



PHARMACY ACT NO. 53 OF 1974

[ASSENTED TO 9 OCTOBER, 1974]

[DATE OF COMMENCEMENT: 21 FEBRUARY, 1975]

(English text signed by the State President)

This Act has been updated to *Government Gazette* 23480 dated 3 June, 2002.

ACT

To provide for the establishment of the South African Pharmacy Council and for its objects and general powers; to extend the control of the council to the public sector; and to provide for pharmacy education and training, requirements for registration, the practice of pharmacy, the ownership of pharmacies and the investigative and disciplinary powers of the council; and to provide for matters connected therewith.

1. Definitions.—In this Act, unless the context otherwise indicates—

“body corporate” means any legal person registered in terms of any Act in operation in the Republic;

[Definition of “body corporate” inserted by s. 1 (a) of Act No. 88 of 1997.]

“Ciskeian Medical Council”

[Definition of “Ciskeian Medical Council” inserted by s. 1 (a) of Act No. 6 of 1995 and deleted by s. 1 (b) of Act No. 88 of 1997.]

“corporation”

[Definition of “corporation” inserted by s. 1 (a) of Act No. 69 of 1985 and deleted by s. 1 (c) of Act No. 88 of 1997.]

“council” means the council referred to in section 2;

“Director-General” means the Director-General: Health or his or her nominee;

[Definition of “Director-General” inserted by s. 1 (b) of Act No. 6 of 1995.]

“medicine” means medicine as defined in section 1 of the Medicines and Related Substances Control Act, 1965;

“member” means a member of the council;

“Minister” means the Minister of Health;

[Definition of "Minister" substituted by s. 1 (b) of Act No. 69 of 1985 and by s. 1 (c) of Act No. 6 of 1995.]

"pharmaceutical technician" means a person registered as such under this Act;

"pharmacist" means a person registered as such under this Act;

"pharmacist intern" means a person registered as such in terms of this Act;

[Definition of "pharmacist intern" inserted by s. 1 (a) of Act No. 20 of 1983 and substituted by s. 1 (d) of Act No. 88 of 1997.]

"pharmacist's assistant" means a person registered as such under this Act;

[Definition of "pharmacist's assistant" inserted by s. 1 (a) of Act No. 20 of 1979.]

"pharmacy" means any place wherein or from which any service specially pertaining to the scope of practice of a pharmacist is provided;

[Definition of "pharmacy" substituted by s. 1 (e) of Act No. 88 of 1997.]

"pharmacy practice" means acts specially pertaining to the scope of practice of a pharmacist as prescribed in terms of section 35A of this Act;

[Definition of "pharmacy practice" inserted by s. 1 (f) of Act No. 88 of 1997.]

"pharmacy student" means a person registered as such in terms of this Act;

[Definition of "pharmacy student" inserted by s. 1 (f) of Act No. 88 of 1997.]

"pharmacy support personnel" means the various categories of support personnel as prescribed and registered as such in terms of this Act;

[Definition of "pharmacy support personnel" inserted by s. 1 (f) of Act No. 88 of 1997.]

"prescribe" or "prescribed" means prescribe or prescribed by regulation;

"president" or "vice-president" means the president or vicepresident of the council and includes a person lawfully acting as president or vicepresident of the council, as the case may be, and for the purpose of section 40 (1), a member acting as chairman at an inquiry referred to in section 39;

"register", when used as a noun, means a register kept in accordance with the provisions of this Act, and when used in relation to any class or a member of any class of persons in respect of which a register is kept, means the register kept for that class and when used as a verb, means to enter in such register; the words **"registered"**, **"registrable"**, **"registration"** and all other words formed with or derived from the word **"register"** having a corresponding meaning;

"registrar" means the registrar of the council appointed in terms of section 4 (u) of this Act or a person lawfully acting in that capacity;

[Definition of "registrar" substituted by s. 1 (g) of Act No. 88 of 1997.]

"regulation" means any regulation made under this Act;

"responsible pharmacist" means a natural person who is a pharmacist and who shall be responsible to the council for complying with all the provisions of this Act and other legislation applicable to services which specially pertain to the scope of practice of a pharmacist, and the legislation applicable to the pharmacy which is under his or her personal supervision;

[Definition of "responsible pharmacist" inserted by s. 1 (h) of Act No. 88 of 1997.]

"Republic"

[Definition of "Republic" deleted by s. 1 (d) of Act No. 6 of 1995.]

