



Nursing Act, 2005

Act No. 33 of 2005

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ACT

To regulate the nursing profession; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1

SOUTH AFRICAN NURSING COUNCIL

Definitions

1. In this Act, unless the context indicates otherwise—

"auxiliary midwife" means a person who prior to the commencement of this Act was enrolled or eligible to be enrolled with the Council as such;

"auxiliary nurse" means a person registered as such in terms of section 31;

"code" means the code of conduct, good practice and any other code made under this Act;

"Council" means the South African Nursing Council contemplated in section 2;

"database" means an integrated system of particulars of persons registered under this Act, nursing education institutions and nursing agencies kept by the Council to meet its information processing and retrieval requirements in terms of this Act;

"Director-General" means the head of the national Department of Health;

"fruitless and wasteful expenditure" has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"health care user" has the meaning assigned to it in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);

"health establishment" has the meaning assigned to it in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);

"health services" has the meaning assigned to it in section 1 of the National Health Act, 2003 (Act No. 61 of 2003);

"irregular expenditure" means expenditure, other than unauthorised expenditure—

- (a) incurred in contravention of or that is not in accordance with a requirement of any applicable legislation; or
- (b) that falls outside of the scope of the functions of the Council contemplated in this Act;

"learner midwife" means a person registered as such in terms of section 32;

"learner nurse" means a person registered as such in terms of section 32;

"midwife" means a person registered as such in terms of section 31;

"midwifery" refers to a caring profession practised by persons registered under this Act, which supports and assists the health care user and in particular the mother and baby, to achieve and maintain optimum health during pregnancy, all stages of labour and the *puerperium*;

"Minister" means the Minister of Health;

"national department" means the national Department of Health;

"nurse" means a person registered in a category under section 31(1) in order to practise nursing or midwifery;

"nursing" means a caring profession practised by a person registered under section 31, which supports, cares for and treats a health care user to achieve or maintain health and where this is not possible, cares for a health care user so that he or she lives in comfort and with dignity until death;

"nursing education institution" means any nursing education institution accredited by the Council in terms of this Act;

"nursing service" means any service within the scope of practice of a practitioner;

"practitioner" means any person registered in terms of section 31(1) of this Act;

"prescribed" means prescribed by regulation;

"professional nurse" means a person registered as such in terms of section 31;

"register" means a register containing the names and other particulars of all persons registered in terms of section 31, 32 or 33 and additional qualifications registered in terms of section 34;

"Registrar" means the person appointed in terms of section 18;

"regulation" means any regulation made in terms of section 58;

"rule" means any rule made in terms of section 59;

"scope of practice" means the scope of practice of a practitioner that corresponds to the level contemplated in section 30 in respect of that practitioner;

"staff nurse" means a person registered as such in terms of section 31;

"this Act" includes the regulations;

"unauthorised expenditure" means expenditure that is not in accordance with the budget of the Council or that takes place outside of the systems of financial and risk management and internal control of the Council contemplated in section 29(2);

"unprofessional conduct" means a conduct which, with regard to the profession of a practitioner, is improper, disgraceful, dishonourable or unworthy.

South African Nursing Council

2. (1) The South African Nursing Council established by section 2 of the Nursing Act, 1978 (Act No. 50 of 1978), continues to exist as a juristic person, notwithstanding the repeal of that Act by this Act.
- (2) The head office of the Council is situated in Pretoria.

Objects of Council

3. The objects of the Council are to—
- (a) serve and protect the public in matters involving health services generally and nursing services in particular;
 - (b) perform its functions in the best interests of the public and in accordance with national health policy as determined by the Minister;
 - (c) promote the provision of nursing services to the inhabitants of the Republic that complies with universal norms and values;
 - (d) establish, improve, control conditions, standards and quality of nursing education and training within the ambit of this Act and any other applicable laws;
 - (e) maintain professional conduct and practice standards for practitioners within the ambit of any applicable law;
 - (f) promote and maintain liaison and communication with all stakeholders regarding nursing standards, and in particular standards of nursing education and training and professional conduct and practice both in and outside the Republic;
 - (g) advise the Minister on the amendment or adaptation of this Act regarding matters pertaining to nursing;
 - (h) be transparent and accountable to the public in achieving its objectives and in performing its functions;
 - (i) uphold and maintain professional and ethical standards within nursing; and
 - (j) promote the strategic objectives of the Council.

Functions of Council

4. (1) The Council must—
- (a) in all its decisions, take cognisance of national health policies as determined by the Minister and implement such policies in respect of nursing;
 - (b) where authorised by this Act, enter, remove from or restore to the register the name of a person;
 - (c) conduct examinations, and appoint examiners and moderators and grant diplomas and certificates in respect of such examinations;
 - (d) conduct inspections and investigations of nursing education institutions, nursing education programmes and health establishments, in order to ensure compliance with this Act and the rules and standards determined by the Council in terms of this Act;
 - (e) report to the relevant statutory body any non-compliance established after an inspection and investigation referred to in paragraph (d);
 - (f) ensure that persons registered in terms of this Act behave towards users of health services in a manner that respects their constitutional rights to

- human dignity, bodily and psychological integrity and equality, and that disciplinary action is taken against persons who fail to do so;
- (g) investigate complaints against persons registered in terms of this Act and take appropriate disciplinary action against such persons in accordance with the provisions of this Act in order to protect the interests of the public;
 - (h) publish in the *Gazette* the details of the unprofessional conduct and the names and qualifications of the persons against whom disciplinary action was taken in terms of this Act within 30 days of the conclusion of such disciplinary action;
 - (i) ensure that a register of persons registered in terms of this Act is available to the public as prescribed;
 - (j) investigate and take action against non-accredited nursing education institutions;
 - (k) withdraw or suspend accreditation of a nursing education institution or nursing education programme if the education or training provided does not comply with the prescribed requirements and inform the relevant licensing authority;
 - (l) determine—
 - (i) the scope of practice of nurses;
 - (ii) the conditions under which nurses may practise their profession;
 - (iii) the acts or omissions in respect of which the Council may take steps against any person registered in terms of this Act; and
 - (iv) the requirements for any nurse to remain competent in the manner prescribed;
 - (m) determine prescribed licence or registration fees, payable under this Act;
 - (n) monitor the assessment by education and training providers, including the recognition of prior learning, register constituent assessors and moderators and grant diplomas and certificates in accordance with the requirements of this Act and any other law;
 - (o) be regarded as an education and training quality assurer in terms of section 5 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), for all nursing qualifications;
 - (p) submit to the Minister—
 - (i) a five-year strategic plan within six months of the Council coming into office which includes details as to how the Council plans to achieve its objectives under this Act;
 - (ii) a report every six months on the status of nursing and on matters of public importance compiled by the Council in the course of the performance of its functions under this Act; and
 - (iii) an annual report within six months of the end of the financial year;
 - (q) ensure that an annual budget is drawn up in terms of sections 23 and 24 and that the Council operates within the parameters of such budget; and

- (r) perform such other functions as may be prescribed.
- (2) The Council may—
 - (a) make extracts from the register;
 - (b) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept or make any donation and administer any trust;
 - (c) institute or defend any legal action in its name;
 - (d) appoint experts and advisers as may be required to assist the Council in the performance of its functions in terms of this Act;
 - (e) delegate to any person or organisation any function referred to in this section, provided that the Council is not divested of any function so delegated;
 - (f) accredit nursing education institutions and nursing education programmes and monitor all assessments by education and training providers in accordance with this Act or any other law;
 - (g) carry out quality control inspections in accordance with the prescribed conditions;
 - (h) investigate complaints against any health establishment in respect of its nursing service;
 - (i) subject to prescribed conditions and upon payment of a prescribed fee, issue a licence for a professional nurse to conduct a private practice;
 - (j) consider any matter affecting nursing, and make representations to the Minister and Director-General or take such action in connection therewith as the Council may find advisable;
 - (k) require nursing education institutions to submit annual returns of learner nurses and to submit any information that the Council may require;
 - (l) require employers to submit annual returns of nurses in their employ and any other information necessary to enable the Council to perform its functions and fulfil its objectives;
 - (m) in consultation with the Minister of Finance, establish, manage and administer a pension or provident fund for the employees of the Council;
 - (n) recommend to the Minister regulations relating to any matter under this Act which may be prescribed; and
 - (o) generally, do all such things as it may find necessary or expedient to achieve the objects of this Act.

Composition and dissolution of Council

- 5. (1) (a) The Council consists of not more than 25 members, of whom 14 must be registered in terms of section 31(1)(a) and (b), appointed by the Minister taking into account their expertise in nursing education, nursing, community health, primary health care, occupational health and mental health.

