

SOUTH AUSTRALIA

PHARMACISTS ACT 1991

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PHARMACISTS ACT 1991

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Pharmacists Act 1991 No. 13 of 1991
[Assented to 4 April 1991]¹

¹ Came into operation 21 November 1991: *Gaz.* 21 November 1991, p. 1328.

N.B. The amendments effected to this Act by the *Financial Sector Reform (South Australia) Act 1999* have not been brought into operation.

An Act to provide for the registration of pharmacists and to regulate the practice of pharmacy; to repeal the Pharmacy Act 1935; to make a consequential amendment to the Controlled Substances Act 1984; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Pharmacists Act 1991*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Repeal

3. The *Pharmacy Act 1935* is repealed.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"the Board" means the Pharmacy Board of South Australia:

"company" means a company as defined in section 9 of the *Corporations Law*:

"director" of a company includes—

(a) any person occupying or acting in the position of director of the company (whether validly appointed to occupy, or duly authorized to act in, that position or not);

and

(b) any person in accordance with whose directions or instructions the directors of the company are accustomed to act:

"equipment" includes appliances or instruments used in, or for the purposes of, practising pharmacy:

"friendly society" means a society or branch within the meaning of the *Friendly Societies Act 1919* or a body corporate formed under section 41 of that Act:

"inspector" means a person authorized by the Board to exercise the powers of an inspector under this Act:

"pharmacy" means the supply of a drug or medicine on the prescription of a medical practitioner, dentist, veterinary surgeon or other person authorized to prescribe the drug or medicine:

"prescribed relative", in relation to a pharmacist, means a parent, spouse, putative spouse, child or grandchild of the pharmacist:

3.

"putative spouse" includes a person who is a putative spouse notwithstanding that a declaration has not been made under the *Family Relationships Act 1975* in relation to that person:

"record" means—

- (a) a documentary record;
- (b) a record made by an electronic, electro-magnetic, photographic or optical process;
- (c) any other kind of record:

"registered" means registered under this Act:

"the Registrar" means the Registrar of the Board:

"share", in relation to a company, includes a right to participate in the distribution of the profits of the company.

(2) For the purposes of this Act, a pharmacist whose registration is under suspension will be regarded as unregistered.

(3) A reference in this Act to pharmacy extends, in relation to a registered pharmacist, to any service or advice provided by the pharmacist in or in connection with his or her practice.

Note: For definition of divisional penalties see Appendix.

4.

PART II
BOARD

DIVISION I—CONSTITUTION OF BOARD

Continuation of Board

5. (1) The *Pharmacy Board of South Australia* continues in existence.

(2) The Board is a body corporate.

(3) The Board has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(4) Where an apparently genuine document appears to bear the common seal of the Board, it will be presumed in legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Board.

Constitution of Board

6. (1) The Board consists of eight members appointed by the Governor and of these—

(a) one will be a legal practitioner;

(b) one will be a registered pharmacist;

(c) one will be a person, who is neither a legal practitioner nor a registered pharmacist, nominated to represent the interests of persons receiving pharmaceutical services;

(d) five will be registered pharmacists of whom—

(i) one will be nominated by the head of the school of pharmacy at the University of South Australia;

(ii) one will be nominated by the Society of Hospital Pharmacists of Australia (S.A. Branch);

(iii) one will be nominated by the Pharmaceutical Society of Australia (S.A. Branch);

(iv) one will be nominated by the Pharmacy Guild of Australia (S.A. Branch);

and

(v) one will be nominated by the Friendly Societies Medical Association Incorporated.

(2) A member of the Board who is a registered pharmacist will be appointed by the Minister to preside at meetings of the Board.

(3) The Minister must consult the Board before making an appointment under subsection (2).

Term and conditions of office

7. (1) Subject to this Act, a member of the Board will be appointed for a term not exceeding three years, on such conditions as the Governor determines, and on the expiration of a term of office is eligible for reappointment.

(2) The Governor may appoint an appropriate person to be a deputy of a member of the Board and that person, while acting in the absence of that member, has all the powers, rights and duties of that member.

