



Tonga

**MEDICAL, DENTAL AND ALLIED  
HEALTH PRACTITIONERS ACT 2021**

**Act 9 of 2021**





# MEDICAL, DENTAL AND ALLIED HEALTH PRACTITIONERS ACT 2021

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# **MEDICAL, DENTAL AND ALLIED HEALTH PRACTITIONERS ACT 2021**

Act 9 of 2021

**AN ACT TO ESTABLISH THE MEDICAL, DENTAL AND ALLIED  
HEALTH PRACTITIONERS BOARD; TO REQUIRE THE  
REGISTRATION OF, AND ISSUING OF PRACTISING CERTIFICATES  
TO, MEDICAL PRACTITIONERS, DENTAL PRACTITIONERS AND  
ALLIED HEALTH PRACTITIONERS; TO PROVIDE FOR MEDICAL OR  
MEDICAL, DENTAL AND ALLIED HEALTH PRACTITIONER'S  
PRACTICE STANDARDS, THE MAKING OF COMPLAINTS AND THE  
CONDUCT OF DISCIPLINARY PROCEEDINGS; AND FOR ANCILLARY  
PURPOSES**

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I assent,  
TUPOU VI,  
28<sup>th</sup> October 2021.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the  
Legislature of the Kingdom as follows:

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## **PART I – PRELIMINARY**

### **1 Short title and commencement**

- (1) This Act may be cited as the Medical, Dental and Allied Health Practitioners Act 2021.

- (2) This Act shall come into force on a date proclaimed by Cabinet and published in a notice in the Gazette.

## 2 Interpretation

In this Act, unless the context otherwise requires —

**“advertisement”** means an advertisement —

- (a) published in a newspaper, magazine or other publication;
- (b) placed in a circular, hand bill, poster or other notice;
- (c) made orally or by any means of producing light or sound;
- (d) made using a form of electronic communication or utilising and of information technology, including an advertisement placed on internet; or
- (e) made in any other manner;

**“allied health profession”** means an allied health profession listed in the Schedule I;

**“allied health practitioner”** means a person who is duly registered as such in any allied health profession under this Act;

**“annual practising certificate”** means a practising certificate issued under section 27 of this Act;

**“Board”** means the Medical, Dental and Allied Health Practitioners Board established in section 4 of this Act;

**“conduct”** means any act or omission;

**“dental practitioner”** means a person who is duly registered as a dentist, dental therapist, dental technician, dental hygienist or dental chair side assistant under this Act;

**“drug”** means any product defined as a medicinal drug in the Therapeutic Goods Act (Cap 12.16);

**“Health Practitioners Review Council”** means the Health Practitioners Review Council established under Part II of the Health Practitioners Review Act (Cap 12.04);

**“layperson”** means a person who is neither registered nor qualified to be registered under this Act;

**“medical practitioner”** means a person who is duly registered as a medical practitioner under this Act;

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

**“narcotic drugs and psychotropic substances”** shall have the same meaning as in the Therapeutic Goods Act (Cap 12.16);

**“prescription”** shall have the same meaning as in the Therapeutic Goods Act (Cap 12.16);

**“professional misconduct”** in relation to a dental practitioner, medical practitioner or allied health practitioner means –

- (a) unprofessional conduct that amounts to conduct that is substantially below the standard reasonably expected of a medical practitioner, dental practitioner and allied health practitioner of an equivalent level of training or experience;
- (b) more than one instance of unprofessional conduct that, when considered together, amounts to conduct that is substantially below the standard reasonably expected of a medical practitioner, dental practitioner and allied health practitioner of an equivalent level of training or experience; or
- (c) conduct, whether occurring in connection with the practice of the medical practitioner, dental practitioner and allied health practitioner’s profession or not, that is inconsistent with the medical practitioner, dental practitioner and allied health practitioner being a fit and proper person to hold registration in the profession;

**“register”** means the register of medical practitioners, dental practitioners and allied health practitioners maintained by the Board under section 15 of this Act;

**“Registrar”** means a person appointed under section 10 of this Act;

**“scope of practice”** means the health services that form part of a health profession and that is described under section 19 of this Act;

**“unprofessional conduct”** means professional conduct that is below standard reasonably to be expected of a medical practitioner, dental practitioner and allied health practitioner by the medical practitioner, dental practitioner and allied health practitioners professional peers, and includes—

- (a) a contravention by the medical practitioner, dental practitioner and allied health practitioner of this Act, whether or not the medical practitioner, dental practitioner and allied health practitioner has been prosecuted for, or convicted of, an offence in relation to the contravention;
- (b) a contravention by the medical practitioner, dental practitioner and allied health practitioner of —
  - (i) a condition to which the medical practitioner, dental practitioner and allied health practitioner’s registration was subject; or
  - (ii) an undertaking given by the medical practitioner, dental practitioner and allied health practitioner to the Board;
- (c) the conviction of a medical practitioner, dental practitioner and allied health practitioner for an offence under another Act, the nature of which may affect the medical practitioner, dental practitioner and allied health practitioner’s suitability to continue to practise their profession;

- (d) providing a person with health services of a kind that are excessive, unnecessary or otherwise not reasonably required for the person’s well-being;
- (e) influencing, or attempting to influence, the conduct of another registered health practitioner in a way that may compromise patient care;
- (f) accepting a benefit as inducement, consideration or reward for referring another person to a health service provider or recommending another person use or consult with a health service provider;
- (g) offering or giving a person a benefit, consideration or reward in return for the person referring another person to the practitioner or recommending to another person that the person use a health service provided by the practitioner; or
- (h) referring a person to, or recommending that a person use or consult, another health service provider, health service or health product if the medical practitioner, dental practitioner and allied health practitioner has a pecuniary interest in giving that referral or recommendation, unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation; and

**“unsatisfactory professional performance”** means the knowledge, skill, attitude, behaviour or judgment possessed, or care exercised by, the medical practitioner, dental practitioner and allied health practitioner in the practice of their profession is below the standard reasonably expected of a medical practitioner, dental practitioner and allied health practitioner of an equivalent level of training or experience.

