



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

R5,40

WINDHOEK — 2 September 1993

No. 710

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 103

1993

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 20 of 1993: Allied Health Services Professions Act, 1993.

**ALLIED HEALTH SERVICES
PROFESSIONS ACT, 1993****ACT**

To provide for the establishment and constitution of professional boards for allied health services professions; to define the functions, duties and powers of such Boards; to define and provide for the registration, training and qualifications of members of such professions; to prohibit the practising of such professions without being registered; and to provide for matters incidental thereto.

(Signed by the President on 12 August 1993)

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SCHEDULE**LAWS REPEALED**

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

**ALLIED HEALTH SERVICES
PROFESSIONS ACT, 1993****PART I****DEFINITIONS**

Definitions.

1. In this Act, unless the context otherwise indicates -

“allied health service profession” means any profession referred to in section 2;

“Board”, in relation to any profession, means the Board established under section 2 for a profession or professions concerned;

“Council” means the Council for Health and Social Services Professions established by section 2 of the Council for Health and Social Services Professions Act, 1993;

“dependence-producing drug” means a dependence-producing drug as defined in the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971);

“misconduct”, in respect of any profession, means those acts and omissions by registered members of the profession concerned and in respect of which a Board concerned has issued rules under section 27;

“educational institution” means any university, college, technicon, technical college or other similar or related institution, or hospital, society or other body where any tertiary education in the field of any profession is provided, irrespective of whether such institution conducts examinations or not;

“improper conduct”, in respect of any profession, means those acts and omissions by registered persons of the profession concerned in respect of which a Board concerned has issued rules under section 27;

“Minister” means the Minister of Health and Social Services;

“Permanent Secretary” means the Permanent Secretary: Health and Social Services;

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“practise” in relation to a profession, includes the taking up of employment where any act specially pertaining to such profession is performed;

“prescribe” -

- (a) when not used in relation to medicine, means prescribe by regulation, and “prescribed” shall have a corresponding meaning;
- (b) when used in relation to medicine, means the prescription of medicine by a medical practitioner or dentist for consumption by a person, and “prescribed”, “prescribed medicine” or “prescription” shall have a corresponding meaning;

“public holiday” means a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1990 (Act 26 of 1990);

“qualification” means any degree, diploma or certificate conferred upon a person after having been examined in respect of his or her competency in his or her field of study;

“register” -

- (a) when used as a noun, means a register referred to in section 14;
- (b) when used as a verb, means to register in terms of section 13, and “registered”, “registrable”, “registration” and all other words derived from the word “register” have a corresponding meaning;

“registered person”, in relation to a Board, means any person who is registered under this Act;

“regulation” means a regulation made and in force under this Act;

“rule” means any rule made under this Act;

“scheduled substance” means a scheduled substance as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

“this Act” includes the regulations and rules.

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PROFESSIONS ACT, 1993****PART II****PROFESSIONAL BOARDS**

Establishment of professional boards.

2. (1) The Minister may by notice in the *Gazette* establish a professional board in respect of each of the following professions, namely -

- (a) the clinical psychology profession, the medical technology profession, the occupational therapy profession, the optic and optometry professions, the physiotherapy profession, the radiography profession, the speech and audio therapy profession and the chiropractic profession;
- (b) any other profession, after consultation with the Council, which, in the opinion of the Minister, is related to the treatment, prevention or relief of physical or mental defects, illnesses or deficiencies in any person, and to which the provisions of the Medical and Dental Professions Act, 1993, the Nursing Professions Act, 1993, the Social Workers' Profession Act, 1993 and the Pharmacy Profession Act, 1993, are not applicable,

and may establish such a Board for two or more professions jointly.

(2) Every Board shall be a juristic person.

Objects of Boards.

3. The objects of a Board shall be -

- (a) to assist in the promotion of the health of the population of Namibia;
- (b) subject to the Medical and Dental Professions Act, 1993, the Nursing Professions Act, 1993, and the Pharmacy Profession Act, 1993, 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 practice or the practices pursued in connection with the diagnoses, treatment or prevention of physical or mental defects, illnesses, diseases or deficiencies in persons in respect of the profession or professions concerned;

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- (c) to promote liaison in the field of the training referred to in paragraph (b), both in Namibia and elsewhere, and to promote the standards of such training in Namibia;
- (d) to advise the Minister on any matter relating to the profession or professions concerned;
- (e) to communicate to the Minister information relating to matters of public interest acquired by a Board in the performance or execution of its powers and functions under this Act.

General powers of
Boards.

4. A Board may, subject to the provisions of this Act -

- (a) register any person in the profession concerned;
- (b) where authorized by this Act, remove from or, upon payment of the prescribed fee, restore to a register any name;
- (c) in respect of the profession or professions concerned, appoint examiners and moderators, conduct examinations and grant certificates, and charge the fees in respect of such examinations and the issue of such certificates;
- (d) in respect of the profession or professions concerned, approve of educational institutions subject to such prescribed conditions as it may deem appropriate;
- (e) consider any matter affecting the profession or professions concerned, and make representations or take such action in connection therewith as such Board deems advisable;
- (f) acquire, hire or dispose of property, borrow money on the security of the assets of a Board concerned or accept and administer any trust or donation;
- (g) upon application of any person, recognize any qualifications held by such person in respect of a profession concerned (whether such qualifications have been obtained in Namibia or elsewhere) as being equal, either wholly or in part, to

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any prescribed qualifications, whereupon such person shall, to the extent to which the qualifications have so been recognized, be deemed to hold such prescribed qualifications;

- (h) perform such other functions as may be prescribed in respect of such Board, and generally, do all such things as such Board deems necessary or expedient to achieve the objects of this Act.

Constitution of Boards.

5. (1) Every Board shall consist of so many members, but not less than five and not more than nine, as may be determined by the Minister, of whom shall, subject to the provisions of section 6, all be persons registered with the Board concerned.

(2) The members of a Board, the number of which has been determined in terms of subsection (1), shall, in the prescribed manner and in accordance with the prescribed procedures, be elected by the registered persons practising the profession in respect of which a Board has been established, and who are Namibian citizens or have lawfully been admitted to Namibia for permanent residence therein, and resident in Namibia.

(3) Notwithstanding any provision to the contrary contained in subsection (2), any meeting for the first election of members of a Board shall be presided over by the Minister or any person designated by the Minister for that purpose, who shall determine the procedures to be followed at such meeting, including the time, date and place of such meeting, notice of such meeting to the persons concerned, the quorum for such meeting, the nomination of candidates, the manner in which the election shall be conducted and any other matter incidental to such election.

(4) Any member of a Board shall hold office for a period of three years and shall, at the expiry of such period, be eligible for re-election.

(5) The names of the members of a Board and the date of commencement of their term of office shall be published by the secretary of such Board in the *Gazette* as soon as possible after the constitution of such Board.

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(6) For the purposes of the constitution of the first Board in relation to a particular profession, any person who immediately before the commencement of this Act, was, in terms of any law in force in Namibia entitled to practise the profession concerned, shall -

- (a) notwithstanding subsection (1), be eligible for election as a member of such Board if such person is not subject to any disqualification mentioned in section 6; and
- (b) notwithstanding subsection (2), be entitled to vote at the first election of the members of such Board held in terms of subsection (3), if such person is a Namibian citizen or has lawfully been admitted to Namibia for permanent residence and is resident in Namibia.

Disqualifications for election as members of Boards.

6. No person -

- (a) who is not a Namibian citizen or not lawfully admitted to Namibia for permanent residence therein, and resident in Namibia;
- (b) who is an unrehabilitated insolvent;
- (c) who in terms of this Act is disqualified from practising his or her profession,

shall be elected as a member of a Board.

Vacation of offices and filling of vacancies.

7. (1) A member of a Board shall vacate his or her office, if -

- (a) he or she becomes subject to any disqualification contemplated in section 6;
- (b) he or she is declared mentally ill under the Mental Health Act, 1973 (Act 18 of 1973);
- (c) he or she in writing under his or her hand, addressed and delivered to the Board concerned, resigns from his or her office;

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- (d) he or she has been absent from more than two consecutive meetings of the Board concerned without its leave; or
- (e) he or she is convicted of an offence and sentenced to a term of imprisonment without the option of a fine.

