



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 155 2004

#### PROMULGATION OF ACT OF PARLIAMENT

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

No. 10 of 2004: Medical and Dental Act, 2004.

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## **ACT**

**To provide for the establishment and constitution of a professional Council for the medical and dental professions; to determine the powers, duties and functions of such Council; to regulate the registration of medical practitioners and of dentists, and of persons practising certain professions allied to the medical profession or to the dental profession; to specify the education, training and qualifications of persons practising such professions; to prohibit the practising of any such profession without being registered; and to provide for matters incidental thereto.**

*(Signed by the President on 13 July 2004)*

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**SCHEDULE  
Laws repealed****PREAMBLE**

Recognising that the standard of professional practice and conduct of all categories of medical and dental practitioners in Namibia must be improved continuously;

Recognising that the evolving Namibian health sector requires strong stewardship on behalf of the people of Namibia;

Recognising that this stewardship function includes both the formulation of rules to govern the professional practice and conduct of practitioners in that sector and to ensure compliance therewith;

Whereas that responsibility may be entrusted to a body led by the relevant professions in close partnership with the public and the State, with the understanding that such body forms a distinct part of a wider statutory framework aimed at the protection and promotion of the health and welfare of the Namibian people;

And whereas that responsibility must be executed in an accountable fashion that effectively protects the public interest,

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

**PART I  
INTERPRETATION****Definitions**

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

“annual fees” means the annual fees determined by the Council in terms of section 26;

“appeal committee” means the appeal committee established by the Council in terms of section 12(3)(a);

“biomedical engineer” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“certificate of status” means a certificate setting out the information referred to in section 28(2);

“clinical biochemist” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“clinical officer” means a person registered as such in terms of the Allied Health Services Professions Act, 1993 (Act No. 20 of 1993) immediately before the commencement date, and regarded to be so registered in terms of section 64 of this Act, and “medical assistant” has a corresponding meaning;

“commencement date” means the date of commencement of this Act;

“committee” means a committee established by or in terms of section 12;

“continuing professional development” means the continuing professional development contemplated in section 32;

“Council” means the Medical and Dental Council of Namibia established by section 3;

“dental student” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“dentist” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“educational institution” means any university, college, technical college, technikon, training facility or other similar or related institution where a qualification can be obtained which complies with the requirements of a prescribed qualification contemplated in section 18;

“education committee” means the education committee established in terms of section 12(4)(a);

“executive committee” means the executive committee established in terms of section 12(1)(a);

“fees”, in relation to an application, means the fees relating to the application concerned as determined by the Council in terms of section 26, and “application fees” has a corresponding meaning;

“former Dental Board” means the Dental Board established by section 2 of the Medical and Dental Professions Act, 1993 (Act No. 21 of 1993), and in existence immediately before the commencement date;

“former Medical Assistants and Clinical Officer Board” means the Medical Assistants and Clinical Officers Board established by section 2 of the Allied Health Services Professions Act, 1993, and in existence immediately before the commencement date;

“former Medical Board” means the Medical Board established by section 2 of the Medical and Dental Professions Act, 1993, and in existence immediately before the commencement date;

“genetic counsellor” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“inquiry” means a professional conduct inquiry in terms of PART V;

“Interim Council” means the Interim Council established in terms of section 63;

“in writing”, relating to any notice to be given, includes a notice, a record, the agenda or the minutes of a meeting, or an extract therefrom, sent, delivered or dispatched to the intended recipient by hand, by registered post or by means of facsimile or e-mail, or in any prescribed manner, addressed to the applicable address furnished in writing by that intended recipient, or which has been entered into the register in which the name of the registered person concerned appears;

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

“medical assistant” means a person registered as such in terms of the Allied Health Services Professions Act, 1993, immediately before the commencement date, and regarded to be

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so registered in terms of section 64 of this Act, and “clinical officer” has a corresponding meaning;

“medical biological scientist” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“medical intern” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“medical physicist” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“medical practitioner” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“medical scientist” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“medical student” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“medicine” means a medicine as defined in section 1 of the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003);

“member of the Council” means a member of the Council appointed, designated or elected, as the case may be, in terms of section 7;

“mental illness” means a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973), and “mentally ill” has a corresponding meaning;

“Minister” means the Minister responsible for Health;

“ophthalmic assistant” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“oral hygienist” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“oral hygiene student” means a person registered as such in terms of this Act, or regarded to be so registered in terms of section 64;

“other examining authority” means an examining authority recognised by the Minister in terms of section 18(4);

“pharmacist” means a person registered as such in terms of the Pharmacy Act, 2004;

“pharmacy” means a pharmacy as defined in section 1 of the Pharmacy Act, 2004;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for Health;

“practise”, in relation to a profession to which this Act applies, includes the taking up of employment where any act especially pertaining to such profession is performed;

“preliminary investigation committee” means the preliminary investigation committee established by the Council in terms of section 12(5)(a);

“prescribe” -

(a) in relation to any medicine, means the prescribing of a medicine by a person authorised by or in terms of any law to prescribe such medicine for consumption by a person, and “prescribed medicine” or “prescription” has a corresponding meaning; and

(b) if not used in relation to medicine, means to prescribe by regulation;

“president” means the president of the Council elected in terms of section 10;

“profession” means any of the health professions mentioned in section 17(1);

“Professional Committee” means a Professional Committee established by section 12(10)(a);

“professional conduct committee” means the professional conduct committee established by the Council in terms of section 12(2)(b);

“professional conduct inquiry” means an inquiry in terms of PART V;

“public holiday” means a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1990 (Act No. 26 of 1990);

“qualification” means any degree, diploma or certificate conferred upon a person after having been examined in respect of that person’s proficiency in a particular field of study;

“register” -

(a) when used as a verb, means to register a person in terms of this Act to practise a profession, and “registration” has a corresponding meaning; and

(b) when used as a noun, means a register referred to in section 23;

“registered person” in relation to any profession to which this Act applies, means a person who is registered in terms of section 20 to practise such profession, or who is regarded to be so registered in terms of section 64;

“registrar” means the person appointed in terms of section 14(1) as the registrar of the Council and of the Councils established by law for the nursing profession, the social work and psychology professions, the pharmacy profession and the allied health professions, or the staff member referred to in section 64(7) acting as the registrar;

“registration certificate” means a registration certificate issued in terms of section 20(4)(b);

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

“repealed Act” means the repealed Medical and Dental Professions Act, 1993 (Act No. 21 of 1993), or the repealed Allied Health Services Professions Act, 1993 (Act No. 20 of 1993), in so far as it relates to any profession mentioned in section 17(1);

“rule” means a rule made by the Council in terms of section 60;

“rural medical aid” means a person registered as such in terms of the Allied Health Services Professions Act, 1993, immediately before the commencement date, and regarded to be so registered in terms of section 64 of this Act;

“scheduled substance” means any medicine or other substance classified as such in terms of section 29(1)(a) of the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003);

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“staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“student” means any person who is studying or is receiving education or training at an educational institution in a profession mentioned in section 17 for the purpose of qualifying for registration to practise such profession in terms of this Act;

“this Act” includes the regulations and the rules;

“treatment” means the management and care of a patient for the purpose of combating any disease or disorder, including wounds and injuries, in or on or in respect of that patient, including such treatment as may be prescribed, and “treat” has a corresponding meaning;

“unprofessional conduct” means improper or dishonourable or unworthy conduct, or conduct which, when regard is had to the profession of the registered person, is improper or disgraceful or dishonourable or unworthy, and includes acts and omissions specified in terms of section 37(1);

“unregistered”, in relation to any profession to which this Act applies, means to be not registered in terms of section 20 to practise such profession, or not to be regarded as so registered in terms of section 64, and “not registered” has a corresponding meaning; and

“vice-president” means the vice-president of the Council elected in terms of section 10.

**Application of Act**

2. This Act applies to the professions mentioned in sections 17(1).

**PART II**  
**ESTABLISHMENT, OBJECTS, FUNCTIONS AND POWERS OF**  
**MEDICAL AND DENTAL COUNCIL OF NAMIBIA**

**Establishment of Medical and Dental Council of Namibia**

3. (1) There is established a Council to be known as the Medical and Dental Council of Namibia.

(2) The Council is a juristic person which is capable, in its own name, of suing and of being sued and, subject to the provisions of this Act, of performing all such acts as a juristic person may perform lawfully.

**Succession from former Boards to Council**

4. (1) The Council is for all purposes the successor to the former Medical Board, the former Dental Board and the former Medical Assistants and Clinical Officers Board.

(2) All assets, rights, obligations and liabilities which immediately before the commencement date vested in, or had been incurred by, any of the former Boards referred to in subsection (1), pass to the Council on that date.

(3) A certificate issued by the registrar under his or her signature in which it is stated that any immovable property or mortgage bond or servitude or other real right or lease, or any other asset or right or liability, described or referred to in such certificate, has passed from the former Board concerned to the Council in terms of subsection (2), will be sufficient proof that the asset, right or liability so described or referred to in such certificate vests in the Council.

(4) Upon the submission of a certificate referred to in subsection (3) and of the relevant title deeds, certificates or other documents to the Registrar of Deeds appointed in terms of section 2 of the Deeds Registry Act, 1937 (Act No. 47 of 1937), or to any other person in charge of any other office where a register or record relating to the ownership of, or entitlement to, an asset or right or liability described in such certificate is being kept, that Registrar or that other person, as the case may be, must make such entries or endorsements into or onto, or in or on, any relevant register, title deed, certificate or other document in his or her office, or submitted to him or her, as may be necessary to effect the transfer contemplated in that subsection into the name of the Council.

(5) Notwithstanding any other law, no stamp duties, transfer duty, value added tax, or any other duty, tax or levy, or any registration fees, payable in terms of any law relating to the acquisition or transfer of assets or rights or liabilities, will be payable in respect of any entry or endorsement made in terms of subsection (4), or the transfer of any asset, right or liability in terms of or pursuant to subsection (2).

(6) Upon the submission of a certificate referred to in subsection (3) to the banking institution or other institution or establishment at which a Board referred to in subsection (1) conducted or operated any banking account or savings account, or held any investment or other asset, such banking institution or other institution or establishment must transfer such banking account or savings account or investment or asset, as the case may be, into the name of the Council.

(7) Any proceeding or cause of action pending or existing immediately before the commencement date, which had been commenced by or against the Board concerned, may be continued or enforced by or against the Council as if the repealed Act had not been repealed.

### **Objects of Council**

5. The objects of the Council are -
- (a) subject to the laws relating to the nursing profession, pharmacy profession, social work profession, psychology profession and the allied and complementary health professions, to control and exercise authority in respect of all matters affecting -
    - (i) the education and training of persons in or relating to the diagnosis, treatment, pharmaceutical care, or the prevention of physical or mental defects, illnesses, diseases or deficiencies in persons; and
    - (ii) the manner in which practises in connection with the diagnosis, treatment, pharmaceutical care, or the prevention of physical or mental defects, illnesses, diseases or deficiencies in persons are to be exercised;
  - (b) in respect of the professions mentioned in section 17(1) -
    - (i) to regulate the practising of such professions, and to ensure that all persons practising such professions are suitably qualified and able to practise the profession concerned, and are registered;
    - (ii) to regulate the manner in which practices in connection with the diagnosis, treatment or prevention of physical or mental defects, illnesses, diseases or deficiencies in persons are exercised by any person practising any such profession;
    - (iii) to establish, develop and maintain universally acceptable standards of control over persons registered in terms of this Act by investigating

in accordance with this Act, all complaints, accusations or allegations relating to the conduct of registered persons;

- (iv) to encourage and promote efficiency in, and responsibilities to or in respect of, the practising of such professions, and to guide registered persons with regard to the respective codes of conduct and ethical standards for or relating to their professions;
  - (v) to promote liaison in the field of the education and training of persons in such professions, or being educated and trained for the purpose of registration to practise any such profession, in Namibia and elsewhere;
  - (vi) to promote and control standards of training of persons for the purpose of registration to practise any such profession;
  - (vii) to give advice or render assistance to any educational institution or other examining body with regard to the education, tuition or training of persons for the purpose of registration to practise any such profession;
  - (viii) to register persons to practise such professions, or remove the name of a registered person from a register;
  - (ix) to promote the continuing professional development of registered persons; and
  - (x) to promote research in the fields of the professions to which this Act applies;
- (c) to assist in the promotion of the health of the population of Namibia;
  - (d) to be transparent relating to the professions to which this Act applies and to the general public in achieving its objects and in performing its functions and executing its powers;
  - (e) to maintain and enhance the dignity of the professions referred to in paragraph (d) and the integrity of registered persons;
  - (f) to deal firmly, fairly and promptly with a registered person against whom a charge, complaint or allegation of unprofessional conduct has been laid or whose fitness to practise his or her profession is in doubt;
  - (g) to advise the Minister on any matter falling within the scope of this Act and relating to the professions to which this Act applies; and
  - (h) to communicate to the Minister information on matters of public interest acquired by it in the course of the performance of its functions in terms of this Act.

#### **Powers of Council**

**6.** (1) In addition to the powers, duties and functions that the Council may exercise or perform in terms of this Act or of any other law, the Council may -

- (a) buy, lease or otherwise acquire, or sell, let or otherwise dispose of, or hypothecate or pledge or otherwise deal with, any movable or immovable property of the Council or any right in or over or relating to such immovable property;

- (b) take up, borrow, lend or invest money;
- (c) open and operate on banking and savings accounts;
- (d) make or accept donations;
- (e) enter into agreements with any person, body, institution or organisation on such terms and conditions as the Council and that person or such body, institution or organisation may agree upon;
- (f) obtain information necessary to achieve its objects and perform its functions, including require any registered person in writing to submit to the Council such information as the Council may consider necessary;
- (g) consider any matter affecting the professions to which this Act applies, or take such action in connection therewith as it may consider advisable;
- (h) on application by any person, recognise any qualification held by that person in respect of the professions to which this Act applies (whether such qualification has been obtained in Namibia or elsewhere) as being equal to, either wholly or in part, to any qualification prescribed in terms of this Act;
- (i) co-opt any person onto any of its committees;
- (j) authorise a person to inspect, subject to section 55, the professional practice of a registered person and to report to the Council on his or her findings in respect of such inspection;
- (k) charge the fees determined by it in respect of any inspection it may regard necessary to enable it to consider an application for the approval of an educational institution, or for any amendment of a condition imposed on such institution; and
- (l) do all such things as it may regard necessary or expedient in order to achieve the objects of this Act.

(2) Unless otherwise provided in this Act, the powers, duties and functions exercised or performed by the Council in terms of any provision of this Act, will be so exercised or performed by means of a decision made by the Council in accordance with section 11.

### Composition of Council

7. (1) The Council must consist of the following 15 members -
- (a) the Permanent Secretary, subject to subsection (7)(a), who is a member of the Council *ex officio*;
  - (b) three persons appointed by the Minister, of whom -
    - (i) one person must be a staff member who is either a medical practitioner or a dentist, and who has expertise and experience in primary health care matters to the satisfaction of the Minister;
    - (ii) two persons must represent the public, and of whom -
      - (aa) one must be a legal practitioner having not less than ten years experience in the practising of law; and

- (bb) one must be a person who, in the opinion of the Minister, is suitably qualified, having regard to the functions of the Council, to serve as a member of the Council, but who is not a registered person;
- (c) one person designated by the Vice-Chancellor of the University of Namibia, which person must be a medical practitioner or a dentist involved with the tuition, education or training of persons who will qualify, on the completion of such tuition, education or training, for registration in terms of this Act; and
- (d) ten persons elected in accordance with subsections (2), (3) and (4).
- (2) The members of the Council referred to in paragraph (d) of subsection (1) must be -
- (a) five persons who are medical practitioners, and elected by the medical practitioners, the genetic counsellors, the biomedical engineers, the clinical biochemists, the medical biological scientists, the medical physicists, the medical scientists, the medical assistants, the clinical officers, the rural medical aids and the ophthalmic assistants; and
- (b) five persons who are dentists, and elected by the dentists and the oral hygienists.
- (3) No person is entitled to vote in an election referred to in subsection (2), unless that person -
- (a) is a registered person, subject to subsection (5) of section 21;
- (b) is a Namibian citizen; and
- (c) is ordinarily resident in Namibia.
- (4) The election of the members of the Council referred to in subsection (2) must be conducted in the prescribed manner and in accordance with the prescribed procedures.
- (5) Notwithstanding subsection (4), the first election of the members of the Council after the commencement date must be conducted by the registrar or by a person designated in writing by him or her for such purpose.
- (6) The expenses relating to the first election of members of the Council after the commencement date referred to in subsection (5) must be defrayed from moneys appropriated by Parliament for such purpose.
- (7) (a) If the Permanent Secretary is not a medical practitioner, then -
- (i) he or she will not be a member of the Council; and
- (ii) the Minister must appoint in writing as a member of the Council in the place of the Permanent Secretary a medical practitioner who is also a staff member and whom he or she regards as a suitable person to serve on the Council as such a member.
- (b) If -

- (i) the Vice-Chancellor of the University of Namibia referred to in subsection (1)(c) fails to designate a person as member of the Council in terms of that subsection; or
- (ii) the registered persons referred to in subsection (2) fail to elect a member or members, as the case may be, of the Council as contemplated in that subsection,

the Minister may appoint in writing a person who is a medical practitioner or a dentist, or persons who are medical practitioners or dentists, as the case may be, and whom he or she regards as a suitable person or as suitable persons to serve on the Council as such a member or members.

- (c) A person appointed as a member of the Council in terms of paragraph (b) will be regarded as having been properly designated in terms of subsection (1)(c) as such a member, or as having been properly elected in terms of subsection (2) as such a member, as the case may be.

(8) The Minister must make known by notice in the *Gazette* the names of the members of the first Council constituted in terms of this Act after the commencement date, including the date of commencement and period of their respective terms of office.

