

- (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. 5

CHAPTER 4

OFFENCES BY PERSONS NOT REGISTERED

Penalties for practising as professional nurse, midwife, staff nurse, auxiliary nurse or auxiliary midwife while not registered 10

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; 15
 - (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; 20
 - (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— 25
- (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; 30
 - (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; 35
 - (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. 40

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. 45

(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

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). 15

(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. 20

(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. 25

(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; 30
- (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 40
- (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. 45

(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. 50

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— 5

- (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. 10

(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— 15

- (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 20
- (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. 25

(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. 30

(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. 35

Regulations

58. (1) The Minister may, after consultation with the Council, make regulations relating to— 40

- (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; 45
- (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; 50
- (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; 5
 - (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; 10
 - (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; 15
 - (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— 20
- (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; 25
 - (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); 30
 - (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 35
 - (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. 40
- (3) A regulation made in terms of this Act may prescribe penalties for any contravention thereof or failure to comply therewith. 45
- (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— 50
- (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. 5

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; 10
 - (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. 15
- (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. 20

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. 25

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. 30
- (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*. 35
- (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. 40 45
- (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. 50

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	5
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	10
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	15
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	