initial registration and such other particulars (including, in the case of a medical practitioners, dentists and psychologists, the name of their speciality or category, if any) as the professional board may determine, of every person whose application for registration in terms of section 17(2) has been granted] The registrar shall keep registers in respect of practitioners, interns and undergraduate and postgraduate students of all health professions registrable under this Act and of persons doing community service in terms of section 24A and shall enter in the appropriate register the name, relevant contact details, qualifications, date of initial registration and such other particulars (including the registration category in which they hold registration and the name of their speciality, subspeciality, professional category or categories, if any) as the professional boards may determine, of every person whose application for registration in terms of section 17(2) has been granted."**

(b) by the substitution for subsection (2) of the following subsection:

**"(2) The registrar shall keep the registers correctly and in accordance with the provisions of this Act and shall remove therefrom the names of all registered persons who have died or whose names have to be removed in terms of this Act and shall from time to time make the necessary alterations [in the addresses or qualifications of] to the entries as contemplated in subsection (1) in respect of [details kept in relation to all] registered persons."**

(c) by the substitution for subsection (3) of the following subsection:

**"(3) Every registered person who changes his contact details [address] shall in writing notify the registrar thereof within thirty days after such change."**

- (d) by the substitution for subsection (5) of the following subsection:
- "(5) No qualification shall be entered in the register unless the registrar is satisfied that the person claiming to possess such qualification is entitled thereto, or if the professional board is not so satisfied; and any entry which is **[proved]** ~~proven~~ to the satisfaction of the professional board to have been in error or through misrepresentation or in circumstances not authorised by this Act, may be removed from the register and a record of the reasons for every such removal shall be made in the register, and the person in respect of whose entry such removal has been made, shall be notified thereof in the manner contemplated in section 19(2) and any certificate issued in respect of the registration in question shall be deemed to be cancelled as from the date on which notice has so been given."

**Amendment of section 19 of Act 56 of 1974 as amended by section 10 of Act 58 of 1992 and section 17 of Act 89 of 1997**

19. Section 19 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:
- "19(1) The professional board concerned or a committee of a professional board to whom the function has been delegated, may **[direct]** ~~delegate~~ the registrar to remove from the register the name of any person-
- (b) by the deletion for paragraph (a) of subsection (1).
- (c) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
- "(c) who has requested that his name be removed from the register, in which case such person may be required to lodge with the registrar an affidavit to the effect that no **[disciplinary]** proceedings relating to unprofessional conduct or criminal proceedings are being or are likely to be taken against him or her."
- (d) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) who has failed to pay to the **[professional board] council**, within three months as from the date on which it became due for payment, any annual fee prescribed by the **[professional board] council** in terms of section 62.";

- (e) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) whose name has been removed from the register, record or roll of any university, technikon, hospital, college, society or other body from which that person received the qualification by virtue of the holding whereof he was registered[.]"

- (f) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) who has been registered in error or through fraud[.]";

- (g) by the addition in subsection (1) of the following paragraph:

"(g) who has been found guilty of unprofessional conduct and on whom a penalty as specified in section 42(1)(b) or (c) is imposed"; or

- (h) by the addition in subsection (1) of the following paragraph:

"(h) who has failed to comply with the requirements in respect of continuing professional development as prescribed under section 26."

- (i) by the addition in subsection (1) of the following paragraph:

"(i) who has been suspended in terms of section 15B(1)(a)

- (j) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

"(b) such person shall cease to practise the health profession in respect of which he was registered or to perform any act which he, in his capacity as a registered person, was entitled to perform, until such time as his name or the entry removed from the register in terms of section 18 (5), as the case may be, is restored to the register".

- (k) by the substitution for subsection (4) of the following subsection:

"(4) If from the documents submitted to him in terms of section 18 (3) of the Mental Health Act, 1973 (Act No. 18 of 1973), it appears to the judge concerned, or it is brought to his notice in any other manner, that the person to whom the documents relate, is a person registered under this Act, he shall, if the person is declared a mentally ill person as contemplated in section 19 (1) (b) of the said Mental Health Act, 1973, direct that a copy of the order declaring such a person a mental ill person be transmitted to the registrar and the registrar shall, on receipt of such a copy, remove the name of the person concerned from the register."

- (l) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) in the case where his name has been removed from the register in terms of subsection (4), submitting proof to the satisfaction of the **[council]** relevant professional board of his discharge in terms of the provisions of the Mental Health Act, 1973, from the institution at which he had been detained, but subject to any conditions of registration or practice which may be imposed on him or her under the regulations made in terms of section 51.";

- (m) by the substitution for paragraph (cA) of subsection (5) of the following paragraph:

"(cA) paying any annual fee which was not paid and payment of an additional fee as may be **[decided upon]** prescribed; and."

- (n) by the substitution for paragraph (d) of subsection (5) of the following paragraph:

"(d) complying with such other requirements as the **[council]** professional board may determine."

#### **Amendment of section 21 of Act 56 of 1974**

20. The following section is hereby substituted for section 21 of the principal Act:

"21. The register shall be kept at the office of the council and the register shall, at intervals to be determined by the council and according to the instructions and on the authority of the council, cause copies of the registers, or of supplementary lists showing all alterations, additions, revisions and deletions made since the last publication of the complete registers, to be printed and published or to be made available in electronic or any other appropriate format approved by the council."

**Amendment of section 22 of Act 56 of 1974 as amended by section 19 of Act 89 of 1997**

21. The following section is hereby substituted for section 22 of the principal Act:

"22(1) A copy of the last published issue of a register or any supplementary list purporting to be printed and published on the authority of the council shall be *prima facie* proof, in all legal proceedings, of the fact therein recorded, and the absence of the name of any person from such copy shall be proof, until the contrary is **[proved]** proven, that such person is not registered according to the provisions of this Act: Provided that in the case of any person whose name—"

**Amendment of section 23 of Act 56 of 1974 as amended by section 20 of 89 of 1997**

22. Section 23 of the principal Act is hereby amended:

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) on proof submitted by the registered person concerned, that a registration certificate has been damaged or destroyed;

(b) by virtue of an affidavit submitted by the registered person concerned, that a registration certificate has been lost,

he may issue a duplicate registration certificate to that person upon payment of the prescribed fee."

(b) by the substitution for subsection (2) of the following subsection:

"(2) The registrar may, upon payment of the prescribed fee, issue to any registered person after submission of an affidavit that no criminal proceedings are pending against him or her, a certificate of status containing particulars relating to **[such person's registration as well as a statement**

to the effect that the said person is not disqualified from practising his profession and no disciplinary steps are pending against him in terms of this Act.] the following, namely:-

- (a) such person's registration under the Act;
- (b) whether or not the person is disqualified in part or totally from practising his or her profession;
- (c) whether or not any steps pertaining to unprofessional conduct are pending against the person concerned at the time of the issuing of the certificate;
- (d) whether or not the person concerned may in the past have been found guilty of any unprofessional conduct, and if so-
  - (i) the date of such finding;
  - (ii) the nature of such unprofessional conduct; and
  - (iii) the penalty imposed;
- (e) whether or not the person concerned is impaired and, if so,-
  - (i) the date of such finding;
  - (ii) the nature of the conditions of registration and practice that may be in place at the time of the issuing of the certificate."

