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**OCCUPATIONAL THERAPISTS (TRAINING,
REGISTRATION AND LICENSING) ACT**

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**OCCUPATIONAL THERAPISTS (TRAINING,
REGISTRATION AND LICENSING) ACT**

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PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE COUNCIL

NO. 31 OF 2017

**OCCUPATIONAL THERAPISTS (TRAINING,
REGISTRATION AND LICENSING) ACT**

[Date of assent: 21st July, 2017.]

[Date of commencement: 16th August, 2017.]

AN ACT of Parliament to make provision for the training, registration and licensing of occupational therapists; to regulate their practice; to provide for the establishment, powers and functions of the Occupational Therapy Council of Kenya and for connected purposes

[Act No. 31 of 2017, Act No. 4 of 2018.]

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Occupational Therapists (Training, Registration and Licensing) Act, 2017.

2. Interpretation

In this Act, unless the context otherwise requires—

“Association” means the Kenya Occupational Therapists Association;

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

“certificate” means a certificate of registration issued by the Council to a person entitled to be registered under this Act;

“occupational therapist” means a person who, having successfully undergone a prescribed course of training in a training institution, is a holder of a certificate issued by that institution and is registered under this Act;

“Council” means the Occupational Therapy Council established under section 3;

“private practice” means the practice of occupational therapy by an occupational therapist for a fee either in kind or cash;

“register” means the register of occupational therapists which the Registrar is required to maintain under section 18;

“Registrar” means the registrar of occupational therapists as provided under section 17.

**PART II — ESTABLISHMENT OF THE
OCCUPATIONAL THERAPY COUNCIL OF KENYA**

3. Establishment of Occupational Therapy Council of Kenya

(1) There is established a Council to be known as the Occupational Therapy Council of Kenya.

(2) The Council 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;

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- (b) purchasing or otherwise acquiring, holding, charging and disposing of moveable and immovable property;
- (c) borrowing, lending or raising money;
- (d) entering into contracts; and
- (e) performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

4. Composition of the Council

(1) The Council shall consist of the following persons—

- (a) the Chairperson, appointed by the Cabinet Secretary from among the persons nominated under paragraph (g);
- (b) the Director of Medical Services or his or her representative;
- (c) the Registrar who shall be an *ex officio* member of the Council without a right to vote;
- (d) the Chief Occupational Therapist;
- (e) the Director, Kenya Medical Training College or his or her representative;
- (f) the Chairperson of the Association;
- (g) six occupational therapists competitively and transparently nominated by the Association, who shall include—
 - (i) two occupational therapists employed in the public service one of whom shall be employed in a County Government;
 - (ii) one occupational therapist employed in the private sector;
 - (iii) one occupational therapist with disability;
 - (iv) one occupational therapist from the gender least represented in the Council; and
 - (v) one occupational therapist employed in a University in Kenya which awards qualifications recognized by the Council.

(2) A person shall be qualified for appointment as a chairperson to the Council if such person—

- (a) is a citizen of Kenya;
- (b) is an occupational therapist of not less than 10 years standing;
- (c) is registered as an occupational therapist under this Act; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Registrar shall be—

- (a) competitively appointed by the Council;
- (b) secretary to the Council.

(4) The Council members referred to in subsection (1)(b), (h) and (i) may attend the Council meetings in person or through their representatives appointed in writing.

(5) The Cabinet Secretary in consultation with the Association shall, in appointing the members of the Council, have regard to gender balance and persons with disability.

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(6) The chairperson and every member appointed under subsection (1) shall hold office for a term of 3 years and shall be eligible for re-appointment for a further term of three years.

(7) All appointments under this section shall be notified in the *Gazette*.

[Act No. 4 of 2018, Sch.]

5. Vacation of office

A member of the Council, other than an *ex-officio* member, may—

- (a) by a notice in writing addressed to the Registrar, resign from office;
- (b) be removed from office by the Cabinet Secretary if the member—
 - (i) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (ii) is adjudged bankrupt;
 - (iii) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his duties as a member of the Council; or
 - (iv) dies.

