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THE CANCER PREVENTION AND CONTROL ACT

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CANCER PREVENTION AND CONTROL ACT

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NO. 15 OF 2012

CANCER PREVENTION AND CONTROL ACT

[Date of assent: 27th July, 2012.]

[Date of commencement: See section 1]

An Act of Parliament to provide for the prevention, treatment and control of cancer and for connected purposes

[Act No. 15 of 2012.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Cancer Prevention and Control Act, 2012 and shall come into operation on such date as the Cabinet Secretary may, by notice in the *Gazette*, appoint which date shall not exceed ninety days from the date of publication.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Board**” means the Board of Management established by section 6;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to public health;

“**Chairperson**” means the Chairperson of the Board appointed under section 6;

“**Chief Executive Officer**” means the Chief Executive Officer of the Institute appointed under section 10;

“**Institute**” means the National Cancer Institute of Kenya established by section 4;

“**medical institution**” means a hospital, clinic, dispensary or other place where a diagnosis of cancer is made and includes a medical practitioner practising in his or her own name;

“**medical practitioner**” has the meaning assigned to it under the Medical Practitioners and Dentists Act (Cap. 253);

“**person with cancer**” means a person diagnosed as having cancer;

“**register**” means the national cancer register established under section 20.

(2) For the period prior to the announcement of the results of the first elections of Parliament as contemplated by section 2 of the Sixth Schedule to the Constitution, reference to a “Cabinet Secretary” in this Act shall be deemed to be reference to a Cabinet Minister and reference to a Principal Secretary shall be deemed to be a reference to a Permanent Secretary.

3. Objects and purposes of the Act

The objects and purposes of this Act are to—

- (a) promote public awareness about the causes, consequences, means of prevention and control of cancer;

- (b) extend to every person with cancer full protection of his human rights and civil liberties by—
 - (i) guaranteeing the right to privacy of the individual;
 - (ii) outlawing discrimination in all its forms and subtleties;
 - (iii) ensuring the provision of basic health care and social services;
- (c) promote utmost safety and universal precautions in practices and procedures that relate to the treatment of cancer;
- (d) positively address and seek to eradicate conditions that cause and aggravate the spread of cancer;
- (e) promote access to quality and affordable diagnostic and treatment services for persons with cancer; and
- (f) ensure sustainable capacity for the prevention and control of cancer.

PART II – ADMINISTRATION

4. Establishment of the Institute

(1) There is established a body to be known as the National Cancer Institute of Kenya.

(2) The Institute shall be 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;
- (d) charging fees for services rendered by it and requesting for securities for such fees; and
- (e) 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.

5. Functions of the Institute

The functions of the Institute shall be to—

- (a) advise the Cabinet Secretary on matters relating to the treatment and care of persons with cancer and to advise on the relative priorities to be given to the implementation of specific measures;
- (b) encourage and secure the establishment of hospitals, vocational treatment and care centres and other institutions for the welfare and treatment of persons with cancer in all counties of the Republic;
- (c) encourage and secure provision of diagnostic, treatment, rehabilitation and other medical care to persons with cancer in those institutions;
- (d) co-ordinate services provided in Kenya for the welfare and treatment of persons with cancer and to implement programmes for vocational guidance and counseling;
- (e) collect, analyze and disseminate all data useful in the prevention, diagnosis and treatment of cancer;
- (f) collaborate with international institutions for the purpose of collecting for the Register and cataloging, storing and disseminating the results

- of cancer research undertaken in any country for the use of any person involved in cancer research in any country;
- (g) establish and support the large scale production or distribution of specialized biological materials and other therapeutic substances for research and set standards of safety and care for persons using such materials;
 - (h) ensure that accurate figures of persons with cancer are obtained in the country for purposes of planning;
 - (i) provide access to available information and technical assistance to all institutions, associations and organizations concerned with the welfare and treatment of persons with cancer, including those controlled and managed by the Government;
 - (j) encourage and secure the care of persons with cancer within their communities and social environment;
 - (k) establish and support measures that seek to eradicate conditions that cause and aggravate the spread of cancer.
 - (l) recommend measures to prevent discrimination against persons with cancer;
 - (m) generally to carry out measures for public information on the rights of persons with cancer and the provisions of this Act; and
 - (n) encourage and participate in the provision of training on cancer prevention and control.

