

Jammu And Kashmir Pharmacy Act, 2011

53 of 2011

[12 April 1955]

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Jammu And Kashmir Pharmacy Act, 2011

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An Act to regulate the profession of Pharmacy.

Whereas it is expedient to make better provision for the regulation of the profession and practice of pharmacy and for that purpose to constitute Pharmacy Council;

It is hereby enacted as follows:-

1. Short title, extent and commencement :-

(1) This Act may be called the Jammu and Kashmir Pharmacy Act, 2011.

(2) It extends to the Municipalities of Jammu and Srinagar, but the Government may, by notification, ¹extend it to the other parts of the State.

(3) It shall come into force at once, but ²Chapters III and IV shall take effect from such date ³[x x x] as the Government may, by notification in the Government Gazette, appoint in this behalf.

1 Extended vide Annexure B to CO. No.1598-C of 1956 dated 24-8-1956.

2 Brought into force vide Annexure C to Cabinet orbit ibid.

3 Words deleted by Act VIII of 1968.

2. Interpretation :-

In this Act, unless there is anything repugnant in the subject or context,-

(a) "Council" means the Pharmacy Council constituted under section 3;

(b) "Executive Committee" means the Executive Committee of the Council;

(c) "medical practitioner" means a person registered or eligible for registration in a medical register of the State meant for the

registration of persons practising allopathic system of medicines under the Jammu and Kashmir Medical Registration Act, 1998;

(d) "prescribed" means in Chapter II prescribed by regulations made under section 15 and elsewhere prescribed by rules made under section 32;

(e) "register" means a register of pharmacists prepared and maintained under Chapter III;

(f) "registered pharmacist" means a person whose name is for the time being entered on the register of the State.

3. Constitution and composition of Council :-

¹[The Government shall, as soon as may be, constitute a Council consisting of the following members, namely:-

²[(a) Controller, Drugs and Food Control Organisation, Jammu and Kashmir;

(b) Deputy Controller, Drugs and Food Control Organisation, Jammu;

(c) Deputy Controller, Drugs and Food Control Organisation, Kashmir;]

(d) Two registered medical practitioners, one each to be elected from amongst the Registered Medical Practitioners from Jammu Province and Kashmir Province;

(e) Two registered Pharmacists, one each to be elected from amongst the Registered Pharmacists from Jammu Province and Kashmir Province;

(f) Drug Analyst;

(g) Assistant Drug Controller;

(h) Two Physician Specialists, one each from S.M.H.S. Hospital, Srinagar and S.M.G.S. Hospital, Jammu to be nominated by the Government:

Provided that in the case of first Council constituted after the commencement of the Jammu and Kashmir Pharmacy (Amendment) Act, 1968, the members to be elected shall be nominated by the Government.]

1 Section 3 substituted by Act VIII of 1968. (For earlier amendment see Act XXVIII of 1961).

2 Substituted by Act No. V of 1997, sec. 2.

4. Incorporation of Council :-

The Council constituted under section 3 shall be a body corporate by the name of the Pharmacy Council of Jammu and Kashmir having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and shall by the said name sue and be sued.

5. President and Vice-President of Council :-

(1) The President and Vice-President of the Council shall be elected by the members of the said Council from among themselves:

Provided that for five years ¹[from the date of constitution of the first Council after the commencement of the Jammu and Kashmir Pharmacy (Amendment) Act, 1968] the President shall be a person nominated by the Government who shall hold office at the pleasure of the Government and where he is not already a member, shall be a member of the Council in addition to the members referred to in section 3.

(2) An elected President and Vice-President shall hold office as such for a term not exceeding five years and not extending beyond the expiry of his term as a member of the Council, but subject to his being a member of the Council, he shall be eligible for re-election.

1 Substituted by Act VIII of 1968 for "from the first constitution of the Council".

6. Mode of elections :-

Elections under this Chapter shall be conducted in the prescribed manner, and where any dispute arises regarding any such election, it shall be referred to the Government whose decision shall be final.

7. Term of office and casual vacancies :-

(1) Subject to the provisions of this section, a nominated or elected member, other than a nominated President, shall hold office for a term of five years from the date of his nomination or election, or until his successor has been duly nominated or elected, whichever is longer.

(2) A nominated or elected member may, at any time, resign his membership by writing under his hand addressed to the President, and the seat of such member shall thereupon become vacant.

(3) A nominated or elected member shall be deemed to have vacated his seat if he is absent, without excuse sufficient in the opinion of the Council, from three consecutive meetings of the Council, or if he ceases to be a registered pharmacist.

