

recognized by the relevant professional board as acceptable for registration in respect of such profession, but of which qualification he or she is not the holder; or

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

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

[S. 40 amended by s. 7 of Act 33/76, s. 6 of Act 43/80 and s. 37 of Act 89/97 and substituted by s. 38 of Act 29/2007]

CHAPTER IV

DISCIPLINARY POWERS OF PROFESSIONAL BOARDS

[Heading substituted by s. 38 of Act 89/97]

41. Inquiries by professional boards into charges of unprofessional conduct

[Heading substituted by s. 39 of Act 29/2007]

- (1) A professional board shall have power to institute an inquiry into any complaint, charge or allegation of unprofessional conduct against any person registered under this Act, and, on finding such person guilty of such conduct, to impose any of the penalties prescribed in section 42(1).

[Proviso deleted by s. 39 of Act 29/2007]

- (2) A professional board may, whenever it is in doubt as to whether an inquiry should be held, in connection with the complaint, charge or allegation in question consult with or seek information from any person, including the person against whom the complaint, charge or allegation has been lodged.

[S. 41 substituted by s. 39 of Act 89/97]

41A. Manner in which certain investigations may be instituted

- (1) The registrar may, where necessary in order to establish more facts, appoint an officer of the professional board as an investigating officer for the purposes of this section.

[Subs. (1) substituted by s. 40 of Act 89/97 and s. 40 of Act 29/2007]

- (2) If the registrar deems it necessary, he or she may appoint any person other than a member of the professional board, who is not in the full-time employment of the professional board, as investigating officer for a particular investigation, or to assist the investigating officer contemplated in subsection (1) with a particular investigation.

[Subs. (2) substituted by s. 40 of Act 89/97 and s. 40 of Act 29/2007]

- (3) A person appointed in terms of subsection (2) shall, for the purpose of the investigation in question, have the same powers and duties as the investigating officer contemplated in subsection (1).

- (4) The registrar shall issue to every person appointed under subsection (1) or (2) a certificate to the effect that he or she has so been appointed, and, in the case of a person appointed for, or to assist with, a particular investigation, that he or she has been appointed for such investigation, and in the exercise of his or her powers and the carrying out of his or her duties that person shall on demand produce such certificate.

- (5) If the registrar deems it necessary for the achievement of the objects of this Act, he or she may institute or cause to be instituted an investigation-

- (a) into an alleged contravention of, or failure to comply with, any provision of this Act;
- (b) in order to determine if any provision of this Act applies to or has been contravened by a registered person; and
- (c) into a charge, complaint or allegation of unprofessional conduct by a registered person.

[Subs. (5) substituted by s.40 of Act 29/2007]

(6)

- (a) An investigating officer carrying out an investigation in terms of this section may request any person to-
 - (i) produce to him or her any book, document, electronic data or thing which such investigating officer on reasonable grounds believes to relate to the matter which he or she is investigating, and which such investigating officer on reasonable ground believes to be-
 - (aa) on any premises which are owned by or in the possession of or controlled by such person; or
 - (bb) in the possession of or under the control of or upon such person; and
 - (ii) furnish such explanations to him or her as he or she may reasonably require in relation to any such book, document, electronic data or thing.
- (b) Subject to paragraph (h), an investigating officer carrying out an investigation in terms of this section must apply to a magistrate or a judge for a search warrant for-
 - (i) any premises on which the investigating officer on reasonable ground believes one or more articles referred to in paragraph (a) may be found; or
 - (ii) any person whom the investigating officer on reasonable grounds believes to have in his or her possession or upon his or her person or under his or her control one or more articles referred to in paragraph (a).
- (c) The magistrate or judge to whom an application in terms of paragraph (b) is made may issue the search warrant if it appears to him or her from information on oath that there are reasonable grounds for believing that any such article is-
 - (i) upon or at any such premises within his or her area of jurisdiction; or
 - (ii) in the possession or under the control of or upon any such person within his or her area of jurisdiction.
- (d) A search warrant issued under paragraph (c) must require the investigating officer and, if so requested by the investigating officer, any named police official or police officials who have agreed to assist in executing the search warrant, to seize the article or articles in question, and must to that end authorise such investigating officer and police official or police officials to search any person identified in the warrant or to enter and search any premises identified in the warrant and to search any person found on or at such premises.
- (e) A search warrant issued under paragraph (c) must be executed by day, unless the magistrate or judge issuing the warrant in the warrant authorises the execution thereof by night.

