

REPUBLIC OF SOUTH AFRICA

TRADITIONAL HEALTH PRACTITIONERS BILL

*(As introduced in the National Council of Provinces)(proposed section 76(2));
see Resolutions passed by National Council of Provinces, Minutes of Proceedings of
National Council of Provinces, 8 June 2007, p 1040, and by National Assembly,
Minutes of Proceedings of National Assembly, 14 June 2007 p 1095)
(The English text is the official text of the Bill)*

(SELECT COMMITTEE ON SOCIAL SERVICES)

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BILL

To establish the Interim Traditional Health Practitioners Council of South Africa; to provide for a regulatory framework to ensure the efficacy, safety and quality of traditional health care services; to provide for the management and control over the registration, training and conduct of practitioners, students and specified categories in the traditional health practitioners profession; and to provide for matters connected therewith.

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

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CHAPTER 1 45

Definitions

1. In this Act, unless the context indicates otherwise—
“accredited institution” means an institution, approved by the Council, which certifies that a person or body has the required capacity to perform the functions within the sphere of the National Quality Framework contemplated in the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);

“Council” means the Interim Traditional Health Practitioners Council of South Africa established by section 4;

“Department of Health” means the national Department of Health;

“diviner” means a person who engages in traditional health practice and is registered as diviner under this Act; 5

“health establishment” means any public or private institution, facility, agency, building or place or part thereof, whether organised for profit or not, that is operated or designed to provide health services;

“health services” includes inpatient or outpatient treatment, diagnostic or therapeutic interventions, nursing and rehabilitative, palliative, convalescent and preventative health services; 10

“herbalist” means a person who engages in traditional health practice and is registered a herbalist under this Act;

“member” means a member of the Council and includes a member of a committee of the Council; 15

“Minister” means the Minister responsible for the national Department of Health;

“prescribed” means prescribed by regulation;

“register” means a register contemplated in section 19(1)(c);

“registrar” means the registrar of the Council appointed in terms of section 18;

“rule” means a rule made under section 40 or 48; 20

“speciality”, in relation to any of the categories, includes any particular sphere of extensive knowledge and skill in which a traditional health practitioner specialises;

“student” means a person training to be a traditional health practitioner;

“this Act” includes any regulation, rule, proclamation or order issued or made thereunder; 25

“traditional birth attendant” means a person who engages in traditional health practice and is registered as a traditional birth attendant under this Act;

“traditional health practice” means the performance of a function, activity, process or service based on a traditional philosophy that includes the utilisation of traditional medicine or traditional practice and which has as its object— 30

(a) the maintenance or restoration of physical or mental health or function; or
 (b) the diagnosis, treatment or prevention of a physical or mental illness; or
 (c) the rehabilitation of a person to enable that person to resume normal functioning within the family or community; or
 (d) the physical or mental preparation of an individual for puberty, adulthood, pregnancy, childbirth and death, 35

but excludes the professional activities of a person practising any of the professions contemplated in the Pharmacy Act, 1974 (Act No. 53 of 1974), the Health Professions Act, 1974 (Act No. 56 of 1974), the Nursing Act, 1974 (Act No. 50 of 1974), the Allied Health Professions Act, 1982 (Act No. 63 of 1982), or the Dental Technicians Act, 1979 (Act No. 19 of 1979), and any other activity not based on traditional philosophy; 40

“traditional health practitioner” means a person registered under this Act in one or more of the categories of traditional health practitioners;

“traditional medicine” means an object or substance used in traditional health practice for— 45

(a) the diagnosis, treatment or prevention of a physical or mental illness; or
 (b) any curative or therapeutic purpose, including the maintenance or restoration of physical or mental health or well-being in human beings, 50

but does not include a dependence-producing or dangerous substance or drug;

“traditional philosophy” means indigenous African techniques, principles, theories, ideologies, beliefs, opinions and customs and uses of traditional medicines communicated from ancestors to descendants or from generations to generations, with or without written documentation, whether supported by science or not, and which are generally used in traditional health practice; 55

“traditional surgeon” means a person registered as a traditional surgeon under this Act;

“traditional tutor” means a person registered under any of the prescribed categories of traditional health practice who has been accredited by the Council to teach traditional health practice or any aspect thereof;

“unprofessional conduct” means any act or omission which is improper or disgraceful or dishonourable or unworthy of the traditional health profession. 5

Purpose of Act

2. The purpose of this Act is to—
- (a) establish the Interim Traditional Health Practitioners Council of South Africa;
 - (b) provide for the registration, training and practices of traditional health practitioners in the Republic; and 10
 - (c) serve and protect the interests of members of the public who use the services of traditional health practitioners.

Application of Act

3. This Act applies to—
- (a) traditional health practice in the Republic; and 15
 - (b) traditional health practitioners and students engaged in or learning traditional health practice in the Republic.

CHAPTER 2

ESTABLISHMENT AND GOVERNANCE OF INTERIM TRADITIONAL HEALTH PRACTITIONERS COUNCIL OF SOUTH AFRICA 20

Establishment of Interim Traditional Health Practitioners Council

4. (1) A juristic person to be known as the Interim Traditional Health Practitioners Council of South Africa is hereby established.

(2) The registrar must convene the first meeting of the Council within three months of the commencement of this Act. 25

(3) The term of office for the Council is three years, but the Minister may, in order to facilitate the implementation of, or development of amendments to, this Act, extend the term of office of the Council for a further period of not more than 24 months.

Objects of Council

5. The objects of the Council are to— 30
- (a) promote public health awareness;
 - (b) ensure the quality of health services within the traditional health practice;
 - (c) protect and serve the interests of members of the public who use or are affected by the services of traditional health practitioners;
 - (d) promote and maintain appropriate ethical and professional standards required 35 from traditional health practitioners;
 - (e) promote and develop interest in traditional health practice by encouraging research, education and training;
 - (f) promote contact between the various fields of training within traditional health practice in the Republic and to set standards for such training; 40
 - (g) compile and maintain a professional code of conduct for traditional health practice; and
 - (h) ensure that traditional health practice complies with universally accepted health care norms and values.

Functions of Council

6. (1) The Council may—
- (a) make enquiries and conduct investigations into complaints and allegations concerning the conduct of registered traditional health practitioners; 5
 - (b) issue guidelines concerning traditional health practice; 5
 - (c) hire, purchase or otherwise acquire any movable property or proprietary right, accept and administer any trust or donations and lease or dispose of property so acquired, but may only acquire or dispose of immovable property with the approval of the Minister, granted with the agreement of the Minister of Finance; 10
 - (d) make rules on matters necessary or expedient for the proper implementation of this Act; 10
 - (e) consider any matter affecting the registration of traditional health practitioners and make representations or take other action in connection therewith;
 - (f) in writing and on such conditions as the Council may determine, delegate or assign any power or duty of the Council to any committee or a member of any committee, but such delegation or assignment does not divest the Council of the responsibility or accountability concerning the performance of the function involved; 15
 - (g) cause copies of the registers or of supplementary lists containing amendments to the relevant registers, to be printed and published; 20
 - (h) require from a registered traditional health practitioner such information as is necessary to enable the Council to carry out its functions effectively;
 - (i) approve minimum requirements pertaining to the education and training of traditional health practitioners in consultation with relevant departments, quality assessment bodies or a body of traditional health practitioners accredited by the Council for this specific purpose; 25
 - (j) appoint such staff as the Council considers necessary to assist the Council in performance of its functions; and
 - (k) generally do all such things as are necessary to enable the Council to perform its functions in terms of this Act. 30
- (2) The Council must—
- (a) in the interests of the public, promote and regulate, liaison between traditional health practitioners and other health professionals registered under any law;
 - (b) implement health policies determined by the Minister concerning traditional health practice; 35
 - (c) advise the Minister on any matter falling within the scope of this Act, including the health needs of the people of South Africa, and the traditional health practice, and on matters of democracy, transparency, equity, accessibility and community involvement affecting the occupation of traditional health practice; 40
 - (d) communicate to the Minister information of public importance acquired by the Council in the course of the performance of its functions under this Act;
 - (e) consult and liaise with relevant authorities on matters that affect traditional health practitioners and involve traditional health practice; 45
 - (f) in consultation with the Minister, determine policy, and in accordance with policy determinations, make decisions regarding matters relating to the educational framework, fees, funding, registration procedure, code for professional conduct and ethics, disciplinary procedure and scope of traditional health practice; 50
 - (g) control and exercise authority in respect of all matters concerning the training of persons in traditional health practice and the conduct of its members;
 - (h) in consultation with the Minister, control and regulate traditional health practice;
 - (i) establish registers for the various categories of traditional health practitioners; 55