6. Board of Trustees

(1) The Institute shall be administered by a board to be known as the Board of Trustees of the Institute.

(2) The Board shall consist of the following persons appointed by the Cabinet Secretary—

- (a) the Chairperson;
- (b) the Principal Secretary for the time being responsible for matters relating to health or his designated alternate not being below the level of Deputy Secretary;
- (c) the Principal Secretary for the time being responsible for matters relating to finance or his designate alternate not being below the level of Deputy Secretary;
- (d) one person nominated by the registered cancer associations in such manner as may be prescribed;
- (e) the Secretary of the National Council for Science and Technology or his designated alternate not being below the level of Deputy Secretary;
- (f) one person nominated by the Media Owners Association in such manner as may be prescribed;
- (g) one prominent philanthropist or industrialist of good standing;
- (h) one person nominated by the universities teaching medicine in such manner as may be prescribed;
- (i) one person nominated by institutions conducting medical research in such manner as may be prescribed;

- (j) the Attorney-General or his representative who shall be an *ex-officio* member; and
- (k) the Chief Executive Officer who shall be an *ex-officio* member and Secretary to the Board.

(3) No person shall be appointed under subsection (2)(a) unless such person is a registered medical practitioner and is a recognized medical specialist of not less than ten years experience in leadership at national institutional level.

(4) Subject to this Act, all acts and things done in the name of, or on behalf of, the Institute, by the Board or with the authority of the Board shall be deemed to have been done by the Institute.

(5) No person shall be appointed as a member of the Board unless such person meets the requirements of Chapter Six of the Constitution.

7. 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.

8. Powers of the Board

(1) The Board shall have all powers necessary for the proper performance of its functions under this Act.

(2) Without prejudice to the generality of the subsection (1), the Board shall have power to—

- (a) control, supervise and administer the assets of the Institute in such manner as best promotes the purpose for which the Institute is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Institute;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) open such banking accounts for the funds of the Institute as may be necessary;
- (e) invest any funds of the Institute not immediately required for its purposes in the manner provided in section 19;
- (f) establish such directorates, departments and regional centres of the Institute to deal with such specific matters as may be necessary; and
- (g) undertake any activity necessary for the fulfillment of any of the functions of the Institute.

(3) Without prejudice to the generality of paragraph (f) of subsection (2), the Institute shall decentralize its services to all counties of the Republic.

9. Remuneration of Board members and staff of the Institute

The Board shall pay its members and staff such remuneration or allowances as it may determine upon the advice of the Salaries and Remuneration Commission.

10. Chief Executive Officer

(1) There shall be a Chief Executive Officer who shall be appointed by the Board and whose terms and conditions of service shall—

- (a) be determined by the Board, upon the advice of the Salaries and Remuneration Commission;
 - (b) be stated in the instrument of appointment or otherwise in writing from time to time.
- (2) No person shall be appointed under this section unless such person has—
- (a) a masters degree in matters relating to cancer from a recognized university;
 - (b) at least ten years post qualification managerial working experience.
- (3) The Chief Executive Officer shall—
- (a) be the secretary to the Board; and
 - (b) subject to the directions of the Board be responsible for the day to day management of the affairs and staff of the Institute.

11. Staff of the Institute

The Institute may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

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 Institute, the exercise of any of the powers or the performance of any of the functions or duties of the Institute under this Act or under any other written law.

13. Protection from personal liability

(1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Board shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Institute of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

14. Common seal

(1) The common seal of the Institute shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Institute shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Board shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Institute when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the

contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

15. Funds of the Institute

(1) The funds of the Institute shall comprise of—

- (a) grants, gifts or donations that the Institute may receive as a result of public and private appeal from local and international donors or agencies for the purposes of carrying out its functions.
- (b) such fees, monies or assets 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 or under any written law;
- (c) all monies from any other lawful source provided for or donated or lent to the Board; and
- (d) such sums as may be appropriated by Parliament for the purposes of the Institute.

