



Tuvalu

HEALTH PROFESSIONAL ACT

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HEALTH PROFESSIONAL ACT

Act No.004 of 2016

**AN ACT TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC
BY PROVIDING FOR MECHANISMS TO ENSURE THAT HEALTH
PROFESSIONALS ARE COMPETENT AND FIT TO PRACTICE THEIR
PROFESSIONS**

Commencement [27th May, 2016]

PART 1 – PRELIMINARY

1 Short Title and Commencement

- (1) This Act may be cited as the Health Professional Act.
- (2) This Act shall come into force on a date appointed by the Minister.

2 Interpretation

In this Act, unless the contrary intention appears:

"**Board**" means the Health Professionals Registration Board established under section 4;

"**Chief Dentist**" means the person for the time being performing the duties of the Chief Dentist in and for Tuvalu;

"**Chief Nurse/Matron**" means the person for the time being performing the duties of the Chief Nurse/Matron in and for Tuvalu;

"**Chief Pharmacist**" means the person for the time being performing the duties of the Chief Pharmacist in and for Tuvalu;

“**Chief Public Health Officer**” means the person for the time being performing the duties of the Chief Public Health Officer in and for Tuvalu;

“**Counsel**” means barrister, solicitor or pleader;

“**Complaints and Disciplinary Committee**” means the committee of the Health Professionals Registration which is established under section 18;

“**Director of Health**” means the person for the time being appointed as head of the Department responsible for health matters in Tuvalu (or employed in an equivalent position);

“**Health professional**” means a professional of a class required under section 7 to be registered to practice under this Act;

“**Inquiry**” means an inquiry into a complaint against a health professional under section 18;

“**Layperson**” means a person who is neither registered nor qualified to be registered as a health practitioner;

“**Medical Superintendent**” means the person for the time being performing the duties of the Medical Superintendent in and for Tuvalu;

“**Minister**” means the Minister of Health;

“**Qualifications**” means qualifications appropriate to a class of health professional such that a person is entitled to be registered to practice in that class of health professional, as established by regulation or, where no regulations have been made, as established by the Board;

“**Qualified**” means a person who possesses the necessary qualifications that qualifies him or her to be registered as a health profession under this Act;

“**Register**” means the register of health professionals established under section 11;

“**Visiting health practitioner**” means a person who is not ordinarily resident in Tuvalu and who wishes to perform health services whilst in Tuvalu.

3 Purpose

The purpose of this Act is help protect the health and safety of the public by providing for mechanisms to ensure that health professionals are competent and fit to practice their professions.

PART 2 – THE BOARD

4 The Health Professionals Registration Board

(1) The Health Professionals Registration Board is established.

- (2) The Board shall consist of:
 - (a) The Director of Health, who shall be the Chairperson;
 - (b) The Medical Superintendent;
 - (c) The Chief Pharmacist;
 - (d) The Chief Dentist;
 - (e) The Chief Nurse/Matron;
 - (f) The Chief Public Health Officer.
- (3) The Board can expand its membership to include additional expertise that it may require from time to time in order to effectively carry out its functions.

5 Functions of the Board

- (1) The functions of the Board are to:
 - (a) Decide upon the classes of health professionals that must be registered under this Act;
 - (b) Undertake the registration of health professionals under this Act (including assessing and vetting applicants and deciding on whether they are fit and competent to be registered);
 - (c) Determine any conditions of registration which may be applied to any health professional or class of health professional;
 - (d) Maintain a register of those health professionals that it has determined are entitled to practice their professions in Tuvalu;
 - (e) Decide whether to suspend or cancel any health professional's registration;
 - (f) Issue certificates of registration;
 - (g) Issue certificates of good standing;
 - (h) Establish standards of educational qualifications, experience, and professional competence, or conduct for any class of health professionals;
 - (i) Approve scopes of practice developed for any class of health professional;
 - (j) Approve the level of continuing training and other forms of professional development that any class of health professional, or individual health professional must undertake;
 - (k) Publish guidance and advice;
 - (l) Consider any complaints referred to it about the professional competence or conduct of any health professional;
 - (m) Participate in any inquiry or investigation permitted under this Act;

- (n) Impose disciplinary measures on health professionals as permitted by this Act;
- (o) Review, from time to time as it thinks fit, the professional competence and/or conduct of any health professional;
- (p) Review from time to time the certificate of registration of any health professional.

