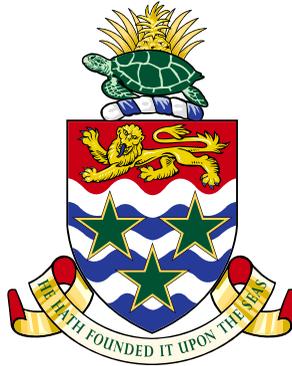


**CAYMAN ISLANDS**



# **HEALTH PRACTICE ACT**

**(2021 Revision)**

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## CAYMAN ISLANDS



# HEALTH PRACTICE ACT

## (2021 Revision)

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## CAYMAN ISLANDS



# HEALTH PRACTICE ACT

(2021 Revision)

## Preliminary

### Short title

1. This Act may be cited as the *Health Practice Act (2021 Revision)*.

### Definitions

2. In this Act —

“**Appeals Tribunal**” means the Health Appeals Tribunal established under section 4;

“**authorised insurer**” means —

- (a) an insurer licensed under the *Insurance Act, 2010 [Law 32 of 2010]* to carry on insurance business within the meaning of that Law; or
- (b) any other person or organisation approved by the Commission to provide medical or any other type of indemnity cover in the Islands;

“**clinical trial**” means —

- (a) subject to paragraph (b), an investigation or series of investigations consisting of the administration of one or more medicinal products or of one or more treatments of a particular description —
  - (i) by or under the direction of a registered practitioner to one or more of that person’s patients; or

- (ii) by or under the direction of two or more registered practitioners, each product being administered by or under the direction of one or other of those registered practitioners to one or more of that person's patients,

where (in any such case) there is evidence that medicinal products or treatments of that description have effects which may be beneficial to the patient or patients in question and the administration of the product or treatment is for the purpose of ascertaining whether, or to what extent, the product or treatment have those or any other effects, whether beneficial or harmful; but

- (b) a clinical trial does not include —
  - (i) the administration of any medicinal product in respect of which there is a product licence in force in the United Kingdom, provided that administration is carried out in accordance with the conditions of the licence;
  - (ii) the administration of any medicinal product in respect of which a licence equivalent to that referred to in subparagraph (i) has been issued by the appropriate authority in the United States of America, Canada or Jamaica and is in force and that administration is carried out in accordance with the conditions of that licence; or
  - (iii) the administration of any medicinal product approved by the World Health Organization.

**“Commission”** means the Health Practice Commission established under section 3;

**“Council”** means a Council established under section 21;

**“health care facility”** means premises at which health services are provided by a registered practitioner;

**“health services”** include clinical examination, nursing care, dental care, the provision of blood and blood products, diagnostic procedures, the provision of medical and surgical services, provision of pharmaceuticals, advice or counselling and any such other service as is provided by a registered practitioner under this Act;

**“manager”** in relation to a health care facility, includes owner;

**“medical tourism facility”** means a health care facility designated by the Cabinet under section 7A(2);

**“medical tourism provider”** means a person designated by the Cabinet under section 7A(1);

**“medical tourism services”** includes inpatient and ambulatory medical and surgical services provided to individuals who have travelled to the Islands for the purposes of obtaining health care;



“**medicinal product**” means any substance, article or device (including any instrument, apparatus or appliance) which is manufactured, sold, supplied or imported for use wholly or mainly in either or both of the following ways —

- (a) use by being administered to one or more human beings or animals for a medicinal purpose;
- (b) use as an ingredient in the preparation of a substance, article or device which is being administered to one or more human beings or animal for a medicinal purpose;

“**medicinal purpose**” means any one or more of the following purposes —

- (a) treating or preventing disease;
- (b) diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;
- (c) contraception;
- (d) anaesthesia;
- (e) investigation, replacement or modification of the anatomy or of a physiological process;
- (f) otherwise preventing or interfering with the normal operation of a physiological function, whether permanently or temporarily and whether by way of terminating, reducing, postponing, increasing or accelerating the operation of that function or in any other way;

“**Minister**” means the Minister responsible for health;

“**practising licence**” means a licence issued pursuant to section 27A(1);

“**register**” means the register of practitioners kept by each Council under this Act;

“**registered practitioner**” means any person qualified to practise any of the professions specified in this Act and registered under this Act;

“**registrar**” means a person in the public service appointed by the Cabinet, acting in its discretion, to carry out the duties specified under this Act;

“**regulations**” means regulations made under this Act;

“**specified period**” means the period commencing on 1st July, 2013, the date of the commencement of the *Health Practice (Amendment) Act, 2013 [Law 13 of 2013]*, and ending on the 18th February, 2020, the date of commencement of the *Health Practice (Amendment and Validation) Act, 2020 [Law 8 of 2020]*; and

“**treatment**” in relation to disease, includes anything done or provided for a medicinal purpose.

## Health Practice Commission

### Health Practice Commission

3. (1) There is established a Health Practice Commission for the following purposes —
- (a) advising the Minister on policy relating to health practice in the Islands including determining the types of health professions which should be permitted in the Islands;
  - (b) providing guidance to the Councils and monitoring their performance in order to ensure consistency in their practices;
  - (c) advising the Director of Planning on applications for the development of health care facilities;
  - (d) the certification and inspection of health care facilities; and
  - (e) such other purposes provided in this Act or as the Cabinet may, from time to time, determine.
- (2) Schedule 1 has effect with respect to the constitution and procedure of the Commission.
- (3) In carrying out its functions under this Act, the Commission may —
- (a) collaborate with such persons as it considers necessary in the collection, compilation and publication of statistics relating to the provision of health services in the Islands;
  - (b) with the approval of the Cabinet, enter into arrangements with any department of the Government for the use of the personnel, facilities and services of that department to any extent not incompatible with that department's operation; and
  - (c) may act by sub-committee and may delegate any of its functions and duties, from time to time, to such sub-committees or to one or more of the members of the Commission except that where the Commission sets up a sub-committee which consists of members other than members of the Commission, it may only act or delegate its functions or duties to such sub-committee with the approval of the Cabinet.
- (4) The delegation by the Commission under subsection (1)(c) —
- (a) shall not preclude the Commission from exercising or performing at any time any of the functions or duties so delegated;
  - (b) may be conditional, qualified or limited in such manner as the Commission may think fit; and
  - (c) may be amended at any time by the Commission.



- (5) No publication of statistics under subsection (3) shall contain any particulars so arranged as to enable any person to identify any particulars relating to any individual person.
- (6) The Cabinet may make regulations —
  - (a) requiring particulars and information to be supplied at prescribed times by persons in prescribed areas for prescribed periods; and
  - (b) prescribing the type of schedules, returns and information which are to be supplied by the Commission.

## **Health Appeals Tribunal**

### **Health Appeals Tribunal**

4. (1) There is established a Health Appeals Tribunal for the purpose of hearing appeals from decisions of the Commission and the Councils.
- (2) Schedule 2 has effect with respect to the constitution and procedure of the Health Appeals Tribunal.

## **Health care facilities**

### **Certification of health care facilities**

5. (1) The Commission may, upon an application being made to it, issue a certificate to any person to operate a health care facility.
- (2) The Commission shall issue a certificate subject to the provisions of this Act and to such other terms and conditions as it considers appropriate.
- (3) An application for a certificate shall be made in writing in such manner and in such form as the Commission shall determine from time to time and shall be accompanied by the prescribed fee.
- (4) An applicant shall provide the Commission with any further information that the Commission requires in considering that person's application.
- (5) The Commission may require an applicant to attend personally before the Commission and, if the applicant fails to attend, the Commission may refuse the application.

### **Duration of certificate**

6. (1) The duration of a certificate shall be stated therein.
- (2) A certificate may be for a fixed period not exceeding three years.

**Renewal of certificate**

7. (1) A certificate issued for a fixed period may be renewed from time to time in accordance with this section.
- (2) An application for renewal shall be made in writing to the Commission and accompanied by the prescribed fee.
- (3) If the Commission is satisfied that the applicant continues to meet the requirements for the issue of a certificate, the Commission shall renew the certificate.
- (4) If an application for the renewal of a certificate has been made before the expiry of the certificate but has not been dealt with by the Commission when the certificate is due to expire, the certificate continues in force until the application for renewal is dealt with and any renewal in such a case shall be taken to have commenced from the day when the certificate would have expired but for the renewal.