**Amendment of section 24 of Act 56 of 1974 as amended by section 1 of Act 43 of 1980, section 2 of Act 38 and substituted by section 21 of Act 89 of 1997**

23. The following section is hereby substituted for section 24 of the principal Act:

"24. The Minister may, on the recommendations of the relevant professional board [council], prescribe the qualifications obtained by virtue of examinations conducted by [a] an accredited university, [a] technikon or other educational institution or examining authority in [the Republic] South Africa, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration in



any registration category, in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with all such conditions or requirements as may be prescribed by the relevant professional board."

**Amendment of section 24A as inserted by section 24A of Act 89 of 1997**

24. Section 24A of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding section 24, any person registering for the first time **[for]** in a category of [profession] registration listed in the regulations made in terms of this Act **[after the commencement of the Medical, Dental and Supplementary Health Service Professions Amendment Act, 1997,]** shall perform remunerated **[medical]** community service in health care for a period of one year in terms of the regulations contemplated in subsection (2) and shall, on the completion of such service, be entitled to practise the profession in question."

(b) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may, after consultation with the council, make regulations concerning the performance of the service contemplated in subsection (1), including but not limited to-

[(i)] (a) the place or places at which it is to be performed;

[(ii)] (b) the conditions of employment [.] pertaining to persons who perform such service: [.]

(c) the registration categories excluded from such services."

**Amendment of section 25 of Act 56 of 1974 as substituted by section 23 of Act 89 of 1997**

25. Section 25 of the principal Act is hereby amended-

(a) by the substitution for the existing heading of the following heading:

**"Registration of persons who hold qualifications not prescribed for registration"**

- (b) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, in consultation with council and the relevant professional board, by regulation provide that any person who holds **[such] a qualification [as] which the [council] professional board may[, for the purpose of registration in a category in terms of this subsection,]** accept by virtue of the fact that such qualification, in the opinion of the **[council] professional board** indicates a satisfactory standard of professional education and training, may be registered in terms of this section in the applicable prescribed registration category, and thereupon the **[council] professional board** may in its discretion, subject to any regulations which the Minister may make, register such person."

- (c) by the substitution for subsection (2) of the following subsection:

"(2) The **[council] professional board** may require a person who holds a qualification referred to in subsection (1) and who applies for registration in terms of this section, to pass to the satisfaction of the **[council] professional board**, on a date and at a place determined by the professional board, an evaluation contemplated in subsection (3) before persons appointed by the **[council] professional board**, for the purpose of determining whether such person possesses adequate knowledge, **[and] skill and competence**, and whether he or she is proficient in any of the official languages of **[the Republic] South Africa**."

- (d) by the substitution for subsection (3) of the following subsection:

"(3) The **[council] professional board** may from time to time determine the nature of the evaluation which shall be conducted for the purpose of subsection (2), and the fees which shall be paid by persons who present themselves for such evaluation, the requirements for admission to the evaluation, and any other matter relating to such evaluation, including the number of attempts."

- (d) by the substitution for subsection (4) of the following subsection:

"(4) The Minister may, in consultation with **[the]** council and the relevant professional board, make regulations concerning the imposition of restrictions on any person registered in terms of subsection (1), subject to which he or she shall be entitled to practise the profession in question, and the lifting of such restrictions."

**Amendment of section 26 of Act 56 of 1974 as amended by section 6 of Act 52 of 1978, section 5 of Act 79 of 1990 and substituted by section 24 of Act 89 of 1997**

26. Section 26 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**"Compliance with certain conditions relating to continuing [education and training] professional development a prerequisite for continued registration";**

- (b) by the substitution for the subsection (1) of the following subsection:

"26. The council, in consultation with a professional board, may from time to time make rules which prescribe –"

- (c) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) conditions relating to continuing **[education and training]** professional development to be **[undergone]** undertaken by persons registered in terms of this Act in order to retain such registration;"

- (d) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) the nature and extent of continuing **[education and training]** professional development to be **[undergone]** undertaken by persons registered in terms of this Act;"

- (e) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) the criteria for recognition by the **[council]** professional board of continuing **[education and training]** professional development **[courses]** activities and of **[education institutions]** providers offering such **[courses]** activities; and"

- (f) by the insertion after paragraph (c) of subsection (1) of the following paragraph:

"(d) any person who fails to comply with the requirements or conditions set out in this section or subsection, commits an offence or unprofessional conduct and shall be liable on conviction to a fine or imprisonment or to both such fine and such imprisonment"

**Amendment of section 29 of Act 56 of 1974 as substituted by section 2 of Act 43 of 1980 and section 26 of Act 89 of 1997**

27. Section 29 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**"Registration of certain persons for educational and training purposes;"**

- (b) by the substitution for subsection (1) of the following subsection;

"(1) For the purpose of promoting education or training for the practising of a health profession in respect of which registration in terms of this Act is a requirement, the **[council]** professional board concerned may, notwithstanding the provisions of this Act, register any person not permanently resident within **[the Republic]** South Africa to teach, train and practise such profession for such period as the **[council]** professional board may determine."

- (c) by the substitution for subsection (2) of the following subsection:

"(2) Any person registered in terms of subsection (1) may **[give]** provide education and training **[demonstrations]** approved for that purpose by the **[council]** professional board, of **[as the case may be, medical, dental or psychological techniques or]** techniques in respect of such health profession as part of such teaching and training."

**Amendment of section 30 of Act 56 of 1974 as substituted by section 27 of Act 89 of 1997**

28. Section 30 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) Any person not permanently resident within **[the Republic] South Africa** and having such education, training and experience as the professional board concerned may, for the purposes of this section, deem satisfactory, may, notwithstanding the provisions of this Act, be registered by the professional board for the purposes of subsection (2) for such period, not exceeding two years, as the professional board may determine."

(b) by the substitution for subsection (2) of the following subsection:

"(2) Any person registered in terms of subsection (1) shall only be entitled to engage in postgraduate or post-diploma studies at such university, technikon or other **[training] educational** institution in **[the Republic] South Africa** as the professional board may determine."

