



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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WINDHOEK — 17 December 1993

No. 764

CONTENTS

Page

GOVERNMENT NOTICE

No. 161 Promulgation of Nursing Professions Act, 1993 (Act 30 of 1993), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 161

1993

**PROMULGATION OF ACT
OF PARLIAMENT**

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 30 of 1993: Nursing Professions Act, 1993

ACT

To provide for the establishment and constitution of a professional board for the nursing and midwifery professions; to make provision for the powers, duties and functions of such board; to provide for the registration, enrolment, training and qualifications of members of the profession of nurses and midwives; to prohibit the practising of such a profession without being registered; to provide for certain offences; and to provide for matters incidental thereto.

(Signed by the President on 26 November 1993)

ARRANGEMENT OF SECTIONS

PART I

DEFINITIONS

1. Definitions.

PART II

PROFESSIONAL BOARD

2. Establishment of Nursing Board.
3. Objects of Board.
4. General powers of Board.
5. Constitution of Board.
6. Disqualifications for election as members of Board.
7. Vacation of offices and filling of vacancies on Board.
8. Office-bearers of Board.
9. Meetings, quorum and procedures of Board.
10. Committees of Board.
11. Finances of Board, keeping of accounts and submission of reports.

PART III

TRAINING, QUALIFICATIONS, REGISTRATION
AND ENROLMENT

12. Control over education and training.
13. Registration or enrolment a prerequisite for practising.
14. Keeping of registers and rolls.
15. Removal of names from, and restoration to, registers or rolls.
16. Copy of registers or rolls as proof.
17. Duplicate certificates and extracts from registers or rolls.
18. Qualifications prescribed for registration or enrolment.
19. Conditional registration or enrolment.
20. Issuing of registration or enrolment certificates replacing conditional registration or enrolment certificates.
21. Registration of student nurses and student midwives.
22. Enrolment of pupil nurses and pupil nursing auxiliaries.
23. Board may refuse registration or enrolment.
24. Educational institutions to furnish Board with certain particulars.
25. Registration and use of additional qualifications and specialities.
26. Persons registered or enrolled may use certain titles.

PART IV

OFFENCES BY PERSONS NOT REGISTERED
OR ENROLLED

27. Penalties for practising as, or using the title of, registered nurse or midwife, enrolled nurse, midwife or nursing auxiliary or for performing certain other acts, while not registered or enrolled.

PART V

DISCIPLINARY POWERS OF BOARD

28. Rules by Board relating to improper conduct or misconduct.
29. Inquiry by Board into complaints, charges or allegations of improper conduct or misconduct.
30. Procedures at inquiries.
31. Penalty for false evidence.
32. Penalties to be imposed by Board.

33. Postponement of imposition of penalties and suspension of operation of penalties.
34. Effect of suspension or removal from register or roll.
35. Cognizance by Board of conduct of registered or enrolled persons under certain circumstances.
36. Appointment of *pro forma* complainants.
37. Limitation of liability.
38. Restriction in, or suspension from, practice of incapable, unfit or incompetent registered or enrolled persons.

PART VI

GENERAL AND SUPPLEMENTARY PROVISIONS

39. Nursing agencies.
40. Authorization to practise professions in employment of State.
41. Special provisions relating to certain nurses.
42. Tariffs of fees.
43. Charges by registered or enrolled persons.
44. Offences relating to registration or enrolment and registers.
45. Onus of proof.
46. Limitations in respect of persons not registered or enrolled.
47. Investigation of matters relating to the training of certain persons.
48. Regulations.
49. Levying of annual fees on registered and enrolled persons.
50. Delegation of powers.
51. Right of appeal to Council.
52. Existing professions.
53. Minister temporarily to exercise powers and perform functions and duties of Board.
54. Repeal of laws and saving.
55. Short title and commencement.

SCHEDULE

LAWS REPEALED

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

PART I

DEFINITIONS

Definitions.

1. In this Act, unless the context otherwise indicates -

“approved nursing school” means a nursing school approved by the Board under section 4;

“Board” means the Nursing Board established by section 2;

“Council” means the Council for Health and Social Services Professions established by section 2 of the Council for Health and Social Services Professions Act, 1993;

“dependence-producing drug” means any dependence-producing drug as defined in section 1 of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971);

“educational institution” means any university, college, technical college, technicon or other institution, or hospital, nursing school, society or other body where a qualification can be obtained which complies with the requirements of prescribed qualifications as contemplated in section 18;

“enrol” means the entry in a roll of a category or member of a category of persons in respect of whom a roll is kept in terms of this Act and “enrolled” and “enrolment” have a corresponding meaning;

“enrolled midwife” means a person enrolled as a midwife under section 13 and includes an accoucheur;

“enrolled nurse” means a person enrolled as a nurse under section 13;

“improper conduct” means those acts and omissions by registered or enrolled persons in respect of whom the Board has issued rules under section 28;

“local authority” means any local authority council as defined by section 1 of the Local Authorities Act, 1992 (Act 23 of 1992);

“member” means any member of the Board;

“Minister” means the Minister of Health and Social Services;

“misconduct” means those acts and omissions by registered or enrolled persons in respect of whom the Board has issued rules under section 28;

“nursing agency” means a business which supplies registered nurses or midwives or enrolled nurses or nursing auxiliaries to any person, organization or institution, whether for gain or not and whether in conjunction with any other service rendered by such business or not;

“nursing auxiliary” means a person enrolled as such under section 14;

“nursing school” means any institution where persons are educated and trained for the profession of nursing or midwifery;

“Permanent Secretary” means the Permanent Secretary: Health and Social Services;

“prescribe” means prescribe by regulation and “prescribed” has a corresponding meaning;

“public holiday” means a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1990 (Act 26 of 1990);

“pupil nurse” means a person enrolled as such under section 22;

“pupil nursing auxiliary” means a person enrolled as such under section 22;

“qualification” means any degree, diploma or certificate conferred upon a person after having been examined in respect of his or her competency in his or her field of study;

“register” -

NURSING PROFESSIONS ACT 1993

- (a) when used as a noun, means a register kept in terms of this Act, and when so used in relation to any category or any member of any category of persons in respect of whom a register is kept, the register kept for that category; and
- (b) when used as a verb, means to enter in a register in terms of this Act;

and the words "registered", "registrable", "registration" and all other words derived from the word "register" have a corresponding meaning;

"registered midwife" means a person registered as a midwife under section 13 and includes an accoucheur;

"registered nurse" means a person registered as a nurse under section 13;

"regulation" means a regulation made in terms of this Act;

"roll" means a roll kept in terms of this Act, and when used in relation to any category or any member of any category or persons in respect of whom a roll is kept, the roll kept for that category;

"rule" means any rule made under this Act;

"scheduled substance" means any medicine or other substance included in any Schedule to the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965);

"student midwife" means a person registered as such under section 21;

"student nurse" means a person registered as such under section 21;

"this Act" includes the regulations and rules made, or any order issued, under this Act.

PART II

PROFESSIONAL BOARD

Establishment of Nursing Board.

2. (1) There is hereby established a professional Board for the nursing and midwifery professions to be known as the Nursing Board.

(2) The Board shall be a juristic person.

Objects of Board.

3. The objects of the Board shall be -

- (a) to regulate the practising of the nursing and midwifery professions and the registration and enrolment of persons practising any such professions;
- (b) subject to the provisions of the Allied Health Services Professions Act, 1993, the Pharmacy Profession Act, 1993, and the Medical and Dental Professions Act, 1993, to control, and to exercise authority in respect of, all matters affecting the education and training of, and the manner of the exercise of the practices pursued by, registered nurses and midwives, enrolled nurses, midwives and nursing auxiliaries;
- (c) to promote liaison of education and training, and the manner of the exercise of the practises referred to in paragraph (b), and to promote standards of such education and training and the manner of the exercise of such practises in Namibia;
- (d) to determine the standards of professional conduct of persons practising the nursing and midwifery professions and to exercise effective control over the professional conduct of such persons;
- (e) to encourage and promote efficiency in, and responsibility with regard to, the practice of the nursing and midwifery professions;
- (f) to protect the interest of the nursing and midwifery professions and to deal with any matter relating to such interest;

NURSING PROFESSIONS ACT 1993

- (g) to maintain and enhance the prestige, status and dignity of the nursing and midwifery professions and the integrity of persons practising such professions;
- (h) to assist in the promotion of the health standards of the inhabitants of Namibia;
- (i) to advise the Minister and the Council in relation to any matter affecting the nursing and midwifery professions; and
- (j) to communicate to the Minister and the Council matters of public interest acquired by the Board in the course of the performance of its functions under this Act.

General powers of Board.

