

REPUBLIC OF SOUTH AFRICA

**MEDICAL, DENTAL AND
SUPPLEMENTARY HEALTH
SERVICE PROFESSIONS
AMENDMENT BILL**

(As introduced)

(MINISTER OF HEALTH)

[B 62—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
GENEESHERE, TANDARTSE EN
AANVULLENDE
GESONDHEIDSDIENSBEROEPE**

(Soos ingedien)

(MINISTER VAN GESONDHEID)

[W 62—97]

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GENERAL EXPLANATORY NOTE:

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

To amend the Medical, Dental and Supplementary Health Service Professions Act, 1974, so as to insert certain definitions and to delete others; to provide for the establishment of the Health Professions Council of South Africa and professional boards for health professions; to abolish the Interim National Medical and Dental Council of South Africa; to provide for control over the education, training, registration and practices of health professionals; 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 33 of 1976, section 12 of Act 36 of 1977, section 1 of Act 52 of 1978, section 1 of Act 38 of 1982, section 1 of Act 58 of 1984, section 24 of Act 94 of 1991, section 1 of Act 58 of 1992 and section 1 of Act 18 of 1995 5

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

- (a) by the deletion of the definition of “Ciskeian Medical Council”;
- (b) by the insertion after the definition of “Director-General” of the following definitions: 10

“ ‘impaired’ means a mental or physical condition, or the abuse of or dependence on chemical substances, which affects the competence, attitude, judgement or performance of a student or a person registered in terms of this Act; 15

‘Interim National Medical and Dental Council of South Africa’ means the Interim National Medical and Dental Council of South Africa referred to in section 2 of this Act prior to its amendment by the Medical, Dental and Supplementary Health Service Professions Amendment Act, 1997;” 20

- (c) by the substitution for the definition of “scheduled substance” of the following definition:

“ ‘scheduled substance’ means [any medicine or] a scheduled substance [listed in the schedules to] as defined in section 1 of the Medicines and Related Substances [Control] Act, 1965 (Act No. 101 of 1965);”;

- (d) by the deletion of the definition of “South African Medical and Dental Council”;
- (e) by the deletion of the definition of “supplementary health service profession”;
- (f) by the deletion of the definition of “Transkeian Medical Council”; and
- (g) by the insertion before the definition of “vice-president” of the following definition:
 - “ ‘unprofessional conduct’ means improper or disgraceful or dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy;”.

Substitution of heading to Chapter I of Act 56 of 1974, as substituted by section 2 of Act 18 of 1995

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

“ESTABLISHMENT [AND], OBJECTS, FUNCTIONS AND POWERS OF THE [INTERIM NATIONAL MEDICAL AND DENTAL] HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA”.

Substitution of section 2 of Act 56 of 1974, as substituted by section 3 of Act 18 of 1995

3. The following section is hereby substituted for section 2 of the principal Act:

“Establishment of Health Professions Council of South Africa

2. (1) There is hereby established a juristic person to be known as the Health Professions Council of South Africa and the first meeting of the council shall be convened by the registrar.

(2) The head office of the council shall be situated in Pretoria.”.

Substitution of section 3 of Act 56 of 1974, as amended by section 2 of Act 58 of 1992 and section 4 of Act 18 of 1995

4. The following section is hereby substituted for section 3 of the principal Act:

“Objects of council

3. The objects of the council are—

- (a) to co-ordinate the activities of the professional boards established in terms of this Act and to act as an advisory and communicatory body for such professional boards;
- (b) to promote and to regulate interprofessional liaison between registered professions in the interest of the public;
- (c) to determine strategic policy, and to make decisions in terms thereof, with regard to the professional boards and the registered professions, for matters such as finance, education, registration, ethics and professional conduct, disciplinary procedure, scope of the professions, interprofessional matters and maintenance of professional competence;
- (d) to consult and liaise with relevant authorities on matters affecting the professional boards in general;
- (e) to assist in the promotion of the health of the population of the Republic;
- (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), to control and to

- exercise authority in respect of all matters affecting the training of persons in, and the manner of the exercise of the practices pursued in connection with, the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in human kind;
- (g) to promote liaison in the field of training referred to in paragraph (f), both in the Republic and elsewhere, and to promote the standards of such training in the Republic; 5
- (h) to advise the Minister on any matter falling within the scope of this Act in order to support the universal norms and values of health professions, with greater emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement; and 10
- (i) to communicate to the Minister information of public importance acquired by the council in the course of the performance of its functions under this Act.”. 15

Substitution of section 4 of Act 56 of 1974

5. The following section is hereby substituted for section 4 of the principal Act:

“General powers of council

- 4.** The council may—
- (a) acquire, hire or dispose of property, borrow money on the security of the assets of the council and accept and administer any trust or donation; 20
- (b) render financial assistance to professional boards in order to enable such boards to perform their functions; 25
- (c) consider any matter affecting the professions registrable with the council generally, and make representations or take such action in connection therewith as the council deems advisable; 25
- (d) make rules on all matters which the council considers necessary or expedient in order that the objects of this Act may be achieved; 30
- (e) delegate to any 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 30
- (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.”. 35

Substitution of section 5 of Act 56 of 1974, as substituted by section 5 of Act 18 of 1995

6. The following section is hereby substituted for section 5 of the principal Act:

“Constitution of council

- 5.** (1) The council shall be representative and shall consist of the following members, namely— 40
- (a) not more than 25 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; 45
- (b) one person in the employment of the Department of Health, appointed by the Minister; 50
- (c) one person in the employment of the Department of Education, appointed by the Minister of Education; 50
- (d) nine persons registered in terms of this Act, appointed by the Minister; 50
- (e) one person from the South African Medical Services, appointed by the Minister of Defence; 50

- (f) three persons appointed by the Committee of University Principals;
- (g) two persons appointed by the Committee of Technikon Principals;
- (h) nine public representatives, one from each province, appointed by the Member of the Executive Council responsible for health in each province: Provided that such representatives shall not be persons registered in terms of this Act; and 5
- (i) one person versed in law, appointed by the Minister.
- (2) Subject to the provisions of section 6, the members of the council shall hold office for a period of five years, but shall be eligible for redesignation or reappointment. 10
- (3) Not less than three months prior to the date of expiry of the term of office of the members of the council, the persons and bodies referred to in subsection (1), except the Minister, shall inform the registrar in writing of the names of the persons to be designated or appointed by them in terms of that subsection. 15
- (4) As soon as possible after the process referred to in subsection (3), the Minister shall inform the registrar of the names of the persons to be appointed by the Minister in terms of subsection (1).
- (5) If any of the persons or bodies referred to in subsection (1), except the Minister, fails to make a designation or an appointment or to inform the registrar in terms of subsection (3) of the names of the persons to be designated or appointed by them, the Minister shall make the necessary designation or appointment, and any designation or appointment so made by the Minister shall be deemed to have been properly made in terms of the appropriate paragraph of subsection (1). 20 25
- (6) The names of the members of the council and the date of commencement of their term of office shall be published by the registrar in the *Gazette* as soon as possible after the constitution of the council.”.