(2) Any vacancy on a Board arising from any circumstance referred to in subsection (1), or caused by the death of any member of the Board shall be filled by election *mutatis mutandis* in accordance with the provisions of section 5(2), and every member so elected shall hold office for the unexpired portion of the period of office of the vacating member.

Office-bearers of Boards.

8. (1) At the first meeting of every newly constituted Board, the members of such Board shall from their number elect a president, vice-president, treasurer and secretary.

(2) The president, vice-president, treasurer and secretary shall hold office as such during their terms of office as members of the Board concerned, unless such person, as the case may be, sooner resigns or ceases to be a member of that Board.

(3) If for any reason the president is absent or unable to act as president, the vice-president shall perform all the functions and exercise all the powers of the president.

(4) If both the president and vice-president are absent from any meeting, the members present at such meeting shall elect one from their number to preside at that meeting and the person so presiding may at such meeting during such absence perform the duties and functions and exercise the powers of the president.

(5) If the office of president, vice-president, treasurer or secretary becomes vacant, the members of the Board shall at the first meeting after such vacancy has occurred, elect from among their number a new president, vice-president, treasurer or secretary, as the case may be, and the member so elected shall hold office for the unexpired portion of the period of office of his or her predecessor.

(6) No person shall hold the office of president or vice-president for longer than two consecutive terms of office: Provided that a portion of a period of office referred

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to in subsection (5) shall be deemed not to constitute a term of office as contemplated in this subsection.

(7) The president, vice-president, treasurer or secretary may vacate his or her office as president, vice-president, treasurer or secretary, as the case may be, without terminating his or her membership of the Board concerned.

Meetings, quorum and
procedures of Boards.

9. (1) The meetings of a Board shall be held at such times and venues as the president of such Board may determine: Provided that the first meeting of a newly constituted Board shall be held at such time and venue as the Minister may determine and be presided over by the Minister or any person designated by the Minister for the purpose.

(2) (a) The president of a Board shall, upon the written request signed by at least four members of such Board or a written request signed by at least one-third of the registered persons concerned, convene a special meeting of the Board concerned to be held within 30 days after the date of receipt of such request, and on such date and at such place as he or she may determine.

(b) Such written request shall state clearly the purpose for which the meeting is to be convened.

(3) A majority of the members of a Board shall constitute a quorum for any meeting of such Board.

(4) The decision of the majority of the members of a Board present at any meeting of such Board shall constitute a decision of the Board concerned, and in the event of an equality of votes, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.

(5) A Board may make rules in relation to the holding of, and procedures at, meetings of such Board.

(6) A Board and any committee of such Board referred to in section 10, shall cause proper records to be kept of the proceedings of its meetings.

(7) (a) Any meeting of a Board where such Board holds an inquiry under Part V or where any com-

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mittee of such Board referred to in section 10 holds an inquiry under powers assigned or delegated to it by such Board, shall be open to the public, unless such Board or committee determines, subject to the provisions of the proviso to Article 12(1)(a) of the Namibian Constitution, otherwise.

- (b) Any member or former member of a Board or of any committee of such Board referred to in section 10, shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge at or in respect of any meeting of such Board or committee, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody related to such matter, except in so far as any such communication or document is required by, or may be made in terms of, this Act or any other law, or is required by an order of a court of law.
- (c) Any person who contravenes or fails to comply with any determination referred to in paragraph (a) or with the provisions of paragraph (b), shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Committees of Boards.

10. (1) A Board -

- (a) shall establish a disciplinary committee which shall consist of such number of persons appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee, to investigate and report to such Board on any complaint, charge or allegation referred to in section 28;
- (b) shall establish an education committee which shall consist of so many persons appointed by such Board, as such Board may determine, but which shall include at least two members of such Board, one of whom shall be the chairperson and

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the other the vice-chairperson of such committee, to investigate and report to such Board on any matter relating to any requirement or qualification for registration or training, as the case may be; and

- (c) may, from time to time establish *ad hoc* committees for such purposes and consisting of such number of persons as such Board may determine, which persons shall be appointed by such Board, but which shall include at least one member of such Board to act as chairperson of such committee.

(2) A committee established in terms of subsection (1) shall, subject to the provisions of subsection (5), exercise such of a Board's powers and perform such of a Board's functions as the Board may from time to time confer upon or assign to it.

(3) A Board shall not be divested of any power delegated to a committee under subsection (2).

(4) A committee established in terms of subsection (1) may at any time, and subject to such conditions as the committee concerned may determine, co-opt any person to assist the committee concerned in the exercising of its powers and the performing of its functions.

(5) No penalty imposed by any committee established in terms of subsection (1)(a), other than a caution or a reprimand, or a caution and a reprimand, shall be of force and effect until confirmed by the Board concerned: Provided that an order made by any such committee under section 36 shall, if the committee so directs in the public interest, come into operation forthwith, but shall lapse after the expiration of a period of six months unless within that period confirmed by such Board.

Finances of Boards,
keeping of accounts and
submission of reports.

11. (1) The funds of a Board shall consist of the registration and examination fees and such other moneys, including assistance referred to in subsection (2), as may in terms of this Act from time to time become payable to such Board, and such Board shall utilize its funds for defraying expenses incurred in connection with the performance of its functions.

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(2) The Minister may, in consultation with the Minister of Finance, at any time grant, subject to such conditions as the Minister may determine, to a Board, out of moneys appropriated by Parliament, such financial assistance as he or she may deem necessary in connection with the performance of its functions.

(3) A Board may invest any unexpended portion of its funds and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient.

(4) (a) A Board shall cause full and correct accounts to be kept of all moneys received or expended by it.

(b) A Board shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and shall, after the statement and balance sheet have been audited by an auditor appointed by such Board, cause copies thereof to be transmitted to every member of such Board and cause a copy thereof to be open for inspection at the office of such Board and the office of the Council by any person registered with such Board.

(c) A Board shall in each financial year, within six months after the close of its financial year, submit to the Council a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in paragraph (b) in respect of that financial year.

(d) The financial year of a Board shall end on 30 June of each year, unless such Board, with the approval of the Minister, determines otherwise.

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PART III

TRAINING, QUALIFICATIONS AND REGISTRATION

Control over education
and training.

12. (1) Notwithstanding anything to the contrary in any other law contained, no person or educational institution may offer or provide any tuition or training which is intended to qualify any person to practise any profession to which the provisions of this Act apply, unless such tuition and training have been approved by the Board concerned.

(2) Any person or educational institution intending to offer or to provide the tuition or training referred to in subsection (1) shall, before offering or providing such tuition or training, apply in such form as may be determined by the Minister, to a Board in writing for its approval of such tuition or training and shall furnish such particulars regarding that tuition or training as such Board may require.

(3) (a) A Board may grant or refuse any application made in terms of subsection (2) and may, where it approves an application, issue a certificate of approval to the person or educational institution concerned in such form and subject to such conditions and for such period as it may determine.

(b) A Board may at any time withdraw any certificate of approval issued under paragraph (a) if it is satisfied that any person or educational institution issued with such certificate has failed to comply with any condition or requirement determined in terms of that paragraph.

(4) A Board shall notify in writing the person or educational institution concerned of any decision taken under subsection (3).

(5) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition determined under subsection (3), shall be guilty of an offence and on conviction be liable -

(a) in the case of a natural person, to a fine not exceeding R12 000 or to imprisonment for a

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period not exceeding three years or to both such fine and such imprisonment; or

(b) in any other case, to a fine not exceeding R50 000.

Registration a prerequisite for practising.

13. (1) Unless otherwise provided in this Act, no person shall be entitled to practise any profession to which the provisions of this Act apply, unless such person is registered with the Board concerned.

