

**THE DISCIPLINARY BODIES (HEALTH SECTOR)  
(MISCELLANEOUS PROVISIONS) BILL  
(No. IX of 2019)**

**Explanatory Memorandum**

The main object of this Bill is to amend various legislation with a view to reviewing and harmonising the disciplinary procedures and powers of statutory disciplinary bodies in the health sector, such as the Allied Health Professionals Council of Mauritius, the Dental Council of Mauritius, the Medical Council of Mauritius, the Nursing Council of Mauritius and the Pharmacy Council of Mauritius. These amendments became necessary since the disciplinary procedures and powers of those disciplinary bodies differed from one another and there was no uniformity.

2. In addition, a time limit is being imposed on the Medical Disciplinary Tribunal, such that whenever a disciplinary case of professional misconduct or negligence is referred to it by any such disciplinary body, the Tribunal shall hear and determine the disciplinary case not later than 90 days after the start of the hearing of the case, except where there is a valid reason, and with the consent of the parties to the case.

3. Opportunity is being taken to amend the Dangerous Drugs Act, whereby the setting up of an ad hoc Dangerous Drugs Tribunal under that Act will no longer be required since the supply, dispensation or prescription of a dangerous drug by a pharmacist, medical practitioner or dentist, as the case may be, to any person which is in excess of the amount that is properly required or knowing that such a prescription is not required for the medical treatment of that person shall, in lieu of that ad hoc Tribunal, be dealt with by the Pharmacy Council of Mauritius, Medical Council of Mauritius or Dental Council of Mauritius, as the case may be. However, the disciplinary sanctions against a pharmacist, medical practitioner or dentist under the Dangerous Drugs Act shall still vest in the Minister to whom responsibility for the subject of health is assigned.

4. As a consequence of the amendment being brought to the Dangerous Drugs Act, the Veterinary Council Act is being amended accordingly.

**DR. M. A. HUSNOO**  
*Minister of Health and Quality of Life*

17 May 2019

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**THE DISCIPLINARY BODIES (HEALTH SECTOR)  
(MISCELLANEOUS PROVISIONS) BILL**  
(No. IX of 2019)

**ARRANGEMENT OF CLAUSES**

*Clause*

1. Short title
2. Allied Health Professionals Council Act 2017 amended
3. Dangerous Drugs Act amended
4. Dental Council Act amended
5. Medical Council Act amended
6. Nursing Council Act amended
7. Pharmacy Council Act amended
8. Veterinary Council Act amended
9. Commencement

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**A BILL**

**To review and harmonise the disciplinary procedures and powers of the Allied Health Professionals Council of Mauritius, the Dental Council of Mauritius, the Medical Council of Mauritius, the Nursing Council of Mauritius and the Pharmacy Council of Mauritius, and to provide for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows –

**1. Short title**

This Act may be cited as the Disciplinary Bodies (Health Sector) (Miscellaneous Provisions) Act 2019.

**2. Allied Health Professionals Council Act 2017 amended**

The Allied Health Professionals Council Act 2017 is amended –

(a) in section 2 –

(i) in the definition of “delegated power”, by deleting the words “, malpractice”;

(ii) by inserting, in the appropriate alphabetical order, the following new definition –

“professional misconduct or negligence”, in relation to an allied health professional, includes –

- (a) a breach of the Code of Practice;
  - (b) a failure to exercise due professional skill or care which results in injury to, or loss of life of, a person;
  - (c) a failure to exercise the proper and timely care expected from him;
  - (d) an act of fraud or dishonesty in the exercise of his calling;
  - (e) an improper, a disgraceful, a dishonourable or an unworthy act, or any other act, which brings the allied health profession into disrepute;
- (b) in section 17(1)(a)(iii), by deleting the words “, malpractice, negligence, fraud, dishonesty or breach of a code of practice” and replacing them by the words “or negligence”;
- (c) in section 25 –
- (i) by repealing subsection (1) and replacing it by the following subsection –
 

(1) The Council may investigate into any complaint of professional misconduct or negligence against an allied health professional, including an allied health professional in respect of whom it holds a delegated power.
  - (ii) in subsection (2)(b), by deleting the word “complaint” and replacing it by the words “professional misconduct or negligence”;
  - (iii) in subsection (3) –
    - (A) by deleting the words “communicate or produce any record, document or article” and replacing them by the words “give evidence, or to communicate or produce any record, document or article,”;
    - (B) by inserting, after the words “that person to”, the words “disclose the evidence, or to”;
  - (iv) in subsection (4), by inserting, after the words “that the”, the words “evidence,”;

- (d) by repealing section 26 and replacing it by the following section –

**26. Disciplinary proceedings**

(1) (a) Where, after having carried out a preliminary investigation, the Council determines that there is prima facie evidence of professional misconduct or negligence against the allied health professional, the Council may, subject to subsection (3), institute disciplinary proceedings against him before the Disciplinary Tribunal.

