HEALTH

Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965

Summary: This Ordinance (OG 2614) provides for the certification of institutions for the treatment of persons addicted to drink, drugs, gambling, etc. and the detention of such persons for treatment. It was brought into force on 1 September 1965 by Proc. 78/1965 (OG 2674).

Section 63(1) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 states:

Subject to the provisions of subsections (2) and (3), the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963), is, except in so far as it is necessary for the administration thereof by the Minister of Coloured Affairs in terms of Proclamation No. 57 of 1964, and the Ordinance for the Prevention and Combating of Alcoholism and Anti-social Conduct, 1965 (Ordinance No. 11 of 1965), of the territory, hereby repealed.

Although the wording may seem at first glance to be somewhat ambiguous, this provision is understood to mean that Act 86 of 1963 is repealed – except insofar as that Act is relevant to the administration of the other two laws cited (Proc. 57 of 1964 and Ord. 11 of 1965). This interpretation is supported by the use of the verb "is....repealed" – which indicates that the provision refers to only a single repealed law – and by the placement of commas in the provision. Thus, it appears that Act 41 of 1973 does *not* repeal this Ordinance as has been assumed in some sources.

Regulations: Regulations are contained in GN 182/1965 (OG 2670). No amendments have been located.

International Health Regulations Act 28 of 1974, as amended to December 1977 w 🕎

Summary: This Act (<u>RSA GG 4219</u>) applies the International Health Regulations adopted by the World Health Assembly in 1969 to South Africa.

On 25 May 1951 WHO Member States adopted the *International Sanitary Regulations – World Health Organisation Regulations No. 2*, which entered into force internationally on 01 October 1952 (Source: UNTC). In accordance with Article 106 - 110 of the Regulations entered into force in the Union of South Africa (including the territory of South West Africa) upon acceptance on the same date 01 October 1952 (Source: UNTC).

The International Sanitary Regulations were replaced by the *International Health Regulations* in 1969. The 1969 Regulations were subject to minor modifications in 1973 and 1981.

The 1969 International Health Regulations were replaced in turn by the *International Health Regulations*, 2005, which entered into force internationally on 15 June 2007 (source: WHO). Namibia is bound by these 2005 Regulations from that date in accordance with Articles 21(a) and 22 of the WHO Constitution.

According to Article 58 of these regulations, headed "International sanitary agreements and regulations", the 2005 Regulations replace inter alia the International Sanitary Regulations, 1951 and the Additional Regulations of 1955, 1956, 1960, 1963 and 1965, as well as the International Health Regulations of 1969 and the amendments of 1973 and 1981.

However, this South African statute, which is still in force in Namibia, incorporates the 1969 version of the International Health Regulations directly into Namibian domestic law.

For more information on the international context, see the Namlex Appendix entry on the Constitution of the World Health Organization (WHO), 1946.

Applicability to SWA: Section 1 defines "Republic" to include "the territory of South West Africa". Section 5 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) – which was not made expressly applicable to SWA.

Amendments: The regulations in this law are amended by RSA Proc. R.139/1975 (RSA GG 4741).

Regulations: Supplementary regulations (in the sense of being "supplementary" to the International Health Regulations applied to South Africa and SWA in terms of the Act) are contained in RSA GN R.2001/1975 (RSA GG 4878), reprinted in OG 3500) and amended in South Africa by RSA GN R.2069/1978 (RSA GG 6188) and RSA GN R.790/1980 (RSA GG 6954). The 1975 and 1980 notices specifically mention that they are being effected with the consent of the Administrator-General for the Territory of South-West Africa and that they also apply in the Territory. The 1978 notice makes no mention of SWA and thus – being after the date of transfer – does not seem to be applicable to SWA. (In any event, the final outcome is the same because the sole amendment made by the 1978 notice is superseded by the amendment made by the 1980 notice.) Thus, the supplementary regulations appear to apply to SWA as issued in RSA GN R.2001/1975 (RSA GG 4878) and amended by RSA GN R.790/1980 (RSA GG 6954).

