

SAMOA

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2007, No. 29

AN ACT to provide for the establishment of a reformed Medical Council, for the professional administration of the medical profession in Samoa and for the determination and enforcement of professional standards and requirements applying to medical practitioners and related matters. [21st November 2007]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Medical Practitioners Act 2007.

(2) This Act shall commence on a date nominated by the Minister.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali.

2. Interpretation-(1) In this Act, unless the context otherwise requires -

“Chairperson” means the Chairperson of the Council, and includes any member of the Council appointed as a temporary chairperson;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Health;

“Council” means the Medical Council established under section 4;

- “ex officio member” means a member who holds office on the Council by reason of being the holder of the designated office, and who shall have full power to vote as a member of the Council;
- “Healthcare Professions Registration and Standards Act” means the Healthcare Professions Registration and Standards Act 2007;
- “Government” means the Government of Samoa;
- “Medical practitioner” means a medical practitioner qualified and registered in accordance with this Act and the Healthcare Professions Registration and Standards Act 2007;
- “Minister” means the Minister responsible for the Ministry from time to time;
- “Ministry” means the Ministry of Health established pursuant to the Ministry of Health Act 2006;
- “National Health Service” means the National Health Service established under the National Health Service Act 2006;
- “Nursing and Midwifery Act” means the Nursing and Midwifery Act 2007;
- “private practice” means the practice of medicine or surgery, or other healing arts, by medical practitioners who are not employed by the Government to undertake the practice or perform the art on a full-time basis;
- “professional standards” include standards of professional conduct, requirements and supervision arrangements;
- “Register” means the Register of Medical Practitioners kept by the Registrar in accordance with the provisions of the Healthcare Professions Registration and Standards Act 2007;
- “registered persons” means persons registered as medical practitioners under this Act;
- “Registrar” means the Registrar of Healthcare Professionals appointed under the Healthcare Professions Registration and Standards Act;

“Samoa General Practitioners Association (Inc)” means the Samoa General Practitioners Association (Inc) incorporated under the Incorporated Societies Ordinance 1952;

“Samoa Medical Association (Inc)” means the Samoa Medical Association (Inc) incorporated under the Incorporated Societies Ordinance 1952;

“Secretary” means the Secretary of the Council appointed under section 5.

(2) Where any office referred to in this Act later ceases to exist, the Chief Executive Officer may determine the appropriate office most approximating the office referred to, and that office shall be deemed to be substituted for the office ceasing to exist.

3. This Act binds the State - This Act binds the State.

PART II THE MEDICAL COUNCIL

4. Medical Council-(1) A Medical Council is hereby established and shall assume the responsibilities of the Medical Council established under the Medical Practitioners Act 1975.

(2) The Medical Council shall be a body corporate and may -

- (a) enter into contracts;
- (b) hold property;
- (c) maintain bank accounts; and
- (d) sue and be sued in the name of the Council.

(3) Subject to subsection (4), the members of the Medical Council shall be -

- (a) the Chief Executive Officer, who shall be an ex-officio member;
- (b) the General Manager of the National Health Service, who shall be an ex-officio member;
- (c) three (3) medical practitioners nominated by the Samoa Medical Practitioners Association (Inc);
- (d) one (1) medical practitioner nominated by the Samoa General Practitioners Association (Inc);

- (e) one (1) medical practitioner appointed by the Minister to represent the interests of private hospitals and other private health service providers; and
 - (f) two (2) members of the community appointed by the Minister who have skills which in the opinion of the Minister, after consulting with the Council, may assist the deliberations of the Council.
- (4) The Minister may approve the appointment of a nursing representative to the Council, if a medical practitioner has membership at any time of the Nursing and Midwifery Council established under the Nursing and Midwifery Act.
- (5) The members of Council shall appoint a member of the Council to be Chairperson, and may vote on one occasion each calendar year to change the appointment of the Chairperson:
PROVIDED THAT only a medical practitioner on the Council may be appointed to be Chairperson of the Council; and
PROVIDED THAT in the absence or unavailability of the Chairperson, the Council may appoint another member of the Council who is a medical practitioner to chair a meeting of the Council where the Chairperson is absent or unavailable.
- (6) The members of the Council shall hold office for a period of three (3) years and shall be eligible for re-appointment.
- (7) The Council may vote to remove a member of the Council on the grounds of -
- (a) inability to perform their functions and duties under this Act due to physical or mental incapacity;
 - (b) bankruptcy;
 - (c) neglect of duty;
 - (d) misconduct in office;
 - (e) misconduct elsewhere affecting or likely to affect the operations or reputation of the Council;
 - (f) failure to disclose and take all reasonable steps to avoid any real or apparent conflicts of interest in relation to their membership of the Council;
 - (g) using information belonging to or under the control of the Council other than for the Council's functions;