"scheduled substance" means a scheduled substance as referred to in the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965);

[Definition of "scheduled substance" substituted, and subsequently re-substituted (after amendment), by s. 23 of Act No. 94 of 1991 and substituted by s. 1 (j) of Act No. 88 of 1997.]

“South African Pharmacy Council”

[Definition of “South African Pharmacy Council” inserted by s. 1 (e) of Act No. 6 of 1995 and deleted by s. 1 (j) of Act No. 88 of 1997.]

“this Act” includes any proclamation, regulation, rule or order made under this Act;

“trainee pharmacist”

[Definition of trainee pharmacist deleted by s. 1 (b) of Act No. 20 of 1983.]

“Transkeian Medical Council”

[Definition of “Transkeian Medical Council” inserted by s. 1 (f) of Act No. 6 of 1995 and deleted by s. 1 (k) of Act No. 88 of 1997.]

“unprofessional conduct” means improper, disgraceful or dishonourable or unworthy conduct or conduct which, when regard is had to the profession of a person who is registered in terms of this Act, is improper or disgraceful or dishonourable or unworthy;

[Definition of “unprofessional conduct” inserted by s. 1 (l) of Act No. 88 of 1997.]

“unqualified assistant”

[Definition of unqualified assistant deleted by s. 1 (c) of Act No. 20 of 1979.]

“veterinarian”

[Definition of “veterinarian” inserted by s. 1 (b) of Act No. 20 of 1979 and deleted by s. 1 (c) of Act No. 69 of 1985.]

CHAPTER I ESTABLISHMENT OF THE SOUTH AFRICAN PHARMACY COUNCIL, ITS OBJECTS,

**CHAPTER V
DISCIPLINARY POWERS OF THE COUNCIL**

38A. Powers of officers and other persons.—

- (1) Any officer appointed in terms of this Act who is required or authorized to perform any duty on behalf of the council and any person appointed by virtue of the provisions of section 49 (1) (l) (v) to make any inspection, may enter any pharmacy at any time reasonable for the proper performance of such duty or the making of such inspection.
- (2) Any person who fails to give or refuses access to any officer or person referred to in subsection (1), if he requests entrance to any pharmacy, or obstructs or hinders him in the execution of his duties under this Act, or who fails or refuses to give information that he may lawfully be required to give to such officer or person, or who gives to such officer or person false or misleading information knowing it to be false or misleading, shall be guilty of an offence.
- (3) Every officer or person referred to in subsection (1) shall be issued with a document signed by the registrar and containing the name of the officer or person concerned as well as a statement to the effect that such officer or person is empowered to perform any duty or make any inspection in terms of this section.
- (4) Whenever any officer or person performs any duty or makes any inspection as contemplated in this section, he shall exhibit to any person affected thereby the document issued to him in terms of subsection (3).

[S. 38A inserted by s. 13 of Act No. 20 of 1979.]

39. Inquiry by the council into charges of misconduct.—

- (1) The council shall have the power to enquire into any matter which is brought to the attention of the council or any complaint, charge or allegation of improper or disgraceful 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 prescribed in section 45 (1).

[Sub-s. (1) substituted by s. 33 of Act No. 88 of 1997.]

- (2) If the council is in doubt as to whether any inquiry should be held, it may, in connection with the complaint, charge or allegation in question, consult with or seek information from any person, including the person against whom the complaint, charge or allegation has been lodged.
- (3) 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.
- (4) The council may appoint a person with adequate experience in the administration of justice to be present as an assessor at any inquiry held by the council under this Chapter and to advise it on matters of law, procedure or evidence.

40. Procedure for the conduct of an inquiry.—

- (1) (a) For the purpose of any inquiry held in terms of section 39, the council may take evidence and may, under the hand of the president or the registrar, summon witnesses and require the production of any book, record, document or thing and may, through the president, administer an oath to any witness or accept an affirmation from him, and may examine any book, record, document or thing which any witness had been required to produce.
- (b) A summons to appear before the council as a witness or to produce to it any book, record, document or thing shall be, as nearly as practicable, in the prescribed form, shall be signed by the president or the registrar and shall be served either by registered letter sent through the post or in the same manner as it would be served if it were a subpoena issued by a magistrate's court.
- (c) Every person summoned in terms of this subsection shall be bound to obey the summons and any person who, having been duly summoned—
- (i) refuses, or without sufficient cause fails, to attend and give evidence relevant to the inquiry at the time and place specified in the summons;
 - (ii) refuses to take the oath or to make an affirmation when required by the president to do so;
 - (iii) refuses to produce any book, record, document or thing which he has in terms of the summons been required to produce; or
 - (iv) attends before the council and refuses to answer, or to answer fully and satisfactorily to the best of his knowledge and belief, any question lawfully put to him,

shall be guilty of an offence and liable on conviction to a fine not exceeding the amount to be determined by the Minister from time to time by notice in the *Gazette*: Provided that every person so summoned shall be entitled to all the privileges to which a witness *subpoenaed* to give evidence before a provincial division of the Supreme Court is entitled.