- (f) A search warrant may be issued under paragraph (c) on any day and must be of force until it is executed or cancelled by the magistrate or judge who issued it or, if such person is not available, by a person with like authority.
- (g) An investigating officer executing a warrant under this section must after such execution, upon demand of any person searched or who owns or is in possession of or controls any premise searched or whose rights in respect of any search or article seized under the warrant may have been affected, hand to such person a copy of the warrant so executed.
- (h) An investigating officer carrying out an investigation in terms of this section may without a search warrant issued under paragraph (c) search any person or premises for the purpose of seizing any article referred to in paragraph (a) if-
 - (i) the person concerned consent to such search for and the seizure of the article in question;
 - (ii) the person who may consent to the search of the premises consents to such search for and the seizure of the article in question; or
 - (iii) the investigating officer on reasonable grounds believes that a search warrant will be issued to him or her under paragraph (c) if he or she applies for such warrant and that the delay in obtaining such warrant would defeat the object of the search.
[Subs. (6) amended by s. 40 of Act 89/97 and substituted by s.40 of Act 29/2007]
- (7)
[Subs. (7) deleted by s. 40 of Act 89/97]
- (8)
 - (a) The registrar or an investigating officer who carries out an investigation under this section, shall compile a report of the investigation, and a report compiled by an investigating officer shall be submitted to the registrar.
 - (b)
 - (i) If such a report reveals *prima facie* evidence of unprofessional conduct contemplated in this Act and no complaint or charge has been lodged or laid or allegation regarding the conduct in question has been made for the purpose of an inquiry in terms of section 41, such report shall be deemed to be a complaint made for that purpose, and the registrar shall serve a copy thereof on the registered person concerned.
 - (ii) If such a report reveals *prima facie* evidence which makes it desirable that an investigation in terms of section 51 be instituted, the registrar shall serve a copy thereof on the health committee to further investigate and deal with the matter in terms of this Act.
 - (iii) If such a report does not reveal *prima facie* evidence of unprofessional conduct contemplated in this Act, the registrar shall serve a copy thereof on the registered person concerned.
[Para (b) amended by s. 40 of Act 89/97 and substituted by s. 40 of Act 29/2007]
 - (c) To the extent that such a report contains statements of witnesses which would have been admissible as oral evidence at an inquiry in terms of section 41 or an investigation in terms of section 51, the provisions of section 213 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply *mutatis mutandis* in respect of those statements at such an inquiry.

[Para (c) amended by s. 40 of Act 89/97 and substituted by s. 40 of Act 29/2007]

(9)

(a) A person who carries out or assists with the carrying out of an investigation in terms of this section, shall keep or assist in preserving confidentiality in respect of all facts which come to his or her notice in the performance of his or her functions, and shall not disclose any such fact to any person except the registrar, the president, chairperson of a relevant professional board or the public prosecutor concerned in the case of an offence in terms of this Act, or by order of a court.

(b) Notwithstanding the provisions of paragraph (a), no personal particulars regarding a patient shall be disclosed to any person except by order of a court or with the consent of the presiding officer at an inquiry contemplated in section 41 or an investigation contemplated in section 51.

[Subs. (9) amended by s. 40 of Act 89/97 and substituted by s. 40 of Act 29/2007]

(10)

(a)

[Para. (a) deleted by s. 40 of Act 89/97]

(b) Such an order shall be executed as if it were a judgment in a civil case in a magistrate's court.