6 Procedures of the Board

- (1) The Board shall meet 4 times a year or on a quarterly basis of a calendar year, necessary for the efficient and effective conduct of its functions, and at such times and places as it determines.
- (2) In cases of urgent matters or it is in the public interest to do so, the Committee may meet at such time and place as the Chairperson delegates.
- (3) At a meeting of the Board, the quorum shall be four.
- (4) For the purposes of carrying out its functions, the Board may:
 - (a) Make such enquiries as it thinks fit;
 - (b) Require information from any person that is material to its functions;
 - (c) Form any committee to advise it or to enable it to effectively and efficiently undertake its functions.
- (5) The procedure or proceedings of the Board under this Act shall be provided under regulations made by the Minister.

7 Classes of health professionals

- (1) The following classes of qualified health professional must be registered under this Act in order to practice in Tuvalu:
 - (a) Medical practitioners;
 - (b) Dentists, dental therapists, dental technicians;
 - (c) Nurses, nurse practitioners, and midwives;
 - (d) Pharmacists or pharmacy technicians;
 - (e) Any allied health professional or paramedical (including but not limited to Medical Imaging Technologists, physiotherapists or physical therapist, medical laboratory technologists or Biomedical Technician);
 - (f) Nutritionist, Dietician, Health Inspectors and Health Promotion Assistant;
 - (f) Any class of health professional declared under subsection (2).
- (2) The Board may declare, by notice, in the Gazette:

- (a) that other classes of health professionals require registration under this Act in order for them to practice in Tuvalu; and
 - (b) the registration fee (if any) for the different classes of health professional registered under this Act.
- (3) A declaration under subsection (2) may include details of the qualifications, experience, and any other matters necessary for registration.

8 Applications for registration

- (1) A person who wishes to practice in Tuvalu as a health professional of a class for which registration is required under this Act may apply to the Board for registration.
- (2) All applications for registration must:
 - (a) Be made in writing in a manner and form determined by the Board;
 - (b) Specify the class or classes of health professional for which the application is made;
 - (c) Be accompanied by evidence of educational qualifications, references and experience appropriate to the class for which it is made;
 - (d) where applicable and as determined by the Board, a Certificate of good standing from another country of practice which shall not be more than 3 months old;
 - (e) Provide such other information as the Board considers necessary to assess and make a decision upon the application.
- (3) The Board may require an applicant to provide additional information in relation to their application that is material to its decision on whether to grant or decline the application.
- (4) The Board must promptly consider any application for registration and must make a decision on whether to grant or decline registration within 3 weeks of receiving any completed application, or within 3 weeks of receiving any additional information it has reasonably requested.

9 Granting or declining registration

- (1) The Board may grant registration if it is satisfied that the applicant:
 - (a) Has achieved the educational qualifications and/or level of experience acceptable to the Board;
 - (b) Is competent to practice as a health professional;
 - (c) Is of good character and is considered a fit and proper person to be entitled to practice as a health professional;

- (d) Intends to practice in Tuvalu and their registration will benefit the Tuvaluan community;
 - (e) Satisfies any other criteria that are prescribed in regulations made under this Act;
 - (f) Satisfies any requirements or that the Board reasonably considers necessary to ensure that the applicant is competent and fit to practice, and there is no unreasonable risk to the safety of the public from the applicant being allowed to practice.
- (2) A person may be registered in more than one class of health professional, provided that separate applications have been made in accordance with this Act for each class.
- (3) Registration may be subject to such terms, conditions, or restrictions as the Board thinks fit in any particular case, including:
- (a) Working under supervision for a period of time;
 - (b) Restricting the health professional from certain types of activities;
 - (c) Only working within any approved scope of practice for the profession in question;
 - (d) Any other reasonable conditions or restrictions imposed by the Board.
- (4) The Board shall require all health professionals to undertake reasonable training and professional development activities that the board approves to ensure such health professionals remain fit and competent to practice.
- (5) Registration is subject to the payment of any registration fee prescribed under the Regulations. Fees paid under this Act shall be subject to the use and implementation of the Board as it thinks fit.
- (6) Upon registration, or temporary registration under section 12, the Board shall grant to each registered health professional a certificate of registration in such form as the Board thinks fit.
- (7) If the Board proposes to decline an application for registration, or a renewal of registration under section 10, it must:
- (a) Notify the applicant in writing of the reasons for its proposed decision and the information upon which it is relying on in proposing to decline the application; and
 - (b) Provide the applicant an opportunity to make a written submission within 1 month and be heard, either personally or by his or her representative, in respect of the application.

10 Renewal of registration

- (1) A health professional's registration shall remain in force for a period of 2 years.

- (2) The period must be stated in the registration certificate granted by the Board.
- (3) Each health professional must apply to the Board (in the form and manner required by the Board) to renew their registration every two years if they want to continue to practice in Tuvalu.
- (4) The Board can determine the procedure for considering any health professional's application to renew their registration.
- (5) When considering whether to renew a health professional's registration, the Board can consider any or all of the requirements under section 9(1) and must also consider whether the health professional has completed any training and other forms of professional development that have been approved by the Board to help ensure the health professional maintains his or her professional competence.

