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Medico-Legal Aspects of the Practice of Occupational Health (Nursing) Practitioners in South Africa (2018/2019)

Introduction

1. The performance of Occupational medical examinations is a legislated duty of employers in South Africa.
2. These examinations are currently performed by a plethora of personsⁱ, some of whom act outside the legal prescription.
3. We analyze whether Professional Nurses, registered with the South African Nursing Council, are, legally, permitted to perform occupational medical examinations independently.

Abbreviations

1. COF: medical certificate of fitness
2. HPCSA: Health Professions Council of South Africa
3. Occupational Health and Safety Act: Occupational Health and Safety Act and Regulations, Act 85 Of 1993, as amended (at 30-11-2018)
4. Mine Health and Safety Act: Mine Health and Safety Act, Act 29 of 1996 and Regulations, as amended (at 30-11-2018)
5. OREP: Occupational Risk Exposure Profile
6. SANC: South African Nursing Council
7. SASOHN: South African Society of Occupational Nursing Practitioners
8. SASOM: South African Society of Occupational Medicine

Labour Law: Occupational Medical Examinations

1. Health and safety risks and occupational medical examinations

1. Duty of the employer

- a. The Occupational Health and Safety Act and Regulationsⁱⁱ require that an employer shall provide and maintain a working environment that is safe and without risk to the health of his employeesⁱⁱⁱ. In order to achieve this, the employer must, amongst other, provide^{iv} systems of work that are without risks to health, primarily eliminate potential occupational hazards, ensure the absence of risks to health in connection with the production, processing, use,

handling, storage or transport of articles or substances and perform an occupational health risk assessment which establishes risk controls protecting the health and safety of persons. The employer must ensure that no employee is permitted to work without the prescribed controls in place and that all controls are enforced at all times.

- b. Applied to occupational health, this means that the Occupational Health and Safety Act requires the employer to institute **fitness for work medical examinations** (for defined risk work) and to establish a system of **medical surveillance** for employees exposed to residual occupational health hazards.

2. Preventative medicine

These medical examinations are risk controls instituted by employers in order to prevent breaches of safety (e.g. uncontrolled epileptic employee erecting a scaffold) or health (e.g. development of occupational asthma in welders).

3. Duty of the employer, assigned to a medical professional

- a. The Mine Health and Safety Act places the onus of occupational health examinations on an appointed occupational medical practitioner; the employer's duty is to appoint and empower a registered occupational medical practitioner^v.
- b. The Occupational Health and Safety Act places the full onus of occupational health examinations, tests, certification and the resulting job placement with the employer.
 - i. In the Regulations to the Occupational Health and Safety Act^{vi}, the employer is required to ensure that the medical examinations are performed by a designated medical professional (Professional Nurse, General Medical Practitioner, Occupational Health Practitioner, and Occupational Medical Practitioner, as the case may be).
 - ii. The statute assigns these employer's duties to the designated medical professional and it is the practitioners' duty to ensure compliance by the employer in respect of matters of occupational health.
 - iii. For this reason, it is important that the employer appoints the correctly qualified and registered occupational health or medicine practitioner or general practitioner or Professional Nurse, as the statute may define.

2. Health designations in the Occupational Health and Safety Act

- a. The Occupational Health and Safety Act defines an occupational health practitioner and an occupational medicine practitioner:
 - i. "**occupational medicine practitioner**" means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), who holds a qualification in occupational medicine

or an equivalent qualification which qualification or equivalent is recognized as such by the South African Medical and Dental Council referred to in the said Act.

- ii. "**occupational health practitioner**" means an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council as referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), or the South African Nursing Council as referred to in the Nursing Act, 1978 (Act No. 50 of 1978).
- b. The duties, which the Occupational Health and Safety Act, requires of the **medical practitioners** are aligned to the professional scope of practice/profession as regulated by the Health Professions Council of South Africa.
 - c. The duties, which the Occupational Health and Safety Act requires of the occupational health practitioner who holds a qualification in occupational health recognized as such by the South African Nursing Council are not aligned to the professional scope of practice and profession as defined by the Minister of Health and regulated by the South African Nursing Council.
 - d. The arrangements of the Occupational Health and Safety Act and Regulations are erroneously considered to be a basis for allowing professional nurses to perform certain medical actions independently, which, in terms of health legislation, such professional nurses are not permitted to do.

3. Medical surveillance

1. The Asbestos Regulations^{vii}, Diving Regulations^{viii}, Lead Regulations^{ix}, Hazardous Chemical Substances Regulations^x, Environmental Regulations for Workplaces^{xi}, Noise Induced Hearing Loss Regulations^{xii} and the Hazardous Biological Agents Regulations^{xiii} require that, when a defined risk level is present, the employer ensures that the exposed employee is under medical surveillance.
2. The Hazardous Chemical Substances Regulations and the Hazardous Biological Agents Regulations require that the employer must designate an **occupational health practitioner**, who amongst other, must perform a physical examination and any other essential examination in order to perform a proper evaluation.
3. The Asbestos Regulations, Diving Regulations and Lead Regulations require that the employer ensures that the exposed employee is under medical surveillance by an **occupational medical practitioner**, who amongst other, must perform a physical examination and any other essential examination in order to perform a proper evaluation.
4. The Environmental Regulations for Workplaces require that cold- or heat- exposed employees are under medical surveillance by a **professional nurse or general medical practitioner**.

5. The Noise Induced Hearing Loss Regulations require that noise-exposed employees are submitted to a hearing conservation program and define that the employer should engage the services of a competent person^{xiv}. Whilst the (a)-person in the definition (Otorhinolaryngologist, speech therapist and audiologist and occupational medicine practitioner) are indeed all competent to perform the audiometric and clinical examinations, the (b)-person in the definition (a person with a qualification in audiometric techniques registered with SASOHN) includes a number of non-medical personnel who are not trained to perform clinical medicine.
8. The Occupational Health and Safety Act thus defines a set of medical surveillance employer-duties assigned to occupational health- and medicine practitioners.

4. Fitness Certification and the Construction Medical Certificate of Fitness, a special case within the Occupational Health and Safety Act.

1. What is a Construction Medical Certificate of Fitness?
 - a. With respect to the construction medical fitness certificate, the employer's duties in terms of fitness for duty are not well-defined in the 2014 Regulations.
 - b. In the 2003 Construction Regulations, the medical certificate of fitness was defined as a certificate valid for one year issued by an occupational medical practitioner.
 - c. This definition was amended in the 2014 Construction Regulations^{xv} and the following legal changes were introduced:
 - i. The duration of the validity of the COF is no longer defined¹.
 - ii. The occupational health practitioner is no longer exclusively a medical practitioner; the occupational health practitioner may also be a person who holds a qualification in occupational health recognized as such by the South African Nursing Council.
 - iii. The COF must be specific to the construction work to be performed².
 - iv. The certificate must follow a prescribed template, which has, however, no explanatory note or definitions in the Regulation, and requires:
 1. That the employer completes an Occupational Risk Exposure Profile-type table before sending the employee for a medical examination³;

¹ Note by the author: nearly invariably COF are currently issued with a 1-year validity; this is contrary to international practice - benchmarked usual durations are for 3 years in the healthy, low-to-medium risk employee (see for instance UK Constructing better health CBH Standards V2. 23.01.08)

² This is not defined in the Regulation, but is (presumably) to be deducted from the prescription to use a defined template document.

³ The table in Annexure 3 has no legal reference or explanatory note and is ill-defined; it includes the 'Occupation' (the first e.g. in the table - 'general worker' - is not assisting the practitioner), a list of 'possible exposures' (one presumes that this includes occupational health and occupational safety exposures), 'Job Specific Requirements' (from the e.g. listed one presumes that this relates to physical demands) and 'Protective Equipment' (even the examples as 'e.g.', do not assist in explaining the impact of this annotation in the

2. That the examiner certifies that the employee was personally examined and tested with a testing program adapted to the OREP criteria specified by the employer;
3. By signing the document the examiner certifies that the employee is fit to perform duties as described by the employer in the matrix above⁴.
4. That the examiner indicates a designation as ‘Occupational Medicine Practitioner’ [this is a legally defined designation] or ‘Occupational Health Nursing Practitioner’ [this title is not defined in South African Legislation^{xvi}]
5. That the examiner includes a ‘practice number’; Annexure 3 does not define which number this refers to⁵?

