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GOVERNMENT OF FIJI

MEDICAL AND DENTAL PRACTITIONER DECREE 2010
(DECREE NO. 3)

In exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree—

PART 1—PRELIMINARY

Short title and commencement

- 1.—(1) This Decree may be cited as the Medical and Dental Practitioner Decree 2010.
- (2) This Decree comes into force on the date appointed by the Minister by notice in the *Gazette*.

Interpretation

2.—(1) In this Decree, unless the contrary intention appears—

“appropriate register” means—

- (a) the medical register;
- (b) the dental register;
- (c) the medical student register; or
- (d) the dental student register,

as the case may be;

“approved” in relation to a form, procedure or other matter means approved by the relevant Council;

“Board” means the Board of Management of the Secretariat;

“close relative”, in relation to a registered person, means a parent, spouse, domestic partner, child, grandchild, brother or sister of the person;

“code of conduct” means a code of conduct produced by a Council under section 6 or 10 as the case may be;

“committee” means a committee of a Council;

“complaint” means a complaint of unprofessional conduct made under section 56;

“conditional registration” means entry on the appropriate register subject to conditions set by the relevant Council under section 38;

“continuing professional development” means professional development and development in the medical or dental field, as the case may be, which continues after qualification and registration;

“corporate health services provider” means a corporate body that provides health services;

“Council” means the Fiji Dental Council or the Fiji Medical Council, as the case may be;

“dental hygienist” means a person who holds a degree, diploma or similar qualification in dental hygiene;

“dental practice” means practice as a dentist, dental surgeon, dental therapist, dental hygienist or dental technician;

“dental practice licence” means an annual licence to practise as a dental practitioner issued by the Fiji Dental Council under Part [8];

“dental practitioner” includes a dentist, a dental therapist, a dental hygienist and a dental technician;

“dental register” means the register of that name kept pursuant to section 30;

“dental student” means a person who is studying to become a dental practitioner;

“dental student register” means the register of dental students kept pursuant to section 30;

“dental therapist” means a person who holds a degree, diploma or similar qualification in dental therapy;

“dental treatment” includes all dental or oral health advice, attendances, services, procedures and operations;

“dentist” mean a person who holds a degree, diploma or similar qualification in dentistry;

“division” in relation to the dental register means the part of the register which shows whether the registered person is registered as a dentist, a dental therapist, a dental hygienist or a dental technician;

“equipment” includes appliances, instruments, dressings or substances used for the purposes of diagnosis and treatment;

“Fiji Dental Council” means the Council continued by section 8;

“Fiji Medical Council” means the Council continued by section 4;

“financial year” means the period from 1st April to 31st March of the following year;

“full registration” means entry on the appropriate register without any conditions or limitations;

“general registration” means registration as a medical or dental practitioner under section 34;

“health product” means—

- (a) a pharmaceutical product; or
- (b) any other product declared by the Minister by order to be a health product for the purposes of this Decree;

“health professional” means—

- (a) a medical practitioner;
- (b) a dental practitioner;
- (c) a registered midwife, nurse or nurse practitioner;
- (d) a pharmacist or pharmaceutical chemist;
- (e) a person qualified to provide physiotherapy, psychology, podiatric, occupational therapy, acupuncture, chiropractic, chiropody or osteopathy services;

“health services” means—

- (a) medical or dental services;
- (b) physiotherapy, psychology, podiatric, occupational therapy, acupuncture, chiropractic, chiropody or osteopathy services; or
- (c) any other service declared by the Minister, by notice in the Gazette, to be a health service for the purposes of this Decree;

“health services provider” means a person or body (not being a registered medical or dental practitioner) who provides health services through the instrumentality of a registered person;

“investigator” means a person appointed by a Council under section 58 to exercise the powers of an investigator under this Decree;

“interim registration” means registration on an interim basis, pursuant to section 37;

“legal practitioner” means a person admitted and enrolled as a practitioner of the High Court of the Fiji Islands under the Legal Practitioners Decree 2009;

“licence” means a medical practice licence or a dental practice licence;

“licensed dental practitioner” means a registered dental practitioner who holds a current dental practice licence;

“licensed medical practitioner” means a registered medical practitioner who holds a current medical practice licence;

“medical practice” means the practice of medicine or surgery;

“medical practice licence” means an annual licence to practise as a medical practitioner issued by the Fiji Medical Council under Part 8;

“medical practitioner” means a person who holds a degree, diploma or similar qualification in medicine or surgery;

“medical register” means the register of that name kept pursuant to section 30;

“medical student” means a person who is studying to become a medical practitioner;

“medical student register” means the register of medical students kept pursuant to section 30;

“medical treatment” includes all medical or surgical advice, attendances, services, procedures and operations;

“nominated contact address” of a registered person means an address notified by the person to the Secretariat for the purpose of service of notices and documents under this Decree, and may be an electronic address;

“notification” means—

- (a) a notification as to the professional conduct of a registered person or the conduct of a health services provider made under section 54; or
- (b) a notification as to medical unfitness to practice made under section 66;

“nurse” means a person who is registered as a nurse under the Nurses, Midwives and Nurse Practitioners Act;

“Permanent Secretary” means the Permanent Secretary in the Ministry;

“Professional Conduct Committee” means a committee appointed by a Council under section 12;

“Professional Standards Committee” means a committee appointed by a Council under section 13;

“provide”, in relation to medical or dental treatment, means provide treatment personally or through the instrumentality of another, and includes offer to provide;

“provisional registration” means registration in accordance with section 34(2);

“psychologist” means a person who holds a degree, diploma or similar qualification in clinical psychology;

“record” means—

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

“register” means a register kept under this Decree;

“registered dental practitioner” means a dental practitioner who is registered on the general dental register;

“registered medical practitioner” means a medical practitioner who is registered on the general medical register;

“registered person” means a person who is registered on a register kept under this Decree;

“Registrar”—

- (a) in relation to the Tribunal, means the person holding or acting in the office of Registrar of the Tribunal;
- (b) in any other case means the person holding or acting in the office of Registrar of the Secretariat;

“relevant business” means a business consisting of or involving—

- (a) the provision of a health service; or
- (b) the manufacture, sale or supply of a health product;

“repealed Act” means the Medical and Dental Practitioners Act 1978 (Cap.255);

“representative body” means a body that is listed in Schedule 1;

“Secretariat” means the Fiji Medical and Dental Secretariat established by Part 6;

“student register” means the medical student register or the dental student register;

“temporary registration” means registration on the appropriate register for a limited time, under section 36;

“Tribunal” means the Medical and Dental Professional Conduct Tribunal established by section 69;

“vocational category”, in relation to registration or a practice licence, means a category of medical or dental practice for which additional qualifications are required and which is declared by the respective Council, by notice in the Gazette, to be a vocational category;

“vocational registration” means registration in the appropriate registration as being qualified in a vocational category.

- (2) For purposes of this Decree, “unprofessional conduct” includes, but is not limited to—
- (a) improper or unethical conduct in relation to professional practice;
 - (b) incompetence or negligence in relation to the provision of medical or dental treatment;
 - (c) misprescription or writing illegible prescriptions;
 - (d) the improper disposal of medical records;
 - (e) a contravention of or failure to comply with—
 - (i) a provision of this Decree; or
 - (ii) a code of conduct or professional standard prepared or endorsed by a Council under this Decree;
 - (f) conduct that constitutes an offence punishable by imprisonment for 1 year or more under some other written law of Fiji.
- (3) A reference in this Decree to unprofessional conduct includes—
- (a) unprofessional conduct committed before the commencement of this Decree; and
 - (b) unprofessional conduct committed outside Fiji.
- (4) A reference in this Decree to engaging in conduct includes a reference to failing or refusing to engage in such conduct.

(5) Without limiting the expression, a person who is not a medical or dental practitioner will, unless exempted by or under this Decree, be taken to provide medical or dental treatment through the instrumentality of a medical or dental practitioner if the person, in the course of carrying on a business, provides services to the practitioner for which the person is entitled to receive a share in the profits or income of the practitioner’s medical or dental practice.

Object of the Decree

3.—(1) The object of this Decree is to protect the health and safety of the public in relation to the practice of medicine and dentistry.

- (2) The Decree achieves this object by—
- (a) providing for the registration and licensing of medical and dental practitioners and students;
 - (b) regulating the provision of medical and dental treatment to ensure the maintenance of high standards of competence and conduct by the persons who provide medical and dental treatment.

PART 2—FIJI MEDICAL COUNCIL

Continuation of the Fiji Medical Council

4.—(1) This section continues the Fiji Medical Council as a corporate body, with perpetual succession and a common seal.

- (2) The Council—
- (a) may sue and be sued in its corporate name;
 - (b) has all the powers of a natural person that are capable of being exercised by a corporate body; and
 - (c) has the functions and powers conferred by or under this Decree.

(3) If a document appears to bear the common seal of the Council, it is presumed, in the absence of proof to the contrary, that the common seal of the Council was duly affixed to the document.

Composition of the Council

- 5.—(1) The Council consists of 9 members appointed by the Minister, of whom—
- (a) the Permanent Secretary for Health who shall be the Chairperson;
 - (b) the Deputy Secretary Public Health who shall be the Deputy Chairperson;
 - (c) one is registered medical practitioner, elected by all licensed medical practitioners;
 - (d) the President of the Fiji Medical Association OR one representative nominated by the Fiji Medical Association in accordance with its own rules and procedures;

- (e) the President of the Fiji College of General Practitioners OR one representative nominated by the Fiji College of General Practitioners in accordance with its own rules and procedures;
- (f) the Dean of the School of Medicine from the Fiji National University;
- (g) the Dean of Umanand School of Medicine;
- (h) one is a licensed medical practitioner vocationally registered in the field of public health appointed by the Minister after consultation with the Permanent Secretary for Health.
- (i) one is a licensed medical practitioner registered as a specialist in vocational category appointed by the Minister after consultation with the Permanent Secretary for Health.

(2) An election for the purposes of subsection (1)(a) must be conducted in accordance with section 16.

(3) A person appointed to the Council under subsection (1)—

- (a) does not need to be a registered medical practitioner, unless otherwise specified in the subsection;
- (b) must have at least 5 years experience in the discipline which qualifies the such person for appointment.

(4) In the absence of the Chairperson from any meeting of the Medical Council, the Deputy Chairperson shall for the purposes of such meeting act as the Chairperson exercising all the powers of the Chairperson.

(5) In each Council meeting the quorum shall be the Chairperson, or in his or her absence the Deputy Chairperson, and four members present in person.

(6) Section 17 applies as to the terms of membership of the Council.

Powers of the Council

6.—(1) The Council has all the powers necessary to enable it to perform its functions as set out in section 7.

(2) Without limiting subsection (1), the Council has the power, in accordance with this Decree—

- (a) to do all things that a corporate body can do, consistent with its functions under this Decree;
- (b) to register medical practitioners and medical students under Part [7];
- (c) to issue medical practice licences under Part [8] and to revoke or suspend such licences;
- (d) to conduct investigations and take disciplinary proceedings against registered medical practitioners and medical students under Part [9];
- (e) to appoint investigators to investigate complaints pursuant to Part [9];
- (f) to refer disciplinary inquiries to the Tribunal under Part [10];
- (g) to suspend the registration of a registered medical practitioner or medical student;
- (h) to issue codes of practice and professional standards for medical practitioners and medical students under section 7;
- (i) to issue or endorse guidelines on continuing professional development for registered medical practitioners;
- (j) to delegate its functions consistently with the power of delegation in Schedule [2].

Functions of the Council

7.—(1) The functions of the Fiji Medical Council are—

- (a) to regulate medical practice in the public interest;
- (b) on the advice of the relevant Professional Standards Committee and after consultation with persons and bodies the Council considers appropriate—
 - (i) to approve courses of education and training recognised for registration on the medical student register;
 - (ii) to decide the requirements necessary for registration as a medical practitioner generally and in each vocational category;
 - (iii) to decide on the continuing professional development requirements to be met for obtaining and renewing a medical practice licence;
- (c) to decide on applications for registration from persons wishing to become registered medical practitioners or medical students;

- (d) to issue, revoke and suspend annual medical practice licences;
- (e) to prepare or endorse codes of conduct or professional standards for registered medical practitioners or students and codes of conduct for medical services providers;
- (e) to respond to notifications and complaints received against medical practitioners, medical students and medical services providers or persons who occupy positions of authority in corporate medical services providers;
- (g) to provide advice to the Minister as the Council considers appropriate or as the Minister requests;
- (h) to carry out other functions assigned to the Council by or under this Decree, or by the Minister in writing.

(2) The response to notifications and complaints under subsection (1)(f) may include processes by which the registered person, provider or person who occupies the position voluntarily enters into an undertaking concerning the location, nature and scope of practice, pursuing a further course of study, submitting to a course of medical assessment and treatment, or other measures the Council considers appropriate.

(3) The Council must perform its functions under this Decree with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of medical treatment in Fiji.

PART 3—FIJI DENTAL COUNCIL

Continuation of the Fiji Dental Council

8.—(1) This section continues the Fiji Dental Council as a corporate body, with perpetual succession and a common seal.

(2) The Council—

- (a) may sue and be sued in its corporate name;
- (b) has all the powers of a natural person that are capable of being exercised by a corporate body; and
- (c) has the functions and powers conferred by or under this Decree.

(3) If a document appears to bear the common seal of the Council, it is presumed, in the absence of proof to the contrary, that the common seal of the Council was duly affixed to the document.

Composition of the Council

9.—(1) The Council consists of 9 members appointed by the Minister, of whom—

- (a) the Permanent Secretary for Health who shall be the Chairperson;
- (b) the National Advisor Oral Health who shall be the Deputy Chairperson;
- (c) one is registered dental practitioner, elected by all licensed dental practitioners;
- (d) the President of the Fiji Dental Association OR one representative nominated by the Fiji Dental Association in accordance with its own rules and procedures;
- (e) the Dean of the School of Medicine from the Fiji National University;
- (f) the Dean of the Umanand School of Medicine;
- (g) one is a licensed dental practitioner vocationally registered in the field of public health appointed by the Minister after consultation with the Permanent Secretary for Health;
- (h) two is a licensed dental practitioner registered as a specialist in a vocational category appointed by the Minister after consultation with the Permanent Secretary for Health;

(2) An election for the purpose of subsection (1)(c) must be conducted in accordance with section 16.

(3) A person appointed to the Council under subsection (1)—

- (a) does not need to be a registered dental practitioner, unless otherwise specified in the subsection;
- (b) must have at least 5 years experience in the discipline which qualifies the person for appointment.

(4) In the absence of the Chairperson from any meeting of the Medical Council, the Deputy Chairperson shall for the purposes of such meeting act as the Chairperson exercising all the powers of the Chairperson.

(5) In each Council meeting the quorum must consist of the Chairperson, or in his or her absence the Deputy Chairperson, and four members present in person.

(6) Section 17 applies as to the terms of membership of the Council.

Powers of the Council

10. The Council has all the powers necessary to enable it to perform its functions as set out in section 11.

(2) Without limiting subsection (1), the Council has the power, in accordance with this Decree—

- (a) to do all things that a corporate body can do, consistent with its functions under this Decree;
- (b) to register dental practitioners and dental students under Part [7];
- (c) to issue dental practice licences under Part [8] and to revoke or suspend such licences;
- (d) to conduct investigations and take disciplinary proceedings against registered dental practitioners and dental students under Part [9];
- (e) to appoint investigators to investigate complaints pursuant to Part [9];
- (f) to refer disciplinary inquiries to the Tribunal under Part [10];
- (g) to suspend the registration of a registered dental practitioner or a dental student;
- (h) to issue codes of practice and professional standards for dental practitioners and dental students under section 11;
- (i) to issue or endorse guidelines on continuing professional development for registered dental practitioners;
- (j) to delegate its functions consistently with the power of delegation in Schedule [2].

Functions of the Council

11.—(1) The functions of the Fiji Dental Council are—

- (a) to regulate the dental practice in the public interest;
- (b) on the advice of the relevant Professional Standards Committee and after consultation with persons and bodies the Council considers appropriate—
 - (i) to approve courses of education or training recognised for registration on the dental student register;
 - (ii) to decide the requirements necessary for registration as a dental practitioner generally and in each vocational category;
 - (iii) to decide on the continuing professional development requirements to be met for obtaining and renewing a dental practice licence;
- (c) to consider and determine applications for registration from persons wishing to become registered dental practitioners or dental students;
- (d) to issue, revoke and suspend annual dental practice licences;
- (e) to prepare or endorse codes of conduct or professional standards for registered dental practitioners or students and codes of conduct for dental services providers;
- (f) to respond to notifications and complaints received against dental practitioners, dental students and dental services providers or persons who occupy positions of authority in corporate dental services providers;
- (g) to provide advice to the Minister as the Council considers appropriate or as the Minister requests;
- (h) to carry out other functions assigned to the Council by or under this Decree, or by the Minister in writing.

