Consent to Operations on Native Minors Proclamation 37 of 1943.

Summary: This Ordinance (OG 1080) empowers magistrates to give consent for operations on “native minors” if the parent or guardian is not readily available or if a delay to obtain consent might be dangerous. This law is repealed by the Child Care and Protection Act 3 of 2015 (GG 5744), which has not yet come into force.

Medical, Dental and Pharmacy Act 13 of 1928.

Summary: This Act (SA GG 1706) appears to have been repealed in its entirety. (If this supposition is incorrect, then the only remaining provision of the Act is section 83, which deals with the regulation of vaccines, clinical thermometers and other diagnostic instruments.) The Act was extended to the Rehoboth Gebiet by the Rehoboth Gebiet Medical, Dental and Pharmacy Proclamation 27 of 1955 (OG 1911).

Applicability to SWA: Section 99(1) of the original Act states
“The Governor-General may, by proclamation in the Gazette, extend this Act, with such modifications of an administrative character as he may deem necessary to the mandated territory of South West Africa, and thereafter and subject to any modifications as aforesaid, that territory shall, for all purposes of this Act, be deemed to be a province of the Union.”

The Act was modified and extended to SWA by SA Proclamation 3 of 1929 (SA GG 1749 and OG 301), which stated
“The Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928), hereinafter referred to as "the Act" is hereby extended to the Mandated Territory of South West Africa...”

This Proclamation did not appear to make amendments to the Act in South Africa automatically applicable to South West Africa—but the statement in section 99 of the Act that the “territory shall, for all purposes of this Act, be deemed to be a province of the Union” could have had the same effect as defining Union to include the Territory of South West Africa—thus making amendments to the Act automatically applicable to South West Africa after the Act was extended to South West Africa in 1929.

It should be noted that the Rehoboth Gebiet Medical, Dental and Pharmacy Proclamation 27 of 1955, made the Act as amended from time-to-time applicable to the Rehoboth Gebiet: “The Medical, Dental and Pharmacy Act, 1928 (Act of the Parliament of the Union of South Africa No. 13 of 1928), as amended from time to time and modified by Union Proclamation No. 3 of 1929 and as applied to the Territory of South West Africa by that Union Proclamation and any proclamation, regulation, rule or order made under that Act together with such amendments which may be made from time to time, shall be of full force and effect within the Gebiet.”

Thus, the position in respect of the rest of South West Africa is somewhat unclear, but the weight of evidence suggests that amendments and repeals prior to the date of transfer were automatically applicable to South West Africa with the result (as explained below) that the Act was repealed in its entirety in SA and SWA prior to the date of transfer.
The whole of Act 13 of 1928, with the exception of sections 83 and 83bis, was repealed by the Medical, Dental and Supplementary Health Service Professions Act 56 of 1974 (RSA GG 4445), which was brought into force on 21 February 1975 by RSA Proc. R.52/1975 (RSA GG 4594) and was made explicitly applicable to SWA (section 65).

Section 83: Section 83 was amended in South Africa by the Medical, Dental and Pharmacy Amendment Act 5 of 1937 (SA GG 2416), which came into force on its date of publication (3 March 1937), and by the Medical, Dental and Pharmacy Amendment Act 43 of 1971 (RSA GG 3125), which was brought into force on 3 September 1971 by RSA Proc. R.200/1971 (RSA GG 3241). However, neither of these Acts was made explicitly applicable to SWA.

Section 83bis: Section 83bis was inserted by the Medical, Dental and Pharmacy Amendment Act 29 of 1954 (RSA GG 5293), which came into force on its date of publication (16 June 1954). This Act was not made explicitly applicable to SWA. Section 83bis was subsequently substituted in South Africa by the Medical, Dental and Pharmacy Amendment Act 11 of 1957 (SA GG 5842), which came into force on its date of publication (22 March 1957), and amended by the Medical, Dental and Pharmacy Amendment Act 69 of 1961 (RSA GG 31), which came into force on its date of publication (5 July 1961). Neither of these Acts was made explicitly applicable to SWA.

These two remaining sections of the Act were repealed in South Africa by the Health Act 63 of 1977 (RSA GG 5558), which was brought into force in relevant part on 1 September 1977 by RSA Proc. R.175/1977 (RSA GG 5716). However, that Act was not made explicitly applicable to SWA.

If amendments to the Act in South Africa did NOT apply automatically to SWA, then section 83 of the original Act remains in force with no amendments.

If amendments to the Act in South Africa DID apply automatically to SWA, then the amendments and substitutions listed above would have applied to SWA—but nothing of the Act would survive since the repeal of sections 83 and 83bis took place prior to the date of transfer.

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977, dated 1 December 1977. The Act is not explicitly mentioned in that Proclamation.


Summary: This Act (RSA GG 2319) establishes a South African Medical Research Council to promote research in the medical sciences.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 25 states “This Act, and any amendment thereof, shall also apply in the territory of South West Africa.”

