

**HEALTH PROFESSIONS AMENDMENT BILL [B10-2006]  
SUBMISSION BY THE HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA**

**S1  
DEFINITIONS**

**(a) *Accredit***

Revise definition so that it does not make reference to "*Prescribed*" education and training requirements as "prescribed" has a meaning of prescribed by regulations, which is quite onerous for purposes of ongoing quality management processes of education and training. It is proposed that the definition be revised to read : "**Accredit** means recognition or certification by the council or the relevant professional board in terms of this Act or any other Act as meeting the education and training requirements as may be determined from time to time".

**Subjecting the determination of education and training requirements to regulations may prove cumbersome and even frustrate quality assurance processes.**

- (b)** delete reference to "intern-psychologist" and "medical practitioner" and replace these with a generic term of a "healthcare practitioner" to mean 'any person, including a student, registered with the council in a profession registrable in terms of this Act'.

**If reference is made to one profession in terms of the definitions, there would need to be reference to all other professions, which will prove cumbersome. Accordingly it is suggested that a much more generic term for reference to a healthcare practitioner be used.**



- (c) define "**community representative**" to mean, 'a person appointed by the Minister as such or any other person appointed to serve in the structures of council or professional boards who is not registered in any of the professions falling under this Act'.

### S3

#### OBJECTS OF COUNCIL

- Support all propositions contained herein;
- Support notion of Council exercising its powers and discharging its responsibilities in accordance with National Health policy determined by the Minister;
- Support requirement for submission of five-year strategic plans, six monthly reports and an annual report to the Minister;
- Support principle of establishing budget for Council and Professional Boards and ensuring operations are handled to fit within the set budget.

### S5 (S4 Principal Act)

#### GENERAL POWERS OF COUNCIL

- Support the delegation of certain powers by Council to the Professional Boards as may be deemed appropriate by Council;
- Support the principle of consultation with Professional Boards on matters affecting the health professions.

**S6 (S5 Principal Act)**  
**CONSTITUTION OF COUNCIL**

- Retain : 'provided that each professional board shall be entitled to designate at least one person registered in terms of this Act'. This will avoid unintended consequences where as a result of fractions, a particular board falls below the threshold for nominating a representative to Council.
- Propose amendment of S5(1)(d) Principal Act to read: "nine [9] community representatives not registered in terms of this Act, appointed by the Minister"; ✓
- Propose deletion of S5(1)(g); ✓
- Propose deletion of S5(1)(h);
- With the proposed deletions, the total figure for Council will amount to 32 and not 52 as is currently the case.

**Motivation for this reduction is rationalisation of categories whilst also ensuring a streamlined and efficient structure. For example, the HPCSA is not a provincial competency but a national competency with the result that the dual appointment process by the National Minister and MECs is not warranted.**

- 13 ministerial appointees;
- 19 designated



### **S7 (S6 Principal Act)**

#### **VACATION OF OFFICE AND FILLING OF VACANCIES**

- Support propositions for Minister's intervention in case of non-compliance by Council with provisions of this Act;
- Support conditions for termination of Council membership.

### **S8 (S7 Principal Act)**

#### **PRESIDENT AND VICE PRESIDENT**

- Support proposition for President or Vice President to appoint a member of the Executive Committee of Council to act in their place in their absence

### **S10 (S10 Principal Act)**

#### **COMMITTEES**

- Support the amendments

### **S11 (S12 Principal Act)**

#### **APPOINTMENT OF REGISTRAR AND STAFF**

- Support amendments regarding the appointment of Registrar, staff as well as their dismissal

### **S12 (S13 Principal Act)**

#### **FINANCING OF COUNCIL**

- Support the corporate governance principles proposed herein

**S13 (S15 Principal Act)**  
**ESTABLISHMENT OF PROFESSIONAL BOARDS**

- Support process of nominations for Professional Board members;

- (fA): Amend:-

"the establishment of professional conduct committees, each consisting of so many persons as may be prescribed but including at least three board members or members of that relevant profession and at least two community representatives one of whom shall be the chairperson of such committee."