(b) Where disciplinary proceedings are instituted under paragraph (a), the Council shall, at the same time, notify the Ministry thereof.

(2) Where, upon a determination under subsection (1), the Council considers that the conduct, act or omission of the allied health professional is of such a serious nature that he should, in the public interest, instantly cease to practise, the Council –

(a) may, in the case of an allied health professional in respect of whom the Council does not hold a delegated power, suspend him temporarily as an allied health professional for a period not exceeding such time as the Council –

(i) takes any disciplinary measures against him under section 28(4); or

(ii) gives him notice, under section 28(6)(a), that the charge against him has not been proved; or

(b) shall, in the case of an allied health professional in respect of whom the Council holds a delegated power, report the temporary suspension to the Public Service Commission for the Commission's decision on any such suspension.

(3) Where, pursuant to subsection (2)(a), the Council suspends an allied health professional temporarily, it shall, not later than 7 days of such suspension, institute disciplinary proceedings against him before the Disciplinary Tribunal.

- (e) in section 27, by deleting the words "Prime Minister" wherever they appear and replacing them by the word "Minister";

(f) in section 28 –

(i) by repealing subsection (1) and replacing it by the following subsection –

(1) The Disciplinary Tribunal shall, pursuant to disciplinary proceedings instituted against an allied health professional, hear and determine the matter not later than 90 days after the start of the hearing of the proceedings, except where there is a valid reason, and with the consent of the parties.

(ii) by inserting, after subsection (1), the following new subsection –

(1A) The Disciplinary Tribunal shall, not later than 3 days after a determination under subsection (1), forward to the Council its report and a copy of its proceedings, including any record, document or article produced.

(iii) in subsection (2), by deleting the words “subsection (1)” and replacing them by the words “subsection (1A)”;

(iv) by repealing subsections (4), (5) and (6) and replacing them by the following subsections –

(4) Where the report is in relation to an allied health professional, other than an allied health professional in respect of whom the Council holds a delegated power, and states that the charge has been proved, the Council may, not later than 14 days after receipt of the report –

(a) administer him a reprimand or a severe reprimand;

(b) suspend him as an allied health professional for a period not exceeding 2 years; or

(c) deregister him as an allied health professional.

(5) (a) Where the report is in relation to an allied health professional in respect of whom the Council holds a delegated power, the Council shall submit its own report to

the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(b) Where the punishment inflicted by the Public Service Commission on an allied health professional, in respect of whom the Council holds a delegated power, is dismissal or retirement in the interest of the public service, the Council shall, not later than 14 days of the decision of the Public Service Commission, determine whether or not it shall suspend or deregister him as an allied health professional.

(6) Where there is finding that the charge has not been proved against the allied health professional, the Council shall, not later than 14 days after receipt of the report –

(a) notify the allied health professional, in writing, of such finding; and

(b) where the Council holds a delegated power in respect of the allied health professional, send a copy of the notice required under paragraph (a) to the Public Service Commission.

(g) in section 30, by inserting, after the words “it may”, the words “, notwithstanding section 26(1)(a),”.

### 3. Dangerous Drugs Act amended

The Dangerous Drugs Act is amended, in section 9 –

(a) in the heading, by deleting the words “**Dangerous Drugs Tribunal**” and replacing them by the words “**Disciplinary sanctions of Minister**”;

(b) in subsection (1), by deleting the words “for inquiry to an *ad hoc* Dangerous Drugs Tribunal” and replacing them by the words “to the appropriate disciplinary body”;

(c) by repealing subsections (2) and (3);

(d) by repealing subsections (4) and (5) and replacing them by the following subsections –

(4) Where a matter is referred to the appropriate disciplinary body under subsection (1), that matter shall be dealt, where it is in relation to a –

- (a) dental surgeon, in accordance with the Dental Council Act;
- (b) medical practitioner, in accordance with the Medical Council Act;
- (c) pharmacist, in accordance with the Pharmacy Council Act; or
- (d) veterinary surgeon, in accordance with the Veterinary Council Act.

(5) The appropriate disciplinary body shall, after having dealt with the matter referred to in under subsection (1), make its recommendation to the Minister.

- (e) in subsection (6), by deleting the words “the Tribunal” and replacing them by the words “the appropriate disciplinary body”;
- (f) by adding the following new subsection –

(8) In this subsection –

“appropriate disciplinary body” means –

- (a) the Dental Council of Mauritius established under the Dental Council Act;
- (b) the Medical Council of Mauritius established under the Medical Council Act;
- (c) the Pharmacy Council of Mauritius established under the Pharmacy Council Act;
- (d) the Veterinary Council of Mauritius established under the Veterinary Council Act.