(9) The registrar must make known by notice in the *Gazette* the names of the members of the Council subsequent to the first Council referred to in subsection (8), including any member contemplated in section 9(3), and the date of commencement and period of their respective terms of office.

(10) Subject to section 9, a member of the Council hold office for a period of five years, but is eligible for re-appointment, re-designation or re-election, as the case may be, as a member at the expiration of that period of time.

(11) The Permanent Secretary or the medical practitioner appointed in terms of subsection (2)(a) as a member of the Council, as the case may be, must designate in writing a medical practitioner employed by the Ministry to act as his or her alternate member of the Council.

(12) Before assuming office, a member of the Council must make and subscribe to the following oath or solemn affirmation before the Minister or a person designated by him or her in writing for such purpose:

“ I, ....., do hereby swear/ solemnly affirm that I will at all times during my service as a member of the Council be faithful to the Republic of Namibia and uphold its Constitution and laws, and perform my functions and further the aims and objects of the Council to the best of my ability.”.

- (13) The Minister may -
  - (a) prescribe the composition of the Council and of any of the committees relating to -
    - (i) gender representation; and
    - (ii) representation from the different regions;
  - (b) extend, by notice in the *Gazette*, at any time and at his or her discretion, the term of office of any member of the Council.

**Disqualification to be member of Council**

**8.** A person does not qualify to be a member of the Council in terms of section 7, if that person -

- (a) is not a Namibian citizen and ordinarily resident in Namibia;
- (b) is disqualified in terms of this Act or of any other law from practising his or her profession;
- (c) is an unrehabilitated insolvent;
- (d) has been declared mentally ill by a competent court in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);
- (e) has been convicted of an offence in respect of which he or she was sentenced to imprisonment without the option of a fine, and in respect of which an appeal, if any, was not upheld;
- (f) has been removed from an office of trust as a result of improper conduct; or
- (g) has been found guilty, in terms of this Act, of unprofessional conduct.

**Vacation of office by members of Council and filling of vacancies**

**9.** (1) A member of the Council must vacate his or her office, if he or she -

- (a) becomes subject to any disqualification mentioned or referred to in section 8;
- (b) resigns from office by giving not less than one month's written notice to the Council;
- (c) has been absent from three consecutive meetings of the Council without the written leave of the Council or of the president, if the Council has authorised the president to grant such leave;
- (d) ceases to be ordinarily resident in Namibia; or
- (e) is removed from office in terms of subsection (2).

(2) The Minister may remove a member of the Council from office, if the Minister is reasonably satisfied, after having given that member an opportunity to be heard, that that member -

- (a) is physically or mentally unfit or unable to effectively perform his or her duties as a member;
- (b) has neglected his or her duties as a member; or
- (c) has contrary to section 11(10)(a) divulged a matter which has been entrusted to that member.

- (3) (a) Any vacancy on the Council arising from any circumstance referred to in subsection (1) or (2), or caused by the death of any member, must be filled in the same manner in terms of section 7 as the person who has vacated his or her office or has died, as the case may be, had been appointed or elected, as the case may be, to such office.

- (b) If any designated or elected member has vacated his or her office or has died and the Vice-Chancellor of the University of Namibia or the profession concerned, as the case may be, fails or refuses to designate or elect within a reasonable period of time a member to the Council as contemplated in paragraph (a), the Minister may appoint, at his or her discretion and in writing, any person as such a member.
- (c) Any appointment made in terms of paragraph (b) is regarded to have been properly made in terms of the relevant provisions of section 7.
- (d) A person filling an office which had been vacated, as described in paragraph (a) or (b), must meet the relevant qualifications relating to members as set out in section 8.
- (e) The term of office of a member of the Council contemplated in paragraph (a) or (b) is for the unexpired portion of the term of office of the member who has vacated his or her office or who has died, as the case may be.

### **President and vice-president of Council**

- 10. (1) (a) At the first meeting of every newly constituted Council held in terms of section 11(1)(a), the members of the Council must elect from their number the president and vice-president of the Council.
- (b) For the purposes of paragraph (a) “newly constituted Council” means the Council constituted every five years in terms of section 7.
- (2) The president and vice-president of the Council hold office as president and vice-president during their term of office as members of the Council, respectively, unless he or she resigns as president or vice-president, as the case may be, or ceases to be such a member.
- (3) If for any reason the president of the Council is absent or unable to act as president, the vice-president of the Council may perform all the duties and functions and exercise all the powers of the president.
- (4) If both the president and vice-president of the Council are temporarily absent for any reason, the president or vice-president, as the case may be, may appoint in writing another member of the executive committee referred to in section 12(1) to act in their stead during such absence.
- (5) (a) If both the president and vice-president of the Council are absent from any meeting of the Council, the members present at such meeting may elect one member from their number to preside at such meeting.
- (b) The person elected in terms of paragraph (a) to preside at the meeting concerned may at such meeting perform all the functions and exercise all the powers of the president.
- (6) (a) If the office of president or of vice-president of the Council becomes vacant, the members of the Council must at the first meeting after which such vacancy occurred, elect from their number another president or vice-president of the Council, as the case may be.
- (b) The president or vice-president elected in terms of paragraph (a) holds office for the unexpired portion of the term of office of his or her predecessor.
- (7) (a) Subject to paragraph (b), no person may hold the office of president or vice-president of the Council for more than two consecutive terms of office.

- (b) A term of office referred to in paragraph (a) does not include a term of office referred to in subsection (6)(b).

(8) The president or vice-president of the Council may vacate his or her office as president or vice-president, as the case may be, without terminating his or her membership of the Council.

(9) If the offices of president and of vice-president are both vacant at the same time, the registrar must convene a meeting of the Council in accordance with section 11(1), with the necessary changes, for the purpose of electing a new president and vice-president in accordance with subsection (1)(a) of this section.

(10) Both the president and the vice-president of the Council must be registered persons.

### Meetings and decisions of Council

11. (1) (a) The registrar, or if the registrar is not available for any reason, a person appointed by the registrar in writing for such purpose, must convene the first meeting of every newly constituted Council.
- (b) For the purposes of paragraph (a) “newly constituted Council” means the Council constituted every five years in terms of section 7.
- (c) The registrar or the person appointed by the registrar in terms of paragraph (a), as the case may be, must -
- (i) determine the date, time and venue for, and the agenda to be discussed at;
  - (ii) inform the members of the Council in such manner as he or she may consider appropriate, of the date, time and venue of;
  - (iii) act as chairperson at;
  - (iv) determine in writing the proceedings, including the proceedings relating to the election of the president and vice-president in terms of section 10(1)(a), to be followed at,

the meeting referred to in that paragraph, and must furnish, before the commencement of such meeting, every member of the Council with a copy of the agenda referred to in subparagraph (i).

- (d) The president must -
- (i) convene; and
  - (ii) determine the date, time and venue for, and the agenda to be discussed at,

all the meetings of the Council to be held subsequent to the first meeting referred to in paragraph (a).

(2) The president must convene a special meeting of the Council, to be held within a period of 30 days after the date of receipt of a written request by -

- (a) the Minister; or

- (b) not less than five members of the Council; or
  - (c) not less than one-third of the persons registered in terms of this Act in respect of the profession requesting such a meeting.
- (3) A request made in terms of subsection (2) must clearly state the purpose for which the meeting is to be convened.
- (4) The Council must hold not less than two meetings in each year, and may hold, in addition thereto, such other meetings as the Council may determine from time to time.
- (5) The majority of the members constituting the Council form a quorum for a meeting thereof.
- (6)
    - (a) The Council may in terms of section 60 make rules relating to the holding of, and procedures at, meetings of the Council.
    - (b) If the Council has not made rules referred to in paragraph (a), the president or any other person who presides at a meeting thereof must determine the procedures to be followed at the meeting over which he or she presides.
  - (7)
    - (a) A decision of the majority of the members of the Council present at any meeting of the Council constitutes a decision of the Council.
    - (b) If all the members of the Council in writing under their signatures approve a written motion submitted by the registrar to all those members, then such motion so approved, notwithstanding paragraph (a) and subject to the other provisions of this section, will be regarded as a decision of the Council in terms of that paragraph.
    - (c) The registrar must submit a written decision of the Council made in accordance with paragraph (b) to the Council at its first meeting following the making of such decision.
    - (d) A written decision made in accordance of paragraph (b) -
      - (i) may be made at any time in between the meetings of the Council; and
      - (ii) must form a part of the written record of the proceedings of the meeting of the Council at which such written decision was submitted to the Council in terms of paragraph (c).
  - (8) The person presiding at a meeting of the Council -
    - (a) has a casting vote, in the event of an equality of votes, in addition to his or her deliberative vote; and
    - (b) must cause a written record to be kept of the proceedings,
- at such meeting.
- (9) A decision of the Council or an act performed on the authority of the Council is not invalid merely by reason of a vacancy on the Council or of the fact that a person who is not entitled to attend a meeting of the Council was in attendance when the decision was made or the act was authorised, if such decision was made or the act was authorised by the required majority of the members of the Council then present and entitled to sit as members.

- (10) (a) Any member of the Council or of a committee thereof, or any member of a former Board referred to in section 4(1), must preserve secrecy in relation to all matters that has come to his or her knowledge as a result of being such a member, except in so far as the making known of any such matter is required by, or may be made in terms of, this Act or any other law, or is required by an order of a competent court.
- (b) Any person who contravenes or fails to comply with paragraph (a) is guilty of an offence and on conviction liable to the penalties specified in section 61(a).

**Executive committee, professional conduct committee, appeal committee, education committee and other committees**

12. (1) (a) For the purposes of performing its functions or duties and exercising its powers in terms of this Act, the Council must establish an executive committee of the Council to so exercise the powers and perform the functions or duties of the Council, subject to paragraph (b), during the periods between the meetings of the Council.
- (b) The executive committee -
- (i) does not have, except in so far as the Council otherwise directs in writing, the power to set aside or amend any decision of the Council; and
- (ii) must report to the Council in writing, at the first meeting of the Council after a power, duty or function had been exercised or performed by the executive committee, that it had so exercised or performed such power, duty or function, including such other particulars relating thereto as the Council may require.
- (c) The Council may amend or set aside, at the meeting referred to in subparagraph (ii) of paragraph (b), any decision or act of the executive committee made or performed in terms of that paragraph.
- (d) The executive committee must consist of the president, the vice-president and not less than two other members of the Council elected by the Council from their number.
- (e) The president will be the chairperson of the executive committee.
- (2) (a) The Council must establish a standing professional conduct committee to exercise the disciplinary powers of the Council set out in PART V.
- (b) The professional conduct committee may consist, subject to paragraph (c), of such number of persons, including persons who are not members of the Council, as the Council may determine and appoint in writing to such committee.
- (c) The professional conduct committee must consist of not less than -
- (i) one medical practitioner;
- (ii) one dentist;
- (iii) one legal practitioner having not less than ten years experience in the practising of law; and
- (iv) one other person who is not a registered person.

- (d) The medical practitioner and the dentist referred to in subparagraphs (i) and (ii), respectively, of paragraph (c), will be subject to subsection (5) of section 21.
- (e) The president will be the chairperson of the professional conduct committee.
- (f) The professional conduct committee, when conducting an inquiry in terms of PART V in respect of any registered person, may co-opt two other registered persons practising the profession of the registered person in respect of whom the inquiry is conducted, to act as members of such committee for the purpose of such inquiry.
- (g) If the profession referred to in paragraph (f) does not have two registered members who may be co-opted as members of the professional conduct committee in terms of that paragraph, such committee may so co-opt two other persons who have, in the opinion of such committee, sufficient knowledge of the scope of practice, and sufficient experience in the practising, of such profession.
- (h) A decision of the majority of the members of the professional conduct committee at any meeting thereof constitutes a decision of such committee.
- (i) In the event of an equality of votes relating to any decision to be made by the professional conduct committee at any meeting thereof, the chairperson has a casting vote in addition to his or her deliberative vote.
- (j) The chairperson of the professional conduct committee must -
  - (i) cause a written record to be kept of the proceedings of all the meetings of such committee; and
  - (ii) submit to the registrar a copy of the written record referred to in subparagraph (i), including the decision made in terms of paragraph (h), as soon as practicable after the conclusion of the meeting concerned.
- (k) When the registrar receives, in terms of paragraph (j)(ii), the copies of the written record and of the decision concerned, he or she must submit such copies to all the members of the Council for ratification by those members of such decision of the professional conduct committee.
- (l) Section 11(7)(b) applies, with the necessary changes, to the ratification by the Council of a decision of the professional conduct committee.
- (m) The registrar may submit, notwithstanding paragraph (k), the copies of the written record and of the decision of the professional conduct committee referred to in that paragraph, to a meeting of the Council for ratification of such decision, if such meeting had been convened to take place within a period of 21 days from the date of the receipt by the registrar of such copies of the record and decision.
- (n) Unless the Council ratifies a decision of the professional conduct committee, such decision will be null and void *ab initio*.
- (3) (a) The Council must establish an appeal committee consisting of -
  - (i) a retired Judge, or a retired magistrate, or a retired Senior Counsel, or a Senior Counsel, who will be the chairperson of the appeal committee;

- (ii) one or more members of the Council as the Council may determine;
  - (iii) one person who is a member of any Professional Council established in Namibia by or in terms of any law relating to any health profession to which this Act does not apply; and
  - (iv) one person who is not a registered person in terms of this Act or in terms of any law referred to in subparagraph (iii).
- (b) For the purposes of this section -
- (i) “Judge” means the Chief Justice or a Judge of the Supreme Court of Namibia referred to in Article 79(1), or the Judge-President or a Judge of the High Court of Namibia referred to in Article 80(1), of the Namibian Constitution;
  - (ii) “magistrate” means a magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003), and who, upon the date of his or her retirement, had served as a magistrate for a period of not less than 20 years; and
  - (iii) “Senior Counsel” means a legal practitioner appointed by the President as a Senior Counsel of Namibia in terms of section 79(3) of the Legal Practitioners Act, 1995 (Act No. 15 of 1995).
- (c) The appeal committee, when conducting an appeal, must co-opt two registered persons practising the profession of the registered person who appealed to such committee against the decision or the finding made, or the penalty imposed, or the refusal or failure to make a decision, as the case may be, by the Council or by the professional conduct committee, to act as members of the appeal committee for the purpose of such appeal.
- (d) If the profession referred to in paragraph (c) does not have two registered members who may be co-opted as members of the appeal committee in terms of that paragraph, such committee must so co-opt two other persons who have, in the opinion of such committee, sufficient knowledge of the scope of practice, and sufficient experience in the practising, of such profession.
- (e) The appeal committee must conduct an appeal in accordance with section 56.
- (f) The chairperson of the appeal committee must -
- (i) determine the procedures to be followed at a meeting of the appeal committee, including the requirements for a quorum, the procedures relating to the making of decisions and the manner of voting, if such procedures, requirements or manner of voting has not been prescribed;
  - (ii) cause a written record to be kept of the proceedings of the meeting at which the appeal concerned is considered; and
  - (iii) furnish the Council with a copy of the record kept in terms of subparagraph (ii) as soon as practicable after the conclusion of the meeting concerned.
- (g) The appeal committee may co-opt any other person to assist such committee in the conducting of an appeal.

- (h) No person who is a member of the professional conduct committee or of the preliminary investigation committee may be a member of the appeal committee.
- (4) (a) The Council must establish a standing education committee, consisting of such number of persons, including persons who are not members of the Council, as the Council may determine and appoint to such committee.
- (b) The education committee established in terms of paragraph (a) must -
- (i) advise the Council with regard to; and
- (ii) investigate and report to the Council in writing on any matter relating to,
- any requirement or qualification pertaining to the registration, education, tuition or training of persons in or relating to the professions to which this Act applies.
- (c) The president -
- (i) will be the chairperson of the education committee; and
- (ii) must determine the procedures to be followed at the meetings of the education committee.
- (5) (a) The Council must establish a standing preliminary investigation committee, consisting of such members as the Council may determine.
- (b) The preliminary investigation committee -
- (i) must conduct a preliminary investigation into any matter in respect of which the Council or the professional conduct committee is to conduct an inquiry in accordance with PART V, and referred to it by the Council or the professional conduct committee, as the case may be;
- (ii) must submit a written report to the Council or the professional conduct committee, as the case may be, relating to the preliminary investigation conducted in terms of subparagraph (i), including its findings and recommendations in respect of the matter concerned;
- (iii) must perform such other functions as the Council may determine and inform such committee in writing; and
- (iv) may co-opt one or more registered persons as members of such committee.
- (c) The Council must appoint the members of the preliminary investigation committee, including the chairperson thereof.
- (d) The president and the vice-president may not be members of the preliminary investigation committee.
- (e) The chairperson of the preliminary investigation committee must determine the procedures to be followed at the meetings of the preliminary investigation committee.

- (6) (a) The Council may establish from time to time one or more committees, consisting of such number of persons, including persons who are not members of the Council, as the Council may determine and appoint thereto in writing.
- (b) The functions of a committee established in terms of paragraph (a) will be -
- (i) to advise the Council on such matters as it may refer; or
- (ii) to assist the Council in the exercise of such of its powers or the performance of such of its duties or functions in terms of this Act as the Council may delegate or assign,
- to the committee concerned.
- (c) The Council may appoint the members of a committee established in terms of paragraph (a) pursuant to -
- (i) a decision of the Council; or
- (ii) a nomination, given to the Council in writing, upon the Council's written invitation, by the association, if any, of the profession concerned.
- (d) A delegation or assignment by the Council in terms of paragraph (b)(ii) -
- (i) must be made in writing;
- (ii) may be made subject to such conditions and restrictions as the Council may determine; and
- (iii) may be withdrawn or amended by the Council at any time.
- (e) The Council is not divested of any power delegated in terms of this subsection, and may amend or set aside any decision made by a committee established in terms of paragraph (a) in the exercise of a power so delegated.
- (f) The Council may -
- (i) dissolve or reconstitute, at any time; and
- (ii) designate one of the members as the chairperson of,
- a committee established in terms of paragraph (a).
- (7) Sections 11(5), (6)(b), (7), (8), (9) and (10) apply with the necessary changes to the meetings of a committee referred to in subsection (1), (4), (5) and (6).
- (8) (a) If a committee is unable, for any reason, to reach a decision on any matter, such committee must refer such matter to the Council for a decision.
- (b) A decision of the Council on any matter referred to it in terms of paragraph (a) will be regarded as a decision of the committee concerned.
- (9) A person appointed in terms of this section to a committee may vote on any matter before such committee.

