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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 499.

30 Maart 1977.

No. 499.

30 March 1977.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 36 van 1977: Wysigingswet op Gesondheidswetgewing, 1977.

No. 36 of 1977: Health Laws Amendment Act, 1977.

ACT

To amend the Medicines and Related Substances Control Act, 1965, so as to provide for an increase of the membership of the Medicines Control Council; to amend the Mental Health Act, 1973, so as to regulate the expiry of the period of office of certain members of a hospital board; and to make provision for the payment of amounts for the treatment of certain persons in certain state institutions; to amend the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974, so as to apply that Act to the territory of South West Africa; and to prohibit persons pursuing certain practices from committing certain acts with patients; to amend the Pharmacy Act, 1974, so as to further regulate the carrying on of the business of retail pharmacist by bodies corporate; and to regulate the training and control of pharmaceutical auxiliary personnel; to amend the Medical, Dental and Supplementary Health Service Professions Act, 1974, so as to provide for the registration of student interns; for the limited registration of certain persons in respect of supplementary health service professions, and the exemption of persons so registered from the restrictions imposed in respect of their registration, upon compliance by them with certain requirements; for the performance of certain acts by student interns; for the granting of authority to certain registered persons to supply certain medicines in certain circumstances; and for the making of regulations relating to the removal by the council from the registers in question of the names of medical, dental or psychology students, the nature and duration of training to be undergone by persons who have obtained certain certificates before they may be registered in respect of supplementary health service professions, the registration of student interns and the conduct of inquiries into the conduct or alleged conduct of members of supplementary health service professions; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 22 March 1977.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 3 of Act 101 of 1965, as amended by section 3 of Act 65 of 1974.

1. Section 3 of the Medicines and Related Substances Control Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The council shall consist of not less than seven or more than fifteen members as may from time to time be determined by the State President.”.

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Amendment of
section 47 of
Act 18 of 1973.

2. Section 47 of the Mental Health Act, 1973, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The appointment of a member of the board shall be for a period of three years, and a member shall be eligible for reappointment: Provided that if the number of members of the board is increased to four or five during the period of office of the serving members of the board, the period of office of the additional member or members shall expire on the same date as that of the serving members.”

Amendment of
section 77 of
Act 18 of 1973.

3. Section 77 (1) of the Mental Health Act, 1973, is hereby amended by the substitution for paragraph (o) of the following paragraph:

“(o) the payment of maintenance and expenses incurred in connection with the detention, treatment and maintenance of any person in a State institution, other than a provincial hospital;”

Amendment of
section 3 of
Act 52 of 1974.

4. Section 3 of the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974, is hereby amended—

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

“(1) An officer in the Department of Health designated by the Minister of Health shall keep a list on which shall be entered the name of every person who—

(a) within six months after the commencement of this Act submitted proof to the satisfaction of such officer that at the said commencement such person—

(i) was pursuing for gain any practice in the Republic; or

(ii) was a South African citizen and was studying, in the Republic or elsewhere, in order to qualify in any practice; or

(aA) within six months after the commencement of the Health Laws Amendment Act, 1977, submitted proof to the satisfaction of such officer that at the commencement of the said Amendment Act such person—

(i) was pursuing for gain any practice in the territory of South West Africa (hereinafter referred to as “the territory”); or

(ii) was a South African citizen permanently resident within the territory and was studying in the Republic (including the territory) or elsewhere in order to qualify in any practice; or

(b) within one month after the date referred to in subparagraph (ii), submitted proof to the satisfaction of such officer that—

(i) such person was at the commencement of this Act—

(aa) a South African citizen; and

(bb) pursuing for gain any practice elsewhere than in the Republic; and

(ii) such person became permanently resident in the Republic from a date after the commencement of this Act; or

(bA) within one month after the date referred to in subparagraph (ii), submitted proof to the satisfaction of such officer that—

(i) such person was at the commencement of the said Amendment Act—

(aa) a South African citizen; and

(bb) pursuing for gain any practice elsewhere than in the territory; and

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- (ii) such person has become permanently resident in the territory from a date after the commencement of the said Amendment Act; or
- (c) submitted proof to the satisfaction of such officer that—
- (i) at the commencement of this Act such person was—
- (aa) as far as residence in the Republic is concerned, capable of acquiring South African citizenship; and
- (bb) studying, in the Republic or elsewhere, in order to qualify in any practice; and
- (ii) such citizenship was granted to such person within two years after the commencement of this Act; or
- (d) submitted proof to the satisfaction of such officer that—
- (i) at the commencement of the said Amendment Act such person was—
- (aa) as far as residence in the territory is concerned, capable of acquiring South African citizenship; and
- (bb) studying in the Republic (including the territory) or elsewhere in order to qualify in any practice;
- (ii) such citizenship was granted to such person within two years after the commencement of the said Amendment Act,
- and together with such proof, submitted proof to the satisfaction of such officer that the Association has made a recommendation that such person's name be entered on such list by virtue of the training he receives or has received, as the case may be, his good character and his proficiency in at least one of the official languages of the Republic.”; and
- (b) by the substitution in subsection (2) for the expression “(a) or (b)” of the expression “(a), (aA), (b) or (bA)”.