- (j) register persons who engage in traditional health practice in accordance with the prescribed requirements for registration;
- (k) in such circumstances as may be prescribed, or where authorised by this Act, remove a person's name from the register or, 'must' upon payment of the prescribed fee, restore a person's name to the register; 5
- (l) obtain from any registered traditional health practitioner payment of the prescribed fee;
- (m) in such circumstances as may be prescribed, suspend or cancel any traditional health practitioner's registration; and
- (n) publish information regarding the objects and functions of the Council and its operations and the rights that any member of the public has under this Act. 10

Constitution of Council

7. The Council consists of a maximum of 22 members, appointed by the Minister in the prescribed manner, of whom—

- (a) one must be a traditional health practitioner appointed as the chairperson of the Council by the Minister; 15
- (b) one is the vice-chairperson of the Council and is elected by the members of the Council from amongst their number;
- (c) nine must be traditional health practitioners, one from each province, of whom each must have been in practice for not less than five years; 20
- (d) one must be an employee in the service of the Department of Health;
- (e) one must be appointed on account of his or her knowledge of the law;
- (f) one must be a medical practitioner who is a member of the Health Professions Council of South Africa;
- (g) one must be a pharmacist who is a member of the South African Pharmacy Council; 25
- (h) three must be community representatives; and
- (i) one must be a representative from each category of traditional health practitioners defined in this Act.

Vacation of office and filling of vacancies 30

8. (1) A member of the Council must vacate his or her office if—

- (a) he or she ceases to be a South African citizen;
- (b) he or she is diagnosed as having a mental illness or becomes a mental health care user as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002); 35
- (c) he or she has been convicted of an offence and sentenced to imprisonment without the option of a fine, whether or not such sentence has been suspended;
- (d) he or she is disqualified in terms of any law from practising as a traditional health practitioner;
- (e) he or she ceases to hold the necessary qualification for his or her designation or appointment; 40
- (f) he or she tenders his or her resignation, in writing, to the Minister;
- (g) he or she is absent from two consecutive meetings of the Council without the leave of the Council;
- (h) his or her estate is sequestrated or he or she has entered into a composition with his or her creditors; 45
- (i) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the Council;
- (j) the Minister, in the public interest or on grounds of misconduct, incapacity or incompetence, terminates his or her membership; or 50
- (k) the period for which the member was appointed has expired and his or her appointment is not renewed by the Minister.

(2) If a member of the Council dies or vacates his or her office before the expiration of his or her term of office, the Minister must appoint another person to fill the vacancy for the remainder of the period of the term of office for which such member was appointed. 55

Disqualification as member of Council

9. A person may not be appointed as a member of the Council if he or she—
- (a) is not a South African citizen;
 - (b) has been convicted of an offence in respect of which he or she was sentenced to imprisonment without the option of a fine; 5
 - (c) has been found guilty of unprofessional conduct under this Act;
 - (d) has been diagnosed as having a mental illness or is a mental health care user as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002);
 - (e) is an unrehabilitated insolvent or has entered into a composition with his or her creditors; 10
 - (f) is disqualified in terms of any law, from practising as a traditional health practitioner; or
 - (g) is, at the time of his or her appointment, or was, during the preceding 12 months—
 - (i) a member of the National Assembly, any provincial legislative body, National Council of Provinces or any municipal council; or 15
 - (ii) an office bearer or employee of any party, organisation or body of a political nature.

Chairperson and vice-chairperson

10. (1) The chairperson and vice-chairperson hold office for the duration of the term of office for which they have been appointed by the Minister to the Council. 20
- (2) In the absence of the chairperson of the Council or if the chairperson is for any reason unable to act as chairperson, the vice-chairperson must perform the functions of the chairperson.
- (3) If both the chairperson and the vice-chairperson are absent from any meeting, the members present must elect one of their number to preside at that meeting and, until the chairperson or vice-chairperson resumes duty, to perform all the functions of the chairperson. 25
- (4) If the office of the chairperson becomes vacant, the Minister must appoint a person from among the remaining members of the Council, or any other person, in terms of section 7(a) and the person so appointed holds office for the unexpired portion of the period for which his or her predecessor was appointed. 30
- (5) If the office of the vice-chairperson becomes vacant, the members of the Council must, at the first meeting thereafter or as soon as it may be convenient, elect from among their number a new vice-chairperson and that member holds office for the unexpired portion of the period for which his or her predecessor was elected. 35
- (6) If a chairperson vacates his or her office without terminating his or her membership of the Council, the Minister must appoint a new chairperson from amongst the members of the Council.

Meetings of Council 40

11. (1) The registrar must, in consultation with the chairperson, convene the meetings of the Council.
- (2) The Council must meet at least twice annually to conduct its business and hold such additional meetings as it may determine.
- (3) A special meeting of the Council— 45
- (a) may be convened by the chairperson at any time;
 - (b) must be convened by the chairperson at such place and on such date as he or she may determine within 30 days of receipt by him or her of a written request by the Minister or of a written request signed by at least six of the members: Provided that such written request must state clearly the purpose for which the meeting is to be convened. 50

Quorum and procedure at meeting

- 12.** (1) A quorum for any meeting of the Council is 12 persons.
- (2) Subject to subsection (6), each member has one vote on a question before the Council.
- (3) Any decision by the Council must be taken by a majority vote at a meeting of the Council at which a quorum is present. 5
- (4) Notwithstanding anything to the contrary in this Act, the majority of members of the Council or any of its committees, is one half of the total number of the members present plus one.
- (5) Only members of the Council have voting rights. 10
- (6) A decision by the majority of the members of the Council present at any meeting constitutes the decision of the Council: Provided that in the event of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.
- (7) A decision taken by the Council or an act performed under the authority of the Council is not invalid merely by reason of— 15
- (a) an interim vacancy in the Council; or
 - (b) the fact that a person who is not entitled to sit as a member of the Council, sat as a member at the time when the decision was taken or the act was authorised by the required majority of members present at the time and entitled to sit as members. 20