**Medical tourism services**

- 7A. (1) Where the Cabinet deems it to be in the national interest, the Cabinet may by Order published in the Gazette designate any person as a medical tourism provider, upon such terms and conditions (if any) as may be specified in the Order; and, upon such designation, the medical tourism provider may provide medical tourism services at any health care facility designated in the Order, in accordance with this Act, any other relevant Law, any relevant Regulations and any terms and conditions specified in the Order.
- (2) Where the Cabinet deems it to be in the national interest, the Cabinet may by Order published in the Gazette designate any health care facility as a facility at which medical tourism services may be provided, upon such terms and conditions (if any) as may be specified in the Order; and, upon such designation —
- (a) medical tourism services may be provided at the health care facility so designated, to individuals who have travelled to the Islands for the purposes of obtaining health care; and
- (b) medical and surgical services may be provided at the health care facility so designated, to individuals who are normally resident in the Islands,
- in accordance with this Act, any other relevant Law, any relevant Regulations and any terms and conditions specified in the Order.
- (3) The provisions of this Act relating to health care facilities apply to medical tourism facilities, and a medical tourism provider shall not operate a medical tourism facility without a certificate issued under this Act authorising the operation of the health care facility at which the relevant medical tourism services are provided.



- (4) No person other than a medical tourism provider shall operate a medical tourism facility.
- (5) A person who operates a medical tourism facility in contravention of subsection (3) or (4) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars.

### **Management of a health care facility**

8. Clinical services at every health care facility shall be managed by a person who is a registered practitioner in the principal list of a Council.

### **Clinical trials**

9. (1) The manager of a health care facility shall not permit any person to carry out clinical trials in a health care facility without the prior written consent of the Commission.
- (2) A manager who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

### **Health fees**

10. (1) The manager of a health care facility shall display, in a prominent part of the health care facility, a notice stating that there is available, on request, a list of the fees charged by the facility for each health service provided there.
- (2) Where a manager fails —
  - (a) to display such notice in accordance with subsection (1); or
  - (b) to make such list available to a person requesting it under subsection (1), that person commits an offence and is liable on summary conviction to a fine of one thousand dollars.

### **Refusal of certificate**

11. (1) Where the Commission is considering the refusal of an application for a certificate or the grant of a certificate subject to the attachment of a term, limitation or condition that is adverse to the applicant or is inconsistent with the terms of the application, the Commission shall inform the applicant accordingly and shall also inform the applicant that the applicant has a right to be heard by or to make written representations to the Commission before the Commission makes a decision on the application.
- (2) Written representations made under this section shall be made by the applicant within twenty one days after being informed under subsection (1).
- (3) The Commission shall have regard to any representations made by the applicant before making its decision.

**Certificate to a body corporate**

12. (1) Where the holder of a certificate to operate a health care facility is a body corporate, then if at any time a change occurs —
- (a) in the persons who are directors of that body corporate; or
  - (b) in the persons in accordance with whose directions or instructions the directors of that body corporate are accustomed to act,
- the secretary or other assigned person of the body corporate shall, no later than fourteen days after that time, serve on the Commission a notice giving particulars of the change.
- (2) A body corporate which fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

**Revocation of a certificate and appeal against revocation**

13. (1) The Commission may revoke a certificate to operate a health care facility —
- (a) where the manager of a health care facility fails to comply with any notice served in accordance with section 17 or 18 or it is found that the premises remain unfit for the purposes for which it is certified;
  - (b) on any ground that would entitle the Commission to refuse an application for the grant of the certificate;
  - (c) on the ground that the prescribed certificate or renewal fee is due or unpaid;
  - (d) in the case where the only holder of the certificate is a registered practitioner, on any of the grounds specified in section 36; or
  - (e) on the ground that any condition attached to the holder's certificate in respect of the health care facility has not been complied with.
- (2) If the Commission proposes to revoke a person's certificate to operate a health care facility, the Commission shall give to the person notice in writing of the proposal and the Commission's reasons for the proposal and shall invite the person to show cause why the Commission should not proceed as proposed.
- (3) A notice to show cause shall state that within twenty-one days of service, the person on whom it is served may make representations in writing or otherwise show cause to the Commission concerning the matter and the Commission shall not determine the matter without considering any submissions or representations received within that period of twenty-one days.



**Closure of health care facility**

14. Where the Commission is considering any submissions or representations made under section 13 regarding the revocation of a certificate by the Commission, the Commission may, prior to its determination of the matter, by notice to the holder of the certificate, permit the health care facility to continue in operation pending its determination or order the closure of the facility within such period of time as it considers just.

**Offences**

15. (1) A person who operates a health care facility without a certificate commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and a further fine of ten thousand dollars for every day during which the facility is operated without a certificate.
- (2) A person who operates a health care facility shall —
- (a) ensure that the registered practitioners practising at the health care facility have malpractice insurance or indemnity cover approved by the Commission;
  - (b) ensure that the health care facility is covered with adequate liability insurance; and
  - (c) ensure that persons who work at the facility under a contract of services with the health care facility have adequate malpractice and other relevant insurance,
- and such malpractice insurance, liability insurance, indemnity cover and any other relevant insurance shall be obtained from an authorised insurer.
- (3) A person who operates a health care facility in contravention of subsection (2) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars.

**Inspection of health care facilities**

16. (1) The Cabinet, acting in its discretion, may appoint as inspectors such persons having suitable qualifications as the Cabinet thinks necessary for carrying into effect the powers and duties set out in subsection (5).
- (2) Each inspector shall be provided by Government with an identification card indicating that that person is an inspector under this Act and bearing a photograph of the inspector.
- (3) An inspector shall, if requested to do so, produce that identification card for inspection to any person in relation to whom the inspector is about to exercise, is exercising or has exercised a power under this Act.

- (4) An inspector who intends to inspect any premises in accordance with this section shall, except in cases of emergency, give at least seven days' notice of that inspector's intention to do so to the manager of the premises.
- (5) An inspector shall be empowered to —
  - (a) at any reasonable time (or, in cases of emergency, at any time) enter, inspect and examine any health care facility in order to ensure that the premises are being kept in accordance with the standards set by the Commission relating to physical facilities, equipment, personnel and procedures which standards shall accord with relevant guidelines or codes in the United Kingdom, Canada or the United States of America;
  - (b) when entering such premises, take with that person such equipment and material as is considered necessary for the purpose of inspection and examination;
  - (c) make such examination and investigation as may in any circumstances be necessary; and
  - (d) require any person to afford that inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on that person by this section.
- (6) An inspector, when exercising a power under this section, may be accompanied by any other person whose assistance the inspector considers necessary, and that person may do such things as are reasonably necessary to assist the inspector in the performance of that inspector's functions.

### **Improvement notices**

- 17.** (1) If an inspector is of the opinion that the premises which were inspected are in an unsatisfactory condition, that inspector shall notify the manager in writing setting out that inspector's findings and giving the manager such period of time as the inspector considers necessary to remedy the situation.
- (2) Where the manager fails to comply with the notice under subsection (1) within the period of time set out in the notice, the inspector shall make a report to the Commission to that effect and the Commission, or in the case of an emergency, the chairperson, may, if it or that chairperson agrees with the report, serve on the manager of the premises a notice ("an improvement notice") stating that the Commission is of that opinion, giving particulars of the reasons why it is of that opinion, and requiring that person to remedy the situation within such period ending not earlier than the period within which an appeal against the notice can be brought under section 20 as may be specified in the notice.



### Prohibition notices

- 18.** (1) If, as regards any activities carried out on the premises, the inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve a risk of serious injury or harm to patients or to users of the premises, the inspector shall report the matter to the Commission or, in the case of an emergency, to the chairperson of the Commission and the Commission or the chairperson may, if it or that chairperson agrees with the report, serve on the manager of the premises a prohibition notice.
- (2) A prohibition notice shall —
- (a) set out the findings of the inspector;
  - (b) specify the matters which, in the opinion of the inspector and the Commission, will give rise to the risk; and
  - (c) direct that the activities to which the notice relates shall not be carried on at the premises unless the matters specified in the notice in under paragraph (b) have been remedied.
- (3) A direction contained in a prohibition notice under subsection (2)(c) shall take effect —
- (a) at the end of the period specified in the notice; or
  - (b) if the notice so declares, immediately.

### Provisions supplementary to sections 17 and 18

- 19.** An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

### Appeal against improvement or prohibition notice

- 20.** (1) In this section —
- “**notice**” means an improvement notice or a prohibition notice.
- (2) A person on whom a notice is served may within a period of twenty-eight days appeal by notice to the Appeals Tribunal; and, on such an appeal, the Appeals Tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the Appeals Tribunal may in the circumstances think fit.
- (3) Where an appeal under this section is brought against a notice within the period allowed under subsection (2), then —
- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is

- finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal; and
- (b) in the case of a prohibition notice, the bringing of the appeal shall have the same effect as in paragraph (a) only where the appellant so applies and the Appeals Tribunal so directs.

