



BERMUDA

MIDWIVES ACT 1949

1949 : 9

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*[preamble and words of enactment omitted]*

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### Interpretation

1 In this Act—

“the Council” means the Bermuda Medical Council established under section 5 of the Medical Practitioners Act 1950 [*title 30 item 8*];

“Minister” means the Minister responsible for health;

“the Permanent Secretary” means the Permanent Secretary for Health;

“to practise midwifery” means to attend women in childbirth habitually and for gain; and cognate expressions shall be construed accordingly;

“prescribed” means prescribed by regulations made under this Act;

“registered midwife” means a woman duly registered as a midwife under this Act.

[*Section 1 “Minister” deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011*]

### Unqualified persons; offences

2 (1) Without prejudice to anything hereinafter in this Act contained, a person who is not a registered midwife—

(a) shall not take or use any name, title or description (whether by initials or otherwise) stating or implying that she is a registered midwife; and

(b) shall not attend any woman in childbirth, whether or not such attendance is for gain, unless such attendance—

(i) is given under the direction and personal supervision of a registered medical practitioner; or

(ii) is given in an emergency.

(2) Any person who contravenes any provision of this section commits an offence against this Act.

(3) Nothing in this section shall apply—

(a) in relation to a registered medical practitioner; or

(b) in relation to a woman who attends another woman in childbirth under the direction and personal supervision of a registered midwife, where such attendance is part of a course of training in midwifery approved by the Council.

### Restrictions on status and capacity of midwives

3 Nothing in this Act shall be construed so as to entitle any woman—

(a) to assume any name, title or description stating or implying that she is a registered medical practitioner; or

(b) to complete and sign any medical certificate required to be signed under any Act by a registered medical practitioner; or

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- (c) to undertake the charge of any case in which abnormality or disease is present in connection with childbirth.

### Substitute must be a registered midwife

4 (1) A registered midwife shall not, except in the circumstances mentioned in section 2(3)(b), employ any person who is not a registered midwife as her substitute.

- (2) Any person who contravenes this section commits an offence against this Act.

### Supervision of midwives by Bermuda Medical Council

5 The Council, in relation to the training, examination, registration, supervision and control of midwives, shall have the powers and shall perform the duties conferred or imposed upon them by or under this Act.

### Permanent Secretary to keep register

6 (1) The Permanent Secretary shall cause to be kept and maintained a register of midwives (hereinafter in this Act referred to as "the register") in such form as he may from time to time determine, containing the names of those women who are entitled to be registered under this Act.

(2) The Permanent Secretary shall cause to be published in the Gazette, as soon as may be after the first day of January in each year, a list of the names entered in the register on that day; and a copy of the Gazette containing the most recent list so published shall be, prima facie, evidence in all courts that the women whose names are specified therein are registered midwives; and the absence of the name of any woman from the said list shall be, prima facie, evidence that that woman is not a registered midwife:

Provided that—

- (a) in the case of any woman whose name does not appear in any such list, a certificate purporting to be signed by the Permanent Secretary of the entry of the name of such woman in the register and of the date of such entry shall be, prima facie, evidence—
  - (i) that she is a registered midwife; and
  - (ii) of the date upon which she became a registered midwife;
- (b) in the case of any woman whose name does appear in any such list, a certificate as aforesaid of the striking off or removal of the name of that woman from the register, or of her suspension from practice under this Act, and of the date of the removal or suspension, shall be, prima facie, evidence—
  - (i) that she is not a registered midwife or has been suspended from practice; and
  - (ii) of the date upon which she ceased by virtue of the striking off or removal to be a registered midwife or, as the case may be, was suspended from practice.

- (3) The Permanent Secretary—
- (a) shall cause to be entered in the register the name of any woman—
    - (i) who passes an examination held in pursuance of section 8; or
    - (ii) whose name, having been struck off or removed from the register, is ordered to be restored to the register in pursuance of section 17;
  - (b) shall cause to be made in the register such alterations and additions relating to the particulars of registered midwives as may from time to time become necessary;
  - (c) shall, subject to section 12, cause to be removed from the register the name of any registered midwife—
    - (i) who has died; or
    - (ii) who has, under section 16, applied to have her name removed from the register;
  - (d) shall, subject to section 12, cause to be struck off the register the name of any registered midwife whose name is ordered by the Council to be struck off the register under section 12;
  - (e) shall cause to be entered in the register, as may from time to time become necessary, a note of the commencement or termination of the suspension from practice of a registered midwife under sections 12 and 13 respectively; and
  - (f) may, without prejudice to any other provision of this Act, cause such notices—
    - (i) to be published in the Gazette; or
    - (ii) to be circulated for the information of registered medical practitioners, as appears to the Permanent Secretary expedient in the circumstances.

