

Himachal Pradesh Ayurvedic And Unani Practitioners Act, 1968

21 OF 1968

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Himachal Pradesh Ayurvedic And Unani Practitioners Act, 1968

21 OF 1968

(Received the assent of the President of India on the 5th December, 1968, and was published in R. H. P. Extra., dated the 3rd March, 1969 at p. 163-179).

Amended, repealed or otherwise affected by, -

(i) A. O. 1973, published in R. H. P. Extra., dated the 20th January, 1973 at p. 91-112.

(ii) H.P. Act No. 14 of 1978² assented to by the President of India on 27-3-1978 and published in R.H.P. Extra., dated 18-4-1978 p. 353.

(iii) HP. Act No. 14 of 1984³ assented to by the Governor of H. P. on 29-5-1984 and published in R. H. P. Extra, dated 1-6-1986, P. 945.

An Act to consolidate and amend the law relating to the registration of practitioners of Ayurvedic and Unani systems of medicine and regulate the practice in such systems.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Nineteenth Year of the Republic of India as follows:-

1. For Statement of Objects and Reasons, see R. H. P. Extra., dated the 21st August, 1968 at p. 866 and for Select Committee's Report, see R. H. P. Extra., dated the 29th July, 1968 at p. 737-755 and for Authoritative Hindi Text see R. H. P. Extra., dated 31-12-87 p. 577.

2 For Statement of Objects and Reasons see R. H. P. Extra., dated 3-1-78 p. 4.

3. For Statement of Objects and Reasons see R. H. P. Extra., dated 4-4-1984 p. 580.

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Himachal Pradesh Ayurvedic and Unani Practitioners Act, 1968.

(2) It extends to the whole of the ¹[State of Himachal Pradesh].

(3) It shall come into force on such date² as the ³[Government of Himachal Pradesh] may, by notification in the Official Gazette, appoint.

1. Subs. for "Union Territory of Himachal Pradesh" by A. O. 1973.

2. The Act enforced w.e.f. the 22nd March, 1971, vide Not. No. 4-21/68-Med. II, dated the 17th March, 1971, published in R. H. P. Extra., dated 22-3-1971, p 186.

3.Subs. for "Administrator" by A. O. 1973.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(a)⁴[* * * *]

(b)"appointed day" means the date on which this Act comes into force under sub-section (3) of section 1;

(c)"Ayurvedic system" means the Ashtang Ayurvedic System and the Sidha, and includes the modernised form thereof;

(d)"Board" means the Board of Ayurvedic and Unani Systems of Medicine, Himachal Pradesh, established and constituted under section 3;

(e)"Director" means the Director of Ayurveda, Himachal Pradesh, and includes an officer appointed by the ⁵[Government of Himachal Pradesh] to exercise the powers and perform the functions of the Director under this Act;

(f)"member means a member of the Board;

(g)"Official Gazette" means the Rajpatra, Himachal Pradesh;

(h)"practitioner" means a person who practices the Ayurvedic or Unani system of medicine;

(i)"prescribed" means prescribed rules made under this Act;

(j)"register" means the register of practitioners maintained under section 14;

(k)"Registered practitioner" means a practitioner whose name is entered in the Register;

(l) "Registrar" means the Registrar appointed under section 13;

(m)"Schedule" means a schedule appended to this Act;

(n)"transferred territory means the territory which on the 1st day of November, 1966, was transferred from the State of Punjab to the ¹[State of Himachal Pradesh] under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966),; and

(o)"Unani system" means the Unani Tibbi system of medicine, and includes the modernised form thereof.

4.The definition of "Administrator" omitted by *ibid*.

5 Subs. for "Union Territory of Himachal Pradesh" by A. O. 1973

CHAPTER 2 ESTABLISHMENT AND CONSTITUTION OF BOARD AND REGISTRATIONS OF PRACTITIONERS

3. Establishment, constitution and incorporation of Board :-

(1) Subject to the provisions of sub-section (6), there shall be established and constituted, for the purpose of carrying out the provisions of this Act, a Board to be known as "the Board of Ayurvedic and Unani Systems of Medicine, Himachal Pradesh", consisting of the following members, namely:-

(a)the Director of Ayurveda, Himachal Pradesh, ex-officio;

(b)²[three members], of whom one shall be the principal of any Ayurvedic or Unani institution, appointed by the ³[Government of Himachal Pradesh];

(c)4[five members], of whom not less than ⁵[three] shall be persons holding a diploma or degree in the Ayurvedic or Unani system, to be elected by the registered practitioners from amongst themselves.