- (b) Of the 25 members—
 - (i) one person must be an officer of the national department;
 - (ii) one person must have special knowledge of the law;
 - (iii) one person must have special knowledge of financial matters;
 - (iv) one person must have special knowledge of pharmacy;
 - (v) one person must have special knowledge of education;
 - (vi) one person must have knowledge of consumer affairs;
 - (vii) three persons must represent communities;
 - (viii) one person must be registered in terms of section 31(1)(c); and
 - (ix) one person must be registered in terms of section 31(1)(d).
- (2) (a) The members must be appointed by the Minister on the basis of nominations made by interested parties, after publication of a notice in the *Gazette* inviting nominations for new members.
- (b) If the Minister receives no nomination or an insufficient number of nominations within the period specified in the invitation, the Minister may appoint the required number of persons who qualify to be appointed in terms of subsection (1).
- (3) A member holds office for a period not exceeding five years reckoned from the date of his or her appointment.
- (4) The names of the members of the Council, the dates of commencement of their terms of office and the periods for which they have been appointed must be published by the Minister by notice in the *Gazette* as soon as possible after their appointment.
- (5) The Minister may reappoint a member whose term of office has expired, for one further period not exceeding five years.
- (6) Each member must, on assumption of office, sign an undertaking to abide by the provisions of this Act and the codes.
- (7) (a) The Minister may dissolve the Council if the Council fails to comply with any of the provisions of this Act.
- (b) All the functions of the Council are vested in the Minister until a new Council is appointed.
- (8) (a) The Minister may at any time request copies of the records, including minutes of meetings and financial statements, of the Council in order to ascertain the extent of the Council's compliance with this Act and any codes.
- (b) The Registrar must furnish copies of all such records within 15 days of the date of the Minister's written request.
- (9) The Minister may appoint one or more persons to investigate the affairs of the Council and to prepare a report after such investigation if there is a reasonable suspicion that the Council is failing to comply with this Act or any code.

Disqualification from membership

6. A person may not be appointed as a member of the Council if he or she—
- (a) is an unrehabilitated insolvent or if his or her creditors have accepted an offer of a composition made in terms of section 119 of the Insolvency Act, 1936 (Act No. 24 of 1936);
 - (b) is disqualified from practising his or her profession under this Act;
 - (c) is not a South African citizen and ordinarily resident in the Republic;
 - (d) he or she becomes mentally ill to such a degree that it is necessary that he or she be detained, supervised or controlled;
 - (e) has been removed from an office of trust on account of misconduct;
 - (f) has been convicted of—
 - (i) an offence for which he or she was sentenced to imprisonment without the option of a fine; or
 - (ii) theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty;
 - (g) has previously been a member of the Council for a period exceeding 10 consecutive years;
 - (h) has had his or her membership terminated by the Minister in terms of this Act; or
 - (i) is, at the time of his or her appointment, or was, during the preceding 12 months—
 - (i) a member of a municipal council, a provincial legislature or Parliament; or
 - (ii) a provincial or national office-bearer or employee of any party, organisation or body of a political nature.

Vacation of office

7. A member must vacate his or her office if—
- (a) he or she becomes disqualified in terms of section 6 from being appointed as a member;
 - (b) he or she has been absent from more than two consecutive ordinary meetings of the Council without leave of the Council;
 - (c) he or she tenders his or her resignation in writing to the Minister and the Minister accepts his or her resignation;
 - (d) he or she becomes impaired to the extent that he or she is unable to carry out his or her duties as a member of the Council; or
 - (e) he or she ceases to hold any qualification necessary for his or her appointment to the Council.

Termination of membership

8. The Minister may terminate membership of a member of the Council where—
- (a) a member fails to perform the duties of a member in terms of this Act or the codes;
 - (b) a member obstructs or impedes the Council in the performance of its functions in terms of this Act or the codes;
 - (c) a member fails to declare a conflict of interest between his or her affairs and those of the Council;
 - (d) a member acts in a manner that is likely to bring the Council into disrepute;
 - (e) a member misuses or misappropriates Council funds or resources;
 - (f) a member approves or engages in unauthorised or irregular expenditure or fruitless and wasteful expenditure; or
 - (g) such termination is in the interest of the public.

Filling of vacancies

9. Every vacancy on the Council arising from a circumstance referred to in section 7 or 8 and every vacancy caused by the death of a member must be filled by appointment by the Minister in terms of section 5(2), and every member so appointed must hold office for the unexpired portion of the period for which the vacating member was appointed.

Chairperson and vice-chairperson of Council

10. (1) (a) The Minister, after consultation with the Council, must appoint one of the members of the Council appointed in terms of section 5(1)(a) as chairperson of the Council.
- (b) At the first meeting of the Council the members must elect a vice-chairperson from the categories mentioned in section 31(1)(a) and (b).
- (c) The Minister may withdraw a member's appointment as chairperson or vice-chairperson if it is in the public interest or if the member is for any reason unable to perform or incapable of performing his or her functions as chairperson for a period exceeding three months.
- (2) The chairperson and vice-chairperson must hold office for the duration of the term of office for which he or she has been appointed as a member of the Council unless the chairperson or vice-chairperson resigns or ceases to be a member of the Council prior to the expiry of his or her term of office as a member or is removed from office by the Minister in terms of section 8.
- (3) In the absence of the chairperson or in the event that the chairperson is for any reason unable to act as chairperson, the vice-chairperson, subject to the provisions of subsection (1), has the authority to perform all the functions and exercise all the powers of the chairperson.
- (4) If both the chairperson and the vice-chairperson are absent from any meeting, the members present must elect one of their number to preside at that meeting and,

until the chairperson or vice-chairperson resumes duty, to perform all the functions and exercise all the powers of the chairperson.

- (5) If the office of the chairperson becomes vacant, the Minister must appoint as chairperson, at his or her discretion, a person from among the remaining members of the Council, or any other person in terms of section 5(1) and (2), and the person so appointed must hold office for the unexpired portion of the period for which his or her predecessor was appointed.
- (6) If the office of the vice-chairperson becomes vacant, the members must, at the first meeting after such vacancy occurs or as soon thereafter as may be convenient, elect from among themselves a new vice-chairperson and the member so elected must hold office for the unexpired portion of the period for which his or her predecessor was appointed.
- (7) The chairperson or vice-chairperson may vacate office as such without terminating his or her membership of the Council and if such vacation occurs, the Minister must appoint a new chairperson from amongst the members of the Council in terms of subsection (1).

Duties of chairperson

11. The chairperson of the Council must—

- (a) ensure that every member of the Council has signed the codes made under this Act and adheres to these codes;
- (b) convene meetings of the executive committee;
- (c) liaise with or advise the Minister on issues relating to the Council;
- (d) generally ensure that the Council performs its functions and fulfils its objectives in terms of this Act and complies with the relevant provisions of any other Act; and
- (e) ensure that the budget of the Council is formulated as prescribed and that the Council operates within such budget.

Meetings of Council

12. (1) The Registrar must, in consultation with the chairperson, convene meetings of the Council at the place and time and on the date determined by the Council and must draw up the agendas and compile documentation for such meetings.
- (2) The Council must meet not less than four times annually for the purpose of conducting its business, but the Council may in addition hold such further meetings as it may from time to time determine.
- (3) A special meeting of the Council—
 - (a) may be convened by the chairperson at any time; or
 - (b) must be convened by the chairperson at such place and time and on such date as he or she may determine within 30 days of the receipt of a written request by the Minister or of a written request signed by at least a third of the members.

- (4) A written request contemplated in subsection (3)(b) must state clearly the purpose for which the meeting is convened.

Quorum and procedure at meetings

13. (1) A quorum of any meeting of the Council is one half of the total number of members plus one.
- (2) At all meetings of the Council each member present must have one vote on a question before the Council.
- (3) Any decision taken by the Council must be decided by a majority vote at a meeting of the Council at which a quorum is present and, in the event of an equality of votes on any matter, the member presiding has a casting vote in addition to his or her deliberative vote.
- (4) For the purposes of this Act, a majority vote at a meeting of the Council or of any of the committees is one half of the total number of members present plus one.
- (5) Only members have voting rights on any matter in which the Council is required to make a decision.
- (6) A decision taken by the Council or an act performed under the authority of the Council is not invalid merely by reason of—
 - (a) an interim vacancy in the Council; or
 - (b) the fact that a person who is not entitled to sit as a member of the Council, sat as a member at the time when the decision was taken, if the act was authorised by the required majority of members present at the time and entitled to sit as members of the Council.

Executive committee of Council

14. (1) There is an executive committee of the Council consisting of—
 - (a) the chairperson;
 - (b) the vice-chairperson;
 - (c) three persons appointed in terms of section 5(1)(a);
 - (d) a person appointed in terms of section 5(1)(b)(i);
 - (e) a person appointed in terms of section 5(1)(b)(iii); and
 - (f) a person appointed in terms of section 5(1)(b)(vii).
- (2) The members of the executive committee contemplated in subsection (1)(c) and (f) must be elected by the members of the Council.
- (3) In the event that there is an equality of votes on any matter in which the executive committee is required to take a decision, the chairperson has a casting vote in addition to his or her deliberative vote.
- (4) The term of office of the executive committee is 20 months.