(3) The Governor may remove a member of the Board from office for—

- (a) any breach of, or non-compliance with, conditions of appointment;
- (b) mental or physical incapacity to carry out official duties satisfactorily;
- (c) neglect of duty;

or

(d) dishonourable conduct.

(4) The office of a member of the Board becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) resigns by written notice addressed to the Minister;

or

(d) is removed from office by the Governor under this section.

(5) On the office of a member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office, but where the office of a member becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term.

Remuneration and expenses

8. (1) The members of the Board are entitled to such remuneration and expenses as may be determined by the Governor.

(2) Any amount to which a member of the Board is entitled under this section will be paid from the funds of the Board.

Personal interest of member

9. A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Board is disqualified from participating in the Board's consideration of that matter.

Quorum, etc.

10. (1) Subject to subsection (2), five members of the Board constitute a quorum of the Board.

(2) For the purposes of a decision or determination of the Board under Part IV of the Act, three members of the Board (of whom at least two are registered pharmacists) constitute a quorum of the Board.

(3) In the absence of the member appointed to preside at meetings of the Board, the members present at a meeting must decide who is to preside.

(4) A decision carried by the votes of a majority of the members of the Board present at a meeting is a decision of the Board.

(5) Each member present at a meeting of the Board is entitled to one vote on a matter arising for determination at that meeting and the person presiding has, in the event of an equality of votes, a second or casting vote.

(6) The Board must cause accurate minutes to be kept of the business conducted at its meetings.

(7) Subject to this Act, the business of the Board must be conducted in a manner determined by the Board.

Committees

11. (1) The Board may establish committees—

(a) to advise the Board on any matter related to the administration of this Act;

or

(b) to carry out functions on behalf of the Board.

(2) The Board may appoint a person who is not a member of the Board to be a member of a committee.

Delegation of functions and powers

12. (1) The Board may delegate any of its functions or powers except those relating to investigations and inquiries under Part IV.

(2) A delegation under this section—

(a) may be made—

(i) to a member, to the Registrar or to an officer or employee of the Board;

or

(ii) to a committee established by the Board under this Act;

(b) may be made subject to such conditions as the Board thinks fit;

7.

(c) is revocable at will;

and

(d) does not derogate from the power of the Board to act in any matter itself.

(3) A person to whom functions or powers are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which that person has a personal interest or a direct or indirect pecuniary interest.

Validity of acts of Board

13. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Registrar and officers of Board

14. (1) The Board must appoint (on such conditions as it thinks fit)—

(a) a Registrar;

and

(b) such other officers and employees as are necessary for the administration of this Act.

(2) An officer or employee of the Board is not a Public Service employee.

DIVISION II—FUNCTIONS OF BOARD

Functions of Board

15. (1) The Board is responsible for—

(a) the registration and professional discipline of pharmacists;

(b) exercising a general oversight over the standards of the practice of pharmacy;

(c) keeping under review the law relating to pharmacy and making recommendations to the Minister with respect to that law;

(d) monitoring the standards of courses of instruction and training available to—

(i) those seeking registration as pharmacists;

and

(ii) registered pharmacists seeking to maintain and improve their skills in the practice of pharmacy,

and consulting with educational authorities in relation to the establishment, maintenance and improvement of such courses;

8.

and

(e) exercising the other functions assigned to it by or under this Act.

(2) The Board must exercise its functions under this Act with a view—

(a) to ensuring that the community is adequately provided with pharmaceutical services of the highest standard;

and

(b) to achieving and maintaining professional standards of competence and conduct in the practice of pharmacy.

DIVISION III—ADMINISTRATIVE PROVISIONS

Accounts and audit

16. (1) The Board must cause proper accounts to be kept of its financial affairs.

(2) The Board must prepare a statement of accounts in respect of each financial year and have the statement audited by a registered company auditor.

Report

17. (1) The Board must, on or before 30 September in each year, deliver to the Minister a report on the administration of this Act during the financial year that ended on the preceding 30 June.

(2) The report must contain statistics relating to complaints received by the Board and the orders and decisions of the Board.

(3) The Minister must, within 12 sitting days after delivery of the report, cause a copy of the report to be laid before each House of Parliament.

