

GOVERNMENT OF FIJI

**PHARMACY PROFESSION DECREE 2011
(Decree No. of 2011)**

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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 of Fiji Decree 2009, I hereby make the following Decree —

**TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC IN RELATION TO THE
PRACTICE OF PHARMACY BY PROVIDING AND REGULATING FOR THE
REGISTRATION OF PHARMACISTS, PHARMACY CHEMISTS, PHARMACY
TECHNICIANS AND PROVIDING FOR THE ESTABLISHMENT OF THE FIJI PHARMACY
PROFESSION BOARD AND THE FIJI PHARMACEUTICAL SOCIETY.**

PART 1 - PRELIMINARY

Short title and commencement

1. - (1) This Decree may be cited as the Pharmacy Profession Decree 2011.

(2) This Decree shall come into force on a date appointed by the Minister by notice in the *Gazette*.

Objects

2. - (1) The object of this Decree is to protect the health and safety of the public in relation to the practice of pharmacy.

(2) The Decree achieves this object by-

- (a) providing for the registration of pharmacists, pharmacy chemists and pharmacy technicians;
- (b) regulating the operation of pharmacies, pharmacy businesses and the provision of pharmacy services; and
- (c) providing for the establishment of the Fiji Pharmacy Profession Board and the Fiji Pharmaceutical Society.

Interpretation

3. In this Decree, unless the context otherwise requires-

"approved" in relation to a form, procedure or other matter means approved by the Board;

"Board" means the Fiji Pharmacy Profession Board established under Part 2;

"Chief Pharmacist" means the public service employee appointed to the position of Chief Pharmacist in the Ministry of Health;

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

"code of conduct" means a code of conduct prescribed by the Board under section 105;

"committee" means a committee of the Board;

"complaint" means a complaint of unprofessional conduct made under section 56;

"condition" includes limitation or restriction;

"conditional registration" means entry on the appropriate register subject to conditions set by the Board under section 28;

"continuing professional development" means professional development and development in the pharmacy field which continues after qualification and registration;

"corporate health services provider" means a corporate body that provides health services;

"division" in relation to the register means the part of the register which shows whether the registered person is a registered pharmacist, a registered pharmaceutical chemist or a pharmacy technician;

"Fiji Medical Council" means the Council referred to in section 4 of the Medical and Dental Practitioners Decree 2010;

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

"full registration" means entry on the register without any conditions or limitations;

"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 person) who provides health services through the instrumentality of a registered person;

"investigator" means a person appointed by the Board under section 58 to exercise the powers of an investigator under this Decree;

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

"Minister" means the Minister of Health;

"Ministry" means the Ministry of Health;

"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) notification as to medical unfitness to practice made under section 65;

"person" and "party" include any company or association, or body of persons corporate or unincorporate;

"Permanent Secretary" means the Permanent Secretary in the Ministry;

"pharmaceutical chemist" means a person carrying on practice as a pharmaceutical chemist;

"pharmacist" means a person carrying on practice as a pharmacist;

"pharmacy" means premises in or from which a registered pharmacist supplies, compounds or dispenses medicines to the public and includes the portion of the premises where the pharmacist sells or offers to sell goods of any kind, but does not include a pharmacy department;

"pharmacy business" means a business carried on at a pharmacy and includes the business of providing pharmacy services and that part of the business where goods of any kind are sold or offered to be sold but does not include a pharmacy department;

"pharmacy department" means a pharmacy maintained out of private funds and located within a private hospital within the meaning of the Private Hospitals Act (Cap 256A), but does not include a pharmacy maintained out of public funds and located within a public hospital, public dispensary, health centre or a nursing station;

"pharmacy services" includes-

- (a) supplying, compounding or dispensing of medicines; and
- (b) advising and counselling on the effective and safe use of medicines;

"pharmacy technician" means a person carrying on practice as a pharmacy technician;

"practise" in relation to a pharmacist includes the provision of pharmacy services;

"prescribed" means prescribed by this Decree or by the Regulations;

"Professional Conduct Committee" means a committee appointed by the Board under section 8;

"Professional Standards Committee" means a committee appointed by the Board under section 9;

"proprietary interest" means a legal or beneficial interest and includes a proprietary interest as a sole proprietor, partner, director, member or shareholder of a company and as the trustee or beneficiary of a trust;

"public dispensary" means a dispensary maintained out of public funds and includes a health centre or a nursing station;

"public hospital" means a hospital maintained out of public funds and includes a health centre or a nursing station;

"recognised approval country" means a country listed in Schedule 1 of the Regulations and any other country prescribed by the Minister, in the Regulations, to be a recognised approval country for the purposes of this Decree;

"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 the Fiji Pharmacists Register established under Part 6;

"registered person" means a person registered as a pharmacist, pharmaceutical chemist or a pharmacy technician under this Decree;

"Registrar" means-

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

"registered pharmaceutical chemist" means a person registered as a pharmaceutical chemist under this Decree;

"registered pharmacist" means a person registered as a pharmacist under this Decree or as a pharmacist or pharmaceutical chemist under any corresponding previous enactment whose name appears on the Register;

"registered pharmacy technician" means a person registered as a pharmacy technician under this Decree;

"Regulations" means regulations under this Decree;

"sale" includes-

- (a) delivery (whether with or without consideration) in any shop, store, attached or associated premises by the keeper, or his or her servant or agent; or
- (b) having in possession for sale or exposing for sale in any place;

"Secretariat" means the Fiji Pharmacy Profession Board Secretariat established by Part 5;

"sell" has a corresponding meaning to sale;

"Society" means the Fiji Pharmaceutical Society established under Part 13;

"student" means a person who has passed the prescribed annual examination of the first year of the course of academic instruction, but has not passed the prescribed final examination in a course of study to qualify as a pharmacist or pharmacy technician;

"temporary registration certificate" means a registration certificate issued by the Board under section 35 of this Decree;

"trainee" means a person who has completed the whole of the course of his or her academic instruction and passed all the prescribed annual examinations but has not yet been registered as a pharmacist;

"Tribunal" means the Pharmacy Professional Conduct Tribunal established by section 69;

"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 pharmacy services;
- (c) dispensing drugs on a misprescription;
- (d) the improper disposal of medical records;
- (e) a contravention of or failure to comply with a-
 - (i) provision of this Decree; or
 - (ii) 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;
- (g) conduct of a registered person occurring in connection with the pharmacy practice that is of a lesser standard than a member of the public or the registered person's peers are entitled to expect of a reasonably competent registered person of that kind;
- (h) professional performance which is of a lesser standard than that which the registered person's peers might reasonably expect of a registered person;
- (i) unprofessional conduct committed before the commencement of this Decree;
- (j) unprofessional conduct committed outside Fiji; or
- (k) a reference to failing or refusing to engage in such conduct.

PART 2 - FIJI PHARMACY PROFESSION BOARD

Establishment of the Fiji Pharmacy Profession Board

4. - (1) This section establishes the Fiji Pharmacy Profession Board as a corporate body, with perpetual succession and a common seal.

(2) The Board-

- (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 this Decree.

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

Composition of the Board

5. - (1) The Board shall consist of 9 members appointed by the Minister.

(2) In appointing the members of the Board, the Minister shall ensure that they comprise of the following-

- (a) Permanent Secretary for Health who shall be the Chairperson;
- (b) Chief Pharmacist who shall be the Deputy Chairperson;

- (c) two persons who must be registered pharmacists nominated by the Fiji Pharmaceutical Society, one of whom with experience in retail pharmacy services and the other with experience in the private sector;
- (d) one person who must be a pharmacy technician nominated by the Society of Hospital Pharmacists of Fiji;
- (e) one person who must be a representative of the School of Medicine nominated by the Dean of the College of Medicine, Nursing & Health Sciences, of the Fiji National University; and
- (f) three persons who must be chosen by the Minister having regard to the desirability of appointing members with expertise or interest in law, medicine, health sciences, consumer affairs or industry.