### 3 Objects of the Act

- (1) The object of this Act is to establish a regulatory scheme for medical practitioners, dental practitioners and allied health practitioners.
- (2) The objectives of the regulatory scheme are —
  - (a) to provide for the protection of the public by ensuring that only medical, dental and allied health practitioners who are suitably educated and qualified to practice in a competent and ethical manner are registered;
  - (b) to inform the general public of the expected level of knowledge, skills, professional attitudes and behaviours they can expect of medical, dental and allied health practitioners;
  - (c) to enable innovation in the service delivery by, medical, dental and allied health practitioners;
  - (d) to set the medical practitioner, dental practitioner and allied health practitioners’ standards, codes and guidelines;
  - (e) to facilitate the rigorous assessment of overseas –educated medical practitioners, dental practitioners and allied health practitioners;

- (f) to set a complaints and conduct of disciplinary proceedings;
- (g) to facilitate access to services provided by medical, dental and allied health practitioners in accordance with the public interest; and
- (h) to enable the continuous development of a flexible, responsive and sustainable medical, dental and allied health practitioners' workforce.

## **PART II - THE MEDICAL, DENTAL AND ALLIED HEALTH PRACTITIONER BOARD**

### **4 Establishment of the Medical, Dental and Allied Health Practitioner Board**

The Medical, Dental and Allied Health Practitioner Board is hereby established.

### **5 Members of the Board**

- (1) The Board shall consist of the following members—
  - (a) Medical Superintendent (Chair);
  - (b) Chief Dental Officer (Deputy Chair);
  - (c) Chief Medical Officer for Clinical Services;
  - (d) Chief Medical Officer for Public Health;
  - (e) President or nominee from the Tonga Dental Association;
  - (f) President or nominee from the Tonga Medical Association;
  - (g) President or nominee from the Allied Health Practitioner Association;
  - (h) Dental Practitioner in private practice nominated by the Minister;
  - (i) Medical Practitioner in private practice nominated by the Minister;
  - (j) Private Allied Health Practitioner in private practice nominated by the Minister; and
  - (k) Layperson nominated by the Minister.
- (2) The Board may co-opt any other person from time to time to provide advice on a matter being considered by the Board.
- (3) When holding an inquiry under section 42, the Board shall co-opt a senior law practitioner to sit on the Board for the purpose of hearing the inquiry.
- (4) The term of appointment of –
  - (a) the Medical Superintendent, Chief Dental Officer, Chief Medical Officer for Clinical Services and Chief Medical Officer for Public Health shall be a member for the duration of time that he holds office in the position specified in subsection (1)(a), (1)(b), (1)(c) and (1)(d); and

- (b) a nominated member under subsection (1) shall hold office for a period of two years from the date of nomination and shall be eligible for re-nomination.
- (5) The membership of any nominated member may be cancelled by the Minister or the nominating Association, and a person may be nominated by the Minister or the nominating Association in place of such member for the vacating member's remaining period of office.
- (6) Any nominated member may resign by giving 20 days notice in writing of such resignation to the Board and the Minister or the nominating Association may nominate another person for the vacating member's remaining period of office.

## 6 Functions of the Board

The Board shall have the following functions -

- (a) authorise the registration of medical, dental and allied health practitioners under this Act and to maintain Registers;
- (b) consider applications for annual practising certificates;
- (c) review and promote the competence of medical, dental and allied health practitioners;
- (d) set standards of clinical competence and ethical conduct to be observed by medical, dental and allied health practitioners;
- (e) set standards for the education and training of health practitioners;
- (f) ensure maintenance of the required standards of practice and conduct among medical, dental and allied health practitioners;
- (g) advise the Minister on any matter relating to medical practitioners, dental practitioners and allied health practitioners;
- (h) review the implementation of the Act, the regulations, guidelines and codes of conduct and to propose any changes or modifications, as may be deemed necessary;
- (i) promote public awareness of the responsibilities of the Board;
- (j) deal with matters relating to disciplinary inquiries and the cancellation, suspension, withdrawal and restoration of registration of medical, dental and allied health practitioners;
- (k) set standards for the qualification of medical, dental and allied health practitioners;
- (l) set standards for the standard of practice of medical, dental and allied health practitioners;
- (m) ensure maintenance of the required standards of practice and conduct among allied health practitioners; and
- (n) maintain the autonomy of the Board.

## **7 Powers of the Board**

The Board shall have the power to summon and compel the attendance of any person while conducting complaints and disciplinary proceedings under Part V of this Act.

## **8 Board Procedures**

- (1) The Board shall determine the procedures and rules governing its meetings.
- (2) The Board shall meet as required and shall report to the Health Practitioners Review Council by providing the Minutes of the Board Meetings.
- (3) The Board shall prepare an annual report of its activities during the preceding 12 months and this report shall be submitted to the Minister.

## **9 Seal**

The seal of the Board shall be kept in the custody of the Registrar and shall be affixed by the Registrar or any other officer duly authorized by the Board to documents authorized to be sealed by the Board.

## **10 Registrar**

- (1) The Registrar is appointed by the Board on terms and conditions determined by the Board.
- (2) The Registrar shall perform the duties of the Secretary of the Board as are necessary for the implementation of the Act.

## **11 Appointment of Committees**

The Board may, from time to time, by written notice, appoint one or more committees of the Board, and -

- (a) any such committees may include persons who are not members of the Board;
- (b) the Board shall set the terms of reference of any such committee and regulate the procedure of the committee in any manner it thinks fit; and
- (c) the Board may at any time discharge, alter or reconstitute any committee it has established under this Act.

## **12 Delegation by the Board**

- (1) Except for this power of delegation, the Board may delegate one or more of its functions or powers under this Act to a Committee appointed under section 11 of this Act.

