GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 395 2024

PROMULGATION OF ACT
OF PARLIAMENT

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

No. 16 of 2024: Health Professions Act, 2024.

Act No. 16, 2024 **HEALTH PROFESSIONS ACT, 2024**

ACT

To provide for the establishment, constitution, powers and functions of the Health Professions Council of Namibia; to provide for the establishment of professional boards; to regulate the registration and licensing of persons practising health professions or categories of registration; to prescribe the education, tuition, training and qualifications required for the registration of persons to practise any of the professions, including sub-specialities, specialities, additional qualifications and other subjects and courses; to prohibit the practising of a profession without being registered or licensed; to provide for appeal against decisions of the Council; and to provide for incidental matters.

(Signed by the President on 13 December 2024)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

PART 1
INTRODUCTORY PROVISIONS

Definitions

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

"additional qualification" means an additional qualification prescribed under section 38;

"appeal committee" means the appeal committee established by section 72;

"category: independent practise" means category: independent practise as defined in section 39;

"category: Public Service" means category: Public Service as defined in section 39;

"category of registration" means the public or independent category referred to in section 39 or a category of registration prescribed under that section;

"certificate of registration" means a certificate of registration issued under section 34(9), and includes –

(a) a certificate of conditional registration issued under section 35(7);

(b) a certificate of temporary registration issued under section 37(13); and

(c) a certificate of registration issued under section 38(9);

"certificate of status" means a certificate of status referred to in section 48;

"certified" means certified by a commissioner of oaths as a true copy of the original;

"commissioner of oaths" means a commissioner of oaths appointed under section 5, or designated under section 6, of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963);

"conditional registration" means conditional registration under section 35;

"continuing professional development" means the continuing professional development contemplated in section 51;

"Council" means the Health Professions Council of Namibia established by section 3;

"Criminal Procedure Act" means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

"deputy president" means the deputy president of the Council elected under section 9;

"deputy registrar" means the person appointed as deputy registrar under section 24;

"disciplinary committee" means the disciplinary committee established in terms of section 64;

"education" means an education approved by the Council in terms of section 27 that an educational institution may provide to a person to enable the person to obtain a prescribed qualification required for registration under this Act;

"education committee" means an education committee established under section 22;

"educational institution" means a university, college, technical college, technikon, training facility or other similar or related institution where a prescribed qualification required for registration may be obtained;

"fees", in relation to the fees payable to the Council, means the fees determined under section 52;

"graduate" means a medical graduate or a dental graduate who obtained a prescribed qualification which entitles the graduate to be registered as a medical practitioner or a dentist, but who –

(a) has failed an evaluation prescribed under this Act for registration as an intern; or

(b) wishes to do practical training before applying for registration as an intern;

"health facility" means a health facility as defined in section 1 of the Hospitals and Health Facilities Act;

"healthcare service" means the maintenance or improvement of health through prevention, diagnosis and treatment of diseases, illness, injury and other physical or mental impairment in human beings;

"hospital" means a hospital as defined in section 1 of the Hospitals and Health Facilities Act;

"Hospitals and Health Facilities Act" means the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994);

"independent contractor" means an independent contractor referred to in the Labour Act, 2007 (Act No. 11 of 2007);

"inquiry" means an inquiry into unprofessional conduct of a registered person in terms of section 64;

"intern" means a person who is registered as an intern for the purpose of completing the internship;

"internship" means a prescribed education, tuition and practical training that an intern must complete before he or she may be registered to practise a profession under this Act;

"legal practitioner" means a legal practitioner as defined in section 1 of the Legal Practitioners Act;

"Legal Practitioners Act" means the Legal Practitioners Act, 1995 (Act No. 15 of 1995);
"licence" means a licence to practise a profession or category of registration under section 43;

"licensed person" means a person to whom a licence has been issued under section 43;

"magistrate" means a magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003);

"medicine" means a medicine as defined in section 1 of the Medicines and Related Substances Control Act;

"Medicines and Related Substances Control Act" means the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003);

"mental illness" means a mental illness as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);

"Minister" means the Minister responsible for health and social services;

"Ministry" means the Ministry administering health and social services;

"other examining authority" means other examining authority recognised under section 32;

"practise", in relation to a profession to which this Act applies –

(a) means to practise such profession or to perform any act falling within the prescribed scope of practise of, or prescribed as pertaining to, such profession; and

(b) includes the taking up of employment to perform any of the acts falling within the scope of practise or the providing of education to any person to enable that person to obtain a qualification prescribed for registration under this Act;

"preliminary investigation" means the preliminary investigation conducted under section 60;

"preliminary investigation committee" means the preliminary investigation committee established by section 60(4);

"prescribed" means prescribed by regulation;

"president" means the president of the Council appointed under section 9;

"private hospital" means a private hospital as defined in section 1 of the Hospitals and Health Facilities Act;

"profession" means a profession specified in Schedule 1 and where applicable, includes category of registration;

"professional board" means a professional board established by or under section 13;

"professional committee" means a professional committee established under section 20;

"professional conduct rule" means a professional conduct rule made under section 58;

"*pro forma* complainant" means the person appointed as a *pro forma* complainant under section 62;

"Public Service" means the Public Service as defined in section 39;

"qualification" means an academic qualification in a particular field of study obtained by a person at an educational institution or other examining authority –

(a) after the educational institution or other examining authority has provided the person with education in that field of study;

(b) after the educational institution or other examining authority has examined the person in or relating to his or her proficiency in such field of study; and

(c) in respect of which the educational institution or other examining authority has conferred a degree, diploma, certificate or other qualification on the person;

"register", when used as a noun, means a register referred to in section 46;

"registered person" means a person registered under this Act or deemed to have been registered in terms of section 95, but for the purposes of sections 5, 12, 15, 22, 53(2), (60)(1), 61(5), 64(1) and (4), 72(1) and 89(2), a registered person excludes a student, a graduate or an intern;

"registrar" means the registrar of the Council and of the professional boards appointed under section 24;

"regulation" means a regulation made under section 91;

"rule" means a rule made under section 92;

"scheduled substance" means a scheduled substance as defined in the Medicines and Related Substances Control Act;

"speciality" means a speciality contemplated in section 38;

"specialist" means a person registered as a specialist as contemplated in section 38;

"staff member of the Council", includes the registrar and deputy registrar;

"state hospital" means a state hospital as defined in section 1 of the Hospital and Health Facilities Act;

"student" means a person registered as a student or enrolling at an educational institution for the purpose of receiving education at the educational institution in a profession to obtain a prescribed qualification required for registration to practise a profession under this Act irrespective of whether or not such student is registered with the Council as a student;

"sub-speciality" means a sub-speciality prescribed under section 38;

"sub-specialist" means a person registered as a sub-specialist as contemplated in section 38;

"this Act" includes the regulations and rules;

"treatment" means the management and care of a patient for the purpose of combating a disease, physical defect, deficiency or disorder, including the healing of wounds and injuries in respect of that patient, and includes a treatment that may be prescribed; and

"unprofessional conduct", in relation to a profession, means an improper or disgraceful or dishonourable or unworthy conduct by a registered person, and includes acts and

omissions specified under this Act, and in respect of which the Council may conduct an inquiry under this Act.

Application of Act

2. This Act applies to the professions and categories of registration.

PART 2
HEALTH PROFESSIONS COUNCIL OF NAMIBIA

Establishment of Health Professions Council of Namibia

3. There is established a juristic person to be known as the Health Professions Council of Namibia.

Functions and powers of Council

4. (1) The functions of the Council are –

(a) to co-ordinate the activities of the professional boards and to act as communicatory body for the professional boards;

(b) to promote and regulate inter-professional liaison between health professions in the interest of the public;

(c) to register and remove from the register, or restore to the register, the names of registered persons;

(d) to register pharmacies, and licence persons to practise a profession and to suspend or cancel licences;

(e) to suspend registered persons from practising professions in accordance with this Act;

(f) to appoint evaluators to conduct evaluations in terms of this Act;

(g) to approve education and educational institutions subject to the approval process specified in sections 27 and 28, respectively;

(h) to promote the standards of health and social education in Namibia and to liaise with institutions having similar objects;

(i) to monitor, assess, inspect and evaluate the standard of educational institutions;

(j) to advise the Minister on any matter falling within the scope of this Act and to support the universal norms and values of health and social services professions with the emphasis on professional practise, transparency, equity, accessibility and community involvement;

(k) to communicate to the Minister information of public importance obtained by the Council in the course of exercising or performing its powers or functions under this Act;

(l) to serve and protect the public in matters involving the rendering of health and social services by persons practising a profession;

(m) to assist in the promotion of the health and social wellbeing of Namibians and to maintain, uphold and enhance the dignity of the professions to which this Act applies and the integrity, professional and ethical standards of registered persons; and

(n) to perform any other functions imposed on the Council by or under this Act.

(2) To enable the Council to perform its functions, the Council may –

(a) hire, purchase or otherwise acquire moveable or immoveable property and let, sell or otherwise dispose of such property;

(b) borrow or invest money, with the approval of the Minister;

(c) render financial assistance to the professional boards in order to enable the professional boards to perform their functions;

(d) open, maintain and operate such bank accounts at one or more banking institutions in Namibia registered in terms of the Banking Institutions Act, 2023 (Act No. 13 of 2023);

(e) make or accept donations, with the approval of the Minister;

(f) enter into agreements with any person, body, institution or organisation relating to the functions of the Council, on the terms and conditions that the Council and that person, body, institution, or organisation may agree on;

(g) consult and liaise with the relevant authorities on matters affecting the health professions or social services;

(h) obtain information necessary to achieve its objects and perform its functions, and may require a registered person in writing to submit to the Council information that the Council may consider necessary in order to achieve its object or perform its functions;

(i) consider any matter affecting a profession and make representation or recommendations to the Minister or take any action in connection with the matter as it may consider necessary and advisable;

(j) assess, on application by any person, any qualification held by a person in respect of any of the profession as being equal to any prescribed qualification and recommend to the Minister for the qualification to be recognised as a minimum qualification for registration under section 31(3);

(k) investigate complaints made against registered persons and take appropriate disciplinary action against the registered persons if the complaints amount to unprofessional conduct;

(l) control and exercise authority over matters affecting the education of registered persons;

(m) make representations to the Minister on any matter affecting a profession and may take the necessary action in connection with the matter; or

(n) exercise any other powers conferred on it by or under this Act or rules.

(3) When the Council performs the functions referred to in subsection (1) (c) to (m), the Council may consult the professional board concerned, except for the –

(a) suspension of a licence of a licensed person;

(b) suspension of certificate of registration of a registered person; or

(c) removal of the name of the registered person from the register,

by the Council where a charge of unprofessional conduct has been instituted against the registered person.

(4) Despite subsection (3), if a matter pertaining to a profession is being deliberated on by the Council, the Council may request the relevant professional board to designate at least two of its members to take part in the deliberation, but the members have no voting rights.

(5) The Council must be transparent and accountable to the public when exercising or performing its powers or functions.

Composition of Council

5. (1) The Council consists of members appointed by the Minister as follow –

(a) five persons, including at least two women, appointed by the Minister of whom –

(i) one is a staff member of the Ministry who is a registered person, whom the Minister considers as a suitable person to serve as member of the Council;

(ii) two are suitable and qualified registered persons who apply for appointment as members of the Council under subsection (2);

(iii) one is a staff member of the Ministry having knowledge or experience in finances; and

(iv) one is a person with expertise in human resources or in finance who is an accountant registered as such in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), who applies for appointment as member of the Council under subsection (2);

(b) a legal practitioner nominated by the Law Society of Namibia established by section 40 of the Legal Practitioners Act at the written request of the Minister; and

(c) the chairpersons of the professional boards who are *ex officio* members.

(2) For purposes of appointing members of the Council under subsection (1)(a)(ii) and (iv), the Minister must in at least two daily newspapers circulating widely through Namibia invite interested persons who meet the requirements of that subsection to apply for appointment as members of the Council within a period specified in the invitation.

(3) Before assuming office, a member of the Council must subscribe to the following oath or solemn affirmation before the Minister:

" I, ……., do swear or solemnly affirm that, at all times during my term of office as a member of the Health Professions Council of Namibia, I will be faithful to the Republic of Namibia and uphold its Constitution and laws, and exercise and perform my powers and functions and further the aims and objects of the Council to the best of my ability without fear, favour or prejudice. So help me God / I solemnly affirm".

(4) The registrar must, as soon as possible after the appointment of members of the Council in terms of subsection (1), notify in the *Gazette* –

(a) the name of every person appointed as a member of the Council;

(b) the period for which the appointment is made; and

(c) the date from which the appointment takes effect.

Term of office

6. (1) Subject to section 7, a member of the Council, except for an *ex officio* member, holds office for a term of five years and is eligible for re-appointment at the expiry of that term.

(2) Despite subsection (1), the Minister may extend by notice in the *Gazette* the term of office of any member of the Council for a period not exceeding two years at a time as he or she may determine and specify in the notice.

Disqualification for appointment as members of Council

7. A person is disqualified from appointment as a member of the Council, if the person –

(a) is not a Namibian citizen;

(b) is not resident in Namibia;

(c) is an unrehabilitated insolvent;

(d) has been declared mentally ill by a competent court;

(e) has been convicted of an offence and sentenced to imprisonment without the option of a fine;

(f) has been removed from an office of trust as a result of improper conduct;

(g) has been found guilty of unprofessional conduct under this Act or any other law;

(h) has been disqualified by or under this Act or any other law from practising any profession under this Act;

(i) is a licensed person and his or her licence is suspended under section 65(1)(b);

(j) has become an impaired registered person as contemplated in section 71;

(k) is a student, a graduate or an intern; or

(l) is the president, chairperson, deputy president or deputy chairperson of an association or society consisting, or established for the benefit, of any group of registered persons.

Vacation of office, removal and suspension of members and filling of vacancies

8. (1) A member of the Council vacates his or her office, if the member –

(a) becomes subject to any of the disqualifications referred to in section 7;

(b) resigns from office by giving not less than 30 days written notice to the Minister;

(c) no longer holds the qualifications, or occupies the position, that made him or her eligible for membership of the Council at the time of his or her appointment as a member;

(d) has been absent from three consecutive meetings of the Council without leave of the Council; or

(e) is removed from office under subsection (2).

(2) The Minister may, after having afforded the member an opportunity to be heard, remove a member of the Council from office before the expiry of his or her term, if the Minister is satisfied that the member –

(a) is physically or mentally unfit or unable to effectively perform his or her functions as a member of the Council;

(b) neglects his or her functions as a member of the Council;

(c) acts in a manner that prejudices or is in conflict with the interests of the Council or any profession;

(d) has failed to disclose his or her financial or other interest in a matter before the Council as required by section 10(12)(a) and (13);

(e) has contrary to section 10(12)(b), divulged confidential information; or

(f) fails to vacate office as required by subsection (1).

(3) If a member of the Council dies or vacates office before the expiration of his or her term of office, the Minister may, within 30 days of the occurrence of the vacancy, appoint another qualified person as member for the remainder of that term in accordance with section 5.

(4) Despite any provision of this section to the contrary, the Minister, pending investigation of an alleged misconduct, may suspend a member of the Council from office for the period and subject to the conditions that the Minister determines and specifies in the notice of suspension pending investigation of any alleged misconduct.

(5) If a member of the Council is suspended under this section, the member may not during the suspension –

(a) be regarded as a member of the Council;

(b) attend any meeting of the Council; or

(c) receive any benefit relating to the membership of the Council.

President and deputy president of Council

9. (1) The Minister must appoint a member from among the members of the Council appointed under section 5(1)(a)(ii) as president.

(2) At the first meeting of a new Council convened under section 10(1), the members of the Council must elect from their number a registered person as the deputy president of the Council in accordance with the prescribed procedure.

(3) Subject to subsection (6), the president or deputy president holds office as president or deputy president for the duration of the term of office as member of the Council, unless the president or deputy president –

(a) resigns as president or deputy president after giving 30 days written notice of his or her intention to resign to the Minister or the Council, respectively;

(b) cease to be a member of the Council; or

(c) is removed from office as president or deputy president under subsection (4) or (5), respectively.

(4) The Minister –

(a) on the recommendation of the Council made in accordance with the prescribed requirements; or

(b) on his or her own initiative based on any valid reason,

may, after having afforded the president an opportunity to be heard, remove the president from office and replace him or her with another member.

(5) The Council on any valid reason may, after having afforded the deputy president an opportunity to be heard, remove the deputy president from office and replace him or her with another member by election in accordance with the procedure contemplated in subsection (2).

(6) If the president or deputy president –

(a) resigns as the president or deputy president under subsection (3)(a);

(b) is removed from office under subsection (4) or (5), respectively, the president or deputy president retains his or her membership in the Council.

(7) If for any reason the president is absent or unable to act as president, the deputy president must perform the functions and exercise the powers of the president.

(8) If both the president and the deputy president are for any reason absent or unable to perform their functions or exercise their powers, the president or deputy president must in writing designate a member of the executive committee of the Council to act as president during that period of inability to act.

(9) If the president or the deputy president is unable or fails to designate a member of the executive committee of the Council under subsection (8) to act as president, the registrar may designate in writing a member of the executive committee of the Council to act as president during the period of inability.

(10) If the president, the deputy president and the person designated under subsection (8) or (9) are absent from a meeting of the Council, the members present at that meeting must elect a member from their number to preside at that meeting.

(11) The person –

(a) designated under subsection (8) or (9) to act as president may, in general or at any meeting, exercise or perform the powers or functions of the president; or

(b) elected under subsection (10) to preside at a meeting of the Council may, at the meeting, exercise the powers or perform the functions of the president.

(12) If the office of president or deputy president becomes vacant –

(a) the Minister must appoint another member as president; or

(b) members of the Council must at the first meeting after the vacancy occurred, elect from their number a deputy president.

(13) The president or deputy president appointed or elected under subsection (12) holds office for the remainder of the term of office of his or her predecessor.

(14) Subject to subsection (15), a person may not hold the office of president or deputy president for more than two consecutive terms of office.

(15) A term of office referred to in subsection (14) does not include the remainder of a term of office referred to in subsection (13).

Meetings and decisions of Council

10. (1) The registrar after having consulted with the Minister, or if the registrar is not available for any reason, the deputy registrar authorised in writing by the registrar for that purpose must convene the first meeting of a new Council constituted in terms of section 5.

(2) For purposes of the meeting referred to in subsection (1), the registrar or the deputy registrar under that subsection must –

(a) determine the date, time, venue and the agenda to be discussed at the meeting;

(b) notify the members of the Council of the date, time and venue of meeting in the manner that he or she considers appropriate;

(c) furnish every member of the Council with a copy of the agenda, at least 14 days, before the commencement of the meeting; and

(d) preside at the meeting.

(3) Subsequent to the first meeting contemplated in subsection (1), the president must –

(a) determine the date, time, venue and the agenda for meetings of the Council;

(b) convene all meetings of the Council; and

(c) determine in writing, unless prescribed, the procedure to be followed at all meetings of the Council.

(4) The president must convene a special meeting of the Council after receipt of a written request by –

(a) the Minister;

(b) not less than four members of the Council; or

(c) not less than one-third of the persons registered for any of the professions.

(5) A request made under subsection (4) must clearly state the purpose for which the meeting is to be convened.

(6) The Council must hold not less than three ordinary meetings during each year.

(7) The majority of all the members of the Council present at a meeting of the Council form a quorum at every meeting but at least three chairpersons of professional boards must be present at the meeting, and a decision taken in respect of a

professional board is not valid unless the chairperson of that professional board is present at that meeting.

(8) Subject to subsection (7), a decision made by the majority of the members of the Council present and voting at a meeting of the Council constitutes a decision of the Council.

(9) A person presiding at a meeting of the Council –

(a) has a casting vote in addition to his or her deliberative vote, in the event of an equality of votes; and

(b) must cause minutes of the proceedings of the meeting to be kept.

(10) Despite other provisions of this section, the Council may discuss a matter of urgent nature which cannot be kept pending until the next meeting of the Council by circulating, in a manner determined by the Council, the matter together with a proposed resolution, if any, among all members and –

(a) any resolution so circulated and approved by the majority of the members of the Council is as effective and binding as if the resolution had been passed at a meeting of the Council;

(b) a member of the Council who has interest as contemplated in subsection (12) –

(i) must, as soon as possible but before the approval of the matter and the resolution, if any, is made, disclose the nature of the interest, in writing, to other members of the Council, and the disclosure must be made in the manner determined by the Council; and

(ii) may not partake in the approval of the matter and the resolution, if any, unless the Council directs otherwise as contemplated in subsection (15); and

(c) the matter so discussed and the resolution so circulated and approved is reported and recorded in the minutes of the next meeting of the Council.

(11) A decision by the Council or an act performed on the authority of the Council is not invalid only by reason of –

(a) a vacancy in the membership of the Council; or

(b) the fact that a person who is not entitled to attend a meeting of the Council was in attendance when the decision was taken or the act was authorised,

if the decision or act was taken or authorised by the required majority of the members of the Council present and entitled to sit and vote as members of the Council.

