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MEDICAL PRACTITIONERS AND DENTISTS ACT

CHAPTER 253

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CHAPTER 253

MEDICAL PRACTITIONERS AND DENTISTS ACT

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CHAPTER 253

MEDICAL PRACTITIONERS AND DENTISTS ACT

[Date of assent: 8th November, 1977.]

[Date of commencement: 1st January, 1978.]

An Act of Parliament to consolidate and amend the law to make provision for the registration of medical practitioners and dentists and for purposes connected therewith and incidental thereto

[Act No. 20 of 1977, L.N. 308/1977, Act No. 13 of 1978, Act No. 19 of 1984, Act No. 7 of 1990, Act No. 11 of 1992, Act No. 11 of 1993, Act No. 9 of 2000, Act No. 12 of 2012.]

1. Short title

This Act may be cited as the Medical Practitioners and Dentists Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means the Medical Practitioners and Dentists Board constituted under section 4;

“**dental practitioner**” and “**dentist**” mean a person registered under this Act as a dentist;

“**dentistry**” and “**dental services**” include the performance of an operation and the giving of treatment, advice or attendance as is usually performed or given by dentists, and an operation or treatment, advice or attendance on or to any person preparatory to or for the purpose of or in connection with the fitting, insertion or fixing of artificial teeth;

“**medical practitioner**” means a person registered under this Act as a medical practitioner;

“**private practice**” means the practice of medicine or of dentistry, as the case may be, for a fee either in kind or cash;

“**private practitioner**” means a person registered under this Act as either a medical practitioner or a dentist who is also licensed under section 15 to practise medicine or dentistry for fees either in cash or in kind;

“**register**” means the register of medical practitioners and dentists which the Registrar is required by section 5 to keep;

“**Registrar**” means the Registrar of Medical Practitioners and Dentists constituted by section 5.

3. Construction of terms in any written law

The expressions “**legally qualified medical practitioner**” and “**duly qualified medical practitioner**” or any words importing a person recognized by law as a medical practitioner or a member of the medical profession, when used

in any written law with reference to that person, shall be construed to mean a person registered as a medical practitioner under this Act or, where the context so admits, a person who is licensed by the Board under section 13.

[Act No. 13 of 1978, Sch.]

4. The Medical Practitioners and Dentists Board

(1) For the purposes of this Act, there shall be constituted a Board to be known as the Medical Practitioners and Dentists Board, which shall consist of the following members, all of whom shall be citizens of Kenya and either medical or dental practitioners of good character and good standing—

- (a) a chairman to be appointed by the Minister;
- (b) the Director of Medical Services or the person for the time being acting in that post;
- (c) a Deputy Director of Medical Services, to be nominated by the Minister;
- (d) four medical practitioners to be nominated by the Minister;
- (e) a representative of each of the universities in Kenya which have power to grant a qualification which is registrable under this Act;
- (f) five medical practitioners and two dentists, who shall be elected by the votes respectively of all medical practitioners and of all dentists at the prescribed times and in the prescribed manner,

but, notwithstanding the provisions of this subsection, the Minister may, if at any time it appears to him that the Board has failed to carry out any of its functions under this Act in the national interest, revoke or annul the appointment, nomination or election of any member of the Board and may himself nominate a new member in the place of that member for the remainder of the period of office of that member under subsection (3).

(2) The Board shall elect a deputy chairman from amongst its members.

(3) The members referred to in paragraphs (a), (c), (d), (e) and (f) of subsection (1) shall hold office for a period of five years from the date of their appointment, nomination or election, as the case may be, but shall be eligible for re-appointment, re-nomination or re-election.

(4) The chairman or, in his absence, the deputy chairman shall preside at all meetings of the Board and, in the absence for any reason of both the chairman and the deputy chairman, the other members of the Board who are present at any meeting shall choose one of the members to act as chairman at that meeting.

(5) Each member of the Board shall have a deliberative vote and the chairman for the time being at any meeting of the Board shall, in addition to his deliberative vote as a member of the Board, have a casting vote.