## **Councils, registration and licensing of practitioners**

### **Councils**

- 21.** (1) For each of the following groups of professions —
- (a) medicine and dentistry specified in Schedule 4;
  - (b) nursing and midwifery specified in Schedule 5;
  - (c) pharmacy specified in Schedule 7; and
  - (d) professions allied with medicine specified in Schedule 6,
- there is a Council which shall —
- (i) register and license practitioners in accordance with this Act;
  - (ii) regulate the professional conduct and discipline of registered practitioners;
  - (iii) regulate the training requirements of registered practitioners in the Islands;
  - (iv) have the general function of promoting high standards of professional conduct and performance of registered practitioners; and
  - (v) have such other duties and powers as are set out in the following provisions of this Act.
- (2) The Councils shall be respectively known as the Medical and Dental Council, the Nursing and Midwifery Council, the Pharmacy Council and the Council for Professions Allied with Medicine.
- (3) Each of the Councils shall have such other functions as are conferred by this Act or regulations, and Schedule 3 shall have effect with respect to matters including the constitution and general proceedings of the Councils.
- (4) At the request of the chairperson of any of the Councils, the Cabinet may by written directions to the Councils make such provisions with respect to the matters dealt with in relation to that Council by the regulations as the Cabinet considers appropriate.
- (5) Any provision under subsection (4) may be made either in substitution for, or as an addition to, that made by regulations.



**Appointment of a registrar**

- 22.** (1) The Cabinet, acting in its discretion, may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a registrar and such other officers and servants as are necessary for the proper carrying out of this Act.
- (2) Notwithstanding subsection (1), in carrying out its functions under this Act a Council may, with the approval of the Cabinet, enter into arrangements with any department of the Government for the use of the personnel, facilities and services of that department to any extent not incompatible with that department's operation.

**Establishment and maintenance of registers**

- 23.** (1) The registrar shall establish and maintain, in respect of each profession regulated by the Councils, registers of the names, addresses and qualifications, and such other particulars as may be prescribed by each Council, of all persons who are registered in accordance with this Act.
- (2) For the purposes of this Act, a person is registered by a Council in respect of a profession if that person's name is on the register maintained under this Act by the Council for that profession;
- (3) Each register established by a Council under subsection (1) shall consist of three lists —
- (a) the principal list;
  - (b) the institutional registration list; and
  - (c) the provisional list.
- (4) Each register of a profession maintained by a Council shall contain —
- (a) in the principal list, the names of persons who are registered under section 24 as fully registered practitioners;
  - (b) in the institutional registration list, the names of persons who are registered under section 24A as registered practitioners who are institutionally registered to practise in the Islands on the terms specified in that section; and
  - (c) in the provisional list, the names and other prescribed data of persons who are registered to work under supervision in posts approved by the Councils under section 25 as part of the completion of their training and recognised by the relevant institution.
- (5) Where a person is registered in accordance with this Act, the Council shall issue to that person a certificate of registration in the form prescribed by regulations; and, in the period before any regulations are made, a Council may issue certificates of registration under section 44(3).

### Full registration

- 24.** (1) Subject to this Act, a person who satisfies the conditions mentioned in subsection (2) shall be registered by the relevant Council as a fully registered practitioner in the principal list under section 23.
- (2) The conditions are that the application is made in the prescribed form and manner and that the applicant —
- (a) satisfies the Council that that applicant is of good character;
  - (b) has the necessary knowledge of English;
  - (c) has a relevant qualification recognised by the Council;
  - (d) satisfies the requirements of the Council as to experience;
  - (e) satisfies the Council that that person’s registration would be in the public interest; and
  - (f) has paid the prescribed fees.
- (3) **Repealed** by section 12 of the *Health Practice (Amendment) Act, 2013 [Law 13 of 2013]*.
- (4) In cases of emergency, the chairperson of a Council, or in that chairperson’s absence the deputy chairperson, may approve the registration of an applicant for a period not exceeding ninety days.

### Institutional registration

- 24A.**(1) Subject to this Act, a person who satisfies the relevant Council of the matters specified in section 24(2) may apply to be institutionally registered under this section, and that person shall be registered by the Council as a registered practitioner in the institutional registration list.
- (2) The Cabinet may by Order published in the Gazette designate a health care facility as a facility at which persons institutionally registered under this section may be employed, whether or not together with any other registered practitioners.
- (3) A person institutionally registered under this section may practise at the health care facility specified in the person’s application (being a facility designated under subsection (2)) but not otherwise.
- (4) Registration under this section shall be for an initial period of two years and may be renewed for consecutive periods not exceeding two years in any period.
- (4A) A registered practitioner on the institutional registration list who wishes to renew that registered practitioner’s registration shall apply for the renewal not less than sixty days prior to the expiration of the registration.
- (5) In cases of emergency, the chairperson of a Council may approve the registration of an applicant for a period not exceeding ninety days.



**Provisional registration**

- 25.** (1) Subject to this Act, any person who —
- (a) satisfies the Council of the matters specified in section 24(2)(a), (b), (c), (e) and (f);
  - (b) has, or is working towards, a relevant qualification recognised by the Council; or
  - (c) is enrolled in an institution recognised by the Council,
- may apply to be registered provisionally under this section, and that person shall be so registered.
- (2) A person provisionally registered under this section may engage in employment as an intern in a health care facility in the Islands approved by the Councils and recognised by relevant universities or such other institutions.
  - (3) References to employment as an intern shall be construed as references to employment which enables a person to complete that person's training and employment only in an approved post and for a specified duration under the direction and supervision of a fully registered practitioner.
  - (4) Registration under this section shall be for a period not exceeding two years and a person who is provisionally registered under this section and who wishes to renew that person's registration shall apply for such renewal not less than sixty days prior to the expiration of that person's registration.

**Repealed**

- 26. Repealed** by section 15 of the *Health Practice (Amendment) Act, 2013 [Law 13 of 2013]*.

**Specialists**

- 27.** Each of the Councils may approve any registered practitioner as a specialist if the Council is satisfied that the practitioner meets the requirements to be a specialist in accordance with rules provided under section 28(2)(j).

**Practising licence**

- 27A.**(1) A registered practitioner shall only practise as a practitioner while that person is in possession of a valid practising licence, issued to that person by the Council in the prescribed form on payment of the prescribed fee to the registrar.
- (2) A practising licence issued to a registered practitioner on the principal list shall, unless renewed, revoked or surrendered, expire on the second anniversary of the birth of the licensee following the date of the first issue or re-issue of the practising licence.

- (2A) A practising licence issued to a registered practitioner on the institutional registration list or the provisional list shall, unless renewed, revoked or surrendered, be valid for a period not exceeding two years.
- (2B) Where an application for the renewal of a practising licence under subsection (2) or (2A) is made before the expiry of the practising licence but has not been dealt with by the relevant Council at the time the practising licence is due to expire, the practising licence continues in force until the application for renewal is dealt with; and any renewal in such a case shall be taken to have commenced from the day on which the practising licence would have expired but for the renewal.
- (3) The Council may, upon the recommendation of the Cabinet, waive the prescribed fee payable by a registered practitioner who is in full-time employment in the Government service, if the Council is satisfied that the registered practitioner is not also engaged in private practice.
- (4) A practising licence shall not be issued to a registered practitioner unless the Council is satisfied that the registered practitioner has adequate malpractice insurance, liability insurance, other relevant insurance or indemnity cover obtained from an authorised insurer and approved by the Commission.
- (5) If the name of a registered practitioner is removed from the register, any practising licence issued to that person shall cease to be in force.
- (6) If, for a period of not less than five consecutive years, a registered practitioner ceases to be in possession of a practising licence, the name of the registered practitioner shall be removed from the register, unless that person applies to the relevant Council to be retained on the register and pays the prescribed fee.
- (7) A person who —
- (a) practises in contravention of subsection (1); or
  - (b) being a registered practitioner, practices without having adequate malpractice insurance, liability insurance, other relevant insurance or indemnity cover approved by the Commission,
- commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars.

## General provisions concerning registration and licensing

### Power to make regulations with respect to the registers

- 28.** (1) The Cabinet may, after consultation with the Councils, make regulations respecting registration and the registers maintained by a Council.
- (2) The regulations may, in particular, make provision as to —
- (a) the form and keeping of the register and the list of licensed practitioners;



- (b) the form and manner in which applications for registration and licensing are to be made;
- (c) the documentary and other evidence which is to accompany applications for registration and licensing;
- (d) the manner and procedure by which a Council is to satisfy itself as to the good character and competence of any person applying for registration;
- (e) the conditions or kinds of conditions which may be imposed on the person concerned in the case of an application for provisional registration;
- (f) the making, periodic revision, updating and removal of entries in the register;
- (g) the giving of reasons for any removal of, or refusal to add, an entry in the register;
- (h) any failure on the part of a registered person to comply with conditions subject to which that person's registration or practice licence has effect, including provisions for the Council to refuse to renew that person's practice licence or remove that person's name from the lists of licensed practitioners;
- (i) the content, assessment and conduct of any test of competence required by section 34;
- (j) the rules or tests of competence by which a Council shall determine whether a practitioner may be registered as a specialist; and
- (k) the minimum cover of insurance that a registered or licensed practitioner is required to have.

