

THE MEDICAL COUNCIL (AMENDMENT) BILL

(No. XXXI of 2007)

Explanatory Memorandum

The object of this Bill is to amend the Medical Council Act to provide for the recognition of additional specialist qualifications, increasing the membership of the Medical Council, enhancing the control exercised on qualifications obtained for the purpose of registration as a medical practitioner, bringing the provisions of the Act relative to disciplinary control into line with the relevant provisions of the Constitution and for related matters.

30 November 2007

S. V. FAUGOO

Minister of Health and Quality of Life

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ARRANGEMENT OF CLAUSES

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A B I L L

To amend the Medical Council Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Medical Council (Amendment) Act 2007.

2. Interpretation

In this Act “principal Act” means the Medical Council Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended -

- (a) in the definition of “diploma in medicine”, by adding immediately after the words “medical institution” the words “and obtained after the successful completion of the course provided by the institution for the obtention of the qualification within the time laid down by the institution”;
- (b) by repealing the definition of “medical institution” and replacing it by the following definition –

“medical institution” means a university, faculty, college or other similar body which –

(i) is authorized under the law of any country to provide courses leading to a diploma in medicine; and

(ii) is prescribed;

(c) by repealing the definition of “medicine” and replacing it by the following definition –

“medicine” –

(i) means scientific medicine in all its branches; and

(ii) includes surgery and obstetrics; but

(iii) does not include veterinary medicine or surgery;

(d) by repealing the definition of “specialist qualification” and replacing it by the following definition -

“specialist qualification” means –

(i) a post-graduate qualification in a medical speciality obtained from a medical institution after having followed a course of training of not less than 3 years and passed the appropriate examination pertaining to the course;

(ii) a post-graduate qualification in a medical speciality issued by a recognized professional body; or

(iii) a recognized specific training in a sub-speciality undertaken after obtaining a qualification under paragraph (a) or (b);

(e) by inserting the following definitions in their appropriate alphabetical order –

“delegated power” means the power to enquire and report into allegations of professional misconduct or negligence against a public officer delegated to the Council by the Public Service Commission pursuant to section 89(2)(b) of the Constitution;

“preliminary investigation” means an investigation conducted in accordance with section 13;

“recognized professional body” means such body as may be prescribed;

“recognized specific training” means such qualification as may be prescribed;

4. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) in paragraph (a) by deleting the figure “12” and replacing it by the figure “14”; and
 - (ii) in paragraph (e) by deleting the figure “4” and replacing it by the figure “5”;
- (b) by repealing subsections (2), (3) and (4) and replacing them by the following subsections –

(2) The 14 members referred to in subsection (1)(a) shall, subject to subsections (3) and (4), be elected in the manner set out in the First Schedule from among registered medical practitioners having not less than 15 years’ experience.

(3) Eight of the 14 members referred to in subsection (1)(a) shall be public officers, of whom 4 shall be specialists and 4 shall be general practitioners.

(4) Out of the 6 remaining members referred to in subsection (1)(a) who are not public officers, 3 shall be specialists and 3 shall be general practitioners.

5. Section 7 of principal Act amended

Section 7 of the principal Act is amended by repealing subsections (2) and (3) and replacing them by the following subsections -

(2) Where a member absents himself for a continuous period of 6 months or more, whether after, or without, having informed the Council of his absences, the Council may cause him to be replaced in the manner specified in subsection (1)(a), 1(b) or 1(c), as the case may be.

(3) A member appointed or elected pursuant to subsection (1) or (2), as the case may be, shall hold office for the remainder of the term of office of the person whom he replaces.

6. Section 9 of principal Act amended

Section 9 of the principal Act is amended, in subsections (1) and (4)(b), by deleting the figure “10” and replacing it by the word “Eleven” and the figure “11” respectively.