(6) If any member of the Board, other than the chairman, the Director of Medical Services or the Deputy Director of Medical Services nominated under paragraph (c) of subsection (1), is temporarily incapacitated by illness or is otherwise prevented from performing his duties as a member thereof, the Board may appoint a medical or dental practitioner to act in the place of that member during his incapacity or absence.

(7) When a member who has been appointed, nominated or elected under paragraph (a), (c), (d), (e) or (f) of subsection (1), dies or resigns from the Board, or is otherwise permanently unable to attend meetings of the Board, the Minister may, after consulting the Board, appoint a medical or a dental practitioner to act as a member of the Board until such time as a permanent member is appointed, nominated or elected to fill the vacancy.

(8) Seven members of the Board (including the chairman of the meeting) shall constitute a quorum at any meeting of the Board, and all acts, matters or things authorized or required to be done by the Board may be decided at any meeting at which a quorum is present.

(9) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(10) The Board shall meet at least once in every three months.

(11) The chairman or, in his absence, the deputy chairman, shall convene a meeting of the Board on receiving written requests by at least five of its members.

(12) A member of the Board who absents himself from two consecutive meetings without prior permission from the chairman or, in his absence, from the deputy chairman, shall automatically lose his place on the Board and the vacancy so created may be filled temporarily in accordance with subsection (7).

(13) The chairman or, in his absence, the deputy chairman, may, with prior approval of the Board, appoint suitable persons, who may be persons employed in the public service, to assist in carrying out particular decisions of the Board or particular duties or investigations for the Board.

(14) Subject to the provisions of this Act and to any rule as to procedure made under section 23, the Board may regulate its own procedures.

(15) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of property;
- (c) borrowing and lending money.

[Act No. 13 of 1978, Sch., Act No. 11 of 1992, Sch., Act No. 11 of 1993, Sch.]

5. Registrar and register

(1) For the purpose of this Act, there shall be a Registrar of Medical Practitioners and Dentists.

(2) The Director of Medical Services shall be the Registrar, and shall perform such duties in connection with the register as are prescribed by this Act.

(3) The Registrar shall keep a register of medical practitioners and dentists in the prescribed form.

6. Registration of medical practitioners and dentists

(1) Every person eligible to be registered as a medical practitioner or as a dentist may apply in the prescribed form to the Registrar for registration in the register, and every such application shall be accompanied by the prescribed fee.

(2) Where a person has complied with the provisions of subsection (1) and has been accepted by the Board as being eligible for registration and has satisfied the Registrar that he has been so accepted, he shall be registered.

7. Certificate of registration

The Registrar shall issue to every person registered under this Act, a certificate in the prescribed form.

8. Correction of register

(1) The Registrar shall from time to time make any necessary alterations and corrections in the register in relation to any entry therein.

(2) The Registrar shall remove from the register—

- (a) the name of every deceased person;
- (b) the name of every person convicted of an offence under section 19;
- (c) the name of every person whose name the Board has under section 20 directed should be struck off the register; and
- (d) any entry which has been incorrectly or fraudulently made in the register.

(3) The Registrar may, with the consent of the person concerned, remove from the register the name of a person who has ceased to practise.

(4) The Registrar shall, not later than 1st July in each year, send by registered post to every person registered in the register a notice inquiring whether or not that person has ceased to practise or has changed his address, and, if no answer is returned to the inquiry within six months from the posting thereof, the name of that person may be removed from the register; but a name removed under this subsection may, at the request of the person concerned and on payment of the prescribed fee, be reinstated by the Registrar.

(5) The Registrar-General of Births and Deaths shall notify the Registrar of the death of any registered medical practitioner or dentist.

9. Publication of register

(1) The Registrar shall publish in the *Gazette* as soon as may be practicable after registration the name of every medical practitioner or dentist registered in the register.

(2) The Registrar shall once in every year, as soon as convenient after 1st January, but not later than 31st March, publish in the print or electronic media, as approved by the Board, a list containing the names, qualifications and registered addresses of all registered medical and dental practitioners.

(3) It shall be the duty of every medical and dental practitioner to inform the Registrar immediately of any change in his registered address.

[Act No. 12 of 2012, Sch.]

10. Publication prima facie evidence of registration

(1) The publication of the list of registered medical and dental practitioners in the *Gazette* shall be *prima facie* evidence that the persons named therein are

registered under this Act, and the absence of the name of any person from such list shall be *prima facie* evidence that the person is not so registered.