Executive committee of Council

- 13.** (1) There is an executive committee of the Council consisting of not more than eight members, being—
- (a) the chairperson;
 - (b) the vice-chairperson; 25
 - (c) three members appointed in terms of section 7(c);
 - (d) a member appointed in terms of section 7(d);
 - (e) a member appointed in terms of section 7(e); and
 - (f) a member appointed in terms of section 7(g).
- (2) The three members of the executive committee, contemplated in paragraph (c) of subsection (1) must be elected by the members of the Council. 30

Other committees of Council

- 14.** (1) Subject to subsection (3), the Council may establish such other committees, including disciplinary committees, as it considers necessary, consisting of such a number of persons as the Council may determine, including at least one member of the Council who must be the chairperson of such committee. 35
- (2) The Council may, subject to subsection (3), delegate to any committee contemplated in subsection (1), or to any member of that committee, such of its powers as it may from time to time determine, but the Council is not divested of any power so delegated. 40
- (3) Notwithstanding subsection (1), the Council may establish *ad hoc* disciplinary appeal committees consisting of—
- (a) as chairperson, either a retired judge, a retired senior magistrate or an attorney with a minimum of 10 years of experience;
 - (b) not more than two registered traditional health practitioners; and 45
 - (c) a member of the Council appointed under section 7(h).
- (4) A disciplinary appeal committee contemplated in subsection (3) has the power to vary, confirm or set aside a finding of a disciplinary committee established under subsection (1) or to refer the matter back to the relevant disciplinary committee with such instructions as it thinks fit. 50
- (5) A decision by a disciplinary committee, unless appealed against, is of force and effect from the date determined by that committee.
- (6) Where a matter has been considered by a disciplinary appeal committee, the decision of the disciplinary appeal committee, unless appealed against in a court of law, is of force and effect from the date determined by that committee. 55

Remuneration of members of Council and committees

15. The members of the Council and members of the committees of the Council must be paid the remuneration and allowances determined by the Minister, in consultation with the Minister of Finance.

Funds of Council 5

16. (1) The funds of the Council consist of—
- (a) money appropriated by Parliament;
 - (b) fees raised by the registrar in the performance of his or her functions under this Act;
 - (c) penalties contemplated in sections 34, 38 and 43; and 10
 - (d) any other fees contemplated in this Act.

(2) The Council must utilise its funds to defray expenses incurred by the Council and the office of the registrar in the performance of their functions.

(3) The Council must, with the concurrence of the Minister and the Minister of Finance, open an account with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990), and deposit therein all money received under subsection (1). 15

(4) The Council may, with the approval of the Minister and the Minister of Finance, invest any money deposited under subsection (3), which is not required for immediate use, with an approved institution.

(5) Any surplus which at the close of the Council's financial year stands to the credit of the Council must be carried forward to the next financial year as a credit in the account of the Council. 20

(6) The Council may establish and operate a reserve fund and deposit therein such amounts as it considers necessary or expedient.

Accounting officer 25

17. The registrar is the accounting officer of the Council and must ensure that—
- (a) proper records of all financial transactions, assets and liabilities of the Council and the registrar are kept;
 - (b) as soon as is practicable, but not later than four months after the end of each financial year, annual financial statements in respect of the financial year in question are prepared and submitted to the Council and the Minister for approval; 30
 - (c) the financial affairs of the Council and the office of the registrar comply with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

CHAPTER 3 35

REGISTRAR, STAFF OF REGISTRAR AND REGISTRATION PROCEDURES

Appointment of registrar

18. (1) The Minister, after consultation with the Council—
- (a) must appoint a registrar; and
 - (b) may dismiss such person. 40

(2) The appointment of the registrar is subject to the conclusion of a written performance agreement entered into by the Minister and that person.

Functions of registrar

19. (1) The registrar—
- (a) is the secretary and accounting officer of the Council; 45
 - (b) must perform the functions assigned to him or her in terms of this Act by the Council;
 - (c) must keep registers—
 - (i) in which he or she enters the names of traditional health practitioners and students; 50

- (ii) in which he or she on instruction of the Council, enters the name, physical address, qualifications, date of initial registration and any other particulars, determined by the Council, including the category or speciality of the person so registered;
 - (iii) from which he or she must remove the names of deceased registered persons or other persons whose names must be removed in the prescribed manner; 5
 - (iv) in which he or she must update, from time to time, the relevant particulars of the person so registered.
- (2) (a) The registrar may, in writing, and on such conditions as he or she determines, delegate or assign any power or duty to any staff member, unless the Minister prohibits a specific delegation or assignment. 10
- (b) A delegation or assignment made under paragraph (a) does not—
- (i) divest the registrar of the responsibility or accountability concerning the performance of the function involved; 15
 - (ii) prohibit the performance of the function involved by the registrar.
- (c) A delegation or assignment made under paragraph (a) may be withdrawn, but such withdrawal does not affect any right which may have accrued to a person as a result of the function performed before the delegation or assignment was withdrawn.

Staff of registrar 20

20. (1) Subject to the written instructions of the Council, the registrar may appoint such members of staff as are necessary to perform the work arising from or connected with the Council's functions.
- (2) The terms and conditions of service of staff of the registrar are determined by the Council and approved by the Minister, in consultation with the Minister of Finance. 25
- (3) The Council may, with the approval of the Minister, in consultation with the Minister of Finance, establish, manage and administer any pension fund for the benefit of the staff of the registrar.

Application for registration to practise

21. (1) No person may practise as a traditional health practitioner within the Republic unless he or she is registered in terms of this Act. 30
- (2)(a) Any person who wishes to register as a traditional health practitioner or a student must apply to the registrar.
- (b) An application contemplated in paragraph (a) must be accompanied by—
- (i) proof that the applicant is a South African citizen; 35
 - (ii) character references by people not related to the applicant;
 - (iii) proof of the applicant's qualifications;
 - (iv) the prescribed registration fee; and
 - (v) any further information relating to the application that the Council may consider necessary. 40
- (3) If the registrar is satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act and upon receipt of the prescribed registration fee, the registrar must issue a registration certificate authorising the applicant to practise as a traditional health practitioner within the Republic. 45
- (4) If the registrar is not satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, he or she may refuse to issue a registration certificate to the applicant, but must, if so required by the applicant, submit the application to the Council for a decision.
- (5) The registrar must only register a traditional health practitioner if the registrar is satisfied that the person applying for registration is suitably qualified to be a traditional health practitioner or if the Council is so satisfied. 50

- (6) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act must be removed from the register and—
- (a) a record of the reason for every such removal must be made in the register;
 - (b) the person in respect of whom such removal has been made must be notified thereof in the manner contemplated in section 23(2); and 5
 - (c) any certificate issued in respect of such registration is deemed to have been cancelled as from the date on which notice has so been given.