Powers of the Board

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

(2) Without limiting subsection 1, the Board has the power, in accordance with this Decree, to-

- (a) do all things that a corporate body can do, consistent with its functions under this Decree;
- (b) register pharmacists, pharmaceutical chemists and pharmacy technicians under Part 6;
- (c) approve appropriate qualifications, courses of study and clinical training for the registration of pharmacists, pharmaceutical chemists and pharmacy technicians;
- (d) conduct investigations and take disciplinary proceedings against registered pharmacists, pharmaceutical chemists and pharmacy technicians under Part 10;
- (e) appoint investigators to investigate complaints pursuant to Part 10;
- (f) refer disciplinary inquiries to the Tribunal under Part 11;
- (g) suspend the registration of pharmacists, pharmaceutical chemists and pharmacy technicians;
- (h) formulate standards and issue codes of practice and professional standards for pharmacists, pharmaceutical chemists and pharmacy technicians under section 105;
- (i) issue or endorse guidelines on continuing professional development for pharmacists, pharmaceutical chemists and pharmacy technicians; and
- (j) delegate its functions consistently with the power of delegation in section 15.

Functions of the Board

7. - (1) The functions of the Fiji Pharmacy Profession Board are to-

- (a) regulate pharmacy practice in public interest;
- (b) in consultation with persons and bodies the Board considers appropriate, to-
 - (i) approve appropriate qualifications, courses of study and clinical training for the registration of pharmacists, pharmaceutical chemists and pharmacy technicians;
 - (ii) decide the requirements necessary for the registration of pharmacists, pharmaceutical chemists and pharmacy technicians; or
 - (iii) decide on the continuing professional development requirements to be met as a condition of being registered as a pharmacist, pharmaceutical chemist or pharmacy technician;
- (c) decide on applications for registration from persons wishing to become registered pharmacists, pharmaceutical chemists and pharmacy technicians;
- (d) grant, revoke and suspend the registration of pharmacists, pharmaceutical chemists and pharmacy technicians;
- (e) respond to notifications and complaints received against registered pharmacists, pharmaceutical chemists and pharmacy technicians and to conduct investigations and take

- disciplinary proceedings against such registered pharmacists, pharmaceutical chemists and pharmacy technicians;
- (f) appoint investigators to investigate complaints against registered pharmacists, pharmaceutical chemists and pharmacy technicians and to refer disciplinary inquiries to the Tribunal under Part 11;
 - (g) formulate standards and prepare or endorse codes of conduct of professional standards for registered pharmacists, pharmaceutical chemists and pharmacy technicians;
 - (h) provide advice to the Minister as the Board considers appropriate or as the Minister requests;
 - (i) carry out other functions assigned to the Board by or under this Decree, or by the Minister in writing.

(2) The response to notifications and complaints under subsection (1) (e) may include processes by which the registered pharmacist, pharmaceutical chemist or pharmacy technician 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 Board considers appropriate.

(3) The Board must perform its functions under this Decree by achieving and maintaining high professional standards both of competence and conduct in the provision of pharmacy services in Fiji.

PART 3 - COMMITTEES OF THE FIJI PHARMACY PROFESSION BOARD

Professional Conduct Committee

8. - (1) The Board must establish a Professional Conduct Committee consisting of 5 members whereby-
- (a) 3 must be registered persons; and
 - (b) 2 must be persons who are not registered persons.
- (2) When appointing a Professional Conduct Committee, the Board must designate one of the members of the Committee as presiding member of the committee.
- (3) A quorum for a Professional Conduct Committee is 3 members, whereby 2 must be registered persons.
- (4) 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 Chairman of the Board;
 - (ii) be dismissed for cause by the Board.
- (5) A committee member who is appointed pursuant to section 8 (1) (a) ceases to be a member if he or she ceases to be a registered person.
- (6) 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 registered persons as to scope of their services, when their capacity to provide certain services is impaired;
- (d) refer cases to the Board for imposition of conditions if a negotiated agreement cannot be reached;
- (e) monitor compliance with conditions agreed or imposed by the Board;
- (f) conduct investigations in accordance with Part 10 to determine whether any prima face case of unprofessional conduct exists;
- (g) recommend to the Board disciplinary action or reference to the Tribunal in the case of a finding of unprofessional conduct in accordance with Part 11;
- (h) perform any other appropriate function assigned to the Committee by the Board from time to time.

(7) The Committee's functions in matters of regulation of impaired registered persons and discipline of unprofessional conduct should be carried out in accordance with principles of natural justice.

Professional Standards Committee

9. - (1) The Board must establish a Professional Standards Committee consisting of appropriate professional and other representatives.

(2) The Professional Standards Committee should comprise of the following-

- (a) a presiding member, appointed by the Board from among its members who are registered persons;
- (b) one person nominated by the Dean of the College of Medicine, Nursing & Health Sciences, of the Fiji National University;
- (c) one person nominated by the Fiji Pharmaceutical Society;
- (d) one person nominated by the Fiji College of General Practitioners; and
- (e) one person nominated by the Permanent Secretary.

(3) Members of the Professional Conduct Committee-

- (a) are appointed for a term of 3 years any may be re-appointed;
- (b) may-
 - (i) resign by writing to the presiding member of the Board; or
 - (ii) be dismissed for cause by the Board in the case of a nominated person at the request of the nominating body.

(4) A committee member who is appointed pursuant to section 9 (2) ceases to be a member if he or she ceases to be a registered person.

(5) The functions of a Professional Standards Committee are to-

- (a) monitor every training course for students in pharmacy and related subjects within tertiary education facilities in Fiji;
- (b) make recommendations to the Board concerning recognition of degrees awarded, in Fiji or elsewhere, as qualification for registration;
- (c) make recommendations to the Board concerning the qualifications for registration;
- (d) refer to the Board any need to change the status previously granted to any course of training or education;

- (e) make recommendations to the Board on the continuing professional development requirements;
- (f) examine continuing professional development programmes proposed by registered persons and bodies, and make recommendations to the Board concerning recognition of such programmes;
- (g) develop guidelines for assessment of the practice of registered persons;
- (h) assess and determine the status to be given to persons completing such programmes managed by appropriate academic or professional bodies; and
- (i) perform any other appropriate function assigned to the Committee by the Board from time to time.

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

(7) The Committee must establish guidelines on appropriate matters, including, but not limited to the nature, scope and format of continuing professional development programmes.

(8) The procedure of the Professional Standards Committee is governed by section 11 to the extent appropriate.

Other committees

10. - (1) The Board may establish committees to-

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

(2) Subject to subsection 3, a committee of the Board may include persons who are not members of the Board 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 Board.

(4) Unless powers are delegated to a committee under section 15, a committee has an advisory role only and does not exercise any of the powers of the Board under this Decree.

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

Procedure of committees

11. - (1) The procedure of a committee, except as otherwise provided by or under this Decree, is to be governed by Part 3 to the extent appropriate.

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

(3) The Board may direct a committee to change its procedures or adopt new procedures, if the Board considers it necessary to achieve efficient and accountable operation of the committee's business.

(4) The Board may remove a member from any committee if the member-

- (a) ceases to be qualified for the appointment;
- (b) conducts himself or herself in a manner that brings the profession into disrepute;

- (c) is absent for 3 consecutive meeting of the committee without reasonable excuse; or
- (d) fails to carry out or becomes incapable of performing satisfactorily the duties of a committee member.

PART 4 - PROCEEDINGS OF THE BOARD

Terms and conditions of membership

12. - (1) The Chairperson and members of the Board shall hold office for 3 years, and are eligible for re-appointment.

(2) The Minister may remove a member of the Board from office if the member-

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

(3) The office of a member 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 Board; or
- (e) is removed from office under subsection (2).

(4) If a member of the Board is a member of the Professional Conduct Committee for the purposes of any proceeding under Part 3 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.

(5) In the event of a vacancy and another person is appointed for such vacancy, such person shall hold office for the balance of the term of his or her predecessor.