PART III
REGISTRATION AND PRACTICE

DIVISION I—ELIGIBILITY FOR REGISTRATION

Qualifications for registration

18. (1) Subject to this Act, a natural person is eligible for registration as a pharmacist, if that person—

- (a) is of or above the age of 18 years;
 - (b) is a fit and proper person to be so registered;
 - (c) has prescribed qualifications and experience in the practice of pharmacy;
- and
- (d) fulfils all other requirements prescribed by the regulations.

(2) Subject to this Act, a company is eligible for registration as a pharmacist if it satisfies the Board—

- (a) that the memorandum and articles of association of the company contain provisions to the following effect:
 - (i) the sole object of the company must be to practise as a pharmacist (but this may include the object of carrying on any business commonly associated with the practice of pharmacy);
 - (ii) the directors of the company must be natural persons who are registered pharmacists (but where there are only two directors, one may be a registered pharmacist and the other may be a prescribed relative of that pharmacist);
 - (iii) no share in the company is to be owned beneficially except by a registered pharmacist who is a director or employee of the company or by a prescribed relative of that pharmacist;
 - (iv) the total voting rights exercisable at a meeting of the members of the company must be held by registered pharmacists who are directors or employees of the company;
 - (v) no director of the company may, without the approval of the Board, be a director of any other company that is registered as a pharmacist;
 - (vi) where the right of a registered pharmacist and of his or her prescribed relatives to hold shares in the company ceases by virtue of the pharmacist ceasing to be a director or employee of the company, the shares must be—

10.

- (A) redeemed by the company;
- (B) distributed amongst the remaining members of the company (or their prescribed relatives);

or

- (C) transferred to a registered pharmacist who is to become a director or employee of the company (or to his or her prescribed relatives),

in accordance with the memorandum and articles of association of the company;

and

- (vii) the shares of a person who is a shareholder by virtue of being the spouse of a registered pharmacist must—

- (A) on dissolution or annulment of marriage with the pharmacist;

or

- (B) in the case of a putative spouse, on cessation of cohabitation with the pharmacist,

be redeemed by the company, or distributed amongst the remaining members of the company, in accordance with the memorandum and articles of association of the company;

and

- (b) that the memorandum and articles of association are otherwise appropriate to a company formed for the purpose of practising as a pharmacist.

DIVISION II—REGISTRATION

Application for registration

19. (1) An application for registration under this Act—

- (a) must be made in the prescribed manner and form;

and

- (b) must be accompanied by the prescribed application fee.

(2) An applicant for registration must, if the Board so requires—

- (a) furnish the Board with such information, papers or documents as it specifies;

and

11.

- (b) verify by statutory declaration any information furnished for the purposes of the application.

Registration and provisional registration

20. (1) Where—

- (a) application is made for registration as a pharmacist in accordance with this Act;

and

- (b) the Board is satisfied that the applicant is eligible for registration,

the Board must register the applicant as a pharmacist.

(2) If it appears likely that the Board will grant an application for registration as a pharmacist, the Registrar may provisionally register the applicant.

(3) Provisional registration remains in force until the application is determined by the Board.

(4) A certificate of registration must be issued to a registered pharmacist.

Limited registration

21. (1) Where a person who applies for registration under this Act does not have the necessary qualifications or experience or does not fulfil the other requirements prescribed by the regulations, the Board may register that person in pursuance of this section—

- (a) in order to enable the person—

- (i) to do whatever is necessary to become eligible for full registration under this Act;

or

- (ii) to teach or to undertake research or study in South Australia;

or

- (b) if, in its opinion, registration of the person is in the public interest.

(2) Where a person who applies for registration under this Act has not satisfied the Board that he or she is a fit and proper person to be registered unconditionally, but otherwise fulfils the requirements prescribed by or under this Act for registration, the Board may register that person in pursuance of this section.

(3) When granting an application referred to in subsection (1) or (2) the Board may—

- (a) restrict the places and times at which the applicant may practise pharmacy;

- (b) limit the areas of pharmacy in which the applicant may practise;

(c) limit the period during which the registration will have effect;

or

(d) impose such other conditions as the Board thinks fit.

