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CONTENTS

No		Page
	ACT	
12	Nurses and Midwives act 1998	103

Nurses and Midwives Act 1998

Arrangements of Sections

PART I

Preliminary

Section

1. Short title and commencement
2. Interpretation

PART II

Lesotho Nursing Council

3. Establishment of the Lesotho Nursing Council
4. Functions of the Council
5. Composition of the Council
6. Tenure of office
7. Vacancy
8. Meetings of the Council
9. Disclosure of interest
10. Committees of the Council
11. Lesotho Nurses Credentials Committee
12. Registrar and staff of the Council
13. Funds of the Council
14. Accounts and audit

PART III

Register, Roll, List and index

15. Register of nurses
16. Roll of nurses and list of nursing assistants
17. Index of Index of student nurses
18. Registration
19. Post-registration, advanced and nursing specialist qualification

- 20. General provisions as to admission to register or roll
- 21. Qualifications obtained outside Lesotho
- 22. Appeal against refusal of registration, enrolment or listing
- 23. Removal from and restoration to register, roll or list
- 24. Custody and keeping of register, roll and list
- 25. Publication of copies of register, roll and list
- 26. Published copies of register, roll and list

PART IV

Education and Training

- 27. Education and training

PART V

Professional Practice

- 28. Application for and renewal of nurses practising license
- 29. Practising without a license
- 30. Private practice
- 31. Monitoring nursing, midwifery, and nurse specialist practice
- 32. Rules for professional practice

PART VI

Professional Conduct

- 33. Professional Conduct Committee
- 34. Proceedings of the Professional Conduct Committee
- 35. Powers of the Professional Conduct Committee and inquiries
- 36. Powers to impose penalties
- 37. Restoration of names to register, roll and list
- 38. Deletion from the register or roll on grounds of fraud or error
- 39. Appeals
- 40. Rules relating to Professional Conduct Committee proceedings

PART VII

Prohibitions and Restrictions

- 41. Prohibitions of falsely professing to be registered or enrolled

-
- 42. Prohibition of false assumption or use of title, badge, etc relating to registered or enrolled persons
 - 43. Fees for prohibited acts not recoverable
 - 44. Falsification of register or of roll
 - 45. Uniforms and badges

PART VIII

Miscellaneous

- 46. Protection of Council
- 47. Recovery of Council fees, etc
- 48. Proof of registration or enrolment
- 49. Notification of deaths of registered or enrolled persons
- 50. Notification of prima facie evidence of professional misconduct

PART IX

Transitional

- 51. Persons deemed to be registered, enrolled, listed or indexed
- 52. Regulations
- 53. Saving
- 54. Repeal

ACT NO. 12 OF 1998

Nurses and midwives Act 1998

An Act to establish the Lesotho Nursing Council, to make provisions with respect to the education and training, registration, the practice of nursing and midwifery, regulation of professional conduct of nurses and midwives and for related matters.

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as the Nurses and Midwives Act of 1997 and shall come into operation on a day to be fixed by the Minister by notice in the Gazette.

Interpretation

2. In the Act, unless the context otherwise requires -
 - “approved institution” means an institution approved by the Council to offer nursing, midwifery or nursing assistant education and training;
 - “Chairman” means the Chairman of the Council;
 - “committee” means a committee of the Council established under section 10;
 - “Council” means the Lesotho Nursing Council established under section 3;
 - “enquiry” means an enquiry under section 35;
 - “enrolled” means a person enrolled under this Act;
 - “enrolled nurse” means a person having trained in a recognised institution for specified period of time and is entitled as such to be admitted onto the roll;
 - “index” means an index maintained under this Act and “indexed” shall be constructed accordingly;
 - “list” means the list of nursing assistants maintained under section 16;
 - “midwife” means a person having been regularly admitted to a midwifery education programme duly recognised in Lesotho, successfully completed the prescribed course of studies in midwifery and has acquired the requisite qualification to be registered to practice midwifery;
 - “Midwife” means a person certified as such by the Council;
 - “Midwifery” means a discipline that assists individuals, families, and communities in reproductive health;
 - “Minister” means the Minister responsible for health;
 - “nurse” means a person certified as such by the Council;

“nurse specialist” means a nurse with additional qualifications and is authorised to practise as such;

“nursing assistant” means a person listed as such under section 16;

“nursing” means assisting individuals, or groups, sick or well, at all levels;

“register” means the book or document bearing the names and qualifications of professional nurses maintained under this Act and
“registered”

“registration” shall be construed accordingly;

“Registrar” means the person appointed under section 12;

“roll” means the roll maintained under this Act; and

“student nurse” means a person who is undergoing education in an approved institution.

PART II

Lesotho Nursing Council

Establishment of the Lesotho Nursing Council

3. (1) There is established the Lesotho Nursing Council, which shall be a body corporate with perpetual succession, a common seal and shall be capable of suing and being sued.

(2) The application of the seal of the Council shall be authenticated by the signature of the Chairman or some member of the Council authorised by the Council to authenticate the application of the seal thereof, and of the Registrar or some other person authorised by the Council to act in his stead in that behalf.

Functions of the Council

4. The Council shall be the governing body in matters relating to nursing and midwifery and its functions are -

- (a) to make recommendations to the Minister on matters relating to and affecting the well-being of the nursing profession;
- (b) to recommend to the Minister, the schools of nursing or other places or institutions where student nurses, midwives or other categories of nurses are to be trained;
- (c) to provide guidelines on curricula and conduct of examination;
- (d) to inspect schools of nursing or other institutions where any category of nurses is trained and warn the minister or the nursing institutions of any discrepancies regarded by the Council as detrimental to the well being of the nursing profession;

- (e) to prescribe registration fees or any other fees to be paid by a person registered, enrolled, listed or indexed under this Act;
- (f) to draw up rules for nurses;
- (g) to maintain documents relating to various categories of nurses, nursing assistants, midwives whether they are undergoing training or fully qualified;
- (h) to remove from the register, roll, list or index the name of a person who has ceased to qualify under this Act and
- (i) to prescribe the necessary requirements for persons wishing to engage in private practice.