Substitution of section 6 of Act 56 of 1974, as amended by section 46 of Act 97 of 1986, section 4 of Act 58 of 1992 and section 6 of Act 18 of 1995 30

7. The following section is hereby substituted for section 6 of the principal Act:

“Vacation of office and filling of vacancies

- 6.** (1) A member of the council shall vacate his or her office if—
- (a) his or her estate is sequestrated or he or she has entered into a composition with the creditors of his or her estate; 35
- (b) he or she has been absent from more than two consecutive ordinary meetings of the council without the council’s leave;
- (c) he or she is or becomes disqualified under this Act from practising his or her profession;
- (d) he or she ceases to hold any qualification necessary for his or her designation or appointment or tenders his or her resignation in writing to the [Minister] person or body by whom he or she was designated or appointed and [the Minister] that person or body accepts his or her resignation; 40
- (e) he or she ceases to be a South African citizen; 45
- (f) he or she becomes a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);
- (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
- (h) the Minister, in the public interest, and after consultation with the person or body by whom the member was designated or appointed, terminates his or her membership. 50
- (2) Every vacancy on the council arising from a circumstance referred to in subsection (1) and every vacancy caused by the death of a member, shall be filled by designation or appointment by the [Minister of a person nominated by the Council] person or body by whom and in the manner in which the vacating member was designated or appointed, and every member so designated or appointed shall hold office for the unexpired portion of the period for which the vacating member was designated or appointed.”. 55 60

Substitution of section 10 of Act 56 of 1974, as amended by section 3 of Act 58 of 1984, section 5 of Act 58 of 1992 and section 8 of Act 18 of 1995

8. The following section is hereby substituted for section 10 of the principal Act:

“Committees

10. (1) (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 appeal committee referred to in subsection (2), at least one member of the council, who shall be the chairperson of such committee.

(b) The council may, subject to the provisions of subsection (3), delegate to any committee so established or to any person some of its powers as it may from time to time determine, but shall not be divested of any power so delegated.

(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 with at least ten years’ experience, not more than two registered persons drawn from the profession of the registered person in respect of whose conduct a disciplinary 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.

(3) A disciplinary appeal committee referred to in subsection (2) shall have the power to vary, confirm or set aside a finding of a disciplinary committee established in terms of subsection (1) or to refer the matter back to the disciplinary committee with such instructions as it may deem fit.

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

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

(6) The council may, after consultation with one or more professional boards, establish a joint standing committee of the council and the board or boards.”.

Repeal of section 11 of Act 56 of 1974

9. Section 11 of the principal Act is hereby repealed.

Amendment of section 12 of Act 56 of 1974, as amended by section 9 of Act 18 of 1995

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

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

“(2) The registrar shall be the chief executive officer 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.”; and

(b) by the insertion after subsection (2) of the following subsection:

“(2A) The registrar may in writing authorise any member of his or her staff to exercise or perform any power, duty or function conferred or imposed on him or her by or in terms of this Act.”.

Amendment of section 13 of Act 56 of 1974, as amended by section 4 of Act 52 of 1978 and section 3 of Act 79 of 1990

11. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) [(a)] All registration and examination fees and any other fees payable under this Act shall, unless otherwise provided, be paid to the council and shall constitute its funds and the council shall utilize its funds for defraying expenses incurred in connection with the performance of its functions.”. 5

Substitution of section 15 of Act 56 of 1974, as amended by section 46 of Act 57 of 1975 and section 11 of Act 18 of 1995 10

12. The following section is hereby substituted for section 15 of the principal Act:

“Establishment of professional boards

15. (1) The Minister shall, on the recommendation of the council, establish a professional board with regard to any profession in respect of which a register is kept in terms of this Act, or with regard to two or more such professions. 15

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

(3) Before making a recommendation as contemplated in subsection (2), the council shall consult with any body which is or persons who are in the opinion of the council representative of the majority of persons to be affected by such change or establishment. 20

(4) The Minister may, on the recommendation of the council, make regulations relating to the constitution, functions and functioning of a professional board. 25

(5) Regulations relating to the constitution, functions and functioning of a professional board shall at least provide for—

(a) the majority of the members of a professional board to be elected by the members of the profession involved; 30

(b) persons representing the community to comprise not less than 20 per cent of the membership of a professional board, with a minimum of one such representative for every profession;

(c) relevant educational institutions to be represented;

(d) the health authorities to be represented; 35

(e) one or more persons versed in law to be appointed, where appropriate;

(f) the establishment by a professional board of such committees as it may deem necessary, each consisting of so many persons appointed by the board as the board may determine, but including at least one member of the board who shall be the chairperson of such committee, and the delegation to any person or any committee so established, such of its powers as it may from time to time determine, but shall not be divested of any power so delegated; 40

(g) the procedure to be followed for the appointment and election, as the case may be, of the members of a professional board; 45

(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

(i) the term of office of the members of a professional board.”.

Insertion of sections 15A and 15B in Act 56 of 1974 50

13. The following sections are hereby inserted after section 15 of the principal Act:

“Objects of professional boards

- 15A.** The objects of a professional board are—
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|-----|--|----|
| (a) | to consult and liaise with other professional boards and relevant authorities on matters affecting the professional board; | 5 |
| (b) | to assist in the promotion of the health of the population of the Republic on a national basis; | 5 |
| (c) | subject to the provisions of section 3 of this Act, the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), and the Pharmacy Act, 1974 (Act No. 53 of 1974), to control and to exercise authority in respect of all matters affecting the training of persons in, and the manner of the exercise of the practices pursued in connection with, any profession falling within the ambit of the professional board; | 10 |
| (d) | to promote liaison in the field of the training contemplated in paragraph (c), both in the Republic and elsewhere, and to promote the standards of such training in the Republic; | 15 |
| (e) | to advise the Minister on any matter falling within the scope of this Act as it relates to any profession falling within the ambit of the professional board in order to support the universal norms and values of the profession, with greater emphasis on professional practice, democracy, transparency, equity, accessibility and community involvement; and | 20 |
| (f) | to communicate to the Minister information on matters of public importance acquired by the professional board in the course of the performance of its functions under this Act. | 25 |

General powers of professional boards

- 15B.** (1) A professional board may—
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|-----|--|----|
| (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 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; | 30 |
| (b) | appoint examiners and moderators, conduct examinations and grant certificates, and charge such fees in respect of such examinations or certificates as may be prescribed; | 35 |
| (c) | subject to prescribed conditions, approve training schools; | 35 |
| (d) | consider any matter affecting any 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; | 40 |
| (e) | upon application by any person, recognise any qualification held by him or her (whether such qualification has been 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 recognised, be deemed to hold such prescribed qualification; | 45 |
| (f) | after consultation with another professional board or boards, establish a joint standing committee or committees of the boards concerned; and | 45 |
| (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 profession falling within the ambit of the professional board. | 50 |
- (2) Any decision of a professional board relating to a matter falling entirely within its ambit shall not be subject to ratification by the council, and the council shall, for this purpose, determine whether a matter falls entirely within the ambit of a professional board.”.
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Amendment of section 16 of Act 56 of 1974, as amended by section 7 of Act 58 of 1992

14. Section 16 of the principal Act is hereby amended—
- (a) by the substitution in subsections (1), (2), (3) and (4) for the word “council”, wherever it occurs, of the words “professional board concerned”; and
 - (b) by the substitution in subsection (5) for the words “five hundred rand” of the expression “R5 000”.

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 and section 8 of Act 58 of 1992

15. Section 17 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 - “(a) the profession of a medical practitioner, dentist, psychologist or as an intern or an intern psychologist or any profession registrable in terms of this Act; or”;
 - (b) by the substitution for the words preceding subparagraph (i) of paragraph (b) of subsection (1) of the following words:
 - “except in so far as it is authorized by the provisions of the Nursing Act, 1978 (Act No. 50 of 1978), the [Associated] Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), the Pharmacy Act, 1974 (Act No. 53 of 1974), and sections [32] 33, 34 and 39 of this Act, for gain any other profession the practice of which mainly consists of—”;
 - (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 [council] registrar and shall submit the qualification which, in his or her submission, entitles 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 [council] professional board concerned.”;
 - (d) by the substitution for subsection (4) of the following subsection:
 - “(4) If the registrar is not satisfied that the qualification or other documents submitted in support of the application satisfy the requirements of this Act, he or she shall refuse to issue a registration certificate to the applicant, but shall, if so required by the applicant, submit the application to the [council] professional board concerned for decision.”.

