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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 107

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

NURSING AMENDMENT DECREE, 1990

DECREE No. 48 OF 1990

DEPARTMENT OF THE COUNCIL OF STATE

NURSING AMENDMENT DECREE, 1990

To amend the Nursing Act, 1984

(English text signed by the Chairman of the Council of State. Assented to on 18 december 1990)

BE IT DECREED by the Council of State of the Republic of Ciskei as follows:-

1. Amendment of section 1 of Act 13 of 1984. - Section 1 of the Nursing Act, 1984 (hereinafter referred to as the principal Act) is hereby amended -

(a) by the insertion after the definition of "Inquiry" of the following definition:

"'List' when used as a noun, means a list kept under this Act, and, when used in relation to any class or a member of any class of persons in respect of whom a list is kept, the list kept for that class, and when used as a verb, means to enter in a list in terms of this Act and the words "listed", "listing" and all other words derived from the word "List" have a corresponding meaning;" and

(b) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Councillor of State for Health;"

2. Amendment of section 3 of Act 13 of 1984, as amended by section 1 of Act 3 of 1986. - Section 3 of the principal Act is hereby amended -

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) members appointed by the Minister, being -

(i) the Director-General for the time being of the Department of Health or an officer of that Department who is either a registered nurse or a registered medical practitioner;

(ii) the Director of Nursing Services of the Department of Health;

(iii) an officer of the professional division of the Department of Education, appointed by the Minister after consultation with the Minister of Education;

(iv) four registered nurses of whom one shall be registered both as a general nurse and as a psychiatric nurse, one shall be a member of the Ciskei College of Nursing, one shall be a member of the full-time staff of the Department of Nursing Science of the University of Fort Hare, and one shall be actively involved in the education and training of nurses and midwives;

(v) two persons who are not registered or enrolled in terms of this Act, or enrolled in terms of the Chiropractors Act, 1971 (Act 76 of 1971) or the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974 (Act 52 of 1974), or registered in terms of the Health Professions and Related Health Practices Act, 1984 (Act 36 of 1984) or any other corresponding law in Ciskei";

(b) by the deletion of the proviso to subsection (1) (c); and

(c) by the deletion of the proviso to subsection (3).

3. Insertion of section 3A in Act 13 of 1984. - The following section is hereby inserted after section 3 of the principal Act:

"3A. Financing of the council. - (1) All registrations, enrolments and examination fees and any other fees payable under this Act, shall be paid to the council and shall constitute its funds and the council shall utilize its funds for defraying expenses incurred in connection with the performance of its functions.

(2) The council may invest any unexpended portion of its moneys and may establish such reserve funds, and pay therein such amounts, as it may deem necessary or expedient".

4. Amendment of section 4 of Act 13 of 1984. - Section 4 of the principal Act is hereby amended -

(a) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e) who is a patient or a President's patient as defined in section 1 of the Mental Act, 1986 (Act 23 of 1986)";

NURSING AMENDMENT DECREE, 1990

- (b) by the substitution for paragraph (e) of subsection (2) of the following paragraph:
“(e) the minister, in the public interest, terminates his membership”.

5. Substitution of section 5 of Act 13 of 1984. - The following section is hereby substituted for section 5 of the principal Act:

“5. Office-bearers: - (1) The members of every newly constituted council shall, at the first meeting of such council, elect from amongst themselves a president and a vice-president who shall be registered nurses and a treasurer, each of whom shall hold office for the life of such council, unless he sooner resigns such office or ceases to be a member of the council.

(2) The president, or in the absence of the president, the vice-president shall preside at a meeting of the council: Provided that, if both the president and the vice-president are absent from any meeting of the council, the members present shall elect from amongst themselves a chairman who shall preside at such meeting during the absence of the president or the vice-president.

(3) The vice-president may, if the president is absent or is for any reason unable to act as president, perform all the functions and exercise all the powers of the president.

(4) If both the president and the vice-president have been given leave of absence or are for any reason unable to act, the members of the council shall elect from amongst themselves, or if the council is not in session the executive committee shall designate a member of the council to act as president until the president or vice-president resumes duty.