- (2) A delegation shall be made in writing and specify the nature and duration of the delegation.
- (3) The Board may in writing, revoke or cancel a delegation which was issued under subsection (1).

### **13 Review of decisions of Registrar**

A person who is adversely affected by a decision made by the Registrar may, within 20 working days after being notified of the decision, ask the Board to review the Registrar's decision. In such a case, the Board shall either confirm or revoke the decision.

### **14 Protection from liability**

No legal action shall be taken against the Minister, Registrar, Chair or any Board member established under this Act, for any act which is done in good faith.

## **PART III - REGISTRATION AND PRACTISING CERTIFICATES FOR MEDICAL, DENTAL AND ALLIED HEALTH PRACTITIONERS**

### **BOARD TO MAINTAIN A REGISTER**

### **15 Register**

- (1) For the purposes of this Act, the Board shall maintain a register of medical practitioners, dental practitioners and allied health practitioners registered with the Board.
- (2) The Board may keep the register -
  - (a) in separate parts; and
  - (b) in an electronic form.

### **16 Content of the registers**

The information to be entered in the register in respect of each person registered with it is —

- (a) the name of the person;
- (b) date of birth and gender;
- (c) the scope of practice in respect of which the medical, dental and allied health practitioner is registered;

- (d) the person's professional address in the Tonga;
- (e) particulars of the qualifications entitling the person to be registered;
- (f) whether the person holds an annual practising certificate;
- (g) the registration number allocated to the person;
- (h) the date of registration;
- (i) any notations relating to specialist qualifications;
- (j) any conditions or other requirements to which the person's registration is subject; and
- (k) such other particulars, if any, as are prescribed by Regulations.

## 17 Holding out

- (1) No person except a registered medical practitioner, dental practitioner and allied health practitioner shall —
  - (a) represent or hold out, expressly or by implication, that he is entitled to practice as a registered medical practitioner, dental practitioner and allied health practitioner;
  - (b) use any sign, emblem, title or advertisement implying that the person is a registered medical practitioner, dental practitioner and allied health practitioner; or
  - (c) use a title or any similar designation or abbreviation implying that he is a registered medical practitioner, dental practitioner and allied health practitioner.
- (2) Any person who contravenes this section commits an offence and upon conviction shall be liable to a fine not exceeding \$10,000 or 3 years imprisonment or both.

## 18 Evidentiary certificate

A certificate by the Registrar, that —

- (a) a person was or was not a medical practitioner, dental practitioner and allied health practitioner, as appropriate;
- (b) the name of a person specified in the certificate was removed from the register;
- (c) a person was suspended from practice as a medical practitioner, dental practitioner and allied health practitioner; or
- (d) a condition, particulars of which are set out in the certificate, was —
  - (i) imposed on the registration of a person so specified; or
  - (ii) revoked or not in force,

shall be received by the Board, the Health Practitioners Review Council and all courts as prima facie evidence of its contents.

## SCOPES OF PRACTICE AND REQUIRED QUALIFICATIONS

### **19 Board to specify scopes of practice**

- (1) The Board shall prescribed in regulations, describe the professions to which this Act applies, in terms of one or more scopes of practice.
- (2) A scope of practice may be described in any way the Board thinks fit, including without limitation, in any one or more of the following ways by reference to -
  - (a) a name or form of words that is commonly understood by persons who work in the health sector;
  - (b) an area of science or learning;
  - (c) tasks commonly performed; or
  - (d) illnesses or conditions to be diagnosed, treated, or managed.

### **20 Board to set required qualifications, training and experience for registration**

- (1) The Board shall prescribe in regulations the required qualifications, training and experience for every scope of practice that it describes under section 19 of this Act.
- (2) In prescribing the required qualifications, training and experience under subsection (1), the Board may require one or more of the following -
  - (a) a degree or diploma of a stated kind from a recognized educational institution, whether in the Tonga or abroad;
  - (b) the successful completion of a course of studies or a programme accredited by the Tonga National Qualifications and Accreditation Board;
  - (c) a pass in an examination or other assessment set by the Board or by another authority approved by the Board;
  - (d) registration with an overseas organisation that performs functions equivalent to those of the Board; or
  - (e) experience in the provision of health services of a particular kind, including experience in a particular context or class of institution.

### **21 Board to consult**

Before confirming a decision under section 19 or section 20 of this Act, the Board shall have consulted about its proposed decision with -

- (a) persons who the Board considers are able to represent the views of medical, dental or allied health practitioners, or classes of medical, dental or allied health practitioners;
- (b) organisations that the Board considers will be affected by the proposal;
- (c) organisations whose members the Board considers will be affected by the proposal; and
- (d) other Boards or Councils in Tonga that perform practitioner registration functions equivalent to those of the Board.

## **22 Board to publish information about scopes of practice and required qualifications**

The Board shall ensure that a notice containing an up-to-date version of the scopes of practice and required qualifications, training and experience made under section 19 and section 20 of this Act is –

- (a) published in the Tonga Government Gazette;
- (b) available on a Tongan government website; or
- (c) available at the office of the Ministry of Health during business hours.

## **REGISTRATION OF MEDICAL PRACTITIONERS, DENTAL PRACTITIONERS AND ALLIED HEALTH PRACTITIONERS**

## **23 Eligibility for registration**

- (1) A person may be registered under this Act if—
  - (a) the person holds the qualifications recognised by the Board for the purposes of registration; and
  - (b) the person has successfully completed—
    - (i) any period of supervised practice required by the Board; or
    - (ii) any examination or assessment required by the Board to assess the person's ability to practise the profession competently and safely;
  - (c) the person is fit for registration under section 25 of this Act;
  - (d) the person is not disqualified under this Act or any other law in a different jurisdiction from applying for registration, or being registered, under this Act;
  - (e) the person meets any other requirements for registration stated in the professional standards for the health profession;
  - (f) the person can provide proof of identity; and
  - (g) the person has paid the prescribed fee.