**Amendment of section 31 of Act 56 of 1974 as amended by sections 46 & 47 of Act 97 of 1986 as substituted by section 28 of Act 89 of 1997**

29. Section 31 of the principal Act is hereby amended-

(a) by the substitution for the existing heading of the following heading:

**"Universities, technikons and other [training] educational institutions to furnish [council] professional board with certain particulars";**

(b) by the substitution for subsection (1) of the following subsection:

"(1) Every university, technikon or other educational institution at which a qualification can be obtained which entitles any holder thereof to registration under this Act, shall furnish **[the council] a professional board** on its request with particulars as to-

- (a) the minimum age and standard of general education and training required of students;
- (b) the **[course of study]** education, training and examinations required of a student before such qualification is granted;
- (c) the results of any examinations conducted by it,

and any such other particulars relating to [any of the matters specified in paragraph (a), (b) or (c)] the education and training offered by such institution as the [council] professional board may from time to time require for the accreditation of the qualification or qualifications offered by that institution for the purpose of registration under this Act."

- (b) by the substitution for subsection (2) of the following subsection:

"(2) If any university, technikon or other educational institution referred to in subsection (1) fails or refuses to furnish any particulars requested by **[the council]** a professional board under that subsection, or if it appears to the **[council]** professional board that any provision of this Act is not being properly complied with by any such university, technikon or other educational institution and that such improper compliance is having or may have an adverse effect on the standards of education and training maintained at that university, technikon or other educational institution after a date specified in the notice shall not entitle any holder thereof to registration under this Act."

- (c) by the substitution for subsection (3) of the following subsection:

"(3) The Minister may, when it has been made to appear to him or her upon representations made by the **[council]** professional board concerned that satisfactory provisions has been made for complying with the requirements of this Act by any university, technikon or other educational institution in respect of any qualification which is the subject of a notice issued under subsection (2), repeal the said notice."

- (d) by the substitution for subsection (5) of the following subsection:

"(5) The **[council]** relevant professional board may appoint a person to be present whenever tests or examinations are being conducted by any



university, technikon or other educational institution in respect of the academic progress made by students at such university, technikon or other educational institution and to report to the **[council]** professional board **[upon such tests]** thereon."

**Amendment of section 33 of Act 56 of 1974 as amended, substituted, added and deleted by section 3 of Act 43 of 1980 and further amended and substituted by section 30 of Act 89 of 1997**

30. Section 33 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**"Definition of scope of other health professions registration in terms of this Act and registration of certain persons";**

- (b) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, on the recommendation of the council and the relevant professional board, by regulation define the scope of any **[other]** health profession registrable in terms of this Act by specifying the acts which shall for the purposes of the application of this Act be deemed to be acts pertaining to that profession: Provided that such regulations shall not be made unless **[the]** any professional board established in terms of section 15 in respect of any profession which may in the opinion of the Minister be affected by such regulation, has been given an opportunity of submitting, through the council, representations as to the definition of the scope of the profession in question: Provided further that if there is a difference of opinion between the council and such professional board as to the definition of the scope of the profession concerned, the council shall mention this fact in its recommendation."

- (c) by the substitution for subsection (2) of the following subsection:

"(2) When a professional board has been established under section 15 in respect of any **[other]** health profession, the professional board shall, subject to such restrictions in respect of his or her professional activities as it may determine, register in respect of such profession, the name of any person who-

- (a) (i) was engaged in the practice of such profession in **[the Republic] South Africa** or in a territory which formerly formed part of **[the Republic] South Africa** for a continuous period of not less than five years immediately prior to the date referred to in paragraph (c);
- (ii) is dependent, wholly or mainly, for his livelihood on the practice of such profession; and
- (iii) submits a certificate **[by such]** to the professional board stating that he is of good character;
- (b) .....
- (c) submits to the professional board an application in the prescribed form containing proof to the satisfaction of the professional board of the facts referred to in paragraph (a) (i) and (ii), within six months (or such longer period as the professional board may allow) after the date on which **[such professional board was established]** the scope of such profession was [promulgated] defined by the Minister in regulations contemplated [terms] in [of] subsection (1)."

**Amendment of section 34 of Act 56 of 1974 as substituted by section 4 of Act 43 of 1980 and section 31 of Act 89 of 1997**

31. Section 34 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**"Registration a prerequisite for practising a profession in respect of which a professional board has been [instituted] established";**

- (b) by the substitution for subsection (1) of the following subsection:

**"(1) Subject to the provisions of sections 33 (2) (c) and 39, no person shall practise **[for gain]** within **[the Republic] South Africa** any **[other]** health**

profession the scope of which has been defined by the Minister in terms of section 33 (1), unless he or she is registered in terms of this Act in respect of such profession."

**Amendment of section 35 of Act 56 of 1974 as inserted by section 8 of Act 52 of 1978 and substituted by section 32 of Act 89 of 1997**

32. Section 35 of the principal Act is hereby amended-

(a) by the substitution for the existing heading of the following heading:

**"Registration and use of additional qualifications, and registration of specialists, and persons in subspecialties, professional categories and additional professional categories":**

(b) by the substitution for subsection (1) of the following subsection:

(1) Any person who desires to have a qualification registered, other than the qualification by virtue of which he has in the first instance been registered, or to **[have a speciality registered]** be registered as a specialist or in a subspecialty, professional category or additional professional category recognised by a professional board shall, upon payment of prescribed fee and subject to the provisions of subsection (2), be entitled to be registered as a specialist or in a professional category or additional professional category or to have such **[other]** additional qualification **[or such speciality]** entered in the register."

(c) by the substitution for subsection (1A) of the following subsection:

**"(1A)** Where a person fails in respect of any provision of a regulation made under section 61 (1) (f) and applies to **[have a speciality registered]** be registered as a specialist or in a professional category or an additional professional category in terms of this section, the **[council]** relevant professional board may require him or her to pass to the satisfaction of the **[council]** professional board, on a date and at a place determined by the **[council]** professional board, an examination prescribed under subsection (1B) before examiners appointed by the **[council]** professional board, for the purpose of determining whether his or her professional knowledge, **[and]** skills and competence in the **[professional field]** discipline of his or her

speciality or field of his or her professional category is sufficiently adequate to enable him or her to practise as a specialist or to be registered in that professional category or additional professional category."

- (c) by the substitution for subsection (1B) of the following subsection:

"(1B) The Minister may on the recommendation of the council, and in consultation with professional boards from time to time make regulations which prescribe the examination which shall be conducted for the purposes of subsection (1A), and the fees which shall be paid by the persons who sit for such examination."

- (d) by the substitution for subsection (2) of the following subsection:

"(2) Only such additional and specialist qualifications, [or] specialities and subspecialities, professional categories or additional professional categories as may be prescribed shall be registrable under this section."

- (e) by the substitution for subsection (3) of the following subsection:

"(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 he holds any professional qualification which is not shown in the register [in connection with] as registered against his name, nor shall any registered person practise as a specialist or hold himself out to be a specialist unless his speciality has been registered as prescribed."

- (f) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) The [council] relevant professional board may remove from the register any qualification registered in terms of subsection (1), if in respect of such qualification the name of the holder thereof has been removed from the roll, register or record of the university, technikon, hospital, college, society or other body from which that person received such qualification."

