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REPUBLIC OF SOUTH AFRICA

HEALTH PROFESSIONS AMENDMENT BILL

(As amended by the Portfolio Committee on Health (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF HEALTH)

[B 10B—2006]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Health Professions Act, 1974, so as to amend and insert certain definitions; to provide for the requirements for removal of members from office; to provide for the absence of the president from council meetings; to provide for the functions of registrar and staff; to provide for the investigation of members whose names have been removed from the register; to provide for the publication of the register by electronic means; to provide for the particulars to be contained in the certificate of status of registration to be issued by the registrar; to provide for qualifications prescribed for registration and for registration of persons holding qualifications not prescribed for registration; to provide for compliance with conditions as a prerequisite for continuing professional development; to provide for registration of professional categories and additional professional categories; to provide for inquiry by professional boards into charges of unprofessional conduct; to provide for the Minister to make regulations relating to unprofessional conduct; to provide for the handling of cases relating to the death of a person undergoing a procedure of a therapeutic, diagnostic or palliative nature; to provide for regulations relating to professional boards, educational institutions and facilities; and to provide for the rules relating to fees payable; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 56 of 1974, as amended by section 1 of Act 38 of 1982, section 24 of Act 94 of 1991 and section 1 of Act 89 of 1997

1. Section 1 of the Health Professions Act, 1974 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of "Council" of the following definition:

"**'accredit'** means recognition or certification by the council or the relevant professional board in terms of this Act or any other Act as meeting the prescribed education and training requirements;

'community representative' means a person appointed by the Minister as community representative and who is not registered in terms of this Act,

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(b) by the insertion after the definition of "Director-General" of the following definitions:

"**'fruitless and wasteful expenditure'** has the same meaning as assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

'health profession' means any profession for which a professional board has been established in terms of section 15 and includes any category or group of persons provided for by such a board;";

(c) by the substitution for the definition of "impaired" of the following definition:

"**'impairment'** refers to a condition which renders a practitioner incapable of practising a profession with reasonable skill and safety;";

(d) by the deletion of the definition of "Interim National Medical and Dental Council of South Africa";

(e) by the substitution for the definition of "intern" of the following definition:

"**'intern'** means a person registered as such under this Act in a profession which provides for internship training;";

(f) by the insertion after the definition of "intern-psychologist" of the following definition:

"**'irregular expenditure'** means expenditure other than unauthorized expenditure—

(a) incurred in contravention of or that is not in accordance with a requirement of any applicable legislation; or

(b) that falls outside of the scope of the functions of the council or a professional board contemplated in this Act;";

(g) by the substitution for the definition of "member" of the following definition:

"**'member'** means a member of the council or of a professional board;";

(h) by the insertion after the definition of "professional board" of the following definition:

"**'professional category'** means the division or subdivision of a field in which any registered health profession may be practised;";

(i) by the substitution for the definition of "register" of the following definition:

"**'register'**, when used as a noun, means a register kept in accordance with the provisions of this Act, and when used in relation to any **[class]** registration category or a member of any **[class]** such category of persons in respect of which a register is kept, means the register kept for that **[class]** category;"; and

(j) by the substitution for the definition of "speciality" of the following definition:

"**'speciality'**, in relation to a **[medical practitioner, dentist or psychologist, includes]** person registered in respect of any profession under this Act, means any particular discipline, division or subdivision of a profession which is recognized under this Act as a speciality in which such **[medical practitioner, dentist or psychologist]** person specializes or intends to specialize;".

Substitution of heading to Chapter 1 of Act 56 of 1974, as substituted by section 2 of Act 89 of 1997

2. The following heading is hereby substituted for the heading to Chapter 1 of the principal Act:

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

Amendment of section 3 of Act 56 of 1974, as substituted by section 4 of Act 89 of 1997

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

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

"**Objects and functions of council**";

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(*b*) by the substitution for the words preceding paragraph (*a*) of the following words:

"The objects and functions of the council are—";

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

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

(*d*) by the substitution for paragraph (*c*) of the following paragraph:

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

(*e*) by the substitution for paragraph (*f*) of the following paragraph:

"(*f*) subject to **[the provisions of section 15A of this Act, the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), and the Pharmacy Act, 1974 (Act No. 53 of 1974)]** legislation regulating health care providers and consistency with national policy determined by the Minister, to control and to exercise authority in respect of all matters affecting the education and training of persons in, and the manner of the exercise of the practices pursued in connection with, the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in human kind;";

(*f*) by the substitution for paragraph (*g*) of the following paragraph:

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

(*g*) by the deletion of the word "and" at the end of paragraph (*h*) and the addition after paragraph (*i*) of the following paragraphs:

"(*j*) to serve and protect the public in matters involving the rendering of health services by persons practising a health profession;

(*k*) to exercise its powers and discharge its responsibilities in the best interest of the public and in accordance with national health policy determined by the Minister;

(*l*) to be transparent and accountable to the public in achieving its objectives and when performing its functions and exercising its powers;

(*m*) to uphold and maintain professional and ethical standards within the health professions;

(*n*) to ensure the investigation of complaints concerning persons registered in terms of this Act and to ensure that appropriate disciplinary action is taken against such persons in accordance with this Act in order to protect the interest of the public;

(*o*) to ensure that persons registered in terms of this Act behave towards users of health services in a manner that respects their constitutional rights to human dignity, bodily and psychological integrity and equality, and that disciplinary action is taken against persons who fail to act accordingly;

(*p*) to submit to the Minister—

(i) a five-year strategic plan within six months of the council coming into office which includes details as to how the council plans to fulfil its objectives under this Act;

(ii) every six months a report on the status of health professions and on matters of public importance that have come to the attention of the council in the course of the performance of its functions under this Act; and

(iii) an annual report within six months of the end of the financial year; and

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(q) to ensure that an annual budget for the council and the professional boards is drawn up and that the council and the professional boards operate within the parameters of such budget.".

