

# The Odisha Gazette

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Orissa Act No. 7 of 1938

## \*THE ORISSA NURSES & MIDWIVES REGISTRATION ACT, 1938

### PREAMBLE

An Act to provide for the Registration and better training of Nurses, Health Visitors, Midwives and Dais in Orissa

Whereas it is expedient to provide for the registration of nurses, health visitors, midwives and dais in Orissa and to secure their better training; It is hereby enacted as follows :

**1. Short title, extent and commencement:-** (1) This Act may be called the Orissa Nurses and Midwives Registration Act, 1938.

(2) It shall extend [It was extended to all the partially excluded areas of the State, from 23rd January, 1940.] to the whole of the State of Orissa.

(3) It shall come into force from such date [The Act came into force from 1st June, 1939, vide Notification. No. 2957-LSG/10-5-1939.] as the State Government may by notification, appoint.

**2. Definitions :-** In this Act, unless there is anything repugnant in the subject or context-

(a) "*Council*" means the Orissa Nurses and Midwives Registration Council established under Section 3 of this Act;

(b) "*dai*" means any person whether following hereditary occupation or not, who ordinarily practices midwifery for gain and who has not passed any of the examinations in midwifery by the Council;

(c) "*health visitor*" means a person who has obtained the health visitors certificate of a recognised health school or such other equivalent certificate as the State Government may notify in this behalf;

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\* Published vide Orissa Act No. 7 of 1938.

- For Statement of Objects and Reasons, see Orissa Gazette, 1938, Pt. XI, and for Proceedings in the Assembly see Proceedings of the Orissa Legislative Assembly 1938, Vol. II, Pt. II.

(d) "*Medical Council*" means the Orissa Council of Medical Registration established under the Orissa Medical Regulation, 1936;

(e) "*midwife*" means a person who has been granted a diploma of midwifery recognised by the Council or who has been registered under Clause (b) of Sub-section (2) of Section 10;

(f) "*nurse*" means a person who holds a certificate in nursing from any institution recognised in this behalf by the State Government;

(g) "*prescribed*" means prescribed by rules, regulation or bye-laws made under this Act;

(h) "*register*" means a register maintained under Section 11;

(i) "*registered*" means registered in accordance with the provisions of Section 10;

(j) "*registered medical practitioner*" means a person registered under the Orissa Medical Regulation, 1936;

(k) "*trained dai*" means a dai who has been granted a training certificate under the bye-laws made by the Council or who has been registered on an application made under Clause (d) of Sub-section (1) of Section 10; and

(l) "*unregistered*" means not registered in accordance with the provisions of Section 10.

**3. Constitution of the Orissa Nurses and Mid wives Registration Council:-** (1)

There shall be established a Council, to be known as the Orissa Nurses and midwives Registration Council, which shall be body corporate having perpetual succession and a common seal and shall by the said name sue and be sued.

(2) The Council shall consist of the following members-

- (i) The Director, of Health, and Prisons Services, Orissa, ex officio, who shall be the President of the Council;
- (ii) The Superintendent of the Orissa Medical College Hospital, ex-officio;
- (iii) The Professor of Midwifery, Orissa Medical College, ex officio;
- (iv) Two Nursing Superintendents of recognised training centres for nurses in the State of whom the Nursing Superintendent of the Orissa Medical College Hospital shall be ex-officio, and the other shall be nominated by the State Government;

*Explanation* - A recognised training centre for nurses' is a place with a hospital of less than 45 beds and minimum of 500 in-patients annually, under a fully trained Nursing Superintendent, with a system of lectures and training for a period of at least three complete consecutive years;

- (v) Two elected members of whom one shall be elected by the registered women medical practitioners from among themselves, and one shall be elected by the registered nurses and midwives from among themselves, in such manner as may be prescribed by the State Government :

Provided that, for the purposes of the constitution of the first Council, the State

Government may nominate a Member to represent the nurses and midwives of the State.

(3) Every election or nomination of a member of the Council shall be notified by the State Government in the Gazette.

**4. Term of office of members:-** (1) The term of office of a member of the Council, other than an ex officio member shall be three years, and shall commence from the date of notification of his election or nomination under Sub-section (3) of Section 3.