Transfer of administration to SWA: The administration of the Act was probably transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG
14/1977), dated 1 December 1977. However, it may have been excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law … which provide for or relate to the institution, constitution or control of … any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

There was only one amending act in South Africa after the date of transfer – the *South Africa Medical Research Council Amendment Act 47 of 1982* (RSA GG 8106) – which is not expressly applicable to SWA. If the administration of the Act was in fact transferred to SWA, then this amending act would not have applied to SWA.


**Summary:** This Act (RSA GG 4608) regulates abortion and sterilization. Abortion is legal only in cases of severe mental or physical risk to the woman concerned, cases where there is a serious risk that the child will suffer a severe physical or mental handicap, and cases where the child was conceived as a result of rape or incest.

**Applicability to SWA:** Section 11 states that “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. Neither of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Abortion and Sterilization Amendment Act 38 of 1980* (RSA GG 6985) and the *Abortion and Sterilization Amendment Act 48 of 1982* (RSA GG 8107) – was made expressly applicable to SWA.

**Amendments:** The following pre-independence South African amendment was applicable to SWA –


The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends some of the terminology in the Act.

**Cases:** *S v Haimbodi* 1993 NR 129 (HC); *S v Alweendo* 1993 NR 177 (HC); *S v Iyambo* 2007 (2) NR 842 (HC) (lenient sentence appropriate where very young foetus is involved).

**Anatomical Donations and Post-Mortem Examinations Ordinance 12 of 1977.**

**Summary:** This Ordinance (OG 3633) covers the donation of human bodies and tissue (including flesh, organs, bones and body fluids) for therapeutic and scientific purposes. It also regulates post-mortems.

**Amendments:** This Ordinance is affected by the Health Act 21 of 1988 (OG 5651),
which made it applicable to all of SWA.

**Namibia Institute of Pathology Act 15 of 1999.**

**Summary:** This Act (GG 2210) establishes the Namibia Institute of Pathology Limited and sets forth its duties and functions. Medical laboratory functions of the Ministry of Health and Social Services will be transferred to the Institute on a date determined by the Minister. The Act will come into force on a date determined by the Minister.

**Amendments:** The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into operation on 1 November 2006 by Proc. 13/2006 (GG 3733) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 11, 12, 13, 15, 16 and 22.

**Notices:** The date for the transfer of medical laboratory functions from the Ministry of Health and Social Services to the Namibia Institute of Pathology Limited is set as 1 December 2000 (GN 283/2000, GG 2444).

**Appointments:** The Board of Directors is announced in GN 125/2000 (GG 2340), GN 140/2005 (GG 3529) and GN 206/2009 (GG 4357). The term of office of one board member is extended in GN 203/2015 (GG 5829).

**Medicines and Related Substances Control Act 13 of 2003.**

**Summary:** This Act (GG 3051) provides for the establishment of a Namibia Medicines Regulatory Council, for the registration of medicines intended for human and animal use, and for the control of medicines and scheduled substances. It replaces the Medicines and Related Substances Control Act 101 of 1965. The Act came into force on 25 July 2008 (GN 177/2008, GG 4088).

Pursuant to section 46(2), the schedules of the Medicines and Related Substances Act 101 of 1965 continue to apply until the Minister publishes a notice in the Gazette in terms of section 29(1).

Pursuant to section 46(1A), the Medicines Control Council established under the previous legislation is to serve the functions of the new Namibia Medicines Regulatory Council until such time as the Minister appoints the new Council. A new Council was initially appointed in GN 209/2009 (GG 4367), which has been followed by subsequent appointments.

Notices, regulations, authorisations, orders, approvals, certificates made and other things done under the previous legislation survive, by virtue of section 47(2) as amended.

**Amendments:** Act 8/2007 (GG 3968) - (which came into force on 1 August 2008 (GN 187/2008, GG 4091) - amends the Act substantially.

**Regulations:** Proposed regulations under the current Act were published in GN 241/2004 (GG 3317).

Extensive regulations pertaining to medicines and related substances were
subsequently issued in GN 178/2008 (GG 4088) (which repeals the pre-independence regulations contained in RSA GN R.352 of 21 February 1975, RSA GN R.1188 of 9 July 1976 and Namibian GN 47/2001). These regulations are amended by GN 28/2015 (GG 5681) (substitution of Regulation 4 and repeal of Annexure II).

These regulations were ruled invalid in Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others, 2010 (2) NR 660 (HC). Subsequently, Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC) suspended the operation of sections 46(3) and (4) of the Act until such time as new regulations are made. However, these holdings were overruled by Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC), which found the regulations to be generally valid, with the exception of regulation 34(3)(a), (c), (d) and (e) which was declared invalid as being ultra vires the powers of the Minister under the Act, and also found that it was not competent for the High Court to suspend the operation of section 46(3) of the Act.

**Exemptions:** Exemptions from the application of section 29 of the Act are contained in GN 179/2008 (GG 4088), as amended by GN 43/2015 (GG 5703).