### **Access to the registers and lists, etc.**

- 29.** (1) The registrar shall make each Council's registers and lists of licensed practitioners available for inspection by members of the public at all reasonable times.
- (2) The registrar shall, at least once in every year, publish in the Gazette the names and registered addresses of the practitioners appearing in the Councils' lists of licensed practitioners and the names of practitioners who have been approved by the Councils as being specialists.
- (3) A publication by a Council under this section may also contain, in respect of each licensed practitioner, such other information derived from the lists as the Council may determine is appropriate for publication.
- (4) **Repealed** by section 19 of the *Health Practice (Amendment) Act, 2013 [Law 13 of 2013]*.
- (5) A certificate purporting to be signed by the registrar certifying that a person —
- (a) is registered in a specified register and list;

- (b) is not registered;
  - (c) was registered in a specified register and list at a specified date or during a specified period;
  - (d) was not registered in a specified register and list, or in any register or list maintained by the Council, at a specified date or during a specified period;  
or
  - (e) has never been registered by the Council,
- shall be evidence of the matters certified.

### **Removal of names and frauds or errors in relation to registration**

- 30.** (1) The registrar shall remove from the registers of a Council the name of a registered practitioner who is deceased or has otherwise ceased to maintain the requirements of registration.
- (2) The registrar shall investigate any allegation that an entry in a register has been fraudulently procured or incorrectly made, and at any time during such an investigation the relevant Council may suspend the licence in question if it is satisfied that it is necessary to do so in order to protect members of the public.
- (3) If, having considered the findings of an investigation under subsection (2), the Council is satisfied that the entry in question has been fraudulently procured or incorrectly made it may remove the entry.
- (4) Where the registrar removes an entry that has been fraudulently procured or incorrectly made it shall without delay notify the person whose entry has been removed of that fact and of the right of appeal to the Appeals Tribunal.
- (5) The registrar may, by letter addressed to any registered practitioner at that person's address on the register, inquire whether the registered practitioner has changed that person's address and, if no answer is received to the inquiry within six months from the date of the posting of the letter, the registrar may erase from the register any entry relating to that person.
- (6) A registered practitioner shall notify the Council of —
- (a) any change relating to that person's contact information or contact details;
  - (b) any change in that person's registration or licensure in any other jurisdiction;
  - (c) any conviction in any other jurisdiction of criminal charges or any proceedings relating to professional misconduct pending in relation to that person in the Islands or in any other jurisdiction occurring after registration;
  - (d) any other material particular as the Council may require; or
  - (e) any change in the scope of practice in the profession in respect of which that person is registered,



within such period as the Council determines but not less than fourteen days after the person has received notice of such matter, and the registrar shall, with regard to any change under paragraph (a), (b) or (d), amend the register accordingly.

### **Registration and licensing fees**

- 31.** (1) Subject to this Act, the Cabinet may make regulations with respect to the charging of fees in connection with the making of entries in the register of practitioners, and in particular —
- (a) prescribing a fee to be charged on the entry of a name or qualification in the register or on the restoration of any entry to the register;
  - (b) prescribing a fee to be charged for the issue and, as the case may be, the renewal of a practising licence; and
  - (c) authorising the registrar, notwithstanding anything in this Act, to refuse to make an entry in, or restore any entry to, the register or a particular list in it until a fee prescribed by regulations under this section has been paid.
- (2) Regulations under this section may authorise the suspension of the practising licence of —
- (a) any person who, after such notices and warnings as may be prescribed by the regulations, fails to pay a fee prescribed under the regulations; or
  - (b) any person who, in the manner prescribed by the regulations, applies for the suspension on the ground that that person does not wish to pay or continue to pay fees prescribed under subsection (1)(b).
- (3) If a person whose practising licence has been suspended in accordance with regulations made under subsection (2) at any time pays —
- (a) such penalty (if any) as may be prescribed for the purposes of this subsection by regulations under this section; and
  - (b) the fee (if any) which, if the practising licence had not been suspended, would be due from that person in respect of the current year,
- the suspension of the practising licence shall cease.
- (4) Regulations under this section prescribing fees may provide for the charging of different fees in different cases and may provide that fees shall not be chargeable in cases prescribed by the regulations.

## **Professional education and qualifications**

### **Promotion of professional education and development**

**32.** Each of the Councils shall have the general duty of promoting high standards of education and training in the professions whose members are registered by the Council.

### **Approval of courses and qualifications**

- 33.** The Cabinet may, by regulations, provide for the purposes of this Act —
- (a) any course of training or secondment which the Council considers is designed to confer on persons completing it sufficient knowledge and skill for the competent and safe practice of that profession; and
  - (b) any qualification which, as the result of an examination taken in conjunction with a course of training approved by the Council under this section, is granted to candidates reaching a standard at the examination indicating, in the opinion of the Council, that the candidates have sufficient knowledge and skill to practise or specialise in that profession.

### **Post registration education**

- 34.** (1) Each of the Councils shall determine that the practitioners registered in any one or more of the lists of a register that the Council maintains shall be required to undertake such continuing professional education as the Council may determine is in the interests of protecting the health of the public.
- (2) Where a Council requires any continuing professional education to be undertaken under subsection (1) it shall determine the period within which it is required to be undertaken.
- (3) A determination as to continuing professional education made under this section may provide that the licensing of practitioners who fail to comply with any requirement of the continuing professional education shall cease to have effect, by virtue of that failure, on the expiration of the period within which the continuing professional education is to be undertaken.
- (4) Before making a determination under this section, a Council shall take such steps as are reasonably practicable to consult the registered practitioners of that Council who will be required by the determination to undertake continuing professional education.



## **Standards of professional practice, professional conduct and fitness to practise**

### **Codes of standards of professional practice**

- 35.** (1) Each of the Councils shall prepare and from time to time publish a code of standards of professional practice (“the code”) for the members of the professions who are required to register with the Council.
- (2) A code prepared by a Council under this section shall —
- (a) lay down standards of professional conduct and practice expected of registered practitioners of the relevant professions;
  - (b) give advice in relation to the provisions of health care services by members of the profession; and
  - (c) provide the conditions of practice and supervision for registered practitioners.
- (3) The Councils shall keep under review the code it has prepared and vary the provisions of such a code whenever they consider it appropriate to do so.
- (4) Before preparing or varying a code a Council may consult registered members of the profession concerned.
- (5) A registered practitioner shall comply with the provisions of a code prepared by a Council under this section.

### **Censure, suspension, striking off, etc.**

- 36.** (1) If any registered practitioner is found upon enquiry by the Council in which that person is registered —
- (a) to be suffering from any habit or any mental or physical condition rendering that person unfit to practise;
  - (b) to have procured that person’s registration under this Act as a result of any misleading, false or fraudulent misrepresentation;
  - (c) to have been convicted of a criminal offence; or
  - (d) to be guilty of dishonesty, negligence or incompetence in the performance of that person’s functions as a registered practitioner or of conduct which otherwise contravenes the standards of professional conduct and practice set out in the code,
- the Council may, if it thinks fit —
- (i) censure that person;
  - (ii) impose, for a specified period, conditions on the registered practitioner’s licence with which that person must comply while practising as a member of that person’s registered profession;

- (iii) suspend that person's licence for a period not exceeding two years;  
or
  - (iv) direct the registrar to remove that person's name from the register.
- (2) A Council may at any time, if it thinks just, direct the registrar to restore to the register any name removed therefrom under subsection (1).
- (3) A Council shall, as soon as practicable after —
  - (a) the licence of any registered practitioner has been suspended;
  - (b) the name of any registered practitioner has been removed from the register;  
or
  - (c) the name of any registered practitioner which was so removed is restored,  
cause a notice of the appropriate fact to be published in the Gazette.
- (4) Where the name of any person has been removed from the register, a Council may in writing require that person to return to the registrar that person's certificate of registration and that person shall comply with that requirement.
- (5) A registered practitioner aggrieved by a decision of a Council to censure that person, impose conditions on that person's licence, suspend that person's licence or to cause that person's name to be removed from the register may, before the end of the period of twenty-eight days beginning with the date on which notice of the decision is sent to that person, appeal against the decision to the Appeals Tribunal.

