

BILL AS TABLED

A BILL

entitled

NURSING AMENDMENT ACT 2010

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Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Nursing Act 1997 (the "principal Act"), may be cited as the Nursing Amendment Act 2010.

Amends section 2

2 Section 2 of the principal Act is amended by replacing the definition of "member" with the following definition—

- (a) in the definition "general nurse", "nurse specialist and "nursing associate" " by inserting the words "advanced practice nurse" next after the words "nurse specialist";

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- (b) by replacing the definition of “member” with the following—
  - “member”, except in sections 5(2)(a) and 8(3)(a). means a member of the Council;”;
- (c) by replacing the definition of “prescribe” with the following definition—
  - “prescribe”, except in relation to prescribing a drug, means to prescribe by rules;”;
- (d) by inserting the following definitions in alphabetical order—
  - “Committee” means the Nursing Profession Complaints Committee established by section 6C;
  - “nurse” , except in section 8(3)(b), means a general nurse, a nurse specialist or an advanced practice nurse or any other category of nurse that may be prescribed;
  - “professional misconduct” includes—
    - (a) incompetence or negligence in the practice of nursing;
    - (b) improper or unethical conduct in relation to professional practice; and
    - (c) a contravention of, or failure to comply with, a provision of this Act or the rules, including a code of conduct prescribed under section 6B; ”; and
- (e) by deleting the definition “a relevant professional association”.

### Amends section 3

3 Section 3(4) of the principal Act is amended by replacing the full stop at the end of paragraph (d) with the words “; and” and by inserting the following after paragraph (d)—

- “(e) to carry out enquiries into complaints, and enquires on its own initiative, concerning nurses and nursing associates, as provided for by this Act.”.

### Amends section 4

4 Section 4 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “general nurses, nurse specialists” and substituting the word “nurses”;
- (b) by repealing subsection (7) and replacing it with the following—

“(7) Copies of the register shall be deposited for public inspection at the offices of the Bermuda Nursing Council, at the Ministry of Health Headquarters and at such other places as the Council may determine.

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(7A) The Council shall publish a notice in the Gazette annually indicating the places where copies of the register are available for public inspection.”; and

- (c) in subsection (9), by deleting the words “, nurse specialist” in the two places where they occur.

Amends section 5

5 Section 5 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “application to the Council in accordance with the rules” and substituting the words “an application to the Council for a registration certificate, in a form determined by the Council”;
- (b) in subsection (2)—
- (i) by deleting the words “(on payment of such fee as may be required)”, and
- (ii) by deleting the words “and is or will be a member of a relevant professional association”; and
- (c) by repealing subsection (4) and replacing it with the following—

“(4) An applicant whose professional qualifications were obtained outside Bermuda and whose first language is not English must satisfy the Council that he has sufficient knowledge of the English language to be able to function as a nurse or nursing associate in Bermuda.

(5) On registration of a person under subsection (2), the Council shall issue to that person a registration certificate in a form determined by the Council.

(6) Subject to the provisions of this Act regarding removal of a person’s name from the registry, a registration certificate is valid from the date when it is issued until December 31 in the next year after the year in which it was issued.”.

Repeals and replaces section 6

6 Section 6 of the principal Act is repealed and replaced by the following—

“Renewal of registration

6 (1) A person may make an application to the Council for renewal of his registration certificate, in a form determined by the Council.

(2) An application for renewal of a registration certificate shall be made in September or October of the year in which the certificate is due to expire.

(3) The Council shall issue a renewal of registration certificate if the Council is satisfied that the applicant—

- (a) continues to meet the conditions set out in section 5(2);

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- (b) has been engaged in the practice of nursing, or the particular type of nursing for which the person applies to be registered, as the case may be, for the prescribed number of hours per year in the two year period immediately prior to the date of application; and
- (c) at the date of application is in compliance with the requirements of section 6A with regard to continuing professional education.

(4) Subject to the provisions of this Act regarding removal of a person's name from the registry, a renewal of registration certificate is valid for two years from January 1 following the date of application.

(5) If the Council decides not to issue a renewal of a person's registration certificate, that person's name shall be removed from the registry at the end of the period allowed under section 7 for appeal of the decision, unless the person appeals the decision, in which case the person's name may not be removed from the registry until after disposition of the appeal.

### Continuing professional education

6A (1) Every registered nurse and nursing associate shall complete a prescribed number of hours of continuing professional education during each period for which their registration certificate, or renewal of registration certificate, is valid.

(2) For the purpose of this section "continuing professional education" means any program of training or development of knowledge that the Council may approve for nurses or nursing associates.

