



*THE CONTROL OF NURSING AND MIDWIFERY PRACTICE*

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## CONTENTS

1.	Preamble .....	1
2.	The Council's legal authority in respect of nursing and midwifery practice .....	2
3.	Practitioners of the nursing and midwifery professions .	2
3.1	Professional nursing category .....	2
3.2	Supplementary nursing categories .....	3
4.	The registration policy of the Council .....	3
4.1	Categories of registration and enrolment .....	4
4.2	Prescribed requirements for registration or enrolment .....	4
4.4	Annual renewal of registration or enrolment .....	4
4.4	Removal of names from the register or roll .....	5
5.	Regulation of practice .....	5
6.	Professional discipline .....	6
7.	Decision-making in nursing and midwifery .....	7
7.1	Principles directing decision-making in practice .....	8
7.2	Potential conflict between personal and patient interest .....	8
7.3	Flexibility in decision-making .....	8
8.	Policy with regard to primary health care .....	9
9.	Policy with regard to lay health workers .....	10

## THE CONTROL OF NURSING AND MIDWIFERY PRACTICE

### 1. PREAMBLE

The South African Nursing Council<sup>1</sup> believes that nursing and midwifery are dynamic professions and the practice in these professions develops according to the needs of the community and in keeping with progress in science and technology.

The practice of the nurse and the midwife is authorised by professional registration in terms of section 16 of the Nursing Act, 1978 (Act No 50 of 1978)<sup>2</sup>. The scope of their practice is prescribed by regulations<sup>3</sup> published in terms of section 45 of the Act and is grounded on the ethical principles which direct the nursing and midwifery professions. Some of these ethical principles are contained in the rules published in terms of section 35 of the Act<sup>4</sup>.

The scope of practice of nurses and that of midwives is not static, but is circumscribed by factors such as the scope of practice of other health professions, certain general legislation, e.g. the Medicines and Related Substances Control Act, 1965 (Act No 101 of 1965), the nature and extent of their education and their knowledge and experience.

The Council thus believes that practice in both nursing and midwifery is directed dynamically by the needs of the patient, and that there is always a measure of overlap where it merges with the practice of other professional role-players. The greatest degree of such reciprocal interaction is between the practice of the nurse or midwife, the medical practitioner and the pharmacist.

The professional role-players, the support network of the patient and the available community and health resources vary according to circumstances, and influence the nature of professional interaction and the decision-making and action of the nurse or midwife.

The eventual determinant for practice in each profession, is the discretion, decision-making ability and professional integrity of the individual practitioner. As professional practitioners in their own right, it is the duty of each to determine the bounds of personal practice in the given situation, and to accept accountability for this.

1 Hereafter referred to as "the Council".

2 Hereafter referred to as "the Act".

3 Regulations relating to the scope of practice who are registered or enrolled under the Nursing Act, 1978 (R 2598 of 30 November 1984, as amended)

4 Rules setting out the acts and omissions in respect of which the Council may take disciplinary steps (R 387 of 15 February 1985, as amended).

incomitant with this is the right of the patient to accessible continuous nursing of an acceptable standard. However, where the patient's rights are violated by the nurse's negligence, ignorance or by her deliberate denial of nursing, the Council is legally authorised, in the interest of the patient to call the nurse to account by applying professional discipline.

#### THE COUNCIL'S LEGAL AUTHORITY IN RESPECT OF NURSING AND MIDWIFERY PRACTICE

In terms of Section 3 of the Act, the Council controls and exercises authority over all matters concerning the practice of nurses and midwives. In terms of this provision, the Council sets standards for education and practice, which include the following:

- \* minimum requirements for education with a view to registration or enrolment and
- \* ethical rules and practice regulations.

#### PRACTITIONERS OF THE NURSING AND MIDWIFERY PROFESSIONS

In South Africa the nursing and midwifery professions are practised by persons registered or enrolled by the Council in terms of section 16 of the Act. The categories in which registered and enrolled persons appear are the following -

##### 1.1 Professional nursing category

These are persons who have complied with the educational requirements for registration by the Council as nurse or midwife and whose practice is directed by the appropriate

- \* regulations relating to the scope of practice of persons who are registered or enrolled under the Nursing Act, 1978 (Government Notice R 2598 of 30 November 1984, as amended),
- \* rules setting out the acts and omissions in respect of which the Council may take professional conduct steps<sup>2</sup> (Government Notice R 387 of 15 February 1985 as amended) and
- \* regulations relating to the conditions under which registered midwives and enrolled midwives may carry on their profession<sup>3</sup> (Government Notice R 2488 of 26 October 1990).

