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THE HEALTH RECORDS AND INFORMATION MANAGERS ACT

CHAPTER 539

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CHAPTER 539

HEALTH RECORDS AND INFORMATION MANAGERS ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title
2. Interpretation

PART II – THE HEALTH RECORDS AND
INFORMATION MANAGERS BOARD

3. Establishment of the Health Records and Information Managers Board
4. Headquarters of the Board
5. Powers of the Board
6. Functions of the Board
7. Composition of the Board
8. Disqualification from office and filling of vacancies
9. Chairperson of the Board
10. Terms of office of the Board
11. Conduct of business and affairs of the Board
12. Delegation by the Board
13. Registrar
14. Qualifications of Registrar

PART III – TRAINING AND REGISTRATION OF
HEALTH RECORDS AND INFORMATION MANAGERS

15. Persons eligible to be registered
16. Application for registration
17. Maintenance of register
18. Removal of names
19. Approved training institutions
20. Limitation of powers on approval or accreditation of university academic programmes
21. Conditions of practice and penalty
22. Custody of registers
23. Qualifications for registration

PART IV – PROVISIONS RELATING TO PRIVATE
PRACTICE AND GENERAL LICENCING

24. Private practice

PART V – OFFENCES

25. Offences by persons not eligible to be registered or licensed
26. Offences by persons eligible to be registered or licensed
27. Offences by persons conducting training courses or examinations without authority

Health Records and Information Managers

PART VI – DISCIPLINARY PROVISIONS

- 28. Disciplinary Committee
- 29. Functions of Committee
- 30. Proceedings of Committee
- 31. Decisions of the Disciplinary Committee
- 32. Lifting of suspensions
- 33. Restoration of registration
- 34. Effect of removal, cancellation or suspension
- 35. Professional misconduct

PART VII – FINANCIAL PROVISIONS

- 36. Funds of the Board
- 37. Financial year

PART VIII – PROVISIONS ON DELEGATED POWERS

- 38. Rules

PART IX – MISCELLANEOUS PROVISIONS

- 39. Certificate and seal
- 40. Protection from personal liability
- 41. General penalty
- 42. Falsification of registers or records

SCHEDULES

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF
THE BOARD

CHAPTER 539

HEALTH RECORDS AND INFORMATION MANAGERS ACT

[Date of assent: 19th May, 2016.]

[Date of commencement: 9th June, 2016.]

An Act of Parliament to make provision for the training, registration and licensing of the health records and information managers; to regulate their practice; to provide for the establishment, powers and functions of the Health Records and Information Managers Board and for connected purposes

[Act No. 15 of 2016, Act No. 5 of 2019.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Health Records and Information Managers Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"approved institute" means an institute for the training of persons seeking registration under this Act which has been declared by notice in the *Gazette* to be so approved by the Cabinet Secretary on the recommendation of the Board;

"Association" means the Association of Medical Records Officers of Kenya;

"Board" means the Health Records and Information Managers Board established by section 3;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to health;

"College" means the Kenya Medical Training College established by the Kenya Medical Training College Act (Cap. 261) or such other college as the Board may approve for the purposes of the Act;

"Committee" means the Disciplinary Committee of the Board established by section 28;

"health institution" includes a hospital, nursing home, convalescent home, maternity home, health centre, dispensary, Clinic or other institution where health or health services are rendered, either free or on the payment of fees;

"health records and information management department" means part of a facility in a health institution in which health records and information services are carried out;

"health records and information diploma" means a diploma in health records and information Technology issued by the Kenya Medical Training College or other similar institution approved by the Board;

"licence" means a licence granted to a manager under section 16;

"Manager" means an officer trained in health records and information and charged with the responsibility of managing health records and information for health services which includes—

- (i) consulting in clinical coding;
- (ii) coding for insurance firms;
- (iii) capacity building in disease classifications and health information management;
- (iv) appraisal of medical documentations and audits;
- (v) medical data analytics and research;
- (vi) use of e-health applications;
- (vii) development of strategic documents and policies in health records and information management services;
- (viii) advice on medical legal issues;
- (ix) advice on retrieval and disposal of medical records;
- (x) management of bed bureaus; or
- (xi) consultancy in administrative statistics and big data analytics.