- (5) The executive committee may, subject to the directives of the Council, exercise all the powers, other than a power referred to in Chapter 3, and may perform all the functions of the Council during periods between meetings of the Council, but does not have the power to set aside or amend the decisions of the Council, save in so far as the Council otherwise directs.
- (6) Any act performed or decision taken by the executive committee is binding unless, on good grounds shown, it is set aside or amended by the Council at its next meeting.

Other committees

15. (1) The Council may from time to time establish such committees, including professional conduct committees and education committees, as it may think necessary to investigate and report to the Council on any matter falling within the scope of its functions.
- (2) Each committee appointed in terms of subsection (1) consists of as many persons appointed by the Council as the Council may determine but must, except in the case of a disciplinary appeal committee referred to in subsection (4), include one member of the Council, who must be the chairperson of such committee.
- (3) (a) The Council may, subject to the provisions of subsection (4), delegate to any committee established in terms of subsection (1) or to any person such of its powers as it may determine.
- (b) The Council is not divested of any power so delegated and may amend or set aside any decision of such committee made in the exercise of its delegated power.
- (4) Despite subsection (1), the Council may establish an *ad hoc* disciplinary appeal committee consisting of—
- (a) as chairperson, either a retired judge, retired senior magistrate or an attorney with at least 10 years' experience; and
- (b) not more than two registered persons who have professional qualifications that are the same as those of the person who is subject to the disciplinary proceedings.
- (5) A disciplinary appeal committee referred to in subsection (4) has the power to vary, confirm or set aside a finding of a disciplinary committee established in terms of subsection (1) or to refer the matter back to the disciplinary committee with such instructions as it may consider fit.
- (6) A decision of a disciplinary committee, unless appealed against, is binding from the date determined by that committee but if an appeal is lodged against a penalty of erasure or suspension from practice, such penalty remains effective until the appeal is finalised.
- (7) Where a matter has been considered by a disciplinary appeal committee, its decision is binding from the date determined by the disciplinary appeal committee unless appealed against to the Council.

Remuneration of members of Council and committees

16. (1) The members of the Council and members of the committees of the Council must be paid remuneration or allowances determined by the Minister in consultation with the Minister of Finance.
- (2) (a) Any person who is not subject to the laws governing the public service shall be entitled to such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the exercise, performance or carrying out of the powers, functions and duties conferred upon, assigned to or imposed upon him or her by the Director-General, as the Minister in consultation with the Minister of Finance may determine.
- (b) Any other remuneration not referred to in paragraph (a) must be paid by the Council.
- (c) Any member who is subject to the laws governing public service must be entitled to special leave to attend to the functions of the Council.

Minister may rectify defects

17. If anything required to be done under this Act in connection with the appointment of any member is omitted or not done within the time or in the manner required by this Act, the Minister may order such steps to be taken as may be necessary to rectify the omission or error or may validate anything done in an irregular manner or form, in order to give effect to the objects of this Act.

Appointment of Registrar and staff

18. (1) The Minister must, after consultation with the Council, appoint the Registrar of the Council to carry out his or her functions under this Act and the Minister may, after consultation with the Council, dismiss the Registrar.
- (2) The appointment of the Registrar is subject to the conclusion of a written performance agreement entered into between the Council and the Registrar, and approved by the Minister.
- (3) The term of office of a Registrar is five years, but the Minister may, after consultation with the Council, renew the Registrar's term of office for such further period as the Minister finds appropriate.
- (4) The Registrar may appoint such other persons, subject to the policies and guidelines of the Council, as he or she may think necessary to perform the functions specified in this Act and the Registrar may dismiss any such other person.
- (5) The staff must include such number of senior managers as the Council may determine, after consultation with the Registrar and the Minister.

Duties of Registrar

19. (1) The Registrar must—

- (a) exercise the powers and perform the functions assigned to the Registrar in terms of this Act;
 - (b) keep the registers in respect of practitioners and must on the instructions of the Council enter in the appropriate register the name, physical address, qualifications, date of initial registration and such other particulars, including, where applicable, the details of the category of practitioner, learner midwife or learner nurse, as the Council may determine, of every person whose application for registration in terms of this Act has been granted;
 - (c) update the registers correctly and in accordance with the provisions of this Act and remove therefrom the names of all practitioners who have been removed in terms of this Act and must from time to time record changes in the addresses or qualifications of registered persons;
 - (d) be the secretary of the Council and maintain the records of its meetings;
 - (e) provide guidance and advice on compliance with this Act to the Council and the officials;
 - (f) act with fidelity, honesty, integrity and in the best interest of the Council in managing its financial affairs;
 - (g) disclose to the Council all material facts and information which in any way might influence the decisions or actions of the Council or the chairperson; and
 - (h) prevent any prejudice to the financial and administrative interests of the Council.
- (2) The Registrar may not—
- (a) act in a way that is inconsistent with the duties assigned to him or her in terms of this Act; or
 - (b) use the position or privileges of, or confidential information obtained as, Registrar for personal gain or to improperly benefit another person.

Accounting duties of Registrar

20. (1) The Registrar must, in a format and for periods as may be prescribed, report to the Council on all revenue received and expenditure incurred by the Council including, but not limited to—
- (a) all fees collected and funds received;
 - (b) salaries and wages;
 - (c) contributions for pensions and medical aid, if any;
 - (d) travel, motor car, accommodation, subsistence and other allowances;
 - (e) housing benefits and allowances;
 - (f) overtime payments;
 - (g) loans and advances; and
 - (h) any type of benefit or allowance related to staff.

- (2) The Registrar must—
 - (a) assist the Council in performing the budgetary functions assigned to it in terms of this Act; and
 - (b) provide the chairperson with the administrative support, resources and information necessary for the performance of those functions.
- (3) The Registrar is responsible for implementing the Council's approved budget, including taking all reasonable steps to ensure that—
 - (a) the spending of funds is reduced if necessary when revenue is anticipated to be less than projected in the budget; and
 - (b) revenue and expenditure are properly monitored.
- (4) When necessary, the Registrar must prepare an adjustments budget and submit it to the chairperson for consideration and tabling in the Council.
- (5) The Registrar must no later than 14 days after the approval of an annual budget submit to the chairperson—
 - (a) a draft service delivery and budget implementation plan for the budget year; and
 - (b) drafts of the annual performance agreements as required for the Registrar and all senior managers.
- (6) The Registrar must report in writing to the Council—
 - (a) any impending—
 - (i) shortfalls in budgeted revenue;
 - (ii) overspending of the Council's budget; and
 - (iii) any steps taken to prevent or rectify such shortfalls or overspending.
- (7) The Registrar must by no later than 10 working days after the end of each month submit to the chairperson a statement in the prescribed format on the state of the Council's budget.
- (8) The Registrar must inform the Director-General, in writing, of—
 - (a) any failure by the Council to adopt or implement a budget-related policy, any other policy approved by the Council or a statutory function or responsibility in terms of this Act or any other legislation; or
 - (b) any non-compliance by a member or official of the Council with any such policy.
- (9) The Registrar must submit to the Council and the Director-General such information, returns, documents, explanations and motivations as may be prescribed or required.
- (10) If the Registrar is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the Council and the Director-General.
- (11) Any action taken by the Council or member of the Council against the Registrar solely because of the Registrar's compliance with a provision of this Act is an

unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).

- (12) The Registrar may delegate to a staff member or any other official of the Council—
- (a) any power or duty assigned to the Registrar in terms of this Act; or
 - (b) any power or duty necessary to assist the Registrar in complying with a duty which requires the Registrar to take appropriate steps to ensure the achievement of the aims of a specific provision of this Act.
- (13) The Registrar may not delegate to any member of the Council any power or duty assigned to him or her in terms of this Act.
- (14) A delegation in terms of subsection (12)—
- (a) must be in writing;
 - (b) is subject to such limitations and conditions as the Registrar may impose in a specific case;
 - (c) may either be to a specific individual or to the holder of a specific post in the Council;
 - (d) may, in the case of a delegation to a senior manager, authorise that senior manager to sub-delegate the delegated power or duty to an official or the holder of a specific post in that senior manager's area of responsibility; and
 - (e) does not divest the Registrar of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (15) The Registrar may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this Act, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Funding of expenditure

21. An annual budget may only be based on—
- (a) anticipated revenue to be collected; and
 - (b) accumulated funds from previous years' surpluses not committed for other purposes.