Persons in this category function within relevant ethics and legislation, as independent nursing practitioners in the health team. An independent practitioner is a practitioner who is legally authorised and competent to practise in own right. It is expected of such a person to judge a patient situation, to take decisions rationally, to act

and to accept responsibility therefor. This implies the legal and moral duty to give account for that for which responsibility has been accepted.

- 1 Hereafter referred to as "regulations relating to scope of practice"
- 2 Hereafter referred to as "rules relating to acts and omissions"
- 3 Hereafter referred to as "regulations relating to conditions for practice"

### 3.2 Supplementary nursing categories

These are persons who have complied with the minimum requirements for enrolment by the Council as nurse or nursing auxiliary and whose practice is directed by the relevant

- \* regulations relating to scope of practice,
- \* rules relating to acts and omissions and
- \* regulations relating to conditions for practice.

Persons in this category function within the above-named ethical and legal framework under the direct or indirect supervision of the registered nurse or midwife.

Direct supervision is not always possible. Indirect supervision implies a planned system of directed help and support for nursing action in the physical absence of the registered nurse or midwife. Prerequisites for this type of supervision are availability of the supervisor for consultation and guidance and contact between the caregiver and the supervisor by means of -

- \* intermittent direct contact,
- \* the nursing/midwifery regimen,
- \* written protocols provided by the registered nurse or midwife and
- \* a system of communication, for example by telephone or radio.

At this level of practice the person accepts accountability for his/her own acts.

## 4. THE REGISTRATION POLICY OF THE COUNCIL

In terms of section 16 of the Act, the Council has the authority to register or enroll persons who comply with the prescribed requirements.

The purpose of registration and enrolment is to establish an identifiable corps of persons whose education and practice are controlled by the Council. Measures exist to keep the registers and rolls up to date and to remove from them the names of those persons found incompetent or otherwise ineligible for nursing or midwifery practice (see paragraph 6).

#### 4.1 Categories of registration and enrolment

The following categories of persons appear on the registers and rolls of the Council:

- \* Registers:
  - Registered nurses
  - Registered midwives
  - Registered student nurses
  - Registered student midwives
  
- \* Rolls:
  - Enrolled nurses
  - Enrolled midwives
  - Enrolled nursing auxiliaries
  - Enrolled pupil nurses
  - Enrolled pupil nursing auxiliaries

#### 4.2 Prescribed requirements for registration or enrolment

Persons must comply with the prescribed requirements for registration or enrolment by the Council. The most important of these are -

- \* the submission of an application on the prescribed form by an individual, on the grounds of a qualification which complies with the minimum requirements for registration or enrolment by the Council,
  
- \* a certified copy of the qualification obtained or certification by the nursing school concerned that all requirements for the issuing of the qualification have been complied with and
  
- \* submission by the accredited nursing school of a complete exposition indicating how the applicant has complied with the minimum requirements for registration or enrolment.

In the case of foreign applications, confirmation of the person's right to registration/enrolment and of his/her good character as well as proficiency in English must be furnished. In addition, the prescribed admission examination must be undertaken successfully.

#### 4.3 Annual renewal of registration or enrolment

To enable it to keep the registers and rolls of the identifiable nursing corps as accurately as possible, the Council requires annual renewal of registration or enrolment by all persons practising as nurses and midwives.

Persons older than seventy who choose to remain on the register or roll may be exempted, upon request, from the annual re-registration fee.

Registration of students and enrolment of pupils takes place once only, at the commencement of training.