(2)The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provision of this Act, to acquire, hold and dispose of property both movable and immovable and to contract, and shall by the said name, sue and be sued.

(3)The Director shall be Chairman of the Board, and the Vice-Chairman shall be elected by the members from amongst themselves.

(4)The ⁶[five] seats of members provided in clause (E) of sub-section (1) shall be distributed by the ⁷[Government of Himachal Pradesh] proportionately to their number, as counted on the prescribed date before the election, between the registered practitioners who follow the Ayurvedic system and the registered practitioners who follow the Unani system:

Provided that in determining the proportion, a fraction of one-half and less shall be ignored and a fraction of more than one-half shall be counted as one ⁸ [and atleast one seat will be provided for Unani system].

(5)Every election or appointment of a member and every vacancy in the office of a member shall be notified in the Official Gazette.

(6)Until the Board is established and constituted in accordance with the provisions of the preceding sub-sections, the [Government of Himachal Pradesh]⁹ may constitute a Board¹⁰ consisting of seven persons, including the Director to be appointed by the State Government and the rest from the persons holding a diploma or degree of Ayurvedic or Unani system or practitioners in these two

systems, and a Board so constituted shall, as from the commencement of this Act and for a period not exceeding [fifteen]¹¹ years from such commencement, be deemed to be the Board established and constituted for the purpose of carrying out all the provisions of this Act, and the provisions of sub-sections (3) and (5) shall apply to such a Board.

1.Subs. for "Union territory of Himachal Pradesh" by A. O. 1973.

2 Subs. for " vide Act No., 14 of 1978 "five members"

3.Subs. for "Administrator" by A. O. 1973.

4Subs. for the words "eleven members" vide Act No. 14 of 1978.

5Subs. for the wards "seven" vide ibid.

6Subs. for the words "eleven members" vide Act No. 14 of 1978.

7Subs. for the words "Administrator" by A. O. 1973.

8 Ins. Vide Act No. 14 of 1978.

9 Subs. for "Administrator" by A. O. 1973.

10 The Board was constituted vide No. No.4-2/68-Med-II, dated the 18th March, 1971. Published in R. H. P. Extra, dated the 22nd March, 1971, p. 186 and subsequently modified by Not. No. 11-4/71- H&F. P. (2), dated the 10th Nov., 1971, published in R. H. P. Extra., dated the 4th December, 1971, p.1467-1468.

11"Seven years" for "two years" vide Act No. 14 of 1978 and subsequently "fifteen years", vide H. P. Act No.14 of 1984 (effective w.e.f. 17-3-71)

4. Election of members :-

The election of practitioners entitled to be the members of the Board under clause (c) of sub-section (1) of section 3 shall be held at such time and place and in such manner as may be prescribed.

5. Term of office :-

(1) Save as otherwise provided in this Act, a member, other than an ex-officio member, shall hold office for a period of five years from the date of the first meeting of the Board.

(2)An outgoing member shall continue in office until the election or appointment of his successor.

(3)An outgoing member shall be eligible for re-election or re-appointment.

6. Vacancies :-

(1) If a vacancy occurs in the office of a member through his death, resignation, removal, disqualification or disability or otherwise, the vacancy shall be filled in the same manner as is provided in section 3.

(2) Any person elected or appointed to fill the vacancy shall, notwithstanding anything contained in section 5, hold office only so long as the member in whose place he is elected or appointed would have held office if the vacancy had not occurred.

7. Resignation :-

Any member may at any time resign his office by a letter addressed to the Chairman and the resignation shall take effect from the date on which it is accepted by him.

8. Disabilities for continuing as member :-

If any member during the period for which he has been appointed or elected absents himself, without such reasons as may in the opinion of the Board be sufficient, from three consecutive ordinary meetings of the Board or becomes subject to any of the disqualifications mentioned in section 9, the Board shall declare his office to be vacant:

Provided that before declaring his office to be vacant, the Board shall call for his explanation and record its decision thereon.

