

# THE EXTENSION OF THE SCOPE OF MEDICAL REGISTRATION

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Recent announcements appearing in the lay press relating to decisions taken by the Medical Council in connection with the extension of the scope of medical registration have resulted in certain of our members obtaining completely erroneous impressions regarding the degree to which registration is to be extended. It might therefore be as well to give a summary of:

- (A) The existing statutory requirements relating to the registration of medical practitioners in the Republic;
- (B) the proposal to extend the scope of registration which originated at Cabinet level, and
- (C) the decisions anent the matter taken by the Medical Council at its recent meeting held in Johannesburg.

## A. THE EXISTING STATUTORY REQUIREMENTS RELATING TO THE REGISTRATION OF MEDICAL PRACTITIONERS IN THE REPUBLIC

At present the registration of medical practitioners in South Africa is governed by Sections 22 and 23 of the Medical, Dental and Pharmacy Act of 1928 and the regulations framed thereunder.

**Section 22** of the Act reads as follows:

'22. (1) The Governor-General may from time to time, after considering any recommendation of the council or the board, prescribe by regulation the several degrees, diplomas and certificates granted after examination by a university, medical

school or other examining authority, which, when held singly or conjointly with any other degree, diploma or certificate, entitle the holders thereof to registration under this Act as medical practitioners, dentists or chemists and druggists, if they have, before or in connection with or after the acquisition of those degrees, diplomas or certificates, complied with such conditions or requirements as may be prescribed in any such regulation: Provided that—

(a) save as is provided in sub-section (2) or in section twenty-three or twenty-eight, no degree, diploma or certificate of a university medical school or other examining authority outside the Union shall be prescribed under this section or accepted as a qualification for registration of the holder as a medical practitioner or dentist or chemist and druggist (as the case may be) unless—

- (i) such degree, diploma or certificate entitles the holder to practise as a medical practitioner or dentist or chemist and druggist (as the case may be) in the country or state in which such university, school or examining authority is situate; and
- (ii) by the laws of that country or state persons holding degrees or qualifications granted after examination in the Union and entitling them to practise as medical practitioners, dentists or chemists and druggists (as the case may be) therein are admitted without further examination to practise in that country or state; and
- (iii) the council or the board is satisfied that possession of such degree, diploma or certificate indicates a standard of professional education not lower than that prescribed by the council or the board for medical practitioners, dentists or chemists and druggists (as the case may be) within the Union;

(b) on the recommendation of the council it may be provided, in relation to any degree, diploma or certificate of a university, medical school or other examining authority outside the Union, that registration under this Act shall be limited to a particular category of holders of such degree, diploma or certificate or to a specified number of holders of that category and that the particular holders to be registered shall be selected in accordance with a specified procedure;

(c) the provisions of paragraph (b) shall not be applied so as to prevent the registration of holders of qualifications which immediately prior to the commencement of the Medical, Dental and Pharmacy Amendment Act, 1954, would have entitled such holders to be registered under this Act.

(2) (a) The Governor-General may, after considering any recommendation of the council, by regulation exempt from the provisions of sub-paragraph (ii) of paragraph (a) of the proviso to sub-section (1) any class of persons who, by reason only of the provisions of that paragraph of the said proviso, is not entitled to be registered as medical practitioners, and thereupon the council may, in its discretion, but subject to any regulations which the Governor-General may make, register persons of that class as medical practitioners: Provided that any person registered as a medical practitioner in terms of this sub-section shall only be entitled to practise as such—

- (i) for an initial period of five years and thereafter for such period or periods as the council may determine;
- (ii) in respect of such area or areas as the council may determine; and
- (iii) subject to such restrictions in respect of his professional activities as the council may determine.

(b) For the purposes of registration under this sub-section, the council may, in addition to such degrees, diplomas or certificates as may be prescribed under sub-section (1) or under sub-section (3) of section twenty-three accept such other degrees, diplomas or certificates as in its opinion indicate a satisfactory standard of professional education.