Application for registration

7 (1) Any woman who applies to be registered under this Act (hereinafter in this Act referred to as an “applicant for registration”) shall apply in the prescribed form to the Permanent Secretary and shall forward with her application—

- (a) such documents relating to professional qualifications, experience and character in support of the application as may from time to time be prescribed; and
- (b) the fee prescribed by regulation made under the Government Fees Act 1965 [*title 15 item 18*].

(2) The Permanent Secretary shall cause the application and accompanying documents (if any) to be transmitted to the Council, who shall, as soon as conveniently may be, meet to consider the application.

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(3) Where, as a result of their consideration of the application, and after making such enquiries, if any, as appear to them desirable in the circumstances, it appears to the Council that the applicant for registration is a duly eligible applicant, then in any such case the Council shall, in pursuance of section 8, proceed to examine the applicant in order to determine her competence to practise midwifery.

(4) Where an applicant for registration does not appear to the Council to be a duly eligible applicant, they shall inform the Permanent Secretary of their decision and of the reasons therefor and the Permanent Secretary shall, in turn, inform the applicant of the decision of the Council and of the reasons therefor.

(5) A person aggrieved by any decision of the Council under this section may appeal to the Governor against the decision in the manner provided in section 18.

(6) In this section, "duly eligible applicant" means an applicant for registration who is a woman of good character, who has not been examined under this Act within the period of the last preceding six months, and—

- (a) who has undergone a course of training in midwifery in Bermuda lasting not less than one year and approved by the Council; or
- (b) who has undergone not less than one year's training in midwifery in a place outside Bermuda, in an institution, or subject to a course of training, recognized by the Council, and who has successfully passed an examination entitling her to practise midwifery in that place:

Provided that where, in either of the aforementioned cases, the woman has, prior to her training as a midwife, undergone not less than three years' training in nursing, a period of not less than six months shall for the purposes of this subsection, be deemed to be a sufficient period of training in midwifery.

### Qualifying examination

8 (1) Where—

- (a) any applicant for registration appears to the Council to be eligible for examination by virtue of section 7; or
- (b) any appeal by an applicant for registration under section 18 against any decision of the Council under the last foregoing section is allowed by the Governor, the Council shall, as soon as may be, conduct an examination of the applicant (hereinafter in this Act referred to as a "qualifying examination").

(2) The Council may, if they consider it desirable, appoint a registered midwife to act as assessor to the Council for the purpose of a qualifying examination.

(3) A qualifying examination shall be set and conducted in such manner as to ensure, as far as possible, that any woman passing the examination is possessed of the competence, knowledge and skill requisite for the efficient practice of midwifery in Bermuda.

(4) The Council shall, having due regard to subsection (3), have power—

- (a) to determine the nature and scope of a qualifying examination; and
- (b) to regulate the conduct of a qualifying examination; and
- (c) to determine whether or not an applicant for registration who takes a qualifying examination shall be considered to have passed or failed in that examination.

(5) A member of the Council shall be entitled to receive out of the Consolidated Fund in respect of each qualifying examination conducted by the Council, such fee as the Minister may determine upon the certificate of the Chairman of the Council.

(6) No appeal shall lie to the Governor under this Act against any determination of the Council arising out of their powers under subsection (4).

#### Examination result

9 The Council shall, as soon as may be after conducting a qualifying examination, inform the Permanent Secretary whether the applicant for registration has passed or failed in the examination, and the Permanent Secretary—

- (a) where the applicant has passed the examination—
  - (i) shall inform the applicant accordingly; and
  - (ii) shall cause the applicant's name and professional qualifications to be entered in the register; and
  - (iii) shall cause a certificate of registration in the prescribed form to be completed and forwarded to the applicant; or
- (b) where the applicant has failed in the examination, shall inform the applicant accordingly.

#### Application fees

10 (1) Where an applicant for registration does not take a qualifying examination there shall be forwarded to her by the Council half of the fee forwarded to them under section 7(1)(b).

(2) Where an applicant for registration takes a qualifying examination then, whether she passes or fails in the examination, there shall not be returned to her any part of the said fee.