Vacancies or defects in appointment of members

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

Procedure

14. – (1) Every meeting of a Board, other than for the purposes of taking disciplinary action under Part 10 is to be chaired by the presiding member or, in that member's absence, by the deputy presiding member. In the absence of both the presiding member and the deputy presiding member, the members present may for that particular meeting choose a member to preside at the meeting.

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

(3) Each member present at a meeting of the Board has one vote on any question arising for decision and, except in taking disciplinary action under Part 10, the member presiding at the meeting may exercise a casting vote if the votes are equal.

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

(5) At any Board meeting, the quorum shall be the Chairperson, or in his or her absence, the Deputy Chairperson and four members.

(6) If the Chairperson and Deputy Chairperson are both absent from a Board meeting then the meeting is to be cancelled.

(7) The Board may hold meetings, or allow members to take part in meetings by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(8) A member who takes part in a Board meeting under subsection (7) is taken to be present.

(9) Accurate minutes of every Board meeting must be kept.

(10) The Minister may-

- (a) direct the Board to change its procedures or to adopt new procedures, if the Minister considers it necessary to achieve efficient and accountable operation of the business of the Board; and
- (b) not give a direction that has the effect of overruling a decision of the Board on a professional matter.

Delegation

15. – (1) The Board 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 10.

(2) A delegation-

- (a) may be made to a-
 - (i) member of the Board, the Registrar or an employee of the Secretariat; or
 - (ii) committee established by the Board;
- (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 Board to act in a matter.

Conflict of interest

16. A member of the Board 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 persons generally or a substantial section of registered persons in Fiji.

Powers of the Board in relation to witnesses, etc

17. – (1) For the purposes of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may-

- (a) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the attendance before the Board of any person whom the Board thinks fit to call before it;
 - (b) by summons signed on behalf of the Board by a member of the Board or the Registrar, require the production 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 a-
 - (i) written translation of the document or record into English; and
 - (ii) certificate signed by a translator approved by the Board 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 Board) to answer truthfully questions put by any member of the Board or any person appearing before the Board; or
 - (e) require any person appearing before the Board (whether summoned to appear or not) to answer any questions put by any member of the Council or by any person appearing before the Board.
- (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 Board, issue a summons on behalf of the Board.
- (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 Board;
 - (b) having been served with a summons to produce a-
 - (i) written translation of the document or record into English; and
 - (ii) certificate signed by a translator approved by the Board 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 Board, wilfully insults the Board or one or more of the members in the exercise of the members' official duties, or wilfully interrupts the proceedings of the Board; 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 Board,
- commits an offence and is liable upon conviction to a maximum penalty of a fine of \$20,000.
- (4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the High Court.

Principles governing proceedings

18. – (1) In any proceedings before the Board under this Decree, the Board-

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

- (c) must keep the parties to the proceedings properly informed as to the progress and outcome of the proceedings.

Remunerations

19. - (1) A member of the Board is entitled to remuneration, allowances and expenses as determined by the Minister.

(2) A professional person who is a member of the Board 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.

Costs

20. - (1) The Board may award such costs against a party to proceedings before it as the Board considers just and reasonable.

(2) A party who is dissatisfied with the amount of the costs awarded by the Board 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 Board.

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

Funding of the Board

21. - (1) The Board is funded out of fees for registration and other services provided by the Board as prescribed by the Regulations.

(2) The Board may at any time receive public money by way of grant or loan from the Government in accordance with the Financial Management Act 2004.

Accounts and audit

22. - (1) The Board 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 Board.

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

Annual report

23. - (1) The Board 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 the Board 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;
- (ii) the total number of registered pharmacists, pharmaceutical chemists and pharmacy technicians;
- (iii) the number and nature of complaints received by the Board against registered pharmacists, pharmaceutical chemists and pharmacy technicians;
- (iv) the number and nature of voluntary undertakings given to the Board by registered pharmacists, pharmaceutical chemists and pharmacy technicians;

- (v) the outcomes of any proceedings before the Board under Part 4; and
- (vi) any other information prescribed by the Regulations;

(b) incorporate the audited accounts of the Board 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 5 - FIJI PHARMACY PROFESSION BOARD SECRETARIAT

Registrar of the Secretariat

24. - (1) This section establishes the Fiji Pharmacy Profession Board Secretariat, with a Registrar of the Secretariat, who must not be a member of the Board.

(2) The Registrar is appointed by the Board on terms and conditions determined by the Board and reports to the Chief Pharmacist.

Other staff of the Secretariat

25. - (1) The Board may, from time to time, appoint any such staff to the Secretariat, as it considers necessary to assist in the performance of its functions under this Decree.

(2) The staff of the Secretariat may 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; and
- (c) a receptionist, data entry or 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

26. - (1) The functions of the Secretariat are to-

- (a) provide administrative and secretarial services to, and as directed by, the Board or the Chief Pharmacist and any committee established by the Board;
- (b) establish, maintain and publish the register required by this Decree;
- (c) receive and process applications for registration on the register and refer every application duly made to the Board for decision;
- (d) receive and process notifications about pharmacy practice matters from members of the public, registered; persons and health services providers;
- (e) receive and to process forthwith complaints about registered persons and refer them to the Board;
- (f) implement decisions of the Board on registration, licensing and disciplinary matters;
- (g) pass information received from applicants or other persons to the Board;

- (h) convey decisions of the Board to applicants and other persons and to give appropriate publicity to them.
- (i) maintain a website for the Board;
- (j) communicate with pharmacy registration authorities in other jurisdictions, for the purpose of obtaining and supplying information about registered persons and applicants for registration;
- (k) perform other functions assigned to the Secretariat by the Board and the Chief Pharmacist 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 members of the public and registered pharmacists, pharmaceutical chemists and pharmacy technicians.

(4) The Registrar must ensure that all services are provided, and that the business of the Board 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 pharmacists, pharmaceutical chemists and pharmacy technicians.

Funding of the Secretariat

27. - (1) The Secretariat is to be funded by the Board from the fees of registered pharmacists, pharmaceutical chemists and pharmacy technicians.

(2) The Secretariat must account to the Board any fees or other moneys collected by the Secretariat for services provided.

PART 6 - REGISTER

Register to be kept

28. - (1) The Registrar must keep a register divided into the following divisions-

- (a) Division 1 - Registered Pharmacist which is to be a list of the names of every person who has satisfied the Board that he or she has the qualifications required for registration as a pharmacist;
- (b) Division 2 - Registered Pharmaceutical Chemists which is to be a list of the names of every person who has satisfied the Board that he or she has the qualifications required for registration as a pharmaceutical chemist; and
- (c) Division 3 - Registered Pharmacy Technicians which is to be a list of the names of every person who has satisfied the Board that he or she has the qualifications required for registration as a pharmacy technician.

(2) The register 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) a record of the registration fees paid; and
- (e) any other information prescribed by the Regulations,

and may include any other information the Board thinks fit.

(3) The register must include particulars of any registered person whose practice is subject to conditions either entered into voluntarily between the Board and the registered person or imposed by the Board.

(4) A registered person must, within one month after changing any details in subsection (2), inform the Registrar in writing of the change and failing to inform is an offence which carries a maximum penalty of a fine of \$250.00.

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

(6) The archival register referred to in subsection (5) 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; and
- (f) if the person has been disqualified from being registered, the date and duration of the disqualification and any conditions attached to its removal.

Supplementary register

29. - (1) The Registrar is responsible to the Board for the form and maintenance of the register and the register may be kept in an electronic form accessible by a computer or computers.

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

(3) The register must be kept available for investigation by any person during ordinary office hours at the office of the Secretariat and the register or extracts of the register 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 the 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.

(6) The Board may from time to time make all necessary alterations in the Register of the names, any qualifications and address of a person registered under this Decree or under any corresponding previous enactment.

(7) When the Registrar-General of Births, Deaths and Marriages registers the death of a registered pharmacist or pharmaceutical chemist or pharmacy technician, he or she must, as soon as practicable, transmit notice of the death by post to the Registrar, and the Board must upon receipt of such notice cause the name of the pharmacist or pharmaceutical chemist or pharmacy technician to be removed from the Register.