*but including at least three members of the relevant profession, of which at least one shall be a member of the board*

**This resonates with the recent Council decision and indeed enhances transparency, openness and reflects independence of the Council.**

**S14 (S15A Principal Act)**  
**OBJECTS OF PROFESSIONAL BOARDS**

- Support proposed adjustment to ensure compliance with protocol so that Professional Boards execute their tasks via the Council.
- Insert a comma in (e) between the words "equity" and "accessibility".

**S15 (S15B Principal Act)**  
**GENERAL POWERS OF PROFESSIONAL BOARDS**

- 15 B(1)(a), remove reference to "prescribed" fee as this suggests fee determination must be a subject of regulations which has proven cumbersome. Prefer to set fees by publishing same in the rules for expediency sake;
- amend (c) to read : "subject to the prescribed accreditation process, accredit teaching institutions and training facilities".

This eliminates reference to administrative processes undertaken when accrediting institutions and focuses on the high level principle of accreditation of institutions. It also removes possible ambiguity that might arise with the interpretation of “prescribed conditions” instead of imposed conditions. Conditions get imposed from time to time to effect remediation of non-compliance with set standards and to suggest that these need to be prescribed as per regulations, may compromise the quality assurance processes.

**S17 (S16 Principal Act)**  
**CONTROL OVER TRAINING**

- Support control over education and training.
- (d)(e) substitute “**prescribe**” for “impose” such conditions...’

**S20 (S19 Principal Act)**  
**REMOVAL OF NAME FROM, AND RESTORATION TO REGISTER**

- 19(1) amend:-  
“the Professional Board or a committee to whom the function has been delegated may direct the Registrar or the Registrar acting on the established policies of the Professional Board may remove from the register the name of any person .....”

This is to avoid referral of every single matter of erasure from the register to a Professional Board as this may lead to cumbersome administrative processes.

**S21**

*Substitute (e) for the following insertion::*

“who on the basis of a complaint lodged with the Council or information available at the disposal of Council is posing an imminent threat or danger to the public in terms of his or her professional practice”;

This is to ensure that Council is authorised to summarily and speedily suspend a practitioner who is posing an imminent danger or threat to the well-being, health or safety of the patients or public without having to wait for extensive disciplinary procedures. Current reading of (e) creates ambiguity in that it refers to suspending a practitioner who has been suspended in terms of S15B(1)(a).

**S24 (S24 Principal Act)****Qualifications Prescribed for Registration**

Retain reference to the ‘Council’ and remove reference to ‘professional board’ as the Minister ought to deal with the Council and not its sub-structures. This principle should be replicated throughout the Act so that the only point of reference and contact by the Minister and to the Minister is through Council.

**S27 (S25 Principal Act)****REGISTRATION OF PERSONS QUALIFIED OUTSIDE THE REPUBLIC**

- The Minister may ‘after’ consultation with the Council, by regulation provide....’ At all instances, the Minister should have the authority to govern and thus be able to promulgate regulations after consultation with the Council and not ‘in’ consultation with the Council. This principle should thus be replicated throughout the Bill and instances where this is the case will be referred to during the oral submission. As indicated above, there should be no reference to Minister consulting with the professional boards, as this is done through the Council.

- 25(1) insert “..... thereupon the relevant Professional Board may in its discretion, but subject to any regulations and National Health policy and international protocols which the Minister may make or be subject to, register such person.”

This will ensure that the HPCSA regulations and policies take into account and are in sink with the established national policies and political conventions for purposes of registering foreign qualified nationals. For example, issues like recruitment and registration of practitioners from the African continent or SADC might compromise the SADC protocol on non-recruitment of practitioners from the SADC region and African continent.

#### **S28(S26 Principal Act)**

#### **COMPLIANCE WITH CERTAIN CONDITIONS RELATING TO CONTINUING PROFESSIONAL DEVELOPMENT AS A PREREQUISITE FOR CONTINUED REGISTRATION**

- Insert “a” in the title between the word ‘as’ and ‘prerequisite’.
- S26(a) &(b) substitute the word ‘prescribe’ for ‘determine’ [ **prescribe has a meaning of prescribing by regulations which is inconsistent with the core of this section focusing on publishing rules instead of regulations**]



**S31 (S31 Principal Act)**  
**UNIVERSITIES, TECHNIKONS AND OTHER TRAINING INSTITUTIONS TO**  
**FURNISH COUNCIL WITH CERTAIN PARTICULARS**

- S31(1)

“..... every university, technikon, or other educational institution at which a qualification can be obtained which entitles any holder thereof to registration under this Act shall upon request by a Professional Board furnish it with full particulars as to:-

(a) the minimum age and evidence of compliance with set standards of education and/or training required of students;

(b) evidence of compliance with the set course of study, training and examinations or assessment methodologies required of a student before such qualification is granted.....

