

THE NURSES AND MIDWIVES ACT, 1965

Date of commencement: 12th September, 1967.

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An Act to make provisions regarding nurses and midwives including the establishment of certain bodies in connexion with the professions.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Nurses and Midwives Act, 1965.

Interpretation.

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

“Association” means the Association established by section 25;

“Board” (Repealed A.2/1989.)

“Chairman” means, as appropriate, Chairman of the Board or of the Council or of the Executive Committee;

“College” means the Nazarene Nursing College; (Added A.2/1989.)

“Council” means the Council established by section 10;

“Director” means the Director of Medical Services;

“Director of Education” and “education officer” mean, respectively, the Director of Education and other officers in the Department of Education;

“Executive Committee” or “Committee” means the Committee established by section 28;

“inquiry” means an inquiry under Part III;

“Institute” means the Institute of Health Sciences; (Added A.2/1989.)

“medical practitioner” means a medical practitioner registered or licensed under the Medical and Dental Practitioners Act, No. 3 of 1970;

“Minister” means the Minister for Health and Social Welfare;

“nurse” includes a male nurse;

“pupil midwife” means a person whose name appears in a Register of Pupil Midwives kept under sections 6(1)(c) or 13(1)(d);

“Register” means Register kept in accordance with section 14(a) and “registered” includes deemed, by section 32, to be registered;

“Registrar” means the person appointed under section 14;

“Roll” means the Roll kept in accordance with section 14(b);

“senior nurse” means a nurse of a least ten years’ experience in nursing;

“student nurse” means a person whose name appears in a Register of Student Nurses kept under section 6(1)(c) or 13(1)(d);

“magistrate’s court” means a court constituted under the Subordinate Courts Act No. 66 of 1938;

“University” means the University of Swaziland. (Added A.2/1989.)

PART II

EXAMINATIONS

Final Professional Nursing and Midwives Examinations.

3. The University shall, in conjunction with the Institute and the College —
- (a) prescribe and conduct the Final Professional Nursing and Midwives Examinations for students of the Institute and the College;
 - (b) award such diplomas as appropriate to students who have passed the Examinations prescribed and conducted under this section;
 - (c) exercise such other powers and perform such other functions as may be necessary for the proper carrying out of the objects of this section including the formation or appointment of Committees;
 - (d) exercise such other powers and perform such other functions as may be incidental to those conferred under this section.

(Amended A. 2/1989.)

(Sections 4 — 9 Repealed.)

PART III

THE COUNCIL

Nursing Council for Swaziland.

10. (1) There is hereby established a Council to be known as the Nursing Council for Swaziland.

(2) Subject to the provisions of this Part, the Council may consider all matters affecting the nursing and midwifery professions, and make such recommendations to the Minister as it considers advisable or he requests.

Constitution of the Council.

11. (1) The Council shall consist of —

- (a) the Director as Chairman *ex officio*;
- (b) one medical practitioner (who shall be nominated by the Minister);
- (c) one education officer (who shall be nominated by the Director of Education);
- (d) one matron (who shall be nominated by the Director, after consultation with the Minister);
- (e) one sister-tutor (who shall be nominated by the Director, after consultation with the Minister);
- (f) one registered senior nurse (who shall be elected by the registered nurses to represent them);
- (g) one registered senior nurse (who shall be elected by the student nurses to represent them);
- (h) subject to subsection (3) one enrolled senior nurse (who shall be elected by enrolled nurses to represent them); and
- (i) the Chief Matron. (Added K.O-I-C. 21/1974.)

(2) An election in terms of subsection (1)(f), (g) or (h) shall be held in such manner as the Director shall determine.

(3) Pending the enrolment of nurses a senior nurse not enrolled may be elected under subsection (1)(h) and the nurses taking part in the election may be nurses who are not enrolled.

(4) The Minister shall give notice in the Gazette of the appointment of all persons to the Council, and the date of commencement of membership.

(5) A member of the Council shall hold office for three years but shall be eligible for further membership.

(6) The Council may co-opt for service on the Council, for specified periods, persons having special knowledge or experience of the nursing profession but such person shall not exercise a vote at a meeting of the Council.