9. Disqualifications :-

A person shall be disqualified for being elected or appointed as, and

for continuing as, a member,-

(a) if he is a minor or an undischarged insolvent;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if his name has been removed from the register or list prepared under this Act and has not been re-entered therein.

10. Vacancies etc., not to invalidate proceedings of Board :-

No act done, or proceeding taken, under this Act by the Board shall be invalid merely on the ground,-

(a) of any vacancy or defect in the constitution of the Board; or

(b) of any defect or irregularity in the election or appointment of a person acting as a member thereof; or

(c) of any defect or irregularity in such act or proceeding, not affecting the merits of the case.

11. Time and place of meetings of Board :-

The Board shall meet at such time and place, and every meeting of the Board shall be summoned in such manner, as may be provided in the regulations made under this Act:

Provided that, until such regulations are made, it shall be lawful for the Chairman to summon a meeting of the Board at such time and place as he may deem expedient by letter addressed to each member.

12. Procedure at meeting of Board :-

(1) The Chairman, and in his absence the Vice Chairman, and in

the absence of both a person elected by the members of the Board from amongst themselves, shall preside at every meeting of the Board.

(2) All questions at a meeting of the Board shall be decided by the votes of the majority of the members present and voting:

Provided that in case of equality of votes, the Chairman, Vice-Chairman or the person presiding, as the case may be, shall, in addition to his own vote as a member of the Board, have and exercise a second or casting vote.

(3) [Five members]¹ shall form a quorum at a meeting of the Board and four members shall form a quorum at a meeting of the Board referred to in sub-section (6) of section 3:

Provided that if a meeting is adjourned for want of quorum, no quorum shall be necessary at the next meeting called for transacting the same business.

1.Subs. for "seven members" vide H. P. Act, No. 14 of 1978 (Sec. 3)

13. Registrar and other staff :-

(1) Subject to the rules made in this behalf, the Board shall appoint a Registrar who shall receive such salary and allowances and be subject to such conditions of service as may be prescribed:

Provided that until a Registrar is so appointed, a person appointed by the ²[Government of Himachal Pradesh] shall, as from the commencement of this Act, be deemed to be the Registrar who shall be entitled to such salary and allowances and shall be subject to such conditions of service as may be determined by the [Government of Himachal Pradesh]³.

(2)The Board may appoint such other employees as may be necessary for carrying out the purposes of this Act and such employees shall receive such salary and allowances and be subject to such conditions of service as may be prescribed.

(3)All employees of the Board, including the Registrar, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

2 Subs. for " Administrator" by A.O.1973.

3 Subs. for " Administrator" by A.O.1973.

14. Duties of Registrar :-

(1) Subject to the provisions of this Act and the rules made thereunder and subject to any general or special order of the Board, it shall be the duty of the Registrar to maintain the register and to act as the Secretary of the Board.

(2) The register shall be in such form as may be prescribed and shall contain the names, addresses and qualifications of every registered practitioner together with the dates on which such qualifications were acquired. The register shall be divided into the following three parts, namely: -

PART I containing the names of the practitioners qualified to practise the Ayurvedic system;

PART II containing the names of the practitioners qualified to practise the Unani system; and

PART III containing the names of practitioners registered under sub-section (2) of section 15.

(3)The Registrar shall keep the register correct and may from time to time enter therein any material alteration in the address or

qualifications of the practitioners. The names of the registered practitioners who die or whose names are directed to be removed from the register under this Act shall be removed from the register.

(4) A registered practitioner shall, on payment of such fees as may be prescribed, be entitled to have entered in the register any further degrees, diplomas or certificates or other qualifications in Ayurvedic system or Unani system or other recognised medical degrees, diplomas or certificates which he may obtain.

(5) For the purposes of this section, the Registrar may write by registered post to any registered practitioner at the address which is entered in the register enquiring whether he has ceased to practise or has changed his residence and if no answer is received to the said letter within three months, the Registrar may remove the name of the said practitioner from the Register:

Provided that the Board may, if it is satisfied on the application of the said practitioner that he has not ceased to practise, direct that his name be re-entered in the register.