- (2) The Board may vary the relevant qualification referred to in subsection (1)(a) in any case where the Board -
- (a) proposes to limit the health services that the applicant will be permitted to perform; and
  - (b) is satisfied that the varied qualification is adequate for the -
    - (i) performance of those health services; and
    - (ii) protection of the public.

## **24 Effect of registration**

A person duly registered under this Act shall be entitled to engage in the practice if he holds a current annual practising certificate under this Act.

## **25 Fitness for registration**

The Board may decide a person is not fit for registration under this Act if —

- (a) in the Board's opinion, the person has an impairment that would detrimentally affect their capacity to practise the profession to such an extent that it may place the safety of the public at risk;
- (b) having regard to the person's criminal history to the extent that is relevant to the person's practice of the profession, the person is not, in the Board's opinion, an appropriate person to practise the profession or it is not in the public interest for the person to practise the profession;
- (c) the person has previously been registered under a relevant law and during the period of that registration proceedings that correspond to proceedings under Part V of this Act, were started against the person but not finalised;
- (d) in the Board's opinion, the person's competency in speaking or otherwise communicating in English or Tongan is not sufficient for the person to practise the profession;
- (e) the person's registration is currently suspended or cancelled in another jurisdiction on a ground for which an adjudication body could suspend or cancel a medical practitioner's, dental practitioner's or allied health practitioner's registration in Tonga;
- (f) the nature, extent, period and recency of any previous practice of the profession is not sufficient to meet the requirements specified in the standards relevant to registration as a medical practitioner, dental practitioner or allied health practitioner;
- (g) the person failed to meet any other requirement in the professional standards for the profession about the suitability of persons to be registered in the profession or to competently and safely practise the profession; or
- (h) in the Board's opinion, the person is for any other reason—

- (i) not a fit and proper person for general registration in the profession; or
- (ii) unable to practise the profession competently and safely.

## 26 Roll fee

- (1) Every medical practitioner, dental practitioner or allied health practitioner shall, on or before the 31st day of October in each year pay to the Registrar a roll fee fixed by the Board for the year commencing on the first day of January next following the prescribed day.
- (2) The medical practitioner, dental practitioner or allied health practitioner shall furnish particulars of his address for entry in the register and such other particulars as may be prescribed.
- (3) If the person does not pay the roll fee referred to in subsection (1) on or before the prescribed day in any year, the Board shall forthwith notify the person by letter addressed to him at the address appearing in the appropriate register that if the fee be not paid before the end of the first working day of the next calendar year the person's name shall be removed from the register as from the next day.
- (4) If the name of a medical practitioner, dental practitioner or allied health practitioner has been removed from the register under this section, the Board shall, upon application in writing and upon being satisfied that the person is of good character, restore the person's name to the register upon payment of the outstanding roll fee and a reinstatement fee fixed by the Board.

## 27 Annual Practising Certificate

- (1) The period shall be stated in the annual practising certificate and shall be no longer than 12 months from the date the certificate is issued.
- (2) If the medical practitioner, dental practitioner or allied health practitioner owns a private clinic, the private medical practitioner, dental practitioner or allied health practitioner must display their Annual Practising Certificate in a conspicuous place in their principal place of business.

## TYPES OF REGISTRATION

## 28 Provisional registration

- (1) If the Board finds that a person applying for registration does not possess the full necessary qualification and experience to be registered but its likely to obtain the full qualification and experience required for registration may grant the applicant a provisional registration, subject to conditions that the Board may determine.

- (2) Once an application for provisional registration of a medical practitioner, dental practitioner or allied health practitioner is approved by the Board, a person shall pay the prescribed registration fee, in full before the certificate of registration in Schedule III is issued.
- (3) A person with a Certificate of Provisional Registration shall be deemed to be registered under this Act until a date as may be fixed by the Board.
- (4) The period of provisional registration shall not exceed 2 years.
- (5) The Board may, at any time before the date so stated or fixed, cancel a Certificate of Provisional Registration.
- (6) Upon the cancellation of a certificate of provisional registration, the holder of the certificate shall no longer be deemed to be registered.

## **29 Temporary registration**

- (1) The Registrar, subject to the approval of the Chair of the Board, may register a medical practitioner, dental practitioner or allied health practitioner who are registered as such in another jurisdiction with a Certificate of Temporary Registration, for up to 3 months.
- (2) The Board shall prescribe the fee payable for such temporary registration.

## **RENEWAL OF ANNUAL PRACTISING CERTIFICATE**

## **30 Renewal of registration requirements**

- (1) A registered medical, dental and allied health practitioner may apply to the Board for the renewal of their registration.
- (2) An application by a medical, dental and allied health practitioner for renewal of registration shall be made no later than the first working day of the next calendar year after the practitioner's registration was due for renewal.
- (3) The application for renewal of registration shall be in the form prescribed by regulations and accompanied by -
  - (a) the prescribed fee;
  - (b) the annual statement required in section 31 of this Act ; and
  - (c) any other information reasonably required by the Board.

## **31 Annual statement required for renewal of annual practising certificate**

- (1) An application for renewal of a practising certificate shall include or be accompanied by a statement that includes the following —
  - (a) a declaration by the applicant that —

- (i) the applicant does not have a mental or physical condition that may affect the applicant's ability to practise safely;
  - (ii) the applicant has met any recency of practice requirements stated in the standard determined for the medical practitioner, dental practitioner or allied health practitioner;
  - (iii) the applicant has completed the continuing professional development the applicant was required to undertake during the applicant's preceding period of practice; and
  - (iv) the applicant has assessed themselves against the relevant professional standards and either believes they meet the standards or has taken steps to update their knowledge or skills to ensure they meet the standards; and
- (b) details of any change in the applicant's criminal history that occurred during the applicant's preceding period of registration;
  - (c) if the applicant's right to practise at a hospital or another facility at which health services are provided was withdrawn or restricted during the applicant's preceding period of registration because of the applicant's conduct, professional performance or health, details of the withdrawal or restriction of the right to practise;
  - (d) details of any complaint made about the applicant to a registration authority or another entity having functions relating to professional services provided by medical, dental and allied health practitioners or the regulation of medical, dental and allied health practitioners; and
  - (e) any other information required by an approved professional standard.
- (2) These annual statements may be subject to random audit to review the evidence on which they are based -
- (a) the Board may make determinations as to the necessary procedures to bring a medical, dental and allied health practitioner into line with the requirements under the annual statement before granting renewal of annual practising certificate; and
  - (b) such determinations under paragraph (a) shall be made expeditiously to reduce delay in renewal of the applicant's practising certificate.

