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सोमवार, २७, मार्च १९७८/चैत्र ६, शके १९००

MAHARASHTRA LEGISLATURE SECRETARIAT

The following Bill was introduced in the Maharashtra Legislative Assembly on 27th March 1978.

L. A. BILL No. VI OF 1978

A BILL

further to amend the Maharashtra Medical Practitioners Act, 1961.

Mah. WHEREAS it is expedient further to amend the Maharashtra Medical Practitioners Act, 1961, for the purposes hereinafter appearing; It is hereby enacted in the Twenty-ninth Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Medical Practitioners (Amendment) Act, 1978. Short title and commencement.

(2) It shall be deemed to have come into force on the 1st day of October 1976.

Amendment of long title of Mah. XXVIII of 1961. 2. In the long title of the Maharashtra Medical Practitioners Act, 1961 (herein- Mah. XXVIII of 1961. after referred to as "the principal Act"), after the words "the Ayurvedic" the word "Siddha" shall be inserted.

Amendment of preamble of Mah. XXVIII of 1961. 3. In the preamble of the principal Act, after the words "the Ayurvedic" the word "Siddha" shall be inserted.

Amendment of section 2 of Mah. XXVIII of 1961. 4. In section 2 of the principal Act, in sub-section (1),—
 (a) for clause (b), the following clause shall be substituted, namely:—
 "(b) "Ayurvedic system of medicine" or "Ayurvedic system" means the *Ashang* Ayurvedic system of medicine, and, where the context requires, for facility of reference, also includes the system known as "Siddha system" of medicine. In the case of either system, it may be supplemented or not by such modern advances as the Faculty may, from time to time, have determined;" ;
 (b) clauses (f) and (i) shall be deleted ;
 (c) in clause (s), for the words "Unani system", where they occur for the third time, the words "Unani or Unani Tibb system" shall be substituted.

Amendment of section 14 of Mah. XXVIII of 1961. 5. In section 14 of the principal Act,—
 (a) for clause (a), the following clause shall be substituted, namely :—
 "(a) to provide for registration of practitioners and to maintain the register;" ;
 (b) in clause (c), the words "and enlisted" shall be deleted ;
 (c) in clause (d), the words "or an enlisted" and the words "or the list, as the case may be," shall be deleted.

Amendment of heading of Chapter III of Mah. XXVIII of 1961. 6. For the heading of Chapter III of the principal Act, the heading "REGISTRATION OF PRACTITIONERS." shall be substituted.

Amendment of section 17 of Mah. XXVIII of 1961. 7. In section 17 of the principal Act,—
 (a) in sub-section (2),—
 (i) for the words "two parts," the words "three parts," shall be substituted ;
 (ii) for clause (ii), the following clauses shall be substituted, namely :—
 "(ii) Part II containing the names of practitioners, whose names were included in that part immediately before the 1st day of October 1976 ;
 (iii) Part III containing the names of practitioners, who on the 30th day of September 1976 were enlisted practitioners and who are on that day deemed to have become registered practitioners under section 18. " ;
 (b) after sub-section (3), the following sub-section shall be inserted, namely :—
 "(3A) Notwithstanding anything contained in any law for the time being in force, every person enrolled on the register maintained under the Indian Medicine Central Council Act, 1970, but not enrolled on the register maintained under this Act, shall, on an application and on payment of the fee as provided in sub-section (3), be entitled to have his name entered in the register maintained under this Act."

8. For section 18 of the principal Act, the following sections shall be substituted, namely :—

Substitution
of section 18
of Mah.
XXVIII
of 1961.

48 of
1970.

“ 18. (1) Every person, who on the 30th day of September 1976, that is, the day immediately preceding the date of coming into force of section 17 of the Indian Medicine Central Council Act, 1970, was an enlisted practitioner under this Act, shall be deemed to have become a registered practitioner under this Act on that day and to have become a person enrolled on the State Register for the purposes of the said section 17. His name shall be entered by the Registrar in the register maintained under this Act with effect from that day, without such person being required to make any application or to pay any fee.

Enlisted
practitioners
deemed to be
registered
practitioners
on 30th
September
1976.

(2) Every person whose name is entered in the register under sub-section (1) shall be given a certificate of registration in the form prescribed by rules, on the payment of a fee of fifteen rupees.