Composition of the Council

5. (1) The Council shall be appointed by the Minister and it shall consist of the following -

- (a) the Principal Secretary responsible for health;
- (b) the Chief Nursing Officer;
- (c) a legal practitioner nominated by the Law Society;
- (d) a member of the teaching staff of the National University of Lesotho from the faculty of education;
- (e) a representative of the Christian Association of Lesotho who may not be a health professional;
- (f) 2 members of the public - a male and a female;
- (g) 10 registered nurses or midwives elected by nurses and midwives and representing the public, private, missionary and other health institutions and health care providers as follows -
 - (i) 4 nurse educators or tutors representing nursing and midwifery education programmes;
 - (ii) 3 registered nurses or midwives representing clinical practice including mental health;
 - (iii) 1 registered nurse or midwife with qualifications in community health;
 - (iv) 1 registered nurse representing the Lesotho Nurses Association.
 - (v) 1 registered nurse representing the Lesotho Nurses Association.

(2) Members of the Council may elect a chairman and a deputy chairman from among themselves both of whom shall be persons registered under this Act.

Tenure of office

6. (1) A member of the Council, other than an ex-officio member, shall hold office for a period of 3 years and shall be eligible for re-appointment.

(2) The office of a member of the Council, other than an ex-officio member, shall become vacant -

- (a) if he resigns by notice in writing through the council to the Minister;
- (b) if he is judged insolvent;
- (c) if circumstances arise which, if he were not a member of the body which nominated him, would disqualify him from appointment as such;
- (d) if he is absent from 3 consecutive meetings of the Council without the leave of the Council; or
- (e) if he has at any time been convicted of an offence involving moral turpitude.

(3) A member of the Council who misconducts himself or abuses his position may be censured by the Council or if the gravity of the matter is sufficiently serious, the Council may, by a vote of two thirds majority of the members present and voting, with the approval of the Minister, remove the member from the Council, and such removal shall be published by notice in the Gazette.

Vacancy

7. (1) If the office of a member becomes vacant, before the expiration of his term of office, whether by death, resignation or otherwise, the vacancy shall be filled in accordance with the manner in which such a person was appointed.

(2) The person appointed under subsection (1) shall hold office for the remainder of his term.

(3) If a member of the Council is granted leave of absence by the Council the Council may, if it thinks fit, fill the vacancy during the absence by co-opting to the Council a person who is a member of the same profession as the member whose place he is filling.

Meetings of the Council

8. (1) The Council shall hold its first meeting at such place on such date as the Registrar may decide:

Provided that such a meeting shall be held not more than 30 days after the appointment of the Council, and thereafter, meetings of the Council shall be held at such places and on such dates as the Council shall determine.

(2) The quorum of the Council shall be three quarters of the total number of members of whom not less than 4 shall be registered nurses or midwives.

(3) The Chairman may cause the holding of an extra-ordinary meeting where need for such a meeting arises.

(4) There shall preside at a meeting of the Council the Chairman or the Deputy Chairman or in the absence of both the Chairman and Deputy-Chairman, a member who shall be elected from amongst those present to preside over the meeting.

(5) Decisions of the Council shall be made according to the majority of votes of the members present and voting at a meeting of the Council at which a quorum is present, and, in the event of an equality of votes, the member presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(6) The Council shall cause minutes of all its meetings to be kept and record all proceedings and resolutions and the names of the Council.

(7) Save as otherwise provided in this Act, the Council may regulate its own procedure and may act validly notwithstanding a vacancy in its membership.

Disclosure of interest

9. A member of the Council who is in any way directly or indirectly interested in a transaction, project or contract made or proposed to be made by the Council shall disclose the nature of his interest at a meeting of the Council, and that member shall not take part in any deliberation or decision of the Council with respect to that transaction, project or contract.

Committees of the Council

10. Subject to this Act, Council may appoint from among its members such committees as it may deem expedient and may delegate to a committee such of its powers as it may from time to time determine and make rules for regulating the functions and proceedings of such committee.

Lesotho Nurses Credentials Committee

11. (1) There is established an examining body to be known as Lesotho Nurses Credentials Committee which may perform the examination functions of the Council subject to any directions by the Council.

(2) Members of the Credentials Committee shall -

- (a) be appointed by the Council;
- (b) be academicians or educators from the Nursing or Midwifery Programmes and the National University of Lesotho.

Registrar and staff of the Council

12. (1) There shall be a Registrar of the Council who shall be appointed by the Council.

(2) The Registrar shall, in addition to any other function imposed on him under this Act, be the Secretary of the Council and shall, in consultation with or on instructions of the chairman of any committee, convene and keep minutes of the proceedings at all meetings of the Council and of any such committee.

(3) The Council may, whenever the Registrar is absent or is for any other cause prevented from or incapable of discharging the functions of his office, appoint an acting Registrar to discharge the functions of that office.

(4) The Council may appoint other employees as it may deem fit.

(5) The Registrar and other employees of the Council shall hold office on such terms and conditions as the Council may determine.

Funds of the Council

13. (1) The funds of the Council shall consist of -

- (a) fees and other moneys payable to the Council under this Act;
- (b) such monies as may be payable to the Council out of monies appropriated by Parliament; and
- (c) such monies and assets as may vest in and accrue to the Council whether in the course of its functions or otherwise.

(2) There shall be paid from the funds of the Council -

- (a) remuneration and allowances of the Registrar and of the employees of the Council;
- (b) such reasonable travelling, transport and subsistence expenses of members and staff of the Council when engaged on the business of the Council; and
- (c) any other expenses incurred by the Council in the discharge of its functions.

Accounts and audit

14. (1) The financial year of the Council shall be the period of 12 months ending on the 31st March in each year:

Provided that the first financial year of the Council shall be the period commencing on the date when the Council holds its first meeting and ending on the 31st March next following.