Bank account of Council

22. (1) The Council must open and maintain at least one bank account in the name of the Council.
- (2) All money received by the Council must be paid into its bank account promptly and in accordance with this Act and any requirements that may be prescribed.
- (3) Money may only be withdrawn from the bank account as prescribed.

- (4) The Registrar must submit the name of the bank where the account is held, and the type and number of the account, to the Auditor-General and the Director-General within 60 days of opening such bank account.
- (5) The Registrar must—
 - (a) administer the bank account of the Council and must account to the Council as requested to do so, but the Minister may order the Registrar and the Council to account to him or her regarding anything concerning such bank account; and
 - (b) ensure compliance with subsections (2) and (3) in the handling and managing of the bank account.
- (6) The Registrar may delegate the duties referred to in subsection (5) only to the manager in charge of finance or the chief financial officer.

Council budget

23. (1) The Council may, except where otherwise provided for in this Act, incur expenditure only—
 - (a) in terms of an approved budget; and
 - (b) within the limits of the amounts appropriated for the different programmes in an approved budget.
- (2) The Council must for each financial year approve an annual budget for the Council before the start of that financial year by adoption of a Council resolution.
- (3) In order for the Council to comply with subsection (2), the chairperson must table the annual budget at a Council meeting at least 90 days before the start of the budget year.
- (4) The chairperson is responsible for the preparation of the budget and must ensure that the draft budget is linked to the Council's strategic plan and that the annual budget is approved as prescribed.
- (5) The Registrar must submit the approved annual budget to the Director-General within 30 days of such approval by the Council.

Contents of annual budget and supporting documents

24. (1) An annual budget of the Council must be a schedule in the prescribed format—
 - (a) setting out anticipated revenue for the budget year from each revenue source;
 - (b) appropriating expenditure for the budget year under the different programmes of the Council;
 - (c) setting out indicative revenue per revenue source and projected expenditure by programme for the two financial years following the budget year;
 - (d) setting out—

- (i) estimated revenue and expenditure by programme for the current year; and
 - (ii) actual revenue and expenditure by programme for the financial year preceding the current year; and
- (e) must include a statement containing any other information required, including—
 - (i) estimates of revenue and expenditure, differentiating between capital and current expenditure;
 - (ii) proposals for financing any anticipated deficit for the period to which they apply; and
 - (iii) an indication of intentions regarding borrowing and other forms of liability that will increase the Council debt during the ensuing year.
- (2) The annual budget of the Council must be divided into a capital and an operating budget in accordance with international best practice and as may be prescribed.
- (3) When an annual budget is tabled, it must be accompanied by amongst other things the following documents:
 - (a) draft resolutions—
 - (i) approving the budget of the Council;
 - (ii) imposing any fees as may be required for the budget year or as prescribed; and
 - (iii) approving any other matter that may be prescribed;
 - (b) measurable performance objectives for revenue from each source and for each programme in the budget, taking into account the Council's strategic plan;
 - (c) a projection of cash flow for the budget year by revenue source, broken down per month;
 - (d) any proposed amendments to the budget-related policies of the Council;
 - (e) particulars of the Council's investments;
 - (f) the proposed cost to the Council for the budget year of the salary, allowances and benefits of—
 - (i) members of the Council;
 - (ii) the Registrar;
 - (iii) the deputy Registrar, if any; and
 - (iv) senior managers, including the chief financial officer, and other persons appointed by the Registrar; and
 - (g) any other supporting documentation as may be prescribed.

Unforeseen and unavoidable expenditure

25. (1) The chairperson may in an emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in the approved budget.
- (2) Any such expenditure—
- (a) must be in accordance with any framework that may be prescribed;
 - (b) may not exceed a prescribed percentage of the approved annual budget;
 - (c) must be reported by the chairperson to the Council at its next meeting; and
 - (d) must be appropriated in an adjustments budget.
- (3) If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 26 applies.

Unauthorised, irregular or fruitless and wasteful expenditure

26. (1) Without limiting liability in terms of common law or other legislation—
- (a) a member of the Council is liable for unauthorised expenditure if that member knowingly or after having been advised by the Registrar that the expenditure is likely to result in unauthorised expenditure instructed an official of the Council to incur such expenditure;
 - (b) the Registrar is liable for unauthorised expenditure deliberately or negligently incurred by him or her, subject to subsection (3);
 - (c) any member or official of the Council who deliberately or negligently made or authorised an irregular expenditure is liable for that expenditure; or
 - (d) any member or official of the Council who deliberately or negligently made or authorised a fruitless and wasteful expenditure is liable for that expenditure.
- (2) The Council must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure, unless the expenditure—
- (a) in the case of unauthorised expenditure, is—
 - (i) authorised in an adjustments budget; or
 - (ii) certified by the Council, after investigation by a Council committee, as irrecoverable and written off by the Council; and
 - (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a Council committee, certified by the Council as irrecoverable and written off by the Council.
- (3) If the Registrar becomes aware that the Council, the chairperson or the executive committee, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the Registrar is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure, provided that the Registrar has informed the Council, the chairperson or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure.

- (4) The Registrar must promptly inform the chairperson, the Director-General and the Auditor-General, in writing—
 - (a) of any unauthorised, irregular or fruitless and wasteful expenditure incurred by the Council;
 - (b) whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and
 - (c) of the steps that have been taken—
 - (i) to recover or rectify such expenditure; and
 - (ii) to prevent a recurrence of such expenditure.
- (5) Criminal or disciplinary proceedings will be instituted against a person charged with the commission of an offence relating to unauthorised, irregular or fruitless and wasteful expenditure whether or not it is written off in terms of subsection (2).
- (6) The Registrar must report to the South African Police Service all cases of alleged—
 - (a) irregular expenditure that constitute a criminal offence; and
 - (b) theft and fraud that occur in the Council.
- (7) The Council must take all reasonable steps to ensure that all cases referred to in subsection (6) are reported to the South African Police Service if—
 - (a) the charge is against the Registrar; or
 - (b) the Registrar fails to comply with that subsection.

Cash management and investments

27. The Council must set out in writing a policy framework within which the Council must conduct its cash management and investments, and invest money not immediately required.

Disposal of capital assets

28. (1) The Council may only transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset after the Council has by resolution decided—
 - (a) on reasonable grounds that the asset is not needed for the performance of the Council's functions; and
 - (b) that the fair market value of the asset will be received for the asset.
- (2) Any transfer or disposal of an asset referred to in subsection (1) must be fair, equitable, transparent, competitive and consistent with the policy framework of the Council contemplated in section 27.

Corporate governance

29. (1) The Registrar is the accounting officer of the Council.

- (2) The Registrar must—
- (a) keep full and proper records of all moneys received and expenses incurred by, and of all assets, liabilities and financial transactions of, the Council; and
 - (b) ensure that the Council has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;
 - (iii) a system for properly evaluating all projects involving expenditure of capital prior to a final decision on the project;
 - (c) take effective and appropriate steps to—
 - (i) collect all moneys due to the Council;
 - (ii) prevent unauthorised, irregular or fruitless and wasteful expenditure and losses resulting from criminal conduct; and
 - (iii) manage available working capital efficiently and economically;
 - (d) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the Registrar's responsibilities are considered and, when necessary, bring those considerations to the attention of the Council;
 - (e) be responsible for the management, including the safeguarding and the maintenance, of the assets and for the management of the liabilities of the Council;
 - (f) settle all contractual obligations and pay all moneys owing by the Council within 30 days of the due date or within a period to which the relevant creditor has agreed;
 - (g) ensure that expenditure of the Council is in accordance with the budget and decisions of the Council;
 - (h) keep full and proper records of the financial affairs of the Council in accordance with any prescribed norms and standards;
 - (i) submit the financial statements of the Council within two months after the end of the financial year to an independent auditor for auditing;
 - (j) submit within four months after the end of a financial year to the Council—
 - (i) an annual report on the activities of the Council during that financial year;
 - (ii) the financial statements for that financial year after those statements have been audited; and
 - (iii) an independent auditor's report on those statements.
- (3) The Council must ensure that the requirements of subsection (2) are met and properly fulfilled.

- (4) Any person who obstructs the Registrar or the Council in fulfilling the requirements of subsections (2) or (3) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

CHAPTER 2

EDUCATION, TRAINING, RESEARCH, REGISTRATION AND PRACTICE

Scope of profession and practice of nursing

30. (1) A professional nurse is a person who is qualified and competent to independently practise comprehensive nursing in the manner and to the level prescribed and who is capable of assuming responsibility and accountability for such practice.
- (2) A midwife is a person who is qualified and competent to independently practise midwifery in the manner and to the level prescribed and who is capable of assuming responsibility and accountability for such practice.
- (3) A staff nurse is a person educated to practise basic nursing in the manner and to the level prescribed.
- (4) An auxiliary nurse or an auxiliary midwife is a person educated to provide elementary nursing care in the manner and to the level prescribed.
- (5) The Minister may prescribe scopes of profession and practice for other categories of nurses contemplated in section 31(2).