(2) The term of office of an ex-officio member shall continue as long as he holds the office in virtue of which he is such a member.

(3) Notwithstanding anything contained in this Act. an outgoing member shall, unless the State Government otherwise directs continue in office until the election or nomination of his or her successor is notified under Sub-section (3) of Section 3.

(4) An outgoing member may, if otherwise qualified, be re-elected or re-nominated.

**5. Cessation of membership:-** A member of the Council shall be deemed to have vacated his seat-

- (a) if he submits his resignation in writing to the President of the Council;
- (b) if he has, in the opinion of the Council, without sufficient excuse, been absent from three consecutive meetings of the Council;
- (c) if he is sentenced by any Court for any non-bailable offence and such sentence-is not subsequently reserved or quashed :

Provided that the State Government may, in any case in which it deems fit, direct that the provisions of this clause shall not apply, and on such direction the member shall be deemed not to have vacated his seat;

- (d) if, in case of a member referred to in Clause (v) of Sub-section (2) of Section 3, he ceases to be a registered medical practitioner.

**6. Casual vacancies how to be filled in:-** When the seat of an elected or a nominated member becomes vacant under the provisions of Section 5 or by death, resignation or otherwise, the vacancy shall be filled up by election or nomination by the State Government as the case may be.

**7. Registrar and establishment for the Council :-**(1) With the previous sanction of the State Government, the Council-

- (a) shall appoint a Registrar;
- (b) may grant leave to such Registrar and appoint a person to act in his place; and
- (c) shall pay to the Registrar and to the person (if any) appointed to act in his place such salary and such allowances (if any) as the Council may determine.

(2) The Council may appoint such other officers and such clerks and servants as they may consider necessary for the purposes of this Act and shall pay them such salary and allowances (if any) as the Council may determine.

(3) The Registrar shall act as Secretary to the Council.

(4) Every person appointed under Sub-section (1) or Sub-section (2) shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (XLV of 1860).

**8. Power to make regulations :-** (1) The Council may make regulation; consistent with this Act and with the rules made thereunder to provide for all or any of the following matters, namely:

- (a) the time and place of meetings;
- (b) the manner in which notice of a meeting shall be given;
- (c) the conduct of business at a meeting, the record of proceedings and adjournment of meetings;
- (d) the quorum necessary for the transaction of business at a meeting;
- (e) the appointment and constitution of sub-committees for any purpose relating to any matter with which the Council is empowered to deal and the co-option of persons who are not members of the Council and who are specially qualified to advise on any particular matter;
- (f) the payment of fees and travelling allowance to members for attendance at meetings of the Council;
- (g) the custody of the common seal and the purposes for which it shall be used;
- (h) the, person by whom receipts shall be granted on behalf of the Council for money received under this Act; and
- (i) the appointment, duties, powers, leave, suspension and removal of its officers and servants.

(2) Regulations made under Sub-section (1) shall not take effect until they have been confirmed by the State Government and published in the Gazette.

**9. Vacancies and irregularities not to invalidate proceedings:-** No act or proceeding of the Council shall be invalid by reason only of the existence of any vacancy in the Council or on account of any defect or irregularity not affecting the merits of the case.

**10. Registration of nurses, health visitors, midwives, trained dais and dais:-** (1) Any person, who complies with such conditions and restrictions as may be prescribed by the Council, and who-

- (a) has undergone the course of training or passed the examination, if any, prescribed for nurses, health visitors, midwives or trained dais; or
- (b) is registered as nurse or midwife by any association which is recognised by the State Government; or
- (c) is able to satisfy the Council that he has anywhere in India undergone a course of training or passed an examination similar to the course of training and examination referred to in Clause (a) and recognised by the State Government,
- (d) is, on the date on which any bye-laws or notification made or issued

under Section 14 come into force, employed or practising in Crissa as a dai or doing the same work as a nurse, health visitor, midwife or trained dai, in the area to which such bye-laws or notification apply, may apply to the Registrar to have his name registered :

Provided that an application from a person who claims to be registered under Clause (d) shall not be entertained unless it is received within one year from the date on which the bye-laws or the notification, as the case may be, come into force and unless within the time prescribed herein she has satisfied the Council of her fitness to be a dai of to do the same work as a nurse, health visitor, midwife, or trained dai, as the case may be, in accordance with the bye-laws made by the Council.