(2) The Council shall -

- (a) in respect of each financial year, prepare a statement of accounts and a balance sheet showing, in all necessary details, the income and expenditure and assets and liabilities of the Council;
- (b) keep proper books of accounts and other records relating thereto.

(3) The accounts of the Council for each financial year of the Council shall be audited by the Auditor-General and, for that purpose, the Auditor-General and any other person authorised by him shall have access to all books and other

records relating to such books.

(4) The Auditor-General shall, not later than 12 months after the end of each financial year of the Council, submit a report on the accounts of the Council to the Minister and the Minister shall, not later than 7 days after the first sitting of the National Assembly, next after the receipt by him of such report, lay the report before Parliament.

(5) In the exercise of his functions under this section, the Auditor-General shall not be subject to the direction or control of any person or authority.

PART III

Register, Roll, List and Index

Register of nurses

15. The Council shall cause to be prepared and maintained a register of nurses and midwives which shall consist of -

- (a) a general part containing the names of all nurses who satisfy the conditions of admission thereto;
- (b) a part containing the names of registered nurses;
- (c) a part containing the names of registered midwives;
- (d) a part containing the names of registered nurses trained in the nursing and care of persons suffering from mental illness;
- (e) a part containing the names of registered nurses trained in the nursing of sick children;
- (f) a part containing the names of persons qualified as tutors, teachers or lecturers, as the case may be;
- (g) a part containing the names of nurses and midwives who may be temporarily resident in Lesotho; and
- (h) such other part as may be prescribed by the Council.

Roll of nurses and list of nursing assistants

16. The Council shall cause to be prepared and maintained a roll of nurses and list of nursing assistants respectively which shall consist of -

- (a) a general part containing the names of all nurses who satisfy the conditions of admission thereto;
- (b) a part containing the names of enrolled nurses and a part containing the names of enrolled midwives;
- (c) a separate list containing names of nursing assistants; and
- (d) such other parts as may be prescribed by the Council.

Index of students nurses

17. The Council shall cause to be prepared and maintained a student nurses

index which shall consist of-

- (a) a record containing the names of all students nurses who satisfy the conditions of admission thereto; and
- (b) such other records as may be prescribed.

Registration

18. (1) Where a person satisfies the conditions of admission to a part of the register or roll other than the general part thereof, his name may be included in that other part, notwithstanding that it is also included in the general part.

(2) a registered person shall not be entitled to be admitted to, nor shall his name be entered in the roll, and where any enrolled person or nursing assistant is admitted to the register under this Act, his name shall be deleted from the roll and list and he shall cease to be an enrolled person or nursing assistant.

Post-registration, advanced and nursing specialist qualification

19. A person who desires registration in respect of a qualification, other than the qualification in respect of which he has in the first instance been registered shall, upon payment of the prescribed fee and subject to prescribed conditions, upon production of such qualification, be entitled to have the qualification entered after his name in the register referred to in section 25 as an additional qualification.

General provision as admission to register, roll or list

20. (1) The Council may make Rules for regulating the conditions of admission to the register, roll or list respectively and for the conduct of any examination which may be prescribed as a condition of admission thereto and any matters auxiliary to or connected with such examinations and any such Rules shall contain provisions -

- (a) requiring as a condition for the admission of any person to the register, roll or list that, that person shall have undergone the prescribed education and training; and
- (b) requiring that the prescribed education and training shall be carried out in an institution approved by the Council.

(2) There shall be paid to the Council in respect of every application to be examined or to be registered or to be enrolled or indexed or listed such fees as the Council may, from time to time, determine.

Qualifications obtained outside Lesotho

21. A nurse who wishes to register a qualification in nursing or midwifery obtained outside Lesotho may, upon request for registration with the Council, be examined by the Council in respect of that qualification.

Appeal against refusal to registration, enrolment or listing

22. If a person seeking registration enrolment or listing is refused such registration, enrolment or listing, the Registrar shall, if required to do so, state in writing the reason for the refusal and the person refused may appeal to the High Court.

Removal from and restoration to register, roll or list

23. (1) The Council may make Rules prescribing -

- (a) the circumstances and the manner in which persons may be removed by the Council from the register, roll or list respectively; and
- (b) the circumstances and the manner in which persons who have been removed from the register, roll or list be restored thereto, and the fee payable in respect of any such restoration.

(2) A person removed by the Council from the register in accordance with the Rules made under this section shall cease to be a registered person, and any person removed by the Council from the roll or list in accordance with Rules made under this section shall cease to be an enrolled person or nursing assistant:

Provided that nothing in this sub-section shall prejudice the restoration of any person to the register, or roll in accordance with Rules made under this section.

(3) Rules made under this section shall be published in the Gazette.

Custody of register, roll and list

24. (1) The register, roll and list shall be kept in the custody of the Registrar at the office of the Council and shall be open to inspection by any person authorised to do so by the Registrar without charge during usual business hours.

(2) The Registrar shall -

- (a) prepare and maintain the register roll and list -
 - (i) correctly; and
 - (ii) in accordance with this Act;
- (b) delete from the register, roll and list the names of persons who have died;
- (c) make any necessary alterations in the register, roll or list.

(3) For the purpose of sub-section (2) it shall be the duty of every registered enrolled or listed person who changes his address to notify the fact to the Registrar within one month after the change.

Publication of copies of register, roll and list

25. (1) The Registrar shall, from time to time under the authority of the Council, cause copies of the register, the roll and the list and of supplementary lists relating thereto showing all alterations, additions and deletions made since

the last publication of the complete register, roll and list as the case may be, to be printed and published.

(2) Copies of the register, roll or list shall be printed and published in such form as the Council may decide.

Published copies or register, roll and list

26. (1) Subject to this section a copy of the register, the roll and the list, or of any supplementary record or list relating thereto, purporting to have been printed or published under the authority of the Council, shall be prima facie evidence admissible in all legal proceedings as proof of the facts stated therein, and the absence of the name of any person from such copy shall be prima facie evidence that such person is not registered, enrolled or listed, as the case may be.