(5) If the office of president, vice-president or treasurer becomes vacant, the members of the council shall, at the first meeting after such vacancy occurs, elect from amongst themselves a new president, vice-president or treasurer, as the case may be and the member so elected shall hold office for the unexpired portion of the period for which his predecessor was elected.

(6) The president, vice-president or treasurer may vacate office as such without thereby terminating his membership of the Council”.

6. Amendment of section 7 of Act 13 of 1984: - Section 7 of the principal Act is hereby amended by the addition of the following subsection:

“(3) No decision taken by the council or act performed under the authority of the council shall be invalid by reason only of an interim vacancy on the council or of the fact that a person who was not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members”.

7. Amendment of section 8 of Act 13 of 1984: - Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The council shall establish an executive committee consisting of the president, the vice-president, the treasurer, one of the members of the council appointed in terms of section 3(1)(a)(v) and so many other members of the council as the council may determine”.

8. Substitution of section 9 of Act 13 of 1984: - The following section is hereby substituted for section 9 of the principal Act:

“9. Other committees: - (1) The council shall -

- (a) establish an education committee consisting of so many persons appointed by the council as the council may determine but including at least three registered nurses who are actively engaged in the education and training of general nurses, midwives and psychiatric nurses and one of whom shall be a member of the council appointed under section 3(1)(a)(iv) from amongst the staff of the Department of Nursing Sciences of the University of Fort Hare;
- (b) establish investigating committee consisting of so many persons appointed by the council as the council may determine but including at least two members of the council who shall be chairman and vice-chairman of such committee, to investigate and report to the council on any complaint, charge or allegation referred to in section 25;

NURSING AMENDMENT DECREE, 1990

- (c) establish a disciplinary committee consisting of the president and so many other persons as the council may determine.
- (2) A committee established in terms of subsection (1) shall, subject to the provisions of subsection (5), exercise such of the council's powers and perform such of the council's functions as the council may from time to time assign to it.
- (3) The council may from time to time establish such other committees as it may deem necessary, each consisting of so many persons, appointed by the council, as the council may determine but including at least two members of the council who shall be the chairman and vice-chairman of such committee, to investigate and report to the council on any matter falling within the scope of the council's functions under this Act.
- (4) Subject to the provisions of subsection (5), the council may delegate to any committee established in terms of subsection (3) such of its powers, in addition to the powers conferred upon such committee by subsection (3), as it may from time to time determine, but the council shall not be divested of any power so delegated.
- (5) The council shall not delegate to a committee any power referred to in section 30 and no penalty imposed by the committee established in terms of subsection (1)(b) other than a caution or a reprimand or a reprimand and a caution, shall be of force and effect until confirmed by the council: Provided that an order made by such committee under section 31(2) shall, if the committee so directs in the public interest, come into operation forthwith, but shall lapse after the expiration of a period of six months unless confirmed within that period by the council".

9. Substitution of section 10 of Act 13 of 1984: - The following section is hereby substituted for section 10 of the principal Act:

- "10. Appointment of registrar and staff: - (1)(a) The council shall appoint a registrar and may appoint such other officers as it may deem necessary, for carrying out its functions under this Act.
- (b) The council may regulate the duties and conditions of service of such officers and shall also have the power to dismiss any of them, but subject to the provisions of subsection (3).
- (2) The registrar shall act as secretary to the council and shall perform the functions and carry out the duties assigned, or imposed upon him under this Act, as well as such functions and duties as may from time to time be assigned to, or imposed upon him by the council.
- (3) The appointment or dismissal of the registrar shall be subject to the approval of the Minister.
- (4) No appointment shall be made in terms of this section unless the person appointed is proficient in both official languages".