### Professional Conduct

6B (1) The Council may prescribe a code of conduct for nurses and nursing associates and such code may incorporate by reference standards of conduct of professional nursing organizations as amended from time to time.

(2) Every registered nurse and nursing associate shall inform the Council if they are—

- (a) convicted of any offence for which that nurse or nursing associate is sentenced to a term of imprisonment without the option of a fine;
- (b) found guilty of professional misconduct by any body that regulates the nursing profession outside Bermuda; or
- (c) struck off the register of nurses or nursing associates in any place outside Bermuda.

### Nursing Profession Complaints Committee

6C (1) There shall be established, in accordance with the Second Schedule, a committee to be known as the "Nursing Profession Complaints Committee".

(2) The functions of the Committee are—

- (a) to receive and investigate, or cause to be investigated, complaints against any registered person including any allegation that—
    - (i) the person's registration was improperly obtained,
    - (ii) the person is guilty of professional misconduct,
    - (iii) the person is unfit to practise by reason of conviction of an indictable offence or adverse physical or mental health, or
    - (iv) the person is otherwise unfit to practise or to be registered; and
  - (b) to perform such other functions as may be prescribed.
- (3) The Committee may investigate any complaint based on matters alleged to have occurred—
- (a) inside or outside Bermuda; or
  - (b) at any time, whether or not at a time when the person was a registered person.
- (4) A complaint referred to in subsection (2)(a)—
- (a) shall be made by the complainant or—
    - (i) if the complainant is a child or is physically or mentally unable to make the complaint, by the parent or guardian, friend or a person acting on behalf of the complainant, and
    - (ii) if the conduct complained of relates to a person who is dead, by the person's executor or personal representative;
  - (b) shall be in writing and addressed to the Committee;
  - (c) shall set out the matters alleged to constitute grounds for disciplinary action to be taken against the person who is the subject of the complaint; and
  - (d) may be required by the Committee to be in a form approved by the Committee.
- (5) The Second Schedule has effect as to the appointment and proceedings of the Committee and other matters relating to the Committee.
- (6) If the Committee considers that a complaint arose from a misunderstanding by the complainant or between the complainant and the person complained of, the Committee may, before proceeding further with the investigation of the complaint, require the parties to appear before it in order to discuss the matter with a view to clarifying the misunderstanding and resolving the matter informally.

Investigation of complaint by Committee

6D (1) Where a complaint under section 6C(4) is not resolved informally, the Committee shall investigate the complaint and determine whether, in its opinion, the complaint—

- (a) is frivolous or vexatious, is made in bad faith, is an abuse of process, or for any other reason, ought not to be referred to the Council; or
- (b) ought to be referred to the Council for decision.

(2) The Committee—

- (a) shall give written notice to the person who is the subject of the complaint that a complaint has been made, together with a summary of the matters alleged in the complaint;
- (b) shall request that the person who is the subject of the complaint show cause in writing, within a specified time after the notice is given, explaining why the matter should not be placed before the Council for determination; and
- (c) may take evidence from witnesses on oath or affirmation, administered by the Chairman.

(3) If the Committee determines that a complaint is frivolous or vexatious, is made in bad faith, is an abuse of process or otherwise ought not to be considered by the Committee, it shall dismiss the complaint and give written notice to the complainant of the dismissal and the reasons for the dismissal.

(4) If the Committee determines that a complaint ought to be referred to the Council for decision, the Committee shall, as soon as practicable, refer the matter to the Council.

Enquiry into complaint by Council

6E (1) If a complaint is referred to the Council, the Council shall conduct an enquiry into the complaint.

(2) For the purposes of an enquiry under this section, the Council—

- (a) may take evidence from witnesses on oath or affirmation, and for that purpose the chairman of the Council may administer an oath or affirmation;
- (b) shall afford the registered person and the Committee, or any member of the Committee, every facility—
  - (i) to appear before the Council at all stages of the enquiry,
  - (ii) to be represented by counsel,
  - (iii) to call or cross-examine witnesses, and

(iv) generally to make a full defence or explanation in the matter of the complaint.

(3) Following its enquiry, the Council shall make a decision as to whether the complaint is proved or not proved, in whole or in part, together with reasons for its decision.

(4) If the Council decides that a complaint is not proved, in whole or in part, it shall dismiss the complaint to the extent that it is not proved.