## 32 Renewal of registration fee

- (1) Every medical practitioner, dental practitioner and allied health practitioner shall, on or before the 31st day of October in each year pay to the Registrar a roll fee fixed by the Board for the year commencing on the first day of January next following the prescribed day.
- (2) If the person does not pay the renewal of registration fee referred to in subsection (1) on or before the prescribed day in any year, the Board shall forthwith notify the person in writing at the address appearing in the appropriate

register that if the renewal of registration fee be not paid before the end of the first working day of the next calendar year the person's name shall be removed from the register as from the next day.

- (3) If the name of a medical practitioner, dental and allied health practitioner has been removed from the register under this section, the Board shall, upon application in writing and upon being satisfied that the person is eligible for renewal of registration, restore the person's name to the register upon payment of the outstanding renewal of registration fee and a reinstatement fee fixed by the Board.

## REMOVAL FROM REGISTER

### 33 Removal from the registers

- (1) After due inquiry, as laid down in Part V of this Act, the Board may direct that the name and other particulars of a registered medical, dental and allied health practitioner be removed from the appropriate register if —
  - (a) the person is convicted of an offence under this Act or under any other legislation relating to drugs;
  - (b) the person has obtained registration by fraud or misrepresentation;
  - (c) the qualification on the basis of which registration was awarded is withdrawn or cancelled by the authority which awarded it;
  - (d) the person is guilty of unsatisfactory professional conduct or professional misconduct which, after due inquiry by the Board, renders the person unfit to be a registered medical, dental and allied health practitioner; or
  - (e) the person's name has been removed from a register in another jurisdiction having been found guilty of unsatisfactory professional conduct or professional misconduct.
- (2) The Board may suspend the registration of a registered medical, dental and allied health practitioner pending investigations and disciplinary inquiry.

## CONTINUING PROFESSIONAL DEVELOPMENT

### 34 Board may require continuing professional development

- (1) To ensure that medical practitioner, dental practitioner or allied health practitioner maintain their competence to practice with the scope of practice within which they are registered, the Board may require medical, dental and allied health practitioners who hold practising certificates to undertake continuing professional development prescribed by the Board.
- (2) The Board may prescribe different continuing professional development requires for different scopes of practice.

- (3) Without limitation, the continuing professional development requirements prescribed by the Board may require a medical, dental and allied health practitioner to -
- (a) pass an examination or assessment or both;
  - (b) complete a course of practical training;
  - (c) undertake a course of instruction;
  - (d) participate in approved processes of peer review;
  - (e) participate in clinical audits; and
  - (f) undertake a period or set number of hours of reflective meetings of a stated number and types with a senior peer approved by the Board to assist the medical, dental and allied health practitioner to reflect on his practice and to identify opportunities to develop in his practice.
- (4) Before confirming a decision under subsection (1) of this section, the Board shall have consulted about its proposed decision with –
- (a) persons who the Board considers are able to represent the views of medical, dental and allied health practitioners, or classes of medical, dental and allied health practitioners;
  - (b) organisations that the Board considers will be affected by the proposal;
  - (c) organisations whose members the Board considers will be affected by the proposal; and
  - (d) other Boards or Health Practitioners Review Councils in Tonga that perform practitioner registration functions equivalent to those of the Board.

## PART IV – STANDARDS, CODES AND GUIDELINES

### 35 Board may develop standards

The Board may develop standards about the following matters —

- (a) matters regarding the criminal history of applicants for registration in the profession, and registered medical practitioner, dental practitioner or allied health practitioner registered by the Board, including, the matters to be considered in deciding whether a person’s criminal history is relevant to the practice of the profession;
- (b) requirements for continuing professional development for registered medical practitioners, dental practitioners and allied health practitioner;
- (c) requirements about the English and Tongan language skills necessary for an applicant for registration to be suitable for registration;

- (d) requirements in relation to the nature, extent, period and recency of any previous practice of the profession by applicants for registration in the profession;
- (e) the physical and mental health of —
  - (i) applicants for registration in the profession; and
  - (ii) registered medical, dental and allied health practitioners; and
- (f) any other issue relevant to the eligibility of persons for registration in the profession or the suitability of persons to competently and safely practice the profession.

### **36 Board may develop or approve codes and guidelines**

The Board may develop codes and guidelines —

- (a) to provide guidance to the medical practitioner, dental practitioner or allied health practitioner it registers; and
- (b) about any other matters relevant to the exercise of its functions.

### **37 Consultation on standards, codes and guidelines**

If the Board develops a registration standard or a code or guideline, it shall ensure there is wide-ranging consultation about its content such that medical, dental and allied health practitioners are aware of their obligations under the Act.

### **38 Use of registration standards, codes and guidelines in proceedings**

An approved registration standard for a registered medical practitioner, dental practitioner or allied health practitioner, or a code or guideline approved by a Board, is admissible in proceedings under this Act against a registered health practitioner as evidence of what constitutes appropriate professional conduct or practice for the health profession.