(2) (a) If the Registrar is satisfied that any nurse, health visitor, midwife or trained dai applying under Clause (a) or Clause (b) of Sub-section (1) is eligible to be registered, he shall, on payment of the prescribed fees, enter the name of such nurse, health visitor, midwife or trained dai in the prescribed register.

(b) If the Registrar is satisfied that any person applying under Clause (c) or (d) of Sub-section (1) is eligible to be registered as a nurse, health visitor, midwife or trained dai, as the case may be, he shall lay the application before the Council with a recommendation that he be permitted to enter the name of such person in the prescribed register, and shall not make any entry in the prescribed register in respect of such person until the entry is permitted by the Council to be made :

Provided that-

(i) the Registrar on receiving an application under Clause (a) or Clause (b) of Sub-section (1) from any person in respect of whom he consider that the Council may wish to exercise its powers of refusal under Clause (ii) of this proviso, may refer the said application to the Council or to any sub-committee appointed by the Council for that purpose, and shall not make any entry in the register in respect of such a person until the entry is permitted to be made by the Council or by the sub-committee, as the case may be;

(ii) the Council may refuse to permit the registration of any person who has been convicted of any such offence as implies, in the opinion of the Council, any defect of character such as would render him unfit for duty or who, after an enquiry has been held by the Council to have been guilty of any professional misconduct or in the case of a person applying under Clause (c) or Clause (d) of Sub-section (1), is held by the Council not to possess satisfactory professional qualifications :

Provided further that any person aggrieved by an order passed under Clause (ii) of the first proviso may, within one month of the date of the despatch to him, by registered post, of a notice informing him of such order, prefer an appeal from such order, to the State Government.

(3) If the Registrar is not satisfied that a person applying for registration under Sub-section (1) is eligible to be registered, he shall reject the application of such person :

Provided that any person aggrieved by an order of the Registrar rejecting such

an application may, within one month of the date of the despatch to him by registered post of notice informing him of such order, prefer an appeal from such order to the Council.

**11. Registers to be maintained :-** (1) The Registrar shall maintain the following registers, namely :

- (a) a register showing the name and address of each registered nurse in Orissa;
- (b) a register showing the name and address of each registered health visitor in Orissa;
- (c) a register showing the name and address of each registered midwife in Orissa; and
- (d) a register showing the name and address of each registered trained dai in Orissa.

(2) The Registrar shall keep the registers in accordance with the provisions of this Act and of any rules or bye-laws made thereunder, and shall, from time to time, make all necessary alterations in the names and addresses of registered persons and remove the names of any such person who is dead.

(3) The Registrar may, for the purpose of carrying out the duties imposed upon him by Sub-sections (1) and (2) by registered letter sent to the registered address of any registered person, require such person to state whether he has ceased to practice, or whether his residence or address has been changed, and if no answer to any such letter is received within a period of six months from the date of its despatch, the Registrar may remove the name of such person from the prescribed register :

Provided that any name removed under this sub-section may be re-entered in the register under the direction of the Council.

(4) The Council may, by resolution, order to be removed or corrected any entry in a register, if it is satisfied that such an entry was fraudulently or incorrectly made.

**12. Removal of names from register for misconduct, etc.:-** The Council may, by resolution, order to be removed from any register the name of any person who is convicted of any such offence as implies in the opinion of the Council any defect of character such as would render him unfit for duty, or who, after an enquiry, is held by the council to have been guilty of professional misconduct :

Provided that any person aggrieved by an order under this section may, within one month of the date of the despatch to him by registered post of a notice informing him of such order prefer an appeal from such order to the State Government.

**13. Annual lists of nurses, health visitors, midwives and trained dais :-** (1) The Registrar shall from time to time, on or before, a date to be fixed in this behalf by the Council, cause to be printed and published correct lists of the names for the time being entered in the registers setting forth-

- (a) the names entered in the respective registers arranged in alphabetical order;

- (b) the registered address of each person whose name is entered in any register; and
- (c) the registered qualification of each such person and the date on which such qualification was certified.