2. Standard for the Construction Medical Certificate of Fitness

- a. Without explicitly pronouncing on the process applied by practitioners to ascertain whether an employee is fit for the designated work, the Regulation leaves it to the profession to determine which examinations and tests should be performed and which standards of fitness should be applied.
- b. This is quite different from other Government Departments in South Africa; for instance, the Chief Inspector of Mines issues guidelines which outline methods to be followed by the occupational medicine practitioners to determine fitness-to-work of an employee^{xvii}; the National Road Traffic Act Regulations^{xviii} define standards for fitness to driver diverse vehicles on the road; the Railway Safety Regulator requires the application of a detailed health standard for safety related workers^{xix}.

Medical law

The practice of medicine is regulated by Acts of Parliament

table). [Note by the author: DOL should consider including an explanatory note to assist employers at completing the OREP table].

⁴ Note by the author: It would be useful if the matrix also included the employee’s duties, as would be defined in a job description

⁵ Medical practitioners have a HPCSA registration ‘MP’ number (registration number with the Health Professions Council of South Africa) and a practice ‘PR’ number (registration number with the Council for Medical Schemes). The MP number can be entered in the HPCSA’s e-register (at <http://isystems.hpcsa.co.za/iregister/>), which allows the identification of a registered occupational medical practitioner. Annexure 3 does not define which number a doctor should enter?

Professional nurses have a certificate of registration, an annual practicing certificate which serves as an Annual Receipt and a License to Practice; the South African Nursing Council registers nurses with a ‘SANC number’; none of these numbers refer to a register for an occupational health practitioner. It is therefore not clear how this ‘practice number’, defined in Annexure 3, would assist in identifying the nurse. The SANC refers to a ‘SANC Number’ to be entered when identifying a nurse of the SANC e-register (at <http://www.sanc.co.za/eRegister.aspx>). On the annual practicing certificate, the SANC defines a ‘reference number’.

1. The practice of medical- and nursing practitioners is regulated by Acts of Parliament^{xx} within the Ministry of Health.
2. In order to practice the health profession, medical- or nursing practitioners must register with the Health Professions Council of South Africa or the South African Nursing Council respectively.
3. Registered practitioners must possess statutorily defined Competencies.
4. Their practice must conform to distinct Professional Standards.
5. The permissible scope of work performed by medical- and nursing practitioners is defined in a statutory Scope of Practice/Profession for the respective professions.

Medical law: the practice of nursing

1. Legal requirements for the practice of nursing by Nursing Practitioners

1. The Nursing Act^{xxi} restricts the practice of nursing^{xxii} to persons who are registered with the South African Nursing Council.
2. Any person practicing as a nurse without registration and any registered nurse who practices a registered professional qualification without entry in the appropriate register is guilty of a criminal offence^{xxiii}.
3. SANC is established by the Nursing Act with statutorily defined Objects^{xxiv} and Functions^{xxv}.
4. Amongst other, SANC develops and maintains the Scope of Practice, Professional Standards and Competencies for nurses^{xxvi}. These concepts are critically different and need to be understood for the purpose of this paper.

2. Scope of Practice

1. The South African Nursing Council^{xxvii} defines the concept of 'Scope of Practice'^{xxviii}.
2. The Minister of Health has issued a Regulation defining the scope of practice of registered nurses^{xxix}.
3. The scope of practice gives a general description of the services nurses are qualified to provide and sets practice boundaries and limitations.
4. The Scope of Practice regulates the practice of the profession, guides employers in preparing job descriptions and performance contracts and should inform other government departments (including the Minister of Labour) about the services nurses are qualified to provide.

5. Nurses have a responsibility to practise within their scope of practice relevant to their education, qualification and context.
6. The Scope of Practice provides the basis for the development of Nursing Standards and Competencies

3. Professional Standards^{xxx}

1. Practice Standards are authoritative statements describing the responsibility for which nurses are accountable. Standards describe best practice and ensure a consistent quality of performance. The South African Nursing Council establishes, monitors and enforces Practice Standards.
2. Contravention of the Practice Standards may result in a finding of unprofessional conduct, leading to professional sanction under the Nursing Act.

4. Nursing Competencies^{xxxii}

1. Competencies are the combination of knowledge, skills, judgement, attitudes, values, capacity and abilities for effective nursing and define the requirements to be considered competent in a designated role and practice setting.
2. The South African Nursing Council has defined the Generic Competency Framework for Advanced Nurse Practitioners^{xxxii}, including the Competencies for the Occupational Health Nurse Specialist^{xxxiii}.

5. Training

1. The South African Nursing Council sets the standards for nursing education & training programmes.
2. Nursing education institutions develop educational curricula which are assessed and accredited by the South African Nursing Council.
3. The South African Nursing Council is empowered to accredit nursing education institutions and the training programmes presented by those institutions.
4. Once accredited the institutions run their programmes, set examinations and issue educational qualifications registerable with the South African Nursing Council. The South African Nursing Council does not require newly qualified professional nurses to write a national licensing examination, but relies on the institution's quality assurance system.
5. In 1993, the Minister instituted a course in Occupational Health which allowed professional nurses to obtain a clinical nursing qualification^{xxxiv}; this reflected as an additional qualification in the general nursing register.

6. The South African Nursing Council discontinued its approval of and listing of short courses in 2007 but somehow agreed to continue reflecting these short courses on the annual practising certificate.
7. Currently new training systems are being implemented^{xxxv} which also involve the Council for Higher Education and the South African Qualifications Authority; the South African Nursing Council, however, retains its pivotal role in determining the professional training standard^{xxxvi}.
8. Nursing education is currently undergoing major changes and is facing considerable fragmentation, various layers of complexity and differing quality of nursing education across educational institutions^{xxxvii}.

6. Registration

1. The South African Nursing Council enters, removes from or restores nurses to the Register and must ensure that a register of persons registered is available to the public as defined in the applicable Regulation^{xxxviii}.
2. The Nursing Act defines 6 distinct Registers^{xxxix} (Professional nurse, midwife, staff nurse, auxiliary nurse, auxiliary midwife and a community service nurse^{xl}) and legislates that the Minister of Health may (by notice in the *Gazette*) create additional categories.
3. In 2014, the Minister of Health created the category of Nurse Specialist^{xli}, which is defined as a nurse holding an additional qualification in terms of Section 34 of the Nursing Act^{xlii}.
4. To date, the prescribed conditions and particulars for registration as Occupational Health Nurse Specialist are not defined and not in place^{xliii}.
5. To date, the scope of practice or the professional standards of an Occupational Health Nurse Specialist are not defined and not in place; as listed, only the Competencies for the Occupational Health Nurse Specialist^{xliv} are defined.

7. Registration in a the South African Nursing Council register has other consequences

1. An employer must not employ a nurse as a specialist nurse, unless the nurse holds the necessary qualification and is registered; employers who use the services of a nurse who is not duly registered under sections 31(1) and (2) of the Nursing Act commit an offence^{xlv}.
2. No person may use a category title unless registered as such; contraventions by nurses who use titles which are not registered in terms of Nursing Act Section 31 (1) or (2) are dealt with under Section 31(11); if found guilty of the offence and on conviction these nurses are liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

8. Current Nursing Scope of Practice excludes occupational health practitioner's duties

1. The current Regulations under the Nursing Act defining the nursing scope of practice^{xlvi} do not refer to or include occupational health nursing.
2. These Regulations offer a detailed outline of nursing acts^{xlvii}, none of which include the requirements defined in the Occupational Health and Safety Act.
3. Amongst other, the following tasks are listed
 - a. The diagnosing of signs, symptoms and processes which denote the individual's interaction with any actual or potential health problem and which require nursing intervention (referred to as 'health need') and the prescribing, provision and execution of nursing interventions which have an influence on the preventive, promotive, curative or rehabilitative aspects of health care and includes the provision of nursing care plans, their implementation and evaluation thereof and recording of the course of the health problem, the health care received by a patient and its outcome whilst a patient is in the charge of the nurse (referred to as a 'nursing regimen') to meet the need of a patient or group of patients or, where necessary, by referral to a registered person;
 - b. The execution of a program of treatment prescribed by a registered person for a patient.
4. In the field of **prevention** (which includes the occupational medical examinations required by the Occupational Health and Safety Act), the nurse's duties are to be involved with 'the prevention of disease and promotion of health and family planning by teaching to and counselling with individuals and groups of persons, the prescribing, promotion or maintenance of hygiene, physical comfort and re-assurance of the patient, the promotion of exercise, rest and sleep with a view to healing and rehabilitation of a patient, the facilitation of body mechanics and the prevention of bodily deformities in a patient in the execution of the nursing regimen'.
5. It is therefore common cause that the scope of practice of nurses does not include the performance of occupational medical examinations required by the Occupational Health and Safety Act; this fact is confirmed by the South African Society of Occupational Health Nursing Practitioners in their position statement on the issuing of medical certificates of fitness by occupational health nurses issued on 22 October 2015^{xlviii}.
6. The Minister of Health has published a proposed revised scope of practice^{xlix}; this scope neither refers to nor includes occupational health nursing.
7. Nurses are thus required to render nursing services in accordance with the current scope of practice for registered (professional) nurses, until such time as the categories of registration are changed or new scopes of practice applicable to areas of nursing specialisation are introduced^l.