#### Registration of additional qualification

11 Where—

- (a) a registered midwife has, since the date of her registration under this Act, been granted any diploma or other qualification in midwifery; and
- (b) the diploma or other qualification appears to the Council to deserve recognition in the register,

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the Permanent Secretary, upon application made by the registered midwife in the prescribed form, shall without charge cause the particulars of the additional qualification to be entered in the register.

### Striking off and suspension

- 12 (1) Where it is made to appear to the Council that a registered midwife—
- (a) has committed an offence against this Act or against any regulations made thereunder; or
  - (b) has been guilty of disgraceful conduct in a professional respect; or
  - (c) is inefficient or negligent in carrying out her professional functions; or
  - (d) has become incapable of properly carrying out her professional functions by reason of old age or mental or bodily infirmity; or
  - (e) is addicted to alcohol or drugs to an extent which makes her unfit to carry out her professional functions; or
  - (f) has ceased for a substantial period actively to practise as a midwife,

the Council shall suspend the registered midwife from practice pending the holding of an enquiry as hereinafter in this section provided, and shall by notice inform her accordingly.

(2) The Council, as soon as conveniently may be after the suspension of a registered midwife from practice under subsection (1), shall hold an enquiry into the matter in respect of which the suspension took place; and in respect of any such enquiry the following provisions shall have effect—

- (a) the Council may take evidence on oath, and for that purpose the Chairman of the Council may administer an oath;
- (b) the Council shall afford the registered midwife every facility—
  - (i) to appear before the Council at all stages of the enquiry;
  - (ii) to be represented by counsel;
  - (iii) to cross-examine witnesses; and
  - (iv) generally to make a full defence or explanation in the matter.

(3) Where the Council, as the result of an enquiry held under this section, are satisfied as to the truth of any of the matters specified in subsection (1), they may, without prejudice to any other proceedings under this Act in respect of the same matter,

- (a) order the name of the registered midwife to be struck off the register; or
- (b) order the registered midwife to be suspended from practice for any period not exceeding twelve months; or
- (c) make no order in the matter;

and the Council shall by notice inform the Permanent Secretary who shall, in turn, by notice in writing, inform the registered midwife of their decision accordingly.

(4) A registered midwife shall be entitled to appeal against any order made under subsection (3) to the Governor in the manner provided in section 18.

(5) The Permanent Secretary, where the Council order the name of a registered midwife to be struck off the register or where they order a registered midwife to be suspended from practice under subsection (3)—

- (a) shall, on the tenth day after notice has been given under subsection (3) cause the name of the registered midwife to be struck off the register, or, as the case may be, a note of the commencement of the suspension to be entered in the register, unless in the meantime an appeal has been duly entered in respect of the order; or
- (b) shall, where an appeal is duly entered, and where the appeal is subsequently dismissed by the Governor, cause the name of the registered midwife to be struck off or the note to be entered immediately after the determination of the appeal;

and in either such case the Permanent Secretary shall by notice in writing inform the registered midwife accordingly.

(6) Any woman whose name is ordered to be struck off the register, or who is ordered to be suspended from practice, under subsection (3), shall, within seven days of receiving a notice under subsection (5), (which notice shall set out the requirements of this subsection), return to the Council any certificate of registration forwarded to her under section 9(a); and any woman who contravenes or fails to comply with this subsection commits an offence against this Act.

(7) Any proceedings in connection with the holding of an enquiry by the Council in pursuance of this section shall, for the purposes of the Criminal Code [*title 8 item 31*] relating to perjury, be deemed to be judicial proceedings.

#### Temporary suspension of midwife who is carrier of infection

13 Without prejudice to section 12, where it appears to the Chief Medical Officer that a registered midwife is, whether through her own fault or not, a carrier or a suspected carrier of any disease prejudicial to the health of women in childbirth, the Chief Medical Officer—

- (a) may by notice require her to undergo such examination or tests by a registered medical practitioner or other person as the Chief Medical Officer thinks necessary to determine whether she is, or has ceased to be, a carrier of infection; and
- (b) may by notice suspend her from the practice of midwifery for such time as in the circumstances the Chief Medical Officer thinks necessary and may extend or reduce that time by subsequent notice; and
- (c) may inform registered medical practitioners accordingly.

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### Suspended midwife to attend only in emergency

14 (1) A registered midwife—

- (a) who has been suspended from practice under section 12; or
- (b) who has been suspended from practice under section 13, or
- (c) who is deemed to be suspended from practice by virtue of section 18,

shall not, during the period of any such suspension, attend any woman in childbirth except in an emergency.