(2) Where a person is registered, enrolled or listed as the case may be, after the date of the last published issue of a copy of the register, of the roll or of the list, a copy of the entries in the register, the roll or the list or other supplementary lists or records relating to that person, certified under the hand of the registrar registered, enrolled or listed or as the case may be.

(3) Where the name of a person has been deleted from the register, or from the roll, or from the list after the date of the last published issue of a copy thereof, a certificate under the hand of the Registrar stating that the name has been deleted there from shall be evidence that such person is not registered or, as the case may be, is not enrolled, listed or otherwise.

PART IV

Education and Training

Education and training

27. (1) The Council may advise the health training institutions in Lesotho as to -

- (a) the form of degree, diploma, certificate or other qualification that may be awarded to persons who have satisfied the requirements for these qualifications;
- (b) the issue of duplicates and certified copies of degrees, diplomas, certificates or other qualifications so awarded and the fees paid thereof;
- (c) the requirements to be fulfilled by persons as a condition of the award of a degree, diploma, certificate or other qualification to them including the education and training courses of instruction to be undergone and examination to be passed and exemptions from fulfilments of such requirements;
- (d) the institutions and other places at which the education and training and courses of instruction referred to in paragraph

(c) shall be undergo, the age, standard of education and character required to qualify persons to undergone such education and training and course of instruction and the supervision of persons undergoing such education and training and courses of instruction;

(e) the conduct of examinations referred to in paragraph (c) including -

- (i) the appointment and remuneration of examiners, moderators and invigilators;
- (ii) the entry and disqualification of candidates for examinations;
- (iii) the fees payable to the Council by candidates for examination; and
- (iv) the publication of examination results.

(2) In this section "health training institutions" refers to the health training institutions set out in the Schedule.

(3) The Minister may, by notice published in the Gazette, amend the Schedule.

PART V - PROFESSIONAL PRACTICE

Application for and renewal of practising licence

28. A registered nurse, enrolled nurse, midwife or nursing assistant shall renew her practising licence annually, or as shall be determined by the Council, upon payment of a prescribed fee.

Practising without a licence

29. (1) A nurse, midwife, enrolled nurse or nursing assistant who practises without a licence commits an offence and is liable on conviction to a fine not exceeding M5000.00 or to imprisonment for a period not exceeding 5 years or both.

Private Practice

30. (1) No person shall engage in private practice unless that person has fulfilled the necessary requirements as may, from time to time, be prescribed by the Council and has been duly registered with the Council.

(2) Any person who contravenes this section commits an offence and is liable on conviction to a fine no exceeding M5000-00 or to imprisonment for a period not exceeding 5 years or both.

Monitoring nursing, midwifery and nurse specialist practice

31. (1) The Council shall monitor and control nursing and midwifery practice in public, private and any other health facility or setting.

(2) Nurses, midwives, nurse specialists, enrolled nurses and nursing

assistants shall practice their profession in the facilities or settings referred to in subsection (1).

Rules for professional practice

32. The Council may make Rules to regulate the practice of nursing and midwifery under this Part.

PART VI Professional Conduct

Professional Conduct Committee

33. (1) There is established the Professional Conduct Committee of the Council which shall consist of -

- (a) the Chairman who shall be a member "ex officio"; and
- (b) 6 members who shall be appointed by the Minister, one of whom shall be a legal practitioner nominated by the council and 5 of whom shall be a persons registered under this Act.

(2) An appointed member of the Professional Conduct Committee hold office for the term of office of the Council and shall, on ceasing to be a member, be eligible for re-appointment.

(3) An appointed member of the Professional Conduct Committee may at any time, upon giving notice in writing to the Minister, resign his office.

(4) The Chairman shall preside at the meetings of the Professional Conduct Committee and in his absence, the members present shall elect one of their number to preside at that meeting.

(5) A registered person may be appointed by the Council to fill a vacancy in the Professional Conduct Committee occurring by reason of resignation, death or otherwise, but he shall hold office only so long as the member in whose stead he is appointed would have held office.

(6) During the absence from Lesotho of any appointed member of the Professional Conduct Committee, the council may appoint any registered person to be a temporary member in place of the absent member for the period of his absence or until the expiration of his term of office, whichever first occurs, and a temporary member so appointed shall be deemed for all purposes to be a member of the Professional Conduct Committee during the period.

Proceedings of the Professional Conduct Committee

34. (1) At any meeting of the Professional Conduct Committee 3 members shall form a quorum.

(2) Any question proposed for decision by the Professional Conduct

Committee shall be determined by a majority of votes of the members present at a meeting of the committee at which a quorum is present, and every member so present shall record a vote.

(3) Each member present at a meeting of the Professional Conduct Committee shall have one vote on a question proposed for decision by the Committee and in the event of any equality of votes, the Chairman, or the member presiding in the absence of the Chairman shall have a casting vote in addition to his deliberate vote.

(4) The Professional Conduct Committee shall meet as and when necessary.

Powers of the Professional Conduct Committee and inquiries

35. (1) The Professional Conduct Committee may exercise such functions as are conferred upon it by or under this part or by the Council and may conduct an inquiry into any matter referred to it for inquiry for the purpose of this Part.

(2) For the purpose of any inquiry by it, the Professional Conduct Committee may hear and receive evidence and may under the hand of the Chairman or of the Registrar subpoena witnesses and require the production of any book, record, document or thing, and may, through the Chairman, administer an oath to a witness.

(3) A person summoned to attend before the Professional Conduct Committee who, without sufficient cause -

- (a) refuses or fails to attend at the time and place specified in the summons;
- (b) having attended, refuses to be sworn; and
- (c) having been sworn -
 - (i) refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief, any question lawfully put to him; or
 - (ii) refuse to produce any book, record, document or thing which he has been required by summons to produce; or
 - (iii) gives false evidence, knowing it to be false or not believing it to be true,

commits an offence and is liable on conviction for every such refusal or failure, to a fine not exceeding M5000.00 or to imprisonment for a period not exceeding 5 years:

Provided that no person shall be compelled to answer any question or produce any book, record, document or thing which he could not be compelled to answer or produce if he were an accused person or witness, as the case may be, in criminal

proceedings in the High Court.