4. The Board may, subject to the provisions of this Act -

- (a) register or enroll any person in the profession concerned;
- (b) where authorized by this Act, remove from or, upon payment of the prescribed fee, restore to, a register or roll any name;
- (c) appoint examiners and moderators, conduct examinations and grant diplomas and certificates, and charge the prescribed fees in respect of such examinations and the issue of such diplomas and certificates;
- (d) approve nursing schools in accordance with the prescribed conditions, inspect such schools, or withdraw or suspend approval of any such school if the education or training thereat is not, in the opinion of the Board, satisfactorily carried out, or if any condition imposed has not been complied with: Provided that the Board shall not refuse to approve, or shall not withdraw or suspend the approval of, any such school without the consent of the Minister;
- (e) charge the prescribed fees in respect of any inspection it may deem necessary to enable it to consider an application for the approval of a

nursing school or any variation of a condition imposed in respect of an approved nursing school;

- (f) subject to the prescribed conditions and upon payment of the prescribed fees, issue or renew a licence to carry on the business of a nursing agency, inspect the records and accounts and investigate the activities of a nursing agency, require any person licensed to carry on the business of a nursing agency to submit to the Board such information as it may deem necessary, and, in the prescribed circumstances, suspend or cancel a licence to carry on the business of a nursing agency;
- (g) consider any matter affecting the nursing or midwifery profession, and make representations or take such action in connection therewith as the Board may deem advisable;
- (h) acquire, hire or dispose of property, borrow money on the security of the assets of the Board or accept and administer any trust or donation;
- (i) upon application of any person, recognize a qualification held by such person (whether such qualification has been obtained in Namibia or elsewhere) as being equal, either wholly or in part, to any prescribed qualification, whereupon such person shall, to the extent to which the qualification has so been recognized, be deemed to hold such prescribed qualification;
- (j) require approved nursing schools to submit annual returns of students registered under section 21 and pupils enrolled under section 22 and such other information as may become necessary at any time;
- (k) require employers to submit annual returns of registered and enrolled persons in their employ and such other information in connection therewith as it may deem necessary at any time;
- (l) appoint such persons at the remuneration and on the other conditions of service which it deems fit for the carrying out of its functions and may dismiss such persons;

- (m) perform such other functions as may be prescribed in respect of the Board, and generally do all such things as the Board deems necessary or expedient to achieve the objects of this Act.

Constitution of Board.

5. (1) The Board shall consist of so many members, but not less than five and not more than nine, as may be determined by the Minister, of whom shall, subject to the provisions of section 6, all or any be registered nurses or registered midwives.

(2) The members of the Board of which the number thereof has been determined in terms of the provisions of subsection (1), shall be elected in the prescribed manner and in accordance with the prescribed procedures by registered nurses and registered midwives, who shall be Namibian citizens or have been lawfully admitted to Namibia for permanent residence therein, and resident in Namibia.

(3) Notwithstanding any provision to the contrary contained in subsection (2), any meeting for the first election of members of the Board shall be presided over by the Minister or any person designated by the Minister for that purpose, who shall determine the procedures to be followed at such meeting, including the time, date and place of such meeting, notice of such meeting to the persons concerned, the quorum for such meeting, the nomination of candidates, the manner in which the election shall be conducted and any other matter incidental to such election.

(4) Any member of the Board shall hold office for a period of three years and shall, at the expiry of such period, be eligible for re-election.

(5) The names of the members of the Board and the date of commencement of their term of office shall be published by the secretary of the Board in the *Gazette* as soon as possible after the constitution of the Board.

(6) For the constitution of the first Board, any person who immediately before the commencement of this Act was in terms of any law in force in Namibia entitled to practise as a registered nurse or a registered midwife, shall -

- (a) notwithstanding subsection (1), be eligible for election as a member of the Board if such person is not subject to any disqualification mentioned in section 6; and

- (b) notwithstanding subsection (2), be entitled to vote at the first election of the members of the Board held in terms of subsection (3), if such person is a Namibian citizen or has lawfully been admitted to Namibia for permanent residence and is resident in Namibia.

Disqualifications for election as members of Board.

6. No person -

- (a) who is not a Namibian citizen or not lawfully admitted to Namibia for permanent residence therein, and resident in Namibia;
- (b) who is an unrehabilitated insolvent;
- (c) who in terms of this Act is disqualified from practising his or her profession,

shall be elected as a member of the Board.

Vacation of offices and filling of vacancies on Board.

7. (1) A member of the Board shall vacate his or her office, if -

- (a) he or she becomes subject to any disqualification contemplated in section 6;
- (b) he or she is declared mentally ill under the Mental Health Act, 1973 (Act 18 of 1973);
- (c) he or she in writing under his or her hand, addressed and delivered to the Board, resigns from his or her office;
- (d) he or she has been absent from more than two consecutive meetings of the Board without its leave; or
- (e) he or she is convicted of an offence and sentenced to a term of imprisonment without the option of a fine.

(2) Any vacancy on the Board arising from any circumstance referred to in subsection (1), or caused by the death of any member of the Board, shall be filled by election *mutatis mutandis* in accordance with the provisions of section 5(2), and every member so elected shall hold office for the unexpired portion of the period of office of the vacating member.

Office-bearers of Board.

8. (1) At the first meeting of every newly constituted Board the members of the Board shall elect from their number a president, vice-president, treasurer and secretary.

(2) The president, vice-president, treasurer and secretary shall hold office as such during their terms of office as members of the Board, unless such person sooner resigns or ceases to be a member of the Board.

(3) If for any reason the president is absent or unable to act as president, the vice-president shall perform all the duties and functions and exercise all the powers of the president.

(4) If both the president and vice-president are absent from any meeting, the members present shall elect one from their number to preside at that meeting, and the person so presiding may at such meeting during such absence perform the duties and functions and exercise the powers of the president.

(5) If the office of president, vice-president, treasurer or secretary becomes vacant, the members of the Board shall at the first meeting after such vacancy has occurred, elect from among their number a new president, vice-president, treasurer or secretary, as the case may be, and the member so elected shall hold office for the unexpired portion of the period of office of his or her predecessor.

(6) No person shall hold the office of president or vice-president for longer than two consecutive terms of office: Provided that a portion of a period of office referred to in subsection (5) shall be deemed not to constitute a term of office as contemplated in this subsection.

(7) The president, vice-president, treasurer or secretary may vacate his or her office as president, vice-president, treasurer or secretary, as the case may be, without terminating his or her membership of the Board.

Meetings, quorum and procedures of Board.

9. (1) The meetings of the Board shall be held at such times and venues as the president of the Board may determine: Provided that the first meeting of the Board constituted in terms of section 5(1) shall be held at such time and venue as the Minister may determine.

- (2) (a) The president of the Board shall, upon the written request signed by at least four members of the Board or upon a written request signed by at least one-third of the persons registered in terms of this Act, convene a special meeting of the Board to be held within 30 days after the date of receipt of such request, and on such date and at such place as he or she may determine.
- (b) Such written request shall state clearly the purpose for which the meeting is to be convened.
- (3) A majority of members of the Board shall constitute a quorum for any meeting of the Board.
- (4) The decision of the majority of the members of the Board present at any meeting of the Board shall constitute a decision of the Board, and in the event of an equality of votes, the person presiding at such meeting shall have a casting vote in addition to his or her deliberative vote.
- (5) The Board may make rules in relation to the holding of, and procedures at, meetings of the Board.
- (6) The Board and any committee of the Board referred to in section 10 shall cause proper records to be kept of the proceedings of its meetings.
- (7) (a) Any meeting of the Board where the Board holds an inquiry under Part V or where any committee of the Board referred to in section 10 holds such an inquiry under powers assigned or delegated to it by the Board, shall be open to the public, unless the Board or such committee determines, subject to the provisions of the proviso to Article 12(1)(a) of the Namibian Constitution, otherwise.
- (b) Any member or former member of the Board or of any committee of the Board referred to in section 10 shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge at or in respect of any meeting of the Board or such committee, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody related to such matter, except in so far

as any such communication or document is required by, or may be made in terms of this Act or any other law, or is required by an order of a court of law.

- (c) Any person who contravenes or fails to comply with any determination referred to in paragraph (a) or with the provisions of paragraph (b) shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Committees of Board.

10. (1) The Board shall -

- (a) establish a disciplinary committee which shall consist of such number of persons appointed by the Board as the Board may determine, but which shall include at least two members of the Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee, to investigate and report to the Board on any complaint, charge or allegation referred to it in terms of section 29;
- (b) establish an education committee which shall consist of such number of persons appointed by the Board as the Board may determine, but which shall include at least two members of the Board, one of whom shall be the chairperson and the other the vice-chairperson of such committee and at least two registered nurses who have knowledge or experience in or are or were involved in the training of nurses or midwives or both, to investigate and report to the Board on any matter relating to any requirement or qualification for registration or training, as the case may be.

(2) A committee established in terms of subsection (1) shall, subject to the provisions of subsection (5), exercise such of the Board's powers and perform such of the Board's functions as the Board may from time to time confer upon or assign to it.

(3) The Board may from time to time establish such other committees as it may deem necessary, each consisting of so many persons, appointed by the Board, as the Board may determine, but including at least one member

of the Board who shall be the chairperson of such committee, to investigate and report to the Board on any matter falling within the scope of the Board's functions under this Act.

(4) The Board may delegate to any committee established in terms of subsection (3), such of its powers, in addition to the powers conferred upon such committee under that subsection, as it may from time to time determine, but shall not be divested of any power so delegated.

(5) No penalty imposed by any committee established in terms of subsection (1) other than a caution or a reprimand or a reprimand and a caution, shall be of force and effect until confirmed by the Board: Provided that an order made by any such committee under section 38(2) shall, if the committee so directs in the public interest, come into operation forthwith, but shall lapse after the expiration of a period of six months unless confirmed within that period by the Board.

Finances of Board, keeping of accounts and submission of reports.