(2) All register books and all copies thereof or extracts therefrom certified under the hand of the Registrar shall be receivable in evidence in all courts.

11. Persons eligible to be registered as medical or dental practitioners

(1) Subject to the provisions of this section, a person shall be eligible for registration under this Act as a medical or dental practitioner if he is the holder of a degree, diploma or other qualification which is recognized by the Board as making him eligible for registration, and—

- (a) after obtaining that degree, diploma or other qualification, he has engaged in training employment in a resident medical capacity in one or more institutions approved by the Board for such period, being not less than one year, as the Board may approve; and
- (b) he satisfies the Board that, whilst engaged in training employment under paragraph (a), he has acquired sufficient knowledge of, and experience in, the practice of medicine or dentistry, as the case may be; and
- (c) he satisfies the Board that he is a person of good moral character and a fit and proper person to be registered under this Act.

(2) Where the Board does not recognize a degree, diploma or other qualification in medicine or dentistry held by a person as making him eligible for registration, it shall take steps to assess his suitability for registration and for the purpose of so doing may require him to attend an interview and to undergo any oral or written examination.

(3) The Board may, after assessing the suitability for registration of a person under subsection (2), direct that before registration he shall undergo such further period of training or pass such further examination as it may specify.

(4) The Board shall not authorize the registration of a person until it is satisfied that the requirements of subsection (1) have been fulfilled or, in the case of a person referred to in subsection (2), that the requirement of paragraphs (a), (b) and (c) of subsection (1) have been fulfilled and that any further period of training or examination directed by it under subsection (3) has been completed or passed.

(5) The Board may, where it considers it expedient so to do, delegate the assessment of suitability for registration under subsection (2) to a committee of the Board which shall, after making the assessment, make recommendations to the Board accordingly.

11A. Supervisory functions of the Board

(1) The Board shall satisfy itself that courses of study to be followed by students for a degree in medicine or dentistry, including the standard of proficiency required for admission thereto and the standards of examinations leading to the award of a degree, are sufficient to guarantee that the holder thereof has acquired the minimum knowledge and skill necessary for the efficient practice of medicine or dentistry.

(2) For the purposes of this section the Board may—

- (a) appoint persons to visit any university or other institution in Kenya offering a course in medicine or dentistry and to report to it on the course of study, staffing, accommodation and equipment available for training in medicine or dentistry and other arrangements available for such training;
- (b) appoint persons to attend examinations in any aspect of medicine or dentistry at any such university or institution and to report to it on the sufficiency of the examinations and on such matters relating thereto as the Board may require;
- (c) require the dean or head of the faculty of medicine or dentistry or both at any such university or institution to provide written information to it concerning any of the matters referred to in paragraph (a) or (b).

(3) The Board shall forward a copy of any report made under subsection (2) to the university or institution concerned and may, if it is satisfied that the standard of any course or examination is insufficient, and after it has given the university or institution an opportunity of making observations on the report, require the university or institution in writing to take such measures as it may specify in order to improve or rectify the standard of such course or examination.

(4) If the Board, after requirements in writing has been made under subsection (3), is satisfied that the university or institution has nevertheless failed to take measures which are in the opinion of the Board necessary to improve or rectify the standard of any course or examination, it may cancel or suspend any recognition of a degree, diploma, or qualification awarded by that university or institution for the purposes of section 11:

Provided that no degree awarded prior to such cancellation or suspension shall be thereby affected.

[Act No. 11 of 1993, Sch.]

12. Person registered may have additional qualifications inserted in the register

Every person registered under this Act who has obtained a higher degree or qualification than the qualification in respect of which he has been registered shall be entitled to have that higher degree or additional qualification inserted in the register in substitution for or in addition to the qualification previously registered, on the payment of the prescribed fee.

13. Licensing of persons to render medical or dental services

(1) Notwithstanding any of the other provisions of this Act, the Board may, if it is satisfied that it is in the public interest to do so, confer upon any person who is not otherwise eligible to be registered as a medical practitioner or as a dentist under the provisions of this Act, by the issue, under the signature of the Director of Medical Services, of a licence to do so, the right to render medical or dental services.