6. Conduct of business and affairs of the Council

The conduct and regulation of the business and affairs of the Council shall be as provided for in the Schedule.

7. Headquarters

The Headquarters of the Council shall be in Nairobi.

8. Functions of the Council

The functions of the Council shall be to—

- (a) maintain a register of all students pursuing courses leading to a qualification in occupational therapy;
- (b) prescribe and conduct examinations in collaboration with the approved institutions;
- (c) evaluate, assess, approve and regulate the usage and application of such tools, equipment and appliances necessary in occupational therapy practice as the Council may from time to time determine;
- (d) regulate the professional conduct of registered occupational therapists and take such disciplinary measures as may be appropriate to maintain proper professional standards;
- (e) maintain a register and records of all occupational therapists registered under this Act;
- (f) maintain a register of private institutions and clinics licensed to offer occupational therapy;
- (g) establish and maintain a professional code of conduct for all persons registered under this Act;
- (h) cause to be published in the Kenya *Gazette* every calendar year the names of all registered occupational therapists;
- (i) consider any other matters generally pertaining to occupational therapists including advertisement, prescribing and approving all

badges, insignias or uniforms to be worn by occupational therapists while on duty, in consultation with the Cabinet Secretary.

9. Tenure of office of Council members

The members of the Council shall hold office for a period of three years and shall be eligible for reappointment subject to a maximum of two terms.

10. Powers of the Council

(1) The Council shall have all powers necessary for the proper performance of the functions of the Council under this Act.

(2) Without prejudice to the generality of the foregoing, the Council shall have power to—

- (a) control, supervise and administer the assets of the Council in such manner as best promotes the purpose for which the Council is established;
- (b) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (c) levy fees for services rendered by the Council as may be determined from time to time by the Council;
- (d) open such banking accounts for the funds of the Council as may be necessary;
- (e) invest any funds of the Council not immediately required for its purposes; and
- (f) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate in furtherance or for the performance of its functions under this Act.

11. Remuneration of members of the Council

The members of the Council shall be paid such remuneration as may be approved by the Cabinet Secretary upon the advice of the Salaries and Remuneration Commission.

12. Staff of the Council

The Council may employ such staff as may be necessary for the proper and efficient discharge of the functions of the Council under this Act, upon such terms and conditions of service as the Council may determine upon the advice of the Salaries and Remuneration Commission.

13. Co-operation with other organizations

The Council may, in the discharge of its functions, consult, collaborate and co-operate with—

- (a) the Commission for University Education and other regulators in the field of education, generally;
- (b) the Technical and Vocational Education and Training Authority; and
- (c) departments and agencies of Government, statutory bodies, and any other body or institution having functions or objects related to the functions of the Council.

14. Invitation of experts

(1) The Council may invite any public officer or other person or any representative of any body, who in the opinion of the Council, has expert knowledge in matters relating to the functions of the Council to attend any meeting of the Council and participate in the proceedings.

(2) A person attending a meeting under this section may, if invited, participate in any discussion at the meeting but shall not vote.

15. The common seal of the Council

(1) The common seal of the Council shall be kept in the custody of the Chief Executive Officer or of such other person as the Council may direct, and shall not be used except upon the order of the Council.

(2) The common seal of the Council, when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been given.

(3) The common seal of the Council shall be authenticated by the signature of the Chairperson of the Council and the Chief Executive Officer.

(4) In the absence of either the Chairperson or the Chief Executive Officer, in any particular matter, the Council may nominate one member of the Council to authenticate the seal of the Council on behalf of either the Chairperson or the Chief Executive Officer.

16. Protection of the Council from liability

(1) Liability shall not attach to the Council, or to any of its staff, or to a member of the Council for loss or damage sustained by any person as a result of any act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed or conferred by or under this Act.

(2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of the powers conferred on the council by this Act or by any written law or by the failure, whether wholly or partially, of any works.

PART III — REGISTRATION AND TRAINING
OF OCCUPATIONAL THERAPISTS

17. Appointment of Registrar

There shall be a Registrar of the Council who shall be recruited and appointed by the Council through a competitive and transparent process.