(8) An application may be made to the Registrar at any time by a person on the Register for a certificate that the person is a registered pharmacist or registered pharmacy technician under this Decree.

(9) When an application is made under subsection (8), the Registrar must, on payment of the prescribed fee, issue a certificate to the applicant.

PART 7 - REGISTRATION AND EXAMINATION

Registration on the register

30. - (1) Subject to this Decree, an individual is eligible for registration as a pharmacist or pharmaceutical chemist or pharmacy technicians if he or she, on application to the Secretariat, satisfies the Board that he or she has qualifications approved or recognised by the Board for the purposes of registration.

(2) A person is qualified for registration as a pharmacist if that person-

(a) has successfully completed a course of study in pharmacy practice approved by the Board and has successfully completed-

(i) a period of supervised training in pharmacy practice approved by the Board; and

(ii) has passed an examination set by the Board or a person or body nominated by the Board for the purpose of qualifying persons for registration as a pharmacist;

(b) has successfully completed a course of study that, in the opinion of the Board, is substantially equivalent to a course of study in pharmacy practice approved by the Board and has successfully completed-

(i) a period of supervised training in pharmacy practice approved by the Board; and

(ii) has passed an examination set by the Board or a person or body nominated by the Board for the purpose of qualifying persons for registration as a pharmacist;

(c) has a qualification that is recognised in a country listed as a 'recognised approval country' as sufficient for the purposes of obtaining registration in that country as a pharmacist; or

(d) has been registered as a pharmacy technician for a minimum of two years and has successfully-

- (i) been assessed for possession of the competencies approved by the Board as necessary for practice as a pharmacist; and
 - (ii) passed an examination set by the Board or a person or body nominated by the Board for the purpose of qualifying a registered pharmacy technician for registration as a pharmacist.
- (3) A person is qualified for registration as a pharmaceutical chemist if that person-
 - (a) has successfully completed a course of study approved by the Board and has successfully completed-
 - (i) a period of supervised training approved by the Board; and
 - (ii) has passed an examination set by the Board or a person or body nominated by the Board for the purpose of qualifying persons for registration as a pharmaceutical chemist; or
 - (b) has successfully completed a course of study that, in the opinion of the Board, is substantially equivalent to a course of study approved by the Board and has successfully completed-
 - (i) a period of supervised training in pharmacy practice approved by the Board; and
 - (ii) has passed an examination set by the Board or a person or body nominated by the Board for the purpose of qualifying persons for registration as a pharmaceutical chemist;
 - (c) has a qualification that is recognised in a country listed under 'recognised approval country' as sufficient for the purposes of obtaining registration in that country as a pharmaceutical chemist.
- (4) A person is qualified for registration as a pharmacy technician if that person-
 - (a) has successfully completed a course of study in pharmacy practice approved by the Board for the qualification of pharmacy technicians;
 - (b) a course of study that, in the opinion of the Board, is substantially equivalent to a course of study in pharmacy practice approved by the Board for the qualification of pharmacy technicians; or
 - (c) has a qualification that is recognised in a recognised in a country listed as a 'recognised approval country' as sufficient for the purposes of obtaining registration as a pharmacy technician.
- (5) Registration as a pharmacist, pharmaceutical chemist or pharmacy technician itself does not entitle the registered person to work in Fiji in contravention of the immigration or business licensing laws.

Application for registration

31. - (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 Board specifies in order to enable the Board to determine the application; and
 - (b) if so required by the Board, attend an interview at a place and time specified by the Board.
- (3) The Board may require an applicant for registration to-
- (a) submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide pharmacy or pharmacy related services; or
 - (b) obtain additional qualifications or experience specified by the Board before the Board determines the application.
- (4) 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 Board by interview, or by certification from an approved assessment body.
- (5) The Board must not grant registration to a person unless satisfied that the person is-
- (a) medically fit to provide pharmacy or pharmacy related services; and
 - (b) a fit and proper person to be registered.
- (6) The Board may delegate to a committee its powers under this section, but a decision on registration may only be made by the Board after receiving advice from the committee.

Fees

32. - (1) The Board may demand and in advance collect such fees as are fixed by the Board and published in the *Gazette* in respect of the following matters-

- (a) Restoration of name to register;
 - (b) Certificate of identity;
 - (c) Registration after final examination;
 - (d) Registration of certificate of competency from a prescribed body outside Fiji;
 - (e) Temporary registration;
 - (f) Registration fee;
 - (g) Licence and licence renewal fee;
 - (h) Approval of pharmacies;
 - (i) Approval of pharmacy departments in private hospitals; and
 - (j) Approval of plans and specifications for alterations to pharmacies or to pharmacy departments in private hospitals.
- (2) All fees received by the Board shall be applied by the Board in such manner as it thinks fit in the defraying of expenses and in carrying out its functions under this Decree.
- (3) Every registration as a pharmacist or pharmaceutical chemist or pharmacy technician is effective for a period of time determined by the Board, but not exceeding one calendar year.
- (4) If in any year a registered person fails to pay his or her registration renewal fee, the Board may cause the name of that person to be removed from the register.

Requirement for renewal of registration

33. - (1) At least 14 days before the latest date for payment of the annual registration renewal fee, the Board must send a notice to each registered person stating that the registration renewal fee is payable on or before the date set out in the notice.

(2) A notice under subsection (1) must be sent by post to each registered person at the address recorded in the register for that person.

(3) An omission to send a notice under subsection (1) or the non-receipt of such a notice by any person does not-

- (a) affect the liability of a person to have his or her name removed from the Register; or
- (b) give any right to a person to have his or her name restored to the Register.

Restoration of name

34. The Board may cause the name of any person whose name has been removed from the Register under section 36 to be restored to the Register, on the payment of the-

- (a) registration renewal fee for the non-payment of which the name was erased or removed; and
- (b) prescribed fee for the restoration of his or her name to the Register.

Temporary Registration Certificates

35. - (1) Upon application in writing made by the governing body of a teaching or research institution on behalf of a person who-

- (a) holds a qualification in pharmacy of a university or pharmacy school outside Fiji or who is qualified by law to practise pharmacy or practice as a pharmaceutical chemist or pharmacy technician outside Fiji; and
- (b) is in Fiji or proposes to come to Fiji in some capacity connected with teaching research or post-graduate study in pharmacy,

the Board may issue a temporary certificate of registration as a pharmacist or pharmaceutical chemist or pharmacy technician for that person in the form approved by the Board.

(2) A temporary registration certificate shall be issued-

- (a) subject to any limitations and restrictions upon the practice of pharmacy or practice as a pharmacy pharmaceutical chemist or pharmacy technician by that person specified in the certificate; and
- (b) for a period of not more than 2 years, in the first instance.

(3) Upon application in writing by the governing body of a teaching or research institution during the currency of a temporary registration certificate, the Board may, from time to time renew the certificate for a further period or periods of not more than one year for each such application.

(4) The maximum period for a temporary registration certificate for any person must not exceed a total of 4 years.

(5) The Board may at any time and for any reason cancel any temporary registration certificate issued or renewed under this section and the certificate then ceases to have any force or effect.

(6) The Board must ensure that-

- (a) a record is kept, called the "Record of Temporary Pharmacists Registrations"; and

(b) in the record all the details about the issue, renewal and cancellation of temporary registration certificates is entered accordingly.

(7) A person to whom a temporary registration certificate is issued is deemed to be a registered person within the meaning of this Decree for all the purposes of this Decree and any other Act or law-

- (a) while the certificate remains in force; and
- (b) so long as he or she does not infringe the restrictions or limitations or contravene the conditions specified in the certificate.

(8) A certificate purporting to be signed by the Registrar and a member of the Board, to the effect that a temporary registration certificate was-

- (a) in force about any person at any specified date or during any specified period; or
- (b) not in force about any person at any specified date or during any specified period,

is in all courts and before all persons acting in any judicial or official capacity *prima facie* evidence of the facts stated in the certificate.

(9) In this section, teaching or research institution means any university, college or school of pharmacy, research institute, hospital or other like institution which is-

- (a) engaged in Fiji in teaching or research in pharmacy; and
- (b) approved by the Board in writing for the purposes of this section.

