REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2015

NAIROBI, 3rd July, 2015

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SCHEDULE—CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD
THE BIOMEDICAL ENGINEERS BILL, 2015

A BILL for

AN ACT of Parliament to make provision for the training, registration and licensing of biomedical engineering professionals, to provide for the regulation of the standards and practice of the profession, to provide for the establishment, powers and functions of the Biomedical Engineering Board of Kenya and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I — PRELIMINARY

1. This Act may be cited as the Biomedical Engineers Act, 2015.

2. (1) In this Act, unless the context otherwise requires—

“approved institution” means the Kenya Medical Training College, a university, training institutions established by law in Kenya or such other training institution as the Board may approve for the purposes of this Act;

“biomedical engineer” means a person who has undergone the prescribed course of training in an approved institution and holds a higher diploma or degree in medical engineering or biomedical engineering;

“biomedical engineering” means the application of design concepts and principles from applied science including mechanical, electrical, electronics, chemical and computer engineering and physical sciences including physics, chemistry and mathematics to medicine and biology to advance healthcare treatment, including diagnosis, monitoring and therapy; and excludes any other engineering category or qualification regulated under the Engineers Act;

“biomedical engineering professional” includes a biomedical engineer, biomedical technologist and or biomedical technician;

“biomedical engineering technician” means a person who has undergone the prescribed course of training in an
approved institution and holds a certificate in medical engineering or biomedical engineering;

“biomedical engineering technologist” means a person who has undergone the prescribed course of training in an approved institution and holds a diploma in medical engineering or biomedical engineering;

“Board” means the Biomedical Engineering Board of Kenya established under section 3;

“Cabinet secretary” means the Cabinet Secretary for the time being responsible for matters relating to health;

“register” means the register of biomedical engineering professionals maintained under section 17;

“Registrar” means the Registrar of the Board appointed under section 10;

PART II—THE BIOMEDICAL ENGINEERS BOARD OF KENYA

3. (1) There is established a Board known as the Biomedical Engineers Board of Kenya.

(2) The Board shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging or disposing of both movable and immovable property;

(c) borrowing money;

(d) entering into contracts;

(e) doing or performing all such other acts necessary for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

(3) The headquarters of the Board shall be in Nairobi.

4. (1) The Board shall consist of—

(a) a chairperson appointed by the Cabinet Secretary;

(b) the Chief Medical Engineer in the ministry responsible for health in the national government or a representative;
(c) the chairperson of the Association of Medical Engineers of Kenya or a representative; and

(d) a biomedical engineering professionals nominated by the Association from amongst biomedical engineers or biomedical technologists or biomedical technicians on a rotational basis.

(e) the Registrar of the Board or a representative who shall be an ex-officio;

(2) In appointing members of the Board the Cabinet Secretary shall ensure that not more than two thirds of the members shall be of the same gender.

(3) No person shall be elected as chairperson of the Board unless such person is—

(a) a biomedical engineering professional of not less than ten years standing; and

(b) a holder of a higher diploma, or degree in biomedical engineering profession;

(4) The Board shall, at its first meeting, elect a vice-chairperson from amongst its members.

5. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

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

(a) advise the Cabinet Secretary on policy matters relating to biomedical engineering and technology;

(b) keep and maintain the register;

(c) receive, consider, make decisions on applications for registration and register approved applications;

(d) publish the names of registered and licensed persons under this Act;

(e) issue licenses to qualified persons under the provisions of this Act;

(f) in consultation with the cabinet Secretary, set standards for biomedical engineering
professionals in management, marketing, ethics, environmental issues, safety, legal matters or any other relevant field;

(g) publish and disseminate materials relating to its work and activities;

(h) carry out inquiries on matters pertaining to registration of biomedical engineering professionals and practice of biomedical engineering;

(i) assess, approve or reject biomedical engineering qualifications of foreign persons intending to offer biomedical engineering services or works;

(j) evaluate foreign biomedical engineering programs for recognition by the Board;

