

NURSING ACT 1997



**BERMUDA
1997 : 16**

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WHEREAS it is expedient to repeal the Nurses Act 1969 and make new provision for regulating nursing:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly, and by the authority of the same, as follows:—

Short title

1 This Act may be cited as the Nursing Act 1997.

Interpretation

2 In this Act—

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"the Association" means the Bermuda Nurses Association;

"the Council" means the Council referred to in section 3;

"general nurse", "nurse specialist" and "nursing associate" have the meanings assigned to those expressions by rules made under subsection (2) of section 9;

"member" means member of the Council;

"the Minister" means the Minister responsible for Health;

"prescribe" means prescribe by rules;

"the register" means the register maintained by the Council under section 4, and "to register" and "registration" are to be construed accordingly;

"a relevant professional association" means a professional Bermudian association approved by the Council;

"the repealed Act" means the Nurses Act 1969;

"rules" means rules made by the Minister under section 9;

"training" includes education.

The Bermuda Nursing Council

3 (1) The Bermuda Nursing Council established by the repealed Act is continued under this Act with the attributes set out in subsections (2) and (3), being attributes conferred by subsections (2) and (3) of section 2 of the repealed Act.

(2) The Council is a body corporate having perpetual succession and a common seal and power to acquire, hold and dispose of moveable property of whatever kind, and to enter into contracts and do all things necessary for the purpose of its functions.

(3) The Council may sue and be sued in its corporate name, and may be described by that name for all purposes.

(4) The functions of the Council are—

- (a) to promote the art and science of nursing;
- (b) to develop and maintain high standards in the practice of nursing;
- (c) to advise the Minister on matters relating to nursing;
- (d) to administer the system of nursing registration instituted by this Act.

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(5) The provisions of the First Schedule have effect for the purpose of determining the constitution and powers of the Council and for regulating its proceedings.

The professional register

4 (1) The Council shall establish and maintain a register of general nurses, nurse specialists and nursing associates.

(2) The register shall be divided into such parts as the Council may determine, the parts being indicative of different qualifications and different kinds and standards of training; and references in this Act to parts of the register are to the parts so determined.

(3) The Minister may make provision by rules—

(a) as to the documentary and other evidence to be produced by those applying for registration or for additional qualifications to be recorded, or for any entry in the register to be altered or restored;

(b) as to the keeping of the register and the means of obtaining access to, and copies of extracts from, it;

(c) for a person's registration to remain effective without limitation of time (subject to removal from the register for misconduct or otherwise) or to lapse after a specified period or in specified cases, or to be capable of renewal as and when provided by the rules.

(4) The Minister may by order provide—

(a) for persons to be registered in one or more parts of the register by virtue of having been included in one or more registers, rolls or lists maintained under the repealed Act, or having been certified under that Act;

(b) for a specified part of the register to be closed, as from a date specified by the order, so that on or after that date no further persons can become registered in that part.

(5) The Minister shall consult the Council before making, varying or revoking an order under subsection (4).

(6) Such an order is subject to the negative resolution procedure.

(7) A copy of the register, duly updated, shall be gazetted annually; but alterations made to the register between annual gazettings of the register need not themselves be gazetted.

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(8) A certificate issued and duly authenticated by the Council stating that a person is, or was at any date, or is not, or was not at any date, registered is evidence in all courts and tribunals of the fact stated in the certificate.

(9) In any enactment or instrument (past or future, and including this Act) "registered", in relation to a nurse, nurse specialist or nursing associate, means registered in the register maintained under this section by virtue of qualifications as such a nurse, nurse specialist or nursing associate, as the case may be.

Admission to the register

5 (1) A person seeking admission to a part of the register must make application to the Council in accordance with the rules.

(2) Subject to subsection (4) below, the applicant shall be registered in that part (on payment of such fee as may be required) if he satisfies the Council that he—

- (a) is of good character and is or will be a member of a relevant professional association; and
- (b) has the appropriate qualifications; and
- (c) has either Bermudian status or the right to work in Bermuda in an occupation for which those qualifications qualify him.

(3) He is to be regarded as having those qualifications if—

- (a) he has in Bermuda undergone the training, and passed the examinations, required by the rules for admission to that part of the register; or
- (b) he has professional qualifications obtained outside Bermuda, and either—
 - (i) those qualifications are recognised by the Council as being to a standard sufficient to justify his registration in that part; or
 - (ii) they are not so recognised but the applicant has undergone in Bermuda or elsewhere such additional training as the Council may require.