Qualifications for registration

- 22.** (1) The Minister may, on the recommendation of the Council, prescribe the minimum qualifications to be obtained by virtue of examinations conducted by an accredited institution, educational authority or other examining authority in the Republic. 10
- (2) Any qualification contemplated in subsection (1), obtained on its own or conjointly with any other qualification, entitles a holder thereof to registration in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with the prescribed conditions or requirements. 15

Removal from and restoration of name to register

- 23.** (1) The registrar must, on instruction from the Council, remove from the relevant register the name of any person— 20
- (a) who has died;
 - (b) who has ceased to be a citizen of the Republic and has permanently left the Republic;
 - (c) who has been absent from the Republic for a continuous period of more than three years; 25
 - (d) who has failed to pay any relevant prescribed fee;
 - (e) who has failed to notify the registrar of any change in residential or postal address or the address of his or her practice within six months after any such change;
 - (f) who has requested that his or her name be removed from the register, in which case such practitioner may be required to lodge with the registrar an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are pending or are likely to be instituted against him or her; 30
 - (g) who has been found guilty of improper or disgraceful conduct in terms of this Act; 35
 - (h) whose name has been removed from the register, record or roll of any education and training institution or other body from which he or she received the qualification by virtue of which he or she was registered;
 - (i) who has been registered through error or fraud;
 - (j) who has failed to furnish the registrar, within a period to be determined by the Council, with such information as the registrar may require under this Act; 40
 - (k) whose registration is proved to the satisfaction of the Council to have been made in error or through fraudulent misrepresentation or concealment of material facts or information or in circumstances not authorised by this Act; or
 - (l) who, after an assessment was made in the manner contemplated in section 41, has been found to be mentally impaired. 45
- (2) The registrar must give notice of the removal of a person's name from the register in terms of paragraph (b) up to and including paragraph (l) of subsection (1) by registered mail addressed to such person at the address of such person as it appears in the register. 50
- (3) From the date on which the notice contemplated in subsection (2) was given—
- (a) any registration certificate issued under this Act to the person concerned is considered to have been cancelled; and

- (b) a person whose name has been removed from the register must cease to practise as a traditional health practitioner and is precluded from performing any act which he or she, in his or her capacity as a registered person, was entitled to perform,
until such time as his or her name is restored to the register. 5
- (4) The registrar must restore the name of a person whose name has in terms of this section been removed from the register if the person concerned—
- (a) applies on the prescribed form for restoration of his or her name to the registrar;
 - (b) pays the prescribed fee, if any; 10
 - (c) complies with such other requirements as the Council may, from time to time, determine; and
 - (d) is otherwise eligible for registration.

Issue of duplicate registration certificate, certificate of status and extract from register or certificate 15

24. (1) The registrar may, on application by a registered traditional health practitioner, issue a duplicate certificate of registration if the applicant—
- (a) provides proof of his or her identity to the satisfaction of the registrar;
 - (b) provides an affidavit in which he or she confirms that the certificate of registration has been lost or destroyed; and 20
 - (c) pays the prescribed fee determined by the Council.
- (2) The registrar may, upon payment of the prescribed fee, issue to any registered person a certificate of status containing—
- (a) particulars of such person's registration; and
 - (b) a statement to the effect that— 25
 - (i) the said person is not disqualified from practising his or her occupation; and
 - (ii) no disciplinary steps are pending against him or her in terms of this Act.
- (3) The registrar may issue a certified extract from the register or a certificate contemplated in subsection (2) under his or her hand to any person upon payment of the prescribed fee. 30
- (4) A certificate may be issued subject to certain conditions imposed by the Council and such conditions must be indicated on the certificate.

Custody and publication of registers

25. The registers must be kept at the office of the registrar, and the Council may, at intervals determined by it, cause to be printed and published copies of the registers or supplementary lists showing additions, removals, amendments or revisions effected since the last publication of such copies of the complete registers. 35

Register as proof

26. (1) A copy of the most recent published issue of a register or any supplementary list contemplated in section 25, and certified by the registrar, is *prima facie* proof in all legal proceedings of the facts therein recorded and the absence of the name of any person from such copy is proof, unless there is credible evidence to the contrary, that such person is not registered in terms of this Act. 40
- (2) For the purposes of subsection (1) a certified extract or a certificate contemplated in section 24(3) bearing a date subsequent to the date of publication of the register or supplementary list contemplated in subsection (1) is "credible evidence to the contrary". 45
- (3) If the registrar issues a certificate, dated later than the date of publication of the register or supplementary list contemplated in subsection (1), to the effect that a practitioner's name has been removed from the register since the date of publication of the register or supplementary list and has not been restored thereto, that certificate is proof, in the absence of credible evidence to the contrary, that such person is not registered in terms of the provisions of this Act. 50

(4) A certificate of registration is proof of registration for a period of one year after its date only and thereafter an annual practising certificate issued upon payment of the prescribed annual fee and upon the submission of such information as may be required by the Council to enable it to keep accurate statistics on human resources in the health field, is proof of registration in the absence of credible evidence to the contrary. 5

Right of appeal

27. (1) Any person who is aggrieved by a decision of the registrar may lodge an appeal to the Council within 30 days from date of that decision.

(2) Any person who is aggrieved by a decision of the Council may appeal to the appropriate High Court against such decision. 10

Conditions relating to continuing education

28. The Council may from time to time make rules which prescribe—

- (a) conditions relating to continuing education and training to be undergone by persons registered in terms of this Act in order to retain such registration;
- (b) the nature and extent of continuing education and training to be undergone by persons registered in terms of this Act; and
- (c) the criteria for recognition by the Council of continuing education and training courses and of education institutions offering such courses. 15

CHAPTER 4

DISCIPLINARY INQUIRIES AND INVESTIGATIONS BY COUNCIL 20

Laying of complaints

29. (1) Any person may lay a complaint with the Council about the way in which he or she was treated by a registered health practitioner or student.

(2) In laying a complaint, the person contemplated in subsection (1) must follow the prescribed procedure. 25

Inquiries into charges of misconduct

30. (1) Notwithstanding anything to the contrary in this Act, the Council may institute an inquiry into any complaint, allegation or charge of unprofessional conduct against any person registered in terms of this Act and, on finding such person guilty of such conduct, to impose any of the penalties contemplated in section 34: Provided that in the case of a complaint, charge or allegation which forms or is likely to form the subject of a criminal case in a court of law, the Council may postpone the holding of an inquiry until such case has been concluded. 30

(2) If the Council is in doubt as to whether any inquiry should be held in connection with a complaint, charge or allegation, it may, in connection with the allegation, charge or complaint in question, consult with or seek further information from any person, including the person against whom the allegation, charge or complaint has been lodged. 35

Manner in which certain investigations may be instituted

31. (1) The registrar may, with the approval of the chairperson of the Council, appoint a member of the Council as the investigating officer for the purposes of this section. 40

(2) Notwithstanding subsection (1), the registrar may, with the approval of the chairperson of the Council and on such conditions as the Council determines, appoint any person who is not a member of the Council and not in the full-time employment of the Council as the investigating officer for a particular investigation or to assist the investigating officer contemplated in subsection (1) with a particular investigation. 45

(3) A person appointed in terms of subsection (2) has the same powers and duties regarding the investigation as the investigating officer contemplated in subsection (1).

- (4)(a) The registrar must issue to the person appointed under subsection (1) or (2), as the case may be, 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 so been appointed for such investigation.
- (b) The person so appointed must on demand produce such certificate. 5
- (5) The registrar may institute an investigation—
- (a) into an alleged contravention of, or failure to comply with, this Act;
 - (b) to determine if a specific provision of this Act applies to a particular registered person;
 - (c) into a charge, complaint or allegation of improper or disgraceful conduct by a 10 registered person; or
 - (d) into the affairs or conduct of a registered person, if any person files a complaint with the registrar, supported by an affidavit setting out the allegations contained in such complaint.