(k) approve institutions other than those established or accredited under the Universities Act, the Technical and Vocational Education and Training Act and any other written law for the training of biomedical engineers;

(l) evaluate, assess, approve and regulate the usage and application of such medical devices, tools, equipment and appliances necessary in biomedical engineering practice as the Board may from time to time determine;

(m) in consultation with approved institutions, prepare detailed curriculum for registration of biomedical engineering professionals;

(n) prescribe the courses of instruction for biomedical engineering and conduct professional examinations for the purposes of registration;

(o) establish, approve, accredit and coordinate programs for continuing professional education;

(p) oversee continuing professional training and development and facilitate internship of biomedical engineers, technologists and technicians;

(q) collaborate with biomedical engineering training institutions, professional associations, organizations and other relevant bodies in
matters relating to training and professional development of biomedical engineers;

(r) maintain a register and records of all biomedical engineers, technologists and technicians registered under this Act and cause to be published in the Gazette every calendar year the names of all registered biomedical engineering professionals;

(s) develop, maintain, enforce and regulate the conduct and ethics of the biomedical engineering profession in general and hear and determine disputes relating to professional conduct or ethics of biomedical engineering professionals;

(t) the regulation of professional biomedical services, setting standards of development and general practice and employment of biomedical engineering professionals in Kenya;

(u) consider other matters pertaining to biomedical engineering including advertisement, prescribing and approving all badges, insignias or uniforms to be worn by biomedical engineering professionals while on duty, in consultation with the Cabinet Secretary; and

(v) carry out such other functions related to the implementation of this Act.

7. The Board shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, shall have power to—

(a) control, supervise and administer the assets of the Board in such manner and for such purpose as best promotes the purpose for which the Board is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom.
(d) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Board is established;

(e) open a banking account or banking accounts for the funds of the Board; and

(f) invest any funds of the Board not immediately required for its purposes as provided under section 38.

8. The Board shall pay its members such remuneration, fees or allowances for expenses as it may determine.

9. The Board may, by resolution generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or an agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

10. (1) There shall be a Registrar of the Board who shall be competitively recruited by the Board and appointed by the Cabinet Secretary.

(2) The Registrar shall hold and vacate the office in accordance with the terms of the instrument of appointment to that office.

(3) The Registrar shall be an ex officio member of the Board.

(4) The Registrar shall be the Chief Executive Officer of the Board and shall, subject to the direction of the Board, be responsible for the day to day management of the Board.

(5) A person shall not be appointed as a Registrar unless such person—

(a) is a registered biomedical engineering professional under this Act;

(b) has at least a higher diploma in the biomedical engineering profession from a recognized institution;

(c) has at least ten years proven experience in the biomedical engineering field;
(d) has knowledge and experience in policy formulation, management and procedures of the Government;

(e) is knowledgeable in, or has actively contributed to the promotion of biomedical engineering profession development agenda; and

(f) meets the requirements of chapter six of the Constitution.

(6). The Registrar shall—

(a) maintain the Register of persons registered in accordance with this Act;

(b) sign, issue, renew and cancel certificates of registration and licences as may be directed by the Board;

(c) keep all documents and records including records of all assets of the Board;

(d) prepare all documents due for gazettement as directed by the Board;

(e) take and keep minutes of the Board meetings;

(f) enforce decisions of the Board;

(g) keep the seal of the Board in such custody as the Board may direct;

(h) in consultation with the Board, be responsible for the direction of the affairs and transactions of the Board, the exercise, discharge and performance of its objectives, functions and duties;

(i) ensure the maintenance of efficiency and discipline by all staff of the Board;

(j) manage the budget of the Board to ensure that its funds are properly expended and accounted for; and

(k) exercise and perform any other functions which the Board may determine from time to time.

11. The Board may appoint such other officers and other staff or hire such experts as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine.
12. (1) A member of the Board shall not be personally liable for any act or default of the Board done or omitted to be done in good faith in the course of carrying on the functions of, or exercise of powers conferred upon the Board under this Act.