15. Registration :-

(1) Every person possessing any of the qualifications specified in Schedule-I shall, subject to the provisions of this Act and on payment of such fees as may be prescribed, be entitled to have his name entered in Part-I or Part-II, as the case may be, of the register subject to such conditions as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), every person, who, within a period of two years from the date on which this Act comes into force, proves to the satisfaction of the Registrar that he has been in regular practice as a practitioner for a period of not less than seven years preceding the date on which he makes an application for being registered as a practitioner shall, subject to the provisions of this Act and on payment of such fees as may be prescribed in this behalf, be entitled to have his name registered in

Part-III of the register subject to such conditions as may be prescribed.

(3) No person shall be entitled under this section to have his name entered in the Register if he is a minor.

(4) Every person whose name is entered immediately before the appointed day in the register maintained under section 15 of the Punjab Ayurvedic and Unani Practitioners Act, 1963 (Punjab Act 42 of 1963), as in force in the transferred territory, shall, subject to the provisions of this Act, be deemed to be registered as a practitioner under this Act and accordingly his name shall be entered in the appropriate part of the register maintained under this Act:

¹[Provided that in the case of persons who were registered under the Punjab Ayurvedic and Unani Practitioners Act, 1963 (42 of 1963) and have to be re-entered under this sub-section shall be liable for payment of such fee as may be prescribed in this behalf.]

(5) The registration of persons entered in the register under this section shall be valid for a period of three years from the date of entry in the register and after every three years, it shall be renewable on payment of such fee in such manner as may be prescribed in this behalf.]

1. Proviso and sub-section (5) added vide H. P. Act No. 14 of 1978 (Sec. 4)

16. Power of the Board to prohibit entry in or to direct removal from register etc :-

(1) The Board may prohibit the entry in, or order the removal from the register of the name of any practitioner,-

(a) who has been sentenced by a criminal court to imprisonment for such offence involving moral turpitude as may be declared by the

¹[Government of Himachal Pradesh]; or

(b)whom the Board, after proper inquiry either made by itself or by a committee appointed for the purpose by the Board from out of its members, has found guilty of professional misconduct or other infamous conduct by a majority of at least two-thirds of the members present and voting at the meeting of the Board.

(2) The Board may direct that the name of any person against whom an order has been passed under sub-section (1) shall be entered or re-entered, as the case may be, after having satisfied itself that due to lapse of time or otherwise the disability mentioned in sub-section (1) has ceased to have any force.

1.Subs. for "Administrator" by A. O. 1973.

17. Procedure in inquiries :-

For the purposes of any inquiry held under clause (b) of sub-section (1) of section 16, the Board or a committee appointed by the Board shall be deemed to be a court within the meaning of the Indian Evidence Act, 1872 (1 of 1872), and shall, so far as may be, follow procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908).

18. Appeal to Board from decision of Registrar and other powers of Board :-

(1) Any person aggrieved by the decision of the Registrar regarding the registration of any person or any entry in the register may, on payment of such fees as may be prescribed, appeal to the Board.

(2)An appeal under sub-section (1) shall be filed within sixty days of the passing of the order appealed against after excluding the time spent in obtaining a copy thereof and shall be heard and decided by the Board in the manner prescribed.

(3)The Board may, on its own motion or on the application of any person, after due and proper enquiry and after affording the person concerned an opportunity of being heard, cancel or alter any entry in the register if in the opinion of the Board, such entry was

fraudulently or wrongly made.

19. Qualified practitioners certificate :-

Notwithstanding anything in any law for the time being in force,---

(a) the expression legally qualified medical practitioner or duly qualified medical practitioner or any word importing a person recognised by law as a medical practitioner or a member of the medical profession shall in all Acts or other provisions having the force of law in the ¹[State of Himachal Pradesh] and relating to matters in List-II or List-III of the Seventh Schedule to the Constitution of India, includes a practitioner registered in Part-I or Part-II of the register;

(b) a certificate required by any Act to be issued by any medical practitioner or medical officer shall be valid if such certificate has been signed and issued by a practitioner registered in Part-I or Part-II of the register:

Provided that a certificate of illness may also be signed and issued by any practitioner registered in Part III of the register;

(c) a practitioner registered in Part-I or Part-II of the register shall be eligible to hold any appointment as medical officer in any Ayurvedic or Unani dispensary or hospital supported by or receiving a grant from the Government and treating patients according to the Ayurvedic system or Unani system or in any public establishment, body or institution dealing with any such system; and

(d) a registered practitioner shall be entitled to use substances in their crude or manufactured form or preparations containing such substances, provided their pharmaceutical action in relation to such use is known to him according to the fundamental principles of those medicines.