8. The new scope of practice regulations, once legislated, may further regulate the practice of the professional nurse^{li} by requiring the nurse to obtain a license, as defined in the Nursing Act^{lii} and to comply with additional provisions of the Nursing Act^{liii}.
9. Section 56 of the Nursing Act allows an extension of the scope of nursing practice to allow the nurse to, amongst other, examine patients for an assessment or diagnosis and to treat patients for prescribed health related conditions, provided the nurse is in the service of, amongst other, an organisation designated by the Director- General and is authorised by the medical practitioner in charge. This practice can only be executed when the services of the medical practitioner are not available.
10. In respect of the above limitations, proposed regulations have yet to be finalised and brought into effect. This is necessary in order to establish the regulatory framework within which professional nurses are expected to comply with scope of practice requirements^{liv}.
11. The Nursing Act contains no provisions for extending the scope of practice of nurses to include clinical assessment and diagnosis other than under the control of a medical practitioner^{lv}.
12. The Nursing Act makes provision for the Minister of Health to create specialist categories of nurses^{lvi} and to prescribe specific scopes of profession and practice^{lvii}. As with the establishment of registers for specialist nurses, these scopes are not established.

9. The occupational nursing functions defined in non-medical legislation

1. The National Road Traffic Regulations
 - a. The National Road Traffic Regulations^{lviii} require that a registered medical practitioner or occupational health practitioner examines and certifies a driver applying for a Professional Drivers Permit.
 - b. An occupational health practitioner is defined in the National Road Traffic Act as ‘an occupational health practitioner as defined in the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), who has successfully completed a health assessment course and was duly accredited to perform the functions of an occupational health practitioner’.
 - c. The health assessment course and accreditation are not available.
 - d. No professional nurse therefore conforms to this definition in the National Road Traffic Regulations.
2. The Occupational Health and Safety Act
 - a. The Occupational Health and Safety Act defines an occupational health practitioner^{lix} as:
 - i. An occupational medical practitioner registered with the Health Professions Council of South Africa; or

- ii. A person who holds a qualification in occupational health recognized as such by the Health Professions Council of South Africa; or
 - iii. A person who holds a qualification in occupational health recognized as such by the South African Nursing Council.
- b. As outlined above the South African Nursing Council has defined the Scope of Practice of a general nurse and the Competencies for the Occupational Health Nurse Specialist; it has recognised Nursing Education Institutions to train a course in Occupational Health which it reflects on annual practising certificate. Critically the Minister and the South African Nursing Council have not changed the scope of professions of professional nurses nor defined a scope of profession for the Occupational Health Nurse Specialist.
- c. Therefore, a ‘person who holds a qualification in occupational health recognized as such the South African Nursing Council’, and who is an ‘occupational health practitioner’ defined in the Occupational Health and Safety Act, has the same scope of practice as a general Professional Nurse; no professional nurse therefore conforms to this definition in the Occupational Health and Safety Act.

10. Statement^{lx} emanating from a South African Nursing Council official,

1. A statement emanating from a the South African Nursing Council official, suggesting that certain nurses are indeed registered with the additional qualification of post basic occupational health nursing science and therefore recognised by SANC as occupational health nurses and eligible to practice as such, has been circulated.
2. If the South African Nursing Council would indeed have issued such a confirmation, the South African Nursing Council would have exceeded its legislated duty, mandate and rights; the duty to define categories of persons to be registered can only be performed by the Minister of Health, as legislated in Section 31^{lxi}.
 - a. The South African Nursing Council or the Registrar have no legislated right to ‘recognise’ special categories of nurse or to issue eligibility to practice as such^{lxii}.
 - b. With respect to registration, the functions of Council are defined as:
 - i. Where authorised, the South African Nursing Council may enter, remove from or restore a nurse’s name to the register.
 - ii. The South African Nursing Council C must ensure that a register of persons registered in terms of the Act is available to the public.
 - iii. The South African Nursing Council determines prescribed licence or registration fees.
 - iv. The South African Nursing Council may require employers to submit annual returns of nurses in their employ.
3. The statement, ‘*Letter to President of SASOHN, dated 24 August 2011. Copy available on request*’, is, in fact, not issued by the South African Nursing Council, but by a person who designates as ‘Registrar and CEO- SA Nursing Council’.
 - a. The functions of the Registrar^{lxiii} are defined in the Nursing Act and do not include defining which nurses ‘are recognised by the South African Nursing Council as occupational health nurses and eligible to practice as such’.

- b. With respect to registration, the Registrar must keep and update the registers in respect of practitioners and must, on the instructions of the Council enter every person whose application for registration in terms of the Act has been granted.
- c. The Registrar may not act in a way that is inconsistent with the assigned duties in terms of the Act.

11. Statement by SASOHN

1. The South African Society of Occupational Health Nursing Practitioners also published a statement^{lxiv} suggesting that the South African Nursing Council has confirmed that a listed qualification in occupational health nursing is recognised by SANC as a qualification in occupational health for purposes of the OHS Act and all regulations made under that Act.
2. Without repeating the limitation on the authority of the South African Nursing Council and the Registrar, it is self-evident that the South African Nursing Council has no authority to define what applies in legislation controlled by the Minister of Labour.
3. There is no evidence that the Minister of Health, the South African Nursing Council or the Registrar have applied their minds to the required competence or the extent of accountability included in the appointment of an occupational health practitioner in terms of the Occupational Health and Safety Act.
4. As a result, employers, employees and some nursing practitioners apply the prescriptions of the Occupational Health and Safety Act and Regulations as the basis for allowing nurses to perform certain medical actions, which, in terms of health legislation, they are explicitly not permitted to do; this practice may be unethical in terms of the Nursing Act and the South African Nursing Council rules but also a criminal offence in terms of the Health Professions Act^{lxv}.

Conclusion

1. The legislated employer duty of occupational medical examinations may only be fully executed by a Health Professions Council of South Africa- registered occupational medical practitioner.
2. Current practices where professional nurses take care of this duty independent of an occupational medical practitioner are illegal in South Africa.

JNR Lapere

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1. Nurses with a basic BCur degree (which includes a basic Occupational Health module)
2. Nurses who did a part time course in occupational health for 6 months and hold a 'Certificate in Occupational Health' but who are not registered as occupational health specialist with the South African Nursing Council

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3. Nurses who did a part time course in occupational health for 24 months and hold a 'Diploma in Occupational Health' but who are not registered as occupational health specialist with the South African Nursing Council
 4. Audiometrists who have done a 1 or 2 week SAQA registered course (with no other prescribed secondary or tertiary education) and who are registered with DOL, by means of a register maintained by the South African Society of Occupational Nursing Practitioners
 5. Occupational medicine practitioners who hold an academic degree (Diploma or Master's Degree) in Occupational Health and who are registered as such by the Health Professions Council of South Africa
 6. Unregistered persons who perform medical testing without statutory registration and commit a (criminal) offence
 7. Organisations who hold no statutory position in terms of the Health- or Labour Acts; these organisations employ or contract professionals in classes 1-6 above.

ii The Occupational Health and Safety Act, Act 85 of 1993

iii Occupational Health and Safety Act, Act 85 of 1993 Section 8(1) General duties of employers to their employees -

- (1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

iv Occupational Health and Safety Act, Act 85 of 1993- Section 8(2) **General duties of employers to their employees**

2. Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular-

- a. the provision and maintenance of systems of work, plant and machinery that, as far as is reasonably practicable, are safe and without risks to health;
- b. taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
- c. making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;
- d. establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;
- e. providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;
- f. as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
- g. taking all necessary measures to ensure that tire requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;
- h. enforcing such measures as may be necessary in the interest of health and safety;
- i. ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and
- j. causing all employees to be informed regarding the scope of their authority as

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Mine Health and Safety Act, 1996 (Act No. 29 of 1996)