Exemptions from section 18(1) of the Act are contained in GN 85/2010 (GG 4473) and GN 194/2011 (GG 4808).

Certain medicines are exempted from the operation of certain regulations for a specified time period in GN 272/2008 (GG 4174), GN 49/2010 (GG 4444), GN 84/2011 (GG 4736), GN 187/2012 (GG 5003), GN 22/2014 (GG 5425) and GN 29/2015 (GG 5681).

**Registrations and cancellations:** Registrations and cancellations under the previous Act are as follows:

GN 64/2001 (GG 2512) relates to the continued registration of medicines registered prior to independence.


The registration of certain medicines is cancelled in GN 26/2006 (GG 3584), GN 203/2006 (GG 3746) and GN 137/2007 (GG 3887).


The registration of certain medicines is cancelled in terms of the current Act in GN 51/2010 (GG 4444), GN 89/2012 (GG 4915), GN 186/2012 (GG 5003) and GN
31/2013 (GG 5142), GN 210/2014 (GG 5596) and GN 98/2015 (GG 5758).

GN 111/2011 (GG 4756) determines classes of veterinary medicines which are subject to registration under the Act.

Health care practitioners are ordered to return certain cancelled medicines to the manufacturers, suppliers or importers of those medicines in terms of GN 90/2012 (GG 4915).

**Notices:** Notices under the previous Act which appear to survive include the following –

GN 154/1999 (GG 2155) is a notice requiring the return to the suppliers of certain undesirable medicines (those containing chlormezanone).

GN 105/2002 (GG 2759) is a notice concerning medicines and classes of medicines subject to registration.

GN 104/2002 (GG 2759) is a notice about inspection of the Medicines Register.

There are a number of RSA Government Notices which amended the Schedules to the previous Act. These have not been recorded here.

In terms of the current Act, GN 180/2008 (GG 4088), as amended by GN 163/2012 (GG 4978), GN 198/2013 (GG 5255) and GN 190/2014 (GG 5582), classifies certain medicines and other substances as Schedule 0, Schedule 1, Schedule 2, Schedule 3, Schedule 4 or Schedule 5. It is published in terms of section 29(1) of the Act – and so appears to replace the Schedules of the Medicines and Related Substances Act 101 of 1965 which survived in terms of section 47(2) of the Act.

**Appointments:** Members of the Namibia Medicines Regulatory Council are announced in GN 209/2009 (GG 4367), GN 195/2010 (GG 4561), GN 162/2012 (GG 4978), GN 278/2012 (GG 5076), GN 277/2013 (GG 5328), GN 278/2013 (GG 5328) and GN 337/2013 (GG 5379).

**Cases:** Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others, 2010 (2) NR 660 (HC) finds the proposed regulations published in GN 241/2004 (GG 3317) and the regulations published in GN 178/2008 (GG 4088) to be unlawful and ultra vires; it also affects the application of section 31(3) and 34(1) and suspends the application of 46(3) until such time as valid new regulations are in place; Medical Association of Namibia Ltd & Another v Minister of Health and Social Services & Others 2011 (1) NR 272 (HC), which varies the order made in the previous case, but still suspends the operation of sections 46(3) and (4) of the Act until such time as new regulations are made; and Minister of Health and Social Services & Others v Medical Association of Namibia Ltd & Another 2012 (2) NR 566 (SC), which ruled the regulations to be generally valid - with the exception of regulation 34(3)(a), (c), (d) and (e) which is invalid as being ultra vires the powers of the Minister under the Act - found that it was not competent for the High Court to suspend the operation of section 46(3) of the Act.

**COMMENTARY**
Clever Mapaure, “Melancholic medical law: Namibian medical practitioners may get away
with homicide - The story of Mr H”, Namibian Law Journal, Volume 6, Issue 1.

**SELECTED CASES**

*LM & Others v Government of the Republic of Namibia* 2012 (20 NR 527 (HC) (unlawful sterilisations); see also Priti Patel, “How did we get here and where to now? The coerced sterilisation of HIV-positive women in Namibia”, Agenda, Issue 75, 2008

*Ex Parte Chingufo: In re Semente v Chingufo* 2013 (2) NR 328 (HC) (patient’s right to refuse treatment if sufficient mental capacity present), appeal decision in *ES v AC* (SA 57-2012) [2015] (24 June 2015) (relevance of children’s right to be cared for by their parents); see also Nico Horn, “*Ex Parte Chingufo. In re E Semente; E Semente v Chingufo:* Another unfortunate victory for formalist law”, Namibia Law Journal, volume 5, Issue 1, 2013.

See also Veterinary and Veterinary Para-Professions Act 1 of 2013 (ANIMALS).

See also HEALTH.

See also HOSPITALS.

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards) (EDUCATION).

See also MEDICAL AID.

See also MENTAL HEALTH AND MENTAL DISORDERS.

See also SOCIAL WELFARE.