(12) A member of the Council –

(a) who has a direct or indirect financial or other interest in a matter which the Council must consider or take a decision on, must disclose the nature of the interest –

(i) to the Council, if the member is present at a meeting of the Council at which the matter is to be considered as soon as possible before the matter is considered; or

(ii) to the president before the meeting commences, if the member is aware that the matter is to be considered at the meeting of the Council or if the member is not going to be present at the meeting; and

(b) must preserve confidentiality in relation to all matters that have come to his or her knowledge as a result of being a member, except in so far as the making known of that matter is required by, or may be made under, this Act or any other law or is required by an order of a court.

(13) If the member referred to in paragraph (a) of subsection (12) is the president, for the purposes of subparagraph (ii) of that paragraph, he or she must disclose the nature of the interest to the deputy president or to a member of the executive committee of the Council.

(14) A person who contravenes or fails to comply with subsection (10)(b), (12) or (13) commits an offence and is liable to the penalties specified in section 57(a).

(15) A member referred to in subsection (12)(a) or (13) who has disclosed his or her interest in a matter under that subsection may not partake in the meeting or deliberations or decision-making process in relation to the matter, unless the Council directs otherwise after having considered the matter and found the conflict of interest to be of trivial nature or consequences.

(16) For the purposes of this section, the interests of a member of the Council includes an interest of his or her spouse, child, parent, sibling, business partner or associate or any organisation, business or association that he or she is a member, a director, a shareholder or has any interest in.

(17) The Council may allow a member to partake in a meeting without being present at that meeting by employing or using technology that allows a member to follow and partake in discussions and vote on a matter before the meeting.

(18) Subject to the prescribed conditions, a member referred to in subsection (17) is regarded as being present at the meeting in which he or she partakes in accordance with that subsection.

(19) The Minister may prescribe –

(a) the procedure that is followed at meetings of the Council in addition to the procedures specified in this section; and

(b) the technology and the manner in which the technology referred to in subsection (17) may be used.

PART 3
COMMITTEES OF COUNCIL

Executive committee of Council

11. (1) There is established a committee to be known as the executive committee of the Council.

(2) The executive committee established by subsection (1) –

(a) subject to subsections (3)(a) and (4), exercises the powers and performs the functions of the Council during the periods between the meetings of the Council; and

(b) subject to this section, may co-opt a person as a member of the executive committee of the Council to assist the executive committee in exercising its powers or performing its functions, but a person co-opted has no voting rights.

(3) The executive committee of the Council –

(a) does not have, except in as far as the Council otherwise directs in writing, the power to set aside or amend a decision of the Council;

(b) must keep a written record of the proceedings of its meetings; and

(c) must report and submit to the Council at the next meeting of the Council the activities and other particulars that the Council may require.

(4) The Council may –

(a) in writing exclude and specify the powers and functions of the Council that the executive committee of the Council may not exercise or perform; and

(b) without any prejudice to a right, amend, substitute or set aside, at the meeting referred to in subsection (3)(c), a decision of the executive committee of the Council.

(5) The executive committee of the Council consists of the president, the deputy president and not less than two and not more than five other members of the Council designated by the Council.

(6) The president is the chairperson of the executive committee of the Council and if he or she is not available, the deputy president presides over the meetings of the committee.

(7) If both the president and deputy president are absent at any meeting of the committee, the members must elect from their number a member to preside over the meeting.

(8) The executive committee may appoint a subcommittee to advise the committee on any matter the committee refers to the subcommittee.

(9) A subcommittee referred to in subsection (8) consists of at least three members of the executive committee and such other persons as the committee may determine and appoint.

(10) Section 10(12), (13), (14), (15), (16), (17) and (18) applies with the necessary changes to this section.

Other committees of Council

12. (1) The Council may establish other committees, in addition to the executive committee established by section 11, consisting of –

(a) the members of the Council designated by the Council;

(b) persons who are not members of the Council as the Council may determine and appoint in writing;

(c) persons elected by registered persons in accordance with subsection (7) as members of a committee; and

(d) co-opted members who have no right to vote.

(2) The functions of a committee established under subsection (1) are to advise the Council on any matter that the Council refers to that committee.

(3) A committee established under subsection (1) may establish a subcommittee to advise the committee on any matter that the committee refers to the subcommittee.

(4) A subcommittee referred to in subsection (3) consists of at least three members of a committee and such other persons as the committee may determine and appoint.

(5) The Council –

(a) may dissolve or reconstitute a committee at any time; and

(b) must designate one of the members of the Council as the chairperson of a committee established under subsection (1).

(6) Section 10(12), (13), (14), (15), (16), (17) and (18) applies with the necessary changes to this section.

(7) The Minister must prescribe –

(a) the number of members of a committee established under subsection (1) required for election by registered persons;

(b) the professions of registered persons that must elect the members pursuant to paragraph (a); and

(c) the manner in which the members referred to in paragraph (a) are elected.

PART 4
PROFESSIONAL BOARDS

Establishment of professional boards

13. (1) There is established the following professional boards –

(a) Allied Health Professions Board of Namibia;

(b) Medical and Dental Board of Namibia;

(c) Nursing Board of Namibia;

(d) Pharmacy Board of Namibia; and

(e) Social Work and Psychology Board of Namibia.

(2) Despite subsection (1), the Minister may, on the recommendation of the Council and by notice in the *Gazette* –

(a) abolish or amend the constitution of a professional board established under that subsection; or

(b) establish one or more additional professional boards.

Powers and functions of professional boards

14. In addition to the powers and functions conferred on a professional board by or under this Act, the board exercises or performs powers or functions delegated or assigned to the board under section 84.

Constitution of professional boards

15. (1) A professional board consists of not less than five registered persons and not more than a number of registered persons as the Minister may prescribe for a board on the recommendation of the Council.

(2) The members of a professional board are appointed by the Council –

(a) for a period of five years and are eligible for reappointment at the expiry of that term; and

(b) on such terms, conditions, qualification and procedure as the Minister may prescribe.

(3) For the purposes of registered persons to be appointed as members of a professional board under subsection (2) –

(a) the Council must in at least two newspapers circulated widely through Namibia invite for applications to be submitted to the Council in the prescribed manner within the period specified in the invitation; and

(b) if no application is submitted as contemplated in paragraph (a) within the period specified in the invitation referred to in that paragraph, the

Council, subject to this section, may appoint a suitable person as a member of the board.

(4) A person appointed as a member of a professional board under subsection (3)(b) is deemed to have been appointed as a member of the board in accordance with subsection (3)(a).

(5) The Council, by notice in the *Gazette,* must notify –

(a) the name of every person appointed as a member of a professional board;

(b) the period for which the appointment is made; and

(c) the date from which the appointment takes effect.

(6) Despite this section and section 94, members of the –

(a) Allied Health Professions Council of Namibia, appointed in terms of the repealed Allied Health Professions Act, 2004 (Act No. 7 of 2004);

(b) Medical and Dental Council of Namibia, appointed in terms of the repealed Medical and Dental Act, 2004 (Act No. 10 of 2004);

(c) Nursing Council of Namibia, appointed in terms of the repealed Nursing Act, 2004 (Act No. 8 of 2004);

(d) Pharmacy Council of Namibia, appointed in terms of the repealed Pharmacy Act, 2004 (Act No. 9 of 2004); and

(e) Social Work and Psychology Council of Namibia, appointed in terms of the repealed Social Work and Psychology Act, 2004 (Act No. 6 of 2004),

who were appointed, or whose terms of office were extended, before the commencement of this Act are deemed to have been appointed by the Council from the commencement of this section for a period of five years, respectively, as members of the –

(i) Allied Health Professions Board of Namibia;

(ii) Medical and Dental Board of Namibia;

(iii) Nursing Board of Namibia;

(iv) Pharmacy Board of Namibia; and

(v) Social Work and Psychology Board of Namibia.

(7) For the purposes of section 5(1)(c), the presidents of the Councils referred to in subsection (6) are deemed to be the *ex officio* members of the Council during the period referred to in that subsection.

Disqualification for appointment as members of professional boards

16. The disqualifications specified by section 7 apply with the necessary changes to members of a professional board.

Vacation of office, removal or suspension of members of professional boards and filling of vacancies

17. Section 8 applies, with the necessary changes, to the vacation of office, and the removal or suspension of members of a professional board and the filling of vacancies.

Chairperson and deputy chairperson of professional boards

18. (1) The members of a professional board must elect the chairperson and deputy chairperson of the board from among themselves at the first meeting of the professional board.

(2) Subject to subsection (4), the chairperson or deputy chairperson holds office as chairperson or deputy chairperson for the duration of the term of office as members of a professional board, unless the chairperson or deputy chairperson –

(a) resigns as chairperson or deputy chairperson after giving 30 days written notice to the professional board of his or her intention to resign;

(b) cease to be a member of the professional board; or

(c) is removed from office as chairperson or deputy chairperson under subsection (3).

(3) The members of a professional board may for any valid reason, after having afforded the chairperson or deputy chairperson an opportunity to be heard, remove the chairperson or deputy chairperson from office as chairperson or deputy chairperson and replace him or her with another member in accordance with subsection (1).

(4) If the chairperson or deputy chairperson resigns under subsection (2) or is removed from office under subsection (3) the chairperson or deputy chairperson retains his or her membership in the professional board.

(5) Section 9(7) to (15) applies with the necessary changes to this section.

Meetings and decisions of professional boards

19. (1) Section 10, excluding subsections (4), (5), (6) and (7) of that section, applies, with the necessary changes, to the meetings conducted and decisions taken by a professional board.

(2) The majority of all members of a professional board present at a meeting of the professional board form a quorum for every meeting of the professional board.

(3) A decision made by the majority of the members of a professional board present and voting at a meeting of the professional board constitutes a decision of the professional board.

PART 5
COMMITTEES OF PROFESSIONAL BOARDS

Professional committees of professional boards

20. (1) A professional board –

(a) may establish one or more professional committees to advise the board; and

(b) must appoint the chairperson of the committee.

(2) A professional committee referred to in subsection (1) consists of at least three members of a professional board and such other persons as the board may determine and appoint.

(3) A member of a professional committee holds office for a period of five years and is eligible for re-appointment at the expiry of his or her term of office.

(4) A professional board may determine –

(a) the procedures for the removal or substitution of members of a professional committee from office and the grounds for that removal;

(b) the convening and conducting of meetings, decisions and reports by the professional committee to the board; and

(c) any other matter relating to the powers and functions of professional committees.

(5) A professional board, with the concurrence of another professional board, may establish a joint committee with that professional board for the purposes of exercising or performing a power or function in terms of this Act.

(6) A professional committee may appoint a subcommittee to advise the committee on any matter the committee refers to the subcommittee.

(7) A subcommittee referred to in subsection (6) consists of at least three members of a committee and such other persons as the committee may determine and appoint.

(8) A professional board may dissolve or reconstitute a professional committee at any time.

(9) Sections 7, 8 and 10(12), (13), (14), (15), (16), (17) and (18), apply with the necessary changes to this section.

Executive committees of professional boards

21. (1) There is established an executive committee for every professional board to be known as the executive committee of the professional board.

(2) The executive committee of a professional board established by subsection (1) exercises the powers and performs the functions of the board during the

periods between the meetings of the board and may co-opt a person as a member to assist the committee in the exercising of its powers or performing of its functions, but a co-opted member has no right to vote.

(3) The executive committee of the professional board concerned –

(a) does not have, except in as far as the board otherwise directs in writing, the power to set aside or amend a decision of the board;

(b) must keep a written record of the proceedings of all its meetings; and

(c) must report and submit to the board in writing at the first meeting of the board the activities done and other particulars that the board may require.

(4) The executive committee of a professional board consists of the chairperson, the deputy chairperson and not more than five other members of the board designated by the board.

(5) The chairperson referred to in subsection (4) is the chairperson of the executive committee of a professional board and if –

(a) he or she is not available, the deputy chairperson referred to in that subsection presides over the meetings of the committee; and

(b) the chairperson and deputy chairperson are absent at any meeting of the committee, the members must elect from their number a member to preside over the meeting.

(6) The executive committee of a professional board may appoint a subcommittee to advise the committee on any matter the committee refers to the subcommittee.

(7) A subcommittee referred to in subsection (6) consists of at least three members of a committee and such other persons as the committee may determine and appoint.

(8) Section 10(12), (13), (14), (15), (16), (17) and (18) applies with the necessary changes to this section.

Education committees of professional boards

22. (1) A professional board must establish an education committee consisting of –

(a) members of the professional board, and may include persons who are not members of the professional board that the professional board may appoint; and

(b) registered persons employed by educational institutions and clinical training facilities in Namibia who are involved in the education of students, nominated by those educational institutions and training facilities,

but members may not be less than five and not more than seven in total.

(2) An education committee established under subsection (1) must investigate and report to or advise the professional board on any matter referred to it by the board relating to –

(a) the education; and

(b) the requirements pertaining to qualifications prescribed for the registration of persons under this Act.

(3) The chairperson of the professional board or any other member of the professional board designated by the chairperson for that purpose –

(a) is the chairperson of the education committee; and

(b) determines the procedures that are to be followed at the meetings of the committee.

(4) The registrar may at any time convene a joint meeting of all or any number of education committees to discuss matters of common concern regarding education and other incidental matters.

(5) An education committee may appoint a subcommittee to advise the committee on any matter the committee refers to the subcommittee.

(6) A subcommittee referred to in subsection (5) consists of at least three members of a committee and such other persons as the committee may determine and appoint.

(7) A professional board may dissolve and reconstitute an education committee at any time.

(8) Section 10(12), (13), (14), (15), (16), (17) and (18) applies with the necessary changes to this section.

Other committees of professional boards

23. (1) A professional board may establish other committees of the board in addition to those established by or under this Act which consists of –

(a) members of the professional board; and

(b) co-opted members of the professional board with no right to vote,

that the board may determine and appoint in writing to advise the board on the matters it refers to the committee.

(2) A committee established under subsection (1) may at any time appoint a subcommittee to advise the committee on any matter the committee refers to the subcommittee.

(3) A subcommittee referred to in subsection (2) consists of at least three members of a committee and such other persons as the committee may determine and appoint.

(4) A professional board –

(a) may dissolve or reconstitute at any time; or

(b) must designate one of the members as the chairperson of,

a committee established under subsection (1).

(5) Section 10(12), (13), (14), (15), (16), (17) and (18) applies with the necessary changes to this section.

PART 6
PERSONNEL AND FUNDS OF COUNCIL

Appointment of registrar, deputy registrar and staff members of Council

24. (1) The Council must –

(a) appoint qualified and suitable persons as registrar and deputy registrar; and

(b) determine their remuneration and benefits and other conditions of service.

(2) The registrar and deputy registrar must be Namibian citizens and must exercise the powers and perform the functions of the registrar as specified by or under this Act.

(3) The registrar, with the approval of the Council –

(a) may appoint such persons as approved on the personnel structure of the Council as he or she may consider necessary to –

(i) perform the functions of the Council; and

(ii) assist the registrar in the exercising and performing of his or her powers and functions under this Act or any other law; and

(b) must determine the remuneration and benefits and other conditions of service of the staff members of the Council.

(4) Subject to subsection (5), the registrar acting on behalf and in the name of the Council may enter into an agreement with an independent contractor to perform any task as may be agreed upon between the registrar and the contractor.

(5) For the purposes of subsection (4), the Council must determine the –

(a) terms and conditions subject to which the registrar may enter into an agreement referred to in that subsection;

(b) task that must be performed by the independent contractor in terms of an agreement referred to in that subsection; and

(c) remuneration that may be paid to the independent contractor in respect of task performed.

(6) The registrar and the deputy registrar are the registrar and the deputy registrar of the Council and the professional boards.

Powers and functions of registrar

25. (1) The registrar –

(a) is the secretary of the Council and committees of the Council, professional boards and committees of professional boards;

(b) must perform the administrative work pertaining to the functions of the Council and its committees as well as professional boards and their committees, including the keeping of the registers established and maintained under this Act;

(c) is the accounting officer of the Council;

(d) must collect and recover, in the name and for the benefit of the Council, all monies due or accruing to the Council;

(e) has the administrative control, on behalf of the Council, over payments and withdrawals made from the funds of the Council;

(f) may instruct, in concurrence with the president, a legal practitioner for any purpose relating to litigation or the execution of the powers or performance of the functions of the Council, professional board or any committee of the Council or professional board; and

(g) must exercise the powers or perform the functions delegated or assigned to him or her under this Act.

(2) If –

(a) the registrar is unable to exercise or perform any of his or her powers or functions; or

(b) the position of registrar is vacant,

the deputy registrar exercises and performs the powers and functions of the registrar during the period that the registrar is unable to act or when the position is vacant.

(3) If –

(a) the deputy registrar has not been appointed; or

(b) the deputy registrar is unable to exercise or perform the powers or functions of the registrar,

and the registrar has not in writing authorised a staff member of the Council to exercise or perform the powers or functions of the registrar, the Council may appoint in writing a staff member of the Council to act as the registrar.

(4) A person appointed under subsection (3) exercises and performs the powers and functions of the registrar subject to the conditions and restrictions that the Council may specify in writing when appointing the person.

Funds of Council and financial year

26. (1) The funds of the Council consist of –

(a) monies appropriated by Parliament for the purpose of the Council;

(b) fees and fines payable to the Council under this Act;

(c) donations and grants received from any source, with the approval of the Minister made with the concurrence of the Minister responsible for finance;

(d) interest and dividends earned on investments made under subsection (4); and

(e) other monies which may accrue to the Council from any other sources in Namibia.

(2) The Council must submit to the Minister for his or her approval –

(a) a detailed estimate of the income and expenditure of the Council in respect of the next financial year not less than six months before the commencement of the financial year; and

(b) supplementary estimates of income and expenditure, if any, in respect of the financial year referred to in paragraph (a), in addition to the estimate of income and expenditure approved under that paragraph, for the purposes of additional funding.

(3) The Council must use its funds for the purpose of defraying the expenses incurred in connection with the exercising of its powers and performing of its functions.

(4) The Council may –

(a) invest any unexpended portion of its monies with the approval of the Minister; and

(b) establish reserve funds and deposit any surplus monies into those funds.

(5) The Council must cause –

(a) detailed and correct accounts to be kept of monies received and expended by it;

(b) an annual statement of its income and expenditure to be prepared in respect of each financial year, including a balance sheet reflecting its financial position at the end of the financial year;

(c) the annual statement and balance sheet referred to in paragraph (b) to be audited annually by a person registered as an accountant and auditor

under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), appointed by the Council; and

(d) a copy of the audited annual statement and balance sheet referred to in paragraph (c) to be submitted to every member of the Council and to lie open at the office of the registrar for inspection by any registered person during office hours.

(6) The Council must, within six months after the end of each financial year, submit to the Minister –

(a) a report on its activities during that year; and

(b) a copy of the audited annual statement and the balance sheet referred to in subsection (5)(c) relating to that financial year.

(7) The Minister must table the annual report and the audited statement and balance sheet submitted to him or her under subsection (6) in the National Assembly –

(a) within 30 days of receipt of the report, if the National Assembly is in session; or

(b) if the National Assembly is not in session, within 14 days after the commencement of its next session.

(8) Despite subsection (6), the Minister may in writing request the Council to submit to him or her an interim report on all or any of the monies received by the Council during the period specified in the request.

(9) The Council must –

(a) submit a written report to the Minister within 21 days after receipt of a request under subsection (8); and

(b) in the report submitted under paragraph (a), specify in detail particulars of the expenditure of the monies specified in the request together with the verification that the Minister may require.

(10) The financial year of the Council ends on 31 March each year.

PART 7
EDUCATION AND APPROVAL OF EDUCATIONAL INSTITUTIONS

Control over and approval of education

27. (1) Despite any other law to the contrary, an educational institution in Namibia that intends to provide an education that enables a student to obtain a prescribed qualification and practise any profession to which this Act applies, must, under subsection (2), apply for the approval of the education that the applicant intends to provide.

(2) An application in terms of subsection (1) must be submitted to the registrar in the prescribed form and manner and must be accompanied by –

(a) full particulars of the education that the applicant wants to provide, including particulars of the curriculum applicable to the education;

(b) the prescribed documents and information;

(c) any additional documents or information that the registrar may require relating to the education that the applicant intends to provide; and

(d) proof of payment of the application fees.

(3) After considering the application submitted under subsection (2), the Council may –

(a) grant the application;

(b) grant the application provisionally, subject to the prescribed conditions; or

(c) refuse the application.

(4) The registrar must –

(a) inform the applicant in writing of a decision of the Council made under subsection (3), and if the application is refused the registrar must inform the applicant of the grounds for the refusal;

(b) if the application for approval is granted or granted provisionally, issue to the applicant a certificate of approval or a certificate of provisional approval in the prescribed form; and

(c) enter the particulars of the approval or provisional approval referred to in paragraph (b) into the appropriate register.

(5) An application for approval under subsection (1) is granted subject to the prescribed conditions and requirements.

Approval of educational institutions

28. (1) An educational institution that has made an application under section 27 must, before commencing to provide the education referred to in that section, apply to the Council for the approval of the educational institution.

(2) An application for approval under subsection (1) must be made in the prescribed manner and form and within the prescribed period and must be accompanied by –

(a) full particulars of the approval applied for;

(b) the prescribed documents and information;

(c) any additional documents and information that the Council may require; and

(d) proof of payment of the application fees.