**Section 23** of the Act which provides for an exception in favour of British subjects born or domiciled in the Union reads as follows:

23. (1) Any South African citizen who—

- (a) is a South African citizen by birth or descent; or
- (b) was domiciled in the Union when he commenced his

professional studies and proceeded therefrom for the purpose of prosecuting those studies,

may, if he has obtained a degree, diploma or certificate not prescribed under section twenty-two, but which is prescribed under sub-section (3) of this section, be registered as a medical practitioner or dentist, as the case may be.

(2) Deleted by Act No. 11 of 1957.

(3) The Governor-General may from time to time, after considering any recommendation of the council, prescribe by regulation the degrees, diplomas or certificates of a university, medical school or other examining authority outside the Union which when held singly or conjointly with any other degree, diploma or certificate by any person described in sub-section (1) shall entitle the holder to be registered as a medical practitioner or as a dentist (as the case may be) if he has, before or in connection with or after the acquisition of any such degree, diploma or certificate, complied with such conditions or requirements as may be prescribed in any such regulation: Provided that—

(a) such degrees, diplomas or certificates have been granted after examination; and

(b) such degrees, diplomas or certificates would, so far as professional qualifications are concerned, entitle the holder to practise as a medical practitioner or dentist (as the case may be) in the country or state in which the university, school or examining authority is situate; and

(c) the council is satisfied that such degrees, diplomas or certificates indicate a standard of professional education not lower than that prescribed by regulation for medical practitioners or dentists (as the case may be) within the Union.

The requirements of Sub-Section (1) of Section 22 of the Act as set out above may be summarized as follows:

(a) The holder of a medical degree granted by a University within the Republic will be entitled to registration as a medical practitioner provided that the degree held has been approved by the Medical Council;

(b) the holder of a medical degree granted by a University outside the Republic will be entitled to registration as a medical practitioner provided that—

- (i) the degree held has been approved by the Medical Council, and
- (ii) that a reciprocity agreement (which provides for a two-way flow of doctors) exists between South Africa and the country in which the University granting the degree is situated. Note—this proviso does not apply to South African citizens who are the holders of degrees prescribed under Section 23 of the Act.

South Africa has at present full reciprocity agreements with Great Britain, Northern Ireland, Irish Free State, certain states in Australia, New Zealand, and a limited reciprocity agreement with Holland in terms of which the two-way flow is limited to 12 registrations per year in each country.

It will be noted from Sub-Section (2) of Section 22 of the Act that the Medical Council may at its discretion exempt from the provisions of Sub-paragraph (ii) of Paragraph (a) of the proviso of Sub-Section (1) certain classes of persons but that persons so registered will be subject to certain restrictions in so far as their medical practice is concerned. The classes of persons which may be exempted from the provisions of this paragraph are enumerated in Government Notice No. 1157 of 1962 (previously Government Notice No. 256 of 1947) and include the following:

(a) Medical practitioners engaged in missionary medical practice or interns undergoing training in mission hospitals approved by the Council. (These practitioners are, however, required to restrict their practice to attendance on the families of missionaries and the staff attached to the said mission society, attendance on non-Europeans within the area of a mission society approved by the Council, or to such other professional activities as the Council may from time to time in individual cases approve.)

(b) Medical practitioners engaged by Universities and scientific institutions approved by the Council. (These practitioners are, however, required to restrict their professional activities to teaching or research duties at a University; research duties at such scientific institution, and such other professional

activities as the Council may from time to time in individual cases approve.)

(c) Persons who have served as medical practitioners in the South African Medical Corps of the Union Defence Forces during the last war.

(d) Medical practitioners employed in a full-time capacity by the State (otherwise than by any Provincial Administration) or by the Administration of South West Africa. (These practitioners, however, may perform only such acts specially pertaining to the calling of a medical practitioner as he is required to perform in terms of his contract of employment with the State or the Administration of South West Africa.)