(2) Despite subsection (1), the Board shall not be relieved of its liability to pay compensation to any person for any injury to the person, the person’s property or to any of the person’s interest caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

PART III—TRAINING AND REGISTRATION OF BIOMEDICAL ENGINEERS

13. (1) A person being in charge of a training institution in Kenya shall not—

(a) admit persons for training with a view to qualifying for registration under this Act;

(b) conduct a course of training or administer the examination prescribed for the purposes of registration under this Act; or

(c) issue any document or statement implying that the holder has undergone a course of training or passed the examinations prescribed by the Board for purposes of registration; unless such institution is established or accredited under the Universities Act, the Technical and Vocational Education and Training Act, any other written law or is approved and accredited by the Board for that purpose in accordance with this Act.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to a fine of not less than five million shillings, or to imprisonment for a term of not less than three years, or to both.

(3) The Board shall prescribe the procedure for approving training institutions other than those established or accredited under the Universities Act, the Technical and Vocational Education and Training Act or any other written law for the purposes of this section.
(4) The Registrar shall publish a list of the training institutions approved under this Act.

14. (1) A person shall be eligible for registration under this Act as a biomedical engineer, technologist or technician if the person is a holder of a certificate, diploma or degree which is recognized by the Board as making that person eligible for registration and—

(a) after obtaining the certificate, diploma or degree, the person has applied to the Association for and has engaged in traineeship under the supervision of a registered biomedical engineer for such period, not being less than one year, as the Board may approve;

(b) satisfies the Board that, while engaged in traineeship as specified in paragraph (a), the person has acquired sufficient knowledge of, and experience in the practice of biomedical engineering; and

(c) has been recommended for registration by the Association.

(2) A person who holds a certificate, diploma or degree from an accredited institution outside Kenya shall be eligible for registration under this Act as a biomedical engineering professional if the person—

(a) is a holder of a certificate, diploma or degree obtained from an institution that is accredited and recognized by—

(i) the regulating authority responsible for the registration of biomedical engineering professionals in the country where the person studied; or

(ii) where no regulating authority exists in the country where the person studied, by the International Federation of Medical and Biomedical Engineers;

(b) has applied to the Association for and has engaged in biomedical engineering practice under the supervision of a biomedical engineer registered by the Board for such period, being not less than twelve months, as the Board may approve; and
(c) satisfies the Board that the qualifications obtained by the person meet such requirements for a course leading to a qualification in biomedical engineering as the Board shall from time to time prescribe pursuant to the provisions of this Act;

(3) Where the Board discovers that a person has not completed all courses required for registration under this Act the Board shall require that person to—

(a) attend an interview;

(b) undergo an oral or written examination; and

(c) take the courses required to be taken in an institution recognized and approved by the Board prior to engaging in supervised practice.

(4) The Board shall not authorize the registration of a person unless it is satisfied—

(a) that the requirements of subsection (1) or (2) have been fulfilled; or

(b) in the case of a person referred to in subsection (3) that the requirements of subsection (4) have been fulfilled and that the person has undergone any further period of training or passed any examination specified by the Board.

(5) Where the Board does not recognize or approve the qualification, certificate, diploma or degree in biomedical engineering held by a person, that person shall not be registered under this Act.

(6) The Board may, where it considers it expedient so to do, delegate the assessment of suitability for registration under subsection (2) to a committee of the Board which shall, after making the assessment, make recommendations to the Board accordingly.

(7) The Board shall register every qualified person by entering his name, address, professional qualifications and such other particulars as the Board may prescribe, in the register kept for that purpose pursuant to Section 17.