10. Amendment of section 11 of Act 13 of 1984: - Section 11 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (b) of the following paragraph:

"(b) subject to the provisions of the Chiropractors Act, 1971, the Homeopaths, Naturopaths, Osteopaths and Herbalists Act, 1974 and the Health Professions and Related Health Practices Act, 1984, to control and to exercise authority in respect of all matters affecting the education and training of, and the manner of the exercise of the practices pursued by registered nurses, midwives, enrolled nurses and nursing assistants";
- (b) by the substitution for paragraph (c) of the following paragraph:

"(c) to promote liaison of the education and training and the manner of the exercise of the practices, referred to in paragraph (b) in Ciskei and elsewhere and to promote the standards of such education and training and the manner of the exercise of such practices in Ciskei";

11. Amendment of section 12 of Act 13 of 1984: - Section 12 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (a) of the following paragraph:

"(a) cause copies of the registers and rolls and of supplementary lists, showing all alterations to the registers and rolls, to be printed and published";

NURSING AMENDMENT DECREE, 1990

- (b) by the substitution for paragraph (b) of the following paragraph:

"(b) make extracts from the registers and rolls and charge the prescribed fees in respect thereof;"

12. Insertion of section 12A in Act 13 of 1984: - The following section is hereby inserted in the principal Act after section 12:

"12A. Minister may rectify defects: - If anything required to be done under this Act in connection with the appointment, designation or election of any member of the council is omitted or not done within the time or in the manner required by this Act, the Minister may order all 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."

13. Amendment of section 13 of Act 13 of 1984: - Section 13 of the principal Act is hereby amended by -

- (a) by the substitution for paragraph 1(e) of the following paragraph:

"(e) the qualifications, and the conditions to be complied with, which shall entitle a person to be registered or enrolled in terms of section 16, or which shall entitle a registered nurse to the registration of an additional qualification in terms of section 17, including the curricula, the period and nature of the education and training required, the examination to be passed, and the payment of fees in respect of an application for registration or enrolment and in respect of registration or enrolment"; and

- (b) by the addition after paragraph 1(r) of the following paragraph:

"(s) the duties and conditions of service of the registrar and other persons appointed in terms of section 10,"

14. Amendment of section 15 of Act 13 of 1984: - Section 15 of the principal Act is hereby amended by the addition thereto of the following subsections, the existing section becoming subsection (1):

"(2) Every person who wishes to be registered or to be enrolled in terms of this Act as a registered nurse, midwife, enrolled nurse or nursing assistant, as the case may be, shall apply to the council and shall submit the qualification which, in his submission, entitles him to registration or enrolment, as the case may be, together with such proof of identity and of the authenticity and validity of the qualification submitted as may be required by the council.

(3) If the council is satisfied that the qualification and the other documents submitted in support of the application satisfy the requirements of this Act, it shall, upon the prescribed fee, register or enrol the applicant, as the case may be, and issue a registration or enrolment certificate, as the case may be, authorizing the applicant, subject to the provisions of this Act and to any other legal provisions, to practise within Ciskei the profession in respect of which he has applied for registration or enrolment."

15. Substitution of section 16 of Act 13 of 1984: The following section is hereby substituted for section 16 of the principal Act:

"16 Keeping of registers and rolls: - (1) The council shall keep the separate prescribed registers and rolls in respect of the different prescribed categories of practitioners, students and pupils, and shall enter in the appropriate register or roll the prescribed particulars of every person whose application under section 15(2), 19 or 20 for registration or enrolment has been granted.

(2) The council shall keep the registers and rolls correctly and in accordance with the provisions of this Act and shall remove therefrom the names of all registered or enrolled persons who have died or whose period of registration or enrolment has expired in terms of the regulations and shall from time to time make the necessary alterations in the names and addresses or qualifications of registered or enrolled persons.

(3) Every registered/enrolled person who changes his name or address shall in writing notify the registrar thereof within thirty days after such change.

NURSING AMENDMENT DECREE, 1990

- (4) (a) No qualification shall be entered in the register or roll if qualification is not entitled thereto.
- (b) Any registration or enrolment, which is proved to the satisfaction of the council to have been made in error or through misrepresentation or in circumstances not authorized by this Act, may be removed from the register or roll and an endorsement of the reason for every such removal shall be made in the register or roll, and the person in respect of whose registration or enrolment such removal has been made shall be notified thereof in the manner contemplated in section 16A (2).
- (c) Any certificate issued in respect of the registration and enrolment in question shall be deemed to be cancelled as from the date on which notice is so given."

