

## **Himachal Pradesh Homoeopathic Practitioners Act, 1979**

**3 of 1980**

**[23 April 1980]**

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**Himachal Pradesh Homoeopathic Practitioners Act, 1979**

**3 of 1980**

**[23 April 1980]**

An Act to regulate the qualifications and to provide for the registration of practitioners of the homoeopathic system of

medicines in the Himachal Pradesh. It is hereby enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:- 1. For Statement of Objects and Reasons see R.H.P. Extra., dated 7.4.1979, p. 1231.

## **PART 1 PRELIMINARY**

### **1. Short Title, Extent And Commencement :-**

(1) This Act may be called the Himachal Pradesh Homoeopathic Practitioners Act, 1979.

(2) It extends to the whole of Himachal Pradesh.

(3) It shall come into force on such date as the Government may by notification<sup>1</sup> in the Official Gazette appoint in this behalf.

1. The Act came into force w.e.f. 13.2.1981 vide Not.No. HFW-11-2/71, dated 31.7.1981, published in R.H.P. Extra., dated 18.8.1981, p. 725-726.

### **2. Definitions :-**

In this Act, unless the context otherwise requires,-

(1) "Chairman" means the Chairman of the Council;

(2) "Council" means the Council of the Homoeopathic System of Medicines, Himachal Pradesh, established and constituted under section 3;

(3) "Government" means the Government of Himachal Pradesh;

(4) "Homoeopathic system" means the Homoeopathic System of medicines founded by Dr. Hahnemann, and includes the biochemic system of medicines founded by Dr. Schussler and the expressions "homoeopathic" and "bio-chemic" shall be construed accordingly;

(5) "inspector" means an inspector appointed under sub-section (1) of section 20;

(6) "member" means a member of the Council and includes the Chairman;

(7) "practitioner" means a persons who practises the Homoeopathic system;

(8) "prescribed" means prescribed by rules or regulations made under this Act;

(9) "qualifying examination" means the examination held for the purpose of granting a degree, diploma or certificate conferring right of registration under this Act;

(10) "register" means the register of practitioners maintained under section 15;

- (11) "registered practitioner" means a practitioner whose name is for the time being entered in the register;
- (12) "Registrar" means the Registrar appointed under section 14;
- (13) "regulations" means regulations made under this Act; and
- (14) "State" means the State of Himachal Pradesh.

## **PART 2 ESTABLISHMENT, CONSTITUTION AND INCORPORATION OF COUNCIL AND REGISTRATION OF PRACTITIONERS**

### **3. Establishment, Constitution And Incorporation Of Council** :-

(1) The Government may, as soon as may be, by notification establish a Council to be called, the Council of Homoeopathic System of Medicines, Himachal Pradesh= for the purpose of carrying out the provisions of this Act.

(2) The Council shall be a body corporate with name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, and to contract, and may by that name sue and be sued.

(3) The Council shall consist of eight members residing in Himachal Pradesh of whom-

(a) three members shall be nominated by the Government one of them, if possible, being a person connected with such institutions as are referred to in Schedule-I; and

(b) five members, of whom not less than three shall be persons holding a degree, diploma or certificate in the Homoeopathic system from such institutions as are referred to in Schedule-I, shall be elected by the registered practitioners from amongst themselves.

(4) The Chairman of the Council shall be nominated by the Government from amongst the members and shall hold office during the pleasure of the Governor.

(5) The Chairman of the Council and five members mentioned in clause (b) of sub-section (3) shall in the case of first Council to be constituted, be nominated by the Government from amongst practitioners, and such members shall be deemed to have been duly elected under clause (b) of sub-section (3):

Provided that not less than four of such members shall be persons holding a degree, diploma or certificate in Homoeopathic system from such institutions as are referred to in Schedule-I.

(6) Every election or nomination of member and every vacancy in the office of a member shall be notified by the Government in the

Official Gazette.