Removal from the register

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

(2) The Registrar must remove from the 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 Board under Part 8;
- (d) whose registration is cancelled by the Tribunal under Part 7;
- (e) who has failed to obtain renewal of the relevant licence for 2 years;
- (f) who fails to pay a fine imposed by Board or the Tribunal within the time specified in the order imposing the fine;
- (g) who is found to be medically unfit to practise; or
- (h) who ceases, for any other reason, to be entitled to be registered on the register.

(3) If a pharmacy 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.

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

Reinstatement on register

37. - (1) A person who has been removed from the 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 the Board 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 Board at any time for reinstatement on that register.

(2) A person whose registration on a register has been suspended may apply to the Board 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 6 may, subject to the terms of the order for disqualification, apply to the Board for reinstatement on the 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 Board so requires, provide the Secretariat with specified information to enable the Board to determine the application.

(6) The Board may require an applicant for reinstatement of registration to-

- (a) submit a medical report or other evidence acceptable to the Board as to the applicant's medical fitness to provide services as a pharmacist, pharmaceutical chemist or pharmacy technician; or
- (b) obtain additional qualifications or experience specified by the Board before the Board determines the application.

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

(8) The Board 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.

Entitlement of applicant to make submissions

38. If the Board is proposing to refuse an application for registration or to impose conditions, limitations or restrictions on the registration, the Board must not do so until it has given the applicant-

- (a) notice of this proposal; and
- (b) an opportunity to make submissions to the Board about the proposal within 21 days after notice has been issued.

Requirement for annual licence

39. - (1) Every registered person must hold a valid licence.

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

(3) 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.

(4) 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 (5).

(5) The documents mentioned in subsection (4) are-

- (a) evidence of satisfactory participation in an approved programme of continuing professional development;
- (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 applicable); and
- (c) a return, in the approved form, containing appropriate information relating to any matter relevant to the person's eligibility for a licence under this Decree.

(6) In the case of a first licence, and of an application from a registered person who does not hold a licence, the evidence required under subsection (5) (c) is of the applicant's practical or of the applicant's pharmacy practice outside Fiji.

Decision on licence

40. - (1) Upon receipt of an application in accordance with section 39, 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 Professional standards Committee for directions.

Conditional licence

41. - (1) If a registered person who has not provided pharmacy or related services for a period of 3 years or more applies for a licence, the Registrar must refer the application to the Board for approval.

(2) The Board may-

- (a) before granting its approval under subsection (1) require the applicant to obtain qualifications or experience specified by the Board and for that purpose may require the applicant to follow a course of continuing professional development; 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 pharmacy services;
- (ii) a condition limiting the kind of pharmacy services that the applicant may provide; or
- (iii) any other condition the Board thinks fit.

Suspension or revocation of licence

42. - (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 Board with a view to disciplinary action being taken under Part 10.

(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 Board.

Registered person must report medical unfitness to Registrar

43. - (1) If a registered person becomes aware that he or she is or may be medically unfit to provide pharmacy services, the person must forthwith give written notice of that fact to the Registrar, who must notify the Board.

(2) Upon receipt of a notice under subsection (1), the Board 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 and is liable upon conviction to a maximum penalty of a fine of \$10,000.

PART 9 - OWNERSHIP OF PHARMACIES

Application of this Part

44. This Part will not apply to public hospitals and public dispensaries.

Ownership of pharmacy businesses

45. - (1) A person must not own or have a proprietary interest in a pharmacy business unless the person is authorised to do so under this Decree.

(2) Failure to comply with this subsection constitutes an offence and the person will be liable upon conviction to a maximum penalty of a fine of \$20,000.

(3) The following persons are authorised own or to have a proprietary interest in a pharmacy business-

- (a) a registered pharmacist; or
- (b) company registered under the Companies Act (Cap. 247);
 - (i) whose directors are all registered pharmacists; and
 - (ii) in which all the shares and the beneficial and legal interest in those shares are held by registered pharmacists;
- (c) a lawful partnership whose partners are all registered pharmacists; and
- (d) a registered pharmacist, or other person approved by the Board, who-
 - (i) already has a proprietary interest in two pharmacies;

- (ii) is approved by the Board to carry on a pharmacy business in an area that the Board determines needs a pharmacy business; and
- (iii) there is no person referred to in paragraphs (a) and (b), with a proprietary interest in less than two pharmacies, who is willing and able to own and carry on a pharmacy business in the area.

(4) A registered pharmacist and a company referred to in subsection (3) (b), except those authorised under subsection (3) (c), must not own or have a proprietary interest in more than 2 separate pharmacy businesses.

(5) Failure to comply constitutes an offence and the person will be liable upon conviction to a maximum penalty of a fine of \$20,000.

(6) Despite subsections (1) and (2), nothing in this section applies to a person who-

- (a) is the executor, administrator or trustee of the estate of a pharmacist who has died and who carried on a pharmacy business at the time of his or her death;
- (b) is appointed or authorised under the laws of bankruptcy to administer the property of a pharmacist who carried on a pharmacy business and is bankrupt; or
- (c) assumes the administration of the property of a person under a mortgage, bill of sale or security interest of that person's pharmacy business,

and continues to carry on the pharmacy business for a period of 6 months, or for any further period permitted by the Board, if the pharmacy services of the business are provided by a registered pharmacist in accordance with this Part.

(7) The Board may impose any condition it thinks appropriate on the authorisation to own or have a proprietary interest in a pharmacy business under this Decree.

Requirement to provide information about pharmacy ownership

46. - (1) The Board may require a person to give the Board any information or produce any documents relating to the person's ownership or proprietary interest in a pharmacy business.

(2) A person must not fail or refuse to give the Board any information required under subsection (1) or fail or refuse to produce any documents required under subsection (1) or wilfully mislead the Board when giving the information.

(3) A breach of subsection (2) constitutes an offence and the person will be liable upon conviction to a maximum penalty of a fine of \$ 20,000.

Establishment of pharmacy businesses

47. - (1) A person must not establish or carry on a pharmacy business unless-

- (a) in the case of a pharmacy business, the person is authorised by this Decree to do so;
- (b) the Board approves the premises of the pharmacy business; and
- (c) the Board approves the carrying on of a pharmacy business from the premises.

(2) Failure to comply with subsection (1) constitutes an offence and the person will be liable upon conviction to a maximum penalty of a fine of \$20,000.

(3) Nothing in this section applies to a person referred to in section 45 who is carrying on a pharmacy business in accordance with that section.

Approval of pharmacies and pharmacy businesses

48. - (1) The Board may approve the premises of a pharmacy business if the Board is satisfied that the premises-

- (a) are suitable for the provision of pharmacy services; and
- (b) without limiting paragraph (a), comply with any requirements that are prescribed.

(2) The Board may approve a person authorised under this Part to carry on a pharmacy business if the Board is satisfied that the facilities, equipment, security, management and operation of the pharmacy business at the premises comply with-

- (a) good pharmacy practice; and
- (b) without limiting paragraph (a), any other requirements that are prescribed.

(3) The Board may also have regard to the applicant's compliance with this Decree, the Regulations and any guidelines issued by the Board in determining whether or not to grant approval to carry on a pharmacy business.

Other persons not to carry on pharmacy business

49. - (1) A person approved by the Board must not authorise, cause or permit any other person to carry on any business or activity in premises approved under this Part.

(2) Failure to comply with subsection (1) constitutes an offence and the person shall be liable upon conviction to maximum penalty of a fine of \$20,000.

(3) Subsection (1) does not apply if that business or activity is approved by the Board and specified in the approval of premises.

Conditions on approval of premises

50. The Board may impose any condition it thinks appropriate on the approval of premises for a pharmacy business.

Copy of partnership agreement to be lodged with Registrar

51. - (1) The parties to a partnership agreement in regards to the ownership of a pharmacy that is executed after the commencement of this Decree, or up to one month before commencement, must lodge a copy of the agreement with the Registrar within two months after the execution of the partnership agreement or within two months after the commencement of this Decree.