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 and section 9 of Act 58 of 1992

16. Section 18 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections:
 - “(1) The registrar shall keep [separate] 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 shall, on the instructions of the [council] professional board, enter in the appropriate register the name, physical address, qualifications, date of initial registration and such other particulars (including, in the case of medical practitioners, dentists and psychologists, the name of their speciality or category, if any) as the [council] professional board may determine, of every person whose application for registration in terms of section 17(2) has been granted.
 - (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 [period of registration has expired in terms of regulations made under section 26(1)] names have to be removed in terms of this Act and shall from time to time make

- the necessary alterations in the addresses or qualifications of registered persons.”;
- (b) by the deletion of subsection (4); and
 - (c) by the substitution in subsection (5) for the word “council”, wherever it occurs, of the words “professional board”. 5

Amendment of section 19 of Act 56 of 1974, as amended by section 10 of Act 58 of 1992

17. Section 19 of the principal Act is hereby amended—
- (a) in subsection (1)—
 - (i) by the substitution for the words preceding paragraph (a) of the following words: 10

“The [council] professional board concerned may direct the registrar to remove from the register the name of any person—”;
 - (ii) by the substitution for paragraph (b) of the following paragraph: 15

“(b) who has failed to notify the registrar, within a period of three months as from the date of an enquiry sent by the registrar by [registered letter] certified mail to the address appearing in the register in respect of such person, of his or her present address;”; and
 - (iii) by the substitution for paragraph (d) of the following paragraph: 20

“(d) who has failed to pay to the [council] professional board, within three months as from the date on which it became due for payment, any annual fee prescribed by the [council] professional board in terms of section 62[(1) or 63(1)];”; 25
 - (b) by the substitution for subsection (2) of the following subsection: 25

“(2) Notice of the removal, in terms of subsection (1), of his or her name from the register, or of the removal, in terms of section 18(5), of an entry from the register, shall be given by the registrar to the person concerned by way of [a registered letter] certified mail addressed to such person at the address appearing in respect of him or her in the register.”; 30
 - (c) by the deletion at the end of paragraph (c) of subsection (5) of the word “and”;
 - (d) by the insertion after paragraph (c) of subsection (5) of the following paragraph: 35

“(cA) paying any annual fee which was not paid and payment of an additional fee as may be decided upon; and”; and
 - (e) by the deletion of subsection (6).

Insertion of section 20 in Act 56 of 1974

18. The following section is hereby inserted after section 19 of the principal Act: 40

“Right to appeal

20. Any person who is aggrieved by any decision of the council, a professional board or a disciplinary appeal committee, may appeal against such decision within one month from the date on which such decision was given.”. 45

Amendment of section 22 of Act 56 of 1974

19. Section 22 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):
- “(2) A certificate of registration shall be evidence of registration for a period of one year only and thereafter an annual practising certificate, which shall be issued upon payment of the required annual fee and the submission of such information as may be required by the council to enable it to keep accurate statistics on human resources in the health field, shall be regarded as proof of registration.”. 50

Amendment of section 23 of Act 56 of 1974

20. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

“(4) A certificate may be issued subject to certain conditions imposed by the professional board concerned and such conditions shall be indicated on the certificate.”. 5

Substitution of section 24 of Act 56 of 1974, as amended by section 1 of Act 43 of 1980 and section 2 of Act 38 of 1982

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

“Qualifications prescribed for registration” 10

24. The Minister may, on the recommendation of the council—

- (a) prescribe the qualifications obtained by virtue of examinations conducted by a university, a technikon or other examining authority in the Republic, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be prescribed; and 15
- (b) make regulations concerning the imposition of restrictions on any person registered in terms of paragraph (a), subject to which he or she shall be entitled to practise the profession in question, and the lifting of such restrictions.”. 20

Insertion of section 24A in Act 56 of 1974

22. The following section is hereby inserted after section 24 of the principal Act:

“Community service” 25

24A. (1) Notwithstanding section 24, every person registering for a profession 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 terms of the regulations contemplated in subsection (2) and shall, on the completion of such service, be entitled to practise the profession in question. 30

(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) the duration thereof; 35
- (ii) the place or places at which it is to be performed;
- (iii) the conditions of employment.”.

Substitution of section 25 of Act 56 of 1974

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

“Registration of persons qualified outside Republic” 40

25. (1) The Minister may, in consultation with the council, by regulation provide that any person who holds such qualification as the council may, for the purpose of registration 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, may be registered in terms of this section, and thereupon the council may in its discretion, but subject to any regulations which the Minister may make, register such person. 45

(2) The council 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, on a date and at a place determined 50

by the council, an evaluation contemplated in subsection (3) before persons appointed by the council, for the purpose of determining whether such person possesses adequate professional knowledge and skill 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 the nature of the evaluation which shall be conducted for the purpose of subsection (2), and the fees which shall be paid by persons who present themselves for such evaluation, the requirements for admission to the evaluation, and any other matter relating to such evaluation, including the number of attempts.

(4) The Minister may, in consultation with the council, 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 amended by section 6 of Act 52 of 1978 and section 5 of Act 79 of 1990 15

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

“Compliance with certain conditions relating to continuing education and training a prerequisite for continued registration

26. The council may from time to time make rules which prescribe—

- (a) conditions relating to continuing education and training to be undergone by persons registered in terms of this Act in order to retain such registration; 20
- (b) the nature and extent of continuing education and training to be undergone by persons registered in terms of this Act; and
- (c) the criteria for recognition by the council of continuing education and training courses and of education institutions offering such courses.”. 25

Repeal of sections 27 and 28 of Act 56 of 1974

25. Sections 27 and 28 of the principal Act are hereby repealed.

Substitution of section 29 of Act 56 of 1974, as substituted by section 2 of Act 43 of 1980 30

26. 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

29. (1) For the purpose of promoting [medical, dental or psychological] education or training for the practising of a [supplementary health service] profession in respect of which registration in terms of this Act is a requirement, the council may, notwithstanding the provisions of this Act, register any person not permanently resident within the Republic [as a medical practitioner, dentist or psychologist or in respect of a supplementary health service profession] to practise such profession for such period as the council may determine. 35 40

(2) Any person registered in terms of subsection (1) may give demonstrations, at institutions approved for that purpose by the council, of [as the case may be, medical, dental or psychological techniques or] techniques in respect of [a supplementary health service] such profession.”. 45

Substitution of section 30 of Act 56 of 1974

27. 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 training and experience as the **[council] professional board concerned** may, for the purposes of this section, deem satisfactory, may, notwithstanding the provisions of this Act, be registered by the **[council] professional board** for the purposes of subsection (2) **[as a medical practitioner, dentist or psychologist]** for such period, not exceeding two years, as the **[council] 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 **[in a department of a faculty of medicine or of dentistry or of psychology]** at such university, technikon or other training institution in the Republic as the **[council] 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

28. 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 institutions to furnish council with certain particulars”**;

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

“Every university, technikon or educational institution at which a qualification can be obtained which entitles any holder thereof to registration under this Act **[as a medical practitioner, intern, dentist or psychologist]**, shall furnish the council on its request with full particulars as to—”; and

(c) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:

“(2) If any university, technikon or educational institution referred to in subsection (1) fails or refuses to furnish any particulars requested by the council under that subsection, or if it appears to the council that any provision of this Act is not being properly complied with by any such university, technikon or educational institution and that such improper compliance is having or may have an adverse effect on the standards of education **[in medicine, dentistry or psychology]** maintained at that university, technikon or 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.