(2) The funds of the Institute and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but shall be retained for the purposes for which the Institute is established.

16. Financial year

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

17. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Institute for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Institute for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of members of the Board and staff of the Institute;
- (b) the payment of pensions, gratuities and other charges in respect of members of the Board and staff of the Institute;
- (c) the proper maintenance of the buildings and grounds of the Institute;
- (d) the maintenance, repair and replacement of the equipment and other property of the Institute; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary's approval, the Board shall not increase the annual estimates without the consent of the Cabinet Secretary.

18. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Institute.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Institute together with—

- (a) a statement of the income and expenditure of the Institute during that year; and
- (b) a balance sheet of the Institute on the last day of that year.

(3) The accounts of the Institute shall be audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003).

19. Investment of funds

The Board may invest any of the funds of the Institute in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART III – THE CANCER REGISTRY

20. Cancer register

(1) The Institute shall cause to be kept and maintained a national cancer register containing the particulars specified under subsection (2).

(2) The Register shall contain particulars on—

- (a) the incidence, preference, trends, type and geographical location of which due notification has been given pursuant to section 21;
- (b) institutions, associations and organizations, including those controlled and managed by the national, and county governments, that provide care and treatment services for persons with cancer; and
- (c) such other matters as the Board may prescribe.

(3) All particulars under subsection (1) and changes in such particulars shall be entered in the Register by the Chief Executive Officer as soon as is practicable after receiving notification thereof.

(4) The Chief Executive Officer may supply a copy of any entry in the Register upon payment of such fee as the Board may prescribe.

21. Notification to Institute

(1) Every medical institution shall, as soon as reasonably practical after making a diagnosis of cancer on a person, deliver a notification to the Institute for purposes of section 20(2)(a).

(2) A notification under subsection (1) shall—

- (a) be in such form as may be prescribed;
- (b) specify the type and geographical location of persons with the cancer;
- (c) not disclose the name of the person with cancer unless with the consent of the person or his guardian where such person is a minor;
- (d) be given not later than sixty days after the diagnosis.

(3) Any person who contravenes the provision of this section commits an offence.

22. Alteration of register

The Board may, at any time, direct that correction be made in respect of any entry which has been incorrectly or fraudulently made.

PART IV – DISCRIMINATORY PRACTICES

23. Discrimination in the workplace

(1) A person shall not be—

- (a) denied access to any employment for which the person is qualified; or
- (b) transferred, denied promotion or have his employment terminated, on the ground only of the person being a person with cancer.

(2) Without limiting the generality of subsection (1), an employer shall not discriminate against a person with cancer in relation to—

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

24. Discrimination in schools

An educational institution shall not deny admission or expel, discipline, segregate, deny participation in any event or activity, or deny any benefits or services to a person on the grounds only of the person being actual or perceived to be a person with cancer.

25. Inhibition from public service

A person shall not be denied the right to seek an elective or other public office on the grounds only of the person being actual or perceived to be a person with cancer.

26. Exclusion from credit and insurance services

(1) Subject to this Act, a person shall not be compelled to undergo cancer screening or to disclose cancer status for the purpose only of gaining access to any credit or loan services, medical, accident or life insurance or the extension or continuation of any such services.

(2) Notwithstanding subsection (1), an insurer, re-insurer or health maintenance organization shall, in the case of life and healthcare service insurance cover, devise a reasonable limit of cover for which a proposer shall not be required to disclose his or her cancer status.

27. Discrimination in health institutions

A person shall not be denied access to healthcare services in any health institution, or be charged a higher fee for any such services, on the grounds only of the person being actual or perceived to be a person with cancer.

28. Penalty for discriminatory practices

A person who contravenes any of the provisions of this Part commits an offence.

PART V – EDUCATION AND INFORMATION

29. Information, education and communication by national government

(1) The national government, in collaboration with the Institute, shall promote public awareness about the causes, consequences, means of prevention, treatment and control of cancer through a comprehensive nation-wide education and information campaign conducted by the national government through the relevant departments, authorities and other agencies.

(2) The education and information campaign referred to in subsection (1) shall be carried out in all schools and other institutions of learning, all prisons, remand homes and other places of confinement, amongst the disciplined forces, at all places of work and in all communities throughout Kenya.