- (h) failure to act with integrity as a member of the Council;
- (i) misuse of their status or authority as a member of the Council to seek or obtain a benefit for themselves or any other person or body;
- (j) departure from Samoa for a period exceeding six (6) months unless the Council has approved the period of absence;
- (k) failure to attend three consecutive meetings of the Council without submitting an apology to the Council for the member's absence; or
- (l) in the case of a member of the Council who is a medical practitioner, professional misconduct or breach of the professional standards approved for medical practitioners in accordance with this Act.

(8) The office of any member of the Council shall become vacant if the member –

- (a) is removed from office under subsection (7); or
- (b) dies; or
- (c) resigns from office by giving written notice to this effect to the Secretary,

and the office of the member may then be filled in the manner which originally applied to the appointment of the member.

(9) Each member of the Council shall be paid from the funds of the Ministry, such remuneration and allowances as are approved by Cabinet from time to time for members of Government Boards and Committees.

5. Secretary of the Council-(1) The Council shall appoint one of its members to be Secretary of the Council.

(2) The Secretary shall be responsible for liaising with the Registrar to ensure the effective implementation of the provisions of this Act and the Healthcare Professions Registration and Standards Act.

(3) The Secretary shall not give any written notice or direction to the Registrar relating to the registration or discipline of a medical practitioner, or the determination of professional standards applying to medical practitioners unless -

- (a) the Secretary is authorised to do so by the Council;
and
- (b) the notice or direction is in accordance with the provisions of this Act and the Healthcare Professions Registration and Standards Act.

6. Meetings of the Council-(1) The Chairperson or the Registrar may request the Secretary to convene a meeting of the Council and shall ensure that the Council meets at least once every calendar year.

(2) The Secretary shall convene a meeting of the Council if requested in writing to do so by at least three (3) members of the Council.

(3) The Council may request assistance from the Registrar in relation to the convening of Council meetings, the recording of Council proceedings and the ability of the Council to access any necessary technical or legal advice.

(4) At any meeting of the Council at least half plus one of the members of the Council holding office shall constitute a quorum.

(5) At every meeting of the Council the Chairperson shall have a deliberative vote and, in the case of an equality of votes, the Chairperson shall also have a casting vote.

(6) Every question before a meeting of the Council shall be determined by a majority of votes of the members present at the meeting.

(7) Except as otherwise provided in this Act or in any regulations, the Council may regulate its procedures as it thinks fit.

(8) Resolutions of the Council may be approved if -

- (a) a copy of all relevant papers together with a draft resolution are provided to all members of the Council by the Secretary; and
- (b) at least half plus one of the members of the Council indicate their consent to the resolution in writing, or by facsimile or email transmission.

7. Functions and Powers of the Council-(1) The functions of the Council are to -

- (a) administer the procedures applying to the registration and discipline of medical practitioners as provided for by this Act and the Healthcare Professions Registration and Standards Act;
- (b) determine the qualifications and experience necessary for registration as a medical practitioner;
- (c) determine any qualifications and experience necessary for a medical practitioner to be in private practice or work for the National Health Service;
- (d) determine the requirements for continuing education to be undertaken by registered persons;
- (e) determine the professional standards applying to medical practitioners and the practice of medicine and surgery in Samoa;
- (f) bring the professional standards to the attention of registered persons in any manner that the Council thinks fit;
- (g) assist the Registrar to effectively monitor and enforce the approved professional standards and notify the Registrar of suspected breaches for investigations to be undertaken;
- (h) advise the Ministry, the National Health Service and other Government agencies in relation to matters related to the practice of medicine and surgery and the provision of medical services in Samoa;
- (i) assist the Ministry and the National Health Service to develop, monitor and enforce policies relevant to the practice of medicine and surgery and the provision of medical services in Samoa;
- (j) determine certain professional rights of medical practitioners relevant to the performance of their practice of medicine; and
- (k) assist in the resolution of disputes which may arise between or amongst medical practitioners.