(11) Any person who-

(a) refuses or neglects to produce any book, document, electronic data or thing to any person who is in terms of this section authorized to ask for it;

(b) hinders or obstructs the registrar or an investigating officer in the exercise of his or her powers or the carrying out of his or her duties;

(c) pretends that he or she is the registrar or an investigating officer;

(d) contravenes a provision of subsection (9),

shall be guilty of an offence and liable on conviction-

(i) in the case of a contravention contemplated in paragraph (a), (b) or (c), to a fine or to imprisonment for a period not exceeding twelve months or to both a fine and such imprisonment;

(ii) in the case of a contravention contemplated in paragraph (d), to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

[Subs. (11) substituted by s. 40 of Act 89/97 and s. 40 of Act 29/2007]

(12) The provisions of this section shall be without prejudice to the power of any authority to institute an investigation into any alleged contravention of, or failure to comply with, any provision of this Act.

[S. 41A inserted by s. 5 of Act 58/84]

42. Matters for and procedure at inquiry by professional boards

(1) Any person registered under this Act who, after a determination made by a preliminary committee of inquiry on minor transgressions or an inquiry held a professional conduct committee, is found guilty of improper or disgraceful conduct,

or conduct which, when regard is had to such person's profession, is improper or disgraceful, shall be liable to one or more of the following penalties:-

- (a) A caution or a reprimand or a reprimand and a caution;
- (b) suspension for a specified period from practising or performing acts specially pertaining to his or her profession;
- (c) removal of his or her name from the register;
- (d) a prescribed fine;
- (e) a compulsory period of professional service as may be determined by the professional board; or
- (f) the payment of the costs of the proceedings or a restitution or both.
[Subs. (1) amended by s. 7 of Act 79/90 and s. 41 of Act 89/97 and substituted by s. 41 of Act 29/2007]
- (1A) If an appeal is lodged against a penalty of erasure or suspension from practice, such penalty shall remain effective until the appeal is finalised.
[Subs. (1A) inserted by s. 41 of Act 89/97 and substituted by s.41 of Act 29/2007]
- (2) Every person whose conduct is the subject of an inquiry under section 41, shall be afforded an opportunity, by himself or herself or through his or her legal representative, of answering the charge and of being heard in his or her defence.
- (3)
[Subs. (3) deleted by s. 41 of Act 89/97]
- (4)
 - (a) For the purposes of any inquiry held in terms of section 41, a professional board may take evidence and may, under the hand of the chairperson of the professional board or the registrar, summon witnesses and require the production of any book, record, document or thing, and may, through the chairperson of the professional board or the person presiding at the inquiry, administer an oath to any witness or accept an affirmation from him or her, and may examine any book, record, document or thing which any witness had been required to produce.
[Para. (a) substituted by s. 15 of Act 58/92 and s. 41 of Act 89/97]
 - (b) A summons to appear before a professional board as a witness or to produce to it any book, record, document or thing shall be, as nearly as practicable, in the prescribed form, shall be signed by the chairperson of the professional board or the registrar and shall be served either by registered letter sent through the post or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.
[Para. (b) substituted by s. 41 of Act 89/97]
- (c) Every person summoned in terms of this subsection shall be bound to obey the summons and any person who, having duly been summoned -
 - (i) refuses, or without sufficient cause fails, to attend and give evidence relevant to the inquiry at the time and place specified in the summons;
 - (ii) refuses to take the oath or to make an affirmation when required by the chairperson of a professional board or the person presiding at the inquiry to do so;
[Subpara. (ii) substituted by s. 15 of Act 58/92 and s. 41 of Act 89/97]

- (iii) refuses to produce any book, record, document or thing which he or she has in terms of the summons been required to produce,

(iv)

[Subpara. (iv) deleted by s. 41 of Act 89/97]

shall be guilty of an offence and on conviction liable to a fine determined by the Minister in consultation with the Minister of Justice by notice in the *Gazette*: Provided that every person so summoned shall be entitled to all the privileges to which a witness subpoenaed to give evidence before a provincial division of the High Court is entitled.

[Words following para. (c)(iii) amended by s. 41 of Act 89/97 and substituted by s. 41 of Act 29/2007]

- (5) The chairperson of a professional board, where the professional board itself holds an inquiry in terms of section 41, or the chairperson of a professional conduct committee of a professional board, where such a committee holds an inquiry under powers delegated to it by the professional board, may appoint a person with adequate experience in the administration of justice to be present as an assessor at such an inquiry and to advise the professional board or such committee, as the case may be, on matters of law, procedure or evidence.

