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THE PRESIDENCY

No. 21

17 January 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 29 of 2007: Health Professions Amendment Act, 2007.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 11 January 2008.)

ACT

To amend the Health Professions Act, 1974, so as to amend and insert certain definitions; to provide for the requirements for removal of members from office; to provide for the absence of the president from council meetings; to provide for the functions of registrar and staff; to provide for the investigation of members whose names have been removed from the register; to provide for the publication of the register by electronic means; to provide for the particulars to be contained in the certificate of status of registration to be issued by the registrar; to provide for qualifications prescribed for registration and for registration of persons holding qualifications not prescribed for registration; to provide for compliance with conditions as a prerequisite for continuing professional development; to provide for registration of professional categories and additional professional categories; to provide for inquiry by professional boards into charges of unprofessional conduct; to provide for the handling of cases relating to the death of a person undergoing a procedure of a therapeutic, diagnostic or palliative nature; to provide for regulations relating to professional boards, educational institutions and facilities; and to provide for the rules relating to fees payable; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 56 of 1974, as amended by section 1 of Act 38 of 1982, section 24 of Act 94 of 1991 and section 1 of Act 89 of 1997

1. Section 1 of the Health Professions Act, 1974 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of "Council" of the following definitions:

"accredit" means recognition or certification by the council or the relevant professional board in terms of this Act or any other Act as meeting the prescribed education and training requirements; 10
"community representative" means a person appointed by the Minister as a community representative and who is not registered in terms of this Act.

(b) by the insertion after the definition of "Director-General" of the following definitions: 15

“‘**fruitless and wasteful expenditure**’ has the same meaning as assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

‘**health practitioner**’ means any person, including a student, registered with the council in a profession registrable in terms of this Act;

‘**health profession**’ means any profession for which a professional board has been established in terms of section 15 and includes any category or group of persons provided for by such a board.”;

(c) by the substitution for the definition of “impaired” of the following definition:

“‘**impairment**’ refers to a condition which renders a practitioner incapable of practising a profession with reasonable skill and safety.”;

(d) by the deletion of the definition of “Interim National Medical and Dental Council of South Africa”;

(e) by the substitution for the definition of “intern” of the following definition:

“‘**intern**’ means a person registered as such under this Act in a profession which provides for internship training.”;

(f) by the insertion after the definition of “intern-psychologist” of the following definition:

“‘**irregular expenditure**’ means expenditure other than unauthorised expenditure—

(a) incurred in contravention of or that is not in accordance with a requirement of any applicable legislation; or

(b) that falls outside of the scope of the functions of the council or a professional board contemplated in this Act.”;

(g) by the substitution for the definition of “member” of the following definition:

“‘**member**’ means a member of the council or of a professional board.”;

(h) by the insertion after the definition of “professional board” of the following definition:

“‘**professional category**’ means the division or subdivision of a field in which any registered health profession may be practised;

‘**public representative**’ means a person appointed by the council to serve in the committees or subcommittees of the Council or professional boards for a particular purpose, and who is not registered in any of the professions falling under this Act”;

(i) by the substitution for the definition of “register” of the following definition:

“‘**register**’, when used as a noun, means a register kept in accordance with the provisions of this Act, and when used in relation to any [class] registration category or a member of any [class] such category of persons in respect of which a register is kept, means the register kept for that [class] category.”; and

(j) by the substitution for the definition of “speciality” of the following definition:

“‘**speciality**’, in relation to a [medical practitioner, dentist or psychologist, includes] person registered in respect of any profession under this Act, means any particular discipline, division or subdivision of a profession which is recognised under this Act as a speciality in which such [medical practitioner, dentist or psychologist] person specialises or intends to specialise.”.

Substitution of heading to Chapter 1 of Act 56 of 1974, as substituted by section 2 of Act 89 of 1997

2. The following heading is hereby substituted for the heading to Chapter 1 of the principal Act:

“ESTABLISHMENT, OBJECTS, FUNCTIONS AND POWERS OF THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA AND OF PROFESSIONAL BOARDS”.