(4) In the case of an applicant within paragraph (b) of subsection (3), the rules may either—

- (a) make it an additional condition of his being registered that he has the necessary knowledge of English; or

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- (b) require him to have that knowledge within a period specified by the rules (failing which his registration will lapse at the end of that period).

Removal from, and restoration to, register

6 (1) Rules shall prescribe the circumstances in which, and the means by which—

- (a) a person may, for misconduct or otherwise, be removed from the register or a part of it, whether or not for a specified period;
- (b) a person who has been removed from the register or a part of it may be restored to it;
- (c) an entry in the register may be removed, altered or restored.

(2) Committees of the Council shall be constituted by the rules to hear and determine proceedings for a person's removal from, or restoration to, the register or for the removal, alteration or restoration of any entry.

(3) The committees shall be constituted from members of the Council; and the rules shall so provide that the members of the committee constituted to adjudicate upon the conduct of a person are selected with due regard to the professional field in which he works.

(4) The rules shall make provision as to the procedure to be followed, and the rules of evidence to be observed, in such proceedings, whether before the Council itself or before any committee so constituted, and for the proceedings to be in public except in such cases (if any) as the rules may specify.

(5) The Second Schedule has effect with respect to the conduct of proceedings to which this section applies.

Appeals

7 (1) A person aggrieved by a decision of the Council to remove him from the register, or to remove from, or alter in, the register any entry in respect of him, may, within 28 days after the date on which notice of the decision is given to him by the Council, appeal to the Supreme Court against the decision.

(2) On an appeal under this section the Supreme Court may make such order in the matter as it thinks proper, including an order as to the costs of the appeal.

(3) An order of the Supreme Court under subsection (2) is final.

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(4) The practice and procedure to be followed in relation to an appeal under this section are as prescribed by rules of court.

False claims

8 (1) A person commits an offence if, with intent to deceive (whether by words or in writing or by the assumption of a name or description, or by the wearing of a uniform or badge or by any other kind of conduct)—

(a) he falsely represents himself to possess qualifications in nursing; or

(b) he falsely represents himself to be registered in the register, or in a particular part of it.

(2) A person commits an offence if—

(a) with intent that a person shall be deceived, he causes or permits another person to make any representation about himself which, if made by himself with intent to deceive would be an offence in him under subsection (1); or

(b) with intent to deceive, makes with regard to another person a representation which—

(i) is false to his own knowledge; and

(ii) if made by the other with that intent would be an offence in the other under that subsection.

(3) Subsection (1) does not apply to—

(a) a person who practises nursing in accordance with his duties as a member of the Armed Forces of the Crown or of the Government of the United States; or

(b) a person who, being a qualified nurse of a country or territory other than Bermuda, accompanies a patient to Bermuda and practises nursing in relation to that patient in Bermuda for a period not exceeding one month.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding 3000 dollars.

Rules

9 (1) The Minister may make rules for the purpose of giving effect to this Act, and in particular with respect to anything which by this Act is required or authorised to be prescribed or provided for by rules.

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(2) Rules shall define the expressions "general nurse", "nurse specialist" and "nursing associate".

(3) The Minister shall consult the Council before making, amending or revoking any rules.

(4) Rules are subject to the negative resolution procedure.

Repeal

10 The Nurses Act 1969 is repealed.

Commencement

11 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

FIRST SCHEDULE (Section 3(5))

THE BERMUDA NURSING COUNCIL

PART I CONSTITUTION OF COUNCIL

- 1 (1) The Council shall consist of nine members.
- (2) Of those—
- (a) the Chief Nursing Officer shall be a member ex officio;
 - (b) three members shall be general nurses, of whom—
 - (i) one shall be appointed by the Association; and
 - (ii) two shall be appointed by the general nurses of Bermuda in elections conducted by the Council;
 - (c) two members shall be nurse specialists, of whom—
 - (i) one shall be appointed by the Association; and
 - (ii) one shall be appointed by the nurse specialists of Bermuda in elections conducted by the Council;
 - (d) one member shall be a nursing associate appointed by the nursing associates of Bermuda in elections conducted by the Council;
 - (e) one member shall be a registered medical practitioner appointed by the Bermuda Medical Society;

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- (f) one member shall be a person appointed by the Minister who—
 - (i) is not a general nurse or a nurse specialist or a nursing associate or a registered medical practitioner; and
 - (ii) is in the Minister's opinion qualified by training, experience or both to assist the Council in matters of a legal or ethical nature.