(5) If the Council decides that a complaint is proved, in whole or in part, it shall record a finding to that effect and it may make any order of a disciplinary nature that it sees fit in respect of a person against whom the complaint is made, including an order—

- (a) admonishing the person;
- (b) suspending the person from the practice of nursing for such period as it sees fit or for an indefinite period;
- (c) striking the name of the person off the register or part of the register; and
- (d) imposing conditions or limitations with regard to the practice of nursing by the person.

(6) The Council shall give written notice, to the person against whom the complaint is made, of its decision under subsection (3) and any order made by the Council under subsection (5), together with reasons.

(7) The person against whom the complaint is made may appeal against a decision or order of the Council in the manner provided in section 7.

(8) Any proceedings in connection with the holding of an enquiry by the Council under this section shall, for the purposes of the provisions of the Criminal Code Act 1907 relating to perjury, be deemed to be judicial proceedings.

(9) A member of the Council who was involved in the matter complained of may not participate in an enquiry by the Council under this section.

(10) A person who is suspended from practice under this section shall, for the duration of the suspension, be deemed not to be registered.

#### Enquiry by Council of its own initiative

6F (1) In the absence of a complaint, the Council may, of its own initiative, hold an enquiry into any matter referred to in section 6C(2) that could have formed the subject of an investigation by the Committee.

(2) The provisions of section 6E that apply in respect of an enquiry by the Council under that section into a complaint apply to an enquiry under this section with any necessary modifications.

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### Voluntary removal of name from register

6G (1) Any person who desires to have his name removed from the register shall make an application in a form determined by the Council.

(2) Upon approval of the application and payment of the relevant fee set out in the Government Fees Regulations 1976, the Council shall make the necessary alterations to the register.

### Restoration of name to register

6H (1) A person whose name has been removed from the register under section 6G, or whose name has been struck from the register, or who has been suspended from practice, under section 6E or 6F, may make an application to the Council, in a form determined by the Council, for his name to be restored to the register or for his suspension to be terminated, as the case may be.

(2) On receipt of an application, the Council shall decide whether or not to restore the applicant's name to the register or to terminate their suspension, after considering the following matters—

- (a) the character and professional ability of the applicant;
- (b) the nature of the matter in respect of which the applicant's name was struck from the register or for which the applicant was suspended;
- (c) the conduct of the applicant after his name was struck from the register or after they were suspended; and
- (d) any other circumstances appearing to the Council to be relevant.

(3) The Council shall give written notice to the applicant of its decision, together with reasons.

(4) An applicant may appeal against a decision of the Council in the manner provided in section 7.”.

### Amends section 7

7 Section 7(1) of the principal Act is repealed and replaced by the following—

“(1) A person aggrieved by any decision of the Council referred to in paragraphs (a) to (e) of this subsection may, within 28 days after the date on which notice of the decision is given to the person by the Council, appeal to the Supreme Court against the decision. The following are decisions that may be appealed—

- (a) a decision not to issue or renew a registration certificate;
- (b) a decision to remove the name of a person from the register;
- (c) a decision to remove, or alter, any entry in the register in respect of a person;
- (d) a decision not to restore a person's name to the registry;

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(e) a decision not to terminate a person's suspension.”.

### Amends section 8

8 Section 8 of the principal Act is amended—

- (a) in subsection (1)(a), by inserting next after the word “to” the words “be a nurse or nursing associate or to”; and
- (b) in subsection (2)(b), by deleting the words “offence in the other” and substituting the words “offence by the other”.

### Inserts sections 8A, 8B, 8C and 8D

9 The principal Act is amended by inserting the following—

#### “Prohibition regarding practice of nursing

8A (1) No person who is not a registered nurse or nursing associate shall practise nursing in Bermuda or hold himself out as practising nursing in Bermuda.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding 3,000 dollars.

#### Prohibitions against prescription of drugs

8B (1) No nurse, other than an advanced practice nurse, and no nursing associate shall prescribe any drugs that are listed in the Third or Fourth Schedule of the Pharmacy and Poisons Act 1979.

(2) An advanced practice nurse may only prescribe drugs on the authorization of a registered medical practitioner.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding 3,000 dollars.

#### Notice

8C Any application, notice or other document which is required or authorized under the Act to be made or given to, or served on, any person may be made, given or served by hand delivering it to the person or delivering it by registered mail to the person, or—

- (a) in the case of the Minister, by delivering it to an officer in the Ministry of Health;
- (b) in the case of the Council, by delivering it to the chairman or deputy chairman of the Council; and
- (c) in the case of any person other than the Minister or the Council, by leaving it at, or sending it to his usual or last business address.

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### Annual report

8D The Council shall, not later than April 30 after the end of each calendar year, submit a report to the Minister on its activities for that year, including a report by the Committee on its activities.”.