"medical practitioner" means a person registered under the Medical Practitioners and Dentists Act (Cap. 253) as a medical practitioner;

"officer" means a manager who holds a diploma or a degree in health records and information management;

"private practice" means the practice of health records and information management, as the case may be, for a fee;

"public practice" means the practice of health records and information management in a public facility;

"private practitioner" means a person registered under this Act as either a health records and information manager licensed to maintain health records and information for a fee;

"Register" means the register of managers required to be maintained under section 17;

"Registrar" means the Registrar of the Board appointed under section 13;

"Technician" means a manager who holds a certificate in health records and information management; and

"Unqualified person" means any person who is not duly registered as a manager under the Act.

[Act No. 5 of 2019, Sch.]

PART II – THE HEALTH RECORDS AND INFORMATION MANAGERS BOARD

3. Establishment of the Health Records and Information Managers Board

(1) There is established a Board to be known as the Health Records and Information Managers Board.

(2) The Board is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments; and
- (d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

4. Headquarters of the Board

The Headquarters of the Board shall be in Nairobi, and the Board may establish offices in the Counties.

5. Powers of the Board

(1) The Board shall have all powers necessary for the proper performance of its functions under the Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

- (a) control, supervise and administer the assets of the Board in such manner and for such purpose as best promotes the purpose for which the Board is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Board;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) in consultation with the Cabinet Secretary, to enter into Agreement with other bodies or organisations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Board is established;
- (e) open a bank account or bank accounts for the funds of the Board; and
- (f) invest any funds of the Board not immediately required for its purposes;

(2) Subject to the Act, the Board may, either generally or in any particular case, delegate to any committee, member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of the Board under the Act.

(3) The terms and conditions of service of the members of the Board shall be determined by the Board in consultation with the Cabinet Secretary and upon the advice of the Salaries and Remuneration Commission.

(4) The Board may appoint such officers and other staff as necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine.

(5) No matter or thing, done by a member of by any officer, employee or agent thereof shall, if the matter; or thing is done bona fide for executing the functions, powers or duties of the Board, render the member, officer, employee or agent personally liable to any action, claim or demand whatsoever.

6. Functions of the Board

(1) The Board shall—

- (a) establish and improve standards of all branches of the health records and information managers profession in all their aspects;

- (b) establish and improve the standards of professional health records and information management in Kenya;
- (c) with the approval of the Cabinet Secretary, make provision for the training and instruction for persons seeking registration or enrolment under this Act;
- (d) in consultation with institutions offering training on health records and information technology, prescribe syllabuses of instruction;
- (e) recommend to the Cabinet Secretary the institutions to train in health records and information technology;
- (f) with the approval of the Cabinet Secretary, make provision for proficiency examination for persons seeking registration or enrolment under this Act;
- (g) have regard to the conduct of persons registered, enrolled or licensed under this Act, and take such disciplinary measures as may be necessary to maintain a proper standard of conduct among such persons;
- (h) direct and supervise the compilation and maintenance of registers, rolls and records required to be kept under section 22;
- (i) advise the Cabinet Secretary on matters concerning all aspects of health records and information management.

(2) The Board shall, before the end of the month of June in each year, cause a report on the work carried out by the Board during the previous year, together with a statement of the accounts for that year, to be supplied to the Cabinet Secretary, and shall cause such further information as may be required by the Cabinet Secretary from time to time to be supplied to him.

(3) The Board shall meet at least four times and not more than twelve times in every financial year.

(4) The Chairperson may at any time convene a special meeting of the Board and shall upon a written request signed by at least four members, convene a special meeting within fifteen days of such a request.

[Act No. 5 of 2019, Sch.]