16. Insertion of sections 16A, 16B and 16C in Act 13 of 1984: - The following sections are hereby inserted in the principal Act after section 16:

"16A. Removal of name from register or roll or restoration thereof: - (1) The Council may direct the registrar to remove from the register or roll the name of any person -

- (a) who has been absent from Ciskei during the three years immediately preceding such removal;
- (b) who has failed to notify the registrar, within a period of three months as from the date of a written inquiry sent by the registrar to the address appearing in the register or roll in respect of such person, of his present address;
- (c) who has requested that his name be removed from the register or roll, in which case such person may be required by the registrar 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 taken against him;
- (d) whose name has been removed from the register, record or roll of any university, hospital, college, society or other body from which that person received the qualification by virtue of which he was registered or enrolled.

(2) Notice of the removal in terms of subsection (1) of his name from the register or roll or of the removal in terms of section 16(4) of any entry from the register or roll, shall be given by the registrar to the person concerned by way of a letter addressed to such person at the address appearing in respect of him in the register or roll.

(3) As from the date on which notice has been given in terms of subsection (2) -

- (a) any registration or enrolment certificate issued in terms of this Act to the person concerned shall be deemed to be cancelled; and
- (b) such person shall cease to practise the profession in respect of which he was registered or enrolled or to perform any act which he, in his capacity as a registered or enrolled person, was entitled to perform,

until such time as his name or the entry removed from the register or roll in terms of section 16(4), as the case may be, is restored to the register or roll.

(4) If -

- (a) it appears to the judge from the documents submitted to him in terms of section 18(3) of the Mental Health Act, 1986, or it is brought to his notice in any other manner, that the person to whom the documents relate is a person registered or enrolled under this Act and such person is declared mentally ill as contemplated in section 19(1)(b) of the said Mental Health Act, or
- (b) it is brought to the notice of a court that an accused person appearing before it is registered or enrolled in terms of this Act and the court in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977 (Act 51 of 1977) directs that the accused person be detained pending the signification of the decision of the Head of State.

The judge shall direct that a copy of the order declaring the person concerned mentally ill, or the court shall direct that a copy of the direction that the accused person be detained pending the signification of the decision of the Head of State, be transmitted to the registrar, and the registrar shall on receipt of the copy remove the name of the person concerned from the register or roll.

NURSING AMENDMENT DECREE, 1990

- (5) The name of a person whose name has in terms of this section been removed from the register or roll, or on an entry removed from the register or roll in terms of section 16(4), shall be restored to the register or roll by the registrar if the person concerned -

- (a) applies on the prescribed form for such restoration;
- (b) pays any fee prescribed in respect of such restoration;
- (c) where his name has been removed from the register or roll in terms of subsection (4), submits proof to the satisfaction of the council of his discharge in terms of the provisions of the Mental Health Act, 1986 from the institution at which he was detained; and
- (d) complies with such other requirements as the council may determine.

16B. Custody and publication of registers and rolls: - The registers and rolls shall be kept at the office of the Council and the registrar shall, at the intervals to be determined by the council and in accordance with the instructions and the authority of the council, cause copies of the registers and rolls and of any supplementary lists showing any alterations, additions, revisions and deletions made since the last publication of the complete registers and rolls, to be printed and published.

16C. Limited registration: - (a) The council may register as a nurse for a period not exceeding two years any person who -

- (i) is registered as a nurse in a country or state outside Ciskei by virtue of qualifications obtained there after undergoing education and training for a period of not less than the period prescribed;
 - (ii) is not entitled to registration as a nurse in terms of section 15 because he has not undergone education and training of the nature prescribed in respect of some branch of nursing; and
 - (iii) is required to undergo further education and training not exceeding six months in order to comply with the requirements prescribed in respect of the period or nature of education and training: Provided that a nurse so registered may not exercise his profession in respect of such branch of nursing as may be determined by the council or be appointed or elected as a member of the council or of a committee of the council or participate in the election of members of the council in terms of section 3(1)(c).
- (b) A person registered under this subsection and who practises for gain in a branch of nursing in respect of which he may not exercise his profession, shall be guilty of an offence."

17. Substitution of section 17 of Act 13 of 1984: - The following section is hereby substituted for section 17 of the principal Act:

"17. Registration or listing of additional qualifications: - (1) A person registered under section 16(1) who wishes to register or list an additional qualification shall, if such person complies with the prescribed conditions and furnishes the prescribed particulars, be entitled, subject to the provisions of section 16C and of subsection (2) of this section to register such qualification as an additional qualification upon payment of the prescribed fee.