(2) Failure to comply with subsection (1) constitutes an offence and the offender shall be liable upon conviction to a maximum penalty of a fine of \$20,000.

Body corporate disqualified from authorisation to own or have a proprietary interest in a pharmacy business under certain circumstances

52. - (1) If a body corporate authorised to own or have a propriety interest in a pharmacy business-

- (a) is convicted of any offence under this Decree or any other law; or

(b) any member of the Board of Directors or any officer of that body or any person employed by that body in carrying on the business has been convicted of a criminal offence, or been guilty of any misconduct, as in the opinion of the Board-

- (i) renders him or her guilty of unprofessional conduct;
- (ii) or would render him or her guilty of unprofessional conduct if he or she was a registered pharmacist,

the Board may inquire into the matter and may, subject to the provisions of this Decree, direct that the body corporate is no longer authorised to own or have a proprietary interest in a pharmacy business and is disqualified from such authorisation for such period as is specified in the direction.

(2) The Board may, if it considers it appropriate to do so, on the application of the body corporate, or of its own motion, direct that any disqualification shall cease.

PART 10 - INVESTIGATIONS AND PROCEEDINGS

Requirement of fairness

53. - (1) The administrative processes established by the Board for handling notifications and complaints received against registered persons must be designed to-

- (a) be fair to both the notifier or complainant and the respondent;
- (b) keep both the notifier or complainant and the respondent properly informed about the steps taken by the Board in response to the notification or complaint;
- (c) provide, where appropriate, opportunities for the clarification of any misapprehension or misunderstanding between the notifier or complainant and the respondent;
- (d) keep both the notifier or complainant and the respondent properly informed about the outcome of the processes; and
- (e) 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, on the possible outcomes and of the consequences of not attending.

(3) Subject to section 68, conduct by a registered person which-

- (a) amounts to a criminal offence, may be the subject of a notification or complaint under this Decree; or
- (b) results in a notification or complaint under this Decree,

may be prosecuted as an offence.

Notifications

54. - (1) If-

- (a) a registered person who has had professional dealings with a registered person;
- (b) a person who provides pharmacy services 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 pharmacy services at the hospital;
- (d) the person in charge of an educational institution at which a pharmacy student is enrolled in a course of study providing qualifications for registration on the 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 Professional Conduct Committee of the Board.

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

(3) 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.

(4) 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.

Cause for disciplinary action

55. There is proper cause for disciplinary action against a registered person if the-

- (a) person's registration or licence or licence renewal was improperly obtained;
- (b) person fails to comply with any condition imposed by virtue of this Decree on the person's registration;
- (c) person commits unprofessional conduct; or
- (d) person is for any reason no longer a fit and proper person to be registered on the register or to be licensed.

Complaints

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

- (a) the Registrar on behalf of a member of the Board;
- (b) the Registrar on behalf of a notifier;
- (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 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); or

(c) ask an investigator to investigate the subject matter of the notification or complaint.

(3) If a complaint has been laid by or on behalf of any person and 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 8; and
- (b) if so required by the Committee, 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; and
- (e) whether the designated Committee member, if any, concurred in the Registrar's findings.

Appointment of investigators

58. - (1) The Board 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 Board who is also a registered person; or
- (b) person who is not a member of the Board 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 Board is satisfied that there will be no conflict of interest.

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

(5) If, having received a complaint under section 56 which is not withdrawn, a Professional Conduct Committee considers that there are reasonable grounds for suspecting that-

- (a) a person has committed an offence against this Decree;
- (b) there is some other proper cause for disciplinary action against a person; or
- (c) a registered person is medically unfit to provide pharmacy services, 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; or
- (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 (1) (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

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 and is liable upon conviction to a maximum penalty of 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 and is liable upon conviction to a maximum penalty of a fine of \$5,000.

Decision after investigation

61. - (1) If a Professional Conduct Committee has requested 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 to the Board to refer the matter to the Tribunal in accordance with Part 11.

(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.

(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 Board 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 that-

- (a) the allegations or evidence against the respondent are sufficiently serious; or
- (b) it is otherwise appropriate to do so,

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

(5) If the-

- (a) respondent elects to have the matter dealt with by the Tribunal; or
- (b) Committee terminates the proceedings in order for the Board 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 Board its findings and recommendations on a complaint as soon as practicable after making them.

(2) The proceedings should be conducted in as informal a manner as possible, consistent with the requirements of natural justice, and for that reason the-

- (a) proceedings are not open to the public;
- (b) parties are not entitled to be represented but may be accompanied by a registered person or one legal adviser.

(3) The presiding member at 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 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 a majority decision of the members.

(5) If a member of the Committee dies or is for any other reason unable to continue with the proceedings, the remaining members may, if they so determine, nominate one of them to be the presiding member and 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; and
- (c) place 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 that there are special reasons for doing so, give a shorter 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 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, and draw any conclusions of fact from the evidence that it considers proper; or
- (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 a-
 - (i) written translation of the document or record into English; and
 - (ii) 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 a-
 - (i) written translation of the document or record into English; and
 - (ii) 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 and is liable upon conviction to a maximum penalty of 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 section, the Committee is satisfied on the balance of probabilities that there is proper cause for disciplinary action against the respondent, it may recommend to the Board to-

- (a) censure the respondent;
- (b) require the respondent to pay to the Board a fine not exceeding \$5,000; or
- (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 pharmacy services in relation to times, places and other matters; or
 - (ii) suspend the respondent's registration for a period not exceeding 3 months.

(2) The Board 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; or
- (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 Board 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;
- (b) a person who provides pharmacy services 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 pharmacy services at the hospital;
- (d) the person in charge of an educational institution at which a student is enrolled in a course of study providing qualifications for registration; 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 pharmacy services, 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 Board.

(2) If a health services provider is of the opinion that a registered person through whom the provider provides pharmacy services is or may be medically unfit to provide pharmacy services, the-

- (a) 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) Registrar must inform the Board.

(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 and is liable upon conviction to a maximum penalty of a fine of \$10,000.

(4) The Registrar, 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 Board to consider whether a named registered person is medically unfit to provide pharmacy services.

(5) The Board 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 Decree 2010;
- (b) the Criminal Procedure Decree 2009; or
- (c) any law for the time being in force relating to prisons,

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

(7) The Committee may-

- (a) refer the matter to a panel of registered medical practitioners 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 pharmacy services 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 Board to-

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

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

(9) The conditions include-

- (a) restricting the person's right to provide pharmacy services;
- (b) 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 pharmacy services must have regard to the question of whether the person is able to provide pharmacy services personally to a patient or customer 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 Professional Conduct Committee may, for any purpose associated with the administration or operation of this Decree, require a registered person, a person who is applying for registration or reinstatement of registration to-

- (a) submit to an examination by a registered medical practitioner, or by registered medical practitioners of a class specified by the Committee; or
- (b) provide a medical report from a registered medical practitioner, or from a registered medical practitioner 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 Board to suspend the person's registration until further order of the Board, and the Board must act on that recommendation unless it refers the matter back to the Committee for further consideration.

Variation or revocation of conditions imposed by the Board

67. - (1) If the Board, pursuant to section 28, imposes a condition in relation to the person's registration, 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 Professional Conduct Committee which must hear the application and make a recommendation to the Board.

(3) On the hearing of an application under this section the procedure is the same as for a disciplinary hearing, with necessary modifications.

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 Board;
- (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.

(2) If a registration certificate is to be endorsed, suspended or revoked following a disciplinary hearing, the holder of the certificate must surrender it.

(3) Failure to do so constitutes an offence and the holder will be liable upon conviction to a maximum penalty of a fine of \$10,000.

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

PART 11 - PHARMACY PROFESSIONAL CONDUCT TRIBUNAL

Establishment of Tribunal

69. - (1) This section establishes the Pharmacy Professional Conduct Tribunal.

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

Composition of Tribunal

70. - (1) The Tribunal shall consist 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 registered persons chosen from the panel in subsection (2).

