

## GOVERNMENT OF ZAMBIA

**ACT**

No. 14 of 1985

Date of Assent: 2nd April, 1985

An Act to provide for the procedures for establishing management boards for Government hospitals, to define the functions and powers of such Boards; to provide for the charging of fees for medical and health services, to empower the Minister to regulate such fees and services; and to provide for matters connected with or incidental to the foregoing.

[12th April, 1985

ENACTED by the Parliament of Zambia.

Enactment

## PART I

## PRELIMINARY

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|--|-----------------|
| 1. This Act may be cited as the Medical Services Act, 1985.  | Short title     |
| 2. In this Act, unless the context otherwise requires—   | Inter-pretation |
| “Board” means a management board established for any Government hospital under section <i>three</i> ;  |                 |
| “Chairman” means the person appointed Chairman of the Board under section <i>five</i> ;  |                 |
| “Director” means the person appointed Director of a parastatal hospital under section <i>eleven</i> ;  |                 |
| “Deputy Director” means the person appointed Deputy Director of a parastatal hospital under section <i>eleven</i> ;  |                 |
| “Government hospital” means a hospital which is owned, fully financed, or managed by or on behalf of the Government; but does not include a grant-aided hospital or a parastatal hospital; |                 |

- “grant-aided hospital” means a hospital which is managed by church agencies, by the Tropical Diseases Research Centre, by the Flying Doctor Service, by the Zambia Red Cross Society, or by any other non-government organisation, and which receives a grant from the Government;
- “hospital” includes any medical institution, surgery, clinic, health or medical centre, nursing home, medical laboratory, or other similar person or institution providing medical or health services;
- “member” means a member of a Board;
- “parastatal hospital” means any Government hospital in respect of which a Board has been established under section *three*;
- “professional staff” means any person holding such qualifications in such medical field as may be prescribed by the Minister by statutory instrument;
- “Secretary” means the person appointed secretary to a Board under section *twelve*;
- “specialist” means any medically qualified person holding such post-graduate qualifications as are recognised by the Medical Council of Zambia;
- “Vice-Chairman” means the person appointed Vice-Chairman of a Board under section *five*.

## PART II

### HOSPITAL MANAGEMENT BOARD

Establishment of Board

3. (1) The Minister may, by statutory instrument, establish a management Board for any Government hospital.

(2) A Board established under subsection (1) shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name, and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform.

Seal of Board

4. (1) The seal of the Board shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The Board may use a wafer or rubber stamp *in lieu* of the seal.

(3) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman, and the Secretary or one other person authorised in that behalf by a resolution of the Board.

(4) Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal, may be entered into or executed without seal on behalf of the Board by the Secretary or any other person generally or specifically authorised by the Board in that behalf.

(5) Any document purporting to be a document under the seal of the Board or issued on behalf of the Board shall be received in evidence and shall be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

5. (1) The Board shall consist of the following members:

Composition  
of Board

- (a) a Chairman and a Vice-Chairman;
- (b) the medical officer of health (or other senior medical officer) of the district council in whose area the parastatal hospital is situated;
- (c) one member nominated by the General Nursing Council of Zambia;
- (d) one member nominated by the Medical Council of Zambia;
- (e) one member who has legal qualifications;
- (f) one member who has experience in hospital or business administration;
- (g) one member who is trained in accountancy;
- (h) not less than two and not more than six other members as may be prescribed by the Minister in respect of that Board.

(2) No person shall be qualified to be a member if he is an employee of the Board.

(3) The members referred to in paragraphs (a), (e), (f), (g) and (h) of subsection (1) shall be appointed by the Minister on such terms and conditions as he thinks fit.

(4) Subject to the other provisions, a member shall hold office for a period of three years from the date of his appointment and may be re-appointed for a like period.

(5) A member may resign by giving one month's notice in writing to the Secretary.

(6) Whenever the office of the Chairman is vacant or the Chairman is absent or is for any other cause unable to perform the functions of his office, the Vice-Chairman shall perform such functions.

Functions  
of Board

6. (1) The functions of the Board shall be:

- (a) to formulate policies for the smooth operations of the parastatal hospital;
- (b) to administer the affairs of the parastatal hospital and any other institution under the control of the Board;
- (c) to provide medical services and to provide for the care of patients;
- (d) to provide for and foster research in medical and related fields and to encourage the publication of the results thereof;
- (e) to provide professional training;
- (f) to provide in-service training for its staff;
- (g) to do all such things as the Board may think necessary to promote health and to prevent disease or cure illness.

(2) The Board may, by directions in writing and subject to such conditions as it thinks fit, delegate to any member, the Director or the Secretary any of its functions under this Act.

(3) The Minister may, by statutory instrument, require a parastatal hospital to carry out such other functions as may therein be specified.

(4) The Minister may give to the Board such general or specific directions with respect to the discharge of its functions as he may consider necessary and the Board shall give effect to such directions.

(5) The Board may collaborate, or enter into agreement, with any organisation or institution on any matter relevant to the carrying out of its functions under this Act.

Proceedings  
of Board

7. (1) Subject to the other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business at least once in every three months at such places and at such times as the Chairman may decide.