18. Functions of the Registrar

The Registrar shall—

- (a) receive applications for registration;
- (b) advise the Council on matters relating to the profession;
- (c) be the secretary to the Council; and
- (d) keep and maintain a register of occupational therapists.

19. Particulars of the register

(1) The register shall contain the following particulars of occupational therapists—

- (a) name and address;
- (b) qualifications of the occupational therapists; and
- (c) place of business or employment of the occupational therapist.

(2) An occupational therapist shall notify the Registrar of any change of particulars.

20. Publication of particulars of register

The Registrar shall—

- (a) publish in the *Gazette* a list of names, addresses and qualifications of the registered occupational therapists not later than the 31st March in every year; and
- (b) subject to the directions of the Council, make any necessary alterations or corrections in the register in relation to an entry including the deletion of names of occupational therapists who have died and entries which have been fraudulently or incorrectly made.

21. Removal of names from register

(1) An occupational therapist may request the Registrar to remove his name from the register.

(2) Subject to subsection (1), the Registrar may reinstate a name upon request of the person concerned, on the approval of the Council and on payment of the prescribed fee.

22. Inspection of Register

Any person may inspect the register and any documents relating to any entry, and may obtain from the Registrar, a copy of, or an extract from the registers on payment of the prescribed fee.

23. Registration and effect of registration

(1) A person shall be qualified for registration, if he satisfies the Council that he—

- (a) has successfully undergone a prescribed course of training at an approved training institution;
- (b) has applied for registration in the prescribed form;
- (c) has paid the prescribed fees for registration; and
- (d) has engaged in training under the supervision of a registered occupational therapist for such period, being not less than one year, as the Council may prescribe.

(2) Subject to the provisions this Act, every occupational therapist registered under subsection (1) shall pay the Council such annual subscription as may be prescribed from time to time.

24. Unregistered persons rendering occupational therapy services

(1) A person shall not render occupational therapy services in Kenya as an occupational therapist unless he has been registered by the Council under this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

25. Allowing unregistered persons to render occupational therapy services

(1) A person in charge of a medical institution shall not allow any unregistered person to render occupational therapy services as an occupational therapist in their institution.

(2) Any person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding two million shillings, or imprisonment for a term not exceeding six years or to both.

26. Surrender of certificates

(1) A person whose name is deleted from the register for any reason shall within thirty days of publication of the deletion in the Gazette, surrender his certificate of registration to the Council for cancellation.

(2) Subject to subsection (1), if the person is deceased, the deceased's legal representative shall surrender the certificate to the Council.

27. Use of titles

The Council shall prescribe such title or titles as may be used to denote that a person is registered under this Act.

PART IV — PROVISIONS RELATING TO PRIVATE PRACTICE

28. Licensing

(1) A person shall not engage in private practice unless he has been issued with a valid licence to practice.

(2) The Council may issue to an occupational therapist who has applied in the prescribed form, a licence to practice on his or her own behalf or to be employed by a registered occupational therapist.

(3) The Council shall grant a licence to an occupational therapist on payment of the prescribed fee, and shall state whether the licensee may practice on his own behalf or on employment.

(4) Licences for private practice shall expire on the 31st of December in the year they are granted and issued and shall be renewable in accordance with the regulations.

(5) The Council may cancel or refuse to issue or to renew a licence.

(6) A person aggrieved by the decision of the Council in exercising its powers under subsection (5) may appeal to the High Court within thirty days of the Council's decision being communicated to him.

29. Qualification for private practice

(1) Notwithstanding that an occupational therapist has been issued with a licence under this Act, he shall not engage in practice on his own behalf, either full time or part-time, unless he has practised in Kenya continuously on a full-time basis for a period of not less than five years after being registered—

- (a) in a salaried post, either as an employee in the Government of Kenya as an occupational therapist; or
- (b) in an organisation approved by the Council; or

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- (c) as an employee of an occupational therapist who has been engaged in a continuous full-time private practice on his own behalf in Kenya for a period of not less than five years.