- (g) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) The **[council]** relevant professional board may remove from the register any **[speciality]** specialist if it is satisfied that the person on whose application such **[speciality]** specialist has been registered, has not complied with the requirements prescribed in regard to **[specialities,]** the registration of specialists and shall remove any **[speciality]** specialist on the written application of the person **[on whose application such speciality has been registered]** concerned.”

- (h) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

“(c) A qualification removed in terms of paragraph (a) or a **[speciality]** specialist removed in terms of paragraph (b), shall be restored to the register by the registrar upon the person concerned –

- (i) applying on the prescribed form for such restoration;
- (ii) paying the fee prescribed in respect of such restoration; and
- (iii) complying with such other requirements, if any, as the **[council]** professional board may determine.”

**Amendment of section 36 of Act 56 of 1974 as inserted by section 16 of Act 36 of 1977, substituted by section 12 of Act 58 of 1992 and amended, substituted by section 33 of Act 89 of 1997**

33. Section 36 of the principal Act is hereby deleted.

**Amendment of section 37 of Act 56 of 1974 as substituted by section 6 of Act 33 of 1976, section 13 of Act 58 of 1992 amended by section 13 of Act 33 of Act 58 of 1992 and amended, added and substituted by section 34 of Act 89 of 1997**

34. Section 37 of the principal Act is hereby deleted.

**Amendment of section 38 as substituted by section 14 of Act 58 of 1992 and amended by section 35 of Act 89 of 1997**

35. Section 38 of the principal Act is hereby deleted.

**Amendment of section 39 of Act 56 of 1974 as substituted by section 5 of Act 43 of 1980, amended and substituted by section 36 of Act 89 of 1997**

36. Section 39 of the principal Act is hereby amended-

(a) by the substitution for the existing heading of the following heading:

**"Prohibition of performance of certain acts [for gain] by unregistered persons [of certain acts] deemed to pertain to [other] health professions registrable in terms of this Act"**

(b) by the substitution for subsection (1) of the following subsection:

**"(1) No person shall perform [for gain] any act deemed [under section 33] to be an act pertaining to any [other] health profession as may be prescribed under this Act [other than those referred to in sections 36, 37 or 38] unless he or she-**

(c) by the substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

**"(i) is registered in terms of this Act in respect of any other profession referred to under section 33 to which [also] such act is [under section 33] deemed also to pertain; or"**

(d) by the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of the following subparagraph:

**"(ii) practises a health profession in respect of which the registrar in terms of this Act keeps a register and such act is deemed to be an act which also pertains to such profession [is registered under section 32 in respect of any other profession to which also such act is under section 33 deemed to pertain]; or"**



- (e) by the deletion of paragraph (c) and (d) of subsection (1);
- (f) by the substitution for subsection (2) of the following subsection:

"(2) Any person contravening the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine **[not exceeding R500]** or to imprisonment for a period not exceeding **[12] twelve** months, or to both such fine and such imprisonment."

**Amendment of section 40 of Act 56 of 1974 as substituted by section 7 of Act 33 of 1976, inserted by section 6 of Act 43 of 1980, substituted and amended by section 37 of Act 89 of 1997**

37. The following section is hereby substituted for section 40 of the principal Act:

- "40. Any person who is not registered in respect of any **[other]** health profession but-
- (a) pretends to be so registered in respect of such profession; or
  - (b) uses any name, title, description or symbol indicating, or calculated to lead persons to infer that he or she is the holder of any qualification which by rule under this Act is recognised by the **[council] relevant professional board** as acceptable for registration in respect of such profession, but of which qualification he or she is not the holder; or
  - (c) uses any name declared by regulation to be a name which may not be used,

shall be guilty of an offence and on conviction liable to a fine or to imprisonment term or both **[for a period not exceeding twelve months, or to both such fine and such imprisonment]."**

**Amendment of section 41 of Act 56 of 1974 as substituted by section 39 of Act 89 of 1997**

38. Section 41 of the principal Act is hereby amended-

(a) by the substitution for the existing heading of the following heading:

**"Inquiry by professional boards into charges of [misconduct]  
unprofessional conduct"**

(b) by the substitution for subsection (1) of the following subsection:

**"(1) A professional board shall have the power to institute an inquiry into any complaint, charge or allegation of unprofessional conduct against any person registered under this Act, and, on finding such person guilty of such conduct, to impose any of the penalties prescribed in section 42 (1) [ : **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, the professional body may postpone the holding of an inquiry until such case has been determined**]."**

**Amendment of section 41A of Act 56 of 1974 as inserted by section 5 of Act 58 of 1984 and amended, added, substituted and deleted by section 40 of Act 89 of 1997**

39. Section 41A of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

**"(1) The registrar may, [with the approval of the chairperson of a professional board] where necessary in order to establish more facts appoint an officer of the professional board as investigating officer for the purpose of this section."**

(b) by the substitution for subsection (2) of the following subsection:

**"(2) If the registrar deems it necessary, he or she may [with the approval of the chairperson of a professional board and on such conditions as the professional board may determine,] appoint any person other than a member of the professional board, who is not in the full-time employment of the professional board, as investigating officer for a particular investigation, or**

to assist the investigating officer contemplated in subsection (1) with a particular investigation."

- (c) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

"(b) in order to determine if any provision of this Act applies to or has been contravened by a registered person;"

- (d) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) into a charge, complaint or allegation of **[improper or disgraceful]** unprofessional conduct by a registered person;"

- (e) by the substitution for subsection (6) of the following subsection:

"(6) The **[registrar]** investigating officer who carries out an investigation in terms of this section or a person appointed by the registrar in terms of subsection (1) may:"

- (f) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

"(a) at any time reasonable for the proper performance of **[the]** his or her duty, **[with the approval of the chairperson of the professional board]** and without prior notice enter upon **[,enter]** and search any premises, and carry out such an investigation and make such enquiries as he or she may deem necessary;"

- (g) by the substitution for subparagraph (i) of paragraph (b) of subsection (8) of the following subparagraph:

"(i) If such a report reveals *prima facie* evidence of **[improper or disgraceful]** unprofessional conduct contemplated in this Act and no complaint, charge or allegation regarding the conduct in question has been **[made]** lodged for the purpose of an inquiry in terms of section 41, such report shall be deemed to be a complaint **[made]** lodged for that purpose,

and the registrar shall serve a copy thereof on the registered person concerned."

- (h) by the substitution for subparagraph (ii) of paragraph (b) of subsection (8) of the following subparagraph:

"(ii) if such a report reveals *prima facie* evidence which [in the opinion of the chairperson of the professional board] makes it desirable that an [inquiry] investigation in terms of section 51 be instituted, the registrar shall serve a copy thereof on the [registered person concerned] health committee to further investigate and deal with in terms of regulations made under section 51."