11. (1) The funds of the Board shall consist of the registration and examination fees and any other fees payable under this Act, and such other moneys, including assistance referred to in subsection (2), as may in terms of this Act from time to time become payable to the Board, and the Board shall utilize its funds for defraying expenses incurred in connection with the performance of its functions.

(2) The Minister may, in consultation with the Minister of Finance, at any time, and subject to such conditions as the Minister may determine, grant to the Board out of moneys appropriated by Parliament, such financial assistance as he or she may deem necessary in connection with the performance of its functions.

(3) The Board may invest any unexpended portion of its funds and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient.

(4) (a) The Board shall cause full and correct accounts to be kept of all moneys received or expended by it.

- (b) The Board shall cause to be prepared in each year a statement of its income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year and shall, after the statement and balance sheet have been audited by an auditor appointed by the Board, cause copies thereof to be transmitted to every member of the Board, and cause a copy thereof to be open for inspection at the office, if any, of the Board and the office of the Council by any person registered or enrolled with the Board.
- (c) The Board shall in each year, within six months after the close of its financial year, submit to the Council a report in regard to its activities during that financial year, together with a copy of the audited statement of income and expenditure and the balance sheet referred to in paragraph (b) in respect of that financial year.
- (d) The financial year of the Board shall end on 30 June of each year, unless the Board, with the approval of the Minister, determines otherwise.

PART III

TRAINING, QUALIFICATIONS, REGISTRATION AND ENROLMENT

Control over education
and training.

12. (1) Notwithstanding anything to the contrary in any law contained, no person or educational institution may offer or provide any tuition or training which is intended to qualify any person to practise the profession of nursing or midwifery to which the provisions of this Act apply, unless such tuition and training have been approved by the Board.

(2) Any person or educational institution intending to offer or to provide the tuition or training referred to in subsection (1) shall, before offering or providing such tuition or training, apply in such form as may be determined by the Minister to the Board in writing for its approval of such tuition or training and shall furnish such particulars regarding that tuition or training as the Board may require.

(3) (a) The Board may grant or refuse any application made in terms of subsection (2) and may, where it approves an application, issue a certificate of approval to the person or educational institution concerned in such form and subject to such conditions and for such period as it may determine.

(b) The Board may at any time withdraw any certificate of approval issued under paragraph (a) if it is satisfied that any person or educational institution issued with such certificate has failed to comply with any condition or requirement determined in terms of that paragraph.

(4) The Board shall notify in writing the person or educational institution concerned of any decision taken under subsection (3).

(5) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition determined under subsection (3), shall be guilty of an offence and on conviction be liable -

(a) in the case of a natural person, to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment; or

(b) in any other case, to a fine not exceeding R50 000.

Registration or enrolment
a prerequisite for practising.

13. (1) Unless otherwise provided in this Act, no person shall be entitled to practise within Namibia the profession of registered nurse or midwife, an enrolled nurse, midwife or nursing auxiliary, or to practise within Namibia as a student nurse or a student midwife or as a pupil nurse or a pupil nursing auxiliary unless such person is registered or enrolled in terms of this Act with the Board as a nurse, a midwife, a nursing auxiliary, a student nurse, a student midwife, a pupil nurse or a pupil nursing auxiliary, as the case may be.

(2) Every person who desires to be registered or enrolled in terms of this Act as a registered nurse or midwife, an enrolled nurse, midwife or nursing auxiliary, as the case may be, shall, in such form as may be determined by the Minister, apply to the Board, and shall together with such application submit to the Board proof

of the qualification which in such person's opinion, entitles him or her to registration or enrolment with the Board, as the case may be, together with such documents or information as may be required by the Board.

(3) If the Board is satisfied that the applicant and his or her qualifications comply with the provisions of this Act and with the requirements of the Board, it shall, upon payment of all prescribed fees, register or enroll the applicant, as the case may be, and issue a registration or enrolment certificate in the prescribed form in the name of such applicant, authorizing the applicant, subject to the provisions of this Act and to any other law, to practise within Namibia the profession in respect of which such person has applied for registration or enrolment.

(4) If the Board is not satisfied that the qualification or other documents submitted in support of such application comply with the provisions of this Act and with the requirements of the Board, the Board shall refuse to issue a registration certificate or enrolment certificate, as the case may be, to the applicant.

Keeping of registers and rolls.

14. (1) The secretary of the Board shall -

- (a) keep separate registers and rolls in respect of the different prescribed categories of nurses, midwives, students and pupils, and shall record in the appropriate register or roll the name, address, qualifications and such other particulars as may be determined by the Board of every person whose application for registration or enrolment in terms of this Act has been granted;
- (b) furnish the registrar of the Council with a copy of the registration or enrolment certificate of every person who has been registered or enrolled in terms of this Act and such other particulars (if any) as may be required by such registrar in connection with such person.

(2) The secretary of the Board shall keep the registers and rolls in accordance with the provisions of this Act and shall, subject to any other provisions of this Act, remove therefrom the names of all registered or enrolled persons who have died or whose period of registration or enrolment has expired in terms of this Act, and shall from time to time make the necessary alterations in the names and addresses or qualifications of registered or enrolled persons.

NURSING PROFESSIONS ACT, 1993

(3) Every registered or enrolled person who changes his or her address shall in writing and within 30 days after such change notify the secretary of the Board of his or her new address.

(4) The Permanent Secretary: Home Affairs shall, on receipt of the death registration of a person which indicates that such person immediately prior to his or her death practised a profession which is required to be registered or enrolled under this Act, forthwith notify the Board of such death.

Removal of names from, and restoration to, registers or rolls.

15. (1) The Board may direct its secretary to remove from the register or roll the name of any person -

- (a) who has been, without notifying the Board, absent from Namibia during the three years immediately preceding such removal;
- (b) who has failed to notify the secretary in terms of section 14(3) of any change of his or her address and who, within a period of three months after a request by the secretary sent by registered letter to the address of such person appearing in the register or roll in respect of such person, to furnish such new address, fails to comply with such request;
- (c) who has requested that his or her name be removed from the register or roll, as the case may be, in which case such person may be required by the secretary to lodge with the Board an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him or her;
- (d) who has failed to pay the Board, within a period of one month as from the date upon which it becomes due for payment, the prescribed annual fees;
- (e) whose name has been removed from the register, record or roll of any educational institution from which that person received the qualification by virtue of the holding whereof such person was registered or enrolled in terms of this Act;

(f) in respect of whom an entry has been made in error or through misrepresentation or in circumstances not authorized by this Act and the initial registration or enrolment would not have been made had the correct facts and circumstances been known to the Board.

(2) (a) Notice of the removal in terms of subsection (1) of any person's name or of an entry from the register or roll, shall be served by the secretary of the Board, or any person designated by the secretary for that purpose, on the person whose name has been removed from the register or roll, as the case may be, at his or her place of business or residence.

(b) In the event that a notice referred to in paragraph (a) cannot be served on the person whose name has been removed from the register or roll concerned at his or her place of business or residence, such notice may be served -

(i) at the place of business of such person, upon any partner or employee of such person; or

(ii) at the place of residence of such person, upon any member of the household or any employee of such person apparently above the age of 16 years; or

(iii) by way of registered letter addressed to such person at his or her address which appears in such register or roll,

and, in the case of subparagraph (i) or (ii), any partner, member or employee upon whom the notice is served shall acknowledge receipt thereof in writing and shall state his or her capacity and, where practicable, his or her age.

(3) As from the date on which a notice referred to in subsection (2) has been served -

(a) any registration or enrolment certificate issued in terms of this Act to the person concerned shall be deemed to be cancelled; and

(b) such person shall cease to practise the profession in respect of which he or she was registered or

enrolled or to perform any act which such person, in his or her capacity as a registered or enrolled person, was entitled to perform,

until such time as the name of such person is restored to the register or roll concerned.

(4) If any person registered or enrolled in terms of this act has been declare a mentally ill person under the Mental Health Act, 1973 (Act 18 of 1973), the Registrar of the High Court shall forward a copy of the order declaring such person a mentally ill person to the secretary of the Board who shall, on receipt of such copy, remove the name of such person from the register or roll concerned.

(5) The name of a person who, or an entry which, has in terms of this section been removed from a register or roll, may be restored to the register or roll by the Board if the person concerned -

- (a) applies to the secretary of the Board in the form as may be determined by the Minister for such restoration;
- (b) pays any fee prescribed in respect of such restoration;
- (c) where his or her name has been removed from the register or roll in terms of subsection (4), submits proof to the satisfaction of the Board that he or she has recovered from his or her mental illness; and
- (d) complies with such other requirements as the Board may determine.

(6) The provisions of section 13 shall apply *mutatis mutandis* to an application in terms of subsection (5) as well as any further and other conditions which the Board may impose.

Copy of registers or rolls as proof.

16. A copy of any register or roll signed by the secretary of the Board shall be *prima facie* proof in all legal proceedings of the facts therein recorded, and the absence of the name of any person from such copy shall be proof, until the contrary is proved, that such person is not registered or enrolled under the provisions of this Act: Provided that in the case of any person whose name -

- (a) does not appear in such copy but ought to appear in such register or roll, a certified statement by the secretary shall be proof that such person is registered or enrolled under the provisions of this Act;
- (b) has been removed from the register or roll and has not been restored to the register or roll, a certified statement by the secretary that the name of such person has been removed from the register or roll, shall be proof that such person is not registered or enrolled under the provisions of this Act.