 Chapter 2 : Health and Safety at Mines

13. Employer to establish system of medical surveillance

- The employer must establish and maintain a system of medical surveillance of employees exposed to health hazards-
- 1) if required to do so by regulation or a notice in the *Gazette*; or
 - b) if, after assessing risks in terms of section 11(1), it is necessary to do so.
- 2) Every system of medical surveillance must -
 - a) be appropriate, considering the health hazards to which the employees are or may be exposed;
 - b) be designed so that it provides information that the employer can use in determining measures to-
 - i) eliminate, control and minimise the health risk and hazards to which employees are or may be exposed; or
 - ii) prevent, detect and treat occupational diseases; and
 - c) consist of an initial medical examination and other medical examinations at appropriate intervals.
 - 3) Every employer who establishes or maintains a system of medical surveillance must-
 - a) engage the part-time or full-time services of-
 - i) an occupational medical practitioner; and
 - ii) ***[deleted by the Mine Health and Safety Amendment Act No. 74 of 2008];***
 - b) supply the practitioners with the means to perform their functions; and
 - c) keep a record of medical surveillance for each employee exposed to a health hazard.
- 4A) The employer must inform the Principal Inspector of Mines, in writing, within seven days of the appointment of the occupational medical practitioner.
- 4B) The information submitted in terms of subsection (4A) must include-
- a) the name of a occupational medical practitioner;
 - b) his or her practice number; and
 - c) whether the occupational medical practitioner is engaged full time 10 or part time .
- An occupational medical practitioner must take every measure that is reasonably practicable to-
- a) promote the health and safety of employees at the mine; and
 - b) assist employees in matters related to occupational medicine.
- 6) If any employee is declared unfit to perform work as a result of an occupational disease, the employer must conduct an investigation in terms of section 11(5). ***(Employees have the right to challenge a decision that they are unfit to perform work. See section 20.)***
- If an employee is temporarily unfit to perform work as a result of any occupational disease, but there is a reasonable expectation that the employee's health will improve so that the employee can return to work, the occupational medical practitioner must record that fact and notify both the employer and employee of it.
- 7)
 - 8) The employer must-
 - a) retain the records referred to in sections 12(3), 13(3)(c) and 14(2) until the mine closes; and
 - b) when the mine closes, deliver those records to the Medical Inspector.

^{vi} Occupational Health and Safety Act, Act 85 of 1993

Asbestos Regulations, GNR155 of 10 February 2002

Construction Regulations, GNR84 of 7 February 2014

Environmental Regulations for Workplaces, GNR2281 of 16 October 1987 : Thermal Requirements

Hazardous Biological Agents Regulations, GNR1390 of 27 December 2001

Hazardous Chemical Substance Regulations, GNR 1179 of 25 August 1995 (7)

Noise Induced Hearing Loss Regulations, GNR307 of 7 March 2003
Driven Machinery Regulation, GNR 527 of 19 June 2015

^{vii} Occupational Health and Safety Act, Act 85 of 1993 - Asbestos Regulation 9, GNR155, dated 10 February 2002

^{viii} Occupational Health and Safety Act, Act 85 of 1993 - Diving Regulation 19, No R41, dated 29 January 2010

^{ix} Occupational Health and Safety Act, Act 85 of 1993 - Lead Regulation 8, GNR236, dated 28 February 2002

^x Occupational Health and Safety Act, Act 85 of 1993
Hazardous Chemical Substances Regulations *GN 1179, 25 August 1995*

7. Medical Surveillance

- (1) An employer shall ensure that an employee is under medical surveillance if –
- (a) the employee may be exposed to a substance listed in Table 3 of Annexure 1
 - (b) the exposure of the employee to any substance hazardous to his health is such that an identifiable disease or adverse effect to his or her health may be related to the exposure, there is a reasonable likelihood that the disease or effect may occur under the particular conditions of his or her work and there are techniques to diagnose indications of the disease or the effect as far as is reasonably practicable; or
 - (c) the occupational health practitioner recommends that the relevant employee should be under medical surveillance in which case the employer may call on an occupational medicine practitioner to ratify the appropriateness of such recommendation.
- (2) In order to comply with the provisions of subregulation (1), the employer shall, as far as is reasonably practicable, ensure –
- (a) that an initial health evaluation is carried out by an occupational health practitioner immediately before or within 14 days after a person commences employment, where any exposure exists or may exist, which comprises –
 - (i) an evaluation of the employee's medical and occupational history;
 - (ii) a physical examination; and
 - (iii) any other essential examination which in the opinion of the occupational health practitioner is desirable in order to enable the practitioner to do a proper evaluation.
 - (b) that subsequent to the initial health evaluation contemplated in paragraph (a), the relevant employee undergoes an examination as contemplated in paragraph (a) (ii) and (iii), at intervals not exceeding two years, or at intervals specified by an occupational medicine practitioner.
- (3) An employer shall not permit an employee who has been certified unfit for work by an occupational medicine practitioner to work in a workplace or part of a workplace in which he would be exposed: provided that the relevant employee may be permitted to return to work which will expose him if he is certified fit for that work beforehand by an occupational medicine practitioner.
- (4) The employer shall record and investigate the incident contemplated in subregulation (3) in compliance with Regulation 8 of the General Administrative Regulations.

^{xi} Occupational Health and Safety Act, Act 85 of 1993 - Environmental Regulation 2 for Workplaces, GNR2281 dated 16 October 1987 : Thermal Requirements (cold)

^{xii} Occupational Health and Safety Act, Act 85 of 1993 - Noise Induced Hearing Loss Regulation 8, GNR307, dated 7 March 2003 and SANS 10083: 2015

^{xiii} Occupational Health and Safety Act, Act 85 of 1993
Hazardous Biological Agents Regulations - GN R 1390, 27 December 2001

8. Medical Surveillance

- (1) An employer shall ensure that an employee is under medical surveillance if –

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- (a) the results of the assessment referred to in regulation 6 indicate that an employee might have been exposed to HBA;
- (b) the exposure of the employee to any HBA hazardous to his or her health is such that an identifiable disease or adverse effect to his or her health may be related to the exposure, there is a reasonable likelihood that the disease or effect may occur under the particular conditions of his or her work and there are techniques such as pre-clinical biomarkers where appropriate for detecting sensitisation to allergens or an inflammatory response associated with exposure to diagnose indications of the disease or the effect as far as is reasonably practicable; or
- (c) an occupational health practitioner recommends that the relevant employee should be under medical surveillance, in which case the employer may call upon an occupational medicine practitioner to ratify the appropriateness of such recommendation.
- (2) In order to comply with the provisions of subregulation (1), the employer shall after extensive counselling and education offer the employee the opportunity to have –
- (a) an initial health evaluation, which should be carried out by an occupational health practitioner immediately before or within 14 days after a person commences employment, where any exposure exists or might exist, which comprises –
- (i) an evaluation of the employees' medical and occupational history;
 - (ii) a physical examination; and
 - (iii) any biological tests and other appropriate medical tests or any other essential examination that in the opinion of the occupational health practitioner is desirable in order to enable the practitioner to do a proper evaluation;
- (b) periodic medical examinations and tests in cases where an HBA is known to be capable of causing persistent or latent infections which –
- (i) in the light of present knowledge, are undiagnosable until signs or symptoms develop;
 - (ii) can have particularly long incubation periods;
 - (iii) can result in an illness which is recurrent in spite of treatment; and
 - (iv) are known to have serious long-term effects.
- (c) All tests and examinations as contemplated in paragraphs (a) and (b) shall be conducted according to a written medical protocol.
- (3) The employer shall, in accordance with regulation 8 of the General Administrative Regulations, investigate and record all incidents that result or might result in infections or the death of an employee.
- (4) All occupational health practitioners shall submit to the health and safety committee for approval a written protocol for procedures to be followed when dealing with abnormal results.

^{xiv} "competent person" means -

- a) a person registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), with the Health Professions Council of South Africa in any of the following three categories :
- i) Otorhinolaryngologist (ear, nose and throat specialist);
 - ii) speech therapist and audiologist; or
 - iii) occupational medicine practitioner; or
- b) a person with a qualification in audiometric techniques obtained from an institution registered with the South African Qualification Authority or any of its structures in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), and registered with the South African Society for Occupational Health Nursing (SASOHN);

^{xv} Occupational Health and Safety Act, Act 85 of 1993

Construction Regulations, 2014 - Government Notice R84 in *Government Gazette* 37305 of 7 February 2014

- Regulation 1: "“medical certificate of fitness” means a certificate contemplated in regulation 7(8)
- Regulation 78) A contractor must ensure that all his or her employees have a valid medical certificate of fitness specific to the construction work to be performed and issued by an occupational health practitioner in the form of Annexure 3.

^{xvi} Section 1 of the Occupational Health and Safety Act, Act 85 of 1993, defines the 'occupational health practitioner'- the South African Nursing Council defined by the The Nursing Act (Act No. 33 of 2005), defines 'an occupational health nurse specialist'.