### Amends section 9

10 Section 9 of the principal Act is amended—

- (a) in subsection (1), by inserting next after the word “may” the words “, after consultation with the Council,”; and
- (b) by repealing subsection (2) and replacing it with the following—

“(2) Without prejudice to subsection (1), the Minister may, after consultation with the Council, make rules—

- (a) defining the expressions “general nurse”, “nurse specialist”, “advanced practice nurse” and “nursing associate”;
- (b) establishing and defining additional categories of nurses;
- (c) describing the functions of different categories of nurses and of nursing associates;
- (d) prescribing the qualifications, training and experience required for different categories of nurses and for nursing associates; and
- (e) prescribing anything that is authorized or required to be prescribed under this Act.”.

### Amends First Schedule

11 The First Schedule of the principal Act is amended—

- (a) by repealing paragraph 1(2)(c) and replacing it with the following—
  - “(c) one member shall be a nurse specialist appointed by the nursing specialists of Bermuda in elections conducted by the Council;
  - (ca) one member shall be an advanced practice nurse appointed by the Association;”; and
- (b) in paragraph 1(2)(f)(i), by inserting the words “or an advanced practice nurse” next after the words “general nurse”;
- (c) by repealing paragraph 1(3);
- (d) in paragraph 2, by inserting “(ca),” next after “(c),”; and
- (e) in paragraph 3, by deleting “(b) or (c)” and substituting “(b), (c) or (ca)”.

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Repeals and replaces Second Schedule

12 The Second Schedule of the principal Act is repealed and replaced by the following—

“SECOND SCHEDULE

(section 6C)

NURSING PROFESSION COMPLAINTS COMMITTEE

1. The Committee shall consist of three members appointed by the Minister, as follows—
  - (a) one from a list of at least three registered nurses in good standing who are nominated by the Association;
  - (b) one from a list of at least three registered nurses in good standing who are nominated by the Council; and
  - (c) a barrister and attorney who is admitted and enrolled in Bermuda.
2. A person who is a member of the Council may not be appointed as a member of the Committee.
3. Appointment as a member under paragraph 1 shall be for a term not exceeding three years and a member is eligible for reappointment.
4. The Minister may appoint a second person to act as an alternate to a member appointed under paragraph 1.
5. An alternate to a member shall be appointed in accordance with the requirements for the appointment of the member, and his term of appointment shall, if not sooner terminated, end at the expiration of the term of the member.
6. There shall be a chairman of the Committee who shall be appointed annually by the Minister from among the members of the Committee to hold office until December 31 of the year for which he was appointed, and who shall be eligible for re-appointment as chairman.
7. If at any time the chairman ceases to be a member of the Committee, or for any other reason ceases to hold office as chairman, the Minister shall, as soon as possible, appoint from among the members of the Committee another person to be chairman.
8. If at any meeting of the Committee the chairman is absent, the members present shall elect one of their number to act as chairman at the meeting.
9. Two members of the Committee shall form a quorum at any meeting.
10. Every question or matter to be determined by the Committee at any meeting shall be decided by a majority of the members present at the meeting but, in the event of an equality of votes, the chairman shall have the casting vote.

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11. Fees shall be paid to members of the Committee in accordance with the Government Authorities (Fees) Act 1971.

12. The validity of any act or proceedings of the Committee shall not be affected by any vacancy among the members of the Committee or by any defect in the appointment of a member of the Committee or of the chairman.

13. Subject to this Act, the Committee may regulate its own proceedings.

14. The Committee shall, not later than March 1 after the end of each calendar year, submit a report on its activities for that year to the Council.”.

### Transitional provision

13 (1) Subject to subsection (2), a person who was registered in a part of the register under the principal Act as it read immediately before the coming into operation of this Act shall continue to be registered in that part until December 31 in the next year after the year in which this Act comes into operation.

(2) A person referred to in subsection (1) who wishes to remain on the register after December 31 in the next year after the year in which this section comes into operation must apply for renewal of their registration in accordance with section 6.

### Consequential amendment

14 Head 38 of the Schedule to the Government Fees Regulations 1976 is revoked and replaced by the following—

“Head 38  
Nursing Act 1997

- |  |         |
|--|---------|
| (1) Applying for registration certificate under section 5            | \$28    |
| (2) Applying for renewal of registration certificate under section 6 | \$18 ”. |

### Commencement

15 This Act comes into operation on a day to be appointed by the Minister responsible for Health by notice published in the Gazette.