18. (1) A person wishing to be registered under this Act shall apply for registration to the Board.
(2) An applicant for registration who is a graduate of a foreign school of biomedical engineering shall, furnish satisfactory evidence to the Board confirming that the applicant—

(a) has completed a course of study in biomedical engineering which is substantially equivalent to that provided in an accredited program approved by the Board;

(b) is a graduate of an institution, college or university recognized by the Board;

(c) is registered or is eligible for registration in the country of study;

(d) has engaged in biomedical engineering practice under the supervision of a biomedical engineer registered by the Board for such period, being not less than twelve months, as the Board may approve; and

(e) has successfully completed a written examination approved by the Board.

(3) An application for registration under sub-section (1) and (2) shall be in the prescribed form and shall be accompanied by the prescribed fee.

16. Subject to the provisions of this Act, a person shall be eligible for registration as a consulting biomedical engineer or technologist if that person—

(a) has practiced in a specialized biomedical engineering field as a registered biomedical engineer or technologist for a period, not less than five years, or as shall from time to time be determined by the Board; and

(b) has achieved a standard of competence to enable him to practice as a consulting biomedical engineer or technologist in that particular specialization as the Board may prescribe.

17. (1) The Registrar shall maintain in such form as the Board may prescribe separate registers of—

(a) biomedical engineers, including biomedical engineers who are specialists in medical devices implants, medical imaging, bionics, neural...
engineering, genetic engineering, tissue engineering and clinical engineering;

(b) biomedical technologists, including biomedical technologists who are specialists in medical devices, cardiovascular technologists, neural technologists, cancer technologists; and

(c) biomedical technicians

(2) The Registrar shall—

(a) not later than the last day of March in every year, publish in the Kenya Gazette, the names, addresses and qualifications of all biomedical engineering professionals registered in the previous year; and

(b) subject to the directions of the Board, cause to be published any amendments or deletion from the registers.

(3) Every biomedical engineering professional shall notify the Registrar of any change in his registered address within thirty days.

(4) The Registrar may, with the written consent of the person concerned remove from the register, the name of a person who has ceased to practice.

(5) A name removed from the register under subsection (4) may, at the written request of the person concerned, on the approval of the Board and on payment of the prescribed fee, be reinstated by the Registrar.

(6) Any person may inspect the register and any documents relating to any entry during official working hours, and may obtain from the Registrar, a certified copy of, or an extract from the registers on payment of the prescribed fee.

18. (1) A certificate under the seal of the Board to the effect that a person is or was at any date registered under this Act shall be conclusive evidence of the facts so stated.

(2) All certificates under the seal of the Board shall remain the property of the Board.

(3) A person whose name is removed from the register shall, within thirty days of the publication of such removal, surrender the certificate of registration to the Board.
(4) In the case of a deceased person, the Board shall write to his legal representative requesting surrender of the certificate of registration of that person to the Board.

19. (1) A person who—

(a) without reasonable excuse, is in possession of a certificate of registration not issued to the person; or

(b) fails to surrender a certificate of registration under subsection (3) and (4) commits an offence and shall, upon conviction, be liable to a fine not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding three months, or both.

(2) A person who, without reasonable excuse, is in possession of a certificate of registration not rightfully issued, or fails to surrender such certificate under subsection (4) commits an offence and shall, upon conviction, be liable to a fine not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding three months, or both.

20. A person aggrieved by a decision of the Board on any matter under this Act may appeal to the Cabinet Secretary within sixty days of being notified of the decision.

21. (1) The Registrar shall remove from the register—

(a) the names of all deceased persons;

(b) the names of all persons removed from the register under section 25(4) and section 32(1)(e);

and

(c) any entries fraudulently or erroneously made.

(2) The Registrar shall, as soon as is reasonably practicable, cause the name and address of every person whose name is removed from the Register under this section, to be published in the Gazette.

PART IV—PROVISIONS RELATING TO PRIVATE PRACTICE

22. (1) A person shall not engage in private practice as a biomedical engineering professional unless that person—
(a) is registered under this Act;
(b) holds a valid practicing certificate and an annual license issued under this Act;
(c) has served as a biomedical engineering professional for a period, being not less than five years, or as the Board shall from time to time determine; and
(d) holds a diploma or a degree recognized by the Board under this Act.