Amendment of section 3 of Act 56 of 1974, as substituted by section 4 of Act 89 of 1997

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“Objects and functions of council”;

- (b) by the substitution for the words preceding paragraph (a) of the following words:
 “The objects and functions of the council are—”;
- (c) by the substitution for paragraph (b) of the following paragraph:
 “(b) to promote and to regulate interprofessional liaison between **[registered] health** professions in the interest of the public;”;
- (d) by the substitution for paragraph (c) of the following paragraph:
 “(c) to determine strategic policy in accordance with national health policy as determined by the Minister, and to make decisions in terms thereof, with regard to the professional boards and the **[registered] health** professions, for matters such as finance, education, training, registration, ethics and professional conduct, disciplinary procedure, scope of the professions, interprofessional matters and maintenance of professional competence;”;
- (e) by the substitution for paragraph (f) of the following paragraph:
 “(f) subject to **[the provisions of section 15A of this Act, the Nursing Act, 1978 (Act No. 50 of 1978), the Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), and the Pharmacy Act, 1974 (Act No. 53 of 1974)]** legislation regulating health care providers and consistency with national policy determined by the Minister, to control and to exercise authority in respect of all matters affecting the education and training of persons in, and the manner of the exercise of the practices pursued in connection with, the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in human kind;”;
- (f) by the substitution for paragraph (g) of the following paragraph:
 “(g) to promote liaison in the field of education and training referred to in paragraph (f), both in the Republic and elsewhere, and to promote the standards of such education and training in the Republic;”;
- (g) by the deletion of the word “and” at the end of paragraph (h) and the addition after paragraph (i) of the following paragraphs:
 “(j) to serve and protect the public in matters involving the rendering of health services by persons practising a health profession;
 (k) to exercise its powers and discharge its responsibilities in the best interest of the public and in accordance with national health policy determined by the Minister;
 (l) to be transparent and accountable to the public in achieving its objectives and when performing its functions and exercising its powers;
 (m) to uphold and maintain professional and ethical standards within the health professions;
 (n) to ensure the investigation of complaints concerning persons registered in terms of this Act and to ensure that appropriate disciplinary action is taken against such persons in accordance with this Act in order to protect the interest of the public;
 (o) to ensure that persons registered in terms of this Act behave towards users of health services in a manner that respects their constitutional rights to human dignity, bodily and psychological integrity and equality, and that disciplinary action is taken against persons who fail to act accordingly;
 (p) to submit to the Minister—
 (i) a five-year strategic plan within six months of the council coming into office which includes details as to how the council plans to fulfil its objectives under this Act;
 (ii) every six months a report on the status of health professions and on matters of public importance that have come to the attention of the council in the course of the performance of its functions under this Act; and
 (iii) an annual report within six months of the end of the financial year; and

- (q) to ensure that an annual budget for the council and the professional boards is drawn up and that the council and the professional boards operate within the parameters of such budget.”.

Amendment of section 4 of Act 56 of 1974, as substituted by section 5 of Act 89 of 1997

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4. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (c) of the following paragraph:

“(c) after consultation with the relevant professional board, consider any matter affecting the health professions registrable [with the council generally] under this Act and, consistent with national health policy determined by the Minister, make representations or take such action in connection therewith as the council deems [advisable] necessary;”;

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- (b) by the substitution for paragraph (d) of the following paragraph:

“(d) consistent with national health policy determined by the Minister, make rules on all matters which the council considers necessary or expedient in order that the objects of this Act may be achieved;”;

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- (c) by the substitution for paragraph (e) of the following paragraph:

“(e) delegate to any professional board or committee or any person such of its powers as it may [from time to time] determine, but shall not be divested of any power so delegated; and”;

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- (d) by the substitution for paragraph (f) of the following paragraph:

“(f) perform such other functions as may be prescribed, and [generally,] do all such things as the council deems necessary or expedient to achieve the objects of this Act within the framework of national health policy determined by the Minister.”.

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Amendment of section 5 of Act 56 of 1974, as substituted by section 6 of Act 89 of 1997

5. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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“(a) not more than [25] 16 persons designated by the professional boards, on a basis proportional to the number of persons registered to practise the professions falling under each professional board: Provided that each professional board shall be entitled to designate at least one person registered in terms of this Act;”;

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- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) nine [persons] community representatives not registered in terms of this Act, appointed by the Minister;”;

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- (c) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) one person from the South African [Medical Services] Military Health Service, appointed by the Minister of Defence;”;

- (d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

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“(f) three persons appointed by the [Committee of University Principals] South African University Vice-Chancellors' Association; and”;

- (e) by the deletion in subsection (1) of paragraphs (g) and (h); and

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- (f) by the addition of the following subsection:

“(7) A person may not be appointed as a member of the Council if he or she is, at the time of his or her appointment, or was, during the preceding 12 months—

- (a) a member of a municipal council, a provincial legislature or Parliament; or

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- (b) a provincial or national office bearer or employee of any party, organisation or body of a political nature.”.