7. Composition of the Board

(1) The Board shall consist of—

- (a) a Chairperson appointed by the Cabinet Secretary from among persons nominated from the public sector with knowledge and expertise in health and who shall have—
 - (i) a minimum of a bachelors' degree in a relevant field; and
 - (ii) ten years' relevant experience;
- (b) the Director or Deputy Director Health Records and Information Management, Ministry of Health;
- (c) two representatives, one from middle level training colleges and one from universities offering training in health records and information technology;
- (d) three registered managers, who shall be competitively and transparently nominated and appointed by the Cabinet Secretary as representatives of—

- (i) the private sector;
 - (ii) faith-based organisations; and
 - (iii) the Association;
- (e) one person with expertise in financial management or accounting and who shall be a bona-fide member of a professional body regulating the accountancy profession who is in compliance with the requirements thereof, appointed by the Cabinet Secretary;
- (f) the Secretary General of the Association;
- (g) *deleted by Act No. 5 of 2019, Sch;* and
- (h) one other member co-opted by the Board from time to time whose knowledge and experience is deemed necessary for the better performance of its functions.

(2) The Registrar shall be the Chief Executive Officer and the Secretary to the Board.

(3) The Board shall appoint an audit committee and up to three (3) other committees that shall deal with matters of finance, risk, standards and education, registration and licensing, human resource, discipline and ethics for the effective performance of its functions, but may establish such other ad hoc committees as may be necessary for the carrying out of the functions of the Board.

(4) The appointments to the Board shall take into consideration gender and regional balance and the mix of skills and competencies required for the achievement of the Board's long-term goals.

(5) Pursuant to subsections (1)(c), (d) and (e), the organizations shall present two nominations from each of the categories, one of whom shall be appointed by the Cabinet Secretary taking into account gender balance, regional balance and skills mix.

[Act No. 5 of 2019, Sch.]

8. Disqualification from office and filling of vacancies

(1) No person shall be qualified for appointment or election as a member of Board if the person—

- (a) is an undischarged bankrupt; or
- (b) has his or her name removed from the appropriate register or his or her registration or licence suspended under section 18.

(2) A member of the Board shall vacate office if he or she—

- (a) becomes subject to any of the disqualifications referred to in subsection (1); or
- (b) has been absent from more than two consecutive ordinary meetings of the Board without its leave; or
- (c) gives notice in writing to the Board of his desire to resign from office and his resignation is accepted.

(3) Every vacancy caused by the death of a member or by vacation of office under subsection (2) shall, in the case of a member appointed by the Cabinet Secretary, be filled by a person appointed by the Cabinet Secretary, and in every other case, unless the Board otherwise decides, shall be filled by a person appointed by the Board and every person so appointed shall hold office for the residue of the term for which his predecessor was appointed or elected.

9. Chairperson of the Board

(1) *Deleted by Act No. 5 of 2019, Sch.*

(2) The vice-Chairperson shall in the absence of the Chairperson discharge the duties of the Chairperson.

(3) In the absence of both the Chairperson and the vice-Chairperson, the members present shall elect a member to preside at the meeting.

(4) Where a Chairperson or vice-Chairperson for any reason vacates office before the term expires, a new Chairperson shall be elected in the manner specified in subsection (1) in a meeting first scheduled immediately after the vacation of the holder.

(5) Notwithstanding the provisions of this section, the Cabinet Secretary may, if at any time it appears to him that the Board has failed to carry out any of its functions under this Act in the national interest, revoke or annul the appointment, nomination or election of any member of the Board and may himself nominate a new member in the place of that member for the remainder of the period of that member.

[Act No. 5 of 2019, Sch.]

10. Terms of office of the Board

The members of the Board shall hold office for a period of three years from the date of their appointment, nomination or election, as the case may be but shall be eligible for re-appointment, re-nomination or re-election for one further term.

11. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

12. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

13. Registrar

(1) The Board shall, with the approval of the Cabinet Secretary, appoint a Registrar who shall be a registered Manager and who shall perform such duties as may be prescribed by this Act or directed by the Board.

(2) The Board may, with the approval of the Cabinet Secretary, appoint such other officers as the work of the Board may require, and those officers shall perform such duties as the Board may direct.

(3) The Registrar shall keep up to date or cause to be kept up to date all registers and records required to be kept under or for the purposes of this Act, subject to any directions which may from time to time be issued to him by the Board.

(4) The Registrar and other officers appointed under this section shall be paid such remuneration and allowances as the Board, with the approval of the Cabinet Secretary, may from time to time determine.

(5) The Registrar shall perform such duties as prescribed by this Act.