Entering and search of premises, attachment and removal of documents 15

- 32.** (1) An investigating officer contemplated in section 31(1) or (2) may, with the approval of the Council and without an entry or search warrant, enter and search any premises, other than a private dwelling, to carry out an investigation contemplated in section 31(5) if—
- (a) a person who is competent to do so, consents to such entry, search or seizure; 20 or
 - (b) the investigating officer, on reasonable grounds, believes—
 - (i) that a warrant would be issued to him or her if he or she were to apply for that warrant; and
 - (ii) the delay in obtaining that warrant would defeat the purpose of the entry. 25
- (2) An entry and search under this section must be executed by day, unless the execution thereof by night is justifiable and necessary.
- (3) An investigating officer must identify himself or herself to any person concerned during entry or search.
- (4) During the search of the premises, or at any other time, an investigating officer 30 may—
- (a) request any person found on the premises to immediately, or at a time and place determined by the investigating officer—
 - (i) produce any book, record, document or thing which relates to, or which on reasonable grounds is believed to relate to, the matter under 35 investigation, and which is or was on the premises or in the possession or custody or under control of that person or his or her employee or agent;
 - (ii) furnish such explanations as may be required in respect of any such book, record, document or thing;
 - (b) request from any person who has or is suspected on reasonable grounds of 40 having in his or her possession or custody or under his or her control any book, record, document or thing relating to the matter which is being investigated, to produce it immediately or at a time and place determined by the investigating officer, for examination of such book, record, document or thing, or to make extracts or copies from such book or document, and may further request that 45 person to furnish such explanations as are required in respect of any entry in that book or document.
- (5) A person who carries out an investigation in terms of this section—
- (a) must preserve secrecy in respect of any facts which come to his or her notice in the performance of his or her functions; and 50
 - (b) may not disclose any such fact to any person except to the registrar, or to the chairperson, or any other member of the Council, or to the public prosecutor concerned in the case of an offence in terms of this or any other Act, or by order of a court.
- (6) Notwithstanding subsection (5), no personal particulars regarding a patient may 55 be disclosed to any person except in terms of a court order or with the consent of the presiding officer at an inquiry contemplated in this Act.

(7) The court order contemplated in subsection (6) must be executed as if it were a judgment in a civil case in a magistrate's court.

(8) Any person who—

(a) refuses or neglects to produce any book, record, document or thing to a person authorised under this section; 5

(b) hinders or obstructs the investigating officer in the exercise of his or her powers or in the performance of his or her duties;

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

(d) contravenes a provision of subsection (5) or (6),

is guilty of an offence and liable on conviction— 10

(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 six months or to both a fine and such imprisonment; or

(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. 15

(9) This section does not preclude any other authority that is otherwise authorised from instituting an investigation into any alleged contravention of, or failure to comply with, any provision of this Act.

Report by investigating officer 20

33. (1) The investigating officer responsible for an investigation under this Act must compile a report of the investigation and submit that report to the registrar.

(2) If the report contemplated in subsection (1) reveals evidence of improper or disgraceful conduct contemplated in this Act and no complaint, charge or allegation regarding such conduct has been made for the purpose of an inquiry in terms of section 30, such report is deemed to be a complaint made for the purpose of an inquiry and the registrar must serve a copy thereof on the registered person concerned. 25

(3) If the report contemplated in subsection (1) reveals evidence which, in the opinion of the chairperson of the Council, makes it desirable that an inquiry on the grounds of an apparent impairment of the complainant's rights be instituted, the registrar must serve a copy thereof on the registered person concerned. 30

(4) If the report contemplated in subsection (1) does not reveal evidence of unprofessional conduct contemplated in this Act, the registrar must serve a copy thereof on the registered person concerned.

(5) To the extent that the report contemplated in subsection (1) contains statements of witnesses which would have been admissible as evidence at an inquiry into impairment of rights or into complaints, charges or allegations of unprofessional conduct, section 213 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes in respect of those statements at such an inquiry. 35

Procedure at inquiry and relevant matters 40

34. (1) A person registered under this Act who, after an inquiry held by the Council, is found guilty of improper or disgraceful conduct, or conduct which, when regard is had to such person's profession, is improper or disgraceful, is liable to one or more of the following penalties:

(a) A caution or a reprimand or both; 45

(b) suspension for a specified period from practising or performing acts pertaining to his or her profession;

(c) removal of his or her name from the register;

(d) a prescribed fine;

(e) a period of compulsory community service determined by the Council; 50

(f) the payment of the costs of the proceedings; or

(g) restitution of any money paid by the complainant to the registered practitioner.

(2) If an appeal is lodged against a penalty of removal of a registered practitioner's name from the register or suspension from practice, such penalty remains effective until the appeal is heard. 55

- (3) The Council may, subject to such conditions as it determines—
- (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. 5
- (4) In respect of inquiry proceedings contemplated in section 30, the Council must—
- (a) give notice of that inquiry to the person who is the subject of the inquiry;
 - (b) give an opportunity to that person to either represent himself or herself or to obtain legal representation at the inquiry proceedings;
 - (c) afford that person an opportunity to state his or her case in response to the allegations. 10
- (5) The Council may, at any inquiry proceedings contemplated in section 30—
- (a) take evidence under oath or affirmation;
 - (b) on the direction of either the registrar or the chairperson of the Council, as the case may be, summon witnesses to give evidence at such proceedings; 15
 - (c) require the production of any book, record, document or thing;
 - (d) through either the chairperson of the Council or the presiding officer at the inquiry, as the case may be, administer an oath to any witness or accept an affirmation from such witness; or
 - (e) examine any book, record, document or thing which any witness was required to produce at the proceedings. 20
- (6) A summons to appear before the Council as a witness or to produce to it any book, record, document or thing must be—
- (a) as nearly as practicable, in the prescribed form;
 - (b) signed by the chairperson of the Council or the registrar, as the case may be; 25
 - and
 - (c) served either by registered letter sent through the post or in the same manner as it would have been served if it had been a subpoena issued by a magistrate's court.
- (7) Any person who, having been summoned— 30
- (a) refuses, or without sufficient cause fails, to attend and give evidence relevant to the inquiry at the time and place specified in the summons;
 - (b) refuses to take the oath or to make an affirmation when required to do so by the chairperson of the Council or the presiding officer, as the case may be, at the inquiry; or 35
 - (c) refuses or fails without sufficient cause to produce any book, record, document or thing which he or she has in terms of the summons been required to produce,
- is guilty of an offence and on conviction liable to any sentence which may be imposed on a witness subpoenaed to give evidence in a civil trial in the High Court who is convicted of a similar offence: Provided that every person so summoned is entitled to all the privileges to which a witness subpoenaed to give evidence before a provincial division of the High Court is entitled. 40
- (8) The chairperson of the Council may appoint a person with adequate experience in the administration of justice to be present as an assessor at an inquiry and to advise the Council or the disciplinary committee, as the case may be, on matters of law, procedure or evidence. 45
- (9) If a person registered in terms of this Act (in this section referred to as the accused) is alleged to be guilty of unprofessional conduct and the Council on reasonable grounds is of the opinion that it must impose a fine determined by the Minister in consultation with the Minister of Justice by notice in the *Gazette* on conviction after an inquiry contemplated in terms of section 30 was held, the Council may issue a summons in the manner prescribed on which an endorsement is made by the Council that the accused 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. 50 55

(10) Where a summons as contemplated in subsection (9) is issued against an accused in terms of this Act, the accused may, without appearing at an inquiry in terms of section 30, admit to 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 Council before a date specified in the summons. 5

(11) Any penalty imposed under this section, excluding an admission of guilt fine, must be paid to the Council within 14 days after such imposition.

(12) The imposition of a penalty has the effect of a civil judgment of the magistrate's court of the district in which the inquiry contemplated in section 30 took place.