### **Proceedings as to unprofessional conduct, etc.**

- 37.** Schedule 3 sets out the procedure to be followed in any proceedings before a Council to censure a registered practitioner, impose conditions, suspend that person's registration or to cause that person's name to be removed from the register.

## **Offences**

### **Offences relating to registration, etc.**

- 38.** (1) A person who wilfully and falsely pretends to be or takes or uses the name or title of physician, doctor of medicine, licentiate in medicine or surgery, bachelor of medicine, pharmacist, surgeon, general practitioner, dentist, nurse or any other name, title, addition or description implying that that person is registered under this Act commits an offence unless that person is so registered.
- (2) A person who, without reasonable excuse, fails to comply with any requirement lawfully imposed by a Council —
- (a) for that person's attendance before the Council;
  - (b) for the giving of evidence; or
  - (c) for the production of documents,



commits an offence.

- (3) A person who procures or attempts to procure the entry of any name on a register established under this Act by wilfully making or producing or causing to be made or produced, either verbally or in writing, any declaration, certificate or representation which that person knows to be false or fraudulent commits an offence.
- (4) A person who commits an offence under subsection (1), (2) or (3) is liable on summary conviction to a fine of ten thousand dollars and where the offence of which the person is convicted is an offence under subsection (1) or (2) and the offence is continued after conviction that person commits a further offence and is liable to a fine of two thousand dollars for every day on which the offence is so continued.

### **Emergencies**

**38A.** Notwithstanding any provision of this Act, where any person meets with an accident or is taken suddenly ill and no person licensed under this Act is immediately available, it shall not be an offence under this Act if any person present having knowledge of first-aid conveys or causes to be conveyed the injured or sick person from any place of immediate danger and protects such person from shock and from excessive loss of blood.

## **Miscellaneous and supplemental**

### **Power to extend or restrict application of this Act**

**39.** The Cabinet may, by order, amend any Schedule where it considers it necessary to do so.

### **Default powers of the Cabinet**

- 40.** (1) If at any time it appears to the Cabinet that a Council has failed, either generally or in a particular case, to perform any duty, exercise any power or do any act or thing imposed on, vested in or authorised to be done by the Council, the Cabinet may direct the Council to perform that duty or (as the case may be) exercise that power or do that act or thing within such period of time as the Cabinet shall specify.
- (2) If a Council fails to comply with any directions of the Cabinet under subsection (1), the Cabinet may give effect to those directions, and for that purpose the Cabinet may exercise any power vested in the Council or do any act or thing authorised to be done by that Council.

## Immunity

- 40A.** (1) The following persons and entities shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions, responsibilities, powers and duties under this Act, unless it is shown that the act or omission was in bad faith —
- (a) the registrar;
  - (b) an inspector appointed under section 16;
  - (c) the Commission;
  - (d) the Appeals Tribunal;
  - (e) a Council; and
  - (f) any member of the Commission, the Appeals Tribunal or a Council.
- (2) Notwithstanding any law to the contrary, an act done by an institutionally registered practitioner during the specified period is deemed to be lawful and valid if the act would have been lawful and valid had the practising licence been issued in accordance with —
- (a) the *Health Practice Act (2005 Revision)*; and
  - (b) any amendments to the *Health Practice Act (2005 Revision)* prior to the commencement of the *Health Practice (Amendment and Validation) Act, 2020 [Law 8 of 2020]*.
- (3) For the purposes of subsection (2), an act done by an institutionally registered practitioner during the specified period is not lawful or valid if the act was negligent or done in bad faith.

## Service of documents.

- 41.** (1) Any notice or other document authorised or required to be served under this Act may be served on a person either by delivering it to that person, by leaving it at that person's proper address or by sending it by registered post.
- (2) For the purpose of the application to this section of section 53 of the *Interpretation Act (1995 Revision)* the proper address of a person to whose registration such a document relates shall be that person's address on the relevant register.

## Regulations, etc.

- 42.** (1) The Cabinet may, by regulations, make provision prescribing or determining anything required or permitted to be prescribed or determined under this Act and it may, where it considers it necessary, consult with the Commission and the Councils prior to making any such regulations.



- (2) In making regulations under this section, the Cabinet shall have regard to the desirability of protecting the public health care in the Islands.
- (3) Any power of the Cabinet to make regulations or an order under this Act includes power —
  - (a) to make different provisions in relation to different cases or classes of case (including different provision for different professions, registers and lists or different groups of professions);
  - (b) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, and
  - (c) to impose fees or to provide for the waiver of fees in certain circumstances, as the Cabinet considers necessary.
- (4) Regulations may provide that the contravention of any provision constitutes an offence and may prescribe penalties for any such offence not exceeding the maximum fine and term of imprisonment prescribed in this Act for any offence under this Act.

### Directions to Councils

**42A.** The Cabinet may, from time to time, issue policy directions to the Councils, for their guidance in the exercise of their respective powers, duties and functions under this Act, and it shall be the duty of the Councils to put into effect and to carry out such directions.

### Payment of fees

**43.** Any fees paid in relation to any matter for which fees are prescribed under this Act shall be paid into General Revenue of the Islands.

### Savings and validation

- 44.** (1) Every form issued or approved for use under the repealed *Health Practitioners' Act (1995 Revision)* is to be regarded as issued or approved for use under this Act until another form is issued or approved under regulations made under this Act in place of that form.
- (2) Where, apart from this section, anything done under or for the purposes of the **repealed** *Health Practitioners' Law (1995 Revision)* would cease to have effect by virtue of the repeal of that law it shall have effect as if it had been done under and for the purposes of the corresponding provisions of this Act.
- (3) References in any enactment, instrument or other document passed or made before the repeal of the **repealed** *Health Practitioners' Law (1995 Revision)* to —
- (a) that law; or

- (b) the register of Health Practitioners maintained under that law, shall, after the repeal of that law, be construed respectively as references to this Act and to the appropriate lists of the registers established and maintained under this Act.
- (4) References to a health practitioner registered under the **repealed** *Health Practitioners' Law (1995 Revision)* in any enactment, instrument or other document passed or made before the repeal of that law shall be construed as references to a health practitioner registered in the appropriate list of the register maintained by a Council under this Act for that person's profession.
- (5) Where, as an alternative to providing the malpractice insurance required by section 15, an operator of a health care facility before the 28th November, 2004, provided instead indemnity cover of any type approved by the Commission, such provision is declared to have been lawfully done and is validated.

### Validation of practising licences

- 44A.** (1) The purpose of this section is to remedy a defect in regulation 9 of the *Health Practice Registration (Amendment) Regulations, 2013 [SL 25 of 2013]*, which was purported to be made in accordance with the *Health Practice Act (2005 Revision)*, the effect of which was to reduce, in some instances, the two-year period for a practising licence provided for under the *Health Practice Act (2005 Revision)*.
- (2) The defect under subsection (1) made regulation 9 of the *Health Practice Registration (Amendment) Regulations, 2013 [SL 25 of 2013]* inconsistent with the *Health Practice Act (2005 Revision)*.
- (3) Notwithstanding the inconsistency referred to under subsection (2), practising licences issued to institutionally registered practitioners during the specified period are validated and deemed to have been issued and expired, in accordance with the *Health Practice Act (2005 Revision)* and any amendments to that Act prior to the commencement of the *Health Practice (Amendment and Validation) Act, 2020 [Law 8 of 2020]*.

### Binding of the Crown

- 45.** This Act binds the Crown.



## SCHEDULE 1

(section 3)

### HEALTH PRACTICE COMMISSION

#### *Composition of Commission*

1. (1) The Commission consists of —
  - (a) the chairperson of each of the Councils;
  - (b) an assignee of the Attorney General;
  - (c) an assignee of the Director of Planning;
  - (d) two persons representing health care facilities; and
  - (e) the registrar,  
appointed by the Cabinet.
- (2) The chairperson and deputy chairperson of the Commission shall be appointed by the Cabinet.
- (3) The registrar shall be the secretary to the Commission and shall record and keep, or cause to be recorded and kept, all minutes of the meetings, proceedings and decisions of the Commission but shall have no right to vote.
- (4) The members of the Commission shall hold and vacate office in accordance with the terms of their appointment.
- (5) A member of the Commission shall be appointed for a term of two years or such shorter term as may be specified in the instrument by which the member is appointed, and the Cabinet shall cause notice of such appointment to be published in the Gazette.
- (6) A member of the Commission shall be eligible for reappointment for only two consecutive terms of two years.
- (7) The Cabinet may terminate a person's appointment as a member of the Commission if it is satisfied that —
  - (a) the person has been adjudged bankrupt;
  - (b) the person is incapacitated by reason of physical or mental illness;
  - (c) the person has been absent from three consecutive meetings of the Commission without the consent of the chairperson of the Commission; or
  - (d) the person is otherwise unable or unfit to discharge the functions of a member of the Commission.