14. Qualifications of Registrar

The Registrar shall be a person who—

- (a) has successfully attended a course of instruction for Managers prescribed by the Board, at any approved training institution in Kenya; or
- (b) has attended a course of instruction for managers recognised by the Board as equivalent to the course prescribed, at any training institution outside Kenya approved by the Board; or
- (c) holds such other qualifications as the Board may prescribe, and
- (d) has completed such approved period of probation as may be prescribed by the Board.

PART III – TRAINING AND REGISTRATION OF
HEALTH RECORDS AND INFORMATION MANAGERS

15. Persons eligible to be registered

(1) A person shall be eligible for registration under this Act as a health records and information manager if the person—

- (a) is the holder of at least a certificate in health records and information management which is recognised by the Board;
- (b) after obtaining that qualification, has engaged in training employment under the supervision of a registered health records and information manager for such period, being not less than six months, as the Board may approve;

(2) The Board shall approve the suitability for registration of a person under paragraphs (a) and (b) through such examinations as may be administered by the Board from time to time.

[Act No. 5 of 2019, Sch.]

16. Application for registration

(1) A person may apply to the Board for registration under this section.

(2) Every application under subsection (1) shall be in the prescribed form and shall be accompanied by such fee as may be prescribed by the Board.

(3) The Registrar shall upon the recommendation of the Board consider every application made under this section and shall register the applicant if satisfied that the applicant is—

- (a) duly qualified in terms of this section;
- (b) a Kenyan citizen; and
- (c) is a fit and proper person to be so registered.

(4) The Registrar shall register every qualified person by entering his name, address, professional qualifications and such other particulars as the Board may prescribe, in the register kept for that purpose pursuant to section 17.

(5) The Registrar shall, on payment of the prescribed fee, issue a certificate of registration to every person registered under this Act.

(6) A fee to be known as a retention fee, may be prescribed for payment annually or at such intervals as the Board may deem appropriate by any person whose name appears on a register as a condition of maintaining the name thereon.

17. Maintenance of register

(1) The Registrar shall maintain a register of Managers with respective categories reflecting their areas of specialty.

(2) The Registrar shall, not later than the last day of March in every year, cause to be published in the *Gazette*, the names and addresses of all Managers Registered in the previous year.

18. Removal of names

The Registrar shall remove from the register—

- (a) the names of all deceased persons;
- (b) the names of all persons struck off from the register any entries fraudulently or erroneously made.

19. Approved training institutions

(1) A person, being in charge of a training institution in Kenya, shall not—

- (a) admit persons for training for the purpose of qualifying for registration under this Act;
- (b) conduct a course of training or administer the examination prescribed for the purposes of registration under this Act; or
- (c) issue any document or statement implying that the holder thereof has undergone a course of training or passed the examinations prescribed by the Board for purposes of registration, unless the training is to be conducted by the Kenya Medical Training College or an institution approved by the Board or is established or accredited under the Universities Act (Cap. 210) or the Technical and Vocational Education and Training Act (Cap. 210A).

(2) The Board shall make Regulations to prescribe the procedure for approving and accrediting training institutions for the purposes of this section.

[Act No. 5 of 2019, Sch.]

20. Limitation of powers on approval or accreditation of university academic programmes

(1) If there is a conflict between the provisions of this Act and the provisions of the Universities Act in matters relating to approval or accreditation of academic programmes offered by Universities or any other part, the provisions of the Universities Act shall prevail.

(2) Despite the provisions of this Act, the approval or accreditation of academic programmes offered at a university shall be the exclusive mandate of the Commission for University Education established under the Universities Act to be exercised in accordance with the Universities Act at the exclusion of any other person or body, but the Commission shall consult the Board before approving an academic programme in the field of health record and information management.

21. Conditions of practice and penalty

(1) No person shall practice as a Manager unless that person is registered under this Act.

(2) A person who contravenes the provisions of subsection (1) above, commits a criminal offence and shall be liable on conviction to imprisonment for a term not exceeding five years or a fine not exceeding five million shillings, or to both.

(3) No person shall, while in charge of a health institution or any Health Records and Information Department in Kenya employ any person who is not registered under this Act as a Manager.

(4) A person who contravenes the provisions of subsection (3) above, commits a criminal offence and shall be liable on conviction to a fine not exceeding four million shillings or imprisonment for a term not exceeding five years, or to both.