(3) For the purposes of the initial reconstitution of the Council under and in accordance with this Act, (b), (c) and (d) of sub-paragraph (2) above are deemed to have been replaced by the following—

- "(b) three members shall be persons appointed by the Minister, being persons who the Minister believes will qualify as general nurses under rules made under section 9(2);
- (c) two members shall be persons appointed by the Minister, being persons who the Minister believes will qualify as nurse specialists under those rules; and
- (d) one member shall be a person appointed by the Minister, being a person who the Minister believes will qualify as a nursing associate under those rules;"

2 For every member appointed under (b), (c), (d), (e) or (f) of sub-paragraph (2) of paragraph 1 ("the primary member"), there shall be an alternate member appointed, in the same manner as that by which the primary member is appointed, to perform the functions of the primary member as circumstances may require.

3 The Council shall have—

- (a) a chairman appointed (initially by the Minister and, as from such later day as the Minister may appoint, by the Council itself) from among the members mentioned in (b) or (c) of sub-paragraph (2) of paragraph 1; and
- (b) a deputy chairman appointed by the Council from among the Council's members.

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PART II OTHER PROVISIONS WITH RESPECT TO CONSTITUTION ETC. OF COUNCIL

Tenure of office of members and chairman etc.

- 4 (1) A member shall hold office for the term of 3 years.
- (2) A member (other than the Chief Nursing Officer) may not at any time be appointed to a third consecutive term of membership, but, subject to that, a member may be re-appointed.
- 5 (1) Where a member's place becomes vacant (whether by death, resignation or otherwise) before the expiration of his term, the vacancy shall be filled in the same manner as that by which he became a member.
- (2) A person who becomes a member under sub-paragraph (1) shall, subject to sub-paragraph (3), hold office for the remainder of the term of the former member whose place he fills.
- (3) The term of a person who has become a member under sub-paragraphs (1) and (2) is his first term for the purposes of sub-paragraph (2) of paragraph 4.
- 6 If the chairman or the deputy chairman ceases to be a member, he shall also cease to be chairman or deputy chairman.

Procedure

- 7 (1) The Council may act notwithstanding any vacancy among its members.
- (2) At any meeting of the Council the quorum shall be 5 members.
- (3) The Council may constitute committees of itself for the purpose of transacting particular business of the Council.
- (4) Persons who are not members of the Council may be appointed by it as members of such committees; but not more than one-third of the members of such a committee shall be persons appointed by virtue of this sub-paragraph.
- (5) The Council may, by means of standing orders, regulate its own procedure and that of any committees constituted under sub-paragraph (3), and may, to such extent and in such cases as may be permitted or required by its standing orders, act through those committees.

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(6) No defect in the appointment of any member shall invalidate any proceedings of the Council or of its committees.

Documents

8 A document purporting to be duly executed under the seal of the Council or to be signed on its behalf shall be received in evidence, and is deemed to be so executed or signed unless the contrary is proved.

SECOND SCHEDULE (Section 6(5))

PROCEEDINGS BEFORE COUNCIL AND COMMITTEES

1 For purposes of proceedings under section 6 before the Council or a committee—

- (a) the Council or committee may administer oaths;
- (b) an attorney to the Council, and any person entitled to appear at the proceedings, may sue out writs of subpoena and testificandum and duces tecum (but not so as to compel a person to produce a document which he could not be compelled to produce on the trial of an action).

2 (1) The Council shall appoint assessors (either generally or for any particular proceedings or class of proceedings) to advise the Council or committees on questions of law arising in the proceedings.

(2) Assessors shall be attorneys of not less than 5 years' standing.

(3) The Council shall pay to assessors such remuneration as it may determine.

3 (1) The Minister may by order make provision with regard to the functions of assessors.

(2) In particular, provision may be made—

- (a) requiring assessors, when advising the Council or any of its committees, to do so in the presence of the parties or, where advice is given in private, requiring the parties to be notified of the advice tendered by the assessors; and
- (b) requiring the parties to be informed in cases where the assessors' advice is not accepted.

(3) An order made under this paragraph is not subject to section 6 of the Statutory Instruments Act 1977.