(2) The response to notifications and complaints under subsection (1)(f) may include processes by which the registered person, provider or person who occupies the position voluntarily enters into an undertaking concerning the location, nature and scope of practice, pursuing a further course of study, submitting to a course of medical assessment and treatment, or other measures the Council considers appropriate.

(3) The Council must perform its functions under this Decree with the object of protecting the health and safety of the public by achieving and maintaining high professional standards both of competence and conduct in the provision of dental treatment in Fiji.

PART 4—COMMITTEES OF COUNCILS

Professional Conduct Committee

12.—(1) Each Council must establish a Professional Conduct Committee consisting of 5 members, of whom—

- (a) 3 must be registered medical or dental practitioners, as the case may be; and
- (b) 2 must be persons who are not registered medical or dental practitioners.

(2) In the case of the Medical Professional Conduct Committee, one of the members appointed under subsection (1)(a) must be a member of the Fiji College of General Practitioners nominated by that College.

(3) When appointing a Professional Conduct Committee, the relevant Council must designate one of the members of the Committee as presiding member of the committee.

(4) A quorum for a Professional Conduct Committee is 3 members, 2 of whom must be registered persons.

(5) Members of the Professional Conduct Committee—

- (a) are appointed for a term of 3 years but may not be re-appointed;
- (b) may—
 - (i) resign by writing to the presiding member of the Council;
 - (ii) be dismissed for cause by the Council or (in the case of a person nominated by the Fiji College of General Practitioners) at the request of the College.

(6) A committee member who is appointed pursuant to section 12(1)(a) ceases to be a member if he or she ceases to be a registered medical or dental practitioner, as the case may be.

(7) The functions of a Professional Conduct Committee are to—

- (a) receive notifications and complaints concerning registered persons;
- (b) initiate and monitor assessments of the health of registered persons where appropriate;
- (c) negotiate agreements with practitioners, whose capacity to provide certain treatments is impaired, to practise within appropriate limitations;
- (d) refer cases to the respective Council for imposition of conditions if a negotiated agreement cannot be reached;
- (e) monitor compliance with conditions agreed or imposed by the Council;
- (f) conduct investigations in accordance with Part [9] to determine whether any prima face case of unprofessional conduct exists;
- (g) recommend to the Council disciplinary action or reference to the Tribunal in the case of a finding of unprofessional conduct in accordance with Part [9];
- (h) perform any other appropriate function assigned to the Committee by the relevant Council from time to time.

(8) The Committee's functions in matters of regulation of impaired practitioners and discipline of unprofessional conduct should be under the active guidance of a senior legal practitioner, and principles of natural justice must be applied.

Professional Standards Committee

13.—(1) Each Council must establish a Professional Standards Committee consisting of appropriate professional and other representatives.

(2) The Professional Standards Committee for the Fiji Medical Council is to be known as the Medical Professional Standards Committee and is to comprise—

- (a) a presiding member, appointed by the Council from among its members who are registered medical practitioners;
- (b) one person nominated by the Fiji School of Medicine postgraduate medical training division;
- (c) one person nominated by the Fiji Medical Association;
- (d) one person nominated by the Fiji College of General Practitioners; and
- (e) one licensed medical practitioner vocationally registered in the field of public health, nominated by the Permanent Secretary.

(3) The Professional Standards Committee for the Fiji Dental Council is to be known as the Dental Professional Standards Committee and is to comprise—

- (a) a presiding member, appointed by the Council from among its members who are registered dental practitioners;
- (b) one person nominated by the Fiji National University postgraduate dental section;
- (c) one person elected by all licensed dental practitioners in private practice;
- (d) one person elected by all licensed dental practitioners in Government service;
- (e) one licensed dental practitioner vocationally registered in the field of public health, nominated by the Permanent Secretary;

(4) An election for the purposes of subsection (3)(c) or (d) must be conducted in accordance with section 16.

(5) Members of the Professional Conduct Committee—

- (a) are appointed for a term of 3 years but may not be re-appointed;
- (b) may—
 - (i) resign by writing to the presiding member of the Council;
 - (ii) be dismissed for cause by the Council or (in the case of a nominated person) at the request of the nominating body.

(6) A committee member who is appointed pursuant to section 13(2)(e) or 13(3)(e) ceases to be a member if he or she ceases to be a licensed medical or dental practitioner, as the case may be.

(7) The functions of a Professional Standards Committee are to—

- (a) monitor every training course for medical or dental students, as the case may be, within tertiary education facilities in Fiji;
- (b) make recommendations to the relevant Council concerning recognition of degrees awarded, in Fiji or elsewhere, as qualification for registration on the appropriate register;
- (c) make recommendations to the relevant Council concerning the qualifications for registration generally and in each vocational category;
- (d) refer to the relevant Council any need to change the status previously granted to any course of training or education;
- (e) make recommendations to the relevant Council on the continuing professional development requirements for obtaining and renewing practice licences in each vocational category;
- (f) examine continuing professional development programmes proposed by registered persons, and make recommendations to the relevant Council concerning recognition of such programmes;
- (g) develop guidelines for assessment of the clinical practice of registered persons, especially for those in independent solo practice;
- (h) assess and determine the status to be given to persons completing such programmes managed by appropriate academic or professional bodies;
- (i) perform any other appropriate function assigned to the Committee by the relevant Council from time to time.

(8) The Committee's responsibility for monitoring of continuing professional education may be delegated to appropriate specialist bodies, but the Committee must monitor these bodies.

(9) The Committee must establish guidelines on appropriate matters, including, but not limited to—

- (a) the number of hours to be spent in continuing professional development for the renewal of a licence;
- (b) feedback questionnaires on continuing professional development;
- (c) distribution of points between interactive and private educational activity claims.

(10) The procedure of the Professional Standards Committee is governed by section 15 and Schedule [2] to the extent appropriate.

Other committees

14.—(1) A Council may establish committees—

- (a) to advise the Council or the Registrar on any matter; or
- (b) to carry out functions on behalf of the Council.

(2) Subject to subsection (3), a committee of a Council may include persons who are not members of the Council but who have appropriate expertise relating to the intended work of the committee.

(3) The presiding member of a committee must be a member of the relevant Council.

(4) Unless powers are delegated to a committee under Schedule [2], a committee, other than one appointed under section 12 or 13, has an advisory role only and does not exercise any of the powers of the Council under this Decree.

(5) The term of office of a person appointed to a committee under this section is as decided by the Council.

Procedure of committees

15.—(1) The procedure of a committee, except as otherwise provided by or under this Decree, is to be governed by Part [5] and by Schedule [2] to the extent appropriate.

(2) The quorum of a committee is a majority of its members unless the Council otherwise directs when appointing the committee.

(3) The relevant Council may direct a committee to change its procedures (other than those set out in Schedule [2]), or to adopt new procedures, if the Council considers it necessary to achieve efficient and accountable operation of the committee's business

(4) The Council may remove a member from any committee if—

- (a) the member ceases to be qualified for the appointment;
- (b) the member conducts himself or herself in a manner that brings the medical or dental profession into disrepute;
- (c) the member is absent for 3 consecutive meeting of the committee without reasonable excuse;
- (d) the member fails to carry out or becomes incapable of performing satisfactorily the duties of a committee member.

PART 5—PROCEEDINGS OF COUNCILS

Elections and casual vacancies

16.—(1) An election conducted to choose persons for appointment to either Council or to a committee under a provision of Part [4] must be conducted in accordance with this section.

(2) The Registrar must prepare a voting list for an election as soon as practicable after a vacancy arises.

(3) Every person who when the voting list for an election is prepared—

- (a) is registered as a medical or dental practitioner, as the case may be;
- (b) holds a valid practice licence; and
- (c) is otherwise qualified in terms of the relevant provision,

is entitled to vote at the election.

(4) The Registrar must—

- (a) send to the nominated contact address of every person entitled to vote at the election an invitation to submit within 14 days one nomination for the vacancy;
- (b) if the number of nominations exceeds the number of vacancies, notify all the persons entitled to vote of the nominees and ask for objections in writing, if any;
- (c) send to every person entitled to vote a ballot paper listing all the valid nominees and inviting the person to mark and return the ballot paper within 7 days;
- (d) count the valid votes received and declare the person with the highest number of votes to be duly elected;
- (e) inform the Minister or, as he case may be, the presiding member of the Council, of the result of the election.

(5) If an election of a member fails for any reason, the Minister or the presiding member, as the case may be, must appoint a duly qualified registered medical or dental practitioner, as the case may be, and the person so appointed will be taken to have been appointed after due election.

(6) If a casual vacancy occurs in the office of a member chosen by an election, the following rules govern the appointment of a person to fill the vacancy—

- (a) if the vacancy occurs within 12 months after the member's election and at that election a candidate or candidates were excluded, the Minister or presiding member must appoint the person who was the last excluded candidate at that election;
- (b) if that person is no longer qualified for appointment or is unavailable or unwilling to be appointed, the Minister or presiding member may appoint any registered medical or dental practitioner qualified for appointment;
- (c) before appointing a registered medical or dental practitioner under paragraph (b) the Minister or presiding member must consult the relevant representative body, and section 5(6) or 9(6) as the case may be applies to the appointment;
- (d) the person appointed holds office for the balance of the term of that person's predecessor.

(7) A person may nominate himself or herself for a vacancy.

Terms and conditions of membership

17.—(1) A member of either Council—

- (a) is appointed for a term, not exceeding 3 years, specified in the instrument of appointment; and
- (b) at the expiration of a term of appointment, is eligible for reappointment.

(2) A member of either Council—

- (a) is appointed for a term, not exceeding 3 years, specified in the instrument of appointment; and
- (b) at the expiration of a term of appointment, is not eligible for reappointment.

(3) The Minister may remove a member of either Council from office if the member—

- (a) conducts himself or herself in a manner that brings the medical or dental profession into disrepute;
- (b) is absent for 3 consecutive meeting of the Council without reasonable excuse;
- (c) fails to carry out or becomes incapable of performing satisfactorily the duties of a Council member.

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

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) resigns by written notice to the Minister;
- (d) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Council; or
- (e) is removed from office under subsection (3).

(4) If a member of either Council is a member of the Professional Conduct Committee for the purposes of any proceeding under Part [9] and the member's term of office expires, or the member resigns, before those proceedings are completed, the member may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Committee.

Vacancies or defects in appointment of members

18. A decision, action or proceeding of either Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Remuneration

19.—(1) A member of either Council is entitled to remuneration, allowances and expenses determined by the Minister.

(2) A professional person who is a member of a Council or of a committee is not entitled to charge professional fees for his or her attendance at meetings or for advice given as such a member.

Procedure

20.—(1) The procedure to be adopted by each Council at its meetings is as set out in Schedule [2], and otherwise is as determined by each Council, consistently with its functions and this Decree.

(2) The Minister—

- (a) may direct a Council to change its procedures (other than those set out in Schedule [2]), or to adopt new procedures, if the Minister considers it necessary to achieve efficient and accountable operation of the Council's business; but
- (b) may not give a direction that has the effect of overruling a decision of a Council on a professional matter.

Costs

21.—(1) Each Council may award such costs against a party to proceedings before it as the Council considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs awarded by a Council may request a Master of the High Court to tax the costs and, after taxing the costs, the Master may confirm or vary the amount of the costs awarded by the Council.

(3) Costs awarded by a Council under this section may be recovered as a debt.

Funding of Councils

22.—(1) Each Council is funded out of fees for registration and other services provided by the Council as prescribed by the regulations.

(2) Each Council may at any time receive public moneys by way of grant or loan from the Government in accordance with the Financial Management Act.

Accounts and audit

23.—(1) Each Council must keep proper accounting records in relation to its financial affairs, and must have annual statements of account prepared in respect of each financial year.

(2) The accounts must be audited at least once in every year by an auditor approved by the Auditor-General and appointed by the Council.

(3) The Auditor-General may at any time audit the accounts of either Council.

Annual report

24.—(1) Each Council must, on or before April in each year, deliver to the Minister a report on the administration of this Decree in relation to its responsibilities, and the work of that Council during the preceding financial year.

(2) The report must—

- (a) include in relation to the relevant financial year—
 - (i) the number of new registrations granted during the year, with the number of conditional, full and vocational registrations;
 - (ii) the total number of registered practitioners and registered students, with the number of conditional, full and vocational registrants;
 - (iii) the number and nature of complaints received by that Council against registered persons, health services providers and persons who occupy positions of authority in corporate health service providers;
 - (iv) the number and nature of voluntary undertakings given to that Council by registered persons, health services providers and persons who occupy positions of authority in corporate health services providers;
 - (v) the outcomes of any proceedings before that Council under Part [9]; and
 - (vi) any other information prescribed by the regulations; and
- (b) incorporate the audited accounts of that Council for the relevant financial year.

(3) The Minister must, within 28 days after receiving a report under this section, have copies of the report laid before the Cabinet.

PART 6—FIJI MEDICAL AND DENTAL SECRETARIAT

Establishment of Board of Management

25.—(1) There is to be a Fiji Medical and Dental Secretariat consisting of a Board of Management and appropriate staff.

(2) The Board of Management is established as a corporate body with perpetual succession and a common seal.

(3) The Board may sue and be sued in its corporate name and has all the powers of a legal person required for the performance of its functions under this Decree.

(4) The Board of Management consists of 3 members of each Council, appointed by the respective Council for a period of 3 years.

(5) The Board of Management—

- (a) must elect its own presiding member and deputy presiding member at its first meeting;
- (b) is governed as to procedure by Schedule [2] to the extent appropriate;
- (c) in other respects may determine its own procedures, consistently with the functions of the Secretariat and this Decree.

Registrar of Secretariat

26.—(1) There is to be a Registrar of the Secretariat, who must not be a member of either Council.

(2) The Registrar is appointed by the Board of Management on terms and conditions determined by the Board.

(3) The Registrar of the Secretariat is the chief executive officer of the Secretariat.

Other staff of the Secretariat

27.—(1) There are to be such other staff of the Secretariat as the Board of Management considers necessary for the proper performance of its functions.

(2) The staff of the Secretariat may, but need not, include—

- (a) one or more Deputy Registrars or senior administrative officers;
- (b) persons responsible for communications with the public, including publications in the Gazette, websites, receiving enquiries and notifications about registered persons;
- (c) a receptionist/data entry/clerical support staff.

(3) A member of the staff of the Secretariat is not, as such, a member of the public service, but the Board may employ a person who is on leave from employment in the public service or with an instrumentality or agency of the Government.

(4) The Board may, with the approval of the Minister responsible for the public service, make use of the services, facilities or officers of the public service.

Functions of the Secretariat

28.—(1) The functions of the Secretariat are—

- (a) to provide administrative and secretarial services to, and as directed by, each Council, and any committee established by either Council;
- (b) to establish, maintain and publish the medical and dental registers required by this Decree;
- (c) to receive and process applications for registration on any of the registers and refer every application duly made to the relevant Council for decision;
- (d) to receive and process applications from registered persons for practice licences;
- (e) to receive and process notifications about medical and dental practice matters from members of the public, registered persons and health services providers;
- (f) to receive and to process forthwith complaints about registered persons and refer them to the relevant Professional Conduct Committee or Council as appropriate;
- (g) to refer disciplinary decisions of either Council to the Tribunal as appropriate;
- (h) to implement decisions of either Council on registration, licensing and disciplinary matters;

- (i) to pass information received from applicants or other persons to the relevant Council;
- (j) to convey decisions of a Council to applicants and other persons and to give appropriate publicity to them.
- (k) to maintain a website for each Council;
- (l) to communicate with medical and dental registration authorities in other jurisdictions, for the purpose of obtaining and supplying information about registered persons and applicants for registration
- (m) to perform other functions assigned to the Secretariat by either Council from time to time in order to promote the objects of this Decree.

(2) The Secretariat may obtain and pay for legal services, information technology services and other services, for the better performance of its functions.

(3) The Secretariat should be the normal channel for resolving failures of communication and frivolous complaints arising between—

- (a) members of the public and registered persons or health services providers;
- (b) registered persons or health services providers and the relevant Council.

(4) The Registrar must ensure that all services are provided, and that the business of each Council is conducted with dispatch and transparency, and as prescribed by this Decree and any relevant regulations.