#### **4. Election Of Member :-**

The election of members under clause (b) of sub-section (3) of section 3 shall be held at such time and place and in such manner as may be prescribed.

#### **5. Nomination Of Members In Default Of Election :-**

If any of the members not elected under clause (b) of sub-section (3) of section 3, the Government may, notwithstanding anything contained in that sub-section nominate such registered practitioner as it deems fit, and the practitioner so nominated shall for the purposes of this part be deemed to have been duly elected under that clause.

#### **6. Term Of Office :-**

(1) Save as otherwise provided, the term of office of elected and nominated members shall be five years commencing from the date on which the first meeting of the Council is held after the members are elected under sub-section (3) of section 3:

Provided that the term of office of members nominated to the first Council shall be three years from the date on which the first meeting of such Council is held.

(2) An outgoing member shall continue in office until the election or nomination of his successor as the case may be.

(3) The outgoing member shall be eligible for re-nomination or re-election.

#### **7. Vacancies :-**

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

(2) Any person nominated or elected to fill the vacancy shall notwithstanding anything contained in section 6, hold office only so long as the member in whose place he is nominated or elected would have held office if the vacancy had not occurred.

#### **8. Resignation :-**

Any member may at any time resign his office by a letter addressed

to the Chairman and such resignation shall take effect from the date on which it is accepted by the Council:

Provided that the Chairman may resign his office by a letter addressed to the Government and his resignation shall take effect from the date on which it is accepted by the Government.

### **9. Disabilities For Continuing As Member :-**

If any member during the period for which he has been nominated or elected-

(a) absents himself without such reasons, as may, in the opinion of the Council, be sufficient, from three consecutive meetings of the Council, or

(b) becomes subject to any of the disqualifications mentioned in section 10, or

(c) being a legal practitioner, appears in any suit or proceedings civil or criminal, against the Council, or

(d) obtains any employment under the Council or has without the previous sanction of the Government acquired directly or indirectly by himself or by a partner any share or interest in any contract made with, by, or on behalf of the Council, the Council may declare his office to be vacant:

Provided that in a case falling under clause (b), the Council shall declare the office to be vacant.

### **10. Disqualification :-**

No person-

(a) who is a minor or an undischarged insolvent, or

(b) who has been adjudicated by a competent court to be of unsound mind, or

(c) whose name has been removed from the register, or

(d) who has been sentenced by a court to imprisonment for an offence which, in the opinion of the Council, involves moral turpitude or indicates such a defect of character as would render the entry or continuance of his name in the register undesirable, the sentence not having been subsequently reversed in appeal or revision, or remitted by an order which the Government is empowered to make in that behalf, or

(e) who has been found guilty, by a majority of two-third, of the members of the Council present and voting at the meeting thereof, of infamous conduct in any professional respect after enquiry by the Council at which an opportunity has been given to such person

to be heard in his defence either personally or through a representative: Provided that at least more than half of the total members of the Council are actually present at such a meeting, or  
(f) who is a dismissed servant of the Government or any local authority, shall be eligible for being elected or nominated as a member.

**11. Vacancies Etc. Not To Invalidate Proceedings Of Council**  
:-

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

- (a) of any vacancy or defect in the constitution of the Council, or
- (b) of any defect or irregularity in election or nomination 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.

**12. Time And Place Of Meetings Of Council** :-

The Council shall meet at such time and place and every meeting of the Council shall be summoned in such manner as may be prescribed by regulations:

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

**13. Procedure At Meetings Of Council** :-

(1) The Chairman, and, in the absence of the Chairman, Vice-Chairman elected by the members shall preside at a meeting of the Council.

(2) All questions at a meeting of the Council shall be decided by the votes of the majority of the members present and voting and, in the case of an equality of votes, the Chairman for the time being may, in addition to his vote as a member of the Council exercise a second or a casting vote.

(3) Three members shall form a quorum at a meeting of the Council:

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.

(4) The Vice-Chairman shall be elected in the first meeting of the Council by majority of the members present and voting.