(2) Every person who desires to be registered in terms of this Act shall in such form as may be determined by the Minister, apply for registration to the Board concerned and shall together with such application submit to such Board proof of the qualification which, in his or her opinion, entitles him or her to registration with such Board, together with such documents or information as may be required by such Board.

(3) If a Board with which the application in terms of subsection (2) has been lodged, is satisfied that the applicant and his or her qualifications comply with the provisions of this Act and with the requirements of the Board concerned, it shall, upon payment of all prescribed fees, register the applicant and issue a registration certificate in the prescribed form in the name of such applicant, authorizing the applicant, subject to the provisions of this Act and to any other law, to practise within Namibia the profession in respect of which such person has applied for registration.

(4) If a Board is not satisfied that the qualification or other documents submitted in support of such application comply with the provisions of this Act and with the requirements of such Board, such Board shall refuse to issue a registration certificate to the applicant.

Keeping of registers.

14. (1) The secretary of a Board shall -

(a) keep a register in respect of the profession concerned and shall enter into such register the name, address, qualifications and such other particulars as may be determined by such Board of every person whose application for registration in terms of this Act has been granted; and

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- (b) furnish the registrar of the Council with a copy of the registration certificate of every person who has been registered in terms of this Act, and other further particulars (if any) as may be required by such registrar in connection with such person.

(2) A secretary of a Board shall keep a register in accordance with the provisions of this Act and shall, subject to any other provisions of this Act, remove therefrom the names of all registered persons who have died or whose period of registration has expired in terms of this Act, and shall from time to time make the necessary alterations in the names and the addresses or qualifications of registered persons.

(3) Every registered person who changes his or her address shall in writing and within 30 days after such change notify the secretary of the Board concerned of his or her new address.

(4) The Permanent Secretary: Home Affairs shall on receipt of the death register of a person which indicates that such person immediately prior to his or her death practised a profession which is required to be registered under this Act, forthwith notify the Board concerned of such death.

Removal of names from, and restoration to, registers.

15. (1) A Board may direct its secretary to remove from the register concerned the name of any person -

- (a) who has been, without informing such Board, absent from Namibia for a period of three years immediately preceding such removal;
- (b) who has failed to notify the secretary in terms of section 14(3) of any change of his or her address and who, within a period of three months after a request by such secretary sent by registered letter to the address of such person appearing in the register, to furnish such new address, fails to comply with such request;
- (c) who has requested, in such form as may be determined by such Board, that his or her name be removed from the register, in which case such person may be required to lodge with the

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secretary an affidavit to the effect that no disciplinary or criminal proceedings are being, or are likely to be taken against him or her;

- (d) who has failed to pay to such Board, within a period of one month as from the date upon which it becomes due for payment, the prescribed annual fees;
 - (e) whose name has been removed from the register or roll of any educational institution from which such person received the qualification by virtue of the holding whereof such person was registered in terms of this Act;
 - (f) in respect of whom any entry has been made in error or through misrepresentation or in circumstances not authorized by this Act and the initial registration would not have been made had the correct facts and circumstances been known to such Board.
- (2) (a) Notice of the removal in terms of subsection (1) of any person's name or of an entry from the register, shall be served by the secretary of the Board concerned or any person designated by such secretary for that purpose, on the person whose name has been removed from the register concerned, at his or her place of business or residence.
- (b) In the event that a notice referred to in paragraph (a) cannot be served on the person whose name has been removed from the register concerned at his or her place of business or residence, such notice may be served -
- (i) at the place of business of such person, upon any partner or employee of such person; or
 - (ii) at the place of residence of such person, upon any member of the household or any employee of such person above the age of 16 years; or
 - (iii) by way of registered letter addressed to such person at his or her address which appears in such register,

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and, in the case of subparagraph (i) or (ii), any partner, member or employee upon whom the notice is served shall acknowledge receipt thereof in writing and shall state his or her capacity and, where practicable, his or her age.

(3) As from the date on which a notice referred to in subsection (2) has been served -

- (a) any registration certificate issued in terms of this Act to the person concerned shall be deemed to be cancelled; and
- (b) such person shall cease to practise the profession in respect of which such person had been registered, or to perform any act which such person, in his or her capacity as a registered person, was entitled to perform,

until such time as the name of such person is restored to the register concerned.

(4) If any person registered in terms of this Act has been declared a mentally ill person under the Mental Health Act, 1973 (Act 18 of 1973), the Registrar of the High Court shall forward a copy of the order declaring such person a mentally ill person to the secretary of the Board concerned who shall, on receipt of such copy, remove the name of the person concerned from the register concerned.

(5) The name of a person who, or an entry which, has in terms of this section been removed from a register, may be restored to such register by the Board concerned if the person concerned-

- (a) applies to the secretary of such Board in the form as may be determined by the Minister for such restoration;
- (b) pays any fee prescribed in respect of such restoration;
- (c) where his or her name has been removed from the register in terms of subsection (4), submits proof to the satisfaction of the Board concerned that he or she has recovered from his or her mental illness; and

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(d) complies with such other requirements as the Board may determine.

(6) The provisions of section 13 shall apply *mutatis mutandis* to an application in terms of subsection (5) as well as any further and other conditions the Board concerned may impose.

Copy of registers.

16. (1) A copy of any register signed by the secretary of a Board shall be *prima facie* proof in all legal proceedings of the facts therein recorded, and the absence of the name of any person from such copy shall be proof, until the contrary is proved, that such person is not registered under the provisions of this Act: Provided that in the case of any person whose name -

- (a) does not appear in such copy but ought to appear in such register, a certified statement by the secretary to that effect, shall be proof that such person is registered under the provisions of this Act;
- (b) has been removed from the register and has not been restored to such register, a certified statement by the secretary that the name of such person has been removed from the register shall be proof that such person is not registered under the provisions of this Act.

Duplicate certificates and extracts from registers.

17. (1) Upon receipt of an application by a registered person and upon payment of the prescribed fee, the secretary of a Board may issue to such person a duplicate certificate of registration or furnish such person with an extract from the register concerned.

(2) A receipt in respect of the payment of annual fees issued to any person by a Board shall, in any legal proceedings, be *prima facie* proof of such person's registration under the provisions of this Act.

Qualifications prescribed for registration.

18. (1) Subject to the provisions of subsection (2), the Minister may from time to time, upon the recommendation of the Board concerned, prescribe the qualifications obtained by virtue of examinations conducted by any educational institution or other examining authority, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to register under this Act with the Board concerned, if he or she has

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before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be so prescribed.

(2) No qualification obtained by virtue of examinations conducted by an educational institution or examining authority situated outside Namibia shall be prescribed under this section unless -

- (a) such qualification entitles the holder thereof to practise the profession concerned in the country or state in which such educational institution or other examining authority is situated; and
- (b) the Board concerned is satisfied that possession of such qualification indicates a standard of professional education not lower than that prescribed in terms of subsection (1) in respect of the profession concerned, within Namibia.

Conditional registration.

19. (1) Any person not in possession of a qualification prescribed in terms of section 18 and who lodges an application for registration with a Board, may be registered by such Board, if -

- (a) such applicant possesses any qualification which such Board is satisfied is indicating a standard of professional education not lower than that prescribed in terms of the said section 18;
- (b) such applicant has received such additional tuition or training, whether within or outside Namibia, as may be prescribed upon the recommendation of such Board; and
- (c) such applicant has passed the additional examinations, whether within or outside Namibia, as may be prescribed upon the recommendation of such Board.

(2) For the purposes of subparagraphs (b) and (c) of subsection (1), a Board may register such applicant conditionally for such period or periods as such Board may determine and impose the conditions subject to which such applicant may practise his or her profession as may be so determined until such time as such applicant has completed the additional tuition or training referred to in

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the said paragraph (b), or until such time as such applicant shall have passed the additional examinations referred to in the said paragraph (c).

(3) A Board may, before issuing a conditional registration certificate in terms of subsection (2), require the applicant concerned, at such date and venue as may be determined by such Board, to be examined by examiners appointed by such Board, to ascertain whether such applicant -

(a) possesses professional knowledge and skill which is of a standard not lower than that required in respect of the profession concerned; and

(b) is proficient in the official language of Namibia.