- (i) by the substitution for paragraph (c) of subsection (8) of the following paragraph:

"(c) To the extent that such a report contains statements of witnesses which would have been admissible as oral evidence at an inquiry in terms of section 41 or an investigation in terms of section 51, the provisions of section 213 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply *mutatis mutandis* in respect of those statements at such an inquiry."

- (j) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

"(a) A person who carries out or assists with the carrying out of an investigation in terms of this section, shall keep or assist in preserving [secrecy] confidentiality in respect of all facts which come to his or her notice in the performance of his or her functions, and shall not disclose any such fact to any person except the registrar, the [president, the council] chairperson of a professional board, the professional board concerned, the chairperson of [the] another relevant professional body concerned or the public prosecutor concerned in the case of an offence in terms of this Act, or by order of a court."

- (k) by the substitution for paragraph (b) of subsection (9) of the following paragraph:

"(b) Notwithstanding the provisions of paragraph (a), no personal particulars regarding a patient shall be disclosed to any person except by order of a

court or with the consent of the presiding officer at an inquiry contemplated in section 41 or an investigation contemplated in section 51."

- (l) by the substitution for paragraph (a) of subsection (11) of the following paragraph:

"(a) refuses or neglects to produce any book, document or thing to any person who is in terms of this section authorised to ask **[therefor]** for it ;"

- (m) by the substitution in subsection (11) of subparagraph (i) of the following subparagraph:

"(i) in the case of a contravention contemplated in paragraph (a), (b) or (c), to a fine **[not exceeding R500]** or to imprisonment for a period not exceeding **[six]** twelve months or to both such fine and such imprisonment;"

- (n) by the substitution in subsection (11) of subparagraph (ii) of the following subparagraph:

"(ii) in the case of a contravention contemplated in paragraph (d), to a fine **[not exceeding R1 500]** or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment."

**Amendment of section 42 of Act 56 of 1974 as deleted by section 8 of Act 33 of 1976, added by section 7 of Act 79 of 1990, substituted by section 15 of Act 58 of 1992, amended by Government Notice No. R.1140 of 1 July 1994, amended, added, substituted, inserted and deleted by section 41 of Act 89 of 1997 and further amended by Government Notice No. R.19 of 3 January 1997.**

40. Section 42 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Every person registered under this Act who, after an inquiry held by **[the]** a professional board, is found guilty of **[improper or disgraceful]** unprofessional conduct, or conduct which, when regard is had to such person's profession, is **[improper or disgraceful]** unprofessional, shall be liable to one or **[other]** more of the following penalties **[-1:]**."

- (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) a caution or a reprimand or a reprimand and a caution; **[or]**”

- (c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) suspension for a specified period from practising or performing acts specially pertaining to his or her profession; **[or]**”

- (d) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) removal of his or her name from the register; **[or]**”

- (e) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) a fine as may be prescribed **[not exceeding [R10 000; or] of R20 000 per count.]**”

- (f) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) a compulsory period of professional service as may be determined by the professional board; **or**”

- (g) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) the payment of the costs of the proceedings and / or a restitution.”

- (h) by the substitution for subsection (1A) of the following subsection:

“(1A) **[If an appeal is lodged against a penalty or erasure or suspension from practice, such penalty shall remain effective until the appeal is heard] Save with the provisions of section 42(1)(b) and (c), a finding made or a penalty imposed by a professional conduct committee shall be of force and effect from the date determined by the professional conduct committee and, if**



an appeal is lodged against such a finding and/or penalty, that finding and penalty shall remain effective until the appeal is heard."

- (i) by the substitution for subsection (2) of the following subsection:

"(2) Every person whose conduct is the subject of an inquiry under section 41, shall be afforded an opportunity, by himself or herself or through his or her legal representative, of answering the charge and of being heard in his or her defence."

shall be guilty of an offence and on conviction liable to a fine as determined by the Minister in consultation with the Minister of Justice by notice in the *Gazette*: Provided that every person so summoned shall be entitled to all the privileges to which a witness subpoenaed to give evidence before a provincial division of the **[Supreme]** High Court is entitled."

- (k) by the substitution for subsection (5) of the following subsection:

"(5) The chairperson of a professional board, where the professional board itself holds an inquiry in terms of section 41, or the chairperson of a professional conduct committee of a professional board, where such a committee holds an inquiry under powers delegated to it by the professional 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 the professional board or such committee, as the case may be, on matters of law, procedure or evidence."

- (l) by the substitution for subsection (8) of the following subsection:

"(8) If a person registered in terms of this Act (in this section referred to as the **[accused]** respondent) is alleged to be guilty of unprofessional conduct and professional board on reasonable grounds is of the opinion that it shall impose a fine as determined by the Minister in consultation with the Minister of Justice by notice in the *Gazette* on conviction after an inquiry under section 41, the professional board may issue a summons as prescribed on which an endorsement is made by the professional board or the registrar that the **[accused]** respondent may admit that he or she is guilty of the said conduct and that he or she may pay the fine stipulated without appearing at the said inquiry."

- (m) by the substitution for subsection (9) of the following subsection:

"(9) Where a summons in terms of subsection (8) is issued against **[an accused,]** a respondent, the **[accused]** respondent may, without appearing at an inquiry in terms of section 41, admit his or her guilt in respect of the conduct referred to in subsection (1) by paying the stipulated fine (in this section referred to as the admission of guilt fine) to the professional board concerned before a date specified in the summons."

**Amendment of section 44 of Act 56 of 1974 as amended by section 43 of Act 89 of 1997**

41. The following section is hereby substituted for section 44 of the principal Act:

"44 Every person who has been suspended or whose name has been removed from the register in terms of section 42 shall, if his or her profession is one which, under this Act, cannot be lawfully **[carried on]** conducted by an unregistered person, be disqualified from **[carrying on]** practising 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 the register by the professional board."

**Amendment of section 45 of Act 56 of 1974 as amended, deleted and substituted by section 44 of Act 89 of 1997**

42. Section 45 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Whenever in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of **[improper or disgraceful]** unprofessional conduct on the part of a registered person, or of conduct which, when regard is had to such person's profession, is **[improper or disgraceful]** unprofessional, the court shall direct that a copy of the record of such proceedings, or such portion thereof as is material to the issue, shall be transmitted to the council."

**Amendment of section 49 of Act 56 of 1974 as substituted by section 47 of Act 89 of 1997**

43. Section 49 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**“[Council to make rules relating to offences under this Chapter.] Minister to make regulations relating to conduct which, if not adhered to, shall constitute unprofessional conduct”**

- (b) by the substitution for subsection (1) of the following subsection:

**“(1) [The Council shall,] The Minister may, in consultation with the council and [a] professional [board] boards, from time to time make [rules] regulations specifying [the acts or omissions] conduct which, if not adhered to, shall constitute conduct in respect of which [the] a professional board may take disciplinary steps under this Chapter: Provided that the powers of a professional board to inquire into and deal with any complaint, charge or allegation relating to a health [profession] professional registered under this [Chapter,] Act, shall not be limited to the [acts or omissions] conduct so specified.”**

- (c) by the deletion of subsection (2).