^{xvii} DMR 16/3/2/3-A3 - Department Of Mineral Resources - Mine Health And Safety Inspectorate - Guideline For The Compilation Of A Mandatory Code Of Practice On The Minimum Standards Of Fitness To Perform Work On A Mine

^{xviii} National Road Traffic Act, 1996 -National Road Traffic Regulations GNR225, dated 17 March 2000, as amended - Chapter V: Fitness of Drivers Part II

^{xix} SANS 3000-4 Human Factors

^{xx} Nursing Act (Act No. 33 Of 2005) & Health Professions Act (Act 56 Of 1974)

^{xxi} The Nursing Act (Act No. 33 of 2005)

^{xxii} The Nursing Act (Act No. 33 of 2005) - Registration as prerequisite to practise

31. (1) Subject to the provisions of section 37, no person may practise as a practitioner unless he or she is registered to practise in at least one of the following categories:

(a) Professional nurse;

(b) midwife;

(c) staff nurse;

(d) auxiliary nurse; or

(e) auxiliary midwife.

(2) The Minister, after consultation with the Council, may by notice in the *Gazette* create such other categories of persons to be registered to practise nursing as he or she considers necessary in the public interest.

(3) An employer must not employ or retain in employment a person to perform the functions pertaining to the profession of nursing, other than a person who holds the necessary qualification and who is registered under subsection (1) or (2).

(4) No person may use as a title any of the categories contemplated in subsection (1) or (2) unless he or she is registered as such in terms of this section.

(5) A practitioner who wishes to register in terms of subsection (1) must apply in the prescribed manner to the Registrar and submit with his or her application—

(a) proof of identity;

(b) certificate of good character and standing;

(c) proof of his or her qualifications;

(d) the prescribed registration fee; and

(e) such further documents and information in relation to his or her application as may be required by the Registrar on the instructions of the Council.

(6) If the Registrar is satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act and upon receipt of the prescribed registration fee, the Registrar must issue a registration certificate authorising the applicant, subject to the provisions of this Act, to practise or engage in any of the categories contemplated in subsection (1) within the Republic.

(7) If the Registrar is not satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, he or she must refuse to issue a registration certificate to the applicant and must inform the applicant in writing of the reasons for his or her decision, but must, if so required by the applicant, submit the application to the Council for a decision.

(8) The Registrar may only register a person in terms of subsection (1) if the Registrar is satisfied that the person applying for registration is suitably qualified or if the Council is so satisfied.

(9) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act may be removed from the register and—

(a) a record of the reason for every such removal must be made in the register;

(b) the person in respect of whom such removal has been made must be notified thereof in writing by the Registrar; and

(c) any certificate issued in respect of such registration is considered to have been cancelled as from the date on which notice has so been given.

(10) The Registrar must delete from the register the name of the practitioner or mark in the register the name of any person removed or suspended, respectively, from practice and must notify such person in writing accordingly.

(11) A person who contravenes subsection (1), (3) or (4) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(12) A person who has completed a programme qualifying him or her for registration in another category must apply to have his or her entry in the register altered accordingly.

(13) A person who completed a programme leading to registration in a higher category must, upon application and after evaluation by the Council, have his or her entry in the register altered accordingly.

(14) A practitioner must notify the Registrar in writing of any change of particulars within 30 days after such change.

^{xxiii} The Nursing Act (Act No. 33 of 2005) Penalties

55. (1) A person registered under this Act who in any way takes, uses or publishes any name, title, description or symbol which indicates, or which is calculated to lead persons to infer, that he or she holds a registered professional qualification which is not shown in the register in connection with his or her name is guilty of an offence and liable on conviction to a prescribed fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) Any person who contravenes or fails to comply with any provision of this Act is guilty of an offence and, save where a penalty is expressly provided, liable on conviction to a prescribed fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.

^{xxiv} The Nursing Act (Act No. 33 of 2005) - Objects of Council

3. The objects of the Council are to—

(a) serve and protect the public in matters involving health services generally and nursing services in particular;

(b) perform its functions in the best interests of the public and in accordance with national health policy as determined by the Minister;

(c) promote the provision of nursing services to the inhabitants of the Republic that complies with universal norms and values;

(d) establish, improve, control conditions, standards and quality of nursing education and training within the ambit of this Act and any other applicable laws;

(e) maintain professional conduct and practice standards for practitioners within the ambit of any applicable law;

(f) promote and maintain liaison and communication with all stakeholders regarding nursing standards, and in particular standards of nursing education and training and professional conduct and practice both in and outside the Republic;

(g) advise the Minister on the amendment or adaptation of this Act regarding matters pertaining to nursing;

(h) be transparent and accountable to the public in achieving its objectives and in performing its functions;

(i) uphold and maintain professional and ethical standards within nursing; and

(j) promote the strategic objectives of the Council.

^{xxv} The Nursing Act (Act No. 33 of 2005) - Functions of Council

4. (1) The Council must—

(a) in all its decisions, take cognisance of national health policies as determined by the Minister and implement such policies in respect of nursing;

(b) where authorised by this Act, enter, remove from or restore to the register the name of a person;

(c) conduct examinations, and appoint examiners and moderators and grant diplomas and certificates in respect of such examinations;

(d) conduct inspections and investigations of nursing education institutions, nursing education programmes and health establishments, in order to ensure compliance with this Act and the rules and standards determined by the Council in terms of this Act;

(e) report to the relevant statutory body any non-compliance established after

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- an inspection and investigation referred to in paragraph (d);
- (f) ensure that persons registered in terms of this Act behave towards users of health services in a manner that respects their constitutional rights to human dignity, bodily and psychological integrity and equality, and that disciplinary action is taken against persons who fail to do so;
- (g) investigate complaints against persons registered in terms of this Act and take appropriate disciplinary action against such persons in accordance with the provisions of this Act in order to protect the interests of the public;
- (h) publish in the *Gazette* the details of the unprofessional conduct and the names and qualifications of the persons against whom disciplinary action was taken in terms of this Act within 30 days of the conclusion of such disciplinary action;
- (i) ensure that a register of persons registered in terms of this Act is available to the public as prescribed;
- (j) investigate and take action against non-accredited nursing education institutions;
- (k) withdraw or suspend accreditation of a nursing education institution or nursing education programme if the education or training provided does not comply with the prescribed requirements and inform the relevant licensing authority;
- (l) determine—
- (i) the scope of practice of nurses;
 - (ii) the conditions under which nurses may practise their profession;
 - (iii) the acts or omissions in respect of which the Council may take steps against any person registered in terms of this Act; and
 - (iv) the requirements for any nurse to remain competent in the manner prescribed;
- (m) determine prescribed licence or registration fees, payable under this Act;
- (n) monitor the assessment by education and training providers, including the recognition of prior learning, register constituent assessors and moderators and grant diplomas and certificates in accordance with the requirements of this Act and any other law;
- (o) be regarded as an education and training quality assurer in terms of section 5 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), for all nursing qualifications;
- (p) submit to the Minister—
- (i) a five-year strategic plan within six months of the Council coming into office which includes details as to how the Council plans to achieve its objectives under this Act;
 - (ii) a report every six months on the status of nursing and on matters of public importance compiled by the Council in the course of the performance of its functions under this Act; and
 - (iii) an annual report within six months of the end of the financial year;
- (q) ensure that an annual budget is drawn up in terms of sections 23 and 24 and that the Council operates within the parameters of such budget; and
- (r) perform such other functions as may be prescribed.
- (2) The Council may—
- (a) make extracts from the register;
 - (b) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept or make any donation and administer any trust;
 - (c) institute or defend any legal action in its name;
 - (d) appoint experts and advisers as may be required to assist the Council in the performance of its functions in terms of this Act;
 - (e) delegate to any person or organisation any function referred to in this section, provided that the Council is not divested of any function so delegated;
 - (f) accredit nursing education institutions and nursing education programmes and monitor all assessments by education and training providers in accordance with this Act or any other law;
 - (g) carry out quality control inspections in accordance with the prescribed conditions;
 - (h) investigate complaints against any health establishment in respect of its nursing service;
 - (i) subject to prescribed conditions and upon payment of a prescribed fee, issue a licence for a professional nurse to conduct a private practice;
 - (j) consider any matter affecting nursing, and make representations to the Minister and Director-General or take such action in connection therewith as the Council may find advisable;
 - (k) require nursing education institutions to submit annual returns of learner nurses and to submit any information that the Council may require;

(l) require employers to submit annual returns of nurses in their employ and any other information necessary to enable the Council to perform its functions and fulfil its objectives;

(m) in consultation with the Minister of Finance, establish, manage and administer a pension or provident fund for the employees of the Council;

(n) recommend to the Minister regulations relating to any matter under this Act which may be prescribed; and

(o) generally, do all such things as it may find necessary or expedient to achieve the objects of this Act.