(3) After considering an application and the documents and information referred to in subsection (2), the Council, subject to subsection (5), may –

(a) grant the application;

(b) provisionally grant the application, subject to the prescribed conditions; or

(c) refuse the application.

(4) The registrar must –

(a) inform the applicant in writing of a decision of the Council made under subsection (3) and if the application is refused, inform the applicant of the grounds for the refusal;

(b) if the application for approval is granted, issue to the applicant a certificate of approval or a certificate of provisional approval in the prescribed form;

(c) enter particulars of the approval or provisional approval referred to in paragraph (b) into the register; and

(d) notify the approval of the educational institution together with the education approved under section 27(3) in the *Gazette*.

(5) An application for approval under subsection (1) is granted subject to the prescribed conditions and requirements.

Compliance with standard of education

29. (1) The Council may, by written notice to an educational institution approved under section 28, require the educational institution to furnish the Council, within 30 days after the receipt of that notice, with –

(a) evidence of compliance with the prescribed standard of education required of students;

(b) evidence of compliance with the courses of education, training and examinations or assessment methodologies approved by the Council before a qualification is granted;

(c) results of the examinations conducted by the educational institution and any other particulars relating to the education offered by the educational institution;

(d) evidence of compliance with the admission requirements of students for admission to the course or field of study;

(e) evidence of the education and examination provided to the student before a qualification may be granted to that student; and

(f) additional particulars relating to a qualification that may be obtained at the educational institution, including the transcript or curriculum pertaining to the qualification for purpose of this Act.

(2) If an educational institution referred to in subsection (1) fails to furnish the particulars required by the Council under that subsection or if it appears to the Council that –

(a) a provision of this Act; or

(b) a condition prescribed or determined under this Act,

pertaining to the educational institution or education is not complied with, and the improper compliance may adversely affect the standard of the education that is maintained at the educational institution, the Council may, after having afforded the educational institution or the holder of the certificate an opportunity to be heard, by notice in the *Gazette* –

(i) determine that the qualification specified in the notice and granted by the educational institution after a date specified does not entitle a holder of the qualification to registration under this Act; or

(ii) withdraw a certificate of approval or certificate of provisional approval issued under section 27(4) or 28(4) if it is satisfied that the holder has failed to furnish the particulars, fails to comply with the provision of this Act or a condition prescribed or determined under this Act or the conditions or requirements applicable to the certificate of approval or provisional approval.

(3) The registrar must, by notice in writing, inform –

(a) the educational institution of the determination made under subsection (2); or

(b) the holder of the certificate of approval or certificate of provisional approval of the withdrawal of the certificate made under subsection (2).

(4) The holder of a certificate of approval or certificate of provisional approval must return the certificate to the Council within 10 days after receipt of the notice under subsection (3).

(5) The registrar must cancel the certificate of approval or certificate of provisional approval and enter the cancellation particulars into the register.

(6) An educational institution may not employ a registered person as a clinical lecturer, clinical instructor, clinical tutor or other similar position or permit the registered person to deliver or present any lecture on subjects of clinical matters at the educational institution, unless that person is licensed in terms of this Act.

(7) For the purposes of subsection (1) and to ensure compliance with this section, the Council may in writing appoint a person, subject to section 53 –

(a) to assess, investigate and inspect whether an educational institution is complying with this section, prescribed conditions and requirements; and

(b) to report to the Council on the finding of the assessment, investigation and inspection conducted under paragraph (a) within the period and

in a manner determined by the Council and specified in the letter of appointment.

(8) The Minister may prescribe –

(a) the qualifications and other requirements relating to the person designated as the head of the program of education offered or provided by an educational institution, including the requirement relating to his or her registration with the Council;

(b) the requirements relating to the program of education provided by an educational institution and the approval requirements, criteria and standards that the program of education must meet;

(c) the agreement that a training institution must enter into with any person providing a healthcare service at a hospital or health facility, the requirements that the hospital or health facility must comply with and the training opportunities the person must provide;

(d) the infrastructure and resources applicable to an educational institution;

(e) the requirements for application that must be submitted to the Council for the extension of the approval granted, including additional education program, relocation of the educational institution, increase in student numbers or the extension of the scope of the approval, and any other matter or issue relating to the approval;

(f) the review by the Council of an approval granted to an educational institution and the procedures relating to the review of such approval;

(g) the assessments and inspections that are conducted relating to an approved educational institution or an application for approval of the educational institution;

(h) the granting of provisional approval of an educational institution under this Act and the conditions applicable to the granting of the provisional approval;

(i) the renewal and withdrawal of a certificate of approval granted and issued under this section;

(j) the investigation by the Council of complaints lodged against an educational institution or education and the procedures relating to the investigation against the educational institution or education; or

(k) any other matters relating to the approval of an educational institution or education that the Minister considers necessary and expedient to prescribe in order to achieve the objects of this section.

(9) The Council may determine, by notice in the *Gazette*, whether any other qualification, other than a qualification referred to in subsection (2) and granted by the educational institution referred to in that subsection subsequent to the date specified by that notice, entitles the holder of the qualification to registration under this Act.

PART 8
REGISTRATION AND LICENCE TO PRACTISE, MINIMUM REQUIREMENTS OF STUDY AND REGISTRATION

Registration and licence to practise

30. (1) In so far as this Part provides for a limitation on the fundamental rights of a person contemplated in Article 10(2) of the Namibian Constitution, in that the provisions authorise that a distinction may be made between persons who are Namibian citizens and persons who are not Namibian citizens, that limitation is enacted on the authority of Article 22 of the Namibian Constitution.

(2) In subsection (3), "profession" includes a sub-speciality, speciality, additional qualification, subject and course relating to the profession prescribed under section 38(1).

(3) Unless otherwise provided in this Act, a person may not practise a profession unless the person is registered and licensed in terms of this Act.

(4) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable to the penalties specified in section 57(b).

(5) This section does not apply to a person registered as a student, a graduate or an intern under this Act.

Minimum requirements of study for registration

31. (1) Subject to subsection (5), the Minister, in respect of every profession, may prescribe –

(a) the minimum qualification that a person must hold, singly or conjointly with any other prescribed qualification provided by an educational institution, including qualifications obtained by virtue of education provided, or examinations conducted, by other examining authorities; and

(b) the conditions and requirements, in addition to the qualifications referred to in paragraph (a), that a person must comply with, before, during or after obtaining a prescribed qualification,

for the purpose of registration under this Act to practise a profession.

(2) When the Minister under subsection (1) prescribes a qualification that a person must hold to qualify for registration under this Act, the Minister may prescribe –

(a) the main domains, subjects or courses, both theoretical and practical, that must be included in the curriculum of the qualification; and

(b) the period of the education pertaining to the qualification.

(3) Subject to subsection (4), the Minister, for the purposes of subsection (1), by notice in the *Gazette*, may recognise as a minimum qualification for the registration of a person under this Act, a qualification obtained at an educational institution or other examining authority in a country other than Namibia.

(4) The Minister may not under subsection (3) recognise a qualification obtained at an educational institution or other examining authority situated in a country other than Namibia as a minimum qualification for the registration of a person under this Act, unless –

(a) the registration authority responsible for the registration of a person to practise the corresponding profession in that country recognises the qualification as a minimum qualification for registration to practise the profession in that country; and

(b) the Council is satisfied that the qualification is of a standard of professional education not lower than any of the other qualifications prescribed under subsection (1) in respect of the profession.

(5) When the Minister prescribes the minimum qualifications and requirements for registration under this section, the Minister may prescribe –

(a) different qualifications, conditions and requirements in respect of different professions; and

(b) different conditions and restrictions applicable to a profession subject to which a person may practise in respect of persons who are Namibian citizens and who are not Namibian citizens.

Recognition of other examining authorities

32. The Minister may –

(a) by notice in the *Gazette*, recognise an examining authority whether in Namibia or outside Namibia for the purposes of examining students, graduates, interns or any other person; and

(b) prescribe the requirements that an examining authority recognised under paragraph (a) must comply with in order to examine the students, graduates, interns or any other person under that paragraph.

Application for registration

33. (1) A person who intends to be registered to practise a profession must submit to the registrar an application for registration in the prescribed form and manner.

(2) An application referred to in subsection (1) must be accompanied by –

(a) a certified copy of the qualification referred to in section 31;

(b) written proof to the satisfaction of the registrar that the applicant has satisfactorily completed –

(i) the prescribed internship, if any, applicable to him or her; and

(ii) that he or she has met the prescribed requirements in respect of the internship or practical training;

(c) if the applicant at the time of the application is registered in a country other than Namibia, or was registered in such country, to practise –

(i) a profession in respect of which registration is applied for; or

(ii) any other profession to which this Act applies,

a letter of good standing from the registration authority of each country in which the applicant is registered or was registered, during the period of five years immediately preceding the date of the application, which letter is issued not more than 120 days before the date of the submission of the application;

(d) the prescribed documents and information;

(e) the additional documents and information that the registrar may require; and

(f) proof of payment of the application fees.

(3) Despite subsection (2)(a), the registrar may require the applicant to submit to the registrar an original transcript issued by the educational institution or other examining authority at which he or she obtained the qualification referred to in that subsection specifying particulars of the education received and completed by the applicant.

(4) The Minister may prescribe the requirements and the procedures relating to an application for registration under this section in addition to the requirements and procedures specified by this section.

(5) Unless otherwise provided for in this Act, this section does not apply to –

(a) the registration of a –

(i) person as a student, a graduate or intern;

(ii) sub-speciality, speciality or additional qualification; or

(b) the listing of any course or subject.

Registration

34. (1) If an application for registration complies with section 33, the registrar must refer the application, together with –

(a) the documents and additional information submitted to him or her; and

(b) his or her recommendations or comments relating to the application,

to the Council for consideration.

(2) The Council may require an applicant to pass to the satisfaction of the Council a prescribed evaluation, whether in Namibia or outside Namibia, to determine whether the applicant –

(a) possesses adequate professional knowledge, skills and competence in the profession for which registration is applied for; and

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

(3) For the purposes of subsection (2), the Council must –

(a) determine the main domains that must be included in the evaluation;

(b) determine the nature and requirements for the evaluation; and

(c) appoint the person who must conduct the evaluation.

(4) The Council may, under subsection (3), determine different evaluations in respect of the different professions.

(5) Before an applicant sits for the evaluation, the applicant must pay to the Council the evaluation fees.

(6) The Council after having considered –

(a) the application for registration referred to the Council under subsection (1);

(b) the documents and other information specified or referred to in section33; and

(c) the results of the evaluation contemplated in subsection (2), if applicable,

may grant the application if it is satisfied that the applicant –

(i) complies with the minimum requirements of study for registration;

(ii) has passed to the satisfaction of the Council an evaluation under subsection (2), if applicable;

(iii) has paid to the Council the application fees; and

(iv) has paid to the Council the evaluation fees, if applicable.

(7) The Council may refuse the application for registration if the Council is satisfied that the applicant has not complied with all the requirements of this section.

(8) If the Council refuses the application, the registrar must, as soon as practicable, inform the applicant in writing, of the refusal and the grounds for the refusal.

(9) If the Council grants the application, the registrar must –

(a) issue the applicant with a certificate of registration in the prescribed form; and

(b) enter the name and other particulars of the applicant into the register.

(10) A certificate of registration issued under subsection (9) must specify –

(a) the profession in which the applicant is registered; and

(b) the particulars of Public Service, if any, applicable to the applicant.

(11) For the purposes of performing public service in the category: Public Service, the Council may approve an application for a licence in terms of section 43 concurrently with an application for registration under this section.

Conditional registration

35. (1) If an applicant applies for registration under section 33 but such applicant –

(a) is not a holder of a qualification prescribed under section 31 but is a holder of a qualification that the Council is satisfied that the qualification is of a standard of professional education not lower than a qualification so prescribed;

(b) has passed the prescribed evaluation contemplated in section 34(2); and

(c) has complied with other provisions of this Act applicable to the registration of such applicant,

the Council may register the applicant conditionally.

(2) Before the Council registers an applicant conditionally under subsection (1), the Council may require the applicant to undergo, to its satisfaction, an evaluation to determine whether the applicant –

(a) possesses adequate professional knowledge, skills and competence to practise his or her profession; and

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

(3) For the purpose of an evaluation under subsection (2), the Council must –

(a) determine the nature and requirements for the evaluation;

(b) determine the main domains that must be included in the evaluation; and

(c) appoint the person who must conduct the evaluation.

(4) Before an applicant sits for the evaluation, the applicant must pay the evaluation fees to the Council.

(5) If an applicant fails to pass the evaluation conducted by the Council contemplated by subsection (2), the Council may not register the applicant conditionally.

(6) If the Council decides to register a person conditionally under subsection (1), the Council must determine –

(a) the conditions and restrictions subject to which the person must practise his or her profession;

(b) the period that the conditions and restrictions determined under paragraph (a) applies to the person;

(c) the education or training that the person must complete during the period determined under paragraph (b);

(d) the additional examinations the person must pass; and

(e) the other conditions that the person must comply with.

(7) If the person is registered conditionally, the registrar must issue to the person a certificate of conditional registration in the prescribed form that specifies –

(a) the condition, restrictions, period, particulars of education and additional examination that the person must pass; and

(b) other conditions that the person must comply with determined under subsection (6).

(8) Despite any provision of this Act to the contrary, the Council may determine that the applicant, in addition to a condition determined under subsection (6)(a), must complete the internship prescribed under this Act in respect of such profession.

(9) A person registered conditionally under subsection (1) may practise a profession in respect of which he or she is so conditionally registered, subject to the conditions and restrictions and for the period of time as specified in the certificate of conditional registration.

(10) The Council, after having afforded the holder of the certificate an opportunity to be heard, may cancel a certificate of conditional registration and remove the name of the person from the register, if the Council is satisfied that the person has failed to comply with the conditions and requirements of the certificate of conditional registration.

(11) A person who is a holder of a certificate of conditional registration and who performs an act in contravention of a condition or requirement of the certificate of conditional registration commits an offence and is liable to the penalties specified by section 57(b).

(12) The conditional registration of a person under this section is valid until –

(a) the expiry date specified on the certificate of conditional registration; or

(b) the date of the cancellation of the certificate of conditional registration under subsection (10).

(13) Despite subsection (12)(a), the Council may –

(a) on its own initiative and after having afforded a person registered conditionally under this section the opportunity to be heard; or

(b) on an application made, in the form and manner determined by the Council, by a person registered conditionally, and on good cause shown,

extend the period of the conditional registration of the person for the period of time, and subject to the conditions, that the Council may determine.

(14) The Minister may prescribe further requirements and procedures relating to the conditional registration of a person in addition to the requirements and procedures specified by this section.

Registration of persons registered conditionally

36. (1) A person registered conditionally under section 35 and who has complied with the conditions subject to which he or she is conditionally registered may, not less than 30 days before the expiry of –

(a) the certificate of conditional registration issued to him or her under subsection (7) of that section; or

(b) an extension of the period as contemplated in subsection (13) of that section,

apply to the registrar to be registered under section 34.

(2) A person registered conditionally under section 35 is regarded as an unregistered person from the date of the expiry of the conditional registration, unless such person is registered under section 34.

(3) The Minister may prescribe further requirements and the procedures relating to the registration of a person in addition to the requirements specified by this section.

Authorisation to practise professions in employment of State and temporary registration

37. (1) In this section –

(a) "service provider" means a hospital or health facility providing healthcare service; and

(b) "training institution" means a university, college, technical college, technikon, training facility or other similar or related institutions in Namibia where education relating to a profession is provided.

(2) Despite anything to the contrary in this Act or any other law but subject to this Act, the Minister may grant written authorisation to practise a profession in the employment of the State to a person who complies with the conditions and requirements prescribed in terms of this section and who –

(a) is registered in any other country or State, but who is not registered in Namibia;

(b) is entitled in terms of the laws of any other country or State to practise the profession concerned in such country or State; or

(c) if the person is not entitled to practise the profession concerned, has –

(i) obtained at an educational institution situated outside Namibia a qualification; or

(ii) received education, tuition or training,

in or relating to such profession which in the opinion of the Minister indicates a satisfactory standard of professional education which enables the person to practise such profession.

(3) The person referred to in subsection (2) must make an application to the Minister in the prescribed form and manner for the granting of written authorisation to practise a profession in the employment of the State.

(4) An application referred to in subsection (3) must be accompanied by –

(a) a certified copy of the national identity card of the person;

(b) a certified copy of the qualification upon which the person relies to be granted the written authorisation;

(c) written proof that the person is entitled in terms of the laws of any other country or State to practise the profession concerned, or if the person is not entitled to practise the profession concerned in such country or State –

(i) certified copy of the qualification obtained at an educational institution situated outside Namibia; or

(ii) written proof that the person has received education, tuition or training,

in or relating to such profession which in the opinion of the Minister indicates a satisfactory standard of professional education which enables the person to practise such profession;

(d) a certificate of good standing, in respect of a person who is entitled in terms of the laws of any other country or State to practise a profession in a country or State, issued by the registering authority in respect of each country in which the person has practised the profession during the period of five years immediately preceding the date of such application to the satisfaction of the Minister.

(5) The Minister, after consultation with the Council, may grant to the person referred to in subsection (2) written authorisation to practise a profession in the employment of the State if the person complies with the applicable conditions and requirements of this section, and the Minister may impose restrictions and conditions to the written authorisation.

(6) A person to whom written authorisation has been granted in terms of subsection (5) must only practise the profession in respect of which he or she has been so authorised and for the period of time allowed –

(a) at a hospital, clinic or similar institution controlled, managed or subsidised by the State; and

(b) subject to such restrictions and conditions in respect of his or her professional activities, including that he or she may only practise his or her profession subject to such supervision,

as the Minister may determine and specify in the written authorisation.

(7) The Minister must submit to the Council, as soon as practicable, a copy of the written authorisation granted in terms of subsection (5).

(8) The Minister may amend or revoke, at any time, any written authorisation granted under subsection (5), including the extension of the period of time for which such authorisation has been granted or condition or restriction imposed on the written authorisation.

(9) Despite any provision of this Act to the contrary in this Act or any other law but subject to this section, the Council may temporarily register a person not permanently resident in Namibia at the written request of –

(a) the Minister to enable the person to practise a profession in the public service;

(b) a service provider to enable the person to practise a profession in the employment of the service provider; or

(c) a training institution to enable the person to provide teaching, training, educational demonstrations or to promote education in respect of a profession.

(10) A person who has requested for temporary registration must submit to the registrar an application for temporary registration in the prescribed form and manner.

(11) An application referred to in subsection (10) must be accompanied by –

(a) written proof, to the satisfaction of the Council, that the person is registered to practise a profession in the country in which he or she is permanently resident or obtained the educational qualification which entitles him or her to practise the profession;

(b) a certificate of good standing from the registration authority of each country in which the applicant is registered or was registered during the period of five years immediately preceding the date of the application, which certificate is issued not more than 120 days before the date of the submission of the application;

(c) the original written request referred to in subsection (10);

(d) the prescribed documents and information; and

(e) proof of payment of the application fees.

(12) The Council, after having considered the application for temporary registration and the documents and other information referred to in subsection (11), may grant or refuse the application.

(13) If the application for temporary registration is granted, the registrar must –

(a) register the applicant and issue the applicant with a certificate of temporary registration in the prescribed form; and

(b) enter the name of the applicant into the register.

(14) A person may be registered under subsection (13) for the period and subject to the restrictions and conditions that the Council determines and specifies in the certificate of temporary registration.

(15) The registrar may not register a person under subsection (13) to temporarily practise a profession in Namibia, unless the person is registered to practise the profession in the country in which he or she –

(a) is permanently resident; or

(b) obtained the educational qualification which entitles him or her to registration to practise the profession under this Act.

(16) Before granting written authorisation or temporary register a person under this section, the Minister or Council may require the person to sit for an examination or evaluation by an examiner or evaluator appointed by the Minister or Council, in writing, for the purposes of ascertaining whether the person –

(a) possesses sufficient professional competence, knowledge and skills pertaining to the profession to which such application relates; and

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

(17) If the application for written authorisation or temporary registration is refused, the Minister or registrar must, in writing, inform the person of the refusal and the grounds for the refusal.

(18) This section does not apply to a person registered under section 34.

(19) The Minister may, by notice in the *Gazette*, determine –

(a) the circumstances and conditions under which a written authorisation may be granted or person may be temporary registered to practise a profession under this section;

(b) the conditions and requirements that a person must comply with in order to qualify for –

(i) written authorisation to practise in the employment of the State; or

(ii) temporary registration,

under this section in order to practise a profession;

(c) the service providers and similar institutions where a person temporary registered under this section may practise a profession; or

(d) the procedures and the requirements for an application for temporary registration under this section.

(20) Part 16 applies with the necessary changes to a person authorised or temporarily registered in terms of this section to practise a profession to which this Act applies as if that person was registered in terms of section 34.

(21) A person who contravenes or fails to comply with a provision of this section or any restriction or condition imposed on the written authorisation or temporary registration commits an offence and is liable to the penalties specified in section 57(b).

Sub-specialities, specialities, additional qualifications and listing of subjects and courses

38. (1) The Minister may prescribe the –

(a) sub-specialities, specialities and additional qualifications that may be registered and the professions and categories of registration in respect of which the sub-specialities, specialities and additional qualifications may be registered;

(b) subjects and courses that may be listed against the name of a registered person in the register and the professions and categories of registration in respect of which the subjects and courses may be listed; or

(c) requirements and procedures for registering a sub-speciality, speciality or additional qualification and for listing of a subject or course.