(7) Where, owing to absence from Swaziland, or illness, or any other cause, a member of the Council is for any period unable to perform his functions the Chairman may appoint any other person, who is eligible for the same appointment to the Council, to act for the member during such period.

(8) A person so acting shall be entitled to vote at a meeting of the Council.

Meetings of the Council.

12. (1) Where the Chairman is absent from a meeting of the Council, the members present shall elect one of themselves to preside.

(2) A person elected under subsection (1) shall, during the absence of the Chairman, perform all the functions of the Chairman.

(3) A least two ordinary meetings of the Council shall be held annually.

(4) The Chairman —

- (a) may, in his discretion, call an additional or a special meeting, and
- (b) shall call such meeting upon the written requisition of at least three members if the requisition states clearly the purpose for which the meeting is to be convened.

- (5) Five members constitute a quorum of the Council.
- (6) The decision of the majority of the members present and voting at a meeting shall be the decision of the Council.

Regulations.

13. (1) The Minister may, after consultation with the Council, make regulations —
- (a) prescribing the qualifications to be held and the conditions to be complied with to entitle a person to be registered or enrolled under section 15, including —
 - (i) the nature and period of training required,
 - (ii) the Examination to be passed, and
 - (iii) the payment of specified fees in respect of registration or enrolment;
 - (b) prescribing the conditions for the removal of names from the Register and Roll and, where necessary, the restoration of names to the Register and Roll;
 - (c) prescribing uniforms, badges and other distinguishing devices for persons registered or enrolled and requiring the wearing of those uniforms, badges or devices when on duty;
 - (d) prescribing curricula, approving schools of nursing and hospitals as schools for nurses, appointing examiners, prescribing Examination fees, the maintenance of a Register of Student Nurses and Pupil Midwives, the conduct of Examinations and the grant of certificates to successful candidates;
 - (e) appointing such officers of the Council as may be necessary and prescribing their functions and conditions of service;
 - (f) prescribing the fees and other allowances to be paid, out of funds appropriated for the purpose by the Parliament, to members, officers and other persons co-opted for service upon the Council, while they are engaged upon the service of the Council;
 - (g) providing for anything which, under this Act, is to be or may be prescribed; and
 - (h) which are otherwise necessary or expedient for carrying out the functions of the Council or otherwise for implementing the objects of this Act.
- (2) Regulations made under subsection (1) shall be published in the Gazette.
- (3) No person who is not registered or enrolled as such (although qualified to be registered or enrolled) shall practise for gain as a nurse or midwife, as the case may be.
- (4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence and liable on conviction to a fine of one hundred emalangeni.

Appointment of Registrar.

14. The Council shall appoint a Registrar to keep a Register and a Roll under its direction for the purposes mentioned in section 15(1) and 16(1).

Registration or enrolment of nurses and midwives.

15. (1) The Council shall direct the registration or enrolment, as the case may be, of the name and qualifications of a nurse or midwife who holds the prescribed qualifications, complies with the prescribed conditions, and pays the appropriate prescribed fee.

(2) No person who is not registered or enrolled as such shall —

- (a) make use of the title “registered nurse” or “enrolled nurse” or “registered midwife” or “enrolled midwife”, as the case may be; or
- (b) hold himself out directly or indirectly, as being so registered or enrolled; or
- (c) wear any uniform, badge or other distinguishing device prescribed for nurses or midwives so registered or enrolled or wear a colourable imitation of such a device.

(3) No person who is not registered or enrolled as such (although qualified to be registered or enrolled) shall practise for gain as a nurse or midwife, as the case may be.

(4) Any person who contravenes subsection (2) or (3) shall be guilty of an offence, and liable on conviction to a fine of one hundred emalangeni.

Registration of additional qualifications.

16. (1) A degree, diploma or other certificate which is a prescribed qualification, not already registered or enrolled shall be registered or enrolled as the case may be upon payment of the prescribed fee, in respect of the name of the person desiring to have it so registered or enrolled.

(2) A registered or an enrolled person shall not take, use or publish a name, title, description or symbol indicating, or calculated to lead persons to infer, that he possesses a qualification not registered or enrolled, as the case may be, in respect of his name.

(3) A person who contravenes subsection (2) shall be guilty of an offence and liable on conviction to a fine of one hundred emalangeni.