(5) The Registrar is responsible, through the Board, to each of the professions and to the public and must maintain fair and consistent dealings with all registered persons.

Funding of Secretariat

29.—(1) The Secretariat is to be funded by moneys provided by each of the Councils in proportion to the income of each Council that is estimated to be received from the fees of registered persons represented by each Council, as determined by the Board and agreed by each Council.

(2) The Secretariat must remit to each Council any fees or other moneys collected by the Secretariat for services in respect of that Council.

PART 7—MEDICAL AND DENTAL REGISTRATION

Registers to be kept

30.—(1) The Registrar must keep the following registers—

- (a) a medical register;
- (b) a dental register;
- (c) a medical student register; and
- (d) a dental student register.,

(2) The medical and dental registers must include, in relation to each person on the register—

- (a) the person's full name and nominated contact address;
- (b) the qualifications for registration held by the person;
- (c) relevant qualifications obtained after registration;
- (d) any vocational category in which the person is qualified to practise;
- (e) a record of annual returns sent and licence fees paid;
- (f) any other information prescribed by the regulations,

and may include any other information the relevant Council thinks fit.

(3) The dental register must indicate the division of dental practice in which a registered person is registered.

(4) The dental student register must show the existing division in which the registered person is registered and the division that the course of study will qualify the person for.

(5) The medical and dental registers must include particulars of any registered person whose practice is subject to conditions either entered into voluntarily between a Council and the registered person, or imposed by a Council.

(6) A registered person must, within one month after changing his or her name or nominated contact address, inform the Registrar in writing of the change and failing to so inform is an offence.

Maximum penalty: A fine of \$250.

(7) The Registrar must also keep an archival register of persons who have been removed from one of the registers mentioned in subsection (1) under this or any other written law and who have not been reinstated on that register.

(8) The archival register referred to in subsection (7) must not include any person who has died, but must include, in relation to each person on the register, a statement of—

- (a) the register from which the person was removed;
- (b) the reason for removal of the person;
- (c) the date of removal;
- (d) if the removal was consequent on suspension, the duration of the suspension;
- (e) if the registration has been cancelled, the date of the cancellation;
- (f) if the person has been disqualified from being registered, the date and duration of the disqualification and any conditions attached to its removal.

(9) Information relating to a person who has been reinstated on another register must be removed from the archival register.

Registers: Supplementary

31.—(1) The Registrar is responsible to the Council for the form and maintenance of the registers.

(2) The Registrar must as soon as practicable correct any entry in a register that is not, or has ceased to be, correct.

(3) The registers must be kept available for investigation by any person during ordinary office hours at the office of the Secretariat and the registers or extracts of the registers may be made available to the public by electronic means.

(4) A person may, on payment of the prescribed fee, obtain a copy of any part of a register.

(5) A certificate—

- (a) stating that a person was, or was not, registered on a particular register at a particular date or during a particular period; and
- (b) purporting to be signed by the Registrar,

will, in the absence of proof to the contrary, be accepted in legal proceedings as proof of the registration, or of the fact that the person was not so registered, on the date or during the period stated in the certificate.

Registration on the medical or dental register

32.—(1) Subject to this Decree, an individual is eligible for registration on the medical or dental register if he or she, on application to the Secretariat, satisfies the relevant Council that he or she has qualifications approved or recognised by the Council for the purposes of registration on that register.

(2) A person cannot be registered on any register unless the person—

- (a) is medically fit to provide medical or dental treatment of the kind authorised by registration on that register;
- (b) unless exempted by the relevant Council under section 52, is insured or indemnified in a manner and to an extent approved by the Council under that section against civil liabilities that might be incurred by the person in connection with the provision of medical or dental treatment as a registered person;
- (c) in other respects is a fit and proper person to be registered on that register.

(3) An applicant whose language of instruction and assessment was not English must be required to demonstrate proficiency in written and spoken English to the satisfaction of the relevant Council by interview, or by certification from an approved assessment body.

(4) Registration as a medical or dental practitioner does itself not entitles the registered person to work in Fiji in terms of the immigration or business licensing laws.

Application for general registration

33.—(1) An application for registration must be—

- (a) made to the Secretariat in the approved manner and form; and
- (b) accompanied by the prescribed fee.

(2) An applicant for registration must—

- (a) provide the Secretariat with all documentary information that the Council specifies in order to enable the Council to determine the application;
- (b) if so required by the Council, attend for interview at a place and time specified by the Council.

(3) A Council may require an applicant for registration—

- (a) to submit a medical report or other evidence acceptable to the Council as to the applicant's medical fitness to provide medical or dental treatment of the kind authorised by registration on the register to which the application relates;
- (b) to obtain additional qualifications or experience specified by the Council before the Council determines the application.

(4) A Council must not grant registration to a person unless satisfied that the person—

- (a) is medically fit to provide medical or dental treatment of the kind authorised by registration on the relevant register; and
- (b) is a fit and proper person to be registered on the relevant register.

(5) A Council may delegate to a committee its powers under this section, but a decision on registration may only be made by the full Council after receiving advice from the committee.

General registration

34.—(1) A person who satisfies the relevant Council that he or she—

- (a) has been conditionally registered, or is eligible to be conditionally registered; and
- (b) has had satisfactory experience in medical or dental practice for at least 12 months—
 - (i) in Fiji in an institution or hospital approved by the Council on the recommendation of the Professional Standards Committee;
 - (ii) outside Fiji in an institution or hospital which in the opinion of the Council is at least of equal standard to such an institution or Hospital; or
 - (iii) partly as described in paragraph (i) and partly as described in paragraph (ii),

is entitled to be registered as a medical or dental practitioner, as the case may be.

(2) If—

- (a) a person who has not previously been registered as a medical or dental practitioner in Fiji applies for general registration, or general and vocational registration; and
- (b) the application has been accepted in principle by the relevant Council,

the person will be granted provisional registration for a period of 4 months (which may be extended at the discretion of the relevant Council.)

(3) During a period of provisional registration the person's medical or dental practice must be supervised by a licensed medical or dental practitioner designated by the relevant Council.

(4) After the period of provisional registration—

- (a) upon receipt of a certificate from the medical or dental practitioner designated under subsection (3) that the person's medical or dental practice is competent and ethical; and
- (b) upon that practitioner's recommendation that the registration be confirmed,

the Registrar must issue a certificate of registration and a practice licence, dated from the date on which the provisional registration began.

- (5) The medical or dental practitioner designated under subsection (3) must—
- (a) be licensed in the same, or an allied, vocational category, and, in the case of a dental practitioner, in the same division, as the person who is provisionally registered; and
 - (b) have adequate opportunity to observe the clinical practice of the person who is provisionally registered.

Vocational categories

35.—(1) Each Council must establish clear guidelines and qualifications for the various vocational categories recognised on its respective register.

(2) The medical or dental register must show the vocational category or categories in which each registered person is registered and the qualifications which the person has for that category or categories.

(3) A person cannot be registered in a vocational category unless the person is also registered on the medical or dental register, as the case may be.

(4) A registered person who wishes to apply for inclusion in a vocational category of a register must apply in the approved manner and pay the prescribed fee, if any.

(5) An individual registered on the medical or dental register is eligible for registration in a vocational category if he or she, on application to the Secretariat, satisfies the relevant Council that he or she—

- (a) has qualifications and clinical experience approved or recognised by the Council for the purposes of registration on that register;
- (b) has achieved an appropriate level of professional competence and expertise, as certified by a licensed medical or dental practitioner designated by the relevant Council.

(6) An application for inclusion in a vocational category is to be processed and dealt with in the same manner as an application for registration, with necessary modifications.

Temporary registration

36.—(1) A person who—

- (a) normally resides outside Fiji;
- (b) is qualified for registration as a medical or dental practitioner in Fiji; and
- (c) proposes to provide medical or dental treatment for a specified project in Fiji under the terms of an agreement between the Government and the person or another government or body,

may apply for temporary registration.

(2) An application for temporary registration must be made and processed in the same way as an application for full registration but—

- (a) the registration must have an expiry date, not later than 3 months from the date of issue;
- (b) the registration must specify the place and scope of practice of the medical or dental treatment to be provided;
- (c) the medical or dental treatment must be subject to appropriate approved supervision.

(3) If the holder of temporary registration holds a current practice licence in his or her usual place of residence, he or she does not need to obtain a practice licence from the relevant Council for the period of the temporary registration.

Interim registration

37.—(1) Upon receipt of an application for registration, the Registrar—

- (a) if the application appears to be in order;
- (b) if the Registrar considers that the relevant Council will grant the application for registration; and
- (c) after consulting a member of the relevant Professional Standards Committee designated by the committee for the purpose,

may, with the agreement of the presiding member of the relevant Council and the presiding member of the Professional Standards Committee, issue an interim certificate of registration pending confirmation at the next meeting of the relevant Council.

(2) Interim registration remains in force until the end of 3 months from issue or until the Council determines the application, whichever is earlier.

(3) A person who holds interim registration may practice as a registered medical or dental practitioner, as the case may be, without a licence until such time as the relevant Council considers and either confirms or rejects the registration or imposes conditions on it.

Conditional registration

- 38.—(1) If a person who applies for registration, or reinstatement of registration, on a particular register—
- (a) does not, in the opinion of the relevant Council, have the necessary qualifications or experience required for full registration on that register; or
 - (b) is not, in the opinion of the Council, medically fit to provide medical or dental treatment of the kind authorised by registration on that register,

the Council may grant conditional registration to the person.

- (2) Conditional registration may be conferred to enable a person—

- (a) to do whatever is necessary to become eligible for full registration;
- (b) to teach or to undertake relevant research or study in Fiji;
- (c) to perform other specified medical or dental tasks that are required in the public interest.

(3) In registering a person under subsection (2) the relevant Council may impose one or more of the following conditions on the registration—

- (a) a condition restricting the places or times at which the practitioner may provide medical or dental treatment;
- (b) a condition limiting the kind of medical or dental treatment the person may provide;
- (c) a condition limiting the period during which the registration will have effect;
- (d) a condition requiring that the person be supervised in the provision of medical or dental treatment by a particular person or by a person in a particular vocational category;
- (e) any other conditions the relevant Council thinks fit.

Registration of medical or dental students

39.—(1) A person is not entitled to provide medical or dental treatment in Fiji as part of a course of study related to medicine or dentistry, whether that course of study is being undertaken by the person in Fiji or elsewhere, unless the person is registered under this Decree as a medical or dental student, as the case may be.

(2) A person is eligible for registration as a medical or dental student on the relevant student register if the person, on application to the Secretariat, satisfies the relevant Council that he or she—

- (a) requires registration on that register—
 - (i) to enable him or her to undertake a course of study that provides qualifications for registration on the register of medical or dental practitioners;
 - or
 - (ii) to enable the person to provide medical or dental treatment as part of a course of study related to medicine or dentistry being undertaken by the person in a place outside Fiji;
- (b) is medically fit to provide medical or dental treatment of the kind authorised by registration on the relevant student register; and
- (c) in other respects is a fit and proper person to be registered on the relevant student register.

(3) If a person who applies for registration or reinstatement of registration, on a student register is not, in the opinion of the Council, medically fit to provide medical or dental treatment of the kind authorised by registration on that register, the Council may confer conditional student registration and impose one or more of the following conditions on the registration—

- (a) a condition limiting the kind of medical or dental treatment that the person may provide;
- (b) a condition limiting the period during which the registration will have effect;

- (c) a condition requiring that the person be supervised in the provision of medical or dental treatment by a particular person or by a person of a particular class;
- (d) any other conditions the relevant Council thinks fit.

(4) A Council may delegate to a committee its powers under this section but a decision on registration may only be made by the full Council.

Qualifications for registration

40.—(1) Each Council must specify the academic or professional qualifications and clinical experience that are required for registration on the medical or dental register and for inclusion in a vocational category.

(2) Each Council must specify the medical or dental training courses in Fiji that will be recognised for registration as a medical or dental student, as the case may be.

(3) The qualifications and courses that have been recognised by each Council must be published in the Gazette and on the Council or Secretariat website.

(4) In specifying qualifications and courses under this section, each Council must be responsive to global developments in the sciences, and in registration and licensing requirements for the medical and dental professions.

Further qualifications

41.—(1) A registered medical or dental practitioner who obtains any medical or dental degree, diploma or other qualification other than that by virtue of which he was registered may apply to the relevant Council to amend the register so far as it relates to the qualifications of that person.

(2) On such an application—

- (a) the relevant Council must, if satisfied that the applicant is entitled to the degree, diploma or other qualification in respect of which the application is made and that it is of sufficient standing to warrant its being entered in the appropriate register, direct the Registrar to amend the register accordingly; and
- (b) the Registrar must thereupon insert in that register particulars as to that degree, diploma or other medical or dental qualification.

Removal from a register

42.—(1) The Registrar must, on the written request of a registered person, remove the name of that person from the appropriate register.

(2) The Registrar must remove from the appropriate register the name of any person—

- (a) who dies;
- (b) who ceases to hold a qualification required for registration on that register;
- (c) whose registration is suspended by the relevant Council under Part [9];
- (d) whose registration is cancelled by the Tribunal under Part [10];
- (e) who has failed to obtain renewal of the relevant licence for 3 years;
- (f) who fails to pay a fine imposed by a Council or the Tribunal within the time specified in the order imposing the fine;
- (g) who is found to be medically unfit to practise;
- (h) who ceases for any other reason to be entitled to be registered on that Register.

(3) The Registrar must, at the request of a registered person or on the Registrar's own initiative, amend the entry in a vocational category of the medical or dental register of a person—

- (a) whose registration in that category has been cancelled or suspended by the relevant Council;
- (b) if the person ceases to hold the qualification required for inclusion in that category.
- (c) if the person fails to provide evidence of satisfactory participation in a programme of CPD approved by Council for that category; or
- (d) if the person has not practised in that category during the previous 3 years.

(4) If a medical or dental student completes, or ceases to be enrolled in, the course of study that formed the basis for the person's registration on a student register, the Registrar must remove the person's name from the relevant student register.

(5) The Registrar may act under subsection (2), (3)(b) or (4) without giving prior notice to the registered person.

Reinstatement on a register

43.—(1) A person who has been removed from a register—

- (a) on his or her application;
- (b) because of failure to obtain renewal of a licence;
- (c) because of failure to pay a fine imposed on the person by a Council or the Tribunal; or
- (d) because the person has—
 - (i) ceased to hold a qualification required for registration on that register or otherwise ceased to be entitled to be registered on that register; or
 - (ii) ceased to be enrolled in the course of study that formed the basis for the person's registration on a student register,

may apply to the relevant Council at any time for reinstatement on that register.

(2) A person whose registration on a register has been suspended may apply to the relevant Council for reinstatement on that register (but not, in the case of an order for suspension for a specified period made in disciplinary proceedings, until after the expiry of that period).

(3) A person who has been disqualified from being registered under Part [10] may, subject to the terms of the order for disqualification, apply to the relevant Council for reinstatement on the appropriate register.

(4) An application for reinstatement must—

- (a) be made to the Secretariat in the approved manner and form; and
- (b) be accompanied by the prescribed reinstatement fee.

(5) An applicant for reinstatement must, if the relevant Council so requires, provide the Secretariat with specified information to enable the Council to determine the application.

(6) The relevant Council may require an applicant for reinstatement of registration—

- (a) to submit a medical report or other evidence acceptable to the Council as to the applicant's medical fitness to provide medical or dental treatment of the kind authorised by registration on the relevant register; or
- (b) to obtain additional qualifications or experience specified by the Council before the Council determines the application.

(7) Subject to this section, the Registrar must reinstate on the appropriate register an applicant under this section if the relevant Council so directs.

(8) The Council may refuse to reinstate the applicant on the appropriate register until any complaint outstanding against the applicant under this Decree has been finally disposed of.

Authority conferred by registration

44.—(1) Subject to any restrictions, limitations or conditions imposed under this Decree, and to the requirement for a licence—

- (a) registration on a medical or dental register authorises the person to provide medical or dental treatment, as the case may be;
- (b) inclusion in a vocational category authorises the person to provide medical or dental treatment in that category;
- (c) registration on the medical or dental student register authorises the person to provide medical or dental treatment in the course of study as a medical or dental student and under appropriate supervision.

(2) In the case of the dental register, the dental treatment authorised by registration is limited to the kind of treatment comprised in dentistry, dental surgery, dental therapy, dental hygiene or the work of a dental technician, as the case may be.

(3) The Registrar must on application in the approved manner by a registered person, and on payment of the prescribed fee, issue to the person a certificate of registration in the approved form.