(2) The Minister may not under subsection (1) prescribe a sub-speciality, speciality, additional qualification, subject or course obtained at an educational institution or examining authority situated in a country other than Namibia, unless –

(a) the registration authority responsible for the registration of a person to practise a profession referred to in that subsection in the country where that educational institution or examining authority is situated recognises that sub-speciality, speciality, additional qualification, subject or course for registration or listing in that country; and

(b) the Council is satisfied that the sub-speciality, speciality, additional qualification, subject or course is of a standard of professional education not lower than any of the other sub-specialities, specialities, additional qualifications, subjects or courses prescribed under that subsection in respect of that profession.

(3) A person registered to practise a profession prescribed under subsection (1) and who, in addition to the qualification in respect of which the person is registered, wishes to have –

(a) a sub-speciality, speciality or additional qualification prescribed under that subsection registered in his or her name; or

(b) a subject or course listed in his or her name,

must apply to the Council in the prescribed form.

(4) An application in terms of subsection (3) must be submitted to the registrar and must be accompanied by –

(a) documentary proof, to the satisfaction of the Council, that the applicant is entitled to the registration or listing and holds the specified qualification;

(b) the prescribed documents and information;

(c) the additional documents or information that the Council may require; and

(d) proof of payment of the application fees.

(5) Despite any provision of this section to the contrary, the Council may require the applicant to pass, to the satisfaction of the Council, a prescribed evaluation in order to determine whether the applicant possesses sufficient professional knowledge, skills and competence to practise the speciality, additional qualification, subject or course for which registration or listing is applied for.

(6) The Council may grant the application for registration if it is satisfied that –

(a) the sub-speciality, speciality, additional qualification, subject or course for which registration and listing is applied meet the requirements of the sub-speciality, speciality, additional qualification, subject or course prescribed under subsection (1);

(b) subsection (4) and the prescribed requirements relating to the registration, listing or recognition of the speciality, additional qualification, subject or course have been complied with; and

(c) the applicant has passed the evaluation under subsection (5) if the Council required the applicant to pass the evaluation.

(7) The Council must refuse the application if it is satisfied that subsection (6) is not complied with by the applicant.

(8) The Council must inform an applicant in writing of its decision under subsection (6) or (7), and if the application is refused inform the applicant of the reasons for the refusal.

(9) If the application is granted under subsection (6), the registrar must –

(a) register the sub-speciality, speciality, additional qualification or list the subject or course against the name of the applicant in the register;

(b) issue to the applicant a certificate of registration or listing in the prescribed form; and

(c) enter the speciality, additional qualification, subject or course against the name of the applicant in the register.

(10) For the purposes of an evaluation specified under subsection (5), the Council may identify and appoint in writing a person, institution or organisation, whether in or outside Namibia, to conduct the evaluation.

(11) Before sitting for an evaluation under subsection (5), an applicant referred to in that subsection must pay to the Council the evaluation fees.

(12) The Minister may prescribe the –

(a) requirements that are to be complied with, including –

(i) the practical training and experience, the nature and the duration of the training that are to be completed;

(ii) the qualifications that are to be held by a person registered in any profession before the registered person may be registered as a sub-specialist or specialist; and

(iii) the categories of specialities that may be so registered in addition to the requirements specified by this section;

(b) evaluation referred to in subsection (5), and the person, institution or organisation, whether in or outside Namibia, who or which must conduct the evaluation;

(c) circumstances in which an applicant for registration as a sub-specialist or specialist may be exempted from any of the requirements of paragraph (a) and the procedures relating to the application and granting of exemption; and

(d) conditions subject to which a sub-specialist or specialist may practise his or her profession and the practising of additional qualifications, including the scope of practise of sub-speciality and speciality.

(13) A person who –

(a) holds himself or herself out to be a sub-specialist, specialist or a holder of an additional qualification, subject or course while the person is not registered as a sub-specialist or specialist or does not hold the additional qualification or the subject or course is not listed in his or her name;

(b) practises a sub-speciality, speciality, additional qualification, subject or course while the person is not registered as a sub-speciality, speciality or does not hold additional qualification or the subject or course is not listed in his or her name; or

(c) assumes, uses or publishes in a way a name, title, description or symbol indicating or calculated to lead a person to infer or believe, that the person is a holder of, or is qualified to practise, a sub-speciality, speciality or holds the additional qualification or subject or course is listed in his or her name,

commits an offence and is liable to the penalties specified in section 57(b).

(14) A registered person who contravenes or fails to comply with any provision of this section, whether he or she is found guilty or not of an offence specified by subsection (13), commits unprofessional conduct.

PART 9
PROFESSIONS AND CATEGORIES OF REGISTRATION

Professions and categories of registration

39. (1) For the purposes of this Part –

"employment" includes full time employment, temporary employment and employment as an independent contractor;

"category: independent practise" means a category of registration that entitles a licensed person to freely practise either in the Public Service or outside the Public Service;

"category: Public Service" means a category of registration required in respect of a licensed person to practise a profession in the employment of the Public Service before the licensed person is registered in the category: independent practise; and

"Public Service" means the Public Service established by section 2 of the Public Service Act, 1995 (Act No. 13 of 1995), and includes –

(a) the Namibian Defence Force referred to in section 2 of the Defence Act, 2002 (Act No. 1 of 2002);

(b) the Namibian Police Force established by section 2 of the Police Act, 1990 (Act No. 19 of 1990);

(c) the Namibian Correctional Service established by section 2 of the Correctional Service Act, 2012 (Act No. 9 of 2012);

(d) the Namibia Institute of Pathology Limited established by section 2 of the Namibia Institute of Pathology Act, 1999 (Act No. 15 of 1999); any blood transfusion service in Namibia; and

(e) any hospital or health facility providing healthcare service owned by a church in Namibia and subsidised the Government or similar institution controlled, managed or subsidised by the Government.

(2) The Minister may prescribe –

(a) other categories of registration;

(b) professions, specialities or sub-specialities to which category: Public Service applies;

(c) the date from which category: Public Service applies to a profession; and

(d) the duration that a licensed person must render services in category: Public Service.

Category: Public Service

40. (1) A person who is licensed to practise a profession, sub-speciality or speciality prescribed under section 39(2) after a date prescribed under that section must be registered in the category: Public Service to perform public service, before the person is registered in the category: independent practise.

(2) The Minister may, in relation to the category: Public Service, prescribe –

(a) the form and manner of an application to be registered in the category: Public Service;

(b) the public service that is performed under category: Public Service;

(c) the period that a person must perform public service in the category: Public Service;

(d) the hospitals and other places where public service is performed;

(e) the conditions relating to the employment of the persons performing the public service; or

(f) any other matter relating to public service that the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this section.

(3) Different periods and conditions may be prescribed under subsection (2) in respect of –

(a) the different professions, sub-speciality or speciality that may be prescribed under section 39(2); or

(b) licensed persons who are Namibian citizens or who are not Namibian citizens.

(4) A period of registration as a student, a graduate or an intern may not be regarded as registration in the category: Public Service.

(5) A licensed person referred to in subsection (1) who –

(a) practises a profession under category: independent practise without having completed the prescribed public service under category: Public Service applicable to him or her; or

(b) contravenes or fails to comply with any provision of this section,

commits unprofessional conduct.

Category: independent practise

41. (1) A licensed person referred to in section 40(1) who has completed public service in the category: Public Service may, in the prescribed form and manner, make an application to practise a profession, sub-speciality or speciality in the category: independent practise.

(2) A licensed person referred to in subsection (1) who practises a profession, sub-speciality or speciality in the category: independent practise without having completed public service in the category: Public Service commits unprofessional conduct.

(3) Despite subsection (2), a registered person who practises a profession, sub-speciality or speciality prior to a date prescribed under section 39(2) is exempted from performing public service in the category: Public Service.

Power to amend Schedules 1 and 2

42. The Minister, on the recommendation of the Council, by notice in the *Gazette*, may amend –

(a) Schedule 1 so as to include or remove a profession; or

(b) Schedule 2 so as to add or exclude a category of registration.

PART 10
LICENCE TO PRACTISE

Licence to practise profession

43. (1) Subject to subsections (7) and (8), a person registered under this Act to practise a profession may not clinically examine patients, treat patients or provide any other healthcare services, unless the registered person holds a licence to practise the profession concerned.

(2) A registered person who wishes to clinically examine, treat a patient or provide other healthcare services must apply to the Council for a licence to practise a profession in accordance with subsection (3).

(3) An application referred to in subsection (2) must be submitted to the Council in the prescribed form and must be accompanied by –

(a) a certified copy of the certificate of registration issued to the applicant under section 34, 35 or 37;

(b) the prescribed documents and information;

(c) the additional documents and information that the Council may require; and

(d) proof of payment of the application fee.

(4) After consideration of an application submitted to it in terms of subsection (3), the Council may –

(a) grant the application, if it is satisfied that the applicant –

(i) is registered to practise the profession in respect of which the licence to practise is applied for;

(ii) the application complies with this section and the prescribed requirements for the granting of a licence; and

(iii) has paid to the Council the application fee; or

(b) refuse the application, if the Council is satisfied that the applicant has not complied with the requirements contemplated in paragraph (a).

(5) The registrar must –

(a) inform the applicant in writing of the decision of the Council made under subsection (4), as soon as practicable;

(b) if the application is refused, inform the applicant of the grounds for the refusal;

(c) issue a licence to the applicant in the prescribed form, if the application is granted; and

(d) enter the name of the applicant into the register.

(6) A licence issued under subsection (5) is valid for a prescribed period and that period may not exceed five years at a time.

(7) Subject to subsection (8), a registered person who clinically examines patients, treats patients or provides other healthcare services before the commencement of this Act must, with 12 months of the commencement of this Act and in accordance with this section, apply to the Council for a licence.

(8) A registered person referred to in subsection (7) is deemed as licensed during the period of 12 months referred to in that subsection or during such shorter period within which the registered person may apply for a licence.

(9) Despite subsection (1), the Minister may prescribe –

(a) the categories of registration that may be practised without a licence;

(b) category of registered persons that may practise without a licence;

(c) further requirements that a person must comply with in order to qualify for a licence; or

(d) in general, all other matters not inconsistent with this Act relating to a licence that the Minister considers necessary or expedient to prescribe in order to achieve the objects of this section.

Renewal of licence to practise profession

44. (1) A licence issued under section 43 may be renewed, subject to the prescribed conditions, and the period of renewal may not exceed five years at a time.

(2) An application for the renewal of a licence must be –

(a) made on a prescribed form;

(b) made within a prescribed period; and

(c) submitted to the registrar.

(3) A holder of a licence must pay to the Council the renewal fees not less than 30 days before the expiry of the licence.

(4) If a registered person complies with the prescribed conditions under subsection (1), and on receipt of payment of renewal fees under subsection (3), the Council must renew the licence of the licensed person.

(5) If the holder of a licence fails to comply with subsections (2) and (3), the Council may suspend or cancel the licence, subject to the prescribed conditions.

Suspension and cancellation of licence

45. (1) The Council, subject to this section, may suspend a licence, if the holder of the licence –

(a) fails to notify the registrar in terms of section 46(4) of the change of his or her particulars;

(b) fails to notify the registrar of his or her correct physical address or other particulars relating to his or her registration or the practising of his or her profession within 60 days after the date of a written request by the registrar by prepaid registered letter addressed to that registered person at his or her postal address as it appears in the register, to furnish the physical address or other particulars;

(c) fails to pay to the Council before 31 March each year the annual fees payable by the registered person;

(d) fails to comply with the rules relating to continuing professional development made under section 51;

(e) fails to comply with any of the conditions, restrictions or limitations subject to which a licence is issued to the licensed person;

(f) fails or refuses to perform services in the category: Public Service;

(g) is found guilty of unprofessional conduct and a penalty of suspension of his or her licence under section 65(1)(b) is imposed;

(h) has under section 71 been found to be an impaired registered person, if the impairment appears to be not of a permanent nature; or

(i) if after investigation and having been heard or made representation, in the opinion of the Council, appears to cause a risk to the health or safety of any member of the public.

(2) A suspension under subsection (1) is for the period and subject to the conditions that the Council may determine and specify in the notice of suspension.

(3) For the purposes of suspending a licence under subsection (1), the Council must inform a licensed person in writing of –

(a) its intention to suspend the licence at least 30 days before the intended date of suspension, excluding a suspension referred to in paragraph (g) of that subsection; and

(b) the grounds for the intended suspension and the period of suspension.

(4) On receipt of the notice referred to in subsection (3), the holder of a licence may, within 14 days of receipt of the notice, reply in writing to the Council putting forward grounds why his or her licence may not be suspended.

(5) The Council –

(a) when finally considering the suspension of a licence must take into account the written reply by a holder of a licence made under subsection (4); and

(b) if it decides to suspend, must, not less than seven days before the effective date of the suspension, inform the holder of a licence in writing that the Council has suspended his or her licence, including the –

(i) date on which the suspension commences;

(ii) period of the suspension; and

(iii) conditions applicable to the suspension,

and the Council must notify the professional board concerned of the suspension, the period for the suspension and any conditions imposed on the suspension.

(6) Despite anything to the contrary and if a licence is suspended on the grounds, other than the grounds specified in paragraph (g) of subsection (1), a registered person whose licence has been suspended and who has paid application fees may submit to the registrar a written application for the rescission of the suspension, if in the case of a suspension under –

(a) paragraphs (a) and (b) of that subsection, the licensed person has furnished the Council with his or her new address or physical address or other particulars referred to in those paragraphs;

(b) paragraph (c) of that subsection, the licensed person has paid the annual fees to the Council;

(c) paragraph (d) of that subsection, the licensed person has complied with the rules relating to continuing professional development to the satisfaction of the Council;

(d) paragraph (e) of that subsection, the licensed person has complied with the conditions, restrictions or limitation subject to which the licence is issued to the satisfaction of the Council;

(e) paragraph (f) of that subsection, the licensed person has performed services in the category: Public Service;

(f) paragraph (h) of that subsection, the licensed person is no longer an impaired registered person; or

(g) paragraph (i) of that subsection, the licensed person is no longer a risk to the health or safety of members of the public.

(7) An application in terms of subsection (6) must be –

(a) submitted to the registrar within 12 months after the date of the suspension; and

(b) accompanied by –

(i) the prescribed documents and information;

(ii) the additional documents and information that the Council may require; and

(iii) proof of payment of the application fee.

(8) The Council, after having considered an application for the rescission of a suspension submitted in terms of subsection (7), may –

(a) grant the application, if the Council is satisfied that the applicant has complied with the applicable requirements of this section; or

(b) refuse the application, if the Council is satisfied that the applicant has not complied with the applicable requirements of this section.

(9) The registrar must –

(a) inform the applicant in writing of the decision of the Council under subsection (8);

(b) if the application is granted under subsection (8)(a), issue to the applicant a notice of rescission of suspension in the form determined by the Council; and

(c) if the application is refused under subsection (8)(b), as soon as practicable, inform the applicant of the grounds for the refusal.

(10) A notice under subsection (9) is delivered in person or by prepaid registered post addressed to the applicant at his or her address as it appears in the register.

(11) If a licensed person fails to comply with a condition or restriction imposed on the suspension of his or her licence, the Council may, after having afforded the licensed person an opportunity to be heard, cancel the licence.

(12) The Council must notify the professional board concerned of the cancellation of the licence of the licensed person.

(13) The Minister may prescribe the –

(a) maximum period that a licence may be suspended;

(b) any other ground under which a licence may be suspended and the procedure applicable to the suspension of the licence;

(c) further conditions and procedures relating to the suspension of a licence;

(d) form and manner in which the public may be notified of the suspension or cancellation of a licence of a licensed person and the particulars of the suspension or cancellation that may be notified; and

(e) grounds for the rescission of a suspension under this section.

(14) A registered person who contravenes or fails to comply with subsection (1), whether or not his or her licence is suspended or cancelled under this section, commits an act of unprofessional conduct.

PART 11
REGISTERS

Registers

46. (1) Subject to subsection (2), the Council must establish and maintain separate registers for –

(a) the persons registered under this Act;

(b) the persons licensed to practise under this Act;

(c) the persons registered in the categories of registration;

(d) the educational institutions approved under section 28;

(e) the examining authorities recognised under section 32;

(f) other prescribed persons, institutions and organisations; and

(g) any other matter required under this Act.

(2) For the purposes of subsection (1), the Council must keep and maintain sub-registers in respect of the different professions and categories of registration in respect of –

(a) the persons registered under section 34;

(b) the persons registered conditionally under section 35;

(c) the persons registered temporarily under section 37;

(d) the registered students;

(e) the registered graduates;

(f) the registered interns;

(g) the persons licensed to practise professions, sub-specialities and specialities;

(h) other prescribed persons, institutions and organisations; and

(i) any other matter required under this Act.

(3) The registrar must enter into a register the particulars relating to every person registered under this Act, including –

(a) his or her full names, identity number, physical address where he or she is practising, postal address, telephone number and details of any other means by which the person may be contacted;

(b) the qualifications relating to his or her registration;

(c) the date of registration and registration number;

(d) the profession or category of registration in which he or she is registered;

(e) the specialities, sub-speciality, additional qualifications, subjects and courses, registered or listed in his or her name;

(f) if the registered person is licensed, the date when the person is licensed and the licence number; and

(g) other particulars that may be prescribed or that the Council may determine in addition to the particulars specified by this subsection.

(4) A registered person who changes his or her particulars referred to in subsection (3) must notify the registrar in writing of his or her new particulars within 30 days after that change.

(5) A registered person who fails to comply with subsection (4) commits an unprofessional conduct.

(6) The registers maintained and kept under subsection (1) must lie open for inspection at the office of the registrar during office hours.

(7) The Minister may prescribe the –

(a) particulars that must be entered into a register, in addition to the particulars specified by this section;

(b) manner in which the particulars entered into a register is made known to the public, in addition to those specified by this section; or

(c) manner a register is closed and the procedures relating to the closure of the register.

Register as proof

47. (1) In legal proceedings –

(a) a copy of a register or an extract from a register, certified by the registrar as a true copy or extract of the original, is proof until the contrary is proven of the facts recorded in the register; and

(b) the absence of the name of a person in a copy of a register referred to in paragraph (a), or a certificate issued by the registrar stating that the name of the person does not appear in the register, is proof until the contrary is proven that the person is not registered or licensed under this Act.

(2) A certificate issued by the registrar in respect of a person –

(a) whose name does not appear in a copy of a register referred to in subsection (1) stating that his or her name has been added to the register after the date of the copy of the register was certified under that subsection, is proof in any legal proceedings until the contrary is proven that the person is registered or licensed under this Act; or

(b) that his or her name has been removed from a register and has not been restored to the register is proof in any legal proceedings until the contrary is proven that the person is not registered or licensed under this Act.

Certificate of status and extract from register

48. (1) A registered person may apply to the registrar to be issued with a certificate of status in the prescribed form.

(2) On receipt of an application under subsection (1) and payment of the application fees, the registrar must, under his or her hand, issue to the applicant a certificate of status in the prescribed form.

(3) A certificate of status issued under subsection (2) must contain particulars relating to –

(a) the compliance with the continuing professional development applicable to the applicant in terms of the rules made under section 51;

(b) the status in respect of registration of applicant under this Act, including the category of registration and particulars of licence to practise, if any;

(c) any disqualification relating to the practising or suspension from the practising of any profession applicable to the applicant;

(d) any complaint of unprofessional conduct made against the applicant and which has been lodged with, or being investigated by, the Council or any proceedings against the applicant;

(e) any conviction of the applicant by a competent authority of any unprofessional conduct and, if so, particulars of the unprofessional conduct, date of conviction and penalties imposed on the registered person;

(f) any impairment referred to in section 71, the nature and particulars of the impairment, the date of the finding of the impairment and the conditions subject to which the person may practise his or her profession, if applicable;

(g) any condition imposed on a registered person; and

(h) any other conditions determined by the Council, if any.

(4) The registrar must, under his or her hand, on the written application by any person and on the payment of the application fees, issue to the person a certified extract from the register.

Removal of names and other entries from register

49. (1) The Council may remove from a register the name and any other entry of a registered person –

(a) who has requested in writing that his or her name be removed from the register;

(b) whose name has been removed from the register, record or roll of the educational institution where the person obtained the qualification by virtue of which he or she is registered under this Act;

(c) who has been registered in error, as a result of fraud or in circumstances not authorised by this Act;

(d) who has been found guilty of unprofessional conduct and the penalty imposed is that of removal of his or her name from the register;

(e) who has under section 71 been found to be an impaired registered person, if the impairment appears to be of a permanent nature;

(f) who has died;

(g) who is declared mentally ill under any law or if a curator is appointed by the High Court to conduct or manage the affairs of the person;

(h) who fails to comply with the continuing professional development applicable to him or her; or

(i) who fails to pay to the Council the annual fees payable by the registered person on or before 31 March each year.