Renewal of registration

22. (1) Subject to this Act, registration under this Act (not being provisional registration or registration for a limited period) remains in force until 31 December next ensuing after the grant of registration and may be renewed for successive periods of one year expiring on 31 December.

(2) An application for renewal of registration under this Act must be made to the Board in the prescribed manner and form.

(3) The application must be delivered to the Registrar not earlier than 1 October and not later than 30 November preceding the end of the registration period, but the Board may, if it thinks fit, determine an application notwithstanding that it is delivered out of time.

(4) Where application is made in accordance with this Act for renewal of registration, the Board must, on payment of the prescribed renewal fee, renew the registration.

Revocation or variation of conditions

23. The Board may, at any time, on the application of a registered pharmacist, revoke or vary any condition attached by the Board to his or her registration.

Register

24. (1) The Registrar must keep a register of pharmacists.

(2) The Registrar must, on payment of the prescribed fee, enter on the register any new or additional qualifications of a prescribed kind that have been acquired by a registered pharmacist.

(3) The Registrar must remove from the register the name of a pharmacist who dies or ceases for any reason to be registered under this Act.

(4) The Registrar must correct any entry in the register that is not, or has ceased to be, correct.

(5) The Registrar must, on payment of the prescribed fee, make the register available for inspection.

Certificates of registration

25. The Registrar must, on request and payment of the prescribed fee, issue a duplicate registration certificate or any other certificate setting out information contained in the register.

DIVISION III—PRACTICE OF PHARMACY

Obligation to be registered

26. (1) Subject to this section, a person who is not registered under this Act must not practise pharmacy.

Penalty: Division 5 fine or division 7 imprisonment.

(2) Subsection (1) does not apply to the practice of pharmacy through the instrumentality of a registered pharmacist by—

- (a) a natural person who carried on a business consisting of or involving pharmacy before 20 April 1972 and who has continued to do so since that date;
- (b) a company that carried on a business consisting of or involving pharmacy on 1 August 1942 and that has continued to do so since that date;
- (c) the Mount Gambier United Friendly Societies' Dispensary Incorporated;
- (d) the Friendly Societies Medical Association Incorporated.

Illegal holding out

27. (1) A person who is not registered under this Act must not hold himself or herself out as being so registered or permit another person to do so.

Penalty: Division 5 fine or division 7 imprisonment.

(2) A person must not hold out another as being registered under this Act unless the other person is so registered.

Penalty: Division 5 fine or division 7 imprisonment.

Prohibition on use of certain words

28. (1) Subject to this section, a person who is not registered under this Act must not use a prescribed word or its derivatives to describe himself or herself or a service that he or she provides.

Penalty: Division 5 fine or division 7 imprisonment.

(2) Subject to this section, a person must not, in the course of advertising or promoting a service that he or she provides, use a prescribed word or its derivatives to describe a person who is engaged in the provision of the service but who is not registered under this Act.

Penalty: Division 5 fine or division 7 imprisonment.

(3) In this section—

"prescribed word" means—

- (a) pharmacist;
- (b) pharmaceutical chemist;
- (c) pharmacist;
- (d) homoeopathic chemist;
- (e) dispensing chemist;

14.

- (f) dispensing druggist;
- (g) chemist and druggist;
- (h) any other word or expression prescribed by regulation.

Board's approval required if pharmacist has not practised for three years

29. (1) A registered pharmacist who, for three years or more, has not practised pharmacy or has only practised pharmacy through the instrumentality of another person, must not commence the practice of pharmacy (except through the instrumentality of another person) without first obtaining the approval of the Board.

(2) The Board may, before granting its approval under subsection (1), require the pharmacist to undertake a refresher course or to obtain specified qualifications and experience.

(3) An approval under subsection (1) may be subject to conditions restricting the pharmacist's right to practise.

Practitioners to be indemnified against loss

30. (1) A registered pharmacist must not practise pharmacy unless—

- (a) an agreement subsists between the pharmacist and a person approved of by the Board;
- and
- (b) the Board is satisfied that, by virtue of that agreement, the pharmacist will be compensated to the extent required by the Board in the event that he or she suffers loss by reason of civil liability incurred in the practice of pharmacy.