Power to impose penalties

36. (1) If a registered, enrolled or listed person is, after due inquiry, judged by the Professional Conduct Committee to have been guilty of misconduct, the Professional Conduct Committee may, if it thinks to fit, impose one or more of the following penalties -

- (a) direct the deletion of his name from the register, the roll or the list;
- (b) censure him;
- (c) caution him and postpone for a period not exceeding one year any further action against him on one or more conditions as to his conduct during that period;
- (d) order him to pay to the Council any cost incidental to the proceedings incurred by the Council.

(2) If a registered or enrolled person is, after due inquiry, judged by the professional Conduct Committee to have become mentally or physically disabled to the extent that the continued practice by such person of his profession is contrary to the public welfare, the Professional Conduct Committee shall direct the deletion of his name from the register or roll, as the case may be.

(3) In an inquiry under this part any finding of fact which is shown to have been made in any criminal proceedings in a court of Lesotho shall be conclusive evidence of the fact found.

(4) If after due inquiry, the Professional Conduct Committee is satisfied that during the period of any postponement under subsection (1)(c) a person has not complied with the conditions imposed thereunder, the Professional Conduct Committee may, if it thinks fit, impose any one or more of the penalties mentioned in subsection (1).

Restoration of name to register, roll or list

37. (1) Where the name of a person has been deleted from the register, roll or list in pursuance of a direction given under section 36, the Professional Conduct Committee may, if it thinks fit, at any time direct restoration of his name thereto:

Provided that an application for the restoration of a name shall not be made to the Professional Conduct Committee -

- (a) before the expiration of 6 months from date of deletion;
- (b) within a period of 6 months from the consideration by the Professional Conduct Committee of a previous application in that behalf.

(2) There shall be payable to the Council by a person on the restoration of his name to the register, roll or list in pursuance of a direction given under this section the like fees as would be payable by the person on first becoming registered, enrolled or listed as the case may be, together with any penalty as may be determined by the Council.

Deletion from the register, roll or list on grounds of fraud or error

38. (1) If the Professional Conduct Committee is satisfied, upon due inquiry, that an entry made in the register, roll or list has been fraudulently or incorrectly made, the Professional Conduct Committee may direct that the entry be deleted therefrom.

(2) A person may be registered, enrolled or listed under this Act notwithstanding that his name has been deleted in pursuance of a direction under subsection (1) but if such deletion was made on ground of fraud he shall not be registered, enrolled or listed as the case may be, except on an application in that behalf to the Professional Conduct Committee and on any such application, the Professional Conduct Committee may, if it thinks fit, direct that such person shall not be registered, enrolled or listed after the expiration of such period as may be specified in the direction.

Appeals

39. (1) Where the Professional Conduct Committee -

- (a) makes findings and imposes a penalty under section 36 on a registered, enrolled or listed person;
- (b) rejects an application for restoration of a name to the register, roll or list under section 37;
- (c) directs deletion of an entry from the register, roll or list under section 38,

the Registrar shall give notice in writing thereof to the person to whom the proceedings relate and that person may, within 90 days of the date on which notice was given, appeal to the High Court.

(2) On any appeal under this section the Council shall be the respondent.

(3) No direction under section 36 or 38 for the deletion of a name of a registered, enrolled or listed person shall take effect until the expiration of the time for appealing or, if the appeal is brought, until such time as the appeal is disposed of, withdrawn or struck out for want of prosecution, as the case may be.

(4) The Chief Justice may make rules regulating appeals to the High Court under this section.

Rules relating to Professional Conduct Committee proceedings

40. (1) The Council may make Rules as to the -

- (a) acts or omissions on the part of registered, enrolled or listed persons which shall constitute professional misconduct;

- (b) times and places of the meetings of the Professional Conduct Committee and mode of summoning the members;
 - (c) form and manner of service of summons requiring the attendance of a witness before the Professional Conduct Committee, and the production of any book, records documents or thing;
 - (d) procedure to be followed and rules of evidence to be observed in proceedings before the Professional Conduct Committee.
- (2) Rules made under this section may, in particular provide -
- (a) for the requirement that before any matters are referred to the Professional Conduct Committee they shall, in such manner as may be provided by the Rules, have been brought before and investigated by a committee set up by the Council for that purpose;
 - (b) for securing that notice of proceedings to be brought before the Professional Conduct Committee shall be given at such time and in such manner as may be specified in the Rules, to the person to whom such proceedings relate;
 - (c) for securing that any party to proceedings before the Professional Conduct Committee shall, if he so requires, be entitled to be heard by the Committee;
 - (d) for enabling any party to proceedings before the Professional Conduct Committee to be represented at such proceedings;
 - (e) for requiring proceedings before the Professional Conduct Committee to be held in public except in so far as may otherwise be provided by the Rules;
 - (f) for requiring that where, in a case in which it is alleged that a person has been guilty of misconduct in any professional respect, the Professional Conduct Committee judges that the allegation has not been proved, it shall request a finding that the said person is not guilty of such conduct in respect of the matters to which the allegation relates.

(3) Nothing in any Rules made under subsection (1)(a) shall be construed as precluding the Professional Conduct Committee from exercising its powers in relation to any person judged by it to be guilty of professional misconduct notwithstanding that such conduct is not prescribed by the Rules.

PART VII

Prohibitions and Restrictions

Prohibition of falsely professing to be registered, enrolled or listed

41. A person, not being registered, enrolled or listed who holds himself out

to be a registered, or enrolled nurse, nursing assistant or a registered or enrolled midwife, or uses any name, title, description or symbol indicating or calculated to lead persons to infer that he is such a nurse, nursing assistant or midwife commits an offence and shall be liable on conviction to a fine not exceeding M5000.00 or to imprisonment for a period not exceeding 5 years.

