

TRADITIONAL AND COMPLEMENTARY MEDICINE BILL 2012

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A BILL

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An Act to provide for the establishment of the Traditional and Complementary Medicine Council to regulate the traditional and complementary medicine services in Malaysia and to provide for matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Traditional and Complementary Medicine Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Non-application

2. The Private Healthcare Facilities and Services Act 1998 [Act 586] shall not apply to the practice of traditional and complementary medicine including the use of any premises, building and facility for such medical practice.

Interpretation

3. In this Act, unless the context otherwise requires—

“practice of traditional and complementary medicine” means a form of health-related practice designed to prevent, treat or manage ailment or illness or preserve the mental and physical well-being of an individual and includes such practices as traditional Malay medicine, traditional Chinese medicine, traditional Indian medicine, homeopathy, and complementary therapies, but excludes medical and dental practices used by a medical and dental practitioner respectively;

“designated practitioner body” means a practitioner body of a recognised practice area that has been designated by the Minister under section 42;

“practice area” means a particular area, field, specialty or subject of practice in traditional and complementary medicine and includes a sub-area, sub-field, sub-specialty or sub-subject;

“recognized practice area” means a practice area which is recognized by the Minister under section 20;

“prescribed”, where no mode is mentioned, means prescribed by regulations made under this Act;

“Director General” and “Deputy Director General” mean the Director General of Health, Malaysia and the Deputy Director General of Health, Malaysia respectively;

“Council” means the Traditional and Complementary Medicine Council established under section 4;

“patient information” means the personal data of a patient, such as name, age, address, physical and mental conditions and financial information;

“Minister” means the Minister charged with the responsibility for health;

“authorized officer” means any person authorized by the Minister under section 48;

“practitioner” means a traditional and complementary medicine practitioner;

“registered practitioner” means a practitioner who is registered under section 23;

“provisionally registered practitioner” means a person who has been provisionally registered as a practitioner under section 22;

“medical practitioner” has the meaning assigned to it in the Medical Act 1971 [*Act 50*];

“dental practitioner” has the meaning assigned to it in the Dental Act 1971 [*Act 51*];

“Chairman” means the Chairman of the Council appointed under subsection 6(2);

“patient” means an individual who engages a registered practitioner to provide traditional and complementary medicine services for his well-being or as treatment for any ailment or illness;

“Secretary” means the Secretary of the Council appointed under section 16.

PART II

THE TRADITIONAL AND COMPLEMENTARY MEDICINE COUNCIL

Establishment of the Council

4. A council to be called the “Traditional and Complementary Medicine Council” is established for the purpose of this Act.

Functions and powers of the Council

5. The Council shall have the following functions:

- (a) to advise the Minister on matters of national policy relating to traditional and complementary medicine practice;

- (b) to establish the eligibility requirements for each practice area;
- (c) to recognize qualifications conferred by any institutions of higher learning established under any written law in Malaysia or any institutions of higher learning recognized and authorized by any countries outside Malaysia for the purpose of registration under this Act;
- (d) to specify the appropriate academic qualifications or recognized skills certificate issued pursuant to the National Skills Development Act 2006 [*Act 652*] which are or is necessary before a person may apply to be a registered practitioner;
- (e) to specify the necessary apprenticeship and training requirements including rules for undergoing apprenticeship, the scope of responsibilities and permitted conduct or activities of apprenticeship, duration of apprenticeship and post-qualification apprenticeship;
- (f) to register individuals who will provide traditional and complementary medicine services to the public;
- (g) to issue practising certificates to registered practitioners who have satisfied the prescribed conditions and paid the prescribed fees;
- (h) to develop codes of professional conduct, rules relating to the professional conduct of registered practitioners, including penalties for breach of such codes or rules;
- (i) to develop, undertake, prescribe and mandate any matter relating to or connected with the practice of traditional and complementary medicine or the professionalism of such practice;
- (j) to specify, provide for and administer a complaints procedure and process;
- (k) to develop rules upon which registered practitioners are to refer their patients to medical practitioners or dental practitioners, as the case may be;
- (l) to obtain such relevant information from practitioners, and to provide the same to the Minister;

- (m) to carry out such functions as may be specified by this Act; and
- (n) to carry out all such other activities as may be directed by the Minister and such direction shall be consistent with the purposes of this Act.

Membership of the Council

6. (1) The Council shall consist of the following members who shall be appointed by the Minister on the recommendation of the Director General:

- (a) not more than three representatives from the Ministry of Health;
- (b) two representatives from any local universities with expertise in traditional and complementary medicine fields;
- (c) not more than three registered practitioners in the public service;
- (d) not more than eight individuals from private practice who represent the designated traditional and complementary medicine practitioner bodies in Malaysia; and
- (e) five individuals who possess sufficient experience and expertise in the relevant industry.

(2) The Director General shall be the Chairman of the Council.

(3) A member of the Council shall, subject to such conditions as may be specified in his instrument of appointment, unless he sooner resigns, hold office for a term not exceeding three years and is eligible for reappointment.

(4) The appointment of any member of the Council may, at any time, be revoked by the Minister if such person is found by the Minister no longer to be a fit and proper person having regard to—

- (a) his probity, his competence and soundness of judgment for fulfilling the responsibilities as a member of the Council; or

- (b) the diligence with which he is fulfilling or likely to fulfil his responsibilities as a member of the Council.

(5) Every member of the Council shall devote such time to the business of the Council as is necessary to discharge his duties effectively.

(6) A member of the Council may at any time resign his office by giving a notice in writing to the Minister and a copy of the notice to the Council.

Vacation of office

7. (1) The office of a member of the Council shall be vacated if—

- (a) he dies;
- (b) there has been proved against him, or he has been convicted of, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of fine) for more than two years;
- (c) he becomes a bankrupt;
- (d) he is of unsound mind or is otherwise incapable of discharging his duties;
- (e) he absents himself from three consecutive meetings of the Council without leave from the Chairman;
- (f) his appointment is revoked by the Minister; or
- (g) his resignation is accepted by the Minister.

(2) Where the office of a member of the Council is vacated pursuant to subsection (1), the Minister may appoint any person he thinks fit to fill up the vacancy for the remainder of the term vacated by the member.

(3) Any period of appointment made under subsection (2) shall not be taken into consideration in the reckoning of the period of appointment of a member under subsection 6(3).

Alternate member

8. (1) The Minister may appoint in respect of each member appointed under subsection 6(1) an alternate member who shall be similarly qualified as the member.

(2) The Deputy Director General responsible for traditional and complementary medicine services shall be the alternate Chairman.

(3) An alternate member may attend meetings of the Council in place of the member when the member is for any reason unable to attend.

(4) An alternate member attending any meeting of the Council shall be deemed for all purposes to be a member of the Council.

(5) An alternate member shall, unless he sooner resigns his membership or his appointment is sooner revoked, cease to be an alternate member when the member in respect of whom he is an alternate member ceases to be a member of the Council.

Meetings of the Council

9. (1) Subject to subsection (2), the Chairman shall preside at all meetings of the Council.