Penalty: Division 5 fine.

(2) The Board may, on such conditions as it thinks fit, exempt a pharmacist or a class of pharmacists from the requirements of this section and may, whenever it thinks fit, revoke an exemption or vary the conditions under which an exemption operates.

Information relating to claim against pharmacist to be provided

31. Where a person has claimed damages or other compensation from a registered pharmacist for alleged negligence committed in the course of practice as a pharmacist, the pharmacist concerned must, within 30 days after—

- (a) a court has ordered the pharmacist to pay damages or compensation in respect of the claim;
- or
- (b) an agreement is entered into to pay a sum of money in settlement of the claim (whether with or without a denial of liability),

provide the Board with prescribed information relating to the claim.

Penalty: Division 5 fine.

Registration of premises

32. (1) A person must not carry on a business consisting of or involving pharmacy except at premises registered under this section in relation to that business.

Penalty: Division 7 fine.

(2) The Board may register premises if satisfied that the premises are suitable for the purpose of carrying on that business.

(3) Registration under this section remains in force until 31 December next ensuing after the grant of registration and may from time to time be renewed for successive periods of one year expiring on 31 December.

(4) The Board may refuse to renew registration of premises under this section if satisfied that the premises have ceased to be suitable.

(5) An application for registration of premises under this section or for renewal of registration—

(a) must be made to the Board in the prescribed manner and form;

and

(b) must be accompanied by the prescribed fee.

(6) An application for renewal of registration under this section must be delivered to the Registrar not earlier than 1 October and not later than 30 November preceding the end of the registration period, but the Board may, if it thinks fit, determine an application notwithstanding that it is out of time.

Supervision of pharmacy by registered pharmacist

33. A person must not carry on a business consisting of or involving pharmacy in any place unless at all times while that place is open to the public it is under the direct and constant personal supervision of a registered pharmacist.

Penalty: Division 7 fine.

Limitation on number of pharmacies

34. (1) Subject to this section, a person must not carry on a business consisting of or involving pharmacy at more than four places of business.

Penalty: Division 7 fine.

(2) A person who was, immediately before the commencement of this Act, carrying on a business consisting of or involving pharmacy at more than four places of business may continue to carry on that business at that greater number of places.

(3) The Friendly Societies Medical Association Incorporated may carry on a business consisting of or involving pharmacy at a maximum of 31 places of business.

(4) For the purposes of this section, a person who is a director or member of a company that carries on a business consisting of or involving pharmacy will be taken to carry on that business.

DIVISION IV—SPECIAL OBLIGATIONS OF COMPANIES

Company to comply with requirements of Act

35. (1) If a provision required by this Act to be included in the memorandum or articles of association of a company registered under this Act is not complied with, the company must, within 14 days, report the non-compliance to the Board.

Penalty: Division 7 fine.

(2) The Board may give such directions as are necessary to secure compliance with the provision.

(3) The registration of a company that has received a direction from the Board under subsection (2) will, if the company has not satisfied the Board that it has complied with the direction, be suspended from the expiration of the time allowed by the Board for compliance with the direction and will remain suspended until the company satisfies the Board that it has complied with the direction.

Alteration to memorandum or articles of association

36. A company registered under this Act or exempt under section 26(2)(b) from the requirement to be registered must not alter its memorandum or articles of association unless the proposed alteration has been submitted to, and approved by, the Board or is made in pursuance of a direction by the Board.

Penalty: Division 7 fine.

Companies not to practise in partnership

37. A company registered under this Act or exempt under section 26(2)(b) from the requirement to be registered must not practise in partnership with any other person unless it has been authorized to do so by the Board.

Penalty: Division 7 fine.

Joint and several liability

38. Any civil liability incurred by a company registered under this Act or exempt under section 26(2)(b) from the requirement to be registered is enforceable jointly and severally against the company and the persons who were directors at the time the liability was incurred.

Return by companies

39. (1) A company registered under this Act or exempt under section 26(2)(b) from the requirement to be registered must within one month after a person becomes or ceases to be a director or member of the company lodge with the Board a notice in writing of that fact stating the name and residential address of that person.