Amendment of
section 5 of
Act 52 of 1974.

5. Section 5 of the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974, is hereby amended by the addition to subsection (1) of the following paragraph:

“(j) commit any indecent act with any patient.”.

Substitution of
section 6 of
Act 52 of 1974.

6. The following section is hereby substituted for section 6 of the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974:

“Saving.

6. (1) The provisions of the Medical, Dental and Supplementary Health Service Professions Act, 1974, shall not be construed so as to prohibit any person whose name appears on the list from performing for gain in the Republic any act usually performed at the commencement of this Act by persons who pursue the practice concerned in the Republic, and the performance of which by such person is not prohibited by this Act.

(2) The provisions of the Medical, Dental and Supplementary Health Service Professions Act, 1974, shall not be construed so as to prohibit any person whose name appears on the list from performing for gain in the territory any act usually performed at the commencement of the Health Laws Amendment Act, 1977, by persons who pursue the practice concerned in the territory, and the performance of which by such person is not prohibited by this Act.”.

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Substitution of
section 7 of
Act 52 of 1974.

7. The following section is hereby substituted for section 7 of the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974:

“Presumption. 7. When any person is charged with a contravention of any provision of the Medical, Dental and Supplementary Health Service Professions Act, 1974, and it is alleged that any act was at the commencement of—

(a) this Act usually performed by persons who pursue any practice in the Republic; or

(b) the Health Laws Amendment Act, 1977, pursued by persons who pursue any practice in the territory,

the onus of proving it shall be upon the person alleging it.”

Insertion of
section 8A in
Act 52 of 1974.

8. The following section is hereby inserted in the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974, after section 8:

“Application of Act in South West Africa. 8A. This Act and any amendment thereof and the rules made thereunder from time to time shall apply also in the territory, including the Eastern Caprivi Zipfel.”

Amendment of
section 22 of
Act 53 of 1974.

9. Section 22 of the Pharmacy Act, 1974, is hereby amended—

(a) by the deletion of the word “or” at the end of subparagraph (iii) of paragraph (b) of subsection (1);

(b) by the addition of the word “or” at the end of subparagraph (iv) of paragraph (b) of subsection (1);

(c) by the addition to paragraph (b) of subsection (1) of the following subparagraph:

“(v) in the case of a body corporate referred to in subsection (6), if that body corporate no longer complies with the provisions of that subsection;”

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

“(e) the body corporate, if it carries on business as a retail pharmacist shall either have been carrying on business as such immediately prior to the commencement of this Act or shall be a corporate body complying with the provisions of subsection (6).”; and

(e) by the addition of the following subsection:

“(6) (a) A body corporate which did not immediately prior to the commencement of this Act carry on business as a retail pharmacist, may carry on business as such if it is a private company having a share capital and has been incorporated and registered under the Companies Act, 1973 (Act No. 61 of 1973), as a private company and if its memorandum of association states that its directors and former directors shall be liable, jointly and separately, together with the company for such debts and liabilities of the company as are or were contracted during their periods of office.

(b) Notwithstanding anything to the contrary contained in the Companies Act, 1973, the following provisions shall apply in respect of such company—

(i) Only natural persons who are pharmacists, may hold the shares of such company or have any interest in such shares: Provided that in the event of any person dying or ceasing to qualify so to hold shares of the company, any shares of it held by him prior thereto, may continue to be held by him or his estate for a period of six months or such longer period as the board may determine.

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- (ii) No voting rights shall attach to any share held in terms of the proviso to subparagraph (i), and the holder of any such share shall not receive any director's fees or remuneration or participate in the income or profits earned by that company by the carrying of its retail pharmacy business.
- (iii) Every holder of shares of such company, other than a person referred to in the proviso to subparagraph (i), shall be deemed to be a director of the company, and no other person who is not such a holder shall be a director of that company.
- (iv) The name of the company shall consist solely of the name or names of any of the members or former members of the company or of persons who carried on, either for their own account or in partnership, any pharmacy business which may reasonably be regarded as a predecessor of the business of the company: Provided that the words "and associates" or "and company" may be included in the name of the company."