Registration as prerequisite to practise

31. (1) Subject to the provisions of section 37, no person may practise as a practitioner unless he or she is registered to practise in at least one of the following categories:
- (a) Professional nurse;
 - (b) midwife;
 - (c) staff nurse;
 - (d) auxiliary nurse; or
 - (e) auxiliary midwife.
- (2) The Minister, after consultation with the Council, may by notice in the *Gazette* create such other categories of persons to be registered to practise nursing as he or she considers necessary in the public interest.
- (3) An employer must not employ or retain in employment a person to perform the functions pertaining to the profession of nursing, other than a person who holds the necessary qualification and who is registered under subsection (1) or (2).
- (4) No person may use as a title any of the categories contemplated in subsection (1) or (2) unless he or she is registered as such in terms of this section.

- (5) A practitioner who wishes to register in terms of subsection (1) must apply in the prescribed manner to the Registrar and submit with his or her application—
 - (a) proof of identity;
 - (b) certificate of good character and standing;
 - (c) proof of his or her qualifications;
 - (d) the prescribed registration fee; and
 - (e) such further documents and information in relation to his or her application as may be required by the Registrar on the instructions of the Council.
- (6) If the Registrar is satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act and upon receipt of the prescribed registration fee, the Registrar must issue a registration certificate authorising the applicant, subject to the provisions of this Act, to practise or engage in any of the categories contemplated in subsection (1) within the Republic.
- (7) If the Registrar is not satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, he or she must refuse to issue a registration certificate to the applicant and must inform the applicant in writing of the reasons for his or her decision, but must, if so required by the applicant, submit the application to the Council for a decision.
- (8) The Registrar may only register a person in terms of subsection (1) if the Registrar is satisfied that the person applying for registration is suitably qualified or if the Council is so satisfied.
- (9) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act may be removed from the register and—
 - (a) a record of the reason for every such removal must be made in the register;
 - (b) the person in respect of whom such removal has been made must be notified thereof in writing by the Registrar; and
 - (c) any certificate issued in respect of such registration is considered to have been cancelled as from the date on which notice has so been given.
- (10) The Registrar must delete from the register the name of the practitioner or mark in the register the name of any person removed or suspended, respectively, from practice and must notify such person in writing accordingly.
- (11) A person who contravenes subsection (1), (3) or (4) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.
- (12) A person who has completed a programme qualifying him or her for registration in another category must apply to have his or her entry in the register altered accordingly.
- (13) A person who completed a programme leading to registration in a higher category must, upon application and after evaluation by the Council, have his or her entry in the register altered accordingly.

- (14) A practitioner must notify the Registrar in writing of any change of particulars within 30 days after such change.

Registration of learners

32. (1) A person undergoing education or training in nursing must apply to the Council to be registered as a learner nurse or a learner midwife.
- (2) The Council must register as a learner nurse or a learner midwife any person who has complied with the prescribed conditions and has furnished the prescribed particulars for a training programme at a nursing education institution.
- (3) The person in charge of a nursing education institution must, within 30 days, notify and furnish to the Council information prescribed by the Council in respect of each learner nurse who has commenced, completed, transferred to or abandoned a nursing education and training programme.
- (4) A person who fails to furnish the Council within a period of 90 days with the required particulars for the registration of a learner nurse or a learner midwife as contemplated in subsection (3) or who contravenes the provisions of subsection (5) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.
- (5) A health establishment must not allow access to clinical facilities for training purposes to anyone who is not registered in terms of this Act.
- (6) The Registrar must delete from the register the name of a learner nurse, or mark in the register the name of any person, suspended from study and must notify such learner nurse or person accordingly, in writing.

Limited registration

33. (1) The Council may provide limited registration to a person who holds a qualification other than a qualification contemplated in section 38 to practise as a nurse if he or she—
- (a) has a qualification that does not meet all the required standards of education and training;
- (b) has not complied with section 31(5);
- (c) does not have all the required professional knowledge, skills and ability; or
- (d) is in the Republic for a limited period for the purpose of practice, research or education.
- (2) A person registered under subsection (1) as a nurse may only be entitled to practise—
- (a) for such period as the Council may determine, but not exceeding three years; and
- (b) under conditions determined by the Council.
- (3) A person registered under this section who practises in contravention of the provisions of subsection (2) is guilty of an offence and liable on conviction to a fine

or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Registration of additional qualifications

34. (1) Subject to the provisions of subsection (2) and on payment of the prescribed fee, the Council must register the additional qualification of a person who is registered under section 31 and who applies in writing for such registration, if he or she complies with the prescribed conditions and furnishes the prescribed particulars.
- (2) Only such qualifications as are prescribed may be registered under this section.

Custody and publication of registers

35. The registers must be kept at the office of the Registrar, and the Council may, at intervals determined by it, cause copies of the registers or supplementary lists, showing additions, removals, amendments or revisions effected since the last publication of copies of the completed registers, to be printed and published or displayed on the internet as the Council thinks fit.

Register as proof

36. (1) A copy of the last published issue of a register or any supplementary list purporting to be printed and published in terms of section 35 is on the face of it proof of the facts recorded in all legal proceedings, and the absence of the name of any person from such copy is proof, unless there is credible evidence to the contrary, that such person is not registered in terms of this Act, but that in the case of any person whose name—
- (a) does not appear in such copy, or whose name has been added to the register after the date of the last published issue thereof, a certified copy under the hand of the Registrar of the entry of the name of such person in the register is proof that such person is registered under the provisions of this Act; or
- (b) has been removed from the register since the date of the last published issue thereof and has not been restored thereto, a certificate under the hand of the Registrar that the name of such person has been removed from the register is proof that such person is not registered in terms of this Act.
- (2) A certificate of registration is proof of registration for a period of one year after its date and thereafter an annual practising certificate, issued upon payment of the prescribed annual fee and the submission of such information as may be required by the Council to keep accurate statistics on human resources in nursing, is proof of registration in the absence of any credible evidence to the contrary.

Receipt as proof

37. A receipt issued by or on behalf of the Council in respect of the payment of registration fees will be proof, in legal proceedings, that such person is registered according to the provisions of this Act, but in the case of any person whose name—
- (a) appears in such register and who is unable to produce such receipt, certification under the hand of the Registrar is proof that such person is registered in terms of this Act; or
 - (b) has been removed from the register since the date of issue of such receipt and has not been restored to the register, certification by the Registrar that such name has been removed from the register is proof that such person is not registered in terms of this Act.

Qualifications prescribed for registration

38. The Minister may, on the recommendation of the Council, prescribe qualifications obtained by virtue of examinations conducted by a nursing education institution in the Republic, which, if held singly or conjointly with any other qualification, entitles any holder thereof to registration in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or requirements as may be prescribed.

Conditions relating to continuing professional development

39. The Council may determine—
- (a) conditions relating to continuing professional development to be undergone by practitioners in order to retain such registration;
 - (b) the nature and extent of continuing professional development to be undergone by practitioners; and
 - (c) the criteria for recognition by the Council of continuing professional development activities and accredited institutions offering such activities.

Community service

40. (1) A person who is a citizen of South Africa intending to register for the first time to practise a profession in a prescribed category must perform remunerated community service for a period of one year at a public health facility.
- (2) A person referred to in subsection (1) must be registered in the category community service.
- (3) The Minister may, after consultation with the Council, make regulations concerning the performance of the service contemplated in subsection (1), including but not limited to—
- (a) the place at which such service is to be performed;

- (b) the conditions of employment pertaining to persons who perform such service; and
- (c) the categories of registration excluded from such service.

Regulation of research

41. The Council must ensure that the prescribed ethical conduct pertaining to research related to the practice of nursing is adhered to and may take appropriate disciplinary action against persons who act in contravention of such rules or any other law.

Education and training

42. (1) An institution intending to conduct a nursing education and training programme in order to prepare persons for practice in any one of the categories contemplated in section 31 must first—
- (a) apply to the Council in writing for accreditation and submit information on—
 - (i) the education and training programme to be provided; and
 - (ii) how it will meet the prescribed standards and conditions for education and training;
 - (b) furnish the Council with any additional information required by the Council for purposes of accreditation or approval of the education and training programme; and
 - (c) pay the prescribed fee.
- (2) The Council may refuse any application made in terms of subsection (1) or grant conditional or provisional accreditation.
- (3) Subject to subsections (1) and (2), the Council must issue an accreditation certificate for a nursing education institution and for each nursing programme offered by that nursing education institution.
- (4) A person who contravenes a provision of this section is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Use of certain titles

43. (1) A person who is registered in one of the categories contemplated in section 31 may use the title "Registered Professional Nurse", "Registered Midwife", "Registered Staff Nurse", "Registered Auxiliary Midwife" or "Registered Auxiliary Nurse", as the case may be, or the abbreviations "RPN", "RM", "RSN", "RAM" or "RAN", respectively.
- (2) A person who is following a programme of study in a nursing education and training institution may use the title "Learner Nurse" or "Learner Midwife", as the case may be, or the abbreviations "LN" or "LM", respectively.