#### **4. Dental Council Act amended**

The Dental Council Act is amended –

- (a) in section 2 –

- (i) by deleting the definitions “infamous conduct”, “malpractice”, “negligence” and “professional misconduct”;
- (ii) by inserting, in the appropriate alphabetical order, the following new definitions –

“dangerous drug” has the same meaning as in the Dangerous Drugs Act;

“delegated power” means the powers delegated, under section 89(2)(b)(i) of the Constitution, and subject to Part IVA of the Public Service Commission Regulations, to the Council by the Public Service Commission to enquire and report into any complaint of professional misconduct or negligence against a registered person appointed by the Public Service Commission;

“professional misconduct or negligence”, in relation to a registered person, includes –

- (a) a breach of the Code of Practice;
- (b) a failure to exercise due professional skill or care which results in injury to, or loss of life of, a person;
- (c) a failure to exercise the proper and timely care expected from him;
- (d) the prescription of a dangerous drug to any person which is in excess of the amount that is properly required for the dental treatment of that person;
- (e) the prescription of a dangerous drug to any person knowing that such a prescription is not required for the medical treatment of that person;
- (f) an act of fraud or dishonesty in the exercise of his calling;
- (g) an improper, a disgraceful, a dishonourable or an unworthy act, or any other act, which brings the dental profession into disrepute;

(b) in section 6 –

- (i) in subsection (1)(a), by deleting the words “gross negligence, misconduct, default or breach of trust in the discharge of his

duties,” and replacing them by the words “professional misconduct or negligence, or breach of trust in the discharge of his duties”;

- (ii) in subsection (4), by repealing paragraph (b) and replacing it by the following paragraph –

- (b) disciplinary proceedings are instituted by the Council or Public Service Commission, as the case may be.

- (c) in section 13 –

- (i) by repealing subsections (1) and (2) and replacing them by the following subsections –

- (1) The Council may investigate into any complaint of professional misconduct or negligence against a registered person, including a registered person in respect of whom it holds a delegated power.

- (2) Where the Council investigates a complaint under subsection (1), it –

- (a) shall notify the registered person, whose conduct, act or omission is under investigation, of the nature of the complaint against him;

- (b) may visit or inspect the premises where the alleged professional misconduct or negligence has occurred;

- (c) may summon and hear the registered person who shall be given an opportunity of being assisted by a legal representative of his choice;

- (d) may summon and hear witnesses;

- (e) may call for the communication or production of any relevant record, document or article; and

- (f) shall submit its report not later than 3 months as from the date the investigation starts.

- (ii) in subsection (5), by deleting the words “any document” wherever they appear and replacing them by the words “or produce any record, document or article”;
- (iii) in subsection (6), by deleting the words “information or document” and replacing them by the words “the evidence, record, document or article”;
- (iv) by adding the following new subsection –

(7) A member who –

- (a) is closely related to a registered person whose conduct, act or omission is under preliminary investigation;
- (b) has any pecuniary or other personal interest in the subject matter of a preliminary investigation,

shall disclose his relationship or interest, as the case may be, and refrain from participating in the investigation.

- (d) by repealing section 14 and replacing it by the following section –

#### **14. Disciplinary proceedings**

(1) (a) Where, after having carried out a preliminary investigation, the Council determines that there is prima facie evidence of professional misconduct or negligence against the registered person, the Council may, subject to subsection (3), institute disciplinary proceedings against him before the Tribunal.

(b) Where disciplinary proceedings are instituted under paragraph (a), the Council shall, at the same time, notify the Ministry thereof.

(2) Where, upon a determination under subsection (1), the Council considers that the conduct, act or omission of the registered person is of such a serious nature that he should, in the public interest, instantly cease to practise, the Council –

- (a) may, in the case of a registered person in respect of whom the Council does not hold a delegated power, suspend him temporarily as a

registered person for a period not exceeding such time as the Council –

- (i) takes any disciplinary measures against him under section 17(4)(a); or
- (ii) gives him notice, under section 17(6)(a), that the charge against him has not been proved; or

- (b) shall, in the case of a registered person in respect of whom the Council holds a delegated power, report the temporary suspension to the Public Service Commission for the Commission's decision on any such suspension.

(3) Where, pursuant to subsection (2)(a), the Council suspends a registered person temporarily, it shall, not later than 7 days of such suspension, institute disciplinary proceedings against him before the Tribunal.

(e) by repealing section 15;

(f) in section 16 –

- (i) in subsection (1), by deleting the words “section 15” and “Prime Minister” and replacing them by the words “section 14” and “Minister”, respectively;
- (ii) in subsections (2) and (3), by deleting the words “Prime Minister” wherever they appear and replacing them by the word “Minister”;

(g) by repealing sections 17, 18 and 19 and replacing them by the following sections –

#### **17. Disciplinary measures**

(1) The Tribunal shall, pursuant to disciplinary proceedings instituted against a registered person, hear and determine the matter not later than 90 days after the start of the hearing of the proceedings, except where there is a valid reason, and with the consent of the parties.

(2) The Tribunal shall, not later than 3 days after a determination under subsection (1), forward to the Council its

report and a copy of its proceedings, including any record, document or article produced.