[Para. (c) amended by s. 34 (a) of Act No. 88 of 1997.]

- (2) Every person whose conduct is the subject of an inquiry under section 39, shall be afforded an opportunity, by himself or through his legal representative, of answering the charge and of being heard in his defence.
- (3) The council shall be entitled to make an order as regards the costs incurred in an inquiry or investigation relating to the conduct of a registered person, of an amount not exceeding the amount determined by the Minister from time to time by notice in the *Gazette*.

[Sub-s. (3) added by s. 34 (b) of Act No. 88 of 1997.]

41. Council to make rules relating to offences under this Chapter.—

- (1) The council shall from time to time make rules specifying the acts or omissions in respect of which the council may take disciplinary steps under this Chapter: Provided that the powers of the council to inquire into and deal with any complaint, charge or allegation under this Chapter shall not be limited to the acts or omissions so specified.
- (2) No rule made in terms of subsection (1) or any amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published in the *Gazette*.

42. Charges by pharmacists.—

- (1) No pharmacist shall make or attempt to make or to recover, or enter into any agreement or associate himself in any way with any other person for the purpose of making or fixing, excessive charges for any article supplied or to be supplied by him in his capacity as a pharmacist.
- (2) Any pharmacist who contravenes any provision of subsection (1) shall be guilty of improper conduct as contemplated in section 39 and the council shall take cognizance of and deal with such conduct in terms of the provisions of this Chapter.

43. Commission on prescription.—

- (1) No pharmacist shall pay to any person any commission or in any other manner reward him in connection with a prescription issued by a medical practitioner or veterinarian.
[Sub-s. (1) substituted by s. 14 of Act No. 20 of 1979.]
- (2) Any pharmacist who contravenes the provisions of subsection (1) shall be guilty of an offence and, in addition, may be dealt with by the council in terms of the provisions of this Chapter.

44. Cognizance by council of conduct of registered persons under certain circumstances.—

- (1) Every registered person who, either before or after registration, has been convicted of any offence by a court of law may be dealt with by the council in terms of the provisions of this Chapter if the council is of the opinion that such offence constitutes improper or disgraceful conduct, or conduct which when regard is had to such person's profession is improper or disgraceful, and shall be liable on proof of the conviction to one or other of the penalties referred to in section 45: Provided that, before imposition of any penalty, such person shall be afforded an opportunity of tendering an explanation to the council in extenuation of the conduct in question.

- (2) When in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of improper or disgraceful conduct on the part of a registered person, or of conduct which when regard is had to such person's profession is improper or disgraceful, the court shall direct that a copy of the record of such proceedings, or such portion thereof as is material to the issue, or in the case of the payment by such person of an admission of guilt fine referred to in section 57 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), a copy of the summons or written notice in question, shall be transmitted to the council.

[Sub-s. (2) substituted by s. 15 (a) of Act No. 20 of 1979.]

- (3) The council shall appoint a person, excluding the registrar or a member, to institute and conduct before the council proceedings under this Chapter: Provided that if a person so appointed is absent or for any other reason unable to perform his duties, the council may, subject to the provisions of this subsection, appoint any other person to perform, during such absence or incapacity, the duties of such first-mentioned person.

[Sub-s. (3) substituted by s. 15 (b) of Act No. 20 of 1979.]

- (4) When it appears—

- (a) from any disciplinary proceedings held by an employer into the conduct of a person registered in terms of this Act or any institution at which education and training in pharmacy is offered, that there is *prima facie* evidence of unprofessional conduct on the part of such employee or a student being trained as a pharmacist;
- (b) that the registration of a pharmacy student with an education and training institution has been suspended or cancelled,

then the employer or the institution shall furnish the council with a copy of the record of such proceedings, or such portion thereof that is material to the issue, or notify in writing the council of such suspension or cancellation.