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

(4) A qualification specified in a notice issued under subsection (2) which has been granted by the university, technikon or educational institution to which such notice relates between the date specified in that notice and the date of the repeal of that notice, shall not entitle the holder thereof to registration under this Act.

(5) The council may appoint a person to be present whenever tests are being conducted by any university, technikon or educational institution

in respect of the academic progress made by **[medical, dental or psychology]** students at such university, technikon or educational institution and to report to the council upon such tests.”.

Repeal of sections 32, 32A and 32B of Act 56 of 1974

29. Sections 32, 32A and 32B of the principal Act are hereby repealed. 5

Amendment of section 33 of Act 56 of 1974, as amended by section 3 of Act 43 of 1980

30. Section 33 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 10
“Definition of scope of other health professions registrable in terms of this Act and registration of certain persons”;
- (b) by the substitution for subsection (1) of the following subsection: 15
“(1) The Minister may, on the recommendation of the council, by regulation define the scope of any [supplementary] other health [service] 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 regulation shall not be made unless the 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.”; 20
 25
- (c) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words: 25
“When a professional board has been established under section 15 in respect of any [supplementary] other health [service] profession, the [council] professional board shall, subject to such restrictions in respect of his or her professional activities as [the council] it may determine, register [in a register kept separately from the register kept under section 32] in respect of such profession, the name of any person who—”; 30
- (d) by the substitution for paragraph (c) of subsection (2) of the following paragraph: 35
“(c) submits to the [council] professional board an application in the prescribed form containing proof to the satisfaction of the [council] professional board of the facts referred to in paragraph (a) (i) and (ii), within six months (or such longer period as the [council] professional board may allow) after the date on which such professional board was established.”; 40
- (e) by the substitution for subsections (3), (4) and (5) of the following subsections: 45
- “(3) The [council] professional board may conduct an oral or practical examination for a person referred to in subsection (2) in order to determine the restrictions referred to in that subsection in respect of his or her professional activities. 45**
- (4) Any person registered under subsection (2) in respect of [a supplementary] any other health [service] profession shall only be entitled to practise that profession subject to— 50**
- (a) such restrictions in respect of his or her professional activities; and 50**
- (b) the use of such name, title and description in respect of his or her profession, 55**
- as the [council] professional board may determine. 55**
- (5) The [council] professional board may allow a person referred to in**

subsection (2) to sit for an examination [referred to in section 32B(2)] and if such person passes such examination to the satisfaction of the [council] professional board, it shall exempt him or her from all restrictions imposed in respect of him or her under subsection (2).”.

Amendment of section 34 of Act 56 of 1974, as substituted by section 4 of Act 43 of 1980 5

31. Section 34 of the principal Act is hereby amended 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 [a supplementary] any other health [service] profession for 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.”. 10

Amendment of section 35 of Act 56 of 1974, as amended by section 8 of Act 52 of 1978 15

32. Section 35 of the principal Act is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) Where a [medical practitioner, dentist or psychologist] person fails in respect of any provision of a regulation made under section 61(1) [(p)] (f) and applies to have a speciality registered in terms of this section, the council may require him or her to pass to the satisfaction of the council, on a date and at a place determined by the council, an examination prescribed under subsection (1B) before examiners appointed by the council, for the purpose of determining whether his or her professional knowledge and skill in the professional field of his or her speciality is sufficiently adequate to enable him or her to practise as a specialist.”. 20 25

Amendment of section 36 of Act 56 of 1974, as amended by section 16 of Act 36 of 1977 and section 12 of Act 58 of 1992

33. Section 36 of the principal Act is hereby amended—

- (a) in subsection (1)—
- (i) by the substitution for the words preceding subparagraph (i) of paragraph (c) of the following words: 30
- “except in accordance with the provisions of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), the Pharmacy Act, 1974 (Act No. 53 of 1974), the Health Act, 1977 (Act No. 63 of 1977), the Nursing Act, 1978 (Act No. 50 of 1978), the [Associated] Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), and sections [32] 33, 34 and 39 of this Act, performs any act whatsoever having as its object—”; 35
- (ii) by the substitution for paragraph (f) of the following paragraph: 40
- “(f) except in accordance with the provisions of the Medicines and Related Substances Act, 1965, the Pharmacy Act, 1974, the Health Act, 1977, the Nursing Act, 1978, the [Associated] Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982, and sections [32] 33, 34 and 39 of this Act, by words, conduct or demeanour holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent physical defects, illnesses or deficiencies in man or to prescribe or supply any medicine, substance or thing in respect of such defects, illnesses or deficiencies; or”; and 45 50
- (iii) by the substitution for the words following upon subparagraph (iii) of paragraph (g) of the following words: 55
- “shall be guilty of an offence and on conviction liable to a fine not exceeding [five hundred rand] R5 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.”; and

- (b) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (2) of the following words:
 “an intern working at an institution recognised by the council from—”.

Amendment of section 37 of Act 56 of 1974, as substituted by section 6 of Act 33 of 1976 and amended by section 13 of Act 58 of 1992 5

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

- (a) in subsection (1)—
- (i) by the deletion in the words preceding subparagraph (i) of paragraph (c) of the expression “32,”; 10
 - (ii) by the deletion in paragraph (f) of the expression “32,”; and
 - (iii) by the substitution for the words following upon paragraph (f) of the following words:
 “shall be guilty of an offence and on conviction liable to a fine not exceeding [**five hundred rand**] R5 000 or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.”; 15
- (b) by the substitution for paragraphs (a), (b) and (c) of subsection (2) of the following paragraphs:
- “(a) the evaluation of behaviour or mental processes or personality adjustments or adjustments of individuals or of groups of persons, through the interpretation of tests for the determination of intellectual abilities, aptitude, interests, personality make-up or personality functioning, and the diagnosis of personality and emotional functions and mental functioning deficiencies according to a recognised scientific system for the classification of mental deficiencies; 20 25
 - (b) the use of any method or practice aimed at aiding persons or groups of persons in the adjustment of personality, emotional or behavioural problems or at the promotion of positive personality change, growth and development, and the identification and evaluation of personality dynamics and personality functioning according to psychological scientific methods; 30
 - (c) the evaluation of emotional, behavioural and cognitive processes or adjustment of personality of individuals or groups of persons by the usage and interpretation of questionnaires, tests, projections or other techniques or any apparatus, whether of South African origin or imported, for the determination of intellectual abilities, aptitude, personality make-up, personality functioning, psychophysiological functioning or psychopathology; 35 40
 - (d) the exercising of control over prescribed questionnaires or tests or prescribed techniques, apparatus or instruments for the determination of intellectual abilities, aptitude, personality make-up, personality functioning, psychophysiological functioning or psychopathology; 45
 - (e) the development of and control over the development of questionnaires, tests, techniques, apparatus or instruments for the determination of intellectual abilities, aptitude, personality make-up, personality functioning, psychophysiological functioning or psychopathology; 50
 - (f) the use of any psychotherapeutic method, technique or procedure to rectify, relieve or change personality, emotional, behavioural or adjustment problems or mental deficiencies of individuals or groups of people;
 - (g) the use of hypnosis and hypnotherapy; 55
 - (h) the use of any psychological method or counselling to prevent personality, emotional, cognitive, behavioural and adjustment problems or mental illnesses of individuals or groups of people.”; 60
- (c) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words: 60