Notices: Designations of approved ports and airports are contained in RSA Proc 241/1975 (<u>RSA GG</u> 4877).

Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979 🗐 🔄

Summary: This Ordinance (OG 4011) controls the sale, manufacture and import of foodstuffs, cosmetics and disinfectants.

Repeals: The Ordinance repeals the Food, Drugs and Disinfectants Ordinance 36 of 1952. 144

Amendments: This Ordinance originally authorised local authorities to enforce it locally. It was extended to all of SWA by the Health Act 21 of 1988 (OG 5651).

Regulations: Regulations made in terms of the repealed Food, Drugs and Disinfectants Ordinance 36 of 1952 survive pursuant to section 28(2) of this Ordinance:

Any proclamation, regulation, notice, authority or order issued, made or granted, or any other thing done in terms of any provision of the said Ordinance, shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been issued, made, granted or done in terms of the corresponding provision of this Ordinance.

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¹⁴⁴ In South Africa, the analogous law was the *Food, Drugs and Disinfectants Act 13 of 1929* (SA GG 1772), which was repealed by the *Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972* (RSA GG 3530).

Regulations relating to the standards of food, drugs and disinfectants were made under the repealed Ordinance and are contained in GN 195/1968 (OG 2949). They were amended after independence by GN 124/1994 (OG 883). 145

Related laws: See GN 179/2008 (<u>GG 4088</u>) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 (<u>GG 3051</u>) to certain substances approved under this Act.

Public and Environmental Health Act 1 of 2015 🕎 📻

Summary: This Act (<u>GG 5740</u>) provides a framework for a structured, uniform public and environmental health system in Namibia. It covers notification, prevention and control of diseases and sexually-transmitted infections; maternal, ante-natal and neo-natal care; water and food supplies; infant nutrition; waste management; health nuisances; public and environmental health planning and reporting.

Part 3 of the Act was brought into force temporarily by the State of Emergency - COVID-19 Regulations, Proclamation 9 of 2020 (GG 7159) issued pursuant to Article 26(5) of the Namibian Constitution, subsequent to the declaration of a State of Emergency in the whole of Namibia, following a worldwide outbreak of the disease known as Coronavirus Disease 2019 (COVID-19), in Proclamation No. 7 of 2020 (GG 7148). In addition, these regulations provided that, despite the provisions of section 22(2) of the Act, Covid-19 is deemed to be a "formidable epidemic disease" which necessitates the measures referred to in section 29(1) of the Act.

After the end of the State of Emergency, the Act was brought permanently into force on 17 September 2020 by GN 230/2020 (GG 7338). The "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) known as COVID-19" is deemed to be a "formidable epidemic disease" for the purposes of the Act in GN 232/2020 (GG 7338).

Repeals: The Act repeals the *Public Health Act 36 of 1919* (SA GG 979) and the SWA Public Health Proclamation 36 of 1920 (OG 35) (which made the *Public Health Act 36 of 1919* applicable to South West Africa as well as amending it) and some of its other amendments. 146

The SWA Public Health Proclamation 36 of 1920 (OG 35) repealed the following laws:

- Ordinance by the Governor relating to slaughter of stock and inspection of meat, dated of 27 June 1911
- Ordinance by the Governor relating to vaccination, dated 30 July 1912
- Notice by the Governor relating to free treatment of natives suffering from sexual disease, dated 31 July 1912.
- Ordinance by the Governor relating to the prevention of the spread of diseases which are contagious and dangerous to the public, dated 27 May 1913.

The current Act does not repeal or amend any other laws, but section 91 states: "If any other law is in conflict or inconsistent with this Act, this Act prevails."

Savings: Section 94 of the current Act contains a broad savings clause:

Anything done under a law repealed by section 95 and which could have been done under a corresponding provision of this Act is deemed to have been done under this Act.

The savings clause could include regulations, as regulations on a variety of topics are authorised by the current Act.

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¹⁴⁵ These regulations are in substitution for those promulgated under GN 103 of 8 May 1956.