- (8) Where any member ceases to be a member before the normal expiration of that person's office the Cabinet in accordance with this Act, may appoint another person to hold that office until the time that the member's office would have expired.

*Procedure of Commission*

2. (1) The Commission shall meet at least once every five months and it may decide its own procedures, except so far as its procedures are prescribed by regulations or this Act.
- (2) At every meeting of the Commission a quorum shall consist of five members including the chairperson, and decisions shall be adopted by a simple majority of the votes of the members present and voting except that in the case of an equality of votes the chairperson shall in addition have a casting vote.
- (2A) In the absence of the chairperson and the deputy chairperson at any meeting, the chairperson shall designate another member to act as chairperson at that meeting.
- (3) The Commission may act notwithstanding that a vacancy exists among the members.
- (4) The deliberations of the Commission shall be confidential but the Commission shall cause any decision which affects the members of the public to be published in the Gazette, in a website or in a newspaper of the Islands.
- (5) If a member of the Commission has any personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Commission, that member shall, if present at the meeting of the Commission at which such matter is to be determined, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration or discussion of such matter or vote on any question with respect thereto.
- (6) Minutes of each meeting shall be kept in a proper form and shall be confirmed by the chairperson as soon as practicable at a subsequent meeting. A copy of the minutes as confirmed by the chairperson shall be sent to the Minister.

*Remuneration of members*

3. Each of the members of the Commission (who are not in the public service) shall receive such remuneration in respect of each meeting attended, and the chairperson and deputy chairperson (who are not in the public service) shall receive such additional remuneration, as may be determined, from time to time, by the Cabinet.



## SCHEDULE 2

(section 4)

### HEALTH APPEALS TRIBUNAL

#### *Composition of Tribunal*

1. (1) The Appeals Tribunal consists of —
  - (a) three registered practitioners, not being members of a Council, from each of the following groups of professions —
    - (i) medicine and dentistry specified in Schedule 4;
    - (ii) nursing and midwifery specified in Schedule 5
    - (iii) pharmacy specified in Schedule 7
    - (iv) professions allied with medicine specified in Schedule 6;
  - (b) two attorneys-at-law; and
  - (c) two other members neither of whom shall be qualified to practise any of the professions specified in this Act,  
all of whom shall be appointed by and hold office at the pleasure of the Cabinet.
- (2) The chairperson and the deputy chairperson of the Appeals Tribunal shall be attorneys-at-law of at least seven years' call to the bar and they shall be appointed by and hold office at the pleasure of the Cabinet.
- (3) The Cabinet may appoint a secretary to the Appeals Tribunal who shall record and keep all minutes of the meetings, proceedings and decisions of the Appeals Tribunal and such secretary shall have no right to vote.
- (4) A member of the Appeals Tribunal shall be appointed for a term of two years or such shorter term as may be specified in the instrument by which the member is appointed, and the Cabinet shall cause notice of such appointment to be published in the Gazette.
- (5) A member of the Appeals Tribunal shall be eligible for reappointment for only two consecutive terms of two years.
- (6) The Cabinet may terminate a person's appointment as a member of the Appeals Tribunal if it is satisfied that that member —
  - (a) has been adjudged bankrupt;
  - (b) is incapacitated by reason of physical or mental illness;
  - (c) has been absent from three consecutive meetings of the Tribunal without the consent of the chairperson of the Appeals Tribunal; or



- (d) is otherwise unable or unfit to discharge the functions of a member of the Appeals Tribunal.
- (7) Where any member ceases to be a member before the normal expiration of that person's office the Cabinet in accordance with this Act, may appoint another person to hold that office until the time that the member's office would have expired.

### *Meetings of Appeals Tribunal*

- 2. (1) The Appeals Tribunal shall meet upon such occasions as, in the opinion of the chairperson, are necessary or desirable in the public interest.
- (2) No decision shall be made by the Appeals Tribunal unless at least three of the members (including the chairperson or deputy chairperson and a registered practitioner) are present and voting, and the Appeals Tribunal shall reach its decisions by majority vote.
- (3) If a member of the Appeals Tribunal has any personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Appeals Tribunal, that member shall before the meeting of the Appeals Tribunal at which such matter is to be determined, disclose the fact, and shall not take part in the consideration or discussion of such matter or vote on any question with respect thereto, and another member shall be appointed by the Cabinet for such period as is appropriate to deal with such matter.
- (4) Subject to subparagraphs (1) to (3), the Appeals Tribunal shall have power to regulate its own procedure.

### *Conduct of appeals from decision of the Commission and Councils*

- 3. (1) A person who is aggrieved by a decision of a Council or of the Commission from which an appeal is allowed under this Act, but for which the period for the submission of the Appeal is not provided, may submit an Appeal to the Appeals Tribunal within twenty-eight days of the communication of the decision to the person or such longer period as the Appeals Tribunal may allow for good cause shown.
- (1A) A person who is —
  - (a) an applicant for registration;
  - (b) an applicant for a licence;
  - (c) an applicant for a certificate to operate a health care facility;
  - (d) a registered practitioner; or
  - (e) a manager of a health care facility,who is aggrieved by a decision of a Council or of the Commission from which an appeal is not otherwise allowed under this Act may submit an appeal to the



Appeals Tribunal within twenty-eight days of the communication of the decision to the person or such longer period as the Appeals Tribunal may allow for good cause shown.

- (2) Appeals shall be by notice in writing addressed to the secretary of the Appeals Tribunal and such notice shall set forth —
  - (a) the decision against which the appeal is made;
  - (b) the grounds of the appeal; and
  - (c) whether or not the appellant wishes to be heard personally or by a representative.
- (3) On receipt of the notice of appeal, the Appeals Tribunal shall, if the appellant has applied to be heard personally or by a representative, fix a time and a date for such hearing and notify the appellant and the Council or the Commission as the case may be.
- (4) At every hearing of an appeal where the appellant or that appellant's representative is present, the appellant or that appellant's representative shall be given an opportunity to address the Appeals Tribunal, and the representative of the Council or Commission, as the case may be, shall be heard in answer in that behalf. The Appeals Tribunal may, in its absolute discretion, call upon either party or any relevant witness to address it further.
- (5) Representatives appearing on behalf of either party need not be persons having legal qualifications.
- (6) The decision of the Appeals Tribunal shall be notified to the parties to the proceedings with the least possible delay in accordance with this Act.

#### *Decisions of Appeals Tribunal*

4. (1) On an appeal the Appeals Tribunal may make such order (including any order for costs or damages) as it thinks just and it may either confirm, modify or reverse the decision against which the appeal is made, or any part of such decision.
- (2) The Appeals Tribunal shall render its determination within a reasonable period of time of the end of the hearing and such period shall not exceed twenty-eight days.
- (3) Where a decision is confirmed, the confirmation shall be deemed to take effect from the date on which the decision was made.
- (4) An appeal may be made to the court from a decision of the Appeals Tribunal.
- (5) An appeal to the Appeals Tribunal or to the court against a decision to close a health care facility under section 14 shall not have the effect of suspending the execution of the decision of the Commission unless the Appeals Tribunal or the court so orders.

*Rules relating to appeals*

5. The Chief Justice may make rules relating to the procedure and forms to be used for the notice of appeal to the court and the admission of evidence in any appeal heard by the Appeals Tribunal.

*Remuneration of members*

6. The members of the Appeals Tribunal (who are not in the public service) shall receive such remuneration in respect of each meeting attended, and the chairperson (who is not in the public service) shall receive such additional remuneration as may be determined, from time to time, by the Cabinet.



## SCHEDULE 3

(section 21(3))

### CONSTITUTION AND GENERAL PROCEEDINGS, ETC. OF THE COUNCILS

#### *Constitution of Councils*

1. (1) Each of the Councils, other than the Council for Professions allied with Medicine, shall consist of the registrar by virtue of office and five other members, appointed by the Cabinet.
- (2) Of the five members of the Medical and Dental Council, the Nursing and Midwifery Council and the Pharmacy Council —
  - (a) at least three members shall be registered practitioners in the principal list of each of those Councils;
  - (b) at least one member of the Medical and Dental Council shall be recommended by the Cayman Islands Medical and Dental Society, and one member shall be a dentist;
  - (c) one member of the Nursing and Midwifery Council shall be a registered nurse, one shall be a midwife and one shall be a representative of the Cayman Islands Nurses Association;
  - (d) at least one member of the Pharmacy Council shall be recommended by the Cayman Pharmacists Association; and
  - (e) at least one member of each Council shall be a person who is not a registered practitioner.
- (3) The Council for Professions allied with Medicine shall consist of —
  - (a) the registrar by virtue of office;
  - (b) six members, being registered practitioners in any of the professions specified in Schedule 6; and
  - (c) one member who is not qualified to practise any of the professions specified in this Act,  
appointed by the Cabinet.
- (4) The chairperson and the deputy chairperson of each Council shall be appointed by the Cabinet.
- (5) A member of a Council shall be appointed for a term of two years or such shorter term as may be specified in the instrument by which the member is appointed, and a member of a Council shall be eligible for reappointment for only two consecutive terms of two years.