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

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

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

"*(c)* after consultation with the relevant professional board, consider any matter affecting the health professions registrable **[with the council generally]** under this Act and, consistent with national health policy determined by the Minister, make representations or take such action in connection therewith as the council deems **[advisable]** necessary;";

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

"*(d)* consistent with national health policy determined by the Minister, make rules on all matters which the council considers necessary or expedient in order that the objects of this Act may be achieved;";

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

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

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

"*(f)* perform such other functions as may be prescribed, and **[generally,]** do all such things as the council deems necessary or expedient to achieve the objects of this Act within the framework of national health policy determined by the Minister.".

Amendment of section 5 of Act 56 of 1974, as substituted by section 6 of Act 89 of 1997

5. Section 5 of the principal Act is hereby amended—

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

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

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

"*(d)* nine **[persons]** community representatives not registered in terms of this Act, appointed by the Minister;";

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

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

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

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

(e) by the deletion in subsection (1) of paragraphs *(g)* and *(h)*; and

(f) by the addition of the following subsection:

"(7) A person may not be appointed as a member of the Council if he or she is, at the time of his or her appointment, or was, during the preceding 12 months—

(a) a member of a municipal council, a provincial legislature or Parliament; or

(b) a provincial or national office bearer or employee of any party, organization or body of a political nature.".

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Amendment of section 6 of Act 56 of 1974, as substituted by section 7 of Act 89 of 1997

6. Section 6 of the principal Act is hereby amended –

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

"*(b)* he or she has been absent without leave of the president from more than two consecutive ordinary meetings of the council **[without the council's leave]** or of a committee referred to in section 10;";

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

"*(c)* he or she has been found guilty of unprofessional conduct under this Act;";

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

"*(f)* he or she becomes **[a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973)]** mentally ill to such a degree that it is necessary that he or she be detained, supervised or controlled;";

(d) by the substitution in subsection (1) after paragraph *(h)* for paragraph *(g)* of the following paragraph:

"*(g)* he or she is convicted of an offence in respect whereof he or she is sentenced to imprisonment without the option of a fine; **[or]**";

(e) by the addition in subsection (1) after paragraph *(h)* of the following paragraphs:

"*(i)* he or she deliberately acts in a manner that will prejudice the interests of the council, the health professions or the public or violates the Charter of the council;

(j) the Minister dissolves the council in terms of this Act;

(k) he or she is an office bearer of an organisation that has a conflict of interest with the council, unless such member elects to immediately vacate his or her office in that organization; or

(l) he or she becomes—

(i) a member of a municipal council, a provincial legislature or Parliament; or

(ii) a provincial or national office bearer or employee of any party, organization or body of a political nature."; and

(g) by the addition of the following subsections:

"(3) *(a)* The Minister may dissolve the council if the council fails to comply with any of the provisions of this Act.

(b) All the functions of the council are vested in the Minister until a new council is appointed.

(4) *(a)* The Minister may in writing request copies of the records, including minutes of meetings and financial statements, of the council in order to ascertain the extent of the council's compliance with the provisions of this Act and the Charter.

(b) The registrar must furnish copies of all such records within 15 days of the date of the Minister's request.

(5) If the Minister reasonably believes that the council is failing to comply with the provisions of this Act or the Charter, he or she may appoint a person or persons to investigate the affairs of the council and to prepare a report upon such investigation.

(6) The Minister may terminate membership of a member of the Council where the member—

(a) fails to perform the duties of a member in terms of this Act or the Charter;

(b) obstructs or impedes the council or other members in the fulfilment of their functions in terms of this Act or the Charter;

(c) fails to declare a conflict of interest between his or her affairs and those of the council;

(d) acts in a manner that is likely to bring the council or health profession into disrepute;

(e) misuses or misappropriates council funds or resources; or

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(f) approves or engages in unauthorized or irregular expenditure or fruitless and wasteful expenditure;".

Amendment of section 7 of Act 56 of 1974

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

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

"(3) *(a)* The vice-president may, if the president is absent or for any reason unable to act as president, perform all the functions and exercise all the powers of the president.

(b) If both the president and vice-president are temporarily absent for any reason, the president or vice-president may appoint another member of the executive committee of the council to act in their place."; and

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

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

Amendment of section 8 of Act 56 of 1974

8. Section 8 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) *(a)* The president may at any time convene a special meeting of the council, to be held on such a date and at such place as he or she may determine and he or she shall, upon a written request by the Minister or a written request signed by at least **[six]** one third of the total number of members, convene a special meeting to be held, within thirty days after the date of receipt of the request, on such a date and at such a place as he or she may determine**[: Provided that such written request shall state clearly the purpose for which the meeting is to be convened]**.

(b) The request must clearly state the purpose of the meeting.".

Amendment of section 10 of Act 56 of 1974, as substituted by section 8 of Act 89 of 1997

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

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

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

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

"(2) The council shall **[from time to time, as the need arises,]** establish *ad hoc* **[disciplinary]** appeal committees, each consisting of, as chairperson, a **[retired judge or retired senior magistrate, or an attorney or advocate]** person with knowledge of the law with at least 10 years' relevant experience, not more than two registered persons drawn from the profession of the registered person in respect of whose conduct a **[disciplinary]** professional conduct committee of a professional board had held an inquiry, and a member of the council appointed to represent the community**[, which member shall not be a registered person]**.";

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

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

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

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

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

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

Amendment of section 12 of Act 56 of 1974, as amended by section 9 of Act 18 of 1995 and section 10 of Act 89 of 1997

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

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

"(1) The **[council shall]** Minister must, after consultation with the council, appoint a registrar and the council may delegate to the registrar the power to appoint such other persons as **[it]** the registrar may deem necessary for carrying out **[its]** the functions specified under this Act, and the council may delegate to the registrar the power to dismiss **[any of]** such other persons."; and

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

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

Amendment of section 13 of Act 56 of 1974, as substituted by section 11 of Act 89 of 1997

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

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

"**Corporate finance and governance**";

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

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

(*c*) by the addition of the following subsections:

"(3) The registrar must—

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

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

(*c*) ensure that the council has and maintains—

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

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

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

(*d*) ensure the effective, efficient, economical and transparent use of the resources of the council;

(*e*) take effective and appropriate steps to—

(i) collect all money due to the council;

(ii) prevent unauthorized, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and