- (10) The Council may remove from office any member of any committee referred in this section, including an elected or a nominated member, if the Council is reasonably satisfied, after having given that member an opportunity to be heard, that that member -
- (a) is physically or mentally unfit or unable to effectively perform his or her duties as a member;
  - (b) has neglected his or her duties as a member; or
  - (c) has divulged, contrary to section 11(10)(a), a matter which has been entrusted to that member.
- (11) (a) There is established -
- (i) a committee for the medical assistants, clinical officers and rural medical aids, to be known as the Professional Committee for Medical Assistants, Clinical Officers and rural medical aids; and
  - (ii) a committee for the ophthalmic assistants, to be known as the Professional Committee for Ophthalmic Assistants.
- (b) The functions of the Professional Committees established by paragraph (a) are, in respect of the health professions for which they have been established -
- (i) to consider or investigate any matter pertaining to such professions;
  - (ii) to advise or make recommendations to the Council or to the Minister on any matter falling within the scope of this Act or which relates to such professions;
  - (iii) to advise the Council on the scope of practice of such professions;
  - (iv) to implement such decisions of the Council which the Council may have instructed such committees to implement;
  - (v) to exercise such powers and perform such duties and functions as may from time to time be delegated or assigned to or imposed upon them by the Council, subject to subsections (5)(g) and (h).
- (c) A Professional Committee established by paragraph (a) -
- (i) consist of five members elected, in accordance with paragraph (d), from amongst the medical assistants and the clinical officers; and
  - (ii) must be elected by the registered persons practising the professions for which the Professional Committee concerned had been so established.
- (d) The president, or a person designated by him or her in writing for such purpose, must -
- (i) convene, in such manner as he or she may determine, a separate meeting for the election of the members of every Professional Committee;
  - (ii) preside at a meeting convened in terms of subparagraph (i), determine the procedures to be followed at such meeting, including the quorum for such meeting, the procedures for the nomination of candidates, the manner in which the election concerned will be conducted and any other matter incidental to such election; and

- (iii) conduct the election of the members of the Professional Committee in respect of which the meeting concerned had been convened.
- (e) A member of a Professional Committee holds office for a period of five years, and is at the expiry of such period of time eligible for re-election.
- (f) Notwithstanding paragraph (e), the Council may remove from office any member of a Professional Committee, if the Council is reasonably satisfied, after having given that member an opportunity to be heard, that that member -
  - (i) is physically or mentally unfit or unable to effectively perform his or her duties as a member;
  - (ii) has neglected his or her duties as a member; or
  - (iii) has divulged, contrary to section 11(10)(a), a matter which had been entrusted to that member.
- (g) Sections 8 and 9(1)(a), (b), (c) and (d) apply with the necessary changes to a member of the Professional Committee.
- (h) At the first meeting of every newly constituted Professional Committee the members of the Committee concerned must elect from their number a chairperson for such Committee.
- (i) The chairperson of a Professional Committee may vacate his or her office as chairperson without terminating his or her membership of such Committee.
- (j) If the chairperson of a Professional Committee is absent from any meeting of the Professional Committee concerned, the members present at such meeting must elect a chairperson from their number to preside at such meeting.
- (k) The person elected in terms of paragraph (j) to preside at a meeting of a Professional Committee may perform at such meeting all the functions and exercise all the powers of the chairperson.
- (l) A decision of the majority of the members of a Professional Committee present at any meeting of such Committee constitutes a decision of such Committee.
- (m) The person presiding at a meeting of a Professional Committee -
  - (i) has a casting vote, in the event of an equality of votes, in addition to his or her deliberative vote; and
  - (ii) must cause a written record to be kept of the proceedings at such meeting.
- (n) If a matter pertaining to any of the professions referred to in paragraph (a) is being discussed or decided upon by the Council, the Council must invite the Professional Committee established for such profession, to designate two persons, of whom one must be a member of such Committee and one must be a registered person practising the profession to which the matter under discussion or to be decided upon relates, to take part in the deliberations and vote on such matter in the Council.
- (o) The Council must designate one of its members to liaise between the Council and the Professional Committees.

(12) Unless otherwise provided for in this Act, a committee established by or in terms of this section must meet at such times and places as the Council may determine and inform such committee in writing.

### **Funds of Council**

**13.** (1) The funds of the Council consist of -

- (a) annual fees, application fees, examination fees, registration fees, fees relating to investigations and any other fees payable to the Council in terms of this Act;
- (b) donations or grants made for the benefit of the Council;
- (c) the assistance contemplated in subsection (2);
- (d) interest derived from investments made in terms of subsection (4);
- (e) any fine paid to the Council in terms of section 42(1)(d); and
- (f) all other moneys received or made available for the benefit of the Council.

(2) The Minister may grant, subject to such conditions as he or she may determine and in consultation with the Minister responsible for Finance, to the Council from moneys appropriated by Parliament for such purpose, financial assistance to exercise its powers and perform its duties and functions.

(3) The Council must use its funds for the purpose of defraying expenses incurred in connection with the exercise of its powers and the performance of its duties and functions.

(4) The Council may -

- (a) invest any unexpended portion of its moneys; and
- (b) establish such reserve funds and pay into such funds such moneys as it may consider necessary.

(5) The Council must cause -

- (a) full and correct accounts to be kept of all moneys received or expended by it;
- (b) an annual statement of its income and expenditure to be prepared in respect of every financial year, including a balance sheet reflecting its financial position as at the end of the financial year concerned;
- (c) the annual statement and balance sheet referred to in paragraph (b) to be audited annually by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951); and
- (d) a copy of the audited statement and balance sheet referred to in paragraph (c) -
  - (i) to be submitted to every member of the Council; and
  - (ii) to lie open at the registrar's office for inspection by any registered person.

- (6) (a) The Council must submit in each year, within a period of six months after the closing of the Council's financial year, to the Minister a report on its activities during such financial year, together with a copy of the audited statement and the balance sheet referred to in subsection (5)(c), in respect of the financial year concerned.
- (b) The Minister must table the report, audited statement and the balance sheet referred to in paragraph (a) in the National Assembly within a period of six months after the date of receiving such report and audited statement.
- (7) The financial year of the Council ends on the last day of March in each year.

#### **Appointment of registrar and staff**

**14.** (1) The Council, and the Councils established by law for the nursing profession, the social work and psychology professions, the pharmacy profession and the allied health professions, acting jointly -

- (a) must appoint a registrar to exercise the powers, and perform the duties and functions, of the registrar in terms of section 15, including such additional powers, duties and functions as the Minister may prescribe; and
- (b) may appoint one or more assistant registrars,

at such remuneration and subject to such conditions of service as such Councils so acting may determine.

(2) The registrar appointed in terms of subsection (1) must act, notwithstanding any other provisions of this Act, as the registrar of the Council and of all the Councils referred to in that subsection.

(3) The Council and the Councils referred to in subsection (1) must enter into a written agreement to provide for -

- (a) the establishing and the conducting of the office of the registrar and all matters relating to such office;
- (b) the contributions to be made by the respective Councils in respect of -
- (i) the expenses incurred or to be incurred relating to the establishing of the office of the registrar referred to in paragraph (a);
- (ii) the payment of the remuneration payable to the registrar, to the assistant registrar and to the other persons employed by the Council and such other Councils in terms of this section; and
- (iii) the running costs and the other expenditure relating to the office of the registrar referred to in paragraph (a); and
- (c) such other matters as may be necessary for the efficient joint conducting of the office of the registrar referred to in paragraph (a).
- (4) The registrar must -
- (a) determine, with the written approval of the Council and of the Councils referred to in subsection (1), acting jointly, the staff establishment of such Councils; and

- (b) employ persons, at such remuneration and subject to such other conditions of service as the Council and the Councils referred to in subsection (1), acting conjointly, may determine, to assist the Council and such other Councils with the performing of all the work and activities which may be necessary for the exercise and performance of the powers, duties and functions of the Council and such other Councils in terms of this Act or of any other law.

(5) Notwithstanding subsection (4), the registrar may appoint, without the approval of the Council and of the Councils referred to in subsection (1) temporary employees for a period not exceeding two calendar months at such daily remuneration as he or she may consider appropriate.

(6) The remuneration referred to in subsections (1), (4) and (5) must be paid from the funds of the Council and of the Councils referred to in subsection (1) in accordance with the written agreement entered into in terms of subsection (3).

#### **Powers, duties and functions of registrar**

- 15.** (1) The registrar -
- (a) must exercise the powers and perform the duties and functions assigned to or imposed upon the registrar by or in terms of this Act;
  - (b) is the secretary of every meeting of the Council and of its committees, unless provided otherwise in this Act;
  - (c) is responsible for the administrative work pertaining to the functions of the Council, including the keeping, on behalf of the Council, of the registers referred to in section 23;
  - (d) is responsible for the administrative work pertaining to the functions of every committee of the Council;
  - (e) is the accounting officer relating to the funds of the Council;
  - (f) must collect and recover, for the benefit of the Council, all moneys due or accruing to the Council;
  - (g) has the administrative control, for and on behalf of the Council, over payments made from the funds of the Council;
  - (h) must keep books of account, or cause such books of account to be kept, as are necessary to fairly represent the state of affairs and business of the Council and to explain the transactions and financial position relating to the business of the Council; and
  - (i) must exercise such powers and perform such duties and functions as may from time to time be delegated or assigned to or imposed upon the registrar by the Council in terms of section 58, but the Council is not divested of any power exercised by the registrar under any power so delegated, and may amend or set aside any decision of the registrar in the exercise of such power.
- (2) (a) The registrar may in writing authorise the assistant registrar or any member of his or her staff to exercise or perform any power, duty or function conferred or imposed upon him or her by, or delegated or assigned to him or her in terms of, this Act, including a power or duty or function delegated or assigned to him or her by the Council in terms of subsection (1)(i).

- (b) The registrar is not divested of any power exercised by the assistant registrar or any member of his or her staff in terms of paragraph (a), and may amend or set aside any decision made by that assistant registrar or that member in the exercise of a power so delegated.
- (3) If the registrar is absent or unable to exercise or perform any of his or her powers, duties or functions in terms of this Act or of any other law -
- (a) the person appointed as assistant registrar in terms of section 14(1)(b) may exercise or perform, during the period of time that the registrar is so absent or unable to act, the powers, duties or functions of the registrar; or
- (b) if no assistant registrar has been appointed in terms of that section, the Council may appoint in writing a person as acting registrar for the period of time of the registrar's absence or inability to act.
- (4) A person appointed as acting registrar in terms of subsection (3)(b) may exercise and perform such of the powers, duties or functions of the registrar, subject to such conditions and restrictions, as the Council may specify in writing at that person's appointment in terms of that subsection.

### PART III EDUCATION, TUITION, TRAINING, QUALIFICATIONS AND REGISTRATION

#### Control over education and training

**16.** (1) Notwithstanding anything in any other law, but subject to this Act and to the laws relating to the pharmacy profession, the nursing profession and the allied health professions, no person or educational institution may offer or provide in Namibia any education, tuition or training having as its object to qualify any person to practise any profession to which this Act applies, or to perform any other activity directed at the physical examination of any person, or the diagnosis, treatment, pharmaceutical care, or the prevention of any physical defect, illness, disease or deficiency in persons, unless such education, tuition or training has been approved by the Council as being appropriate education, tuition or training for such purposes.

(2) Any person or educational institution intending to offer the education, tuition or training referred to in subsection (1) must apply, before offering such education, tuition or training, to the Council in writing and in such form and manner as the Council may determine from time to time, for the written approval of the Council in terms of that subsection.

- (3) An application in terms of subsection (2) must be accompanied by -
- (a) such particulars and documents regarding such education, tuition or training as may be prescribed, or as the registrar or the Council may require; and
- (b) payment of such fees as the Council may determine in respect of such applications, or proof of the payment thereof to the Council.
- (4) After considering an application and the relevant documents and particulars referred to in subsection (3), the Council, at its discretion, may -
- (a) grant the approval; or
- (b) refuse the approval.

- (5) The registrar must -
- (a) inform an applicant in writing of any decision made in terms of subsection (4);
  - (b) issue, if approval had been granted, to the applicant a certificate of approval; and
  - (c) enter particulars of the approval referred to in paragraph (b) in the register concerned; or
  - (d) inform the applicant in writing, if the approval had been refused, the reasons for such refusal.
- (6) An approval granted in terms of subsection (4)(a), in addition to any prescribed condition, may be made subject to such conditions and requirements, and be granted for such period of time, as the Council may determine at the time of such approval, and specify in the certificate of approval concerned.
- (7) The Council may appoint in writing from time to time a person -
- (a) to investigate, subject to section 55, whether or not the prescribed conditions and the conditions and requirements determined by the Council in terms of subsection (6) in respect of a person or an educational institution, are being complied with by that person or such educational institution; and
  - (b) to report to the Council on the investigation conducted in accordance with paragraph (a) in such form and manner as the Council may determine and inform that person in writing.
- (8) (a) The Council may withdraw in writing an approval granted in terms of subsection (4)(a), if it is satisfied, after having given the person or educational institution concerned an opportunity to be heard, that that person or such educational institution has failed to comply with any applicable prescribed condition, or condition or requirement determined in terms of subsection (6) and specified in the certificate of approval concerned.
- (b) The registrar must by notice in writing inform the person or educational institution concerned of any decision of the Council in terms of paragraph (a).
- (9) A person or educational institution referred to in subsection (8) must within a period of thirty days after the date of the notice referred to in paragraph (a) of that subsection return the certificate of approval concerned to the Council.
- (10) The registrar must -
- (a) cancel the certificate of approval referred to in subsection (9); and
  - (b) enter such cancellation in the register concerned.
- (11) Any person who contravenes or fails to comply with subsection (1) or (9) is guilty of an offence and on conviction liable to the penalties specified in section 61(a).

### **Registration prerequisite for practising**

**17.** (1) Unless otherwise provided in this Act, no person is entitled to practise within Namibia the profession of -

- (a) medical practitioner;
- (b) dentist;
- (c) biomedical engineer;
- (d) clinical biochemist;
- (e) clinical officer;
- (f) genetic counsellor;
- (g) medical assistant;
- (h) medical biological scientist;
- (i) medical intern;
- (j) medical physicist;
- (k) medical scientist;
- (l) ophthalmic assistant;
- (m) oral hygienist; or
- (n) rural medical aid,

unless that person is registered in terms of this Act to practise the profession concerned.

(2) Unless otherwise provided in this Act and except in so far as it is authorised by the laws relating to the nursing profession, the pharmacy profession, the social work profession, the psychology profession, the allied and complementary health professions and the traditional healers, no person is entitled to practise for gain any profession, the practice of which mainly consists of -

- (a) the physical and mental examination of persons;
- (b) the diagnosis, treatment or prevention of physical defects, illnesses, diseases or deficiencies in persons;
- (c) the giving of advice in regard to the defects, illnesses, diseases or deficiencies referred to in paragraph (b);
- (d) the prescribing or providing of medicine or any artificial denture or other dental appliance in connection with the defects, illnesses, diseases or deficiencies, as the case may be, referred to in paragraph (b);
- (e) the prescribing, compounding or dispensing of a medicine for consumption by any human; or
- (f) the rendering of pharmaceutical care,

unless that person is registered by the Council for such purpose.

(3) Subsection (2) may not be construed as permitting the performance of any act by persons registered in terms of the laws referred to therein which is not performed in the ordinary course of the practising of his or her profession.

(4) Any person who contravenes subsections (1) or (2) is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

(5) The Minister may prescribe, on the recommendation of the Council and in respect of the professions to which this Act applies -

- (a) that students or interns must be registered in terms of this Act, the requirements for, and the procedures relating to, such registration, and the removal of the names of students or interns from registers;
- (b) the practical training which students or interns must complete, including the approval of the institutions at which such practical training is to be completed and the procedures relating to the approval of such institutions and the recognition of such practical training; and
- (c) the consequences of the failure by students to register in terms of the regulations to be made in terms of paragraph (a), including the penalties applicable to such failure.

### **Minimum requirements of study for registration**

**18.** (1) The Minister may prescribe from time to time, on the recommendation of the Council and in respect of the professions to which this Act applies, the qualifications obtained by virtue of examinations conducted by any educational institution or other examining authority, which, when held singly or conjointly with any other qualification, entitles the holder thereof to registration in terms of this Act, if that holder has complied, before or in connection with or after the acquisition of the qualification concerned, with such other requirements and conditions as may be prescribed in terms of or required by this Act in respect of such registration.

(2) No qualification obtained by virtue of examinations conducted by an educational institution or other examining authority situated outside Namibia may be prescribed in terms of subsection (1), unless -

- (a) such qualification entitles the holder thereof to practise the profession concerned in the country or state in which such educational institution or other examining authority is situated; and
- (b) the Minister is satisfied that such qualification is of a standard of professional education not lower than the qualification prescribed in terms of subsection (1) in respect of the profession concerned.

(3) The Minister may prescribe, on the recommendation of the Council, the requirements with which the examining authorities referred to in subsection (1) must comply.