(2) A person shall be deemed to engage in private practice if the person practices as a biomedical engineering professional—

(a) individually and is entitled to receive the entire amount of all fees and charges earned for his own financial benefit; or

(b) in partnership with other persons and is entitled to receive a share of the profits earned by such partnership and is liable to bear a share of any losses incurred by such partnership.

(3) A person shall not be deemed to engage in private practice where the person—

(a) is employed by the Government or any other public body;

(b) is employed by a state corporation as defined by the State Corporations Act; or

(c) is employed as a biomedical engineer by any person or partnership engaged in his profession where all fees and charges earned by him are to the benefit of his employer.

(4) A person who engages in private practice as a biomedical engineering professional contrary to the provisions of this section commits an offence and shall, upon conviction, be liable to a fine of not less than one million shillings, or to imprisonment for a term not less than three years, or to both.

23. The Board shall issue, in accordance with the provision of this Act and any rules made under this Act, a practicing certificate and an annual license to a biomedical
engineer or technologist authorizing the biomedical engineer or technologist named to engage in private practice.

24. (1) An application for a practicing certificate shall be made to the registrar in triplicate, signed by the applicant, specifying the name and place of practice the registration number and the date of registration as a biomedical engineer or technologist.

(2) Every application under this section shall be accompanied by the prescribed fee.

(3) The Board shall, where a biomedical engineer or technologist is duly registered under this Act and is not for the time being suspended from practice, within sixty days of receipt by the Board of the application, issue to the applicant a practicing certificate in the prescribed form.

(4) The Registrar shall keep one copy of every application delivered to him under this section.

25. (1) Every practicing certificate shall bear the date on which it is issued and shall have effect from that day.

(2) A practicing certificate issued under this section shall be valid from the date it is issued and shall expire on the last day of December in the year it is issued.

(3) The Registrar shall enter in the register the date of issue of every practicing certificate.

(4) Where the name of the biomedical engineer or technologist is removed or struck off the register, the practicing certificate, if any, shall expire forthwith.

26. (1) A biomedical engineer, technologist or technician issued with a practicing certificate may apply for renewal of the certificate in the prescribed form at least thirty days before the date of expiry thereof.

(2) A biomedical engineer or technologist who fails to renew the practicing certificate within the prescribed period shall, when applying for a renewal, be required to pay such late application fee, as shall be prescribed by the Board.

(3) The Board shall have the power to renew any practicing certificate and may, refuse to renew, cancel, withdraw or suspend a practicing certificate for a period not exceeding twelve months, if satisfied that the
biomedical engineer or technologist is guilty of professional misconduct or is in breach of any provisions of this Act or any regulations made hereunder.

(4) A biomedical engineer or technologist aggrieved by the decision of the Board in the exercise of its powers under subsection (3) may appeal to the Cabinet Secretary within thirty days of the receipt of the decision.

27. A person registered under this Act who wishes to engage in private practice may apply for an annual license in the prescribed form and pay the prescribed fee.

PART V—DISCIPLINE

28. (1) There is established a Disciplinary Committee of the Board which shall consist of—

(a) the Secretary General of the Association who shall be the chairperson of the Committee;

(b) one biomedical engineering professional in the public service of the national government nominated by the Cabinet Secretary who shall not be a member of the Board;

(c) one biomedical engineering professional in the public service of a county government nominated by the Cabinet Secretary who shall not be a member of the Board;

(d) two biomedical engineering professionals, at least one of whom shall be from private practice nominated by the Association, both of whom shall not be members of the Board; and

(e) the Registrar who shall be the secretary to the Committee and who shall be responsible for taking records of the proceedings but shall not have a right to vote on any matter.

(2) The quorum of the Committee shall be three voting members.

29. The Board may refer a matter to the Disciplinary Committee if it has reason to believe that a person registered under this Act, either before or after he was registered—

(a) committed any acts of negligence or professional misconduct in respect of the profession; or
(b) committed any acts of impropriety or misconduct in respect of the profession.

