

NURSING COUNCIL BILL

(No. of 2003)

Explanatory Memorandum

The objects of this Bill are –

- (a) to repeal and replace the Nursing Council Act of 1992 and to make further and better provisions for the establishment, composition and functioning of a Nursing Council;
- (b) to confer power on the Nursing Council to provide for and better the Code of Practice for the nursing and midwifery professions;
- (c) to establish a disciplinary Tribunal to investigate any matter of fraud, dishonest practices, negligence, professional misconduct or malpractice or any breach of the Code of Practice referred to it by the Nursing Council, with specific provisions being made for public officers;
- (d) to better regulate and control the nursing and midwifery professions through a system of registration;
- (e) to provide for penal sanctions in cases of illegal practice of nursing or midwifery.

....., 2003

A.K. JUGNAUTH

Minister of Health and Quality of Life

NURSING COUNCIL BILL

(No. of 2003)

ARRANGEMENT OF CLAUSES

Clause

PART I - PRELIMINARY

1. Short title
2. Interpretation

PART II - THE COUNCIL SUBPART A – ESTABLISHMENT AND FUNCTIONS OF THE COUNCIL

3. Establishment of Council
4. Composition of Council
5. Tenure of office of members
6. Vacation of office of member

7. Filling of vacancies on Council
8. Chairperson of Council
9. Meetings of Council
10. Registrar
11. Appointment of employees
12. Functions of Council

SUBPART B – DISCIPLINE

13. Preliminary investigation by Council
14. Disciplinary proceedings
15. Reference to Tribunal
16. Membership of Tribunal

17. Disciplinary measures
18. Disciplinary measures following conviction
19. Summary proceedings

PART III - REGISTRATION

20. Registers
21. Application for registration
22. Registration as general nurse
23. Registration as mental health nurse
24. Registration as midwife
25. Registration as state enrolled nurse or assistant nurse
26. Temporary registration
27. Visitors
28. Certificate of registration
29. Additional qualifications
30. Annual list

PART IV - MISCELLANEOUS

31. Seal of Council
32. Validity of documents
33. Remuneration and immunity

34. Duty of disclosure
35. Deficiency in quorum
36. Restoration of name to register
37. Illegal practice of nursing or midwifery
38. Exemptions from application of Act
39. Funds and audit
40. Power to make regulations
41. Powers of the Minister
42. Offences
43. Repeal

PART V - SAVINGS AND TRANSITIONAL

44. Continuance of pending proceedings
45. Saving of membership
46. Saving of appointment
47. Saving of registration
48. Saving of annual list
49. Transfer of assets and liabilities
50. Agreements
51. Saving of Code of Practice
52. Commencement

A BILL

To repeal and replace the Nursing Council Act of 1992 and to make further and better provisions for the establishment, composition and functioning of a Nursing Council, to establish a disciplinary Tribunal and to better regulate and control the nursing and midwifery professions

ENACTED by the Parliament of Mauritius, as follows –

PART I - PRELIMINARY

1. Short title

This Act may be cited as the Nursing Council Act 2003.

2. Interpretation

In this Act –

“annual list” means the annual list of nurses and midwives published under section 30;

“certificate in basic nursing” means a certificate or other similar qualification obtained after having successfully undergone at least two-year full time or 3480 hours training in basic general or psychiatric nursing in a recognised nursing institution;

“certificate in general nursing” means a certificate or other similar qualification obtained after having successfully undergone a three-year full time training in general nursing in a recognized nursing institution;

“certificate in midwifery” means a certificate or other similar qualification obtained after having successfully undergone at least two-year full time training in midwifery in a recognised nursing institution or one year post basic course in midwifery;

"Chairperson" means the Chairperson of the Council;

“Code of Practice” means the code of practice established under section 12(f);

"Council" means the Nursing Council established under section 3;

“diploma in mental health nursing” means a diploma or similar qualification obtained after having successfully undergone at least three-year full time training in psychiatric nursing or 15 months post-basic course in psychiatric nursing in a recognized nursing institution;

"diploma in nursing" means a diploma or similar qualification obtained after having successfully undergone at least three-year full time training in general nursing in a recognised nursing institution;

"general nurse" means a person who is registered as such under section 20;

"mental health nurse" means a person who is registered as such under section 20;

"midwife" means any person registered as such under section 20;

"Minister" means the Minister responsible for the subject of health;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for the subject of health;