(3) The Tribunal shall not, in its report, make any recommendation regarding the form of disciplinary measure.

(4) Where the report is in relation to a registered person, other than a registered person in respect of whom the Council holds a delegated power, and states that –

- (a) the charge has been proved, the Council may, not later than 14 days after receipt of the report –
  - (i) administer him a reprimand or a severe reprimand;
  - (ii) suspend him as a registered person for a period not exceeding 2 years; or
  - (iii) deregister him as a registered person; or
- (b)
  - (i) the registered person has prescribed a dangerous drug to any person which is in excess of the amount that is properly required for the medical treatment of that person; or
  - (ii) the registered person has prescribed a dangerous drug to any person knowing that such a prescription is not required for the medical treatment of that person,

the Council shall, in addition to any disciplinary measures under paragraph (a), make a recommendation to the Minister in accordance with section 9(6) of the Dangerous Drugs Act.

(5) (a) Where the report referred to in subsection (4) is in relation to a registered person in respect of whom the Council holds a delegated power, the Council shall submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(b) Where the punishment inflicted by the Public Service Commission on a registered person, in respect of whom the Council holds a delegated power, is dismissal or retirement in the

interest of the public service, the Council shall, not later than 14 days of the decision of the Public Service Commission, determine whether or not it shall suspend or deregister him as a registered person.

(6) Where there is finding that the charge has not been proved against the registered person, the Council shall, not later than 14 days after receipt of the report –

- (a) notify the registered person, in writing, of such finding; and
- (b) where the Council holds a delegated power in respect of the registered person, send a copy of the notice required under paragraph (a) to the Public Service Commission.

#### **18. Other disciplinary measures**

(1) Without any of the proceedings provided for in sections 13, 14 and 17 being instituted, the Council shall, where a registered person has been convicted of an offence and is serving a sentence of imprisonment or penal servitude –

- (a) suspend him as a registered person for such time as the Council may determine; or
- (b) give him an opportunity to show cause why he shall not be deregistered as a registered person.

(2) The Registrar shall cause any suspension or deregistration under this Act to be published in the Gazette and in 2 daily newspapers.

#### **19. Summary proceedings**

Where the Council is satisfied, after having carried out a preliminary investigation against a registered person, other than a registered person in respect of whom the Council holds a delegated power, that he has committed an act or omission which, in its opinion, is not considered to be of a serious nature, it may, notwithstanding section 14(1)(a), administer him a warning or severe warning.

### **5. Medical Council Act amended**

The Medical Council Act is amended –

(a) in section 2 –

(i) by deleting the definition of “delegated power” and replacing it by the following definition –

“delegated power” means the powers delegated, under section 89(2)(b)(i) of the Constitution, and subject to Part IVA of the Public Service Commission Regulations, to the Council by the Public Service Commission to enquire and report into any complaint of professional misconduct or negligence against a registered person appointed by the Public Service Commission;

(ii) by deleting the definitions “infamous conduct”, “malpractice”, “negligence” and “professional misconduct”;

(iii) by inserting, in the appropriate alphabetical order, the following new definitions –

“dangerous drug” has the same meaning as in the Dangerous Drugs Act;

“professional misconduct or negligence”, in relation to a registered person, includes –

(a) a breach of the Code of Practice;

(b) a failure to exercise due professional skill or care which results in injury to, or loss of life of, a person;

(c) a failure to exercise the proper and timely care expected from him;

(d) the prescription of a dangerous drug to any person which is in excess of the amount that is properly required for the medical treatment of that person;

(e) the prescription of a dangerous drug to any person knowing that such a prescription is not required for the medical treatment of that person;

(f) an act of fraud or dishonesty in the exercise of his calling;

- (g) an improper, a disgraceful, a dishonourable or an unworthy act, or any other act, which brings the medical profession into disrepute;
- (b) in section 6 –
  - (i) in subsection (1)(a), by deleting the words “gross negligence, misconduct, default or breach of trust in the discharge of his duties,” and replacing them by the words “professional misconduct or negligence, or breach of trust in the discharge of his duties”;
  - (ii) in subsection (4), by repealing paragraph (b) and replacing it by the following paragraph –
    - (b) disciplinary proceedings are instituted by the Council or Public Service Commission, as the case may be.
- (c) in section 13 –
  - (i) by repealing subsections (1) and (2) and replacing them by the following subsections –
    - (1) The Council may investigate into any complaint of professional misconduct or negligence against a registered person, including a registered person in respect of whom it holds a delegated power.
    - (2) Where the Council investigates a complaint under subsection (1), it –
      - (a) shall notify the registered person, whose conduct, act or omission is under investigation, of the nature of the complaint against him;
      - (b) may visit or inspect the premises where the alleged professional misconduct or negligence has occurred;
      - (c) may summon and hear the registered person who shall be given an opportunity of being assisted by a legal representative of his choice;
      - (d) may summon and hear witnesses;