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(iii) manage available working capital efficiently and economically;

(f) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the registrar's responsibilities are considered and, when necessary, bring those considerations to the attention of the council;

(g) be responsible for the management, including the safeguarding and maintenance, of the assets and for the management of the liabilities of the council;

(h) settle all contractual obligations and pay all money owing by the council within 30 days of due date or within a period agreed by the relevant creditor and the council;

(i) ensure that expenditure of the council is in accordance with the decisions of the council and that effective and appropriate steps are taken to prevent unauthorized expenditure;

(j) keep full and proper records of the financial affairs of the council in accordance with any prescribed norms and standards;

(k) prepare financial statements for each financial year in accordance with recognized accounting practice;

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

(m) submit within six months after the end of a financial year to the council for approval, and thereafter to the Minister within one month of such approval—

(i) an annual report on the activities of the council during that financial year;

(ii) the financial statements for that financial year after those statements have been audited; and

(iii) an independent auditor's report on those statements.

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

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

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

Amendment of section 15 of Act 56 of 1974, as substituted by section 12 of Act 89 of 1997

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

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

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

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

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

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

"*(a)* the **[majority]** appointment of the members of a professional board **[to be elected]** by the Minister on the basis of nominations made by the members of the health profession or professions involved;";

(d) by the substitution in subsection (5) for paragraph *(b)* of the following paragraph:

"*(b)* persons representing the community to comprise not less than 20 per cent of the membership of a professional board, with a

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minimum of one such representative for every **[profession]** professional board and such representatives must not be persons registered with that board;";

(e) by the insertion in subsection (5) after paragraph *(f)* of the following paragraph:

"*(fA)* the establishment of professional conduct committees, each consisting of so many persons as may be prescribed but including at least three board members or members of the relevant profession and at least two community representatives one of whom shall be the chairperson of such committee;";

(f) by the substitution in subsection (5) for paragraph *(g)* of the following paragraph:

"*(g)* the procedure to be followed for the nomination and appointment **[and election]**, as the case may be, of the members of a professional board;";

(g) by the substitution in subsection (5) for paragraph *(h)* of the following paragraph:

"*(h)* the election of a chairperson and vice-chairperson by the members of a professional board and the powers and functions of such a chairperson and vice-chairperson; **[and]**;"

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

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

(i) by the addition to subsection (5) of the following paragraph:

"*(j)* the vacation of office by a member of and the filling of vacancies in a professional board.".

Amendment of section 15A of Act 56 of 1974, as inserted by section 13 of Act 89 of 1997

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

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

"*(c)* subject to **[the provisions of section 33 of this Act, the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), and the Pharmacy Act, 1974 (Act No. 53 of 1974)]** legislation regulating health care providers and consistency with national policy determined by the Minister, to control and to exercise authority in respect of all matters affecting the education and training of persons in, and the manner of the exercise of the practices pursued in connection with, any health profession falling within the ambit of the professional board;";

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

"*(d)* to promote liaison in the field of the education and training contemplated in paragraph *(c)*, both in the Republic and elsewhere, and to promote the standards of such education and training in the Republic;";

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

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

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

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

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

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

(f) by the substitution for paragraph *(h)* of the following paragraph:

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

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

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

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

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

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

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

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

"*(c)* subject to the prescribed accreditation process and prescribed conditions, **[approve training schools]** including the submission of reports by accreditation teams or evaluators appointed by the professional board, accredit teaching institutions and training facilities;";

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

"*(d)* consider any matter affecting any health profession falling within the ambit of the professional board and make representations or take such action in connection therewith as the professional board deems advisable;";

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

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

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

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

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Substitution of heading to Chapter II of Act 56 of 1974

15. The following heading is hereby substituted for the heading to Chapter II of the principal Act:

"EDUCATION, TRAINING AND REGISTRATION".

Amendment of section 16 of Act 56 of 1974, as substituted by section 7 of Act 8 of 1992 and amended by section 53 of Act 88 of 1996 and section 14 of Act 89 of 1997

16. Section 16 of the principal Act is hereby amended—

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

"**Control over education and training**";

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

"(1) Notwithstanding anything to the contrary in any other law **[contained]** but subject to the provisions of the Nursing Act, **[1978 (Act No. 50 of 1978)]** 2005 (Act No. 33 of 2005), no person **[or]**, educational institution**[, exc ding a university or technikon]** or training facility, may offer or provide any education or training having as its object to qualify any person for the practising of any health profession to which the provisions of this Act apply or for the **[carrying on]** perform nce of any other activity directed to the mental or physical examining of any person or to the diagnosis, treatment or prevention of any mental or physical defect, illness or deficiency in **[man]** humankind, unless such education and training has been **[approved]** accredit d by the professional board concerned as being appropriate ed ic tion a d training for such purposes.";

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

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

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

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

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

"(5) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding **[six]** 12 months or both **[such]** a fine and such imprisonment."; and

(f) by the addition of the following subsection:

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

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

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

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

"(1) No person shall be entitled to practise within the Republic—

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

(b) except in so far as it is authorized by **[the provisions of the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths**

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

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

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

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

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

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

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

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

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"The **[relevant]** professional board **[concerned]** or a committee to whom the function has been delegated may direct the registrar to, or the registrar acting on the established policies of the professional board may, remove from the register the name of any person ";

(b) by the deletion of paragraph *(a)* of subsection (1);

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

"*(c)* who has requested that his or her name be removed from the register, in which case such person may be required to lodge with the registrar an affidavit to the effect that no **[disciplinary]** unprofessional conduct proceedings are pending against him or her, or criminal proceedings are being or are likely to be taken against him or her;";

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

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

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

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

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

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

(g) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* such person shall cease to practise the health profession in respect of which he or she was registered or to perform any act which he or she, in his or her capacity as a registered person, was entitled to perform,";

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and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), the Pharmacy Act, 1974 (Act No. 53 of 1974),] legislation regulating health care providers and sections 33, 34 and 39 of this Act, **[for gain]** any **[other]** health profession the practice of which mainly consists of—

(i) the physical or mental examination of persons;

(ii) the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in **[man]** humankind;

(iii) the giving of advice in regard to such defects, illnesses or deficiencies; or

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

unless he or she is registered in terms of this Act.";

(b) by the insertion of the following subsection:

"(1A) The provisions of subsection (1)*(b)* must not be construed as permitting the performance by a person registered under any of the laws contemplated in that subsection of any act which is not performed in the ordinary course of the practising of his or her profession.";

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

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

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

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

(e) by the addition of the following subsection:

"(5) Any person who is not registered in terms of this Act and practises a health profession in contravention of this section or who pretends to hold such registration is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.".