11 Register of health professionals

- (1) The Board shall create and maintain a register of health professionals in such a form as it considers appropriate (this can include any hard copy or electronic form).
- (2) The information to be entered in the register for each health professional includes:
 - (a) The health professional's name and work contact details;
 - (b) Details of the qualifications by virtue of which the health professional is registered;
 - (c) Any conditions or restrictions that the Board has imposed upon their registration;
 - (d) Any other matters the Board considers appropriate to include in the register to achieve the purpose of this Act.
- (3) The Board shall keep a published up-to-date list of all registered health professionals who are entitled to practice in Tuvalu. The register is a public document and shall be made available for anyone to inspect.

PART 3 – TEMPORARY REGISTRATIONS

12 Temporary registration

Subject to any requirements prescribed in the regulations, the Board may temporarily register any health professional for up to 3 months and not more than 6 months who is lawfully registered by a recognisable and reputable registration

authority in another country, after being trained in a training institution that the Board considers recognisable and reputable.

13 Visiting health professionals

- (1) Short-term or long term visiting health professionals, either in a group or individual visits to Tuvalu, shall apply for temporary registrations under section 12 of this Act.
- (2) When considering any application made under subsection (1), the Board shall be satisfied on reasonable grounds that the health professional(s) in question is fit and competent to practice and does not pose an undue risk to the health and safety of the public.
- (3) The Board may impose any conditions or restrictions on any temporary registrations it makes under this section.

14 Fees

- (1) Subject to subsection (2), fees imposed for any class of health professional can be prescribed in the regulations made under this Act.
- (2) Any fee imposed by a regulation is not refundable.

15 Suspension of registration

- (1) Where a person is suspended from practice after an inquiry under section 19, a notation of the suspension shall be made in the register, and the Board shall issue a notice of the suspension showing the reasons for the suspension and its duration to the person.
- (2) The Board can temporarily suspend the registration of a health professional who is to be the subject to an inquiry initiated under this Act.
- (3) The Board shall make a notation of any temporary suspension under subsection (2) in the register and issue a notice of the suspension, the reasons for the suspension, and its duration to the health professional.
- (4) Once an inquiry under section 18 has been completed and the health professional is found guilty of the act complained of, the Board must then revoke any temporary suspension under section 15(2) and make an order under section 19(1).

16 Cancellation, Removal of registration

- (1) If a person registered under this Act:
 - (a) Dies, or permanently ceases to practice as a health professional in Tuvalu; or

- (b) Applies in writing to the Board for cancellation of his or her registration; or
- (c) Fails to pay any registration fee which is due and payable; or
- (d) Is ordered under section 19(1)(d) or section 21(6) to be removed from the register; or
- (e) Is found to have obtained their registration through fraud or misrepresentation; or
- (f) Is found by the Board to no longer meet the registration criteria under section 9(1) of this Act; or
- (g) Otherwise ceases to be qualified for any reason to be entered in the register,

their registration shall be cancelled and their name deleted from the register, and a notation made in the register about the reason for the deletion.

- (2) A person whose registration is cancelled or removed under this Act, may apply to the Board to be re-registered. The procedure for re-registration shall be provided by regulations made under this Act.

17 Complaints against health professionals

- (1) Any person who considers that a health professional has committed professional incompetence or professional misconduct may make a written complaint to the Director of Health, who shall send a copy of the complaint to the Board.
- (2) Upon receipt of the complaint under subsection (1), the Board shall form an opinion as to whether or not the conduct complained of, if proved, would constitute professional incompetence or professional misconduct.
- (3) If the Board considers that the conduct complained of if proved:
 - (a) Would not constitute professional incompetence or professional misconduct; or
 - (b) Is of a minor character only, or there are extenuating circumstances such that it would not be appropriate to proceed to inquiry under this Act,

it shall inform the complainant and the concerned health professional(s) accordingly,

- (4) Any other considerations of the Board that does not fall under subsection (3) of this section, the Board will order an inquiry into the complaint.

18 Inquiries against health professionals

- (1) This Board shall establish a Complaints and Disciplinary Committee (the Committee) to undertake any inquiry ordered under section 17(4) to consider complaints and disciplinary matters about the professional conduct and competence of health professionals.
- (2) The Complaints and Disciplinary Committee shall consist of:
 - (a) A chairperson who must be a magistrate, judge, or a barrister or solicitor of not less than 7 years' experience;
 - (b) The Director of Health (or another member of the Board if the Director is the subject of the complaint);
 - (c) 2 professional peers of the health professional who is the subject of the hearing;
 - (d) 2 laypersons of good repute and who in the opinion of the Board is a reasonable person of society.
- (3) Procedures for the operation and functioning of the Committee shall be prescribed in the regulations made under this Act.
- (4) At an inquiry:
 - (a) the complainant; and
 - (b) the person against whom the complaint is made; and
 - (c) where the complainant is not the Board — a representative of the Board,

and their counsel, if any, shall be entitled to be present throughout the inquiry and to adduce evidence, including the examination and cross-examination of witnesses.