(2) The alternate Chairman shall preside at meetings of the Council in the absence of the Chairman.

(3) The Council shall meet at least twice a year.

(4) The Chairman may requisition from time to time a meeting of the Council if there is a need to do so.

(5) The members of the Council may requisition a meeting of the Council by submitting a requisition notice to the Secretary in accordance with subsection (6).

(6) A requisition notice under subsection (5) shall contain the signatures of at least three members of the Council and shall specify the matters to be discussed and decided upon by the Council.

Quorum of meetings

10. The quorum for all meetings of the Council shall be eleven.

Voting

11. (1) Every member present at a meeting of the Council shall have one vote.

(2) If on any question to be determined by the Council there is equality of votes, the Chairman or, in his absence, the alternate Chairman, shall have a casting vote in addition to his deliberative vote.

(3) All matters to be decided by the Council shall be decided by a majority of votes.

Procedure of Council

12. The Council shall determine its own procedure.

Validity of acts and proceedings

13. No act done or proceedings taken under this Act shall be questioned on the ground of—

- (a) any vacancy in the membership of, or any defect in the constitution of the Council; or
- (b) any omission, defect or irregularity not affecting the merits of the case.

Advisors

14. (1) The Council may appoint any person as it thinks necessary as advisors for the purpose of advising it on any matter relating to its functions.

(2) The Council may invite any advisor or any other person to attend any meeting or deliberation of the Council for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at such meeting or deliberation.

Allowances

15. The members of the Council, advisors and any other person invited to attend any meeting or deliberation of the Council shall be paid such allowances as may be determined by the Minister.

Secretary of the Council and other officers

16. (1) The Minister shall designate a public officer, as may be recommended by the Director General, as the Secretary of the Council to assist the Council in carrying out its functions under this Act.

(2) The Minister may designate such number of other public officers, as may be recommended by the Director General, to assist the Secretary in carrying out his functions.

(3) For the purpose of this Act, the Secretary and the officers designated under subsection (2) shall be deemed to be officers of the Council.

Delegation of functions

17. (1) The Council may, with the approval of the Minister, in writing, subject to such conditions, limitations or restrictions, delegate any of its functions as may be appropriate to—

(a) any designated practitioner body; or

(b) any person as the Council deems fit.

(2) Any function delegated under subsection (1) shall be performed and exercised in the name and on behalf of the Council.

(3) The Council shall record all delegations, including any revocation or amendment of the delegation, in a register.

(4) The Council shall make available all such delegations to the public.

(5) A delegation under this section shall not preclude the Council itself from performing or exercising at any time of the functions so delegated.

PART III

GENERAL ADMINISTRATION

Registrar

18. (1) For the purposes of this Act, the Secretary to the Council shall be the Registrar.

(2) The Registrar shall be assisted by such number of officers as may be necessary for the performance of his functions and duties.

(3) The Council may appoint a person to act as a Registrar during the absence from Malaysia or incapacity from illness or otherwise of the Registrar.

Register

19. (1) The Registrar shall maintain in both physical and electronic forms any register as may be required under this Act.

(2) Any person may, on payment of the prescribed fee, inspect and make a copy of or take extracts an entry from any register.

(3) If a person requests that a copy be provided in an electronic media, the Registrar may provide the relevant information upon payment of a prescribed fee—

(a) on a data processing device; or

(b) by way of electronic transmission.

(4) The register maintained under this Act shall be deemed to be a public document within the meaning of the Evidence Act 1950 [Act 56].

PART IV

REGISTRATION OF TRADITIONAL AND COMPLEMENTARY MEDICINE PRACTITIONERS

Recognized practice areas

20. (1) The Council shall, from time to time, identify the practice areas that are to be undertaken in Malaysia, and shall make a recommendation to the Minister for such practice areas to be prescribed as recognized practice areas.

(2) The Minister may, after considering the recommendation of the Council, by order published in the *Gazette*, prescribe the practice areas as recognized practice areas.

Practitioner to practise only in recognized practice area

21. (1) No person shall practise in any practice area which is not a recognized practice area.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable—

- (a) in respect of a first offence, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (b) in respect of a subsequent offence, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Provisional registration

22. (1) A person intending to practise traditional and complementary medicine in any recognized practice area shall apply to the Council to be provisionally registered as a practitioner by submitting the prescribed form to the Registrar and shall comply with any qualifications as may be specified by the Council for that recognised practice area.

(2) The Council may refuse to provisionally register an applicant under subsection (1).

(3) Where the Council refuses to provisionally register an applicant, the applicant may appeal against that decision to the Minister within fourteen days from the date he was notified of the refusal.

(4) The Minister shall make a decision within seven days from the receipt of the appeal and his decision shall be final.

(5) A provisionally registered practitioner shall undergo a period of residency of not less than one year with any hospital or institution in Malaysia which is approved by the Council to enable him to be registered under section 23.

(6) A provisionally registered practitioner may be subject to such restrictions and conditions as may be imposed by the Council.

(7) The Council shall issue a certificate in the prescribed form to the provisionally registered practitioner as evidence of his registration.

(8) The Council may extend the residency of a provisionally registered practitioner for not more than one year if the Council is not satisfied with the performance of the practitioner.

(9) The Council shall revoke the provisional registration of a practitioner if he fails to complete the period of residency under subsection (5) or any extension under subsection (8).

(10) The Council may, subject to such terms as it may impose, exempt any person from the provisions of this section if the Council is satisfied that the person is a practitioner and has substantial experience, knowledge and skills in any recognized practice area.

(11) Any practitioner exempted under subsection (10) shall be issued a certificate in the prescribed form as evidence of his exemption.

Registered practitioner

23. (1) Subject to subsection (2), a provisionally registered practitioner or any practitioner exempted under subsection 22(10) intending to practise traditional and complementary medicine in a recognized practice area may apply to be registered with the Council.

(2) A provisionally registered practitioner may apply to be registered with the Council only after he completes the period of residency under section 22.

(3) A practitioner may be registered in one or more recognized practice areas if he satisfies the eligibility requirements for those practice areas and has paid the prescribed fee.

(4) The registration criteria, eligibility requirements, type and field of practice and the procedures for registration shall be as prescribed.

(5) When the practitioner is registered under this section, the Council shall cause to be issued to him a certificate of registration.

(6) A registered practitioner shall notify the Registrar of the address, title, style and nature of his current practice.

(7) Any person whose application for registration under subsection (1) is refused by the Council may appeal to the Minister within thirty days of being informed of such refusal.

Temporary practising certificate

24. (1) Notwithstanding anything to the contrary contained in this Act, the Council may, upon application in writing, temporarily register, subject to such conditions and restrictions as the Council deems fit to impose, a person who is registered as a practitioner outside Malaysia.

(2) The Council shall issue to a person temporarily registered under subsection (1) a temporary practising certificate.

(3) The holder of such temporary practising certificate shall, while the certificate remains in force and subject to the restrictions and conditions specified in the certificate, be deemed to be a registered practitioner.