(3) Upon giving notice of not less than fourteen days, a meeting of the Board may be called by the Chairman and shall be called if not less than five members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon giving a shorter notice.

(4) The quorum at any meeting of the Board shall be the Chairman or Vice-Chairman (or a person authorised to preside in accordance with subsection (5) (c)) and four other members.

(5) There shall preside at any meeting of the Board—

- (a) the Chairman; or
- (b) in the absence of the Chairman, the Vice-Chairman; or
- (c) in the absence of the Chairman and the Vice-Chairman, such member as may have been authorised for that purpose in writing by the Chairman or the Vice-Chairman.

(6) A decision of the Board on any question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(7) Where a member referred to in paragraph (c) or (d) of subsection (1) of section *five* is for any reasonable cause unable to attend any meeting of the Board, he may, in writing, nominate another person from the same organisation to attend such meeting in his stead and such person shall be deemed to be a member for the purposes of such meeting.

(8) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board but such person shall have no vote.

(9) The validity of any proceedings, act or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled so to do took part in the proceedings.

(10) The Board shall cause minutes to be kept of the proceedings of every meeting of the Board and of every meeting of any committee established by the Board.

8. (1) The Board may, for the purpose of performing its functions under this Act, establish committees and delegate to any such committee such of its functions as it thinks fit.

Committees  
of Board

(2) The Board may appoint as members of a committee established under subsection (1), persons who are or are not members of the Board and such persons shall hold office for such period as the Board may determine.

(3) Subject to any specific or general direction of the Board any committee established under subsection (1) may regulate its own procedure.

9. (1) If a member is present at a meeting of the Board or any committee of the Board at which any matter is the subject of consideration and in which matter the member or his spouse is directly or indirectly interested in a private capacity, he shall, as soon as practicable after the commencement of the

Disclosure  
of  
interest

meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

Immunity  
of  
members

10. No action or other proceedings shall lie or be instituted against any member for or in respect of any act or thing done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act.

### PART III

#### ADMINISTRATION

Director and  
Deputy  
Director

11. (1) The Board shall appoint on such terms and conditions as it may determine in consultation with the Minister, a Director who shall be the chief executive officer of the Board and who, subject to the control of the Board, shall be responsible for the administration of the parastatal hospital.

(2) The Board may appoint on such terms and conditions as it may determine in consultation with the Minister, a Deputy Director to assist the Director.

(3) The Director, or in his absence the Deputy Director, shall attend meetings of the Board and may address such meetings, but shall not vote on any matter:

Provided that the person presiding at any meeting of the Board may, for good cause, require the Director or Deputy Director, as the case may be, to withdraw from such meeting.

(4) The provisions of section *nine* shall apply, *mutatis mutandis*, to the Director and the Deputy Director.

Secretary  
and other  
staff

12. (1) There shall be a Secretary of the Board who shall be appointed by the Board on such terms and conditions as the Board may determine in consultation with the Minister.

(2) The Secretary shall be responsible for the administration of the day-to-day affairs of the Board under the general supervision of the Director.

(3) The Board may appoint, on such terms and conditions as it may determine in consultation with the Minister, such other staff as it considers necessary for the performance of its functions under this Act.

Prohibition  
of publica-  
tion or  
disclosure of  
information  
to  
unauthorised  
persons

13. (1) No person, including any professional staff, shall, without the consent in writing given by or on behalf of the Board, publish or disclose to any person, otherwise than in the course of his duties, the contents of any documents, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of, his duties under this Act.

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand kwacha or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding five thousand kwacha or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

#### PART IV

##### PROFESSIONAL STAFF

14. The Board may employ such professional staff on such terms and conditions as it may determine in consultation with the Minister.

Employment of professional staff

15. Where a parastatal hospital requests the Public Service Commission to second to such parastatal hospital a public officer working in a Government hospital, the Public Service Commission may second such officer for such period and on such conditions as may be agreed between the Board and the Public Service Commission.

Secondment of professional staff from public service

16. (1) Any public officer who, immediately before the establishment of the Board, was working in the Government hospital in respect of which the Board is established, may voluntarily transfer from the public service to the service of the Board; and shall be deemed to have so transferred unless within six months from the establishment of the Board he gives notice in writing to the Board, with a copy thereof to the Public Service Commission, stating his intention not to transfer from the public service to the service of the Board.

Transfer of professional staff from public service

(2) Any public officer working for a Government hospital may apply to the Public Service Commission to transfer from the public service to the service of a Board, and the Public Service Commission may grant or refuse such transfer.

(3) The terms and conditions of service of a public officer who transfers under subsection (1) or (2) shall be no less favourable than those he enjoyed while in the public service and his previous service shall be treated as service with the Board for the purposes of determining his rights to, or eligibility for, pension, gratuity, leave or other benefits.

(4) A public officer eligible to transfer under subsection (1) or permitted to transfer under subsection (2) may apply to the Public Service Commission for retirement under section

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*eighteen* of the Civil Service (Local Conditions) Pensions Act, and the Public Service Commission may consent to his retirement:

Provided that if upon retirement such officer does not join the service of the Board or resigns therefrom without completing three years of service, his retirement from the public service shall be deemed to have been under section *thirteen* of the Civil Service (Local Conditions) Pensions Act and not under section *eighteen* of that Act.