(5) A person who wilfully makes a false or misleading statement or utters a false certificate in an application for registration under section 16, commits an offence and shall be liable on conviction to a fine not exceeding four million shillings, or to imprisonment for a term not exceeding five years, or to both.

22. Custody of registers

(1) The Registrar shall, under the direction of the Board, compile and maintain custody of—

- (a) a register of Technicians;
- (b) a register of Officers; and
- (c) such other registers as may from time to time be prescribed by the Board with the approval of the Cabinet Secretary.

(2) Subject to the payment of a retention fee, there shall be entered and maintained in the appropriate register the name and address of every person entitled to be registered under this Act together with his professional qualifications and such other particulars as may be prescribed by the Board.

23. Qualifications for registration

Except as otherwise provided in this Act or in any Regulations made thereunder, a person shall be entitled to registration on the appropriate register upon satisfying the Board that the person—

- (a) is of good character;
- (b) has paid the prescribed registration fee; and
- (c) has undergone a prescribed course of instruction and passed the examination conducted or prescribed by the Board or has undergone a course of training and passed an examination which the Board recognizes as equivalent to the training and instruction prescribed under this Act.

PART IV – PROVISIONS RELATING TO PRIVATE PRACTICE AND GENERAL LICENCING

24. Private practice

(1) A person shall not engage in private practice unless such person—

- (a) is a citizen of Kenya;
- (b) is registered as a Manager under this Act;
- (c) has served in his category for a period of not less than three years;
- (d) holds an annual licence for that year;
- (e) is a holder of such other qualification as may be prescribed by the Board.

(2) Notwithstanding the provisions of subsection (1), a person who is not a citizen of Kenya may be licensed to practice as a Manager if he satisfies the Board that such person—

- (a) is of good character;
- (b) has paid the prescribed fee;
- (c) has undergone a course of training and passed an examination equivalent to the training and examination prescribed under the Act.

(3) A licence issued under subsection (2)—

- (a) shall be for such period and for such purpose as the Board may prescribe;
- (b) may, on its expiry, be renewed for such period, not exceeding one year, as the Board may prescribe.

(4) Where a licence issued under subsection (2) is renewed, details of the renewal shall be entered in the appropriate register.

(5) Where a licence issued under subsection (2) expires and is not renewed within thirty days of expiry, the name of the holder of the licence shall be removed from the register and the Board may decline further requests for renewal of such a licence or impose a prescribed levy on such further requests.

(6) For the purposes of this Act, a Manager shall be deemed to engage in private practice if—

- (a) he or she practices on his own account and is entitled to receive, for his or her own financial benefit, the entire amount of all fees and charges;
- (b) he or she practises in partnership with others and is entitled to receive, for his or her own financial benefit, a share of the fees and charges;

(7) A person shall not be deemed to engage in private practice as a Manager if such person is employed by—

- (a) the Government or any other public body;
- (b) any person or employer where all fees and charges accrue to the person or employer despite the fact of him or her being employed in his professional capacity as a Manager.

(8) An application for a practising certificate or its renewal shall be made to the Board in the prescribed form and shall be accompanied by such fee as the Board may from time to time determine.

(9) The Board shall issue to such person a practising certificate for that year if it is satisfied that the person fulfils the requirements set out in subsection (1) and has paid the fee referred to in subsection (8) of this section.

(10) A practising certificate shall be valid from the date on which it is issued and shall expire on the thirtieth day of December of every year unless its holder ceases to be a registered person under this Act.

(11) Where a practising certificate ceases to be in force in accordance with subsection (8), the person to whom the certificate was issued shall deliver it to the Board within thirty days from the date on which he or she ceases to be registered.

(12) Any person who contravenes subsection (1) or (2), in addition to being culpable of professional misconduct, commits an offence and is liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding one year, or to both.

PART V – OFFENCES

25. Offences by persons not eligible to be registered or licensed

(1) Any person who, not being eligible to be registered or licensed under this Act, uses any title appropriate to a person so registered or licensed, or holds himself out directly or indirectly as being so registered or licensed, or wears any uniform, badge or other distinguishing device prescribed for the use of persons so registered or licensed, or any imitation thereof, commits an offence and shall be liable to a fine not exceeding three million shillings or imprisonment for a term not exceeding two years or to both.