(2) For the purposes of removing a name of the registered person under subsection (1), the Council must inform a registered person –

(a) in the prescribed manner of its intention to remove the name of the registered person from the register, except the removal of a name under paragraph (a), (d), (e), (f) or (g) of that subsection, not less than 30 days before the date of the intended removal; and

(b) that he or she may, in writing and within the specified period, submit to the registrar grounds why his or her name may not be removed from the register.

(3) The Council must take into account the grounds submitted under subsection (2)(b) when deciding whether to remove the name of a person from the register.

(4) The Council may require a registered person referred to in subsection (1)(a), to lodge with the registrar an affidavit confirming that there are no proceedings relating to a complaint of unprofessional conduct or to a criminal act that is instituted or is likely to be instituted against him or her.

(5) The registrar must –

(a) enter into the register particulars of the grounds for the removal of a name of a person under subsection (1) and the date of the removal; and

(b) notify in writing the person whose name has been removed from the register under subsection (1) that his or her name has been removed and the grounds for the removal.

(6) A notice under subsection (5)(b) is served in person on the person referred to in that subsection or by prepaid registered post addressed to him or her at his or her postal address as it appears in the register.

(7) After the date of service of a notice under subsection (5)(b), until the date that the name of the person referred to in subsection (1) is restored to the register, that person is an unregistered person.

(8) If –

(a) a registered person is declared mentally ill under any law; or

(b) a curator is appointed by the High Court to conduct or manage the affairs of the registered person,

the Registrar of the High Court must submit to the registrar, as soon as practicable, a copy of the court order that declared the registered person as mentally ill or that ordered a curator to be appointed.

(9) Upon receipt by the registrar of the copy of the court order referred to in subsection (8), the Council must remove the name of the person named in the court order from the register.

(10) Subsection (5) applies with the necessary changes to the removal of the name of a registered person from a register under subsection (9).

(11) If the death of a registered person is reported to the Registrar of Births and Deaths in terms of the Births, Marriages and Deaths Registration Act, 1963 (Act No. 81 of 1963), the Registrar defined in that Act must submit to the registrar, as soon as practicable, a notice of death in the prescribed form and manner together with a copy of the death certificate.

(12) On receipt of the copy of the death certificate referred to in subsection (11), the registrar must remove the name of the deceased registered person from the register.

(13) The Council must notify the professional board concerned of the removal of the name from the register of the registered person and the ground for the removal.

(14) A person who acts in contravention of subsection (7) commits an offence and is liable to the penalties specified in section 57(b).

Restoration of names and other entries to register

50. (1) Subject to subsection (2), a person whose name and any entry relating to him or her has been removed from a register under section 49 may, within 12 months after the date of the removal, apply to the Council in the prescribed form to have his or her name or the entry restored to the register.

(2) The Council may not restore the name of a person or an entry relating to him or her to a register under subsection (1) if –

(a) the application for restoration of the name and other entry is submitted after 12 months from the date of the removal of the name of the person or entry from a register; or

(b) the name of a person is removed from a register under section 49(1)(b), (c), (d), (e) or (g).

(3) A person –

(a) who fails to submit his or her application for restoration to the Council within the period specified by subsection (2)(a); or

(b) whose name has been removed under the provisions referred to in subsection (2)(b),

and who wishes to be registered again must apply for registration in terms of section 34 and subject to such further conditions and requirements as may be prescribed.

(4) An application under subsection (1) for the restoration of a name to a register must be accompanied by –

(a) the documents and information prescribed in respect of the application;

(b) the additional documents and information that the Council may require; and

(c) proof of payment of the application fees.

(5) The Council may –

(a) restore to a register the name of the applicant, if the Council is satisfied that the applicant has complied with this section and the prescribed conditions; or

(b) refuse to restore to a register the name of the applicant, if the Council is satisfied that the applicant has not complied with this section and the prescribed conditions.

(6) The Council may not under subsection (5) consider the application made under subsection (1), unless the applicant has paid the restoration fees and other amounts due and payable to the Council.

(7) The registrar –

(a) must in writing inform a person who has made an application under subsection (1) of the decision made under subsection (5), and if the application is refused the registrar must inform the person of grounds for the refusal; and

(b) must, if the application made under subsection (1) is granted under subsection (5), issue in the name of a person whose application has been granted a certificate of restoration in the prescribed form.

(8) The Council must notify the professional board concerned of the restoration of the name of the registered person to the register and the ground for the restoration.

PART 12
CONTINUING PROFESSIONAL DEVELOPMENT

Continuing professional development

51. (1) The Council may, under section 92, make rules relating to –

(a) the continuing professional development that applies to registered and licensed persons or to a category of registered persons;

(b) the nature, contents and duration of the continuing professional development, including –

(i) the subjects, disciplines, domains, practices and professional ethics; and

(ii) the nature and extent of the professional development that must form part of the continuing professional development;

(c) the conditions and the requirements for the continuing professional development applicable to a registered person; and

(d) the procedures relating to the approval by the Council of a person or educational institution for –

(i) presenting continuing professional development to registered and licensed persons; and

(ii) examining the registered or licensed persons in the continuing professional development presented to them, including –

(aa) the application for approval;

(ab) the procedures relating to the approval; and

(ac) the issuing of a certificate of approval.

(2) The Council may make different rules with different requirements under subsection (1) for the persons practising different professions or registered in different categories of registration.

PART 13
FEES PAYABLE TO COUNCIL

Fees payable to Council

52. (1) The Council, with the approval of the Minister and by notice in the *Gazette*, may determine –

(a) the application fees for any application made under this Act;

(b) the registration fees for any registration under this Act;

(c) the assessment fees, inspection fees or evaluation fees conducted by or on behalf of the Council;

(d) the licence fees in respect of a licence issued under this Act and fees relating to the renewal of the licence;

(e) the fees payable for a certificate, extract, other document or copy of any document issued by or on behalf of the Council;

(f) the fees relating to the restoration of the name of a registered person to a register;

(g) the fees payable in respect of continuing professional development;

(h) the fees payable for approval and issuing of a certificate of approval in respect of continuing professional development;

(i) the annual fees for any certificate and licence issued under this Act;

(j) the fees payable for the rescission of the suspension of a licence;

(k) the fees payable for the lodging of an appeal to the appeal committee;

(l) the penalties payable, in addition to the fees determined under this section, in respect of the late payment of any of the fees after the date on which the fees became due and payable, including the –

(i) manner in which, and the periods for which, the penalties are calculated; and

(ii) dates on which the fees and penalties become due and payable; and

(m) any other fees authorised under this Act.

(2) When the Council, under subsection (1), determines the fees or penalties payable to the Council by a person, the Council may determine different fees or penalties payable –

(a) in respect of different professions, speciality, sub-speciality or different categories of registration;

(b) by persons who are Namibian citizens and by persons who are not Namibian citizens;

(c) by persons who are not Namibian citizens, but citizens of member states of the Southern African Development Community; or

(d) by persons who are not citizens of member states of the Southern Africa Development Community.

(3) The Council may recover from a person any fee or penalty due to the Council by means of proceedings in a competent court irrespective of –

(a) whether the person is registered or no longer registered; or

(b) whether his or her licence has been cancelled or suspended.

(4) In so far as any provision of this section may provide for –

(a) a discrimination of any person; or

(b) limitation on any fundamental right of any person,

those provisions are enacted on the authority of Article 22 of the Namibian Constitution read with Article 10(2) of that Constitution.

PART 14
INSPECTIONS

Inspections

53. (1) In this Part –

"inspector" means a person appointed as an inspector under subsection (2);

"practice" includes premises or part of premises where a registered person practises his or her profession, and a motor vehicle or other vehicles found on the premises which is the property of the registered person or used by him or her for any other purpose;

"premises" includes –

(a) a building, place, establishment or institution used by –

(i) an educational institution for the education of a student, a graduate or intern; or

(ii) a registered person, State hospital, private hospital or health facility providing healthcare service for the conducting of the practice;

(b) a mobile health facility found on the premises and which is the property or used by the educational institution, registered person, State hospital, private hospital or health facility; and

"search warrant" means a search warrant issued under Chapter 2 of the Criminal Procedure Act.

(2) For the purposes of compliance with this Act, the registrar, on the instructions of the Council and subject to the terms and conditions that the Council may determine, may appoint a registered person as inspector to –

(a) inspect a matter relating to an education received by a person for the purpose of qualifying the person to practise a profession, speciality or sub-speciality and the premises where the person is receiving the education; or

(b) inspect the practice of a registered person, including the manner in which the practice is being conducted.

(3) The registrar must issue to the inspector a letter of appointment in the form that the registrar determines, and the letter must specify –

(a) full names and identity number of the inspector;

(b) the purpose of his or her appointment; and

(c) the period for which he or she is appointed.

(4) The inspector, at the request of a person at or in the practice that is to be inspected and before conducting an inspection under this section, must produce –

(a) his or her letter of appointment issued under subsection (3); and

(b) his or her identity document.

(5) Subject to subsections (6) and (7), an inspector may, for the purposes of conducting an inspection under this section, enter a practice without a search warrant.

(6) In exercising the powers conferred by subsection (2), an inspector may not enter and search a private home of a person unless –

(a) such entry and search have been authorised by a search warrant issued in accordance with section 21 of the Criminal Procedure Act; or

(b) the circumstances in which an article may be seized without a search warrant in terms of section 22 of the Criminal Procedure Act are met.

(7) The search of the practice or private home of a person under this section must, where applicable, comply with Chapter 2 of the Criminal Procedure Act.

(8) An entry and inspection under this section is conducted between sunrise and sunset, unless the entry and inspection between sunset and sunrise is essential, justifiable and urgent.

(9) During an inspection under this section, an inspector may require a person –

(a) found on the premises to –

(i) produce a book, record, document or thing which relates to the matter under inspection or which on reasonable grounds is believed to relate to his or her practice and which is or was on the premises or in the possession or custody or control of the person or his or her employer, employee or agent; and

(ii) give an explanation to the inspector in respect of the contents of a book, record, document or thing referred to in subparagraph (i); or

(b) who has or is suspected on reasonable grounds to have, in his or her possession or custody or under his or her control, a book, record, document or thing referred to in paragraph (a), or which on reasonable grounds is believed to relate to his or her practice to –

(i) produce such book, record, document or thing immediately or at any reasonable time and place determined by the inspector for the purpose of the examination or to make copies or extracts of such book, record, document or thing; and

(ii) give an explanation to the inspector in respect of the contents or any entry of a book, record, document or thing.

(10) An inspector who conducts an inspection under this section –

(a) must preserve secrecy in respect of a fact which comes to his or her knowledge in the performance of his or her functions; and

(b) may not disclose a fact referred to in paragraph (a) to a person other than –

(i) the registrar;

(ii) the *pro forma* complainant;

(iii) the Council;

(iv) a member of the Namibian Police as defined in the Police Act, 1990 (Act No. 19 of 1990) investigating a criminal matter specified by this Act; or

(v) a court of law.

(11) Despite subsection (10)(b), an inspector may not disclose to a person any personal particulars relating to a patient unless –

(a) in terms of an order of a competent court;

(b) to the Council;

(c) to the *pro forma* complainant on the instructions of the person presiding at an inquiry; or

(d) when testifying at an inquiry or in any court of law.

(12) A person who –

(a) hinders or obstructs an inspector in the exercise of his or her powers or the performance of his or her functions under this Act;

(b) prevents an inspector from entering a practice;

(c) fails to produce a book, record, document or thing referred to in this section;

(d) presents himself or herself as an inspector when he or she has not been appointed as such under subsection (2); or

(e) contravenes or fails to comply with any provision of this section, commits an offence and is liable to the penalties specified in section 57(a).

(13) In so far as this section provides for a limitation on the fundamental rights contemplated by Article 13 of the Namibian Constitution in that it authorises interference with the privacy of a person relating to his or her correspondence or communication, that limitation is enacted upon the authority of that Article.

(14) This section does not –

(a) prevent a person or authority from investigating an alleged contravention or failure to comply with a provision of this Act or any other law;

(b) prejudice the right of a person to institute civil proceedings in terms of this Act or any other law; or

(c) prevent the Namibian Police as defined in the Police Act, 1990 (Act No. 19 of 1990) to investigate an allegation of the contravention or failure to comply with a provision of this Act or any other law.

(15) On the completion of an inspection or investigation under this section –

(a) the inspector must submit to the registrar, in the form and manner that the registrar determines, a written report on the inspection and findings by the inspector; and

(b) the registrar on receipt of the report must transmit the report to the Council to assess if there is any non-compliance with this Act and if there is non-compliance with this Act, the Council must order that a registered person, educational institution, hospital or health facility providing healthcare service complies within a specified period and if the registered person, educational institution, hospital or health facility fails to comply, the Council may, after having afforded the educational institution, hospital or health facility an opportunity to be heard –

(i) suspend the licence of the registered person;

(ii) suspend the approval granted to an educational institution, hospital or health facility; or

(iii) charge a registered person with unprofessional conduct.

PART 15
OFFENCES AND PENALTIES

Offences relating to practise and performing certain acts while unregistered or unlicensed

54. (1) A person who is not registered or licensed to practise a profession under this Act, and who –

(a) practises a profession under this Act;

(b) performs an act that may only be performed by a registered person or licensed person;

(c) purports, or by any other means holds himself or herself out, to be a registered person or licensed person or qualified and able to practise a profession;

(d) uses the name of a profession or a name, title, description or symbol indicating or calculated to lead a person to believe or infer that the person using the name, title, description or symbol is registered or licensed or is entitled to practise a profession under this Act;

(e) performs any act of diagnosing, treating or preventing a physical or psychological defect, illness, disease or deficiency in a person or physically examines the person for such purpose;

(f) on the ground of information provided by a person or obtained in any way –

(i) diagnoses the physical or psychological condition of a person; or

(ii) prescribes, sells or supplies a medicine or similar substance or prepare similar thing to a person;

(g) performs an act –

(i) that falls within the scope of practise of a registered person;

(ii) pertaining to a profession, whether or not that act is defined in or under this Act or any other law, pertaining to the profession; or

(iii) having as its objective the diagnosing, treating or preventing of a physical or psychological defect, illness, disease or deficiency in a person;

(h) by word, conduct or demeanour holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent a physical or psychological defect, illness, disease or deficiency in a person or to prescribe or supply a medicine, drug or similar substance or preparation or thing in respect of any of the defects, illnesses, diseases or deficiencies; or

(i) purports or by any means holds himself or herself out to be a healer of any description of physical or psychological defects, illnesses, diseases or deficiencies in a person,

commits an offence and is liable to the penalties specified in section 57(b).

(2) This section does not apply to –

(a) a person registered as an intern during internship or a person authorised under this Act or any other law to practise a profession in the employment of the State;

(b) a student, a graduate or intern receiving education at an educational institution, a hospital or a health facility and performing an act pertaining to, or required by, or falling within the scope of, the education;

(c) an act lawfully performed under any of the provisions of the Public and Environmental Health Act, 2015 (Act No. 1 of 2015), the Medicines and Related Substances Control Act or the National Health Act, 2015 (Act No. 2 of 2015); or

(d) a person called as a witness to present evidence before a court, if the person is regarded or declared by the court as an expert witness when the person performs an act relating to the presenting of expert evidence in court, including the examination or evaluation of the person relating to the presenting of the evidence.

Offences relating to holding unregistered or unlicensed persons as registered or licensed persons and employing such persons

55. (1) A person who knows that a person is not registered or licensed to practise a profession or that his or her licence has been suspended or cancelled or his or her name has been removed from the register and who –

(a) holds such person out, directly or indirectly, as being a registered and licensed person;

(b) employs the person –

(i) in a position or capacity in which only a registered or licensed person may be employed; or

(ii) to perform an act that only a registered or licensed person may perform; or

(c) aids and abets the person to practise a profession or perform an act that falls within the scope of practise of a registered person or licensed person,

commits an offence and is liable to the penalties specified in section 57(a).

(2) A registered person who refers a person for treatment to another person, knowing that that other person –

(a) is not registered and licensed under this Act to practise a profession; or

(b) is suspended from practise or his or her name has been removed from the register,

commits an offence and is liable to the penalties specified in section 57(a).

Offences relating to registers, registration and impersonation

56. A person who –

(a) procures or attempts to procure for himself or herself or for any other person registration under this Act or a certificate, order, receipt, prescription or other document referred to in this Act by means of a false representation, whether made verbally or in writing;

(b) makes or causes to be made an unauthorised entry or alteration in or on, or removal from, a register or certified copy of the register or extract from the register or on a certificate, licence or receipt issued under this Act;

(c) makes or causes to be made a false statement in connection with the identity or qualifications of the person or of any other person applying for registration or licence;

(d) wilfully destroys or renders illegible or causes to be destroyed or rendered illegible a register, certificate, licence or receipt issued under this Act or an entry in such register, certificate, licence or receipt;

(e) forges, or knowing it to be forged, utters a document purporting to be a document issued under this Act;

(f) impersonates a registered person or licensed person;

(g) supplies or offers to supply to a person –

(i) not registered or licensed; or

(ii) not authorised under this Act,

an instrument or appliance which can be used or is believed to be effective for the purpose of diagnosing, treating or preventing a physical or mental defect, illness, diseases or deficiency in a person knowing that the instrument or appliance may be used by that person not registered or licensed or authorised to perform those acts that the person not registered and licensed or authorised is prohibited from performing; or

(h) abets any other person in the contravention of or in the failure to comply with paragraphs (a) to (g),

commits an offence and is liable to the penalties specified in section 57(b).

Penalties for offences

57. A person convicted of an offence under –

(a) section 10(14), 53(12), 55, 64(34), 65(4), 75(5), 80(3), 81(5), 86(2) or 89(7) is liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; or

(b) section 30(4), 35(11), 37(21), 38(13), 49(14), 54(1), 56, 69(4), 76(6), 77(8), 79(3) or 93(4) is liable to a fine not exceeding N$500 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

PART 16
DISCIPLINARY POWERS OF COUNCIL

Professional conduct rules

58. (1) In this Part "legal practitioner", includes a retired judge, a magistrate and a retired magistrate.

(2) The Council, with the approval of the Minister, may, in addition to the acts or omissions specified by this Act as unprofessional conduct, make professional conduct rules –

(a) specifying the acts or omissions by registered persons that constitute unprofessional conduct; and

(b) regulating the practising of a profession by a registered person.

(3) Without derogating from the generality of subsection (2), the rules made under that subsection may include –

(a) the conditions subject to, and the name under, which a registered person may practise his or her profession, and the conducting of a practice by a sole owner or in partnership;

(b) the profession which a registered person may or may not practise in a partnership;

(c) the requirements relating to the conducting of a practice, the name under which a registered person may practise or the name of a partnership, including restrictions on the use of names or categories of names when practising;

(d) the manner in which a registered person may advertise his or her practice, including different kinds of advertisement allowed, restrictions on advertisement and name at premises where the practice is conducted; and

(e) any other matter relating to the practising of a profession by a registered person that the Council may consider necessary or expedient but not inconsistent with this Act.

(4) Despite a provision of this section to the contrary, a registered person commits unprofessional conduct, if the person –

(a) fails to comply with the professional conduct rules made under subsection (2); or

(b) is found guilty by a court of an offence –

(i) under this Act or any law that regulates national health, hospitals or health facilities in relation to the provision of healthcare service; or

(ii) under the Medicines and Related Substances Control Act.

(5) The powers of the Council to inquire into and deal with complaints relating to registered persons are not limited to the acts or omissions specified by the rules made under subsection (2).

Lodging of complaints of unprofessional conduct

59. (1) A person having a complaint of unprofessional conduct against a registered person may, in writing, lodge such complaint with the Council.

(2) The lodging of the complaint of unprofessional conduct under subsection (1) must be submitted to the registrar and must be made in the prescribed form and manner.

(3) The Council must refer the complaint of unprofessional conduct submitted to it under subsection (1) to the preliminary investigation committee for preliminary investigation.

(4) Despite subsection (1), the Council may on its own accord instruct the preliminary investigation committee to conduct an investigation against a registered person if the Council is of the opinion that the registered person may have committed unprofessional conduct.

(5) The Council may suspend a licence of a registered person in respect of whom –

(a) a complaint of unprofessional conduct is made; or

(b) the Council on its own accord under subsection (4) instructed the preliminary investigation committee to conduct a preliminary investigation,

pending the outcome of the investigation.

(6) If an employer of a registered person or any other person complains to the Council in writing that a registered person appears to be incompetent or not capable of practising the profession in respect of which he or she is registered, the Council must refer that report to the preliminary investigation committee with instructions to conduct a preliminary investigation into the complaints.

Preliminary investigation committee

60. (1) The Council must compile a list consisting of –

(a) registered persons from different professions; and

(b) other persons that are not registered persons, including a legal practitioner having at least 10 years relevant experience,

from which the Council must constitute a preliminary investigation committee in terms of subsection (4).

(2) The Council may constitute more than one preliminary investigation committee during the same period as the circumstances may require, but a person may not be appointed to more than one preliminary investigation committee conducting investigation during the same period.

(3) A preliminary investigation committee conducts the preliminary investigation –

(a) of complaints of unprofessional conducts against registered persons lodged with the Council; or

(b) as the Council may on its own accord instruct the committee to conduct the preliminary investigation if the Council is of the opinion that a registered person may have committed unprofessional conduct.