- (e) may call for the communication or production of any relevant record, document or article; and
    - (f) shall submit its report not later than 3 months as from the date the investigation starts.
  - (ii) in subsection (5), by deleting the words “any document” wherever they appear and replacing them by the words “or produce any record, document or article”;
  - (iii) in subsection (6), by deleting the words “information or document” and replacing them by the words “the evidence, record, document or article”;
  - (iv) by adding the following new subsection –
    - (7) A member who –
      - (a) is closely related to a registered person whose conduct, act or omission is under preliminary investigation;
      - (b) has any pecuniary or other personal interest in the subject matter of a preliminary investigation,
- shall disclose his relationship or interest, as the case may be, and refrain from participating in the investigation.
- (d) by repealing section 14 and replacing it by the following section –

#### **14. Disciplinary proceedings**

(1) (a) Where, after having carried out a preliminary investigation, the Council determines that there is prima facie evidence of professional misconduct or negligence against the registered person, the Council may, subject to subsection (3), institute disciplinary proceedings against him before the Tribunal.

(b) Where disciplinary proceedings are instituted under paragraph (a), the Council shall, at the same time, notify the Ministry thereof.

(2) Where, upon a determination under subsection (1), the Council considers that the conduct, act or omission of the registered person is of such a serious nature that he should, in the public interest, instantly cease to practise, the Council –

(a) may, in the case of a registered person in respect of whom the Council does not hold a delegated power, suspend him temporarily as a registered person for a period not exceeding such time as the Council –

(i) takes any disciplinary measures against him under section 17(4)(a); or

(ii) gives him notice, under section 17(6)(a), that the charge against him has not been proved; or

(b) shall, in the case of a registered person in respect of whom the Council holds a delegated power, report the temporary suspension to the Public Service Commission for the Commission's decision on any such suspension.

(3) Where, pursuant to subsection (2)(a), the Council suspends a registered person temporarily, it shall, not later than 7 days of such suspension, institute disciplinary proceedings against him before the Tribunal.

(e) by repealing sections 17, 18 and 19 and replacing them by the following sections –

## **17. Disciplinary measures**

(1) The Tribunal shall, pursuant to disciplinary proceedings instituted against a registered person, hear and determine the matter not later than 90 days after the start of the hearing of the proceedings, except where there is a valid reason, and with the consent of the parties.

(2) The Tribunal shall, not later than 3 days after a determination under subsection (1), forward to the Council its report and a copy of its proceedings, including any record, document or article produced.

(3) The Tribunal shall not, in its report, make any recommendation regarding the form of disciplinary measure.

(4) Where the report is in relation to a registered person, other than a registered person in respect of whom the Council holds a delegated power, and states that –

- (a) the charge has been proved, the Council may, not later than 14 days after receipt of the report –
  - (i) administer him a reprimand or a severe reprimand;
  - (ii) suspend him as a registered person for a period not exceeding 2 years; or
  - (iii) deregister him as a registered person; or
- (b)
  - (i) the registered person has prescribed a dangerous drug to any person which is in excess of the amount that is properly required for the medical treatment of that person; or
  - (ii) the registered person has prescribed a dangerous drug to any person knowing that such a prescription is not required for the medical treatment of that person,

the Council shall, in addition to any disciplinary measures under paragraph (a), make a recommendation to the Minister in accordance with section 9(6) of the Dangerous Drugs Act.

(5) (a) Where the report referred to in subsection (4) is in relation to a registered person in respect of whom the Council holds a delegated power, the Council shall submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(b) Where the punishment inflicted by the Public Service Commission on a registered person, in respect of whom the Council holds a delegated power, is dismissal or retirement in the interest of the public service, the Council shall, not later than 14 days of the decision of the Public Service Commission, determine whether or not it shall suspend or deregister him as a registered person.

(6) Where there is finding that the charge has not been proved against the registered person, the Council shall, not later than 14 days after receipt of the report –

- (a) notify the registered person, in writing, of such finding; and
- (b) where the Council holds a delegated power in respect of the registered person, send a copy of the notice required under paragraph (a) to the Public Service Commission.

### **18. Other disciplinary measures**

(1) Without any of the proceedings provided for in sections 13, 14 and 17 being instituted, the Council shall, where a registered person has been convicted of an offence and is serving a sentence of imprisonment or penal servitude –

- (a) suspend him as a registered person for such time as the Council may determine; or
- (b) give him an opportunity to show cause why he shall not be deregistered as a registered person.

(2) The Registrar shall cause any suspension or deregistration under this Act to be published in the Gazette and in 2 daily newspapers.

### **19. Summary proceedings**

Where the Council is satisfied, after having carried out a preliminary investigation against a registered person, other than a registered person in respect of whom the Council holds a delegated power, that he has committed an act or omission which, in its opinion, is not considered to be of a serious nature, it may, notwithstanding section 14(1)(a), administer him a warning or severe warning.