^{xxvi} SANC Document entitled: THE RELATIONSHIP BETWEEN THE SCOPES OF PRACTICE, PRACTICE STANDARDS AND COMPETENCIES at www.sanc.co.za/

^{xxvii} The Nursing Act (Act No. 33 of 2005) Section 3(e) & 4(1)(l)(i)

^{xxviii} SANC Document entitled: THE RELATIONSHIP BETWEEN THE SCOPES OF PRACTICE, PRACTICE STANDARDS AND COMPETENCIES at www.sanc.co.za/

The Scope of Practice provides a general description of the services its practitioners are qualified to provide and the setting of practice boundaries and limitations under which their services may be provided. It does not list specific tasks or procedures (breadth). Scope of Practice entails what nurses are educated, competent and authorised to perform. It is influenced by the health needs of individuals and groups, the place where nursing care is being provided, the level of competence, education and qualifications, including policies and protocols of healthcare providers and relevant legislation. In summary, it is the context in which the nurse functions. It encompasses standards of professional nursing practice that identify the roles and responsibilities of the nurse in any healthcare setting to perform safe, competent and ethical care as defined by their educational, legislative and regulatory authority. Furthermore it addresses the obligations of registered nurses to use specialised judgment and skill in providing safe and competent patient care (depth). The purposes of the Scope of Practice are to regulate the practice of the profession; guide curriculum development; assist employers in preparing job descriptions and performance contracts; and inform the public about the services its members are qualified to provide. Nurses have a responsibility to practise within their scope of practice relevant to their education, qualification and context. The Scope of Practice provides the basis for the development of Nursing/Midwifery standards and competencies

^{xxix} Regulations Relating to the Scope of Practice of Persons Who are Registered or Enrolled under the Nursing Act, 1978; Government Notice No. R. 2598, 30 November 1984 as amended by GN No. R. 1469 of 10 July 1987, GN No. R. 2676 of 16 November 1990 and GN No. R. 260 of 15 February 1991

^{xxx} 3. SANC Document entitled: THE RELATIONSHIP BETWEEN THE SCOPES OF PRACTICE, PRACTICE STANDARDS AND COMPETENCIES at [www.sanc.co.za/Nursing/Midwifery/Practice Standard](http://www.sanc.co.za/Nursing/Midwifery/PracticeStandard)

Practice Standards are authoritative statements by which the nursing profession describes the responsibility for which its practitioners are accountable and these statements are agreed upon (articulated and promulgated) by the nursing profession to use in judging the quality of practice, service or education. Regulatory bodies have a responsibility to establish, monitor and enforce Practice Standards. They are statements about what registered nurses are required and expected to do as professionals. Practice Standards are also benchmarks and achievable levels of professional performance which reflect the values of the profession and clarify what the regulatory body expects of its registered nurses and, in turn, represent the criteria against which the practice of all registered nurses will be measured by the public, clients/patients, employers and colleagues. Standards describe “best practice” and ensure a consistent quality of performance. They are concerned with the “how” whilst the codes focus on the “should”. Practice standards are prerequisites for the promotion of safe, competent and ethical nursing practice. The Practice Standards state minimum levels below which performance is unacceptable. Contravention of the Practice Standards may result in a finding of unprofessional conduct, leading to professional

sanction under the Nursing Act. Practice Standards are used to guide and direct nursing practice, promote professional nursing practice, facilitate evaluation of nursing practice, enable healthcare users to judge the adequacy of nursing care and provide guidance to nurse researchers, administrators and educators. The purposes of Practice Standards for Nursing Practice are the protection of the public; identification of expected behaviour; regulation of safe, competent and ethical behaviour; regulation of registered nurse practice and practice consultation; and allowing nurses to understand issues related to professional practice. In Nursing Education, standards are used for curriculum development and evaluation of outcomes. In Nursing Management, standards are used as administrative guidelines, legal reference, public information, frameworks for research and policy development and the determination of the quality of nursing care a healthcare

^{xxxi} SANC Document entitled: THE RELATIONSHIP BETWEEN THE SCOPES OF PRACTICE, PRACTICE STANDARDS AND COMPETENCIES at www.sanc.co.za/
Competencies are a combination of knowledge, skills, judgement, attitudes, values, capacity and abilities that underpin effective performance in a profession. Competencies are requirements of a practitioner to be considered competent in a designated role and practice setting. They are building blocks that shape nursing work in all clinical and practice settings. Competency Standards provide a framework to assess competence as part of the annual renewal of license process, to assess nurses educated overseas seeking to work in South Africa, to assess nurses involved in professional conduct matters, to develop curricula and to assess students. They further form a dynamic set of skills and attributes that are context-specific and evolve throughout one's professional life. Some countries accommodate the dynamism of competence through mandatory continuing education as a condition for renewal of the license. The practitioner is considered competent if he/she has the ability to integrate and apply the knowledge, skills, judgement, attitudes, values and abilities required to practise safely and ethically in a designated role and setting. Each nurse is accountable in an ongoing manner to review/appraise his/her level of competence in order to upgrade and maintain his/her competency

^{xxxii} SANC website at www.sanc.co.za/
Generic Competency Framework for Advanced Nurse Practitioners
Competencies - Critical Nurse Specialist (Adult)
Competencies - Forensic Nurse
Competencies - Midwife Specialist
Competencies - Nephrology Nurse Specialist
Competencies - Occupational Health Nurse Specialist
Competencies - Ophthalmic Nurse Specialist
Competencies - Orthopaedic Nurse Specialist
Competencies - Paediatric Nurse Specialist
Competencies - Primary Care Nurse Specialist

^{xxxiii} SANC website
<http://www.sanc.co.za/pdf/Competencies/SANC%20Competencies-Occupational%20Health%20Nurse%20Specialist%202013-04.pdf>

^{xxxiv} *Government Notice No. R. 212 of 19 February 1993, as amended by GN No. R. 74 of 17 January 1997* South African Nursing Council - Regulations Relating to the Course in Clinical Nursing Science Leading to Registration of an Additional Qualification

^{xxxv} Glob Health Action 2015, 8: 28005 - <http://dx.doi.org/10.3402/gha.v8.28005>

1. In South Africa, there is a well-established system of regulation and accreditation of nursing education through the SANC.

2. In South Africa, increasing professionalization and a shift to university education have been important features of the reform of nursing education. The first nursing school was established in 1877, following the standard hospital apprenticeship model of the time, and despite the efforts of its founder, it was placed under the jurisdiction of the Medical Council, instead of the Department of Education. The establishment of the South African Nursing Council (SANC) in 1944 wrested control of nursing education from the medical profession. However, a 3-year diploma at a hospital-based nursing college remained the only pathway to qualifying as a registered nurse. The first university nursing degree programs in the country were introduced in 1956 but uptake remained relatively small. A

more significant policy shift occurred in 1986 when all nursing colleges were required to become affiliated with university-based nursing departments, which placed them officially within the higher education system. At the same time, a new comprehensive 4-year curriculum (including general nursing, midwifery, community nursing, and psychiatric nursing) was introduced for the training of professional nurses in South Africa, which could be completed through a nursing college diploma or a university degree. Since South Africa's democracy in 1994, there has been a renewed focus on nursing education as part of the post-apartheid transformation of both the health and higher education sectors. The nursing education policy reforms have included the rationalization of nurse training institutions, changing the Scope of Practice of nurses, and revising nursing qualifications. The revision of nursing qualifications has been driven by changes within the profession and the imperative to align nursing qualifications with the new National Qualifications Framework (NQF) - a comprehensive system for the classification and articulation of qualifications in the country. A key recommendation of the new nursing qualifications proposals is that registration as a professional nurse will require completion of a baccalaureate degree in nursing, rather than a nursing college diploma.

