

**THE MEDICAL, DENTAL AND PHARMACY (AMENDMENT) ACT, 1967**

No. 41



of 1967

**AN ACT TO AMEND THE MEDICAL, DENTAL AND PHARMACY PROCLAMATION (CAP. 147).**

Date of Assent: 19.10.67.

Date of Commencement: 20.10.67.

ENACTED by the Parliament of Botswana.

**Short Title**

1. This Act may be cited as the Medical, Dental and Pharmacy (Amendment) Act, 1967.

**Amendment of Section 1 of Cap. 147**

2. Section 1 of the Medical, Dental and Pharmacy Proclamation (Chapter 147) (hereinafter referred to as the principal law) is amended —

(a) by the insertion prior to the definition of "Intern" of the following definition —

“ “Director” means the Director of Medical Services;”

(b) by the addition of the following subsection, the existing section becoming, thereby, subsection (1) —

(2) For the purposes of sections 7A to 7I and section 15 “practitioner” means any person entered in the register kept in terms of section 3 as a medical practitioner or any person granted leave to practise as such in pursuance of the provisions of the proviso to section 2.”.

**Amendment of Section 2 of Cap. 147**

3. Section 2 of the principal law is amended by the addition of the following proviso:

“Provided that the Director may authorise a medical practitioner, dentist, chemist, oculist or optician who is entitled to practise as such under the laws of a foreign or Commonwealth country to practise for a limited period or for a purpose specified by the Director subject to such conditions or restrictions as the Director

may impose notwithstanding that he is not registered in accordance with the provisions of this Proclamation.”.

**Amendment of Section 3 of Cap. 147**

4. Section 3 of the principal law is amended —

(a) in subsection (2) —

(i) in paragraph (a) by the deletion of “in the United Kingdom of Great Britain and Northern Ireland or in the Union of South Africa”;

(ii) in paragraph (b) by the deletion of “President” and substitution of “Minister”;

(b) in subsection (3) by the deletion of “by the President”;

(c) by the addition of the following subsections —

“(4) Notwithstanding the provisions of subsections (2) and (3) the Minister may enter a person on the register who is in possession of diplomas or certificates other than prescribed diplomas and certificates where he is satisfied in all the circumstances of the case that the person is qualified to practise as a medical practitioner, intern, dentist, chemist, oculist or optician and is, in all other respects, a fit and proper person.

(5) The Minister may refuse his approval of any application for registration without stating his reasons.”.

**Amendment of Section 6 of Cap. 147**

5. Section 6 of the principal law is amended —

(a) by the deletion of “President” where it first appears and the substitution of “Minister”;

(b) by the deletion of “five pounds” and the substitution of “R10”;

(c) by the deletion of “one pound” and the substitution of “R2”;

(d) by the deletion of “ten shillings” wherever it appears and the substitution of “R1”.

**Amendment of Section 7 of Cap. 147**

6. Section 7 of the principal law is repealed and the following sections are substituted —

**“Discipline**

7. (1) There shall be a Medical Ethical Advisory Committee for Botswana (hereinafter referred to as the committee) which shall consist of —

(a) the Director; and

- (b) a private medical practitioner who shall be elected in the prescribed manner from amongst the private medical practitioners in Botswana; and
- (c) not more than four medical practitioners (being persons entitled to practice as such either within or outside Botswana) nominated by the Minister.

(2) The President of the committee shall be the Director.

(3) The Attorney-General or a person nominated by him shall attend every enquiry undertaken by the committee under the provisions of this Proclamation to advise on matters of law, procedure and evidence.

(4) Where any member of the committee is a member of a committee of similar function established by the Government of Lesotho or Swaziland such person may, within Botswana, exercise his functions as a member of such committee according to the law for the time being in force in Swaziland or Lesotho as the case may be.

(5) Where any member of the committee is within Lesotho or Swaziland for the purpose of performing his functions as a member of a committee of similar function established by the Government of Lesotho or Swaziland he may, within Lesotho or Swaziland, perform his functions as a member of the committee established by this Act in accordance with the provisions of this Act.

#### **Enquiries by Committee**

7B. (1) The committee shall have the power to enquire into and make a finding upon any complaint, charge or allegation of improper conduct or disgraceful conduct in a professional report against any practitioner and having found that any such complaint, charge or allegation has been proved, to report its finding to the Minister:

Provided that in the case of a complaint, charge or allegation which forms or is likely to form the subject of criminal proceedings the committee may postpone enquiry until such proceedings have been determined:

Provided further that a practitioner as to whose conduct as aforesaid enquiry is to be made shall be afforded an opportunity, by himself or a legal practitioner representing him, of answering the complaint, charge or allegation and of being heard in his defence.

(2) The Minister may suspend any practitioner

- (a) in respect of whom an enquiry under this section is pending; or
- (b) against whom criminal proceedings are pending;

until the termination of such enquiry or of such proceedings and, thereafter, pending his determination under section 7C and, where appeal is made under 7D, until the determination of the matter by the High Court.

#### **Penalties**

7C. The Minister, if of the opinion that disciplinary action should be taken

against such practitioner, shall impose on him one or other of the following penalties —

- (a) a caution or a reprimand or caution and a reprimand; or
- (b) suspension for a specified period from practising or performing acts specifically pertaining to the profession of medical practitioner or dentist; or
- (c) erasure of his name from the register kept in terms of section 3, if his name is entered in the register.

#### **Appeal to High Court**

7D. (1) Any practitioner aggrieved by the finding of the committee made under section 7B may appeal against that finding or against the penalty imposed by the Minister under section 7C to the High Court in manner provided by the rules of court.