7. Section 12 of principal Act amended

Section 12 of the principal Act is amended by deleting paragraph (a) and replacing it by the following paragraph -

(a) exercise and maintain discipline in the practice of medicine with the assistance and support of its Disciplinary Tribunal –

(i) in relation to public officers, in respect of whom it holds a delegated power, to the extent and within the limits of that delegation of power; and

- (ii) in relation to any other registered medical practitioner, in accordance with this Act;

8. Section 13 of principal Act amended

Section 13 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

(1) Subject to section 18, the Council may investigate any complaint of professional misconduct, malpractice, fraud, dishonesty or negligence or of a breach of the Code of Practice against a registered person including a public officer in respect of whom it holds a delegated power.

9. Section 14 of principal Act amended

Section 14 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “may institute disciplinary proceedings against the registered person before the Tribunal and replacing them by the words “may, subject to section 19, institute disciplinary proceedings against him”;
- (b) in subsection (2), by deleting the words “until a decision is taken under section 17(4)” and replacing them by the words “for a period not exceeding 6 months, and shall, in the case of a public officer in respect of whom it holds delegated power, report the suspension to the Public Service Commission for the Commission’s decision on any such suspension”.

10. Sections 15 to 19 of principal Act repealed and replaced

Sections 15 to 19 of the principal Act are repealed and replaced by the following sections –

15. Disciplinary Tribunal

(1) There is set up for the purposes of this Act, a Disciplinary Tribunal which shall consist of –

- (a) a President who –
 - (i) holds or has held judicial office for not less than 10 years; or
 - (ii) has been a law officer for not less than 10 years; and
- (b) 2 other persons who are –
 - (i) registered medical practitioners with not less than 10 years' experience in the practice of medicine; but
 - (ii) are not members.

(2) Notwithstanding subsection (1)(b), either or both of the persons referred to in that subsection may be persons registered as medical practitioners outside Mauritius and who have wide experience in the practice of medicine.

(3) The persons referred to in subsections (1) and (2) shall be appointed by the Prime Minister on such terms and conditions as he may determine.

(4) The Minister shall designate a public officer to be the Secretary to the Tribunal.

16. Proceedings of the Tribunal

(1) The Tribunal shall sit at such place and time as the President of the Tribunal may determine.

(2) The law of evidence shall apply to proceedings before the Tribunal.

- (3) The Tribunal may –
 - (a) require in writing any person to appear before it to give evidence or produce any document or other article as it may need; and
 - (b) take evidence on oath and, for that purpose, administer an oath.

17. Disciplinary measures

(1) Where the Council decides to institute disciplinary proceedings against a registered person and prefers charges against him, it shall require the Tribunal to inquire into the charges on its behalf into the matter.

(2) The Tribunal shall, after conducting the enquiry, forward to the Council its report and a copy of the proceedings including any document or exhibit produced, not later than 14 days after the completion of the proceedings.

(3) The Council shall, after considering the contents of the documents referred to in subsection (2), determine whether or not, in its opinion -

- (a) the charges against the registered person have been proved; and
- (b) there is any circumstance that aggravates or alleviates the charges.

(4) The Council shall, where it determines that the charges against a registered person have been proved -

- (a) in the case of a public officer in respect of whom it holds a delegated power, forward its report on the matter to the Public Service Commission; and
- (b) in every other case, impose on the registered person such disciplinary measures as it thinks fit, namely –
 - (i) a warning or a severe warning;
 - (ii) a reprimand or a severe reprimand;
 - (iii) a suspension from medical practice for a period not exceeding 12 months; or
 - (iv) the removal of the registered person's name from the register.

(5) Where the punishment inflicted by the Public Service Commission on a public officer is dismissal or retirement from the public service, the Council shall determine whether or not the person's name should be removed from the register.

(6) A decision of the Council under subsection (4) or (5) shall be communicated to the registered person not later than 14 days from the date of the decision.

18. Conviction of registered person

Where a registered person who is not a public officer has been convicted of an offence involving negligence, professional misconduct, fraud or dishonesty in the exercise of his calling, the Council may, after giving him an opportunity to show cause in writing why disciplinary measures should not be taken against him, inflict upon him any of the punishments specified in section 17(4)(b).

19. Summary proceedings

Where, after having carried out a preliminary investigation and after giving a registered medical practitioner an opportunity to show cause why disciplinary action should not be taken against him, the Council is satisfied that the registered person has committed an act specified in section 14(1) which, in the opinion of the Council, constitutes a minor fault, it may inflict upon that person a warning or a severe warning.