(2) For the purposes of subsection (1) (b), the Minister must, after consulting appropriate representative bodies, appoint, at least 5 registered persons who are not members of the Board to be 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 pharmacist who is not a member of the Board; or
- (b) 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 male and one female.

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 for-

- (a) breach of, or non-compliance with, a condition of appointment;
- (b) misconduct; or
- (c) 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 as determined by the Minister, after consultation with the Chief Justice.

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) A decision 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 the Board to register, or reinstate the registration of, a person, brought by the person;
- (b) a complaint laid by the Board on the recommendation of a Professional Conduct Committee under section 8;
- (c) an appeal against disciplinary decision by the Board brought by a respondent who is aggrieved by the decision;
- (d) an appeal against a decision of the Board relating to the medical fitness of a person brought by the person; or
- (e) an appeal against a decision of the Board 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) 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), (d), or (e) 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 Board and any other party.

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 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 Board, whether or not a complaint against the person has been laid before the Board.

(2) If the Board 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 pharmacy services;
- (ii) suspend the respondent's registration for a period not exceeding one year;
- (iii) cancel the respondent's registration; or
- (iv) cancel the registration and disqualify the respondent from being registered;

(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 stipulate that-

(a) 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) 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 Board 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 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, the Tribunal must examine the decision of the Board on the evidence or material before that Board 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 Board 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 consideration 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 Board could have made;

(c) remit the matter to the Board for consideration or further consideration in accordance with any directions or recommendations of the Tribunal; or

(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.

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

(3) If the Board has exercised its powers to suspend the registration 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 Board.

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, if-

(a) it thinks special reasons exist for doing so, give a lesser period of written notice under subsection (1); or

(b) of the opinion that it is desirable to do so in 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 pharmacy services, 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 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 a-

- (i) written translation of the document or record in English; and
 - (ii) certificate signed by a translator approved by the Board 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, 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; or
 - (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 a-
 - (i) written translation of the document or record in English; and
 - (ii) certificate signed by a translator approved by the Board 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 and is liable upon conviction to a maximum penalty of 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 section, 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; or
- (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 pharmacy business in contravention of an order of the Tribunal, the person commits an offence and is liable upon conviction to a maximum penalty of a fine of \$75,000 or imprisonment of 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, the person and the provider each commits an offence and are liable upon conviction to a maximum penalty of 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 and is liable upon conviction to a maximum penalty of 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, 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.

(3) The register of prohibitions must-

- (a) not include any person who is dead;
- (b) include, in relation to each person on the register-
 - (i) the person's full name and business address;
 - (ii) particulars of the order; and
 - (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 the 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 the High Court

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

(2) An appeal against a decision on a complaint may be instituted by the Board or by the respondent to the complaint.

(3) An appeal against a decision on an appeal may be instituted by the appellant or respondent to the original appeal

(4) 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.

(5) 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.

(6) 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.

(7) 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; and
- (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 the Board or the Tribunal and the Board 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 the Board or the Tribunal has suspended the operation of an order under subsection (1), the Board or the Tribunal, as the case may be, terminate the suspension and if the High Court has done so, the court may terminate the suspension.

PART 12 - OFFENCES

Holding out as a registered person

87. A person who-

- (a) holds himself or herself out as a registered pharmacist, pharmaceutical chemist and pharmacy technician; or
- (b) permits another person to hold him or her out as such,

when not registered, commits an offence and liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

Offences concerning conditional registration

88. - (1) A person who contravenes or fails to comply with a condition imposed on the person's registration commits an offence and is liable upon conviction to a maximum penalty of 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 and is liable upon conviction to a maximum penalty of 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 and is liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

Use of certain titles or descriptions prohibited

89. - (1) A person who is not registered as a registered pharmacist, pharmaceutical chemist and pharmacy technician must not-

- (a) practise as or hold himself or herself out as or pretend to be a registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician;
- (b) use or exhibit-

- (i) the name or title of a pharmacist, registered pharmacist, pharmaceutical chemist, chemist, druggist, chemist and druggist or homoeopathic chemist, pharmacy technician or registered pharmacy technician or any name of similar import; or
 - (ii) any title or sign or symbol which may be construed as meaning that he or she is qualified to perform the duties of a registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician; or
- (c) engage in any activity which is intended to have the consequence or has the consequence of inducing a belief in another person that he or she is a registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician or is carrying on the business of a pharmacist.

(2) Failure to comply with subsection (1) constitutes an offence and the person will be liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

(3) A person who, in the course of advertising or promoting health services that he or she provides, uses the term registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician, or any of its derivatives, to describe a person who is engaged in the provision of the service but who is not registered commits an offence and is liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

Offences in relation to practice licences

90. - (1) A registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician whose registration has been suspended or revoked, and who provides pharmacy services for fee or reward, commits an offence and is liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

(2) A registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician whose registration has conditions attached and who provides pharmacy services in breach of those conditions commits an offence and is liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

Improper directions to registered persons

91. - (1) A person who provides pharmacy services through the instrumentality of a registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician and who directs or pressures the registered person to engage in unprofessional conduct commits an offence and is liable upon conviction to a maximum penalty of 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 pharmacist or registered pharmaceutical chemist or registered pharmacy technician through whom the provider provides pharmacy services to engage in unprofessional conduct, the person and the provider each commits an offence and is liable upon conviction to a maximum penalty of a fine of \$50,000 or imprisonment for 6 months or both.

Procuring registration or licence by fraud

92. 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 and is liable upon conviction to a maximum penalty of a fine of \$20,000.

False or misleading statements

93. - (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 and is liable upon conviction to a maximum penalty of a fine of \$20,000.

(2) A person who makes a notification or complaint in respect of a registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician, knowing it to be untrue, or being reckless as to its truth, commits an offence and is liable upon conviction to a maximum penalty of a fine of \$20,000.

Failing to give information relating to a claim

94. - (1) If a person has claimed damages or other compensation from a registered pharmacist or registered pharmaceutical chemist or registered pharmacy technician or other person for alleged negligence committed by the registered person in the course of providing pharmacy services, the person against whom the claim is made must within 30 days after-

- (a) the claim is made; or
- (b) 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 pharmacy services, the provider must within 30 days after-

- (a) the claim is made; or
- (b) 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 subsections (1) or (2), the Secretariat may in writing, require the person or provider who gave the information to provide 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 subsections (1) or (2) or further information as required under subsection (3) commits an offence and is liable upon conviction to a maximum penalty of a fine of \$10,000.

Punishment of conduct that constitutes an offence

95. 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) conviction and punishment for the offence is not a bar to disciplinary action under this Decree.

Vicarious liability for offences

96. 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

97. 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 Board.

PART 13 - FIJI PHARMACEUTICAL SOCIETY

Continuation of the Fiji Pharmaceutical Society

98. - (1) This section continues in existence the Fiji Pharmaceutical Society as a corporate body with perpetual succession and a common seal.

(2) Membership of the Fiji Pharmaceutical Society is open to every registered pharmacist, pharmaceutical chemist and pharmacy technician.

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

Powers of the Society

99. - (1) The Society continues to have power to hold real and personal property and may sue and be sued in matters relating to contracts, torts or otherwise in connection with the exercise of its powers or the carrying out of its functions under this Decree.

(2) The Society 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 Society;
- (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 Society;
- (c) invest and deal with moneys of the Society not immediately required in the manner from time to time be determined by the Society;
- (d) pay the whole or any part of the expenses incurred by members in attending meetings of the Society or of any committee appointed by the Society;
- (e) pay all costs and other payments incidental to or connected with the discharge of any function of the Society; or
- (f) do all such other things as are incidental or conducive to the attainment of the objects of the Society for any of them.