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

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

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

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

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

"(4) If it appears to the judge concerned from the documents submitted to him or her in terms of **[section 18(3) of the Mental Health Act, 1973 (Act No. 18 of 1973), it appears to the judge concerned]** the Mental Health Care Act, 2002 (Act No. 17 of 2002), or it is brought to his or her notice in any other manner, that the person to whom the documents relate is a person registered under this Act, he or she shall, if the said person is declared a mentally ill person as contemplated **[in section 19(1)*(b)* of]** by the said **[Mental Health Act]** Mental Health Care Act, direct that a copy of the order declaring such a person a mentally ill person be transmitted to the registrar and the registrar shall, on receipt of the said copy, remove the name of the person concerned from the register.";

(i) by the substitution in subsection (5) for paragraph *(c)* of the following paragraph:

"*(c)* in the case where his or her name has been removed from the register in terms of subsection (4), submitting proof to the satisfaction of the **[council]** relevant professional board of his or her discharge in terms of the provisions of the **[Mental Health Act, 1973]** Mental Health Care Act, 2002, from the institution at which he or she had been detained, but subject to any conditions of registration or practice which may be imposed on him or her in terms of section 51;";

(j) by the deletion in subsection (5) of paragraph *(c*A*)*; and

(k) by the substitution in subsection (5) for paragraph *(d)* of the following paragraph:

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

Insertion of section 19A in Act 56 of 1974

20. The following section is hereby inserted in the principal Act after section 19:

"Suspension of health professionals and revocation of such suspension

19A. (1) A relevant professional board or a committee of a professional board to whom the function has been delegated may authorize the registrar to suspend the registration of any person—

(a) who has failed to notify the registrar of his or her present address, within a period of three months from the date of an inquiry sent by the registrar by certified mail, which is returned unclaimed, to the address appearing in the register in respect of such person;

(b) who has failed to pay his or her prescribed annual fee on a date when it became due in terms of section 61A;

(c) who has been found guilty of unprofessional conduct and on whom a penalty referred to in section 42(1)*(b)* of the Act is imposed;

(d) who has failed to comply with the requirements in respect of continuing professional development as prescribed under section 26; or

(e) who on the basis of a complaint lodged with the Council or information available at the disposal of Council is posing an imminent threat or danger to the public in terms of his or her professional practice.

(2) The registrar must issue the notice of suspension and forward it to the person contemplated in subsection (1) by way of certified mail, fax or electronic transmission to the address appearing in respect of him or her in the register.

(3) As from the date of issue of the notice referred to in subsection (2) and its receipt by the person concerned—

(a) any registration certificate issued in terms of this Act to the person concerned must be deemed to be suspended; and

(b) such person must immediately cease to practise the health profession in respect of which he or she is registered or to perform any act which

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he or she in his or her capacity as a registered person is entitled to perform, until such time as the suspension of his or her registration is lifted.

(4) The suspension of any person in terms of subsection (1) must be revoked by the registrar upon—

(a) the payment of any annual fee which was not paid and payment of a restoration fee and other penalties as may be prescribed;

(b) the expiry of the suspension period;

(c) such person complying with requirements in respect of continuing professional development as prescribed under section 26; and

(d) such person complying with such other requirements as the relevant professional board may determine.".

Substitution of section 21 of Act 56 of 1974

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

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

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

22. Section 22 of the principal Act is hereby amended by the substitution in subsection (1) for the words proceeding paragraph *(a)* of the following words:

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

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

23. Section 23 of the principal Act is hereby amended—

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

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

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

"(2) The registrar may, upon payment of **[the prescribed]** a fee, issue to any registered person, after submission of an affidavit that no criminal or unprofessional conduct proceedings are pending against him or her, a certificate of status containing particulars relating to **[such person's registration as well as a statement to the effect that the said person is not disqualified from practising his profession and that no disciplinary steps are pending against him in terms of this Act]**—

(a) such person's registration under this Act;

(b) whether or not the person is disqualified in part or totally from practising his or her profession;

(c) whether or not any steps pertaining to unprofessional conduct are pending against the person concerned at the time of the issuing of the certificate;

(d) whether or not the person concerned was, in the past, found guilty of any unprofessional conduct, and if so—

(i) the date of such finding;

(ii) the nature of such unprofessional conduct; and

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(iii) the penalty imposed; and

(e) whether or not the person concerned has been found to be impaired and, if so—

(i) the date of such finding; and

(ii) the nature of the conditions of registration and practice that may be in place at the time of the issuing of the certificate.".

Substitution of section 24 of Act 56 of 1974, as substituted by section 21 of Act 89 of 1997

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

"Qualifications prescribed for registration

24. The Minister may, on the recommendation of the council, prescribe the qualifications obtained by virtue of examinations conducted by **[a]** an accredited university **[or technikon]** or other educational institution or examining authority in the Republic, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration in a registration category in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be prescribed.".

Substitution of section 24A of Act 56 of 1974, as inserted by section 22 of Act 89 of 1997

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

"Community service

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

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

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

[(ii)]*(b)* the conditions of employment pertaining to persons who perform such service; and

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

Substitution of section 25 of Act 56 of 1974, as substituted by section 23 of Act 89 of 1997

26. The following section is hereby substituted for section 25 of the principal Act:

"Registration of persons [qualified outside Republic] who hold qualifications not prescribed for registration

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

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any regulations and national health policy and international protocals which the Minister may make or be subject to, register such person.