(4) For the purposes of this section, "other examining authority" means any examining authority recognised by the Minister by notice in the *Gazette* for the purposes specified in such notice.

### **Application for registration**

**19.** (1) Any person who wishes to be registered in terms of this Act must submit to the registrar an application in the form determined by the Council.

- (2) An application referred to in subsection (1) must be accompanied by -

- (a) the certificate relating to any qualification upon which the applicant relies for registration in terms of this Act, or a photocopy or other copy of such certificate duly certified by a commissioner of oaths, to the satisfaction of the registrar, as a true copy of the original;
- (b) if any period of practical training is prescribed in respect of the profession concerned, written proof to the satisfaction of the Council that the applicant has satisfactorily completed the period of practical training so prescribed and has met all the requirements prescribed in respect of such practical training;
- (c) if the applicant was registered previously in a country other than Namibia to practise the profession in respect of which registration is applied for, or is at the time of such application for registration still so registered, a letter of good standing from the registering authority concerned of each country in which the applicant was registered or practised his or her profession during the five years immediately preceding the date of the application, or is still so registered or practising, which certificate must be issued not more than 120 days before the date of the submission of such application;
- (d) such documents and information as may be prescribed in respect of such application;
- (e) such additional documents or information as the registrar or the Council may require in respect of such application; and
- (f) payment of the fees determined by the Council in respect of such application, or written proof of the payment thereof to the Council.

(3) Notwithstanding paragraph (a) of subsection (2), the Council may require that a copy of a certificate referred to in that paragraph must be verified in the manner determined by the Council.

#### **Procedures relating to registration**

**20.** (1) The registrar must refer an application for registration submitted to him or her in terms of subsection (1) of section 19, including the documents and other information referred to in subsection (2) of that section, to the Council for its decision.

(2) The Council, after having considered the application for registration, and the documents and other information, referred to in subsection (1), and where applicable, the results of any evaluation made in terms of subsection (3), may -

- (a) grant the application for registration, if it is satisfied that the applicant -
  - (i) meets the requirements relating to study and qualifications prescribed in terms of section 18(1) in respect of the profession concerned;
  - (ii) has complied with section 19;
  - (iii) is a fit and proper person to be so registered; and
  - (iv) has paid to the Council the fees determined in respect of such application; or
- (b) refuse the application, if the Council is satisfied that the applicant -

- (i) has not met the requirements relating to study and qualifications prescribed in terms of section 18(1) in respect of the profession concerned; or
  - (ii) has not complied with section 19; or
  - (iii) is not a fit and proper person to be so registered; or
  - (iv) has not paid to the Council the fees determined in respect of such application.
- (3) (a) Notwithstanding any examination that may be prescribed, the passing of which is a requirement for registration in terms of this Act, the Council may require an applicant to pass to the satisfaction of the Council an evaluation referred to in paragraph (b), in order to determine whether or not the applicant -
- (i) possesses adequate professional knowledge, skill and competence in the profession for which registration has been applied for; and
  - (ii) is proficient in the official language of Namibia.
- (b) The Council may determine for the purposes of paragraph (a) from time to time -
- (i) the nature, contents and the extent or ambit of the evaluation to be conducted; and
  - (ii) the persons who must serve on the panel that has to conduct the evaluation,
- in accordance with that paragraph.
- (c) The applicant concerned must pay the fees determined by the Council in respect of an evaluation conducted in terms of this section before sitting for any such evaluation.
- (4) The Council must -
- (a) inform the applicant concerned in writing of any decision of the Council in terms of this section;
  - (b) issue, if the registration had been granted, to the applicant concerned a certificate relating to the registration concerned and enter his or her name into the relevant register;
  - (c) inform the applicant concerned in writing, if the registration had been refused, as soon as practicable of the reasons for such refusal.
- (5) Notwithstanding the other provisions of this section, the registrar, acting for, on behalf and in the name, place and stead of the Council, may exercise the powers, and perform the duties and functions, of the Council in terms of this section.
- (6) The Council -
- (a) is not divested of any power, duty or function referred to in; and
  - (b) may amend or set aside any decision made by the registrar in the exercising of any power or the performance of any function or duty, in terms of,

subsection (5).

- (7) The registrar must submit in writing to the Council at every meeting thereof -
  - (a) the full names and other particulars relating to every person registered by the registrar acting in terms of subsection (5), during the period following the previous submission by the registrar to the Council in accordance with this subsection; and
  - (b) particulars of the applications for registration refused by the registrar acting in terms of subsection (5), and the reasons for such refusal.

(8) Notwithstanding subsection (5), the registrar may refer any application for registration in terms of this section to the Council for consideration.

### **Conditional registration**

**21.** (1) The Council may register any person, subject to the other provisions of this section, who is not in possession of a qualification prescribed in terms of section 18(1) and who lodges an application for registration with the Council, if the person who has lodged such application -

- (a) is in possession of a qualification which the Council is satisfied as being of a standard of professional education not lower than the standard prescribed in terms of that section; and
- (b)
  - (i) has received such additional prescribed education, tuition or training, whether in or outside Namibia; and
  - (ii) has passed the prescribed additional examinations, whether in or outside Namibia,

as the Council may determine.

- (2) (a) For the purposes of paragraph (b) of subsection (1), the Council may register conditionally an applicant referred to in, and who complies with paragraph (a) of, that subsection -
  - (i) for such period or periods of time; and
  - (ii) on such conditions subject to which the applicant may practise his or her profession,

as the Council may determine.

- (b) When the Council registers a person in terms of paragraph (a) conditionally, the Council must issue to that person a certificate of conditional registration in such form as the Council may determine.
- (c) The certificate issued in accordance with paragraph (b) must specify the period or the periods of time referred to in paragraph (a)(i), and particulars relating to the conditions referred to in paragraph (a)(ii).
- (3) (a) In order to decide whether or not to register any person conditionally in terms of subsection (2), the Council may require the applicant concerned to pass to its satisfaction an evaluation, in order to determine whether or not that applicant -

- (i) possesses adequate professional knowledge, skills and competence in or relating to the profession in respect of which registration has been applied for; and
  - (ii) is proficient in the official language of Namibia.
- (b) The Council may determine, for the purposes of paragraph (a), from time to time -
  - (i) the nature and requirements of or relating to the evaluation to be conducted; and
  - (ii) the constitution of the panel which has to conduct the evaluation, referred to in that paragraph.
- (c) The applicant concerned must pay to the Council the fees determined by it in respect of an evaluation conducted in terms of this section before sitting for any such an evaluation.

(4) As soon as any person in possession of a conditional registration certificate has complied with subsection (1)(b) and upon the expiry of any period or periods of time determined by the Council in terms of subsection (2), and specified in such conditional registration certificate, he or she may apply in writing to the Council to sit for the prescribed additional examinations referred to in subsection (1)(c).

(5) A person conditionally registered in terms of this section may not be appointed or elected as a member of the Council or of a committee of the Council, or vote or otherwise participate in the election of the members of the Council.

(6) The Council may withdraw in writing, at any time during the period of time for which a conditional registration certificate had been issued, and after having afforded the holder thereof an opportunity to be heard, such certificate and remove the name of the person concerned from the relevant conditional registration register, if the Council is satisfied that the person to whom such certificate had been issued has refused or failed to comply with all the conditions or requirements specified on such certificate.

(7) Notwithstanding subsection (6), any person in possession of a conditional registration certificate and who performs any act which he or she may not perform in respect of the profession concerned, or which he or she performs in contravention of any condition or requirement of such conditional registration, is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

(8) No person who is in possession of a qualification prescribed in terms of section 18(1), and which qualification entitles him or her to registration in terms of section 20, may be registered conditionally in terms of this section.

### **Registration of person registered conditionally**

**22.** Any person registered conditionally in terms of section 21 may apply to the Council, as soon as he or she has complied with that section and the conditions specified in the conditional registration certificate concerned, for registration in terms of section 20.

### **Keeping of registers**

- 23.** (1) (a) Subject to section 64, the Council must continue to keep, for the purposes of this Act, the registers which were kept before the commencement date in terms of the provisions of any law repealed by section 65 and which registers relate to the persons required to be registered to practise certain professions in terms of this Act.

- (b) The registers referred to in paragraph (a) are for all purposes regarded to be registers established in terms of this Act.
- (2) The Council must establish and keep in respect of the persons registered in terms of this Act to practise the professions concerned, separate registers in respect of -
- (a) such different professions or registered persons as the Council may determine from time to time;
  - (b) the registration and conditional registration of persons; and
  - (c) students or interns who are completing training or internships in Namibia relating to a qualification required for registration to practise any such profession.
- (3) The registrar must enter or cause to be entered into the appropriate register referred to in subsection (2) the particulars relating to every person whose application for registration had been granted in terms of this Act, including -
- (a) his or her full names, identity number, physical address, postal address and details of any other means by which that person may be contacted;
  - (b) the qualification in terms of which he or she is so registered;
  - (c) the date of such registration and the registration number concerned;
  - (d) the registration category in which he or she holds such registration and particulars of his or her speciality or professional category, if any; and
  - (e) such other particulars as the Council may determine from time to time or as may be prescribed.
- (4) (a) The Council may amend, with the written approval of the Minister, the name of a register kept in terms of subsection (2).
- (b) If the Council amends the name of a register in accordance with paragraph (a), any person who immediately before such amendment was registered in such register will be regarded for all purposes to be registered in the register bearing the amended name.
- (5) (a) If the Council intends to amend the name of a register in terms of subsection (4), the Council must publish in the *Gazette* and in such newspapers as the Council considers appropriate, a notice of such intention and the date with effect from which the name of such register will be amended.
- (b) A notice in terms of paragraph (a) must be published not less than 30 days before the date of the intended amendment of the name of the register concerned.
- (6) Every registered person who changes his or her address, must notify the registrar in writing and within a period of 30 days after such change of address of his or her new address.
- (7) The registers must lie open for inspection during ordinary office hours at the offices of the Council.
- (8) The Council may direct the registrar in writing to perform the functions of the Council in terms of this section for and on behalf of the Council in the manner and to the extent, and subject to the conditions, as the Council may determine and specify in such directive.

**Removal of name from register and effect of such removal**

24. (1) The Council may remove from the register concerned the name of any registered person -

- (a) who has failed to notify the registrar in terms of section 23(6) of any change of his or her address, or who has failed to notify the registrar of his or her correct physical address, within a period of three months after the date of a request for particulars of such physical address by the registrar by prepaid registered letter addressed to that registered person at his or her postal address as it appears in the register concerned;
  - (b) who has requested in writing that his or her name be removed from the register;
  - (c) who has failed to pay to the Council on or before 31 March of the year concerned the annual fees determined by the Council in terms of section 26(1)(c) and payable by that registered person;
  - (d) whose name has been removed from the register, record or roll of any educational institution from which that person received the qualification by virtue of which he or she was registered in terms of this Act;
  - (e) who has been registered in error or as a result of fraud or in circumstances not authorised by this Act; or
  - (f) who has been found guilty of unprofessional conduct and upon whom the penalties prescribed by section 42(1)(c) have been imposed.
- (2) (a) The registrar may in respect of a request by a registered person in terms of subsection (1)(b) require that person to lodge with the registrar an affidavit to the effect that no proceedings relating to any unprofessional conduct or to any criminal act have been, or are likely to be, instituted against him or her.
- (b) Particulars of the reason for every removal of a name from a register in terms of subsection (1) must be entered into such register as a part of such removal.

(3) The registrar, or a person designated in writing by the registrar for such purpose, must by notice in writing inform the person whose name has been removed from the register in terms of subsection (1) that his or her name has been so removed and the reason for such removal.

(4) A notice referred to in subsection (3) must be served either by prepaid registered letter addressed to the person referred to in that subsection at his or her postal address as it appears in the register concerned, or in the prescribed manner.

(5) After the date of service of a notice in terms of subsection (4), until such time as the name of the person referred to in subsection (1) is restored to the register concerned -

- (a) the registration certificate relating to that person is regarded to be withdrawn; and
- (b) that person must cease to practise the profession in respect of which he or she had been registered, or to perform any act which no person other than a registered person may perform.

- (6) (a) If any registered person is declared mentally ill in terms of the Mental Health Act, 1973 (Act No. 18 of 1973), or if a curator is appointed by the High Court to conduct or manage the affairs of that person, the Registrar of the High Court must submit to the registrar, as soon as practicable, a copy of the order declaring that registered person a mentally ill person or appointing that curator, as the case may be.
- (b) Upon receipt of the copy of the order referred to in paragraph (a), the registrar must remove the name of the person named in such order from the register concerned, and inform the Council in writing of such removal.
- (c) Subsections (3) and (4) apply, with the necessary changes, to the removal of the name of a registered person from a register in terms of paragraph (b).
- (7) (a) If the death of any registered person is reported to the Master of the High Court, the Master must submit to the registrar, as soon as practicable, a copy of the death certificate of such deceased registered person.
- (b) Upon receipt of the copy of the death certificate referred to in paragraph (a), the registrar must remove the name of that deceased registered person from the register concerned, and inform the Council of such removal.
- (8) Any person referred to in subsection (5) who fails to comply with or acts in contravention of paragraph (b) of that subsection is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

#### **Restoration of name to register**

**25.** (1) Subject to subsection (2), a person whose name has been removed from a register in terms of section 24 may apply to the Council, in the form and manner determined by it, to have his or her name restored to such register.

- (2) An application referred to in subsection (1) must be accompanied by -
- (a) such documents and information as may be prescribed in respect of such application;
- (b) such additional documents and information as the Council may require;
- (c) if the name of a person was removed from the register in terms of section 24(1)(c), payment of the outstanding annual fees concerned;
- (d) if the name of a person was removed from the register in terms of section 24(1)(f), proof to the satisfaction of the Council that the applicant has complied with all the conditions or requirements as may be prescribed or as the Council may require in respect of such application, and that the applicant is a fit and proper person to be so restored to such register;
- (e) if the name of a person was removed from the register in terms of section 24(6), written proof to the satisfaction of the Council of his or her sound mental health, or proof that the order of court placing him or her under curatorship has been set aside, as the case may be; and
- (f) payment of the fees determined by the Council in respect of such application for restoration.
- (3) In the case of the removal of a name from a register in terms of section 24(1)(a), (b), (c), (d), or (e), the registrar, acting for and on behalf of the Council -

- (a) must restore to the register concerned the name of the applicant referred to in subsection (1), if the registrar is satisfied that that applicant has complied; or
- (b) may refuse an application referred to in subsection (1), if the registrar is satisfied that the applicant has not complied,

with the applicable provisions of subsection (2).

(4) In the case of the removal of a name from a register in terms of subsections (1)(f) or (6)(b) of section 24, or if the registrar has any doubt relating to any application referred to in subsection (3), the registrar must refer the application for restoration concerned to the Council for consideration and a decision.

(5) The registrar must -

- (a) inform in writing a person who has applied to the Council in terms of subsection (1) for the restoration of his or her name to a register, of any decision made in terms of subsection (3) or (4), as the case may be, and in the event of the registrar's or the Council's refusal to grant the application for restoration, the reasons for such refusal; and
- (b) if the name of the person concerned has been restored to the register, issue to the applicant a certificate of restoration in such form as the Council may determine.

(6) The Council may determine, with the approval of the Minister and subject to section 26 -

- (a) fees payable to the Council relating to the restoration of the name of a person to a register in terms of this section; and
- (b) different restoration fees in terms of paragraph (a) in respect of the different reasons for the removal of a person's name from the register and in respect of the period of time for which such name was so removed.

(7) The Council -

- (a) is not divested of any power, duty or function referred to in; and
- (b) may amend or set aside any decision made by the registrar in the exercising of any power or the performance of any duty or function, in terms of,

subsection (3).

#### **Fees payable to Council and maintaining of registration by registered person**

**26.** (1) The Council may determine, with the written approval of the Minister -

- (a) application fees, registration fees, investigation fees and examination fees payable to the Council;
- (b) any other fees payable to the Council in respect of any power exercised or duty or function performed by the Council; and
- (c) subject to subsection (4), the annual fees, or the portion thereof in respect of a part of a year, payable by any registered person to the Council,

in terms of this Act.

(2) The Council may amend or repeal from time to time, with the approval of the Minister, any of the fees determined in terms of subsection (1).

(3) A fee determined, or an amendment or repeal thereof, in terms of this section, must be made known by the president of the Council by notice in the *Gazette*.

(4) When the Council determines the annual fees payable to it by registered persons, the Council may determine different fees -

- (a) in respect of different professions or different registration categories relating to a profession;
- (b) the number of years which any registered person has been practising his or her profession; or
- (c) based on such criteria as may be prescribed.

(5) If any person liable to pay any annual fees determined in terms of subsection (1)(c) fails or refuses to pay such fees before or on 31 March of the year in respect of which such fees are due and payable, the Council may recover such unpaid fees by means of proceedings in a competent court, whether or not that person's name has been removed from the register concerned.

(6) If any person whose name had been removed from a register applies for the restoration of his or her name to such register, the Council may not consider such application for restoration until such time as the applicant has paid in full all amounts due and payable by him or her to the Council in terms of this Act.

(7) The Council may in writing exempt any person in part or fully from paying any annual fees determined in terms of subsection (1)(c).

(8) When a registered person pays to the Council the annual fees determined in terms of subsection (1)(c) and payable to the Council by that registered person, the Council must issue a certificate in the name of that registered person as proof of the payment of such annual fees.

(9) A certificate issued in terms of subsection (8) -

- (a) must be in such form as the Council may determine;
- (b) must specify -
  - (i) the name of the Council;
  - (ii) the full names and surname of the registered person concerned;
  - (iii) particulars of the profession in respect of which the person concerned is registered;
  - (iv) the amount of the fees paid;
  - (v) the period of time in respect of which the annual payment was made and in respect of which such certificate will be valid;
  - (vi) such particulars as may be prescribed; and

- (vii) such additional particulars as the Council may determine; and
- (c) will serve as proof until the contrary is proven of the fact that the registered person named in such certificate has maintained his or her registration for the period of time specified in such certificate.