(2) Every such licence shall be for such period and may contain such conditions as the Director of Medical Services shall, with the consent or on the instruction of the Board, impose.

(3) Any licence issued under this section may be cancelled or revoked and withdrawn at any time by the Director of Medical Services with the consent or on the instructions of the Board.

14. Effects of registration and licence under section 13

(1) Registration as a medical practitioner or a dentist under this Act, or the granting of a licence under section 13, shall only entitle the person so registered or so licensed to practise medicine or dentistry or to render medical or dental services, as the case may be, in a salaried post under a Government or local government health scheme or in such salaried posts in such institutions as the Board may from time to time approve.

(2) No medical practitioner or dentist shall act as or engage in private practice as a private practitioner or may be employed by a private practitioner, unless he holds a licence to engage in private practice under the provisions of section 15.

15. Licences for private practice

(1) The Board may authorize the Registrar to issue to a medical practitioner or a dentist who has applied in the prescribed form and whom the Board considers has had suitable working experience in medicine or in dentistry, as the case may be, a licence to engage in private practice on his own behalf as a private practitioner or to be employed, either whole time or part time, by a private practitioner.

(2) The Registrar shall issue, on payment of the prescribed fee, a licence in the prescribed form to persons who are authorized by the Board under subsection (1).

(3) Licences shall be granted for a period of one year at a time and shall state whether the person so licensed may practise as a private practitioner on his own behalf or may be employed by a private practitioner.

(4) The Board may refuse to issue or to renew a licence to engage in private practice to any person and may withdraw a licence it has issued.

(5) No premises may be habitually used for the purposes of private practice unless they are authorized for such use by the Board.

(6) A person aggrieved by a decision of the Board under this section may appeal to the High Court, and in any such appeal the High Court may annul or vary the decision as it thinks fit.

15A. *Repealed by Act No. 9 of 2000, s. 83.*

16. Licences to be published in Gazette

The issue and the cancellation, revocation or withdrawal of a licence under section 13 or section 15 shall be published in the *Gazette*.

17. No fees recoverable unless person licensed under section 15

No person shall be entitled to recover a charge for medical or surgical advice or attendance, or for the performance of an operation as a medical practitioner or

dentist, or for medicine which he has prescribed and supplied as a medical practitioner or dentist, unless he is at the time appropriately licensed under section 15.

18. Certificate not valid unless signatory registered, etc.

No certificate or other document required by law to be signed by a duly qualified medical or dental practitioner shall be valid unless signed by a person registered as a medical or dental practitioner under this Act or, where the context so admits, by a person who is licensed by the Board under section 13.

19. Penalty for fraudulently procuring registration or licence

A person who wilfully procures or attempts to procure himself to be registered or licensed under any of the provisions of this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing, and a person aiding or assisting him therein, shall be guilty of an offence and shall be liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding twelve months, or to both; and if a person convicted of an offence under this section is registered or licensed under this Act the Registrar shall forthwith remove his name from the register or cancel his licence, as the case may be.

19A. Report of convictions

The court by which a medical practitioner or dentist is convicted of an offence under the Penal Code (Cap. 63) or this Act or any court by which his case is brought by way of appeal against conviction shall report the conviction or the upholding of a conviction to the Board specifying the name of the medical practitioner or dentist, as the case may be, the date of the conviction or judgment on appeal and the offence for which he was convicted.

[Act No. 19 of 1984, Sch.]

20. Disciplinary proceedings

(1) If a medical practitioner or dentist registered or a person licensed under this Act is convicted of an offence under this Act or under the Penal Code (Cap. 63), whether the offence was committed before or after the coming into operation of this Act, or is, after inquiry by the Board, found to have been guilty of any infamous or disgraceful conduct in a professional respect, either before or after the coming into operation of this Act, the Board may, subject to subsection (9), remove his name from the register or cancel any licence granted to him.

(2) Upon any inquiry held by the Board under subsection (1) the person whose conduct is being inquired into shall be afforded an opportunity of being heard, either in person or by an advocate.