#### **14. Registrar :-**

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

Provided that until a Registrar is appointed, a person appointed by the Government 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.

(2) The Chairman may, from time to time, grant leave to the Registrar and the Council may appoint a person to act in his place.

(3) Any person duly appointed to act as a Registrar shall be deemed to be the Registrar for all the purposes of this Act.

(4) Any order of the Council appointing, punishing or removing the Registrar from office shall not be passed without the previous approval of the Government.

(5) The Council may appoint such other officers and servants as may be necessary for carrying out the purposes of this Act:

Provided that the number and designation of such officers and servants and their salaries and allowances shall be subject to the previous approval of the Government.

(6) The Registrar and any other officer or servant appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

(7) The Registrar shall be the Secretary of the Council and shall act as Executive Officer of the Council.

#### **15. Duties Of The Registrar :-**

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

(2) The Register shall be kept in such form as may be prescribed and shall contain the name, address and qualifications of every Registered practitioner together with the dates on which such qualifications were acquired. The Register shall be divided into the following two parts:-

Part-A-



containing the names of practitioners referred to in sub-section (1) of section 16; and

Part-B-

containing the names of practitioners referred to in sub-section (2) of section 16.

(3) The Registrar shall keep the Register correct as far as may be possible and may from time to time enter therein any material alteration in the address or qualifications of the practitioners. The names of Registered practitioners, who die or whose names are directed to be removed from the Register under sub-section (3) of section 16 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 degrees, diplomas or certificates or other qualifications in homoeopathy or other recognised medical degrees, diplomas or certificates which he may obtain.

(5) For the purpose of this section, the Registrar may write by Registered post to any Registered practitioner at the address which is entered in the Register to enquire whether he has ceased to practise or has changed his residence and, if no answer is received to such letter within six months, the Registrar may remove the name of such practitioners from the Register:

Provided that if the Council is satisfied, on the application of such practitioner, that he has not ceased to practise, the Council may direct that name of such practitioner be re-entered in the Register.

## **16. Registration :-**

(1) Every person, who possesses any qualification mentioned in Schedule-I, shall, subject to the provisions contained in this Act and on payment of the prescribed fees, be entitled to have his name entered in Part-A of the Register subject to such conditions as the Council may by regulations specify.

(2) Every person, who, within a period of six months from the date on which this Act comes into force, proves to the satisfaction of the Registrar that immediately before the commencement of this Act he was not less than twenty-five years of age and had been in continuous practice as a practitioner for at least five years, shall, on payment of the prescribed fees, be entitled to have his name entered in Part-B of the Register subject to such conditions as the Council may by regulations specify.

(3) No person ,-

(a) who is Registered or deemed to have been Registered under the Punjab Medical Registration Act, 1916 (2 of 1916) or the Himachal Pradesh Ayurvedic and Unani Practitioners Act, 1968 (21 of 1968), shall be eligible for registration under sub-section (1) or sub-section (2) unless and until he ceases to be Registered under those Acts; or

(b) who is Registered or deemed to have been Registered under sub-section (1) or sub-section (2), shall continue to be a Registered practitioner under this Act, if subsequent to . such registration he also gets himself Registered under the Punjab Medical Registration Act, 1916 (2 of 1916), or the Himachal Pradesh Ayurvedic and Unani Practitioners Act, 1968 (21 of 1968).

(4) Where an application for entry in the Register is made by a person whose case is not clearly covered by sub-section (1) or sub-section (2) or by the rules or regulations made under this Act, the Registrar shall refer his application to the Council for such decision as the Council may deem fit.

(5) The Council may direct that the name of any practitioner who has been convicted of a cognizable offence as defined in the Code of Criminal Procedure, 1973 (2 of 1974), which discloses such defect of a morel character as is, in the opinion of the Council, sufficient to make him unfit to practise his profession or who has been found, after due inquiry, guilty of conduct which is, in the opinion of the Council, infamous in any professional respect, shall be removed from the Register.