Penalty: Division 7 fine.

(2) A company registered under this Act must lodge with the Board in July of each year a return in a form approved by the Board containing the information required by the Board.

Penalty: Division 7 fine.

PART IV
INVESTIGATIONS AND INQUIRIES

DIVISION I—INVESTIGATIONS

Powers of inspectors

40. (1) If the Board has reasonable grounds to suspect—

(a) that there is proper cause for disciplinary action against a registered pharmacist;

(b) that a registered pharmacist may be mentally or physically unfit to practise pharmacy;

or

(c) that a person other than a registered pharmacist is guilty of an offence against this Act,

an inspector may investigate the matter.

(2) For the purposes of an investigation, an inspector may—

(a) enter and inspect premises registered under section 32 or any premises not so registered if the inspector reasonably suspects that pharmacy is being or has been practised at those premises;

(b) put questions to persons on the premises;

(c) if the inspector reasonably suspects that an offence against this Act has been committed—seize and remove any object that, in the opinion of the inspector, affords evidence of the offence.

Offences relating to investigations

41. (1) Subject to subsection (2), a person who—

(a) hinders or obstructs an inspector in the exercise of a power conferred by this Act;

or

(b) refuses or fails to answer truthfully questions put by an inspector pursuant to this Act,

is guilty of an offence.

Penalty: Division 7 fine.

(2) A person is not required to answer a question put by an inspector if the answer would tend to incriminate him or her of an offence.

Obligation to report incapacity

42. Where a medical practitioner is treating a registered pharmacist in relation to an illness that, in the opinion of the medical practitioner, has resulted in or is likely to result in mental or physical incapacity that seriously impairs, or may seriously impair, the pharmacist's ability to practise pharmacy, the medical practitioner must submit a written report to the Board or to a person nominated by the Board stating—

- (a) the reasons for that opinion;
 - (b) the views (if known) of any other medical practitioner in relation to the matter;
- and
- (c) all other prescribed information.

Penalty: Division 7 fine.

Investigation of mental or physical capacity

43. (1) If the Board has reason to suspect that a registered pharmacist may be mentally or physically unfit to practise pharmacy or to exercise an unrestricted right of practice, the Board may, by notice in writing, require the pharmacist to submit to an examination by a medical practitioner nominated in the notice on or before a date specified in the notice.

(2) If a registered pharmacist fails to comply with a requirement under subsection (1), the registration is suspended until the requirement is complied with.

DIVISION II—INQUIRIES

Inquiries

44. (1) The Board may, on its own initiative or on receipt of a complaint, conduct an inquiry in order to determine—

- (a) whether a registered pharmacist is mentally or physically unfit to practise as such;
- or
- (b) whether there is proper cause for disciplinary action against a registered pharmacist.

(2) The Board may decline to inquire into a complaint if it considers the complaint frivolous or vexatious.

(3) If, after conducting an inquiry, the Board is satisfied that a registered pharmacist is mentally or physically unfit to practise pharmacy or to exercise an unrestricted right of practice, the Board may—

- (a) impose conditions restricting the right of practice;
- or
- (b) suspend the registration until the registered pharmacist has recovered from the incapacity or for such lesser period as the Board determines.

(4) If, after conducting an inquiry, the Board is satisfied that there is proper cause for disciplinary action against a registered pharmacist, the Board may exercise any one or more of the following powers:

- (a) it may reprimand the pharmacist;
- (b) it may impose a division 5 fine;
- (c) it may impose conditions restricting the right of practice;
- (d) it may suspend the registration for a period not exceeding three years;

or

- (e) it may cancel the registration.

(5) A fine imposed under this section by the Board may be recovered as a debt due to the Board.

(6) There is proper cause for disciplinary action against a registered pharmacist if—

- (a) the registration was obtained improperly;
- (b) the pharmacist has been convicted, or is guilty, of an offence against this Act, an offence involving dishonesty or an offence punishable by imprisonment for one year or more;
- (c) the pharmacist is guilty of unprofessional conduct.