Swaziland members of the Board.

17. The Chairman of the Council shall submit to the Minister the names of the members of the Council for the purpose of the nomination by him of members of any Committee formed or appointed by the University in conjunction with the Institute and the College under section 3. (Amended A. 2/1989)

Inquiry by the Council into improper or disgraceful conduct.

18. Without prejudice to any proceedings for an offence the Council may, in the prescribed manner, inquire into a complaint, charge or other allegation of improper or disgraceful conduct against a registered or enrolled person whether such conduct relates to the profession of such person or whether it is prescribed as constituting improper or disgraceful conduct.

Proceedings at an inquiry.

19. (1) Section 10(2), (3) and (7) of the Constitution shall, *mutatis mutandis*, apply with respect to an inquiry under section 18:

Provided that this section shall not be construed as entitling a person to legal representation at public expense.

(2) Except with the agreement of all parties thereto all proceedings of every inquiry including the announcement of the decision shall be held in public:

Provided that the Council may exclude from the proceedings persons other than the parties thereto and their legal representatives to such extent as it may by law be empowered —

- (a) to do and may consider necessary or expedient in the circumstances where publicity would prejudice the interest of justice or in interlocutory proceedings or in the interests of morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings; or
 - (b) required to do in the interest of defence, public safety or public order.
- (3) For the purpose of such inquiry, the Council may —
- (a) take evidence;
 - (b) summon under the hand of the Chairman or other member presiding persons to give evidence or to produce records or other documents and things;
 - (c) through the Chairman or other member presiding, administer an oath or accept an affirmation and declaration in lieu of an oath; and
 - (d) examine any record, document or thing produced to it.
- (4) A summons mentioned in subsection (3)(b) shall be —
- (a) in a form approved by the Minister; and
 - (b) served by post or in the same manner as a subpoena is served in a criminal case in a magistrate's court.
- (5) A person summoned in connexion with such inquiry shall —
- (a) not be bound to incriminate himself, and
 - (b) subject to this section, be entitled to the same privileges and fees (at the expense of the Council) as those of a witness in a criminal case before a magistrate's court.
- (6) A person who is summoned and who —
- (a) without reasonable excuse, fails to comply with the terms of the summons; or
 - (b) saving any lawful objection, refuses to be sworn or to take an oath or to make an affirmation or declaration or to answer fully and satisfactorily, to the best of his knowledge and belief, a question lawfully put to him;

shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni.

(7) Any person who having taken an oath or made an affirmation and declaration, gives false evidence at an inquiry knowing the evidence to be false, or not believing it to be true, shall be guilty of an offence and liable on conviction to the same penalty as is prescribed at common law for perjury.

(8) Where the evidence in support of an allegation is documentary, or the Council thinks fit the Registrar may, as *pro forma* complainant, institute an inquiry.

(9) The Council may appoint a legal practitioner as an assessor to be present at an inquiry to advise it on matters of law, procedure and evidence.

(10) Where a complainant or a defendant expresses to the Council a desire to have persons summoned to give evidence, or to produce records or other documents or things, at the inquiry, it may exercise the powers under subsection (3)(b).

(11) Where the Council so summons a person, it may —

- (a) if it thinks fit, require the person, at whose instance the summons is issued, to deposit a sum sufficient to cover the costs thereby incurred; and
- (b) pay those costs out of the amount so deposited.

Proof of improper or disgraceful conduct.

20. The conviction by a court of a registered or enrolled person (whether such conviction was before or after his registration or enrolment) of an offence the commission of which, in the opinion of the Council, constitutes improper or disgraceful conduct shall for the purpose of an inquiry unless the contrary is proved be proof of improper or disgraceful conduct by that person.

Punishments.

21. Where, at an inquiry, the Council finds the allegation has been proved, it may impose on the person —

- (a) a caution or reprimand or both; or
- (b) suspension, for a specified period, from practising in Swaziland in a capacity in which he is registered or enrolled; or
- (c) cancellation of his registration or enrolment and the removal of his name from the Register or Roll.

Appeal to the High Court.

22. (1) Within thirty days after the date of the finding of the Council under section 21, a person aggrieved by the finding of or a punishment imposed by the Council may appeal to the High Court.