- (3) A person registered in terms of section 40(2) may use the title "Community Service Practitioner".

Removal from and restoration of name to register

44. (1) The Council may instruct the Registrar to remove from the register the name of any practitioner—
- (a) who has died;
 - (b) who has ceased to be a citizen or permanent resident of the Republic and has permanently left the Republic;
 - (c) who has failed to pay any relevant prescribed fee;
 - (d) who has failed to notify the Registrar of any change in residential and postal address or the address of his or her practice within six months after any such change;
 - (e) who has requested that his or her name be removed from the register, in which case he or she may be required to lodge with the Registrar an affidavit or affirmation to the effect that no disciplinary or criminal proceedings are being or are likely to be instituted against him or her;
 - (f) who has been found guilty of unprofessional conduct and a penalty contemplated in 47(1)(b) or (d) was imposed in terms of this Act;
 - (g) whose name has been removed from the register, record or roll of any accredited institution or other body from which he or she received the qualification by virtue of which he or she was registered;
 - (h) who has failed to furnish the Registrar, within a period to be determined by the Council, with such information as the Registrar may require under this Act;
 - (i) whose registration is proved to the satisfaction of the Council to have been made in error or through fraudulent misrepresentation or concealment of material facts or information or in circumstances not authorised by this Act; or
 - (j) who, after an inquiry in terms of section 51, is found to be mentally impaired.
- (2) The Registrar must give notice of the removal of a person's name from the register in terms of paragraph (b) to paragraph (k) of subsection (1) by registered mail addressed to such person at the address of such person as it appears in the register.
- (3) From the date on which notice was given in terms of subsection (2)—
- (a) any registration certificate issued in terms of this Act to the person concerned is considered to have been cancelled; and
 - (b) a person whose name has been removed from the register must cease to practise as a practitioner and is precluded from performing any act which he or she, in his or her capacity as a registered person, was entitled to perform.

- (4) The Registrar must restore the name of a person whose name has in terms of this section been removed from the register if the person concerned—
 - (a) applies on the prescribed form to the Registrar for restoration of his or her name;
 - (b) pays the prescribed fee, if any;
 - (c) complies with such other requirements as the Council may determine; and
 - (d) is otherwise eligible for registration.

Issue of duplicate registration certificate, certificate of status, extract from register or certificate

45. (1) The Registrar may, on application by a practitioner, issue a duplicate certificate of registration if the applicant—
- (a) provides proof of his or her identity to the satisfaction of the Registrar;
 - (b) provides an affidavit in which he or she confirms that the certificate of registration has been lost or destroyed; and
 - (c) pays the prescribed fee determined by the Council.
- (2) The Registrar may, upon payment of the prescribed fee, issue to any registered person a certificate of status containing—
- (a) particulars relating to such person's registration; and
 - (b) a statement to the effect that—
 - (i) the said person is not disqualified from practising his or her occupation; and
 - (ii) no disciplinary steps are pending against him or her in terms of this Act.
- (3) The Registrar may issue a certified extract from the register or a certificate referred to in subsection (2) under his or her hand to any person upon payment of the prescribed fee.
- (4) A certificate may be issued subject to certain conditions imposed by the Council and such conditions shall be indicated on the certificate.

CHAPTER 3

POWERS OF COUNCIL WITH REGARD TO UNPROFESSIONAL CONDUCT

Inquiry by Council into charges of unprofessional conduct

46. (1) The Council may institute an inquiry into any complaint, charge or allegation of unprofessional conduct against a practitioner or a director, manager or owner of an agency registered in terms of this Act, on finding such person guilty of such conduct, may impose any of the penalties contemplated in section 47, but in the case of a complaint, charge or allegation which forms or is likely to form the

subject of a criminal case in a court of law, the Council may postpone the holding of an inquiry until such criminal case has been disposed of.

- (2) In the absence of a complaint, charge or allegation, the Council may institute an inquiry into any alleged unprofessional conduct that comes to its notice.
- (3) If the Council doubts whether an inquiry should be held in connection with a complaint, charge or allegation, it may consult with or seek information from any person, including the person against whom the complaint, charge or allegation has been lodged, to determine whether an inquiry should be held.

Procedure of inquiry by Council

47. (1) A person registered in terms of this Act who, after an inquiry has been held by the Council, is found guilty of unprofessional conduct is liable to one or more of the following penalties:
- (a) A caution or a reprimand or both;
 - (b) suspension for a specified period from practising or, in the case of a learner nurse or a learner midwife, extension or suspension for a specified period of the prescribed period of education and training;
 - (c) removal of his or her name from the register;
 - (d) a prescribed fine; or
 - (e) payment of the costs of the proceedings.
- (2) The Council must appoint a pro forma complainant to act on behalf of the Council in terms of this Chapter.
- (3) A preliminary investigating committee appointed by the Council may—
- (a) investigate all matters of alleged unprofessional conduct;
 - (b) based on evidence, determine whether the case should be referred for a professional conduct inquiry; and
 - (c) in the case of a minor offence, recommend a prescribed fine instead of a full professional conduct inquiry.
- (4) The Registrar may then issue a summons on the prescribed form against the defendant carrying an endorsement by the committee of preliminary investigation that the defendant may admit that he or she is guilty of unprofessional conduct and that he or she may pay the fine specified in the summons, without having to appear at an inquiry in terms of section 46.
- (5) If a summons referred to in subsection (4) is issued against a defendant he or she may, without appearing at an inquiry in terms of section 46, admit that he or she is guilty of unprofessional conduct by paying the prescribed admission of guilt fine to the Council on or before the date specified in the summons.
- (6) (a) A penalty imposed under this section, excluding an admission of guilt fine, is effective within 14 days after notification.
- (b) The imposition of a fine under this section has the effect of a judgment in civil proceedings in the magistrate's court of the district in which the inquiry

in question under section 46 took place or the district wherein the defendant is subsequently resident or employed.

- (7) A penalty referred to in subsection (1) imposed by a professional conduct committee or the preliminary investigation committee referred to in subsection (3), other than a reprimand, is not effective until confirmed by the Council, but a penalty referred to in subsection (1) imposed by a professional conduct committee or any order made by such committee under subsection (1) must, if such committee so directs in the public interest, come into operation forthwith, and must then lapse after expiry of a period of six months unless confirmed by the Council within that period.
- (8) (a) During an inquiry in terms of this section, the defendant must be afforded an opportunity of pleading to the charge and of being heard in his or her defence.
- (b) Any party in a professional conduct hearing has the right to be represented by a person of his or her choice, but such representative must adhere to the prescribed procedure pertaining to such inquiry.
- (c) Despite a plea of guilty by a defendant, the Council or a professional conduct committee may require the pro forma complainant or defendant to lead evidence.
- (9) Any penalty imposed under subsection (1) must be reduced to writing and signed by the chairperson of the Council and dealt with in the prescribed manner.
- (10) (a) The Council or a professional conduct committee may—
- (i) take evidence from any witness who has been subpoenaed by the Registrar;
 - (ii) administer an oath to, or take an affirmation from, any witness; and
 - (iii) examine any book, record, document or thing which a witness has been required to produce.
- (b) A subpoena to appear before the Council or a professional conduct committee as a witness or to produce any book, record, document or thing must be in the prescribed form and must be served either by registered post or in the same manner as a subpoena issued by a magistrate's court.
- (c) A person subpoenaed under this subsection who—
- (i) refuses or, without sufficient cause, fails to attend and give evidence relevant to the inquiry at the time and place specified in the subpoena;
 - (ii) refuses to take the oath or to make an affirmation when required by the chairperson to do so;
 - (iii) refuses to produce any book, record, document or thing which he or she is in terms of the subpoena required to produce;
 - (iv) wilfully misleads the Council or a professional conduct committee; or
 - (v) refuses to answer any question that is not self-incriminatory or to answer, to the best of his or her knowledge and belief, any question lawfully put to him or her,

is guilty of an offence and on conviction liable to a prescribed fine.

- (d) A person so subpoenaed is entitled to all the privileges to which a witness subpoenaed to give evidence before a magistrate's court is entitled.
- (11) The chairperson of a professional conduct committee may appoint assessors to advise the Council or such committee on matters of law, procedure or evidence when holding an inquiry.