(4) No person may recover any charge in any court of law for any medical or dental advice or attendance, or for the performance of any operation, or for any medicine which he has both prescribed and supplied, unless when the charge in respect of which the action is brought was incurred, the person was—

- (a) registered on the appropriate register; and
- (b) in possession of a valid practice licence.

PART 8—MEDICAL AND DENTAL PRACTICE

Requirement for annual licence

45.—(1) Every registered medical or dental practitioner who engages in medical or dental practice must hold a valid and current medical or dental practice licence, as the case may be.

(2) If a registered medical or dental practitioner engages in medical or dental practice in a vocational category, the licence held by that person must state the vocational category.

(3) Subject to subsection (4), a licence is valid for 12 months but may be renewed annually, for as long as the holder remains a registered person, on application to the Registrar.

(4) A licence must not be granted that extends beyond the period of temporary or provisional registration, but may be extended if the temporary registration is renewed or the provisional registration is confirmed, as the case may be.

(5) Application for a licence or for renewal of a licence must be made to the Registrar in the approved form, and must be accompanied by the prescribed fee and by the documents set out in subsection (6).

(6) The documents mentioned in subsection (5) are—

- (a) evidence of satisfactory participation in an approved programme of continuing professional development relevant to the person's vocational category;
- (b) evidence that the person is entitled to work as a registered person in Fiji in terms of the business licensing law (and immigration law if appropriate);
- (c) evidence that the person has indemnity insurance as required by the relevant Council under section 45, unless exempted under that section;
- (d) a return, in the approved form, containing appropriate information relating to—
 - (i) the provision by the person of medical or dental treatment, as the case may be, during the preceding year; and
 - (ii) any other matter relevant to the person's eligibility for a practice licence under this Decree.

(7) In the case of a first licence, and of an application from a registered person who does not hold a practice licence, the evidence required under subsection (5)(c)(i) is of the applicant's practice as a medical or dental student, as the case may be, or of the applicant's medical or dental practice outside Fiji..

(8) A licence must state any vocational category or categories in which the holder is registered.

(9) A dental practice licence must state the division of the dental register in which the holder is registered.

Decision on licence

46.—(1) Upon receipt of an application in accordance with section 45 the Registrar, if satisfied that the licence fee has been paid, the required documents are in order and that they show that the applicant is entitled to a licence, or renewal of a licence, may issue the licence or renewal, as the case may be.

(2) If the Registrar is not satisfied as described in subsection (1), the Registrar may—

- (a) require the applicant to provide further information or documents to support the application; or
- (b) refer the application to the relevant Professional Standards Committee for directions.

Conditional licence

47.—(1) If a registered person who has not provided medical or dental treatment of the kind authorised by his or her registration for a period of 3 years or more applies for a licence, the Registrar must refer the application to the relevant Council for approval.

(2) If a registered person wishes to vary the vocational category to which a licence relates, the registrar must refer the application to the relevant Council for approval.

(3) The relevant Council—

- (a) may, before granting its approval under subsection (1) or (2), require the applicant to obtain qualifications or experience specified by the Council and for that purpose may require the applicant to undertake a specified course of instruction and training in medicine or dentistry or a vocational category; and
- (b) may impose one or more of the following conditions on the applicant's licence—
 - (i) a condition restricting the places and times at which the applicant may provide medical or dental treatment;
 - (ii) a condition limiting the kind of medical or dental treatment that the applicant may provide;
 - (iii) a condition requiring the applicant to be supervised in the provision of medical or dental treatment by a particular person or by a person of a particular class;
 - (iv) any other condition the Council thinks fit.

Suspension or revocation of licence

48.—(1) If the Registrar has reason to believe that the holder of a licence obtained the licence by any false representation or that the conditions for holding the licence are not being met, the Registrar may report the fact to the relevant Council with a view to disciplinary action being taken under Part [9].

(2) The Registrar must notify the holder of the licence of action taken under subsection (1) and must invite the holder to make appropriate representations to the relevant Council.

(3) Discretion under this section may be taken in relation to the vocational category for which a licence is valid in the same way as in relation to the licence itself.

Registered person must report medical unfitness to Registrar

49.—(1) If a registered person becomes aware that he or she is or may be medically unfit to provide medical treatment, the person must forthwith give written notice of that fact to the Registrar, who must notify the relevant Council.

(2) Upon receipt of a notice under subsection (1), the relevant Council may take any action authorised by this Decree in relation to registered persons who are or may be medically unfit.

(3) A person who fails to notify the Registrar as required by subsection (1) commits an offence.
Maximum penalty: A fine of \$10,000.

Report to Registrar of cessation of status as student

50.—(1) The person in charge of an educational institution must, if a medical or dental student ceases to be enrolled in a course of study at that institution providing qualifications for registration on the medical or dental register, within 3 months give written notice of that fact to the Registrar, who must amend the relevant student register accordingly.

(2) A person registered on the medical or dental student register who completes, or ceases to be enrolled in, the course of study that formed the basis for that registration must within 3 months give written notice of that fact to the Registrar, who must amend the relevant student register accordingly.

(3) A person who fails to notify the Registrar as required by subsection (1) or (2) is guilty of unprofessional conduct and commits an offence.

Maximum penalty –

- (a) \$5,000 for an offence under subsection (1);
- (b) \$1,250 for an offence under subsection (2).

Information to be given to Registrar by health services providers

- 51.—(1) Every person who is a health services provider must give written notice to the Registrar of—
- (a) the provider's full name and business or registered address;
 - (b) the address of the premises at which the provider provides medical or dental treatment;
 - (c) the full names and nominated contact addresses of the registered persons through the instrumentality of whom the provider is providing medical or dental treatment; and
 - (d) in the case of a corporate health services provider, the full names and addresses of all persons who occupy a position of authority in the provider.

- (2) The information required by subsection (1) must be given—
- (a) if the person was a health services provider immediately before this section came into force - within 60 days of it coming into force;
 - (b) in any other case - within 60 days of the person becoming a medical or dental services provider,

(3) The provider must, within 30 days of any change occurring in the particulars required to be given under subsection (1), inform the Registrar in writing of the change.

(4) A person who contravenes or fails to comply with this section commits an offence.

Maximum penalty: A fine of \$10,000.

- (5) The Secretariat—
- (a) must keep a record of information provided to the Registrar under this section available for inspection, on payment of the prescribed fee, by any person during ordinary office hours at the office of the Secretariat; and
 - (b) may make the record available to the public by electronic means.

Registered persons and health services providers to be indemnified against loss

52.—(1) A registered person or health services provider must not, unless exempted by the relevant Council, provide medical or dental treatment unless insured or indemnified in a manner and to an extent approved by that Council against civil liabilities that might be incurred by the registered person or medical or dental services provider, as the case may be, in connection with the provision of any such treatment.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(3) The relevant Council may, subject to such conditions as it thinks fit, exempt a person or a class of persons, from the requirements of this section and may, whenever it thinks fit, revoke an exemption or revoke or vary the conditions under which an exemption operates.

PART 9—INVESTIGATIONS AND PROCEEDINGS

Requirement of fairness

53.—(1) The administrative processes established by a Council or Professional Conduct Committee for handling notifications and complaints received against registered persons or health services providers or persons who occupy positions of authority in corporate health services providers must be designed—

- (a) to be fair to both the notifier or complainant and the respondent;
- (b) to keep both the notifier or complainant and the respondent properly informed about the steps taken by the Council or Committee in response to the notification or complaint;
- (c) to provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the notifier or complainant and the respondent;
- (d) to keep both the notifier or complainant and the respondent properly informed about the outcome of the processes; and
- (e) to take into account the needs of particular classes of persons who may otherwise suffer disadvantage in the conduct of those processes.

(2) When inviting a person to attend a meeting or hearing conducted pursuant to this Part, the Registrar must inform the person of the person's rights and obligations, of the procedure to be adopted, of the possible outcomes and of the consequences of not attending.

- (3) Subject to section 64(4), conduct by a registered person—
- (a) which amounts to a criminal offence - may be the subject of a notification or complaint under this Decree;
 - (b) which results in a notification or complaint under this Decree—may be prosecuted as an offence.

Notifications

- 54.—(1) If—
- (a) a registered person or health professional who has had professional dealings with a registered person;
 - (b) a person who provides medical or dental treatment through the instrumentality of a registered person;
 - (c) a hospital that has entered into an arrangement with a registered person under which that person provides medical or dental treatment at the hospital;
 - (d) the person in charge of an educational institution at which a medical or dental student is enrolled in a course of study providing qualifications for registration on the medical or dental register; or
 - (e) a member of the public,

is of the opinion that the registered person or student has or might have engaged in unprofessional conduct, the person or hospital may give written notice to the Registrar, setting out the reasons for that opinion, and the Registrar must inform the relevant Professional Conduct Committee.

(2) If a health services provider is of the opinion that a registered person through whom the provider provides medical or dental treatment has or might have engaged in unprofessional conduct, the provider must give written notice to Registrar, setting out the provider's reasons for that opinion, and the Registrar must inform the relevant Professional Conduct Committee.

(3) If a registered person or member of the public is of the opinion that a health services provider has or might have engaged in conduct which is or might give cause for disciplinary action under this Decree, the person must give written notice to Registrar, setting out the provider's reasons for that opinion, and the Registrar must inform the relevant Professional Conduct Committee.

(4) On receiving a notification under this section, and before informing the relevant Professional Conduct Committee of it, the Registrar may investigate the matter the subject of the notification and if appropriate intervene to facilitate a resolution between the parties.

(5) If, as a result of the Registrar's intervention or otherwise, the notifier withdraws the notification, the Registrar must so inform the Committee but no other action will be taken on it, unless the Committee otherwise directs.

(6) If the notification is not withdrawn, and if it discloses a cause for disciplinary action, the Registrar must formulate a complaint, or assist the notifier to formulate a complaint, on the basis of the notification, and section 56 applies.

Cause for disciplinary action

- 55.—(1) There is proper cause for disciplinary action against a registered person if—
- (a) the person's registration or licence or licence renewal was improperly obtained;
 - (b) the person fails to comply with any condition imposed by virtue of this Decree on the person's registration or practice licence;
 - (c) the person commits unprofessional conduct; or
 - (d) the person is for any reason no longer a fit and proper person to be registered on the appropriate register or to be licensed (other than for medical unfitness, as to which section 65 applies.)
- (2) There is proper cause for disciplinary action against a health services provider if—
- (a) the provider has contravened or failed to comply with a provision of this Decree;
 - (b) there has been, in connection with the provision of medical or dental treatment by the provider, a contravention or failure to comply with a code of conduct under this Decree applying to the provider;

- (c) the provider or any person employed or engaged by the provider has, in connection with the provision of medical or dental treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct;
- (d) the provider is for any reason not a fit and proper person to be a health services provider; or
- (e) in the case of a corporate health services provider, an occupier of a position of authority in the provider—
 - (i) has contravened or failed to comply with a provision of this Decree;
 - (ii) has, in connection with the provision of medical or dental treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct; or
 - (iii) is for any reason not a fit and proper person to occupy a position of authority in a corporate health services provider.

(3) There is proper cause for disciplinary action against the occupier of a position of authority in a corporate health services provider if—

- (a) the person has contravened or failed to comply with a provision of this Decree;
- (b) the person has, in connection with the provision of medical or dental treatment by the provider, engaged in conduct that would, if the person were a registered person, constitute unprofessional conduct;
- (c) the person is for any reason not a fit and proper person to occupy a position of authority in a corporate health services provider;
- (d) the provider has contravened or failed to comply with a provision of this Decree;
- (e) there has been, in connection with the provision of medical or dental treatment by the provider, a contravention or failure to comply with a code of conduct under this Decree applying to the provider; or
- (f) the provider, or any person employed or engaged by the provider, has, in connection with the provision of medical or dental treatment by the provider, engaged in conduct that would, if the provider or the person were a registered person, constitute unprofessional conduct.

(4) In the cases specified in subsection (3)(d), (e) and (f) it is a defence to show that the person could not, by the exercise of reasonable care, have prevented the contravention, failure to comply or conduct.

Complaints

56.—(1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a registered person or a health services provider may be laid before the relevant Professional Conduct Committee (in the approved manner and form) by—

- (a) the Registrar on behalf of a member of either Council;
- (b) the Registrar on behalf of a notifier, pursuant to section 54(6);
- (c) the Registrar on behalf of the Secretariat;
- (d) the Minister;
- (e) a representative body; or
- (f) a person who is aggrieved by the conduct of the person or provider or, if the person aggrieved is a child or is suffering from a mental or physical incapacity, by a person acting on his or her behalf.

(2) Upon receiving a complaint, the relevant Professional Conduct Committee must—

- (a) if it considers that the complaint is frivolous or vexatious, decide to take no further action on it;
- (b) refer the matter to the Registrar as provided by subsection (3);
- (c) if the person in respect of whom the complaint is made is a member of the Fiji College of General Practitioners, inform the College of the complaint, and invite the College to make any report or recommendation to the Committee it considers appropriate;
- (d) ask an investigator to investigate the subject-matter of the notification or complaint.

(3) If—

- (a) a complaint has been laid by or on behalf of any person; and

- (b) the relevant Committee is satisfied that the complaint arose from a misapprehension on the part of the complainant or from a misunderstanding between the parties,

the Committee may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar for an informal meeting to clarify the misapprehension or misunderstanding and if necessary define the issues.

(4) The Committee may direct that the Registrar conducts the meeting alone, or jointly with a member of the Committee designated by the Committee in the direction.

Informal meeting with Registrar

57.—(1) The Registrar must—

- (a) in writing inform the complainant and the respondent of the decision of a Professional Conduct Committee under section 56;
- (b) if so required by the Committee under section 57(3), invite the parties to attend for an informal meeting of the parties.

(2) At an informal meeting the parties are not entitled to be represented but may be accompanied by an adviser.

(3) An informal meeting may be adjourned from time to time to allow the Registrar to make enquiries.

(4) The Registrar must report to the relevant Professional Conduct Committee the outcome of an informal meeting as soon as practicable after it has been concluded.

(5) The Registrar's report must indicate—

- (a) the nature of the meeting, including any adjournment;
- (b) whether the parties attended and the nature of their submissions;
- (c) whether as a result of the meeting the complaint has been withdrawn;
- (d) if not, the terms of the complaint that the Committee is required to consider;
- (e) whether the designated Committee member, if any, concurred in the Registrar's findings.

Appointment of investigators

58.—(1) Each Council must appoint one or more investigators to conduct investigations for the purposes of this Part.

(2) An investigator must be either—

- (a) a member of the relevant Council who is also a registered medical or dental practitioner, as the case may; or
- (b) a person who is not a member of the Council but who has specialist expertise relevant to the matter being investigated.

(3) The Registrar may be appointed as an investigator for a particular matter if the Council is satisfied that there will be no conflict of interest.

(4) A Council may delegate to its Professional Conduct Committee the power to appoint investigators under this section.

(5) If, having received a complaint under section 55 which is not withdrawn, a Professional Conduct Committee considers that there are reasonable grounds for suspecting—

- (a) that a person has committed an offence against this Decree;
- (b) that there is some other proper cause for disciplinary action against a person; or
- (c) that a registered person is medically unfit to provide medical or dental treatment, as the case may be,

the Committee must request an investigator to investigate the matter.

Powers of investigators

59.—(1) For the purposes of an investigation, an investigator may—

- (a) at any reasonable time, enter and inspect premises of a registered person or premises on which the investigator reasonably suspects an offence against this Decree has been or is being committed;

- (b) with the authority of a warrant issued by a magistrate or in circumstances in which the investigator reasonably believes that immediate action is required, use reasonable force to break into or open any part of, or anything in or on any premises referred to in paragraph (a);
- (c) while on premises entered under paragraph (a) or (b), seize and retain anything found on the premises that the investigator reasonably believes may afford evidence relevant to the matters under investigation;
- (d) require any person who has possession of documents or records relevant to the matters under investigation to produce those documents or records for investigation, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process;
- (e) inspect any documents or records produced to the investigator and retain them for such reasonable period as the investigator thinks fit, and make copies of the documents or records;
- (f) require any person who is in a position to provide information relevant to the matters under investigation to answer any question put by the investigator in relation to those matters;
- (g) take photographs, films or video or audio recordings;
- (h) if the investigator reasonably suspects that an offence against this Decree has been or is being committed, require the suspected offender to state his or her full name and address.

(2) An investigator must not exercise the power conferred by subsection (2)(a) in relation to any residential premises except with the permission of the occupier of the premises or on the authority of a warrant issued by a magistrate.