- “The provisions of subsection (1) shall not prohibit an intern-
psychologist actually undergoing an internship from—”;
- (d) in subsection (4)—
- (i) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of the
following subparagraphs: 5
- “(i) an educational, a training or a research institution recognized
by the professional board and the council;
- (ii) a member of the academic staff of a university, **[or]** a
technikon, a training institution or a teacher on the staff of a
school established under any law,”; 10
- (ii) by the substitution for paragraph (e) of the following paragraph:
- “(e) the performance of any act by a person holding office in a
[church] religious denomination which exists for the purpose
of **[the worship of the Almighty God]** worshipping, provided
it is performed for that purpose and in accordance with the 15
normal pastoral practice of that **[church]** religious denomina-
tion,”; and
- (iii) by the substitution for subparagraph (ii) of paragraph (g) of the following
subparagraph:
- “(ii) by an organization, recognized by the professional board and 20
the council, which performs services for the aid of persons
with personal problems.”; and
- (e) by the substitution for paragraphs (a) and (b) of subsection (6) of the
following paragraphs:
- “(a) provide that any act referred to in subsection (2) and specified in 25
such regulation, may be performed by a person not registered as a
psychologist or as an intern-psychologist under this Act or by an
organization recognized by the professional board; and
- (b) prescribe the conditions on which such act may be performed by
such person or such organization.”. 30

Amendment of section 38 of Act 56 of 1974, as amended by section 14 of Act 58 of 1992

35. Section 38 of the principal Act is hereby amended—
- (a) by the substitution for the words following upon paragraph (b) of subsection
(1) of the following words: 35
- “shall be guilty of an offence and on conviction liable to a fine not
exceeding **[five hundred rand]** R5 000 or to imprisonment for a period
not exceeding twelve months or to both such fine and such imprison-
ment.”; and
- (b) by the substitution in paragraph (b) of subsection (3) for the expression 40
“under section 32” of the words “in terms of this Act”.

Amendment of section 39 of Act 56 of 1974, as substituted by section 5 of Act 43 of 1980

36. Section 39 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 45
- “Prohibition of performance for gain of certain acts deemed to
pertain to other health professions by unregistered persons regis-
trable in terms of this Act”;**
- (b) by the substitution for the words preceding paragraph (a) of subsection (1) of
the following words: 50
- “No person shall perform for gain any act deemed under section 33 to be
an act pertaining to any **[supplementary]** other health **[service]**
profession unless he or she—”; and
- (c) by the substitution for paragraphs (a) and (b) of subsection (1) of the
following paragraphs: 55
- “(a) is registered **[under section 32]** in terms of this Act in respect of
such profession;

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

Amendment 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

37. Section 40 of the principal Act is hereby amended— 10
- (a) by the substitution for the words preceding paragraph (a) of the following words: 10
- “Any person who is not registered [**under section 32**] in respect of any [**supplementary**] other health [**service**] profession, but—”;
- (b) by the substitution for paragraph (b) of the following paragraph: 15
- “(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 [**section 32(1)**] this Act is recognized by the council as acceptable for registration in respect of such profession, but of which qualification he or she is not the holder; or”; and 20
- (c) by the substitution for the words following upon paragraph (c) of the following words: 25
- “shall be guilty of an offence and on conviction liable to a fine not exceeding [**five hundred rand**] R5 000, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.”.

Substitution of heading to Chapter IV of Act 56 of 1974

38. The following heading is hereby substituted for the heading to Chapter IV of the principal Act: 30
- “DISCIPLINARY POWERS OF [**THE COUNCIL**] PROFESSIONAL BOARDS”.

Substitution of section 41 of Act 56 of 1974

39. The following section is hereby substituted for section 41 of the principal Act:
- “**Inquiries by professional boards into charges of misconduct** 35
41. (1) [**The council**] A professional board shall have power to institute an inquiry into any complaint, charge or allegation of [**improper or disgraceful**] unprofessional conduct against any person registered under this Act, and, on finding such person guilty of such conduct, to impose any of the penalties prescribed in section 42(1); Provided that in the case of a complaint, charge or allegation which forms or is likely to form the subject of a criminal case in a court of law, the [**council**] professional board may postpone the holding of an inquiry until such case has been determined. 40
- (2) [**The council**] A professional board may, whenever it is in doubt as to whether an inquiry should be held, in connection with the complaint, charge or allegation in question consult with or seek information from any person, including the person against whom the complaint, charge or allegation has been lodged.”. 45

Amendment of section 41A of Act 56 of 1974, as inserted by section 5 of Act 58 of 1984 50

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

- (a) by the substitution for subsections (1) and (2) of the following subsections:
- “(1) The registrar may with the approval of the **[president]** chairperson of a professional board appoint an officer of the **[council] professional board** as investigating officer for the purposes of this section. 5
- (2) If the registrar deems it necessary, he or she may with the approval of the **[president]** chairperson of a professional board and on such conditions as the **[council] professional board** may determine, appoint any person other than a member of the **[council or of a]** professional board, who is not in the full-time employment of the **[council] professional board**, as investigating officer for a particular investigation, or to assist the investigating officer contemplated in subsection (1) with a particular investigation.”; 10
- (b) by the substitution in paragraph (a) of subsection (6) for the word “president” of the words “chairperson of the professional board”; 15
- (c) by the deletion of paragraph (d) of subsection (6);
- (d) by the deletion of subsection (7);
- (e) in subsection (8)—
- (i) by the deletion in subparagraph (i) of paragraph (b) of the expression “or 48”;
- (ii) by the substitution in subparagraph (ii) of paragraph (b) for the word “president” of the words “chairperson of the professional board”;
- (iii) by the addition of the following subparagraph to paragraph (b): 20
- “(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 the registered person concerned.”; 25
- and
- (iv) by the deletion in paragraph (c) of the expression “,48”;
- (f) by the insertion in paragraph (a) of subsection (9), after the expression “professional board concerned,” of the expression “the chairperson of the professional board concerned,”; 30
- (g) by the deletion in paragraph (b) of subsection (9) of the expression “,48”;
- (h) by the substitution for paragraph (a) of subsection (10) of the following paragraph:
- “(a) If **[the council]** a professional board at an inquiry in terms of section 41 **[48]** or 51, or in a case referred to the **[council] professional board** by the registrar, is satisfied that the person contemplated in subsection (5)(d) had no reasonable grounds to ask for an investigation, the **[council] professional board** may order that the costs of the investigation by the registrar or the investigating officer concerned, or such portion thereof as the **[council] professional board** may determine, be paid by that person to the **[council] professional board**.”; and 35
- (i) by the substitution for paragraph (a) of subsection (11) of the following paragraph: 40
- “(a) refuses or neglects to produce any book, document or thing **[or furnish any explanation]** to any person who is in terms of this section authorized to ask therefor **[or who furnishes an explanation knowing it to be false]**.”; 45

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 and Government Notice No. R.1140 of 1 July 1994 50

41. Section 42 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 55
- “**Matters for and procedure at inquiry by professional boards**”;
- (b) in subsection (1)—
- (i) by the substitution in the words preceding paragraph (a) for the word “council” of the words “professional board”;
- (ii) by the addition at the end of paragraphs (c) and (d) of the word “or”; and
- (iii) by the addition of the following paragraphs: 60
- “(e) a compulsory period of service as may be determined by the professional board; or