Duplicate certificates and extracts from registers or rolls.

17. (1) Upon receipt of an application by a registered or enrolled person and upon payment of the prescribed fee, the secretary of the Board may issue to such person a duplicate certificate of registration or enrolment or furnish such person with an extract from the register or roll concerned.

(2) A receipt in respect of the payment of annual fees issued to any person by the Board shall be *prima facie* proof in any legal proceedings that such person is registered or enrolled under the provisions of this Act.

Qualifications prescribed for registration or enrolment.

18. (1) Subject to the provisions of subsection (2), the Minister may from time to time, upon the recommendation of the Board, prescribe the qualifications obtained by virtue of examinations conducted by any educational institution or other examining authority, which, when held singly or conjointly with any other qualification, shall entitle any holder thereof to registration or enrolment under this Act in the nursing or midwifery profession, if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be so prescribed.

(2) No qualification obtained by virtue of examinations conducted by an educational institution or other examining authority situated outside Namibia shall be prescribed under this section unless -

- (a) such qualification entitles the holder thereof to practise such profession in the country or state in which such educational institution or other examining authority is situated; and

- (b) the Board is satisfied that possession of such qualification is of a standard of professional education not lower than that prescribed in terms of subsection (1) in respect of the nursing or midwifery profession within Namibia.

Conditional registration
or enrolment.

19. (1) Any person not in possession of a qualification prescribed in terms of section 18 and who lodges an application for registration or enrolment with the Board, may be registered or enrolled by the Board, if -

- (a) such applicant possesses any qualification which the Board is satisfied as indicating a standard of professional education not lower than that prescribed in terms of the said section 18;
- (b) such applicant has received such additional tuition or training, whether within or outside Namibia, as may be prescribed upon the recommendation of the Board;
- (c) such applicant has passed the additional examinations, whether within or outside Namibia, as may be prescribed upon the recommendation of the Board.

(2) For the purposes of the provisions of paragraphs (b) and (c) of subsection (1), the Board may register or enroll such applicant conditionally for such period or periods as the Board may determine and on such conditions subject to which such applicant may practise the nursing or midwifery profession as may be so determined until such time as such applicant has completed the additional tuition or training referred to in the said paragraph (b) or until such time as such applicant has passed the additional examinations referred to in the said paragraph (c).

(3) The Board may, before issuing a conditional registration or enrolment certificate in terms of subsection (2), require the applicant concerned, at such date and venue as may be determined by the Board, to be examined by examiners appointed by the Board, to ascertain whether such applicant -

- (a) possesses professional knowledge and skill which is of a standard not lower than that required in respect of the nursing or midwifery profession; and

(b) is proficient in the official language of Namibia.

(4) The Minister may, from time to time and upon the recommendation of the Board, prescribe the examinations to be conducted in terms of subsection (3) and the examination fees payable to the Board by such applicant.

(5) As soon as an applicant has complied with the provisions of subsection (1)(b) and upon expiry of any period determined by the Board in terms of subsection (2), any person in possession of a conditional registration or enrolment certificate may apply to the Board to sit for the additional examinations prescribed in terms of subsection (1)(c).

(6) Any person who possesses a qualification referred to in paragraph (a) of subsection (1) may, upon application, be exempted by the Minister from any restriction or condition imposed in respect of him or her under the provisions of this section.

Issuing of registration or enrolment certificates replacing conditional registration or enrolment certificates.

20. Any person to whom a conditional registration or enrolment certificate has been issued in terms of section 19 may, as soon as such person has complied with the provisions of that section and the conditions determined thereunder by the Board, apply to the Board for registration or enrolment *mutatis mutandis* in accordance with the provisions of section 13.

Registration of student nurses and student midwives.

21. (1) The Board shall register as a student for an additional qualification, or as a student nurse or a student midwife, a person undergoing tuition and training at an approved nursing school, who has complied with the prescribed conditions and has furnished the prescribed particulars.

(2) Every person shall on commencing or resuming tuition and training as a student nurse or a student midwife at an approved nursing school, apply for registration with the Board.

(3) The person in charge of an approved nursing school shall forthwith notify the Board of the termination of the tuition and training of a student nurse or a student midwife, whether by reason of abandonment or completion of tuition and training or a transfer or for any other reason.

Enrolment of pupil nurses and pupil nursing auxiliaries.

22. (1) The Board shall enroll as a pupil nurse or a pupil nursing auxiliary a person undergoing tuition and training at an approved nursing school, who has complied with the prescribed conditions and has furnished the prescribed particulars.

(2) Every person shall on commencing or resuming tuition and training as a pupil nurse or pupil nursing auxiliary at an approved nursing school, apply for enrolment with the Board.

(3) The person in charge of an approved nursing school shall forthwith notify the Board of the termination of the tuition and training of a pupil nurse or a pupil nursing auxiliary, whether by reason of abandonment or completion of tuition and training or a transfer or for any other reason.

Board may refuse registration or enrolment.

23. Notwithstanding any provision of this Act, the Board may refuse to register or enroll any person under section 13, 21 or 22, or to restore the name of any person to a register or roll, if, in the opinion of the Board, such person is by reason of a conviction for a prescribed offence, in Namibia or elsewhere, not fit to practise as a registered nurse or midwife, an enrolled nurse, midwife or a nursing auxiliary, as the case may be, or to undergo education and training as a registered student nurse, a student midwife, an enrolled pupil nurse or pupil nursing auxiliary.

Educational institutions to furnish Board with certain particulars.

24. (1) Every educational institution at which a qualification can be obtained entitling the holder thereof to registration or enrolment with the Board, shall furnish the Board upon its request, with full particulars as to -

- (a) the minimum age and standard of general education required of students for admission to the relevant course or field of study;
- (b) the courses of study, training and examinations required of a student before such qualification is granted;
- (c) particulars of examinations conducted and the results thereof in respect of a specific student or a specific category of students;

- (d) such other particulars relating to any of the matters referred to in paragraph (a), (b) or (c) as the Board may from time to time require.

(2) If any educational institution referred to in subsection (1) fails or refuses to furnish the particulars requested by the Board under that subsection or if it appears to the Board that any provision of this Act applicable to such educational institution is not properly being complied with and that such improper compliance is having or may have an adverse effect on the standard of the education in respect of the professional training to be maintained at such educational institution, the Minister may upon the recommendation of the Board, by notice in the *Gazette* declare that any qualification specified in such notice and granted by such educational institution after a date specified in such notice shall, subject to the provisions of subsection (4), not entitle any holder thereof to registration or enrolment under this Act.

(3) Upon the recommendation of the Board the Minister may, when it appears to him or her that satisfactory provision has been made for complying with the requirements of this Act by any educational institution in respect of any qualification which is the subject of a notice issued under subsection (2), repeal or amend any notice published in terms of that subsection.

(4) Upon the recommendation of the Board the Minister shall, in the notice published in terms of subsection (3), determine whether or not any qualification granted subsequent to the date specified in the notice published in terms of subsection (2) and granted by the educational institution referred to in that notice, entitles the holder of such qualification to registration or enrolment in terms of this Act.

(5) A Board may from time to time appoint a person to investigate whether the minimum requirements laid down by the Board are being complied with by an educational institution and to report to the Board thereon.

Registration and use of additional qualifications and specialities.

25. (1) The Minister may from time to time prescribe the degrees, diplomas or certificates which may be registered as additional qualifications, or the qualifications which may be registered as specialities.

(2) Every person who desires to have a prescribed degree, diploma or certificate registered other than the qualification by virtue of which such person has in the first instance been registered or enrolled, or to have a prescribed speciality registered, shall in the form determined by the Minister apply to the Board, submitting such documentary proof that he or she holds the additional qualification in question as the Board may require, or, in the case of an application for registration of a speciality, submitting proof that he or she complies with the prescribed requirements, and if the Board is satisfied that such additional qualification is a degree, diploma or certificate prescribed in terms of subsection (1), or, in respect of a speciality, that such speciality has been prescribed in terms of that subsection and that the prescribed requirements have been complied with, it shall, upon payment of the prescribed fee, cause such degree, diploma or certificate, or speciality, as the case may be, to be entered in the register or roll against the name of the applicant.

(3) If a person wishes to register a qualification or speciality not prescribed in terms of this Act, the Board may, before entering such qualification or speciality into the register or roll, require of such applicant to pass an examination prescribed by the Minister upon the recommendation of the Board in order to determine whether the applicant's professional knowledge and skill in the field of his or her qualification or speciality are of such a standard so as to enable such person to practise the profession or speciality concerned.

(4) The Board may remove from the register or roll any qualification or speciality registered in terms of this section, if -

- (a) in respect of such qualification the name of the holder thereof has been removed from the roll, register or records of the educational institution at or from which the applicant obtained or acquired such qualification;
- (b) the Board is satisfied that such qualification or speciality does not comply with the requirements as prescribed;
- (c) the person in respect of whom a qualification or speciality has been registered, requests in writing the Board to remove such application or speciality from the register or roll, as the case may be.

(5) A qualification or speciality removed from the register or roll in terms of subsection (4) shall be restored to the register or roll by the secretary of the Board upon such person -

- (a) applying for such restoration in the form and manner determined by the Minister;
- (b) paying the fees prescribed in respect of such restoration; and
- (c) complying with such other requirements (if any) as the Board may determine.