1.Subs. for "Union territory of Himachal Pradesh" by A. O. 1973.

20. Notice of death :-

Every Registrar of Deaths on receiving notice of the death of a registered practitioner shall forthwith transmit by post to the registrar a certificate under his own hand of such death with the particulars of time and place of death and may charge the cost of such certificate and transmission as an expense of his office.

21. Exemption from serving on inquests :-

notwithstanding anything contained in any other law for the time being in force, every registered practitioner shall be exempted if, he so desires, from serving on any inquest under ²[the Code of Criminal Procedure, 1898 (5 of 1898)].

2. Now the Code of Criminal Procedure, 1973 (2 of 1974).

22. Fees and allowances payable to members :-

There shall be paid to the members for attending meetings of the Board such fees and such travelling and other allowances as may be prescribed.

23. Mode of proof of Boards records :-

A copy of any proceeding, receipt, application, plan, notice, entry in a register or other document in the possession of the Board shall, if duly certified by the Registrar or any other person authorised by the Board in this behalf, be received as prima facie evidence of the existence of the entry or document and shall be admitted as evidence of the existence of the entry or document and of the matters therein recorded in every case where, and to the same extent as, the original entry or document would, if procured, have been admissible to prove such matters.

24. Fees for the issue of copies of orders, entries in register, etc :-

Copies of any order passed by the Board or the Registrar or of any entry in the register shall be supplied on payment of such fees as may be prescribed.

25. Fees received by the Board :-

All moneys received by the Board as fees under this Act shall be

applied for the purposes of this Act in the prescribed manner.

26. Publication of list of practitioners :-

(1) The Registrar shall at least once in every five years on or before a date to be fixed by the Board cause to be printed and published a correct list of the names and qualifications of all practitioners for the time being entered in the register and the dates when such qualifications were acquired.

(2) In any proceeding, whether before a court or otherwise, it shall be presumed that every person entered in such list is a registered practitioner and that any person not so entered is not a registered practitioner.

27. Penalty for unlawful assumption of title of registered practitioner :-

Whoever wilfully and falsely assumes or uses any title or description or any addition to his name implying that he is a registered practitioner shall be punishable for the first offence with imprisonment which may extend to six months or with fine which may extend to two hundred and fifty rupees or with both and for every subsequent offence with imprisonment which may extend to two years or with fine which may extend to five hundred rupees or with both.

28. Selling medicines by hawking etc. to be an offence :-

No practitioner whether registered or not, shall sell any Medicine of the Ayurvedic system or Unani system in a public place as a hawker or by assembling a majma.

29. Prohibition to practise :-

No person other than a registered practitioner, shall, from such date¹ as may be specified by the ²[Government of Himachal Pradesh] by notification in the Official Gazette, practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise Ayurvedic system or Unani system.

1 For such date see Not. No. 11.4/71.H.& F.P., dated 12-11-1971 (Appended).

2. In sections 29,31,32,33, the words " Government of Himachal Pradesh" Subs. for the words "Administrator" vide A.O.1973.

30. Penalty :-

Any person, who contravenes the provisions of section 28 or section 29, shall, on conviction, be punishable with fine which may extend to two hundred rupees.

31. Power to amend Schedule-I :-

The [Government of Himachal Pradesh] may, by notification, amend Schedule-I so as to add thereto or omis therefrom any qualification, and thereupon the Schedule shall be deemed to be amended accordingly.

32. Control of the [Government of Himachal Pradesh] :-

If at any time it appears to the [Government of Himachal Pradesh] that the Board has neglected to exercise, or has exceeded or abused any powers conferred upon it under this Act or has neglected to perform any duty imposed upon it by the Act, the [Government of Himachal Pradesh] may communicate the particulars of such neglect, excess or abuse to the Board; and if the Board fails to remedy such neglect, excess or abuse within such time as may be fixed by the [Government of Himachal Pradesh] in this behalf, the [Government of Himachal Pradesh] may, for the purpose of remedying such neglect, excess or abuse, cause any of the powers and duties of the Board to be exercised and performed by such agency and for such period as the [Government of Himachal Pradesh] may think fit.