(c) ....., etc

- S31(2)

If any university, technikon, or other educational institution referred to in subsection (1) fails or refuses to furnish any particulars requested by a Professional Board under that subsection or if it appears to the Professional Board that any provision of this Act is not being properly complied with by any such university, technikon or other educational institution and that such improper compliance is having or may have an adverse effect on the standards of education and training maintained at that university, technikon or other educational institution, the Professional Board may revoke the accreditation of that university, technikon or other educational institution and by notice in the gazette declare qualifications obtained from that institution as unsuitable to entitle the holder thereof to registration under this Act or impose such conditions on the students before authorising their registration as the Professional Board may deem appropriate.

- S31(3)

The Professional Board may when it has been made to appear to it upon representations made by the affected institution that satisfactory provision has been made for complying with the requirements of this Act by the said institution, reinstate, by notice in the gazette, the accreditation of that institution.

- S31(4) delete

This will empower the Boards, in the spirit of quality assurance, to deal swiftly with issues of non-compliance to set quality standards without invoking the Minister's power to de-accredit a particular qualification. This will also enable the Council to impose whatever remedial steps it may deem appropriate without revoking accreditation.

**S42 (S42 Principal Act)** — *Take to Section 41 as new addition.*

**MATTERS FOR AND PROCEDURE AT INQUIRY BY PROFESSIONAL BOARDS**

- 1) "Any person registered under this Act who, after a determination made by a Preliminary Committee of Inquiry or an inquiry held by a Professional Conduct Committee, is found guilty of unprofessional conduct ....."  
(remove Professional Board and add Prelim Process for minor transgressions determinations)

It is envisaged that the Preliminary Committees of Inquiry will make certain determinations on minor offences and the Professional Conduct Committees appointed by the Boards actually make determinations.

2) a fine (remove "prescribed")

**Council must be allowed to determine an appropriate fine and if arbitrariness is a concern, to rather empower Council to publish fines in the rules rather than subjecting this to a cumbersome process of regulations.**

#### **S45 (S49 Principal Act)**

#### **COUNCIL TO MAKE RULES RELATING TO OFFENCES UNDER THIS CHAPTER**

- Retain S49 of Principal Act as is
- New introduction will cause complications and delay in processes. This is also having a gap in interpretation – *"conduct which if not adhered to shall constitute"*
  - some conduct ought to be adhered to and therefore it is not only in the negative;
  - secondly, you want this to be in the rules for ease of promulgation.

#### **S52**

- Registration must be by the Council as the legal entity and corporate body which can and should register so that reference to the professional board registering should be eliminated.
- Likewise the issue of certificates can only be done by the Council as the corporate body.



### **S53 (S61A Principal Act)**

#### **RULES**

- The Council may make rules or adopt policies relating to .....

**The formulation of policies will enable Council without having to subject itself to a process of rules and regulations, to expeditiously make determinations on professional practice issues which are essential for guiding the profession and protecting the public.**

### **S54 (S62 Principal Act)**

#### **LEVYING OF ANNUAL FEES ON CERTAIN REGISTERED PERSONS**

- Retain proposed deletion for purposes of pro rata payments and still add new insertions of profession and registration category.

## COMPOSITION OF COUNCIL

CATEGORY	NUMBER	
	OLD	NEW
1) Designation by Professional Boards	25	16
2) Person employed by Department of Health (appointed by Minister)	1	1
3) Person employed by Department of Education (appointed by Minister of Education)	1	1
4) Persons registered in terms of this Act (appointed by Minister)	9	Nil
5) Person from SAHMS (appointed by Minister of Defence)	1	1
6) SAUVCA representatives	3	3
7) Technikon Principals representatives	2	Nil
8) Public representatives one per province (appointed by MECs)	9	9 (Community Representatives appointed by Minister)
9) Person versed in law	1	1
<b>TOTAL</b>	<b>52</b>	<b>32</b>