### **Register as proof**

**27.** (1) A copy of any register of the Council, signed by the registrar, is proof until the contrary is proven in all legal proceedings of the facts recorded therein.

(2) The absence of the name of any person from a copy of a register referred to in subsection (1) is proof until the contrary is proven that the person concerned is not registered in terms of this Act.

- (3) If the name of a person -
  - (a) does not appear in a copy of a register referred to in subsection (1), or has been added to such register after the date of such copy, a certified copy under the hand of the registrar of the entry of the name of that person in such register is proof until the contrary is proven that the person is registered in terms of this Act;
  - (b) has been removed from the register referred to in paragraph (a) and has not been restored thereto, a certificate under the hand of the registrar that the name of that person has been removed from such register is proof until the contrary is proven that the person is not registered in terms of this Act.

### **Certificate of status and extract from register**

**28.** (1) A registered person may apply, in such form and manner as the Council may determine, to the registrar for the issue of a certificate of status in terms of subsection (2).

(2) Upon the payment of the fees determined by the Council in terms of section 26(1)(a) in respect of an application in terms of subsection (1), and upon the submission to the registrar of an affidavit by the registered person concerned that no criminal proceedings are pending against that registered person, the registrar must issue to that registered person a certificate of status containing particulars relating to -

- (a) that person's status in respect of registration in terms of this Act;
- (b) whether or not that registered person is disqualified in part or wholly from practising his or her profession in terms of this Act;
- (c) whether or not any proceedings pertaining to unprofessional conduct are pending against that registered person at the time of the issuing the certificate of status;
- (d) whether or not that registered person has been found guilty of any unprofessional conduct and, if so, the nature of the charge, the date of the finding and the penalties imposed;
- (e) whether or not that registered person is an impaired person in terms of section 48; and
- (f) if that registered person is an impaired person in terms of section 48, the date of the finding concerned made and the nature of the conditions of registration and practice which are applicable to that person at the time of the issuing of the certificate of status.

(3) A certificate of status referred to in subsection (2) -

(a) must be issued in such form and manner; and

(b) may be issued subject to such conditions,

as the Council may determine.

(4) The registrar must issue under his or her hand, upon the written application by any person and upon the payment of the applicable fees determined by the Council in terms of section 26(1)(a), to that person a certified extract from the register.

#### **Temporary registration for purposes of educational demonstrations or training**

**29.** (1) Notwithstanding the provisions of this Act, the Council may register, for the purpose of promoting education, tuition or training in respect of, or relating to, any profession to which this Act applies, any person not permanently resident in Namibia to teach or train or give educational demonstrations relating to any such profession for such period of time and subject to such conditions as the Council may determine.

(2) The Council may determine the form of and the procedures relating to an application to the Council for temporary registration in terms of this section, including the form of the certificate of temporary registration to be issued by the Council and the application fees payable, if any.

(3) No person may be registered in terms of subsection (1) unless that person, in terms of the laws of the country in which he or she -

(a) is resident; or

(b) obtained the educational qualification which entitles him or her to be registered to practise his or her profession,

is registered to practise his or her profession in such country.

(4) Any person who teaches or trains or provides educational demonstrations referred to in subsection (1), without being registered in terms of that subsection, is guilty of any offence and on conviction liable to the penalties specified in section 61(a).

(5) This section does not apply to registered persons or to persons employed by educational institutions.

#### **Educational institutions to furnish particulars**

**30.** (1) Every educational institution in Namibia at which a qualification can be obtained, and which qualification will entitle the holder thereof to registration in terms of this Act, must furnish the Council in writing, at the Council's written request and within a period of 30 days after the receipt of such request, with full particulars in respect of -

(a) the standard of general education and training required of students for admission to the relevant course or field of study;

(b) the courses of study, training and examinations required of a student before such qualification may be granted;

(c) the particulars of examinations conducted and the results thereof in respect of a specific student or of a specific category of students; and

- (d) such other particulars relating to the education and training offered by such educational institution as the Council may from time to time require.
- (2) If -
  - (a) any educational institution referred to in subsection (1) fails or refuses to furnish the particulars requested by the Council in terms of that subsection; or
  - (b) it appears to the Council that any provision of this Act or any condition prescribed or determined by or in terms of this Act pertaining to the educational institution referred to in subsection (1) is not properly being complied with, and that such improper compliance may adversely affect the standard of the education, tuition and training in respect of the professional training concerned to be maintained at such educational institution,

the Minister may determine, on the recommendation of the Council and by notice in the *Gazette*, that any qualification granted by the educational institution after the date specified in such notice does not entitle any holder thereof to registration in terms of this Act.

(3) The Minister may determine, on the recommendation of the Council and by notice in the *Gazette*, whether or not any qualification other than a qualification referred to in subsection (2), and granted subsequent to the date specified in such notice by the educational institution referred to in that subsection, entitles the holder thereof to registration in terms of this Act.

(4) The Minister may repeal or amend, on the recommendation of the Council, any notice published in terms of subsection (2) or (3), if it appears to the Minister that the educational institution in respect of which such notice was published has made satisfactory provision to comply with the requirements of this Act or with the prescribed or other conditions referred to in subsection (2)(b).

(5) A qualification specified in a notice issued in terms of subsection (2) which had been granted by an educational institution to which the notice relates between the date specified in such notice and the date of the repeal of such notice, does not entitle the holder thereof to registration in terms of this Act.

(6) The Council may appoint in writing, for the purposes of subsection (2)(b), a person to investigate, subject to section 55, whether the prescribed conditions, and the conditions and requirements determined by the Council, in respect of an educational institution referred to in that subsection are being complied with by such educational institution, and to report to the Council on such investigation within such period of time and in such manner as the Council may determine and specify in such written appointment.

#### **Registration of additional qualifications, specialities, professional categories and additional professional categories**

**31.** (1) The Minister may prescribe, from time to time and on the recommendation of the Council, the qualifications that may be registered as -

- (a) additional qualifications;
- (b) specialities;
- (c) professional categories or additional professional categories,

in terms of this section, including the curricula concerned, the period of time required for and the nature of the education, tuition and training concerned, the examinations to be passed, and the educational institutions where such education, tuition and training may be completed.

(2) Any registered person who, in addition to the qualification by virtue of which that person had been registered in the first instance, desires to -

- (a) have an additional qualification registered; or
- (b) be registered -
  - (i) as a specialist; or
  - (ii) in another professional category or in an additional professional category,

may apply to the Council, in the form and manner determined by it, to have such additional qualification, speciality, professional category or additional professional category, as the case may be, entered against his or her name in the register concerned.

(3) An application referred to in subsection (2) must be accompanied by -

- (a) such documentary proof that the applicant holds the relevant qualification in respect of the application as the Council may require;
- (b) such documents and information as may be prescribed in respect of such application;
- (c) such additional documents or information as the registrar or Council may require; and
- (d) payment of the fees determined by the Council in respect of such applications.

(4) If the Council is satisfied that the qualification relating to the application has been prescribed and that subsection (3) and any other prescribed requirement, if any, have been complied with, it must cause such additional qualification, speciality, professional category or additional professional category, as the case may be, to be entered in the register against the name of the applicant.

(5) The Council may enter into the register against the name of an applicant an additional qualification, speciality, professional category or additional professional category not prescribed in terms of this Act, if -

- (a) the Council is satisfied that the qualification upon which the applicant relies for registration in terms of this section is of a standard of professional education not lower than the qualification prescribed in respect of such application; and
- (b) the applicant passes to the satisfaction of the Council, whether in or outside Namibia, an examination prescribed by the Minister on the recommendation of the Council, or if no such examination has been prescribed, such examination as the Council may specify, in order to determine whether or not the applicant -
  - (i) possesses a standard of professional knowledge, skill and competence relating to the additional qualification, speciality or professional category for which registration has been applied and that would enable him or her to practise the profession in respect of the additional qualification, speciality or professional category concerned; and

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

(6) The Council may identify, for the purposes of subsection (5) and from time to time, the person or persons who have to conduct the examination referred to in that subsection.

(7) An applicant referred to in subsection (2) must pay the fees determined by the Council in terms of section 26 in respect of an examination conducted in terms of this section before sitting for any such examination.

(8) The registrar must -

- (a) inform an applicant in writing of any decision made in terms of this section;
- (b) if the application had been granted in terms of subsection (4) or (5), issue to the applicant a certificate relating to the registration concerned and enter his or her name into the relevant register; and
- (c) if the application had been refused, inform the applicant of the reasons for such refusal.

(9) Any person who assumes, uses or publishes in any way whatsoever any name, title, description or symbol indicating, or calculated to lead any person to infer, that he or she holds any qualification, speciality, professional category or additional professional category registered in terms of this section, and if such qualification, speciality, professional category or additional professional category is not so registered, is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

### **Continuing professional development**

**32.** (1) The Council may determine from time to time -

- (a) the continuing professional development that will apply to registered persons or to a class of registered persons so determined;
- (b) the nature, extent and duration of the professional development determined in terms of paragraph (a); and
- (c) the conditions pertaining to the continuing professional development by registered persons determined in terms of paragraph (a), including, but not limited to, the attending or completion or presenting of study courses or refresher courses, or the passing of examinations relating to such professional development.

(2) Notwithstanding subsection (1), and in addition thereto, the Minister may prescribe -

- (a) the continuing professional development that will apply to a registered person or to a class of registered persons so prescribed for the purposes of paragraph (b);
- (b) that the registration of a registered person may not be maintained in terms of section 26 unless that registered person has attended or completed, or has otherwise complied with, during the period of time so prescribed and to the satisfaction of the Council, the continuing professional development prescribed in terms of paragraph (a) and applicable to that registered person; and

- (c) the procedures to be followed by the Council in the event of a registered person failing to comply with any determination made by the Council in terms of subsection (1) or any regulation made in terms of this subsection, and the powers of the Council relating to such procedures.

**PART IV  
OFFENCES BY UNREGISTERED PERSONS**

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

**33.** (1) Subject to subsections (2) and (3), any person who is not registered as a medical practitioner or a medical intern, and who -

- (a) practises as a medical practitioner or a medical intern, whether or not purporting to be registered as such;
- (b) for gain -
- (i) physically examines any person;
  - (ii) performs any act of diagnosing, treating or preventing any physical defect, illness, disease or deficiency in respect of any person;
  - (iii) advises any person on his or her physical condition;
  - (iv) on the ground of information provided by any person or obtained from that person in any way whatsoever -
    - (aa) diagnoses that person's physical condition;
    - (bb) advises that person relating to his or her physical condition; or
    - (cc) supplies or sells to, or prescribes for, that person any medicine or treatment;
  - (v) prescribes or provides any medicine, scheduled substance or similar substance or preparation or thing to any person;
  - (vi) performs any act prescribed by or in terms of this Act or any other law as an act which may be performed only by a medical practitioner or a medical intern; or
  - (vii) performs any other act, whether or not defined in this Act, especially pertaining to the profession of a medical practitioner or a medical intern;
- (c) except in accordance with the Public Health Act, 1919 (Act No. 36 of 1919), the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003), this Act or the laws relating to the nursing profession, the pharmacy profession, the social work profession, the psychology profession, the allied and complementary health professions or the traditional healers, performs any act whatsoever having as its object -
- (i) the diagnosing, treating or preventing of any physical defect, illness, disease or deficiency in any person; and
  - (ii) by virtue of the performance of such act, the obtaining, either for himself or herself or for any other person, of any benefit by way of

any profit from the sale or disposal of any medicine, foodstuff or substance, or by way of any donation or gift or by way of the provision of accommodation, or the obtaining of, either for himself or herself or for any other person, any other gain whatsoever;

- (d) pretends, or by any means whatsoever holds himself or herself out, to be a medical practitioner or a medical intern, whether or not purporting to be registered, or a healer, of whatever description, of physical defects, illnesses, diseases or deficiencies in any person, or to be entitled to practise as a medical practitioner or a medical intern; or
- (e) uses the name or title of medical practitioner or medical intern, healer or doctor, or any other name, title, description or symbol indicating or calculated to lead persons to infer that such a person is the holder, or is entitled to be the holder, of any qualification entitling that person to practise as a medical practitioner, a physician, a surgeon, a gynaecologist, an obstetrician or a medical intern, or of any other qualification enabling that person to diagnose, treat or prevent physical defects, illnesses or deficiencies in persons in any manner whatsoever, or that that person is registered in terms of this Act as a medical practitioner or a medical intern;
- (f) except in accordance with the Public Health Act, 1919, the Medicines and Related Substances Control Act, 2003, this Act or the laws relating to the nursing profession, the pharmacy profession, the social work profession, the psychology profession, the allied and complementary health professions or the traditional healers, by word, conduct or demeanour holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent physical defects, illnesses, diseases or deficiencies in persons, or to prescribe or supply any medicine, drug or similar substance or preparation or thing in respect of such defects, illnesses, diseases or deficiencies; or
- (g) purports that any article, compound, medicine or apparatus is or may be of value for the alleviation, curing or treatment of any medical condition,

is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

- (2) The provisions of subsection (1) do not prohibit -
  - (a) a medical intern from -
    - (i) performing any function or issuing any certificate or other document which in terms of this Act or any other law, may be or is required to be performed or issued by a medical practitioner, whether described in such other law as a medical practitioner by any other name or designation; or
    - (ii) describing himself or herself as a medical practitioner in connection with the performance of such function or the issuing of any such certificate or other document,and any reference in any such law to a medical practitioner is regarded to include a reference to a medical intern;
  - (b) a pharmacist from performing any act falling within the scope of practice of his or her profession as contemplated in any law relating to pharmacists, or from using any name, title, description or symbol normally associated with such profession; or
  - (c) a dentist from performing any act falling within the scope of practice of his or her profession as contemplated in this Act, or from using any name, title, description or symbol normally associated with such profession.

- (3) The provisions of subsection (l)(b), (c) and (f) do not -
- (a) apply in respect of any act performed by any person in the course of *bona fide* research at any educational institution approved for such purpose by the Minister in writing;
  - (b) apply in respect of any act performed by a pharmacist or by an employee of a pharmacist acting within the scope of his or her employment, for the purposes of selling or promoting the sale of any medicine to any other pharmacist or to any medical practitioner;
  - (c) apply in respect of the sale of any medicine by a pharmacist to any person in pursuance of a written prescription issued by a medical practitioner; or
  - (d) prohibit a dentist from diagnosing cancer while performing in respect of any person any act pertaining to the practice of dentistry, or treating the cancer so diagnosed.

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

**34.** (1) Subject to section 35 and subsection (3) of this section, any person who is not registered as a dentist, and who -

- (a) practises as a dentist, whether or not purporting to be registered;
- (b) for gain -
  - (i) performs any act especially pertaining to the practice of dentistry;
  - (ii) takes in the mouth of any person any impression or bite in connection with, or tries in, or fits in the mouth of any person any artificial denture or other similar dental appliance for the purpose of making, repairing or supplying any dental prosthesis; or
  - (iii) makes, repairs or supplies any dental prosthesis or other similar dental appliance;
  - (iv) tries in or fits in the mouth of any person any dental prosthesis or other similar dental appliance;
  - (v) performs any act prescribed by or in terms of this Act or any other law as an act which may be performed only by a dentist;
  - (vi) performs any other act, whether or not defined in this Act, especially pertaining to the profession of dentistry;
- (c) pretends, or by any means whatsoever holds himself or herself out, to be a dentist, or to be entitled to practise dentistry, whether or not purporting to be registered; or
- (d) uses the name of a dentist or any name, title, description or symbol indicating, or calculated to lead any person to infer, that that person is the holder, or is entitled to be the holder, of any qualification entitling that person to practise as a dentist, or that that person is registered as a dentist and entitled to practise dentistry in terms of this Act,

is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

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

- (3) Nothing in this section may be construed as prohibiting -
- (a) a medical practitioner who is not registered also as a dentist, from performing in the course of his or her practice, acts pertaining to the practice of dentistry in cases of emergency or where no dentist is readily available;
  - (b) a dental technician -
    - (i) from being employed by a dentist for the purpose of the making or repairing, on the instructions of a dentist, any dental prosthesis or other dental appliance, or
    - (ii) from making, repairing, altering, working on or supplying, or undertaking to make, repair, alter or work on any artificial denture or other dental appliance as a dental technician contractor, provided such manufacturing, repairing or supplying is carried out on the instructions and to the order of a dentist,but does not include the taking of any impression or bite or any trying or fitting thereof in the mouth of any person;
  - (c) any oral hygienist from performing on the instructions and under the direct supervision of a dentist any prescribed act pertaining to the practice of dentistry which may be so performed;
  - (d) anything necessary or required to be performed by -
    - (i) a student dental technician in the course and for the purposes of his or her studies or training, if it is performed by such student under the direct supervision and control of a dentist or a dental technician; or
    - (ii) a student oral hygienist in the course and for the purposes of his or her studies or training, if it is performed by such student under the direct supervision and control of a dentist or an oral hygienist;
  - (e) any unregistered person from being employed in a dental laboratory as an auxiliary to the dentist or dental technician owning or in control of such dental laboratory, and from performing, under the direct supervision and control of that dentist or dental technician -
    - (i) all plaster work in connection with artificial dentures or dental appliances, excluding the articulation of models on an articulator and the casting of plaster models for crown and bridge work;
    - (ii) the flasking and deflasking of a dental prosthesis or appliance using either plaster or stone plaster;
    - (iii) the separating of dental flasks and boiling out the wax contents; or
    - (iv) the polishing only of plastic and metal dentures.