(6) No person shall take up, use or publish in any manner whatsoever any name, title, description or symbol indicating or calculated to lead persons to infer that he or she possesses an additional qualification contemplated in subsection (1), if such qualification has not been registered in terms of this section in respect of such person.

(7) No person registered under this Act shall practise as a specialist or shall hold himself or herself out as such a specialist, or shall in any other manner profess to be a person in respect of whom a speciality has been registered, unless the speciality in question has been registered in terms of this section in respect of such person.

Persons registered or enrolled may use certain titles.

26. A person who is not registered or enrolled, as the case may be, may not use the title "registered nurse", "registered midwife", "enrolled nurse", "enrolled midwife" or "enrolled nursing auxiliary", as the case may be.

PART IV

OFFENCES BY PERSONS NOT REGISTERED OR ENROLLED

Penalties for practising as, or using the title of, registered nurse or midwife, enrolled nurse, midwife or nursing auxiliary or for performing certain other acts, while not registered or enrolled.

27. (1) Any person who is not registered or enrolled under this Act in a particular capacity and -

- (a) who makes use of a title which only a person who is registered or enrolled in that capacity may use, whether he or she makes use of such title alone or in combination with any word or letter;

NURSING PROFESSIONS ACT, 1993

- (b) who in any manner pretends or holds himself or herself out or permits himself or herself to be held out, directly or indirectly, as being registered or enrolled in that capacity; or
- (c) who wears a uniform, badge or other distinguishing device, or any misleading imitation thereof, prescribed in respect of a person registered or enrolled in that capacity,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(2) Subject to the provisions of subsection (4), the Medical and Dental Professions Act, 1993, and the Allied Health Services Professions Act, 1993, any person -

- (a) who is not registered as a nurse or enrolled as a nurse or a nursing auxiliary and who for gain performs any act pertaining to the profession of nursing;
- (b) who is not registered or enrolled as a midwife and who for gain performs any act pertaining to the profession of midwifery; or
- (c) who is not registered or enrolled as a midwife and who makes any internal examination of the genitals of a woman while attending to the woman in relation to a condition arising out of or in connection with pregnancy,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(3) Any person who, knowing that another person is not registered or enrolled in a particular capacity -

- (a) describes such person as the holder of a title which only a person who is registered or enrolled in that capacity may use, whether he or she describes such other person by making use of such title alone or in combination with any word or letter; or

NURSING PROFESSIONS ACT 1993

- (b) holds such other person out, directly or indirectly, as being registered or enrolled in that capacity,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

- (4) (a) The provisions of subsection (2)(a) and (b) shall not apply to -

- (i) a student nurse or a student midwife registered under section 21, or a pupil nurse or a pupil nursing auxiliary enrolled under section 22, while acting in the course of his or her tuition and training;
 - (ii) any person who has completed the prescribed period of tuition and training and who has taken or will at the first available opportunity after such completion take the final examination for a qualification which, if obtained by him or her would entitle him or her to be registered or enrolled, as the case may be, until such time as he or she is advised by the secretary of the Board that he or she has failed the said examination or that he or she has been registered or enrolled with the Board;
 - (iii) a member of the Namibia Red Cross as defined in section 1 of the Namibia Red Cross Act, 1991 (Act 16 of 1991), while acting within the scope of the objects, and under the direct control, of that organization;
 - (iv) a person rendering assistance in a case of emergency;
 - (v) any other prescribed category or categories of persons.
- (b) Any person referred to in paragraph (a)(ii) shall, while that paragraph applies to him or her, be deemed for the purposes of Part V to be registered or enrolled, as the case may be.

PART V

DISCIPLINARY POWERS OF BOARD

Rules by Board relating to improper conduct or disgraceful conduct.

28. (1) The Board shall from time to time issue rules specifying the acts or omissions by registered or enrolled persons which constitute improper conduct or misconduct and in respect of which the Board may conduct inquiries and may take disciplinary steps in terms of the provisions of this Part.

(2) No rules issued in terms of subsection (1) or any amendment or withdrawal thereof shall be of force and effect until approved by the Minister and published in the *Gazette*.

(3) The provisions of this section shall not prohibit the Board from conducting an inquiry into any conduct or behaviour of any registered or enrolled person concerned, whether or not such conduct or behaviour is an act or omission referred to in subsection (1).

Inquiry by Board into complaints, charges or allegations of improper conduct or misconduct.

29. (1) The Board shall have power to inquire -

(a) into any complaint or charge; or

(b) whether or not a complaint or charge has been lodged with the Board, into any allegation,

of improper conduct or misconduct against any person registered or enrolled with the Board and, on finding such person guilty of such conduct, may impose any of the penalties prescribed in section 32: Provided that in the case of a complaint, charge or allegation which forms or is likely to form the subject of a criminal case in a court of law, the Board may postpone the holding of an inquiry until such case has been disposed of.

(2) The Board may -

(a) when in doubt as to whether an inquiry should be held in connection with the complaint, charge or allegation in question, consult with or seek information from any person, including the person against whom the complaint, charge or allegation has been made;

- (b) for the purpose of an inquiry in terms of subsection (1), permit or request any person to give evidence at such inquiry or to advise the Board on any matter in respect thereof.

Procedures at inquiries.

30. (1) Any inquiry in terms of section 29 shall, subject to the provisions of this section, be conducted in accordance with the prescribed procedures.

(2) The proceedings at such inquiry shall, in so far as is practicable, be minuted *verbatim* and the minutes of such inquiry shall be certified by the members of the Board present at such meeting as being a true and accurate account of the evidence given at such inquiry, the exhibits presented and of the decision of the Board.

(3) The minutes of an inquiry referred to in subsection (2) shall for a period of at least five years be kept in safe custody by the secretary of the Board and shall for the purpose of an appeal in terms of section 51 be *prima facie* proof of the proceedings at such inquiry and the decisions taken by the Board as a result of such inquiry.

(4) Any person in respect of whom an inquiry in terms of section 29 is to be held shall be notified in writing of such inquiry at least 21 days before the date of commencement of such inquiry by the delivery to such person of a notice in the prescribed form informing such person of the intended inquiry and obtaining from such person an acknowledgement of receipt stating the date, place and time of the service of such notice.

(5) Service of a notice in terms of subsection (4) shall be performed by the secretary of the Board or by a person designated for such purpose by him or her.

(6) In the event of the secretary of the Board or the person designated in terms of subsection (5) certifying that -

- (a) the person upon whom the notice is to be served cannot be traced;
- (b) such person refuses to accept such notice; or
- (c) such person refuses to sign the required acknowledgement of receipt,

the secretary may send such notice by registered letter to such person to his or her address as it appears in the register or roll of the Board: Provided that such notice shall be so sent not less than 14 days prior to the date of the intended inquiry.

(7) In the event of a person served with a notice in terms of subsection (4) or to whom a notice has been sent in terms of subsection (6), not being present at the commencement of an inquiry, the president of the Board may at his or her discretion have such inquiry conducted in the absence of such person.

(8) (a) For the purpose of an inquiry in terms of section 29 the Board may summon witnesses to appear at a specified date, place and time to give evidence before such Board and to submit to such Board any document, book, record or other thing relevant to the inquiry.

(b) A summons to appear before the Board or a committee thereof as a witness or to produce to it any book, record, document or thing referred to in paragraph (a), shall be, as nearly as practicable, in the prescribed form and signed by the president or secretary of the Board, and shall be served either by registered letter or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.

(c) Any person who, having been duly summoned -

(i) refuses or without sufficient cause fails to attend and give evidence relevant to the inquiry at the time and place specified in the summons; or

(ii) refuses to take the prescribed oath or to make an affirmation when required by the person presiding at such inquiry to do so; or

(iii) leaves the inquiry in question without the consent of the person presiding at such inquiry, whether or not such person has given evidence; or

(iv) refuses to give evidence before the Board or refuses to answer fully and satisfactorily to

the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any book, record, document or thing which such person has in terms of the summons been required to produce,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(9) Every person summoned in terms of subsection (8) shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court is entitled.

(10) Every person whose conduct is the subject of an inquiry under section 29 shall, if such person is present at such inquiry, have the right, by himself or herself or through a legal representative, to answer any complaint, charge or allegation against him or her and to be heard in his or her defense, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;
- (d) to examine witnesses testifying against him or her.

(11) The president of the Board, where the Board itself holds an inquiry in terms of section 29, or the chairperson of a committee of the Board, where such committee holds an inquiry under powers assigned or delegated to it by the Board, may appoint a person with adequate experience in the administration of justice as an assessor at such an inquiry to advise the Board or such committee, as the case may be, on matters of law, procedure or evidence.

(12) For the purpose of the computation of any period referred to in subsections (4) and (6), no Saturday, Sunday or public holiday shall be regarded as a day referred to in those subsections.

Penalty for false evidence.

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

Penalties to be imposed by Board.

32. (1) Every person registered or enrolled under this Act who, after an inquiry held by the Board, is found guilty of improper conduct or misconduct, shall be liable to any one or more of the following penalties, namely -

- (a) a caution or a reprimand or a reprimand and a caution; or
- (b) suspension for a specified period from practising or performing acts specially pertaining to the nursing or midwifery profession; or
- (c) removal of the name of such person from the register or roll concerned,

and the Board may in lieu of or in addition to any such penalty impose a fine not exceeding R2 000: Provided that, before imposition of any penalty such person shall, by himself or herself or through his or her legal representative, be afforded an opportunity of tendering an explanation to the Board in extenuation of the conduct in question.

