

**THE MEDICAL PRACTITIONERS AND DENTISTS
(AMENDMENT) BILL, 2016**

A Bill for

**AN ACT of Parliament to amend the Medical
Practitioners and Dentists Act.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Medical Practitioners and Dentists (Amendment) Act, 2016.

Short title.

2. Section 8 of the Medical Practitioners and Dentists Act, hereinafter referred to as “the principal Act”, is amended by deleting subsection (5).

Amendment of section 8 of Cap. 253.

3. Section 14 of the principal Act is amended in subsection (1) by deleting the words “under a Government or local government” appearing immediately after the words, “a salaried post” and substituting therefor the words “under the national government or a county government”.

Amendment of section 14 of Cap. 253.

4. Section 19 of the principal Act is amended by deleting the words “shall be guilty of an offence and shall be liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding twelve months, or to both” appearing after the words, “assisting him therein” and substituting therefor the words “commits an offence and shall be liable, on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both”.

Amendment of section 19 of Cap. 253.

5. Section 22 of the principal Act is amended-

Amendment of section 22 of Cap. 253.

- (a) in subsection (1) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding twelve months or to both” appearing after the words, “as a private practitioner” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both”;

- (b) in subsection (2) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both.” appearing after the words, “provisions of this subsection” and substituting therefor the words “commits an offence and shall be liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding five years or to both”;
- (c) in paragraph (a) of subsection (3) by deleting the words “of the Government” appearing after the words, “medical department” and substituting therefor the words “of the national or the county government”.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The Bill seeks to amend the Medical Practitioners and Dentists Act, Cap. 253. The parent Act establishes the Medical Practitioners and Dentists Board which provides for the regulation of the practice of medicine and dentistry in the country. The key functions of the Board include-

- (1) inspecting and accrediting institutions for medical and dental training;
- (2) registering eligible medical and dental practitioners;
- (3) issuing practice licenses; and
- (4) conducting preliminary inquiries on professional conduct and medical malpractice;

Further, the Act sets out offences and penalties related to professional misconduct in the practice of medicine and dentistry. This Bill therefore seeks to enhance the penalties set out in the Act given the high number of complaints arising from cases of professional misconduct and misrepresentation in the profession.

The Bill also seeks to ensure the recognition of counties in the regulation of the practise of medicine and dentistry in the country.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement of how the Bill concerns County Governments

Article 43(1)(f) of the Constitution confers on every person the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. Further, paragraph 2 of the Fourth Schedule to the Constitution provides for health as a devolved function. The regulation of medical practitioners and dentists who work in health institutions therefore directly affects the powers and functions of county governments.

This Bill is therefore a Bill that affects counties in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution

The Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 15th February, 2016.

WILFRED LESAN,
Member,
Standing Committee on Health.

Section 8 of Cap. 253 of which it is proposed to amend

8. Correction of register

(1) The Registrar shall from time to time make any necessary alterations and corrections in the register in relation to any entry therein.

(2) The Registrar shall remove from the register—

(a) the name of every deceased person;

(b) the name of every person convicted of an offence under section 19;

(c) the name of every person whose name the Board has under section 20 directed should be struck off the register; and

(d) any entry which has been incorrectly or fraudulently made in the register.

(3) The Registrar may, with the consent of the person concerned, remove from the register the name of a person who has ceased to practise.

(4) The Registrar shall, not later than 1st July in each year, send by registered post to every person registered in the register a notice inquiring whether or not that person has ceased to practise or has changed his address, and, if no answer is returned to the inquiry within six months from the posting thereof, the name of that person may be removed from the register; but a name removed under this subsection may, at the request of the person concerned and on payment of the prescribed fee, be reinstated by the Registrar.

(5) The Registrar-General of Births and Deaths shall notify the Registrar of the death of any registered medical practitioner or dentist.

Section 14 of Cap. 253 of which it is proposed to amend

14. Effects of registration and licence under section 13

(1) Registration as a medical practitioner or a dentist under this Act, or the granting of a licence under section 13, shall only entitle the person so registered or so licensed to practise medicine or dentistry or to render medical or dental services, as the case may be, in a salaried post under a Government or local government health scheme or in such salaried posts in such institutions as the Board may from time to time approve.

(2) No medical practitioner or dentist shall act as or engage in private practice as a private practitioner or may be employed by a private practitioner, unless he holds a licence to engage in private practice under the provisions of section 15.

Section 19 of Cap. 253 of which it is proposed to amend

19. Penalty for fraudulently procuring registration or licence

A person who wilfully procures or attempts to procure himself to be registered or licensed under any of the provisions of this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing, and a person aiding or assisting him therein, shall be guilty of an offence and shall be liable to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding twelve months, or to both; and if a person convicted of an offence under this section is registered or licensed under this Act the Registrar shall forthwith remove his name from the register or cancel his licence, as the case may be.

Section 22 of Cap. 253 of which it is proposed to amend

22. Penalty for unregistered and unlicensed person practising

(1) Any person who wilfully and falsely takes or uses any name, title or addition implying a qualification to practise medicine or surgery or dentistry, or who, not being registered or licensed under this Act, practises or professes to practise or publishes his name as practising medicine or surgery or dentistry, or who, not being licensed under section 15, practises as a private practitioner, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding twelve months or to both.

(2) Subject to this Act, no person shall use the title “doctor” unless he is registered or licensed under this Act as a medical or dental practitioner or he has acquired a higher academic doctoral qualification which entitles him to use that title and any person who contravenes the provisions of this subsection shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both.

(3) Nothing in subsection (1) shall make it an offence for a person in the service of—

- (a) the medical department of the Government; or
- (b) a hospital, dispensary or similar institution which the Director of Medical Services, by notice in the Gazette, declares to be an approved institution for the purposes of this section,

to render medical assistance in the course of his duties in such service or for a person to carry out treatment under the direction, supervision and control of a medical practitioner or a dentist or of a person licensed under section 13.