- (f) the payment of the costs of the proceedings or a restitution.”;
- (c) by the insertion after subsection (1) 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.”;
- (d) by the deletion of subsection (3);
- (e) in subsection (4)—
- (i) by the substitution for paragraphs (a) and (b) of the following paragraphs:
 “(a) For the purposes of any inquiry held in terms of section 41, **[the council]** a professional board may take evidence and may, under the hand of the **[president]** chairperson of the professional board or the registrar, summon witnesses and require the production of any book, record, document or thing, and may, through the **[president]** chairperson of the professional board or the person presiding at the inquiry, administer an oath to any witness or accept an affirmation from him or her, and may examine any book, record, document or thing which any witness had been required to produce.
- (b) A summons to appear before **[the council]** a professional board as a witness or to produce to it any book, record, document or thing shall be, as nearly as practicable, in the prescribed form, shall be signed by the **[president]** chairperson of the professional board or the registrar and shall be served either by registered letter sent through the post or in the same manner as it would have been served if it were a subpoena issued by a magistrate’s court.”;
- (ii) by the substitution for subparagraph (ii) of paragraph (c) of the following subparagraph:
 “(ii) refuses to take the oath or to make an affirmation when required by the **[president]** chairperson of a professional board or the person presiding at the inquiry to do so;”;
- (iii) by the deletion at the end of subparagraph (iii) of paragraph (c) of the word “or”;
- (iv) by the deletion of subparagraph (iv) of paragraph (c); and
- (v) by the substitution in the words following upon subparagraph (iv) of paragraph (c) for the words “one hundred rand” of the expression “R1 000”;
- (f) by the substitution for subsection (5) of the following subsection:
 “(5) The **[president of the council]** chairperson of a professional board, where the **[council]** professional board itself holds an inquiry in terms of section 41, or the **[chairman]** chairperson of a committee of [the council] a professional board, where such committee holds an inquiry under powers delegated to it by the **[council]** 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 **[council]** professional board or such committee, as the case may be, on matters of law, procedure or evidence.”;
- (g) by the substitution for the words preceding paragraph (a) of subsection (7) of the following words:
 “The **[council]** professional board may, if it deems fit, and subject to such conditions **[if any]** as it may determine—”;
- (h) by the substitution for subsections (8), (9), (10) and (11) of the following subsections:
 “(8) If a person registered in terms of this Act (in this section referred to as the accused) is alleged to be guilty **[as the case may be]** of **[improper or disgraceful]** unprofessional conduct **[or conduct which, when regard is had to such person’s profession, is improper or disgraceful]** and the **[council or a]** professional board on reasonable grounds is of the opinion that it shall impose a fine not exceeding R5 000 on conviction after an inquiry under section 41 **[or 48]**, the **[council]** professional board may issue a summons as prescribed on which an

endorsement is made by the [council or a] professional board that the accused 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.

(9) Where a summons in terms of subsection (8) is issued against an accused, the accused may, without appearing at an inquiry in terms of section 41 [or 48], 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 council or] the professional board concerned before a date specified in the summons. 5

(10) (a) Any penalty imposed under this section, excluding an admission of guilt fine, shall be paid to the [council or a] professional board [as the case may be] within 14 days after such imposition. 10

(b) The imposition of a penalty shall have the effect of a civil judgment of the magistrate's court of the district in which the inquiry under section 41 [or 48] took place. 15

(11) The Minister may on the recommendation of the [council] professional board amend the amount mentioned in subsection (8) by notice in the *Gazette*.”. 15

Amendment of section 43 of Act 56 of 1974, as amended by section 8 of Act 79 of 1990 20

42. Section 43 of the principal Act is hereby amended—

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

“Where [the council] a professional board finds a person referred to in section 42(1) guilty of conduct referred to therein, it may—”; and 25

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

“(2) (a) If at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1)(a), the [council] professional board is satisfied that the person concerned has observed all the relevant conditions, the [council] professional board shall inform the person concerned that no penalty will be imposed upon him or her. 30

(b) If the execution of a penalty or any part of a penalty has been suspended in terms of subsection (1)(b), and the [council] professional board is satisfied that the person concerned has observed all the relevant conditions, the [council] professional board shall inform such person that such penalty or part thereof will not be executed. 35

(c) If the execution of a penalty or any part of a penalty has been suspended in terms of subsection (1)(b) and the person concerned fails to observe any of the conditions of suspension, the [council] professional board shall put such penalty or part thereof into operation, unless such person satisfies the [council] professional board that the non-observance of the condition concerned was due to circumstances beyond his or her control.”. 40

Amendment of section 44 of Act 56 of 1974

43. Section 44 of the principal Act is hereby amended— 45

(a) by the substitution for the word “council” of the words “professional board”; and

(b) by the insertion after the word “his”, wherever it occurs, of the words “or her”.

Amendment of section 45 of Act 56 of 1974 50

44. Section 45 of the principal Act is hereby amended—

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

“**Cognizance by professional boards of conduct of registered persons under certain circumstances**”;

(b) by the substitution for subsections (1) and (2) of the following subsections: 55

“(1) Every registered person who, either before or after registration, has been convicted of any offence by a court of law may be dealt with by the [council] professional board in terms of the provisions of this Chapter if the [council] professional board is of the opinion that such offence constitutes [improper or disgraceful] unprofessional conduct [or conduct which, when regard is had to such person’s profession, is improper or disgraceful], and shall be liable on proof of the conviction to one or other of the penalties referred to in section 42: Provided that, before imposition of any penalty, such person shall be afforded an opportunity of tendering an explanation to the [council] professional board in extenuation of the conduct in question. 5 10

(2) Whenever in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of [improper or disgraceful] unprofessional conduct on the part of a registered person [or of conduct which, when regard is had to such person’s profession, is improper or disgraceful], the court shall direct that a copy of the record of such proceedings, or such portion thereof as is material to the issue, shall be transmitted to the [council] professional board.”; and 15

(c) by the deletion of subsections (3) and (4).

Substitution of section 47 of Act 56 of 1974 20

45. The following section is hereby substituted for section 47 of the principal Act:

“Limitation of liability

47. Save as is provided in this Act, the council or a professional board or any member or officer thereof shall not be liable in respect of any act done in good faith or duty performed in accordance with this Chapter.”. 25

Repeal of section 48 of Act 56 of 1974

46. Section 48 of the principal Act is hereby repealed.

Amendment of section 49 of Act 56 of 1974

47. Section 49 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

“(1) The council shall, in consultation with a professional board, from time to time make rules specifying the acts or omissions in respect of which the [council] professional board may take disciplinary steps under this Chapter: Provided that the powers of [the council] a professional board to inquire into and deal with any complaint, charge or allegation relating to a health profession under this Chapter, shall not be limited to the acts or omissions so specified.”. 35

Repeal of section 50 of Act 56 of 1974

48. Section 50 of the principal Act is hereby repealed.

Substitution of section 51 of Act 56 of 1974

49. The following section is hereby substituted for section 51 of the principal Act: 40

“Regulations relating to inquiries in respect of impaired persons registered in terms of this Act

51. The Minister may, in consultation with the council, make regulations relating to inquiries 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.” 5

Substitution of section 52 of Act 56 of 1974, as substituted by section 6 of Act 58 of 1984

50. The following section is hereby substituted for section 52 of the principal Act: 10

“Dispensing of medicines

52. (1) A medical practitioner, dentist or other person registered in terms of this Act—
 (a) may compound or dispense medicines only on the authority and subject to the conditions of a licence granted by the Director-General in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965); 15
 (b) shall not be entitled to keep an open shop or pharmacy.
 (2) For the purposes of this section “open shop” means a situation where the supply of medicines and scheduled substances to the public is not done by prescription by a person authorized to prescribe medicine.” 20