11. Section 22 of principal Act amended

Section 22 of the principal Act is amended-

- (a) by deleting the words “A person may” and replacing them by “A person shall be entitled to”;
- (b) by inserting, after paragraph (a) the following paragraph –
 - (aa) produces an eligibility certificate, issued by such institution in Mauritius, and certifying that he satisfies such minimum requirements, as may be prescribed as the minimum requirements that any person must satisfy before he may enrol for the course leading to a diploma in medicine;
- (c) by deleting paragraph (b) and replacing it by the following paragraph –
 - (b) holds a diploma in medicine or in the case of a graduate who obtained his diploma after studying in 2 or more medical institutions, where he –
 - (i) establishes to the satisfaction of the Council that he has obtained the qualification after

following the relevant modules for the course during the time laid down by the awarding institution;

(ii) produces to the Council an exemption or equivalence certificate from the awarding institution; and

(iii) produces any other information that may be required by the Council;

(d) in paragraph (c), by deleting the words “one year’s” and replacing them by “24 months”.

12. Section 23 of principal Act amended

Section 23 of the principal Act is amended in subsection (1) by deleting the words “A person may” and replacing them by “A person shall be entitled to”.

13. Section 26 of principal Act amended

Section 26 of the principal Act is amended in –

(a) subsections (1) and (2) by deleting the words “a non-citizen may” wherever they appear and replacing them by “a non-citizen shall be entitled to”;

(b) subsection (1)(a) by adding immediately after the words “Non-citizen (Employment Restriction) Act” the words “or holds an Occupation Permit under section 9A of the Immigration Act”.

14. Section 27 of principal Act amended

Section 27 of the principal Act is amended in subsection (1) by deleting the words “may be temporarily registered” and replacing them by “shall be entitled to be”.

15. Section 42 of principal Act repealed and replaced

Section 42 of the principal Act is repealed and replaced by the following section –

42. Regulations

(1) (a) The Minister may make such regulations as he thinks fit for the purpose of prescribing any matter which is required to be prescribed under section 2 or 22.

(b) Any regulations made under paragraph (a) shall be made after consultation with the Council and with such other bodies, including the World Health Organisation, as the Minister may deem appropriate.

(2) (a) The Council may, for the purposes of this Act, other than for the purposes of prescribing matters referred to in subsection (1)(a), make such regulations as it thinks fit.

(b) Any regulations made under paragraph (a) may provide for -

- (i) the amendment of the Schedules;
- (ii) the drawing up of the Code of Practice; and
- (iii) the levying of fees and charges.

16. Section 43 of principal Act amended

Section 43 of the principal Act is amended –

- (a) by deleting the figure and brackets “(1)”; and
- (b) by repealing subsection (2).

17. First Schedule to principal Act amended

The First Schedule to the principal Act is amended –

- (a) in rule 1, by deleting the words “three-month period specified in section 47(2) and every subsequent period of 3 years” and replacing them by the words “the term of office of the members specified in section 5”;
- (b) by adding after rule 2, the following new rule-
 - 2A. No person shall be qualified to be nominated as a candidate where he is under investigation for misconduct by the Council, or has been subject to disciplinary sanction by the Council during the 5 years preceding the nomination.
- (c) in rule 4(2), by inserting, after the words “private sector”, the words “or general practitioners or specialists”.

18. Transitional provisions

(1) Any person who has, before the commencement of this Act, been appointed or elected as a member shall remain in office until the completion of the period for which he has been appointed or elected.

(2) The Tribunal set up under the repealed section 15 of the principal Act shall be deemed to have been set up under the new section 15 of that Act, and its President and members shall continue in office on the same terms and conditions subject to which they were previously appointed.

(3) Notwithstanding the provisions of this Act or of the principal Act, any proceedings pending before the Tribunal prior to the coming into force of this Act shall be continued and dealt with as if they were commenced in conformity with this Act.

(4) Sections 11(a), (b) and (c) of this Act shall apply to persons enrolled for a course leading to a diploma in medicine after the coming into force of that section.