(2) In every year in which such lists have not been published, the Registrar shall cause to be printed and published on or before a date to be fixed as aforesaid supplementary lists setting forth-

- (a) the particulars specified in Clauses (a) to (c) of Sub-section (1) in the manner therein laid down in regard to persons whose names have been entered in any register during the year to which such supplementary lists appertain, and
- (b) the names of any persons which have been removed from the registers during the said year.

(3) Every Court shall presume that any person whose name is entered in the latest of such lists published under Sub-section (1) as modified by any supplementary lists published under Sub-section (2) is duly registered under this Act and that any person whose name is not so entered is not registered under this Act :

Provided that in the case of any person whose name does not appear in any such list, a certified copy, signed by the Registrar, of the entry of the name of such person in any register shall be conclusive evidence that such person is registered under this Act :

Provided further that a certificate purporting to be signed by the Registrar stating that the name of a person has been removed from any register and specifying the date of such removal shall be conclusive evidence of the fact and date of such removal.

#### **14. Power to prohibit unregistered person from practising :-**

*[Section 14 is in force in this form in the Partially-excluded areas of the State. See the Orissa Laws Validating Regulation, 1942 (Orissa Regulation I of 1943. Section 2 and Second Schedule.)]*

(1) A local authority or where there is no such authority, the State Government may make bye-laws prohibiting unregistered persons from practising as nurses, health visitors, midwives, trained dais or dais within the area subject to its authority, and may in such bye-laws provide that any person practising in contravention of such bye-laws or any person committing, or abetting the commission of a breach of any such bye-laws shall be punishable with fine not exceeding fifty rupees for a first offence and not exceeding two hundred and fifty rupees for a second or subsequent offence.

(2) If, in any area, there is a local authority, such authority fails to make bye-laws under Sub-section (1), the State Government may, by notification, prohibit unregistered persons from practising as nurses, health visitors, midwives, trained dais within the area subject to such local authority and any unregistered person practising in contravention of such notification shall be punishable with fine not exceeding fifty rupees for a first offence and not exceeding two hundred and fifty rupees for a second or subsequent offence.

*[Section 14 is in force in this form in the areas other than the Partially excluded area of the State; see ibid. The difference between the two sections lies in the words printed in Italics.]*

14. *Power to prohibit unregistered person from practising :- (1) A local authority may make bye-laws prohibiting unregistered persons from practising as nurses, health visitors, midwives, trained dais or dais within the area subject to its authority, and may in such bye-laws provided that any person practising in contravention of such bye-laws or any person committing, or abetting the commitment of, a breach of any such bye-laws shall be punishable with fine not exceeding fifty rupees for a first offence and not exceeding two hundred and fifty rupees for a second or subsequent offence.*

*(2) If any local authority fails to make bye-laws under Sub-section (1), the State Government may, by notification, prohibit un-registered persons from practising as nurses, health visitors, midwives, trained dais or dais within the area subject to such local authority and any unregistered persons practising in contravention of such notification shall be punishable with fine not exceeding fifty rupees for a first offence and not exceeding two hundred and fifty rupees for a second or subsequent offence.*

**15. Power of Council to make bye-laws:-** The Council may, after previous publication, make bye-laws-

- (a) to prescribe the courses of training and examinations for nurses, health visitors, midwives. or trained dais and the qualifications for their registration; and to provide for the recognition of institutions competent to give such training;
- (b) to prescribe the conditions of, and restrictions on, the entry of the names of persons in the registers, the form of application for such admission and the fees for registration and the re-entry of names removed from any register;
- (c) to regulate the issue of certificates;
- (d) to regulate the maintenance of the registers;
- (e) prescribe the uniform or badge to be worn by registered nurses, registered midwives and registered trained dais while on duty;
- (f) to regulate the Publication of lists of registered nurses, registered midwives or registered trained dais; and
- (g) to regulate any matter required as authorised by this Act to be prescribed.