## **PART V - COMPLAINTS AND DISCIPLINARY PROCEEDINGS**

### **COMPLAINTS**

### **39 Making of complaints**

Any person may make a complaint in writing to the Registrar that a registered medical practitioner, dental practitioner or allied health practitioner —

- (a) has been convicted in Tonga or elsewhere of an offence involving fraud, drugs or dishonesty;

- (b) has been guilty of professional misconduct;
- (c) does not have sufficient physical or mental capacity to carry on practice as a registered medical, dental and allied health practitioner; or
- (d) is not of good character.

#### **40 Procedure on receipt of complaint**

- (1) The Registrar shall refer any complaint to the Board.
- (2) The Board may require the complainant to provide further particulars of the complaint and may make such preliminary inquiries concerning the complaint as it thinks fit.
- (3) The Board shall inform the medical practitioner, dental practitioner or allied health practitioner against whom the complaint is made of the particulars of the complaint and invite that person to make, within such time as the Board specifies in the notice, such representations to the Board with respect to the complaint as he thinks fit.
- (4) The Board is required to consider any representations made to it within the time specified in its notice.

#### **41 Dealing with complaints**

- (1) The Board may decide at any time in relation to a complaint that it will —
  - (a) deal with the complaint at a meeting of the Board;
  - (b) conduct an inquiry into the complaint;
  - (c) decline to deal with; or
  - (d) dismiss the complaint.
- (2) The Board may decide that the complaint also, or primarily, raises questions about whether the medical practitioner, dental practitioner or allied health practitioner is practising at the required standard of competence or whether the medical, dental or allied health practitioner's capacity or ability to practice safely is affected by some mental or physical condition.
- (3) In such case the Board may undertake a review of the practitioner's competence or health, as the case may be.

### **CONDUCT OF INQUIRY**

#### **42 Conduct of inquiry**

If the Board decides to conduct an inquiry into a complaint —

- (a) the Board, in conducting the inquiry, shall sit as in open court unless it determines to do otherwise;
- (b) the person against whom the complaint was made is to be afforded an opportunity of defence either in person or by a law practitioner or another adviser;
- (c) the Board is not bound to observe the rules of evidence, but may inform itself of any matter in such manner as it thinks fit; and
- (d) the Chair of the Board is to preside at the inquiry.

#### **43 Power to summon witnesses to inquiry**

- (1) The Chair of the Board may summon a person to appear at any inquiry conducted by the Board, to give evidence and to produce such documents as are referred to in the summons.
- (2) The Board may take evidence on oath and require a person appearing at the inquiry to give evidence on oath.
- (3) A person served with a summons shall in the absence of any reasonable excuse attend as required by the summons.
- (4) A person appearing at an inquiry to give evidence shall not, without reasonable excuse, fail to answer a question or to produce a document that he is required to produce.
- (5) Any person who fails to comply with this section commits an offence.

#### **44 Power to obtain documents at inquiry**

- (1) The Chair of the Board may, by written notice, require any person to attend before a member of the Board, at a time and place specified in the notice and to produce any documents specified in the notice.
- (2) Any person who fails to comply with this section commits an offence.
- (3) The Board may receive and admit, as evidence at any inquiry —
  - (a) the judgment and findings of any court whether civil or criminal or tribunal made within or outside Tonga;
  - (b) the verdict or findings of a jury of any such court;
  - (c) a certificate of the conviction of any person; or
  - (d) a transcript, duly certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Board is of the opinion that the judgment, findings, verdict, certificate or evidence is or are relevant to the proceedings.

**45 Additional complaints**

- (1) The Board may at an inquiry deal with one or more complaints about a medical practitioner, dental practitioner and allied health practitioner.
- (2) If, during any such inquiry, it appears to the Board that, having regard to any matters that have arisen, another complaint could have been made against the medical practitioner, dental practitioner or allied health practitioner concerned —
  - (a) whether instead of or in addition to the complaint which was made; and
  - (b) whether or not by the same complainant,the Board may take that other complaint as having been referred to it and may deal with it at the same inquiry.
- (3) If another complaint is taken to have been referred to the Board under subsection (2) the complaint may be dealt with after such as adjournment as is, in the opinion of the Board, just and equitable in the circumstances.

**46 Release of information concerning inquiry**

- (1) The Chair at any inquiry conducted by the Board may, on the Chair's own motion, or at the request of a complainant, the medical practitioner, dental practitioner and allied health practitioner concerned, or any other person, if he thinks it appropriate in the particular circumstances of the case, direct that all of the following matters —
  - (a) the name and address of any witness;
  - (b) the name and address of a complainant;
  - (c) the name and address of a medical practitioner, dental practitioner and allied health practitioner;
  - (d) any specified evidence; and
  - (e) the subject matter of a complaint,shall not be published, except in a publication intended primarily for the use of members of the medical, dental and allied health practitioner or legal professions.
- (2) A direction under subsection (1) may be amended or revoked at any time by the Chair.
- (3) A direction may be given before or during an inquiry, but is not to be given before the inquiry unless notice is given to —
  - (a) the complainant who requested the direction;
  - (b) the complainant, the medical practitioner, dental and allied health practitioner concerned, as appropriate; and
  - (c) such other persons as the Chair thinks fit,

of the time and place appointed by the Chair for consideration of the request.

- (4) A person who contravenes a direction given under this section, without reasonable excuse, commits an offence.

#### **47 Authentication of documents**

Every document requiring authentication by the Board may be sufficiently authenticated if signed by the Chair of the Board or by a member of the Board authorized to do so by the Chair without the seal of the Board.

#### **48 Representative complainant**

At any inquiry, an officer of the Ministry of Health appointed by the Chief Executive Officer for Health may, with the consent of the complainant, act for the complainant.

#### **49 Expedition of inquiries**

- (1) It is the duty of the Board to conduct inquiries under this Act and to determine those inquiries as soon as is reasonably practicable.
- (2) Without affecting the generality of subsection (1), the Board may postpone or adjourn an inquiry being conducted by it as it thinks fit.