(e) Medical practitioners or interns engaged in post-graduate study or research in the Republic, as the holders of appointments which are not of a permanent nature. (These practitioners may, however, only carry out such professional practice in the Republic as in the opinion of the Council falls legitimately within the sphere of postgraduate study or research.)

(f) Persons undergoing training as interns, or holding posts normally held by interns in the Republic, for the purpose of extending their postgraduate experience.

#### B. THE PROPOSAL TO EXTEND THE SCOPE OF MEDICAL REGISTRATION

At its meetings held during May, June and July of this year, the Executive Committee of the Medical Council gave consideration to a letter submitted by the Secretary for Health, which was written to the Council at the behest of the Honourable the Minister, in which the Council was requested to consider extending the scope of registration of medical practitioners under the Act.

In this letter the Secretary for Health stated, *inter alia*:

(a) That the Government's immigration scheme is being hampered by the restrictive provisions of certain South African legislation which debar many suitable and adequately qualified persons, more particularly professional men, from pursuing their calling in South Africa and that the Honourable the Prime Minister had accordingly appealed to the Honourable the Minister of Health to make every effort to overcome this obstacle in so far as the registration of medical practitioners is concerned.

(b) That the Honourable the Minister of Health had come to the conclusion that short of amending the Medical, Dental and Pharmacy Act, the only practicable manner in which to give effect to the Prime Minister's request would be to broaden the scope for registration of medical practitioners in terms of Sub-Section (2) of Section 22 of the Act by making provision in the regulations promulgated under that Section (i.e. Government Notice No. 1157 of 1962) for the registration of an additional category of medical practitioners and placing no restrictions on their professional activities or on their period of registration after they have practised for a prescribed probationary period equal to the normal minimum residential qualification period necessary for the acquisition of South African citizenship.

(c) That the suggested amendment would contribute towards relieving the present shortage of doctors in South Africa.

(d) That 'owing to the prevailing unsettled conditions in certain other territories in Africa, there are at present a number of suitably qualified foreign medical practitioners who desire to immigrate to this country. However, there is little doubt that if the existing restrictions re their registration and professional activities are not relaxed at an early date the prospects of their immigrating to South Africa will be negligible.'

*It will be noted that the method suggested by the Honourable the Minister of Health for extending the scope of registration would extend to persons, merely on their promise to become citizens of the Republic in a matter of five or more years, privileges in regard to registration which are not extended to citizens of the Republic.*

Having given the matter careful consideration at successive meetings the Executive Committee of the Medical Council finally resolved 'that the request of the Honourable the Minister of Health and the Right Honourable the Prime

Minister, that the scope of registration under the Act be extended, be referred to the Council for consideration and decision.'

In order, however, that the full Council might have all possible assistance in considering the matter, the Executive Committee further resolved 'that the matter be referred for an expression of opinion to the Medical Association of South Africa and the Dental Association of South Africa.'

The Parliamentary Committee, having given careful consideration to the documents relating to the matter submitted by the Medical Council at a special meeting held on 6 August 1962, approved of a memorandum setting out the views of the Association on the matter and resolved to recommend to the Federal Council that it approve of the submission of this memorandum to the Medical Council.

When the memorandum of the Parliamentary Committee was considered by the Federal Council at its recent meeting, Council resolved that the memorandum with a minor amendment be submitted to the Medical Council. Council further resolved:

'That the South African Medical and Dental Council be requested to receive a deputation from the Federal Council during the course of that Council's meeting next week in order to make known the views of the Association regarding extension of the scope of medical registration under the Medical, Dental and Pharmacy Act. Further that the deputation consist of Drs. J. H. Struthers, W. H. Lawrance and A. L. Agranat.'