"recognised nursing institution" means a school, university, college, faculty or other similar body which is authorised under the laws of a country to provide courses leading to nursing or midwifery and is prescribed by regulations made by the Minister after consultation with the Council or other relevant bodies;

"register" means a register kept under section 20;

"registered nurse" means a general nurse or a mental health nurse;

"registered person" means a person whose name is on one of the registers kept under section 20;

"Registrar" means the Registrar of the Council appointed under section 10;

"state enrolled nurse or assistant nurse" means a person whose name is registered as such under section 20;

"Tribunal" means the Medical Disciplinary Tribunal set up under section 15 of the Medical Council Act, and constituted in such manner or provided for in section 16.

PART II - THE COUNCIL

SUBPART A - ESTABLISHMENT AND FUNCTIONS OF THE COUNCIL

3. Establishment of Council

(1) There is established for the purposes of this Act a Council which shall be known as the Nursing Council of Mauritius.

(2) The Council shall be a body corporate.

4. Composition of Council

(1) The Council shall consist of –

- (a) 12 persons elected from among registered nurses or midwives having at least 10 years' experience in accordance with the rules set out in the Schedule to this Act;
- (b) a representative of the Ministry responsible for the subject of health;
- (c) a representative of Attorney-General's Office;
- (d) a representative of Prime Minister's Office;

(e) 4 persons, not being in the profession of nursing or midwifery, appointed by the Minister.

(2) The composition of the Council shall be published in the *Gazette*.

5. Tenure of office of members

The members of the Council shall hold office for a period of three years and shall be eligible for re-appointment or re-election, as the case may be.

6. Vacation of office of member

(1) The Council may require a member to vacate his office if he -

(a) commits a gross negligence, misconduct, default or breach of trust in the discharge of his duties, as a member or otherwise, which in the opinion of the Council renders him unfit to be a member;

(b) is incapacitated by prolonged physical or mental illness;

(c) is convicted of an offence of such a nature as, in the opinion of the Council, renders him unfit to be a member;

(d) is absent without leave of the Council from three consecutive meetings of the Council of which he had notice;

(e) is disqualified under this Act from practising his profession as a nurse or midwife.

(2) A member may resign by giving notice in writing to the Registrar.

(3) Where a member resigns under subsection (2), his seat shall become vacant when the Registrar receives the notice.

(4) The Council may suspend a member against whom -

(a) criminal proceedings are instituted for an offence punishable by imprisonment;

(b) disciplinary proceedings are instituted -

(i) by the Council; or

(ii) in the case of a public officer, by the Public Service Commission,

on any ground involving fraud, dishonesty, gross negligence, infamous conduct or breach of the Code of Practice.

7. Filling of vacancies on Council

(1) Where a member of the Council dies, retires, resigns or is removed from office, the vacancy thereby caused shall be filled, for the remaining period of the term of office, -

- (a) in the case of a member appointed by the Minister, by a fresh appointment;
- (b) in the case of an elected member by appointing the person who obtained the highest number of votes in the relevant category of nurses or midwives, as appropriate, after the elected members at the previous election held in accordance with the provisions of the Schedule;
- (c) where no person is qualified for appointment under paragraph (b), by holding of a fresh election for that category.

(2) Where a member absents himself with the approval of the Council for a continuous period of six months or more, the Council may cause him to be replaced by a new member appointed in the manner specified in subsection (1)(a) or 1(b) as the case may be, for the period during which the member absents himself.

8. Chairperson of Council

(1) The Council shall elect a member who is elected under section 4(1) as its Chairperson.

(2) The Chairperson shall preside at every meeting of the Council and shall have the right to vote.

(3) The Chairperson shall, in the event of an equality of votes, have a casting vote.

(4) Where the Chairperson is absent from a meeting the members present shall elect one of the members elected under section 4(1) to chair the meeting, and in case of prolonged absence, a temporary chairperson shall be elected.

(5) A member who intends to stand as candidate for the office of Chairperson under subsection (1) shall, not less than 3 days before the date fixed for the election of the Chairperson, notify the Registrar by registered post of his intention.

9. Meetings of Council

(1) Ten members shall constitute a quorum at any meeting.

(2) The validity of any decision, proceeding or act of the Council or act done on the authority of the Council shall not be affected by –

- (a) any vacancy among the members thereof;
- (b) any defect in the appointment of a member thereof; or
- (c) the fact that a person who was not entitled to participate in the deliberation of the Council, did so.