33. Court competent to try offence and cognizance of offences :-

(1) No court other than the court of a Magistrate of the First Class shall take cognizance of, or try, an offence under this Act.

(2) No court shall take cognizance of any offence under section 9 of

this Act except on a complaint in writing of an officer empowered by the [Government of Himachal Pradesh] in this behalf.

(3)A police officer may arrest without warrant any person who commits an offence punishable under sections 27 and 28 of this Act.

34. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or under rules or regulations made thereunder.

CHAPTER 3 DISPUTES REGARDING ELECTIONS

35. Definitions :-

In this Chapter, unless the context otherwise requires,---

(a)"agent" means any person appointed in writing by a candidate at an election to be his agent for the purposes of his election with the written consent of such person;

(b)"candidate" means a person who has been or claims to have been duly nominated as a candidate at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate;

(c)"corrupt practice" means any of the practices specified in Schedule II;

(d)"costs" means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(e)"election" means an election to fill the office of a member;

(f)"electoral right" means the right of a person to stand or not to

stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election; and

(g)"pleader" means any person entitled to appear and plead for another in a civil court, and includes an advocate.

36. Election petitions :-

No election shall be called in question except by an election petition presented in accordance with the provisions of this Chapter.

37. Presentation of petitions :-

(1) Any registered practitioner may within a period of thirty days from the date on which the election of any member is notified under sub-section (5) of section 3 and on furnishing the prescribed security in the prescribed manner, present on one or more of the grounds specified in sub-section (1) of section 49 to the prescribed authority an election petition in writing against the election of such member.

(2) The election petition shall be deemed to have been presented to the prescribed authority,---

(a)when it is delivered to the prescribed authority,-

(i)by the person making the petition; or

(ii)by a person authorised in writing in this behalf by the person making the petition; or

(b)when it is sent by registered post and is delivered to the prescribed authority.

38. Contents of petition :-

(1) An election petition,--

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition

39. Procedure on receiving election petition :-

If the prescribed security is not furnished in the prescribed manner or the petition is not presented within the period specified in section 37, the prescribed authority shall dismiss the petition; Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.

40. Power of Director to withdraw and transfer petitions :-

The Director may, at any stage after notice to parties and for reasons to be recorded, withdraw any election petition pending before a prescribed authority and transfer it for trial to another

prescribed authority; and upon such transfer, that prescribed authority shall proceed with the trial from the stage at which it was withdrawn:

Provided that such authority may, if it thinks fit, recall and re-examine any of the witnesses already examined.

41. Procedure before the prescribed authority :-

(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the prescribed authority, as nearly as may be, in accordance with the procedure applicable under ¹[the Code of Civil Procedure, 1908 (5 of 1908)], to the trial of suits:

Provided that the prescribed authority shall have the discretion to refuse for reasons to be recorded to examine any witness or witnesses, if it is of the opinion that their evidence is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.

1. Now the Code of Criminal Procedure, 1973 (2 of 1974).

42. Appearance before prescribed authority :-

Any appearance application or act before the prescribed authority may be made or done by the party in person or by pleader duly appointed to act on his behalf:

Provided that it shall be open to the prescribed authority to direct any party to appear in person whenever the prescribed authority considers it necessary.

43. Power of the prescribed authority :-

The prescribed authority shall have the powers which are vested in

a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters:---

(a)discovery and inspection;

(b)enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c)compelling the production of documents;

(d)examining witnesses on oath;

(e)granting adjournments;

(f)reception of evidence taken on affidavit; and

(g)issuing commissions for the examination of witnesses; and may summon and examine suo moto any person whose evidence appears to it to be material; and shall be deemed to be a civil court within the meaning of sections 480 and 482 of ¹[the Code of Criminal Procedure, 1898 (5 of 1898)]

Explanation,---For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the prescribed authority shall be the limits of the ²[State of Himachal Pradesh].

¹Now see the code of criminal Procedure, 1973 (2 of 1974).

²Subs. for "union territory of Himachal Pradesh by A.O.1973.