(4) The Council may at any time revoke the temporary registration of a person under this section and the temporary practising certificate issued to such person shall thereupon lapse.

Effect of non-registration

25. (1) A person who is not a registered practitioner shall not, directly or indirectly, practise the traditional and complementary medicine services.

(2) Any person who contravenes subsection (1), commits an offence and shall, on conviction, be liable—

(a) in respect of a first offence, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) in respect of a subsequent offence, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) The court may, in addition to subsection (2), order the Council to enter the details of such person in a register and such person may not apply to be registered until the expiry of a period of two years from the date of conviction.

Registered practitioner's practising certificate

26. (1) A registered practitioner shall not practise a recognized practice area unless he holds a valid and subsisting practising certificate.

(2) A registered practitioner shall make an application for a practising certificate to the Registrar in the prescribed form and pay the prescribed fee.

(3) A practising certificate shall be valid for not more than twelve months from the date of issuance and shall contain a unique alpha-numerical reference number.

(4) The Registrar shall maintain a register of registered practitioners who have been issued with practising certificates.

(5) All prescriptions, reports or referrals produced, made or issued by a registered practitioner to a patient or any third party as representative of the patient shall bear the signature of the registered practitioner and the registration number of his practising certificate.

(6) The application for the renewal of an annual practising certificate shall be made to the Registrar not less than thirty days before the date of expiry in the prescribed form together with payment of the prescribed fee.

(7) All practising certificates shall be displayed in such manner as may be prescribed at the registered practitioner's place of practice.

Revocation of registration

27. (1) Other than revocation of registration of a registered practitioner under section 37 arising from disciplinary proceedings against him, the Council may revoke the registration of a registered practitioner if—

- (a) he has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself only or in addition to or in lieu of a fine);
- (b) he has had his qualification withdrawn or cancelled by the awarding authority which it was acquired or by which it was awarded; or
- (c) the registered practitioner has been declared by a court of competent jurisdiction to be mentally unfit or has been found by the Council to be mentally or physically unable to practice.

(2) Prior to revoking the registration of a registered practitioner, the Council shall—

- (a) inform the registered practitioner, by written notice, as soon as practicable, of its intention to revoke his registration;
- (b) specify the grounds of decision to revoke the registration; and
- (c) inform the registered practitioner that he is entitled to make written submissions to the Council within a prescribed time which shall not be less than thirty days from the date that the registered practitioner receives the notice issued pursuant to paragraph (a).

(3) An affected registered practitioner may, within the time specified in the notice, submit to the Council a written submission and the Council shall consider the written submission before arriving at a decision.

(4) The decision of the Council shall specify the grounds for the revocation of registration including the time when the affected registered practitioner may apply to be re-registered.

(5) The decision to revoke the registration shall be recorded in a register and shall specify the name of the practitioner whose registration was revoked, the place of business and the recognized practice area in respect of which the registration to practice is revoked.

(6) Any registered practitioner who is aggrieved by the decision of the Council to revoke his registration may appeal to the Minister in accordance with the regulations.

(7) The Council may, pending the appeal to the Minister, order the registered practitioner to cease practising in the recognized practice area until the appeal has been disposed by the Minister.

(8) After considering the appeal made under subsection (6), the Minister may, not later than fourteen days from the receipt of the appeal, confirm, set aside or vary the decision appealed against, and the decision of the Minister shall be final.

(9) A registered practitioner whose registration has been revoked shall no longer be permitted to practice that recognized practice area or any other practice area until he has been re-registered.

Re-registration

28. (1) A registered practitioner whose registration has been revoked may after the expiry of thirty-six months or such other time as may be specified in the grounds and decisions for revocation made under section 27, apply to the Council to be re-registered.

(2) The Council may re-register the person under subsection (1) if he is satisfied that the reasons or grounds for the revocation of registration made under section 27 are unlikely to recur or that the person has now satisfied the registration requirements.

(3) Upon such re-registration, any stop order made under section 51 shall be revoked, and such revocation and the effective date of such revocation shall be recorded in a register.

PART V

OBLIGATIONS AND DUTIES OF REGISTERED PRACTITIONERS

Use of titles and abbreviations

29. (1) Subject to subsections (2) and (3), a registered practitioner may use any title or abbreviation to denote his qualification or status.

(2) Any title or abbreviation, used by a registered practitioner, unless the registered practitioner is also a qualified medical or dental practitioner, should not cause the public to believe that the registered practitioner is qualified to practice medicine or surgery under the Medical Act 1971 or dentistry under the Dental Act 1971.

(3) The Council shall specify and publish a list of prohibited titles and abbreviations through notification in the *Gazette*.

(4) A registered practitioner shall not use any title or abbreviation which has been prohibited by the Council under subsection (3).

(5) If a registered practitioner has been found to have used any prohibited title or abbreviation specified under subsection (3), the Council may place the practitioner on a watch-list register.

(6) The Council shall, if the practitioner, within twenty-four months of being placed on the watch-list register, uses a prohibited title or abbreviation, revoke the registration of such practitioner.

Duty to refer patient to medical or dental practitioner

30. (1) A registered practitioner shall refer his patient to a medical practitioner or dental practitioner if the patient is experiencing an acute medical emergency or if the ailment or condition of the patient is beyond the skill, competency or expertise of the registered practitioner.

(2) An acute medical emergency is a medical condition which is sudden, unanticipated and urgent, requiring immediate medical or surgical evaluation or treatment for the relief of acute, pain and suffering of the patient.

(3) A registered practitioner shall clearly and carefully explain to and advise the patient or the guardian or representative of the patient of the duty to refer the patient to a medical or dental practitioner so as to enable the patient or the guardian or representative of the patient to make an informed decision as to whether to refuse to be referred or not.

(4) Notwithstanding subsection (1), if the patient or the guardian or representative of such patient by written notice duly consents not to be referred, then the practitioner shall not be obliged to refer the patient to a medical or dental practitioner.

(5) If a registered practitioner has contravened subsection (1) the Council may—

(a) impose a stop order pursuant to section 51; or

(b) revoke the registration of such practitioner.

Duty to report any epidemic or other localized outbreaks of diseases, etc., to the Registrar

31. (1) In addition to the Prevention and Control of Infectious Diseases Act 1988 [Act 342], all registered practitioners shall, in accordance with the regulations, report to the Registrar on the occurrence of any epidemic or other localized outbreaks of diseases, or infectious diseases or any other illness, public health problems or any adverse reaction of patients to traditional and complementary medicine services.

(2) If a practitioner contravenes subsection (1), the Council may—

- (a) impose a stop order pursuant to section 51; or
- (b) revoke the registration of the practitioner.

Use of medical device

32. The use of medical devices by registered practitioners shall be subject to the medical device conforming to the Medical Device Act 2012 [Act 737].

Advertisement and promotion

33. (1) A registered practitioner or any person engaging or employing the practitioner shall not make any spurious claim in any advertisement, journal, article, pamphlet, website or media commercial in respect of the curative, medicinal, or health properties of any traditional and complementary medicine services that is provided by the registered practitioner.