(3) The Council shall meet at least 3 times each year and shall be convened by the Registrar.

(4) A special meeting of the Council -

(a) may be convened by the Chairperson at any time;

(b) shall be convened by the Registrar within 7 days of the receipt by him of a request in writing signed by not less than 10 members of the Council and specifying the purpose for which the meeting is to be convened.

(5) The Council may set up a Committee of 2 or more members for such purpose as it may determine.

10. Registrar

(1) There shall be a Registrar who shall be a registered nurse or midwife.

(2) The Registrar shall be appointed by the Council and shall hold office on such terms and conditions as the Council thinks fit.

(3) The Registrar shall be responsible to the Council for -

(a) the proper administration of the Council;

(b) executing the decisions of the Council; and

(c) carrying out such duties as may be assigned to him by the Council.

(4) In the exercise of his functions, the Registrar shall act in accordance with such directions as he may receive from the Council.

(5) The Registrar shall also be the Secretary to the Council.

(6) Where the Registrar is for any reason unable to carry out his functions, the Council may appoint another person to act as Registrar.

(7) The service of any summons, notice or process by or on behalf of the Council shall be sufficient if made by or on behalf of the Registrar.

11. Appointment of employees

(1) The Council may, on such terms and conditions as it thinks fit appoint such employees as it considers necessary for the proper discharge of its functions under this Act.

(2) Every employee of the Council shall be under the administrative control of the Registrar.

12. Functions of Council

The Council shall -

(a) exercise and maintain discipline in the practice of nursing and midwifery;

- (b) establish and maintain registers kept under section 20;
- (c) advise the Minister on any matter governed by the provisions of this Act or any matter connected therewith or incidental thereto;
- (d) advise the Minister on the establishment and improvement of the standards of education of nurses and midwives;
- (e) promote the education and training of nurses and midwives;
- (f) establish such code of practice for the nursing and midwifery professions and monitor compliance with such code; and
- (g) publish the annual list.

SUBPART B - DISCIPLINE

13. Preliminary investigation by Council

(1) The Council may investigate any complaint of dishonest practices, negligence, professional misconduct or malpractice, infamous conduct, or any breach of the Code of Practice against a registered person, provided that in the case of a public officer the prior approval of the Responsible Officer is obtained.

(2) Where the Council investigates a complaint -

- (a) it shall notify the person whose conduct, act or omission is under investigation of the nature of the complaint;
- (b) it may summon and hear the person;
- (c) it may summon and hear witnesses; and
- (d) it may call for relevant documents and make such copies thereof as it thinks fit.

(3) The Council shall keep a proper record of its proceedings under subsection (2).

(4) Notwithstanding section 9(1), for the purposes of an investigation under subsection (1), the Council may appoint an Investigating Committee of not less than 3 members.

(5) Where, in the course of an investigation, a person refuses to give evidence or, to communicate any document, on the ground of confidentiality, the Registrar may apply to a Judge sitting in Chambers for an order directing that person to disclose the evidence required, or to communicate any document needed for the purposes of the investigation.

(6) The Judge shall make an order under subsection (5) where he is satisfied that the information or document the disclosure of which is sought is bona fide required for the purposes of the investigation.

14. Disciplinary proceedings

(1) Where after having carried out a preliminary investigation under section 13, the Council is satisfied that a registered person has committed -

- (a) a breach of the Code of Practice;
- (b) an act of dishonesty or negligence; or
- (c) an act of professional misconduct or malpractice;
- (d) any other act likely to bring the nursing or midwifery profession into disrepute,

the Council may institute disciplinary proceedings against the registered person before the Tribunal.

(2) Notwithstanding subsection (1), where after the preliminary investigation, the Council considers that -

- (a) there is prima facie evidence of gross negligence, incompetence, or serious misconduct on behalf of a registered person; and
- (b) public interest requires that the registered person should instantly cease to practice nursing or midwifery,

the Council may, suspend the registered person from the practice of nursing or midwifery until a decision is taken under section 17(4), provided that in the case of a public officer, the prior approval of the Responsible Officer and the Public Service Commission is obtained.