- (2) Only such qualifications as may be prescribed may be registered or listed under this section.
- (3) No registered person shall in any way whatsoever take, use or publish any name, title, description or symbol which indicates, or which is calculated to lead persons to infer, that he holds a registered or listed professional qualification which is not shown in the register or list in connection with his name.
- (4) The council may remove from the register or list any registered or listed qualification referred to in subsection (1), if in respect of such qualification the name of the holder thereof has been removed from the roll, register or record of the university, hospital, college, society or other body from which the holder received such qualification".

NURSING AMENDMENT DECREE, 1990

18. Substitution of section 36 of Act 13 of 1984: - The following section is hereby substituted for section 36 of the principal Act:

"36 Limitations in respect of persons not registered or enroled. - (1) No remuneration shall be recoverable in respect of any act especially pertaining to the profession of a registered or enrolled person when performed by a person who is not authorized under this Act to perform such act for gain.

(2) No person, other than a registered or enrolled person holding the necessary qualifications, shall be eligible for or entitled to hold any appointment to any establishment, institution, body, organization or association, whether public or private, if such appointment involves the performance of any act which a person who is not registered or enrolled may in terms of the provisions of this Act not perform for gain: Provided that nothing in this subsection contained shall be construed as prohibiting the education and training of any student in nursing or midwifery under the supervision of a registered nurse or the employment in any hospital or similar institution of any person undergoing education and training."

19. Substitution of section 39 of Act 13 of 1984: - The following section is hereby substituted for section 39 of the principal Act:

"39 Certain functions may be performed by certain nurses: - Notwithstanding the provisions of this Act, the medicines and Related Substances Control Act, 1965, the Health Professions and Related Health Practices Act, 1984 or any other law, any registered nurse who is in the service of the Department of Health, a local authority or any organization performing any health service and designated by the Director-General: Department of Health and who has been authorised thereto by the said Director-General, the medical officer of health of such local authority or the medical practitioner in charge of such organization, as the case may be, may in the course of such service perform -

- (a) in relation to the physical examination of any person, or
- (b) as regards the diagnosing of any physical defect, illness or deficiency in any person, or
- (c) in relation to the keeping of prescribed medicines and the supply, administering or prescribing thereof on the prescribed conditions, or
- (d) in connection with the promotion of family planning, any act which the said Director-General, 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: Provided that such nurse may perform such act only whenever the services of a medical practitioner or pharmacist, as the circumstances may require, are not available".

20. Amendment of section 40 of Act 13 of 1984. - Section 40 of the principal Act is hereby amended by the addition of the following subsection:

"(3) Any person who contravenes any provision of this section shall be guilty of an offence".

21. Substitution of section 43 of Act 13 of 1984: - The following section is hereby substituted for section 43 of the principal Act:

"43, General penalty: - Any person who is convicted of an offence under this Act for which no penalty is expressly provided shall be liable to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment."

22. Short title: - This decree shall be called the Nursing Amendment Decree, 1990.

| OKUQULATHIWEYO | | | CONTENTS | | |
|------------------------------------|----------------|-----------------|------------------------------------|-------------|----------------|
| <i>Isaziso sika-</i> | <i>Inani</i> | <i>Inani le</i> | <i>Govt.</i> | <i>Page</i> | <i>Gazette</i> |
| <i>Rhulumente No.</i> | <i>leKhasi</i> | <i>Gazethi</i> | <i>Notice No.</i> | <i>No.</i> | <i>No.</i> |
| | | 174 | | | 174 |
| DEPARTMENT OF THE COUNCIL OF STATE | | | DEPARTMENT OF THE COUNCIL OF STATE | | |
| GOVERNMENT NOTICE No. 107 | | | GOVERNMENT NOTICE No. 107 | | |
| NURSING AMENDMENT DECREE, 1990 | | | NURSING AMENDMENT DECREE, 1990 | | |
| (DECREE No. 48 OF 1990) | | | (DECREE No. 48 OF 1990) | | |

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