30. The Committee shall inquire into any matter referred to it by the Board.

31. (1) Upon an inquiry under section 29, the biomedical engineering professional subject to the inquiry shall be afforded an opportunity to be heard either in person or through an advocate.

(2) For the purpose of proceedings at any inquiry by the Committee, the Committee may administer oaths or affirmations and may, subject to any regulations made under this Act, enforce the attendance of persons as witnesses and the production of any books or other documents relevant to the inquiry.

(3) The Committee shall, subject to any regulations made under this Act, have power to regulate its own procedure in any disciplinary proceedings.

32. (1) Where on the recommendations of the Committee, the Board is satisfied that a biomedical engineering professional is in breach of any of the terms or conditions prescribed by the Board under this Act, the Board may—

(a) impose a fine which the Board deems appropriate in the circumstances;

(b) issue the biomedical engineering professional with a letter of admonishment;

(c) suspend the registration certificate of the biomedical engineering professional for a specified period not less than three months but not exceeding twelve months;

(d) withdraw or cancel the practicing certificate of the biomedical engineering professional for a period not less than twelve months but not exceeding three years; or

(e) remove the name of the biomedical engineering professional from the register.

(2) Where, after the hearing in a disciplinary proceedings under this Act the Committee recommends to the Board that a biomedical engineering professional is
unfit to practice as a result of ill-health, the Board may, if satisfied with the Committee’s recommendations, withdraw the certificate of registration or practicing certificate of the biomedical engineering professional until such time as the Board is satisfied that the biomedical engineering professional is fully recovered to resume duties.

(3) A biomedical engineering professional who has been suspended from practice or whose license to practice has been withdrawn or cancelled shall, from the date of the suspension, withdrawal or cancellation, surrender the registration and practicing certificates and annual license if in private practice to the Registrar.

(4) A biomedical engineering professional who refuses or fails to surrender his badges, licenses or certificates to the Registrar on request shall be guilty of professional misconduct and liable to a fine not exceeding twenty thousand shillings by the Board.

(5) A biomedical engineering professional who is aggrieved by the decision of the Board in the exercise of its powers under this section may seek further redress in a court of competent jurisdiction.

33. (1) A biomedical engineering professional who has been suspended from practicing, may appeal to the Board for the lifting of the suspension at any time before the expiry thereof.

(2) Where the Board is satisfied that the suspension of a biomedical engineering professional should be lifted, the Board shall, upon the receipt of the prescribed fee, lift the suspension and restore to the biomedical engineering professional, his or her registration and practicing certificates and annual license if in private practice.

34. (1) A biomedical engineering professional whose name has been removed from the register may, after the expiry of a period of three years from the date of such removal, appeal to the Board for restoration to the register.

(2) The Board may, after considering the appeal made under subsection (1), cause the name of the applicant to be restored in the appropriate register, upon payment of the prescribed fee.
PART VI — FINANCIAL PROVISIONS

35. (1) The funds of the Board shall comprise of—

(a) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act;

(b) such gifts, loans, grants and donations as may be given to the Board and approved by the Cabinet Secretary for the time being responsible for matters relating to finance;

(c) licence and registration fees charged in accordance with this Act; and

such sums as may in any manner become payable to or vested in the Board under the provisions of this Act or any other written law subject to the approval of the cabinet secretary for the time being responsible for matters relating to finance.

(2) There shall be paid out of the funds of the Board any expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

36. The financial year of the Board shall be the period of twelve months ending on the 30th day of June in every year.

37. (1) The Board shall, at least three months before the commencement of each financial year, cause to be prepared estimates of revenue and expenditure of the Board for that financial year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Board for the financial year concerned and in particular shall provide for the—

(a) payment of salaries, allowances and other charges in respect of the members of staff or agents of the Board;

(b) payment of pensions, gratuities and other charges in respect of members and other staff of the Board;

(c) proper maintenance of buildings and grounds of the Board;
(d) acquisition, maintenance, repair and replacement of the equipment and other movable property of the Board; and

(e) funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after approval, the Board shall not increase annual estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Board except in accordance with the annual estimates approved under subsection (3), or in pursuance of an authorization by the Cabinet Secretary.