15. Reference to Tribunal

(1) Where -

- (a) after an investigation under section 13, the Council is of the opinion that disciplinary proceedings should be instituted against a registered person; or
- (b) pursuant to section 89(2) of the Constitution, the Public Service Commission refers to the Council a case of alleged negligence or professional misconduct against a registered person who is a public officer,

the Council shall refer the matter for hearing to the Tribunal.

(2) Notwithstanding subsection (1)(a), the Council shall not refer a case involving a public officer before the Tribunal unless the approval of the Public Service Commission is obtained.

16. Membership of Tribunal

(1) Notwithstanding section 15 (2)(b) of the Medical Council Act, in relation to a matter referred to the Tribunal under section 15, the Prime Minister shall, subject to subsections (2) and (3), appoint 2 persons -

- (a) one of whom shall be a registered nurse or midwife and the other a medical practitioner; and
 - (b) have at least 10 years' experience in the practice of nursing, midwifery or medicine as appropriate,
- as members of the Tribunal.

(2) The Prime Minister shall not appoint a member of the Council as a member of the Tribunal.

(3) The Prime Minister may appoint a person who is not registered under this Act as member of the Tribunal, if the Prime Minister is satisfied that the person -

- (a) has wide experience in the practice of nursing, midwifery or medicine; and
- (b) is registered as nurse, midwife or medical practitioner outside the Republic of Mauritius.

17. Disciplinary measures

(1) The Tribunal shall, after having enquired into the matter, forward its report to the Council as soon as practicable and at any rate not later than one month from the termination of the proceedings.

(2) The report of the Tribunal shall include -

- (a) a statement as to whether the charge has been proved and a brief statement of the reasons for those findings;
- (b) details of any matters which, in the Tribunal's opinion aggravate the charge or alleviate the gravity of the charge; and
- (c) the record of the proceedings of the Tribunal.

(3) The Tribunal shall not make any recommendation regarding the form of punishment.

(4) Subject to subsections (8) and (9), where the Council receives a report from the Tribunal under subsection (1) stating that the charge has been proved, it may -

- (a) administer a warning or a severe warning to the registered person;
- (b) administer a reprimand or a severe reprimand to the registered person;
- (c) suspend the registered person from the practice of nursing or midwifery for a period not exceeding 12 months; or
- (d) remove the name of the registered person from the register.

(5) The decision of the Council under subsection (4) shall be communicated to the registered person as soon as reasonably practicable and at any rate not later than 15 days from the date the Tribunal arrives to the decision.

(6) A registered person aggrieved by the decision of the Council may appeal to the Supreme Court by way of judicial review.

(7) Where -

- (a) a registered person has been suspended under subsection (4) or section 14 (2); or
- (b) the name of a registered person has been removed from the register under section 17 (4)(d);

such suspension or removal shall not be stayed pending the determination of any related appeal.

(8) Where the registered person is a public officer the Council shall refer the report of the Tribunal to the Public Service Commission, with such recommendations as it may deem necessary, for the Public Service Commission to take such appropriate action as it may deem necessary.

(9) Where the Public Service Commission has dismissed the registered officer from the public service as a result of action taken under subsection (8), the Council may after having given him an opportunity to show cause in writing why disciplinary measures specified in sub-section (4) should not be taken against him, take against him any measure specified in that subsection.

18. Disciplinary measures following conviction

(1) Where a registered person, who is not a public officer, has been convicted of a criminal offence involving negligence, professional misconduct, fraud or other dishonesty in the exercise of his calling, the Council may after giving him an opportunity to show cause in writing why disciplinary measures should not be taken against him, take against him any of the measures specified in section 17(4).

(2) Where a registered person, who is a public officer, has been dismissed from service under regulation 36 of the Public Service Commission Regulations, the Council may, after giving him an opportunity to show cause in writing why disciplinary

measures should not be taken against him, take against him any measure specified in section 17(4).

19. Summary proceedings

Notwithstanding section 15, the Council may, without reference to the Tribunal and after an investigation carried out under section 13, inflict on a registered person, who is not a public officer -

- (a) a warning;
- (b) a severe warning;
- (c) a reprimand; or
- (d) a severe reprimand.

PART III - REGISTRATION

20. Registers

- (1) The Registrar shall keep –
 - (a) a register for general nurse;
 - (b) a register for mental health nurse;
 - (c) a register for midwife,
 - (d) a register of state enrolled nurse and assistant nurse;
 - (e) a register of temporary registered nurse and midwife; and
 - (f) such other register as the Council may determine.