## **6. Nursing Council Act amended**

The Nursing Council Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definitions –

“delegated power” means the powers delegated, under section 89(2)(b)(i) of the Constitution, and subject to Part IVA of the Public Service Commission Regulations, to the Council by the Public Service Commission to enquire and report into any complaint of professional misconduct or negligence against a registered person appointed by the Public Service Commission;

“professional misconduct or negligence”, in relation to registered person, includes –

- (a) a breach of the Code of Practice;
  - (b) a failure to exercise due professional skill or care which results in injury to, or loss of life of, a person;
  - (c) a failure to exercise the proper and timely care expected from him;
  - (d) an act of fraud or dishonesty in the exercise of his calling;
  - (e) an improper, a disgraceful, a dishonourable or an unworthy act, or any other conduct, act or omission, which brings the nursing profession into disrepute;
- (b) in section 6 –
- (i) in subsection (1)(a), by deleting the words “gross negligence, misconduct, default or breach of trust in the discharge of his duties,” and replacing them by the words “professional misconduct or negligence, or breach of trust in the discharge of his duties”;
  - (ii) in subsection (4), by repealing paragraph (b) and replacing it by the following paragraph –
    - (b) disciplinary proceedings are instituted by the Council or Public Service Commission, as the case may be.
- (c) in section 13 –
- (i) by repealing subsections (1) and (2) and replacing them by the following subsections –
    - (1) The Council may investigate into any complaint of professional misconduct or negligence against a registered

person, including a registered person in respect of whom it holds a delegated power.

(2) Where the Council investigates a complaint under subsection (1), it –

- (a) shall notify the registered person, whose conduct, act or omission is under investigation, of the nature of the complaint against him;
  - (b) may visit or inspect the premises where the alleged professional misconduct or negligence occurred;
  - (c) may summon and hear the registered person who shall be given an opportunity of being assisted by a legal representative of his choice;
  - (d) may summon and hear witnesses;
  - (e) may call for the communication or production of any relevant record, document or article; and
  - (f) shall submit its report not later than 3 months as from the date the investigation starts.
- (ii) in subsection (5), by deleting the words “or to communicate any document” wherever they appear and replacing them by the words “, or to communicate or produce any record, document or article”;
- (iii) in subsection (6), by deleting the words “information or document” and replacing them by the words “evidence, record, document or article”;
- (iv) by adding the following new subsection –

(7) A member who –

- (a) is closely related to a registered person whose conduct, act or omission is under preliminary investigation;

- (b) has any pecuniary or other personal interest in the subject matter of a preliminary investigation,

shall disclose his relationship or interest, as the case may be, and refrain from participating in the investigation.

- (d) by repealing section 14 and replacing it by the following section –

#### **14. Disciplinary proceedings**

(1) (a) Where, after having carried out a preliminary investigation, the Council determines that there is prima facie evidence of professional misconduct or negligence against the registered person, the Council may, subject to subsection (3), institute disciplinary proceedings against him before the Tribunal.

(b) Where disciplinary proceedings are instituted under paragraph (a), the Council shall, at the same time, notify the Ministry thereof.

(2) Where, upon a determination under subsection (1), the Council considers that the conduct, act or omission of the registered person is of such a serious nature that he should, in the public interest, instantly cease to practise, the Council –

(a) may, in the case of a registered person in respect of whom the Council does not hold a delegated power, suspend him temporarily as a registered person for a period not exceeding such time as the Council –

(i) takes any disciplinary measures against him under section 17(4); or

(ii) gives him notice, under section 17(6)(a), that the charge against him has not been proved; or

(b) shall, in the case of a registered person in respect of whom the Council holds a delegated power, report the temporary suspension to the Public Service Commission for the Commission's decision on any such suspension.

(3) Where, pursuant to subsection (2)(a), the Council suspends a registered person temporarily, it shall, not later than 7

days of such suspension, institute disciplinary proceedings against him before the Tribunal.

- (e) by repealing section 15;
- (f) in section 16 –
  - (i) in subsection (1), by deleting the words “section 15(2)(b)”, “section 15” and “Prime Minister” and replacing them by the words “section 15(1)(b)”, “section 14” and “Minister”, respectively;
  - (ii) in subsections (2) and (3), by deleting the words “Prime Minister” wherever they appear and replacing them by the word “Minister”;
- (g) by repealing sections 17, 18 and 19 and replacing them by the following sections –

#### **17. Disciplinary measures**

(1) The Tribunal shall, pursuant to disciplinary proceedings instituted against a registered person, hear and determine the matter not later than 90 days after the start of the hearing of the proceedings, except where there is a valid reason, and with the consent of the parties.

(2) The Tribunal shall, not later than 3 days after a determination under subsection (1), forward to the Council its report and a copy of its proceedings, including any record, document or article produced.