(6) The Council may, on sufficient cause being shown, also direct that the name of the practitioner so removed shall be re-entered in the Register on payment of such fees as may be prescribed.

### **17. Appeal To The Council From The Decision Of The Registrar And Other Powers Of The Council :-**

(1) Any person aggrieved by the decision of the Registrar regarding registration of any person or any entry in the Register may appeal to the Council.

(2) Such appeal shall be filed with, and shall be heard and decided by the Council in the manner prescribed.

(3) The Council may, on its own motion or on the application of any person, after due and proper enquiry and after giving an opportunity to the person concerned of being heard, cancel or alter any entry in the Register if, in the opinion of the Council, such entry was fraudulently or incorrectly made.

## **18. Qualified Practitioner 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 medical profession shall in all Acts or other provisions having the force of law in 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 `A 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 `A of the Register:

Provided that a certificate of illness may be signed and issued by any practitioner Registered in Part `B of the Register;

(c) a practitioner Registered in Part `A of the Register shall be eligible to hold any appointment as a medical officer in any homoeopathic dispensary or hospital supported by or receiving a grant from the Government and treating patients according to the Homoeopathic system or in any public establishment, body or institution dealing with such system.

## **19. 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 on expense of his office.

## **20. Inspection Of Institutions :-**

(1) The Council may appoint such number of Inspectors to inspect the institutions and their examinations as it may deem fit and such Inspector shall be paid such fee as may be prescribed.

(2) Such Inspectors shall, in accordance with any general or special directions of the Council given from time to time, inspect the institutions established by or affiliated to the Council and report to the Council in regard to the courses of study pursued and training imparted at every institution, which they inspect and on any other matters with regard to which the Council may require them to report.

## **21. Qualifying Examinations :-**

(1) The Council shall by regulations,-

(a) recognise institutions as required under paragraph (2) of Schedule-I;

(b) prescribe the course of training and qualifying examinations including the examinations prior to qualifying examinations;

(c) provide that instructions and examination shall as far as possible be given or held in the languages specified in the regulations.

(2) A qualifying examination shall be an examination in the Homoeopathic system held for the purpose of granting a diploma, degree or certificate conferring the right of registration under this Act by any of the institutions which on the recommendations of the Council maybe specified by the Government by notifications as being authorised to hold qualifying examination.

(3) It shall be the duty of the Council to secure the maintenance of a n adequate standard of proficiency for the practice of Homoeopathic system. For the purpose of securing such a standard the Council shall have authority to call on the governing body or authorities of any institution giving instructions in the Homeopathic system and on any examining body authorised or desirous of being authorised under sub-section (2)-

(a) to furnish such particulars as the Council shall require of any course of study prescribed by regulations or examination held by such body or authority or in any school or college thereof with reference to the grant of any qualifications; and

(b) to permit Inspectors appointed by the Council from amongst the Registered practitioners in this behalf to attend and be present at all or any of qualifying examinations.

(4) An Inspector shall not interfere with the conduct of any examination, but it shall be his duty to report to the Council his opinion as to the sufficiency or insufficiency of every examination which he attends and any other matter in relation to such examination on which the Council may require him to report.

(5) Every qualifying examinations and every prior examination leading up to it held by the bodies or institutions authorised under this section shall be inspected by the Inspector at least once in two years and more frequently if the Council so desires.

(6) The Council shall forward a copy of such report to the body which held the examination in respect of which the said report was made and shall also forward a copy of such report, together with

any observations thereon made by the said body, to the Government.

## **22. Removal Of Institution Authorised To Hold Qualifying Examinations :-**

If it appears to the Government on the report of the Council that the courses of study and examinations prescribed by any of the institutions specified in the notification under section 21 are not such as to secure the maintenance of an adequate standard of proficiency for the practice of Homoeopathic system it shall be lawful for the Government to direct by notification that the said institution shall be removed from the said notification and shall not be authorised to hold a qualifying examination:

Provided that, before any direction for the removal of an institution from the said notification is made under this section, the Council shall require the institution to take steps within such time as it thinks fit to provide that the courses of study and examinations prescribed by the institution are of an adequate standard.