(2) The person employing an occupational therapist under this section shall in the prescribed form notify the Council of the commencement and termination of employment of such person.

(3) A person who engages in private practice as an occupational therapist contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding four years, or to both.

30. Validity of licence

(1) After the expiry of twelve months from the commencement of this Act, no person shall engage in the practice of occupational therapy unless he has been duly issued with a registration certificate and a practicing license by the Council in accordance with this Act.

(2) A licence issued under this Act shall be valid from the date it is issued and shall expire on the 31st December of the year it is or one year issued.

(3) Subject to subsection (2), where the name of the occupational therapist is removed or struck off the register, the licence, if any, shall expire forthwith.

(4) On expiry, a license may be renewed for such further period, not exceeding one year.

(5) Where a licence expires and is not renewed for a period of one year, the name of the holder of the licence shall be removed from the appropriate record.

(6) The Registrar shall enter in the register the date of issue of every licence.

31. Terms and conditions of private practice

(1) The Council shall, in regulation, prescribe the terms and conditions of the practice of an occupational therapist engaged in private practice.

(2) Regulations made under subsection (1) shall in particular provide for—

- (a) the services to be rendered by an occupational therapist in private practice; and
- (b) the employment of an occupational therapist in private institutions.

(3) A person who breaches any term or condition prescribed in the regulation under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding one year, or to both.

32. Application for a licence

(1) An application for a licence shall be made to the Registrar in duplicate, signed by the applicant, specifying his name and place of practice and the date of his registration as an occupational therapist.

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

(3) The Council shall, where an occupational therapist is duly registered under this Act and is not for the time being suspended from practice, within sixty days of receipt by the Council of the application, issue to the applicant a licence in the prescribed form.

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

33. Renewal, cancellation and suspension of licence

(1) An occupational therapist issued with a licence may apply for renewal of the certificate in the prescribed form at least thirty days before the date of expiry thereof.

(2) An occupational therapist who fails to renew his licence within the prescribed period shall, when applying for a renewal, be required to pay such late application fee, as shall be prescribed by the Council.

(3) The Council shall have the power to renew any licence and may, refuse to renew, cancel, withdraw or suspend a licence for a period not exceeding twelve months, if satisfied that the occupational therapist is guilty of professional misconduct or is in breach of any provisions of this Act or any regulations made under this Act.

(4) Any person who is aggrieved by the decision of the Council made under the provisions of this section may appeal within thirty days to the High Court and the High Court may confirm, vary, or annul the decision of the Council.

PART V —DISCIPLINE

34. Establishment of the Disciplinary Committee

(1) There is established a Disciplinary Committee.

(2) The Committee shall consist of—

- (a) the chairman of the association who shall be chairman of the Committee;
- (b) one representative of the Cabinet Secretary who shall not be a member of the Council;
- (c) an advocate of the High Court with at least seven years' experience appointed by the Council;
- (d) one occupational therapist in the public service nominated by the association, who is not a member of the council and is employed by the National Government;
- (e) one occupational therapist in the public service nominated by the Association, who is not a member of the Council and is employed by a County Government;
- (f) two occupational therapists from private practice nominated by the Association, who are not members of the Council.

(3) The Registrar of the Council shall be the Secretary of the Disciplinary Committee but shall not have voting power.

(4) The Disciplinary Committee shall receive and investigate complaints against occupational therapists in accordance with the rules and regulations under this Act.

(5) Subject to this Act, the Disciplinary Committee shall regulate its own procedures.

35. Disciplinary powers of the Committee

(1) The Disciplinary Committee may order the removal from the register, suspension of registration or revocation of the practicing license of an occupational therapist or the imposition of a fine on a practitioner as may be prescribed by the Council if that practitioner—

- (a) has been convicted of an offence punishable by imprisonment, the commission of which in the opinion of the Council has dishonored the profession in the public estimation; or
- (b) has been guilty of negligence or malpractice in respect of his profession; or
- (c) has been guilty of impropriety or misconduct, whether in respect of his profession or not.