¹⁴⁶ Regarding the *Public Health Act 36 of 1919*, the amending Acts repealed are Ord. 50/1957 (<u>OG 2094</u>), Ord. 35/1958 (<u>OG 2153</u>), and Ord. 2/1971 (<u>OG 3147</u>). However, the amendments made by Ord. 7/1932 (<u>OG 476</u>), Proc. 16/1936 (<u>OG 676</u>), Proc. 20/1938 (<u>OG 761</u>) and Ord. 10/1964 (<u>OG 2565</u>) are not repealed.

Section 155 of the *Public Health Act 36 of 1919* also contains a savings clause that applies explicitly to regulations:

Bye laws or regulations made under any law repealed by this Act shall remain in force unless in conflict with this Act and be deemed to be made thereunder until superseded by regulations made under this Act. All of the laws repealed were provincial ones and have not been further researched.

For the purpose of considering what regulations made under the repealed *Public Health Act 36 of 1919* may survive, the SWA Public Health Proclamation 36 of 1920 (OG 35) appears to have served as a transfer proclamation by virtue of its amendments to the 1919 Act, with effect from 1 **September 1920**. The SWA Public Health Proclamation 36 of 1920 provided that the terms "Administrator", "Governor-General" and "Minister" would be construed throughout the Act to mean the Administrator of the Protectorate of South-West Africa. Thus, it would seem that SA/RSA regulations made after that date did *not* apply to SWA, since the power to make regulations was transferred to SWA.

Regulations: Several provisions of the current Act authorise regulations: section 29(1), section 31(1)(b), sections 74-75 and section 77.

Note that only national pre-independence regulations and regulations authorised under the current Act are recorded here; regulations that applied only to local areas have not been recorded.

The following regulations made under the repealed Act appear to survive: 148

Regulations relating to Nursing and Maternity Homes are contained in GN 81/1922 (OG 88).

Regulations relating to Slaughtering, Meat Inspection, Etc. are contained in GN 140/1926 (OG 213). These regulations, originally called "Village Management Board Area, Walvis Bay: Slaughterhouse Regulations", were applied "throughout the areas under the jurisdiction of all local authorities in South West Africa" by GN 94/1927 (OG 238) and refers to them under the more general heading. They were amended by GN 10/1932 (OG 447), GN 78/1988 (OG 5537) and AN GN 76/1989 (OG 5800).

Regulations relating to the Payment of Fees by Patients in Isolation Hospitals are contained in GN 209/1930 (OG 390).

Port Health Regulations are contained in GN 18/1937 (OG 696), as amended by GN 191/1943 (OG 1078).

Regulations regarding Vaccines, Sera and Cultures or Preparations of Pathogenic Micro-Organisms are contained in GN 124/1939 (OG 800).

Rural Sanitary Regulations are contained in GN 175/1943 (OG 1075), "in force within such areas, and in effect from such dates, as the Administrator may from time to time indicate by notice in the Gazette".

¹⁴⁷ As a matter of historical interest, the SWA Public Health Proclamation 36 of 1920 repealed the following:

[•] Ordinance by the Governor relating to slaughter of stock and inspection of meat of 27 June 1911.

[•] Ordinance by the Governor relating to vaccination of 30 July 1912.

[•] Notice by the Governor relating to free treatment of natives suffering from sexual disease of 31 July 1912.

[•] Ordinance by the Governor relating to the prevention of the spread of diseases which are contagious and dangerous to the public of 27 May 1913.

¹⁴⁸ (1) No surviving South African regulations prior to the transfer date have been located. (2) Note that a draft of proposed regulations relating to persons with leprosy is contained in AG GN 88/1931 (OG 433), but no enacted version of these regulations was located.

Notices bringing these regulations into force are contained in GN 209/1943 (Kalkveld) (OG 1080); GN 279/1947 (Gibeon) (OG 1319); GN 247/1948 (Otavi) (OG 1382); GN 256/1948 (Aroeb) (OG 1385); GN 32/1949 (Aroeb) (OG 1406); GN 115/1949 (Witvlei) (OG 1423); GN 148/1949 (Voigtskub) (OG 1426); GN 243/1949 (Wlotzkasbaken) (OG 1448); GN 268/1949 (Voigtskub); GN 1/1950 (Wlotzkasbaken); GN 272/1951 ("Hentys Bay") (OG 1603); and GN 175/1965 (Hardap Irrigation Settlement) (OG 2663).