## **23. Exemption From Service On Inquest :-**

Notwithstanding anything in any other law for the time being in force, every Registered practitioner shall be exempted, if he so desires, from service on any inquest under the Code of Criminal Procedure, 1973 (2 of 1974).

## **24. Allowances Payable To Members :-**

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

## **25. Fees Received By The Council :-**

All moneys received by the Council as fees under this Act shall be applied for the purpose of this Act in accordance with the rules made thereunder.

## **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 Council, 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 proceedings 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. Control Of The Government :-**

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

### **28. Prohibition Of Practice By Persons Not Registered :-**

No person, other than a practitioner Registered under this Act, shall practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise the Homoeopathic system.

### **29. False Assumption Of Degrees Etc. To Be An Offence :-**

Whosoever voluntarily and falsely assume or uses any title or description or any addition to his name implying that he holds a degree, diploma or certificate conferred, granted or issued by any of the institutions specified in the notification made under section 21 or that he is qualified to practise the Homoeopathic system, or that he is a Registered practitioner, shall on conviction be punishable with fine which may extend to two hundred and fifty rupees for the first offence and with fine which may extend to five hundred rupees for every subsequent offence.

### **30. Penalty For The Violation Of The Provisions Of Section 28 :-**

Any person who acts in contravention of the provisions of section 28 shall, on conviction, be punishable with fine which may extend

to two hundred rupees.

**31. Conferring, Granting Or Issuing Degrees, Diplomas, Etc. By Unauthorised Persons Or Institutions :-**

(1) No person, other than an association or institution recognised or authorised by the Council under this Act, shall confer, grant or issue or hold himself or itself out as entitled to confer, grant or issue any degree, diploma, certificate or other document stating or implying that the holder, grantee or recipient is qualified to practise the Homoeopathic system.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to five hundred rupees and if the person so contravening is an association, every member of such association, who knowingly and wilfully authorises or permits the contravention, shall, on conviction, be punishable with fine which may extend to two hundred rupees.

**32. Court Competent To Try Offences Under This Act And Cognizance Of Offences :-**

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

(2) No court shall take cognizance of any offence under this Act except on a complaint in writing of an officer empowered by the Government in this behalf.

**33. Power To Amend Schedule-I :-**

The State Government may by notification amend Schedule-I, so as to add thereto or omit therefrom any qualification, and thereupon such Schedule shall be deemed to have been amended accordingly.

**PART 3 DISPUTES REGARDING ELECTIONS**

**34. Definitions :-**

In this part, 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 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, the filing 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;

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

### **35. Election Petition :-**

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

### **36. 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 (6) 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 48 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 the 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.

### **37. Contents Of Petition :-**

(1) An election petition-

(a) shall contain 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 parties alleged to have committed such corrupt practice and the date and place of the commission of each 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 petitioners and verified in the same manner as the petition.

### **38. Procedure On Receiving Election Petitions :-**

If the prescribed security is not furnished in the prescribed manner or the petition is not presented within the period specified in section 36, the prescribed authority shall dismiss the petition:

Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard.

### **39. Power To Withdraw And Transfer Petitions :-**

Any authority empowered in this behalf by the Government 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.

### **40. 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 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 election petition.

#### **41. Appearance Before The Prescribed Authority :-**

Any appearance, application or act before the prescribed authority may be made or done by the party in person or by a 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.

#### **42. Powers 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 following matters:-

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses;
- (c) requiring the deposit of their expenses;
- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence taken on affidavit;
- (g) issuing commission for the examination of witnesses; and
- (h) compelling the production of documents;

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 345(1) and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

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 State of Himachal Pradesh.