^{xxxvi} SANC website

<http://www.sanc.co.za/pdf/Qualifications/New%20Qualifications%20FAQs.pdf>

^{xxxvii} Glob Health Action 2015, 8: 28005 - <http://dx.doi.org/10.3402/gha.v8.28005>

In South Africa, there are three categories of nurses: professional (registered) nurses with 4 years of training; enrolled nurses with 2 years of training, and nursing assistants or auxiliaries with 1 year of training. The majority of professional (registered) nurses are also midwives, and the terms 'nurse' and 'midwife' are used interchangeably in the Nursing Act. Nursing education is undergoing major changes, notably the requirement that a baccalaureate degree is a precondition for registration as a professional nurse, and the abolition of the enrolled nurse with 2 years of training in favour of a staff nurse with a 3-year college diploma. Nursing education takes place in a complex environment, which includes 20 out of 23 public universities, 12 public-sector nursing colleges (with numerous satellite training campuses) that are the responsibility of the nine provincial health departments, a nursing college run by the defense force, private nursing colleges run by the three major private hospital groups in South Africa, and private nursing schools that are run for profit. This environment creates considerable fragmentation, and various layers of complexity. The public universities and public-sector nursing colleges are the only institutions that are allowed by law to offer the integrated course leading to registration as a professional nurse, which includes general, community health nursing, psychiatric nursing, and midwifery, through a 4-year degree or diploma, respectively. The South African Nursing Council (SANC) is the regulatory authority responsible for setting standards and accrediting nursing education institutions against those standards. The SANC does not require newly qualified professional (registered) nurses with 4 years of training to write a national licensing examination, but relies on the nursing education institution's own quality assurance systems to ensure an acceptable standard of education and competencies. However, the reality is that the quality of nursing education for registered nurses differs across the different educational institutions, and even from one nursing college to another managed by the same provincial health department. There are even more variations in the training of enrolled nurses (with 2 years of training) and auxiliary nurses (with 1 year of training), although these two categories of nurses are required to write a national licensing examination.

^{xxxviii} The Nursing Act (Act No. 33 of 2005)

GOVERNMENT NOTICE - DEPARTMENT OF HEALTH No. R. 195 19 February 2008, as amended by: GN No. R. 175 of 8 March 2013

Regulations relating to the particulars to be furnished to the council for keeping of the register for nursing practitioners, the manner of effecting alterations to the register, and certificates that may be issued by the council

^{xxxix} The Nursing Act (Act No. 33 of 2005) - Registration as prerequisite to practise

31. (1) Subject to the provisions of section 37, no person may practise as a practitioner unless he or she is registered to practise in at least one of the following categories:

- (a) Professional nurse;
- (b) midwife;
- (c) staff nurse;

(d) auxiliary nurse; or

(e) auxiliary midwife.

(2) The Minister, after consultation with the Council, may by notice in the *Gazette* create such other categories of persons to be registered to practise nursing as he or she considers necessary in the public interest.

(3) An employer must not employ or retain in employment a person to perform the functions pertaining to the profession of nursing, other than a person who holds the necessary qualification and who is registered under subsection (1) or (2).

(4) No person may use as a title any of the categories contemplated in subsection (1) or (2) unless he or she is registered as such in terms of this section.

(5) A practitioner who wishes to register in terms of subsection (1) must apply in the prescribed manner to the Registrar and submit with his or her application—

(a) proof of identity;

(b) certificate of good character and standing;

(c) proof of his or her qualifications;

(d) the prescribed registration fee; and

(e) such further documents and information in relation to his or her application as may be required by the Registrar on the instructions of the Council.

(6) If the Registrar is satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act and upon receipt of the prescribed registration fee, the Registrar must issue a registration certificate authorising the applicant, subject to the provisions of this Act, to practise or engage in any of the categories contemplated in subsection (1) within the Republic.

(7) If the Registrar is not satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, he or she must refuse to issue a registration certificate to the applicant and must inform the applicant in writing of the reasons for his or her decision, but must, if so required by the applicant, submit the application to the Council for a decision.

(8) The Registrar may only register a person in terms of subsection (1) if the Registrar is satisfied that the person applying for registration is suitably qualified or if the Council is so satisfied.

(9) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act may be removed from the register and—

(a) a record of the reason for every such removal must be made in the register;

(b) the person in respect of whom such removal has been made must be notified thereof in writing by the Registrar; and

(c) any certificate issued in respect of such registration is considered to have been cancelled as from the date on which notice has so been given.

(10) The Registrar must delete from the register the name of the practitioner or mark in the register the name of any person removed or suspended, respectively, from practice and must notify such person in writing accordingly.

(11) A person who contravenes subsection (1), (3) or (4) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

(12) A person who has completed a programme qualifying him or her for registration in another category must apply to have his or her entry in the register altered accordingly.

(13) A person who completed a programme leading to registration in a higher category must, upon application and after evaluation by the Council, have his or her entry in the register altered accordingly.

(14) A practitioner must notify the Registrar in writing of any change of particulars within 30 days after such change.

^{x1} The Nursing Act (Act No. 33 of 2005) - Community service

40. (1) A person who is a citizen of South Africa intending to register for the first time to practise a profession in a prescribed category must perform remunerated community service for a period of one year at a public health facility.

(2) A person referred to in subsection (1) must be registered in the category community service.

(3) The Minister may, after consultation with the Council, make regulations concerning the performance of the service contemplated in subsection (1), including but not limited to—

(a) the place at which such service is to be performed;

- (b) the conditions of employment pertaining to persons who perform such service; and
 (c) the categories of registration excluded from such service.

^{xli} Government Notice No. 368 of 15 May 2014: Notice relating to the creation of categories of practitioners in terms of section 31(2) of the Nursing Act, 2005

^{xlii} The Nursing Act (Act No. 33 of 2005) -Registration of additional qualifications

34. (1) Subject to the provisions of subsection (2) and on payment of the prescribed fee, the Council must register the additional qualification of a person who is registered under section 31 and who applies in writing for such registration, if he or she complies with the prescribed conditions and furnishes the prescribed particulars.

(2) Only such qualifications as are prescribed may be registered under this section.

^{xliii} This fact is acknowledged by the South African Society of Occupational Health Nursing Practitioners in their position statement on the issuing of medical certificates of fitness by occupational health nurses issued on 22 October 2015

.... "Currently, there remain only five categories of registration for nurse practitioners at SANC. These are: professional nurse, midwife, staff nurse, auxiliary nurse and auxiliary midwife. The Minister is empowered to create other categories of persons registered to practise nursing and may prescribe further scopes of profession and practice for those categories as necessary.

The registration of additional qualifications is possible under regulations which were promulgated in 1993 (commonly referred to as Regulation 212, published in the Government Gazette on 19 February 1993). In terms of those regulations, practitioners (who must already be registered professional nurses) may complete one of seven additional clinical nursing qualifications which are registrable against their names as 'additional qualifications', in the register kept by SANC. Occupational Health Nursing is one of those seven additional qualifications which practitioners may hold.

Previously, SANC had approved short educational courses for registered nurses in, among others, occupational health nursing. However, SANC discontinued its approval of and listing of short courses in 2007.

Following discussions with SANC, it was agreed that those practitioners who hold listed short course qualifications (awarded prior to 2007) will continue to see these reflected on their annual practising certificate as 'listed qualifications'.

The current state of affairs regarding registration of nursing qualifications is thus:

- *If a practitioner's occupational health qualification was not obtained under Regulation 212 (and the Teaching guide which accompanied it), that occupational health qualification will be shown as a 'listed qualification' by SANC on the annual practising certificate.*
- *If a practitioner enrolled for and completed the clinical nursing qualification in occupational health nursing science as per Regulation 212, this will be registered by SANC as a post-basic specialisation and displayed on the annual practising certificate.*

^{xliv} SANC website

<http://www.sanc.co.za/pdf/Competencies/SANC%20Competencies-Occupational%20Health%20Nurse%20Specialist%202013-04.pdf>

^{xlv} Nursing Act Registration as prerequisite to practise

31. (1) Subject to the provisions of section 37, no person may practise as a practitioner unless he or she is registered to practise in at least one of the following categories:

- (a) Professional nurse;
 (b) midwife;
 (c) staff nurse;
 (d) auxiliary nurse; or
 (e) auxiliary midwife.

(2) The Minister, after consultation with the Council, may by notice in the *Gazette* create such other categories of persons to be registered to practise nursing as he or she considers necessary in the public interest.

(3) An employer must not employ or retain in employment a person to perform the

functions pertaining to the profession of nursing, other than a person who holds the necessary qualification and who is registered under subsection (1) or (2).

(4) No person may use as a title any of the categories contemplated in subsection (1) or (2) unless he or she is registered as such in terms of this section.

(5) A practitioner who wishes to register in terms of subsection (1) must apply in the prescribed manner to the Registrar and submit with his or her application—

(a) proof of identity;

(b) certificate of good character and standing;

(c) proof of his or her qualifications;

(d) the prescribed registration fee; and

(e) such further documents and information in relation to his or her application as may be required by the Registrar on the instructions of the Council.

(6) If the Registrar is satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act and upon receipt of the prescribed registration fee, the Registrar must issue a registration certificate authorising the applicant, subject to the provisions of this Act, to practise or engage in any of the categories contemplated in subsection (1) within the Republic.