Regulations on Infectious Diseases: Exclusion of Patients and Contacts from Schools and Hostels and the Closing of Schools and Hostels are contained in GN 80/1964 (OG 2562). 149

Regulations on Compulsory Immunisation against Poliomyelitis are contained in GN 39/1965 (OG 2611), as amended by GN 212/1978 (OG 3818).

Regulations on Smallpox are contained in GN 124/1965 (OG 2649). 150

South African **Regulations regarding Smallpox** are contained in RSA GN R.1826/1963, which was reprinted in OG 2518. However, these regulations do not mention SWA and, despite being published in SWA, they were made *after* the power to make regulations under the *Public Health Act 36 of 1919* in respect of SWA was transferred to the Administrator of SWA by the SWA Public Health Proclamation 36 of 1920 (OG 35). Thus, they do not appear to have been applicable to SWA. The **Regulations on Smallpox** in GN 124/1965 (OG 2649) are similar in content.

Regulations on Plague are contained in GN 125/1965 (OG 2649). 151

South African **Regulations regarding Plague** are contained in RSA GN R.1827/1963, which was reprinted in OG 2518). However, these regulations do not mention SWA and, despite being published in SWA, they were made *after* the power to make regulations under the *Public Health Act 36 of 1919* in respect of SWA was transferred to the Administrator of SWA by the SWA Public Health Proclamation 36 of 1920 (OG 35). Thus, they do not appear to have been applicable to SWA. The **Regulations on Plague** in GN 125/1965 (OG 2649) are similar in content.

Typhus Fever Regulations are contained in GN 126/1965 (OG 2649). 152

South African **Typhus Fever Regulations** are contained in RSA GN R.1828/1963, which was reprinted in OG 2518. However, these regulations do not mention SWA and, despite being published in SWA, they were made *after* the power to make regulations under the *Public Health Act 36 of 1919* in respect of SWA was transferred to the Administrator of SWA by the SWA Public Health Proclamation 36 of 1920 (OG 35). Thus, they do not appear to have been applicable to SWA. The **Typhus Fever Regulations** in GN 126/1965 (OG 2649) are similar in content.

Regulations regarding Human Trypanosomiasis (Sleeping-Sickness) are contained in GN 89/1969 (OG 3014).

Regulations Regarding "Carriers" of Infectious Diseases, GN 78/1968 (OG 2892) and GN 155/1968 (OG 2928).

¹⁴⁹ Proposed regulations on Infectious Diseases: Exclusion of Patients and Contacts from Schools and Hostels and the Closing of Schools and Hostels are contained in GN 102/1963 (<u>OG 2491</u>).

¹⁵⁰ These regulations substitute for the ones in in substitution for the regulations in SWA GN 106/1941.

¹⁵¹ These regulations substitute for the ones in Schedule A of SWA GN 32/1950, SWA GN 7/1924 and SWA GN 8/1925.

¹⁵² These regulations are in substitution for the Typhus Fever Regulations in AG GN 86/1934 (OG 569).

General Health Regulations are contained in GN 121/1969 (OG 3027) as amended by GN 98/1970 (OG 3102) (with these amendments being substituted by those in GN 139/1970), GN 139/1970 (OG 3112) and GN 168/1976 (OG 3549).

Regulations on the Extermination of Rodents and the Elimination or Improvement of Conditions in the Storage of Grain, Fodder or any other Article which Permits or Promotes the Harbourage or Increase of Rodents are contained in GN 241/1973 (OG 3359). 153

Regulations concerning the Immunisation Certificate are contained in GN 212/1978 (<u>OG</u> 3818).

Regulations concerning Immunisation against Tuberculosis with BCG are contained in GN 213/1978 (OG 3818).

These regulations are currently being processed for the database.