#### 4.4 Removal of names from the register or roll

Removal of the name of a person from the register or roll may take place as follows:

- \* persons who are not practising may make written application to have their names removed temporarily or permanently from the register or roll. When practice is resumed, application is made for restoration to the register or roll and the prescribed fees have to be paid;
- \* the names of persons who have failed to renew their registration or enrolment by 31 January of any year are automatically removed from the register or roll. In such a case application for re-registration or enrolment must be made and the prescribed restoration fee paid, before practice may be resumed;
- \* after a professional conduct enquiry, the sentence imposed by a committee and ratified by the Council, may be that a person's name be removed from the register or roll;
- \* administrative removal should there be evidence that the original application for registration or enrolment was irregular; or
- \* Section 17 and 18 of the Act make provision for other grounds for removal of names from the register or roll.

#### 5. REGULATION OF PRACTICE

The policy for practice in nursing and midwifery is prescribed in the three sets of regulations/rules, namely

- \* regulations relating to scope of practice,
- \* rules relating to acts and omissions and
- \* regulations relating to the conditions for practice.

The purpose of the regulations prescribing the scope of practice for the various nursing categories and the midwife is to define the terrain within which the practitioner may render safe nursing according to the comprehensive health needs of a patient. The patient includes the individual, the family, groups and communities.

The regulations also define an identifiable, distinctive field of study for the nurse and midwife.

The regulated boundaries of the practice of the nurse and midwife are dynamic and change in accordance with the needs of the patient, the knowledge and ability of the practitioner, the situation within which nursing takes place, the availability of other health service professionals and support systems, as well as progress in science and technology. There is provision for the most elementary to the most sophisticated situations. The regulations are thus enabling and not restrictive.

The regulations relating to conditions for practice set certain requirements to ensure that the nurse or midwife keeps pace with the rapidly developing technology and the progress in the profession as well as respecting the ethical principles and integrity of the profession in making his/her practice known.

When the practitioner breaches these two sets of regulations, the rules relating to the acts and omissions which may lead to professional conduct steps come into operation. The broad principle on which the three sets of regulations/rules is based, is the protection of the public from misrepresentation, malpractice and exploitation.

#### 6. PROFESSIONAL DISCIPLINE

The distinctive characteristics of a profession are

- \* service to the community;
- \* control over who may practise the profession, by means of registration/enrolment;
- \* the setting of minimum requirements for the education of those wishing to practise the profession;
- \* personal accountability for practice; and
- \* disciplining of those practitioners who do not conform to the norms of the profession.

Nursing is recognised worldwide as one of the professions which is necessary for orderly, meaningful communal life in a society.

The Council is the institution in South African society which is commissioned by legislation to ensure a safe nursing and midwifery service. Professional discipline, along with training and registration/enrolment requirements, is part of the mechanism which the Council has at its disposal to attain this goal. The aim of professional discipline is to eliminate unprofessional conduct by individuals within the profession. This is achieved, *inter alia*, by suspending such a practitioner's right to practise, or by giving the person the opportunity for rehabilitation over a specified period of time.



Professional conduct enquiries originate in complaints or records of court cases or inquests involving nurses or midwives, which are received by the Council. All such documentation is referred to the committee of preliminary investigation for consideration. The committee may take one of three decisions -

- \* to refer the case to a professional conduct committee for a formal hearing;
- \* that there is no prima facie case for a hearing; or
- \* that further information be obtained for reconsideration by the committee.

In the case of a professional conduct hearing, the matter is heard by a professional conduct committee constituted on the principles of peer group control and public representation and functioning in terms of regulations made under the Act. The Act also provides for the appointment of a legal assessor at any hearing to advise the committee on matters of law, procedure or evidence.

Decisions of the committee involve a finding of guilty or not guilty of professional misconduct and, in the case of the former, the imposition of a suitable penalty, which may be -

- \* a caution or a reprimand;
- \* a caution and a reprimand;
- \* suspension from practice for a specified period;
- \* removal from the register or roll and hence removal of the right of practise;
- \* extension of the prescribed period of training in the case of a student or pupil; or
- \* a fine not exceeding R2 000.

Although there is no provision in the Act for a right of appeal to the courts, any nurse or midwife disciplined by the Council has a right to review by the High Court.

## 7. DECISION-MAKING IN NURSING AND MIDWIFERY

The relationship between a nurse or midwife and her patient is one of trust, where there is an implicit contract in terms of which the practitioner is bound to provide adequate, safe care.

Action by the nurse or midwife is preceded by judicious decision-making by the individual practitioner.