- (6) The registrar shall be the secretary to each Council and shall record and keep, or cause to be recorded and kept, all minutes of the meetings, proceedings and decisions of each Council but shall have no right to vote.
2. (1) Subject to this paragraph, members of each Council shall hold and vacate office in accordance with the terms of their appointment.
- (2) If the chairperson of a Council ceases to be a member of the Council, that person shall also cease to be chairperson.
- (3) A member may, at any time, by notice in writing addressed to the Cabinet, resign that person's membership.
- (4) The Cabinet, after consultation with or on the advice of the relevant Council, may terminate a person's appointment as member of a Council if it is satisfied that that person—
- (a) has been absent from any two out of five consecutive meetings of the Council without the prior written consent of the chairperson of the Council;
- (b) has been adjudged bankrupt;
- (c) is incapacitated by reason of physical or mental illness; or
- (d) is otherwise unable or unfit to discharge the functions of a member of the Council.
- (5) Where any member ceases to be a member before the normal expiration of that person's office, the Cabinet may appoint another person qualifying for that appointment to hold that office until the time that member's office would have expired.
- (5A) In the absence of the chairperson and the deputy chairperson at any meeting, the chairperson shall designate another member to act as chairperson at that meeting.

#### *Funding of Councils*

3. The funds available for the purpose of enabling the Councils to perform their functions under this Act shall consist of such sums as may be provided for those purposes in the estimates of revenue and expenditure of the Islands for the purpose and approved by the Cayman Islands Parliament.

#### *Proceedings of Councils Generally*

4. (1) Where a member of a Council is in any way directly or indirectly interested in an application for registration made to the Council or in any other matter which is to be determined by the Council, that member shall disclose the nature of that member's interest at a meeting of the Council as soon as possible after the relevant circumstances have come to that member's knowledge.



- (2) Any disclosure so made by such a member shall be recorded in the minutes of the Council and that member shall not take part after the disclosure in any decision of the Council with respect to the application.
5.
  - (1) The registrar of the Councils may attend the meeting of the Councils but shall not be entitled to vote and shall not be counted for the purpose of constituting a quorum.
  - (2) Each of the Councils may co-opt any person whom it considers able to assist it in the performance of any of its functions and such person shall be co-opted for a period of six months or such longer period as the Cabinet may approve.
  - (3) Any person co-opted may attend and participate in meetings of the Council, but shall not be entitled to vote and shall not be counted for the purpose of constituting a quorum.
  - (4) A Council shall, if so requested in that behalf, give audience to any registered practitioner and that person's representative before reaching any decision concerning them.
  - (5) If a Council proposes to refuse to register a person the Council shall give to the person notice in writing of the proposal and the Council's reasons for the proposal and shall invite the person to show cause why the Council should not proceed as proposed.
  - (6) A notice to show cause shall state that within twenty-one days of service, the person on whom it is served may make representations in writing or otherwise show cause to the Council, and the Council shall not determine the matter without considering any submissions or representations received within that period of twenty-one days.
6.
  - (1) A Council shall meet as often as it considers necessary but not less than once every three months.
  - (2) Subject to this Schedule, the quorum of the Councils shall be a simple majority and procedure of each Council shall be determined by such Council.
  - (3) The chairperson of a Council shall call a meeting of the Council if so directed by the Minister or by the Commission or if requested to do so in writing by two members, and such a direction or request must include a statement of the agenda proposed for the meeting.
  - (4) Each of the Councils shall reach its decisions by a majority of the votes of the members present and voting at the meeting.
  - (5) The chairperson or other member presiding at the meeting shall be entitled to vote only in the event of an equality of votes, when that person shall have a casting (but not original) vote.
  - (6) Minutes of each meeting shall be kept in a proper form and shall be confirmed by the chairperson as soon as practicable at a subsequent meeting. A copy of the

minutes as confirmed by the chairperson shall be sent to the Minister and the chairperson of the Commission.

7. The Councils shall provide the Cabinet and the chairperson of the Commission with such information as it may, from time to time, require with respect to the activities or proposed activities of the Council, but a requirement imposed under this paragraph shall not impose upon a Council the duty of providing the Cabinet with information the Council does not possess and cannot reasonably be expected to obtain.
8. The validity of any proceedings of a Council shall not be affected by any vacancy among the members of the Council or by any defect in the appointment or any disqualification of any of the members of the Council.
9. The members of the Councils and persons co-opted under paragraph 5 (who are not in the public service) shall receive such remuneration in respect of each meeting attended, and the chairperson and deputy-chairperson (who are not in the public service) shall receive such additional remuneration as may be determined, from time to time, by the Cabinet.
10. (1) All documents issued by a Council and all decisions of the Council shall be signed by the chairperson or the registrar.  
(2) Any document purporting to be issued by the Council, and to be signed on behalf of the Council in accordance with this paragraph, shall be received in evidence and shall be deemed to be such a document without further proof unless the contrary is shown.

### *Statistics*

11. For the purpose of enabling each of the Councils to compile or assist in the compilation of statistics relating to the professions respectively regulated by the Councils and the health care services provided by those professions, each of the Councils may, from time to time issue to persons registered by the Council requests for information on matters which in the opinion of the Council concerned are relevant for that purpose.

### *Proceedings Relating to Hearing of Allegations, Etc.*

#### Investigating procedures

12. (1) Each Council shall carry out investigations of cases where it is alleged that a registered practitioner —
  - (a) is suffering from any habit or any mental or physical condition rendering that person unfit to practise medicine;
  - (b) has procured that person's registration under this Act as a result of any misleading, false or fraudulent misrepresentation;



- (c) has been convicted of a criminal offence; or
  - (d) commits an act of dishonesty, negligence or incompetence in the performance of that person's functions as a registered practitioner or of conduct which otherwise contravenes the standards of professional conduct and practice set out in the code,
- (2) When considering how cases shall be investigated, a Council shall have proper regard for the public interest as well as the interest of all groups of practitioners within the professions whose members are required to register with the Council.
  - (3) Where an allegation under subparagraph (1) has been brought to the notice of a Council, the Council may invite the registered practitioner concerned to furnish any written statement or explanation which that person may desire to offer.
  - (4) The Council shall consider the matter and obtain such reports as it considers necessary and may ask the person who has made the allegation to verify the allegation by way of affidavit, and any such affidavit shall state the description of the deponent and grounds for that person's belief in the truth of any fact declared which is within that person's personal knowledge.
  - (5) A Council may decline to proceed with the investigation of any allegation against a registered practitioner where it is of the opinion that the allegation made is without merit or because the allegation does not deal with a matter falling within the jurisdiction of the Council, and the Council shall give reasons for its decision.
  - (6) In every case where a Council decides to proceed with the investigation of an allegation against a registered practitioner, the Council shall consider whether to suspend the licence of the practitioner under this Act to protect members of the public.
  - (7) Before a Council decides whether or not to proceed any further with an investigation against a registered practitioner it shall seek legal advice on the matter from the Attorney General, or in the case of a registered practitioner who is employed by Government, an independent legal adviser.
13. Where a Council —
- (a) has decided to proceed with an allegation against a registered practitioner;
  - (b) has been asked to restore to a register it maintains the name of a registered practitioner which has been removed from it; or
  - (c) has received notice that an entry in a register it maintains has been fraudulently procured or incorrectly made,
- it shall seek to determine the case in accordance with this Schedule.

*Notice of Hearing*

14. (1) Where a Council has decided to proceed with a case under paragraph 13 it shall send to the registered practitioner concerned written notice —
  - (a) of the nature of the allegations against the registered practitioner and the reasons for the hearing of the case by the Council; and
  - (b) the date, time and place at which the case will be heard.
- (2) In any case where a person has made an allegation which is to be considered, the relevant Council shall send a written notice setting out the allegation to that person.
- (3) Upon application by any of the parties to the proceedings, the Council shall send to that party copies of any statutory declaration or any other document sent to the Council in relation to the proceedings by the person who made the allegation against the registered practitioner or by the registered practitioner.
- (4) The registered practitioner who is alleged to be liable to have that person's name removed from the register —
  - (a) may appear at the hearing in person;
  - (b) may be represented at the hearing by an attorney-at-law; and
  - (c) may examine and cross-examine witnesses and otherwise offer evidence.