#### **43. 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.

#### **44. 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.

#### **45. Answering Of Incriminating Questions And Certificate 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 on the ground that the answer to such question may incriminate him or may tend to incriminate 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 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.

#### **46. 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.

#### **47. Decision Of Prescribed Authority :-**

(1) When an election petition has not been dismissed under section 38, the prescribed authority shall inquire into the election petition and at the conclusion of the enquiry 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 or has not been proved to have been committed at the election and the nature of that corrupt practice; and .

(ii) the names of all person, 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 cost 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.

#### **48. 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 of any rules made under this Act;

it 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.

#### **49. Abatement Of Election Petition :-**

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

#### **50. Costs And Payment Thereof Out Of Security Deposits And Return Of Such Deposits :-**

(1) Cost 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 part 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 part, on an application, made in writing in that behalf within a period of one year from the date of such order to such authority as may be empowered in this behalf by the Government, by the person in whose favour the costs have been awarded.

(3) If there is any balance left of the security deposit under this part 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 authority referred to in sub-section (2) 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.

#### **51. Execution Of Orders As To Costs :-**

Any orders as to costs under the provisions of this part 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 cost or any portion thereof may be recovered by an application made under sub-section (2) of section 50, 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 costs 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.

## **52. Corrupt Practices Entailing Disqualification :-**

The corrupt practices specified in Schedule-II shall entail disqualification for membership of the Council 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 Government may, for reasons to be recorded, remove the disqualification or reduce the period thereof.

## **PART 4 MISCELLANEOUS**

### **53. Power To Make Rules :-**

(1) The Government may, by notification and after previous publication, make rules to carry out all or any of the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Government may make rules for all or any of the following matter, namely;-

(a) the time at which and the place and manner in which election shall be held under section 4;

(b) the salary, allowances and other conditions of service of the Registrar under section 14;

(c) the form of the Register and the particulars to be entered therein under section 15;

(d) the fees chargeable for registration, Registration Certificate, re-entries of a removed name and alteration of entries in the Register;

(e) the manner in which appeals against the decision of the Registrar shall be heard by the Council under section 17;

(f) the travelling and other allowances payable to members under section 24;

(g) the application of fees under section 25;

(h) the furtherance of any of the objects of the Council;

(i) the form of the Certificates of Registration mentioning therein the part in which the Registered practitioner is Registered;

(j) 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 36;

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

- (l) the form of affidavit required to accompany the petition under sub-section (1) of section 37; and
- (m) any other matter which may be prescribed.

#### **54. Regulations :-**

(1) The Council may, with the previous sanction of the Government, make regulations not inconsistent with this Act or the rules made under section 53 for all or any of the following matters, namely:-

- (a) the time and place at which the Council shall hold its meetings under section 12;
- (b) the salary, allowances and other conditions of service of officers and servants of the Council, other than Registrar, under section 14;
- (c) the conditions for registration referred to in sub-sections (1) and (2) of section 16;
- (d) the course of study for training and qualifying and other examinations;
- (e) the admission of students to the bodies or institutions authorised under section 21;
- (f) the language in which the examinations shall be conducted and instructions shall be imparted;
- (g) the conditions under which students shall be admitted to the degree, diploma or certificate course and to the qualifying and prior examinations;
- (h) the conditions of appointment of examiners and the conduct of examinations; and
- (i) all other matters which may be necessary for the purposes of carrying out the objects of this Act.

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

(3) The Government may by notification cancel any regulation:

Provided that in submitting regulations under clauses (d) and (h) for sanction of the Government under this section, the Council shall send a copy of its proceedings relating to the passing of such regulations and shall state the number of its members who have voted for or against such regulations or not voted in respect of such regulations:

Provided further that in sanctioning the regulations due consideration shall be given to the opinion of the members as expressed in the said proceedings.