(4) Any unregistered person who is employed as an auxiliary in a dental laboratory and who fails to comply with subsection (3)(e) is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

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

**35.** (1) Subject to section 34 and to subsection (3) of this section, any person who is not registered as an oral hygienist, and who -

- (a) practises as an oral hygienist, whether or not purporting to be registered; or
- (b) for gain performs any act -
  - (i) prescribed by or in terms of this Act or any other law as an act which may be performed by an oral hygienist only; or
  - (ii) especially pertaining to the profession of an oral hygienist; or
- (c) pretends or by any means whatsoever holds himself or herself out to be an oral hygienist, whether or not purporting to be registered, or to be entitled to practise as an oral hygienist; or
- (d) uses the name of oral hygienist or any name, title, description or symbol indicating or calculated to lead persons to infer that that person is the holder, or is entitled to be the holder, of any qualification entitling that person to practise as an oral hygienist, or that he or she is registered as an oral hygienist or entitled to practise as an oral hygienist in terms of this Act,

is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

(2) For the purposes of this section, any act prescribed as contemplated in section 34(3)(c), must be regarded to be an act especially pertaining to the profession of an oral hygienist.

- (3) Nothing in this section contained may be construed as prohibiting -
  - (a) any dentist; or
  - (b) any student oral hygienist in the circumstances referred to in section 34(3)(d)(ii),

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

**Penalties for practising any other profession to which this Act applies, or for performing certain acts, while unregistered, and penalties for holding person out to be registered**

**36.** (1) Subject to sections 33, 34 and 35, any person who is not registered as a biomedical engineer, clinical biochemist, clinical officer, genetic counsellor, medical assistant, medical biological scientist, medical physicist, medical scientist, ophthalmic assistant or rural medical aid, and who -

- (a) practises any of such professions, whether or not purporting to be registered; or
- (b) for gain performs any act -
  - (i) which has been prescribed by or in terms of this Act or any other law as an act which may only be performed by a person registered in terms of this Act to practise;
  - (ii) especially pertaining to the practising of,

the profession concerned;

- (c) pretends or by any means whatsoever holds himself or herself out to be so registered, or to be entitled to practise any such profession; or
- (d) uses the name of biomedical engineer, clinical biochemist, clinical officer, genetic counsellor, medical assistant, medical biological scientist, medical physicist, medical scientist, ophthalmic assistant or rural medical aid, as the case may be, or any name, title, description or symbol indicating, or calculated to lead persons to infer, that he or she is the holder, or is entitled to be the holder, of any qualification entitling him or her to practise any such profession, or that he or she is registered or entitled to practise any such profession in terms of this Act,

is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

(2) Any person who, knowing that another person is not registered in terms of this Act to practise any of the professions referred to in subsection (1) -

- (a) describes that person as the holder of a title which only such a registered person may use, whether he or she describes that other person by making use of such title alone or in combination with any word or letter; or
- (b) holds that other person out, directly or indirectly, as being so registered,

is guilty of an offence and on conviction liable to the penalties specified in section 61(a).

## PART V DISCIPLINARY POWERS OF COUNCIL

### Professional conduct rules by Council

**37.** (1) The Council may from time to time issue rules specifying the acts or omissions by registered persons which constitute unprofessional conduct and in respect of which the Council may conduct inquiries and disciplinary proceedings in terms of the provisions of this PART.

(2) The powers of the Council to inquire into and deal with any complaint, charge or allegation relating to a registered person are not limited to the acts or omissions specified in terms of subsection (1).

(3) No rules issued in terms of subsection (1) or any amendment thereto or withdrawal thereof is of force and effect until approved by the Minister in writing and published by the Council in the *Gazette*.

- (4) Any registered person who -
  - (a) refuses to comply, or who complies insufficiently, with a lawful instruction of the Council is guilty of unprofessional conduct, and on being found so guilty in a professional conduct inquiry is liable to the penalties prescribed by section 42(1)(d); or
  - (b) is found guilty of an offence under the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994) is guilty of unprofessional conduct, and on proof of such conviction in a professional conduct inquiry liable to any one or more of the penalties prescribed by section 42.

**Inquiry by Council into complaint, charge or allegation of unprofessional conduct**

- 38.** (1) The Council may conduct an inquiry -
- (a) into any complaint or charge lodged with the Council; or
  - (b) whether or not a complaint or charge has been lodged with the Council, into any allegation,

of unprofessional conduct against any person registered with the Council.

(2) Upon finding the registered person guilty of unprofessional conduct at an inquiry referred to in subsection (1), the Council may impose any of the penalties prescribed by section 42(1) against that person.

(3) If a complaint, charge or allegation referred to in subsection (1) forms, or is likely to form, the subject of criminal proceedings in a court of law, the Council may postpone the conducting of an inquiry referred to in that subsection until such time as the criminal proceedings concerned has been finalised in such court.

- (4) The Council may -
- (a) when it is in doubt as to whether or not an inquiry should be conducted in connection with a complaint, charge or allegation, consult with or seek information from any person, including the person against whom the complaint or the charge has been lodged or the allegation has been made;
  - (b) for the purpose of an inquiry in terms of subsection (1), permit or request any person to give evidence at such inquiry or to advise the Council on any matter in respect thereof;
  - (c) delegate any of its powers in terms of this subsection to the preliminary investigation committee.

(5) If a person whose name has been removed from the register concerned in terms of section 24 is alleged to have committed unprofessional conduct before such removal, the Council may institute an inquiry in terms of this PART in respect of such allegation.

(6) A person referred to in subsection (5) will be regarded, for the purposes of an inquiry in terms of this PART, to be a registered person.

**Procedures relating to professional conduct inquiry**

- 39.** (1) (a) Any inquiry in terms of this PART must be conducted, subject to this section, in accordance with the prescribed procedures.
- (b) The Council may delegate to the professional conduct committee all or any of its powers to conduct an inquiry in terms of this PART.

(2) The proceedings at an inquiry referred to in subsection (1) must be minuted *verbatim*, in so far as it is practicable, and the minutes of such inquiry must be certified by the person presiding at such inquiry as being a true and accurate account of the evidence given and the exhibits presented, and of the decision of the Council or the professional conduct committee, as the case may be, at such inquiry.

- (3) The minutes referred to in subsection (2) -

- (a) must be kept in safe-custody by the registrar for a period of not less than five years; and
- (b) are, for the purpose of an appeal in terms of section 56 or 57, proof until the contrary is proven of the proceedings at such inquiry and the decisions made by the Council or professional conduct committee, as the case may be, as a result of such inquiry.

(4) Any registered person in respect of whom an inquiry is to be conducted in terms of this PART must be notified in writing of such inquiry not less than 21 days before the date of commencement of such inquiry, by means of the delivery to that registered person of a notice in the prescribed form, informing him or her of -

- (a) the date, time and venue of; and
- (b) the particulars of the complaint, charge or allegation against him or her which will be investigated at,

such inquiry.

(5) The registrar, or a person designated by him or her in writing for such purpose, must serve the notice referred to in subsection (4) on the registered person referred to in that subsection, and obtain from that registered person a written acknowledgement of receipt stating the date, time and place of the service of such notice.

(6) If the registrar, or the person designated in terms of subsection (5), certifies in writing that the registered person upon whom the notice concerned is to be served in terms of that subsection -

- (a) cannot be traced;
- (b) refuses to accept service of such notice; or
- (c) refuses to sign the required acknowledgement of receipt relating to the service of such notice,

the registrar may send such notice by prepaid registered letter, not less than 21 days before the date of the intended inquiry, to that registered person at his or her postal address as it appears in the relevant register of the Council.

(7) If the registered person served with a notice in terms of subsection (5), or to whom a notice has been sent in terms of subsection (6), is not present at the commencement of the inquiry concerned, the president of the Council, if the Council itself conducts the inquiry, or the chairperson of the professional conduct committee, if such a committee conducts the inquiry under powers assigned or delegated to it by the Council, may have the inquiry conducted, at his or her discretion, in the absence of that registered person.

- (8) (a) For the purpose of an inquiry in terms of this PART, the Council or the professional conduct committee may summons any witness to appear at a specified date, time and venue to give evidence before the Council or the professional conduct committee, as the case may be, and to submit to it any document, book, record, or other thing relevant to the inquiry and specified in such summons.
- (b) A summons to appear before the Council or the professional conduct committee as a witness or to produce to it any document, book, record or thing referred to in paragraph (a), must be substantially in the prescribed form and be signed by the president of the Council or by the registrar, and must be served upon the person concerned either by prepaid registered letter or in the prescribed manner.

- (c) Any person who has been duly summoned in accordance with this subsection to appear before the Council or the professional conduct committee, as the case may be, for the purposes of an inquiry in terms of this PART and who -
- (i) refuses or fails, without sufficient cause, to attend the inquiry concerned at the date, time and venue specified in the summons; or
  - (ii) refuses to take the prescribed oath or to make an affirmation when required by the person presiding at such inquiry to do so; or
  - (iii) leaves the inquiry concerned without the consent of the person presiding at such inquiry, whether or not that person has given evidence; or
  - (iv) refuses to give evidence before the Council or the professional conduct committee, or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her, or refuses to produce any document, book, record or thing which that person has in terms of the summons been required to produce,

is guilty of an offence and on conviction liable to the penalties specified in section 61(a).

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

(10) Every person whose conduct is the subject of an inquiry in terms of this PART, if that person is present at such inquiry, may answer himself or herself or through a legal practitioner, to any complaint, charge or allegation against him or her and be heard in his or her defence, and may for such purpose -

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

(11) A registered person found guilty of unprofessional conduct in terms of this PART may -

- (a) address the professional conduct committee;
- (b) call witnesses to give evidence on his or her behalf,

in mitigation of sentence.

(12) The person presiding at an inquiry conducted in terms of this PART may appoint a legal practitioner having not less than ten years experience in the practising of law to be present as an assessor at such inquiry and to advise the Council or the professional conduct committee, as the case may be, on matters of law, procedures or evidence.

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

(14) An inquiry conducted by the Council or by the professional conduct committee in terms of this PART, must be open to the public, unless the Council or such committee, as the case may be and subject to the proviso to Article 12(1)(a) of the Namibian Constitution, otherwise determines.

(15) If the Council fails to ratify a decision of the professional conduct committee in terms of section 12(2)(l) or (m), as the case may be, the Council must -

- (a) refer the matter concerned back to the professional conduct committee, together with such recommendations as the Council may determine, for further consideration and the making of a decision; or
- (b) conduct an inquiry in terms of this PART relating to the matter in respect of which the professional conduct committee made such decision.

**Professional conduct inquiry in respect of registered person not to prejudice civil or criminal liability**

- 40.** (1) The institution of -
- (a) a professional conduct inquiry against a registered person does not prejudice the right of any person, body or institution to institute civil proceedings, or the Prosecutor-General to institute criminal proceedings, or an employer to take disciplinary action against that registered person; or
  - (b) civil or criminal proceedings against a registered person, or the fact that an employer has taken disciplinary action against a registered person, does not prejudice the right of the Council to institute a professional conduct inquiry against that registered person, or from imposing penalties on that person for unprofessional conduct,

arising from or based on the same facts.

(2) Any incriminating reply or information obtained, or incriminating evidence directly or indirectly derived from questioning in a professional conduct inquiry is not admissible as evidence against the person concerned in criminal or civil proceedings in a court of law.

(3) Notwithstanding subsection (2), incriminating evidence referred to in that subsection is admissible in criminal proceedings where the person stands trial on a charge of the contravention of any of the provisions of section 39(8)(c).

**Penalties for false evidence**

**41.** Any person who gives false evidence on oath at any inquiry conducted in terms of this PART, knowing such evidence to be false, is guilty of an offence and on conviction liable to the penalties prescribed by law for the crime of perjury.

**Penalties by Council or professional conduct committee for unprofessional conduct**

**42.** (1) Every registered person who, after an inquiry conducted by the Council or the professional conduct committee, as the case may be, in terms of this PART, is found guilty of unprofessional conduct or conduct which is unprofessional when regard is had to that registered person's profession, or who admits that he or she is guilty of the charge concerned, is liable to any one or more of the penalties consisting of -

- (a) a reprimand or a caution;

- (b) suspension for a specified period of time from practising or performing acts especially pertaining to the profession in respect of which that person is registered;
  - (c) removal of the name of that registered person from the register concerned;
  - (d) payment of a fine not exceeding the prescribed amount.
- (2) The Council may recover any fine imposed in terms of subsection (1)(d) by means of proceedings in a competent court.
- (3) The Council and the professional conduct committee must -
- (a) set out fully in writing its findings and the penalties (if any) imposed in terms of this section; and
  - (b) make such findings and the penalties known to any prescribed body or person in writing.
- (4) The registrar must inform a registered person who has been found guilty of unprofessional conduct in terms of this PART, whether or not that registered person was present at the inquiry concerned -
- (a) in the case of penalties imposed in terms of subsection (1)(a), of the findings of the Council or the professional conduct committee, as the case may be, and the penalties concerned by forwarding a copy of such findings and particulars of the penalties, duly signed by the person who presided at the inquiry, by prepaid registered letter to his or her address as it appears in the relevant register of the Council;
  - (b) in the case of penalties imposed in terms of subsection (1)(b), (c), or (d), by serving a copy of the findings of the Council and particulars of the penalties, duly signed by the person who presided at the inquiry, or having such a copy served -
    - (i) upon him or her personally; or
    - (ii) at his or her place of business on any partner, employer or employee of that person.
- (5) If the registered person referred to in subsection (4) or the person referred to in subsection (4)(b)(ii), as the case may be -
- (a) cannot be traced;
  - (b) refuses to accept service of the documents concerned; or
  - (c) refuses to sign an acknowledgement of receipt relating to the service of such copy of the findings and particulars of the penalties referred to in subsection (4),
- the registrar may serve such copy of the findings and particulars of the penalties upon that registered person by means of a prepaid registered letter addressed to that registered person's postal address as it appears in the register concerned.
- (6) The partner, employer or employee upon whom a copy of the findings and the penalties is served in terms of subsection (4)(b)(ii), must acknowledge receipt thereof in writing and state his or her capacity.

(7) When a person has been found not guilty of unprofessional conduct, the registrar must inform that person of the findings of the Council or the professional conduct committee by prepaid registered letter addressed to that person at his or her postal address as it appears in the register concerned.

(8) A finding made, or a penalty imposed, by the Council or the professional conduct committee in an inquiry conducted in terms of this PART is, unless appealed against in terms of section 56, of force and effect after the date determined by the Council or such committee.

(9) Notwithstanding subsection (8), if an appeal is lodged against a penalty for the removal or suspension of any registered person from practice, such penalty remains effective until the appeal has been finally determined.

### **Postponement of imposition of a penalty and suspension of execution of a penalty**

**43.** (1) If the Council or the professional conduct committee finds a person guilty of unprofessional conduct after the conducting of an inquiry in terms of this PART, it may -

- (a) postpone for such period of time and on such conditions as it may determine, the imposition of any penalty; or
  - (b) impose any penalty mentioned in paragraph (b), (c) or (d) of section 42(1), but order the execution of such penalty to be suspended for such period of time and on such conditions as it may determine.
- (2) (a) If at the end of the period of time for which the imposition of a penalty was postponed in terms of subsection (1)(a) the Council is satisfied that the person concerned has observed all the relevant conditions relating to such suspension, the Council must give notice to that person that no penalty will be imposed upon him or her.
- (b) If the execution of a penalty has been suspended in terms of subsection (1)(b) and -
- (i) the Council is satisfied that the person concerned has observed all relevant conditions throughout the period of such suspension, the Council must give notice to that person that such penalty will not be executed;
  - (ii) the person concerned has failed to observe any of the conditions of that suspension, the Council must put the suspended penalty into operation by notice to that person, unless that person satisfies the Council that the non-observance of the condition concerned was due to circumstances beyond that person's control.
- (c) Before the Council may put a suspended penalty into operation in terms of paragraph (b)(ii), the Council must -
- (i) give notice to the registered person concerned of its intention to put such suspended penalty into operation;
  - (ii) inform the registered person concerned, in the notice in terms of subparagraph (i), that he or she may make written representations to the Council within the period of time specified in such notice, putting forward reasons why the Council should not put the suspended penalty concerned into operation.

- (d) The Council must give notice to the registered person concerned -
- (i) of its decision relating to the representations, if any, made by that registered person referred to in paragraph (c)(ii); and
  - (ii) whether or not it is putting the suspended penalty into operation.

(3) The Council may terminate, if it considers it appropriate and subject to such conditions, if any, as it may determine, the suspension of the execution of a penalty in terms of subsection (1) before the expiry of the period of such suspension.

(4) Before the Council may terminate the suspension of a penalty in terms of subsection (3), it must -

- (a) give notice to the registered person concerned of its intention to terminate the suspension of the penalty concerned; and
- (b) inform the registered person concerned, in the notice in terms of paragraph (a), that he or she may make written representations to the Council within the period of time specified in such notice, putting forward reasons why the Council should not terminate the suspension of the penalty concerned.

(5) The Council must give notice to the registered person concerned -

- (a) of its decision relating to the written representations, if any, made by that registered person referred to in subsection (4)(b); and
- (b) whether or not it is terminating the suspension of the penalty concerned.

(6) Any notice by the Council in terms of this section to any registered person must be in writing and be given by prepaid registered letter, addressed to the postal address of that registered person as it appears in the register concerned.

(7) The Minister may prescribe procedures additional to the procedures contained in this section relating to -

- (a) the postponement of the imposition of penalties and the imposition of such penalties; and
- (b) the suspension of the execution of penalties and the putting into operation of such suspended penalties.

#### **Effect of suspension or removal from register**

**44.** (1) Every registered person who has been suspended in terms of section 42(1)(b) from practising the profession in respect of which he or she is registered, or from performing certain acts, or whose name has been removed from the register in terms of section 42(1)(c), is disqualified from practising such profession.