18A. (1) If the courses of study to be undergone for obtaining any of the qualifications specified in the Schedule, include a period of training after a person has passed the qualifying examination, and before such qualification is conferred on him, any such person shall, on an application made to the Registrar, in the form prescribed by rules and on payment of a fee of fifteen rupees, be granted a provisional registration in the register, in order to enable him to practise Ayurvedic or Unani system of medicine in an approved institution for the purpose of such training, and for no other purpose, for the period aforesaid.

Provisional
registration
for practice.

(2) Every person who is granted a provisional registration under sub-section (1), shall be given a certificate of provisional registration in the form prescribed by rules, which shall remain in force for such period as may be specified therein.”

9. In section 19 of the principal Act,—

(a) for the words and figures “sections 17 and 18”, the word and figures “section 17”, shall be substituted ;

(b) the words “or list”, the words “or the list respectively” and the words “or the list” shall be deleted ;

(c) in the marginal note, the words “or enlistment” shall be deleted.

Amendment
of section 19
of Mah.
XXVIII
of 1961.

10. In section 20 of the principal Act,—

(a) in sub-section (2), for clause (a), the following clause shall be substituted, namely :—

“(a) the register maintained under the Maharashtra Medical Council Act, 1965 ;” ;

(b) sub-section (9) shall be deleted ;

(c) in the marginal note, the word “list” shall be deleted.

Amendment
of section 20
of Mah.
XXVIII
of 1961.

Mah.
XLVI
of 1965.

11. In section 21 of the principal Act,—

(a) sub-section (4) shall be deleted ;

(b) in the marginal note, the words “and list” shall be deleted.

Amendment
of section 21
of Mah.
XXVIII
of 1961.

Amendment
of section 23
of Mah.
XXVIII
of 1961.

12. In section 23 of the principal Act,—
(a) sub-section (5) shall be deleted ;
(b) in the marginal note, the words “ and enlisted ” shall be deleted.

Amendment
of section
23A of
Mah. XXVIII
of 1961.

13. In section 23A of the principal Act, sub-section (2) shall be deleted.

Amendment
of section 24
of Mah.
XXVIII of
1961.

14. In section 24 of the principal Act, after the figures “ 18,” the figures and letter “ 18A,” shall be inserted.

Substitution
of section
25 of Mah.
XXVIII of
1961.

15. For section 25 of the principal Act, the following section shall be substituted, namely :—

Rights of
registered
practitioners
to practise.

- “ 25. Notwithstanding anything contained in any law for the time being in force,—

(i) the expression “ legally qualified medical practitioner ” or “ duly qualified medical practitioner ” or any words importing a person recognised by law as a medical practitioner or member of the medical profession or as having a right to practise any system of medicine shall, in all Acts of the State Legislature and in all Central Acts (in their application to the State of Maharashtra), in so far as such Acts relate to any matters specified in List II or List III in the Seventh Schedule to the Constitution of India, include a practitioner whose name is entered in any part of the register maintained under this Act, whether before or on or after the 1st day of October 1976, that is, the date of coming into force of section 17 of the Indian Medicine Central Council Act, 1970 ;

48 of
1970.

(ii) it shall be lawful for every practitioner whose name is entered in any part of the register maintained under this Act to use in full after his name the words “ Registered Medical Practitioner ”;

(iii) a certificate, required by any Act from a medical practitioner or medical officer, shall be valid if such certificate has been given and signed by a practitioner registered under Part I or Part II of the register maintained under this Act.”.

Amendment
of section
30 of Mah.
XXVIII of
1961.

16. In section 30 of the principal Act, in sub-section (2),—
(a) in clause (e), the words “ and the list ” shall be deleted ;
(b) for clause (f), the following clause shall be substituted, namely :—
“ (f) the forms of application for registration and provisional registration under sections 17 and 18A, and the documents to accompany such forms ;” ;
(c) in clause (h), for the words “ and enlistment ” the words “ and provisional registration ” shall be substituted.

17. For section 33 of the principal Act, the following section shall be substituted, namely :—

Substitution of section 33 of Mah. XXVIII of 1961.

“ 33. (1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court, no person other than a medical practitioner whose name is entered in—

Prohibition of medical practice by persons not registered.

(i) the register maintained under this Act ; or

Bom. XII of 1960.

(ii) the register or the list prepared and maintained under the Bombay Homoeopathic and Biochemic Practitioners' Act, 1959 or under any other law for the time being in force in relation to the qualifications and registration of Homoeopathic or Biochemic Practitioners in any part of the State ; or

Mah. XLVI of 1965.