(3) The national government in collaboration with the Institute shall provide training, sensitization and awareness programmes on the prevention, treatment, palliative care and control of cancer for—

- (a) employees of all national government departments, authorities and other agencies; and
- (b) employees of private and informal sectors;
- (c) community and social workers;
- (d) media professionals, educators, and other stakeholders involved in the dissemination of information to the public on cancer prevention, treatment and control.

(4) In conducting the education and information campaign referred to in this section, the national government shall ensure the involvement and participation of individuals and groups affected by cancer.

(5) The information provided under this section shall cover issues such as confidentiality in the work-place and attitudes towards affected employees and workers.

(6) For the purposes of this section, the national government in collaboration with the Institute shall ensure training of healthcare providers on proper information dissemination and education on cancer prevention and treatment.

30. Cancer prevention and control to form part of education syllabus

(1) The Institute shall liaise with the national government department responsible for education, to integrate instruction on the causes and ways of preventing cancer, its treatment and palliative care in subjects taught in public and private schools at all levels starting from early childhood education development centers to primary, secondary, and tertiary levels, including informal, non formal and indigenous learning systems.

(2) The Institute shall in collaboration with the national government department responsible for education, develop and implement a training curriculum to be integrated into syllabuses on the prevention and treatment of cancer and the care of persons with cancer to be taught at all levels starting from early childhood education development centers.

31. Cancer prevention and control to form part of health care

(1) The Institute shall liaise with the national government department responsible for public health to ensure that education and information dissemination on the prevention and treatment of cancer and the care of persons

with cancer including palliative care, shall form part of health care services by healthcare providers.

(2) For the purposes of subsection (1), the national government department responsible for public health in collaboration with the Institute shall provide training for the healthcare providers to acquire skills for proper information dissemination and education on cancer prevention control and palliative care.

32. Cancer prevention and control dissemination by county governments

Every county government, in collaboration with the Institute, shall conduct an educational and information campaign on cancer prevention, treatment and control within its area of jurisdiction in the manner contemplated under sections 29, 30 and 31.

33. Cancer prevention and control dissemination in cities or urban areas

Every city or urban area, in collaboration with the Institute, shall conduct an educational and information campaign on cancer prevention, treatment and control within its area of jurisdiction.

PART VI – MISCELLANEOUS PROVISIONS

34. Consent to research

(1) No person shall undertake any cancer related human biomedical research on another person or on any tissue or blood removed from such person except—

- (a) with the written informed consent of that other person; or
- (b) if that other person is a child, with the written informed consent of a parent or legal guardian of the child;
- (c) If that person is incapacitated by infirmity, by the legal guardian.

(2) The person whose consent is sought to be obtained under subsection (1) shall be adequately informed of the aims, methods, anticipated benefits and the potential hazards and discomforts of the research.

(3) A person who contravenes any of the provisions of this section commits an offence.

35. General penalty

A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term, not exceeding two years or to both.

36. Rules

(1) The Cabinet Secretary, on the recommendation of the Institute may make rules generally for the better carrying out of its functions under this Act.

(2) Without prejudice to the generality of sub section (1), the rules shall prescribe anything which this Act requires to be prescribed.

(3) For purposes of the first appointment of members of the Board under section 6, the Cabinet Secretary shall prescribe the procedures specified under that section notwithstanding the absence of the Institute but subsequent procedures shall be prescribed in accordance with subsection (1) of this section.

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

[Section 7.]

1. Tenure of office

The Chairperson or a member of the Board other than *ex-officio* members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

2. Vacation of office

(1) A member other than an *ex-officio* member may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member—
 - (i) has been absent from three consecutive meetings of the Board without its permission;
 - (ii) is convicted of a criminal offence that amounts to a felony in Kenya;
 - (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
 - (iv) is otherwise unable or unfit to discharge his functions.

3. 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 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 half of the total members including the Chairperson or the person presiding.

(5) The members present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (6), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. Committees of the Board

(1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

5. Disclosure of interest

(1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof 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 the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) 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 a fine not exceeding two hundred thousand shillings.

6. Contracts and 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.