#### **55. Rules And Regulations To Be Laid Before State Legislature :-**

Every rule or regulation made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or regulation, as the case may be, or decides that the rule or regulation should not be made, the rule or regulation 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 an annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

## **56. Repeal And Savings :-**

(1) The Punjab Homoeopathic Practitioners Act, 1965 (16 of 1965), as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) is hereby 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 enactment 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 1st November, 1966, of the Council constituted under section 3 of the Punjab Homoeopathic Practitioners Act, 1965 (16 of 1965), which by virtue of any agreement or otherwise under the Punjab Re-organisation Act, 1966 (31 of 1966), may devolve on the Union, shall, if the Government so directs, become the assets and liabilities of the Council.

## **57. Power To Remove Difficulty :-**

If any difficulty arises in giving effect to the provisions of this Act, the Government 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 it to be necessary or expedient for the removal of such difficulty.

### **SCHEDULE 1**

#### **SCHEDULE I**

[See sections 3(3) and (5), 16(1), 21(1)(a) and 33]

Persons who are entitled to have their names entered in Part `A of the Register of the practitioners of Homoeopathic system of medicines:-

- (1) Homoeopaths who have passed the final examinations held by the Council of the Homoeopathic System of Medicines, Himachal Pradesh.
- (2) Homoeopaths who have passed an examination from the recognised homoeopathic institution in Himachal Pradesh or have got diploma, degree from the institutions situated outside Himachal Pradesh; provided such diploma and degree is recognised by the Council.
- (3) Homoeopaths who have been Registered by the State Council or Board of Homoeopathic System of Medicines established by law any where in the Indian Union by virtue of their having passed qualifying examination from any of the recognised institutions of such Council or Board.

### **SCHEDULE 2**

#### **SCHEDULE II**

[See sections 34 (c) and 52]

The following shall be deemed to be corrupt practices for the purposes of section 52:-

- (1) bribery, that is to say-
  - (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his agent of any gratification, to any person whomsoever with the object, directly or indirectly of inducing-
    - (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
    - (b) a voter to vote or refrain from voting at an election or as a reward to-
      - (i) a person for having so stood or not stood, or for having withdrawn his candidature; or
      - (ii) a voter for having voted or refrained from voting;
  - (B) the receipt of or, agreement to receive, any gratification whether as a motive

or a reward-

(a) by a person for standing or not standing as, or, for withdrawing from being a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any voter to vote or refrain from voting, or any candidate to withdraw his candidature.

Explanation .- For the purpose of this clause,-

(1) The term "gratification" is not restricted to pecuniary gratification or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward, but it does not include the payment of any expenses bona fide incurred at, or for the purpose of any election.

(2) "undue influence" that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, with the free exercise of any electoral right:

Provided that-

(a) without prejudice to the generality of the provisions of this clause, any such person as is referred to therein who-

(i) threatens any candidate or a voter or any person in whom a candidate or such voter is interested, with injury of any kind and including social ostracism and excommunication or expulsion from any caste or community ;or

(ii) induces or attempts to induce a candidate or a voter to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure;

shall be deemed to interfere with free exercise of the electoral right of such candidate or a voter within the meaning of this clause;

(b) a declaration of public policy, or a promise of publication or the mere exercise of legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(4) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race caste, community or language by a candidate or his agent or any other person with the consent of a candidate or his agent for the furtherance of the prospects of the elections of that candidate or for prejudicially affecting the election of any candidate.

(5) The publication by candidate or his agent or by any other person with the consent of a candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidates election.

(6) The hiring or procuring whether on payment or otherwise of any vehicle by a candidate or his agent or by any other person with the consent of a candidate or his agent for the conveyance of any voter (other than the candidate himself, the member of his family or his agent) to or from any polling station provided or a place fixed for the poll:

Provided that the hiring of vehicle by a voter or by several voters at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause, if the vehicle so hired is a vehicle not propelled by mechanical power:

Provided further that the use of any public transport vehicle by any voter at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause;

Explanation .- In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or, by any other person with the consent of a candidate or his agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidates election, from any person in the service of the Government, the Government of India or the Government of any other State or a local authority