Postponement of imposition and suspension of operation of penalty

48. (1) Where a person has been found guilty of unprofessional conduct, a professional conduct committee may—
- (a) postpone the imposition of a penalty for such period and on such conditions as it may determine; or
 - (b) impose any penalty mentioned in section 47(1)(b) or (c) but may order the execution of the penalty to be suspended for such period and on such conditions as it may determine.
- (2) If, at the end of the period for which the imposition of a penalty has been postponed in terms of subsection (1)(a), the Council is satisfied that a registered person has observed all the relevant conditions of a penalty imposed, the Council must inform such registered person that the penalty contemplated in section 47 will not be imposed upon him or her.
- (3) If the execution of the penalty or any part thereof has been suspended in terms of subsection (1)(b) and the Council is satisfied that the person concerned has observed all the relevant conditions throughout the period of suspension, the Council must inform that person that the penalty contemplated in section 47 will not be executed.
- (4) If the execution of the penalty or any part thereof has been suspended in terms of subsection (1)(b) and the practitioner concerned fails to comply with one or more of the conditions of suspension, the Council must put the penalty or part thereof into operation unless the practitioner satisfies the Council that the failure to comply with the conditions concerned was due to circumstances beyond his or her control.

Suspension or removal from register related to professional conduct matters

49. (1) A practitioner suspended or whose name is removed from the register in terms of section 47 is disqualified from practising the profession and his or her registration certificate is withdrawn until the period of suspension has expired or until his or her name is restored to the register.
- (2) The name of the person removed from the register in terms of section 47(1)(c) or restored to the register in terms of subsection (3)(b) must be published in the *Gazette*.
- (3) The Council may on such conditions as it may determine—

- (a) terminate any suspension referred to in subsection (1) before the expiry of the specified period; or
- (b) restore to the register the name which has been removed, but such restoration may be considered only 12 months after such removal.

Cognisance by Council of conduct of registered persons under certain circumstances

50. (1) If—

- (a) a registered practitioner has been convicted of any offence by a court of law; and
- (b) the Council is of the opinion that such offence constitutes unprofessional conduct contemplated in section 46,

such practitioner may be dealt with by the Council in terms of this Chapter and is liable on conviction to one or more of the penalties contemplated in section 47 but, before imposition of any penalty, such practitioner must be afforded an opportunity to address the Council in extenuation of the conduct in question.

- (2) Whenever in the course of any proceedings before any court of law it appears to the court that there is, on the face of it, proof of unprofessional conduct on the part of a person registered in terms of this Act, the court must ensure that a copy of the record of such proceedings, or such portion thereof as is material to the issue, is transmitted to the Council.

Unfitness to practise due to impairment

51. (1) Whenever it appears to the Council that a person registered in terms of the Act is or may be incapacitated as a result of disability or is or may be impaired, whether mentally or otherwise, to such an extent that—

- (a) it would be detrimental to the public interest to allow him or her to continue to practise;
- (b) he or she is unable to practise the profession with reasonable skill and safety; or
- (c) in the case of a learner, has become unfit to continue with the education programme,

the Council must appoint a committee to conduct an inquiry in the prescribed manner.

- (2) If the Council after holding an inquiry finds the person registered in terms of the Act incapacitated or impaired as referred to in subsection (1), the Council may—

- (a) allow that person to continue practising the profession and in the case of a learner to continue with the education programme under such conditions as it may think fit; or

- (b) suspend that person for a specified period or stop that person from practising and, in the case of a learner, from continuing with his or her education and training programme.
- (3) If a person referred to in subsection (2) applies for re-instatement, the Council must evaluate the person's ability to continue practising and may extend or withdraw the period of operation of the suspension.
- (4) Section 49 must, with the necessary changes, apply in respect of a practitioner suspended in terms of subsection (2).
- (5) A practitioner registered under this Act who contravenes or fails to comply with the provisions of subsection (2)(a) or (b) is guilty of an offence.
- (6) The committee referred to in subsection (1) may appoint persons with relevant expertise and experience as assessors to advise such committee.
- (7) For the purposes of this section "impairment" refers to a condition which renders a practitioner incapable of practising nursing with reasonable skill and safety.

Investigation of matters relating to teaching of learners

52. (1) Despite anything to the contrary contained in any law, any person who has been authorised by the Council in writing may, in the presence of police officer, enter any institution or premises where learners are trained and confiscate any document or object relevant to such education and training for purposes of—
- (a) inspecting such institution or premises for the quality of nursing service in relation to its professional conduct function; or
 - (b) investigating any matter relating to the education and training of learners for the qualification to practise the profession of nursing in terms of this Act.
- (2) Any person who prevents or hinders an authorised person referred to in subsection (1) is guilty of an offence.

CHAPTER 4

OFFENCES BY PERSONS NOT REGISTERED

Penalties for practising as professional nurse, midwife, staff nurse, auxiliary nurse or auxiliary midwife while not registered

53. (1) A person registered under this Act who misrepresents that he or she is competent or registered to practise nursing or practises in a capacity that he or she is not registered for is guilty of an offence.
- (2) Subsection (1) is not applicable to—
- (a) a learner nurse or a learner midwife registered under section 32, while acting in the course of his or her education and training;
 - (b) a learner nurse or a learner midwife who has taken or will at the first available opportunity take the final examination for a qualification which, if

obtained, will entitle him or her to be registered until such time as he or she is advised on the results of such an examination;

- (c) a person rendering assistance in a case of emergency; or
- (d) any other class or classes of persons determined by the Council.

Penalty for misrepresentation inducing registration and false entries in register and impersonation

54. (1) A person is guilty of an offence if he or she—
- (a) by means of a false representation procures or attempts to procure for himself or herself or any other person registration or any certificate or decision referred to in this Act;
 - (b) makes or causes to be made any unauthorised entry in, alteration to or removal from a register or a certified copy of or extract from any certificate issued under this Act;
 - (c) wilfully destroys, damages or renders illegible any entry in the register or, without the permission of the holder, any certificate issued under this Act;
 - (d) wilfully omits any information or gives false information to the effect that no professional misconduct proceedings are being or are likely to be held regarding him or her;
 - (e) forges or, knowing it to be forged, utters any document purporting to be a certificate issued under this Act; or
 - (f) impersonates any person registered in terms of this Act.
- (2) A person found guilty of an offence contemplated in subsection (1) is liable on conviction to a fine or to a period of imprisonment or to both a fine and such imprisonment.

Penalties

55. (1) A person registered under this Act who in any way takes, uses or publishes any name, title, description or symbol which indicates, or which is calculated to lead persons to infer, that he or she holds a registered professional qualification which is not shown in the register in connection with his or her name is guilty of an offence and liable on conviction to a prescribed fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.
- (2) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence and, save where a penalty is expressly provided, liable on conviction to a prescribed fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.

CHAPTER 5

GENERAL AND SUPPLEMENTARY PROVISIONS

Special provisions relating to certain nurses

56. (1) Despite the provisions of this Act or any other law, the Council may register a person who is registered in terms of section 31(1)(a), (b) or (c) to assess, diagnose, prescribe treatment, keep and supply medication for prescribed illnesses and health related conditions, if such person—
- (a) provides proof of completion of prescribed qualification and training;
 - (b) pays the prescribed registration fee; and
 - (c) complies with subsection 6.
- (2) The Council must issue a registration certificate to a person who complies with the requirements referred to in subsection (1).
- (3) The registration certificate referred to in subsection (2) is valid for a period of three years.
- (4) The Council may renew a registration certificate referred to in subsection (2) subject to such conditions as the Council may determine.
- (5) A person registered in terms of subsection (1) may—
- (a) acquire, use, possess or supply medicine subject to the provisions of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965); and
 - (b) dispense medicines subject to the provisions of the Medicines and Related Substances Act, 1965.
- (6) Despite the provisions of this Act, the said Medicines and Related Substances Act, 1965, the Pharmacy Act, 1974 (Act No. 53 of 1974), and the Health Professions Act, 1974 (Act No. 56 of 1974), a nurse who is in the service of—
- (a) the national department;
 - (b) a provincial department of health;
 - (c) a municipality; or
 - (d) an organisation performing any health service designated by the Director-General after consultation with the South African Pharmacy Council referred to in section 2 of the Pharmacy Act, 1974,
- and who has been authorised by the Director-General, the head of such provincial department of health, the medical officer of health of such municipality or the medical practitioner in charge of such organisation, as the case may be, may in the course of such service perform with reference to—
- (i) the physical examination of any person;
 - (ii) the diagnosing of any physical defect, illness or deficiency in any person; or

- (iii) the keeping of prescribed medicines and their supply, administering or prescribing on the prescribed conditions;

any act which the said Director-General, head of provincial department of health, medical officer of health or medical practitioner, as the case may be, may, after consultation with the Council, determine in general or in a particular case or in cases of a particular nature, if the services of a medical practitioner or pharmacist, as the circumstances may require, are not available.