- (2) The Council may exercise any power –
- (a) prescribed by this Act, the Healthcare Professions Registration and Standards Act and any applicable law; and
 - (b) which is necessary or incidental to any function, duty or responsibility of the Council provided for in this Act, the Healthcare Professions Registration and Standards Act and any applicable law.

PART III PROFESSIONAL STANDARDS

8. Professional standards to be determined by the Council-(1) The Council shall -

- (a) determine the professional standards to be observed by medical practitioners;
- (b) determine any specific professional standards to apply to medical practitioners in private practice or working for the National Health Service;
- (c) ensure that the professional standards approved under this section -
 - (i) are consistent with the proper and effective administration and operation of hospitals and the provision of medical services to the public;
 - (ii) reflect matters of Government policy and administrative practice relating to the provision of medical services as advised from time to time by the Ministry; and
 - (iii) ensure that the medical services provided to all persons in Samoa meet accepted international standards and are consistent with the human rights applying to all persons in Samoa;
- (d) review the approved professional standards, and make necessary amendments to them:

- (i) at least once every calendar year; and
 - (ii) when a specific request to do so is made by the Chief Executive Officer from time to time;
- (e) liaise with the Registrar when professional standards, are being determined or changed to ensure that the requirements of paragraph (c) are met;
 - (f) notify the Registrar of the approved professional standards, or the changes to them; and
 - (g) take appropriate action to monitor and enforce the professional standards in accordance with the requirements of this Act.
- (2) The Council may adopt the professional standards applying to medical practitioners in any other country as the professional standards to be observed by medical practitioners in Samoa.
- (3) The Council may establish a committee to deal with matters relevant to professional standards and may delegate to that committee any of its function, powers and responsibilities concerning professional standards.

9. Professional standards applying to other healthcare professionals to be taken into account - In consultation with the Registrar, the Council shall ensure that the professional standards determined under section 8, and by other Councils relating to the work of healthcare professionals, take account of the role of other healthcare professionals affecting the work and duties of medical practitioners.

PART IV REGISTRATION OF MEDICAL PRACTITIONERS

- 10. Qualifications for registration**-(1) To be eligible for registration as a medical practitioner, a person must -
- (a) hold a degree in medicine from an educational institution recognised by the Council;
 - (b) be of good character and reputation; and

(c) have undertaken such experience in the practice of medicine and surgery as the Council may require.

(2) It shall be the responsibility of the applicant to satisfy the Council of the requirements for registration stated in subsection (1), and the Council may defer any decision until the applicant provides sufficient details or verification of -

- (a) the course or courses undertaken by the applicant for the obtaining of the relevant degree and the academic record of the applicant;
- (b) any required practical experience in the practice of medicine and surgery;
- (c) any matter relevant to the applicant undertaking private practice or working for the National Health Service;
- (d) any current registration to practice medicine and surgery in Samoa or elsewhere held by the applicant;
- (e) any current eligibility for practice of medicine and surgery held by the applicant, including compliance with any requirement to undertake continuing education;
- (f) the identity, age, good character and reputation of the applicant; and
- (g) any disciplinary action taken against the applicant as a medical practitioner in Samoa or elsewhere.

(3) Notwithstanding anything in this Act, any person who was registered as a medical practitioner under the Medical Practitioners Act 1975 immediately prior to the commencement of this Act shall be entitled to registration as a medical practitioner under this Act.

