

THE NURSES (AMENDMENT) ACT

No. 27 of 2011

Date of Assent: 16th September, 2011

Date of Commencement: By Notice

AN ACT of Parliament to amend the Nurses Act.

ENACTED by the Parliament of Kenya as follows-

Short title and commencement.

1. This Act shall be cited as the Nurses (Amendment) Act, 2011 and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint which date shall not exceed ninety days from the date of publication.

Repeal and replacement of section 4 of Cap. 257.

2. The Nurses Act, in this Act referred to the "principal Act", is amended by repealing section 4 and replacing it with the following new section—

Membership of the Council.

4. (1) The Council shall consist of-

- (a) the Director of Medical Services or his representative;
- (b) the Director of Education or his representative;
- (c) the Chief Nursing Officer or his representative;
- (d) the Attorney-General or his representative;
- (e) the following persons appointed by the Minister-
 - (i) one registered midwife, to be elected by registered midwives;
 - (ii) one registered community health nurse, to be elected by registered community health nurses;

- (iii) one registered psychiatric health nurse, to be elected by registered psychiatric health nurses;
 - (iv) one registered general nurse, elected by registered general nurses;
 - (v) one nurse nominated by the National Nurses Association of Kenya;
 - (vi) one nurse nominated by the Kenya . Progressive Nurses Association;
 - (vii) one registered nurse educator actively involved in the training of nurses nominated by recognized universities in Kenya;
 - (viii) two registered nurses nominated by registered religious organizations providing health services in Kenya;
 - (ix) one person with a professional background in human resource management;
- (f) the chief executive officer of the Kenya Medical Training College or his representative.

(2) All nominations and elections under this section shall be in such manner as may be prescribed and all appointments shall be notified in the Gazette.

(3) The members of the Council appointed under paragraph (e) of subsection (1) shall hold office for a term of three years and shall be eligible for reappointment in accordance with the procedure set out in that paragraph for one further term.

Amendment of section 7 of Cap. 257.

3. Section 7 of the principal Act is amended by deleting the word "six" appearing in subsection (2) and substituting therefor the word "four"

Amendment of section 8 of Cap. 257.

4. Section 8 of the principal Act is amended by deleting the words "twelve, at least seven of whom shall be elected members" appearing in subsection (1) and substituting therefor the words "seven, at least four of whom shall be members appointed under section 4(1) (e)".

Amendment of section 9 of Cap. 257.

5. Section 9 of the principal Act is amended in subsection 1 (i) by inserting the words "nursing commodities" immediately after the words "qualified staff".

Amendment of section 10 of Cap. 257.

6. Section 10 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection-

- (1) The Council shall appoint committees in the following areas-
 - (a) human resources and finance;
 - (b) registration and licensing;
 - (c) education, research and examination;
 - (d) discipline, standards and ethics.

Repeal and replacement of section 17 of Cap. 257.

7. The Nurses Act is amended by repealing section 17 and replacing it with the following new section -

Private practice.

17. (1) No person shall engage in private practice as a nurse unless such person-

- (a) is a citizen of Kenya;
- (b) is registered, enrolled or licensed as a nurse under this Act;
- (c) has served as a nurse for a period of not less than three years under supervision of a senior nurse of not less than seven years standing;
- (d) is a holder of an annual licence known as practising certificate for that year;
- (e) is a holder of such other qualification as may be prescribed.

(2) Notwithstanding the provisions of subsection (1), a person who is not a citizen of Kenya may be licensed to practise as a nurse if he satisfies the Council that-

- (a) he is of good character;
- (b) has paid the prescribed fees;
- (c) has undergone a course of training and passed an examination, elsewhere than in Kenya, which would not qualify him to be registered or enrolled under this Act but which the Council recognizes as sufficient to enable him to practise nursing in Kenya.

(3) A licence issued under subsection (2) —

- (a) shall be for such period and for such purpose as the Council may prescribe;
- (b) may, on its expiry, be renewed for such period, not exceeding one year, as the Council may prescribe.

(4) Where a licence issued under subsection (2) is renewed, details of the renewal shall be entered in the appropriate record.

(5) Where a licence issued under subsection (2) expires and is not renewed within thirty days of expiry, the name of the holder of the licence shall be removed from the appropriate record and the Council may decline further requests for renewal of such a licence or impose a levy on such further requests.

(6) For the purposes of this Act-

- (a) a person shall be deemed to engage in private practice as a nurse if such person-
 - (i) practises on his own account and is entitled to receive, for his own financial benefit, the entire amount of all fees and charges;
 - (ii) practises in partnership with others and is entitled to receive, for his own financial benefit, a share of the fees and charges;
- (b) a person shall not be deemed to engage in private practice as a nurse if such person is employed by-
 - (i) the Government or any other public body;

- (ii) any person or employer where all fees and charges accrue to the person or employer despite the fact of his being employed in his professional capacity as a nurse.