False assumption or use of title, uniform badge, etc. relating to registered, enrolled or listed persons

42. (1) A person who -

- (a) not being registered or enrolled takes or uses a name or title of registered nurse or registered midwife either alone or in combination with any other words or letters, or any name, title, addition, description, uniform or badge implying that he is registered or recognised by law as registered;
- (b) not being enrolled, takes or uses the name or title of enrolled nurse or enrolled midwife, either alone or in combination with any other words or letters, or any name, title, addition, description, uniform or badge implying that the person is enrolled or recognised by law as enrolled;
- (c) being a person whose name is included in any part of the register, of the roll or of the list, takes or uses any name, title, addition, description, uniform or badge, or otherwise does any act of any kind, implying that his name is included in some other part of the register or of the roll, as the case may be;
- (d) at any time, with intent to deceive, makes use of any certificate of registration, enrolment or listing issued to him or to any other person,

commits an offence and shall be liable on conviction to a fine not exceeding M5000 or imprisonment for a period not exceeding 5 years or both.

(2) A person who, knowing that some other person is not registered, enrolled or listed makes any statement or does any act calculated to suggest that the person is registered, enrolled or listed commits an offence and shall be liable on conviction to a fine not exceeding M5000.00 or imprisonment for a period not exceeding 5 years.

Fees for prohibited acts not recoverable

43. No remuneration or reward shall be recoverable by legal proceedings in respect of any act pertaining to the profession of a registered, enrolled or listed person where such act is performed by a person who is prohibited by this Act from performing such act for gain or otherwise.

Falsification of register, roll or list

44. A person who wilfully makes, or causes to be made a falsification in a matter

relating to the register, roll or list commits an offence and shall be liable on conviction to a fine not exceeding M3000.00 or imprisonment for a period not exceeding 3 years.

Uniforms and badges

45. (1) The Council may, after consultations with various organs for nurses and midwives, make rule specifying distinctive uniforms, burses or tokens which may be worn or used by registered, enrolled, listed or indexed persons respectively and prohibiting the wearing or use of such uniforms, badges or tokens or any imitation thereof by any persons not qualified to wear or use them.

(2) A person who contravenes the provisions of any rule made under this section commits an offence and shall be liable on conviction to a fine not exceeding M1,000.00 or imprisonment for a period not exceeding 1 year.

PART VIII

Miscellaneous

Protection of the Council

46. Save as provided by this Act, no civil, or criminal proceedings shall lie against the Council or any member or employee of the Council in respect of any act or duty performed in accordance with **Part VI** of this Act.

Recovery by the Council of fees, etc

47. The Council may, by action in a competent court recover any costs ordered to be paid to the Council under section 36 or any other costs payable to the Council under this Act.

Proof of registration enrolment or listing

48. If in any criminal proceedings it is proved that the accused person committed any act which constitutes an offence under this Act when performed by a person who is not registered, enrolled or listed, the accused person shall be deemed not to be registered, enrolled or listed unless he proves the contrary.

Notification of deaths of registered, enrolled or listed persons

49. If the Registrar-General of Births and Deaths receives notice of a death showing that the deceased belonged to a profession in respect of which a register, roll or list is maintained under this Act, he shall forthwith notify the Registrar of such death.

Notification of prima facie evidence of professional misconduct

50. Whenever in the course of any proceedings before any court in Lesotho it

appears to the court that there is prima facie evidence that a registered, enrolled or listed person has been guilty of misconduct in any professional respect, the court shall cause a copy of the record of such proceedings, or of such portion thereof as is material to the issue, to be transmitted to the Registrar.

PART IX

Transitional

Persons deemed to be registered, enrolled, listed or indexed

51. For the purposes of this Act, any person who, at the commencement of this Act, is registered, enrolled, listed or indexed under the Act as a nurse, midwife, nursing assistant or student nurse shall be entitled to be registered, enrolled, listed or indexed as such under this Act, and until so registered, enrolled, listed or indexed shall be deemed to be registered, enrolled, listed or indexed as such under this Act:

Provided that nothing in this section shall prevent or prejudice the exercise by any authority of any power conferred upon it by or under **part VI OR VIII** in relation to any such person.

Regulations

52. (1) The Minister may make Regulations for the carrying into effect the provisions of this Act.

(2) The Minister shall, by notice in the gazette, from time to time, review and amend the fines stipulated in this Act.

Saving

53. Nothing in this Act shall render invalid any degree, diploma, certificate or other qualification issued under the Nursing and Midwifery Order of 1993, or any standard of education or instruction attained or received, including any course of instruction or examination undergone, by any person under that Order:

Provided that nothing in this section shall prevent or prejudice the exercise by the Council of the powers conferred on it by **PART IV** of this Act in relation to any of the foregoing matters.

Repeal

54. The Nursing and Midwifery Order of 1993¹ is repealed.

NOTE

Order No. 19 of 1993

SCHEDULE

[section 27(2)]

Health Training Institutions

1. Maluti School of Nursing
2. National Health Training College
3. Paray School of Nursing
4. Roma School of Nursing
5. Scott School of Nursing

or other qualification issued under the Nursing and Midwifery Order of 1993, or any standard of education or instruction attained or received, including any course of instruction or examination undergone, by any person under that Order:

Provided that nothing in this section shall prevent or prejudice the exercise by the Council of the powers conferred on it by **PART IV** of this Act in relation to any of the foregoing matters.

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54. The Nursing and Midwifery Order of 1993¹ is repealed.

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1998

THE PARLIAMENT OF LESOTHO

NURSES AND MIDWIVES BILL 1998

EXPLANATORY MEMORANDUM

**CIRCULATED BY AUTHORITY OF
THE MINISTER FOR HEALTH AND SOCIAL WELFARE
THE HON. TEFO MABOTE**

OUTLINE

1. The purpose of the Bill is to make comprehensive provisions in relation to the nursing profession.
2. In particular the Bill sets up an autonomous Nursing Council which is the supreme governing body as far as matters related to nursing are concerned.
3. The Bill also introduces new features like the Professional Conduct Committee which determines all cases on professional Conduct.
4. Another significant feature of the Bill is in regard to education and training. The Council is empowered to make guidelines for education and training of nurses, midwives and nursing assistants.