(iii) the register prepared and maintained under the Maharashtra Medical Council Act, 1965 ; or

CII of 1956.

(iv) the Indian Medical Register prepared and maintained under the Indian Medical Council Act, 1956,

shall practise any system of medicine in the State :

Provided that, the State Government may, by notification in the *Official Gazette*, direct that subject to such conditions as it may deem fit to impose and the payment of such fees as may be prescribed by rules, the provisions of this section shall not apply to any class of persons, or to any area, as may be specified in such notification.

(2) Any person who acts in contravention of any provisions of sub-section (1) shall, on conviction, be punished—

(i) for a first offence, with fine which may extend to five hundred rupees ;

(ii) for a second offence, with imprisonment for a term which may extend to six months and with fine which may extend to five hundred rupees ;

(iii) for a third and subsequent offences, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees.”

18. In section 33A of the principal Act, in sub-section (1),—

Amendment of section 33A of Mah. XXVIII of 1961.

(a) for the words “ Notwithstanding anything contained in the last preceding section,” the words “ Notwithstanding anything contained in any law for the time being in force,” shall be substituted ;

(b) at the end, the following *Explanation* shall be inserted, namely :—

“ *Explanation.*—For the purposes of this sub-section a practitioner registered under this Act shall not include a practitioner registered under Part III of the register maintained under this Act.”

19. In section 34 of the principal Act,—

Amendment of section 34 of Mah. XXVIII of 1961.

(a) in sub-section (1),—

(i) for clause (i), the following clause shall be substituted, namely :—

“ (i) Part I or Part II of the register maintained under this Act ; ” ;

(ii) for clause (ii), the following clause shall be substituted, namely :—

“ (ii) the Maharashtra Medical Council Act, 1965 ; ” ;

Mah. XLVI of 1965.

(b) in sub-section (2), for the words “ No person ” the words “ Notwithstanding anything contained in any law for the time being in force, no person ” shall be substituted.

Amendment of section 36 of Mah. XXVIII of 1961. 20. In section 36 of the principal Act, in sub-section (1), in clause (b), after sub-clause (iii), the following shall be inserted, namely :—
“ , or

(iv) has been recognised by the Central Council of Indian Medicine.”.

Amendment of Schedule to Mah. XXVIII of 1961. 21. In the Schedule to the principal Act, after Part D, the following Part shall be added at the end, namely :—
“ PART E.

All qualifications specified in the Second, Third and Fourth Schedules to the Indian Medicine Central Council Act, 1970, other than those specified in Parts A to D above.”. 48 of 1970.

STATEMENT OF OBJECTS AND REASONS

The Maharashtra Medical Practitioners Act, 1961 (Mah. XXVIII of 1961), provides for registration of practitioners of Ayurvedic and Unani Systems of Medicine. In 1970, Parliament has passed the Indian Medicine Central Council Act, 1970 (48 of 1970), to provide for constitution of a Central Council of Indian Medicine and the maintenance of a Central Register of Indian Medicine. Section 17 and sections 23 to 31 of this Act have been brought into force by the Central Government on the 1st October 1976. Section 17(2) *inter alia* provides that, no person other than a practitioner of Indian Medicine, who possesses a qualification included in Second, Third or Fourth Schedule to that Act and is enrolled in the State Register or the Central Register of Indian Medicine, shall practise Indian medicine in any State. The qualifications given in the Schedule to the Maharashtra Medical Practitioners Act, 1961 and in the Schedules to the Central Act are in certain respects different and, therefore, a person, who may possess a qualification given in the Schedule to the Maharashtra Act which is not also given in the Schedules to the Central Act, will not now be able to practise Indian medicine in this State. There is a saving provision in section 17(3) of the Central Act that nothing contained in section 17(2) shall affect the right of a practitioner enrolled on the State Register merely on the ground of not possessing any qualification recognised by the Central Act or affect any privilege conferred by the State law on a practitioner enrolled on the State Register. This saving provision will be useful to those who already stand registered on the 1st October 1976, but will not be useful to those who may be registered in future in the State register merely on the ground of possessing State qualifications and to a large number of enlisted practitioners who were also entitled to practise before but would not now be able to practise, because they were not registered practitioners on the date on which section 17 of the Central Act came into force. To remove the difficulties experienced by such practitioners and to make certain changes consequential to the passing of the Central Act, it is necessary to amend the Maharashtra Medical Practitioners Act, 1961, with retrospective effect from the 1st October 1976, the date on which section 17 of the Central Act came into force. The Bill is intended to achieve these objects.