- (2) The Registrar shall enter in the appropriate register -
 - (a) the names, addresses, qualifications and other particulars of every person who is registered;
 - (b) any alterations in the names, addresses, qualifications and other particulars of registered persons;
 - (c) an annotation as to whether a registered person -
 - (i) has died;
 - (ii) has been struck off as a registered nurse or midwife or state enrolled nurse or assistant nurse;
 - (iii) has been suspended from practising as a nurse, midwife, or state enrolled nurse or assistant nurse;
 - (iv) has left Mauritius with the intention of settling abroad.

- (d) any other information he may with the approval of Council consider necessary.

21. Application for registration

(1) Every person who wishes to be registered under section 20 shall apply in person to the Registrar and in such form as may be approved by the Council.

(2) An applicant under subsection (1) shall submit along with his application -

- (a) the original or a certified copy of his qualifications;
- (b) a certified translation in English or French of the qualification where the qualification is in a language other than English or French;
- (c) his birth certificate or any official documentary evidence; and
- (d) such other particulars as the Council may reasonably require.

(3) A foreign applicant under subsection (1) shall in addition to the requirements under subsection (2), submit a syllabus of the training programme followed and a morality certificate from his country of origin.

(4) Where the Registrar is satisfied that an applicant qualifies for registration under this Act, he may cause the name of the applicant to be entered into the appropriate register and inform the Council accordingly.

(5) Where the Registrar does not register an applicant under subsection (3), the Registrar shall refer the application to the Council for its decision.

(6) Where the Council decides to register an applicant, the applicant shall be so registered.

(7) Where the Council refuses to register an applicant, the Registrar shall notify the applicant accordingly, stating the reasons for the refusal.

22. Registration as general nurse

A person may register as general nurse if he –

- (a) is a citizen of Mauritius;
- (b) holds a certificate or diploma in general nursing;
- (c) is of good character and has not been convicted of any offence involving fraud or other dishonesty;
- (d) has not been removed from the list of nurses under the laws of any country on account of any infamous conduct, professional misconduct, negligence or malpractice;

- (e) does not suffer from any mental or physical incapacity which may hamper him in the discharge of his duties; and
- (f) has paid such fee as may be prescribed by the Council.

23. Registration as mental health nurse

A person may register as a mental health nurse if he –

- (a) is a citizen of Mauritius;
- (b) holds a diploma in psychiatric nursing;
- (c) is of good character and has not been convicted of any offence involving fraud or other dishonesty;
- (d) has not been removed from the list of nurses under the laws of any country on account of any infamous conduct, professional misconduct, negligence or malpractice;
- (e) does not suffer from any mental or physical incapacity which may hamper him in the discharge of his duties; and
- (f) has paid such fee as may be prescribed by the Council.

24. Registration as midwife

A person may register as a midwife if she -

- (a) is a citizen of Mauritius;
- (b) holds a certificate in midwifery;
- (c) is of good character and has not been convicted of any offence involving fraud or other dishonesty;
- (d) has not been removed from the list of midwife under the laws of any country on account of any infamous conduct, professional, negligence or malpractice;
- (e) does not suffer from any mental or physical incapacity which may hamper her in the discharge of her duties; and
- (f) has paid such fee as may be prescribed by the Council.

25. Registration as state enrolled nurse or assistant nurse

A person may be registered as a state enrolled nurse or assistant nurse if he -

- (a) is a citizen of Mauritius
- (b) holds a certificate in basic nursing;

- (c) is of good character and has not been convicted of an offence involving fraud or other dishonesty;
- (d) has not been removed from the list of nurse under the laws of any country on account of any infamous conduct or any professional misconduct, negligence or malpractice;
- (e) does not suffer from any mental or physical incapacity which may hamper the discharge of his duties;
- (f) is employed by the state as a nurse or assistant nurse; and
- (g) has paid such fee as may be prescribed by the Council.

26. Temporary registration

Notwithstanding sections 22(a), 23(a) and 24(a), a person may be temporarily registered as a nurse, mental health nurse, state enrolled nurse or assistant nurse, or midwife where he –

- (a) satisfies the requirements of sections 21, 22, 23, 24 or 25;
- (b) holds a work permit or is exempted from holding a permit under the Non-Citizens (Employment Restriction) Act;
- (c) has paid such fees prescribed by the Council.