(13) The Minister may, on the recommendation of the Council, amend the amount mentioned in subsection (9) by notice in the *Gazette*. 10

Postponement of imposition of penalty and suspension of penalty or part thereof

35. (1) Where a person has been found guilty of any conduct contemplated in section 30, the Council may—

- (a) postpone the imposition of a penalty for such period and on such conditions as it determines; or 15
- (b) impose any penalty contemplated in section 34(1)(b), (c) or (d), but order the execution of such penalty or any part thereof to be suspended for such period and on such conditions as it determines.

(2) If, at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1)(a), the Council is satisfied that the practitioner concerned has observed all the relevant conditions, the Council must inform such practitioner that the penalty contemplated in section 34 will not be imposed upon him or her. 20

(3) If the execution of the penalty or any part thereof has been suspended in terms of subsection (1)(b) and the Council is satisfied that the practitioner concerned has observed all the relevant conditions throughout the period of suspension, the Council must inform that practitioner that the penalty contemplated in section 34 will not be executed. 25

(4) If the execution of a penalty or any part thereof has been suspended in terms of subsection (1)(b) and the practitioner concerned fails to comply with one or more of the conditions of suspension, the Council must put such penalty or part thereof into operation unless the practitioner satisfies the Council that the failure to comply with the conditions concerned was due to circumstances beyond his or her control. 30

Effect of suspension or removal from register 35

36. A person who has been suspended or whose name has been removed from the register in terms of section 34 is disqualified from carrying on his or her profession and his or her registration certificate is 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 Council.

Cognisance by Council of conduct under certain circumstances 40

37. (1) A registered person who—

- (a) has been convicted of any offence by a court of law; and
- (b) where the Council is of the opinion that such offence constitutes unprofessional conduct as contemplated in section 30,

may be dealt with by the Council in terms of this Chapter and is liable on conviction to one or more of the penalties contemplated in section 34: Provided that, before imposition of any penalty, such person must be afforded an opportunity to address the Council in extenuation of the conduct in question. 45

(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 person registered in terms of this Act, the court must direct that a copy of the record of such proceedings, or such portion thereof as is material to the issue, be transmitted to the Council. 50

Penalty for false evidence

38. A person who gives false evidence on oath or affirmation at any inquiry held in terms of this Act, knowing such evidence to be false, is guilty of an offence and liable on conviction to the penalties which a court may impose for the crime of perjury.

Limitation of liability

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39. Neither the Council nor any member, officer or employee thereof is liable for any act done in good faith under this Act.

Rules relating to offences

40. (1) The Council must make rules specifying the acts or omissions in respect of which the Council may take disciplinary steps in terms of this Act: Provided that the powers of the Council to make inquiries into and deal with any complaint, charge or allegation contemplated in this Act are not limited to the acts or omissions so specified. 10

(2) No rule made in terms of subsection (1) or any amendment or withdrawal thereof is of force and effect until such rule is approved by the Minister and published in the *Gazette*. 15

Inquiries in respect of mentally impaired registered persons

41. The Council may hold an inquiry in the prescribed manner in respect of a person registered in terms of this Act who appears to be mentally impaired and if that person is found on assessment to be impaired, the Council may—

- (a) impose prescribed conditions relating to the registration of that person; or 20
- (b) suspend or remove such person from practice.

CHAPTER 5**GENERAL AND SUPPLEMENTARY PROVISIONS****Fees charged by registered persons**

42. (1) Every person registered under this Act must before rendering any traditional health services inform the person to whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he or she intends to charge for such services. 25

(2) Any traditional health practitioner who in respect of any traditional health services rendered by him or her claims payment from any person (in this section referred to as the patient), must, subject to the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998), where applicable, furnish the patient with a detailed account within a reasonable period. 30

(3)(a) The patient may, within three months after receipt of the account contemplated in subsection (2), apply in writing to the Council for a determination of the amount which, in the opinion of the Council, should have been charged for the services to which the account relates. 35

(b) The Council must, as soon as possible after receipt of the application, determine the said amount and notify the traditional health practitioner and the patient, in writing, of the amount so determined. 40

(c) Before the Council determines an amount, it must afford the practitioner concerned an opportunity to submit to the Council, in writing, the relevant factors to be considered by the Council in support of the amount charged.

(4) The Minister may, after consultation with the Council, prescribe the procedure which the Council must follow in disposing of an application under subsection (3). 45

(5) The Council may, from time to time, determine and publish the fees used by the Council as the norm for the determination of amounts contemplated in subsection (3).

(6)(a) A claim for payment, which is the subject of an application contemplated in subsection (3) and of which notice has been given by the Council or the patient to the traditional health practitioner concerned, is not recoverable until a determination has been made in terms of subsection (3).

(b) Only the amount so determined is payable and if the patient has paid to the traditional health practitioner concerned an amount exceeding the amount so determined, the traditional health practitioner must repay the patient the amount by which that payment exceeds the amount so determined. 5

(7) This section does not divest the Council of any of its functions in terms of this Act with regard to acts or omissions in respect of which it may take disciplinary steps. 10

(8) For the purposes of this section “fee” includes payment in kind.

False representations, false entries in register and impersonation

43. (1) A person is guilty of an offence if he or she—

(a) by means of a false representation procures or attempts to procure for himself or herself or any other person, registration or any certificate or decision referred to in this Act; 15

(b) makes or causes to be made any unauthorised entry or alteration in or removal from a register, certified copy thereof, or extract therefrom or any certificate issued under this Act;

(c) wilfully destroys, damages or renders illegible any entry in the register or, without the permission of the holder thereof, any certificate issued under this Act; 20

(d) forges or, knowing it to be forged, utters any document purporting to be a certificate issued under this Act;

(e) impersonates any person registered in terms of this Act; or 25

(f) supplies or offers to supply to any person not registered under this Act or any other law, an instrument or appliance which can be used, or is claimed to be effective, for the purpose of diagnosing, treating or preventing physical or mental defects, illnesses or deficiencies, whilst knowing that such instrument or appliance will be used by such unregistered person for the purpose of performing for gain an act which such unregistered person is in terms of this Act or any other law prohibited from performing for gain. 30

(2) A person found guilty of an offence contemplated in subsection (1) is liable on conviction to a fine or to a period of imprisonment or to both a fine and a period of imprisonment. 35

Limitations in respect of unregistered persons

44. (1) No remuneration is recoverable in respect of any act which relates to the profession of a traditional health practitioner if such an act is performed by a person who is not authorised under this Act to perform such act for gain.