**Amendment of section 51 of Act 56 of 1974 as substituted by section 49 of Act 89 of 1997**

44. Section 51 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**“Regulations relating to [inquiries] investigations in respect of impaired persons registered in terms of this Act”**

- (b) by the substitution for section 51 of the following section:

**“51. The Minister may, in consultation with the council and professional boards, make regulations relating to [inquiries] investigations in respect of students or [persons] practitioners registered in terms of this Act who appear to be impaired, on the assessment of their condition, the conditions to be imposed on their registration or practice, their suspension or removal from**

practising, revocation of conditions, suspension or removal and on acts of unprofessional conduct committed before or during assessment or investigation."

**Amendment of section 52 of Act 56 of 1974 as substituted by section 6 of Act 58 of 1984 and amended by section 52 of Act 89 of 1997**

45. The following section is hereby substituted for section 52 of the principal Act:

"(52) The Department may on application in the prescribed manner and on payment of the prescribed fee issue to a medical practitioner, dentist, nurse or other person registered under this Act, a licence to compound and dispense medicine on the prescribed conditions and as contemplated in terms of the Medicine and Related Substances Amendment Act (Act No. 90 of 1997):

**Amendment of section 53 of Act 56 of 1974 as amended by section 9 of Act 52 of 1978, section 3 of Act 38 of 1982, substituted by section 43 of Act 23 of 1993, amended by section 55 of Act 88 of 1996, substituted and amended by section 52 of Act 89 of 1997**

46. Section 53 of the principal Act is hereby amended-

(a) by the substitution for the existing heading of the following heading:

**"[Charges] fees charged by registered persons"**

(b) by the substitution for subsection (2) of the following subsection:

"(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, subject to the provisions of section 32 of the Medical Schemes Act, [1976] 1998 (Act No. [72] 131 of [1976] 1998), furnish the patient with a detailed account within a reasonable period."

(c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) The Minister may, after consultation with the council, make such regulations as he or she may deem necessary in relation to the procedure which **[the council]** a professional board shall follow in disposing of an application under this subsection.”

**Amendment of section 54A of Act 56 of 1974 as inserted by section 16 of Act 58 of 1992, amended and substituted by section 54 of Act 89 of 1997**

47. Section 54A of the principal Act is hereby amended-

by the insertion of commas after the words “may” and “council” in subsection (1).

**Amendment of section 55 of Act 56 of 1974 as substituted by section 17 of Act 58 of 1992 and deleted by section 55 of Act 89 of 1997**

48. Section 55 of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of the following paragraph:

“55. Any person who-

(a) procures or attempts to procure for himself or herself or any other 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 or abets any person in so doing;”

(b) by the substitution for paragraph (g) of the following paragraph:

“(g) supplies or offers to supply to any person not registered under this Act or the Nursing Act, 1978 (Act No. 50 of 1978), any instrument or appliance which can be used, or is claimed to be effective, for the purpose of diagnosing, treating or preventing physical or mental defects, illnesses or deficiencies in **[man,]** humankind, 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 the provisions of this Act or the said Nursing Act, 1978, prohibited from performing for gain,

shall be guilty of an offence and on conviction liable to a fine, imprisonment term or both” **[not exceeding [one] ten thousand rand.]**”

**Amendment of section 56 of Act 56 of 1974**

49. Section 56 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**“Death of person [under anaesthetic] undergoing a procedure”**

- (b) by the substitution for section 56 of the following section:

“56. The death of a person **[whilst under the influence of a general anaesthetic or local anaesthetic, or of which the administration of an anaesthetic] undergoing or as a result of a procedure of a therapeutic, diagnostic or palliative nature or of which any aspect of such a procedure** has been a contributory cause, shall not be deemed to be a death from natural causes as contemplated in the Inquest Act, 1959 (Act No. 58 of 1959), or the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963).”

**Amendment of section 59 of Act 56 of 1974 as amended by section 58 of Act 89 of 1997**

50. Section 59 of the principal Act is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:

“(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 authorized under this Act to perform such act **[for gain]**”

- (b) by the substitution for subsection (2) of the following subsection:

“(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, organisation 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 education and training of health professionals under the supervision of a health professional, or the employment in any hospital or similar institution of any person undergoing education and training with a view to registration in terms of this Act in respect of any health profession, under the supervision of a health professional."

**Amendment of section 60 of Act 56 of 1974 as amended by section 59 of Act 89 of 1997**

51. Section 60 of the principal Act is hereby amended-

- (a) by the substitution for the existing heading of the following heading:

**"Investigation of matters relating to the [teaching] education or training of certain [classes of] persons"**

- (b) by the substitution for subsection (1) of the following subsection:

**"(1) Notwithstanding anything to the contrary contained in any law **[contained]**, any person who has been authorised by a professional board in writing to investigate any matter relating to the **[teaching] education or training** of any **[class of] person[s]** who is [are] undergoing such **[teaching] education or training** for the purpose of qualifying **[themselves]** for the practising of any profession to which the provisions of this Act apply, may, for the purpose of making such investigation, enter any institution or premises utilised in the teaching or training of any such **[class of person] person[s]**."**

- (c) by the substitution for subsection (2) of the following subsection:

**"(2) Any person who prevents any person authorised in terms of subsection (1) from entering any institution or premise referred to in that subsection, or who hinders him or her in the making therein or thereon of any investigation contemplated in that subsection, shall be guilty of an offence and on conviction liable to a fine, imprisonment term or both **[not exceeding one [hundred] thousand rand.]"****

**Amendment of section 61 of Act 56 of 1974 as amended by section 10 of Act 33 of 1976, section 18 of Act 36 of 1977, section 9 of Act 43 of 1980, section 4 of Act 38 of 1982, section 9 of Act 58 of 1984, section 9 of Act 79 of 1990 and substituted by section 60 of Act 89 of 1997**

52. Section 61 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) of subparagraph (i) of paragraph (a) of the following subparagraph:

"(i) the registration by the **[council]** professional boards of students in registrable professions studying at any **[recognised]** accredited educational institution or training [institution,] facility, and the removal by the **[council]** relevant professional board from the register in question of the names of such students so registered;"

- (b) by the substitution in subsection (1) of subparagraph (iii) of paragraph (a) of the following subparagraph:

"(iii) the duration of the curricula to be followed by such students at such educational institution or training [institutions] facility;"

- (c) by the substitution in subsection (1) of subparagraph (iv) of paragraph (a) of the following subparagraph:

"(iv) the minimum requirements of the curricula and the standards of education, training and examinations to qualify for registration in terms of this Act, which must be maintained at every educational institution or training [institution] facility offering education and training in any such profession, in order to secure recognition under this Act of the qualifications in question at such educational institution or training [institutions] facility;"