(2) Any fine imposed under subsection (1) may be recovered and shall be dealt with in the manner prescribed.

(3) The Board shall set out fully and in writing its findings and the penalty imposed (if any), and shall make such findings and penalty known to any other prescribed bodies or persons.

(4) A person who has been found guilty of improper conduct or misconduct shall, whether or not such person was present at the inquiry in question -

- (a) in the case of a penalty imposed under subsection (1)(a), be informed of the findings of the Board and the penalty concerned by the forwarding of a copy of such findings and penalty duly signed by the person presiding at the inquiry, by registered letter to such person at his or her address as it appears in the register or roll of the Board;

(b) in the case of a penalty imposed under subsection (1)(b) or (c), be informed of the findings of the Board and the penalty concerned by the serving *mutatis mutandis* in accordance with the provisions of section 15(2), of a copy of such findings and penalty duly signed by the person who presided at the inquiry.

(5) When a person has been found not guilty of improper conduct or misconduct, the secretary of the Board shall by registered letter to such person at his or her address as it appears in the register or roll concerned, inform such person of the findings of the Board.

(6) The Board may, if it deems fit and subject to such conditions (if any) as it may determine -

- (a) terminate any suspension under subsection (1) before the expiry of the specified period;
- (b) on payment of the prescribed fee, restore to the register or roll any name which has been removed therefrom.

Postponement of imposition of penalties and suspension of operation of penalties.

33. (1) Where the Board finds a person guilty of improper conduct or misconduct, it may -

- (a) postpone for such period and on such conditions as may be determined by it, the imposition of the penalty; or
- (b) impose any penalty mentioned in paragraph (b) or (c) of subsection (1) of section 32, but order the execution of such penalty to be suspended for such period and on such conditions as may be determined by it.

(2) (a) If at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1)(a), the Board is satisfied that the person concerned has observed all the relevant conditions, the Board shall inform such person that no penalty will be imposed upon him or her.

(b) If the execution of a penalty has been suspended in terms of subsection (1)(b) and -

- (i) the Board is satisfied that the person concerned has observed all the relevant conditions throughout the period of suspension, the Board shall inform such person that such penalty will not be executed;
- (ii) the person concerned fails to observe any of the conditions of suspension, the Board shall put such penalty into operation unless such person satisfies the Board that the non-observance of the condition concerned was due to circumstances beyond his or her control.

Effect of suspension or removal from register or roll.

34. Any person who has been suspended or whose name has been removed from the register or roll in terms of section 32 shall be disqualified from carrying on his or her profession, and his or her registration or enrolment certificate shall be deemed to be cancelled until the period of suspension has expired or until his or her name has been restored to the register or roll, as the case may be, by the Board.

Cognizance by Board of conduct of registered or enrolled persons under certain circumstances.

35. (1) Any registered or enrolled person who either before or after registration or enrolment has been convicted of any offence by a court of law may be dealt with by the Board in terms of the provisions of this Part if the Board is of the opinion that such offence constitutes improper conduct or misconduct, and such person shall be liable on proof of such conviction, to one or more of the penalties referred to in section 32: Provided that, before imposition of any penalty, such person shall, by himself or herself or through his or her legal representative, be afforded an opportunity of tendering an explanation to the Board in extenuation of the conduct in question.

(2) Whenever in the course of any proceedings before any court of law it appears to the court that there is *prima facie* proof of improper conduct or misconduct on the part of a registered or enrolled person, the court shall direct that a copy of the record of such proceedings or such portion thereof as is material to such conduct, be transmitted to the Board.

Appointment of *pro forma* complainants.

36. (1) If the Board exercises the powers conferred upon it by section 29, it shall appoint any person as *pro forma* complainant to present the case to the Board:

Provided that the secretary for the time being or any member of the Board shall not be so appointed.

(2) The Board may, subject to the provisions of the proviso to subsection (1), appoint any person to institute proceedings or to continue proceedings if the person appointed under that subsection is for any reason unable to do so.

Limitation of liability.

37. The Board or any committee thereof or any member of the Board or such committee shall not be liable in respect of anything done or omitted in good faith and not attributable to negligence in the exercise of a power or the carrying out of a duty or the performance of a function under or by virtue of the provisions of this Part or in respect of anything that may result therefrom.

Restriction in, or suspension from, practice of incapable, unfit or incompetent registered or enrolled persons.

38. (1) Whenever it appears to the Board that a person registered or enrolled under this Act -

- (a) has become mentally or physically disabled to such an extent that it would be contrary to the public interest to allow such person to continue to practise; or
- (b) has become unfit to purchase, acquire, keep, use, administer, prescribe, order, supply or possess any scheduled substance; or
- (c) has used, possessed, prescribed, administered or supplied any scheduled substance for any purpose other than a medicinal purpose as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965); or
- (d) has become addicted to any scheduled substance or dependence-producing drug,

the Board shall cause the matter to be investigated and may, if it deems it necessary, conduct an inquiry *mutatis mutandis* in accordance with the provisions of this Part in respect of such person.

(2) If the Board, after having conducted an inquiry referred to in subsection (1), finds that any of the circumstances contemplated in paragraph (a), (b), (c) or (d) of that subsection exist in respect of such person, the Board may, by order -

- (a) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (a) of subsection (1) exist -
- (i) suspend such person for such period and subject to such conditions as the Board may determine from practising his or her profession or performing any act specially pertaining to his or her profession; or
 - (ii) impose such conditions as it may deem fit, subject to which such person shall be entitled to continue practising his or her profession; or
- (b) in the case of a person in respect of whom any of the circumstances contemplated in paragraph (b), (c) or (d) of subsection (1) exist -
- (i) impose upon such person any of the penalties referred to in section 36(1);
 - (ii) prohibit such person from purchasing, acquiring, keeping, using, administering, dispensing, ordering, supplying or possessing any scheduled substance; or
 - (iii) prohibit, for such period and on such conditions as the Board may impose, such person from purchasing, acquiring, keeping, using, administering, dispensing, ordering, supplying or possessing any scheduled substance.
- (3) The Board may at any time withdraw or extend the period of, or amend any order made by it under subsection (2).
- (4) The provisions of section 34 shall apply *mutatis mutandis* in respect of any person who has been suspended or whose name has been removed from the register or roll concerned by virtue of any provision of subsection (2).
- (5) Any person registered or enrolled under this Act who contravenes or fails to comply with any order made under subsection (2) shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or both such fine and such imprisonment.

PART VI

GENERAL AND SUPPLEMENTARY PROVISIONS

Nursing Agencies.

39. Any person who carries on the business of a nursing agency without a licence as required by this Act, shall be guilty of an offence and on conviction be liable to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Authorization to practise professions in employment of State.

40. (1) Notwithstanding anything to the contrary in this Act or in any other law contained, but subject to the provisions of this section, the Minister may, on application of any person who is not registered or enrolled under this Act as a nurse, midwife, nursing auxiliary, student nurse, student midwife, pupil nurse or pupil nursing auxiliary, but who -

- (a) in terms of the laws of any other country or state approved by the Minister for that purpose, is entitled to practise the profession of a nurse, midwife or a nursing auxiliary without further examination or training in that country or state; or
- (b) although he or she is not entitled to practise as contemplated in paragraph (a), at any educational institution situated outside Namibia, obtained a qualification or received education in the nursing or midwifery profession which in the opinion of the Minister indicates a satisfactory standard of professional education; and
- (c) complies with such further conditions or requirements as the Minister may determine,

grant a written authority to such person to practise, as the case may be, the profession of a registered nurse or midwife, an enrolled nurse, midwife or nursing auxiliary or to practise as a student nurse, student midwife, pupil nurse or pupil nursing auxiliary.

(2) Any person to whom a written authority has been granted under subsection (1) -

- (a) shall be entitled to practise the profession of a nurse, midwife or nursing auxiliary or to practise

as a student nurse, student midwife, pupil nurse or pupil nursing auxiliary, as the case may be -

- (i) only in the employment of the State and in such hospital, clinic or similar institution within Namibia;
- (ii) for the period; and
- (iii) subject to -
 - (aa) such restrictions in respect of his or her professional activities; and
 - (bb) such further conditions, including the condition that he or she may only practise as such subject to such supervision,

as may be determined by the Minister and specified in such written authority;

- (b) shall, subject to any restriction or condition imposed in respect of him or her under the provisions of paragraph (a), be competent and entitled to perform any act falling within the scope of the profession of a person who is registered or enrolled under this Act as a nurse, midwife, nursing auxiliary, student nurse, student midwife, pupil nurse or pupil nursing auxiliary, as the case may be, and which he or she could have performed if he or she had been registered or enrolled as such under this Act.

- (3) The Minister may, at his or her discretion -
 - (a) at any time amend or revoke any restriction or condition imposed under subsection (2);
 - (b) at any time impose such further and additional restrictions and conditions as he or she may determine;
 - (c) extend from time to time the period for which such authority has been granted;
 - (d) at any time suspend, for such period and subject to such conditions as he or she may determine, any written authority granted under subsection (1); or

(e) at any time withdraw any such authority.