(3) The Tribunal shall not, in its report, make any recommendation regarding the form of disciplinary measure.

(4) Where the report is in relation to a registered person, other than a registered person in respect of whom the Council holds a delegated power, and states that the charge has been proved, the Council may, not later than 14 days after receipt of the report –

- (a) administer him a reprimand or a severe reprimand;
- (b) suspend him as a registered person for a period not exceeding 2 years; or

(c) deregister him as a registered person.

(5) (a) Where the report is in relation to a registered person in respect of whom the Council holds a delegated power, the Council shall submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(b) Where the punishment inflicted by the Public Service Commission on a registered person, in respect of whom the Council holds a delegated power, is dismissal or retirement in the interest of the public service, the Council shall, not later than 14 days of the decision of the Public Service Commission, determine whether or not it shall suspend or deregister him as a registered person.

(6) Where there is finding that the charge has not been proved against the registered person, the Council shall, not later than 14 days after receipt of the report –

(a) notify the registered person, in writing, of such finding; and

(b) where the Council holds a delegated power in respect of the registered person, send a copy of the notice required under paragraph (a) to the Public Service Commission.

## **18. Other disciplinary measures**

(1) Without any of the proceedings provided for in sections 13, 14 and 17 being instituted, the Council shall, where a registered person has been convicted of an offence and is serving a sentence of imprisonment or penal servitude –

(a) suspend him as a registered person for such time as the Council may determine; or

(b) give him an opportunity to show cause why he shall not be deregistered as a registered person.

(2) The Registrar shall cause any suspension or deregistration under this Act to be published in the Gazette and in 2 daily newspapers.

## **19. Summary proceedings**

Where the Council is satisfied, after having carried out a preliminary investigation against a registered person, other than a registered person in respect of whom the Council holds a delegated power, that he has committed an act or omission which, in its opinion, is not considered to be of a serious nature, it may, notwithstanding section 14(1)(a), administer him a warning or severe warning.

- (h) in section 22(d), by deleting the words “infamous conduct, professional misconduct, negligence or malpractice” and replacing them by the words “professional misconduct or negligence”;
- (i) in section 23(d), by deleting the words “infamous conduct, professional misconduct, negligence or malpractice” and replacing them by the words “professional misconduct or negligence”;
- (j) in section 24(d), by deleting the words “infamous conduct, professional negligence or malpractice” and replacing them by the words “professional misconduct or negligence”;
- (k) in section 25(d), by deleting the words “infamous conduct or any professional misconduct, negligence or malpractice” and replacing them by the words “professional misconduct or negligence”.

## **7. Pharmacy Council Act amended**

The Pharmacy Council Act is amended –

- (a) in section 2, by inserting, in the appropriate alphabetical order, the following new definition –

“dangerous drug” has the same meaning as in the Dangerous Drugs Act;

“professional misconduct or negligence”, in relation to a pharmacist, includes –

- (a) a breach of the Code of Practice;
- (b) a failure to exercise due professional skill or care which results in injury to, or loss of life of, a person;
- (c) a failure to exercise the proper and timely care expected from him;

- (d) the supply, or the dispensing, of a dangerous drug to any person otherwise than is properly required for the treatment of a person or an animal;
  - (e) the supply, or the dispensing, of a dangerous drug to any person which is in excess of the amount that is properly required for the treatment of a person or an animal;
  - (f) the supply, or the dispensing, of a dangerous drug on presentation of a prescription knowing the fictitious nature of any such prescription;
  - (g) an act of fraud or dishonesty in the exercise of his calling;
  - (h) an improper, a disgraceful, a dishonourable or an unworthy act, or any other conduct, act or omission, which brings the profession of pharmacists into disrepute;
- (b) in section 8(3)(b), by deleting the words “an act of misconduct, malpractice, negligence, fraud or dishonesty, or a breach of the Code of Practice” and replacing them by the words “a professional misconduct or negligence, or breach of trust in the discharge of his duties”;
  - (c) in section 18(1)(a)(iii), by deleting the words “, malpractice, negligence, fraud, dishonesty or breach of a code of practice” and replacing them by the words “or negligence”;
  - (d) in section 27 –
    - (i) by repealing subsection (1) and replacing it by the following subsection –
      - (1) The Council may investigate into any complaint of professional misconduct or negligence against a pharmacist.
    - (ii) in subsection (2), by inserting, after paragraph (a), the following new paragraph –
      - (aa) may visit or inspect the premises where the alleged professional misconduct or negligence has occurred;
    - (iii) in subsection (4) –

- (A) by deleting the words “communicate or produce any record, document or article” and replacing them by the words “give evidence, or to communicate or produce any record, document or article,”;
- (B) by inserting, after the words “that person”, the words “to give evidence or”;
- (iv) in subsection (5), by inserting, after the words “that the”, the words “evidence,”;
- (e) by repealing section 28 and replacing it by the following section –

**28. Disciplinary proceedings**

(1) (a) Where, after having carried out a preliminary investigation, the Council determines that there is prima facie evidence of professional misconduct or negligence against the pharmacist, the Council may, subject to subsection (3), institute disciplinary proceedings against him before the Tribunal.