(2) The High Court may uphold the finding, or set it aside, or direct the Council to take whatever other action the court considers appropriate and shall make such order as to costs as it deems appropriate.

(3) The Chief Justice may make rules as to the procedure and practice in relation to an appeal under this section, including the fees to be paid, and the giving of security for costs.

Council's power after award of punishment.

23. The Council may, if it thinks fit —

- (a) before the expiry of the period specified under section 21(b), terminate a suspension; or
- (b) restore to a Register or Roll a name removed under section 21(c).

Protection against legal proceedings.

24. Except as provided in this Act, legal proceedings, whether civil or criminal, shall not lie against the Council, or a member or officer thereof, in respect of any function or other act performed *bona fide* under sections 18 to 23 inclusive.

PART IV

SWAZILAND NURSING ASSOCIATION

Swaziland Nursing Association.

25. (1) There is hereby established an Association to be known as the Swaziland Nursing Association.

(2) The Association shall be a body corporate and may, in its corporate name, sue and be sued.

(3) The law relating to trade unions shall not apply to the Association.

(4) The Association shall consist of —

(a) all nurses and midwives who are registered or enrolled, to be known as senior members; and

(b) all student nurses and pupil midwives in training in Swaziland, to be known as junior members;

who pay the fee payable under section 30(a).

Objects of the Association.

26. The objects of the Association are —

(a) to provide an efficient and adequate nursing and midwifery service in Swaziland;

(b) to raise the status, maintain the integrity and promote the interests of the nursing and midwifery professions in Swaziland; and

(c) to consider and, subject to this Act, deal with all matters affecting nurses and midwives, and student nurses and pupil midwives, in Swaziland.

Meetings of the Association.

27. (1) There shall be at least one meeting of the Association a year.

(2) A decision of the majority of the members of the Association present and voting at a meeting shall be the decision of the Association.

Executive Committee of the Association.

28. (1) The conduct of the Association is hereby vested in a Committee, to be known as the Executive Committee, which, subject to the directions of the Association, may pursue the functions and objects of the Association under this Act.

(2) Subject to subsection (4), the Committee shall be composed of a prescribed number of members of the Association from each district elected, in the prescribed manner, by members of the Association resident, at the time of the election, in the district.

(3) A quorum of the Committee shall be as prescribed.

(4) A nurse who is a member of the Council shall not be eligible for election to the Committee.

(5) A member of the Committee shall hold office for three years and be eligible for further election.

Meetings of the Executive Committee.

29. (1) At its first meeting and, subsequently, at its first meeting of every calendar year, the Committee shall elect, from amongst the members present a Chairman, and such other officers as it considers necessary.

(2) Where the Chairman is absent from a meeting, the Committee shall elect a member present to preside at the meeting.

(3) A decision of a majority of the members of the Committee present and voting at a meeting shall be the decision of the Committee.

(4) A meeting of the Committee shall be held at least twice a year, and at such other times as the Committee may decide.

Functions of the Association.

30. The Association shall —

- (a) specify the fees payable for membership of the Association;
- (b) subject to paragraph (d), decide upon the use to which the funds of the Association are to be put;
- (c) take such steps as it may deem necessary to safeguard or improve the conditions of service of nurses and midwives, and student nurses and pupil midwives, making such representations, on their behalf, as the Association may deem necessary or expedient;
- (d) undertake, subsidize or otherwise support the publication of a nursing journal;
- (e) bring to the notice of the Council any complaint of improper or disgraceful conduct on the part of any member of the Association; and
- (f) do such other things as the Association may deem necessary or expedient for the exercise of its functions under this Act.

PART V
GENERAL

Saving.

31. (1) If immediately prior to the commencement of this Act a person's name appeared or was entitled to appear in a Register specified in section 12 or 13 of the Nurses and Midwives Proclamation (*Cap. 53*), he shall be entitled to have his name registered as a nurse, midwife, student nurse, or pupil midwife as the case may be under this Act.

(2) Where a course of training was undertaken in terms of that Proclamation and is of the same nature and period as that prescribed by this Act, the training shall be deemed to have been undertaken in terms of this Act.