(4) A casual vacancy in the Council shall be filled by fresh nomination or election, as the case may be, and the person nominated or elected to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated or elected.

(5) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the Council.

(6) Members of the Council shall be eligible for renomination or re-

election.

8. Staff, remuneration and allowances :-

(1) The Council may appoint a Secretary who may also, if so decided by the Council, act as treasurer:

Provided that for the first four years ¹[from the date of the constitution of first Council after the commencement of the Jammu and Kashmir Pharmacy (Amendment) Act, 1968], the Secretary shall be a person appointed by the Government, who shall hold office during the pleasure of the Government.

(2) The Council may, with the previous sanction of the Government,-

(a) appoint such other officers and servants as may be required to enable the Council to carry out its functions under this Act;

(b) fix the salaries and allowances and other conditions of service of the Secretary and other officers and servants;

(c) fix the rates of allowances payable to members of the Council.

1 Substituted by Act VIII of 1968 for "from the first constitution of the Council".

9. The Executive Committee :-

(1) The Council shall, as soon as may be, constitute an Executive Committee consisting of the President (who shall be Chairman of the Executive Committee) and Vice-President, ex officio, and ¹[three] other members elected by the Council from amongst its members.

(2) A member of the Executive Committee shall hold office as such until the expiry of his term of office as member of the Council, but

subject to his being a member of the Council, he shall be eligible for re-election.

(3) In addition to the powers and duties conferred and imposed upon it by this Act, the Executive Committee shall exercise and discharge such powers and duties as may be prescribed.

1 Substituted by Act XVIII of 1961 for "five".

10. Education Regulations :-

(1) Subject to the provisions of this section, the Council may, subject to the approval of the Government, make regulations to be called the Education Regulations prescribing the minimum standard of education required for qualification as a pharmacist.

(2) In particular and without prejudice to the generality of the foregoing power, the Education Regulations may prescribe-

(a) the nature and period of study, and of practical training to be undertaken before admission to an examination;

(b) the equipment and facilities to be provided for students undergoing approved courses of study;

(c) the subjects of examination and the standards therein to be attained;

(d) any other conditions of admission to examinations.

(3) The Education Regulations shall be published in the Government Gazette, and in such other manner as the Council may direct and shall thereupon take effect.

(4) The Executive Committee shall, from time to time, report to the Council on the efficacy of the Education Regulations and may recommend to the Council such amendments thereof as it may think fit.

11. Approved courses of study and examination :-

(1) Any authority which conducts a course of study for pharmacists may apply to the Council for approval of the course, and the Council, if satisfied, after such enquiry as it thinks fit to make, that the said course of study is in conformity with the Education Regulations, shall declare the said course of study to be an approved course of study for the purpose of admission to an approved examination for pharmacists.

(2) Any authority which holds an examination in pharmacy may apply to the Council for approval of the examination, and the Council, if satisfied, after such enquiry as it thinks fit to make, that the said examination is in conformity with the Education Regulations, shall declare the said examination to be an approved examination for the purpose of qualifying for registration as a pharmacist under this Act.

(3) Every authority which conducts an approved course of study or holds an approved examination shall furnish such information as the Council may, from time to time, require as to the course of study and training and examination to be undergone, as to the ages at which such courses of study and examination are required to be undergone and generally as to the requisites for such courses of study and examination.

(4) Notwithstanding anything contained hereinabove the Council, if it is satisfied that any qualification in pharmacy granted by an authority outside the State affords a sufficient guarantee of the requisite skill and knowledge, may declare such qualification to be an approved qualification for the purpose of qualifying for registration under this Act, and may, for reasons appearing to it sufficient, at any time declare that such qualification shall be

deemed to be approved only when granted before or after a specified date.

12. Withdrawal of approval :-

(1) Where the Executive Committee reports to the Council, that an approved course of study or an approved examination does not continue to be in conformity with the Education Regulations, the Council shall give notice to the authority concerned of its intention to take into consideration the question of withdrawing the declaration of approval accorded to the course of study or examination, as the case may be, and the said authority shall, within three months from the receipt of such notice, forward to the Council such representation in the matter as it may wish to make.

(2) After considering any representation which may be received from the authority concerned and any observations thereon which the Government may think fit to make, the Council may declare that the course of study or the examination shall be deemed to be approved only when completed or passed, as the case may be, before a specified date.

13. Mode o declarations :-

All declarations under section 11 or section 12 shall be made by resolution passed at a meeting of the Council and shall have effect as soon as they are published in the Government Gazette.

14. Information to be furnished :-

(1) The Council shall furnish copies of its minutes and of the minutes of the Executive Committee and an annual report of its activities together with an abstract of its accounts to the Government.