(2) No person other than a person registered in terms of this Act, and holding the necessary qualifications, is eligible for or entitled to hold any appointment to any establishment, institution, body, organisation or association, whether public or private, if such appointment involves the performance of any act which an unregistered person, in terms of this Act, may not perform for gain: Provided that nothing in this subsection precludes the training of traditional health practitioners or students under the supervision of a suitably qualified traditional health practitioner, or the employment in any hospital or similar institution of any person undergoing training with a view to registration in terms of this Act, under the supervision of a suitably qualified traditional health practitioner or other health professional. 45

Investigation of matters relating to teaching or training of certain classes of persons

45. (1) Despite any law to the contrary, a person who is authorised by the Council, in writing, to investigate any matter relating to the teaching or training of any person or class of persons undergoing such teaching or training for the purpose of qualifying themselves for practising the profession to which this Act applies, may, in the manner contemplated in section 32(1) for the purpose of making such investigation, enter any institution or premises utilised in the teaching or training of any such person or class of persons. 5

(2) A person who prevents a person authorised in terms of subsection (1) from entering any institution or premises contemplated in that subsection, or who hinders that person from pursuing his or her investigation, is guilty of an offence and liable on conviction to a fine or to a period of imprisonment or to both a fine and a period of imprisonment. 10

Exemptions 15

46. (1) The Minister may, after consultation with the Council, by notice in the *Gazette* exempt any juristic person or class of juristic persons specified in the notice, either generally or subject to such conditions as may be specified in the notice, from the operation of this Act, so as to enable such juristic person to practise as a traditional health practitioner, subject to the registration of such juristic person under this Act. 20

(2) Any reference in this Act or any other law to a person registered in terms of this Act to practise as a traditional health practitioner or to a partner or partnership in relation to such registered person, is deemed to include a reference to a juristic person contemplated in subsection (1) or to a member of such a juristic person, as the case may be, unless the context indicates otherwise. 25

(3) The Minister may, after consultation with the Council, at any time by notice in the *Gazette* amend or repeal any notice issued under subsection (1).

Regulations

47. (1) The Minister may, after consultation with the Council, make regulations relating to— 30

- (a) the appointment of members of the Council;
- (b) (i) the registration by the Council of students in any prescribed category of traditional health practice undergoing education or training at any accredited training institution or educational authority or with any traditional tutor, the fees payable in respect of such registration and the removal by the Council from the register in question of the names of such students; 35
- (ii) the minimum standards of education and training required of students as a condition precedent to registration; 40
- (iii) the duration of the educational programme to be followed by students at an educational or training institution or with a traditional tutor;
- (iv) the minimum requirements of the curricula and the minimum standards of education or examinations which must be maintained at every educational or training institution or by every traditional tutor offering training in traditional health practice, in order to secure registration and recognition of the qualifications obtained under this Act; 45
- (c) (i) the minimum age and standards of general education required of a candidate for examination for a certificate entitling the holder thereof to registration in terms of this Act; 50
- (ii) the courses of study and the training required for examinations;
- (iii) institutions at which, or persons with whom, educational courses or training may be undertaken and any other requirements relating to such study or training; 55
- (iv) the registration by the Council of persons undertaking educational courses or undergoing training and the fees payable in respect of such registration;
- (v) the fees payable by candidates for examinations;

- (vi) the appointment and remuneration of examiners for examinations;
- (vii) any matter incidental to examinations or the issue of certificates by the Council;
- (viii) the nature and duration of the practical training to be completed by persons before they may be registered; 5
- (ix) the nature and duration of the training to be completed by a person who has obtained a qualification as a traditional health practitioner, but who is not yet registered as such, before he or she may be registered as such;
- (d) the conditions under which a registered person may practise as a traditional health practitioner or practise in any category of traditional health practice; 10
- (e) (i) the registration of students of traditional health practice, including the recording of particulars relating to their training and proof of the fulfilment of the requirements thereof;
- (ii) the health establishments or other institutions, if any, at which or the persons with whom such training may be undertaken; 15
- (iii) any other matter incidental to the registration or training of students;
- (f) (i) the registration of the categories of registered persons, which includes diviners, herbalists, traditional birth attendants and traditional surgeons; 20
- (ii) the registration of specialities;
- (iii) the requirements to be satisfied, including the experience to be obtained, the nature and duration of the training to be undergone and the qualifications or additional qualifications required from a person before any category or speciality may be registered; 25
- (iv) the circumstances under which any applicant for the registration of any category or speciality may be exempted from any of such requirements;
- (v) conditions in respect of the practices of persons whose categories or specialities have been registered, including conditions restricting the practice of any such person to the category or speciality registered in his or her name; 30
- (g) the conduct of an inquiry contemplated in section 30, including—
- (i) the manner in which complaints or charges brought against a registered person must be lodged;
- (ii) the method of summoning an accused person and the penalties for failure or refusal on the part of any such person to attend or for obstructing or interrupting the proceedings; 35
- (iii) the continuation of a disciplinary inquiry, after a plea has been lodged, by the committee conducting the inquiry, should one or more members of the committee be unable to continue to serve: Provided that at least two of the original members of the committee must be available to continue with the inquiry; 40
- (iv) the procedure to be followed to lodge an appeal with an appeal committee and the time within which an appeal may be lodged;
- (v) any other matter relating to the conduct of such an inquiry or appeal; 45
- (h) (i) inquiries contemplated in section 41 relating to students or persons registered under this Act who appear to be mentally impaired;
- (ii) the assessment of the condition of mentally impaired persons;
- (iii) the conditions to be imposed on mentally impaired person's registration or practice; 50
- (iv) the suspension or removal from practice of mentally impaired persons;
- (v) the revocation of any of the imposed conditions, or of suspension or removal from practice;
- (vi) acts of unprofessional conduct committed before or during assessment or investigation of mentally impaired persons. 55
- (i) the procedure which the Council must follow in disposing of an application brought under section 42(3);

- (j) traditional medicines in order to protect the public and to ensure safety of use, administration or application;
 - (k) standards of traditional health practice in order to ensure that practices are not detrimental to the health of patients or the general public;
 - (l) scopes of practice of the various categories of traditional health practitioners; 5
 - (m) any disease contemplated in section 49(1)(g) to be terminal; and
 - (n) generally any matter which it is necessary to prescribe in order to effect the smooth implementation of this Act and the transition of traditional health practice from an unregulated to a regulated occupation.
- (2) The provisions of any regulation made under paragraph (e) or (f) of subsection (1) relating to fees payable under section 23(4) may vary according to the reason for the removal of a person's name from the register and the period during which it was so removed. 10
- (3) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith. 15
- (4) The Minister must, not less than three months before any regulation is made under subsection (1)—
- (a) publish the regulation in the *Gazette* together with a notice declaring his or her intention to make such regulation; and
 - (b) invite interested persons to comment thereon or to make representations with regard thereto. 20
- (5) Subsection (4) does not apply in respect of—
- (a) any regulation which has been amended by the Minister in consequence of representations received by him or her as a result of the notice published in terms of subsection (4); and 25
 - (b) any regulation in respect of which the Council advises the Minister that the public interest requires it to be made without delay.

Rules

- 48.** (1) The Council may make rules relating to—
- (a) the conduct of the business and the procedure at meetings of the Council and committees of the Council and the manner in which minutes of such meetings must be kept; 30
 - (b) the manner in which—
 - (i) contracts must be entered into on behalf of the Council;
 - (ii) the accounts of the Council must be kept; and 35
 - (iii) money accruing to the Council must be disposed of;
 - (c) the allowances which may be paid to members of the Council or to members of committees of the Council;
 - (d) the duties and the conditions of service of the registrar and other officers appointed under this Act; 40
 - (e) any fees other than prescribed fees payable in terms of this Act;
 - (f) the various registers to be kept under this Act, the certificates which may be issued under this Act and the manner in which alterations may be effected in such registers;
 - (g) the forms to be completed and the documents to be submitted by an applicant for purposes of registration or restoration to the register; 45
 - (h) the returns and information to be furnished by a person registered under this Act;
 - (i) any other matter which must or may be promulgated as rules under this Act.
- (2) The Council must, not less than three months before any rule is made under this Act— 50
- (a) publish such rule in the *Gazette* together with a notice declaring the Council's intention to make such rule; and
 - (b) invite interested persons to comment thereon or to make representations with regard thereto. 55