NOTES ON CLAUSES

PART I

PART 1 - Preliminary

CLAUSE I SHORT TITLE AND COMMENCEMENT

5. The clause provides for the citation of Nurses and Midwives Act of 1998 and for its commencement date to be appointed by the Minister in the Gazette.

Clause 2 INTERPRETATION

6. This clause defines the terms used else where in the Act.

PART II

LESOTHO NURSING COUNCIL

Clause 3. ESTABLISHMENT OF THE LESOTHO NURSING COUNCIL

7. This clause provides for the establishment of the Council and its nature, and it also provides for the use of the seal and the persons with authority to sign.

Clause 4. FUNCTIONS OF THE COUNCIL.

8. This clause sets out the role played by the Council in relation to the nursing profession and to the Minister. It also specifies areas of operation in matters pertaining to the profession.

Clause 5 COMPOSITION OF THE COUNCIL

9. This clause (1) specifies persons who shall serve as members of the Council, how the membership is attained, the status and representation and it also provides for the election of the chairman and deputy chairman.

Clause 6 TUNURE OF OFFICE

10. This Clause provides that the period of service of members of the Council is 3 years but the members may be re-appointed. It also spells out the circumstances under which the office of members can become vacant. It further empowers the Council to remove a member from the Council and to publish such removal by notice in the Gazette.

Clause 7 VACANCY

11. This clause sets out the procedure to be followed to fill up the vacancies in the council, specifies the period which such members will serve and it also explains how the Council is to fill the vacancy of temporarily absent member.

Clause 8 MEETINGS OF THE COUNCIL

12. This clause stipulates the periods of holding the first and subsequent meetings, spells out the quorum, provides for an extra-ordinary meeting where necessary, specifies person who shall preside at the meetings of the Council, empowers the Council to make its decisions and stipulates conditions under which decisions shall be deemed valid and fanally it mandates keeping of proceedings and recitations during meetings.

Clause 9 DISCLOSURE OF INTEREST

13. The clause provides for a member to disclose transactions, projects or contracts in which he has an interest in a Council meeting. It further clarifies that he shall not be part of the deliberation or decision of the Council as regard to those matters.

Clause 10 COMMITTEES OF THE COUNCIL

14. This clause empowers the Council to set up committees from among its members and that it may make rules for those committees.

Clause 11 CREDENTIALS COMMITTEE

15. This clause establishes the credentials committee whose members are to be appointed by the Council.

Clause 12 REGISTRAR AND STAFF OF THE COUNCIL

16. This clause provides for the appointment of the Registrar by the Council, sets out the functions of the Registrar, where necessary provides for the Council to appoint an acting Registrar, and sets out the conditions under which such powers can be exercised and it also empowers the Council to appoint other staff members and it empowers the Council to define the terms and conditions under which the Registrar and staff shall hold office.

Clause 13 FUNDS OF THE COUNCIL

17. This clause makes provision as to how the funds of the Council shall be

obtained as follows:

money paid to the Council; money provided by the Parliament and funds accrued to the Council. It also makes provisions as to how the funds will be used that is, payment of staff, transport and any other expenses of the Council.

Clause 14 ACCOUNTS AND AUDIT

18. This clause provides for the Council to keep its accounts in order and for the accounts to be audited and presented to parliament.

PART III

REGISTER, ROLL, LIST AND INDEX

Clause 15 REGISTER FOR NURSES

19. This clause stipulates the cadres to be entered in the register. Since the list is not exhaustive, the Council is empowered to prescribe such other parts as may be deemed necessary.

Clause 16 ROLL OF NURSES AND LIST OF NURSING ASSISTANTS

20. This clause Mandates the Council to keep a roll for enrolled nurses and a list for nursing assistants. To allow for other cadres of similar category, the Council is empowered to prescribe such other parts as may be deemed necessary.

Clause 17 INDEX OF STUDENT NURSES

21. This clause provides for the indexing of student nurses and mandates the Council to keep such indexes as it may deem necessary.

Clause 18 REGISTRATION

22. This clause prescribes that if any person is to register in a part of the register or roll other than the general part of the register or roll his name may be included in that other part and it further prescribes that a person cannot be in the register and roll at the same time.

Clause 19 Post-Registration, Advanced and nursing specialist Qualifications

23. This clause prescribes the procedure to be followed in order to register an extra qualification.

Clause 20 General Provision as to admission to register, roll or list

24. This clause mandates the Council to regulate the examination and conditions of admission to the register, roll or list and it also provides for the Council to prescribe fees for registration, enrollment, listing or indexing respectively.

Clause 21 QUALIFICATIONS OBTAINED OUTSIDE LESOTHO

25. This clause sets out conditions for registration of a qualification in nursing or midwifery obtained outside Lesotho.

Clause 22 APPEAL AGAINST REFUSAL TO REGISTRATION, ENROLMENT OR LISTING

26. This clause allows a person refused entry into the register, roll and or list to appeal against such refusal and the Registrar may have to give reasons for such refusal.

Clause 23 REMOVAL FROM AND RESTORATION TO REGISTER, ROLL OR LIST

27. This clause provides for the Council to make rules for the removal and restoration of persons from and into the register, roll or list respectively. It also specifies that any person removed from the register, roll or list respectively by the Council ceases to function as such but his name may be restored to the register, roll or list under certain circumstances. It further provides for the rules made under this clause to be gazetted.

Clause 24 CUSTODY OF REGISTER, ROLL, LIST AND INDEX

28. This prescribes that the Registrar shall be responsible for the register, roll, list and index and that they all be accessible for inspection to all during working hours and that he shall maintain Register, roll list and index in good condition and keep them up to date. It also provides for notification of change of address by registered, enrolled, listed and indexed persons to the Registrar to facilitate his function in maintaining the register, roll list, and index.