[Subs. (5) substituted by s. 41 of Act 89/97 and s. 41 of Act 29/2007]

(6)

[Subs. (6) deleted by s. 8 of Act 33/76]

- (7) The professional board may, if it deems fit, and subject to such conditions as it may determine -

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

[Subs. (7) amended by s. 41 of Act 89/97]

- (8) If a person registered in terms of this Act (in this section referred to as the respondent) is alleged to be guilty of unprofessional conduct and the professional board on reasonable grounds is of the opinion that it shall impose a fine as determined by the Minister in consultation with the Minister of Justice by notice in the *Gazette* on conviction after an inquiry under section 41, the professional board may issue a summons as prescribed on which an endorsement is made by the professional board or the registrar that the respondent may admit that he or she is guilty of the said conduct and that he or she may pay the fine stipulated without appearing at the said inquiry.

[Subs. (8) added by s. 7 of Act 79/90, amended by GN R1140/94 and GN R19/97 and substituted by s. 41 of Act 89/97 and s. 41 of Act 29/2007]

- (9) Where a summons in terms of subsection (8) is issued against a respondent, he or she may, without appearing at an inquiry in terms of section 41, admit his or her guilt in respect of the conduct referred to in subsection (1) by paying the stipulated fine (in this section referred to as the admission of guilt fine) to the relevant professional board before a date specified in the summons.

[Subs. (9) added by s. 7 of Act 79/90 and substituted by s. 41 of Act 89/97 and s. 41 of Act 29/2007]

(10)

- (a) Any penalty imposed under this section, excluding an admission of guilt fine, shall be paid to the professional board within 14 days after such imposition.
- (b) The imposition of a penalty shall have the effect of a civil judgment of the magistrate's court of the district in which the inquiry under section 41 took place.
[Subs. (10) added by s. 7 of Act 79/90 and substituted by s. 41 of Act 89/97]
- (11) The Minister may on the recommendation of the professional board amend the amount mentioned in subsection (8) by notice in the *Gazette*.
[Subs. (11) added by s. 7 of Act 79/90 and substituted by s. 41 of Act 89/97]

43. Postponement of imposition of penalty and suspension of operation of penalty

- (1) Where a professional board finds a person referred to in section 42(1) guilty of conduct referred to therein, it may -
 - (a) postpone for such period and on such conditions as may be determined by it, the imposition of the penalty; or
 - (b) impose any penalty mentioned in paragraph (b), (c) or (d) of section 42(1), but order the execution of such penalty or any part of the penalty to be suspended for such period and on such conditions as may be determined by it.
[Para. (b) substituted by s. 8 of Act 79/90]
[Subs. (1) amended by s. 42 of Act 89/97]
- (2)
 - (a) If at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1)(a), the professional board is satisfied that the person concerned has observed all the relevant conditions, the professional board shall inform the person concerned that no penalty will be imposed upon him or her.
 - (b) If the execution of a penalty or any part of a penalty has been suspended in terms of subsection (1)(b), and the professional board is satisfied that the person concerned has observed all the relevant conditions, the professional board shall inform such person that such penalty or part thereof will not be executed.
 - (c) If the execution of a penalty or any part of a penalty has been suspended in terms of subsection (1)(b) and the person concerned fails to observe any of the conditions of suspension, the professional board shall put such penalty or part thereof into operation, unless such person satisfies the professional board that the non-observance of the condition concerned was due to circumstances beyond his or her control.
[Subs. (2) amended by s. 8 of Act 79/90 and substituted by s. 42 of Act 89/97]

44. Effect of suspension or removal from register

Every person who has been suspended or whose name has been removed from the register in terms of section 42 shall, if his or her profession is one which, under this Act, cannot be lawfully practised by an unregistered person, be disqualified from practising his or her profession and his or her registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his or her name has been restored to the register by the professional board.

[S. 44 amended by s. 43 of Act 89/97 and substituted by s. 42 of Act 29/2007]

45. Cognizance by professional boards of conduct of registered persons under certain circumstances

- (1) Every registered person who, either before or after registration, has been convicted of any offence by a court of law may be dealt with by the professional board in terms of the provisions of this Chapter if the professional board is of the opinion that such offence constitutes unprofessional conduct, and shall be liable on proof of the conviction to one or other of the penalties referred to in section 42: Provided that, before imposition of any penalty, such person shall be afforded an opportunity of tendering an explanation to the professional board in extenuation of the conduct in question.