Offences

- 49.** (1) A person who is not registered as a traditional health practitioner or as a student in terms of this Act is guilty of an offence if he or she—
- (a) for gain practises as a traditional health practitioner, whether or not purporting to be registered; 5
 - (b) for gain—
 - (i) physically examines any person;
 - (ii) performs any act of diagnosing, treating or preventing any physical defect, illness or deficiency in respect of any person;
 - (iii) advises any person on his or her physical or mental state; 10
 - (iv) by reason of information provided by any person or obtained from such person in any manner whatsoever—
 - (aa) diagnoses such person’s physical or mental state;
 - (bb) advises such person on his or her physical or mental state;
 - (cc) supplies or sells to or prescribes for such person any traditional medicine or treatment; 15
 - (v) prescribes or provides any traditional medicine, substance or thing; or
 - (vi) performs any other act specially pertaining to the profession;
 - (c) except in accordance with any other law, performs any act having as its object— 20
 - (i) the diagnosis, treatment or prevention of any physical defect, illness or deficiency in any person; and
 - (ii) obtaining by virtue of the performance of such act, either for himself or herself or for any other person, any benefit by way of deriving profit from the sale or disposal of any traditional medicine, foodstuff or substance or by way of any donation or gift or by way of providing accommodation, or obtaining, either for himself or herself or for any other person, any gain whatsoever; 25
 - (d) pretends, or holds himself or herself out, to be a traditional health practitioner or student (whether or not purporting to be registered), of whatever description, of physical defects, illnesses or deficiencies; 30
 - (e) uses the name of traditional health practitioner, student, healer or doctor or any name, title, description or symbol indicating, or calculated to lead persons to infer, that he or she is the holder of any qualification as a traditional health practitioner or of any other qualification enabling him or her to diagnose, treat or prevent physical defects, illnesses or deficiencies, or that he or she is registered under this Act as a traditional health practitioner or a student; 35
 - (f) except in accordance with any other law, by words, conduct or demeanour holds himself or herself out to be able, qualified or competent to diagnose, treat or prevent physical defects, illnesses or deficiencies or to prescribe or supply any traditional medicine, substance or thing in respect of such defects, illnesses or deficiencies; or 40
 - (g)
 - (i) diagnoses, treats or offers to treat, or prescribes treatment or any cure for, cancer, HIV and AIDS or any other prescribed terminal disease; 45
 - (ii) holds himself or herself out to be able to treat or cure cancer, HIV and AIDS or any other prescribed terminal disease or to prescribe treatment therefor; or
 - (iii) holds out that any article, compound, traditional medicine or apparatus is or may be of value for the alleviation, curing or treatment of cancer, HIV and AIDS or any other prescribed terminal disease. 50
- (2) For the purposes of subsection (1) “cancer” includes all neoplasms, irrespective of their origin, including lymphoma and leukaemia.
- (3) A person who is not registered as a traditional health practitioner, is guilty of an offence if he or she— 55

- (a) pretends to be so registered in respect of such occupation; or
- (b) uses any name declared by regulation to be a name which may not be used.

(4) A person found guilty of an offence in terms of this section is liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment

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(5) This section does not apply to a medical practitioner or dentist contemplated in the Health Professions Act, 1974 (Act No. 56 of 1974).

Payment of annual fees

50. (1) The Minister may, on the recommendation of the Council, by notice in the *Gazette* prescribe a fee to be paid annually to the Council by the registered persons concerned: Provided that in prescribing such fee the Minister on advice by the Council may differentiate between persons according to whether they have been registered before or after a date specified in the notice and may vary the amount of such fee according to whether it is paid before or after a specific date.

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(2) If a person who is liable to pay any annual fee prescribed in terms of subsection (1), fails or refuses to pay such fee within the period specified in the notice in question, the Council may recover payment of such fee by action in a competent court.

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(3) If a person's name has been removed from the register in terms of this Act he or she must pay the outstanding annual fee before his or her name may be restored to the register.

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(4) The Council may, by resolution, in writing, exempt for an indefinite or definite period any registered person specified in the resolution from payment of any annual fee prescribed in terms of subsection (1).

Transitional provisions

51. No person is subject to legal or disciplinary action or to any penalty contemplated in this Act for engaging in traditional health practice during the period of one year following the date of commencement of this Act without being registered to do so.

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Short title and commencement

52. This Act is called the Traditional Health Practitioners Act, 2004, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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MEMORANDUM ON THE OBJECTS OF THE TRADITIONAL HEALTH PRACTITIONERS BILL

1. BACKGROUND

On 8 and 14 June 2007 the National Council of Provinces and the National Assembly, respectively, passed resolutions which—

- (a) noted that—
 - (i) on 18 August 2006 the Constitutional Court declared the *Traditional Health Practitioners Act* (Act No. 35 of 2004) invalid, and that the order of invalidity is suspended for a period of 18 months to enable Parliament to re-enact the statute in a manner that is consistent with the Constitution;
 - (ii) the 18-month suspension period expires on 16 February 2008; and
 - (iii) the Rules do not provide specifically for Parliament to deal with legislation that has been declared invalid;
- (b) resolved that—
 - (i) the above-mentioned statute be re-enacted, in compliance with the court order;
 - (ii) the legislation be deemed introduced in the National Council of Provinces, as the First House;
 - (iii) the Act, as it now exists, be deemed as the text before Parliament, as extensive work has been done during Parliament's previous consideration of the legislation; and
- (c) resolved and noted, respectively, that the Select Committee on Social Services be put in charge of the Bills before the Council.

2. OBJECTS OF BILL

The Bill aims to—

- (a) control and regulate traditional health practice in the Republic;
- (b) assist in the promotion of the health of the population of the Republic;
- (c) ensure quality of health care in traditional health practice;
- (d) protect and serve the interests of members of the public who use or are affected by the services of traditional health practitioners;
- (e) determine policy with regard to traditional health practitioners and traditional health practice in matters of education, fees, finance, registration, professional conduct, ethics, disciplinary procedure, scope of traditional health practice, inter-professional matters and the maintenance of professional competence;
- (f) ensure the maintenance and observation of ethical and professional standards by traditional health practitioners;
- (g) promote and develop the traditional health profession by encouraging research, education and training in traditional health practice;
- (h) promote communication between the various fields of training in traditional health practice in the Republic and to promote the standards of such training in the Republic;
- (i) maintain and enhance the dignity of the profession and the integrity of traditional health practitioners;
- (j) promote a traditional health practice which complies with universally accepted health care norms and values with a view to improving the quality of life of the general public;
- (k) create a registry for persons who engage in traditional health practice in accordance with the prescribed requirements for registration;
- (l) guide the profession;
- (m) create a consultative process with the relevant authorities in matters affecting traditional health practitioners and matters which involve traditional health practice;
- (n) promote and regulate, in the interests of the public, liaison between traditional health practitioners and other health professionals registered in terms of any other law;
- (o) give effect to health policies set by the Minister concerning traditional health practice;
- (p) communicate to the Minister information of public importance acquired by the council in the course of the performance of its functions under this Act.

3. FINANCIAL IMPLICATIONS FOR STATE

The Department of Health has advised that the start-up costs for the Council will have to be carried by the State. With the passage of time the Council should achieve a greater degree of financial independence as more and more traditional health practitioners pay registration fees. Full details of these are contained in the proposed Bill.

4. PARLIAMENTARY PROCEDURE

- (a) The Parliamentary Legal Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely "Health services".
- (b) The Parliamentary Legal Advisers are also of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.

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