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(5) Where a public officer who has not retired in accordance with subsection (4) transfers to the service of the Board, all his accrued benefits relating to gratuity, pension, earned leave, and the like, shall be transferred to the Board for the benefit of such officer.

Secondment  
or transfer  
between  
Boards, etc.

17. A Board may, on such terms and conditions as may be agreed between all parties concerned, permit the secondment or transfer of its professional or other staff to the service of another Board or to the public service.

Relation-  
ship with  
outside  
specialists  
and teaching  
staff

18. Subject to any regulations made under this Act, the Board may, in consultation with the Minister, determine the terms and conditions (including the payment of fees) on which—

- (a) any specialist not in the full-time service of the Board may be permitted by the Board—
  - (i) to render *ad hoc* or part-time service to the Board; or
  - (ii) on part-time basis, to treat and attend upon patients of the parastatal hospital; or
- (b) any person not in the service of the Board may be permitted by the Board to carry out teaching duties or research at the parastatal hospital.

Rights of  
Board in  
discoveries,  
etc.

19. Where any person employed by the Board on full-time or part-time basis, or carrying out teaching duties or research at the parastatal hospital, makes any discovery, invention or improvement in the course of his duties, the Board shall be deemed to be the owner for all purposes of the rights therein:

Provided that the Board may pay to such person such bonus, fees or royalties therefor, or make such arrangements for such person to share in the profits derived therefrom, as the Board may determine.



20. (1) The Minister, in consultation with the Boards established under this Act, may, by statutory instrument, regulate the procedures for the exercising of disciplinary control by a Board over its professional staff, including the removal of any such staff from office.

Discipline  
of profes-  
sional staff

(2) Without derogation from the generality of subsection (1), regulations made under this section may provide for the holding of inquiries into any death at the parastatal hospital or into any alleged or suspected malpractice or professional negligence by any professional staff working at a parastatal hospital.

## PART V

### FINANCIAL PROVISIONS

21. (1) The funds of the Board shall consist of such moneys as may—

Funds of  
Board

- (a) be appropriated by Parliament for the purposes of the Board;
- (b) be paid to the Board by way of fees, grants or donations; and
- (c) vest in or accrue to the Board.

(2) The Board may—

- (a) accept moneys by way of grants or donations from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia;
- (b) subject to the approval of the Minister, raise by way of loans or otherwise, such moneys as it may require for the discharge of its functions;
- (c) in accordance with the regulations made under this Act, charge and collect fees in respect of consultations, prescriptions, treatment and other medical services provided by the Board; and
- (d) charge and collect fees in respect of programmes, seminars, consultancy services, and other services provided by the Board.

(3) There shall be paid from the funds of the Board—

- (a) the salaries, allowances and loans of the staff of the Board;
- (b) such reasonable travelling, transport and subsistence allowances for members or members of any committee of the Board when engaged on the business of the Board, at such rates as the Minister may determine; and
- (c) any other expenses incurred by the Board in the performance of its functions.

(4) The Board may invest in such manner as it thinks fit such of its funds as it does not immediately require for the performance of its functions.

Financial  
year

22. The financial year of the Board shall be the period of twelve months ending on the 31st December in each year.

Accounts

23. The Board shall cause to be kept proper books of account and other records relating to its accounts.

Annual  
report

24. (1) As soon as practicable, but not later than six months after the expiry of each financial year, the Board shall submit to the Minister a report concerning its activities during such financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Board and there shall be appended thereto--

(a) a balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after the receipt of the report referred to in subsection (1), lay it before the National Assembly.

## PART VI

### FEES AND OTHER PROVISIONS

Fees

25. (1) No fees shall be payable for medical or health services provided in Zambia except as may be prescribed by the Minister by statutory instrument:

Provided that in prescribing any fees, the Minister shall ensure that such fees are related to costs and expenses incurred in the provision of such medical or health services.

(2) Regulations made under this section may—

(a) prescribe the fees which may be charged by any hospital or person registered under the Medical and Allied Professions Act;

(b) regulate the standards of such services;

(c) make different provisions for different hospitals, services, persons, or classes thereof;

(d) exempt any hospital, service, person, or class thereof, from any provisions of such regulations;

(e) in the case of Government hospitals and grant-aided hospitals—

(i) prescribe how the income from such fees is to be dealt with; and

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- (ii) provide for the keeping of proper accounts relating to such fees and the auditing thereof; and
- (f) provide for such other matters as may appear to the Minister to be necessary or desirable.

(3) Before making any regulations which apply to a person registered under the Medical and Allied Professions Act, the Minister shall consult the Medical Council of Zambia and shall take into account, as far as he thinks fit, any representations made by the Council.

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26. The Minister may, by statutory instrument, make regulations for the better carrying out of the purposes of this Act.

Regulations

27. Section *thirty-five* of the Medical and Allied Professions Act shall stand repealed on such date as the Minister may by statutory instrument appoint.

Repeal of  
section 35  
of Cap. 544

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