The deputation referred to in the above resolution met the full Medical Council on Tuesday, 11 September 1962, and explained the views of the Association as set out in its memorandum. This memorandum, as amended, reads as follows:

1. The Association contends that the alleged shortage of doctors in South Africa cannot and should not be advanced as a reason for a decision to extend the scope of medical registration so as to allow doctors from foreign countries who cannot comply with the existing requirements for registration to settle and practise their profession in the Republic. The Association is not convinced that the shortage is as serious as has been indicated. It is, however, satisfied that there is a maldistribution of doctors, both geographic and as between private practice and salaried employment, but it is stressed that the extension of the scope of registration will certainly not overcome this maldistribution.

2. Despite the contention contained in the previous paragraph the Association will not oppose the extension of the scope of medical registration in order to allow *suitable* as well as *adequately qualified* doctors to settle and practise in South Africa, provided that the method adopted adequately safeguards the interests of the profession already practising in South Africa. The only method which would provide the necessary safeguards and which will be agreed to by the Association is referred to in paragraph 4 hereunder.

3. The Association is strenuously opposed to the proposed methods of extending the scope of registration suggested by—

- the Honourable the Minister of Health in his communications addressed to the Medical Council;
- the Registrar of the Medical Council in his memorandum written on the instructions of his Executive Committee and which is marked Exec. 172/Sept., 1962;
- a member of the Executive Committee of the Medical Council at the meeting of the Committee held on 13 and 14 July 1962.

The reasons why the Association is opposed to these proposed methods may be enumerated as follows:

- The Association is in agreement with the basic concept of registration contained in Sections 22 and 23 of Act No. 13 of 1928, viz. that a person who has complied with certain definitely stated requirements is entitled to registration as a *right*.
- The Association considers that it was unfortunate that this basic concept was departed from in Sub-Section (2) of Section 22 of the Act and also in the regulations framed thereunder, viz. Government Notice No. 256 of



1947 as amended, i.e. the present Government Notice No. 1157 of 1962.

- (c) The Association considers that the adoption of any of these methods will not provide the safeguards to the interests of the medical profession in South Africa to which the profession is entitled. In this connection attention is drawn to the fact that the Association regards Act No. 13 of 1928 as a contract which was willingly entered into by the medical profession with the public of South Africa and it is in terms of this contract that the profession accepted the basic requirements for registration as at present prescribed. The Association firmly believes that this contract should only be varied *with the consent of the profession*.

4. The Association, the voice of the profession, would be agreeable to a variation in the contract referred to in the previous paragraph and to the extension of the scope of medical registration provided that this is done by extending the limited reciprocity for which provision is already made in the case of Holland. This method would accomplish everything which is desired by the Cabinet and yet would provide the required safeguards in so far as the economic interests of the medical profession in the Republic are concerned. It would have the added advantage in that all that requires to be done is to extend the list of degrees, diplomas or certificates enumerated in Regulation No. 2 of the regulations published in Government Notice No. 321 of 1956, by including degrees, diplomas or certificates (of a sufficiently high standard) issued in other countries such as Germany, Belgium, France, Scandinavia, Canada and America. The Association, however, considers that the provisions of paragraph (e) of the Regulation must be adhered to and would furthermore request that the Medical Council consult with the Association before determining the various quotas.

It may, of course, be argued that the method suggested by the Association is unsatisfactory because of the length of time which will be required to conclude negotiations with the countries concerned. Whilst admitting that negotiations will take some time if conducted by correspondence via the normal channels, the Association would nevertheless submit that these negotiations could be speedily concluded if for example they were conducted by a special emissary appointed for the purpose. It must be stressed that the Association will on no account agree to the method suggested by the Honourable the Minister even as a temporary expedient pending the finalization of reciprocity negotiations.

5. In paragraph 2 above reference is made to 'suitable as well as adequately qualified doctors.' The adjective 'adequately qualified' is self-explanatory and needs no further elaboration. The Association would, however, like to comment further on the adjective 'suitable':

The South African Medical and Dental Council, in addition to creating and maintaining the medical register and being responsible for the recognition of adequate academic standards, is also the custodian of our medical ethics.