(2) Any person who, not being eligible to be registered or licensed under this Act, practises for gain as a Health Records and Information Manager, except in an area which the Cabinet Secretary has, by notice in the *Gazette*, determined to be suitable for such practice by persons who are not so registered or licensed, or, except in such circumstances as may be specifically laid down in Regulations made under this Act, commits an offence and shall be liable to a fine not exceeding three million shillings or imprisonment for a term not exceeding two years or to both.

26. Offences by persons eligible to be registered or licensed

(1) Any person who, though eligible to be registered or licensed under this Act, is not so registered or licensed and who practices as a Health Records and Information Manager, commits an offence and liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding six months.

(2) Any person who, being registered or licensed under this Act—

- (a) holds himself out, directly or indirectly, as being—
 - (i) registered in any register under this Act in which his name is not registered;
 - (ii) licensed under this Act to do anything which he is not licensed to do; or
- (b) uses any name, title or description other than that which he is entitled to use under this Act, commits an offence and on conviction shall be liable to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding six months.

27. Offences by persons conducting training courses or examinations without authority

(1) Any person, being in charge of any health or other institution which is not approved by the Board as an institution for the training of persons seeking registration or enrolment under this Act, who—

- (a) admits to the institution under his charge any person for the purpose of training in any of the categories of Health Records and Information Managers in respect of which provision is made for registration or enrolment under this Act;
- (b) purports to be conducting courses of training or examinations under this Act or Regulations made thereunder;
- (c) issues any document, statement, badge, seal or uniform implying that the institution under his charge is approved by the Board as an institution for training of persons seeking registration or enrolment under this Act;

- (d) issues any document, statement, certificate, badge or seal implying that the holder thereof has undergone a course of instruction or passed an examination prescribed by the Board, commits an offence and on conviction shall be liable to a fine not exceeding three million shillings or imprisonment for a term not exceeding two years or to both.

(2) Any person who purports to conduct examinations on behalf of the Board while not being authorized by the Board so to do commits an offence and on conviction shall be liable to a fine not exceeding three million shillings or imprisonment for a term not exceeding two years.

PART VI – DISCIPLINARY PROVISIONS

28. Disciplinary Committee

(1) There is established a Disciplinary Committee of the Board, which shall consist of—

- (a) the Chairperson of the Board, or a nominee thereof who shall be the Chairperson of the Committee;
- (b) one representative of the Cabinet Secretary who shall not be a member of the Board;
- (c) a representative of the Attorney-General;
- (d) a representative appointed by the Institute of Certified Public Secretaries;
- (e) two Managers, one each from public and private practice, of distinguished professional standing nominated by the Board, who shall not be member of the Board; and
- (f) the Registrar who shall be an ex-officio member of the Committee.

(2) The Board may refer a matter to the Committee if it has reason to believe that any person registered as a Manager, either before or after he became registered—

- (a) has been convicted by a court of law of an offence punishable by imprisonment for more than six months, the commission of which in the opinion of the Board has dishonoured him or her in the public estimation; or
- (b) has been convicted of or has acted in a manner amounting to professional negligence or professional misconduct in respect of the profession, including any breach of provisions of the Act or Regulations made pursuant to this Act.

(3) The quorum of the Committee shall be five members.

29. Functions of Committee

The Committee shall hear and determine matters referred to it by the Board or any other aggrieved person.

30. Proceedings of Committee

(1) A Manager whose conduct has been referred to the Committee shall be afforded a fair hearing and may appear either in person or be represented by an advocate of the High Court of Kenya.

(2) The Committee may administer oaths or affirmation and may, subject to any Regulations, summon and enforce the attendance of persons as witnesses and

the production of books and documents or other relevant evidence, on request by either party.

(3) Subject to any Regulations made under this Act, the Committee shall regulate its own procedure.