Insertion of section 22A in Act 53 of 1974.

10. The following section is hereby inserted in the Pharmacy Act, 1974, after section 22:

"Prohibition of opening, purchase or acquisition of certain pharmacies by certain bodies corporate.

22A. (1) As from the commencement of the Health Laws Amendment Act, 1977, no body corporate, other than a body corporate which complies with the provisions of section 22 (6), shall open, purchase or otherwise acquire a pharmacy in which the business of a retail pharmacy is carried on, or acquire any share in such pharmacy.

(2) Any contravention of the provisions of subsection (1) shall be an offence and any person shall on conviction thereof be liable to a fine not exceeding five hundred rand."

Amendment of section 49 of Act 53 of 1974.

11. Section 49 (1) of the Pharmacy Act, 1974, is hereby amended by the substitution for paragraph (m) of the following paragraph:

- "(m) (i) the registration by the board of pharmaceutical technicians and other pharmaceutical auxiliary personnel;
- (ii) the persons required to be registered as pharmaceutical technicians or other pharmaceutical auxiliary personnel and the circumstances under which such persons shall be required to be so registered;
- (iii) the training and the educational or other qualifications required for registration as pharmaceutical technicians or other pharmaceutical auxiliary personnel."

Amendment of section 1 of Act 56 of 1974, as amended by section 1 of Act 33 of 1976.

12. Section 1 of the Medical, Dental and Supplementary Health Service Professions Act, 1974, is hereby amended by the insertion after the definition of "scheduled substance" of the following definition:

"'student intern' means a person registered as such under this Act;"

Amendment of section 18 of Act 56 of 1974, as amended by section 48 of Act 57 of 1975 and section 3 of Act 33 of 1976.

13. Section 18 of the Medical, Dental and Supplementary Health Service Professions Act, 1974, is hereby amended by the substitution for subsection (1) of the following subsection:

"(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 and shall, on the instructions of the council, enter in the appropriate register the name, address, qualifications, date of initial registration

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and such other particulars (including, in the case of medical practitioners, dentists and psychologists, the name of their speciality, if any, and in the case of psychologists also the name of their category) as the council may determine, of every person whose application for registration in terms of section 17 (2) has been granted.”

Amendment of section 32 of Act 56 of 1974, as substituted by section 5 of Act 33 of 1976.

14. Section 32 of the Medical, Dental and Supplementary Health Service Professions Act, 1974, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) (a) The registrar shall, as from time to time directed by the council, establish and keep registers in which shall, subject to the provisions of section 33 (2), be entered particulars in respect of categories of persons who, to the satisfaction of the council, are being trained with a view to qualifying them for the practising of, or have been trained and have passed examinations with a view to qualifying them for the practising of, or of persons who are practising, any profession, other than the profession of a medical practitioner, dentist, intern, psychologist, intern-psychologist or any profession to which the provisions of the Nursing Act, 1957 (Act No. 69 of 1957) or the Pharmacy Act, 1974 (Act No. 53 of 1974), are applicable, which has as its object the treatment, prevention or relief of physical or mental defects, illnesses or deficiencies in man.
- (b) The council may conduct examinations for persons who intend to qualify for the practising of a supplementary health service profession.
- (c) The council may make rules—
- (i) prescribing the fee for the registration of persons under paragraph (a);
 - (ii) providing for the recognition by the council of qualifications which may be accepted for registration in lieu of the passing of any examination prescribed by the council, and the conditions of acceptance.”

Insertion of sections 32A and 32B in Act 56 of 1974.

15. The following sections are hereby inserted in the Medical, Dental and Supplementary Health Service Professions Act, 1974, after section 32:

“Limited registration in respect of supplementary health service professions.

32A. (1) The Minister may from time to time on the recommendation of the council by regulation provide that any person who holds a qualification which is not recognized by the council under section 32 but which qualification the council, for the purposes of registration under this section, accepts by virtue of the fact that such qualification, in the opinion of the council, indicates a satisfactory standard of professional education, and who belongs to a prescribed category of persons, may be registered in respect of a supplementary health service profession, and thereupon the council may in its discretion, but subject to the provisions of the regulations, register such person.

(2) Any person registered under subsection (1) in respect of a supplementary health service profession, shall only be entitled to practise such profession—

- (a) for an initial period not exceeding five years and thereafter for such period or periods as the council may determine;
- (b) in respect of such area or areas as the council may determine; and
- (c) subject to such restrictions in respect of his professional activities as the council may determine.