(2) The High Court shall enquire into and consider the matter appealed against, and, in the case of an appeal against the finding of the committee, may confirm, vary or set aside that finding or make such other finding as in its opinion the committee ought to have made or in the case of an appeal against any penalty imposed by the Minister, may confirm vary or set aside such penalty or substitute a different penalty so, however, that the penalty so substituted shall not be more severe than the penalty imposed by the Minister and may make such order as to costs as it may deem fit :

Provided that the finding of the committee shall not be set aside by reason only of an irregularity which did not materially embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) In the exercise of its functions under this section the High Court shall have the power to summon and examine witnesses and, for such purposes, the enquiry shall be deemed to constitute criminal proceedings for the purposes of the Criminal Procedure and Evidence Proclamation (Chapter 18).

(4) The High Court may, for the purpose of ascertaining what is improper or disgraceful conduct, take into consideration the evidence of practitioners given at the enquiry or contained in the appeal record.

#### **Termination of Suspension**

7E. Every person who has been suspended or whose name has been erased from the register shall be disqualified from practising as a practitioner and if he has been issued with a certificate of registration it shall be deemed to be cancelled until the period of suspension is expired or until his name has been restored to the register.

#### **Report by a Court to Committee**

7G. Whenever in the course of any proceedings before any court it appears to

the court that there is *prima facie* evidence of improper conduct or disgraceful conduct on the part of a practitioner the court shall direct that a copy of the record in such proceedings, or such portion thereof as is material to the issue, shall be transmitted to the committee for enquiry. Such enquiry shall be deemed to be an enquiry under the provisions of section 7B.

#### **Indemnification of Committee and Members**

7H. No legal proceedings, civil or criminal, shall lie against the committee or any member thereof in respect of any act or duty performed in accordance with this Proclamation.

#### **Rules of the Committee**

7I. The committee may, with the approval of the Minister make rules regulating its own procedure and prescribing the acts or omissions constituting improper conduct or disgraceful conduct of which the committee may take cognizance under this Proclamation.”.

#### **Repeal of Section 8 of Cap. 147**

7. (1) Section 8 of the principal law is repealed.

(2) Notwithstanding provisions of subsection (1) any person registered under the provisions of section 8 (1) of the principal law prior to the coming into operation of this Act shall be deemed to be registered under the provisions of section 3 of the principal law as amended by this Act.

#### **Amendment of Section 11 of Cap. 147**

8. The principal law is amended in subsection (7) of section 11 by the deletion of “fifty pounds” and the substitution of “R100”.

#### **Amendment of Section 12 of Cap. 147.**

9. The principal law is amended in section 12 by the deletion of “ten pounds” and the substitution of “R20”.

#### **Amendment of Section 13 of Cap. 147**

10. Section 13 of the principal law is amended —

(a) by inserting after “13” the number “(1)”;

(b) in subsection (1) —

(i) by the deletion of “fifty pounds” and the substitution of “R100”;

(ii) by the deletion of “one hundred pounds” and the substitution of “R200”;

(c) by the addition of the following subsection —

“(3) The provisions of subsection (1) shall not be deemed to prohibit a herbalist prescribing according to African custom, nor shall it apply to dispensers who have been approved by the Minister and who are directly or indirectly employed by and come under the control of the Government of Botswana.”.

**Amendment of Section 14 of Cap. 147.**

11. Section 14 of the principal law is amended —

- (a) by the deletion of “the Proclamation of the 4th April, 1892” and the substitution of “any written law”;
- (b) by the deletion of “General Dealer” and the substitution of “person”;
- (c) by the deletion of “the said Proclamation” and the substitution of “such written law”.

**Insertion of New Section 15 into Cap. 147**

12. The principal law is amended by the insertion of the following after section 14, the existing section 15 becoming, thereby, section 16—

**“Regulations**

15. The Minister may, by notice in the *Gazette* make regulations providing for —

- (a) the manner in which complaints, charges or allegations against a practitioner may be lodged and in which evidence may be heard;
- (b) the method of summoning persons against whom complaints, charges or allegations have been made and the penalties for failure or refusal on the part of any such persons to attend when summoned or for obstructing or interrupting the proceedings;
- (c) the method of summoning witnesses and of requiring the production of any book, record, document or thing and the penalties for failure or refusal on the part of any such witnesses to attend when summoned or for refusing to give evidence or to produce any book, record, document or thing or for obstructing or interrupting the proceedings;
- (d) oaths and the manner of the administration of oaths; and
- (e) any other matter incidental to the holding of any enquiry;
- (f) the creation of a board or committee to advise the Minister in the exercise of his functions under this Proclamation;
- (g) anything which, in terms of this Proclamation, is required or permitted to be prescribed;

and generally for the better carrying out of the provisions of this Proclamation.”.

**Further Amendment of Cap. 147**

13. The principal law is amended —

- (a) by the deletion of “dentist, chemist, nurse or midwife” wherever it appears and the substitution of “dentist or chemist”;
- (b) by the deletion of the expressions “nurse or midwife” and “nurses or midwives” wherever they appear.

**Amendment of Schedule B of Cap. 147**

14. The principal law is amended in Schedule B —

- (a) by the deletion of “Chief Secretary’s Office” and the substitution of “Ministry of Education, Health and Labour”;
- (b) by the deletion of “Chief Secretary” and the substitution of “Permanent Secretary, Ministry of Education, Health and Labour”.

Passed by the National Assembly this day, the 31st August, 1967.

**G. T. MATENGE,**  
Clerk to the National Assembly.