(3) A magistrate must not issue a warrant under this section unless satisfied, by information given on oath, that the warrant is reasonably required in the circumstances.

(4) At the conclusion of an investigation, an investigator must report his or her findings to the relevant Professional Conduct Committee.

Offence to hinder, etc. investigator

60.—(1) A person who—

- (a) hinders or obstructs an investigator in the exercise of powers conferred by this Decree;
- (b) uses abusive, threatening or insulting language to an investigator;
- (c) refuses or fails to comply with a requirement of an investigator under this Decree;
- (d) when required by an investigator to answer a question, refuses or fails to answer the question to the best of the person's knowledge, information and belief; or
- (e) falsely represents, by words or conduct, that he or she is an investigator; or
- (f) offers an inducement to an investigator to do or refrain from doing anything,

commits an offence.

Maximum penalty: A fine of \$10,000.

(2) A person in charge of premises which an investigator is authorised to search under the powers in section 59 who fails to give the investigator all reasonable assistance and provide all reasonable facilities needed to enable the powers to be exercised commits an offence.

Maximum penalty: A fine of \$5,000.

Decision after investigation

61.—(1) If a Professional Conduct Committee has asked an investigator to investigate a complaint, it may, on receiving the report from the investigator—

- (a) decide to take no further action on the complaint;
- (b) conduct a disciplinary hearing; or
- (c) recommend the relevant Council to refer the matter to the Tribunal in accordance with Part [10].

(2) If the Committee decides to take no action on a complaint, a record of the investigation must be kept and may be used as evidence in any subsequent proceedings involving that registered person or health services provider.

- (3) If the Committee decides to conduct a disciplinary hearing—
 - (a) the Committee must give the respondent an opportunity to elect to have the matter dealt with by the Tribunal; and
 - (b) if the respondent so elects, the Committee must recommend to the relevant Council to lay a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint.
- (4) If, in the course of conducting a hearing under this section, a Committee considers—
 - (a) that the allegations or evidence against the respondent are sufficiently serious; or
 - (b) that it is otherwise appropriate to do so,

the Committee may terminate the proceedings under this section and recommend to the Council to lay a complaint against the respondent before the Tribunal in relation to those allegations or that evidence.

- (5) If—
 - (a) the respondent elects to have the matter dealt with by the Tribunal; or,
 - (b) the Committee terminates the proceedings in order for the Council to lay a complaint against the respondent before the Tribunal,

the proceedings will not be taken to be heard and determined for the purposes of this Part until heard and determined by the Tribunal.

Proceedings before a Professional Conduct Committee

- 62.—(1) A Professional Conduct Committee—
- (a) should conduct proceedings under this Part as expeditiously as possible; and
 - (b) must report to the Council its findings and recommendations on a complaint as soon as practicable after making them.
- (2) The proceedings should be conducted in as informal manner as possible, consistent with the requirements of natural justice, and for that reason—
- (a) the proceedings are not open to the public;
 - (b) the parties are not entitled to be represented but may be accompanied by one medical or dental practitioner, as the case may be, and one legal adviser.
- (3) The presiding member over the proceedings may, sitting alone—
- (a) deal with—
 - (i) preliminary, interlocutory or procedural matters; and
 - (ii) questions of costs; and
 - (b) enter consent orders,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order that the member considers appropriate.

(4) Subject to subsection (3), questions arising before the Committee including any question of law or procedure are to be determined by majority decision of the members.

(5) If a member of the Committee (other than the member presiding) dies or is for any other reason unable to continue with the proceedings, the remaining members may, if the member presiding so determines, continue and complete the proceedings.

- (6) A Professional Conduct Committee in proceedings under this Part must—
 - (a) give to all parties to proceedings before it at least 14 days written notice of the time and place at which it intends to conduct the proceedings;
 - (b) afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Committee;
 - (c) put in evidence the report of the investigator and give the parties an opportunity to question the investigator on the report.

(7) The Committee—

- (a) may, if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (6); and
- (b) may, if of the opinion that it is desirable to do so in the public interest—
 - (i) suspend the registration or licence of the person who is the subject of the proceedings; or
 - (ii) impose conditions on the person's registration or licence restricting the person's right to provide medical or dental treatment,

pending hearing and determination of the proceedings.

(8) The requirement to give written notice under subsection (6) does not extend to adjournments.

(9) If a party to whom notice has been given under subsection (5) does not attend at the time and place fixed by the notice, the Committee may proceed to hear and determine the matter in the absence of that party.

(10) The complainant in a hearing before a Committee under this Part is, subject to any direction of the Committee to the contrary, entitled to be present at the hearing of the proceedings.

(11) In the course of proceedings before a Committee under this Part, the Committee may—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of Fiji or of another country, and draw any conclusions of fact from the evidence that it considers proper;
- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

Powers of Professional Conduct Committee in relation to witnesses, etc.

63.—(1) For the purposes of proceedings before a Professional Conduct Committee (including an application for registration or reinstatement of registration), the Committee may—

- (a) by summons signed on behalf of the Committee by a member of the Committee or the Registrar, require the attendance before the Committee of any person whom the Committee thinks fit to call before it;
- (b) by summons signed on behalf of the Committee by a member of the Committee or the Registrar, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the Committee certifying that the translation accurately reproduces in English the contents of the document or record;
- (c) examine any document, record or equipment produced before it, and retain it for such reasonable period as it thinks fit, and make copies of the document or record or its contents;
- (d) require any person to make an oath or affirmation (which may be administered by any member of the Committee) to answer truthfully questions put by any member of the Committee or any person appearing before the Committee; or
- (e) require any person appearing before the Committee (whether summoned to appear or not) to answer any questions put by any member of the Committee or by any person appearing before the Committee.

(2) On the receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Committee, issue a summons on behalf of the Committee.

(3) A person who—

- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Committee;
- (b) having been served with a summons to produce—
 - (i) a written translation of the document or record into English; and

- (ii) a certificate signed by a translator approved by the Committee certifying that the translation accurately reproduces in English the contents of the document or record,
fails, without reasonable excuse, to comply with the summons;
- (c) misbehaves before the Committee, wilfully insults the Committee or one or more of the members in the exercise of the member's official duties, or wilfully interrupts the proceedings of the Committee;
or
- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Committee,

commits an offence.

Maximum penalty: A fine of \$10,000.

(4) A person who appears as a witness before the Committee has the same protection as a witness in proceedings before the High Court.

Recommendation for disciplinary action

64.—(1) If, after conducting a hearing under this Part, a Committee is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, it may recommend to the relevant Council to—

- (a) censure the respondent;
- (b) require the respondent to pay to the Council a fine not exceeding \$5,000;
- (c) if the respondent is a registered person—
 - (i) impose conditions on the person's registration or licence restricting the person's right to provide medical or dental treatment in relation to times, places and other matters, and either generally or in a specified vocational category;
 - (ii) suspend the respondent's registration or licence generally or in a specified vocational category for a period not exceeding 3 months;
 - (iii) revoke the respondent's licence generally or in a specified vocational category.

(2) The relevant Council must accept the recommendation of the Professional Conduct Committee and take disciplinary action accordingly and make a decision within 28 days, unless it considers that the matter should be reconsidered by the Committee, in which case it must send the matter back to the Committee for reconsideration.

(3) The Committee when recommending imposition of a fine under this section may—

- (a) fix a period within which the fine must be paid;
- (b) on application by a person liable to pay a fine imposed under this section, extend the period within which the fine must be paid.

(4) If—

- (a) a person has been convicted of a criminal offence in a court and fined; and
- (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person cannot in addition be fined under this section in respect of conduct giving rise to the offence.

(5) A fine imposed under this section is recoverable by the relevant Council as a debt.

(6) The Registrar may, without further notice, remove from the appropriate register and cancel the licence of a person who fails to pay a fine imposed under this section.

(7) This section does not affect the provisions of section 65 relating to a finding of medical unfitness of a registered person.

Medical fitness of registered persons

65.—(1) If—

- (a) a registered person or health professional who has had professional dealings with a registered person;
- (b) a person who provides medical or dental treatment through the instrumentality of a registered person;

- (c) a hospital that has entered into an arrangement with a registered person under which that person provides medical or dental treatment at the hospital;
- (d) the person in charge of an educational institution at which a medical or dental student is enrolled in a course of study providing qualifications for registration on the medical or dental register; or
- (e) a member of the public,

is of the opinion that the registered person or student is or may be medically unfit to provide medical or dental treatment, as the case may be, the person must give written notice to the Registrar, setting out his or her reasons for that opinion and any other information required by the regulations, and the Registrar must inform the relevant Council.

(2) If a health services provider is of the opinion that a registered person through whom the provider provides medical or dental treatment is or may be medically unfit to provide medical or dental treatment, as the case may be—

- (a) the provider must give written notice to Registrar, setting out the provider's reasons for that opinion and any other information required by the regulations; and
- (b) the Registrar must inform the relevant Council

(3) A person (other than a member of the public) or a health services provider who fails to notify the Registrar as required by subsection (1) or (2) respectively commits an offence.

Maximum penalty: A fine of \$10,000.

(4) The Registrar, the Minister, or a representative body may at any time, and whether or not there has been a notification under subsection (1), in writing ask the relevant Council to consider whether a named registered person is medically unfit to provide medical or dental treatment.

(5) The relevant Council must refer a notification or request under this section to the relevant Professional Conduct Committee for a recommendation.

- (6) If a registered person is admitted to or confined in a mental hospital under—
- (a) the Mental Health (Care and Treatment) Decree 2010;
 - (b) the Criminal Procedure Code Decree; or
 - (c) any law for the time being in force relating to prisons,

the relevant Council must refer to case to the relevant Professional Conduct Committee for a recommendation.

(7) The Committee may—

- (a) refer the matter to a panel of registered persons with appropriate experience in impairment and medical unfitness to practice for a report; or
- (b) appoint an investigator to report on the matter to the Committee, in which case the provisions of this Part relating to investigators apply to the extent appropriate.

(8) If the Committee is satisfied, after due inquiry, that a registered person is medically unfit to provide medical or dental treatment in any respect and that it is desirable in the public interest that an order be made under this section, it may recommend to the relevant Council to—

- (a) suspend the person's registration or licence until further order of the Council or for a specified period; or
- (b) impose one or both of the conditions mentioned in subsection (9) on the person's registration or licence, or both,

and the Council must act on that recommendation unless it refers the matter back to the Committee for further consideration.

(9) The conditions are—

- (a) a condition restricting the person's right to provide medical or dental treatment, as the case may be, generally or in a particular respect;
- (b) a condition requiring the person to undergo counselling or treatment or to enter into any other undertaking.

(10) A person or body who has to make a determination under this Decree as to a person's fitness to provide medical or dental treatment must have regard to the question of whether the person is able to provide medical or dental treatment personally to a patient without endangering the patient's health or safety.

(11) A registered person who considers that his or her fitness to practise is impaired in any respect may notify the Registrar of the possible impairment, and the provisions of this section apply to the extent appropriate, except that it is not necessary to appoint an investigator.

Requirement for medical examination or report

66.—(1) The relevant Professional Conduct Committee may, for any purpose associated with the administration or operation of this Decree, require a registered person, or a person who is applying for registration or reinstatement of registration to—

- (a) submit to an examination by a health professional, or by a health professional of a class specified by the Committee; or
- (b) provide a medical report from a health professional, or from a health professional of a class, specified by the Committee,

including an examination or report that will require the person to undergo some form of medically invasive procedure.

(2) If a person fails to comply with a requirement made under subsection (1), the Committee may recommend to the relevant Council to suspend the person's registration until further order of the Council, and the Council must act on that recommendation unless it refers the matter back to the Committee for further consideration.

Variation or revocation of conditions imposed by a Council

67.—(1) If a Council, pursuant to section 37 or section 65, imposes a condition in relation to the person's registration or licence, the registered person may at any time apply to the Secretariat for variation or revocation of the condition.

(2) On an application under subsection (1), the Registrar must refer the matter to the relevant Professional Conduct Committee which must hear the application and make a recommendation to the relevant Council.

(3) On the hearing of an application under this section—

- (a) the procedure is the same as for a disciplinary hearing, with necessary modifications;
- (b) the Registrar, the Minister and representative bodies are entitled to appear and be heard.

Notification of decisions, etc.

68.—(1) Upon the conclusion of a disciplinary hearing under this Part, the Registrar must—

- (a) notify the parties of the decision of the relevant Council;
- (b) publish the decision in the Gazette;
- (c) if necessary, amend the appropriate register to reflect the decision; and
- (d) if necessary, issue a new registration certificate or licence.

(2) If a registration certificate or licence is to be endorsed, suspended or revoked following a disciplinary hearing, the holder of the certificate or licence must surrender it for the purpose, and failure to do so is an offence. Maximum penalty: A fine of \$10,000.

(3) The provisions of this section apply with appropriate modifications to the findings of the Tribunal and of the High Court on an appeal.

PART 10—MEDICAL AND DENTAL PROFESSIONAL CONDUCT TRIBUNAL

Establishment of Tribunal

69.—(1) This section establishes the Medical and Dental Professional Conduct Tribunal.

(2) The Tribunal is not a standing body but is constituted under section 70(2) as and when required.

Composition of Tribunal

70.—(1) The Tribunal consists of 3 members appointed by the Chief Justice of whom—

- (a) the President must be a person who is qualified to be a judge of the High Court; and

- (b) 2 other members must be either registered medical or dental practitioners (depending on the nature of the inquiry) chosen from the panel.

(2) For the purpose of subsection (1)(b), the Minister must, after consulting appropriate representative bodies, appoint, as the case may be, at least 5 registered medical practitioners and 5 registered dental practitioners who are not members of either Council to be a panel from which the 2 members to be appointed to the Tribunal under that subsection can be chosen.

(3) A member of the Tribunal must not have been involved in the investigation or preliminary hearings, if any.

(4) The Tribunal may include—

- (a) a registered medical or dental practitioner who is not a member of either Council; and
 (b) a person of equivalent qualifications who is not a Fiji resident,

if specialist expertise is required for a particular case.

(5) The members of the Tribunal must include one woman and one man.

Terms and conditions of membership

71.—(1) Members of the Tribunal are appointed on conditions determined by the Chief Justice for a term appropriate to deal with the inquiry for which the Tribunal is convened.

(2) The Chief Justice may remove a member of the Tribunal from office—

- (a) for breach of, or non-compliance with, a condition of appointment;
 (b) for misconduct; or
 (c) for failure or incapacity to carry out official duties satisfactorily.

(3) The office of a member of the Tribunal becomes vacant if the member—

- (a) dies;
 (b) resigns by written notice to the Chief Justice;
 (c) ceases to satisfy the qualification by virtue of which the member was eligible for appointment to the Tribunal; or
 (d) is removed from office under subsection (2).

(4) A member of the Tribunal is entitled to remuneration, allowances and expenses determined by the Minister.

Vacancies or defects in appointment of members

72.—(1) If there is a vacancy on the Tribunal, the proceedings must be adjourned until the vacancy is filled.

(2) An act or proceeding of the Tribunal is not invalid by reason only of a defect in the appointment of a member.

Registrar of the Tribunal

73.—(1) There is to be a Registrar of the Tribunal.

(2) The Registrar of the Tribunal is the person for the time being holding or acting in the office of Registrar of the High Court.

Jurisdiction of the Tribunal

74.—(1) The Tribunal has jurisdiction to hear—

- (a) an appeal against the refusal by a Council to register, or reinstate the registration of, a person, brought by the person;
 (b) an appeal against the refusal by a Council to license a registered person in a specified or any vocational category, brought by the person;
 (c) a complaint laid by a Council on election by a respondent under section 62(3);
 (d) a complaint laid by a Council on the recommendation of a Professional Conduct Committee under section 56(4);

- (e) an appeal against disciplinary decision by a Council under Part [9] brought by a respondent who is aggrieved by the decision;
- (f) an appeal against a decision of a Council under section 66 relating to the medical fitness of a person brought by the person ;
- (g) an appeal against a decision of a Council under section 67 on the variation or revocation of conditions imposed on a registered person, brought by the person.

(2) A complaint laid pursuant to subsection (1)(c) or (d) must be laid within 42 days of the election or receipt of the recommendation and is commenced by written notice to the Registrar of the Tribunal, copied to the respondent.

(3) An appeal to the Tribunal under subsection (1)(a), (b), (e), (f) or (g) must be brought within 42 days of the decision appealed against and is commenced by written notice to the Registrar of the Tribunal, copied to the relevant Council and any other party.