(2) Any registered midwife who contravenes this section commits an offence against this Act.

### Compensation of midwife suspended without default

15 (1) Where—

- (a) in pursuance of the power conferred upon them by section 12(1) the Council, pending the decision of her case by them or, as the case may be, by a court, having suspended a registered midwife from practice, and the case is subsequently decided in her favour; or
- (b) a registered midwife is suspended from practice under section 13, in order to prevent the spread of infection, and there has been no default on her part in the matter; or
- (c) a registered midwife, pending an appeal under section 18, is deemed to be suspended from practice and the appeal is subsequently allowed,

the Minister may, if he thinks fit, pay to the registered midwife such reasonable compensation for loss of practice as appears to him just in the circumstances.

(2) A registered midwife who is aggrieved by any decision of the Minister under this section may appeal to the Governor in the manner provided in section 18.

### Voluntary removal of name from register

16 Any registered midwife may apply to the Permanent Secretary to have her name removed from the register; and upon receiving any such application the Permanent Secretary shall cause her name to be removed accordingly.

### Restoration of name to register and termination of suspension

17 (1) Where—

- (a) the name of a midwife has been struck off the register under section 12 or removed from the register under section 16; or
- (b) a registered midwife has been suspended from practice under section 12,

the midwife, at any time after the expiration of three months from the date of the striking off, removal or suspension, as the case may be, shall be entitled to apply from time to time

to the Council for her name to be restored to the register or for the suspension to be terminated.

(2) Upon any such application as aforesaid the Council, having regard, as in the circumstances may be material, to the character of the midwife, to her conduct subsequent to the striking off or removal of her name from the register or subsequent to her suspension, to the nature of the matter in respect of which the striking off, removal or suspension occurred, to her professional ability and to the other circumstances of the case—

- (a) may order that her name be restored to the register, or, as the case may be, that the suspension be terminated; or
- (b) may make no order in the matter.

(3) In connection with any order made under subsection (2), the Council may declare it to be a condition of the restoration of the name to the register or of the termination of the suspension from practice that the midwife shall pass a fresh qualifying examination as though she were, for the purposes of section 7, a duly qualified applicant for registration.

(4) The Council shall in every case inform the Permanent Secretary of their decision under subsection (2) and the Permanent Secretary shall take such steps—

- (a) to inform the applicant by notice in writing, accordingly;
- (b) to make such entries, deletions or other amendments in the register; and
- (c) to forward a certificate of registration to the applicant,

as in the circumstances may be necessary to give effect to their decision.

(5) Where the Council do not make any order under subsection (2) the applicant may appeal to the Governor against their decision in the manner provided in section 18.

#### Appeal of decisions of the Council

18 Where a woman is aggrieved by any decision of the Council in respect of which an appeal is allowed under this Act, she may, within seven days of receiving a notice communicating that decision to her, appeal to the Governor by notice in writing addressed to the Secretary to the Cabinet; and the Governor shall determine any such appeal, and may make such orders [*sic*] as appears to him just; and the Council shall govern themselves accordingly:

Provided that—

- (a) where a registered midwife, who has been suspended from practice, appeals to the Governor, such suspension, unless earlier terminated by notice of the Council, shall remain in force pending the determination of the appeal; and
- (b) where a woman, whose name has been ordered to be struck off the register, appeals to the Governor, she shall be deemed for the purposes of section 14 to be suspended from practice pending the determination of the appeal.

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### Duty to call in registered medical practitioner

19 (1) In case of any emergency arising out of or connected with childbirth, being an emergency such as is described in the Schedule, a registered midwife attending that birth shall, if no registered medical practitioner is present, call in to her assistance a registered medical practitioner.

(2) The Minister shall pay a fee of ten dollars and eight cents to a registered medical practitioner who has been called in by a registered midwife to her assistance in case of emergency:

Provided that it shall be a condition of the payment of such fee that any such registered medical practitioner—

- (a) shall submit his claim thereto to the Council within two months of the date on which he was called in; and
- (b) shall state in the claim the nature of the emergency.

(3) The registered midwife shall as soon as may be report to the Minister in the prescribed form each case of emergency in which she has called in a registered medical practitioner to her assistance.