**16. Confirmation and publication of bye-laws :-**

*[Section 16 is in force in the partially-excluded areas of the State; see Orissa Laws Validating Regulation, 1942 (Orissa Regulation I of 1943), the Section 2 and Second Schedule.]*

(1) Bye-laws made by a local authority under Sub-section (1) of Section 14 shall not come into force until six months after they have been confirmed by the State Government and published in the Gazette, and bye-laws made by the State Government



under the said sub-section of that section shall not come into force until six months after they have been published in the Gazette and a notification issued by the State Government under Sub-section (2) of the said section shall not come into force until six months after it has been published in the Gazette.

(2) The State Government may cancel any bye-laws which it has confirmed, or made, as the case may be, and thereupon the bye-laws shall cease to have effect.

*[Section 16 is in force in this form in the areas other than the Partially-excluded areas of the State; see ibid. The difference between the two sections lies in the words printed in italics.]*

*16. Confirmation and publication of bye-laws:- (1) Bye-laws made under Sub-section (1) of Section 14 shall not come into force until six months after they have been confirmed by the State Government and published in the Gazette, and a notification issued by the State Government under Sub-section (2) of the said section shall not come into force until six months after it has been published in the Gazette.*

*(2) The State Government may cancel any bye-laws which it has confirmed, and thereupon the bye-laws shall cease to have effect.*

**17. Power of Government to make rules :-** (1) The State Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules-

- (a) to prescribe the form of registers to be maintained under Section 11;
- (b) to regulate and control the practice of registered nurses, registered health visitors, registered midwives or registered trained dais;
- (c) to regulate the procedure to be followed by the Council-
  - (i) in making a re-entry in any register of the name of any person removed from such register;
  - (ii) in disposing of appeals from the decision of the Registrar made under Sub-section (3) of Section 10; and
  - (iii) in regulating the application of fees levied under this Act and of other money received by the Council for the purposes of this Act; and
- (d) to regulate the expenditure of the Council and to provide for the audit of its accounts.

**18. Bar to suits in respect of acts done under this Act :-** No act done in exercise of any power conferred by this Act on the State Government or the Council or the Registrar be questioned in any Civil Court.

**19. Exemption of registered medical practitioners from provisions of this Act:-** Nothing in this Act shall apply to registered medical practitioners.

**20. Disabilities of unregistered persons :-** (1) Except with the special sanction of the State Government no person shall, after the expiry of two years from the commencement of this Act, be competent to hold any appointment as nurse or midwife in any hospital, dispensary or infirmary not supported entirely by voluntary contributions

unless, such person is registered as nurse or midwife under this Act.

(2) After the expiry of two years from the commencement of this Act, no subsidy shall be paid by the State Government or by a local authority to any medical practitioner who employs a dai other than a registered dai.

**21 - Penalty for dishonest use of certificates, etc.:-** Any person who-

- (a) dishonestly makes use for any certificate of registration issued under the provisions of this Act to him or to any other person; or
- (b) procures or attempts to procure registration under the provisions of this Act by making or procuring or causing to be made or produced any false or fraudulent declaration, certificate or representation whether in writing or otherwise; or
- (c) wilfully makes or causes to be made any falsification in any matter relating to the registers maintained, of the certificates issued under the provisions of this Act, shall, on conviction by a Magistrate of the first class, be punishable with fine not exceeding three hundred rupees.

**22. Penalty for unlawful assumption of the title of registered nurse, health visitor, midwife or trained dai :-** Any person who, not being a registered nurse or a registered health visitor or a registered midwife or a registered trained dai assumes or uses the name or title of a registered nurse or a registered health visitor or a registered midwife or a registered trained dai or uses any name, title, addition, description, uniform, badge of signboard implying that such person is a registered nurse or a registered health visitor or a registered midwife or a registered trained dai, as the case may be, shall, on conviction by a Magistrate of the first class, be punishable with fine not exceeding one hundred rupees for a first offence and not exceeding Three hundred rupees for a second or subsequent offence.

**23. Bar to prosecutions under this Act :-** No Court shall take cognizance of any offence punishable under this Act except on, complaint made with the previous sanction of the Council.

**24. Repeal of the Madras Act III of 1926 :-** *The Madras Nurses and Midwives Act, 1926 in its application to the State of Orissa, is hereby repealed.*