### 7.1 Principles directing decision-making in practice

As a result of continuous scientific and technological development, the unavailability of other health practitioners and the changing needs of the community, demands are sometimes made of the registered nurse or midwife which give rise to the question of whether he/she has the legal authorisation to act in accordance with such demands. The principles directing decision-making, irrespective of the nature of the situation, remain the same, namely -

- \* the knowledge and correct interpretation of the ethical rules and the regulations governing his/her practice,
- \* the knowledge and judicious interpretation and application of other policy and legislation influencing his/her practice,
- \* ensuring that acting or omitting to act does not place the safety of the patient in the jeopardy and
- \* willingness to accept accountability for the decision to act or not, as well as for the acts arising from this.

### 7.2 Potential conflict between personal and patient interests

The Council recognises the right of every individual nurse or midwife to freedom of association. The Council also recognises his/her right to address grievances in the manner agreed upon with the employer. If, however, he/she fails to abide by the agreed-upon approach and, in the process, wilfully or negligently denies the patient his/her right to care, he/she contravenes the ethical code of the nursing and midwifery professions and exposes him/herself to disciplinary action.

Where intimidation exists it should be met with firm professional resolve to maintain patient care. The nurse or midwife must take a resolute stand that patient care is his/her first concern at all times.

### 7.3 Flexibility in decision-making

The dynamic nature of health needs and human resource distribution in the field of health care necessitates on-going review of policy on specific practice issues in respect of -

- \* health care interventions where the legal authorisation of the nurse or midwife to carry out the intervention has been questioned or
- \* the obligations or responsibilities of the nurse or midwife with respect to certain aspects of practice or

- \* the legal status and acceptability of certain technological resources being used in nursing practice.

The continuing review of policy reflects the recognition of the dynamic nature of the nursing and midwifery professions, each with an open-ended scope of practice, making it responsive to the changing health needs of the community and involving in pace with scientific and technological advances. At the same time and in each situation, the principles directing the decision-making of the individual nurse or midwife remain operative.

#### 8. POLICY WITH REGARD TO PRIMARY HEALTH CARE

The Council endorses the view of the World Health Organisation with regard to primary health care. In the context of the setting of standards for

- \* the preparation of nurses and midwives for practice and
- \* the control of the practice of nurses and midwives,

within a comprehensive health care system, the Council regards primary health care as a basic level of health care, usually the point of entry to the health care system, which includes programmes directed at the promotion of health and living standards and the prevention, early diagnosis and treatment of disease and disability.

The Council believes that the nurse and midwife have a unique and indispensable role in the provision of primary health care. This belief is based on the universal and deep-rooted philosophy of service to mankind which characterises nursing and midwifery practice. This philosophy is re-enforced by the comprehensive and integrated approach to the education of nurses and midwives as well as their prescribed scope of practice, which equips and enables them to function in all primary health care settings.

Furthermore, in terms of geographical distribution and numbers in South Africa, the nurse and midwife are the most readily available members of the health team.

Nursing and midwifery practice in primary health care is dynamic and is determined by the nature of the needs of the community and the availability of other members of the health team as well as availability and type of health care facilities.

9. POLICY WITH REGARD TO LAY HEALTH WORKERS

The Council supports the concept of a lay health worker, whose practice is not statutorily regulated.

Certain activities traditionally carried out by nurses and midwives in primary health care settings or in the caring for persons with physical or mental illness or disability in institutions or at home, cannot be viewed as exclusively nursing activities. Those activities which require the application of scientifically based knowledge and judgement, are the responsibility of the registered nurse or midwife. Activities which could be carried out by the lay or support staff in care settings, are those which require the exercise of common sense rather than professional judgement and where the expected outcome is predictable in these terms.

The Council believes that lay health workers should function within a health team. Since the nurse and midwife are the more readily available health professionals, they are frequently the persons ideally placed for the local training, support and supervision of such workers.

The Council is of the opinion, however, that the nurse or midwife functioning in this role must

- \* understand fully the role, function and status of the lay health worker,
- \* appreciate the context within which such a worker contributes to the health care system,
- \* understand his/her own role in identifying, training, supporting and supervision of lay health workers and
- \* be skilled in applying the techniques of adult education.