(4) The Minister may, from time to time and upon the recommendation of the Board concerned, prescribe the examinations to be conducted in terms of subsection (3) and the examination fees payable to such Board by such applicant.

(5) As soon as the applicant concerned has complied with the provisions of subsection (1)(b) and upon expiry of the period determined by the Board concerned in terms of subsection (2), any person in possession of a conditional registration certificate may apply to such Board to sit for the additional examinations prescribed in terms of subsection (1)(c).

(6) Any person who possesses a qualification referred to in paragraph (a) of subsection (1) may, upon application, be exempted by the Minister from any restriction or condition imposed in respect of him or her under the provisions of this section.

Issuing of registration certificates replacing conditional registration certificates.

20. Any person to whom a conditional registration certificate has been issued in terms of section 19 may, as soon as such person has complied with the provisions of that section and the conditions determined thereunder by the Board concerned, apply to such Board for registration *mutatis mutandis* in accordance with the provisions of section 13.

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Registration of persons
for purposes of educa-
tional demonstrations.

21. (1) Notwithstanding the provisions of this Act, a Board may, for the purpose of promoting any education in respect of the profession concerned, register any person not permanently resident in Namibia for such period and subject to such conditions as such Board may determine.

(2) Any person registered in terms of subsection (1) may at any institution approved for that purpose by the Board concerned give educational demonstrations relating to such profession.

Registration of persons
for purposes of post-
graduate studies.

22. (1) Notwithstanding the provisions of this Act, a Board may, for the purpose of subsection (2), register in the profession concerned any person having such training and qualifications as the Board concerned may deem satisfactory.

(2) Any person registered in terms of subsection (1) shall only be entitled to engage in such post-graduate studies and at such educational institution as approved by the Board concerned, and subject to such conditions as may be determined by such Board.

Educational institutions
to furnish Boards with
certain particulars.

23. (1) Every educational institution at which a qualification can be obtained entitling the holder thereof to registration with the Board concerned shall furnish such Board, upon its request, with full particulars as to -

- (a) the minimum age and standard of general education required of students for admission to the relevant course or field of study;
- (b) the courses of study, training and examinations required of a student before such qualification is granted;
- (c) particulars of examinations conducted and the results thereof in respect of a specific student or of a specific category of students; and
- (d) such other particulars relating to any of the matters referred to in paragraph (a), (b) or (c) as such Board may from time to time require.

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(2) If any educational institution referred to in subsection (1), fails or refuses to furnish the particulars requested by the Board concerned under that subsection or if it appears to such Board that any provision of this Act which applies to such educational institution is not properly being complied with and that such improper compliance is having or may have an adverse effect on the standard of the education in respect of the professional training concerned to be maintained at such educational institution, the Minister may, upon the recommendation of such Board, by notice in the *Gazette* declare that any qualification specified in such notice and granted by such educational institution after a date specified in such notice shall, subject to the provisions of subsection (4), not entitle any holder thereof to registration under this Act.

(3) Upon the recommendation of the Board concerned, the Minister may, when it appears to him or her that satisfactory provision has been made for complying with the requirements of this Act by any educational institution in respect of any qualification which is the subject of a notice issued under subsection (2), repeal or amend any notice published in terms of that subsection.

(4) Upon the recommendation of the Board concerned the Minister shall, in the notice published in terms of subsection (3), determine whether or not any qualification granted subsequent to the date specified in the notice published in terms of subsection (2) and granted by the educational institution referred to in such notice, entitles the holder of such qualification to registration in terms of this Act.

(5) A Board may from time to time appoint a person to investigate whether the minimum requirements laid down by such Board are being complied with by an educational institution and to report to such Board thereon.

Registration and use of additional qualifications and registration of specialities.

24. (1) Every person who desires to have a prescribed qualification registered, other than the qualification by virtue of which such person has in the first instance been registered, or to have a prescribed speciality registered, shall -

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(a) upon application in the form determined by the Minister; and

(b) upon payment of the prescribed fee,

be entitled to have such other qualification or such speciality entered in the register concerned.

(2) If a person wishes to register a qualification or speciality not prescribed in terms of this Act, the Board concerned may, before entering such qualification or speciality into the register, require of such applicant to pass an examination prescribed by the Minister upon the recommendation of such Board in order to determine whether the applicant's professional knowledge and skill in the field of his or her qualification or speciality are of such a standard so as to enable such person to practise the profession or speciality concerned.

(3) No registered person shall take, use or publish in any way whatsoever any name, title, description or symbol indicating or calculated to lead persons to infer that such person holds any professional qualification registered in terms of this section which is not shown in the register against the name of such person, nor shall any registered person practise as a specialist or hold himself or herself out to be a specialist unless his or her speciality has been registered in terms of this section.

(4) A Board may remove from the register concerned any qualification or speciality registered in terms of this section, if -

(a) in the case of such qualification, the name of the holder thereof has been removed from the roll or register of the educational institution which had granted such qualification to such applicant;

(b) such Board is satisfied that such qualification or speciality does not comply with the requirements as prescribed;

(c) the person in respect of whom a qualification or speciality is registered requests in writing such Board to remove such qualification or speciality from such register.

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(5) Any qualification or speciality removed from a register in terms of subsection (4), shall be restored to such register by the secretary of the Board concerned upon such person -

- (a) applying for such restoration in the form and manner determined by the Minister;
- (b) paying the fee prescribed in respect of such restoration; and
- (c) complying with such other requirements (if any), as such Board may determine.

Use of titles by registered persons.

25. No person not registered under this Act in respect of an allied health service profession shall be entitled to practise that profession subject to -

- (a) such restrictions in respect of his or her professional activities; and
- (b) the use of such name, title and description in respect of his or her profession,

as the Board concerned may determine.

PART IV**OFFENCES BY UNREGISTERED PERSONS**

Penalties for practising, or using the title of any allied health service profession or for performing certain other acts, while unregistered.

26. (1) Subject to the provisions of subsection (3) and section 38, any person who performs for gain any act deemed under subsection (2) to be an act pertaining to any allied health service profession, shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

- (2) (a) The Minister may, on the recommendation of the Council, by regulation define the scope of any allied health service profession 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 Board established in

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terms of section 2 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 concerned: Provided further that if there is a difference of opinion between the Council and such Board as to the definition of the scope of the profession concerned, the Council shall mention this fact in its recommendation.

- (b) The Minister may, by regulation made in accordance with the provisions of paragraph (a), prescribe that any act, so referred to therein, may be performed by any person or category of persons not registered to practise the profession concerned but subject to such conditions as may be prescribed.
- (3) The provisions of subsection (1) shall not apply to -
 - (a) any person who is registered under this Act in respect of such profession;
 - (b) any person who practises another allied health service profession in respect of which a register is kept under this Act and he or she performs any act which is deemed to be an act which pertains to such profession;
 - (c) any person who is a medical practitioner registered under the Medical and Dental Professions Act, 1993, and he or she performs an act which also pertains to the medical profession;
 - (d) any person who is a dentist registered under the Medical and Dental Professions Act, 1993, and he or she performs an act which also pertains to the dental profession;
 - (e) any person who is a pharmacist registered under the Pharmacy Profession Act, 1993, and he or she performs an act which also pertains to the pharmacy profession;

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- (f) any person who is a social worker registered under the Social Workers' Profession Act, 1993, and he or she performs an act which also pertains to the profession of a social worker;
 - (g) any person who is a nurse registered or enrolled under the Nursing Professions Act, 1993, and he or she performs an act which also pertains to the nursing profession;
 - (h) any member of the academic staff of any educational institution or other tertiary educational institution, or a teacher on the staff of a school established or deemed to be established under any law, in the ordinary course of education or research in education;
 - (i) anything necessary or required to be performed by a student in the course of and for the purpose of his or her studies at an educational institution or other institution referred to in paragraph (h), provided it is performed by such student under the supervision of a registered person practising the profession concerned;
 - (j) anything done in the prescribed manner -
 - (i) by any person under the supervision of or upon the instructions of a registered person practising the profession concerned;
 - (ii) any person in the employ of any organization recognized by the Minister which performs any health services as may be so prescribed.
- (4) Any person who is not registered under this Act in respect of any allied health service profession, but -
- (a) pretends to be so registered in respect of such profession; or
 - (b) uses any name, title or description or wears any uniform, badge or other distinguishing symbol indicating, or calculated to lead persons to infer, that he or she is the holder of any qualification which is acceptable for registration in respect of such profession, but of which qualification he or she is not the holder; or

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

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

PART V**DISCIPLINARY POWERS OF BOARDS**

Rules by Boards relating to improper conduct or misconduct.