(4) The Minister may recover the amount of the fee from the patient or from the husband or other person liable to maintain the patient in the manner provided by the Magistrates Act 1948 [*title 8 item 15*], for the recovery of a debt or liquidated demand.

### Minister may make regulations

20 (1) The Minister may make regulations for carrying this Act into effect; and, without prejudice to the generality of the foregoing provision of this subsection, such regulations may provide—

- (a) for prescribing forms, notices and other documents to be used in connection with this Act;
- (b) for prescribing returns to be rendered to the Minister by registered midwives;
- (c) for specifying the manner in which notices shall or may be served;
- (d) for prescribing documents required to be forwarded with applications for registration under this Act;
- (e) generally for regulating the methods to be used in the practice of midwifery, for prescribing sanitary precautions to be taken by midwives to prevent infection, and for restricting within due limits the practice of midwifery in connection with cases of abnormality or disease in connection with childbirth;
- (f) for prescribing courses of training in midwifery and for regulating the conduct of persons undergoing any such course of training; and
- (g) for prescribing any other matter or thing which by or under this Act may be or is to be prescribed.

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(2) *[omitted] [covered by Interpretation Act 1951 section 35]*

(3) The negative resolution procedure shall apply to regulations made under this section.

### Summary prosecution of offences

21 Offences against this Act, or against any regulations made thereunder, shall be prosecuted before a court of summary jurisdiction.

### False statements

22 (1) Any person who, in connection with any application or other matter falling to be performed under this Act or under any regulations made thereunder—

- (a) makes any statement knowing it to be false in a material particular; or
- (b) produces any certificate, diploma or other document knowing the same to be false,

commits an offence against this Act.

(2) Nothing in this section shall be construed so as to derogate from any provision of the Criminal Code [*title 8 item 31*].

### Punishments

23 Where a person commits an offence against this Act or against any regulations made under this Act:

Punishment on summary conviction: a fine of \$840; or, in the case of a second or subsequent conviction: imprisonment for 6 months or a fine of \$1,680 or both such imprisonment and fine.

SCHEDULE

EMERGENCIES TO WHICH SECTION 19 APPLIES—

- 1 In the case of a woman in labour—
  - (a) any presentation of the child other than an uncomplicated vertex or breech presentation;
  - (b) a breech presentation, where the mother has not previously given birth to a child;
  - (c) any case where the midwife, when the cervix has become dilated, is unable to make out the presentation;
  - (d) any case where flooding, convulsions or collapse occurs;
  - (e) any case where before the birth of the child, it appears that the mother's pelvis is deformed or that there will be insufficient room for the child to pass;
  - (f) any case where a tumour is felt in any part of the mother's passages ;
  - (g) any case where there is an abnormally heavy loss of blood;
  - (h) any case where, an hour having elapsed since the birth of the child, the placenta has not been expelled and cannot be pressed out, whether or not any bleeding has occurred;
  - (i) any case where a rupture of the perineum, or any other serious injury to the soft parts, has occurred.
  
- 2 In the case of a lying-in woman—
  - (a) any case where there is—
    - (i) abdominal swelling and any sign of insufficient contraction of the womb;
    - (ii) a foul smelling discharge;
    - (iii) secondary post-partum haemorrhage;
    - (iv) rigor;
    - (v) a rise of temperature to a temperature above 100.4 degrees Fahrenheit accompanied by a substantial quickening of the pulse for more than twenty-four hours;
    - (vi) unusual swelling of the breasts accompanied by local tenderness or pain;
  - (b) any other case where the progress of the woman is unsatisfactory.

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- 3 In the case of a new-born child—
- (a) any case where there is—
    - (i) any substantial injury caused during birth;
    - (ii) any obvious malformation or deformity not inconsistent with continued existence;
    - (iii) any concealed malformation, including an inability to suck or to take nourishment;
    - (iv) any inflammation of the eyes, eyelids or ears;
    - (v) any syphilitic appearance of the skin;
    - (vi) any illness or feebleness arising from prematurity;
    - (vii) any symptoms of malignant jaundice (icterus neonatorum) ;
    - (viii) any inflammation above the umbilicus (septic infection of the cord);
  - (b) any other case where the progress of the child is unsatisfactory.
- 4 Any case where a woman dies during labour or whilst lying in.

*[This Act was brought into operation on 5 August 1949]*

[Assent Date: 26 March 1949]

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*[Amended by:*

1952 : 5  
1952 : 11  
1968 : 48  
1970 : 390  
1977 : 35  
BR 5 / 2011]