Repeal of section 52A of Act 56 of 1974

51. Section 52A of the principal Act is hereby repealed.

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 and section 43 of Act 23 of 1993 25

52. Section 53 of the principal Act is hereby amended—
 (a) by the substitution for subsection (3) of the following subsection:
 “(3) (a) The patient may, within three months after receipt of the account referred to in subsection (2), apply in writing to the [council] professional board to determine the amount which in the opinion of the [council] professional board should have been charged in respect of the services to which the account relates, and the [council] professional board shall, as soon as possible after receipt of the application, determine the said amount and notify the practitioner and the patient in writing of the amount so determined: Provided that before the [council] professional board determines the said amount, it shall afford the practitioner concerned an opportunity to submit to it in writing his or her case in support of the amount charged. 30
[(b) A determination made by the council under this section shall be final] 40
 (c) The Minister may, after consultation with the council, make such regulations as he or she may deem necessary in relation to the procedure which [the council] a professional board shall follow in disposing of an application under this subsection.
 (d) [The council] A professional board may from time to time determine and publish the fees used by the [council] professional board as norm for the determination of amounts contemplated in paragraph (a).” 45
 (b) by the substitution in subsection (4) for the word “council” of the words “professional board”; and 50
 (c) by the substitution for subsection (5) of the following subsection:
 “(5) This section shall not be deemed to divest [the council] a professional board of any of its powers or functions under Chapter IV with regard to acts or omissions in respect of which it may take disciplinary steps.” 55

Repeal of section 54 of Act 56 of 1974

53. Section 54 of the principal Act is hereby repealed.

Amendment of section 54A of Act 56 of 1974, as inserted by section 16 of Act 58 of 1992

54. Section 54A of the principal Act is hereby amended— 5

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

“(1) The Minister may **[on the recommendation of]** in consultation with the council by notice in the *Gazette* exempt any juristic person or class of juristic persons specified in the notice, either generally or subject to such conditions as may be specified in the notice, from the operation 10 of any of the provisions of this Act, so as to enable such juristic person to practise a profession, likewise specified, in respect of which registration in terms of this Act is a prerequisite for practising.”; and

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

“(3) The Minister may **[on recommendation of]** in consultation with 15 the council at any time by notice in the *Gazette* amend or repeal any notice issued under subsection (1).”.

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

55. Section 55 of the principal Act is hereby amended by the deletion of paragraph (c). 20

Substitution of section 57 of Act 56 of 1974

56. The following section is hereby substituted for section 57 of the principal Act:

“Commission on prescriptions

57. (1) No medical practitioner or dentist or any other person registered in terms of this Act shall accept or obtain from a **[pharmacist]** pharmacy 25 any commission or other reward in connection with any prescription given by such medical practitioner or dentist or person.

(2) Any medical practitioner or dentist or any other person registered in terms of this Act who contravenes the provisions of subsection (1) shall be 30 guilty of an offence and on conviction liable to a fine not exceeding **[two hundred rand]** R10 000 and in addition, may be dealt with by the **[council]** professional board in terms of the provisions of Chapter IV.”.

Repeal of section 58 of Act 56 of 1974

57. Section 58 of the principal Act is hereby repealed.

Amendment of section 59 of Act 56 of 1974 35

58. Section 59 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:

“Provided that nothing in this subsection contained shall be construed as prohibiting the training of **[medical, dental or psychology students]** health professionals under the supervision of a **[medical practitioner, dentist or psychologist, as the case may be]** health professional, or the employment in any hospital or similar institution of any person undergoing training with a view to registration **[under section 32]** in terms of this Act in respect of any **[supplementary]** health [service] profession, under the supervision of a **[medical practitioner, dentist or person registered under section 32 in respect of the supplementary** 40 **health service profession in question]** health professional.”. 45

Amendment of section 60 of Act 56 of 1974

59. Section 60 of the principal Act is hereby amended by the substitution in subsection (1) for the words “the council” of the words “a professional board”.

Substitution of section 61 of Act 56 of 1974, as amended by section 10 of Act 33 of 1976, section 18 of Act 36 of 1977, section 9 of Act 43 of 1980, section 4 of Act 38 of 1982, section 9 of Act 58 of 1984 and section 9 of Act 79 of 1990 5

60. The following section is hereby substituted for section 61 of the principal Act:

“Regulations

- 61. (1)** The Minister may, in consultation with the council, make regulations relating to— 10
- (a) (i) the registration by the council of students in registrable professions studying at any recognised training institution, 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; 15
- (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 training institutions; 20
- (iv) the minimum requirements of the curricula and the standards of education and examinations to qualify for registration in terms of this Act, which must be maintained at every training institution offering training in any such profession, in order to secure recognition under this Act of the qualifications in question at such training institutions; 25
- (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; 30
- (iv) the institutions at which such courses or training may be taken or undergone and any other requirements in connection with such study or training;
- (v) the registration by the council of persons taking or undergoing such courses or training and the fees payable in respect of such registration; 35
- (vi) the fees payable by candidates for such examinations;
- (vii) the appointment and remuneration of examiners for such examinations; 40
- (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; 45
- (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;
- (c) the conditions under which any registered person may practise his or her profession; 50
- (d) the names which may in terms of section 40(c) not be used;
- (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 at which or the persons with whom such training may be undertaken;
 - (iii) any other matter incidental to the registration or training of interns and student interns, where applicable;
- (f) (i) the registration in terms of section 35, of the specialities or categories of registered persons;
- (ii) the requirements to be satisfied, including the experience to be obtained, the nature and duration of the training to be undergone and the qualifications to be held by persons before any speciality or category may be registered;
 - (iii) the circumstances under which any applicant for the registration of a speciality shall be exempted from any of such requirements;
 - (iv) conditions in respect of the practices of persons whose specialities or categories have been registered, including conditions restricting the practice of any such person to the speciality or category registered in his or her name;
- (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 as a member of a professional board;
- (h) the conduct of an inquiry held in terms of section 42, including—
- (i) the manner in which complaints or charges brought against a registered person shall be lodged;
 - (ii) the method of summoning an accused person and the penalties for failure or refusal on the part of any such person to attend or for obstructing or interrupting the proceedings;
 - (iii) the continuation of a disciplinary 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) the accreditation by the council 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;
- (j) any matter which in terms of this Act is required to be prescribed by regulation; and
- (k) generally, all matters which the Minister considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.
- (2) The Minister may, after consultation with the council, if he or she deems it to be in the public interest, amend or repeal any regulation or rule made in terms of this Act.
- (3) The provisions of any regulation made under paragraph (e) of subsection (1) relating to fees payable under section 19(5) may vary according to the reason for the removal of a person's name from the register and the period during which it was so removed.

(4) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith.

(5) Any proclamation or notice issued or regulation, rule or order made under this Act may from time to time be amended or repealed by the authority by which it was issued or made.”