11. Applications for registration - Every application for registration as a medical practitioner shall be -

- (a) made in writing to the Secretary in a form approved by the Council;
- (b) accompanied by the application fee;

- (c) accompanied by two recent references as to the applicant's good character, reputation and professional competence given by medical practitioners of good standing (whether in Samoa or elsewhere); and
- (d) be accompanied by evidence to the satisfaction of the Council of the matters referred to in section 10.

12. Council to consider applications-(1) In relation to each application for registration, the Secretary shall confirm that the requirements of section 11 have been complied with, and upon being so satisfied, the Secretary shall refer the matter to Council as soon as is practicable.

(2) When considering any application for registration, the Council may:

- (a) require the applicant to be interviewed by one or more members of Council nominated by the Council;
- (b) require the applicant to appear before the Council to be examined on oath, which may be administered by the Chairperson;
- (c) give any direction to the Secretary to verify any manner relevant to the application or seek any further information relevant to it; and
- (d) require any person to verify by statutory declaration any aspect of the application.

13. Decisions of the Council-(1) In relation to any application for registration considered by Council, the Council may:

- (a) defer consideration of the application until -
 - (i) the applicant has provided any further information or any verification required by the Council;
 - (ii) the applicant has complied with a requirement made by Council under section 12(2);or

(iii) any person required by Council to provide verification of any matter by statutory declaration has done so;

(b) approve the application;

(c) permit the applicant to be provisionally registered if the Council is satisfied that the applicant is otherwise qualified to be registered but lacks sufficient practical experience in the practice of medicine and surgery; or

(d) refuse the application.

(2) A person who is permitted to be provisionally registered under subsection (1) (c) may be employed or permitted to practise medicine or surgery in an approved hospital or other healthcare service for such period as the Council considers necessary for the applicant to acquire the practical experience needed for registration.

(3) The Secretary shall advise the applicant in writing of any decision made by Council as soon as is practicable.

(4) Where an application has been approved for registration or provisional registration, the Secretary shall advise the Registrar that the Council has authorised the registration of the applicant, and shall provide such information as may be required by the Registrar to properly maintain the register.

14. Certificate of registration - Upon entry into the register, the registered person shall be entitled upon payment of the prescribed fee to receive a Certificate of Registration issued by the Registrar.

15. Annual practising certificates-(1) Every registered person shall in every year pay the prescribed fee to the Secretary for the issue of an annual practising certificate.

(2) Each practising certificate shall:

(a) be in the form approved by the Council;

(b) expire on the 31st day of December in the year for which it is issued; and

(c) be issued by the Registrar or the Secretary in accordance with any arrangement made between the Council and the Registrar.

(3) The approved form of a practising certificate shall indicate whether the medical practitioner is entitled to a right to private practice or to work for the National Health Service, as the case may require.

(4) The Council may determine that the entitlement to a practising certificate is conditional upon the registered person undertaking or agreeing to undertake any course or courses of continuing education approved by the Council.

16. Temporary practising certificates-(1) Notwithstanding any provision of this Act to the contrary, the Council may cause to be issued to a person who has made an application for registration under this Act a temporary certificate of permission to practise medicine and surgery in accordance with any conditions imposed by the Council and noted on the certificate.

(2) A temporary practising certificate may be issued under this section to an applicant who is undertaking a course of relevant study from outside Samoa and who:

- (a) submits an application to do practical training in a hospital or other healthcare service in Samoa;
- (b) is accepted to do the practical training by the National Health Service; and
- (c) undertakes to work in accordance with any direction given by the Council or the National Health Service.

(3) A certificate issued under this section may not remain in force for a period of more than three (3) months from the date of its issue, but may be renewed for a further period of no more than three (3) months at a time by the Council.

(4) The Council may cancel a certificate issued under this section for any reason, and at any time during its currency.

PART V DISCIPLINE OF MEDICAL PRACTITIONERS

17. Disciplinary procedures applying to medical practitioners-(1) Disciplinary action may be taken against a medical practitioner for -

- (a) any breach of the professional standards;

- (b) any act or omission by the medical practitioner in the course of the medical practitioner's work which negligently, carelessly, unreasonably, unethically or recklessly places the life or health of any person at risk;
 - (c) any criminal offence committed by the medical practitioner which is in any way associated with the work or duties of the medical practitioner as a medical practitioner; or
 - (d) any breach or failure to observe a direction given or requirement imposed by any person empowered by law or contract to give directions or impose requirements on the medical practitioner which relate to the work or duties of the medical practitioner.
- (2) All disciplinary action taken by the Council against medical practitioners shall be in accordance with the procedures prescribed in Part V of the Healthcare Professions Registration and Standards Act.