(3) Any person registered under subsection (1) shall, subject to the provisions of subsection (2), for the purposes of this Act (except section 32B (1)) be

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deemed to be registered under section 32 in respect of the profession concerned.

Exemption of persons registered under section 32A from restrictions imposed in terms of that section.

32B. (1) Any person (in this section referred to as the applicant) who—

- (a) holds a qualification which is accepted under section 32A (1);
- (b) has for a period of at least two years been registered under section 32A (1) in respect of a supplementary health service profession; and
- (c) has, while being registered as contemplated in paragraph (b), practised the profession in question for a period of at least two years at any institution in the Republic, of which at least one year shall have been at an institution approved for this purpose by the council; and
- (d) submits a certificate issued by the head of the institution at which the applicant practised as required by paragraph (c), if such head is registered under section 32 in respect of the profession in question, or, if such head is not so registered, by a person who is registered in respect of the profession in question and who has personal knowledge of the applicant's practice of the profession during the period of two years referred to in paragraph (c) and, if the council so requires, by a person indicated by the council, who is registered under section 32 in respect of the profession in question, stating that the applicant was during such period professionally competent and of good character,

may apply to the council to be admitted to sit for the examination referred to in subsection (2).

(2) If the council is satisfied that the applicant complies with the requirements of subsection (1), it shall allow the applicant to sit for an examination prescribed under subsection (3), on a date and at a place determined and before examiners appointed by the council, for the purpose of ascertaining whether the applicant—

- (a) possesses professional knowledge and skill which is of a standard not lower than that prescribed in the Republic in respect of the profession to which the application relates;
- (b) has sufficient knowledge of the laws of the Republic applying to such profession;
- (c) is proficient in at least one of the official languages of the Republic.

(3) If the applicant passes the examination referred to in subsection (2) to the satisfaction of the council, it shall exempt the applicant from all restrictions imposed in respect of the applicant under section 32A (2).

(4) The Minister may from time to time, on the recommendation of the council, make regulations—

- (a) prescribing the examination to be held for the purposes of this section;
- (b) prescribing the fee to be paid by persons intending to sit for such examination; and
- (c) prohibiting a person who has failed such an examination a prescribed number of times from sitting again for such an examination."

Amendment of section 36 of Act 56 of 1974.

16. Section 36 of the Medical, Dental and Supplementary Health Service Professions Act, 1974, is hereby amended by the insertion after paragraph (a) of subsection (2) of the following paragraph:

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- “(aA) a student intern in the course of his training from—
- (i) performing under the supervision of a medical practitioner any act mentioned in paragraph (b) of subsection (1) which has been prescribed;
 - (ii) issuing in connection with such performance of that act in the institution where he is undergoing his training, any document required in respect of the performance of that act;”.

Insertion of section 52A in Act 56 of 1974.

17. The following section is hereby inserted in the Medical, Dental and Supplementary Health Service Professions Act, 1974, after section 52:

“Authority for supply in certain circumstances of certain medicines by certain registered persons in accordance with directions of medical practitioner.

52A. The Secretary for Health may, if he is of the opinion that the consulting rooms of a medical practitioner are not situated within a reasonable distance of a retail pharmacy, grant authority, subject to such conditions as he may deem fit to impose, for the supply by any person who is in the employment of such medical practitioner and who is registered or enrolled as a nurse under the Nursing Act, 1957 (Act No. 69 of 1957), of any medicine mentioned in Schedule 1, 2, 3 or 4 of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), to any person under the treatment of such medical practitioner: Provided that such supply shall take place in accordance with the directions of such medical practitioner.”.

Amendment of section 61 of Act 56 of 1974, as amended by section 10 of Act 33 of 1976.

18. Section 61 of the Medical, Dental and Supplementary Health Service Professions Act, 1974, is hereby amended—

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

“(i) the registration by the council of medical, dental or psychology students studying at any university, the fees payable in respect of such registration and the removal by the council from the registers in question of the names of such students so registered;”;
- (b) by the addition to paragraph (l) of subsection (1) of the following subparagraph:

“(viii) 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 in respect of the supplementary health service professions in question, before they may be so registered;”;
- (c) by the substitution for paragraph (n) of subsection (1) of the following paragraph:

“(n) (i) the registration of interns, student interns or intern-psychologists, 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, student interns or intern-psychologists; and
- (d) by the substitution in paragraph (r) of the words preceding subparagraph (i) of the following words:

“the conduct of an enquiry held in terms of the provisions of section 41 or 48, including—”.

Short title

19. This Act shall be called the Health Laws Amendment Act, 1977.