27. Visitors

- (1) Where a person who is not a citizen of Mauritius -
 - (a) is engaged in the implementation of a scheme agreed upon by the Government of Mauritius and the World Health Organisation or other similar international agency;
 - (b) is visiting Mauritius and has been invited to offer his services under a scheme approved by the Ministry; or
 - (c) is visiting Mauritius for the purpose of teaching, research or study in nursing or midwifery under such scheme as may be approved by the Government of Mauritius,

he shall apply for temporary registration and may be granted temporary registration under section 26.

(2) A person registered under subsection (1) shall be exempted from the payment of any registration fee.

(3) Any nurse or midwife of any visiting force or ship lawfully present in Mauritius shall be exempted from registration for the discharge of his duties relating to the visiting force or ship.

28. Certificate of registration

(1) The Registrar shall issue to every person registered under this Act a certificate of registration in such form as the Council may prescribe.

(2) The Registrar may issue to a registered person a duplicate certificate against payment of such fee as may be approved by the Council where he is satisfied that the certificate of registration has been lost, defaced or otherwise destroyed.

29. Additional qualifications

Where after registration, a registered person obtains further qualification from a recognised nursing institution, the Council may, on application to the Registrar, include in the register the qualification where it is satisfied that the qualification is an appropriate qualification.

30. Annual List

(1) The Council shall, not later than 1st March of every year, publish in the *Gazette* an annual list.

(2) Subject to sections 27(3) and 38, a person shall not practise nursing or midwifery, or profess to be a nurse or a midwife unless his name is on the annual list.

(3) Every registered nurse, midwife, or state enrolled nurse or assistant nurse who wishes to have his name on the annual list shall –

- (a) in the case of a newly registered nurse, midwife or assistant nurse on registration;
- (b) in any other case, not later than 31 January in every year,

pay to the Council such fee as it may be prescribed.

(4) The Registrar shall on receipt of the fee under subsection (3), enter the name of the registered nurse, midwife, or state enrolled nurse or assistant nurse in the annual list.

(5) A registered nurse, midwife, or state enrolled nurse or assistant nurse who fails to comply with subsection (3)(b) may apply to the Council to have his name added to the annual list.

(6) A registered nurse, midwife, or state enrolled nurse or assistant nurse who makes an application under subsection (5), shall state in writing the reason why he was unable to comply with subsection (3)(b).

(7) Where a registered nurse, midwife, or state enrolled nurse or assistant nurse makes an application under subsection (5), the Council may, upon being satisfied of the reasons received pursuant to subsection (6), cause the name of the applicant to be added to the annual list on payment of such fees as may be prescribed by the Council.

(8) Any person who contravenes subsection (2) shall commit an offence.

PART IV - MISCELLANEOUS

31. Seal of Council

The Council shall have a seal which shall bear such device as may be approved by the Council.

32. Validity of documents

All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of the Council if signed by the Registrar or any member authorised by the Council for that purpose.

33. Remuneration and immunity

(1) The members of the Council shall be paid such allowance as may be determined by the Minister.

(2) No civil or criminal proceedings shall lie against a member or the Registrar in respect of any act or omission done by him in good faith in the performance of his duties under this Act.

34. Duty of disclosure

Every member who –

- (a) is closely related to a registered person whose conduct, act or omission is under investigation;
- (b) has any pecuniary or other personal interest in the subject-matter of an investigation under subpart B,

shall disclose his relationship or interest, as the case may be, and refrain from participating in the investigation.

35. Deficiency in quorum

(1) Where a quorum cannot be obtained without a fresh election and the Council is of the opinion that it is urgent to hold an investigation, the Registrar may request the Minister to appoint one or more persons to make up any deficiency in quorum for the purpose of such investigation.

(2) An appointment made by the Minister under subsection (2), shall not lapse notwithstanding that a quorum can be obtained if the investigation in respect of which he is appointed is not completed.

36. Restoration of name to register

(1) Subject to any order which may be made by the Supreme Court, where the name of any person has been removed from the register in accordance with the provisions of this Act, the name of that person shall not be restored therein except by order of the Council.

(2) Where the name of a person has been removed from the register, the

Council may, after the expiry of 12 months from the date of such removal -

- (a) either on its own motion or on the application of the person concerned; and
- (b) after holding such inquiry as it thinks fit,

cause the name of such person to be restored to the register.