(7) Disciplinary action may be taken under this section against a person who was registered as a pharmacist when the cause for disciplinary action arose but has since ceased to be registered as a pharmacist.

Procedure in relation to inquiries

45. (1) The Board must give to a person in relation to whom an inquiry is to be held, and to any person on whose complaint an inquiry is to be held, not less than 14 days written notice of the time and place at which it intends to conduct the inquiry.

(2) A person to whom notice has been given pursuant to subsection (1) may be represented by counsel at the inquiry and must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Board.

(3) If a person to whom a notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Board may hold the inquiry in his or her absence.

(4) The Board is not bound by the rules of evidence and may inform itself on any matter as it thinks fit.

(5) The Board must act according to equity, good conscience and the substantial merits of the case.

(6) Subject to this Act, the procedure at an inquiry will be as determined by the Board.

Powers of Board

46. (1) For the purposes of an inquiry under this Part, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of any person whom the Board thinks fit to call before it;
- (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production to the Board of any relevant records or equipment and, in the case of a record that is not a documentary record in the English language, require the production of a written statement in the English language of the contents of the record;
- (c) inspect any records or equipment produced before it and retain them for such reasonable period as it thinks fit, and make copies of the records or their contents;
- (d) require any person to make an oath or affirmation (which may be administered by any member of the Board) to answer truthfully questions put by any member of the Board or any person appearing before the Board;

or

- (e) require any person appearing before the Board (whether summoned to appear or not) to answer any questions put by any member of the Board or by any person appearing before the Board.

(2) Subject to subsection (3), a person—

- (a) who fails without reasonable excuse to comply with a summons issued to attend, or to produce records or equipment, before the Board;
- (b) who, having been served with a summons to produce a written statement of the contents of a record in the English language fails, without reasonable excuse, to comply with the summons or produces a statement that he or she knows, or ought to know, is false or misleading in a material particular;
- (c) who misbehaves before the Board, wilfully insults the Board or one or more of the members in the exercise of the member's official duties, or interrupts the proceedings of the Board;

or

- (d) who refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Board,

is guilty of an offence.

Penalty: Division 5 fine or division 7 imprisonment.

(3) A person is not required to answer a question put by the Board or to produce records or a statement if the answer to the question, or the contents of the record or statement, would tend to incriminate him or her of an offence.

(4) In the course of an inquiry, the Board may—

(a) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusions of fact that it considers proper;

or

(b) adopt, as in its discretion it considers proper, any finding, decision or judgment of a court that may be relevant to the proceedings.

Costs

47. (1) The Board may order a party to an inquiry to pay such amount as the Board considers just and reasonable towards the costs of any other party to the inquiry.

(2) A party who is dissatisfied with the Board's assessment of costs may request a Master of the Supreme Court to tax the costs and the Master may confirm or vary the assessment.

(3) Subject to this section, where the Board orders a party to pay costs, those costs may be recovered as a debt.

DIVISION III—CONSEQUENCES OF ACTION AGAINST REGISTERED PHARMACISTS IN OTHER JURISDICTIONS

Consequences of action against registered pharmacists in other jurisdictions

48. (1) Where, in consequence of action taken against a registered pharmacist in another State or a Territory of the Commonwealth, a registered pharmacist's right to practise pharmacy in that State or Territory is suspended or cancelled, the registration of the pharmacist under this Act is, unless the Board otherwise determines, automatically suspended or cancelled.

(2) Where such a pharmacist is reinstated on the register in that other State or Territory, the pharmacist is, unless the Board otherwise determines, automatically reinstated on the register in this State.

PART V
APPEALS

Appeals

49. (1) A right of appeal to the Supreme Court lies against any decision or order of the Board made in the exercise or purported exercise of its powers or functions under this Act.

(2) The appeal must be instituted within one month of the making of the decision or order appealed against.

(3) The Supreme Court may, on the hearing of the appeal, exercise any one or more of the following powers according to the nature of the case:

- (a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Board for further hearing or consideration or for rehearing;
- (c) make any further or other order as to costs or any other matter that the case requires.

(4) The Board must, if so required by a person affected by a decision or order made by it, state in writing the reasons for its decision or order.