The ethical standards of the profession are of great importance to itself as well as to the public and great store is placed on the maintenance of a high ethical code. It is very rarely necessary for the Medical Council to take individual action to enforce this code because the medical schools and the profession see to it that during the formative years the student and the young doctor develop an understanding of and a pride in the ethical code which in due course he helps to apply.

Standards of ethics vary in different parts of the world. For example, you have the British School upon which our ethical code is largely based and you have the Continental School where you may find doctors advertising in the press. The lowering of ethical standards by even a few doctors could have most unwelcome repercussions on medical practice particularly if an influx were to result in increased economic competition.

6. In paragraph 1 above it is stated that the extension of the scope of medical registration will not overcome the maldistribution of doctors that exists between private practice and full-time salaried employment. The Association would further submit that the extension of the scope of registration

by means of an amendment to Government Notice No. 256 of 1947, as amended, as suggested by the Honourable the Minister, will aggravate rather than alleviate the shortage of doctors in the public service, because those doctors at present in the public service and in the service of mission hospitals and who are registered in terms of this Government Notice, will then be free to resign their posts in order to enter private practice, quite possibly in the cities where there are already too many doctors. The net result will be that apart from having to fill newly vacated posts the Government will also have to create additional posts for doctors to render those medical services in the Bantu areas which were previously supplied by mission doctors having restricted registration.'

#### C. THE DECISIONS OF THE MEDICAL COUNCIL REGARDING THE EXTENSION OF THE SCOPE OF MEDICAL REGISTRATION

The decisions of the Medical Council anent the matter are contained in the following resolutions adopted by it after its interview with the Association's deputation:

'1.

(i) That reciprocity in the registration of medical practitioners and dentists under the provisions of Section 22(1)(b) be instituted with certain countries to be specified whose qualifications are at present acceptable under the provisions of Section 23, provided such countries are prepared to enter into such agreements of limited reciprocity;

(ii) that negotiations for the establishment of such limited reciprocity be instituted forthwith, and that the negotiations be conducted in the most expeditious manner possible;

(iii) that the Medical and Dental Education Committee be instructed to consider for recommendation to the Council what further degrees, diplomas or certificates, not at present listed under Section 23, may entitle the holders thereof to registration with this Council under the provisions of Section 22(1)(b) of the Act.

(iv) that the Council consult annually with the Medical Association of South Africa and the Dental Association of South Africa on the numbers of medical practitioners and dentists (as the case may be), to be entitled to registration.

2. That in so far as medical practitioners are concerned, negotiations in terms of the above resolution of the Council be commenced with Western Germany, Belgium, France, Switzerland, Austria.

3. That in so far as dentists are concerned, negotiations in terms of the above resolution of the Council be commenced with the Netherlands and Western Germany, with the latter on the basis of qualifications obtained after the date previously decided on by the Council (31 March 1957).

4. That in the conduct of negotiations and in the implementation of any agreements reached in terms of the decision of the Council regarding the establishment of limited reciprocity with the countries specified, in so far as the details of the conduct of such negotiations and the amendment of the rules and regulations are concerned in order to give effect to such agreements, shall be dealt with by the Executive Committee with power to act.

5. That in order to implement the decision of the Council as set out in paragraph (iii) of the resolution of the Council, the Chairman of the Medical and Dental Education Committee in consultation with the President and the Registrar, be requested kindly to prepare a memorandum on the extension of qualifications listed under paragraph 3 of the Regulations regarding the degrees, diplomas or certificates entitling medical practitioners and dentists to registration as set out in Government Notice No. 321 of 24 February 1956, as amended.'

In conclusion I should like to draw the attention to the fact that the method adopted by the Medical Council in dealing with this important matter illustrates once again the close cooperation which exists between that Council and our own Federal Council. Although the Medical Council was created primarily to look after the interests of the public it nevertheless always consults with and pays heed to the views of the Federal Council before taking decisions which may affect the interests of the medical profession.