18. Re-registration - Where the registration of any medical practitioner is refused or revoked by the Council or a Disciplinary Committee under the Healthcare Professions Registration and Standards Act, the Council shall not be obliged to consider any further application by that person for registration under this Act for a period determined by Council at any time, being not less than a period of two (2) years following the refusal or revocation.

PART VI OFFENCES

19. Unlawful practice as a medical practitioner-(1) No person shall practise as a medical practitioner or carry on business as a medical practitioner in Samoa, unless:

- (a) the person is registered as a medical practitioner in accordance with this Act and the Healthcare Professions Registration and Standards Act; and

- (b) the person is holding a current practising certificate under this Act -

PROVIDED THAT a person who is practising medicine and surgery in accordance with and holds a current temporary practising certificate issued under section 16 may do so without registration.

(2) Any person who breaches subsection (1) commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding five (5) years or to a fine not exceeding 100 penalty units, or both.

20. Wrongfully purporting to be a medical practitioner

- Every person who describes themselves or holds themselves out to be a medical practitioner without being registered under this Act and without holding a current practicing certificate commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding two (2) years or to a fine not exceeding 100 penalty units, or both.

21. Wrongfully procuring registration - Every person who:

- (a) makes or causes to be made any false entry in the Register; or
- (b) procures or attempts to procure registration under this Act for that person or any other person by making any false or fraudulent representation or declaration; or
- (c) furnishes any false information or forged document in support of an application for registration under this Act,

commits an offence and shall be liable upon conviction to imprisonment for a term not exceeding seven (7) years or to a fine not exceeding 100 penalty units, or both.

**PART VII
MISCELLANEOUS**

22. No action may lie against the Council etc.-(1) The Registrar, the Ministry, the Council, any member of the Council

and the Secretary shall not be liable for any loss or damage suffered by any person arising from any act or omission relating to the registration and discipline of medical practitioners under this Act.

(2) The responsibility for establishing a right to be registered under this Act, and for verifying all information provided in support of an application for registration shall lie with the applicant.

- 23. Fees** - The Council may from time to time determine -
- (a) the types of fees to be paid under this Act; and
 - (b) the amounts of such fees.

24. Transitional and savings provisions-(1) The registration of all medical practitioners under the Medical Practitioners Act 1975 shall continue to have full force and effect as if the registration was made under this Act.

(2) All practising certificates issued under the Medical Practitioners Act 1975 shall continue to have full force and effect until the 31st December next following the commencement of this Act.

(3) All determinations of the Medical Council made under the Medical Practitioners Act 1975, and all disciplinary proceedings and criminal proceedings being undertaken by or on behalf of the Medical Council or arising out of or under the Medical Practitioners Act 1975 as at the commencement of this Act shall be deemed to have been made and taken under this Act.

(4) Any reference in law (other than this Act) to the Medical Practitioners Act 1975 shall be taken as a reference to this Act except where the context otherwise requires.

25. Regulations-(1) The Head of State, acting on the advice of Cabinet, may from time to time make all such regulations as are necessary or expedient for giving full effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made under this section may –

- (a) impose any requirement on a medical practitioner to give notification of any disease, illness or condition detected by the medical practitioner;
- (b) prescribe the forms of applications, certificates and other documents required under this Act, and the manner in which notices may be served, and the times when they shall be deemed to have been served;
- (c) prescribe the fees payable in respect of education, examination and registration under this Act, in respect of any alteration of or addition to any register kept under this Act, and in respect of any other matter under this Act; and
- (d) prescribe fines not exceeding 100 penalty units for the breach of any regulation.

26. Repeal – The Medical Practitioners Act 1975 is repealed.

**The Medical Practitioners Act 2007 is administered by the
Ministry of Health**