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

(3) The council may from time to time determine—

(a) the nature of the evaluation which shall be conducted the purpose of subsection (2), the requirements for admission and any other matter relating to such evaluation, including the number of attempts;

(b) the fees which shall be paid by persons who present themselves for such evaluation by persons who present themselves for such evaluation**[, the requirements for admission to the evaluation, and any other matter relating to such evaluation, including the number of attempts]**.

(3A) *(a)* Despite section 24A, no person with a foreign qualification may be registered in the category independent practice unless he or she is a South African citizen or has attained permanent residence status in terms of the Immigration Act 2002, (Act No. 13 of 2002).

(b) The Council may exempt any person who has applied for exemption and is in the Republic for a temporary and particular purpose.

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

Substitution of section 26 of Act 56 of 1974, as substituted by section 24 of Act 89 of 1997

27. The following section is hereby substituted for section 26 of the principal Act:

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

26. The council, after consultation with a professional board, may **[from time to time]** make rules which **[prescribe]**—

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

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

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

(d) relate to offences in respect of, and penalties for, non-compliance with this section.".

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Substitution of section 29 of Act 56 of 1974, as substituted by section 26 of Act 89 of 1997

28. The following section is hereby substituted for section 29 of the principal Act:

"**Registration of certain persons [so as to enable them to give educational demonstrations] for education and training purposes**

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

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

Substitution of section 30 of Act 56 of 1974, as substituted by section 27 of Act 89 of 1997

29. The following section is hereby substituted for section 30 of the principal Act:

"**Registration of certain persons so as to enable them to engage in post-graduate studies**

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

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

Amendment of section 31 of Act 56 of 1974, as amended by sections 46 and 47 of Act 97 of 1986 and section 28 of Act 89 of 1997

30. Section 31 of the principal Act is hereby amended—

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

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

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

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

(a) the minimum age and **[standard of general]** evidence of compliance with set standards of education and training required of students;

(b) evidence of complaince with the set course of study, training and examinations or assessment methodologies required of a student before such qualification is granted;

(c) the results of any examinations conducted by it,

and **[such]** any other particulars relating to **[any of the matters specified in paragraph *(a)*, *(b)* or *(c)*]** the education and training offered by such institution as the **[council]** professional board may from time to time

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require for the accreditation of the qualification or qualifications offered by that institution for the purpose of registration under this Act.";

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

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

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

"(3) The professional board may, when it has been made to appear to it upon representations made by the affected institution that satisfactory provision has been made for complying with the requirements of this Act by the said institution, reinstate, by notice in the *Gazette*, the accreditation of that institution."; and

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

"(5) The **[council]** relevant professional board may appoint a person to be present whenever tests or examinations are being conducted by any university**[, technikon]** or other educational institution in respect of the academic progress made by students at such university**[, technikon]** or other educational institution and to report to the **[council upon such tests]** relevant professional board thereon.".

Amendment of section 33 of Act 56 of 1974, as amended by section 3 of Act 43 of 1980 and section 30 of Act 89 of 1997

31. Section 33 of the principal Act is hereby amended—

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

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

(b) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

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

(c) by the substitution in subsection (2)*(a)* for subparagraph (iii) of the following subparagraph:

"(iii) submits a certificate **[by such]** to the professional board stating that he or she is of good character; and"; and

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(d) by the substitution in subsection (2) for paragraph *(c)* of the following paragraph:

"*(c)* submits to the professional board an application in the prescribed form containing proof to the satisfaction of the professional board of the facts referred to in subparagraphs (i) and (ii) of paragraph *(a)* **[(i) and (ii)]**, within six months (or such longer period as the professional board may allow) after the date on which **[such professional board was established]** the scope of such profession was defined by the Minister in regulations contemplated in subsection (1).".

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

32. Section 34 of the principal Act is hereby amended—

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

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

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

"(1) Subject to the provisions of sections 33(2)*(c)* and 39, no person shall practise **[for gain]** within the Republic any **[other]** health profession the **scope of** which has been defined by the Minister in terms of section 33(**1**), **unless** he or she is registered in terms of this Act in respect of such **profession**.".

Amendment of section 35 of Act 56 of 1974, as amended by section 8 of Act 52 of 1978 and section 32 of Act 89 of 1997

33. Section 35 of the principal Act is hereby amended—

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

"**Registration and use of additional qualifications, [and] registration of [specialities] specialists, persons in subspecialities, professional categories and additional professional categories**";

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

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

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

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

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

"(1B) The Minister may on the recommendation of the council, and in consultation with the relevant professional board, from time to time make regulations which prescribe the examination which shall be

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conducted for the purposes of subsection (1A), and the fees which shall be paid by persons who sit for such examination.";

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

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

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

"(3) No registered person shall take, use or publish in any way whatsoever any name, title, description or symbol indicating or calculated to lead persons to infer that he or she holds any professional qualification which is not shown in the register **[in connection with]** as registered against his or her name, nor shall any registered person practise as a specialist or hold himself or herself out to be a specialist unless his or her speciality has been registered as prescribed.";

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

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

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

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

(i) applying on the prescribed form for such restoration;

(ii) paying the fee prescribed in respect of such restoration; and

(iii) complying with such other requirements, if any, as the **[council]** relevant professional board may determine.".

Repeal of section 36 of Act 56 of 1974

34. Section 36 of the principal Act is hereby repealed.

Repeal of section 37 of Act 56 of 1974

35. Section 37 of the principal Act is hereby repealed.

Repeal of section 38 of Act 56 of 1974

36. Section 38 of the principal Act is hereby repealed.

Amendment of section 39 of Act 56 of 1974, as substituted by section 5 of Act No 43 of 1980 and amended by section 36 of Act 89 of 1997

37. Section 39 of the principal Act is hereby amended—

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

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

(b) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"No person shall perform **[for gain]** any act deemed **[under section 33]** to be an act pertaining to any **[other]** health profession as may be prescribed under this Act unless he or she—";

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

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

(ii) practises **[another]** a health profession in respect of which the registrar in terms of this Act keeps a register and such act is deemed to be an act which also pertains to such profession;";

(d) by the deletion in subsection (1) of paragraphs *(c)* and *(d)*; and

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

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

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

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

"Penalty for professing to be a registered person or [the] holder of certain qualifications

40. Any person who is not registered in respect of any **[other]** health profession, but—

(a) pretends to be so registered in respect of such profession; or

(b) uses any name, title, description or symbol indicating, or calculated to lead persons to infer that he or she is the holder of any qualification which by rule under this Act is recognized by the **[council]** relevant professional board as acceptable for registration in respect of such profession, but of which qualification he or she is not the holder; or

(c) uses any name ~~declared~~ by regulation to be a name which may not be used,

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

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

39. Section 41 of the principal Act is hereby amended—

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

"**Inquiries by professional boards into charges of [misconduct] unprofessional conduct**"; and

(b) by the deletion in subsection (1) of the proviso.