37. Illegal practice of nursing or midwifery

(1) No person shall practise nursing or midwifery in Mauritius unless he is registered under this Act or exempted from such registration.

(2) No person shall -

- (a) take or use any name, title, addition or description –
 - (i) implying a qualification to practise nursing or midwifery in Mauritius; or
 - (ii) implying or tending to the belief that he is a registered person; or
- (b) by any willful act or omission, cause or induce any person to believe that he is a registered person,

unless he is duly registered under this Act.

(3) For the purposes of this section, the performance of any single act relating to the practice of nursing or midwifery may be held to be sufficient evidence of such practice.

(4) No person who has been suspended from the practice of nursing or midwifery or whose name has been removed from the register shall practise nursing or midwifery during the period of the suspension or so long as his name has not be restored to the register, as the case may be.

(5) Any person who contravenes subsection (1), (2) or (4) commits an offence.

(6) Where a person is convicted of an offence under this section, any drug, poison, medicine or any surgical, medical, dental or diagnostic instrument or appliance used by him or belonging to him or found in his possession may be forfeited, destroyed or otherwise disposed of as the Court may think fit.

38. Exemptions from application of Act

Nothing contained in this Act shall be deemed to prohibit or prevent any person duly authorised by the Permanent Secretary and employed by, or attached to, any voluntary organisation in Mauritius from carrying out nursing or midwifery duties under the supervision of or pursuant to the instructions of a registered nurse or midwife.

39. Funds and audit

(1) All fees payable under any regulations made under this Act shall form part

of the revenue of the Council and any expenses incurred in carrying out the provisions of this Act shall be paid out of such revenue.

(2) The Council shall keep proper accounts of all sums received or paid and the accounts for each financial year shall be audited by a qualified auditor appointed by the Council.

(3) The Council may borrow money or accept donation.

40. Power to make regulations

(1) The Council shall have the power to make regulations generally for the carrying out of the provisions of this Act and any such regulation may, without prejudice to the generality of the foregoing -

- (a) prescribe anything which is permitted or required by this Act to be prescribed;
- (b) provide for any matter in respect of which regulations may be made under this Act;
- (c) provide for the procedure to be followed by the Council at any inquiry under this Act;
- (d) provide for the levy of fees;
- (e) provide for a Code of Practice for the purposes of section 12 (d);
- (f) amend the Schedule;
- (g) provide that a person who fails to comply with any regulations or Code of Practice shall commit an offence or be subject to disciplinary proceedings as the case may be.

(2) Regulations made under this section shall be subject to the approval of the Minister and shall be laid on the table of the National Assembly.

41. Powers of the Minister

The Minister may give to the Council such directions of a general nature, not inconsistent with this Act, as he thinks fit, and the Council shall comply with such directions.

42. Offences

(1) Any person who -

- (a) fails to attend the Tribunal after having been required to do so;
- (b) gives false evidence or evidence which he knows to be misleading before the Tribunal;
- (c) at any sitting of the Tribunal –

- (i) wilfully insults any member thereof;
- (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;
- (d) fraudulently procures or attempts to procure his registration under this Act;
- (e) being required in writing by the Council to attend as a witness or to produce any document for the purposes of this Act fails to do so without any reasonable or lawful justification or excuse;
- (f) obstructs the proceedings of the Council or Tribunal during any investigation or by proceedings of the Council or Tribunal under this Act;
- (g) molests any member of the Council or Tribunal in the course of or on account of any investigation or proceedings under this Act; and
- (h) contravenes any regulation made under this Act;

commits an offence.

(2) Any person who commits an offence under this Act or any regulations made under this Act shall, on conviction, be liable to a fine not exceeding Rs 10,000 and to imprisonment for a term not exceeding 12 months.

43. Repeal

The Nursing Council Act is repealed.

PART V - SAVINGS AND TRANSITIONAL

44. Continuance of pending proceedings

(1) All investigations or disciplinary proceedings commenced under the Nursing Council Act shall be continued and completed -

- (a) where the investigations or proceedings have been wholly or partly completed or heard, as if the Nursing Council Act were still in force; and
- (b) in other cases, as if the investigation or proceedings had been commenced under this Act.

(2) All judicial or extra judicial proceedings other than those referred to in subsection (1) started by or against the Nursing Council established under the Nursing Council Act shall be deemed to have been started by or against the Council.