(2) A registered practitioner or any person engaging or employing the practitioner shall not make any false or misleading representation in respect of any traditional and complementary medicine services so as to induce, influence or cause a patient to enter into a contract for the purchase of such services.

(3) Any person who contravenes subsection (1) or (2), commits an offence and shall, on conviction—

- (a) in respect of a first offence, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (b) in respect of a subsequent offence, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(4) For the purposes of this section, “misleading representation” means any action which is likely to mislead the public—

- (a) as to the nature, characteristics, suitability for the purpose, or quantity, of the service being provided;
- (b) that the provided services are of a particular kind, standard, quality or quantity;
- (c) in advertising the provided services for particular diseases as listed under the Medicines (Advertisement and Sale) Act 1956 [*Act 290*];
- (d) that the services are provided by any particular person or by any person of a particular trade, qualification or skill; or
- (e) as to the price of the service being provided.

Registered practitioners may incorporate

34. (1) A registered practitioner may incorporate his practice into a company with limited liability, practice as a company or enter into a partnership, in order to provide traditional and complementary medicine services.

(2) A registered practitioner who has incorporated his practice into a company with limited liability, practice as a company or enter into a partnership pursuant to subsection (1) shall, as soon as practicable, notify the Registrar of the legal status of his practice.

Mandatory practice standards in governance and practice codes

35. (1) The Council shall prescribe the mandatory practice standards, for the purpose of the governance and practice codes which are to be complied with by registered practitioners.

(2) A registered practitioner shall comply with the mandatory practice standards in governance and practice codes.

(3) Non-compliance with the mandatory practice standards in governance and practice codes shall subject the registered practitioner to disciplinary action and revocation of registration.

(4) Prior to determining the mandatory practice standards, the Council shall conduct a public engagement as to the scope of the mandatory practice standards.

(5) The public engagement shall set out the views of the Council in respect of the mandatory practice standards and provide interested parties not less than forty-five days to submit written responses to the Council.

(6) At the conclusion of the public engagement process, the Council shall cause to be published a public engagement report and the approved draft mandatory practice standards.

(7) All mandatory practice standards shall be published and recorded in register.

(8) All mandatory practice standards may be varied, amended, modified or revoked by the Council and such variation, amendment, modification or revocation shall be published and recorded in register.

(9) The Council shall, prior to any variation, amendment, modification or revocation of mandatory practice standards becoming effective undertake a public engagement in respect of the variation, amendment, modification or revocation except where such variation, amendment, modification or revocation is due to typographical errors only.

(10) The whole or part of the governance and practice code shall be invalid to the extent of any conflict or inconsistency with the mandatory practice standards.

PART VI

DISCIPLINARY PROCEEDINGS

Disciplinary jurisdiction of the Council

36. (1) The Council shall have disciplinary jurisdiction over all registered practitioners under this Act.

(2) The Council may exercise disciplinary jurisdiction over any registered practitioner who—

- (a) has conducted himself in such a manner so as to bring the profession into disrepute;
- (b) has failed to comply with the mandatory practice standards contained in the governance and practice codes as provided for in section 47;
- (c) is alleged to have committed serious professional misconduct as stipulated in the code of professional conduct and any other similar guidelines and directives issued by the Council;
- (d) has obtained registration by fraud or misrepresentation;
- (e) was not at the time of his registration entitled to be registered; or
- (f) has not complied with any provisions of this Act, or subsidiary legislation made or conditions imposed under this Act.

(3) The Council shall establish a mechanism, including the establishment of a disciplinary authority to inquire into complaints or information received against a registered practitioner.

Disciplinary punishments

37. (1) The Council may, in the exercise of its disciplinary jurisdiction, impose any of the following punishment:

- (a) reprimand such registered practitioner;

- (b) order such registered practitioner's registration to be subjected to conditions which may include, but are not limited to, one or more of the following:
 - (i) that such conditions relating to the registered practitioner's practice area as it considers appropriate, be imposed on the registration of such registered practitioner;
 - (ii) that such registered practitioner undergo educational courses or programmes as may be specified by the Council; or
 - (iii) that such registered practitioner report on his practice area to such registered practitioner or persons as may be specified by the Council;
- (c) order the name of such registered practitioner to be suspended from the Register for such period as it thinks fit; or
- (d) make such order in paragraph (c) but suspend the application thereof, subject to such conditions as the Council may think fit, for a period, in the aggregate, not exceeding two years;
- (e) order the name of such registered practitioner to be struck off the register.

(2) No registered practitioner shall practise as registered practitioner during the period of suspension under paragraph (1)(e).

(3) The Council may also impose a fine as may be decided by the Council in addition to the punishments in subsection (1).

(4) Any registered practitioner who contravenes the additional conditions imposed in paragraph (1)(b) or continues to practice during the period of suspension under paragraph (1)(c), or fails to pay the fine imposed under subsection (3) shall be subject to further disciplinary proceeding.

(5) Any further disciplinary proceeding under subsection (4) relating to the failure to pay the fine imposed under subsection (3) shall not effect the right of the Council to recover such fine as a civil debt.

(6) The Council may, in any case, make such order as the Council thinks fit with regard to the payment of the costs of the Registrar and of any complainant or of a registered practitioner, and any costs awarded may be recovered as a civil debt.

Appeal against orders of the Council

38. (1) Any registered practitioner who is aggrieved by any order made in respect of him by the Council in the exercise of its disciplinary jurisdiction may appeal to the High Court, and the High Court may thereupon affirm, reverse or vary the order appealed against or may give such direction in the matter as it thinks proper; the cost of the appeal shall be at the discretion of the High Court.

(2) Subject to subsection (3), the practice in relation to any such appeal shall be subject to the rules of court applicable in the High Court.

(3) The High Court shall not have the power to hear any appeal against an order made under section 37 unless a notice of such appeal was given within one month of the service of the order in the prescribed manner.

Restoration of name in register

39. (1) No registered practitioner whose name has been struck off from the register under the provisions of paragraph 37(1)(e) shall thereafter be entitled to be registered as a practitioner under this Act, but the Council may, if it thinks fit in any case to do so, on the application of the person concerned, order that the name of such person be restored to the register.

(2) Any registered practitioner whose name has been suspended from the register under paragraph 37(1)(d) shall be entitled at the expiration of the period of suspension, but not earlier, to apply for the certificate of registration (if the period for which the certificate is issued is still unexpired) to be returned to him.

(3) An application under subsection (1) or (2) shall be made in such manner or form and accompanied by such documents, particulars and fees as may be prescribed.

PART VII

PATIENT'S RIGHTS

Patient's rights

40. (1) All patient information, directly or indirectly provided to or obtained by a registered practitioner or any person engaging or employing the practitioner, shall—

(a) be kept in confidence; and

(b) not be disclosed to any other party unless with the prior consent of the patient or by an order of the court.

(2) A registered practitioner shall properly notify and inform the patient of any harmful, unsafe or other effects which the traditional and complementary medicine services provided may produce, by themselves or in combination with other medicines, prior to providing, supplying or prescribing the patient with such services and shall maintain a record of such notification and information.