[Subs. (1) substituted by s. 44 of Act 89/97]

- (2) Whenever in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of unprofessional conduct on the part of a registered person, or of conduct which, when regard is had to such person's profession, is unprofessional, the court shall direct that a copy of the record of such proceedings, or such portion thereof as is material to the issue, shall be transmitted to the relevant professional board.

[Subs. (2) substituted by s. 44 of Act 89/97 and s. 43 of Act 29/2007]

- (3)

[Subs. (3) deleted by s. 44 of Act 89/97]

- (4)

[Subs. (4) deleted by s. 44 of Act 89/97]

46. Penalty for false evidence

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

47. Limitation of liability

Save as is provided in this Act, the council or a professional board or any member or officer thereof shall not be liable in respect of any act done in good faith or duty performed in accordance with this Chapter.

[S. 47 substituted by s. 54 of Act 88/96 and s. 45 of Act 89/97]

48.

[S. 48 amended by s. 7 of Act 43/80 and repealed by s. 46 of Act 89/97]

49. Council to make rules relating to offences under this Chapter

- (1) The council shall, in consultation with a professional board, from time to time make rules specifying the acts or omissions in respect of which the professional board may take disciplinary steps under this Chapter: Provided that the powers of a professional board to inquire into and deal with any complaint, charge or allegation relating to a health profession under this Chapter, shall not be limited to the acts or omissions so specified.

[Subs. (1) substituted by s. 47 of Act 89/97]

- (2)

[Subs. (2) deleted by s. 44 of Act 29/2007]

50.

[S. 50 amended by s. 9 of Act 33/76 and repealed by s. 48 of Act 89/97]

51. Regulations relating to investigations in respect of impaired persons registered in terms of this Act

The Minister may, after consultation with the council and the professional boards, make regulations relating to investigations in respect of students or persons registered in terms of this Act who appear to be impaired, on the assessment of their condition, the conditions to be imposed on their registration or practice, their suspension or removal from practising, revocation of conditions, suspension or removal and on acts of unprofessional conduct committed before or during assessment or investigation.

[S. 51 substituted by s. 49 of Act 89/97 and s. 45 of Act 29/2007]

CHAPTER V

GENERAL AND SUPPLEMENTARY PROVISIONS

52. Medical practitioners and dentists may dispense medicines

(1)

(a) Every medical practitioner or dentist whose name has been entered in the register contemplated in subsection (2) shall, on such conditions as the council may determine in general or in a particular case, be entitled to personally compound or dispense medicines prescribed by himself or herself or by any other medical practitioner or dentist with whom he or she is in partnership or with whom he or she is associated as principal or assistant or locum tenens, for use by a patient under treatment of such medical practitioner or dentist or of such other medical practitioner or dentist: Provided that he or she shall not be entitled to keep an open shop or pharmacy.

(b) The council may, on such conditions as it may determine, exempt any medical practitioner or dentist from the requirement of registration contemplated in paragraph (a), and may, after an investigation, withdraw such exemption.

(2) The registrar shall keep a register in which he or she shall enter, at the direction of the council, the name and such other particulars as the council may determine of a medical practitioner or dentist -

(a) who within three months after the commencement of the Medical, Dental and Supplementary Health Service Professions Amendment Act, 1984, submits proof to the satisfaction of the registrar that at such commencement he or she compounded or dispensed medicine as contemplated in subsection (1)(a) in the practice of his or her profession; or

(b) who informs the registrar in the prescribed manner of his or her intention to compound or dispense medicine in the practice of his or her profession as contemplated in subsection (1)(a).

(3) The council may, after an investigation, direct that the name of any person be removed from the register contemplated in subsection (2), or prohibit him or her for a specified period from making use of the right contemplated in subsection (1).

(4) The council may determine fees to be paid for the entering of a name in the register contemplated in subsection (2).

[S. 52 substituted by s. 6 of Act 58/84]