45. Saving of membership

(1) The Chairperson and members of the Nursing Council established under the Nursing Council Act who were in office prior to the coming into force of this Act shall remain in office for the purposes of this Act as if they had been elected or appointed, as the case may be, under this Act until the day members of the Council are elected under this Act.

(2) For the purposes of subsection (1), the election of the members of the Council shall be held after the tenure of office of the elected members.

(3) For the purposes of subsection (1), the quorum of the Council shall be the quorum provided under the Nursing Council Act.

46. Saving of appointment

The person who holds the office of Registrar under the Nursing Council Act on the day this Act comes into force shall remain in office on the same terms and conditions on which he held the office of Registrar before that day.

47. Saving of registration

A person who immediately before the coming into force of this Act was registered as a nurse or midwife under the Nursing Council Act shall, upon the coming into force of this Act, be deemed to be registered as a nurse or midwife under this Act.

48. Saving of annual list

The annual list of nurses or midwives published under the Nursing Council Act immediately before the coming into force of this Act shall be deemed to be the annual list of nurse or midwife under this Act until the annual list is published under section 30.

49. Transfer of assets and liabilities

(1) On the day when this Act comes into force, all assets and liabilities of the Nursing Council established under the Nursing Council Act shall be transferred to and shall vest in the Council.

(2) The Council shall have all powers necessary to take possession of, recover and deal with those assets and discharge those liabilities.

50. Agreements

Every agreement, whether in writing or not, and every other instrument to which the Nursing Council established under the Nursing Council Act was a party or which affected it, shall have effect as if the Council were a party to it or affected to it.

51. Saving of Code of Practice

Until the Code of Practice is established, the Code of Practice established under the Nursing Council Act shall be deemed to be the Code of Practice.

52. Commencement

(1) This Act shall come into force on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of the Act.

SCHEDULE
(section 4)

Rules of Election of Members of the Council

1. Calling for nominations and appointment of nomination day

Not less than one month before the expiry of the period specified in section 45(2) and every subsequent period of three years, the Registrar shall publish in the Gazette and such newspaper as he thinks fit, a notice inviting the submission of nominations and appointing a day on which and the time at which nominations must be submitted.

2. Nomination of candidates

No person shall be eligible for election as a member of the Council unless -

- (a) on nomination day he is a registered nurse or midwife, is not otherwise suspended and reckons at least 10 years' experience as a nurse or a midwife in Mauritius;
- (b) he is a citizen of and resident in Mauritius; and
- (c) he is nominated from one of the categories mentioned in paragraph (d), provided that he belongs to that category by virtue of his employment in that capacity and his nomination is supported by at least five registered nurses or midwives, as appropriate.

3. Distribution of members

The number of members in the different grades of registered persons shall be as follows -

(i)	General Nursing	-	5
(ii)	Psychiatric Nursing	-	1
(iii)	Nursing or Midwifery Education	-	1
(iv)	Community Health Nursing	-	1
(v)	Midwifery	-	1
(vi)	Nursing Administration (Nursing Supervisors and above)	-	1
(vii)	Nursing Officers from private sector (with working experience in the private sector for at least two years)	-	2

4. Procedure after nomination

- (a) If the number of persons duly nominated exceeds the number of persons to be elected, the Registrar shall publish in the Gazette and such newspapers as the Council may direct, a notice –
 - (i) specifying the names of the persons duly nominated; and
 - (ii) appointing a day, time and place, being not less than 15 days after the publication of the notice, for the holding of an election.
- (b) A person who has been duly nominated shall not publish or distribute any manifesto which is calculated or likely to induce persons to vote for him to be a member of the Council.

5. Persons entitled to vote

- (a) Every person who on nomination day is fully registered as a nurse or midwife under this Act shall be entitled to vote at an election of the members of the Council.
- (b) Every nurse or midwife voting pursuant to subparagraph (a) shall vote for such number of candidates as there are vacancies available in the membership of the Council.
- (c) Any vote which is cast contrary to subparagraph (b) shall be null and void.

6. Election

- (a) The election of members of the Council shall be conducted by the Office of the Electoral Commissioner who shall communicate the results to the Registrar.
- (b) The Registrar shall submit to the Minister the results of the election forthwith.
- (c) The Minister shall, within 21 days of the receipt of the results of the election, publish in the Gazette the composition of the Council.