#### **50 Certain complaints not to be heard**

- (1) The Board may decide not to conduct an inquiry, or at any time to terminate an inquiry, if —
- (a) a complainant fails to comply with a requirement made by the Board; or
  - (b) the person about whom the complaint is made ceases to be a medical practitioner, dental practitioner or allied health practitioner.
- (2) The Board or Health Practitioners Review Council shall not conduct or continue any inquiry or any appeal if the medical practitioner, dental practitioner or allied health practitioner has died.

#### **51 Consequences of misconduct**

- (1) The Board may, if it is satisfied that the subject matter of a complaint against a medical practitioner, dental practitioner or allied health practitioner is proved, do any one or more of the following —
- (a) caution or reprimand the person;
  - (b) order that the person seek medical or psychiatric treatment or counselling;

- (c) order that such conditions, relating to the person's practice of medicine, dentistry or allied health, as it considers appropriate, be imposed on the person's registration;
  - (d) order that any authority of that person to prescribe or administer narcotic drugs and psychotropic substances be withdrawn;
  - (e) order that the person complete such educational courses as are specified by the Board;
  - (f) order that the person report on the person's practice as a registered medical, dental and allied health practitioner at the times, in the manner and to the persons specified by the Board;
  - (g) impose a fine not exceeding \$2000;
  - (h) order that the person's registration be suspended for such period not exceeding 12 months as the Board thinks fit; or
  - (i) order that the person's name be removed from the register.
- (2) If the registration of a registered medical practitioner, dental practitioner or allied health practitioner is suspended under this section, the Registrar shall note in the register the suspension and its date and cause.
- (3) The Board shall not suspend a medical practitioner, dental practitioner or allied health practitioner's registration or remove a medical practitioner, dental practitioner or allied health practitioner's name from the register for having committed an offence if, having regard to the nature of the offence or the circumstances under which it was committed, the Board is of the opinion that it does not render the person unfit in the public interest to be registered as a medical practitioner, dental practitioner or allied health practitioner.

## 52 Unfitness

- (1) Notwithstanding any other provision of this Act, where the Board is satisfied that any applicant for registration under this Act or any medical practitioner, dental practitioner or allied health practitioner is, by reason of infirmity, injury or illness, whether mental or physical, unfit to carry on the practice of medicine, dentistry or allied health, the Board shall —
- (a) refuse to register the applicant's name in the register;
  - (b) order that the name of the person be removed from the appropriate register; or
  - (c) order that the person be suspended from practice as a medical practitioner, dental practitioner and allied health practitioner for such period as may be specified.
- (2) For the purposes of subsection (1) the Board may -
- (a) require an applicant for registration, a medical practitioner, dental practitioner and allied health practitioner to be examined by any medical practitioner as may be specified by the Board; and

- (b) hold such inquiry as the Board thinks fit.
- (3) A failure or refusal by any person required by the Board to be examined in accordance with a requirement of the Board made under subsection (2)(a) may be regarded by the Board as evidence that the person is, by reason of infirmity, injury or illness, whether mental or physical, unfit to carry on the practice of medicine, dentistry or allied health.
- (4) Nothing in subsection (1) affects the powers of the Board under any other provision of this Act to refuse an application for registration under this Act or to remove the name of a medical practitioner, dental practitioner and allied health practitioner from the register or to suspend a medical practitioner, dental practitioner and allied health practitioner from practice.

### **53 Removal from register outside Tonga**

Where a medical practitioner, dental practitioner or allied health practitioner has, while registered under this Act, been —

- (a) removed from the register; or
- (b) suspended from practice,

as a medical practitioner, dental practitioner or allied health practitioner for professional misconduct, in some place outside Tonga, the Board may order that the medical practitioner, dental practitioner or allied health practitioner's name be removed from the register or that the medical practitioner, dental practitioner or allied health practitioner be suspended from the practice of medicine, dentistry or allied health for such period not exceeding 12 months, as the Board determines.

### **54 Effect of Board's Order**

- (1) An order made by the Board under section 51 shall take effect one month from the date the order is served personally on the medical practitioner, dental practitioner or allied health practitioner, or is sent by registered post by the Registrar to the medical practitioner, dental practitioner or allied health practitioner at the address appearing in the register.
- (2) If within such period the medical practitioner, dental practitioner or allied health practitioner applies in writing to the Health Practitioners Review Council, for a review of the Board's decision under section 4 of the Health Practitioners Review Council Act (Cap 12.04), the order shall not be effective until the review proceedings have been completed.

### **55 Copy of Board's Order**

- (1) If, under section 51, the Board decides to make an order in respect of a person or decides to caution or reprimand a person, the Board shall, within one month

of making its order, provide the person, and any person who made a complaint which resulted in the order or decision and such other persons as it considers appropriate, with a copy statement of its decision.

- (2) If the Board makes a decision in relation to a person under any provision of this Act, other than section 51, the person may request in writing that the Board provide the person with a copy of the decision.
- (3) Any such request shall be made within 60 days after the decision to which it relates.
- (4) The Board shall provide a copy of the decision within one month of receipt of such a request.
- (5) A copy of a decision shall —
  - (a) set out any findings on material questions of fact;
  - (b) refer to any evidence or other material on which the findings were based; and
  - (c) give the reasons for the decision.

## **56 Review of Board's Order**

- (1) Any person aggrieved —
  - (a) by an order made under section 51 or under this Act; or
  - (b) by any refusal or failure to register the person as medical practitioner, dental practitioner or allied health practitioners,may, not later than one month after being served with, or sent, the order in accordance with section 32, or not later than 3 months after the application for registration was lodged, apply to the Health Practitioners Review Council for review.
- (2) Any such review will be in the nature of a new hearing at which new evidence may be given.
- (3) The Health Practitioners Review Council may make such order as it thinks fit.
- (4) The provisions of this section do not apply to enable an applicant for provisional registration or the holder of a certificate of provisional registration that has been cancelled to apply for a review of the refusal or cancellation of the certificate of provisional registration.