(7) An application for a practising certificate or its renewal shall be made to the Council in the prescribed form and shall be accompanied by such fee as the Council may from time to time determine.

(8) Where an application is made by a person in accordance with subsection (7), the Council shall issue to such person a practising certificate for that year if it is satisfied that the person fulfils the requirements set out in subsection (1) and has paid the fee referred to in subsection (7) of this section.

(9) A practising certificate shall be valid from the date on which it is issued and shall expire on the thirtieth day of December of every year unless its holder ceases to be a registered person under this Act.

(10) Where a practising certificate ceases to be in force in accordance with subsection (7), the person to whom the certificate was issued shall deliver it to the Council within thirty days from the date on which he ceases to be registered.

(11) Any person who contravenes-

- (a) subsection (1) or (2), in addition to being culpable of professional misconduct, commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both;
- (b) subsection (7) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.

Insertion of new Part IIIA in Cap. 257.

8. The principal Act is amended by inserting the following new Part immediately after section 18-

PART IIIA—DISCIPLINARY PROVISIONS

Professional misconduct.

18A. (1) A registered nurse shall be culpable of professional misconduct if such nurse —

- (a) allows any person to practise in his name as a registered nurse, unless such person is the holder of a practising certificate and is in partnership with him or employed by him;
- (b) enters, for the purpose of or in the course of practising as a registered nurse, into partnership with a person who does not hold a practising certificate, or secures any professional business through the services of such a person or by means not open to a registered nurse;
- (c) pays or allows or agrees to pay, directly or indirectly, to any person (other than a person who holds a practising certificate, is a retired partner or the legal representative of such a partner), any share, commission or brokerage out of the fees for, or profits of his professional services;
- (d) solicits clients or professional work or advertises professional attainments or services by use of means which contravenes the guidelines published by the Council;
- (e) discloses information acquired in the course of professional engagement to any person other than a client, without the consent of the client, or otherwise than required by law;
- (f) fails to observe and apply professional, technical, ethical or other standards prescribed by the Council as guidelines for practice by registered nurses;
- (g) is guilty of gross negligence in the conduct of his professional duties;
- (h) expresses an opinion on any matter with which he is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;
- (i) fails to keep the funds of a client in a separate banking account or to use any such funds for purposes for which they are intended;
- (j) includes in any statement, return or form to be submitted to the Council any particular knowing it to be false;
- (k) is convicted of a crime under the Anti-Corruption and Economic Crimes Act, 2003;
- (l) fails to declare a conflict of interest in relation to any particular matter or acts in a matter notwithstanding the presence of an undisclosed conflict of interest; or

(m) fails to do any other act which may be prescribed.

(2) For avoidance of doubt, this section applies in equal respects to all categories of nurses whether registered, enrolled or licensed as such under this Act.

Inquiry by the Council.

18B. (1) Where the Council, a member of the Council or any member of the public has reason to believe that a registered, enrolled or licensed nurse has committed an act of professional misconduct, the Council may, on its own or through a committee appointed for that purpose, inquire into the matter.

(2) The provisions of the Schedule shall have effect with respect to an inquiry by the Council under this section.

(3) On the completion of an inquiry under this section into the alleged professional misconduct of a registered, enrolled or licensed nurse, the Council may decide that—

- (a) no further action be taken against that nurse;
- (b) the nurse be reprimanded;
- (c) the nurse pays to the Council such fine, not exceeding five hundred thousand shillings, as may be appropriate;
- (d) the nurse undertakes training at his own cost, of such nature and duration and at such institutions as the Council may determine;
- (e) the nurse discharges his professional obligations under any contractual arrangement subject of the alleged misconduct;
- (f) any practising certificate held by the nurse be suspended for such period not exceeding five years as may be appropriate; or
- (g) the nurse be de-registered from the register.

(4) The Council shall as soon as practically possible, inform the registered, enrolled or licensed nurse of the action taken against him under this section.

(5) Any person aggrieved by any decision of the Council on inquiry may, within twenty-eight days from the date of the decision, appeal to the High Court, and in any such appeal the High Court may annul or vary the

decision as it thinks fit.

(6) Any person whose name has been removed from a register, roll or record or whose registration, enrolment or licence has been suspended shall forthwith surrender to the Registrar his certificates and badges, and any person who contravenes this subsection commits an offence and is liable to a fine not exceeding fifty thousand shillings.

Amendment of section 19 of Cap. 257.

9. Section 19 of the principal Act is amended-

- (a) by deleting the words "ten thousand shillings or imprisonment for a term not exceeding twelve months" appearing in subsection (1) and substituting therefor the words "five hundred thousand shillings or imprisonment for a term not exceeding two years",
- (b) by deleting the words "ten thousand shillings or imprisonment for a term not exceeding twelve months" appearing in subsection (2) and substituting therefor the words "five hundred thousand shillings or imprisonment for a term not exceeding two years".