27. (1) A Board shall from time to time issue rules specifying the acts or omissions by registered persons which constitute improper conduct or misconduct and in respect of which such Board may conduct inquiries and may take disciplinary steps in terms of the provisions of this Part.

(2) No rules issued in terms of subsection (1) or any amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published in the *Gazette*.

(3) The provisions of this section shall not prohibit a Board from conducting an inquiry into any conduct or behaviour of any registered person concerned whether or not such conduct or behaviour is an act or omission referred to in subsection (1).

Inquiries by Boards into complaints, charges or allegations of improper conduct or misconduct.

28. (1) A Board shall have power to inquire -

- (a) into any complaint or charge; or
- (b) whether or not a complaint or charge has been lodged with such Board, into any allegation,

of improper conduct or misconduct against any person registered with such Board and, on finding such person guilty of such conduct, may impose any of the penalties prescribed in section 31.

(2) 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 Board concerned may postpone the holding of an inquiry until such case has been disposed of.

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(3) A Board may -

- (a) when 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 made; and
- (b) for the purpose of an inquiry in terms of subsection (1), permit or request any person to give evidence at such inquiry or to advise such Board on any matter in respect thereof.

Procedures at inquiries.

29. (1) An inquiry in terms of section 28 shall, subject to the provisions of this section, be conducted in accordance with the prescribed procedures.

(2) The proceedings at such inquiry shall, in so far as is practicable, be minuted *verbatim* and the minutes of such inquiry shall be certified by the members of the Board concerned present at such meeting as being a true and accurate account of the evidence given at such inquiry, the exhibits presented and of the decision of such Board.

(3) The minutes of an inquiry referred to in subsection (2) shall for a period of at least five years be kept in safe custody by the secretary of the Board concerned and shall for the purpose of an appeal in terms of section 49 be *prima facie* proof of the proceedings at such inquiry and the decisions taken by such Board as a result of such inquiry.

(4) Any person in respect of whom an inquiry in terms of section 28 is to be held shall be notified in writing of such inquiry at least 21 days before the date of such inquiry by the delivery to such person of a notice in the prescribed form informing such person of the intended inquiry and obtaining from such person an acknowledgement of receipt stating the place, date and time of the service of such notice.

(5) Service of a notice in terms of subsection (4) shall be performed by the secretary of the Board concerned or by a person designated for such purpose by him or her.

(6) In the event of the secretary of the Board concerned or the person designated in terms of subsection (5) certifying that -

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- (a) the person upon whom the notice is to be served cannot be traced;
- (b) that such person refuses to accept such notice; or
- (c) such person refuses to sign the required acknowledgement of receipt,

such secretary may send such notice by registered letter to such person to his or her address as it appears in the register of the Board concerned: Provided that such notice shall be sent not less than 14 days prior to the date of the intended inquiry.

(7) In the event of a person served with a notice in terms of subsection (4) or to whom a notice has been sent in terms of subsection (6), not being present at the commencement of an inquiry, the president of the Board concerned may at his or her discretion have such inquiry conducted in the absence of such person.

- (8) (a) For the purpose of the conducting of an inquiry in terms of section 28, the Board concerned may summon witnesses to appear at a specified date, time and venue to give evidence before such Board and to submit to such Board any document, book, record or other thing relevant to the inquiry.
- (b) A summons to appear before a Board or a committee thereof as a witness or to submit to it any document, book, record or thing referred to in paragraph (a), shall be, as nearly as practicable, in the prescribed form and signed by the president or secretary of such Board, and shall be served either by registered letter or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.
- (c) Any person who, having been duly summoned -
 - (i) refuses or without sufficient cause fails to attend and give evidence relevant to the inquiry in question at the time and place specified in the summons; or
 - (ii) refuses to take the prescribed oath or to make an affirmation when required by the person presiding at such inquiry to do so; or

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(iii) leaves the inquiry in question without the consent of the person presiding at such inquiry whether or not such person has given evidence; or

(iv) refuses to give evidence before the Board concerned or refuses to answer fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any book, record, document or thing which such person has in terms of the summons been required to produce,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(9) Every person summoned in terms of subsection (8) shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court is entitled.

(10) Any person whose alleged conduct is the subject of an inquiry under section 28 shall, if such person is present at such inquiry, have the right, by himself or herself or through a legal representative, to answer any complaint, charge or allegation against him or her and to be heard in his or her defense, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;
- (d) to examine witnesses testifying against him or her.

(11) The president of a Board, where the Board itself holds an inquiry in terms of section 28, or the chairperson of a committee of such Board, where such committee holds an inquiry under powers assigned or delegated to it by such Board, may appoint a person with adequate experience in the administration of justice to be present as an assessor at such an inquiry to advise such Board or committee, as the case may be, on matters of law, procedure or evidence.

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(12) For the purpose of the computation of any period referred to in subsections (4) and (6), no Saturday, Sunday or public holiday shall be regarded as a day referred to in those subsections.

Penalty for false evidence.

30. Any person who gives false evidence on oath or affirmation at any inquiry held under this Part, knowing such evidence to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for the crime of perjury.

Penalties to be imposed by Boards.

31. (1) Every person registered under this Act, who, after an inquiry held by the Board concerned, is found guilty of improper conduct or misconduct, shall be liable to one or more of the following penalties, namely -

- (a) a caution or a reprimand or a caution and a reprimand;
- (b) suspension for a specified period from practising or performing acts specially pertaining to the profession of such person; or
- (c) the removal of the name of such person from the register concerned,

and such Board may in lieu of or in addition to any such penalty impose a fine not exceeding R2 000: Provided that, before the imposition of any penalty such person shall, by himself or herself or through his or her legal representative, be afforded an opportunity of tendering an explanation to such Board in extenuation of the conduct in question.

(2) Any fine imposed under subsection (1) may be recovered and shall be dealt with in the manner prescribed.

(3) The Board concerned shall set out fully and in writing its findings and the penalty imposed (if any), and shall make such findings and penalty known to any other prescribed bodies or persons.

(4) A person who has been found guilty of improper conduct or misconduct shall, whether or not such person had been present at the inquiry in question -

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- (a) in the case of a penalty imposed under subsection (1)(a), be informed of the findings of the Board concerned and the penalty concerned by the forwarding of a copy of such findings and penalty duly signed by the person presiding at the inquiry, by registered letter to such person at his or her address as it appears in the register of such Board;
- (b) in the case of a penalty imposed under subsection (1)(b) or (c), be informed of the findings of the Board concerned and the penalty concerned by the serving *mutatis mutandis* in accordance with the provisions of section 15(2), of a copy of such findings and penalty, duly signed by the person who presided at the inquiry.

(5) When a person has been found not guilty of improper conduct or misconduct the secretary of the Board concerned shall by registered letter addressed to such person at his or her address as it appears in the register concerned, notify such person of the findings of such Board.

(6) A Board may, if it deems fit and subject to such conditions (if any), as it may determine -

- (a) terminate any suspension under subsection (1) before the expiry of the specified period;
- (b) on payment of the prescribed fee, restore to the register concerned any name which has been removed therefrom.

Postponement of imposition of penalties and suspension of operation of penalties.

32. (1) Where a Board finds a person guilty of improper conduct or misconduct, it may -

- (a) postpone for such period and on such conditions as may be determined by it the imposition of the penalty;
- (b) impose any penalty mentioned in paragraph (b) or (c) of section 31(1), but order the execution of such penalty to be suspended for such period and subject to such conditions as may be determined by it.