38. The Board may, subject to the approval of the Cabinet Secretary for the time being responsible for matters relating to finance invest any of the funds of the Board in securities in which, for the time being, trustees may by law invest funds or in any other securities which the Treasury may, from time to time, approve for that purpose.

39. (1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Board.

(2) The accounts of the Board shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

(3) The Board shall, within three months from the end of the financial year to which the accounts relate, submit to the Auditor-General the accounts of the Board together with—

(a) a statement of income and expenditure during the year;

(b) a statement of the assets and liabilities of the Board as of the last day of that year;
(c) a cash flow statement for the financial year; and

(d) any other statements and accounts that may be necessary to fully disclose the financial position of the Board.

40. (1) The Board shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary responsible for matters related to finance a report of the operations of the Board for the immediate preceding year.

(2) The Cabinet Secretary shall lay the annual report before the National Assembly within three months of the day the National Assembly next sits after receipt of the report.

PART VII—MISCELLANEOUS PROVISIONS

41. (1) The Board may appoint biomedical engineering inspectors to oversee enforcement of provisions of this Act in regard to the practice of biomedical engineering.

(2) Such inspectors shall carry out functions of the Board as shall be delegated by the Board, or as shall be defined in the rules and regulations.

(3) Every biomedical engineering inspector shall be furnished with such form of identification as the Board may determine.

(4) A biomedical engineering inspector shall, if so required, produce the identification determined under subsection (3) in the course of execution of his duties under this Act.

(5) Subject to this Act, the Board may in writing order the closure of any Biomedical engineering facility that contravenes the provisions of this Act.

(6) Where a facility is closed pursuant to subsection (5) the Board’s seal shall be placed upon the entrance of the facility or in any other convenient place.

(7) Notwithstanding the provisions of subsections (5) and (6), the Board may prescribe the instances and manner in which a biomedical engineering inspector may, in the course of duty, order the closure of a biomedical engineering facility pending an order of the Board under subsection (5).
(8) Any person whose biomedical engineering facility is closed pursuant to subsection (5) may, within fourteen days after the date of the closure, apply to the Board for an order of reopening of the closed facility.

(9) Any biomedical engineer aggrieved by the decision of the Board in exercising its powers under this section may seek redress in a court of competent jurisdiction.

42. (1) An act or omission which is an offence under this Act or any regulations made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless proved that the offence was committed without consent or connivance of the director, secretary or manager and that he or she exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

(2) If an offence under this Act or any regulations made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence, unless there is proof that the offence was committed without the consent or connivance of the partner and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and the circumstances of the case.

43. (1) A person shall not practice as a biomedical engineering professional in any health institution or in any other place in Kenya unless that person is registered under this Act.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or both.

(3) A person shall not while in charge of a health institution or any other health organization in Kenya, employ a person who is not registered under this Act as a biomedical engineering professional.
(4) A person who contravenes the provisions of subsection (3) commits an offence and shall, upon conviction, be liable to a fine not exceeding one million shillings, or imprisonment for a term not exceeding five years, or both.

(5) A person who, in an application for registration, willfully makes a false or misleading statement or presents a false certificate, commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding three years or both.

44. A person convicted of an offence under this Act for which no penalty is provided shall, upon conviction, be liable to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three months, or both.