[Sub-s. (4) inserted by s. 35 of Act No. 88 of 1997.]

45. Penalties the council may impose.—

- (1) Any person registered under this Act who, after an inquiry held by the council in accordance with the provisions of this Chapter, has been found guilty of improper or disgraceful conduct, or conduct which when regard is had to such person's profession is improper or disgraceful, shall be liable to one or other of the following penalties:

- (a) a reprimand or a caution or a reprimand and a caution; or
- (b) suspension for a specified period from practising or performing any acts forming part of his or her scope of practice as prescribed in terms of this Act;
[Para. (b) substituted by s. 16 of Act No. 20 of 1979 and by s. 36 (a) of Act No. 88 of 1997.]
- (c) removal of his name from the register;
- (d) a fine not exceeding the amount determined by the Minister from time to time by notice in the *Gazette*.

[Para. (d) inserted by s. 36 (b) of Act No. 88 of 1997.]

- (2) When the council has imposed one or other of the penalties referred to in subsection (1) the registrar shall cause to be published in the *Gazette* the name of the person concerned, the nature of the conviction and the penalty imposed.

- (3) Any person aggrieved by a finding of or penalty imposed by the council in terms of this section, may, after notice to the council and within a period of two months after the date of such finding or the imposition of the penalty, appeal to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area wherein the appellant normally practises in the capacity in which he is registered, against such finding or penalty, and the provisions of section 24 shall apply *mutatis mutandis* to such an appeal: Provided that no finding of or penalty imposed by the council shall be set aside by reason only of an irregularity which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.
- (4) The council may, if it deems fit, and subject to such conditions (if any) as it may determine—
 - (a) terminate any suspension under subsection (1) before the expiry of the specified period; or
 - (b) on payment of the prescribed fee restore to the register any name removed therefrom in terms of subsection (1).

45A. Postponement of imposition, and suspension of operation, of penalty.—

- (1) Where the council finds a person referred to in section 45 (1) guilty of conduct referred to therein, it may—
 - (a) postpone, for such period and on such conditions as it may determine, the imposition of a penalty; or
 - (b) impose any penalty mentioned in section 45 (1) (b) or (c), but order the execution of such penalty to be suspended for such period and on such conditions as it may determine.
- (2)
 - (a) If at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1) (a), the council is satisfied that the person concerned has observed all the relevant conditions, the council shall inform him that no penalty will be imposed upon him.
 - (b) If the execution of a penalty has been suspended in terms of subsection (1) (b), and the council is satisfied that the person concerned has observed all relevant conditions throughout the period of suspension, the council shall inform him that such penalty will not be executed.
 - (c) If the execution of a penalty has been suspended in terms of subsection (1) (b) and the person concerned fails to observe any of the conditions of suspension, the council shall put such penalty into operation unless such person satisfies the council that the non-observance of the condition in question was due to circumstances beyond his control.

[S. 45A inserted by s. 17 of Act No. 20 of 1979.]

45B. Recovery of fines and cost orders.—

- (1) Any fine imposed in terms of this Act shall, unless an appeal has been noted against such penalty, be paid to the council within 14 days after the imposition thereof, or within such extended period and in such instalments as the council may in its discretion determine.
- (2) Any cost order made in terms of this Act shall—
 - (a) in the event of such order being made against the *pro forma* complainant or against the council be paid by the council within 14 days after the amount thereof has been fixed;

- (b) in the event of such order being made against any other person be paid to the council within 14 days after the amount thereof has been fixed, or within such extended period and in such instalments as the council may in its discretion determine.
- (3) The imposition of a fine or the making of a cost order in terms of this Act shall have the effect of a judgment in civil proceedings in the magistrate's court of the district in which the person liable to pay such fine resides or has his or her registered address or main place of business.

[S. 45B inserted by s. 37 of Act No. 88 of 1997.]

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

47. Effect of suspension or removal from register.—Every person who has been suspended or whose name has been removed from the register under this Chapter shall, if his profession is one which, under this Act, cannot be lawfully carried on by an unregistered person, be disqualified from carrying on his profession and his registration certificate shall be deemed to be cancelled until the period of suspension has expired or until his name has been restored to the register by the council.

48. Limitation of liability.—Subject to the provisions of this Act the council or any member or officer of the council shall not be liable in respect of any act done in good faith or duty performed in accordance with this Act.

[S. 48 substituted by s. 52 of Act No. 88 of 1996 and by s. 38 of Act No. 88 of 1997.]