Public Health Covid-19 General Regulations

(no longer in force)

The following regulations were made under the current Act to address Covid-19, but none of these remain in force:

Public Health Covid-19 General Regulations applicable to the whole of Namibia from 00:00 on 24 September 2020 to 24:00 on 21 October 2020 were contained in GN 233/2020 (GG 7342), as amended by GN 235/2020 (GG 7346). These regulations were then amended by GN 256/2020 (GG 7367) and made applicable as amended from 00:00 on 22 October 2020 to 24:00 on 30 November 2020 (regulation 2(2) as amended). They were again amended by GN 309/2020 (GG 7404) and made applicable as amended from 1 December 2020 to 24:00 on 25 January 2021 (regulation 2(2) as amended). This version of the regulations was superseded by further amendments made by GN 319/2020 (GG 7421), with these amended regulations made applicable with effect from 00:00 on 17 December 2020 to 24:00 on 30 December 2020 (regulation 2(2) as amended). This version was again superseded by amendments made by GN 326/2020 (GG 7429), with these amended regulations made applicable from 00:00 on 24 December 2020 to 24:00 on 13 January 2021 (regulation 2(2) as amended). The regulations were then amended by GN 1/2021 (GG 7436) and made applicable as amended from 00:00 on 14 January 2021 to 24:00 on 3 February 2021 (regulation 2(2) as amended). They were further amended by GN 9/2021 (GG 7451) and made applicable as amended from 00:00 on 4 February 2021 to 24:00 on 24 February 2021 (regulation 2(2) as amended). The regulations were again amended by GN 29/2021 (GG 7467) and made applicable as amended from 00:00 on 25 February 2021 to 24:00 on 31 March 2021 (regulation 2(2) as amended). GN 29/2021 was amended by GN 35/2021 (GG 7472) to change the Government Notice number from 9, as it incorrectly appeared, to 29. The regulations were next amended by GN 54/2021 (GG 7495) and made applicable as amended from 00:00 on 1 April 2021 to 24:00 on 30 April 2021 (regulation 2(2) as amended).

This amended set of Public Health Covid-19 General Regulations was then replaced by a new set of similar **Public Health Covid-19 General Regulations** contained in Government Notice 91/2021 (GG 7522), with the new regulations being applicable from 00:00 on 1 May 2021 to 31 May 2021 (regulation 2(2)). These regulations were amended by GN 108/2021 (GG 7544) and made applicable as amended from 00:00 on 1 June 2021 to 24:00 on 30 June 2021 (regulation 2(2) as amended). They were further amended by GN 128/2021 (GG 7554) and made applicable as amended from 00:00 on 17 June 2021 to 24:00 on 30 June 2021 (regulation 2(2) as amended). They were further amended by

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¹⁵³ These regulations repeal the "Regulations regarding the Prevention of Rodent Infestation and the Storage of Grain, Forage etc., in Urban and Rural Areas" in GN 64/1968 (OG 2887).

GN 138/2021 (GG 7568) and made applicable as amended from 00:00 on 1 July 2021 to 24:00 on 31 August 2021 (regulation 2(2) as amended), and again amended by GN 144/2021 (GG 7576) with no change to the dates of applicability. The regulations were further amended by GN 151/2021 (GG 7581) and made applicable as amended from 00:00 on 16 July 2021 to 24:00 on 31 July 2021 (regulation 2(2) as amended). They were then further amended by GN 160/2021 (GG 7593) and made applicable as amended from 00:00 on 1 August 2021 to 24:00 on 14 August 2021 (regulation 2(2) as amended). They were further amended by GN 175/2021 (GG 7604) and made applicable as amended from 00:00 on 15 August 2021 to 24:00 on 15 September 2021 (regulation 2(2) as amended), and again amended by GN 176/2021 (GG 7624) with no change to the dates of applicability. The regulations were further amended by GN 205/2021 (GG 7637) and made applicable as amended from 00:00 on 16 August 2021 to 24:00 on 15 October 2021 (regulation 2(2) as amended). They were further amended by GN 232/2021 (GG 7662) and made applicable as amended from 00:00 on 16 October 2021 to 24:00 on 15 November 2021 (regulation 2(2) as amended), then amended by GN 246/2021 (GG 7680) with no change to the dates of applicability. The regulations were further amended by GN 249/2021 (GG 7686) and made applicable as amended from 00:00 on 16 November 2021 to 24:00 on 15 December 2021 (regulation 2(2) as amended). They were further amended by GN 281/2021 (GG 7703) and made applicable as amended from 00:00 on 16 December 2021 to 24:00 on 15 January 2022 (regulation 2(2) as amended).