(4) Any person who desires to obtain a written authority under the provisions of subsection (1), shall apply therefor in such form and such manner as may be determined by the Minister, and such application shall be accompanied by -

- (a) proof of the qualification or qualifications on account of which the applicant so applies;
- (b) such proof of the applicant's identity and good character and of the fact that he or she is entitled to practise the profession of a nurse, midwife or nursing auxiliary or to practise as a student nurse, student midwife, pupil nurse or pupil nursing auxiliary and of any qualification or qualifications which may be required by the Minister, including the authenticity and validity thereof as may be so required;
- (c) such application fees as may be determined by the Minister; and
- (d) any further documents or information as may be required by the Minister.

(5) No application referred to in subsection (1) shall be granted unless the Board has been consulted by the Minister in regard thereto.

(6) Before granting an application referred to in subsection (1), the Minister may require of the applicant concerned to sit for any examination before an examiner or examiners appointed by the Minister for the purpose of ascertaining whether the applicant, to the satisfaction of the Minister, possesses sufficient professional knowledge and skill to practise as a nurse, midwife or nursing auxiliary or to practise as a student nurse, student midwife, pupil nurse or pupil nursing auxiliary, as the case may be.

- (7) (a) The provisions of Part IV and of section 46 shall *mutatis mutandis* apply to or in relation to any person authorized under this section to practise the profession of a nurse, midwife or nursing auxiliary or to practise as a student nurse, student midwife, pupil nurse or pupil nursing auxiliary, as the case may be, as if such person were registered or enrolled under this Act as such.

(b) Any reference in those provisions to a registered nurse or midwife, an enrolled nurse, midwife or nursing auxiliary, student nurse or student midwife, pupil nurse or pupil nursing auxiliary shall be construed as including a reference to any person authorized under this section to practise as such, but subject to any condition or restriction imposed by or under this section.

(8) For the purposes of the provisions of any other law, any reference to a registered nurse or midwife, an enrolled nurse, midwife or nursing auxiliary, student nurse or student midwife, pupil nurse or pupil nursing auxiliary shall be construed as including a reference to a person authorized under this section to practise as such, but subject to any condition or restriction imposed by or under this section.

Special provisions relating to certain nurses.

41. Notwithstanding anything to the contrary in any other law contained, any registered nurse or enrolled nurse who is in the employment of the State, a local authority or an organization or other body and who is authorized thereto by the Minister by notice in the *Gazette* to provide any health services, may in the course of his or her employment and subject to the prescribed conditions perform any act relating to -

- (a) the physical examination of any person;
- (b) the diagnosing of any physical defect, illness or deficiency in any person;
- (c) the keeping of prescribed medicines and the supply, administering or prescribing thereof on the prescribed conditions; or
- (d) the promotion of family planning:

Provided that such nurse may perform such act only at, in or in respect of such place or area as may be specified in such notice and whenever the services of a medical practitioner or pharmacist, as the circumstances may require, are not available.

Tariffs of fees.

42. (1) The Board may, after consultation with the Council and with the approval of the Minister, determine a tariff of fees which may be charged for professional services rendered by persons registered or enrolled under this Act.

(2) The Board may from time to time, in a like manner, repeal or amend such tariff of fees.

(3) The tariff of fees referred to in subsection (1) and any repeal or amendment thereof in terms of subsection (2) shall have no force and effect unless published by the secretary of the Board in the *Gazette*.

Charges by registered or enrolled persons.

43. (1) Every person registered or enrolled under this Act (in this section referred to as the practitioner) shall, unless the circumstances render it impossible for him or her to do so, before rendering any professional services, inform the person to whom the services are to be rendered or any person responsible for the maintenance of such person, of the fee which he or she intends to charge for such services -

- (a) when so requested by the person concerned; or
- (b) when such fee exceeds that determined under section 42 or, if no such fee is so determined, that usually charged for such services,

and shall in a case to which paragraph (b) relates, also inform the person concerned of the fee so determined or the usual fee, as the case may be.

(2) Any practitioner who in respect of any professional services rendered by him or her claims payment from any person (in this section referred to as the patient) shall furnish the patient with a detailed account within the prescribed period.

(3) A patient may, whether or not he or she has settled an account referred to in subsection (2), in writing and within the prescribed period request the Board to determine the amount which in the opinion of the Board should have been charged in respect of the services to which the account relates and such patient shall at the same time by registered letter inform the practitioner concerned of such request.

(4) On receipt of a request referred to in subsection (3), the Board shall request the practitioner concerned to submit to it in writing and within the prescribed period any representations in support of the amount charged in the account rendered by such practitioner.

(5) The Board shall within one month after receipt of the practitioner's representations referred to in subsection (4), or if no such representations have been submitted within the period referred to in that subsection, within one month after the expiration of that period, determine the amount payable by the patient to the practitioner and shall in writing inform such practitioner and such patient of the amount so determined.

(6) The determination of the amount payable in terms of this section by the patient to the practitioner shall be binding upon both the practitioner and the patient.

(7) Until such time as the Board has in terms of subsection (5) made a determination in respect of any account referred to it in terms of subsection (3), no practitioner shall institute legal proceedings in any court of law against a patient for recovery of any amount owing in respect of such account.

(8) The provisions of subsection (7) shall not be construed so as to prohibit a practitioner from instituting proceedings for the recovery of any amount owing and which has not in terms of subsection (3) been referred to the Board or in respect whereof the Board has already made a determination in terms of subsection (5), irrespective of whether or not such patient has in terms of subsection (3) referred any other account or any other or further part of such practitioner's account to the Board.

(9) If a patient has settled an account referred to in subsection (3) before the Board has determined that the amount payable by the patient concerned is actually less than the amount which such patient has paid, the practitioner concerned shall, after such determination -

- (a) credit the account of such patient with the deficiency between the amount actually paid and the amount which the Board has so determined; or
- (b) at the request of such patient, refund to him or her the amount of the deficiency referred to in paragraph (a).

(10) This section shall be deemed not to divest the Board of any of its powers or functions under Part V with regard to acts or omissions in respect of which it may take disciplinary steps.

Offences relating to registration or enrolment and registers.

44. (1) Any person who -

- (a) procures or attempts to procure for himself or herself or any other person registration or enrolment under this Act, or any diploma, certificate, receipt or order referred to in this Act, by means of a false representation, whether verbally or in writing, or aids and abets any person in so doing;
- (b) makes or causes to be made any unauthorized entry or alteration in or removal from a register or roll or certified copy thereof or extract therefrom or on any diploma, certificate or receipt issued under this Act;
- (c) except upon the direction of the Council or the Board, wilfully destroys or damages or renders illegible or causes to be destroyed, damaged, or rendered illegible, any entry in the register or roll or, any diploma, certificate or receipt issued under this Act;
- (d) makes or causes to be made a false statement in connection with the identity or qualifications of himself or herself or any other person applying for registration or enrolment in terms of this Act; or
- (e) forges or, knowing it to be forged, utters any document purporting to be a document issued under this Act,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Onus of proof.

45. (1) In any criminal proceedings against any person appearing upon a charge of having performed any act which constitutes an offence under this Act, if performed by a person who is not registered or enrolled or who is not in possession of any document specified in the charge, such person shall be deemed not to have been registered or enrolled or to have been in possession of such document at the time of the commission of the alleged offence, unless such person proves the contrary.

(2) In any criminal proceedings against any person appearing upon a charge of having performed an act which constitutes an offence under this Act, if performed by such person for gain, such person shall be deemed to have performed such act for gain if he or she has accepted any consideration of whatsoever nature in respect of such act.

Limitations in respect of persons not registered or enrolled.

46. (1) No remuneration shall be recoverable in respect of any act specially pertaining to the profession of a registered or enrolled person when performed by a person who is not registered or enrolled under this Act to perform such act for gain.

(2) No person, other than a registered or enrolled person holding the necessary qualifications shall be eligible for or entitled to hold any appointment to any establishment, institution, body, organization or association, whether public or private, if such appointment involves the performance of any act which a person who is not registered or enrolled in terms of this Act may not perform for gain: Provided that nothing in this subsection contained shall be construed as prohibiting the tuition and training of any student in nursing or midwifery under the supervision of a registered nurse, or the employment in any hospital or similar institution of any person undergoing tuition and training.

Investigation of matters relating to the training of certain persons.

47. (1) Notwithstanding anything to the contrary in this Act or any other law contained, any person who has been authorized in writing by the Board to investigate any matter relating to the tuition or training of any person registered or enrolled under this Act, which tuition or training shall have the purpose of qualifying such persons for the practise of any profession contemplated in this Act, may, for the purpose of making such investigation and upon the producing of such written authorization, enter any premises or institution utilized in the tuition or training of such person.

(2) Any person who prevents any person authorized in terms of subsection (1) from entering any premises or institution referred to in that subsection or hinders such person in such investigation shall be guilty of an offence and on conviction be liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Regulations.