PROCEEDINGS OF THE TRIBUNAL

Decisions by President of the Tribunal sitting alone

75.—(1) The President of the Tribunal sitting alone may —

- (a) deal with—
 - (i) preliminary, interlocutory or procedural matters;
 - (ii) questions of costs; and
 - (iii) questions of law;
- (b) enter consent orders,

and may, for that purpose or as a consequence, while sitting alone, make any determination or order (including a final order) that the person considers appropriate.

(2) Any questions of law or procedure arising before the Tribunal are to be determined by the President of the Tribunal and any other questions by unanimous or majority decision of the members.

Powers of the Tribunal on a complaint

76.—(1) A complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person may be laid before the Tribunal by the Secretariat on behalf of the relevant Council (whether or not a complaint against the person has been laid before the Council under Part [9]).

(2) If the Council lays before the Tribunal a complaint setting out matters that are alleged to constitute grounds for disciplinary action against a person, the Tribunal must, unless it considers the complaint frivolous or vexatious, inquire into the subject matter of the complaint.

(3) If, after conducting an inquiry under this section, the Tribunal is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, the Tribunal may, by order—

- (a) censure the respondent;
- (b) require the respondent to pay to the relevant Council a fine not exceeding \$20,000;
- (c) if the respondent is a registered person—
 - (i) impose conditions on the respondent's registration or licence restricting the respondent's right to provide medical treatment generally or in a specified vocational category;
 - (ii) suspend the respondent's registration or licence for a period not exceeding one year, generally or in a specified vocational category;
 - (iii) cancel the respondent's registration or licence generally or in a specified vocational category;
 - (iv) cancel the registration and revoke the licence and disqualify the respondent from being registered generally or in a specified vocational category;
- (d) prohibit the respondent from carrying on business as a health service provider;
- (e) prohibit the respondent from occupying a position of authority in a corporate health services provider.

- (4) If the Tribunal disqualifies a person under subsection (3)(c) it may—
- (a) stipulate that the disqualification is to apply—
 - (i) permanently;
 - (ii) for a specified period;
 - (iii) until the fulfilment of specified conditions; or
 - (iv) until further order;
 - (b) stipulate that an order relating to a person is to have effect at a specified time and impose conditions as to the conduct of the person or the person's business until that time.
- (5) A fine imposed under subsection (2) is recoverable by the relevant Council as a debt.
- (6) If—
- (a) a person has been convicted of a criminal offence in a court and fined; and
 - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person cannot in addition be fined under this section in respect of conduct giving rise to the offence.

(7) The Registrar of the Secretariat may, without further notice, remove from the appropriate register a person who fails to pay a fine imposed under this section.

Powers of the Tribunal on an appeal

77.—(1) On an appeal under section 76(1), the Tribunal must examine the decision of the relevant Council on the evidence or material before that Council but the Tribunal may, as it thinks fit, allow further evidence or material to be presented to it.

- (2) The Tribunal, on an appeal under section 76(1)—
- (a) must give the Council from whose decision the appeal is made an opportunity to be heard;
 - (b) is not bound by the rules of evidence but may inform itself as it thinks fit;
 - (c) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
 - (d) must give due weight to the decision being appealed against and the reasons for it and not depart from the decision except for cogent reasons.
- (3) The Tribunal may, after hearing an appeal under this section—
- (a) affirm the decision appealed against;
 - (b) substitute any decision that the relevant Council could have made;
 - (c) remit the matter to the relevant Council for consideration or further consideration in accordance with any directions or recommendations of the Tribunal;
 - (d) make any order as to costs or as to any other matter that the case requires.

Variation or revocation by the Tribunal of conditions

78.—(1) The Tribunal may, at any time, on application by a registered person, vary or revoke a condition imposed by the Tribunal in relation to that person's registration or licence.

(2) The relevant Council is entitled to appear and be heard on an application under this section.

(3) If the relevant Council has exercised its powers under Part [9] to suspend the registration or licence of the person the subject of the proceedings or impose conditions on the person's registration, the Tribunal may revoke or vary the suspension or conditions imposed by the Council.

Proceedings before the Tribunal

79.—(1) Subject to this Decree, the Tribunal must give all the parties to proceedings before the Tribunal at least 14 days written notice of the time and place at which it intends to conduct the proceedings, and must afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

- (2) The Tribunal may—
- (a) if it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); and
 - (b) if of the opinion that it is desirable to do so in the public interest—
 - (i) suspend the registration of the person who is the subject of the proceedings; or
 - (ii) impose conditions on the person's registration restricting the person's right to provide medical or dental treatment,

pending hearing and determination of the proceedings.

- (3) The requirement to give written notice under subsection (1) does not extend to adjournments.

(4) If a party to whom notice has been given under subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed to hear and determine the matter in the absence of that party.

- (5) A party to proceedings before the Tribunal is entitled to be represented at the proceedings.

- (6) The Tribunal—

- (a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(7) The Tribunal may proceed in the public interest notwithstanding investigations in progress, or charges already preferred, against the respondent concerning the same matter as the enquiry or hearing before the tribunal.

- (8) Subject to this Decree, the procedure at an inquiry is as determined by the Tribunal.

Powers in relation to witnesses, etc.

- 80.—(1) For the purposes of an inquiry under this Part, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal, by a member of the Tribunal or the Registrar of the Tribunal, require the attendance before the Tribunal of any person whom the Tribunal thinks fit to call before it;
- (b) by summons signed on behalf of the Tribunal, by a member of the Tribunal or the Registrar of the Tribunal, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the relevant Council certifying that the translation accurately reproduces in English the contents of the document or record;
- (c) investigate any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents;
- (d) require any person to make an oath or affirmation (which may be administered by any member of the Tribunal) to answer truthfully questions put by any member of the Tribunal or any person appearing before the Tribunal;
- (e) require any person appearing before the Tribunal (whether summoned to appear or not) to answer any questions put by any member of the Tribunal or by any person appearing before the Tribunal.

- (2) A person who—

- (a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before the Tribunal;
- (b) having been served with a summons to produce—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the relevant Council certifying that the translation accurately reproduces in English the contents of the document or record,
 fails, without reasonable excuse, to comply with the summons;
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or one or more of the members in the exercise of the members' official duties, or wilfully interrupts the proceedings of the Tribunal; or

(d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Tribunal,
 commits an offence.
 Maximum penalty: A fine of \$10,000.

(3) A person who appears to give evidence before the Tribunal has the same protection as a witness in proceedings before the High Court.

(4) If a person summoned under subsection (1) fails to produce any books or equipment or to appear before the Tribunal as required by the summons or, having appeared, refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal, a certificate of the failure or refusal, signed by a member of the Tribunal or by the Registrar of the Tribunal, must be filed in the High Court.

(5) If a certificate has been filed under subsection (4), a party requiring the production of books or equipment or the appearance of a person before the Tribunal may apply to the High Court for an order directing the production of the books or equipment or for that person to attend, be sworn or affirm and answer questions (as the case may require) and on such an application the Court may make any order it thinks fit (including an order for costs).

(6) The Court may require that notice be given of an application under subsection (5) to the person against whom the order is sought or any other person (but an order may be made, if the Court thinks fit, although no notice has been given of the application).

(7) In the course of an inquiry under this Part, the Tribunal may—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of Fiji or of another country, and draw any conclusions of fact from the evidence that it considers proper;
- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

Costs

81.—(1) The Tribunal may award costs (to be fixed by the Tribunal or taxed by a Master of the High Court) against a party to proceedings before the Tribunal as it thinks fit.

(2) Costs awarded by the Tribunal under this section may be recovered as a debt.

Contravention of prohibition order

82.—(1) If a person carries on business as a health services provider in contravention of an order of the Tribunal under section 76(3), the person commits an offence.
 Maximum penalty: A fine of \$75,000 or imprisonment for 12 months, or both.

(2) If a person occupies a position of authority in a corporate health services provider in contravention of an order of the Tribunal under section 76(3), the person and the provider each commits an offence.
 Maximum penalty: A fine of \$75,000 or imprisonment for 12 months, or both.

(3) If a person contravenes or fails to comply with a condition imposed by the Tribunal as to the conduct of the person or the person's business, the person commits an offence.
 Maximum penalty: A fine of \$75,000 or imprisonment for 12 months, or both.

Register of prohibition orders

83.—(1) The Registrar of the Tribunal must keep a register of persons who have been prohibited by order of the Tribunal under section 76(3) from carrying on business as a health services provider or occupying a position of authority in a corporate health services provider.

(2) The Registrar of the Tribunal must notify the Registrar of the Secretariat and the authority that issued the business licence to the health services provider of a prohibition order made in respect of a health services provider under section 76(3).

(3) The register of prohibitions—

- (a) must not include any person who is dead;
- (b) must include, in relation to each person on the register—
 - (i) the person's full name and business address; and

- (ii) particulars of the order;
 - (iii) in the case of a corporate health services provider, the name and business address of the company, and the names of its directors.
- (4) The Registrar of the Tribunal is responsible to the Tribunal for the form and maintenance of the register.
- (5) The Registrar must correct an entry in the register that is not, or has ceased to be, correct.
- (6) The register of prohibition orders must be kept available for investigation by any person during ordinary office hours at the office of the Secretariat and the register may be made available to the public by electronic means.
- (7) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.
- (8) In legal proceedings, a document apparently certified by the Registrar to be a copy of the register must be accepted as such in the absence of proof to the contrary.

Power of Tribunal to make rules

84. The Tribunal may make rules—

- (a) regulating the practice and procedure of the Tribunal; or
- (b) making any other provision that is necessary or expedient for carrying into effect the provisions of this Decree relating to the Tribunal.

Right of appeal to High Court

85.—(1) An appeal lies to the High Court against any decision of the Tribunal in the exercise of its jurisdiction under section 75(1).

- (2) The appeal lies—
- (a) if it is an appeal against a decision on a complaint—to the Court constituted of a single Judge;
 - (b) if it is an appeal against a decision on an appeal—to the High Court.
- (3) An appeal against a decision on a complaint may be instituted by the relevant Council or by the respondent to the complaint.
- (4) An appeal against a decision on an appeal may be instituted by the appellant or respondent to the original appeal
- (5) An appeal must be instituted within 42 days of the date of the decision appealed against, but the Court may, if satisfied that it is just and reasonable in the circumstances to do so, extend that period (whether or not it has already expired).
- (6) The Court must, on an appeal under this section, examine the decision of the Tribunal on the evidence or material before the Tribunal, but the Court may, as it thinks fit, allow further evidence or material to be presented to it.
- (7) The Court, on an appeal under this section—
- (a) must give the Tribunal an opportunity to make written representations;
 - (b) is not bound by the rules of evidence but may inform itself as it thinks fit;
 - (c) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
 - (d) must give due weight to the decision being appealed against and the reasons for it and not depart from the decision except for cogent reasons.
- (8) The Court may, after hearing an appeal under this section—
- (a) affirm the decision appealed against;
 - (b) remit the matter to the Tribunal for consideration or further consideration in accordance with any directions or recommendations of the Court;
 - (c) make any order as to costs or as to any other matter that the case requires.

Operation of order may be suspended

86.—(1) If an order has been made by a Council or the Tribunal, and the Council or the Tribunal (as the case may be) or the High Court is satisfied that an appeal against the order has been instituted, or is intended, it may, if it thinks fit in the circumstances of the case, suspend the operation of the order until the determination of the appeal.

(2) If a Council or the Tribunal has suspended the operation of an order under subsection (1), the Council or the Tribunal (as the case may be) may terminate the suspension, and if the High Court has done so, the Court may terminate the suspension.

Rules of court

87. The Chief Justice may make rules—

- (a) regulating the practice and procedure of the High Court on an appeal under this Part; or
- (b) making any other provision that is necessary or expedient for carrying into effect the provisions of this Decree relating to the High Court.

PART 11—OFFENCES

Provision of medical or dental treatment by an unregistered person

88.—(1) A person who provides medical or dental treatment must not seek to recover a fee or other charge, or any part of a fee or charge, for the treatment unless, at the time the treatment was provided—

- (a) the person was registered in the appropriate medical or dental register; or
- (b) the person provided the treatment through the instrumentality of a person who was so registered.

(2) A person who provides medical or dental treatment in a vocational category or in a division of the dental register must not seek to recover a fee or other charge, or any part of a fee or charge, for the treatment unless, at the time the treatment was provided—

- (a) the person was registered in that vocational category in the medical or dental register or in that division in the dental register; or
- (b) the person provided the treatment through the instrumentality of a person who was so registered.

(3) A person who contravenes subsection (1) or (2) commits an offence.
Maximum penalty: A fine of \$75,000 or imprisonment for 6 months, or both.

Holding out as a registered person

89.—(1) A person who—

- (a) holds himself or herself out as a registered person; or
- (b) permits another person to hold him or her out as such,

when not registered on the appropriate register, commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(2) A person who holds out another as a registered person when the other person is not registered on the appropriate register commits an offence.

Maximum penalty: A fine of \$50 000 or imprisonment for 6 months, or both.

(3) A person who—

- (a) holds himself or herself out as registered in a vocational category or in a division of the dental register; or
- (b) permits another person to hold him or her out as such,

when not registered in that category or in that division, commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(4) A person who holds out another as being registered in a vocational category or in a division of the dental register when the other person is not so registered commits an offence.

Maximum penalty: A fine of \$50 000 or imprisonment for 6 months, or both.

Offences concerning conditional registration

90.—(1) A person who contravenes, or fails to comply with, a condition imposed on the person's registration commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(2) A person whose registration is subject to a condition and who—

- (a) holds himself or herself out as having a registration that is not subject to a condition; or
- (b) permits another person to do so,

commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(3) A person who holds out another whose registration is subject to a condition as having a registration that is not subject to a condition commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

Use of certain titles or descriptions prohibited

91.—(1) A person who is not registered on the appropriate register and who uses a relevant term, or any of its derivatives, to describe himself or herself or a service that he or she provides, commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(2) A person who, in the course of advertising or promoting health services that he or she provides, uses a relevant term, or any of its derivatives, to describe a person who is engaged in the provision of the service but who is not registered on the appropriate register, commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(3) In this section, “relevant term” means—

- (a) in relation to registration on the medical student register, “registered medical student”;
- (b) in relation to registration on the dental student register, “registered dental student”;
- (c) in relation to registration on the general medical register, “medical practitioner”;
- (d) in relation to registration on the general dental register, “dental practitioner”;
- (e) in relation to vocational registration, any term that states or implies that the person is registered in a vocational category;
- (f) any other word or expression prescribed by the regulations.

Offences in relation to practice licences

92.—(1) A registered person who does not hold a current medical or dental practice licence, or whose licence has been suspended or revoked, and who provides medical or dental treatment respectively for fee or reward, commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(2) A registered person who practises in a vocational category which is not stated in his or her practice licence commits an offence as if he or she does not hold a licence.

(3) A registered person whose practice licence has conditions attached and who provides medical or dental treatment in breach of those conditions commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

Registered person, etc. must declare interest in relevant business

93.—(1) A registered person or close relative of a registered person who has an interest in a relevant business must—

- (a) in the case of an interest that came into existence before this section came into force, within one month after it came into force;
- (b) in any other case, within one month after the interest comes into existence,

notify the Secretariat in writing of the interest and of the manner in which it arose.

(2) A registered person or close relative of a registered person who has an interest in a relevant business must, within one month after a change in the nature or extent of the interest, notify the Secretariat in writing of the change.

(3) Upon receiving notification under subsection (1) or (2), the Secretariat may in writing require the person who gave the notice to provide further information that it reasonably requires for purposes of this Decree.

(4) A person who fails to give information as required by subsection (1) or (2) or further information as required under subsection (3) commits an offence.
Maximum penalty: A fine of \$20,000.

(5) If a registered person or close relative of a registered person has an interest in a relevant business, the registered person must not—

- (a) refer a patient to, or recommend that a patient use, a health service provided by that business; or
- (b) prescribe, or recommend that a patient use, a health product manufactured, sold or supplied by that business,

unless the registered person has informed the patient, in writing, of the interest of the registered person or close relative of the registered person in that business.

(6) A person who fails to inform a patient as required by subsection (4) commits an offence.
Maximum penalty: A fine of \$20,000.

(7) Subject to subsection (8), a person has an interest in a relevant business for the purposes of this section if the person is likely to derive a financial benefit, whether directly or indirectly, from the profitable conduct of the business.

(8) For the purposes of subsection (4)—

- (a) a financial benefit is not derived by a registered person if the benefit consists solely of reasonable fees payable to the registered person for treatment provided to patients by the registered person; and
- (b) a person does not have an interest in a relevant business that is carried on by a public company if the interest consists only of a shareholding in the company of less than 5% of the issued share capital of the company.