PART VIII—PROVISIONS ON DELEGATED POWERS

45. (1) The Cabinet Secretary may in consultation with Board make regulations for the better carrying out of the provisions of this Act;

(2) Without prejudice to the generality of subsection (1) the regulations may provide for—

(a) the form and method of keeping registers and other records under this Act;

(b) the conditions under which training institutions other than those established or accredited under the Universities Act, the Technical Education and Vocational and Training Act or any other written law may be approved;

(c) the terms and conditions of professional practice of registered biomedical engineers;

(d) the forms and fees to be prescribed for purposes of this Act;

(e) the inspection of biomedical engineering institutions, tools, equipment and appliances;

(f) the service to be rendered by a biomedical engineer or technologist in private practice;
(g) the employment of a biomedical engineer or technologist in private institutions; and

(h) the form and method of conducting any inspection, assessment, evaluation, examination or regulation required under this Act.

(2) The Board shall, as soon as reasonably practicable cause any rules and regulations made under this Act to be published in the Gazette.

SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD (s. 5)

1. The Chairperson or a member of the Board, other than an ex officio member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment but shall be eligible for re-appointment for one further term.

2. A member of the Board, other than an ex officio member, may—

(a) at any time resign from office by notice to the Cabinet Secretary through the Registrar;

(b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months without the option of a fine; or

(iii) becomes, for any reason including infirmity, incompetent or incapable of performing the functions of the office;

(ii) ceases to be a registered person under this Act; or

(v) is otherwise unable or unfit to discharge his functions.
3. (1) The chairperson of the Board shall convene ordinary meetings of the Board not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least three members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be three members.

(5) The chairperson shall preside at every meeting of the Board, in his absence the vice chairman shall preside, and he shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(6) In the event of the absence of both the chairman and the vice chairman, the members present shall elect one of their number to preside, the person so elected shall with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairperson or the vice-chairperson or the person presiding shall have a casting vote.

(8) Subject to sub-clause (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(9) Subject to the provisions of this Section, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make rules in respect thereof.

4. (1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.
(2) The committees under (1) shall appoint the chairperson from amongst its members.

(3) The Committee may where it deems appropriate, co-opt any person from outside the Committee with knowledge and expertise in specific areas to attend the deliberations of any of its committees.

(4) All decisions by the committees established under subsection (1) shall be ratified by the Board.

5. (1) A member of the Board who has a direct or indirect personal interest in a matter being considered by the Board shall, as soon as possible after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Board.

(2) A disclosure of interest made by a member of the Board under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, in respect of the matter, be present or take part or vote during any deliberations on the matter by the Board.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

7. (1) The Board shall have a common seal which shall be kept in such manner as the Board may determine;

(2) The affixing of the common seal of the Board shall be authenticated by the signature of the chairperson and the Registrar and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairperson and the Registrar.

(3) Provided that the Board shall, in the absence of either the chairman or the Registrar in any particular matter, nominate one member by resolution to authenticate the seal of the Board on behalf of either the chairman or the Registrar.
MEMORANDUM OF OBJECTS AND REASONS

The main objective of this Bill is to provide a legislative framework for the training, registration and licensing of biomedical engineering professionals. The Bill further seeks to regulate the practice of biomedical engineering and provide for the establishment, powers and functions of a Biomedical Engineering Board which shall regulate the profession.

PART I of the Bill contains preliminary provisions.

PART II of the Bill provides for the establishment of the Biomedical Engineers Board of Kenya.

PART III of the Bill contains provisions for the training and registration of biomedical engineers.

PART IV of the Bill contains provisions relating to private practice.

PART V of the Bill contains provisions for the discipline of biomedical engineers.

PART VI of the Bill contains financial provisions relating to the Biomedical Engineers Board of Kenya.

PART VII of the Bill contains miscellaneous provisions.

PART VIII of the Bill contains provisions on delegated powers.

The Bill delegates legislative powers but does not limit any fundamental rights and freedoms.

The Bill is not a Bill concerning County governments. It does not contain provisions affecting the functions, powers and finances of county governments or relate to the election of members of a county assembly or county executive.

The Bill is not a money Bill within the meaning of Article 114 (3) of the Constitution.

Dated the 22nd June, 2015.

STEPHEN MUTINDA MULE,
Member of Parliament.