(3) Where any traditional and complementary medicine services are provided, supplied or replaced pursuant to paragraph (4)(a) by a registered practitioner or any person engaging or employing the practitioner to a patient, there shall be the following implied terms or guarantees:

(a) an implied term that the traditional and complementary medicine services are free of any undisclosed illegal compound or substance or defect;

(b) an implied term that the traditional and complementary medicines are safe for human consumption, ingestion or application and that there are no unknown effects or consequences;

(c) an implied guarantee that the traditional and complementary medicines are fit for the particular purpose for which traditional and complementary medicine goods of the type or nature in question are supplied, unless the patient did not rely on the practitioner's skill or judgment or that it was unreasonable for the patient to so rely;

- (d) an implied guarantee that the registered practitioner is suitably qualified, experienced and sufficiently trained to perform the traditional and complementary medicine services;
- (e) an implied guarantee that the traditional and complementary medicine services shall be carried out with reasonable care and skill;
- (f) an implied guarantee that the traditional and complementary medicine services resulting from the supplied services will be reasonably fit for any particular purpose and of such nature and quality that it can reasonably be expected to achieve the particular result or effect that the registered practitioner has advised the patient of; and
- (g) an implied guarantee that the patient may reasonably rely on the registered practitioner's skill or judgment, unless the circumstances show otherwise.

(4) If any registered practitioner or any person engaging or employing the registered practitioner fails to comply with the implied terms or guarantees under subsection (3), the patient may choose to exercise the following rights:

- (a) cancel the contract with the registered practitioner or the person engaging or employing the practitioner, without any liability; or
- (b) obtain from the registered practitioner and the person engaging or employing the practitioner, compensation for any loss or damage suffered; or
- (c) obtain a refund of all monies paid by the patient to the registered practitioner and the person engaging or employing the practitioner, as the case maybe;

(5) Subsections (1), (2), (3) and (4) shall have effect notwithstanding anything to the contrary in any agreement.

(6) If a registered practitioner is engaged or employed by any person, the person shall be jointly liable with the practitioner for any failure to comply with subsections (1), (2), (3) and (4) and it shall not be a defence for such person that such failure to comply with subsections (1), (2), (3) and (4) was due to the registered practitioner acting on his own.

Dispute resolution service

41. (1) The Council may resolve or appoint a committee to resolve any dispute arising out of or in connection with any matter relating to section 40 between a patient and a registered practitioner.

(2) The Council shall determine the procedures and guidelines for the management and proceedings of the dispute resolution service.

(3) All decisions made pursuant to a dispute resolution proceeding against a patient or a registered practitioner shall be entered into the register.

(4) The decisions referred to in subsection (3) shall be complied with by the patient and the registered practitioner.

(5) Any patient or registered practitioner who is dissatisfied with the decision made by the Council or a committee appointed by the Council under subsection (1), may apply to the court to review the decision.

PART VIII

TRADITIONAL AND COMPLEMENTARY MEDICINE
PRACTITIONER BODY

Designation and revocation of designation of practitioner body

42. (1) The Minister may, on the recommendation of the Council and by order published in the *Gazette*, designate a practitioner body of a recognized practice area to exercise the functions delegated under subsection 17(1) and other functions under this Act.

(2) The Minister may, on the recommendation of the Council and by order published in the *Gazette*, revoke the designation under subsection (1) if he is satisfied that the designated practitioner body is no longer capable of discharging its functions or meeting the requirements under this Act.

(3) Upon such revocation under subsection (2), the Minister may, on the recommendation of the Council, designate another practitioner body to be the designated practitioner body or direct the Council accordingly.

Duties of designated practitioner body

43. (1) The Council may delegate any of its function to designated practitioner body.

(2) The Council may override any decision of the designated practitioner body relating to the discharge of the delegated functions.

(3) The Council may request any relevant information from the designated practitioner body and the information shall be provided within the time stated in such request.

(4) Any action taken or performed by designated practitioner body pursuant to any order or direction of the Council in discharging its delegated functions shall not be void by reason of any inconsistency with any subsequent decision of the Council.

(5) The Council may, from time to time, issue orders or directions to the designated practitioner body in respect of the discharge of the functions that have been so delegated.

Self-regulatory framework when practitioner body is ready

44. (1) The Council may, if the practitioners of a recognized practice area may be better, efficiently and effectively governed by their own practitioner body, determine that the designated practitioner body shall be the governing body of the recognized practice area.

(2) The determination by the Council under subsection (1) shall specify the effective date when the designated practitioner body will assume the regulatory role of the Council.

(3) All determinations by the Council under subsection (1) shall be recorded in a register.

(4) Subject to subsection (2), the designated practitioner body shall undertake, perform and discharge the following functions:

- (a) make recommendations to the Council as to the appropriate academic qualifications or certification issued pursuant to the National Skills Development Act 2006 that an individual would require in order to be eligible to apply to be a registered practitioner of the recognised practice area;
- (b) discipline those practitioners who have breached the rules of the designated practitioner body or the provisions of this Act or the regulations made thereunder;
- (c) identify any continuous development programmes for the practitioners which may be offered by any institutions, bodies or individuals within or outside Malaysia;
- (d) subject to section 33, develop guidelines on the proper marketing, advertising and promotion actions, including but not limited to the training of multi-level marketing personnel, that may be taken by its members;
- (e) develop and conduct or cause to be conducted appropriate training and continuous professional development programmes;
- (f) develop guidelines to assist practitioners in referring their patients to medical practitioners or dental practitioners, as the case may be;
- (g) develop and prescribe any matter relating to or connected with the practice of the recognised practice area or the professionalism of such practice; and
- (h) develop, prescribe and mandate rules and requirements that may be appropriate or necessary to ensure compliance with the requirements of the Act, including rules or regulations relating to practitioner conduct, record keeping, and maintenance of confidentiality of patient information.

Supervision by Council

45. The Council shall supervise the designated practitioner body and may direct the designated practitioner body on any matter relating to the practice of the recognized practice area.

Effect of revocation of designation

46. (1) If the Minister revokes the designation of a practitioner body in accordance with subsection 42(2), then the practitioner body shall—

- (a) deliver all of its records and registers to the Council;
- (b) immediately cease to carry out and discharge all regulatory and oversight functions;
- (c) notify all parties, including any relevant international organisations that the practitioner body has ceased to be the regulatory body for that practice area; and
- (d) comply with such terms as may be specified by the Minister.

(2) If a practitioner body whose designation has been revoked fails to comply with the requirements specified under subsection (1), the practitioner body—

- (a) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or imprisonment of the principal office bearers of a term not exceeding two years or to both; and
- (b) may have its records and registers seized by an authorized officer;

and the Registrar may notify all parties including any international organizations that the practitioner body has ceased to be the regulatory body for that practice area.

Preparation of governance and practice codes

47. (1) The Council may instruct a designated practitioner body to prepare governance and practice codes according to the mandatory practice standards as prescribed by the Council under section 35.