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- (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 Board concerned is satisfied that the person concerned has observed all the relevant conditions, such Board shall inform such person that no penalty will be imposed upon him or her.
- (b) If the execution of a penalty has been suspended in terms of subsection (1)(b) and -
- (i) the Board concerned is satisfied that the person concerned has observed all the relevant conditions, throughout the period of suspension, such Board shall inform such person that such penalty will not be executed; or
- (ii) the person concerned fails to observe any of the conditions of suspension, the Board concerned shall put such penalty into operation unless such person satisfies such Board that the non-observance of the condition concerned was due to circumstances beyond his or her control.

Effect of suspension or removal from registers.

33. Any person who has been suspended or whose name has been removed from the register concerned in terms of section 31 shall be disqualified from carrying on his or her profession, and his or her registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his or her name has been restored to such register by the Board concerned.

Cognizance by Boards of conduct of registered persons under certain circumstances.

34. (1) Any registered person who either before or after registration has been convicted of any offence by a court of law, may be dealt with by a Board in terms of the provisions of this Part if such Board is of the opinion that such offence constitutes improper conduct or misconduct, and such person shall be liable on proof of such conviction, to one or more of the penalties referred to in section 31: Provided that, before imposition of any penalty, such person shall, by himself or herself or through his or her legal representative, be afforded an opportunity of tendering an explanation to such Board in extenuation of the conduct in question.

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(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 conduct or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of such proceedings or such portion thereof as is material to such conduct, be transmitted to the Board concerned.

Appointment of *pro forma* complainants.

35. (1) If a Board exercises the powers conferred upon it by section 28, it shall appoint any person as *pro forma* complainant to present the case to such Board: Provided that the secretary for the time being or any member of such Board shall not be so appointed.

(2) A Board may subject to the provisions of the proviso to subsection (1), appoint any other person to institute proceedings or to continue proceedings if the person appointed under that subsection is for any reason unable to do so.

Restriction in, or suspension from, practice of incapable, unfit or incompetent registered persons.

36. (1) When it appears to a Board that any person registered under this Act -

- (a) has become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow such person to continue to practise;
- (b) has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply or possess any scheduled substance;
- (c) has used, possessed, prescribed, administered or supplied any scheduled substance for any purpose other than a medicinal purpose as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965); or
- (d) has become addicted to any scheduled substance or dependence-producing drug,

such Board shall cause the matter to be investigated and may, if it deems it necessary, conduct an inquiry *mutatis mutandis* in accordance with the provisions of section 28 in respect of such person.

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(2) If the Board concerned, after having conducted an inquiry referred to in subsection (1), finds that any of the circumstances contemplated in paragraph (a), (b), (c) or (d) of that subsection exist in respect of such person, such Board may, by order -

(a) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (a) of subsection (1) exist -

(i) suspend such person, for such period and subject to such conditions as the Board concerned may determine, from practising his or her profession or performing any act specially pertaining to his or her profession;
or

(ii) impose such conditions as it may deem fit, subject to which such person shall be entitled to continue practising his or her profession;
or

(b) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (b), (c) or (d) of subsection (1) exist -

(i) impose upon such person any of the penalties referred to in section 31;

(ii) prohibit such person from purchasing, acquiring, keeping, using, administering, prescribing, ordering, supplying or possessing any scheduled substance; or

(iii) prohibit, for such period and subject to such conditions as such Board may impose, such person from purchasing, acquiring, keeping, using, administering, prescribing, ordering, supplying or possessing any scheduled substance.

(3) A Board may at any time withdraw or extend the period of, or amend any order made by it under subsection (2).

(4) The provisions of section 33 shall apply *mutatis mutandis* in respect of any person who has been suspended or whose name has been removed from the register concerned by virtue of any provision of subsection (2).

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(5) Any person registered under this Act who contravenes or fails to comply with any order made under subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(6) The provisions of subsection (1)(c) shall not apply if any scheduled substance is administered -

- (a) in terms of an authority granted by the Minister;
- (b) subject to such conditions as may be stated in such authority; and
- (c) to the particular person mentioned in such authority.

Limitation of liability.

37. No Board or committee thereof or any member of such Board or committee shall be liable in respect of anything done or omitted in good faith and not attributable to negligence in the exercise of a power or the carrying out of a duty or the performance of a function under or by virtue of the provisions of this Part or in respect of anything that may result therefrom.

PART VI**GENERAL AND SUPPLEMENTARY PROVISIONS**

Authorization to practise
professions in employ-
ment of State.

38. (1) Notwithstanding anything to the contrary in this Act or in any other law contained, but subject to the provisions of this section, the Minister may, upon application by any person who is not registered under this Act to practise an allied health service profession, but who -

- (a) in terms of the laws of any other country or state approved by the Minister for that purpose, is entitled to practise such profession without further examination or training in that country or state; or
- (b) although he or she is not entitled to practise as contemplated in paragraph (a), at any educational institution situated outside Namibia, obtained a qualification or received education in

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such profession which in the opinion of the Minister indicates a satisfactory standard of professional education,

and complies with such further conditions or requirements as the Minister may determine, grant a written authority to such person to practise the profession concerned.

(2) Any person to whom a written authority has been granted under subsection (1) -

(a) shall be entitled to practise the profession in respect of which he or she has been so authorized -

(i) only in the employment of the State and in such hospital, clinic or similar institution within Namibia;

(ii) for the period; and

(iii) subject to -

(aa) such restrictions in respect of his or her professional activities; and

(bb) such further conditions, including the condition that he or she may only practise the profession concerned subject to such supervision,

as may be determined by the Minister and specified in such written authority; and

(b) shall, subject to any restriction or condition imposed in respect of him or her under the provisions of paragraph (a), be competent and entitled to perform any act falling within the scope of the profession of a person who is registered in terms of the provisions of this Act in respect of the profession concerned and which he or she could have performed if he or she had been registered under this Act in respect of such profession.

(3) The Minister may, at his or her discretion -

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- (a) at any time amend or revoke any restriction or condition imposed under subsection (2);
- (b) at any time impose such further and additional restrictions and conditions as he or she may determine;
- (c) extend from time to time the period for which such authority has been granted;
- (d) at any time suspend, for such period and subject to such conditions as he or she may determine, any written authority granted under subsection (1); or
- (e) at any time withdraw any such authority.

(4) Any person who desires to obtain a written authority under the provisions of subsection (1), shall apply therefor in such form and such manner as may be determined by the Minister, and such application shall be accompanied by -

- (a) the qualification or qualifications on account of which the applicant so applies;
- (b) such proof of the applicant's identity and good character and of the fact that he or she is entitled to practise the profession concerned as contemplated in subsection (1) and of any qualification or qualifications which may be required by the Minister, including the authenticity and validity thereof as may be so required;
- (c) such application fees as may be determined by the Minister; and
- (d) any further documents or information as may be required by the Minister.

(5) No application referred to in subsection (1) shall be granted unless the Board concerned has been consulted by the Minister in regard thereto.

(6) Before granting an application referred to in subsection (1), the Minister may require of the applicant concerned to sit for an examination before an examiner or

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examiners appointed by the Minister for the purpose of ascertaining whether the applicant, to the satisfaction of the Minister, possesses sufficient professional knowledge and skill to practise.

- (7) (a) The provisions of Part IV and of section 43 shall *mutatis mutandis* apply to or in relation to any person authorized under this section to practise the profession concerned as if such person were registered under this Act as such.
- (b) Any reference in those provisions to a person registered to practise a profession under this Act shall be construed as including a reference to any person authorized under this section to practise as such, but subject to any conditions or restrictions imposed by or under this section.

(8) For the purposes of the provisions of any other law, any reference to a person registered to practise a profession under this Act, shall be construed as including a reference to a person authorized under this section to practise as such, but subject to any condition or restriction imposed by or under this section.

Tariffs of fees.