(9) It is a defence to proceedings for an offence against subsection (4) and to a charge of unprofessional conduct for failure to comply with that subsection for the defendant to prove that he or she did not know and could not reasonably have been expected to know that a close relative had an interest in the relevant business to which the referral, recommendation or prescription that is the subject of the proceedings relates.

Giving, offering or accepting a benefit for referral or recommendation

94.—(1) A person must not give, or offer to give, a registered person or a close relative of a registered person a benefit as an inducement, consideration or reward for the registered person—

- (a) referring a patient to, or recommending that a patient use, a health service provided by the person; or
- (b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by the person.

(2) A registered person or a close relative of a registered person must not accept from any person a benefit offered or given as an inducement, consideration or reward for the registered person—

- (a) referring a patient to, or recommending that a patient use, a health service provided by that person; or
- (b) prescribing, or recommending that a patient use, a health product manufactured, sold or supplied by that person.

(3) A person who contravenes subsection (1) or (2) commits an offence.
Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(4) In this section, “benefit” means money, property or anything else of value.

Improper directions to registered persons

95.—(1) A person who provides medical or dental treatment through the instrumentality of a registered person and who directs or pressures the registered person to engage in unprofessional conduct commits an offence.
Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

(2) If a person who occupies a position of authority in a corporate health services provider directs or pressures a registered person through whom the provider provides medical or dental treatment to engage in unprofessional conduct, the person and the provider each commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

Procuring registration or licence by fraud

96.—(1) A person who, by fraud or any other dishonest means, procures registration or reinstatement of registration (whether for himself or herself or for another person) commits an offence.

Maximum penalty: A fine of \$20,000.

(2) A person who, by fraud or any other dishonest means, procures a practice licence (whether for himself or herself or for another person) commits an offence.

Maximum penalty: A fine of \$20,000.

False or misleading statements

97.—(1) A person who makes a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Decree commits an offence.

Maximum penalty: A fine of \$20,000.

(2) A person who makes a notification or complaint in respect of a registered person, knowing it to be untrue, or being reckless as to its truth, commits an offence.

Maximum penalty: A fine of \$20,000.

Failing to give information relating to a claim

98.—(1) If a person has claimed damages or other compensation from a registered person or other person for alleged negligence committed by the registered person in the course of providing medical or dental treatment, the person against whom the claim is made must—

- (a) within 30 days after the claim is made; or
- (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

give the Secretariat all relevant information relating to the claim.

(2) If a person has claimed damages or other compensation from a health services provider for alleged negligence committed by the provider in connection with the provision of medical or dental treatment, the provider must—

- (a) within 30 days after the claim is made; or
- (b) within 30 days after any order is made by a court to pay damages or other compensation in respect of that claim or any agreement has been entered into for payment of a sum of money in settlement of that claim (whether with or without a denial of liability),

give the Secretariat all relevant information relating to the claim.

(3) Upon receiving information under subsection (1) or (2), the Secretariat may in writing require the person or provider who gave the information to give in writing within 30 days such further information as it reasonably requires for the purposes of this Decree.

(4) A person or provider who fails to give relevant information within the time mentioned in subsection (1) or (2) or further information as required under subsection (3) commits an offence.

Maximum penalty: A fine of \$10,000.

Punishment of conduct that constitutes an offence

99. If conduct constitutes an offence and is also a ground for disciplinary action under this Decree—

- (a) the taking of disciplinary action under this Decree is not a bar to conviction and punishment for the offence; and
- (b) subject to sections, 65(8) and 76(6), conviction and punishment for the offence is not a bar to disciplinary action under this Decree.

Vicarious liability for offences

100. If a corporate health services provider or other corporate body commits an offence against this Decree, each individual occupying a position of authority in the provider or body commits an offence and liable to the same penalty as is prescribed for the principal offence, unless it is proved that the individual could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

Application of fines

101. A fine imposed for an offence against this Decree must be paid to the Secretariat and is recoverable as a civil debt owing to the relevant Council.

Exemption

102.—(1) The offences under sections 88 to 93 relating to registration do not apply in relation to a person who is the subject of an exemption under subsection (3) below and who provides medical or dental treatment in accordance with the exemption.

(2) The offence under section 94 relating to practice licences do not apply in relation to a person who is the subject of an exemption under subsection (4) below and who provides medical or dental treatment in accordance with the exemption.

(3) The Minister may, by written notice, exempt a person or class of persons from the requirement for registration under this Decree for a specified period or for specified purposes, or both, if of the opinion that good reason exists for doing so in the particular circumstances of the case.

(4) The Minister may, by written notice, exempt a person or class of persons from the requirement for a practice licence under this Decree for a specified period or for specified purposes, or both, if of the opinion that good reason exists for doing so in the particular circumstances of the case.

(5) An exemption under subsection (3) or (4)—

(a) must not be made retrospectively;

(b) may be subject to such conditions as the Minister, on the advice of the relevant Council, thinks fit and specifies in the notice.

(6) The Minister may vary or revoke a notice under this section.

(7) The Minister must consult both the Councils before exercising the powers under subsection (3), (4) or (6).

(8) A person who contravenes, or fails to comply with, a condition of an exemption under this section commits an offence.

Maximum penalty: A fine of \$50,000 or imprisonment for 6 months, or both.

PART 12—FIJI MEDICAL ASSOCIATION

Continuation of the Fiji Medical Association

103.—(1) This section continues in existence the Fiji Medical Association as a corporate body with perpetual succession and a common seal.

(2) Membership of the Association is open to every registered medical practitioner and registered medical student.

(3) A person who is a member of the Fiji Medical Association at the commencement of this Decree continues to be member of the Association unless and until the person's membership is terminated in accordance with the rules of the Association.

Powers of the Association

104.—(1) The Association—

(a) continues to have power to hold real and personal property; and

(b) may sue and be sued in matters whether relating to contract or tort or otherwise in connection with the exercise of its powers or the carrying out of its functions under this Decree.

(2) The Association may—

- (a) acquire, hold, develop or dispose of property of all kinds, whether real or personal, and derive capital or income from such property, for all or any of the objects of the Association;
- (b) raise or borrow money for all or any of the foregoing objects in the manner and upon the security from time to time determined by the Association;
- (c) invest and deal with moneys of the Association not immediately required in the manner from time to time be determined by the Association;
- (d) pay the whole or any part of the expenses incurred by members in attending meetings of the Association or of any committee appointed by the Association;
- (e) pay all costs and other payments incidental to or connected with the discharge of any function of the Association;
- (f) do all such other things as are incidental or conducive to the attainment of the objects of the Association or any of them.

Objects of the Association

105.—(1) The objects of the Fiji Medical Association are—

- (a) to maintain and improve the standards of conduct and competence of the medical profession in Fiji;
- (b) to promote the welfare and to preserve and maintain the integrity and status of the medical profession;
- (c) to represent the views, interests and wishes of the medical profession;
- (d) to represent, protect and assist members of the medical profession in Fiji as regards conditions of practice and otherwise;
- (e) to represent, protect and assist members of the medical profession in Fiji as regards conditions of employment with the Government;
- (f) to settle points of practice and to provide means for the amicable settlement of professional differences;
- (g) to protect and assist the public and the medical profession in all matters touching, ancillary or incidental to medical practice;
- (h) to assist needy members and former members of the Association or their relatives and the relatives of deceased members;
- (i) to cultivate a generous professional spirit among medical practitioners by encouraging meetings of members of the Association and persons connected with matters of medical interest;
- (j) generally, to promote excellence in medical practice in any manner which the Association thinks fit in the interests of the profession and of the country.

(2) The Association is the negotiating body for its members as regards terms and conditions of employment in the public sector.

Rules of the Association

106.—(1) The Association may make rules for—

- (a) the election of officers of the Association;
- (b) the summoning and conduct of meetings of the Association;
- (c) admission to and termination of membership;
- (d) creating categories of membership, including associate membership for medical students, medical assistants and primary care practitioners and nurse practitioners;
- (e) all other matters that are necessary or expedient to ensure the efficient functioning of the Association.

(2) Until any new or amendment rules are made under subsection (5), the rules of the Fiji Medical Association in force immediately prior to the commencement of this Decree are the rules of the Fiji Medical Association continued by subsection (1).

Assets, etc. of the Association

107. All property, assets and liabilities of the Fiji Medical Association continue to be vested in the Association continued by section 104, and any moneys due and owing to the Fiji Medical Association are to be paid to and are recoverable by the Association as so continued.

PART 13—FIJI DENTAL ASSOCIATION

Continuation of the Fiji Dental Association

108.—(1) This section continues in existence the Fiji Dental Association as a corporate body, with perpetual succession and a common seal.

(2) Membership of the Association is open to every registered dental practitioner and registered dental student.

(3) A person who is a member of the Fiji Dental Association at the commencement of this Decree continues to be member of the Association unless and until the person's membership is terminated in accordance with the rules of the Association.

Powers of the Association

109.—(1) The Association—

- (a) continues to have power to hold real and personal property; and
- (b) may sue and be sued in matters whether relating to contract or tort or otherwise in connection with the exercise of its powers or the carrying out of its functions under this Decree.

(2) The Association may—

- (a) acquire, hold, develop or dispose of property of all kinds, whether real or personal, and derive capital or income from such property, for all or any of the objects of the Association;
- (b) raise or borrow money for all or any of the foregoing objects in the manner and upon the security from time to time determined by the Association;
- (c) invest and deal with moneys of the Association not immediately required in the manner from time to time be determined by the Association;
- (d) pay the whole or any part of the expenses incurred by members in attending meetings of the Association or of any committee appointed by the Association;
- (e) pay all costs and other payments incidental to or connected with the discharge of any function of the Association;
- (f) do all such other things as are incidental or conducive to the attainment of the objects of the Association or any of them.

Objects of the Association

110.—(1) The objects of the Fiji Medical Association are—

- (a) to maintain and improve the standards of conduct and expertise of the dental profession in Fiji;
- (b) to promote the welfare and to preserve and maintain the integrity and status of the dental profession;
- (c) to represent the views, interests and wishes of the dental profession;
- (d) to represent, protect and assist members of the dental profession in Fiji as regards conditions of practice and otherwise;
- (e) to represent, protect and assist members of the dental profession in Fiji as regards conditions of employment with the Government;
- (f) to settle points of practice and to provide means for the amicable settlement of professional differences;
- (g) to protect and assist the public and the dental profession in all matters touching, ancillary or incidental to dental practice;
- (h) to assist needy members and former members of the Association or their relatives and the relatives of deceased members;
- (i) to cultivate a generous professional spirit among dental practitioners by encouraging meetings of members of the Association and persons connected with matters of dental interest;
- (j) generally, to promote excellence in dental practice in any manner which the Association thinks fit in the interests of the profession and of the country.

(2) The Association is the negotiating body for its members as regards terms and conditions of employment in the public sector.

Rules of the Association

111.—(1) The Association may make rules for—

- (a) the election of officers of the Association;
- (b) the summoning and conduct of meetings of the Association;
- (c) admission to and termination of membership;
- (d) categories of membership related to divisions of dental practice;
- (e) categories of membership, including associate membership for dental students;
- (f) all other matters that are necessary or expedient to ensure the efficient functioning of the Association.

(2) Until any new or amendment rules are made under subsection (5), the rules of the Fiji Dental Association in force immediately prior to the commencement of this Decree are the rules of the Fiji Dental Association continued by subsection (1).

Assets, etc. of the Association

112. All property, assets and liabilities of the Fiji Dental Association continue to be vested in the Association continued by section 108, and any moneys due and owing to the Fiji Medical Association are to be paid to and are recoverable by the Association as so continued.

PART 14—FIJI COLLEGE OF GENERAL PRACTITIONERS

Establishment of the Fiji College of General Practitioners

113.—(1) This section establishes the Fiji College of General Practitioners as a corporate body with perpetual succession and a common seal.

(2) The College may—

- (a) acquire, hold, develop or dispose of property of all kinds, whether real or personal, and derive capital or income from such property, for all or any of the objects of the College;
- (b) raise or borrow money for all or any of the foregoing objects in the manner and upon the security from time to time determined by the College;
- (c) invest and deal with moneys of the Association not immediately required in the manner from time to time be determined by the College;
- (d) pay the whole or any part of the expenses incurred by members in attending meetings of the College or of any committee appointed by the College;
- (e) pay all costs and other payments incidental to or connected with the discharge of any function of the College;
- (f) do all such other things as are incidental or conducive to the attainment of the objects of the College or any of them.

Objects the College

114. The objects of the Fiji College of General Practitioners are—

- (a) to promote and safeguard the rights and interests of its members in all matters affecting the profession of general practitioner
- (b) to give concerted expression of its opinion upon all questions and matters affecting general practitioners and to represent the views, interest, and wishes of general practitioners;
- (c) to enrol as members all general practitioners and to regulate the practice of its members;
- (d) to uphold and enforce among its members a high standard of efficiency and professional conduct in the interests of that profession and the public generally;
- (e) to formulate policies, procedures and directives relating to general practice and associated matters and to ensure compliance by its members;
- (f) to settle points of practice and to provide means of amicable settlements of professional differences between its members;
- (g) to maintain and improve the professional skills and competence of general practitioners in Fiji by promoting ongoing training, education and research;
- (h) to advise the Fiji Medical Council on, or to conduct, appropriate training courses for medical students intending to enter general practice;

- (i) to grant in conjunction with institutes of higher learning diplomas and other certificates of proficiency in general practice;
- (j) to provide scholarships for students intending to enter general practice;
- (k) to provide relevant information on general practice health issues to the general public and to publish appropriate materials;
- (l) to promote the health and welfare of the members of the College.
- (m) generally, to promote excellence in general practice in any manner which the College thinks fit in the interests of the profession and of the country.

Membership of the College

115.—(1) The College consists of the persons who are for the time being registered as members in accordance with this Part and the rules of the College.

(2) Membership of the College is open to every registered medical practitioner in general practice, subject to the College rules.

(3) A body corporate is not eligible for membership of the College.

(4) The College must establish a register for Fellows and Members of the College and publish and revise it annually.

(5) Every registered medical practitioner who is a member of the College—

- (a) is entitled to be issued with a certificate of membership; and
- (b) must display the certificate of membership in his or her place of business.

(6) A person who is a member of the College at the commencement of this Decree continues to be member of the College unless and until the person's membership is terminated in accordance with the rules of the College.

The College Council

116.—(1) The Council of the College comprises—

- (a) the President;
- (b) the Vice President;
- (c) the Honorary Secretary;
- (d) the Honorary Treasurer;
- (e) a representative of each faculty; and
- (f) the chairpersons of any College Committees.

(2) The management and control of the College and of its funds is vested in the Council and everything that can be done by the College which is not required by this Decree, by College rules, or by the College in general meeting to be done by the College may be done by the Council.

(3) Subject to the College rules, the Council may—

- (a) make by-laws to provide for all matters not expressly reserved to the College in general meeting;
- (b) prescribe the conditions for applicants for admission as members of the College and for the changes in the classification of members either generally or in particular cases;
- (c) appoint such officers, and servants for the College as the Council considers necessary and determine their duties and terms of service;
- (d) appoint bankers, accountants and legal advisers of the College;
- (e) purchase, rent or otherwise acquire or furnish suitable premises for the use of the College;
- (f) bring to a general meeting of the College any matter which it considers material to the College or to the interest of the profession and make recommendations and take action as it considers fit or as the meeting directs;
- (g) communicate with other similar bodies and with members of the profession in Fiji or elsewhere on matters likely to prove beneficial or interesting to members and to negotiate and arrange with such bodies for reciprocal recognition of the status of the members of the College;
- (h) establish committees of the College;

- (i) delegate any of its powers, except this power of delegation, to a committee on conditions and for periods it considers appropriate;
- (j) exercise all other powers conferred on the Council by this Decree, the Constitution and Rules or the College in general meeting.

Rules of the College

117.—(1) The College may in general meeting make such rules as are necessary or expedient for giving effect to the objects of the College consistently with this Decree.