- (7) A person contemplated in subsection (1) is not entitled to keep an open shop or pharmacy.
- (8) For the purpose of subsection (7) "open shop" means a situation where the supply of medicines and scheduled substances to the public is not done by prescription by a person authorised within the scope of practice concerned to prescribe medicine.

Appeal against decisions of Council

57. (1) A person aggrieved by a decision of the Council may within the prescribed period and in the prescribed manner appeal against such decision to an appeal committee contemplated in subsection (2) and appointed by the Minister.
- (2) The appeal committee referred to in subsection (1) consists of—
- (a) a retired judge or magistrate or an advocate or attorney of the High Court of South Africa who has practised as such for a period of at least five years, and who must be the chairperson of such committee; and
 - (b) a nurse.
- (3) An appeal under subsection (1) must be heard on the date, place and time fixed by the appeal committee.
- (4) The appeal committee must ensure that the appellant as well as the Council are informed of the date, place and time contemplated in subsection (3) at least 14 days before such appeal is heard.
- (5) The appeal committee may for the purposes of an appeal lodged with it—
- (a) summon any person who, in its opinion, may be able to give material information concerning the subject of the appeal or who it believes has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the appeal to appear before it at a time and place specified in the summons, to be interrogated or to produce that document, and may retain for examination any document so produced; and
 - (b) administer an oath to or accept affirmation from any person called as a witness at the appeal.
- (6) The chairperson of the appeal committee must determine the procedure to be followed during the appeal hearing and notify the appellant and the Council of such determined procedure.
- (7) The appeal committee may after hearing the appeal—

- (a) confirm, set aside or vary the relevant decision of the Council; and
 - (b) direct the Council to execute the decision of the appeal committee in that regard.
- (8) (a) The decision of the appeal committee must be in writing, and a copy must be furnished to the appellant as well as to the Council.
- (b) The decision of the appeal committee contemplated in paragraph (a) must be conveyed to the appellant and the Council within 14 days of the decision being reached.
- (9) The members of the appeal committee who are not in the full-time employment of the State may be paid such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance.

Regulations

58. (1) The Minister may, after consultation with the Council, make regulations relating to—
- (a) the appointment of members of the Council in terms of section 5(1) and the requirements for a valid nomination of a candidate for appointment as a member of the Council;
 - (b) the register to be kept, the information which must be recorded in the register and the manner in which alterations may be effected in the register and the diplomas and certificates that may be issued, in terms of this Act;
 - (c) the conditions under which extracts from the register may be made;
 - (d) the particulars to be furnished to the Council to enable it to keep the register;
 - (e) the registration of an additional qualification;
 - (f) the qualifications, and the conditions to be complied with, which entitle a person to be registered under section 31;
 - (g) accreditation of institutions as nursing education institutions;
 - (h) identification symbols provided by the Council that a practitioner may use;
 - (i) the instituting and holding of professional conduct inquiries;
 - (j) the conditions under which private practice may be licenced;
 - (k) the circumstances in which any name may be removed from or restored to a register;
 - (l) the manner of instituting, and the procedure to be followed at, an appeal hearing in terms of section 57 and any other matter incidental thereto;
 - (m) mandatory supplementary training or refresher courses to be undergone or taken by persons registered under this Act, the provision of and control over such training or courses, the intervals between such training or courses and sanctions for failure to undergo such training or take such courses;
 - (n) the performance of community service;

- (o) ethical conduct for research;
 - (p) conditions for limited registration in terms of section 33;
 - (q) the scope of practice of practitioners;
 - (r) the fees and fines payable in terms of this Act; and
 - (s) generally, any matter which in terms of this Act is required or may be done, which the Minister considers necessary or expedient to prescribe in order that the objects of this Act may be achieved.
- (2) The Minister may make regulations regarding—
- (a) procedures for the proper functioning of the Council where, in the opinion of the Minister, the Council is not fulfilling one or more of its functions adequately;
 - (b) disciplinary steps that may be taken against a member, the chairperson or the vice-chairperson for failure to perform his or her duties as required in terms of this Act, including the suspension of a member, chairperson or the vice-chairperson from the office pending an investigation into his or her conduct as a member of a profession or as a member, chairperson or vice-chairperson of the Council, or a criminal investigation involving such person;
 - (c) interim measures for the continued management and functioning of the Council in the event that the Minister terminates membership of 10 or more members simultaneously in terms of section 8 or that the Minister dissolves the Council in terms of section 5(7);
 - (d) investigations to be conducted into the affairs of the Council concerning the procedure at Council meetings and meetings of the executive committee of the Council, keeping of records of meetings and resolutions of the Council, the manner in, and extent to, which the Council fulfils its functions in terms of this Act and any other matter which, in the opinion of the Minister, is impeding the Council in the fulfilment of its functions; and
 - (e) returns, reports, registers, records, documents and forms to be completed and kept by the Council or to be submitted to the Minister or the Director-General by the Council.
- (3) A regulation made in terms of this Act may prescribe penalties for any contravention thereof or failure to comply therewith.
- (4) A notice issued or regulation or order made under this Act may from time to time be amended or revoked by the authority which issued or made it.
- (5) The Minister must, not less than three months before any regulation is made under subsection (1), publish the regulation in the *Gazette* together with a notice—
- (a) declaring his or her intention to make such regulations; and
 - (b) inviting interested persons to comment thereon or to make representations with regard thereto.
- (6) Subsection (5) does not apply in respect of—
- (a) any regulation which, after the provisions of subsection (5) have been complied with, has been amended by the Minister in consequence of

representations received by him or her as a result of the notice published in terms of subsection (5); and

- (b) any regulation in respect of which the Council advises the Minister that the public interest requires it to be made without delay.

Rules

59. (1) The Council may make rules relating to—
- (a) conditions relating to continuing professional development to be undergone by practitioners in order to retain such registration;
 - (b) the nature and extent of continuing professional development to be undergone by practitioners;
 - (c) the criteria for recognition by the Council of continuing professional development activities and of providers offering such activities; and
 - (d) any other matter which must be promulgated as rules under this Act.
- (2) The Council must, not less than three months before any rule is made under this Act—
- (a) publish such rule in the *Gazette* together with a notice declaring the Council's intention to make such rule; and
 - (b) invite interested persons to comment thereon or to make representations with regard thereto.

Repeal of laws

60. (1) The laws set out in the first and second column of the Schedule are repealed to the extent set out in the third column of the Schedule.
- (2) The repeal does not affect the transitional arrangements contained in section 61.

Transitional provisions

61. (1) Any proclamation, notice, regulation, authorisation or order issued, made or granted, any registration or enrolment, any removal from a register or roll or any appointment or any other thing done in terms of a provision of any law repealed by section 60(1) is, unless inconsistent with any provision of this Act, deemed to have been issued, made, granted or done under the corresponding provision of this Act.
- (2) The members of the Council as constituted immediately prior to the commencement of this Act must continue to be members thereof, and the Council is regarded to be validly constituted in terms of this Act until a date determined by the Minister and published in the *Gazette*.
- (3) If any member referred to in subsection (2) vacates his or her office, the Council must, until the date referred to in that subsection, consist of the remaining members.

- (4) Despite the provisions of subsection (1) and subject to the provisions of subsection (5), the Council has the power to institute or conclude disciplinary proceedings under the relevant provisions of the repealed laws in accordance with the procedures as prescribed by regulations made under such repealed laws, against any person who, at any time prior to the first meeting of the Council after the commencement of this Act, is alleged to have committed an act which may have constituted improper or disgraceful conduct in terms of the provisions of the repealed laws or any regulation made thereunder.
- (5) The Council may not institute proceedings referred to in subsection (4) against any person unless the nature of the contravention which such person is alleged to have committed in terms of the repealed laws or any regulation made thereunder is substantially the same as that of a contravention referred to in the corresponding provisions of this Act or of any regulation made thereunder.

Short title and commencement

- 62. This Act is called the Nursing Act, 2005, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE
(SECTION 60)

No. and year	Short Title	Extent of repeal
No. 50 of 1978	Nursing Act	The whole
No. 71 of 1981	Nursing Amendment Act	The whole
No. 70 of 1982	Nursing Amendment Act	The whole
No. 97 of 1986	Transfer of Powers and Duties of the State President Act	Section 46
No. 56 of 1987	Nursing Amendment Act	The whole
No. 21 of 1992	Nursing Amendment Act	The whole
No. 145 of 1993	Nursing Amendment Act	The whole
No. 5 of 1995	Nursing Amendment Act	The whole
No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act	Section 78
No. 19 of 1997	Nursing Amendment Act	The whole
No. 45 of 1997	Extension of Terms of Office of Members of Certain Councils Act	Section 6

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