44. Documentary evidence :-

notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or

registered.

45. Secrecy of voting not to be infringed :-

No witness or other person shall be required to state for whom he has voted at an election.

46. Answering of crminating questions and certificates of indemnity :-

(1) No witness shall be excused from answering any question as to any matter relevant to a matter in issue in the trial of an election petition upon the ground that the answer to such question may criminate or may tend to criminate him, or that it may expose or may tend to expose him to any penalty or forfeiture;

Provided that,--

(a) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity from the prescribed authority; and

(b) an answer given by a witness to a question put by or before the prescribed authority shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any civil or criminal proceeding.

(2) When a certificate of indemnity has been granted to any witness, it may be pleaded by him in any court and shall be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code (45 of 1860), arising out of the matter to which such certificate relates but it shall not be deemed to relieve him from any disqualification in connection with any election imposed by this Act or any other law.

47. Expenses of witnesses :-

The reasonable expenses incurred by any person in attending to

give evidence may be allowed by the prescribed authority to such person and shall unless the prescribed authority otherwise directs, be deemed to be part of the costs.

48. Decision of the prescribed authority :-

(1) Where an election petition has not been dismissed under section 39, the prescribed authority shall enquire into the election petition and at the conclusion of the inquiry shall make an order,---

(a) dismissing the election petition; or

(b) setting-aside the election.

(2) At the time of making an order under sub-section (1) the prescribed authority shall also make an order,---

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording,---

(i) a finding whether any corrupt practice has not been proved to have been committed at the election and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless,---

(i) he has been given notice to appear before the prescribed

authority and to show cause why he should not be so named; and

(ii) if he appears in pursuance of the notice, he has been given an opportunity of cross examining any witness who has already been examined by the prescribed authority and has given evidence against him, of calling evidence in his defence and of being heard.

49. Grounds for setting-aside election :-

(1) If the prescribed authority is of the opinion,-

(a) that on the date of his election the elected person was not qualified or was disqualified, to be elected under this Act; or

(b) that any corrupt practice has been committed by the elected person or his agent or by any other person with the consent of the elected person or his agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns the elected person, has been materially affected,---

(i) by the improper acceptance of any nomination; or

(ii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iii) by any non-compliance with the provisions of this Act or any rules made thereunder; the prescribed authority shall set-aside the election of the elected person.

(2) When an election has been set aside under sub-section (1), a

fresh election shall be held.

50. Abetment of election petitions :-

An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

51. Costs payment of cost out of security deposits and return of such deposits :-

(1) Costs including pleaders fee shall be in the discretion of the prescribed authority.

(2) If in any order as to costs under the provisions of this Chapter there is a direction for payment of costs by any party to any person, such costs shall, if they have not been already paid, be paid in full or so far as possible, out of the security deposit made by such party under this Chapter, on an application made in writing in that behalf within a period of one year from the date of such order to the Director by the person in whose favour the costs have been awarded.

(3) If there is any balance left of the security deposit under this Chapter after payment under sub-section (2) of the costs referred to in that sub- section, such balance, or where no costs have been awarded or no application as aforesaid has been made within the said period of one year, the whole of the said security deposit may, on an application made in that behalf in writing to the Director by the person by whom the security has been deposited, or if such person dies after making such deposit, by the legal representatives of such person, be returned to the said person or to his legal representatives, as the case may be.

52. Execution of orders as to costs :-

Any order as to costs under the provisions of this Chapter may be produced before the principal civil court within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business and such court

shall execute the order or cause the same to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit:

Provided that where any such costs or any portion thereof may be recovered by an application made under sub-section (2) of section 51, no application shall lie under this section within a period of one year from the date of such order unless it is for the recovery of the balance of any cost which has been left unrealised after an application has been made under that sub-section owing to the insufficiency of the amount of the security deposit referred to in that sub-section.

53. Corrupt practices entailing disqualification :-

The corrupt practices shall entail disqualification for membership of the Board for a period of five years counting from the date on which the finding of the prescribed authority as to such practice has been given:

Provided that the ¹[Government of Himachal Pradesh] may, for reasons to be recorded, remove the disqualification or reduce the period thereof.

1.Subs. for "Administrator" by A. O. 1973.