Objects of the Society

100. - (1) The objects of the Fiji Pharmaceutical Society are to-

- (a) maintain and improve the standards of conduct and competence of the pharmacy profession in Fiji;
- (b) promote the welfare and to preserve and maintain the integrity and status of the pharmacy profession;

- (c) conduct continuing professional education programmes for the pharmacy profession, as required by the Board;
- (d) represent, protect and assist members of the pharmacy profession in Fiji as regards conditions of practice and otherwise;
- (e) represent, protect and assist members of the pharmacy profession in Fiji as regards conditions of employment with the public sector and the private sector;
- (f) settle points of practice and to provide means for the amicable settlement of professional differences;
- (g) protect and assist the public and the pharmacy profession in all matters touching, ancillary or incidental to pharmacy practice;
- (h) assist needy members and former members of the Society or their relatives and the relatives of deceased members;
- (i) cultivate a generous professional spirit among pharmacy practitioners by encouraging meetings of members of the Society and persons connected with matters of public health and medical interest; and
- (j) promote excellence in pharmacy practice in any manner which the Society 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 and private sector.

Rules of the Society

101. - (1) The Society may make rules for-

- (a) the election of officers of the Society;
- (b) the summoning and conduct of meetings of the Society;
- (c) admission to and termination of membership;
- (d) creating categories of membership, including honorary membership for those who have rendered distinguished service for the profession and associate membership for students in pharmacy and related sciences and disciplines;
- (e) the keeping and use of the common seal; and
- (f) all other matters that are necessary or expedient to ensure the efficient functioning of the Association.

(2) Until any amendment rules are made under subsection (1), the rules of the Fiji Pharmaceutical Society in force immediately prior to the commencement of this Decree, are the rules of the Fiji Pharmaceutical Society continued by subsection (1).

Assets, etc of the Society

102. All property, assets and liabilities of the Fiji Pharmaceutical Society continue to be vested in the Fiji Pharmaceutical Society and any moneys due and owing to the Fiji Pharmaceutical Society are to be paid to and are recoverable by the Society as so continued.

PART 14 - MISCELLANEOUS PROVISIONS

Regulations

103. - (1) The Minister, after consulting the Board, 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 fees or charges for-
 - (i) the purposes of this Decree;
 - (ii) services provided by the Board 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; or
 - (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; or
 - (c) provide that a specified provision of this Decree does not apply, or applies with prescribed variations, to any person, circumstance or situation, person, circumstance or situation of a prescribed class, specified by the Regulations, subject to any condition to which the Regulations are expressed.
- (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

104. – (1) Subject to the approval of the Minister, the Board may prescribe by Regulations, a code of conduct or a professional standard in relation to pharmacy practice.

(2) The Board may issue guidelines relating to pharmacy practice including good procurement, storage and dispensing practices.

(3) If a code of conduct or professional standard prepared or endorsed by the Board is approved by the Minister or guidelines are issued by the Board, the Board must-

- (a) cause a copy of the code, standard or guidelines to be published in the *Gazette*;
- (b) take reasonable steps to send a copy of the code, standard or guidelines to each registered pharmacist, pharmaceutical chemist and pharmacy technician to whom it applies; and
- (c) 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 Board.

(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

105. – (1) A person ‘A’ victimises another person ‘B’ if ‘A’ causes detriment to ‘B’ on the ground, or substantially on the ground, ‘B’ has made or intends to make a notification or complaint under Part 10 of this Decree about ‘A’ or any person or health services provider.

(2) A person who victimises another commits an offence and is liable upon conviction to a maximum penalty of 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; and
- (d) threats of reprisal.

Protection from personal liability

106. – (1) No personal liability is incurred for an act or omission by-

- (a) a member of the Tribunal, the Board, any committee of the Board or the Secretariat; or
- (b) the Registrar or the Registrar of the Tribunal, done in good faith in the performance of functions or duties under this Decree.

(2) A civil liability, with the exception of subsection (1), against a person is a liability against the Government.

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

Self-incrimination

107. 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, the-

- (a) person must provide the information or produce the document, record or equipment; but
- (b) 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

108. – (1) If the Board-

- (a) refuses to recognize or approve a course of education or training for the purposes of this Decree; or
- (b) revokes the recognition or 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 Board; and
- (c) grant, preserve or vary the approval to the extent appropriate.

Confidentiality

109. – (1) A person engaged or formerly engaged in the administration of this Decree or the repealed sections of the corresponding legislation 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 Act;
- (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 services as a pharmacist, pharmaceutical chemist or pharmacy technician 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) Any person who discloses information in contravention of subsection (1) commits an offence and is liable upon conviction to a maximum penalty of a fine of \$10,000.

Service

110. A notice or document required or authorised to be given, 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, the 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

111. – (1) In proceedings for an offence against this Decree or in disciplinary proceedings under Part 10, an allegation in the complaint, that-

- (a) a person named in the complaint is or is not, or was or was not on a specified date, a registered person;
- (b) the registration of a person named in the complaint is, or was on a specified date, subject to specified conditions;
- (c) a person named in the complaint is, or was on a specified date, a health services provider;
- (d) 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) 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 the Board under this Decree, must be accepted as such in the absence of proof to the contrary.

Statutory Declarations

112. 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.

Other occupations

113. Nothing in this Decree affects the lawful occupation, trade or business of any registered medical practitioner or registered dental practitioner.

PART 15 - REPEALS AND SAVINGS, ETC

Repeals and savings

114. – (1) Part III and sections 33 - 40, and 43 of Part IV of the Pharmacy and Poisons Act (Cap. 115) are hereby repealed.

(2) Any Regulations made under the repealed Act remain in force as if made under section 104 of this Decree.

Transitional provisions

115. - (1) An application for registration or approval of a pharmacy business under the provisions of the Pharmacy and Poisons Act (Cap. 115) in force immediately before the commencement of this Decree is deemed to be an application under this Decree for the equivalent registration or approval under this Decree.

(2) A registration or approval in force under the Pharmacy and Poisons Act (Cap. 115) immediately before the commencement of this Decree, including a suspended registration or approval-

- (a) must be taken to have been granted or issued under the relevant equivalent provision of this Decree; and
- (b) may be renewed, amended, suspended, cancelled or otherwise dealt with under this Decree accordingly.

(3) A person who, immediately prior to the commencement of this Decree was registered as a pharmacist under the Pharmacy and Poisons Act (Cap. 115) is, on the commencement of this Decree, deemed to be registered as a pharmacist under this Decree.

(4) A person who immediately prior to the commencement of this Decree was employed by the Ministry of Health as a pharmacy technician is, on the commencement of this Decree, deemed to be registered as a pharmacy technician under this Decree.

(5) The register maintained under the repealed Part III of the Pharmacy and Poisons Act (Cap. 115) continues in existence as the equivalent register under this Decree.

(6) A person who is on the Register of Pharmacists prior to the commencement of this Decree will be taken to be registered under this Decree and any restrictions, limitations or conditions that applied to the registration of the person under the repealed Part III of the Pharmacy and Poisons Act (Cap. 115) 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 Board under this Decree.

(7) If a person who was removed from the register under the repealed Part III of the Pharmacy and Poisons Act (Cap. 115) 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 Board may deal with the application as though it were an application for reinstatement on the register under this Decree.

(8) Despite anything to the contrary, a pharmacy business which immediately prior to the commencement of this Decree, was-

(a) lawfully owned by pharmacists in partnership may continue in the ownership of the partnership during the subsistence of the partnership and thereafter wholly in the ownership of the remaining partners from time to time;

(b) lawfully owned by a pharmacist who was prior to that commencement the owner of more than three pharmacies may continue in the ownership of that pharmacist during his or her lifetime; or

(c) one in which a pharmacist lawfully held a proprietary or pecuniary interest, then the pharmacist may continue to hold that proprietary or pecuniary interest.

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

(10) Subject to subsection (9), any action, arbitration, proceeding or cause of action that relates to the functions of the Pharmacy and Poisons Board, in terms of the provisions referred to in this Decree, that immediately before the commencement of this Decree is pending or existing by, against or in favour of the Pharmacy and Poisons Board, or to which the Pharmacy and Poisons Board is a party, may be continued and enforced by and against the Pharmacy and Poisons Board under the provisions of this Decree.

GIVEN under my hand this day of 2011.

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EPELI NAILATIKAU
President of the Republic of Fiji