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

40. Section 41A of the principal Act is hereby amended—

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

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

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

"(2) If the registrar deems it necessary, he or she may **[with the approval of the chairperson of a professional board and on such conditions as the professional board may determine,]** appoint any person other than a member of the professional board, who is not in the full-time employment of the professional board, as investigating officer for a particular investigation, or to assist the investigating officer contemplated in subsection (1) with a particular investigation.";

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

"(5) If the registrar deems it necessary for the achievement of the objects of this Act, he or she may institute or cause to be instituted an investigation—

(a) into an alleged contravention of, or failure to comply with, any provision of this Act;

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

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

(d) **into the affairs or conduct of a registered person, if requested to do so by a person by reason of allegations confirmed upon oath]**.";

(d) by the substitution for subsection (6) of the following subsection:

"(6) **[The registrar or an]** An investigating officer who carries out an investigation in terms of this section may—

(a) at any time reasonable for the proper performance of **[the]** his or her duty, **[with the approval of the chairperson of the professional board]** with or with a warrant, and without prior notice enter upon**[, enter]** and search any premises, and carry out such an investigation and make such enquiries as he or she may deem necessary: Provided, where there is no warrant, that a person who is competent to allow the entry and search consents to such an exercise or that there are reasonable grounds to believe that a warrant would be issued by a magistrate and that the delay in obtaining the warrant would defeat the object of the warrant;

(b) while he or she is on the premises or at any other time request any person found on the premises to immediately or at a time and place determined by the registrar or investigating officer—

(i) produce to him or her any book, document, electronic data or thing relating to, or which he or she on reasonable grounds believes**[,]** to relate to, the matter which he or she is investigating, and which is or was on the premises, or in the possession or custody or under the control of that person or his or her employee or agent; and

(ii) furnish such explanations to him or her as he or she may require in respect of any such book, document, electronic data or thing; and

(c) at any time and at any place request any person who has or is suspected on reasonable grounds of having in his or her possession or custody or under his or her control any book, document, electronic data or thing relating to the matter which he or she is investigating, to produce it immediately or at a time and place determined by the registrar or investigating officer, examine such book, document, electronic data or thing, make extracts from and copies of the book, **[or]** document or electronic data, and request any person to furnish such explanations to him or her as he or she may require in respect of any entry in that book, **[or]** document electronic data or thing**[;]**.";

(e) by the substitution in subsection (8) for paragraphs *(b)* and *(c)* of the following paragraphs respectively:

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

(ii) If such a report reveals *prima facie* evidence which **[in the opinion of the chairperson of the professional board]** makes it desirable that an **[inquiry]** investigation in terms of section 51 be instituted, the registrar shall serve a copy thereof on the

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[registered person concerned] health committee to further investigate and deal with the matter in terms of this Act.

(iii) If such a report does not reveal *prima facie* evidence of unprofessional conduct contemplated in this Act, the registrar shall serve a copy thereof **[to]** on the registered person concerned.

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

(f) by the substitution for subsection (9) of the following subsection:

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

(b) Notwithstanding the provisions of paragraph *(a)*, no personal particulars regarding a patient shall be disclosed to any person except by order of a court or with the consent of the presiding officer at an inquiry contemplated in section 41 or an investigation contemplated in section 51.";

(g) by the substitution for subsection (11) of the following subsection:

"(11) Any person who—

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

(b) hinders or obstructs the registrar or an investigating officer in the exercise of his or her powers or the carrying out of his or her duties;

(c) pretends that he or she is the registrar or an investigating officer;

(d) contravenes a provision of subsection (9),

shall be guilty of an offence and liable on conviction—

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

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

Amendment of section 42 of Act 56 of 1974, as amended by section 8 of Act 33 of 1976, section 7 of Act 79 of 1990, section 15 of Act 58 of 1992, Government Notice R.1140 of 1 July 1994, section 41 of Act 89 of 1997 and Government Notice R.19 of 3 January 1997

41. Section 42 of the principal Act is hereby amended—

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

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

(a) A caution or a reprimand or a reprimand and a caution; **[or]**

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

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

(*d*) a prescribed fine **[not exceeding R10 000; or]**;

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

(*f*) the payment of the costs of the proceedings or a restitution or both.";

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

"(1A) If an appeal is lodged against a penalty of erasure or suspension from practice, such penalty shall remain effective until the appeal is **[heard]** finalised.";

(*c*) by the substitution in subsection (4) for the words following paragraph (*c*)(iii) of the following words:

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

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

"(5) The chairperson of a professional board, where the professional board itself holds an inquiry in terms of section 41, or the chairperson of a professional conduct committee of a professional board, where such a committee holds an inquiry under powers delegated to it by the professional board, may appoint a person with adequate experience in the administration of justice to be present as an assessor at such an inquiry and to advise the professional board or such committee, as the case may be, on matters of law, procedure or evidence.";

(*e*) by the substitution for subsection (8) of the following subsection:

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

(*f*) by the substitution for subsection (9) of the following subsection:

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

Substitution of section 44 of Act 56 of 1974, as amended by section 43 of Act 89 of 1997

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

"Effect of suspension or removal from register

44. Every person who has been suspended or whose name has been removed from the register in terms of section 42 shall, if his or her profession is one which, under this Act, cannot be lawfully **[carried on]** practised by an unregistered person, be disqualified from **[carrying on]** practising his or her profession and his or her registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his or her name has been restored to the register by the professional board.".