(2) The registration certificate of the registered person referred to in subsection (1) is regarded to be cancelled until the period of suspension has expired or his or her appeal against such penalty is upheld, or until his or her name has been restored to such register by the Council, as the case may be.

(3) Any person who practises in contravention of subsection (1) is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

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

45. (1) Every registered person who, either before or after registration, has been convicted of any offence by a court of law may be dealt with by the Council in terms of the provisions of this PART, if the Council is of the opinion that such offence constitutes unprofessional conduct.

(2) A registered person referred to in subsection (1) is liable upon proof of the conviction referred to in that subsection, to any one or more of the penalties referred to in section 42(1).

(3) The Council must afford, before the Council imposes upon the registered person concerned any penalty referred to in subsection (2), that registered person the opportunity, by himself or herself or through a legal practitioner, to tender an explanation to the Council in mitigation of the conduct concerned.

(4) If in the course of any proceedings before any court of law it appears to the court that there is proof until the contrary is proven of unprofessional conduct on the part of a registered person, or of conduct which, when regard is had to that person's profession, is unprofessional, the court must direct that a copy of the record of such proceedings, or such portion thereof as is material to such conduct, be submitted to the Council.

(5) The Council may request from the clerk of any court a transcript of any proceedings finalised before such court and which has relevance to any inquiry conducted by the Council.

(6) The clerk of the court referred to in subsection (5) must make the transcript referred to in that subsection available to the Council as soon as practicable.

***Pro forma complainants***

46. (1) If the Council exercises the powers conferred upon it by section 38, it may appoint any person as a *pro forma* complainant to present the case to the Council.

(2) No member of the Council may be appointed as a *pro forma* complainant in terms of subsection (1).

(3) The Council may appoint, subject to subsection (2), any other person to institute proceedings or to continue proceedings, as the case may be, in any case referred to in subsection (1) serving before the Council, if the person appointed in terms of that subsection (1) is for any reason unable to act as a *pro forma* complainant.

**Limitation of liability**

47. Unless otherwise provided in this Act, the Minister, the Permanent Secretary, the Council or any committee thereof, any member of the Council or of any such committee, the Interim Council or any member thereof, any officer or employee of the Council, or the registrar, is not liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of a duty or function in terms of this Act, or anything that may result from anything so done or omitted.

**Investigation, assessment and powers of Council in respect of impaired registered persons**

48. (1) For the purposes of this section -

(a) "impaired" means -

- (i) a mental or physical condition; or
- (ii) the abuse of, or the dependence on, any medicine, scheduled substance, dependence-producing substance, chemical substance or any other substance,

which negatively affects the competence, attitude, judgement or performance of any registered person; and

- (b) “dependence-producing substance” means dependence-producing substance as defined in section 1 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971);

(2) If it appears to the Council, after an investigation in terms of subsection (4)(a), (b) and (c), that any registered person has become impaired to such an extent that -

- (a) it would be against the public interest to allow that person to continue to practise the profession in respect of which he or she is registered;
- (b) he or she is unable to practise the profession in respect of which he or she is registered with reasonable skill or safety to his or her patients; or
- (c) he or she has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply or possess any scheduled substance,

the Council may deal with that person in the manner prescribed in terms of subsection (4).

(3) The provisions of subsection (2)(c) do not apply if any scheduled substance is administered -

- (a) in accordance with a written authority granted by the Minister in terms of any law;
- (b) subject to such conditions as may be specified in an authority referred to in paragraph (a); and
- (c) to the particular person mentioned in an authority referred to in paragraph (a).

(4) The Minister may make, on the recommendation of the Council, regulations in respect of a registered person referred to in subsection (2), relating to -

- (a) the investigation in respect of that person and the circumstances under which such an investigation may be conducted, including the procedures relating to such an investigation;
- (b) the assessment of the condition of that person, including the procedures relating to such an assessment;
- (c) the manner in which an investigation or inquiry must be conducted in order to make a finding relating to that person’s competence to practise the profession in respect of which he or she is registered, including the procedures relating to such an inquiry;
- (d) the conditions or restrictions which may be imposed on that person’s registration or practice;

- (e) the suspension or removal of that person from practising the profession in respect of which he or she is registered, and the manner in which such an order must be executed;
- (f) the rescission of any condition imposed as contemplated in paragraph (d), or of an order for the suspension or removal from practising a profession as contemplated in paragraph (e);
- (g) the specific acts of unprofessional conduct committed before or during an assessment, investigation or inquiry contemplated in this section; and
- (h) generally all other matters which the Minister may consider necessary or expedient to be prescribed in order to achieve the purposes of this section.

(5) The Council may in writing appoint a person or committee to conduct the investigation, assessment or inquiry as contemplated in paragraph (a), (b) or (c) of subsection (4), as the case may be.

(6) Any person who practises the profession in respect of which he or she is registered, or performs any act relating to such profession, while he or she is suspended or removed from the register in accordance with any regulation made under subsection (4), or who acts contrary to, or does not comply with, any condition applicable to him or her in terms of any such regulation, is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

## PART VI GENERAL AND SUPPLEMENTARY PROVISIONS

### Preparation and supply of medicine by medical practitioners or dentists

- 49.** (1) A medical practitioner or dentist -
- (a) may sell or supply, subject to section 29 of the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003), to his or her patients -
    - (i) a Schedule 1, Schedule 2, Schedule 3 or Schedule 4 substance only on the authority of, and subject to the conditions specified in, a licence granted and issued to him or her in terms of section 31(3) of that Act;
    - (ii) a Schedule 5 substance only on the authority of, and subject to the conditions specified in, a permit issued by the Namibia Medicines Regulatory Council in terms of section 29(27) of that Act; and
  - (b) may not keep or conduct an open shop or a pharmacy.
- (2) For the purposes of this section -
- (a) “Namibia Medicines Regulatory Council” means the Namibia Medicines Regulatory Council referred to in section 2(1) of the Medicines and Related Substances Control Act, 2003;
  - (b) “open shop” means a place where medicines or a scheduled substances are sold or supplied to the public with a prescription by a person authorised to prescribe medicine, or without such a prescription;
  - (c) “pharmacy” means a pharmacy as defined in section 1 of the Pharmacy Act, 2004; and

(d) “sell” means sell as defined in section 1 of the Medicines and Related Substances Control Act, 2003.

(3) Any person who contravenes -

(a) subsection (1)(a) is guilty of an offence in terms of the relevant provision of section 38 of the Medicines and Related Substances Control Act, 2003, and on conviction liable to the penalties specified in section 39 of that Act;

(b) subsection (1)(b) is guilty of an offence and on conviction liable to the penalties specified in section 61(a) of this Act.

(4) The Minister may prescribe, in addition to the provisions of this section, conditions subject where to a medical practitioner or a dentist may sell or supply any medicine or scheduled substance.

### **Charges by registered persons**

**50.** (1) Every registered person (in this section referred to as “the practitioner”), before rendering any professional services, unless the circumstances render it impossible for him or her to do so, must inform the person to whom the services are to be rendered or any person responsible for the maintenance of that person, of the fees which the practitioner intends to charge for such services and the fees usually charged for such services.

(2) Any practitioner who claims, in respect of any professional services rendered by him or her, payment from any person (in this section referred to as “the patient”) must submit to the patient a detailed account relating to such professional services rendered within a reasonable period of time after the rendering of such services.

(3) A patient may apply, within a period of three months after the receipt of the account referred to in subsection (2) and whether or not he or she has settled such account, in writing to the Council to determine the amount which in the opinion of the Council should have been charged in respect of the services to which the account relates.

(4) The Council, as soon as practicable after the receipt of the application referred to in subsection (3) and in writing, must -

(a) inform the practitioner concerned of such application; and

(b) request the practitioner concerned to submit to it in writing and within the period of time specified by the Council in such request, representations in support of the amount concerned charged in the account rendered by that practitioner.

(5) The Council must within a period of one month after the receipt of the practitioner’s representations referred to in subsection (4)(b), or if no such representations have been submitted to the Council within the period of time specified in the written notice concerned, within a period of one month after the expiration of the period of time so specified, determine the amount payable by the patient to the practitioner and in writing inform both the practitioner and the patient of the amount so determined.

(6) A determination by the Council in terms of subsection (5) of the amount payable by the patient to the practitioner is binding upon both that practitioner and that patient.

(7) No practitioner may institute legal proceedings in any court of law against a patient for the recovery of any amount owing in respect of an account which that patient has referred to the Council, until such time as the Council has made, in terms of subsection (5), a determination in respect of such account.

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

(9) If a patient has settled an account referred to in subsection (3) before the Council has made a determination in terms of subsection (5) relating to such account, and if the Council so determines that the amount payable by that patient to the practitioner concerned is less than the amount which that patient has paid, that practitioner concerned must -

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

(10) This section does not divest the Council of any of its powers or functions under PART V with regard to the acts or omissions in respect of which it may take disciplinary action or conduct inquiries.

#### **Offences relating to registers, registration and impersonation**

**51.** Any person who -

- (a) procures or attempts to procure for himself or herself or for any other person registration in terms of this Act, or any certificate, order, receipt or prescription referred to in this Act, by means of a false representation, whether made verbally or in writing, or aids and abets any other person in so doing; or
- (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 certificate or receipt issued in terms of this Act; or
- (c) makes or causes to be made a false statement in connection with the identity or qualifications of himself or of herself or of any other person applying for registration in terms of this Act; or
- (d) unless on the direction of the Council, wilfully destroys or damages or renders illegible, or causes to be destroyed, damaged or rendered illegible, any entry in a register or a certificate issued in terms of this Act; or
- (e) forges, or knowing it to be forged, utters any document purporting to be a document issued in terms of this Act; or
- (f) impersonates any registered person; or
- (g) supplies or offers to supply to any person who is not registered in terms of this Act, any instrument or appliance which can be used, or is claimed to be effective, for the purpose of diagnosing, treating or preventing any physical defects, illnesses, diseases or deficiencies in persons, knowing that such instrument or appliance will be used by such unregistered person for the purpose of performing for gain an act which such unregistered person is in terms of this Act prohibited from performing for gain,

is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

#### **Death of person under anaesthetic**

**52.** The death of a person while under the influence of a general anaesthetic or local anaesthetic, or of which the administration of an anaesthetic has been a contributory cause, is not regarded to be a death from natural causes as contemplated in the Inquests Act, 1993 (Act No. 6 of 1993), or the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963).

#### **Commission on prescriptions**

**53.** (1) No registered person may accept or obtain from a pharmacist any commission or other reward in connection with any prescription given by that person.

(2) Any person who contravenes subsection (1) is guilty of an offence and on conviction liable to the penalties specified in section 61(a).

(3) The Council may conduct an inquiry in accordance with PART V in respect of any person referred to in subsection (2), irrespective of whether that person had been found guilty of the offence concerned.

#### **Limitations in respect of unregistered persons and proof of registration for issue of licences and permits**

**54.** (1) No remuneration is recoverable in respect of any act especially pertaining to the profession of a registered person when such act has been performed by a person who is not registered in terms of this Act to practise such profession or to perform such act for gain.

(2) No person other than a registered person holding the necessary qualifications is eligible for, or entitled to hold, any appointment with any establishment, institution, body, organisation or association, whether public or private, if that appointment involves the performance of any act which only a registered person may perform for gain in terms of this Act.

(3) Nothing in subsection (2) may be construed as prohibiting the education and training of persons in the professions to which this Act applies under the supervision of a registered person, or the employment in any hospital or similar institution of any person receiving education, tuition or training for the purpose of registration in terms of this Act.

(4) No licence or permit required to be obtained by a registered person in terms of any law may be issued by the issuing authority concerned in terms of such law, unless the person applying for such licence or permit submits to such authority a registration certificate, or a copy thereof certified by a commissioner of oaths as a true copy of the original, as proof that he or she is registered in terms of this Act.

#### **Matters relating to investigations and inspections**

**55.** (1) Notwithstanding anything in this Act or in any other law, the Council may authorise in writing any person -

- (a) to investigate or inspect any matter relating to the education, tuition or training of any person receiving such education, tuition or training for the purpose of qualifying himself or herself to practise a profession to which this Act applies;

- (b) to inspect the professional practice of any registered person, including the premises where such practice is being conducted.

(2) A person authorised in writing in terms of subsection (1) to conduct an investigation or inspection in terms of that subsection may enter, for the purposes of such investigation or inspection and upon producing such written authorisation, any premises, place, establishment or institution utilised in the teaching, tuition or training referred to in paragraph (a), or the conducting of the professional practice referred to in paragraph (b), of that subsection.

(3) Any person who prevents a person authorised in terms of subsection (1) from entering any premises, place, establishment or institution referred to in subsection (2), or who hinders the person so authorised in conducting therein or thereon an investigation or inspection in accordance with subsection (1), is guilty of an offence and on conviction liable to the penalties specified in section 61(a).

(4) A person authorised by the Council in terms of subsection (1) to conduct an investigation or inspection in terms of this section must report to the Council relating to such investigation or inspection in the form and manner determined by the Council and specified in the written authorisation issued in terms of that subsection.

(5) In so far as this section provides for a limitation on the fundamental rights contemplated in Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person's home, correspondence or communication, that limitation is enacted upon the authority of that Article.

#### **Appeals to appeal committee**

**56.** (1) (a) Any person who is aggrieved by -

- (i) a finding or a decision made; or
- (ii) a penalty imposed; or
- (iii) the refusal or failure to make a finding or a decision,

by the Council or by the professional conduct committee, may appeal, in the prescribed form and manner, to the appeal committee against such a finding or a decision made, or such a penalty imposed or such a failure to make a finding or a decision.

- (b) A notice of appeal referred to in paragraph (a) must be submitted to the Council within a period of 30 days after the date upon which the finding concerned or the decision concerned was made or the penalty concerned was imposed, as the case may be.
- (c) A notice of appeal in terms of paragraph (a)(iii) against the refusal or failure by the Council or the professional conduct committee to make a finding or a decision must be submitted to the Council not less than 30 days and not more than 60 days after the date of the delivery of a written notice to the registrar of the intention of the person concerned to lodge such an appeal.
- (d) The registrar must refer, in the prescribed form and manner, a notice of appeal submitted to it in terms of paragraph (a) or (b) to the appeal committee as soon as practicable after the receipt of such notice of appeal.

(2) The appeal committee -

- (a) must conduct an appeal in accordance with the provisions of this section;
- (b) may -
  - (i) refer any appeal which it has to conduct to the Council or professional conduct committee, as the case may be, for further consideration;
  - (ii) obtain from the Council or from the professional conduct committee, as the case may be, such particulars, documents or information as the appeal committee may consider necessary for the purposes of conducting the appeal concerned;
  - (iii) allow or dismiss the appeal concerned;
  - (iv) amend or confirm the finding or the penalty made or imposed by the Council or the professional conduct committee relating to the appeal concerned;
  - (v) make an order as to the payment of costs and how such costs must be determined; or
  - (vi) make such other order in terms of this Act as the appeal committee may consider appropriate,

in the prescribed form and manner.

(3) The chairperson of the appeal committee must determine the procedures relating to the conducting of an appeal, if no procedures relating to such conducting of an appeal has been prescribed.

(4) A finding or a decision made, or a penalty imposed, by the appeal committee, unless appealed against in terms of section 57, becomes of force and effect upon the date determined by such committee.

(5) If an appeal to the High Court is lodged in terms of section 57 against a decision of the appeal committee for the removal or suspension from practice of any registered person, such a penalty remains effective until the appeal has been finally determined by the High Court.

### **Appeals to High Court**

**57.** (1) Any person who is aggrieved by any decision of the appeal committee in terms of section 56 may appeal to the High Court against such decision.

(2) A notice of appeal relating to an appeal in terms of subsection (1) must be lodged, in the prescribed form and manner, with the registrar of the High Court within a period of 30 days after the date upon which the decision appealed against was made.

(3) The High Court may allow, on good cause shown, an appeal to be lodged after the expiry of the period of 30 days specified in subsection (2).

(4) The Minister may prescribe the procedures relating to the conducting of an appeal to the High Court in terms of this section, including the form of the notice of appeal concerned and the manner in which such notice must be lodged.

- (5) The High Court may -
  - (a) request the appeal committee in writing to furnish the High Court with such documents or particulars as it may require;

- (b) refer the matter to the appeal committee for further consideration;
- (c) allow or dismiss an appeal lodged in terms of this section;
- (d) make an order reversing or amending the decision of the appeal committee appealed against, if it is of the opinion that such committee has not acted in accordance with this Act;
- (e) make an order relating to the payment of costs; or
- (f) make such other order as it may consider appropriate.

### Delegation of powers

**58.** (1) The Council, in addition to any delegation made in terms of this Act, may -

- (a) delegate in writing to the registrar any power conferred upon it; or
- (b) assign in writing to the registrar the performance of any function or duty entrusted to it,

by or in terms of this Act.

(2) A delegation or assignment made in terms of subsection (1) may be made subject to such conditions or restrictions as the Council may determine and specify in such delegation or assignment.

(3) The Council may withdraw or amend in writing any delegation or assignment made by it in terms of subsection (1).

(4) Subsection (6) of section 20 applies, with the necessary changes, in respect of any power delegated and any duty or function assigned in terms of subsection (1) of this section.