(5) If the reasons of the Board are not given in writing at the time of making a decision or order and the appellant within one month of the making of the decision or order requests the Board to state its reasons in writing, the time for instituting the appeal runs from the time when the appellant receives the written statement of those reasons.

Operation of order may be suspended

50. (1) Where an order has been made by the Board and the Board or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board has suspended the operation of an order under subsection (1), the Board may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

Variation of conditions imposed by the Court

51. (1) The Supreme Court may, at any time, on application by a pharmacist, vary or revoke a condition imposed by the Court in relation to his or her registration under this Act.

(2) The Board and the Minister are entitled to object to an application under this section.

PART VI
MISCELLANEOUS

Penalty for breach of condition

52. A person who contravenes or fails to comply with a condition imposed under this Act in relation to that person's practice of pharmacy is guilty of an offence.

Penalty: Division 5 fine.

Offences by body corporate

53. (1) Where a body corporate is guilty of an offence against this Act, every responsible officer of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the officer could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

(2) In this section—

"responsible officer" means—

- (a) a director or secretary of the body corporate;
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act;
- or
- (c) a person concerned in the management of the body corporate.

Protection from personal liability

54. (1) No personal liability attaches to—

- (a) a member of the Board;
 - (b) the Registrar or any other member of the Board's staff;
- or
- (c) an inspector,

for an act or omission by that person or the Board, in good faith, in the exercise or discharge or purported exercise or discharge of powers, duties or functions under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies against the Crown.

Evidentiary provision

55. (1) In any legal proceedings, a certificate under the hand of the Registrar that any person was or was not registered under this Act at a specified date or as to any matter contained in the register is, in the absence of proof to the contrary, proof of the matter so certified.

(2) A document appearing to be a certificate under subsection (1) will, in the absence of proof to the contrary, be accepted as such in any legal proceedings.

Punishment of conduct that constitutes offence

56. Where conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

Service of documents and notices

57. A notice or document to be given under this Act may be sent by post.

Summary offences

58. Offences against this Act are summary offences.

Application of fines

59. A fine imposed for an offence against this Act must be paid to the Board.

Regulations

60. (1) The Governor may make such regulations as are necessary or expedient for the purposes of, or as are contemplated by, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) prescribe and regulate the standard of premises and equipment to be used in the practice of pharmacy;
- (b) prescribe reference works to be kept by pharmacists for use in the practice of pharmacy;
- (c) prescribe and regulate the records to be kept by pharmacists in relation to the practice of pharmacy;
- (d) regulate advertising by pharmacists in relation to the practice of pharmacy;
- (e) regulate business or trading names used in relation to the practice of pharmacy;
- (f) regulate the conduct of pharmacists in connection with the practice of pharmacy;
- (g) declare any conduct to be unprofessional;
- (h) prescribe (or empower the Board to prescribe) fees or charges for the purposes of this Act and provide for the recovery of a fee or charge so prescribed;
- (i) exempt (conditionally or unconditionally) specified persons, or persons of a specified class, from the provisions, or any specified provisions, of this Act;
- (j) prescribe fines not exceeding a division 7 fine for contravention of, or non-compliance with, a regulation.

SCHEDULE 1

Transitional Provisions

1. The offices of all members of the Board become vacant on the commencement of this Act.
2. A person registered as a pharmacist under the repealed Act immediately before the commencement of this Act is to be taken to be registered under this Act.
3. Premises registered under section 17 of the repealed Act immediately before the commencement of this Act are to be taken to be registered under section 32 of this Act until 31 December next ensuing after the commencement of this Act.
4. In this schedule—

"the repealed Act" means the *Pharmacy Act 1935*.

26.

SCHEDULE 2

Amendment of Controlled Substances Act 1984

The *Controlled Substances Act 1984* is amended by striking out from subsection (1) of section 4 the definition of "pharmacist" and substituting the following definition:

"pharmacist" means a person registered as a pharmacist under the *Pharmacists Act 1990* or exempt from the requirement to be so registered:.

APPENDIX

Divisional Penalties

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

Note: This appendix is provided for convenience of reference only.