31. Decisions of the Disciplinary Committee

(1) Where the Committee determines, unanimously or by a majority of its members, that a Manager whose conduct has been referred to it is guilty of any of the matters referred to under section 28(2), the Committee may—

- (a) issue the Manager with a letter of admonishment; suspend the registration certificate of the Manager for a specified period not exceeding twelve months;
- (b) suspend the practising certificate of the Manager for a period not exceeding three months;
- (c) withdraw or cancel the practising certificate of the Manager;
- (d) impose a fine as prescribed in this Act or regulations or as it deems appropriate in the circumstances; or
- (e) remove the name of the Manager from the register.

(2) The Committee may order that a Manager reimburse the costs and witness expenses incurred in connection with the disciplinary hearing and such costs shall be civil debt recoverable summarily by the Board.

(3) Where the Committee recommends to the Board that a Manager is unfit to practice as a result of ill-health, the Board may, if satisfied with the Committee's recommendations, withdraw the Manager's certificate of registration or practising certificate until such a time as the Board is satisfied that the Manager is able to resume his or her duties.

(4) A Manager who has been suspended from practice or whose licence has been withdrawn or cancelled shall from the date of such suspension withdrawal or cancellation, surrender his or her registration and practising certificates and annual licence to the Registrar.

(5) A person being a Manager who refuses or fails to surrender his or her registration and practising certificates and annual licence to the Registrar on request commits an offence and on conviction shall be liable to a fine not exceeding two hundred thousand shillings.

(6) A Manager who is aggrieved by the decision of the Committee or the Board in the exercise of its powers under this Part, may within twenty-one days from the date of the decision appeal to the High Court.

32. Lifting of suspensions

(1) A Manager who has been suspended from practicing may appeal to the Board citing valid reasons for the lifting of the suspension at any time before its expiry.

(2) Where the Board is satisfied that the suspension of a Manager should be lifted, the Board shall lift the suspension and restore the registration and practising certificates and annual licence of a Manager subject to the payment of the prescribed fee.

33. Restoration of registration

(1) A Manager whose name has been removed from the register may appeal to the Board for restoration of his or her name in the register after the expiry of a period of three years from the date of such removal.

(2) The Board may, after considering the appeal made under subsection (1) cause the name of the person appealing to be restored in the register upon payment of the prescribed fee.

34. Effect of removal, cancellation or suspension

(1) Where an order has been granted under section 31, the Board on the application of the person concerned, and in either case after holding such inquiry as the Board thinks fit, without fee or on the payment of a fee not exceeding the registration or licence fee—

- (a) cause the name of that person to be restored to the register;
- (b) terminate the suspension of the registration;
- (c) grant a new licence; or
- (d) terminate the suspension of the existing licence.

(2) Subsection (1) shall not apply where a person's name has been removed from the register at his or her request or with his or her consent and the name of that person shall on his or her application and on the payment of the prescribed fee be restored to the register.

35. Professional misconduct

A Manager commits an act of professional misconduct if such Manager—

- (a) allows any person to practise in his or her name as a registered Manager, unless such person is the holder of a practising certificate and is in partnership with or employed by the Manager;
- (b) enters into partnership with a person who does not hold a practicing certificate, or secures any professional business through the services of such a person or by means not open to a Manager;
- (c) pays or allows or agrees to pay, directly or indirectly, to any person, other than a person who holds a practising certificate, is a retired partner or the legal representative of such a partner, any share, commission or brokerage out of the fees for, or profits of his or her professional services;
- (d) solicits clients or professional work or advertises professional attainments or services by use of means not prescribed by the Board;
- (e) discloses information acquired in the course of professional engagement to any person other than a client, without the consent of the client, or otherwise than required by law;
- (f) fails to observe and apply professional standards prescribed by the Board;
- (g) is grossly negligent in the conduct of his or her professional duties;
- (h) expresses an opinion on any matter with which he is concerned in a professional capacity without obtaining sufficient information on which to base the opinion;
- (i) is convicted of a crime under any other law;

- (j) fails to declare a conflict of interest in relation to any particular matter or acts in a matter notwithstanding the presence of an undisclosed conflict of interest; or
- (k) fails to do any other act which prescribed by the Board.

PART VII – FINANCIAL PROVISIONS

36. Funds of the Board

The funds of the Board shall comprise of—

- (a) such monies as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act; and
- (b) all monies from any other source provided for or donated or lent to the Board.