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Amendment of section 45 of Act 56 of 1974, as amended by section 44 of Act 89 of 1997

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

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

Amendment of section 49 of Act 56 of 1974, as amended by section 47 of Act 89 of 1997

44. Section 49 of the principal Act is hereby amended—

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

"**[Council to make rules relating to offences under this Chapter] Regulations relating to unprofessional conduct**";

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

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

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

Substitution of section 51 of Act 56 of 1974, as substituted by section 49 of Act 89 of 1997

45. The following section is hereby substituted for section 51 of the principal Act:

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

51. The Minister **may, [in]** after consultation with the council and the professional boards, make regulations relating to **[inquiries]** investigations in respect of students or persons registered in terms of this Act who appear to be impaired, on the assessment of their condition, the conditions to be imposed on their registration or practice, their suspension or removal from practising, revocation of conditions, suspension or removal and on acts of unprofessional conduct committed before or during assessment or investigation.".

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

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

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

"**[Charges] Fees charged by registered persons**";

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

"(2) Any practitioner who in respect of any professional services rendered by him or her claims payment from any person (in this section referred to as the patient) shall, subject to the provisions of section 32 of the Medical Schemes Act, **[1967]** 1998 (Act No. **[72]** 131 of **[1967]** 1998), furnish the patient with a detailed account within a reasonable period."; and

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

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

Amendment of section 55 of Act 56 of 1974, as amended by section 17 of Act 58 of 1992 and section 55 of Act 89 of 1997

47. Section 55 of the principal Act is hereby amended—

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

"*(g)* supplies or offers to supply to any person not registered under this Act or the Nursing Act, **[1978 (Act No. 50 of 1978)]** 2005, any instrument or appliance which can be used, or is claimed to be effective, for the purpose of diagnosing, treating or preventing physical or mental defects, illnesses or deficiencies in **[man]** humankind, knowing that such instrument or appliance will be used by such unregistered person for the purpose of performing **[for gain]** an act which such unregistered person is in terms of the provisions of this Act or the said Nursing Act prohibited from performing **[for gain]**,"; and

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

"shall be guilty of an offence and on conviction liable to a fine **[not exceeding one thousand rand]** or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.".

Substitution of section 56 of Act 56 of 1974

48. The following section is hereby substituted for section 56 of the principal Act:

"**Death of person [under anaesthetic] undergoing procedure of therapeutic, diagnostic or palliative nature**

56. The death of a person **[whilst under the influence of a general anaesthetic or local anaesthetic, or of which the administration of an anaesthetic]** undergoing, or as a result of, a procedure of a therapeutic, diagnostic or palliative nature, or of which any aspect of such a procedure has been a contributory cause, shall not be deemed to be a death from natural causes as contemplated in the Inquest Act, 1959 (Act No. 58 of 1959), or the Births, Marriages and Deaths Registration Act, **[1963 (Act No. 81 of 1963)]** 1992 (Act No. 51 of 1992).".

Substitution of section 59 of Act 56 of 1974, as amended by section 58 of Act 89 of 1997

49. The following section is hereby substituted for section 59 of the principal Act:

"**Limitations in respect of unregistered persons**

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

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

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

Substitution of section 60 of Act 56 of 1974, as amended by section 59 of Act 89 of 1997

50. The following section is hereby substituted for section 60 of the principal Act:

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

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

(2) Any person who prevents any person authorized in terms of subsection (1) from entering any institution or premises referred to in that subsection, or who hinders him or her in the making therein or thereon of any investigation contemplated in that subsection, shall be guilty of an offence and on conviction liable to a fine **[not exceeding one hundred rand]** or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.".

Amendment of section 61 of Act 56 of 1974, as substituted by section 60 of Act 89 of 1997

51. Section 61 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"The Minister may, **[in]** after consultation with the council, make regulations relating to—";

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

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

(ii) the standards of general education required of such students as a condition precedent to such registration;

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

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

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

"*(b)* (i) the minimum age and the standard of general education required of a candidate for examination for a certificate entitling the holder thereof to registration in terms of this Act;

(ii) the persons who may be admitted to such examinations;

(iii) the courses of study and the training required for such examinations;

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

(v) the registration by the council of persons taking or undergoing such **[courses]** education or training **[and the fees payable in respect of such registration]** provided for in section 61A(1)*(l)*;

[(vi) the fees payable by candidates for such examinations;]

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

(viii) the issue of certificates by the council and any other matter incidental to such examinations or the issue of such certificates;

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

(x) the nature and duration of the training to be undergone by any person who has obtained a qualification in a profession prescribed in terms of section 24 or 25, but who is not yet registered as such, before he or she may be registered as such;";

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

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

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

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

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

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

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

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

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

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

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(iv) conditions in respect of the **[practices of persons]** practising of a specialist or a person whose **[specialities or categories have]** subspeciality, professional category or additional professional category has been registered, including conditions restricting the practice of such a specialist or any such person to the speciality, subspeciality or professional category **[registered in his or her name]** or additional professional category in which he or she holds registration;";

(g) by the substitution in subsection (1) for paragraph *(g)* of the following paragraph:

"*(g)* **[(i) the election of members of a professional board required to be elected in terms of section 15;]**

(ii) the requirements for a valid nomination of a candidate for **[election]** appointment by the Minister as a member of a professional board;";

(h) by the substitution in subsection (1) for subparagraph *(h)* of the following paragraph:

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

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

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

(iv) the procedure to be followed to lodge an appeal with an appeal committee and the time within which an appeal may be lodged;

(v) any other matter relating to the conduct of such an inquiry;";

(i) by the substitution in subsection (1) for paragraph *(i)* of the following paragraph:

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

(j) by the deletion of subsection (3).