- (d) by the substitution in subsection (1) of subparagraph (iv) of paragraph (b) of the following subparagraph:

"(iv) the institution and facilities at which such **[courses]** education or training may be taken or undergone and any other requirements in connection with such **[study]** education or training;"

- (e) by the substitution in subsection (1) of subparagraph (v) of paragraph (b) of the following subparagraph:

"(v) the registration by **[the council]** professional boards of persons taking or undergoing such **[courses]** education or training provided for in section 61A **[and the fees payable in respect of such registration];"**

(f) by the deletion of subparagraph (vi) of paragraph (b) in subsection (1),

(g) by the substitution in subsection (1) of subparagraph (vii) of paragraph (b) of the following subparagraph:

"(vii) the appointment and remuneration of moderators and examiners **[for]**, as well as other persons required to assist in such examinations;"

(h) by the substitution in subsection (1) of subparagraph (viii) of paragraph (b) of the following subparagraph:

"(viii) the issue of certificates by **[the council]** professional boards and any other matter incidental to such examinations or the issue of such certificates;"

(i) by the substitution in subsection (1) of subparagraph (ix) of paragraph (b) of the following subparagraph:

"(ix) the nature and duration of the **[practical]** training to be undergone by persons who have obtained such certificates, but who have not yet been registered, before they may be so registered;"

(j) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) the names which **[may]** in terms of section 40(c) may not be used;"

(k) by the substitution in subsection (1) of subparagraph (i) of paragraph (e) of the following subparagraph:

"(i) the registration of interns **[or student interns]**, where applicable, to a registrable profession, including the recording of particulars of their training and proof of the performance thereof;"

(l) by the substitution in subsection (1) of subparagraph (ii) of paragraph (e) of the following subparagraph:

"(ii) the hospitals or other **[institutions]** facilities at which or the persons with whom such training may be undertaken and the accreditation of such facilities and persons;"

- (m) by the substitution in subsection (1) of subparagraph (iii) of paragraph (e) of the following subparagraph:

"(iii) any other matter incidental to the registration or training of interns **[and student interns, where applicable];**"

- (n) by the substitution in subsection (1) of subparagraph (i) of paragraph (f) of the following subparagraph:

"(i) the **[registration]** recognition in terms of section 35[,] of the specialities or subspecialities or professional categories or additional professional categories of **[registered persons]** the health professions;"

- (o) by the substitution in subsection (1) of subparagraph (ii) of paragraph (f) of the following subparagraph:

"(ii) the requirements to be satisfied, including the **[experience]** education and training to be obtained, the nature and duration of the education and training to be undergone and the qualifications to be held by persons before any **[speciality or category may be registered]** person may be registered as a specialist or in any subspeciality or professional category or additional professional category;

- (p) by the substitution in subsection (1) of subparagraph (iii) of paragraph (f) of the following subparagraph:

"(iii) the circumstances under which any applicant for **[the]** registration **[of]** as a [speciality] specialist shall be exempted from any of such requirements;"

- (q) by the substitution in subsection (1) of subparagraph (iv) of paragraph (f) of the following subparagraph:

"(iv) conditions in respect of the **[practices]** practising of specialists or persons whose [specialities or] subspecialities, professional categories or additional professional category have been registered, including conditions restricting the practice of specialists or any such **[person]** persons to the

speciality, subspeciality or professional category or additional professional categories [registered in his or her name] in which they hold registration;

- (r) by the substitution in subsection (1) of subparagraph (i) of paragraph (h) of the following subparagraph:

"(i) the manner in which complaints, **[or]** charges or allegations brought against a registered person shall be lodged;"

- (s) by the substitution in subsection (1) of subparagraph (ii) of paragraph (h) of the following subparagraph:

"(ii) the method of summoning **[an accused person]** a respondent and the penalties for failure or refusal on the part of any such person to respond or attend to or for obstructing or interrupting any part of the [proceedings] professional conduct proceedings [inquiries];"

- (t) by the substitution in subsection (1) of subparagraph (iii) of paragraph (h) of the following subparagraph:

"(iii) the continuation of a **[disciplinary]** professional conduct inquiry, after a plea has been lodged, by the committee conducting the inquiry, should one or more members of the committee be unable to continue to serve: Provided that not less than two of the original members of the committee are available to continue with the inquiry;"

- (u) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

"(i) the accreditation by **[the council]** a professional board of pathology laboratories providing services which fall within the ambit of this Act, the laying down of conditions with which such laboratories must comply to obtain accreditation**[, and the determination of the fees to be paid by such laboratories in the accreditation process];**"

- (v) by the substitution for paragraph (k) of subsection (1) of the following paragraph:

"(k) generally, all matters which the Minister considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection;"

- (w) by the deletion of subsection (3);

**Amendment of section 61A of Act 56 of 1974 as inserted by section 61 of Act 89 of 1997**

53. Section 61A of the principal Act is hereby amended-

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the conduct of the business and the procedure at meetings of the council[,] and [professional boards,] committees of the council [and of professional boards] and the manner in which minutes of such meetings shall be kept;"

- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) the professional fees and allowances which may be paid to members of [the] council or to members of professional boards established in terms of section 15 or to members of committees or subcommittees of the council or professional boards and other persons who render services to council and/or professional boards;"

- (c) by the deletion of paragraph (d) of subsection (1),

- (d) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) any fees payable in terms of this Act which may include –

(i) registration fees;

(ii) annual fees as provided for in section 62;



- (iii) fees payable for restoration of -
    - (aa) a name to a register from which it had been removed and such fees may vary according to the reason for the removal thereof and the period for which it was so removed;
    - (bb) a person as a specialist or in a subspecialty or an additional qualification;
    - (cc) a professional category or an addition professional category;
  - (iv) fees payable for the issuing of certificates;
  - (v) fees payable for examinations conducted by or on behalf of professional boards;
  - (vi) fees payable for accreditation of educational institutions, training facilities, activities for continuing professional development, and pathology laboratories;"
- (e) by the deletion of paragraph (i), (j) and (k) of subsection (1);
- (f) by the substitution for paragraph (l) of subsection (1) of the following paragraph:
- “(l) the qualifications which may be registered as specialist and additional qualifications in terms of section 35; and”
- (g) by the substitution for subsection (2) of the following subsection:
- “(2) The council shall, after consultation with the professional boards, not less than three months before any rule is made in terms of this Act, cause the text of such rule to be published in the Gazette together with a notice declaring the council's intention to make such rule and inviting interested persons to furnish the council with any comments thereon or any representations they may wish to make in regard thereto.”

**Amendment of section 62 of Act 56 of 1974 as amended by section 10 of Act 79 of 1990  
and substituted by section 62 of Act 89 of 1997**

54. Section 62 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, on the recommendation of the council, at any time by notice in the *Gazette* authorise **[a professional board]** the council to prescribe a fee to be paid annually to the **[professional board]** council by the registered person concerned: Provided that in prescribing such fee the **[professional board]** council may differentiate between persons according to **[whether they have been registered before or after a date specified in the notice and may vary such fee according to whether it is paid before or after a specific date]** the profession and registration category in which they hold registration."