37. Financial year

The financial year of the Board shall be the period of twelve months ending on the thirtieth of June in every year.

PART VIII – PROVISIONS ON DELEGATED POWERS

38. Rules

(1) The Board, in consultation with the Cabinet Secretary, may make Rules generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Rules made under this section may provide for—

- (a) the attendance of witnesses and the production of books and documents at an inquiry held by the Board;
- (b) forms to be used in connection with this Act or fees to be charged under this Act;
- (c) the conditions of admission to the registers and of the issue of licences;
- (d) the manner in which the various categories of persons for whom provision is made in this Act for registration or enrolment may be established and their training regulated;
- (e) the conditions under which training schools for persons desirous of obtaining registration under this Act may be approved and the courses of training and instruction to be undergone by persons seeking such registration or enrolment;
- (f) the subject matter of training courses and examinations to be conducted by the Board;
- (g) the conditions of admission for entry to training courses and examinations to be conducted by the Board;
- (h) the standards and conditions of professional practice of persons registered, or licensed under this Act;
- (i) the fees payable in respect of examinations, registration, issue of licences, issue of certificates and badges and in respect of any other matters under this Act;

- (j) the procedure for election of the Chairperson and the vice-Chairperson;
 - (k) the powers and duties of local supervising authorities, different powers and duties for which may be prescribed for different local supervising authorities;
 - (l) provide for the disposal of fees collected, the authorization of such disbursements as may be necessary and the management of any funds within the control of the Board;
 - (m) the keeping and opening of new registers, and records and the closing of existing registers, rolls and records or parts thereof.
- (3) For the purposes of Article 94(6) of the Constitution—
- (a) the purpose and objective of delegation under this section is to enable the Board and Cabinet Secretary to make Rules to provide for the better carrying into effect of the provisions of this Act and to enable the Board to discharge its functions more effectively;
 - (b) the authority of the Board and the Cabinet Secretary to make Rules under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;
 - (c) the principles and standards applicable to the Rules made under this section are those set out in the Interpretation and General Provisions Act (Cap. 2) and the Statutory Instruments Act (Cap. 2A).

PART IX – MISCELLANEOUS PROVISIONS

39. Certificate and seal

(1) A certificate under the seal of the Board stating that a person is or was at any date registered, enrolled or licensed under this Act shall be conclusive evidence of the fact stated in the certificate.

(2) All certificates under the seal of the Board shall remain the property of the Board.

(3) A person whose name is removed from the register under section 31(1)(e), or in the case of a deceased person, his legal representative, shall, within thirty days of the publication of such removal, surrender the certificate of registration of that person to the Registrar.

(4) A person who destroys or defaces a certificate or registration or fails to surrender certificate of registration under subsection (3) commits a criminal offence and is liable on conviction to imprisonment for a term not exceeding three months.

(5) A person who without reasonable excuse, is in possession of a certificate of registration not issued to him or her, or fails to surrender such certificate under subsection (3) commits an offence and is liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both.

40. Protection from personal liability

(1) No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting under the directions personally liable to any action, claim or demands whatsoever.

(2) The provisions of subsection (1) shall not relieve the Board of the liability to pay lawful compensation or damages to any person for injury to the person or property.

41. General penalty

Any person convicted of an offence under the Act for which no penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings.

42. Falsification of registers or records

Any person who wilfully makes or causes to be made any false entry in, or falsification of, any register or record kept under this Act, or who procures or attempts to procure himself or any other person to be registered, or licensed under this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing, commits an offence and liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or to both.

SCHEDULE

[s. 11]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

- (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.
- (2) Notwithstanding the provisions of subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.
- (3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.
- (4) The quorum for the conduct of the business of the Board shall be seven and no meeting shall be held or continued, notwithstanding that there is a quorum, unless the Registrar or a person deputed by him is present.
- (5) The Chairperson shall preside at every meeting of the Board at which he is present but, in the absence of the Chairperson, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted, have all the powers of the Chairperson.
- (6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the chairperson or the person presiding shall have a casting vote in addition to a deliberative vote.
- (7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. Disclosure of interest by Board Members

- (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of this meeting during consideration of the matter:

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
- (3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Execution of instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

4. Minutes

The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.