(2) The Government may publish in such manner as it may think fit any report, copy or abstract, furnished to it under this section.

15. Power to make regulations :-

(1) The Council may, with the approval of the Government, make regulations consistent with this Act to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

(a) the management of the property of the Council and the maintenance and audit of its accounts;

(b) the manner in which elections under this Chapter, shall be conducted;

(c) the summoning and holding of meetings of the Council, the times and places at which such meetings shall be held, the conduct of business thereat and the number of members necessary to constituted a quorum;

(d) the functions of the Executive Committee, the summoning and holding meetings thereof, the times and places at which such meetings shall be held, and the number of members necessary to constitute a quorum;

(e) the qualifications, the term of office and the powers and duties of the Secretary, and other officers and servants of the Council, including the amount and nature of the security to be furnished by the treasurer.

(3) Until regulations are made by the Council under this section, the President may, with the previous sanction of the Government, make such regulations under this section including those to provide for the manner in which the first elections to the Council shall be conducted, as may be necessary for carrying into effect the provision of this Chapter, and any regulations so made may be

altered or rescinded by the Council in exercise of its powers under this section.

16. Preparation and maintenance of register :-

(1) As soon as may be after this Chapter has taken effect, the Government shall cause to be prepared, in the manner hereinafter provided, a register of pharmacists.

(2) The Council shall, as soon as possible after it is constituted, assume the duty of maintaining the register in accordance with the provisions of this Act.

(3) The register shall include the following particulars, namely:-

(a) the full name and residential address of the registered person;

(b) the date of his first admission to the register;

(c) his qualifications for registration;

(d) his professional address, and if he is employed by any person, the name of such person;

(e) such further particulars as may be prescribed.

17. Preparation of first register :-

(1) For the purpose of preparing the first register the Government shall, by notification in the Government Gazette, constitute a Registration Tribunal consisting of three persons, and shall also appoint a Registrar who shall act as Secretary of the Registration Tribunal.

¹[(1-A) For the purposes of completion of the first register in accordance with the provisions of the Act, which have not been taken care of under sub-section (1), the Government shall by a notification in the Government Gazette constitute a Second Registration Tribunal consisting of three persons, and shall also appoint a Registrar who shall act as Secretary of the Registration Tribunal for completion of the first register of pharmacists and bring such register up to date in the State.]

(2) The Government shall, by the same or a like notification, appoint a date on or before which applications for registration, which shall be accompanied by ²[a fee of rupees fifty] shall be made to the Registration Tribunal.

(3) The Registration Tribunal shall examine every application received on or before the appointed date, and if it is satisfied that the applicant is qualified for registration under section 18, shall direct the entry of the name of the applicant on the register.

(4) The first register so prepared shall thereafter be published in such manner as the Government may direct and any person aggrieved by a decision of the Registration Tribunal expressed or implied in the register as so published may, within sixty days from the date of such publication, appeal to an authority appointed by the Government in this behalf by notification in the Government Gazette.

(5) The President shall amend the register in accordance with the decisions of the authority appointed under sub-section (4) and shall thereupon issue to every person whose name is entered in the register a certificate of registration in the prescribed form.

(6) Upon the constitution of the Council, the register shall be given into its custody and the Government may direct that all or any specified part of the application fees, for registration in the first register shall be paid to the credit of the Council.

1 sub-section (1-A) inserted by Act XVIII of 1985, Section 2.

2 Substituted *ibid*

18. Qualifications for entry on first register :-

A person shall be entitled, on payment of 1[a fee of rupees fifty] to have his name entered in the first register if he resides, or carries on the business or profession of pharmacy, in the State and if he-

(a) holds a degree or diploma in pharmacy or pharmaceutical chemistry or chemist and druggist diploma of an Indian University or a State Government, as the case may be, or a prescribed qualification granted by an authority outside India; or

(b) holds a degree 1[in science with chemistry as elective-subject] other than a degree in pharmacy or pharmaceutical chemistry and has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioner for a total period of not less than three years;

(c) has passed an examination recognised as adequate by the Government for compounders or dispensers; or

1[(d) is a matriculate or has passed an equivalent examination from a recognised University and has been engaged in the compounding of drugs in a hospital or dispensary or other place in which drugs are regularly dispensed on prescriptions of medical practitioners for a total period of not less than five years prior to the date notified under sub-section (2) of section 17.]