(4) Depending on the nature of the matter to be investigated and the profession concerned, the Council must, from the list of persons referred to in subsection (1), appoint –

(a) a number of persons to constitute a preliminary investigation committee; and

(b) a legal practitioner or any registered person as chairperson of the preliminary investigation committee.

(5) A member of the Council or professional board concerned may not –

(a) be a member of the preliminary investigation committee; or

(b) attend any meeting or partake in any activity of the committee, unless he or she is a witness in the matter being investigated.

(6) The preliminary investigation committee –

(a) must, when conducting a preliminary investigation, follow the prescribed procedure and manner of conducting the investigation;

(b) depending on the nature of the matter to be investigated and the profession concerned, may co-opt one or more registered persons as members of the preliminary investigation committee, but with no right to vote;

(c) must conduct a preliminary investigation into complaints of unprofessional conduct perpetrated by a registered person and referred to the committee by the Council under section 59;

(d) may –

(i) obtain statements from any person, including from a registered person whose conduct is being investigated subject to paragraph (e) and the person who laid the complaint against the registered person;

(ii) collect documents and other evidence relating to the matter being inquired into as the committee may consider expedient and necessary; or

(iii) exercise and perform other powers and functions relating to preliminary investigation; and

(e) may not question the registered person whose conduct is being investigated, unless the preliminary investigation committee before questioning the registered person, informs the registered person –

(i) of the nature of the matter being investigated and the complaints made against the person;

(ii) of his or her right to be represented or assisted by any other person;

(iii) that he or she is not obliged to make any statement or to answer any question put to him or her by the committee; and

(iv) that any statement that he or she makes to the committee is taken down in writing or voice recording and that it may be used as evidence against him or her at an inquiry.

(7) A registered person who is being investigated for a complaint of unprofessional conduct under subsection (6) may at any time before the commencement or during the investigation submit to the preliminary investigation committee a written admission of guilt of unprofessional conduct.

(8) An admission of guilt submitted under subsection (7) –

(a) must be made in the form of an affidavit or solemn declaration duly attested to by the registered person referred to in that subsection before a commissioner of oaths;

(b) must set out in full the facts relating to the complaint of unprofessional conduct that the registered person admits being guilty of; and

(c) may include arguments in mitigation of the penalty.

(9) After having conducted a preliminary investigation and considered any other documents or information available before the preliminary investigation committee, and after having given an opportunity to the registered person to state his or her case, the committee must determine whether –

(a) the evidence, documents and information appear to support the alleged unprofessional conduct; or

(b) the evidence, documents and information appear not to support the alleged unprofessional conduct,

against the registered person and must make an appropriate recommendation to the Council.

(10) If a registered person has made an admission of guilt under subsection (7), the preliminary investigation committee must recommend to the Council to impose one or more of the penalties under section 65, if the Council is satisfied with the admission of guilt.

(11) Upon receipt of the recommendation of the preliminary investigation committee, the registrar must, in the form and manner determined by him or her, notify the registered person and the complainant that the matter has been referred to the Council to conduct an inquiry or to make a finding and impose a penalty.

(12) The preliminary investigation committee may not divulge evidence or information gathered by the committee during the investigation under this section to any person other than the Council, the registrar or *pro forma* complainant or a court of law.

(13) The membership of a registered person as a member of the Council, professional board or any committee who –

(a) has admitted guilt to unprofessional conduct; or

(b) in the opinion of the preliminary investigation committee, may have committed unprofessional conduct,

is suspended from the date on which the registrar informs the registered person that the matter is referred to the Council in terms of subsection (11) until such time –

(i) the Council accepts the admission of guilt and imposes the appropriate penalty;

(ii) an inquiry into the alleged unprofessional conduct is finalised; or

(iii) the Council rescinds the suspension while continuing with the inquiry.

(14) The registrar must give written notice to a member of the Council, professional board or committee referred to in subsection (12) of the suspension of his or her membership.

(15) A notice under subsection (14) is delivered –

(a) by hand to the member; or

(b) by prepaid registered post at his or her address as specified in the register in which the name of the member appears.

Consideration of recommendation of preliminary investigation committee

61. (1) The Council must consider any recommendation made to it by the preliminary investigation committee.

(2) If the recommendation by the preliminary investigation committee to the Council is that evidence, documents and information appear –

(a) to support the complaints of unprofessional conduct or the nature of the alleged unprofessional conduct is of such a nature that an inquiry must be conducted or the Council is not satisfied with a plea of guilt by the registered person charged, the Council must refer the matter for an inquiry in accordance with section 64; or

(b) not to support the complaints of unprofessional conduct, the Council may –

(i) close the matter; or

(ii) instruct the preliminary investigation committee to conduct further investigation on certain aspects of the matter.

(3) If the preliminary investigation committee recommends to the Council that the registered person has admitted guilt to unprofessional conduct and the Council –

(a) is satisfied with the plea of guilt; or

(b) is of the opinion that a penalty may be imposed without conducting an inquiry,

the Council may, after it has considered any argument in mitigation of penalty as contemplated in section 60(8)(c), find the person guilty and impose one or more penalties in terms of section 65, but if the Council is of the opinion that further investigation into the alleged unprofessional conduct is necessary, it may refer the matter to the preliminary investigation committee with instructions for the committee to conduct further investigation on certain aspects of the matter.

(4) The registrar must inform the complainant and the registered person against whom a complaint of unprofessional conduct has been lodged of the decision of the Council made in terms of subsection (2) or (3).

(5) If –

(a) the Council, under subsection (2)(b) or under section 64(21)(b), finds a registered person not guilty of unprofessional conduct; and

(b) the complainant who lodged a complaint of unprofessional conduct with the Council resulting in the preliminary investigation so request,

the registrar may, with the concurrence of the Council, appoint a person to –

(i) explain to the complainant grounds for the findings of the Council;

(ii) reply to the best of his or her ability to any question by the complainant relating to the matter; and

(iii) furnish the registrar with a written report in the form and manner that the registrar determines relating to the explanation of the matter.

(6) The person appointed under subsection (5) –

(a) must be a registered person who –

(i) has been practising his or her profession for a period of not less than 10 years; or

(ii) has retired from practise and who had not less than 10 years' experience in the practising of his or her profession;

(b) may not be a member of the Council, a professional board or any committee; and

(c) is appointed for a specified period and on such terms and conditions as the registrar and that person may agree.

***Pro forma* complainant**

62. (1) When the Council exercises any of its disciplinary powers under this Part, it may appoint a competent person as a *pro forma* complainant to exercise the powers and perform the functions conferred or imposed by or under this section.

(2) A member of the Council, professional board or committee may not be appointed as a *pro forma* complainant under subsection (1).

(3) The *pro forma* complainant appointed under subsection (1) leads disciplinary proceedings against a registered person at an inquiry.

(4) The *pro forma* complainant may at an inquiry –

(a) lead evidence and call witnesses to testify against the registered person;

(b) submit a document, book, record or any other thing relevant to the inquiry;

(c) cross-examine a registered person and witnesses testifying for the registered person; or

(d) withdraw or amend the charges against a registered person or add further charges against the registered person during the inquiry.

(5) If the *pro forma* complainant is for any reason unable to exercise or perform his or her powers or functions, the Council may appoint any other person to exercise or perform the powers or functions of the *pro forma* complainant.

Admission of guilt by registered persons

63. (1) If a registered person is served with a notice of inquiry in accordance with section 64, the registered person may submit to the Council a written admission of guilt to the charge of unprofessional conduct specified in the notice.

(2) An admission of guilt under subsection (1) –

(a) must be made in the form of an affidavit or a solemn declaration duly sworn to or affirmed and signed by the registered person before a commissioner of oaths;

(b) must set out in full the facts supporting the charge of unprofessional conduct that the registered person admits of being guilty;

(c) may include arguments in mitigation of penalty; and

(d) must be submitted to the registrar not less than seven days before the date of commencement of the inquiry proceedings specified in the notice referred to in section 64.

(3) The Council may accept, on good cause shown, an admission of guilt submitted to the registrar a date before the date referred to in subsection (2)(d).

Disciplinary committee and inquiry into charges of unprofessional conduct

64. (1) The Council must compile a list consisting of –

(a) registered persons from different professions, including registered persons who are members of the Council or professional boards; and

(b) persons who are not registered persons, including a legal practitioner having at least 10 years of relevant experience,

from which the Council must constitute a disciplinary committee in terms of subsection (3), and the Council may constitute more than one disciplinary committee during the same period as the circumstances may require.

(2) A disciplinary committee conducts inquiries into charges of unprofessional conduct against registered persons in accordance with this section.

(3) Depending on the nature of the matter to be inquired and the profession concerned, the Council must, from the list of persons referred to in subsection (1), appoint –

(a) a number of persons to constitute a disciplinary committee; and

(b) the president, the deputy president or the legal practitioner as the chairperson of the committee,

but the members of the committee may not be more than five members in total.

(4) When conducting an inquiry and depending on the nature of the matter to be inquired and the profession concerned, the disciplinary committee may co-opt –

(a) one or two registered persons as members of the committee; or

(b) one or two persons as assessors, but with no right to vote.

(5) A decision by the majority of the members of the disciplinary committee appointed in terms of subsection (3) constitutes a decision of the committee, and in the event of an equality of votes the chairperson has a casting vote in addition to his or her deliberative vote.

(6) The Council must, not less than 21 days before the commencement of the inquiry against a registered person, give notice of the inquiry to the registered person in the prescribed form informing the registered person –

(a) of the date, time and venue of the inquiry;

(b) of the particulars of the charges made against the registered person; and

(c) that in case of an admission of guilt to the charge he or she must submit an admission of guilt to the Council in accordance with section 63.

(7) The registrar or a person designated by him or her in writing for that purpose must –

(a) deliver the notice referred to in subsection (6) personally to the registered person referred to in that subsection; and

(b) obtain from the registered person a written acknowledgement of receipt of the notice stating the date, time and place of the service of the notice,

and if the person who is to be served with the notice –

(i) refuses to accept service of the notice; or

(ii) refuses to sign the required acknowledgement of receipt relating to the service of the notice,

the notice is considered to have been served on the person and the registrar or the person so designated must in writing report that the person is served with the notice but he or she refuses to accept the notice or refuses to sign the required acknowledgment of receipt.

(8) If the registrar or the person designated under subsection (7) certifies in writing that the registered person on whom the notice is to be served under that subsection cannot be traced, the registrar must send the notice by prepaid registered post, not less than 21 days before the date of commencement of the intended inquiry,

addressed to the registered person at his or her postal address as it appears in the register in which his or her name appears.

(9) If the registered person served with a notice under subsection (7) or to whom a notice has been sent under subsection (8) is –

(a) not present at the commencement of the inquiry; or

(b) absent from the inquiry at any time after the commencement of the inquiry,

the disciplinary committee may conduct the inquiry or may continue with the inquiry in the absence of the registered person.

(10) For the purposes of an inquiry under this section, the Council may subpoena a witness to appear at a specified date, time and venue –

(a) to give evidence at the inquiry; or

(b) to submit to the Council a document, book, record or other thing relevant to the inquiry or as may be specified in the subpoena.

(11) A subpoena referred to in subsection (10) is –

(a) in the prescribed form; and

(b) served on the witness in the prescribed manner.

(12) The disciplinary committee may accept an admission of guilt made by the registered person under subsection (1) of section 63, and submitted to the registrar in terms of subsection (2)(d) of that section, as a plea of guilty for the purposes of subsection (13), irrespective of whether the registered person is present at the inquiry or not.

(13) If a registered person charged admits guilt as contemplated in subsection (12) to a charge of unprofessional conduct, whether or not the registered person is present at the inquiry, the disciplinary committee, without leading evidence, may –

(a) after it has considered any argument in mitigation of penalty as contemplated in section 63(2)(c), find the person guilty of unprofessional conduct and may impose one or more penalties specified in section 65;

(b) refer the matter to the preliminary investigation committee for further investigation on certain aspects of the matter, if the disciplinary committee is not satisfied with the plea of guilt; or

(c) refuse the admission of guilt and proceed with the inquiry.

(14) Despite anything to the contrary, the Council may institute and conduct an inquiry in respect of a person –

(a) whose name has been removed from the register under section 49 and a complaint of unprofessional conduct is made against him or her or is alleged to have committed unprofessional conduct while registered; or

(b) temporary or conditional registered under section 35 or 37, but no longer registered and a complaint of unprofessional conduct is made against him or her or is alleged to have committed unprofessional conduct while temporary or conditional registered.

(15) For the purposes of an inquiry, a person referred to in subsection (14) is considered as a registered person.

(16) The disciplinary committee must cause the proceedings of an inquiry to be –

(a) recorded and safely kept; and

(b) certified by the person presiding at the inquiry as being a true and accurate account of the evidence and exhibits presented and of the decision made at the inquiry.

(17) The record referred to in subsection (16) –

(a) is kept by the registrar for a period of five years; and

(b) is, for the purpose of an appeal or review under section 73 or 74, proof, until the contrary is proven, of the proceedings and decisions made at the inquiry.

(18) A person giving evidence at an inquiry before the disciplinary committee is entitled to all the privileges to which a witness giving evidence before a court of law is entitled.

(19) Despite any provision of this section to the contrary, a registered person charged and who is present at the inquiry may at the inquiry plead guilty to a charge of unprofessional conduct against him or her as specified in the notice delivered to him or her under subsection (7) or sent to him or her under subsection (8).

(20) A registered person charged may –

(a) be heard in his or her defence;

(b) give evidence under oath or affirmation in his or her defence;

(c) call witnesses to testify in his or her defence;

(d) submit a document, book, record or other thing in his or her defence;

(e) examine witnesses testifying against him or her; or

(f) represent himself or herself or request any other person to represent him or her.

(21) After having heard the concluding statements of the *pro forma* complainant and the registered person charged, the disciplinary committee may find the registered person –

(a) guilty of unprofessional conduct; or

(b) not guilty of unprofessional conduct.

(22) If a registered person charged –

(a) is found guilty of unprofessional conduct under subsection (21); or

(b) pleaded guilty to a charge of unprofessional conduct under subsection (19),

he or she may address the disciplinary committee, and may call witnesses to give evidence, in mitigation of penalty, and the *pro forma* complainant may do the same in aggravating factors.

(23) The disciplinary committee must set out fully in writing its findings, the penalties or other orders made by the committee.

(24) The chairperson of the disciplinary committee must, as soon as practicable after the completion of the inquiry, submit to the Council a copy of the written record of the proceedings of the inquiry, its findings and the penalty imposed to the Council for ratification, and the Council may confirm or vary the decision of the committee.

(25) Within seven days from the date of the confirmation or varying of the decision of the disciplinary committee by the Council as contemplated in subsection (24), the registrar must, in writing, inform the registered person charged –

(a) that he or she is found guilty of unprofessional conduct;

(b) of the penalties imposed in terms of section 65; and

(c) that he or she may lodge an appeal in accordance with section 73.

(26) For the purposes of subsection (25), the registrar must notify the registered person charged in the case of a penalty imposed –

(a) under section 65(1)(a), by delivering to the registered person a copy of the findings and particulars of the penalty, duly certified by the person who presided at the inquiry, in person or by prepaid registered post to his or her address as it appears in the register; or

(b) under section 65(l)(b) to (e) or an order made under section 65(3), by delivering to the registered person a copy of the findings and particulars of the penalty or order, duly certified by the person who presided at the inquiry, in person or at his or her place of business or employment to a partner, employer or employee of the registered person.

(27) The Council must determine the manner in which any of the findings made against the registered person charged under this section is made known to the public and the particulars of the findings that are made known.

(28) The registered person charged or the person referred to in subsection (26) (b) must acknowledge in writing receipt of the delivery of the copy of the findings, penalty and order and specify his or her capacity, and if the registered person charged or person –

(a) refuses to accept service of the copy of the finding of the Council; or

(b) refuses to sign an acknowledgement of receipt of the copy of the findings,

the notice is considered to have been served on the person and the registrar must in writing report that the registered person charged or the person refuses to accept service of the copy or refuses to sign an acknowledgment of receipt.

(29) If the registered person charged or a person referred to in subsection (26) (b) cannot be traced or found, the registrar must deliver the copy of the findings and particulars of the penalties to the registered person charged by sending the copy of the finding by registered post to his or her address as specified in the register.

(30) If a registered person charged is found not guilty of unprofessional conduct at an inquiry, the registrar must inform the registered person that he or she is found not guilty by notifying the registered person in writing and forward the notice by registered post to the registered person.

(31) Despite this section, if an appeal under section 73 is lodged against a finding, penalty or order of the Council, the Council may suspend, on the conditions that it may determine, the execution of the penalty or order until the appeal has been finalised.

(32) An inquiry is open to the public, but the disciplinary committee may exclude a member of the public from attending the inquiry in the circumstances where it is just and fair to do so.

(33) The Minister may prescribe –

(a) the procedure applicable to an inquiry referred to in this section in addition to the procedures prescribed by this section;

(b) the procedures and requirements relating to the lodging of a complaint of unprofessional conduct against a registered person;

(c) the manner of instituting and conducting of an inquiry;

(d) the form of a subpoena for the purpose of securing the attendance of a witness or for the production of any book, record, document or thing by the witness at an inquiry;

(e) the form of a notice and the manner in which a notice, subpoena or other notice by the Council is served on a person;

(f) the manner of leading evidence, making closing argument and the recording of the proceedings at an inquiry;

(g) the institution of inquiry proceedings de novo in the event of the number of members prescribed not available where inquiry proceedings have commenced; or

(h) any other matter relating to the instituting, conducting and finalising of an inquiry.

(34) A person –

(a) who disrupts the proceedings of an inquiry or behaves himself or herself disorderly at an inquiry under this section; or

(b) who is duly subpoenaed under this section to appear before the disciplinary committee as a witness to give evidence at an inquiry and who –

(i) refuses or, without sufficient cause, fails to –

(aa) attend the inquiry on the date, time and venue specified in the subpoena;

(bb) take the prescribed oath or to make an affirmation when required by the person presiding at the inquiry;

(cc) give evidence before the disciplinary committee;

(dd) answer fully and satisfactorily to the best of his or her knowledge and belief a question lawfully put to him or her; or

(ee) produce a document, book, record or thing which the person has in terms of the subpoena been required to produce; or

(ii) leaves the inquiry without the permission of the person presiding at the inquiry, whether or not the person has given evidence,

commits an offence and is liable to the penalties specified in section 57(a).

Penalties for unprofessional conduct

65. (1) If a registered person is found guilty of unprofessional conduct, one or more of the following penalties may be imposed –

(a) a reprimand or caution;

(b) a suspension for a specified period of –

(i) the licence of a licensed person; or

(ii) the certificate of registration of a registered person, from practising or performing acts pertaining to the profession for which the registered person is registered or licensed;

(c) removal of the name of the registered person from the register;

(d) payment of a fine not exceeding the prescribed amount; or

(e) a refund by the registered person of any financial loss suffered by a person as a result of unprofessional conduct.

(2) A licensed person whose name is removed from the register under subsection (1)(c) must return the licence to the Council and the licence is deemed to have been cancelled until his or her name is restored to the register.

(3) When a penalty under subsection (1)(b) or (c) is imposed, the Council may order the registered person to safeguard the interests of his or her patients, including the manner in which and the period within which he or she must safeguard the interests.

(4) A person who fails to comply with an order of the Council under subsection (3) commits an offence and is liable to the penalties specified by section 57(a).

(5) Despite anything to the contrary in this Act –

(a) the Council may recover a fine imposed under subsection (1)(d); and

(b) a person in whose favour a refund order is made under subsection (1)(e) may enforce the order,

by means of proceedings in a competent court.

Suspension of penalties

66. (1) If a registered person charged is found guilty of unprofessional conduct and his or her licence is suspended under section 65(1)(b), the Council may suspend the suspension of licence for a specified period and on such conditions as the Council may determine.

(2) If after the expiry of the period specified in respect of subsection (1), the Council is satisfied that a registered person has –

(a) observed the conditions subject to which the suspension of licence is suspended, the Council must give notice to the registered person that the Council does not intend to suspend the licence; or

(b) not observed the conditions subject to which the suspension of licence is suspended, the Council must give notice to the registered person that the Council intends to suspend the licence.

(3) Before the Council suspend the licence under subsection (2)(b), the Council must, in the notice referred to in that subsection, inform the registered person that he or she may make written representations to the Council within the period specified in the notice, putting forward grounds why the Council should not suspend his or her licence.

(4) After having considered the representations made under subsection (3), the Council must inform the registered person of its decision.

(5) Despite a provision of this section to the contrary, the Council may terminate the suspension period granted under subsection (1) before the expiry of that period, if the Council considers it appropriate to do so.

(6) Before the Council terminates the suspension period under subsection (5), the Council must –

(a) give notice to the registered person of its intention to terminate the suspension period; and

(b) inform the registered person, in the notice under paragraph (a), that he or she may make written representations to the Council within the period specified in the notice, putting forward grounds why the Council should not terminate the suspension period.

(7) The Council must give notice to the registered person of its decision after having considered written representations made under subsection (6)(b).

(8) A notice by the Council under this section to a registered person is made in writing and delivered to the person in the prescribed manner.

(9) The Minister must prescribe the circumstances, conditions or qualifications under which the Council may suspend the suspension of the licence.