## NURSING AMENDMENT BILL 2010

### EXPLANATORY MEMORANDUM

This Bill seeks to make a number of amendments to streamline and update the Nursing Act 1997 (the “Act”), including—

- (a) the addition and clarification of definitions;
- (b) the transfer of provisions regarding registration of nurses and nursing associates from the Nursing Rules 2003 (the “Rules”) to the Act;
- (c) the creation of a Nursing Profession Complaints Committee and an enhanced procedure for dealing with complaints against nurses and nursing associates, in the Act instead of in the Rules;
- (d) the addition of provisions regarding continuing education and professional conduct; and
- (e) provisions regarding the prescription of drugs by advanced practice nurses.

Clause 1 sets out the citation for the amending Bill.

Clause 2 makes a number of additions and clarifications of definitions. It adds a definition of “advanced practice nurse” and a definition of “nurse”; it clarifies the definition of “member” of the Bermuda Nursing Council; it adds definitions of “Committee” (the Nursing Profession Complaints Committee), and “professional misconduct”, which are terms new to the Act as a result of other amendments in the Bill.

Clause 3 adds to the functions of the Council, that of carrying out enquiries into complaints and enquiries generally.

Clause 4 deletes references to “general nurse” and “nurse specialist” as these terms would now be included in the general term “nurse”. It also provides for copies of the register of nurses and nursing associates to be deposited for public inspection at certain places and for a notice to be published in the Gazette indicating those places. This is instead of publication of the whole register every year.

Clause 5 makes a number of changes to the process of application for registration, including moving some of the provisions that are presently in the Rules to the Act. The form of application would be determined by the Council; a provision regarding fees is deleted as fees are provided for in the Government Fees Regulations 1976. Clause 5 also clarifies the requirement for nurses and nursing associates to have knowledge of the English language; and it provides for the issue of a registration certificate and for it to be valid for up to two years.

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Clause 6 replaces section 6 of the Act, which deals with removal and restoration of a name on the register, and replaces it with a new section 6 and sections 6A to 6H, making provision for the following—

- (a) the procedure for renewal of registration certificates every two years;
- (b) a provision for continuing professional education;
- (c) provisions regarding professional conduct including authority for the Council to prescribe a code of conduct;
- (d) establishment of the Nursing Profession Complaints Committee, the functions of the Committee and the procedure for making complaints;
- (e) investigation of complaints by the Complaints Committee;
- (f) enquiries by the Council into complaints that are referred to it by the Complaints Committee;
- (g) enquiries by the Council of its own initiative;
- (h) the procedure for voluntary removal of a person's name from the register of nurse and nursing associates (presently in the Rules); and
- (i) the procedure for restoration of a person's name to the register (presently in the Rules), and the procedure for termination of a person's suspension.

Clause 7 expands the decisions of the Council that may be appealed to include a decision not to issue or renew a person's registration, a decision not to restore a person's name to the register, or a decision not to terminate a person's suspension.

Clause 8 is by way of clarification.

Clause 9 adds new sections 8A to 8D to the Act, making provision for the following—

- (a) a prohibition on a person practising nursing without being registered;
- (b) a prohibition on nurses, other than advanced practice nurses, prescribing drugs, and then only on the authorization of a registered medical practitioner;
- (c) inclusion in the Act of provisions regarding notice; and
- (d) a requirement for the Council to submit an annual report to the Minister.

Clause 10 adds a requirement for the Minister to consult with the Nursing Council before making rules and expands the power of the Minister to include making rules—

- (a) defining the expressions "general nurse", "nurse specialist", "advanced practice nurse" and "nursing associate";
- (b) establishing and defining additional categories of nurses;

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- (c) describing the functions of different categories of nurses and of nursing associates;
- (d) prescribing the qualifications, training and experience required for different categories of nurses and for nursing associates; and
- (e) prescribing anything that is authorized or required to be prescribed under this Act.

Clause 11 makes changes to the First Schedule of the Act dealing with appointment of members to the Council to include references to advanced practice nurses.

Clause 12 repeals and replaces the Second Schedule of the Act. The Second Schedule presently contains provisions regarding proceedings of the Nursing Council and its committees that are no longer considered appropriate. The new Second Schedule sets out the establishment and proceedings of the Nursing Profession Complaints Committee.

Clause 13 grandfathers persons who are presently registered for a period of not more than two years, after which they are required to have their registration renewed.

Clause 14 makes changes in the references to fees under the Government Fees Regulations 1976 as a consequence of applications for registration and renewal of registration being moved from the Rules to the Act.

Clause 15 provides for the coming into operation of the amending Bill.