(b) by the substitution for subsection (2) of the following subsection:

"(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 **[professional board]** council may recover such fee by action in a competent court."

(c) by the substitution for subsection (3) of the following subsection:

"(3) If a person's name has been removed from the register in terms of the provisions of section 19 (1) (d), it shall be a condition precedent for the restoration of his or her name to the register that he or she pays the outstanding annual fee or fees and restoration fees as may be prescribed."

(d) by the substitution for subsection (4) of the following subsection:

"(4) **[The]** A professional board may by resolution exempt for an indefinite or definite period any registered person specified in the resolution from payment of any annual fee prescribed in terms of subsection (1)."

**Amendment of section 63A of Act 56 of 1974 as inserted by section 5 of Act 38 of 1982, substituted by section 12 of Act 18 of 1995 and section 64 of Act 89 of 1997**

55. Section 63A of the principal Act is hereby deleted.

**Amendment of section 64 of Act 56 of 1974**

56. Section 64 of the principal Act is hereby amended-

- (a) by the deletion of subsection (3) and (4).

**Substitution of the long title of Act 56 of 1974 as substituted by section 13 of Act 18 of 1995 and section 66 of Act 89 of 1997**

57. The following long title is hereby substituted for the long title of the principal Act:

**"Act**

To amend the Health Professions Act, 1974, as amended so as to establish the Health Professions Council of South Africa and professional boards; to provide for the control over the education, training, registration and [practises] practising of [practitioners of] health professions registered under this Act; and to provide for matters incidental thereto."

**Amendment of Act 56 of 1974 as amended by Act 89 of 1997**

58. The principal Act is hereby amended by the addition-

- (a) after "he", wherever it appears in the Act, of "or she"; and  
 (b) after "him", wherever it appears in the Act, of "or her",  
unless the context indicates otherwise.

**Amendment of Act 56 of 1974 as amended by Act 89 of 1997**

1. The principal Act is hereby amended by the substitution for the word "Republic" of the word "South Africa", wherever it appears in the Act, unless the context indicates otherwise.

**Short title and commencement**

59. This Act is is ~~[shall be]~~ called the Health Professions Amendment Act, 2003 and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

**NOTICE 2584 OF 2003****PUBLICATION OF EXPLANATORY SUMMARY OF THE DENTAL TECHNICIANS AMENDMENT BILL, 2003**

The Minister of Health intends to introduce the Dental Technicians Amendment Bill, 2003 ("the Bill") in Parliament in 2003. The full text of the Bill is hereby published in accordance with rule 241(c) of the Rules of the National Assembly.

The Bill will amend the Dental Technicians Act, 1979 (Act No. 19 of 1979)(as amended).

The full text, as certified, is attached.

For further information the contact person is-

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REPUBLIC OF SOUTH AFRICA

DENTAL TECHNICIANS AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary  
of Bill published in Government Gazette No.     of     ) (The English text is the  
official text of the Bill)*  
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(MINISTER OF HEALTH)

[B - 2003]

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## GENERAL EXPLANATORY NOTE:

[            ] Words in bold type in square brackets indicate omissions from existing enactments.  
\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

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## BILL

To amend the Dental Technicians Act, 1979, so as to define "informally trained person"; to provide for the restricted registration of informally trained persons as dental technicians; to make direct billing by a dental technician contractor discretionary; to restrict the performance of certain acts by members of certain juristic persons; and to make provision for the publication of draft regulations for comment; and to provide for matters connected therewith.

**BE IT ENACTED** by Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 19 of 1979, as amended by section 1 of Act 43 of 1997**

1. Section 1 of the Dental Technicians Act, 1979 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "Director-General" of the following definition:

" 'informally trained person' means a person who has been employed as a dental laboratory assistant for a period of not less than five years under the supervision of a dentist or dental technician and who has been trained by such dentist or dental technician to perform the work of a dental technician;".

**Insertion of section 23A in Act 19 of 1979**

2. The following section is hereby inserted in the principal Act after section 23:

**"Restricted registration of informally trained persons**

23A. (1) Notwithstanding sections 16, 17, 18 and 22, the Minister may, on the recommendation of the council, prescribe conditions in terms of which an informally trained person may be registered by the council as a dental technician in terms of this Act.

(2) The regulation contemplated in subsection (1) shall at least provide for—

- (a) the application by an informally trained person for restricted registration as a dental technician;
- (b) the establishment by the council of a selection committee to consider every application contemplated in paragraph (a);
- (c) an informally trained person to undergo a practical examination at an approved institution before he or she may obtain restricted registration as a dental technician; and

- (d) the conditions in terms of which an informally trained person who obtained restricted registration as a dental technician may practise his or her profession."

**Amendment of section 32 of Act 19 of 1979, as amended by section 25 of Act 43 of 1997**

3. Section 32 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A dental technician contractor [~~shall~~] may, from a date determined by the Minister by notice in the *Gazette*, directly claim from the patient or medical aid scheme concerned for services rendered."

**Amendment of section 32A of Act 19 of 1979, as inserted by section 26 of Act 43 of 1997**

4. Section 32A of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) [~~A~~] Subject to paragraph (b), a juristic person being an incorporated company or a close corporation may carry on any business involving the performance of any act specially pertaining to the profession of dental technician or dental technologist, as the case may be: **Provided that], as long as** all the members of such juristic person [~~shall be~~] are either dentists or clinical dental technologists on the one hand, or dental technicians or dental technologists or both, on the other hand."

(b) If the members of such juristic person are dentists or clinical dental technologists conducting a dental laboratory, they may only perform work in the laboratory for patients of that juristic person and all the members of the juristic person must practice their profession and conduct the laboratory on the same premises."

**Amendment of section 50 of Act 19 of 1979, as amended by section 34 of Act 43 of 1997**

5. Section 50 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (q) of the following paragraph:

"(qA) the conditions in terms of which an informally trained person may be registered by the council as a dental technician in terms of section 23A;"; and

(b) by the addition of the following subsections:

"(5) The Minister shall not less than three months before any regulation is made in terms of this Act, cause the text of such draft regulation to be published in the Gazette together with a notice declaring his or her intention to make such regulation and inviting interested persons to furnish him or her with comments thereon or any representations they wish to make in regard thereto.

(6) The provisions of subsection (5) shall not apply in respect of—

(a) any regulation which, after the provisions of subsection (5) have

been complied with, has been amended by the Minister in consequence of representations received by him or her in pursuance of the notice issued thereunder; and

(b) any regulation in respect of which the Minister is advised by the council that the public interest requires it to be made without delay.”.

#### **Short title and commencement**

6. This Act is called the Dental Technicians Amendment Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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