(3) For the purpose of proceedings at an inquiry held by the Board, the Board may administer oaths and may, subject to the provisions of rules made under section 23, enforce the attendance of persons as witnesses and the production of books and documents.

(4) Subject to the foregoing provisions of this section and to rules as to procedure made under section 23, the Board may regulate its own procedure in disciplinary proceedings.

(5) The power to direct the removal of the name of a person from the register or to cancel the licence of a person shall include a power exercisable in the same manner to direct that during such period as may be specified in the order the registration of a person's name in the register or the licence granted to him shall not have effect.

(6) A person aggrieved by a decision of the Board under the provisions of this section may appeal within thirty days to the High Court and in any such appeal the High Court may annul or vary the decision as it thinks fit.

(7) The provisions of this section, in so far as they relate to the cancellation or suspension of licences, shall be in addition to and not in derogation of the provisions of section 13 or 15.

(8) A person who fails when summoned by the Board to attend as a witness or to produce any books or documents which he is required to produce shall be guilty of an offence and liable to a fine of two thousand shillings or to imprisonment for one month.

(9) Notwithstanding the provisions of subsection (8) of section 4, the Board shall not remove the name of a person from the register, or cancel any licence granted to a person, under subsection (1) of this section unless at least ten members of the Board so decide.

21. Effect of removal, cancellation or suspension

(1) Where the name of a person has been removed from the register, the name of that person shall not, subject to the provisions of this Act, be again entered in the register except by order of the Board.

(2) Where an order has been made for the removal of a person's name from the register, or for suspending the effect of a person's registration under this Act, or for cancelling or suspending a licence granted to a person under this Act, the Board may either on its own motion or on the application of the person concerned, and in either case after holding such inquiry as the Board thinks fit, cause the name of that person to be restored to the register or terminate the suspension of the registration, or, as the case may be, grant a new licence or terminate the suspension of the existing licence, in any such case either without fee or on the payment of such fee, not exceeding the appropriate registration or licence fee, as the Board may determine.

(3) Subsection (1) shall not apply when a person's name has been removed from the register at his request or with his consent in circumstances under which it could not have been removed without consent, and the name of that person shall on his application and on the payment of the prescribed fee, if any, be restored to the register.

22. Penalty for unregistered and unlicensed person practising

(1) Any person who wilfully and falsely takes or uses any name, title or addition implying a qualification to practise medicine or surgery or dentistry, or who, not being registered or licensed under this Act, practises or professes to practise or publishes his name as practising medicine or surgery or dentistry, or who, not being licensed under section 15, practises as a private practitioner, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding twelve months or to both.

(2) Subject to this Act, no person shall use the title “doctor” unless he is registered or licensed under this Act as a medical or dental practitioner or he has acquired a higher academic doctoral qualification which entitles him to use that title and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both.

(3) Nothing in subsection (1) shall make it an offence for a person in the service of—

- (a) the medical department of the Government; or
- (b) a hospital, dispensary or similar institution which the Director of Medical Services, by notice in the *Gazette*, declares to be an approved institution for the purposes of this section,

to render medical assistance in the course of his duties in such service or for a person to carry out treatment under the direction, supervision and control of a medical practitioner or a dentist or of a person licensed under section 13.

[Act No. 11 of 1992, Sch.]

23. Rules

The Minister may, after consultation with the Board, make rules generally for the better carrying out of the provisions of this Act, and any such rules may, without prejudice to the generality of the foregoing power—

- (a) prescribe anything required by this Act to be prescribed;
- (b) provide for the procedure to be followed by the Board in an inquiry under section 20;
- (c) provide for enforcing the attendance of witnesses and the production of books and documents at an inquiry held by the Board;
- (d) prescribe forms to be used in connection with this Act or fees to be charged under this Act.

24. Attorney-General's consent

A prosecution for an offence under this Act shall not be instituted without the written consent of the Attorney-General.

25. Finance

The Minister may, with the consent of the Treasury, out of money provided by Parliament—

- (a) make to the Board such grants as may be necessary to enable it to discharge its functions under this Act;
- (b) pay remuneration and travelling and other allowances to the members of the Board (other than members who are public officers in receipt of a salary);
- (c) make such other payments as may be necessary to give effect to the provisions of this Act.