(2) Upon an inquiry held by the committee, the person whose conduct is being inquired into shall be afforded an opportunity of being heard either in person or through an advocate.

(3) For the purposes of proceedings at any inquiry held by the disciplinary committee, the committee may administer oaths, and may subject to any regulation made under this Act, enforce attendance of persons as witnesses and the production of books and documents.

(4) Any person whose name has been removed from the register or whose licence has been suspended shall forthwith surrender to the Council his certificate of registration or licence.

(5) An occupational therapist who contravenes subsection (4) commits an offence and upon conviction, shall be liable to a fine not exceeding twenty thousand shillings.

(6) An occupational therapist who is aggrieved by the decision of the Council in the exercise of its powers under this section may, within sixty days from the date of the decision of the Council, appeal to the High Court.

PART VI — FINANCIAL PROVISIONS**36. Funds of the Council**

The funds of the Council shall consist of —

- (a) such monies as may be payable to the Council pursuant to this Act or any other written law;
- (b) such monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or performance of its functions under this Act;
- (c) any funds provided by bilateral or multilateral donors, for the purpose of the Council;
- (d) gifts, grants, donations or endowments as may be given to the Council;
- (e) monies from any other source provided for the Council.

37. Financial year

The financial year of the Council shall be the period of twelve months ending on the thirtieth of June in each year.

38. Annual estimates

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

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

- (a) payment of allowances and other charges in respect of members of the Council;
- (b) payment of salaries, allowances and other charges in respect of the staff of the Council;
- (c) payment of pensions, gratuities and other charges in respect of staff of the Council;
- (d) proper maintenance of the assets of the Council; and
- (e) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Council may deem fit.

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

39. Investment of funds

The Council may invest any of the funds of the Council in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART VII — PROVISIONS ON DELEGATED POWERS**40. Regulations**

(1) The Cabinet Secretary shall, in consultation with the Council, make regulations for the better carrying into effect of the provisions of this Act.

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

- (a) the form and method of keeping records under this Act;
- (b) the procedure for applications for registration under this Act;
- (c) the prescribed courses under this Act;
- (d) any fees to be paid for registration, private practice licence, or any other fees to be charged under the provisions of this Act; and
- (e) anything required by this Act to be prescribed.

(3) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Council to make regulations and to enable the Council to discharge its functions more effectively;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect provisions of this Act and to fulfilment of the objectives specified under this section;

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- (c) the principles and standards applicable to the regulations made under this section are those found in—
- (i) the Statutory Instruments Act, 2013 (No. 23 of 2013);
 - (ii) the Interpretation and General Provisions Act (Cap. 2);
 - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
 - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

PART VIII —TRANSITIONAL PROVISIONS

41. Carrying on of business

After the expiry of twelve months after the commencement of the Act no person may carry on business or hold himself or herself out as being an occupational therapist except in compliance with this Act.

42. Acting Registrar

The Chief Occupational Therapist at the Ministry for the time being responsible for matters relating to health shall hold the office of the Registrar until the first appointment is made under section 17.

SCHEDULE

[Section 6.]

PROVISIONS AS TO THE CONDUCT OF
BUSINESS AND AFFAIRS OF THE COUNCIL

1. Meetings

(1) The Council shall meet 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 the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least six members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

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

(4) The quorum for the conduct of the business of the Council shall be seven members including the chairperson or the person presiding.

(5) The chairperson shall preside at every meeting of the Council at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

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

(7) Subject to subparagraph (4), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

2. Committees of the council

The Council may establish such committees as may be necessary for the performance of the functions of the Council and may, subject to the provisions of this Act, delegate powers conferred on it to any such committee.

3. Disclosure of interest by Council members

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Council and is present at a meeting of the Council at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) If the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Council may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(3) A member of the Council who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

4. Execution of instruments

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 Council by any person generally or specially authorized by the Council for that purpose.

5. Minutes

The Council shall cause minutes of all resolutions and proceedings of meetings of the Council to be entered in books kept for that purpose.