### Regulations

**59.** (1) The Minister may make, on the recommendation of the Council, regulations relating to -

- (a) the allowances payable to members of the Council or of a committee thereof for services rendered for and on behalf of the Council or such a committee;
- (b) the form of the registers to be kept in terms of this Act and the manner in which they must be kept, which alterations may be effected to those registers, and the manner in which such alterations may be so effected;
- (c) any certificate that may be issued by the Council, including the form of such certificate;
- (d) (i) the registration by the Council of students studying or receiving education, tuition or training at an educational institution in Namibia or elsewhere in a profession mentioned in section 17, the requirements for such registration, the procedures relating to such registration, and the removal from the register by the Council of the names of students so registered in respect of the respective professions;

- (ii) the exemption of students from registration in accordance with regulations made in terms of subparagraph (i);
- (iii) the minimum requirements and duration of the curricula, courses or training required, and the standard or nature of education, tuition and training, and examinations pertaining thereto, which will enable a person to qualify for registration in terms of this Act;
- (iv) the minimum requirements of the curricula and the standard and nature and duration of education, tuition, training and examinations which must be maintained by every educational institution at which education or training relating to a profession to which this Act applies is provided, in order to comply with the requirements of the Council for the recognition of such qualifications for the purpose of registering the holder thereof in terms of this Act; and
- (v) the practical training, if any, to be completed by students, in addition to the education, tuition or training completed at an educational institution referred to in subparagraph (iii);
- (e)
  - (i) the nature and duration of practical training to be completed by an intern or other person who has obtained a qualification prescribed for registration in terms of this Act, before that person may be so registered, and the approval by the Council of persons or institutions with whom or at which such practical training may be completed, including the procedures relating to the application for such approval;
  - (ii) the circumstances under which any person referred to in subparagraph (i) may be exempted from the practical training referred to in that subparagraph, including the procedures relating to an application for such exemption;
- (f) the examinations to be conducted in terms of this Act, the appointment and remuneration of examiners for the purposes of such examinations, and any other matter incidental to such examinations;
- (g)
  - (i) the registration of interns, the recording of particulars regarding their training and any matter incidental to the registration and training of interns in the respective professions;
  - (ii) the hospitals or other facilities at which, or the persons with whom, the training referred to in subparagraph (i) may be completed, and the procedures relating to, and manner of approval of, such hospitals, facilities or persons at which or with whom such training may be completed;
- (h) the conditions subject whereto a registered person may practise his or her profession, including the conducting of a practice by a sole owner or by registered persons practising in partnership, and the requirements relating to the establishing and the conducting of such a practice;
- (i)
  - (i) the requirements to be complied with, including the practical experience to be completed, the nature and the duration of the training to be completed and the qualifications to be held by a person registered in any profession before that registered person may be registered as a specialist or in any professional category or additional professional category;

- (ii) the circumstances in which any applicant for registration as a specialist may be exempted from any of the requirements contemplated in subparagraph (i), and the procedures relating to such exemption, including the procedures relating to the application for such exemption; and
- (iii) the conditions pertaining to the practices of specialists or persons whose professional category or additional professional category have been registered, including conditions restricting the scope of practice of specialists or of those persons;
- (j) the conditions subject whereunto registered persons may conduct practices relating to their professions;
- (k) the ethical standards and code of conduct of registered persons;
- (l) the scope of practice relating to the professions to which this Act applies and of the registered persons practising such professions, including, but not limited to, the specifying of the acts which for the purposes of this Act must be regarded as acts especially pertaining to such professions and practices, and specifying the conditions restricting the practising of such professions;
- (m) the continuing professional development applicable to registered persons, including the attendance and presenting thereof by registered persons;
- (n) the procedures relating to the convening and the conducting of meetings, and to the election of the members of the Council, including the nomination of candidates for election;
- (o) the requirements for a quorum at any meeting of the Council;
- (p) the instituting and conducting of a professional conduct inquiry in terms of PART V, including -
  - (i) the procedures for the lodging of a complaint, charge or allegation against a registered person;
  - (ii) the form of a subpoena for the purpose of the attendance of a witness at the inquiry concerned, or for the production of any book, record, document or thing by that witness;
  - (iii) the penalties for the failure or refusal on the part of a person against whom a complaint, charge or allegation has been lodged to attend an inquiry relating to such complaint, charge or allegation, or for obstructing or interrupting any part of the proceedings at such inquiry;
  - (iv) the leading of evidence, the recording of the proceedings and the actions to be taken against any person who refuses to answer any question or who in any way delays, obstructs or disrupts the proceedings at an inquiry;
  - (v) the continuation of an inquiry after a plea has been entered, should one or more of the members of the professional conduct committee be unable to continue to serve on such committee, but not less than two of the original members of the committee must remain available for the purpose of continuing such inquiry;

- (vi) the institution of inquiry proceedings *de novo* in the event of the two members referred to in subparagraph (v) not being available; and
- (vii) any other matter relating to the institution and conduct of such inquiry;
- (q) the procedures relating to the lodging of an appeal to be heard by the appeal committee, including the form of such notice of appeal, and any other matter relating to the conduct of such an appeal;
- (r) the circumstances, in addition to the circumstances referred to in this Act, in which a name may be removed from, or restored to, a register;
- (s) the manner in which the Council may perform or execute any power or function in terms of this Act;
- (t) the conducting of investigations and inspections in terms of section 55, including -
  - (i) the powers of the persons authorised to conduct such investigations and inspections;
  - (ii) the powers of the Council relating to a report received from a person referred to in subparagraph (i), including the powers to close down the practice or premises referred to in subsection (1)(b) of that section for such period of time as the Council may determine; and
- (u) generally all other matters which are by this Act required or permitted to be prescribed or which the Minister considers necessary or expedient to be prescribed in order to achieve the purposes and objects of this Act.

(2) A member of the Council or of a committee referred to in paragraph (a) of subsection (1) who is also a staff member or otherwise in the full-time employment of the Public Service is not required to pay into the State Revenue Fund any allowances paid to him or her in terms of any regulations made in terms of that paragraph.

(3) If a scope of practice referred to in paragraph (l) of subsection (1) is extended to encroach upon the scope of practice of a health profession to which this Act does not apply, the regulations concerned may only be made after consultation with the Professional Council or other governing body established by law in respect of such health profession.

(4) Any regulation made in terms of this section may prescribe, unless otherwise provided in this Act, a fine not exceeding N\$4 000 or a period of imprisonment not exceeding 12 months, or both such fine and such imprisonment, as penalties for the contravention of such regulation or failure to comply therewith.

### General rules by Council

60. (1) The Council may make rules relating to -
- (a) the conduct of the business and the procedures at meetings of the Council, and the manner in which minutes of such meetings must be kept;
  - (b) the manner in which contracts must be entered into on behalf of the Council, the handling of funds and the bookkeeping of the Council;
  - (c) the duties and conditions of service of the registrar and other employees of the Council;

- (d) the forms to be completed and the documents to be submitted by any applicant in terms of this Act;
- (e) the returns and information to be furnished to the Council by any registered person;
- (f) what constitutes good professional practice for the professions to which this Act applies,

and any other matter that the Council considers expedient or necessary to make rules on, in order to achieve its objects and to perform its duties and functions in terms of this Act.

(2) The president must publish the rules made in terms of subsection (1) by notice in the *Gazette*.

(3) A rule made by the Council in terms of subsection (1) will not be of force and effect until published in the *Gazette* in terms of subsection (2).

### **Offences and penalties**

- 61.** Any person convicted of any offence in terms of or referred to in -
- (a) section 11(10)(b), 16(11), 29(4), 36(2), 39(8)(c), 49(3)(b), 53(2)(a) or 55(3), is liable to a fine not exceeding N\$6 000 or to imprisonment for a period of time not exceeding 18 months, or to both such fine and such imprisonment;
  - (b) section 17(4), 21(7), 24(8), 31(9), 33(1), 34(1) or (4), 35(1), 36(1), 44(3), 48(6), 51 or 62(11) is liable to a fine not exceeding N\$20 000 or to imprisonment for a period of time not exceeding five years, or to both such fine and such imprisonment.

### **Authorisation to practise professions in employment of the State**

**62.** (1) The Minister may prescribe, after consultation with the Council, the conditions and requirements with which a person must comply in order to qualify for the granting of a written authorisation in terms of this section to practise, in the employment of the State, a profession to which this Act applies.

- (2) Any person who -
- (a) is not a registered person;
  - (b) who complies with the conditions and requirements prescribed in terms of subsection (1); and
  - (c)
    - (i) who is entitled in terms of the laws of any other country or state prescribed by the Minister for such purpose, to practise the profession concerned in such country or state; or
    - (ii) if he or she is not entitled to practise the profession concerned as contemplated in subparagraph (i), that person has obtained at an educational institution situated outside Namibia a qualification or has received education, tuition or training in or relating to such profession which in the opinion of the Minister indicates a satisfactory standard of professional education which will enable that person to practise such profession,

may apply to the Minister, in such form and manner as the Minister may determine in writing, for the granting of a written authorisation to practise such profession in the

employment of the State.

- (3) An application in terms of subsection (2) must be accompanied by -
- (a) written proof -
    - (i) of the qualification or qualifications upon which the applicant relies to be granted the written authorisation concerned; and
    - (ii) that the applicant is entitled in terms of the laws of any other country or state prescribed by the Minister in terms of subsection (2)(c) for such purpose, to practise the profession concerned, alternatively complies with subsection (2)(c)(ii);
  - (b) documentary proof of his or her identity; and
  - (c) a letter of good standing, if the applicant is a person referred to in subsection (2)(c)(i), issued by the registering authority relating to the profession concerned in respect of each country in which the applicant has practised the profession concerned during the period of five years immediately preceding the date of such application,

to the satisfaction of the Minister.

- (4) Notwithstanding anything in this Act or in any other law, but subject to this section, the Minister may grant -
- (a) after consultation with the Council; and
  - (b) if the person who has applied in terms of subsection (2) for the granting of a written authorisation to practise a profession in the employment of the State, complies with the prescribed conditions or requirements, and with such additional conditions and requirements as the Minister in any individual case may determine,

to that person a written authorisation to practise such profession in the employment of the State.

(5) A person to whom a written authorisation had been granted in terms of subsection (4) may practise the profession in respect of which he or she has been so authorised only -

- (a) at such hospital, clinic or similar institution controlled, managed or subsidised by the State;
- (b) for the period of time; and
- (c) subject to such restrictions and conditions in respect of his or her professional activities, including that he or she may only practise his or her profession subject to such supervision,

as the Minister may determine and specify in such written authorisation.

(6) A person to whom a written authorisation had been granted in terms of subsection (4) is entitled to perform any act falling within the scope of practice relating to the profession which that person is so authorised to practise, subject to the restrictions and conditions imposed upon him or her as specified in such written authorisation.

(7) The Minister may amend or revoke, at any time and at his or her discretion, any written authorisation granted in terms of subsection (4), including the extension of the period of time for which such written authorisation had been granted or the imposition of additional conditions or restrictions.

(8) Before granting a written authorisation in terms of subsection (4), the Minister may require the applicant to sit for an examination before, or an evaluation by, the examiner or examiners appointed by the Minister in writing for the purpose of ascertaining whether that applicant -

- (a) possesses sufficient professional competence, knowledge and skills pertaining to the profession to which such application relates; and
- (b) is proficient in the official language of Namibia.

(9) The Minister must submit to the Council, as soon as practicable, a copy of the written authorisation granted in terms of subsection (4).

(10) PART V applies with the necessary changes to any person authorised in terms of this section to practise a profession to which this Act applies as if that person were registered in terms of this Act to practise such profession.

(11) Any person authorised in terms of this section to practise a profession to which this Act applies and who contravenes or fails to comply with any restriction or condition in respect of his or her professional activities as specified in such authorisation, is guilty of an offence and on conviction liable to the penalties specified in section 61(b).

#### **Establishment of Interim Council**

**63.** (1) The Minister may establish by notice in the *Gazette* an Interim Council.

(2) The Minister may appoint in writing as the members of the Interim Council -

- (a) not less than two medical practitioners;
- (b) not less than two dentists;
- (c) one legal practitioner having not less than ten years experience in the practising of law; and
- (d) not less than one person who is not a registered person.

(3) The Permanent Secretary is a member, subject to subsection (4), of the Interim Council *ex officio*.

(4) If the Permanent Secretary is not a medical practitioner, then -

- (a) he or she will not be a member of the Interim Council; and
- (b) the Minister must appoint in writing as a member of the Interim Council in the place of the Permanent Secretary a medical practitioner who is also a staff member and whom he or she regards as a suitable person to serve on the Interim Council as such a member.

(5) The registrar will act as the secretary of the Interim Council.

(6) The Minister may appoint in accordance with subsection (2), but subject to the other provisions of this section, any person to replace any member of the Interim Council -

- (a) who has vacated office in terms of section 9(1); or
- (b) is removed from office in terms of section 9(2).

(7) A person appointed in terms of subsection (2) as a member of the Interim Council, who is not a staff member or otherwise in the full-time employment of the Public Service, may be paid such remuneration in respect of his or her membership as the Minister may determine with the concurrence of the Minister of Finance.

(8) The Interim Council established in terms of subsection (1) -

- (a) may exercise the powers and perform the duties and functions of the Council conferred or imposed upon the Council by or in terms of this Act; and
- (b) acts for and on behalf of the Council and in its name, place and stead,

as if it were the Council until such time as the Council has been constituted in terms of section 7.

(9) For the purposes of this section, any reference in this Act to the Council, unless the context otherwise indicates, must be regarded as a reference to the Interim Council.

(10) Any -

- (a) power exercised or duty or function performed by the Interim Council by virtue of subsection (8);
- (b) person appointed or employed by the Interim Council, or regarded to have been so appointed or employed,

will be regarded as having been so exercised or performed, or having been so appointed or employed, by the Council.

(11) Upon the date of the publication in the *Gazette* of a notice in terms of subsection (8) of section 7, the Interim Council established in terms of subsection (1) of this section will be regarded to have been disestablished.

(12) Any application for registration submitted to the Interim Council in terms of this Act, or regarded to have been submitted to the Interim Council in terms of section 64(5), and not finalised upon the date referred to in subsection (11), must be finalised by the Council in accordance with the provisions of this Act.

(13) Any disciplinary proceedings commenced with by the Interim Council before the date referred to in subsection (11), or pending before the Interim Council or any committee upon such date, must be finalised by the Council in accordance with PART V.

(14) No provision of this section implies that any member of the Interim Council continues to be a member of the Council.

#### **Transitional provisions**

**64.** (1) Any person -

- (a) who was registered to practise any of the professions mentioned in section 17(1); or
- (b) in respect of whom an additional qualification, professional category, additional professional category or speciality was registered,

in terms of any law repealed by section 65, immediately before the commencement date, is regarded, or the additional qualification, professional category, additional professional category or speciality referred to in paragraph (b), is regarded, as the case may be, to

have been so registered in terms of this Act, subject to any restriction, condition or penalty relating to the practising of his or her profession imposed upon him or her in terms of any such repealed law.

(2) A person whose name immediately before the commencement date appears in a register referred to in section 23(1), is for all purposes from the commencement date regarded to be registered in terms of, and subject to, the provisions of this Act.

(3) For the purposes of this Act, any period of practical training completed before the commencement date in terms of any of the laws repealed by section 65 is regarded, from that date, to have been a period of practical training completed in terms of this Act.

(4) (a) Any disciplinary proceedings or criminal proceedings instituted in terms of or pursuant to any law repealed by section 65 and not finalised immediately before the commencement date may be continued or enforced as if the law concerned had not been repealed.

(b) Any finding made or a penalty imposed in any disciplinary proceedings referred to in paragraph (a) is regarded for all purposes to be a finding made or a penalty imposed in terms of this Act.

(5) Any application for registration submitted to the former Medical Board, the former Medical Assistants and Clinical Officers Board or the former Dental Board and not finalised before the commencement date, must from that date be finalised by the Council in accordance with the corresponding provisions of this Act.

(6) Any person employed by the former Medical Board, the former Medical Assistants and Clinical Officers Board and the former Dental Board immediately before the commencement date, is regarded from that date to be so employed by the Council or by the Interim Council, as the case may be, in terms of section 14 on the same conditions of service as were applicable to that person on that date.

(7) Notwithstanding the repeal of the Council for Health and Social Services Professions Act, 1993 (Act No. 29 of 1993) by any other law, the staff member designated as registrar in terms of section 13 of that Act immediately before the date of such repeal, continues from that date to be the registrar of the Council or of the Interim Council, as the case may be, as if that Act had not been so repealed, until the appointment of the registrar in terms of section 14(1) of this Act.

### Repeal of laws and savings

**65.** (1) Subject to subsections (2), the laws specified in the Schedule are repealed to the extent set out in the third column thereof.

(2) Unless otherwise provided in this Act, any notice, regulation, rule, authorisation or order issued, made or granted, or any removal from the register or appointment made, or any other act done, or regarded to have been so issued, made, granted or done in terms of a provision of any of the laws repealed by subsection (1), must be regarded as having been issued, made, granted or done in terms of the corresponding provision of this Act, and continues to have force and effect -

(a) unless it is inconsistent with this Act; or

(b) until such time as it is set aside or repealed.

(3) For the purposes of subsection (2), the rules referred to in that subsection relating to improper conduct or misconduct must be construed as a reference to rules relating to unprofessional conduct made in terms of this Act.

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(4) Any reference in any law to any of the former Boards referred to in section 64(5) must be regarded, unless the context otherwise indicates, to be a reference to the Council.

(5) Subsections (2) and (4) do not imply that any member of a former Board continues to be a member of the Council after the commencement date.

**Short title and commencement**

**66.** This Act is called the Medical and Dental Act, 2004, and will come into operation on a date to be determined by the Minister by notice in the *Gazette*.

**SCHEDULE**  
**LAWS REPEALED**  
*(Section 65)*

Number and year of law	Short title of law	Extent of repeal
Act No. 20 of 1993	The Allied Health Services Professions Act, 1993	Insofar as it relates to any of the professions specified in section 17(1)
Act No. 21 of 1993	The Medical and Dental Professions Act, 1993	The whole
Act No. 16 of 1994	The Medical and Dental Professions Amendment Act, 1994	The whole
Act No. 9 of 1998	The Medical and Dental Professions Amendment Act, 1998	The whole
Act No. 21 of 2003	The General Law (Health Professions) Amendment Act, 2003	Section 2