5

Insertion of section 61A in Act 56 of 1974

61. The following section is hereby inserted after section 61 of the principal Act:

“Rules

61A. The council may make rules relating to—

- (a) the conduct of the business and the procedure at meetings of the council, professional boards, committees of the council and of professional boards and the manner in which minutes of such meetings shall be kept; 10
- (b) the manner in which contracts shall be entered into on behalf of the council, the accounts of the council shall be kept and the manner in which money accruing to the council shall be disposed of; 15
- (c) the 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 of the council or professional boards; 20
- (d) the duties and conditions of service of the registrar and other officers appointed by the council in terms of section 12;
- (e) any fees payable in terms of this Act;
- (f) the forms of the registers to be kept in terms of this Act and of all certificates which may be issued under this Act and the manner in which alterations may be effected in such registers; 25
- (g) the forms to be completed and the documents to be submitted by applicants for registration or for restoration to the register;
- (h) the returns and information to be furnished by any person registered in terms of this Act;
- (i) the nature and duration of training to be undergone by any person who has obtained a qualification in medicine, dentistry or psychology prescribed in terms of section 24 or 25, but who is not yet registered as a medical practitioner, dentist or psychologist, as the case may be, before he or she may be registered as such; 30
- (j) the circumstances under which any person referred to in paragraph (i) shall be entitled to exemption from such training; 35
- (k) the minimum ages of persons eligible for registration in terms of this Act;
- (l) the qualifications which may be registered as additional qualifications in terms of section 35; and 40
- (m) any matter which in terms of this Act is required to be or may be promulgated as rules.”

Substitution of section 62 of Act 56 of 1974, as amended by section 10 of Act 79 of 1990

62. The following section is hereby substituted for section 62 of the principal Act: 45

“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 **[the council]** a professional board to prescribe a fee to be paid annually to the **[council]** professional board by **[every medical practitioner and every dentist]** the registered persons concerned: Provided that in prescribing such fee the **[council]** professional board may differentiate between persons according to whether they have 50

been registered before or after a date specified in the notice and may vary such fee according to whether it is paid [at] before or after a specific date.

(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 [council] professional board may recover such fee by action in a competent court. 5

(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. 10

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

Repeal of section 63 of Act 56 of 1974 15

63. Section 63 of the principal Act is hereby repealed.

Substitution of section 63A of Act 56 of 1974, as substituted by section 12 of Act 18 of 1995

64. The following section is hereby substituted for section 63A of the principal Act:

“Abolition of Interim National Medical and Dental Council of South Africa, and transitional provisions 20

63A. (1) (a) The Interim National Medical and Dental Council of South Africa shall cease to exist on the day immediately preceding the date of the first meeting of the council, and all rights, obligations, assets and liabilities acquired or incurred, as the case may be, by the Interim National Medical and Dental Council of South Africa shall immediately vest in the council and the council shall be deemed to have acquired or incurred such rights, obligations, assets and liabilities in terms of this Act. 25

(b) The Minister may extend the terms of office of the members of professional boards existing before the commencement of the Medical, Dental and Supplementary Health Service Professions Act, 1997, by notices in the *Gazette*. 30

(2) (a) The registrar of deeds concerned shall, at the request of the council and on submission of the relevant title deeds and other documents, make the necessary entries and endorsements in respect of his or her registers and other documents in order to give effect to a transfer in terms of subsection (1). 35

(b) No transfer duty, stamp duty or other fees shall be payable in respect of such transfer, entry or endorsement.”. 40

Substitution of section 66 of Act 56 of 1974 40

65. The following section is hereby substituted for section 66 of the principal Act:

“Short title and commencement

66. This Act shall be called the [Medical, Dental and Supplementary Health Service Professions Act, 1974] Health Professions Act, 1974, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.”. 45

Substitution of long title of Act 56 of 1974, as substituted by section 13 of Act 18 of 1995

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

“ACT

To establish the **[Interim National Medical and Dental Council of South Africa]** 5
Health Professions Council of South Africa; to provide for control over the
training, **[of and for the]** registration and practices of **[medical practitioners,**
dentists and] practitioners of **[supplementary] health [service] professions; [to**
provide for control over the training of and for the registration of
psychologists] and to provide for matters incidental thereto.”. 10

Savings

67. (1) Any proclamation, notice, regulation, authorisation, rule or order issued, made, granted or done in terms of a provision of the principal Act or that is deemed to have been issued, made, granted or done in terms of the principal Act, shall stay in force until cancelled or repealed by the Health Professions Council of South Africa, established under section 2 of the principal Act (in this section referred to as the council). 15

(2) Any inquiry conducted by the Interim National Medical and Dental Council of South Africa, including any preliminary investigation undertaken to determine whether *prima facie* evidence exists which would justify such inquiry, into alleged unprofessional conduct by any person, and which has not been concluded at the date of the first meeting of the council, shall be continued and concluded by the professional board concerned. 20

(3) The council shall have the power to institute and conclude disciplinary proceedings against any person who, at any time prior to the first meeting of the council, is alleged to have committed an act which constituted unprofessional conduct. 25

(4) Any person employed by the Interim National Medical and Dental Council of South Africa immediately prior to the date on which the said Council is abolished in terms of section 63 A of the principal Act, shall be deemed to have been appointed by the council. 30

(5) In this section, “Interim National Medical and Dental Council of South Africa” shall mean the Interim National Medical and Dental Council of South Africa as defined in section 1 of the principal Act.

Short title

68. This Act shall be called the Medical, Dental and Supplementary Health Service Professions Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 35

**MEMORANDUM ON THE OBJECTS OF THE MEDICAL, DENTAL
AND SUPPLEMENTARY HEALTH SERVICE PROFESSIONS
AMENDMENT BILL, 1997**

Clause 1 of the Bill deals with the insertion of new definitions and the deletion of obsolete definitions.

Clauses 2, 3 and 4 of the Bill deal with the establishment of the new Health Professions Council of South Africa and the objects of that council. Some of the objects are to co-ordinate the activities of the new professional boards and to advise the Minister on matters falling within the scope of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974) (hereinafter referred to as "the Act").

Clauses 5 and 6 deal with the powers of the new council and its constitution, respectively. The powers are those mostly enjoyed by juristic persons but in particular, the new council has the power to consider matters affecting the professions registrable in terms of the Act and to make rules to achieve the purpose of the Act.

With regard to the constitution of the council, provision is being made for proportional representation of professional boards. Provision is also made for provincial representation and for persons who are not health professionals to be members of the new council.

Clause 12 deals with the establishment of professional boards in respect of all registered professions, including medicine and dentistry, to deal with and finalise matters pertaining to those professions.

Clause 22 enables the Minister, after consultation with the council, to make regulations concerning the performance of remunerated medical community service by persons registering in terms of the Act.

Clause 23, which deals with the registration of persons who qualified outside the Republic of South Africa, ensures that such persons are adequately evaluated before they may be registered and further seeks to impose restrictions on their practice if deemed necessary.

Clause 28 includes technikons and other training institutions to train health professionals for registration in terms of the Act.

Clause 29 repeals sections 32, 32A and 32B of the Act to do away with references to supplementary health service professions in order to bring equality in health professions.

Clause 34 adds other acts to the already existing statutory acts which psychologists may perform. The amendment also increases penalties from R500 to R5 000.

Chapter 4 of the Act is amended to give professional boards disciplinary powers in respect of their professions.

Clause 49 allows the Minister, in consultation with the council, to make regulations relating to inquiries in respect of impaired practitioners and how they should be dealt with in terms of the assessment of their conditions.

Clause 50 is aimed at ensuring that persons registered in terms of this Act only compound and dispense medicines in terms of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965).

Clause 60 is aimed at ensuring that regulations in terms of the Act are made by the Minister in consultation with the council.

Clause 61 enables the council to make rules for its internal organisation.

Clause 64 abolishes the Interim National Medical and Dental Council of South Africa and also makes provision for the transfer of its assets and liabilities to the new council.

Clause 65 changes the name of the Act to the Health Professions Act.

Due to the above-mentioned amendments to the Act, there are various consequential amendments that are being dealt with in the unmentioned clauses.

The Department of Health and the State Law Advisers are of the view that the procedure set out in section 76 of the Constitution should be followed with regard to this Bill.