Inquiry not to prejudice civil or criminal liability

67. (1) The institution of –

(a) an inquiry against a registered person does not prejudice the right of –

(i) any other person to institute civil proceedings or criminal proceedings against the registered person; or

(ii) an employer of the registered person to take disciplinary action against the registered person; or

(b) civil or criminal proceedings against a registered person or the fact that an employer has taken disciplinary action against the registered person under paragraph (a) does not prejudice the right of the Council –

(i) to conduct an inquiry into a charge of unprofessional conduct against the registered person; or

(ii) to impose penalties for unprofessional conduct, arising from or based on the same facts.

(2) Any incriminating information or evidence obtained directly or indirectly during the proceedings of an inquiry is not admissible as evidence against a registered person in criminal or civil proceedings in a court of law, except in criminal proceedings where a registered person stands trial for contravening section 54, 56 or 68.

False evidence

68. A person who gives false evidence under oath or affirmation at an inquiry knowing the evidence to be false commits an offence and is liable to a penalty for the crime of perjury.

Effect of suspension or removal from register

69. (1) A registered person whose –

(a) licence is suspended; or

(b) name is removed from the register, is regarded as unregistered and,

is disqualified from practising the profession or performing any act pertaining to the profession during the period of suspension or removal.

(2) The –

(a) certificate of registration of a registered person is regarded as cancelled until the period of suspension has expired or until the name of the person is restored to the register; and

(b) the licence of a registered person referred to in subsection (1) is automatically restored after the period of suspension has expired, or after the name of the person is restored to the register.

(3) A registered person whose –

(a) name has been removed from a register; or

(b) licence has been cancelled,

is disqualified from practising his or her profession until his or her name has been restored to the register or he or she is issued with a new licence.

(4) A person who practises his or her profession while –

(a) his or her name is removed from the register; or

(b) his or her licence is suspended or cancelled,

commits an offence and is liable to the penalties specified in section 57(b).

Cognisance by Council of conduct of registered persons

70. (1) If a registered person is convicted of an offence by a court of law, either before or after his or her registration under this Act, the Council may conduct an inquiry, if the Council is of the opinion that the commission of the offence may constitute unprofessional conduct.

(2) If in the course of proceedings before a court of law it appears to the court that there is proof, until the contrary is proven, of unprofessional conduct on the part of a registered person, the court must direct the clerk of the court to submit to the registrar a copy of the record of the proceedings or the portion of the proceedings that is material to unprofessional conduct.

(3) Despite subsection (2), the registrar may request from the clerk of a court a transcript of court proceedings in respect of a matter which is finalised by the court and that has relevance to an inquiry.

(4) The clerk of the court contemplated in subsection (3) must make the transcript referred to in that subsection available to the registrar as soon as practicable.

(5) A court record of a conviction referred to in subsection (1) and a transcript referred to in subsection (4) may be used as evidence at an inquiry.

Impaired registered persons

71. (1) In this section –

(a) "impaired" means –

(i) a mental or physical condition; or

(ii) the abuse of, or the dependence on, a medicine, scheduled substance, dependence-producing substance, chemical substance or any other substance,

which negatively affects the competence, attitude, judgement or performance of a registered person or renders him or her incapable of practising his or her profession with reasonable skill or safety; and

(b) "dependence-producing substance" means a dependence-producing substance as defined in section 1 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971).

(2) If it appears to the Council, after an investigation, assessment or inquiry made under subsection (4), that a registered person has become impaired to the extent that –

(a) it would be against the public interest to allow that person to continue to practise the profession;

(b) he or she is unable to practise his or her profession with reasonable skills or safety to his or her patients; or

(c) he or she has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply or possess a medicine, scheduled substance or dependence-producing substance,

the Council must deal with the person in the prescribed manner, including the manner of removing the name of the person from the register.

(3) The Council may appoint a person or committee to conduct an investigation, assessment or inquiry for the purposes of this section, and the powers of that person or committee are as prescribed.

PART 17
APPEALS AND REVIEWS

Appeal committee

72. (1) The Minister must establish a standing appeal committee consisting of five members appointed by the Minister for a term of five years as follows –

(a) a magistrate or a retired magistrate having not less than 10 years experience, who is the chairperson of the appeal committee, selected from three names nominated by the Magistrate Commission, established by section 2 of the Magistrates Act, 2003 (Act No. 3 of 2003);

(b) legal practitioner having not less than 10 years' experience in the practising of law selected from three names nominated by the Law Society of Namibia established by section 40 of the Legal Practitioners Act; and

(c) three registered persons having not less than 10 years' experience selected from seven names nominated by the Council.

(2) The appeal committee may co-opt one or two persons as members of the committee to act as assessors in the conducting of an appeal, but has no right to vote.

(3) A person who is a member of the Council or a professional board may not be appointed or co-opted as member of the appeal committee.

(4) The appeal committee must conduct an appeal in accordance with section 73.

(5) The appeal committee must –

(a) cause a written record to be kept of the proceedings of an appeal; and

(b) furnish the registrar with a copy of the written record kept under paragraph (a) as soon as possible after the conclusion of an appeal.

Appeals to appeal committee

73. (1) A registered person may appeal to the appeal committee against –

(a) a decision;

(b) a finding or order; or

(c) a penalty,

made by or imposed by the Council under this Act.

(2) An appeal under subsection (1) must be made by lodging a notice of appeal with the registrar –

(a) within 30 days after the date on which the appellant became aware of the finding, decision or penalty appealed against;

(b) setting out in detail the grounds for the appeal and relief sought by the appellant; and

(c) accompanied by the fee for the lodging of appeal.

(3) The registrar must submit the notice of appeal to the chairperson of the appeal committee as soon as possible after receipt of the notice of appeal in terms of subsection (2)(a).

(4) The appeal committee must –

(a) hear and conclude the appeal submitted to it under subsection (3) within 90 days of receipt;

(b) allow the appellant or his or her representative, the *pro forma* complainant or member of the Council to address the appeal committee on any issue relating to the appeal; and

(c) decide on the appeal and submit its written reasons to the registrar as soon as possible after the decision is made.

(5) The appeal committee may –

(a) obtain from the Council, appellant or any other person documents, particulars or information that the appeal committee may regard as necessary for the purpose of the appeal;

(b) allow or dismiss the appeal; or

(c) amend or confirm the finding, decision, penalty or order appealed against.

(6) Despite any provision of this section to the contrary, the appeal committee may, subject to the prescribed procedures, conduct an appeal on written submissions made by the parties if the committee is satisfied that it is appropriate and fair to both parties to so conduct the appeal.

(7) The Minister, by notice in the *Gazette*, after consultation with the Council, may make regulations relating to the procedures for the conducting of appeal and other requirements, including –

(a) the lodging of notice of appeal;

(b) the submission of documents; and

(c) the quorum at meetings, taking of oaths and affirmation, recusal of members, filling of vacancy, disclosure of interest by members, manner of voting.

(8) The Council must notify the professional board concerned of the outcome of the appeal in respect of a registered person.

Reviews by High Court

74. (1) A registered person who is aggrieved by a decision, finding or order of the appeal committee under section 73 may apply for review of the decision by the High Court.

(2) A person referred to in subsection (1) must apply for the review in the manner prescribed by the Rules of the High Court of Namibia.

PART 18
REGISTRATION AND CONDUCTING OF PHARMACY PRACTICE AND OWNERSHIP OF PHARMACY

Registration of pharmacies

75. (1) In this Part –

"close corporation" means a corporation as defined in section 1 of the Close Corporations Act;

"Close Corporations Act" means the Close Corporations Act, 1988 (Act No. 26 of 1988); "company" means a private company having share capital and registered under the Companies Act;

"Companies Act" means the Companies Act, 2004 (Act No. 28 of 2004);

"Namibian citizen", includes a person lawfully admitted to Namibia for permanent residence;

"pharmacist" means a person registered and licensed to practise as a pharmacist under this Act;

"pharmacy" means a place in which an act pertaining to the profession of a pharmacist is performed; and

"wholesale pharmacy" means a pharmacy that supplies medicines, schedule substances and other related products to pharmacies, doctors or hospitals.

(2) A person who intends to conduct a pharmacy in accordance with this Act must register the pharmacy with the Council before he or she commences with the conducting of the pharmacy.

(3) The Minister may prescribe –

(a) the requirements that a pharmacy must comply with, including the premises where the pharmacy is conducted;

(b) the procedures relating to the registration of a pharmacy, including the requirements for an application for registration and the procedures for considering the application;

(c) subject to section 53, the assessment and inspection of a pharmacy for the purpose of determining whether the pharmacy complies with the prescribed requirements for registration; or

(d) any other matters or requirements relating to the registration of a pharmacy that the Minister may regard as necessary.

(4) Different requirements may be prescribed under subsection (3) relating to different kinds of pharmacies.

(5) A pharmacist who fails to comply with subsection (2) commits an offence and is liable to the penalty specified in section 57(a).

(6) A pharmacist who fails to comply with subsection (2) commits unprofessional conduct.

Sole owner or partnership conducting pharmacy

76. (1) A pharmacist may own and conduct a pharmacy or a wholesale pharmacy registered under section 75 –

(a) for his or her own account; or

(b) in partnership with one or more other pharmacists for the account of the partnership,

in accordance with the prescribed conditions.

(2) A pharmacist who conducts a pharmacy for his or her own account under subsection (1)(a) must be the sole owner of that pharmacy.

(3) A pharmacist referred to in subsection (1) must –

(a) be a Namibian citizen;

(b) be resident in Namibia; and

(c) comply with the prescribed requirements.

(4) A person other than a pharmacist may not under this section –

(a) have a financial interest in or receive a financial benefit from the conducting of a pharmacy; or

(b) be a partner in a pharmacy conducted by a partnership.

(5) The Minister may prescribe further requirements for the conducting of a pharmacy or a wholesale pharmacy by a sole owner or partnership.

(6) A person who contravenes or fails to comply with subsection (1), (2), (3) or (4) commits an offence and is liable to the penalty specified in section 57(b).

(7) A person who contravenes or fails to comply with subsection (1), (2), (3) or (4) commits unprofessional conduct.

Company or close corporation conducting pharmacy

77. (1) Unless otherwise provided in this Act, the Companies Act and Close Corporations Act apply to this section.

(2) A company or a close corporation approved by the Council for the purposes of this Act and subject to this Act may own and conduct one or more pharmacies.

(3) The managing director of a company or a manager of a close corporation owning and conducting a pharmacy –

(a) must be a pharmacist;

(b) must be a Namibian citizen;

(c) must be resident in Namibia;

(d) must comply with the prescribed requirements; and

(e) subject to subsection (4)(a), may not engage as a pharmacist in any business that does not belong to the company or close corporation –

(i) as a sole owner, a partner in partnership with another person;

(ii) as manager of a close corporation; or

(iii) as managing director of a company,

except with the prior approval of the Council.

(4) Despite paragraph (e) of subsection (3) –

(a) a managing director referred to in that subsection may be –

(i) a member of the board of directors of any other company authorised to conduct a pharmacy; or

(ii) a member of a close corporation authorised to conduct a pharmacy; or

(b) a manager referred to in that subsection may be –

(i) a member of any other close corporation that is authorised to conduct a pharmacy; or

(ii) a member of the board of directors of a company that is authorised to conduct a pharmacy.

(5) A managing director of a company or a manager of a close corporation referred to in subsection (3) is accountable to the Council in respect of acts done by the company or close corporation that he or she is the managing director or manager that may lead to an inquiry by the Council, unless if the managing director or manager satisfies the Council that he or she is not responsible for the act and could not reasonably have prevented the committing of the act.

(6) Despite anything to the contrary in the Companies Act or Close Corporations Act, only natural persons who are pharmacists and Namibian citizens –

(a) may hold shares in a company; or

(b) may be members in a close corporation,

that conducts pharmacy business.

(7) The Minister may, in addition to this section, prescribe the –

(a) requirements, form, manner and the procedures relating to the application for approval of a company or close corporation to own and conduct a pharmacy under subsection (2);

(b) requirements that a director of a company or a manager of a close corporation referred to in subsection (3), including a managing director of the company or a managing member of a close corporation must comply with;

(c) name under which a company or a close corporation may or may not conduct a pharmacy under this section;

(d) cancellation of the approval of a company or a close corporation to conduct a pharmacy under this section, including the grounds for the cancellation and the procedures relating to the cancellation;

(e) subject to section 82(2), disposal of the shares of a shareholder in a company or disposal of members interest in a close corporation referred to in subsection (2), in the event of the death of a shareholder or a member or if the shareholder or member ceases to hold the shares or interest;

(f) obligations of a company or close corporation referred to in subsection (2) when changing its address;

(g) requirements for the conducting of a wholesale pharmacy by a company or close corporation; or

(h) management and control of a pharmacy referred to in subsection (2).

(8) A person who contravenes or fails to comply with subsection (2), (3) or (6) commits an offence and is liable to the penalties specified in section 57(b).

Conducting of hospital pharmacy

78. (1) A hospital may conduct a hospital pharmacy on its premises to provide pharmaceutical care and services to patients of the hospital.

(2) The Minister may prescribe requirements or conditions relating to conducting of a pharmacy by a hospital.

Conducting of wholesale pharmacy

79. (1) A –

(a) pharmacist as sole owner who is a Namibian citizen;

(b) partnership consisting of pharmacists who are Namibian citizens; or

(c) company or a close corporation subject to section 77,

may own and conduct a wholesale pharmacy.

(2) The Minister may prescribe –

(a) the manner in which a wholesale pharmacy is conducted, including the restrictions applicable to the conducting of the wholesale pharmacy;

(b) the requirements that a wholesale pharmacy must comply with;

(c) the requirements for the registration of a wholesale pharmacy; or

(d) any other matter relating to the conducting of a wholesale pharmacythat the Minister may consider necessary to prescribe.

(3) A person who conducts a pharmacy in contravention of subsection (1) commits an offence and is liable to the penalties specified in section 57(b).

(4) A person who conducts a pharmacy in contravention of subsection (1) commits unprofessional conduct.

Pharmacies to be conducted under continuous supervision of pharmacist

80. (1) A pharmacy conducted under this Act is conducted under the continuous management, supervision and control of a pharmacist.

(2) The name of the pharmacist referred to in subsection (1) is to be conspicuously displayed over or next to the main entrance of a pharmacy.

(3) A person who conducts a pharmacy in contravention of this section commits an offence and is liable to the penalties specified in section 57(a).

(4) A person who conducts a pharmacy in contravention of this section commits unprofessional conduct.

Restriction on business names

81. (1) A pharmacy may not be conducted under a business name other than a business name approved by the Council.

(2) Subject to subsection (3), a person may not register or conduct a pharmacy business under the name, title or description that is, or includes in any form, the surname of a natural person, living or deceased, if the use of the name, title or description is calculated or likely to lead persons to infer that a person with that surname is or has been associated with the pharmacy business.

(3) Subsection (2) does not –

(a) prohibit –

(i) the inclusion in the name, title or description of a pharmacy business of the surname of any of the owners of the pharmacy, or in the case of the business being wholly owned by a –

(aa) company, of the surname of a shareholder or director of the company; or

(bb) close corporation, of the surname of a member of the close corporation,

who is a pharmacist;

(ii) the use in the name, title or description of a pharmacy business of a surname used immediately prior to the commencement of this Act; or

(b) apply in respect of a pharmacy business if the business consists of the manufacture of medicines and the sale of medicines to pharmacies or other dealers.

(4) The Minister may prescribe –

(a) restrictions on the use of business names by pharmacies, in addition to the restrictions specified by this section;

(b) the manner and procedure a person must apply to the Council for the approval of a business name and the requirements in respect of the approval of the name; or

(c) any other matter that the Minister considers necessary or expedient to prescribe in order to achieve the objects of this section.

(5) A person who conducts a pharmacy in contravention of subsection (1) or (2) commits an offence and is liable to the penalties specified in section 57(a).

(6) A person who conducts a pharmacy in contravention of subsection (1) or (2) commits unprofessional conduct.

Continuation of pharmacy business by executor, trustee, liquidator or curator

82. (1) Despite anything in this Act to the contrary –

(a) the executor of the deceased estate of a pharmacist, subject to the laws relating to the administration of estates may continue to conduct the pharmacy business of the deceased pharmacist for –

(i) a period not exceeding three years after the date of the death of the pharmacist; and

(ii) for such extended period that the Council may allow after the expiry of period referred to in subparagraph (i), but the extended period may not exceed three years at a time;

(b) the trustee in the insolvent estate of a pharmacist or the liquidator of a company or a close corporation conducting a pharmacy business, subject to the laws relating to insolvency, companies or close corporation, may continue to conduct the pharmacy business of the pharmacist, company or close corporation –

(i) for a period not exceeding three years after the date of the final sequestration order of the insolvent estate or the final winding up order of the company or close corporation; and

(ii) for such extended period that the Council may allow after the expiry of the period referred to in subparagraph (i), but the extended period may not exceed three years at a time; or

(c) if a pharmacist is declared, by order of court, incapable of managing his or her own affairs, his or her curator, subject to the laws relating to curatorship, may continue to conduct the pharmacy business of the pharmacist for a period not exceeding two years after the date of that order and for the extended period that the Council may allow,

but the pharmacy business is to be conducted under the continuous management, supervision and control of a pharmacist.

(2) Despite any law to the contrary, the disposal of shares, in accordance with laws relating to the administration of estates, insolvency, companies, close corporations or curatorship, of a deceased pharmacist, an insolvent pharmacist, a company, a close corporation or a pharmacist incapable of managing his or her own affairs conducting a pharmacy business must only be acquired by a pharmacist, company or close corporate that qualifies to conduct pharmacy business in terms of this Act.

PART 19
GENERAL PROVISIONS

Exemption by Minister

83. (1) Despite anything in this Act to the contrary, the Minister, by notice in the *Gazette,* on the recommendation of the Council made after consultation with the professional board concerned, may exempt –

(a) a registered person;

(b) a category of registered persons; or

(c) any other person,

from any provision of this Act.

(2) A notice under subsection (1) must specify –

(a) the person or category of persons exempted;

(b) the provision of the Act from which the person or category of persons is exempted and the extent of the exemption;

(c) the profession or the category of registration that may be practised under the exemption;

(d) the place or institution, the conditions and restrictions subject to which, the person may practise the profession;

(e) the period for which the exemption is granted; and

(f) any other conditions or restrictions that the Minister may impose.

Delegation of powers and assignment of functions

84. (1) The Council, in writing and on such conditions that the Council may determine, may delegate a power or assign a function conferred or imposed on it by or under this Act to a professional board or the registrar, except the power to –

(a) enter into an agreement with any person, body, institution or organisation under section 4;

(b) remove the deputy president from office under section 9;

(c) establish committees under section 12;

(d) appoint the registrar and deputy registrar under section 24;

(e) make professional conduct rules under section 58;

(f) establish a preliminary investigation committee in terms of section 60;

(g) establish the disciplinary committee in terms of section 64;

(h) make an order for a registered person to safeguard the interest of patients as contemplated in section 65(3); and

(i) make rules under section 92.

(2) The registrar, in writing and on such conditions as the registrar may determine, may delegate a power or assign a function conferred or assigned on him or her by or under this Act to the deputy registrar or to a staff member of the Council, except the power to issue a certificate of status under subsection (2) of section 48 or an extract from the register under subsection (4) of that section.

(3) The Council or registrar –

(a) is not divested of a power or function delegated or assigned under this section; and

(b) may, at any time –

(i) withdraw or amend a delegation or assignment made under this section; or

(ii) without prejudice of any right, amend or withdraw a decision made by virtue of the power so delegated.

Limitation of liability

85. In the exercise of a power or the performance of a function under this Act –

(a) the Minister;

(b) a member of the Council, professional board, a committee or subcommittee;

(c) a staff member of the Council; or

(d) any other person appointed or contracted by the Council,

is not personally liable for any loss or damages caused as a result of anything done or omitted to be done in good faith, unless such thing is done or omitted to be done due to the gross negligence or unlawful conduct of the Minister, member, staff member or such person.

Commission on prescriptions prohibited

86. (1) A –

(a) registered person may not accept or obtain from a pharmacist a commission or other reward for, or in connection with the, prescription of a medicine by the registered person; or

(b) pharmacist may not offer to a registered person a commission or other reward for, or in connection with the prescription of a medicine made by the registered person.

(2) A registered person or a pharmacist who contravenes subsection (1) commits an offence and is liable to the penalties specified in section 57(a).

(3) A registered person or a pharmacist who contravenes subsection (1) commits unprofessional conduct.

Death of patients

87. If a patient dies, while –

(a) under the influence of a general or local anaesthetic; or

(b) undergoing a procedure of therapeutic, diagnostic or palliative nature,

his or her death is regarded as unnatural death for the purposes of section 2 of the Inquests Act, 1993 (Act No. 6 of 1993) until the contrary is proven.

Registered persons to inform patients about fees to be charged

88. (1) In this section "responsible person" means the person responsible for the maintenance of the patient.

(2) Before rendering professional services to a patient and unless the circumstances render it impossible for him or her to do so, a registered person must inform the patient or the responsible person of the fees and disbursements that the registered person intends to charge.

(3) If a registered person refuses or fails to comply with subsection (2), he or she commits unprofessional conduct.