*Legal Advisers*

15. (1) The Attorney General shall, at the request of a Council, assign a legal adviser to advise the Council on any legal issue arising in relation to proceedings under this Act.
- (2) It shall be the duty of the legal adviser assigned to a Council to be present at all proceedings to which that legal adviser is appointed.
- (3) If on any occasion a Council does not accept the advice of a legal adviser the Council shall make a record of —
  - (a) any question referred to the legal adviser;
  - (b) the legal adviser's advice; and
  - (c) the refusal to accept it and the reason for that refusal, and the copy of the record shall be given to every party or representative of a party to the proceedings.

*Oaths and Evidence*

16. (1) In any proceedings under this Schedule, a Council shall have the same powers to summon witnesses, administer oaths and affirmations and take evidence as has a magistrate in a court of summary jurisdiction.



- (2) Each witness shall be examined by the Council through the chairperson and may be examined by the registered practitioner or that person's attorney-at-law.

### *Hearing and Charge*

17. (1) Subparagraph (2) applies where the registered practitioner who is liable to have that person's name removed from the register in consequence of the proceedings does not appear before the hearing.
- (2) The Council shall ask the legal adviser to satisfy the Council that the notice was received by the registered practitioner concerned; if the notice does not appear to have been so received the Council may nevertheless proceed with the hearing if it is satisfied that all reasonable efforts have been made to serve the notice on the registered practitioner.
- (3) The allegation against a registered practitioner shall be read by the chairperson in the presence of the parties to the proceedings; if a registered practitioner concerned in the allegation does not appear but the Council nevertheless decides that the hearing should proceed, the allegation shall be read in that person's absence.

### *Procedure where conviction is alleged*

18. (1) In cases relating to the alleged criminal conviction of a registered practitioner by a court in the Islands a certificate from a competent officer of the court that the registered practitioner has been so convicted shall be conclusive evidence of the conviction for the purposes of this Act.
- (2) In cases relating to the alleged criminal conviction of a registered practitioner by a court otherwise than a court in the Islands, the chairperson of the Council shall require such evidence to be adduced concerning the conviction as that chairperson is advised by the legal adviser is necessary for the purpose of proving the conviction.
- (3) In every case where a registered practitioner is alleged to have committed a criminal offence and the registered practitioner concerned has not admitted that that person was convicted as alleged, the Council shall determine whether or not the conviction has been proved.
- (4) After the Council has determined that a conviction has been proved, the validity of that conviction shall not be questioned by any party to the proceedings before the Council.
- (5) Proof of conviction shall be conclusive evidence for the purposes of this Act of the commission by the registered practitioner concerned of the offence of which that person was convicted.

- (6) Where a conviction has been proved, the chairperson of the Council shall invite the parties to address the Council as to the circumstances leading to the conviction and to make representations as to those circumstances.

*Procedure where there is more than one respondent*

19. (1) A Council may hold one hearing in respect of charges against two or more registered practitioners where it considers the circumstances justify the procedure.
- (2) Where such a hearing is held, the preceding paragraphs of this Schedule shall apply subject to any necessary modifications.
- (3) On the advice of the legal adviser the Council may direct the order in which proceedings shall be taken in relation to the several practitioners.
- (4) Any of the rights ensured to a registered practitioner under paragraphs 14, 16, 17 and 18 shall be exercised separately by each of the practitioners who may desire to invoke any of those rights.

*Hearing and adjournment*

20. (1) The Council may hear evidence in public if it thinks it is in the public interest to do so or upon the request of the registered practitioner against whom the allegations are made.
- (2) The Council, having heard the evidence, shall consider that evidence in private and communicate its decision to the parties to the proceedings with the least possible delay.
- (3) The Council may, if it thinks it is in the public interest to do so, make its decision available to the public in such manner as it thinks fit.

*Voting*

21. (1) Any question put to the vote of a Council shall be put in the form of a motion, and on any such motion all members of the Council, including the chairperson, shall vote for or against the motion.
- (2) Where the votes are equal on any motion put to the vote of a Professional Conduct and Health Committee to recommend to a Council —
- (a) the removal of a practitioner's name from a register or list in a register;
- (b) the suspension of a practitioner's licence; or
- (c) the imposition or variation of conditions on a practitioner's registration,
- the question shall be deemed to have been resolved in favour of the practitioner.



- (3) Where the votes are equal on any motion put to the vote of a Council relating to the restoration of a practitioner's name to a register or list in a register, the question shall be deemed to have been resolved against the practitioner.

## **SCHEDULE 4**

*(section 21(1))*

### **Professions of Medicine and Dentistry**

Medical doctors

Dentists

Dental assistants

Dental hygienists

Dental therapists

Dental technicians

Osteopaths (trained in the United States of America)

Podiatrists



## **SCHEDULE 5**

*(section 21(1))*

### **Professions of Nursing and Midwifery**

Registered General Nurse - RGN  
Advanced Practice Nurse – APN  
Registered Nursing Assistant – RNA  
Registered Midwife – RM  
Registered Nurse – RN  
Public Health Nurse – PHN  
Student Nurse – StdN



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**SCHEDULE 6***(section 21(1))***Professions allied with Medicine**

Acupuncturists  
Audiologists  
Biomedical Scientists  
Chiropodists  
Chiropractors  
Counselors/Therapists  
Cytotechnologists  
Dialysis Technologists/Therapists  
Dieticians  
Emergency Medical Dispatchers  
Emergency Medical Responders  
Emergency Medical Technicians - Basic  
Emergency Medical Technicians - Intermediate  
Forensic Scientists  
Histotechnologists  
Homeopaths  
Hyperbaric Medicine Technicians/Technologists  
Kinesiotherapists  
Laser Technicians  
Massage Therapists  
Medical Aestheticians  
Medical Herbalists  
Medical Laboratory Technicians  
Medical Laboratory Technologists  
Naturopathic Doctors  
Nuclear Medicine Technologists  
Nutritionists



Occupational Therapists  
Ophthalmology Assistants/Technicians  
Opticians  
Optometrists  
Orthoptists  
Osteopaths (not trained in the United States of America)  
Paramedics  
Phlebotomists  
Physiotherapists  
Polysomnographic Technologists  
Psychologists - Doctorate Level  
Psychologists - Master Level  
Radiographers  
Respiratory Therapists  
Social Workers  
Speech Therapists  
Surgical Technicians/Technologists  
Ultrasound Technicians  
Vascular Scientists/Technologists

## **SCHEDULE 7**

*(section 21(1))*

### **Pharmacy**

Pharmacists

Pharmacy Technicians

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**Kim Bullings**  
*Clerk of Cabinet*



## ENDNOTES

### Table of Legislation history:

SL #	Law #	Legislation	Commencement	Gazette
	56/2020	Citation of Acts of Parliament Act, 2020	3-Dec-2020	LG89/2020/s1
	8/2020	Health Practice (Amendment and Validation) Law, 2020	18-Feb-2020	LG11/2020/s3
		<b>Health Practice Law (2017 Revision)</b>	31-May-2014	GE45/2017/s14
5/2017		Health Practice Law (Amendment of Schedule 2) Order, 2017	1-Feb-2017	GE10/2017/s1
67/2016		Health Practice (Amendment of Schedule 5) Order, 2016	2-Dec-2016	GE96/2016/s3
		<b>Health Practice Law (2013 Revision)</b>	21-Oct-2013	G21/2013/s4
24/2013		Health Practice (Amendment) Law, 2013 (Commencement) Order, 2013	10-May-2013	GE39/2013/s3
23/2013		Health Practice (Amendment) Law, 2011 (Commencement) Order, 2013	10-May-2013	GE39/2013/s2
	13/2013	Health Practice (Amendment) Law, 2013	1-Jul-2013	G9/2013/s6
	5/2011	Health Practice (Amendment) Law, 2011	1-Jul-2013	G4/2011/s4
		<b>Health Practice Law (2005 Revision)</b>	8-Aug-2005	G17/2005/s7
	22/2004	Health Practice (Amendment) (No. 2) Law, 2004	29-Nov-2004	G24/2004/s7
	12/2004	Health Practice (Amendment) Law, 2004	9-Aug-2004	G16/2004/s10
		Health Practice Law, 2002 (Commencement) Order, 2004	31-May-2004	G11/2004/s1
	25/2002	Health Practice Law, 2002	1-Jun-2004	GE8/2003/s2





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