48. (1) The Minister may, on the recommendation of the Board, make regulations relating to -

- (a) (i) the election of members of the Board referred to in section 5(2);

(ii) the requirements for a valid nomination of a candidate for election as a member of the Board;
- (b) the allowances payable to members of the Board and of committees of the Board when engaged in the service of the Board: Provided that -
 - (i) the allowances payable to a member who is in the full-time employment of the State shall not exceed the allowances payable to such member under the Public Service Act, 1980 (Act 2 of 1980);
 - (ii) no such member shall be required to pay into the State Revenue Fund any allowance paid to him or her in terms of any regulations made under this paragraph;
- (c) except as otherwise provided in this Act, any fees payable under this Act, including fees in respect of the registration or enrolment of any person, and the exemption from payment of any such fees;
- (d) the form of the registers and rolls to be kept, and the diplomas and certificates that may be issued, in terms of this Act, the information which shall be recorded in the registers and rolls and the manner in which alterations may be effected in the registers and rolls;
- (e) the application forms to be completed and the documents to be submitted by applicants for registration or enrolment or the restoration of any name to any register or roll;
- (f) the conditions under which extracts from the registers and rolls may be made;
- (g) the particulars to be furnished to the Board to enable it to keep the registers and rolls;
- (h) the qualifications, and the requirements to be complied with, which shall entitle a person to be

- registered or enrolled in terms of section 13 or which shall entitle a registered or enrolled person to registration of an additional qualification, including the curricula, the period and nature of the education and training required, the examinations to be passed and the payment of fees in respect of an application for registration or enrolment;
- (i) the minimum requirements of the curricula and the standards of education and examination which shall be maintained by every educational institution at which education for the nursing or midwifery profession is provided in order to comply with the requirements of the Board for recognition of such qualifications for the purpose of registering or enrolling the holders thereof under this Act;
 - (j) the qualifications, and the conditions to be complied with, which shall entitle a person to be registered or enrolled under section 21 or 22, including the payment of fees in respect of such registration or enrolment;
 - (k) the conditions which the Board may impose for the approval of nursing schools;
 - (l) the uniforms, badges and other distinguishing devices which may, or when on duty shall, be worn by persons registered or enrolled under section 13, 19, 21 or 22, and the prohibition of the manufacture, sale, supply or possession of such uniforms, badges and other distinguishing devices by any person, except a person authorized thereto by the Board;
 - (m) the manner in which a complaint, charge or allegation against a person registered or enrolled under section 13, 19, 21 or 22 shall be lodged;
 - (n) the form of a subpoena for the attendance of a witness at an inquiry, or for the production of any book, record, document or thing;
 - (o) the manner of instituting, and the procedure to be followed at an inquiry, and any other matter incidental to the institution or holding thereof;

- (p) the form of a licence to carry on the business of a nursing agency, the circumstances in which such a licence may be issued, suspended or cancelled, the conditions subject to which such a business may be carried on, including the records and accounts which shall be kept, the manner of advertising and the maximum fees that may be charged for services rendered by or on behalf of such a business;
- (q) the scope of practice of registered or enrolled persons, the conditions under which registered or enrolled persons may carry on their profession, the control which shall be exercised by specified officers of the Ministry of Health and Social Services and of local authorities over the practice of enrolled midwives and the inspections which shall be carried out in connection with enrolled midwives;
- (r) the circumstances, in addition to the circumstances referred to in this Act, in which any name may be removed from, or restored to, a register or roll;
- (s) the entering into agreements by or on behalf of the Board, the handling of funds by and the bookkeeping of the Board, and

generally, any matter which in terms of this Act is required or permitted to be prescribed or which the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this Act.

(2) Any regulation made under this section may, except as otherwise provided in this Act, prescribe fines not exceeding R2 000 or imprisonment not exceeding a period of six months as a penalty for the contravention of such regulation or failure to comply therewith or both such fine and such imprisonment.

Levying of annual fees on registered and enrolled persons.

49. (1) The Minister may, upon the recommendation of the Board, by notice in the *Gazette* determine the fees to be paid annually to the Board by all persons registered or enrolled under this Act: Provided that in determining such fees, the Minister may differentiate between persons or categories of persons according to whether they have been registered or enrolled before or after a date specified in the notice.

(2) If any person liable to pay any annual fee prescribed in terms of subsection (1) fails or refuses to pay such fee within the period specified in the notice in question, the Board may recover such fee by action in a competent court, whether or not such person's name has been removed from the register or roll concerned.

(3) If any person whose name has been removed from a register or roll in terms of this Act, applies for the restoration of his or her name to such register or roll, the Board shall not consider such application for restoration until such time as the applicant has paid in full all amounts owing by him or her to the Board under this Act.

(4) The Board may by resolution exempt any person in part or fully from payment to the Board of any annual fee determined in terms of subsection (1).

Delegation of powers.

50. (1) The Minister may, on such conditions as he or she may deem fit, in writing delegate any power conferred upon him or her by this Act to the Permanent Secretary, excluding any power conferred by section 48.

(2) The Permanent Secretary may, on such conditions as he or she may deem fit and with the approval of the Minister, delegate any power conferred upon or entrusted to him or her in terms of this Act, to any officer in the Ministry of Health and Social Services.

Right of appeal to Council.

51. (1) Any person aggrieved by a decision or finding of the Board -

- (a) to refuse to register or enrol him or her or to enter in, or to restore to, the appropriate register or roll any degree, diploma or certificate, additional qualification or speciality which he or she desires, and maintains he or she is entitled to have it so entered or restored in terms of the provisions of this Act;
- (b) to remove from the register or roll his or her name or any degree, diploma, certificate, additional qualification or speciality which he or she maintains he or she is entitled to have it entered in the register or roll in terms of the provisions of this Act;

- (c) to impose any penalty or fine on him or her or, by order, any restriction in, or condition on, or suspension from practice of him or her,

shall have the right within a period of 30 days from the date on which the decision or finding was made, to by notice in writing appeal to the Council against such decision or finding, as the case may be: Provided that the Council may on good cause shown allow an appeal to be lodged after such period.

(2) Unless otherwise provided in this Act, the right of appeal to the Council referred to in subsection (1) shall be subject to the provisions of any law which prescribe the procedures which have to be followed in the exercise of that right and which regulate the proceedings of the Council in respect of appeals to it.

(3) The Council may dismiss such appeal or, if it is of the opinion that the Board has not acted in accordance with the provisions of this Act, may make an order reversing or modifying the Board's decision or finding or it may remit the matter to the Board for further consideration or make such other order, including an order as to costs, as it may deem appropriate.

Existing professions.

52. (1) Any person who, immediately prior to the commencement of this Act, was registered or enrolled to practise as a registered or enrolled nurse or midwife under any law repealed by this Act, as the case may be, or authorized to practise as such under the Health Service Professions Proclamation, 1989 (Proclamation AG. 70 of 1989), shall, subject to the provisions of subsections (2) and (3) and any restriction, condition or penalty imposed upon him or her in relation to his or her profession, and provided such person is resident in Namibia at such commencement, be deemed to have been registered or enrolled as such under this Act.

(2) Any person referred to in subsection (1) shall, within a period of 90 days from the date of the constitution of the Board as contemplated in section 5(3), or such further period as the Board may on good cause shown allow, apply in the manner and form determined by the Minister to the Board for his or her registration or enrolment, as the case may be, with the Board and submit together with such application his or her present certificate of registration, enrolment or authorization, as the case

may be, and thereupon he or she shall be entitled to registration or enrolment as such with the Board: Provided that nothing in this subsection contained shall be construed as prohibiting the Minister, in the circumstances referred to in section 53, from exercising any power conferred on him or her under that section, to so register any such person as such as if he or she were the Board.

(3) Any person referred to in subsection (1) shall, upon the expiry of the period or further period referred to in subsection (2), as from the date of such expiry or the date on which any application for registration or enrolment referred to in the said subsection (2) has been disposed of, whichever date is the later date, be deemed not to be registered or enrolled as contemplated in the said subsection (1).

(4) The provisions of this section shall apply *mutatis mutandis* in respect of -

- (a) any additional qualification or speciality registered in respect of any person referred to in those provisions;
- (b) a nursing auxiliary, student nurse, student midwife, pupil nurse or pupil nursing auxiliary, as the case may be.

Minister temporarily to exercise powers and perform functions and duties of Board.

53. (1) Subject to the provisions of subsection (3), the Minister may, until the Board has been constituted in terms of section 5(3), exercise any of the powers and perform any of the functions and duties of the Board conferred or imposed upon it in terms of this Act.

(2) The Minister may, when he or she exercises any of the powers and performs any of the functions and duties referred to in subsection (1), appoint not more than four registered nurses resident in Namibia as may be determined by the Minister, to assist and advise him or her in relation to the exercise or performance of such powers, functions and duties.

(3) Any power exercised or any function or duty performed by the Minister by virtue of the provisions of this section, shall be deemed to have been so exercised or performed by the Board.

Repeal of laws and savings.

54. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the said Schedule.

(2) Any notice, regulation, rule, authorization, order or approval issued, made or granted or any appointment or any other thing done in terms of a provision of any law repealed by subsection (1) shall, except in so far as may be otherwise required by this Act, be deemed to have been issued, made, granted or done under the corresponding or allied provision of this Act.

Short title and commencement.

55. This Act shall be called the Nursing Professions Act, 1993, and shall come into operation on a date determined by the Minister by notice in the *Gazette*.

SCHEDULE

LAWS REPEALED (Section 54(1))

No. and year of law	Short title	Extent of repeal
Act 50 of 1978	Nursing Act, 1978	The whole
Act 71 of 1981	Nursing Amendment Act, 1981	The whole
Proclamation 163 of 1982	Nursing Proclamation, 1982	The whole
Act 22 of 1982	Nursing Amendment Act, 1982	The whole