They were further amended by GN 7/2022 (GG 7726) and made applicable as amended from 00:00 on 16 January 2022 to 24:00 on 15 February 2022 (regulation 2(2) as amended), and then further amended by GN 56/2022 (GG 7748) and made applicable as amended from 00:00 on 16 February 2022 to 24:00 on 15 March 2022 (regulation 2(2) as amended). The regulations were further amended by GN 85/2022 (GG 7765) and made applicable as amended from 00:00 on 16 March 2022 to 24:00 on 15 April 2022 (regulation 2(2) as amended), and then again amended by GN 121/2022 (GG 7788) and made applicable as amended from 00:00 on 16 April 2022 to 24:00 on 15 May 2022 (regulation 2(2) as amended). The dates of applicability of this version of the regulations were extended by GN 145/2022 (GG 7808), to apply from 00:00 on 16 May 2022 to 24:00 on 15 June 2022 (regulation 2(2)) as amended), without any other amendments. The regulations were further amended by GN 172/2022 (GG 7829) and made applicable as amended from 00:00 on 16 June 2022 to 24:00 on 15 July 2022 (regulation 2(2) as amended). These regulations were further amended by GN 210/2022 (GG 7855) and made applicable as amended from 00:00 on 16 July 2022 to 24:00 on 15 January 2023 (regulation 2(2) as amended). However, they were almost immediately amended again by GN 211/2022 (GG 7857) and made applicable as amended from 17:00 on 16 July 2022 to 24:00 on 15 January 2023 (regulation 2(2) as amended). These regulations expired on 15 January 2023 and were not extended or replaced.

Notices: Pre-independence notices which could survive in terms of the savings clause have not been researched.

GN 232/2020 (GG 7338) declares under section 22(2) of the Act that the "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) known as COVID-19" is a "formidable epidemic disease" for purposes of the Act.

Cases: S v Mateus (CR 16/2022) [2022] NAHCNLD 39 (19 April 2022) (convictions and sentences for violations of Public Health Covid-19 General Regulations set aside due to improperly formulated charge sheets).

SELECTED CASES

LM & Others v Government of the Republic of Namibia 2012 (2) NR 527 (HC).

COMMENTARY

Chantal J Badul & Ann Strode, "LM and Others v Government of the Republic of Namibia: the first sub-Saharan African case dealing with coerced sterilisations of HIV-positive women – Quo vadis?: recent developments", 13 (1) *African Human Rights Law Journal* 214 (2013).

COMMISSIONS

Commission of Inquiry into Health Services (AG 19/1981)

Commission of Inquiry into Activities, Affairs, Management and Operations of Ministry of Health and Social Service (Proc. 20/2012, GG 5013).

INTERNATIONAL LAW

Constitution of the World Health Organization (WHO), 1946

Amendments to Articles 24 and 25 of the Constitution of the World Health Organization, 1986 Amendments to Articles 24 and 25 of the Constitution of the World Health Organization, 1998

*Amendment to Article 7 of the Constitution of the World Health Organization, 1965

*Amendment to Article 74 of the Constitution of the World Health Organization, 1978

International Convention against Doping in Sport, 2005 Minamata Convention on Mercury, 2013

SADC Protocol on Health, 1999

See also **DISABILITIES**.

See also Atomic Energy and Radiation Protection Act 5 of 2005 (ENVIRONMENT).

See also **HEALTH PROFESSIONS**.

See also HOSPITALS.

See also LABOUR (health and safety at workplaces).

See also MEDICINE.

See also MENTAL HEALTH AND MENTAL DISORDERS.