CHAPTER 4 MISCELLANEOUS

54. Rules :-

(1) The ²[Government of Himachal Pradesh] may, by notification in the Official Gazette and after previous publication, make rules³ for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the date on which the number of registered practitioners shall be counted under sub-section (4) of section 3;

(b) the time and place at which, and the manner in which election

shall be held as required by section 4;

(c)the salary, allowances and other conditions of service of the Registrar and other employees of the Board appointed under section 13;

(d)the form of register required to be maintained under section 14;

(e)the amount of fees payable under sub-section (4) of section 14;

(f)the amount of fees on payment of which, and the conditions subject to which, a person may get his name entered in Part-I or Part-II or Part-III of the register under section 15;

(g)the manner in which appeals against the decision of the Registrar shall be heard and decided by the Board under section 18 and the fees chargeable for such appeals;

(h)fees and allowances payable to the members under section 22;

(i)the amount of fees payable for the supply of copies under section 24;

(j)the manner in which moneys, received by the Board as fees shall be applied under section 25;

(k)the amount of security to be furnished and the manner in which it is to be furnished as required by sub-section (1) of section 37;

(l)the authority to whom election petitions may be presented and by whom such petitions may be inquired into and decided under Chapter-III;

(m)the form of affidavit required to accompany the petition under sub-section (1) of section 38; and

(n)any other matter which is to be or may be prescribed or provided for by rules.

(3) Every rule made under this section shall be laid as soon as may be after it is made before the Legislative Assembly of Himachal Pradesh while it is in session for a total period of ten days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

2.Subs. for "Administrator" by A. O. 1973.

3.Rules made vide Not. No. 4-20/68-Med. II, dated the 7th March, 1970 (Appended).

55. Regulations :-

(1) The Board may, with the previous approval of the ¹[Government of Himachal Pradesh] make regulations not inconsistent with this Act or the rules made thereunder for all or any of the following matters, namely:-

(a)the time and place at which the Board shall hold its meetings and the manner in which such meeting shall be summoned under section 11;

(b)any other matter which may be considered necessary for carrying out the purposes of this Act.

(2) All regulations shall be published in the Official Gazette.

(3) The [Government of Himachal Pradesh] may, by notification in the Official Gazette, cancel any regulation.

1 In sections 55, the word "Government of Himachal Pradesh" subs. for the words " Administrator" vide A.O., 1973.

CHAPTER 5 REPEAL AND SAVINGS

56. Repeal and savings :-

(1) As from the commencement of this Act,-

(a) the Punjab Ayurvedic and Unani Practitioners Act, 1949, as in force in the area comprised in the ¹[State of Himachal Pradesh] immediately before 1st November, 1966; and

(b) the Punjab Ayurvedic and Unani Practitioners Act, 1963, in its application to the transferred territory, shall stand repealed:

Provided that the repeal of any such enactment shall not affect,-

(a) the previous operation of such enactment or anything duly done or suffered thereunder, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under such enactment, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such enactment, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or

punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

(2) Subject to the proviso to sub-section (1), anything done or any action taken (including any appointment or delegation made, notification, order, instruction or direction issued, rules and regulations framed) under the enactments repealed by sub-section (1) shall, in so far as it is not inconsistent with this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly, unless and until superseded by anything done or any action taken under this Act.

(3) Without prejudice to the general application of the provisions of sub-sections (1) and (2), the assets and liabilities immediately before the 4th February, 1966, of the interim Board constituted under sub-section (6) of section 3 of the Punjab Ayurvedic and Unani Practitioners Act, 1963, (42 of 1963), which by virtue of any agreement or otherwise under the Punjab Re-organisation Act, 1966 (31 of 1966), may devolve on the ²[Government of Himachal Pradesh] shall, if ³[the Government of Himachal Pradesh] so directs, become the assets and liabilities of the Board.

57. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the ⁴[Government of Himachal Pradesh] may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act, as may appear to ⁵[it] to be necessary or expedient for the removal of the difficulty.

1. Subs. for "Union territory of Himachal Pradesh" by ibid.

2. Subs. for "Administrator" by A.O. 1973.

3. Subs. for "Administrator" by A.O. 1973.

4. Subs. for "Administrator" by A.O. 1973.

5. Subs. for "him" by *ibid.*