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

52. Section 61A of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"The Council may make rules or adopt policies relating to—";

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

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

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

"*(c)* the professional fees and allowances which may be paid to members of the council or to members of professional boards established in terms of section 15 or to members of committees or subcommittees

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of the council or professional boards and other persons who render services to the council or professional boards;";

(d) by the deletion in subsection (1) of paragraph *(d)*;

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

"*(e)* any fees payable in terms of this Act, which may include—

(i) registration fees;

(ii) annual fees provided for in section 62;

(iii) fees payable for restoration of—

(aa) a name to a register from which it had been removed and such fees may vary according to the reason for the removal thereof and the period for which it was so removed;

(bb) a person as a specialist or in a subspeciality or an additional qualification;

(cc) a professional category or an additional professional category;

(iv) fees payable for the issuing of certificates;

(v) fees payable for examinations conducted by or on behalf of professional boards; and

(vi) fees payable for accreditation of educational institutions, training facilities, activities for continuing professional development, and pathology laboratories;";

(f) by the deletion in subsection (1) of paragraphs *(i)*, *(j)* and *(k)*;

(g) by the substitution in subsection (1) for paragraph *(l)* of the following paragraph:

"*(l)* the qualifications which may be registered as specialist and additional qualifications in terms of section 35; and"; and

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

"(2) The council shall, after consultation with the professional boards, not less than three months before any rule is made in terms of this Act, cause the text of such rule to be published in the *Gazette* together with a notice declaring the council's intention to make such rule and inviting interested persons to furnish the council with any comments thereon or any representations they may wish to make in regard thereto,".

Substitution of section 62 of Act 56 of 1974, as substituted by section 62 of Act 89 of 1997

53. The following section is hereby substituted for section 62 of the principal Act:

"Levying of annual fees on certain registered persons

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

(2) If any person liable to pay any annual fee prescribed in terms of subsection (1) fails or refuses to pay such fee within the period specified in the notice in question, the **[professional board]** council may recover such fee by action in a competent court.

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

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

Repeal of section 63A of Act 56 of 1974 as substituted by section 64 of Act 89 of 1997

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

Amendment of section 64 of Act 56 of 1974

55. Section 64 of the principal Act is hereby amended by the deletion of subsections (3) and (4).

Substitution of long title of Act 56 of 1974, as substituted by section 66 of Act 89 of 1997

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

"ACT

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

Substitution or deletion of certain words in Act 56 of 1974

57. (1) The principal Act is hereby amended by the substitution for the words "he", "him", "his" and "himself", wherever they occur, of the expressions "he or she", "him or her", "his or her" and "himself or herself", respectively.

(2) Subsection (1) does not apply if the application would be clearly inappropriate.

(3) The principal Act is hereby amended by the deletion of the expression ", technikon" in section 31(4).

Short title

58. This Act is called the Health Professions Amendment Act, 2006.

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MEMORANDUM ON THE OBJECTS OF THE HEALTH PROFESSIONS AMENDMENT BILL, 2006

1. BACKGROUND

The process to transform statutory councils was initiated primarily to improve their accountability, define their roles and relationship with the Department and facilitate transformation. The Task Team on the Transformation of Statutory Councils (TTTSC) made certain recommendations, which were then relayed to the Minister for consideration. Statutory Councils, including the Health Professions Council of South Africa (HPCSA), individually considered these recommendations and reported back to the Department on their plans to implement them. This culminated in the need to amend legislation regulating each council.

It must be noted that all councils but one are listed in Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), as scheduled public entities. To ensure accountability, it was imperative to insert provisions on corporate governance.

There was also a need to transform the council in terms of the number of council members and the racial demography. The Health Professions Act, 1974 (Act No. 56 of 1974), was also found to be wanting in terms of provisions on appointment of the president and the registrar, regulation of the conduct of professionals, and the evaluation and accreditation of teaching institutions.

The Bill therefore aims to include the above matters, technical amendments and deletion of certain provisions. The Bill will further bring in line the current Act with the objective of section 50 of the National Health Act, 2003 (Act No. 61 of 2003). The Bill was published for public comment and certain comments were incorporated into the draft.

2. OBJECTIVES OF BILL

The Bill aims to—

(a) make clear and more comprehensive the objects and functions of the council in order to ensure that the objectives are achieved and are in line with the national health policy determined by the Minister;

(b) foster closer liaison between the council and the boards when considering certain matters;

(c) reduce the number of council members from 25 to 16, and to further regulate the appointment of the president, members of the council and the registrar;

(d) make provision for the removal of members of the council under certain circumstances, e.g. failure to attend meetings without leave by the president or the chairperson, being found guilty of unprofessional conduct or having acted to the prejudice of the council;

(e) empower the Minister to dissolve the council or terminate membership under certain circumstances;

(f) ensure accountability and transparency by the council and by the registrar, particularly relating to financial administration of the council;

(g) empower the Minister to appoint members of the professional boards on the basis of nominations as opposed to elections by members of the profession boards in order to advance equity measures, ensure demographically balanced boards and for cost-efficiency sake.

(h) make provision for an evaluation, quality assurance and accreditation process for teaching institutions and training facilities;

(i) make provisions dealing with the keeping of a register, application for registration and removal of names from such register more comprehensive;

(j) empower the Minister to make regulations excluding certain persons from performing compulsory community service;

(k) enable professionals to further register in sub-specialities, professional categories and additional professional categories, and to replace the council with the professional board as the authority to register professionals;

(l) guide the professions;

(m) empower the Minister, after consultation with the council and the board, to make regulations relating to unprofessional conduct as opposed to this function being performed by the council only;

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(n) empower the Minister to make regulations "after", and not "in" consultation with the council;

(o) empower the council to make rules on operational issues affecting the council and the boards, e.g. to enable the council to determine professional fees to be paid to members of the council and the boards, and to persons rendering different services to the council, and to determine different fees payable by professionals and institutions; and

(p) make the language of the current Act gender sensitive and make technical amendments and deletions.

3. CONSTITUTIONAL IMPLICATIONS

The professions under the HPCSA are regulated by the current Act. The Bill will help to emphasise the constitutional right of users to receive health care services in a dignified and respectable manner.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

- Health Professions Council of South African and its professional boards;
- Publication for public comment.

5. FINANCIAL IMPLICATIONS FOR STATE

None, as the Council will continue to source its funds mainly from prescribed fees and penalties.

6. PARLIAMENTARY PROCEDURE

6.1 The Bill has been classified by the Joint Tagging Mechanism of Parliament as a Bill to be dealt with in accordance with the procedure established by section 76 of the Constitution.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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