Clause 25 PUBLICATION OF COPIES OF REGISTER, ROLL OR LIST

29. This clause provides for the Council to authorise the Registrar to have copies of updated register, roll or list printed and published at any time using the format the Council may decide upon.

Clause 26 PUBLISHED COPIES OF REGISTER, ROLL OR LIST

30. This clause provides that any register, roll or list provided under the authority of the Council may be used as evidence in legal proceedings.

PART IV

EDUCATION AND TRAINING

Clause 27 GUIDELINES FOR EDUCATION AND TRAINING

31. This clause provides for the Council to make guidelines governing education and training of nurses and midwives and that such guidelines must be published in the gazette.

PART V

PROFESSIONAL PRACTICE

Clause 28 APPLICATION FOR AND RENEWAL OF PRACTISING LICENCE

32. This clause requires nurses, midwives and nursing assistants to apply for and renew

their practising licences.

Clause 29 PRACTISING WITHOUT A LICENCE

33. This clause stipulates type of punishment if one practises without a licence.

Clause 30 PRIVATE PRACTICE

34. This clause provides for regulation of private practice of nurses, midwives and nurse specialists.

Clause 31 MONITORING NURSING, MIDWIFERY AND NURSE SPECIALIST'S PRACTICE

35. This Clause prescribes the power of the Council in monitoring and controlling nursing in public private practice and when nursing and midwifery can be practised.

Clause 32 RULES FOR PROFESSIONAL PRACTICE

36. This clause empowers the Council to make rules for nursing and midwifery practice.

PART VI

PROFESSIONAL CONDUCT

Clause 33 PROFESSIONAL CONDUCT COMMITTEE

37. This clause provides for the establishment and composition of the professional Conduct Committee, appointment of members, proceedings at the meetings, filling of vacancies temporarily and permanently.

Clause 34 PROCEEDINGS OF THE PROFESSIONAL CONDUCT COMMITTEE

38. This clause prescribes how meetings of the professional conduct committee are to proceed.

Clause 35 Powers of the professional conduct committee and inquires

39. This clause gives the Professional Conduct Committee the right to exercise functions conferred upon it and the conduct and inquiry to any matter referred to it for an inquiry. It empowers the professional Conduct Committee to look for, hear and receive evidence and it also list offenses that a summoned person may commit before the professional Conduct Committee and his liability on conviction.

Clause 36 Power to impose penalties

40. This clause empowers the Professional Conduct Committee to impose penalties on a registered, enrolled, or listed person found guilty of misconduct in any professional respect.

Clause 37 Restoration of names to register, roll or list

41. This clause specifies the conditions under which the Professional Conduct Committee

may direct restoration of names, which it had directed that they be removed, to the register, roll or list respectively, and fees such a person shall pay to the council.

Clause 38 Deletion from the register, roll or list on ground of fraud or error

42. This clause stipulates that if a person has been wrongly registered, enrolled or listed the Professional Conduct Committee may direct that such a person's name be deleted.

Clause 39 Appeals

43. This clause provides for the procedure that a registered, enrolled or listed person may follow if he wants to appeal to the High Court against the decisions of the Professional Conduct Committee and it also provides the Chief Justice to make rules for appeals to the High Court.

Clause 40 Rules relating to professional conduct committee proceedings

44. This clause provides for the Council to make rules that will guide the proceedings of the Professional Conduct Committee.

PART VII

Prohibitions and restrictions

Clause 41 Prohibited of falsely professing to be registered, enrolled or listed

45. This clause provides that any person who falsely claims to be or leads people to infer that he is registered, enrolled, listed under this Act, commits an offense and shall be liable on conviction to a specified fine or period of imprisonment.

Clause 42 false assumption or use of title, uniform, badge etc. relating to registered, enrolled or listed persons

46. This clause prohibits false use of title, description, uniform or badge implying that such a person is registered, enrolled or listed under this Act. Such a person commits an offence and shall be liable on conviction to a specified fine or period of imprisonment and it also provides that any person who makes false statement or does any act aimed at liable on conviction to a specified fine or period of imprisonment.

Clause 43 fees for prohibited acts not recoverable

47. This clause prohibits one from recovering remuneration or reward by legal proceeding in respect to any act pertaining to the profession of a registered, enrolled or listed person if that act is done by a person prohibited by this Act from performing such act for gain.

Clause 44 falsification of register, roll or list

48. This clause stipulates that one who deliberately give false information into the register, roll or list commits an offence and it also provides for punishment of such a person.

Clause 45 uniforms and badges

49. This clause provides that the Council shall prescribe uniform and distinguishing

devices for registered, enrolled, listed or indexed persons and control their use by unauthorized persons and prescribes the punishment for not conforming to the rule.

PART VIII

MISCELLANEOUS

Clause 46 protection of the council

50. This clause protects the council and its members against civil or criminal proceedings while performing duties in accordance with PART VI of the Act.

Clause 47 recovery by the council of fees etc

51. This clause provides for the council to recover any costs ordered to be paid to it.

Clause 48 proof of registration, enrolment or listing

52. This clause specifies that in any criminal proceedings, the accused will only be considered to be registered, enrolled or listed if there is proof of that registration, enrolment or listing.

Clause 49 notification of deaths of registered, enrolled or listed persons

53. This clause requires the Registrar-General of Births and Deaths to notify the Registrar of the death of a registered, enrolled or listed persons.

Clause 50 notification of prima facie evidence of professional misconduct

54. This clause requires any Court in Lesotho to transmit to the Registrar, a copy of the Court proceedings where a registered, enrolled or listed person has been found guilty of an offence.

PART IX

TRANSITIONAL

Clause 51 persons deemed to be registered enrolled, listed or indexed

55. This clause prescribes that one registered, enrolled listed or indexed before the inception of this Act shall be considered as such in under this Act.

Clause 52 Regulations

56. This clause empowers the Minister of Health to make regulations for the implimentation of this Act.

Clause 53 saving

57. This clause states that qualifications one obtained under previous Act will remain valid.

Clause 54 repeal

54. This clause provides that this Act repeals the Nursing and midwifery Order of 1993.