1 Substituted by Act XVIII of 1985, s. 3.

19. Qualifications for subsequent registration :-

(1) After the date appointed under sub-section (2) of section 17 and before the Education Regulations have, by or under section 10, taken effect in the State, a person shall, on payment of the prescribed fee, be entitled to have his name entered in the register

if he resides or carries on the business or profession of pharmacy in the State, and if he-

(a) satisfies the conditions prescribed with the prior approval of the Council or where no conditions have been prescribed, the conditions entitling a person to have his name entered on the first register as set out in section 18, or

(b) is a registered pharmacist in other State, or

(c) possesses a qualification approved under sub-section (4) section 11:

Provided that no person shall be entitled under this sub-section to have his name entered in the register unless he has passed a matriculation examination or an examination prescribed as being equivalent to a matriculation examination.

(2) After the Education Regulations have by or under section 10 taken effect, a person shall, on payment of the prescribed fee, be entitled to have his name entered in the register if he has attained the age of twenty-one years, if he resides or carries on the business or profession of pharmacy in the State and if he has passed an approved examination or possesses a qualification approved under sub-section (4) of section 11.

20. Scrutiny of applications for registration :-

(1) After the date appointed under sub-section (2) of section 17, applications for registration shall be addressed to the President of the Council and shall be accompanied by the prescribed fee.

(2) If upon such application the President is of the opinion that the applicant is entitled to have his name entered in the register under the provisions of this Act for the time being applicable, he shall enter the name of the applicant in the register:

Provided that no person whose name has, under the provisions of

this Act, been removed from the register shall be entitled to have his name entered in the register except with the approval of the Council recorded at a meeting.

(3) Any person whose application for registration is rejected by President may, within three months from the date of such rejection, appeal to the Government and the decision of the Government thereon shall be final.

(4) Upon entry in the register of a name under this section, the President shall issue a certificate of registration in the prescribed form.

21. Renewal fees :-

(1) The Government may, by notification in Government Gazette, direct that for the retention of a name on the register after the 31st day of December of the year following the year in which the name is first entered in the register, there shall be paid annually to the Council such renewal fee as may be prescribed and where such direction has been made, such renewal fee shall be due to be paid before the first day of April of the year to which it relates.

(2) Where a renewal fee is not paid by the due date, the President shall remove the name of the defaulter from the register: Provided that a name so removed may be restored to the register on such conditions as may be prescribed.

(3) On payment of the renewal fee the President shall, in the prescribed manner, endorse the certificate of registration accordingly.

22. Entry of additional qualifications :-

A registered pharmacist shall, on payment of the prescribed fee, be entitled to have entered in the register any further degrees or

diplomas in pharmacy or pharmaceutical chemistry which he may obtain.

23. Removal from register :-

(1) Subject to the provisions of this section, the Executive Committee may order that the name of a registered pharmacist shall be removed from the register, where it is satisfied, after giving him a reasonable opportunity of being heard and after such further enquiry, if any, as it may think fit to make,-

(i) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact, or

(ii) that he has been convicted of any offence or has been guilty of any infamous conduct in any professional respect, which in the opinion of the Executive Committee renders him unfit to be kept in the register, or

(iii) that a person employed by him for the purposes of his business of pharmacy has been convicted of any such offence or has been guilty of any such infamous conduct as would, if such person were a registered pharmacist, render him liable to have his name removed from the register under clause (ii):

Provided that no such order shall be made under clause (iii) unless the Executive Committee is satisfied-

(a) that the offence or infamous conduct was instigated or connived at by the registered pharmacist, or

(b) that the registered pharmacist has, at any time during the period of twelve months immediately preceding the date on which the offence or infamous conduct took place, committed a similar offence or been guilty of similar infamous conduct, or

(c) that any person employed by the registered pharmacist for the purposes of his business of pharmacy has, at any time during the

period of twelve months immediately preceding the date on which the offence or infamous conduct took place, committed a similar offence or been guilty of similar infamous conduct and that the registered pharmacist had, or reasonably ought to have had, knowledge of such previous offence or infamous conduct, or

(d) that where the offence or infamous conduct continued over a period, the registered pharmacist had, or reasonable ought to have had, knowledge of the continuing offence or infamous conduct, or

(e) that where the offence is an offence under the Jammu and Kashmir Drugs Act, 2000 (XX of 2000) the registered pharmacist has not used due diligence in enforcing compliance with the provisions of that Act in his place of business and by persons employed by him.

(2) An order under sub-section (1) may direct that the person whose name is ordered to be removed from the register shall be ineligible for registration in the State under this Act either permanently or for such period as may be specified.

(3) An order under sub-section (1) shall be subject to confirmation by the Council and shall not take effect until the expiry of three months from the date of such confirmation.