(2) Without limiting the general power in subsection (1), rules made under that subsection may provide for—

- (a) the qualifications and procedures for admission of members to the College;
- (b) the classes of membership including the category of Fellows;
- (c) the training, education and examination of candidates for admission as members of the College and the fees payable therefore;
- (d) the maintenance of a register of members and Fellows of the College;
- (e) the disciplining, suspension, removal and resignation of members;
- (f) the procedure for investigation of the conduct of members of the College, including publication of findings;
- (g) the election, appointment, resignation, suspension and removal of officers and members of the Council;
- (h) the holding of meetings of the Council and of the members of the College;
- (i) the manner of voting at any meetings of the Council or of the members of the College and any election held by the College;
- (j) the appointment of auditors and a patron;
- (k) the custody, investment and use of the funds and property of the College;
- (l) the establishment of faculties and branches of the College;
- (m) defining the conditions under which certificates of general practice may be issued;
- (n) the enrolment of student members studying for examination leading to registration as medical practitioners under this Decree;
- (o) fees payable by members and applicants and forms for use by members or applicants;
- (p) generally, the regulation and administration of the College for the achievement of its objects.

(3) Until any new or amendment constitution or rules are made under subsection (1), the Constitution and Code of Ethics of the Fiji College of General Practitioners in force immediately prior to the commencement of this Decree, other than Part XIII, are the constitution and rules of the College for purposes of this Part.

Termination of membership

118.—(1) The College must inform the Registrar if a member ceases to be a member of the College for any reason.

(2) If the College proposes to take disciplinary action against a member that might result in loss of membership, the College must inform the Professional Conduct Committee of the Fiji Medical Council and must not take any further action on the matter except on the direction of that committee.

Definitions

119. In this Part—

“College” means the Fiji College of General Practitioners established by this Part;

“College rules” means the Constitution and Code of Ethics of the Fiji College of General Practitioners, or any amendment or replacement of them under this Part;

“general meeting” means a meeting of all the members of the College held to conduct the business of the College;

“general practice” means the discipline of clinical scientific medicine, which provides comprehensive medical care as a continuing responsibility to an individual client and his or her family in the community regardless of age of the client or the presence of a condition that may temporarily require the service of a specialist;

“general practitioner” means a registered medical practitioner who engages exclusively or primarily in general practice.

PART 15—MISCELLANEOUS PROVISIONS

Regulations

120.—(1) The Minister, after consulting both Councils, may make any regulations required by this Decree or necessary or expedient for the purposes of this Decree.

- (2) Without limiting subsection (1), the regulations may—
- (a) prescribe—
 - (i) fees or charges for the purposes of this Decree;
 - (ii) fees or charges for services provided by a Council in the exercise of its functions under this Decree;
 - (b) exempt any class of persons from the obligation to pay a fee or charge so prescribed;
 - (c) prescribe forms for use in connection with this Decree;
 - (d) make further provision with respect to the keeping of a register;
 - (e) prescribe penalties, not exceeding \$5,000, for breach of a regulation.
- (3) The regulations may—
- (a) be of general or limited application;
 - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply;
 - (c) provide that a specified provision of this Decree does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject.
- (4) If a code, standard or other document is referred to or incorporated in the Regulations—
- (a) a copy of the code, standard or other document must be kept available for public investigation, without charge and during normal office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Codes of conduct and professional standards

121.—(1) Subject to the approval of the Minister, a Council may prepare or endorse a code of conduct or a professional standard in relation to medical or dental practice, as the case may be.

- (2) A Council may issue guidelines relating to medical or dental practice, as the case may be.
- (3) If—
- (a) a code of conduct or professional standard prepared or endorsed by a Council is approved by the Minister; or
 - (b) guidelines are issued by a Council,

the Council must—

- (i) cause a copy of the code, standard or guidelines to be published in the *Gazette*;
- (ii) take reasonable steps to send a copy of the code, standard or guidelines to each registered medical practitioner or medical services provider to whom it applies; and
- (iii) ensure that a copy of the code, standard or guidelines is published on the internet and kept available for public investigation without charge during normal office hours at the principal office of the Council.

(4) Proof of compliance with subsection (3) is not necessary for the purposes of any proceedings that involve an alleged contravention of or failure to comply with a code of conduct or professional standard or guidelines.

Victimisation

122.—(1) A person ('A') victimises another person ('B') if 'A' causes detriment to 'B' on the ground, or substantially on the ground, that 'B' has made or intends to make a notification or complaint under Part [9] of this Decree about 'A' or any person or health services provider.

(2) A person who victimises another commits an offence.

Maximum penalty: A fine of \$10,000.

(3) If a complaint alleging an act of victimisation under this Decree has been lodged with the Commissioner of Police and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.

(4) In this section, "detriment" includes—

- (a) injury, damage or loss;
- (b) intimidation or harassment;
- (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business;
- (d) threats of reprisal.

Protection from personal liability

123.—(1) No personal liability is incurred for an act or omission by—

- (a) a member of the Tribunal, a Council, any committee of a Council or the Secretariat; or
- (b) the Registrar or the Registrar of the Tribunal,

done in good faith in the performance or purported performance of functions or duties under this Decree.

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

(3) No personal liability is incurred by any person who makes a notification or complaint under Part [9] against a person or health services provider in good faith and without wilful misrepresentation or malice.

Self-incrimination

124. If a person is required to provide information or to produce a document, record or equipment under this Decree and the information, document, record or equipment would tend to incriminate the person or make the person liable to a penalty—

- (a) the person must provide the information or produce the document, record or equipment; but
- (b) the information, document, record or equipment so provided or produced is not admissible in evidence against the person in proceedings for an offence, other than an offence against this or any other Decree relating to the provision of false or misleading information.

Ministerial review of decisions relating to courses

125.—(1) If a Council—

- (a) refuses to approve a course of education or training for the purposes of this Decree; or
- (b) revokes the approval of a course of education or training under this Decree,

the provider of the course may apply to the Minister for a review of that decision.

(2) On an application under subsection (1) the Minister must—

- (a) obtain the advice of an appropriate international standards organisation;
- (b) in the light of that advice, and taking all the circumstances into account, review the decision of the Council;
- (c) grant, preserve or vary the approval (as appropriate).

Confidentiality

126.—(1) A person engaged or formerly engaged in the administration of this Decree or the repealed Decree must not divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

- (a) as required or authorised by or under this Decree or the repealed Decree;

- (b) in the performance of duties under this Decree or any other written law;
- (c) to an authority responsible under the law of a place outside Fiji for the registration or licensing of persons who provide medical or dental treatment, if the information is required for the proper administration of that law; or
- (d) with the consent of the person to whom the information relates.

(2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—

- (a) the person to whom the information was disclosed; or
- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure,

(4) A person who discloses information in contravention of subsection (1) commits an offence.

Maximum penalty: A fine of \$10,000.

Service

127. A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Decree may be—

- (a) given to the person personally;
- (b) posted in an envelope addressed to the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address;
- (c) left for the person at the person's last known nominated contact, residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or
- (d) transmitted by facsimile transmission or electronic mail to a facsimile number or electronic mail address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

Evidentiary provisions

128.—(1) In proceedings for an offence against this Decree or in disciplinary proceedings under Part [9], an allegation in the complaint—

- (a) that a person named in the complaint is or is not, or was or was not on a specified date, a registered and licensed person;
- (b) that the registration or licence of a person named in the complaint is, or was on a specified date, subject to specified conditions;
- (c) that a person named in the complaint is, or was on a specified date, a health services provider;
- (d) that a person named in the complaint is, or was on a specified date, occupying a position of authority in a corporate health service provider; or
- (e) that a person named in the complaint is, or was on a specified date, an investigator,

must be accepted as proved in the absence of proof to the contrary.

(2) In legal proceedings, a document apparently certified by the Registrar of the Secretariat to be a copy of a register under this Decree, or a copy of a code of conduct or professional standard prepared or endorsed by a Council under this Decree, must be accepted as such in the absence of proof to the contrary.

Statutory declarations

129. If a person is required to furnish information to the Secretariat, the Secretariat may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Secretariat.

Amendment of Schedules

130.—(1) Subject to subsection (2) the Minister, after consulting both Councils, may by order amend Schedule [1] or Schedule [2].

(2) A body may only be added to Schedule [1] as a representative body if its constituent instrument is a statute or is registered with the relevant authority.

Other occupations

131.—(1) Nothing in this Decree affects the lawful occupation, trade or business of any registered pharmacist, pharmaceutical chemist, mid-wife or nurse, or of any qualified physiotherapist or psychiatrist.

(2) Nothing in this Decree affects the lawful occupation, trade or business of, or the use of any name or style by, an optometrist, chiropractor, acupuncturist or chiropodist who possesses the minimum qualifications and experience prescribed by the Minister by regulations.

(3) The Minister may make regulations prescribing the fees to be paid, and a register of patients to be kept, by any person practising the occupation, trade or business of an optometrist, chiropractor, acupuncturist or chiropodist and generally for the purpose of regulating the practice and conduct of such occupation, trade or business.

PART 16—REPEALS AND SAVINGS, ETC.

Repeals and savings

132.—(1) The Medical and Dental Practitioners Act (Cap.255) is repealed.

(2) The following regulations made under section 40 of the repealed Act remain in force as if made under section 122 of this Decree—

- (a) the Acupuncturists, Chiropractors and Chiropodists Qualification Regulations;
- (b) the Acupuncturists, Chiropractors and Chiropodists Regulations 1976;

Transitional provisions

133.—(1) Schedule [3] applies for making transitional arrangements consequent on the coming into force of this Decree.

(2) The Minister may by regulations make other provisions of a savings or transitional nature consequent on the coming into force of this Decree.

SCHEDULE [1]
(Section 3)

REPRESENTATIVE BODIES

Fiji Medical Association
Fiji Dental Association
Fiji College of General Practitioners
Fiji Oral Health Workers Association
Fiji School of Medicine

SCHEDULE [2]
(Section 14)

PROCEDURE OF COUNCILS AND COMMITTEES

Delegation

1.—(1) A Council may delegate any of its functions or powers under this Decree other than—

- (a) this power of delegation; and
- (b) the power to take disciplinary action under Part [9].

(2) A delegation—

- (a) may be made—
 - (i) to a member of the Council, the Registrar or an employee of the Secretariat; or
 - (ii) to a committee established by the Council;

- (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
- (c) is revocable at will and does not derogate from the power of the Council to act in a matter.

Council procedures

2.—(1) Every meeting of a Council (other than for the purposes of taking disciplinary action under Part [9]) is to be chaired by the presiding member or, in that member's absence, by the deputy presiding member and, in the absence of both the presiding member and the deputy presiding member, the members present at a meeting of the Council must choose one of their number to preside at the meeting.

(2) A decision carried by a majority of the votes cast by members of a Council at a meeting is a decision of the Council.

(3) Each member present at a meeting of a Council has one vote on any question arising for decision and, except in taking disciplinary action under Part [9], the member presiding at the meeting may exercise a casting vote if the votes are equal.

(4) A conference by telephone or other electronic means between the members of a Council is, for the purposes of this Article, a meeting of the Council at which the participating members are present if—

- (a) notice and the agenda of the conference are given to all members in the manner decided by the Council for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(5) A proposed resolution of a Council becomes a valid decision of the Council despite the fact that it is not voted on at a meeting of the Council if—

- (a) notice of the proposed resolution is given to all members of the Council in accordance with procedures decided by the Council; and
- (b) a majority of the members express concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission, electronic mail or other written communication setting out the terms of the resolution.

(6) Paragraphs (4) and (5) do not apply in relation to the taking of disciplinary action under Part [9] by a Council as constituted for the purposes of proceedings under that Part.

(7) Accurate minutes of every Council meeting must be kept.

Conflict of interest, etc.

3. A member of a Council is not taken to have a direct or indirect interest in a matter by reason only of the fact that the member has an interest in the matter that is shared in common with registered medical or dental practitioners generally or a substantial section of registered medical or dental practitioners in Fiji.

Powers of a Council in relation to witnesses, etc.

4.—(1) For the purposes of proceedings before a Council (including an application for registration or reinstatement of registration), the Council may—

- (a) by summons signed on behalf of the Council by a member of the Council or the Registrar, require the attendance before the Council of any person whom the Council thinks fit to call before it;
- (b) by summons signed on behalf of the Council by a member of the Council or the Registrar, require the production of any relevant documents, records or equipment and, in the case of a document or record that is not in the English language, require the production of—
 - (i) a written translation of the document or record into English; and
 - (ii) a certificate signed by a translator approved by the Council certifying that the translation accurately reproduces in English the contents of the document or record;
- (c) investigate any documents, records or equipment produced before it, and retain them for such reasonable period as it thinks fit, and make copies of the documents or records or their contents;
- (d) require any person to make an oath or affirmation (which may be administered by any member of the Council) to answer truthfully questions put by any member of the Council or any person appearing before the Council;

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

(2) On the receipt of an application for the issue of a summons under this Article, a member or the Registrar may, without referring the matter to the Council, issue a summons on behalf of a Council.

(3) A person who—

(a) fails without reasonable excuse to comply with a summons issued to attend, or to produce documents, records or equipment, before a Council;

(b) having been served with a summons to produce—

(i) a written translation of the document or record into English; and

(ii) a certificate signed by a translator approved by the Council certifying that the translation accurately reproduces in English the contents of the document or record, fails, without reasonable excuse, to comply with the summons;

(c) misbehaves before the Council, wilfully insults the Council or one or more of the members in the exercise of the members' official duties, or wilfully interrupts the proceedings of the Council; or

(d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully a relevant question when required to do so by the Council,

commits an offence.

Maximum penalty: A fine of \$20,000.

(4) A person who appears as a witness before a Council has the same protection as a witness in proceedings before the High Court.

Principles governing proceedings

5.—(1) In any proceedings before a Council under this Decree, the Council—

(a) is not bound by the rules of evidence and may inform itself on any matter as it thinks fit; and

(b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

(2) In any proceedings before a Council under this Decree, the Council must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

Committees

6.—(1) The membership of a committee will be determined by the Council and must include at least one member of the Council.

(2) The Council determines who will be the presiding member of a committee.

(3) The quorum for a committee is a majority of the members.

(4) The procedures to be observed in relation to the conduct of the business of a committee are—

(a) as determined by the Council; and

(b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

(5) The membership and procedure of a Professional Conduct Committee or Professional Standards Committee are as provided in sections 12 and 13 respectively.

SCHEDULE [3]

(Section 132)

TRANSITIONAL PROVISIONS

Transitional provisions relating to Councils

1.—(1) The Fiji Medical Council and the Fiji Dental Council are respectively the same corporate bodies as the Fiji Medical Council and Fiji Dental Council established under the repealed Decree.

(2) On the commencement of this Schedule, all members of the relevant Council then in office vacate their respective offices so that fresh appointments may be made to the Council under this Decree.

(3) If appointments are to be made to a Council or committee for the purposes of this Decree prior to the commencement of this Schedule (as provided by section 2 of the Interpretation and General Clauses Decree)—

- (a) a reference in this Decree to a registered medical or dental practitioner is, for those purposes, a reference to a person who is a registered medical or dental practitioner under the repealed Decree at the relevant time; and
- (b) such an appointment takes effect on the commencement of the section for the purposes of which it was made and not before.

Transitional provisions relating to registration

2.—(1) The registers maintained under the repealed Act continue in existence as the equivalent registers under this Decree.

(2) A person who is on the medical or dental register immediately following the commencement of this Schedule will be taken to be registered under this Decree on the relevant register and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Act immediately before that commencement will be taken to continue to apply to the registration of the person under this Decree as if they had been imposed by the relevant Council under this Decree.

(3) If a person who was removed from a register under the repealed Act for any reason and who had not, before the commencement of this Decree, been reinstated on that register, applies for registration under this Decree, the relevant Council may deal with the application as though it were an application for reinstatement on the appropriate register under this Decree.

Transitional provisions for licences

3. Any person who intends to apply for a licence issued under this Decree may, from the commencement of this Decree do so within 6 months.

Transitional provision relating to medical or dental students

4. A person who was, immediately before this Schedule comes into force, enrolled in an undergraduate course, or approved postgraduate course, of medical or dental study at a tertiary educational institution in Fiji accredited by the Fiji Medical Association or Fiji Dental Association, as the case may be, on due application to the relevant Council, entitled to full registration on the register of medical or dental students, as the case may be.

Transitional provision relating to applications for registration, prosecutions, disciplinary hearings etc.

5.—(1) A prosecution for an offence committed against a repealed law must be brought and continued under that law.

(2) Subject to paragraph (1), any action, arbitration, proceeding or cause of action that relates to the function of the Fiji Medical Council and Fiji Dental Council and that immediately before the commencement of this Decree is pending or existing by, against or in favour of the Fiji Medical Council or Fiji Dental Council, or to which the Fiji Medical Council or Fiji Dental Council is a party, may be continued and enforced by and against the Fiji Medical Council or Fiji Dental Council under the provisions of the Decree.

GIVEN under my hand this 31st day of December 2009.

EPELI NAILATIKAU
President of the Republic of Fiji