Amendment of section 20 of Cap. 257.

10. Section 20 of the principal Act is amended-

- (a) by deleting the words "five thousand shillings" appearing in subsection (1) and substituting therefor the words "one hundred thousand shillings or imprisonment for a term not exceeding six months";
- (b) by deleting the words "five thousand shillings" appearing in subsection (2) and substituting therefor the words "one hundred thousand shillings or imprisonment for a term not exceeding six months".

Amendment of section 21 of Cap. 257.

11. Section 21 of the principal Act is amended-

- (a) by deleting the words "ten thousand shillings or imprisonment for a term not exceeding twelve months" appearing in subsection (1) and substituting therefor the words "five hundred thousand shillings or imprisonment for a term not exceeding two years";

- (b) by deleting the words "five thousand shillings" appearing in subsection (2) and substituting therefor the words "one hundred thousand shillings or imprisonment for a term not exceeding six months";

Amendment of section 22 of Cap. 257.

12. Section 22 of the principal Act is amended-

- (a) by deleting the words "ten thousand shillings or imprisonment for a term not exceeding twelve months" appearing in subsection (1) and substituting therefor the words "five hundred thousand shillings or imprisonment for a term not exceeding two years";
- (b) by deleting the words "five thousand shillings" appearing in subsection (3) and substituting therefor the words "one hundred thousand shillings or imprisonment for a term not exceeding six months";

Amendment of section 24 of Cap.257

13. Section 24 of the principal Act is amended by deleting the words "ten thousand shillings or imprisonment for a term not exceeding twelve months" and substituting therefor the words "five hundred thousand shillings or imprisonment for a term not exceeding two years".

Repeal of section 25 of Cap. 257.

14. The Nurses Act is amended by repealing section 25.

Insertion of Schedule in Cap. 257.

15. The principal Act is amended by inserting a Schedule immediately after section 25 as follows-

SCHEDULE (s.18B)

INQUIRY BY THE COUNCIL

Statement of allegation.

1. (1) The Council, member of the Council or member of the public shall prepare, or cause to be prepared, a statement, in such form as may be prescribed, setting out the allegation of professional misconduct to be investigated by the Council.

(2) The Registrar shall transmit to each member of the Council or its committee, and to the person whose conduct is the subject of investigation, a copy of the statement prepared pursuant to subparagraph (1) of this paragraph.

Notice of meeting.

2. (1) The Registrar shall give notice of the first date, time and place fixed for the inquiry to the person whose conduct is the subject of investigation.

(2) Every such notice shall, at least fourteen days, before the first date fixed for the inquiry, be delivered to the person whose conduct is the subject of investigation by hand or be sent to him through the post by registered letter addressed to his address last known to the Council.

(3) Where a person whose conduct is the subject of investigation fails to appear either personally or by his advocate at the time and place fixed in the notice served on him, the inquiry may proceed in his absence.

(4) Notice of the adjournment of an inquiry shall be given to the person whose conduct is the subject of investigation in such manner as the Council determines.

Right to representation.

3. A person whose conduct is the subject of investigation may appear at the inquiry either personally or by his advocate.

Power of Council.

4. (1) For the purpose of the conduct of the inquiry, the Council shall have power to—

- (a) administer oaths;
- (b) summon persons to attend and give evidence;
- (c) order the production of relevant documents, including court judgements; and
- (d) recover in whole or in part the costs of the inquiry not exceeding one hundred thousand shillings from any or all the parties involved in the proceedings.

(2) An oath may be administered by any member of the Council or by

the Registrar.

(3) Notices, orders and summonses of the Council shall be issued under the hand of the Registrar.

Procedure at inquiry.

5. (1) Subject to this Act, during an inquiry—

- (a) the procedure to be followed shall be within the discretion of the Council; and
- (b) the Council shall not be bound by the rules of evidence.

(2) Unless the Council otherwise determines, the proceedings on the inquiry shall be held in camera.

(3) The Registrar shall keep or cause to be kept, a record of the proceedings on the inquiry.

(4) The Registrar may attend meetings of the Council and may with the consent of the person presiding at a meeting take part in the deliberations on any matter arising at the meeting but he shall not be entitled to vote on any such matter.

Decision by majority.

6. (1) The decision of the Council on an inquiry shall be that of the majority of the members present and voting for the purpose of making a decision.

(2) For the purposes of making a decision on an inquiry, every member of the Council shall have one vote, and, in the event of an equality of votes, the chairperson shall have a casting vote.

Transition.

16. The Council existing at the commencement of this Act shall stand dissolved upon the expiration of six months after the commencement of this Act and a new Council shall be constituted in accordance with the provisions of this Act.