(2) The designated practitioner body in which the Council has instructed to prepare governance and practice code shall prepare it within the specified time.

(3) The governance and practice codes prepared by the designated practitioner body shall be approved and recorded by the Council in register.

(4) Notwithstanding with subsection (1), the Council may determine the mandatory practice standards on any matter which the governance and practice codes are to contain, if—

- (a) a designated practitioner body is unlikely to develop the governance and practice codes or parts thereof, within a reasonable time;
- (b) the Council is satisfied that any subject matter of the governance and practice codes has failed and will continue to fail, to promote the purposes of this Act or the relevant national policy; or
- (c) the Minister directs the Council to do so.

PART IX

ENFORCEMENT

Authorized officer

48. (1) The Minister may, in writing, authorize any medical officer of health, health inspector of the ministry of Health and any local authority, any public officer and suitably qualified person to exercise the power of enforcement under this Act.

(2) Any such authorized officer shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Authority card

49. (1) The Council shall issue to each authorized officer an authority card which shall be signed by the Chairman.

(2) Whenever an authorized officer exercises any of the power of enforcement under this Act, he shall, on demand, produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Power of investigation

50. (1) An authorized officer may investigate the commission of any offence under this Act.

(2) For the avoidance of doubt, it is declared that for the purpose of this Act, an authorized officer shall have all or any of the powers of a police officer of whatever rank in relation to police investigations in seizable cases as provided under the Criminal Procedure Code [Act 593], and all powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

Stop order

51. (1) An authorized officer may, on his own motion or upon a receipt of a written complaint or upon an application by the Secretary, issue an order requiring a practitioner to stop and cease practising a practice area, if—

- (a) the practitioner has so practised despite his registration being revoked;
- (b) the practitioner practices a designated practice area for which he is not registered;
- (c) the registered practitioner practices without a practising certificate or while he is suspended;
- (d) the registered practitioner employs unsafe practices that affects the safety of the patient;
- (e) the registered practitioner has contravened sections 30 or 31;

- (f) the registered practitioner has failed to comply with any determination, direction or order issued by the Council, the Minister or the Director General;
- (g) the registered practitioner has contravened other written laws and such contravention has the effect or likely effect of affecting the safety of the public.

(2) Such order as may be issued by the authorized officer shall be for a period of not longer than fourteen days.

(3) Upon the expiry of the order made under subsection (1), the authorized officer may apply to the Director General for the extension of such order.

(4) The Director General may, prior to the expiry of the order issued under subsection (1), issue an order requiring the person who is subject to an order under subsection (1), to stop and cease practising that practice area, and in addition thereto, may order that all tools, equipment, materials, furniture, apparel, books, records, substances, medication or any other item used in the practice of traditional and complementary medicine be seized.

(5) An authorized person may, at all reasonable times enter any premise, building or facility to discharge and enforce the order issued under to subsection (4).

(6) If the order issued under to subsection (4) provides for the seizure of items, then the authorized officer may at all reasonable times enter, search, seize and remove any tool, equipment, material, furniture, apparel, books, records, substances, medication or any other item used in the practice of traditional and complementary medicine.

(7) An inventory of all items seized and removed under subsection (6) shall be provided to the person in charge of the premise, building or facility.

(8) All orders issued under subsection (1) or (4) shall be recorded in a register.

(9) A person who continues to practice in contravention of the orders issued under subsection (1) or (4) while such orders are in force commits an offence, and shall, on conviction, be liable—

- (a) in respect of a first offence, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and
- (b) in respect of a subsequent offence, to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(10) The court may, in addition, order the Council to enter the details of the practitioner into a register of black-listed practitioners, and such persons shall not be permitted to practice a recognised practice area or be a director or officer of a company involved in providing traditional and complementary medicine or a partner in a partnership of practitioners, until the expiry of a period of two years from the date of his conviction.

(11) The Director General may revoke the stop order made under subsections (1) and (4).

(12) The revocation of the order under subsections (1) and (4) shall be effective from the date of such revocation and shall be recorded in a register.

Closure order

52. (1) The Director General may, on matters concerning public health and safety, or persistent use of unsafe or unhygienic practices, issue an order to close any premises, building or facility that is used for the provision of traditional and complementary medicine services for such period and on such prescribed terms as may be specified therein.

(2) The effect of a closure order issued under subsection (1) is that the premises, building or facility is not to be used in the practice of that practice area, but such closure order shall not affect any other activities at the premise, building or facility which are not activities of that practice area.

(3) All closure orders issued by the Director General shall contain the grounds and reasons for the order.

(4) Upon the issuance of the order under subsection (1), the authorized officer may enter the premises, building or facility to inform the occupants of the order and he shall thereafter proceed to close the premises, building or facility, and shall use a mark, seal, sign, barrier, lock or device to indicate its closure, or any item which will indicate its closure.

(5) Any person who tampers, alters, removes, breaks or modifies any mark, seal, sign, barrier, lock, device to or any item which will indicate that the premises, building or facility is subject to a closure order, or in any other way contravenes the closure order, commits an offence and shall, on conviction, be liable—

(a) in respect of a first offence, to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding two years or to both; and

(b) in respect of a subsequent offence, to fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(6) Upon the expiry of the period specified in the order issued under subsection (1), the Director General may extend the period of closure if there is sufficient cause to do so.

(7) The Director General may revoke the order made under subsection (1) and allow the premise, building or facility to be used for the provision of traditional and complementary medicine services.

(8) A registered practitioner who is dissatisfied with the decision of the Director General made under subsection (1) may appeal to the Minister in accordance with the regulations made under this Act.

Search and seizure with warrant

53. (1) If it appears to a Magistrate, upon written information on oath from an authorized officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

(a) any premises has been used for or is about to be used for; or

- (b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act or any regulations made under this Act, the Magistrate may issue a warrant authorizing any authorized officer named in the warrant at any reasonable time by day or by night and with or without assistance, to enter the premises and if need be by force.

(2) Without affecting the generality of subsection (1), the warrant issued by Magistrate may authorize the authorized officer to—

- (a) take samples of any traditional and complementary medicine goods;
- (b) request and take blood samples as a result of a report being made under section 31;
- (c) photograph or digitally record any situation, condition or state of the premises, building or facility or any part thereof;
- (d) request the production of any document, record, manual, book, material or other article maintained by the registered practitioner and may make copy of or extract from thereof; or
- (e) seize any document, record, manual, book, material or other article requested.

(3) An authorized officer entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(4) An authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(5) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(6) An authorized officer may, in the exercise of his powers under this section, if it is necessary so to do—

- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;
- (b) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under this section; and
- (c) detain any person found in the premises until the search has been completed.

(7) If, by the reason of its nature, size or amount, it is not practicable to remove any receptacle, package, conveyance, book, document or other thing seized under this section, the authorized officer shall seal the conveyance, container or premises in which such receptacle, package, book, document or other thing is found.