19 Result of inquiry

- (1) Where as a result of an inquiry the Committee finds that the person against whom the complaint is made is guilty of professional incompetence or professional misconduct, it shall, unless it considers that the conduct complained of was of such a minor character or occurred in such extenuating circumstances that it would not be appropriate to do so, order any one or more of the following:
 - (a) A reprimand; or
 - (b) That the person against whom the complaint is made may continue to be registered, but can only continue to practice according to any reasonable conditions that the Committee may decide to impose;
 - (c) That the person against whom the complaint is made be suspended from practice as a health professional for such period, not exceeding two years, as the Committee thinks fit;

- (d) That the name of the person against whom the complaint is made be struck off the register of health professionals.
- (2) An order made under subsection (1) does not derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this Act.
- (3) Where a person who is registered in more than one class of health professional and whose name is ordered to be struck off under subsection (1)(d), the order may be made either generally or only in the class of health professional in respect of which the complaint is made.

20 Appeals

A person aggrieved by a decision of the Board or of the Complaints and Disciplinary Committee may appeal to the Senior Magistrate Court.

21 Offences

- (1) No person may practice in Tuvalu as a health professional unless they are registered and holds a current practicing certificate under this Act.
- (2) Despite subsection (1), a visiting health professional may practice if they are temporarily registered under section 12.
- (3) A person may only use names, words, titles, initials, abbreviations, or descriptions stating or implying that the person is a health professional of a particular kind if the person is a registered health professional.
- (4) No person shall pretend, claim or do anything to show that he or she is a health professional of a particular kind unless the person:
 - (a) Is a health professional of that kind; and
 - (b) Is currently registered as a health professional of that kind.
- (5) Any person who contravenes this section commits an offence, and shall be liable upon conviction to a fine not exceeding \$5,000.
- (6) If the Court convicts a person for an offence under this Act it may, in addition to imposing a penalty or fine, order that person's name to be removed from the register.

22 Annual report

Each year the Board must provide an annual report to the Minister of Health describing its activities and any significant issues that it had to consider or deal with during the preceding year.

23 Regulations

The Minister may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act, which can include (but is not limited to) all or any of the following purposes:

- (a) Prescribing further details about the form of, or information required to be provided in, any application for registration or renewal of registration;
- (b) Prescribing any additional registration criteria to those contained in section 9;
- (c) Prescribing any standard conditions or restrictions that are to be imposed on the registration of any class of health professional or individual health professional;
- (d) Prescribing any information to be recorded in the register established under section 11;
- (e) Prescribing any requirements, procedures, or conditions for approving temporary registration under section 12
- (f) Prescribing any reasonable requirement, procedure or condition that any visiting health professional temporarily registered under this Act must comply with;
- (g) Prescribing appropriate qualifications for classes of health professionals;
- (h) Prescribing required standards of health practice;
- (i) Prescribing standards of professional competence and professional conduct required of health professionals and prescribing acts, behaviours, or omissions that amount professional incompetence or professional misconduct;
- (j) Prescribing any requirements or procedures for considering complaints about health professionals under section 17;
- (k) Prescribing any requirements or procedures for holding inquires under section 18;
- (l) Prescribing any procedures or requirements to enable the Board or Complaints and Disciplinary Committee to carry out any of their functions, duties, or responsibilities under this Act;
- (m) Prescribing any registration fee permitted by the Act;
- (n) Prescribing the form and content of any form or certificate required for the purposes of this Act;
- (o) Prescribing any reasonable measure to ensure the accountability and good governance and management of the Board or the Complaints and Disciplinary Committee.

24 Savings and transitional provisions

- (1) All persons who, at the commencement of this Act, are registered under the Medical and Dental Practitioners Act 1964, the Nurses and Midwives Act 1968, or the Pharmacy and Poisons Act 1948 have to register again under this Act.
- (2) Any application for registration under the Medical and Dental Practitioners Act 1964, the Nurses and Midwives Act 1968, or the Pharmacy and Poisons Act 1948 that was pending immediately before the commencement of this Act must be considered and dealt with under this Act.

25 Repeals

- (1) The Health Professional Act 2015 repeals the following Acts;-
 - (a) The Medical and Dental Practitioners Act 1964; and
 - (b) The Nurses and Midwives Act 1968;

SCHEDULE