Assessment of registered persons, practices and educational institutions

89. (1) In this section –

(a) "assessment officer" means a person appointed under subsection (2) for the purpose of conducting an assessment under this section;

(b) "practice" includes a health facility or mobile health facility providing healthcare service, a building, premises or place or any part of the building, premises or place, utilised for the conducting of the practice of a registered or licensed person; and

(c) "premises" means the premises as defined in section 53.

(2) The registrar, with the approval of the Council and subject to the conditions that the Council may determine, may appoint a registered person as an assessment officer to assess –

(a) the professional ability, competency and proficiency of a registered person in the conducting of his or her practice;

(b) the practice of a registered person for suitability and conducive environment; or

(c) an educational institution providing or intends to provide the education referred to in section 27,

as specified in the letter of appointment.

(3) The registrar must issue to the assessment officer a letter of appointment, in the form determined by the registrar and the letter must specify –

(a) the names of the assessment officer;

(b) his or her identity number;

(c) the purpose and terms of reference of his or her appointment; and

(d) the period for which he or she is appointed.

(4) An assessment officer must assess the registered person, the practice of the registered person or the educational institution specified in the letter of appointment in accordance with the purpose and terms of reference specified in the letter of appointment.

(5) An assessment officer who conducts an assessment under this section –

(a) must, subject to paragraph (b), preserve secrecy in respect of any confidential information which comes to his or her knowledge during the performance of his or her functions;

(b) may not disclose confidential information contemplated in paragraph (a) to a person other than –

(i) the registrar;

(ii) the Council;

(iii) the *pro forma* complainant;

(iv) a member of the Namibian Police as defined in the Police Act, 1990 (Act No. 19 of 1990) investigating a criminal matter specified in this Act;

(v) the preliminary investigation committee;

(vi) the disciplinary committee; or

(vii) a person authorised by the order of a competent court; and

(c) must comply with the prescribed requirements and conditions.

(6) Despite subsection (5)(b), an assessment officer may not disclose to a person personal particulars relating to a patient unless –

(a) in terms of an order of a competent court;

(b) to the *pro forma* complainant on the instructions of the person presiding at an inquiry; or

(c) when testifying at an inquiry.

(7) A person who –

(a) prevents an assessment officer to enter premises, or hinders or obstructs an assessment officer in the exercise of his or her powers or the performance of his or her functions under this section;

(b) presents himself or herself as an assessment officer when he or she has not been appointed as such; or

(c) contravenes subsection (5) or (6),

commits an offence and is liable to the penalties specified in section 57(a).

(8) In so far as this section provides for a limitation on the fundamental rights contemplated by Article 13 of the Namibian Constitution in that it authorises interference with the privacy of correspondence or communication of a person that limitation is enacted upon the authority of that Article read with Article 22 of that Constitution.

(9) An assessment conducted under this section –

(a) is conducted with a strict regard to decency; and

(b) is conducted between sunrise and sunset, unless the conducting of the assessment at any time other than between sunrise and sunset is essential and justifiable.

(10) On the completion of an assessment under subsection (4), the assessment officer must submit to the registrar a written report on the assessment setting out his or her findings in the form and manner determined by the registrar.

(11) On receipt of the report referred to in subsection (10) and if it appears from the report that a registered person specified in the report is failing to practise or to conduct his or her practice in accordance with this Act, the Council may –

(a) suspend the registered person from practising his or her profession for the period, and subject to the conditions, that the Council determines;

(b) conduct an inquiry into the alleged failure of the registered person; or

(c) execute the other powers and perform the other functions as may be prescribed.

(12) The Council must inform the professional board concerned of –

(a) the suspension of the registered person from practise; or

(b) the outcome of an inquiry conducted,

as contemplated in subsection (11).

(13) The Minister may prescribe –

(a) the manner in which an assessment is conducted; or

(b) the powers of the Council or registrar relating to a report submitted by an assessment officer under subsection (10), including the powers to suspend a registered person from practise or to close down the practice or premises of the registered person.

Service and submission of notices and applications

90. Unless otherwise provided in this Act, any –

(a) notice by the registrar or the Council under this Act, is –

(i) delivered by hand to the registered person;

(ii) sent to the registered person by prepaid registered post at his or her postal address as specified in the register in which his or her name appears; or

(iii) delivered to him or her in the prescribed manner; and

(b) application or notice that is lodged with or submitted to the Council, or the registrar under or in terms of this Act, is so lodged at, or submitted to, the office of the registrar.

Regulations

91. (1) The Minister, on the recommendation of the Council made after the Council has consulted with the professional board concerned, may make regulations relating to –

(a) the forms, applications, certificates and licences required to be made under this Act;

(b) further requirements and procedures relating to submission of applications under this Act;

(c) the procedures relating to the appointment of evaluators for the purpose of evaluations that may be conducted under this Act, including the qualification of evaluators that may be appointed;

(d) the returns and reports that registered persons must submit to the Council or professional board, including the matters and issues that are reported on, the form of the returns and reports and the manner and times when those returns and reports are submitted;

(e) the scope of practise of registered persons, including specifying the acts that is regarded as acts pertaining to the practising of a profession by a registered person and the treatment that the registered person may administer to a person;

(f) the manner in which the Council, a committee, subcommittee or a professional board may perform or execute a power or function under this Act;

(g) the procedure relating to the registration of additional qualification, sub-speciality or speciality or listing of courses or subjects;

(h) the registration and procedures relating to the registration of a person as a student, a graduate or an intern;

(i) the internship that an intern must complete, including the nature, contents and duration of the internship, the recording of particulars regarding the internship and any matter incidental to the registration and training of the interns;

(j) the circumstances under which an intern may be exempted from the internship or the duration of such internship may be reduced, including the procedures relating to an application for the exemption or reduction;

(k) the procedure relating to the approval by the Council of persons or facilities at which an intern must complete the internship, the requirements that the person or facilities must comply with, and the application and procedures for the approval;

(l) the entering into an agreement of internship between an intern and a registered person or approved facility, the approval of the agreement by the Council and the cession of the agreement to any other person or facility, including the particulars and basic requirements that must form part of the agreement;

(m) the grounds for the suspension or termination of an internship and the procedures relating to the suspension or termination of internship;

(n) the circumstances under which the name of an intern may be removed from the register and the restoration of the name to the register;

(o) the manner of the registration by the Council of students who are studying or receiving education at an educational institution in Namibia or elsewhere for the purpose of obtaining a qualification prescribed for registration under this Act and the requirements and procedures relating to the registration of the students;

(p) the circumstances under which the name of a student may be removed from the register and the restoration of the name of the student to a register;

(q) the conditions subject to which a person may be registered under this Act;

(r) the practical training, if any, to be completed by students or graduates, in addition to the education, tuition or training being received by the students or completed by the graduates at an educational institution;

(s) any other requirements and conditions that the Minister may considers necessary for the registration of a person as a student, a graduate or an intern;

(t) the investigation or inquiry into the alleged impairment of a registered person, the period when the investigation or inquiry is conducted and the procedures relating to the investigation or inquiry;

(u) the assessment of the physical or mental condition of a registered person alleged to be impaired, including the procedures relating to the assessment;

(v) the manner in which an investigation or inquiry is conducted in order to make a finding relating to the competence of a registered person alleged to be impaired to practise his or her profession;

(w) the conditions or restrictions that may be imposed on registration or practice of an impaired registered person;

(x) the procedures relating to the suspension of licences of licensed persons or removal of names of registered persons from the register;

(y) the rescission of a condition imposed or a decision to suspend the suspension of a licence;

(z) the manner in which a pharmacy is conducted, including the restrictions applicable to the conducting of the pharmacy by hospitals;

(aa) the requirements that a pharmacist must comply with in order to conducta pharmacy;

(bb) the procedures for the registration of a pharmacy;

(cc) the allowances payable to a member of the Council, a professional board or a member of other committees or subcommittees, except that no allowance is payable to a member who is subject to the laws governing the Public Service, but such member may be paid an allowance for travelling and subsistence expenses incurred by that member in the performance of his or her functions in terms of this Act;

(dd) the ethical standards and code of conduct of registered persons;

(ee) all matters which are by this Act required or permitted to be prescribed; or

(ff) in general, all other matters not inconsistent with the powers of the Minister under this Act that the Minister considers necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) If a scope of practise prescribed under subsection (1)(e) in respect of a profession encroaches on the scope of practise of any other health or social service profession, that scope of practise is prescribed after consultation with all the health and social service professions that may be affected by those regulations, and such consultation is conducted by –

(a) the registrar; or

(b) a person designated by the registrar for that purpose.

(3) A regulation made under this section may provide a penalty not exceeding N$15 000 or imprisonment for a period not exceeding three years or both such fine and such imprisonment for any contravention or failure to comply with the regulation.

Rules by Council

92. (1) The Council may make rules relating to –

(a) the conduct of the business and the procedures at meetings of committees and subcommittees and the manner in which minutes of the meetings are kept;

(b) the manner in which agreements are entered into on behalf of the Council and the handling and the bookkeeping of funds of the Council;

(c) the professional titles or professional descriptions that a registered person may use when describing him or herself, his or her profession or practice and the manner in which the titles or description is displayed;

(d) the good pharmacy practise applicable to pharmacies; or

(e) any matter which by this Act is required or permitted to be done by the Council through the rules or any matter that the Council considers necessary to make rules in order to achieve the object of this Act, but not inconsistent with the powers of the Council.

(2) A person who contravenes or fails to comply with any rule made under this section commits an unprofessional conduct.

Prohibition of persons not registered or licensed to practise professions

93. (1) A person who is not registered or licensed under this Act to practise a profession or to perform an act pertaining to a profession may not –

(a) practise such profession or perform such act; or

(b) claim any remuneration or fees for an act the person performed in contravention of this section.

(2) An establishment, institution, body, organisation, association or any other employer, whether public or private may not appoint a person other than a registered person or licensed person, if such appointment involves acts that may only be performed by a registered or licensed person.

(3) Subsection (2) does not apply to the education and training of persons –

(a) under the supervision of a registered person in the professions to which this Act applies; or

(b) in the employment of any hospital or similar institution for the purpose of qualifying persons for registration under this Act.

(4) A person who contravenes or fails to comply with this section commits an offence and is liable to the penalties specified in section 57(b).

Repeal and amendment of laws

94. Subject to this Act, the laws set out in –

(a) Part 1 of Schedule 3 are repealed; and

(b) Part 2 of Schedule 3 are amended to the extent indicated in that Part.

Transitional and saving provisions

95. (1) A –

(a) person registered or enrolled under a law repealed by section 94 to practise a profession or registered as student, a graduate or an intern; or

(b) qualification, sub-speciality, speciality or additional qualification registered in the name of a registered person or a subject listed under the name of a registered person in respect of a profession,

at the commencement of this Act is deemed to have been registered or listed under the corresponding provision of this Act, subject to the conditions and restrictions imposed by or under this Act.

(2) A register established by or under a law repealed by section 94 is deemed to have been established under the corresponding provision of this Act.

(3) A period of internship or other practical training completed by a person under a provision of a law repealed by section 94 before the commencement of this Act is deemed to have been completed under the corresponding provision of this Act.

(4) A disciplinary or criminal proceeding instituted under a law repealed by section 94, and not finalised at the commencement of this Act continues under the provisions of the repealed Act until it is finalised.

(5) A finding, order or decision made or penalty imposed by a Council established by a law repealed by section 94 before the commencement of this Act is deemed to have been made or imposed by the Council under this Act.

(6) An application made before a Council established by a law repealed by section 94 and not finalised at the commencement of this Act is deemed to have been made to the Council under the corresponding provision of this Act.

(7) An agreement entered into by a Council established by a law repealed by section 94 and which is still valid at the commencement of this Act is deemed to have been entered into by the Council under the corresponding provision of this Act.

(8) A person or a temporary employee who at the commencement of this Act has been appointed or contracted by the registrar in terms of a law repealed by section 94 is deemed to have been appointed or contracted under the corresponding provision of this Act.

(9) A person who at the commencement of this Act has been appointed as registrar or assistant registrar in terms of a law repealed by section 94 is deemed to have been appointed under the corresponding provision of this Act as registrar and deputy registrar, respectively.

(10) A regulation, rule, notice or application form made or an order issued or anything done under a law repealed by section 94 which –

(a) is in force at the commencement of this Act; and

(b) could be made, issued or done under a corresponding provision of this Act,

is deemed to have been made, issued or done under a corresponding provision of this Act.

(11) Despite subsection (1), a person who at the commencement of this Act –

(a) has been registered under –

(i) the Medical and Dental Act, 2004 (Act No. 10 of 2004) repealed by section 94, as an ophthalmic assistant, is deemed to have been registered as an ophthalmic clinical officer under this Act;

(ii) the Allied Health Professions Act, 2004 (Act No. 7 of 2004) repealed by section 94, as a therapeutic masseur, or as a Chinese medicine practitioner and acupuncturist, as a single medium therapist in occupational therapy, as an operational emergency

care orderly, is deemed to have been respectively registered under this Act as –

(aa) a therapeutic massage therapist;

(bb) a traditional Chinese medicine practitioner and acupuncturist;

(cc) an arts therapist in art therapy, music therapy, dance movement therapy or drama therapy; or

(dd) combat medic; or

(b) has been authorised under a provision of a law repealed by section 94 to temporary practise a profession in the employment of the State is deemed to have been temporarily registered under section 37 to practise the profession in the employment of the State.

(12) A pharmacy registered under a law repealed by section 94 is deemed to have been registered under the corresponding provision of this Act.

(13) A person who is not a Namibian citizen and who has been authorised to conduct a pharmacy under a law repealed by section 94 at the commencement of this Act is deemed to have been registered and licensed to practise and conduct the pharmacy under the corresponding provision of this Act.

(14) An educational institution that has been approved under a law repealed by section 94 to provide to a student any education that enables the student to obtain a qualification and practise a profession at the commencement of this Act is deemed to have been approved under the corresponding provision of this Act.

Transfer of assets, rights and liabilities to Council

96. (1) In this section –

"asset", includes immovable and movable properties and other real rights;

"former Council" means a Council established by a law repealed by sections 94; and

"liability" includes a mortgage bond and monies owed and payable to a person or entity.

(2) The Council is for all purposes the successor to all former Councils.

(3) Despite any law to the contrary –

(a) ownership or other rights relating to the assets that vested in a former Council; or

(b) an obligation or liability incurred by a former Council,

before the date of commencement of this Act passes to the Council on the date of commencement of this Act.

(4) A certificate signed and issued by the registrar stating that an asset, right, obligation or liability specified by or referred to in that certificate, has passed, in

accordance with subsection (3), from a former Council to the Council, is sufficient proof that the asset, right, obligation or liability so specified or referred to vests in the Council.

(5) On the submission of the certificate of the title deed relating to the assets, rights or liabilities specified or referred to in that certificate to –

(a) the Registrar of Deeds in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or

(b) any other person in charge of any other office or place where any deed or register or record relating to the ownership of, or entitlement to, an asset or right or liability is kept,

the Registrar or the other person must make an endorsement on, or an entry into, the title deed, register or record in his or her office, or submitted to him or her, as may be necessary to effect the transfer of any asset, right or liability into the name of the Council.

(6) Despite any other law to the contrary, no stamp duty, transfer duty, value added tax, or any other duty, tax, levy or registration fees payable to the State, any regional or local or other authority in respect of or relating to the acquisition or transfer of assets, rights or liabilities, is payable in respect of –

(a) an entry or endorsement made; or

(b) the transfer of the ownership of an asset, right or liability to the Council,

in terms of subsection (5) pursuant to subsection (3).

Short title and commencement

97. (1) This Act is called the Health Professions Act, 2024, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

SCHEDULE 1

PROFESSIONS
(Sections 1, 2 and 42(a))

The following are health and social services professions:

A. Allied Health Professions

1. Acupuncturist
2. art therapist in art therapy or in music therapy or in dance movement
3. therapy or in drama therapy
4. audiologist
5. audiometrician
6. ayurveda medicine practitioner
7. biokineticist
8. chiropractor
9. clinical technologist in perfusion or in cardiac or neurophysiology, or in pulmonology, or in critical care or in nephrology or in reproductive biology

10. combat medic
11. community speech and hearing worker
12. dietician
13. dispensing optician
14. electro-encephalographic technician
15. emergency care practitioner (basic)
16. emergency care practitioner (intermediate)
17. emergency care technician
18. emergency practitioner assistant
19. environmental health practitioner assistant
20. environmental health practitioner
21. food inspector
22. hearing aid acoustician
23. homoeopath
24. masseur
25. medical laboratory scientist in blood transfusion technology, or in chemical or clinical or forensic pathology, or in cytogenetics or cytotechnology, or in haematology or histopathological technique, or in immunology or microbiology or pharmacology or virology, or molecular diagnostics
26. medical laboratory technician in blood transfusion or chemical pathology or haematology or histopathology or microbiology or cytotechnicians or clinical pathology or phlebotomy
27. medical orthotist and prosthetist
28. medical orthoptist and prosthetist assistant
29. medical orthoptist and prosthetist technologist
30. medical orthotist
31. medical prosthetist
32. medical rehabilitation worker
33. medical technologist in blood transfusion technology, or in chemical or clinical pathology, or in cytogenetics or in cytotechnology or in forensic pathology or in haematology or in histopathological technique or in immunology or in microbiology or in pharmacology or in virology or in molecular diagnostics
34. naturopath
35. nutritionist
36. occupational therapist
37. occupational therapy assistant
38. occupational therapy technician
39. ocularist
40. operation theatre technologist
41. optometrist
42. orthomedic orthotist
43. orthopaedic footwear technician
44. orthopaedic prosthetist
45. orthopaedic technical assistant
46. orthopaedic technician
47. orthopaedic technologist
48. orthoptist
49. osteopath
50. paramedic (advanced life support)
51. physiotherapist
52. physiotherapy assistant
53. phytotherapist
54. podiatrist
55. radiation technologist

56. radiographer in diagnostic or nuclear medicine, or in therapeutic or ultrasound radiography, or in sonography, ultra-sonographer
57. radiography assistant
58. remedial gymnast
59. speech and hearing assistant
60. speech and hearing correctionist
61. speech therapist
62. speech therapist and audiologist
63. sonography technician
64. therapeutic aromatherapist
65. therapeutic massage therapist
66. therapeutic reflexologist
67. traditional Chinese medicine practitioner and acupuncturist
68. traditional Chinese medicine practitioner
69. unani tibb practitioner

B. Dental Professions:

70. dental assistant
71. dental technician
72. dental technologist
73. dental therapist
74. dentist
75. oral hygienist

C. Medical Professions:

76. biomedical engineer
77. clinical biochemist
78. clinical officer
79. medical assistant
80. medical practitioner
81. medical scientist as genetic counsellor or medical physicist or medical biological scientist
82. ophthalmic clinical officer

D. Nursing Professions:

83. nurse practitioner
84. midwife or accoucheur practitioner
85. nurse and midwife or accoucheur practitioner
86. staff nurse
87. auxiliary nurse

E. Pharmacy Professions:

88. pharmaceutical technician
89. pharmacist
90. pharmacist's assistant

F. Psychology Professions:

91. clinical psychologist
92. educational psychologist
93. industrial psychologist
94. psychological counsellor
95. psychometrist

G. Social Work Professions:
96. social auxiliary worker
97. social worker

SCHEDULE 2

CATEGORIES OF REGISTRATION
(Sections 1, 2 and 42(b))

The following are categories of registration:

(a) Category: independent practise

(b) Category: Public Service

SCHEDULE 3

LAWS REPEALED AND LAWS AMENDED

PART 1
LAWS REPEALED
(Section 94)

No. and year of law	Short Title	Extent of Repeal
Act No. 6 of 2004	Social Work and Psychology Act, 2004	The whole
Act No. 12 of 2018	Social Work and Psychology Amendment Act, 2018	The whole
Act No. 7 of 2004	Allied Health Professions Act, 2004	The whole
Act No. 8 of 2018	Allied Health Professions Amendment Act, 2018	The whole
Act No. 8 of 2004	Nursing Act, 2004	The whole
Act No. 10 of 2018	Nursing Amendment Act, 2018	The whole
Act No. 9 of 2004	Pharmacy Act, 2004	The whole
Act No. 11 of 2018	Pharmacy Act Amendment, 2018	The whole
Act No. 10 of 2004	Medical and Dental Act, 2004	The whole
Act No. 9 of 2018	Medical and Dental Act Amendment, 2018	The whole

PART 2
LAWS AMENDED
(Section 94)

The Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994) is amended to the extent indicated:

Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994)

The Hospitals and Health Facilities Act, 1994 is amended –

(a) by the substitution for the word “Permanent Secretary” of the word “Executive Director” wherever it appears in the Act;

(b) in section 1 by the –

(i) insertion after the definition of "committee" of the following definition:

""Executive Director" means an Executive Director as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);";

(ii) deletion of the definition of "Permanent Secretary".

(c) in section 10 by the substitution for subsection (1) of the following subsection:

"(1) The –

(a) Executive Director may designate one or more officers in his or her Ministry; or

(b) the Health Professions Council of Namibia established by section 3 of the Health Professions Act, 2024 (Act No. 16 of 2024) may appoint one or more persons,

as inspectors of hospitals and health facilities under this Act, and shall issue each inspector with a certificate of designation or appointment, and the inspector shall on demand in the performance of his or her duties produce the certificate.".