The following notes on clauses explain the important provisions of the Bill :—

(a) *Clauses 2, 3 and 4(a).*—The State Act at present covers only Ayurvedic and Unani Systems of Medicine, whereas the Central Act includes *Siddha* system of Medicine and refers to Unani Tibb system, in the definition of “ Indian Medicine ”. The definition of “ Ayurvedic System of Medicine ” in section 2(1)(b) of the State Act and references to it in the long title and preamble thereof are proposed to be amended so as to include the “ *Siddha* system ”. Similarly reference to Unani Tibb system is being given in the definition of “ Unani system ” in the State Act.

(b) *Clause 7.*—An additional Part III is proposed to be added to the register maintained under section 17(2) of the State Act to include the names of practitioners who on the 30th day of September 1976 were enlisted practitioners and who would under revised section 18 be deemed to have become registered practitioners from that day.

A new sub-section (3A) is proposed to be inserted in section 17 entitling persons enrolled on the register maintained under the Central Act to be registered on the State register, on making an application and on payment of the fee.

(c) *Clause 8.*—In order to give them the benefit of sub-section (3) of section 17 of the Central Act, it is proposed that all the enlisted practitioners shall, under revised section 18, be deemed to be registered practitioners from the 30th September 1976. Their names shall be registered in the State register, without their being required to make any application or to pay any fee ; but they will be required to make the payment of a fee of Rs. 15 for getting a certificate of registration.

A new section 18A is also proposed to be inserted to provide for provisional registration of persons who have passed qualifying examinations, but whose courses of study require them to undergo a certain period of training before the qualifications are conferred on them.

(d) *Clause 15.*—Section 25 of the Act is proposed to be revised so as to make it clear that the persons enrolled in any part of the State register, whether before, on or after the 1st October 1976, would be entitled to practise in this State, notwithstanding anything contained in any other law for the time being in force.

(e) *Clause 17.*—Section 33 of the Act has been declared *ultra vires* by the Bombay High Court in *Rukmani v. Appellate Authority*, M.M.P. Act (1968), 71 *Bom. L.R.* 71, on the ground that section 18(2)(b)(ii) of the Act is violative of article 14 of the Constitution of India and that the provisions of section 18(2)(b)(ii) cannot be severed from those of section 33. Having regard to the fact that the existing section 18 of the Act is now proposed to be deleted and substituted by a new one, the unconstitutionality of section 33 on the abovementioned ground would stand removed with the enactment of the said new provision. However, in order to leave no scope for any doubt in this behalf, section 33 is proposed to be re-enacted with suitable modifications.

(f) *Clauses 18 and 19.*—Enlisted practitioners are not at present entitled to hold any appointments specified in section 33A and are not competent to give valid certificates or to give evidence as experts. Although the enlisted practitioners would now be deemed to be registered practitioners with effect from the 30th September 1976, such registration would not as at present entitle them to hold such appointments or to give valid certificates or expert evidence. Sections 33A and 34 of the Act are proposed to be amended to make this clear.

(g) Other clauses contain either consequential or minor amendments.

Bombay, dated 21st March 1978.

S. B. PATIL (NILANGEKAR),
Minister for Public Health.

MEMORANDUM REGARDING DELEGATED LEGISLATION

The Bill involves the following proposals for delegation of legislative powers.

2. *Clauses 8 and 16.*—By sub-clauses (b) and (c) of clause 16 of the Bill, clauses (f) and (h) of sub-section (2) of section 30 of the Maharashtra Medical Practitioners Act, 1961, are being substituted to empower the State Government to make rules to prescribe the forms of application for registration and provisional registration under section 17 and new section 18A, and the documents to accompany such forms and to prescribe the forms of certificates of registration and provisional registration, respectively.

3. *Clause 17.*—Under the proviso to sub-section (1) of section 33, substituted by this clause, the State Government is empowered to direct, by notification in the *Official Gazette*, that subject to such conditions as it may deem fit to impose and the payment of such fees as may be prescribed, the provision of the said section shall not apply to any class of persons or to any area, as may be specified in such notification.

4. The above proposals for delegation of legislative powers are of a normal character.

G. S. NANDE,

Secretary,

Bombay, dated the 27th March 1978.

Maharashtra Legislative Assembly.