39. (1) A Board may, after consultation with the Council and with the approval of the Minister, determine a tariff of fees which may be charged by any registered person in respect of professional services rendered by him or her in the practise of his or her profession under this Act.

(2) A Board may from time to time, in a like manner, repeal or amend such tariff of fees.

(3) The tariff of fees referred to in subsection (1) and any repeal or amendment thereof in terms of subsection (2), shall have no force and effect unless published in the *Gazette* by the secretary of the Board concerned.

Charges by registered persons.

40. (1) Every registered person (in this section referred to as the practitioner) shall, unless the circumstances render it impossible for him or her to do so, before rendering any professional services, inform the person to whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he or she intends to charge for such services -

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- (a) when so requested by the person concerned; or
- (b) when such fee exceeds that determined under section 39 or, if no such fee is so determined, that usually charged for such services,

and shall in a case to which paragraph (b) relates, also inform the person concerned of the fee so determined or the usual fee, as the case may be.

(2) Any practitioner who in respect of any professional services rendered by him or her claims payment from any person (in this section referred to as the patient) shall furnish the patient with a detailed account within the prescribed period.

(3) A patient may, whether or not he or she has settled an account referred to in subsection (2), in writing and within the prescribed period request the Board concerned with whom the practitioner is registered, to determine the amount which in the opinion of such Board should have been charged in respect of the services to which the account relates and such patient shall at the same time by registered letter inform the practitioner concerned of such request.

(4) On receipt of a request referred to in subsection (3), the Board concerned shall request the practitioner concerned to submit to it in writing and within the prescribed period any representations in support of the amount charged in the account rendered by such practitioner.

(5) The Board concerned shall within one month after receipt of the practitioner's representations referred to in subsection (4), or if no such representations have been submitted within the period referred to in that subsection, within one month after the expiration of that period determine the amount payable by the patient to the practitioner and shall in writing inform such practitioner and such patient of the amount so determined.

(6) The determination of the amount payable in terms of this section by the patient to the practitioner shall be binding upon both the practitioner and the patient.

(7) Until such time as the Board concerned has in terms of subsection (5) made a determination in respect of

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any account referred to it in terms of subsection (3), no practitioner shall institute legal proceedings in any court of law against a patient for recovery of any amount owing in respect of such account.

(8) The provisions of subsection (7) shall not be construed so as to prohibit a practitioner from instituting proceedings for the recovery of any amount owing which has not in terms of subsection (3) been referred to the Board concerned or in respect whereof such Board has already made a determination in terms of subsection (5), irrespective of whether or not such patient has in terms of subsection (3) referred any other account, or any other or further part of such practitioner's account, to such Board.

(9) If a patient has settled an account referred to in subsection (3) before a Board has determined that the amount payable by the patient concerned is actually less than the amount which such patient has paid, the practitioner concerned shall, after such determination -

- (a) credit the account of such patient with the deficiency between the amount actually paid and the amount which such Board has so determined; or
- (b) at the request of such patient, refund to him or her the amount of the deficiency referred to in paragraph (a).

(10) This section shall be deemed not to divest a Board of any of its powers or functions under Part V with regard to acts and omissions in respect of which it may take disciplinary steps.

(11) For the purpose of this section "professional services" shall include the supply of any artificial part for the human body and the fitting of such part to the human body.

Offences relating to registration and registers.

41. Any person who -

- (a) procures or attempts to procure for himself or herself or any other person registration or authorization under this Act, or any diploma, certificate, order or receipt referred to in this Act, by means of a false representation, whether verbally or in writing, or aids and abets any person in so doing; or

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- (b) makes or causes to be made any unauthorised entry or alteration in or removal from a register or certified copy thereof or extract therefrom, or on any diploma, certificate or receipt issued under this Act; or
- (c) makes or causes to be made a false statement in connection with the identity or qualifications of himself or herself of any other person applying for registration or authorization to practise under this Act; or
- (d) except upon the direction of the Council or the Board concerned, wilfully renders illegible or damages or destroys, or causes to be rendered illegible or be damaged or destroyed any entry in a register or a diploma, certificate or receipt or written authority issued under this Act; or
- (e) forges, or knowing it to be forged, utters any document purporting to be a document issued under this Act; or
- (f) supplies or suffers to supply to any person not registered or authorised under this Act any instrument or appliance which can be used, or is claimed to be effective, for the purpose of diagnosing, treating or preventing physical or mental defects, illnesses, diseases or deficiencies in persons, knowing that such instrument or appliance will be used by such unregistered or unauthorized person for the purpose of performing for gain an act which such unregistered or unauthorized person is in terms of this Act prohibited from performing for gain,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Onus of proof.

42. (1) In any criminal proceedings against any person appearing upon a charge of having performed any act which constitutes an offence under this Act if performed by a person who is not registered or who is not in possession of any document specified in the charge, such person shall, until the contrary is proved, be deemed not to have been registered or not to have been in possession of such document at the time of the commission of the alleged offence.

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(2) In any criminal proceedings against any person appearing upon a charge of having performed an act which constitutes an offence under this Act, if performed by him or her for gain, the accused shall be deemed to have performed such act for gain if he or she has accepted any consideration of whatsoever nature in respect of such act.

Limitations in respect of
unregistered persons.

43. (1) No remuneration shall be recoverable in respect of any act specially pertaining to the profession of a registered person when performed by a person who is not registered under this Act to practise such profession.

(2) No person other than a registered person holding the necessary qualifications shall be eligible for or be entitled to hold any appointment to any establishment, institution, body, organization or association, whether public or private, if such appointment involves the performance of any act which an unregistered person, in terms of the provisions of this Act, may not perform for gain: Provided that nothing in this subsection contained shall be construed as prohibiting the tuition and training of any student in any allied health service profession under the supervision of any person registered with the Board concerned, or the employment in any hospital or similar institution of any person undergoing tuition and training.

Investigation of matters
relating to the training of
certain persons.

44. (1) Notwithstanding anything to the contrary in this Act or in any other law contained, any person who has been authorized in writing by the Board concerned to investigate any matter relating to the tuition or training of persons, which tuition or training shall have the purpose of qualifying such persons for the practising of a profession in respect of which such Board has been established, may, for the purpose of making such investigation and upon the producing of such written authorization, enter any premises or institution utilized in the tuition or training of such person.

(2) Any person who prevents a person authorized in terms of subsection (1) from entering any premises or institution referred to in that subsection or hinders such person in such investigation shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Regulations.

45. (1) The Minister may, on the recommendation of a Board, make regulations in relation to such Board, relating to -

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- (a) the entering into of agreements by or on behalf of, the handling of funds by and the bookkeeping of such Board;
- (b) the allowances payable to members of such Board for services rendered for and on behalf of such Board: Provided that -
 - (i) the allowances payable to a member who is in the full-time employment of the State shall not exceed the allowances payable to such member under the Public Service Act, 1980 (Act 2 of 1980); and
 - (ii) no such member shall be required to pay into the State Revenue Fund any allowances paid to him or her in terms of any regulations made under this paragraph;
- (c) except as provided otherwise in this Act, any fees payable under this Act and the exemption from payment of any such fees;
- (d) the form of the registers and certificates to be kept or which may be issued in terms of this Act and the manner in which alterations may be effected to such registers;
- (e) the application forms to be completed and the documents to be submitted by applicants for registration or for restoration to the register;
- (f)
 - (i) the registration by such Board of students studying or training at an educational institution and the fees payable to such Board in respect of such registration;
 - (ii) the removal from the register by such Board of the names of students;
 - (iii) the standards or nature of education or training required of such students as a condition precedent to registration;
 - (iv) the duration of the curricula, courses or training to be followed by such students at such educational institutions; and