(8) Any person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (5) or removes any receptacle, package, conveyance, book, document or other thing seized under seal or attempts to do so, commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power to enter premises

54. An authorized officer may at any time enter any premises for the purpose of—

- (a) inspecting any sample of any traditional and complementary medicine goods, receptacle, package, conveyance, book, document or other thing as he considers necessary;
- (b) verifying the accuracy of records or statement or any information given to an authorized officer; or
- (c) collecting samples of any traditional and complementary medicine or other substances found in the premises for the purposes of ascertaining, by testing or otherwise, whether an offence has been committed.

Power to take sample

55. (1) An authorized officer may demand, select, take or collect samples of any traditional and complementary medicine or other substances for the purposes of ascertaining without payment from any person importing, manufacturing, distributing, selling or having possession of such goods, or his or its agent or servant from whom the other substances are procured.

(2) The procedure for taking and dealing with the samples shall be as prescribed.

Access to computerized data

56. (1) An authorized officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purposes of this section, “access” includes being provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable the comprehension of computerized data.

Institution of prosecution

57. No prosecution shall be instituted for any offence under this Act without the consent in writing of the Public Prosecutor.

List of document, record, etc., seized

58. (1) Except as provided in subsection (2), where any document, record, manual, book, material or other article is seized pursuant to this Act, the authorized officer making the seizure—

(a) shall prepare and sign—

- (i) a list of the document, record, manual, book, material or other article seized; and
- (ii) a written notice of the seizure containing the grounds for the seizure; and

(b) shall as soon as practicable serve a copy of the list of the document, record, manual, book, material or other article seized and the written notice of the seizure under paragraph (a) to the occupier of the premises which have been searched or to his agent or servant at those premises.

(2) The written notice of the seizure shall not be required to be served in pursuance of paragraph (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of such property or his agent.

Release of document, record, *etc.*, seized

59. (1) If any document, record, manual, book, material or other article has been seized under this Act, the authorized officer who effected the seizure may, after referring to the Public Prosecutor, release the document, record, manual, book, material or other article has been seized to the person as he determines to be lawfully entitled to it, and is not otherwise required for the purpose of any proceedings under this Act or for the purpose of any prosecution under any other written law, and in such event neither the authorized officer effecting the seizure nor the Federal Government, shall be liable to any proceedings by any person if the seizure and the release of the document, record, manual, book, material or other article had been effected in good faith.

(2) A record in writing shall be made by the authorized officer effecting the release of the document, record, manual, book, material or other article under subsection (1), specifying in detail the circumstances of and the reason for the release, and he shall send a copy of the record to the Public Prosecutor within seven days of the release.

PART X

GENERAL

Power to make regulations

60. (1) The Minister may make regulations for the further, better and more convenient carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) to prescribe the form of scrutiny and oversight the practice of the recognized practice area;
- (b) to prescribe the form and manner in which applications for registration and for annual practising certificates shall be made;
- (c) to prescribe the amount of fees and charges to be payable by practitioners in respect of any matter specified in this Act;
- (d) to prescribe the manner of displaying the practising certificate;
- (e) to prescribe the information that should be published in the registers;
- (f) to prescribe the amount to be paid to members of the Council, the Secretary and members of committees formed by the Council as an honorarium;
- (g) to prescribe the process, procedure, eligibility requirements, documentation and conditions relating to the application for permission to use any medical device and to provide for any other matters as may be reasonably necessary for the use of any medical device;
- (h) in relation to section 31, to prescribe the manner of reporting of any occurrence of any epidemic or other localized outbreaks of diseases, contagious diseases or any other illness, public health problems or any adverse reaction of patients to the traditional and complementary medicine services;
- (i) to prescribe the form and nature of any undertaking that may be provided under this Act, the manner of enforcing such undertakings against the practitioner and the penalties for breach of such undertakings;
- (j) to prescribe the manner and terms to be imposed for revoking any order issued under this Act and the conditions to be imposed as a result of such revocation;

- (k) to prescribe the receipt of complaints or information touching any disciplinary matter that may be inquired into by the Council and the establishment of a Committee to be known as the Investigation Committee to make an investigation into complaints or information touching any disciplinary matter that may be inquired into by the Council and to determine whether or not there shall be an inquiry by the Council;
- (l) to prescribe the procedure of any appeal to the Minister; and
- (m) to provide for any other matters as are contemplated by, or necessary for giving full effect to the provisions of this Act.

Penalties for subsidiary legislation

61. Any subsidiary legislation made under this Act may provide for any act or omission in contravention of any provision in the subsidiary legislation shall be an offence and may provide penalties of a fine not exceeding ten thousand ringgit or a term of imprisonment not exceeding three months or to both.

Offences by body corporate

62. (1) Where a body corporate commits an offence under this Act or any of its subsidiary legislation, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate or was assisting in such management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate; and
- (b) where the body corporate is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge, consent or connivance; and

- (ii) that he took all reasonable precautions and had exercised due diligence to prevent the commission of the offence.

(2) Where any person would be liable under this Act or any of its subsidiary legislation to any punishment or penalty for any act, omission, neglect or default, he shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any practitioner engaged by him, employee or agent of his, or of the employee of such agent, if such act, omission, neglect or default was committed—

- (a) by a registered practitioner engaged by him;
- (b) by his employee in the course of his employment;
- (c) by the agent when acting on his behalf; or
- (d) by the employee of such agent in the course of his employment by such agent or otherwise on behalf of the agent.

PART XI

TRANSITIONAL PROVISION

Transitional

63. (1) Any practitioner body who before the coming into operation of this Act undertakes or performs its functions as a governing body of a practice area, shall, on the coming into operation of this Act, cease to so undertake or perform such functions until it has been designated as a designated practitioner body under section 42.

(2) Any register of practitioners kept and maintained by a practitioner body immediately before the coming into operation of this Act shall, on the coming into operation of this Act, be deemed to be registers kept and maintained under section 19 and shall be deemed to form part of such register of practitioners.

(3) Any practitioner who is registered with a practitioner body who before the coming into operation of this Act undertakes or performs its functions as a governing body of a practice area shall apply to be registered under this Act and shall be exempted from section 22.

EXPLANATORY STATEMENT

The proposed Traditional and Complementary Medicine Bill 2012 (“the proposed Act”) seeks to provide for matters relating to the establishment of the Traditional and Complementary Medicine Council, to regulate traditional and complementary medicine services in Malaysia and to provide for matters connected therewith.

PART I

2. Part I of the proposed Act deals with preliminary matters.
3. *Clause 1* contains the short title and commencement of the proposed Act.
4. *Clause 2* provides for the non-application of the Private and Healthcare Facilities and Services Act 1998 to the practice of traditional and complementary medicine.
5. *Clause 3* contains the definition of certain expressions used in the proposed Act.

PART II

6. Part II of the proposed Act deals with specific provisions on the Traditional and Complementary Medicine Council.
7. *Clause 4* provides for the establishment of the Council.
8. *Clause 5* provides for the functions and powers of the Council.
9. *Clause 6* provides for the appointment of the members of the Council.
10. *Clause 7* provides for the vacation of office of the members of the Council.
11. *Clause 8* provides for the appointment of the alternate member who shall be attending any meeting of the Council or acting for the substantive member.
12. *Clause 9* provides that the Director General shall preside at all meetings and the Council shall meet at least twice a year.