(4) A person aggrieved by an order under sub-section (1) which has been confirmed by the Council may, within thirty days from the communication to him of such confirmation, appeal to the Government and the order of the Government upon such appeal shall be final.

(5) A person whose name has been removed from the register under this section or under sub-section (2) of section 21 shall forthwith surrender his certificate of registration to the President and the name so removed shall be published in the Government Gazette.

24. Restoration to register :-

The Council may, at any time for reasons appearing to it sufficient, order that upon payment of the prescribed fee the name of a person removed from the register shall be restored thereto:

Provided that where an appeal against such removal has been rejected by the Government, an order under this section shall not take effect until it has been confirmed by the Government.

25. Bar of other jurisdiction :-

No order refusing to enter a name in the register or removing a name from the register shall be called in question in any Court.

26. Issue of duplicate certificate of registration :-

Where it is shown to the satisfaction of the President that a certificate of registration has been lost or destroyed, the President may, on payment of the prescribed fee, issue a duplicate certificate in the prescribed form.

27. Printing of register :-

As soon as may be after the first day of April in each year, the President shall cause to be printed copies of the register as it stood on the said date, and such copies shall be made available to persons applying therefor on payment of the prescribed charge, and shall be evidence that on the said date the person whose names are entered therein were registered pharmacists.

28. Penalty for falsely claiming to be registered :-

(1) If any person, whose name is not for the time being entered in the register of the State, falsely pretends that it is so entered or uses in connection with his name or title any words or letters reasonably calculated to suggest that his name is so entered, he shall be punishable on first conviction with a fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment extending to six months, or with fine not exceeding one thousand rupees, or with both:

Provided that it shall be a defence to show that the name of the accused is entered in the register of another State and that at the time of the alleged offence under this section an application for

registration . in the State had been made.

(2) For the purposes of this section-

(a) it shall be immaterial whether or not any person is deceived by such pretence or use as aforesaid;

(b) the use of the description "pharmacist" "chemist" "druggist" "pharmaceutist" "dispenser" "dispensing chemist", or any combination of such words shall be deemed to be reasonably calculated to suggest that the person using such description is a person whose name is for the time being entered in the register of the State;

(c) the onus of proving that the name of a person is for the time being entered in the register of a State shall be on him who asserts it.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by order of the Government or the Executive Committee of the Council.

29. Dispensing by unregistered persons :-

(1) On or after such date as the Government may, by notification in the Government Gazette, appoint in this behalf, no person other than a registered pharmacist shall compound, prepares mix or dispense any medicine on the prescription of a medical practitioner except under the direct and personal supervision of a registered pharmacist:

Provided that this sub-section shall not apply to the dispensing by a medical practitioner of medicine for his own patients, or with the general or special sanction of the Government for the patients of another medical practitioner.

(2) Whoever contravenes the provisions of sub-section (1) shall be

punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one thousand rupees, or with both.

(3) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by an order of the Government.

30. Failure to surrender certificate of registration :-

(1) If any person whose name has been removed from the register fails without sufficient cause forthwith to surrender his certificate of registration he shall be punishable with fine which may extend to fifty rupees.

(2) Cognizance of an offence punishable under this section shall not be taken except upon complaint made by an order of the Executive Committee.

31. Appointment of Commission of Enquiry :-

(1) Whenever it appears to the Government that the Council is not complying with any of the provisions of this Act, the Government may appoint a Commission of Enquiry consisting of three persons two of whom shall be appointed by Government one being the Judge of a High Court, and one by the Council; and refer to it the matters on which the enquiry is to be made.

(2) The Commission shall proceed to enquire in such manner as it may deem fit and report to the Government on the matters referred to it together with such remedies, if any, as the Commission may like to recommend.

(3) The Government may accept the report or remit the same to the Commission for modification or reconsideration.

(4) After the report is finally accepted, the Government may order the Council to adopt the remedies so recommended within such time as may be specified in the order and if the Council fails to comply within the time so specified, the Government may pass such order or take such action as may be necessary to give effect to the recommendations of the Commission.

32. Power to make rules :-

(1) The Government may, by notification in the Government Gazette, make rules to carry out the purposes of Chapters III and IV.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the qualification, the term of office and the powers and duties of the President and the Vice-President;

(b) the particulars to be stated, and the proof of qualifications to be given in applications for registration under Chapter III;

(c) the conditions for registration under sub-section (1) of section 19;

(d) fees payable under Chapter III and the charge for supplying copies of the register;

(e) the form of certificates of registration and the manner of endorsement of renewals thereof;

(f) the maintenance of a register;

(g) any other matter which is to be or may be prescribed under

Chapters III and IV except sub-section(1), (2), (3), and (4) of section 31.