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- (v) the minimum requirements of the curricula and the standards or nature of education or training and examinations which shall be maintained by every educational institution at which education or training in a profession is provided in order to comply with the requirements of such Board for recognition of the qualifications for the purpose of registration under this Act;
- (g) (i) the qualifications required and recognised for registration in terms of this Act to practise the profession concerned;
- (ii) the nature and duration of the practical training to be completed by any person who has obtained a qualification prescribed for registration before such person may be registered; and
- (iii) the circumstances under which any person referred to in subparagraph (ii) shall be exempted from such practical training and the manner in which such person has to apply for such exemption;
- (h) the registration of students, interns and student-interns, the recording of particulars regarding their training and any matter incidental to the registration and training of students, interns and student-interns in the respective professions;
- (i) the qualifications which may be registered as additional qualifications in terms of section 24, including the curricula, the period and nature of tuition and training, the examinations to be passed, and the educational institutions where such training may be completed;
- (j) (i) the registration of specialities in terms of section 24;
- (ii) the requirements to be complied with, including the experience to be obtained, the nature and duration of the training to be completed and the qualifications to be held by persons registered in any profession before any speciality may be registered;

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- (iii) the circumstances in which any applicant for the registration of a speciality may be exempted from any of such requirements; and
- (iv) conditions in respect of the practise of registered persons whose specialities have been registered, including conditions restricting the practice of such person to the speciality registered in his or her name;
- (k) the professional practice, ethical standards and the scope of the profession concerned;
- (l) supplementary training or refresher courses to be completed by persons registered under this Act and the conducting and control of such supplementary training and refresher courses;
- (m)
 - (i) the convening and conducting of meetings and the procedures for the election of a member of such Board; and
 - (ii) the requirements for a quorum of any meeting and the valid nomination of a candidate for election as a member of such Board.
- (n) the instituting and conducting of an inquiry under section 28, including -
 - (i) the procedure for lodging a complaint, charge or allegation with such Board against a member of the profession concerned;
 - (ii) the procedures for informing any person against whom a complaint, charge or allegation has been lodged, of such complaint, charge or allegation, the particulars thereof, and the securing at an inquiry of such person's presence and that of witnesses;
 - (iii) the taking of evidence, recording of the procedures and action against any person who refuses to answer questions or who in any way obstructs, disturbs or disrupts any proceedings; and
 - (iv) any other matter relating to the institution and conduct of such an inquiry;

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- (o) the manner in which such Board may perform or execute any power or function in terms of this Act; and
- (p) generally all other matters which are by this Act required or permitted to be prescribed, or which are necessary or expedient to be prescribed in order to achieve the purposes of this Act.

(2) Any regulation made under this section may, except as otherwise provided in this Act, prescribe fines not exceeding R2 000 or imprisonment not exceeding a period of six months as a penalty for the contravention of such regulation or failure to comply therewith or both such fine and such imprisonment.

Levying of annual fees on registered persons.

46. (1) The Minister may, upon the recommendation of a Board by notice in the *Gazette* determine the fees to be paid annually to such Board by all persons registered under this Act with such Board: Provided that in determining such fees, the Minister may differentiate between persons or categories of persons according to whether they have been registered before or after a date specified in the notice.

(2) If any person liable to pay any annual fee determined in terms of subsection (1) fails or refuses to pay such fee within the period specified in the notice in question the Board concerned may recover such fee by action in a competent court, whether or not such person's name has been removed from the register concerned.

(3) If any person whose name has been removed from a register in terms of this Act, applies for the restoration of his or her name to such register, the Board concerned shall not consider such application for restoration until such time as the applicant has paid in full all amounts owing by him or her to such Board under this Act.

(4) A Board may by resolution exempt any person in part or fully from payment to such Board of any annual fee determined in terms of subsection (1).

Delegation of powers.

47. (1) The Minister may, on such conditions as he or she may deem fit, in writing delegate any power conferred upon him or her by this Act to the Permanent Secretary, excluding any power conferred by section 45.

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(2) The Permanent Secretary may on such conditions as he or she may deem fit, and with the approval of the Minister, delegate any power conferred or entrusted to him or her in terms of this Act to any officer in the Ministry of Health and Social Services.

Registration until establishment of Board of persons practising allied health service professions, or having been or being trained for such practising.

48. (1) (a) The Minister shall, from time to time, until a Board has been established under this Act in respect of any allied health service profession, establish and keep or cause to be established and kept registers in which shall, subject to the provisions of subsection (4), be entered the name and particulars of every person who -

(i) within a period of three months after the commencement of this Act, or such longer period as the Minister may on good cause shown allow, submits proof to the satisfaction of the Minister that at the said commencement such person was resident in Namibia and practising for gain any such profession in Namibia; or

(ii) submits proof to the satisfaction of the Minister that at such commencement such person was resident in Namibia and was studying in Namibia or elsewhere, in order to qualify him or her for the practising of any such profession; or

(iii) in the case of any other person, submits proof to the satisfaction of the Minister that such person is resident in Namibia and intends practising any such profession in Namibia or, in Namibia or elsewhere, is being trained with a view to qualify him or her for the practising of, or has been trained and has passed examinations with a view to qualify him or her for the practising of any such profession.

(b) The Minister may cause examinations to be conducted for persons who intend to qualify for the practising of such an allied health service profession.

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(c) The Minister may make rules -

- (i) prescribing the fee for the registration of persons under paragraph (a);
- (ii) providing for the recognition of qualifications which may be accepted for registration in lieu of the passing of any examination prescribed by the Minister, and the conditions of acceptance.

(d) A person registered under this subsection in respect of the profession concerned may practise such profession in Namibia as if a Board were established under this Act in respect of such profession and he or she were registered with such Board.

(2) The Minister may, for good and sufficient reason, cancel any certificate issued to, or remove from the register the name of, any person registered under this section.

(3) The Minister shall not under the provisions of this section remove the name of any person from any register kept under this section in respect of any profession, unless the Council has recommended such removal to the Minister.

(4) When a Board has been established under section 2 in respect of any allied health service profession, a person registered under this section in respect of that profession, shall for all purposes be deemed to have been registered under this Act with such Board.

Right of appeal to
Council.

49. (1) Any person aggrieved by a Board's decision or finding -

- (a) to refuse to register him or her or to enter in, or to restore to, the appropriate register any degree, diploma, certificate, additional qualification or speciality which he or she desires, and maintains he or she is entitled to have it so entered or restored in terms of the provisions of this Act;
- (b) to remove from a register his or her name or any degree, diploma, certificate, additional qualification or speciality which he or she maintains he or she is entitled to have it entered in a register in terms of the provisions of this Act;

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- (c) to impose any penalty or fine on him or her or, by order, any restriction in, or condition on, or suspension from, practice of him or her,

shall have the right, within a period of 30 days from the date on which the decision or finding was made, to appeal by notice in writing to the Council against such decision or finding, as the case may be: Provided that the Council may on good cause shown, allow an appeal to be lodged after such period.

(2) Unless otherwise provided in this Act, the right of appeal to the Council referred to in subsection (1) shall be subject to the provisions of any law which prescribe the procedures which have to be followed in the exercise of that right and which regulate the proceedings of the Council in respect of appeals to it.

(3) The Council may dismiss such appeal or, if it is of the opinion that a Board has not acted in accordance with the provisions of this Act, may make an order reversing or modifying such Board's decision or finding or it may remit the matter to such Board for further consideration or make such other order, including an order as to costs, as it may deem appropriate.

Repeal of laws and saving.

50. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Any notice, regulation, rule, authorization or order issued, made or granted, or any registration, removal from a register, appointment or any other thing done in terms of a provision of any law repealed by subsection (1), or of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), or of the Health Service Professions Proclamation, 1989 (Proclamation AG. 70 of 1989), and which may or is required to be issued, made, granted or done in terms of this Act, shall be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act.

Short title and commencement.

51. This Act shall be called the Allied Health Services Professions Act, 1993, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

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(Section 50(1))**

No. and year of law	Short title	Extent of repeal
Act 76 of 1971	Chiropractors Act, 1971	The Whole
Act 96 of 1972	Chiropractors Amendment Act, 1972	The Whole
Act 52 of 1974	Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974	The Whole
Act 20 of 1976	Chiropractors Amendment Act, 1976	The Whole
Act 36 of 1977	Health Laws Amendment Act, 1977	Sections 4 to 8 inclusive.