13. *Clause 10* provides for the quorum at the meetings.
14. *Clause 11* provides for the voting by the members of the Council.
15. *Clause 12* enables the Council to regulate its own procedure.
16. *Clause 13* provides for the validity of acts and proceedings taken under the Act.
17. *Clause 14* provides for the appointment of the advisors.
18. *Clause 15* sets out the payment of allowances to members of the Council, advisors and any other person appointed under the proposed Act.
19. *Clause 16* provides for the designation of the Secretary of the Council who is to assist the Council in carrying out its functions under the proposed Act.
20. *Clause 17* provides for the powers of the Council to delegate its functions, with the approval of the Minister, to any designated practitioner or any person as the Council deems fit.

PART III

21. Part III of the proposed Act deals with general administration.
22. *Clause 18* deals with the appointment of the Secretary to the Council as the Registrar.
23. *Clause 19* provides that the Registrar shall maintain in both physical and electric forms any register as may be required under the proposed Act.

PART IV

24. Part IV of the proposed Act deals with the registration of traditional and complementary medicine practitioners.
25. *Clause 20* deals with the recognition of the practice areas by the Council.
26. *Clause 21* requires the practitioner to practise only in recognised practice area.
27. *Clause 22* requires that a person intending to practise traditional and complementary medicine in any recognized practice area to apply to the Council to be provisionally registered as a practitioner and to comply with any qualifications as may be specified by the Council for that recognised practice area.

28. *Clause 23* provides a provisionally registered practitioner intending to practise traditional and complementary medicine in any recognised practice area to apply to the Council to be registered with the Council after completing his period of residency under section 22.
29. *Clause 24* provides that the Council may temporary register a person who is registered as a practitioner outside Malaysia, subject to such conditions and restrictions as the Council deems fit to impose.
30. *Clause 25* provides that any individual who is not registered in a recognised practice area shall not, directly or indirectly, provide or practice in such area. Doing so is an offence under the Act.
31. *Clause 26* provides that a registered practitioner shall not practice in a recognised practice area unless he holds a valid and subsisting practising certificate.
32. *Clause 27* provides for the revocation of registration of a registered practitioner.
33. *Clause 28* provides for the re-registration of deregistered practitioners.

PART V

34. Part V of the proposed Act deals with the obligations and duties of registered practitioners.
35. *Clause 29* imposes provisions regarding the use of practitioner titles and abbreviations and the consequences for breach of those provisions.
36. *Clause 30* places a duty on the registered practitioner to refer the patient to a medical or dental practitioner, as the case may be, in certain circumstances, unless the patient or individual consents in writing not to be referred.
37. *Clause 31* places a duty on the registered practitioner to report of any epidemic or other localized outbreaks of diseases to the Registrar.
38. *Clause 32* seeks to regulate the use of medical devices by traditional and complementary practitioners in their practice.
39. *Clause 33* seeks to prohibit the making of any spurious claim or false or misleading representation in advertisements or promotions, by registered practitioners and those who engage or employ practitioners.
40. *Clause 34* seeks to allow registered practitioner to incorporate his practice into a company with limited liability, practice as a company or enter into a partnership in order to provide traditional and complementary medicine services, and shall, as soon as practicable, notify the Registrar of the legal status of his practice.

41. *Clause 35* seeks to provide for the compliance with mandatory practice standards and registered governance and practice codes.

PART VI

42. Part VI of the proposed Act deals with the disciplinary proceedings for all practitioners registered under the proposed Act

43. *Clause 36* provides the disciplinary jurisdiction of the Council.

44. *Clause 37* sets out the punishments that the Council may impose in exercising its disciplinary jurisdiction.

45. *Clause 38* allows appeal to be made against the orders made by the Council under section 37.

46. *Clause 39* allows the restoration of name to the register by the Council if the Council thinks fit to do so.

PART VII

47. Part VII of the proposed Act deals with the patient's rights.

48. *Clause 40* sets out patient's rights and imposes obligations in respect thereof on registered practitioners and on non-practitioners who engage or employ practitioners.

49. *Clause 41* sets out dispute resolution provisions. This *clause* further provides that the Council may, on its own or through a person appointed to provide dispute resolution services, resolve any dispute relating to section 40.

PART VIII

50. Part VIII of the proposed Act deals with the traditional and complementary medicine practitioner bodies.

51. *Clause 42* provides for the designation and revocation of the designation of practitioner bodies, on the recommendation of the Council, by the Minister.

52. *Clause 43* provides for the duties of the designated practitioner body.

53. *Clause 44* sets out the conditions for self-regulation of the designated practitioner body.

54. *Clause 45* provides for the supervision by the Council. The Council shall supervise the designated practitioner body and may direct the designated practitioner body on matters relating to the practice of the recognised practice area.

55. *Clause 46* provides for the effect of revocation of the designation of the practitioner body.

56. *Clause 47* provides for the preparation of governance and practice codes according to the mandatory practice standards as prescribed by the Council.

PART IX

57. Part IX provides for the enforcement of the proposed Act.

58. *Clause 48* provides for the Minister to authorize medical officer of health, health inspector of the Minister of Health and of any local authority, any public officer to perform enforcement powers under the proposed Act.

59. *Clause 49* provides that each authorised officer shall be issued an authority card signed by the Chairman.

60. *Clause 50* provides for the power of investigation.

61. *Clause 51* provides for stop orders. The authorized officers are authorized to enter into any to premises, building or facility to discharge and enforce the stop order.

62. *Clause 52* empowers the Director General to issue closure orders in respect of any premises, building or facility used for providing traditional and complementary medicine services, in circumstances relating to public health and safety, or persistent use of unsafe or unhygienic practice.

63. *Clause 53* confers on an authorized officer the power to enter any premises, building or facility to search the premises and seize documents or material with warrant.

64. *Clause 54* provides the power to an authorized officer to enter any premises, building or facility.

65. *Clause 55* provides the power to an authorized officer to take samples.

66. *Clause 56* confers on an authorized officer the power to access to computerized data when required.

67. *Clause 57* provides that the prosecution for an offence under the proposed Act shall be instituted only with the consent in writing of the Public Prosecutor.

68. *Clause 58* deals with list of document, record, etc., seized under the proposed Act.

69. *Clause 59* deals with the release of any document seized under the proposed Act.

PART X

70. Part X of the proposed Act deals with general provisions. It deals with power of the Minister to make regulations, penalties for subsidiary legislations and offences of body corporate.

71. *Clause 60* empowers the Minister to make regulations.

72. *Clause 61* sets out the penalties in the subsidiary legislation made under the proposed Act.

73. *Clause 62* provides for the offences by body corporate under the proposed Act.

PART XI

74. Part XI of the proposed Act contains *clause 63* which deals with transitional matters.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U²)2758]