## **57 Effect of removal from register or suspension**

- (1) Where the name of a medical, dental and allied health practitioner has been removed from a register under this Act, and until the person's name is restored thereto, the person shall be deemed not to be registered under this Act.

- (2) Where a registered medical, dental and allied health practitioner has been suspended from practice as a medical, dental and allied health practitioner under this Act, the Registrar shall make an entry in the register of that fact and of the date and cause thereof.

## **58 Surrender of certificates of registration**

- (1) Any person whose name is removed from the register, or who has been suspended from practice as a medical practitioner, dental practitioner or allied health practitioners or whose certificate of provisional registration has been cancelled, pursuant to the provisions of this Act, shall within 14 days from receipt of the notification of such removal or suspension or cancellation surrender to the Board any certificate of registration or provisional registration issued to the person under this Act.
- (2) Any person who, without reasonable excuse, contravenes this section commits an offence against this Act and is liable on conviction to a fine not exceeding \$200.

## **59 Restoration of name to register**

- (1) Where the name of any person has been removed from the register, or any person has been suspended from the practice of medicine , dentistry or allied health, the person's name shall not be restored to the register, and the suspension of such person shall not be terminated before the period for which the suspension was imposed, except by direction of the Board or by order of the Health Practitioners Review Council or order of a court of competent jurisdiction.
- (2) The Board may, if it thinks fit in any case, direct the Registrar, without fee or on payment of such fee, not exceeding the current registration fee as the Board may direct, to restore to a register any name removed there from and the Registrar shall restore the name accordingly.

# **PART VI - MISCELLANEOUS**

## **60 Supervised practice**

Nothing in this Act prevents a person from engaging in the supervised practice of medicine or dentistry to the extent required as part of clinical medical, dental or allied health training provided that such practice is in accordance with any other conditions that may be prescribed in the regulations.

**61 Making false or fraudulent representation**

A person who, in an application for registration under this Act, makes or produces any false or fraudulent representation, certificate or affidavit, either verbally or in writing, and any person who knowingly aids or assists therein commits an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or both.

**62 Offence and penalty**

Any person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act commits an offence, and on conviction shall, where no other penalty is provided, be liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; and in the case of a continuing offence, to a fine not exceeding \$1000 for every day or part of a day during which the offence has continued.

**63 Prosecutions**

- (1) Prosecutions for an offence under this Act may be brought —
  - (a) by or on behalf of the Attorney General; or
  - (b) by a member of the police.
- (2) A person referred to in subsection (1)(b), whether or not a law practitioner, may lay, institute or conduct any charge, information, complaint or other proceedings arising under this Act, subject to any directions issued by the Attorney General.

**64 Crown to be bound**

This Act binds the Crown.

**65 Regulations**

The Minister may, with the consent of the Cabinet, and after consultation with the Board may make regulations prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act and, in particular, for the following purposes —

- (a) prescribing the duties of the Registrar;
- (b) prescribing the fees payable under the Act and the regulations;
- (c) providing codes of conduct for medical practitioners, dental practitioners and allied health practitioners;
- (d) prescribing the qualifications for registration as a medical practitioner, dental practitioner and allied health practitioner;

- (e) prescribing the format of any examination to be conducted by the Board in connection with the registration of medical practitioner, dental practitioner and allied health practitioner;
- (f) prescribing the grounds on which registration may be suspended;
- (g) prescribing the procedures to be followed in conducting disciplinary inquiries;
- (h) prescribing the continuous professional development requirements for registration as a medical practitioner, dental practitioner and allied health practitioner, on the recommendation of the Board;
- (i) prescribing the process and procedures for public awareness; and
- (j) prescribing the process and procedures for Board activities and budget plans.

## **66 Savings and Repeal**

- (1) The Medical and Dental Practice Act (Cap. 12.09) is hereby repealed.
- (2) All persons who at the commencement of this Act, are registered under the Medical, Dental and Allied Health Practitioner Act (Cap.12.09) shall be deemed to be registered under this Act.

Passed by the Legislative Assembly **24<sup>th</sup>** day of **August** 2021.

**SCHEDULE I****ALLIED HEALTH PROFESSION****Part 1 - Clinical Treatment Services**

- (a) Audiologists
- (b) Dieticians
- (c) Physiotherapists
- (d) Occupational Therapists
- (e) Speech Therapists
- (f) Medical Laboratory Scientists
- (g) Medical Laboratory Technicians
- (h) Medical Radiation Practitioner
- (i) Podiatrists
- (j) Paramedics
- (k) Eye care practitioners
- (l) Phlebotomist
- (m) Anesthetist assistant

**Part 2 - Complementary and Health Alternative Therapies**

- (a) Acupuncturists
- (b) Massage Therapists, as Health Practice for Healthcare
- (c) Chiropractors
- (d) Naturopaths

**Part 3 - Public Health Services**

- (a) Environmental Health Officers
- (b) Health Promotion Officers
- (c) Nutritionists
- (d) First Aid Instructors
- (e) Public Health Officers
- (f) Community Based Rehabilitation Officer
- (g) Community Health Assistant

**Part 4 – Clinical Mental Health and Wellbeing**

- (a) Counsellors, Psychologists
- (b) Psychoanalyst
- (c) Hypnotist
- (d) Behavioral analyst
- (e) Psychiatric Security attendant
- (f) Psychiatric Assistant
- (g) Mental Health Welfare Officer
- (h) Drug and Alcohol Therapist
- (i) Psychotherapist

**Part 5 - Applied Health Science Services**

- (a) Biomedical Engineers
- (b) Biomedical Technicians
- (c) Optometrists
- (d) Optometrist Technicians
- (e) Orthoptists
- (f) Prosthetists
- (g) Mobility Equipment and Plaster Technician
- (h) Dental Electrician
- (i) Bio-dental Engineer
- (j) Sterilizing Officer