(b) Where disciplinary proceedings are instituted under paragraph (a), the Council shall, at the same time, notify the Ministry thereof.

(2) Where, upon a determination under subsection (1), the Council considers that the conduct, act or omission of the pharmacist is of such a serious nature that he should, in the public interest, instantly cease to practise, the Council –

- (a) may, in the case of a pharmacist in respect of whom the Council does not hold a delegated power, suspend him temporarily as a pharmacist for a period not exceeding such time as the Council –
  - (i) takes any disciplinary measures against him under section 30(4)(a); or
  - (ii) gives him notice, under section 30(6)(a), that the charge against him has not been proved; or
- (b) shall, in the case of a pharmacist in respect of whom the Council holds a delegated power, report the temporary suspension to the Public

Service Commission for the Commission's decision on any such suspension.

(3) Where, pursuant to subsection (2)(a), the Council suspends a pharmacist temporarily, it shall, not later than 7 days of such suspension, institute disciplinary proceedings against him before the Tribunal.

(f) in section 29 –

(i) by repealing subsection (1) and replacing it by the following subsection –

(1) Notwithstanding section 15(1)(b) of the Medical Council Act, in relation to a matter referred to the Tribunal under section 28, the Minister shall, subject to subsection (2), appoint 2 pharmacists as members of the Tribunal, one from the public sector and one from the private sector, who are pharmacists with not less than 10 years' experience.

(ii) in subsection (2), by deleting the words "Prime Minister" and replacing them by the word "Minister";

(g) in section 30 of the principal Act is amended –

(i) by repealing subsection (1) and replacing it by the following subsection –

(1) The Tribunal shall, pursuant to disciplinary proceedings instituted against a pharmacist, hear and determine the matter not later than 90 days after the start of the hearing of the proceedings, except where there is a valid reason, and with the consent of the parties.

(ii) by inserting, after subsection (1), the following new subsection –

(1A) The Tribunal shall, not later than 3 days after a determination under subsection (1), forward to the Council its report and a copy of its proceedings, including any record, document or article produced.

(iii) in subsection (2), by deleting the words "subsection (1)" and replacing them by the words "subsection (1A)";

(iv) by repealing subsections (4), (5) and (6) and replacing them by the following subsections –

(4) Where the report is in relation to a pharmacist other than a pharmacist in respect of whom the Council holds a delegated power, and states that –

- (a) the charge has been proved, the Council may, not later than 14 days after receipt of the report –
  - (i) administer him a reprimand or a severe reprimand;
  - (ii) suspend him as a pharmacist for a period not exceeding 2 years; or
  - (iii) deregister him as a pharmacist; or
- (b)
  - (i) the pharmacist has supplied or dispensed a dangerous drug to any person otherwise than is properly required for the treatment of a person or an animal;
  - (ii) the pharmacist has supplied or dispensed a dangerous drug to any person which is in excess of the amount that is properly required for the treatment of a person or an animal; or
  - (iii) the pharmacist has supplied or dispensed a dangerous drug on presentation of a prescription knowing the fictitious nature of any such prescription,

the Council shall, in addition to any disciplinary measures under paragraph (a), make a recommendation to the Minister in accordance with section 9(6) of the Dangerous Drugs Act.

(5) (a) Where the report referred to in subsection (4) is in relation to a pharmacist in respect of whom the Council holds a delegated power, the Council shall submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations.

(b) Where the punishment inflicted by the Public Service Commission on a pharmacist, in respect of whom the Council holds a delegated power, is dismissal or retirement in the interest of the public service, the Council shall, not later than 14 days of the decision of the Public Service Commission, determine whether or not it shall suspend or deregister him as a pharmacist.

(6) Where there is finding that the charge has not been proved against the pharmacist, the Council shall, not later than 14 days after receipt of the report –

(a) notify the pharmacist, in writing, of such finding; and

(b) where the Council holds a delegated power in respect of the pharmacist, send a copy of the notice required under paragraph (a) to the Public Service Commission.

(h) in section 32, by inserting, after the words “it may”, the words “, notwithstanding section 28(1)(a),”.

## **8. Veterinary Council Act amended**

The Veterinary Council Act is amended, in section 20, by adding the following new paragraph –

(3) Where the Council is satisfied that –

(a) the veterinary surgeon has prescribed a dangerous drug which is in excess of the amount that is properly required for the veterinary treatment of an animal; or

(b) the veterinary surgeon has prescribed a dangerous drug knowing that such a prescription is not required for the veterinary treatment of an animal,

the Council shall, in addition to any disciplinary measures under subsection (1), make a recommendation to the Minister in accordance with section 9(6) of the Dangerous Drugs Act.

## **9. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

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