(7) If the Registrar is not satisfied that the information and documentation submitted in support of an application for registration meet the requirements of this Act, he or she must refuse to issue a registration certificate to the applicant and must inform the applicant in writing of the reasons for his or her decision, but must, if so required by the applicant, submit the application to the Council for a decision.

(8) The Registrar may only register a person in terms of subsection (1) if the Registrar is satisfied that the person applying for registration is suitably qualified or if the Council is so satisfied.

(9) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act may be removed from the register and—

(a) a record of the reason for every such removal must be made in the register;

(b) the person in respect of whom such removal has been made must be notified thereof in writing by the Registrar; and

(c) any certificate issued in respect of such registration is considered to have been cancelled as from the date on which notice has so been given.

(10) The Registrar must delete from the register the name of the practitioner or mark in the register the name of any person removed or suspended, respectively, from practice and must notify such person in writing accordingly.

(11) A person who contravenes subsection (1), (3) or (4) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

^{xlvi} Regulations Relating to the Scope of Practice of Persons Who are Registered or Enrolled under the Nursing Act, 1978; Government Notice No. R. 2598, 30 November 1984 as amended by GN No. R. 1469 of 10 July 1987, GN No. R. 2676 of 16 November 1990 and GN No. R. 260 of 15 February 1991

^{xlvii} Regulations Relating to the Scope of Practice of Persons Who are Registered or Enrolled under the Nursing Act, 1978; Government Notice No. R. 2598, 30 November 1984 as amended by GN No. R. 1469 of 10 July 1987, GN No. R. 2676 of 16 November 1990 and GN No. R. 260 of 15 February 1991

**The South African Nursing Council
Regulations Relating to the Scope of Practice of Persons Who are Registered or Enrolled
under the Nursing Act, 1978**

2. The scope of practice of a registered nurse shall entail the following acts or procedures, which may be performed by scientifically based physical, chemical, psychological, social, educational and technological means applicable to health care practice

(a) The diagnosing of a health need and the prescribing, provision and execution of a nursing regimen to meet the need of a patient or group of patients or, where necessary, by referral to a registered person;

(b) the execution of a program of treatment or medication prescribed by a registered person for a patient;

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- (c) the treatment and care of and the administration of medicine to a patient, including the monitoring of the patient's vital signs and of his reaction to disease conditions, trauma, stress, anxiety, medication and treatment;
 - (d) the prevention of disease and promotion of health and family planning by teaching to and counselling with individuals and groups of persons;
 - (e) the prescribing, promotion or maintenance of hygiene, physical comfort and re-assurance of the patient;
 - (f) the promotion of exercise, rest and sleep with a view to healing and rehabilitation of a patient;
 - (g) the facilitation of body mechanics and the prevention of bodily deformities in a patient in the execution of the nursing regimen;
 - (h) the supervision over and maintenance of a supply of oxygen to a patient;
 - (i) the supervision over and maintenance of fluid, electrolyte and acid base balance of a patient;
 - (j) the facilitation of the healing of wounds and fractures, the protection of the skin and the maintenance of sensory functions in a patient;
 - (k) the facilitation of the maintenance of bodily regulatory mechanisms and functions in a patient;
 - (l) the facilitation of the maintenance of nutrition of a patient;
 - (m) the supervision over and maintenance of elimination by a patient;
 - (n) the facilitation of communication by and with a patient in the execution of the nursing regimen;
 - (o) the facilitation of the attainment of optimum health for the individual, the family, groups and the community in the execution of the nursing regimen;
 - (p) the establishment and maintenance, in the execution of the nursing regimen, of an environment in which the physical and mental health of a patient is promoted;
 - (q) preparation for and assistance with operative, diagnostic and therapeutic acts for the patient;
 - (r) the co-ordination of the health care regimens provided for the patient by other categories of health personnel;
 - (s) the provision of effective patient advocacy to enable the patient to obtain the health care he needs;
 - (t) care of the dying patient and the care of a recently deceased patient within the execution of the nursing regimen

^{xlvi} South African Society of Occupational Health Nursing Practitioners: position statement on the issuing of medical certificates of fitness by occupational health nurses issued on 22 October 2015: ...*Neither the current scope of practice regulations nor the proposed scope of practice regulations expressly refer to or include occupational health nursing in a description of the scope of practice of a professional nurse*".

^{xlix} Government Gazette Notice R786 of 15 October 2013

^l South African Society of Occupational Health Nursing Practitioners: POSITION STATEMENT ON THE ISSUING OF MEDICAL CERTIFICATES OF FITNESS BY OCCUPATIONAL HEALTH NURSES issued on 22 OCTOBER 2015

^{li} Government Notice No. R. 786 15 October 2013 - Regulations Regarding the Scope of Practice of Nurses and Midwives - Limitations of practice of a professional nurse
5.1. A professional nurse-

- (a) may not set up a private practice without obtaining a licence in terms of section 4(2)(i) of the Act; and
- (b) must comply with the provisions of section 56 of the Act as well as the regulations made thereunder in order to assess, diagnose, prescribe treatment, keep and supply medication for prescribed illnesses and health related conditions.

^{lii} The Nursing Act (Act No. 33 of 2005) Section 4(2)(i)
4(2)The Council may–

- (i) subject to prescribed conditions and upon payment of a prescribed fee, issue a licence for a professional nurse to conduct a private practice;

liii The Nursing Act (Act No. 33 of 2005) **Special provisions relating to certain nurses**

- 56.** (1) Despite the provisions of this Act or any other law, the Council may register a person who is registered in terms of section 31(1)(a), (b) or (c) to assess, diagnose, prescribe treatment, keep and supply medication for prescribed illnesses and health related conditions, if such person—
- (a) provides proof of completion of prescribed qualification and training;
 - (b) pays the prescribed registration fee; and
 - (c) complies with subsection 6.
- (2) The Council must issue a registration certificate to a person who complies with the requirements referred to in subsection (1).
- (3) The registration certificate referred to in subsection (2) is valid for a period of three years.
- (4) The Council may renew a registration certificate referred to in subsection (2) subject to such conditions as the Council may determine.
- (5) A person registered in terms of subsection (1) may—
- (a) acquire, use, possess or supply medicine subject to the provisions of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965); and
 - (b) dispense medicines subject to the provisions of the Medicines and Related Substances Act, 1965.
- (6) Despite the provisions of this Act, the said Medicines and Related Substances Act, 1965, the Pharmacy Act, 1974 (Act No. 53 of 1974), and the Health Professions Act, 1974 (Act No. 56 of 1974), a nurse who is in the service of—
- (a) the national department;
 - (b) a provincial department of health;
 - (c) a municipality; or
 - (d) an organisation performing any health service designated by the Director-General after consultation with the South African Pharmacy Council referred to in section 2 of the Pharmacy Act, 1974, and who has been authorised by the Director-General, the head of such provincial department of health, the medical officer of health of such municipality or the medical practitioner in charge of such organisation, as the case may be, may in the course of such service perform with reference to—
- (i) the physical examination of any person;
 - (ii) the diagnosing of any physical defect, illness or deficiency in any person; or (iii) the keeping of prescribed medicines and their supply, administering or prescribing on the prescribed conditions; any act which the said Director-General, head of provincial department of health, medical officer of health or medical practitioner, as the case may be, may, after consultation with the Council, determine in general or in a particular case or in cases of a particular nature, if the services of a medical practitioner or pharmacist, as the circumstances may require, are not available.
- (7) A person contemplated in subsection (1) is not entitled to keep an open shop or pharmacy.
- (8) For the purpose of subsection (7) "open shop" means a situation where the supply of medicines and scheduled substances to the public is not done by prescription by a person authorised within the scope of practice concerned to prescribe medicine.

liv South African Society of Occupational Health Nursing Practitioners: position statement on the issuing of medical certificates of fitness by occupational health nurses 22 October 2015

lv *Nursing Act, 2005 (Act No. 33 Of 2005)*

Special provisions relating to certain nurses

- 56.** (1) Despite the provisions of this Act or any other law, the Council may register a person who is registered in terms of section 31(1)(a), (b) or (c) to assess, diagnose, prescribe treatment, keep and supply medication for prescribed illnesses and health related conditions, if such person—
- (a) provides proof of completion of prescribed qualification and training;
 - (b) pays the prescribed registration fee; and
 - (c) complies with subsection 6.
- (2) The Council must issue a registration certificate to a person who complies with the requirements referred to in subsection (1).
- (3) The registration certificate referred to in subsection (2) is valid for a period of three years.
- (4) The Council may renew a registration certificate referred to in subsection (2)

subject to such conditions as the Council may determine.

(5) A person registered in terms of subsection (1) may—

- (a) acquire, use, possess or supply medicine subject to the provisions of the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965); and
- (b) dispense medicines subject to the provisions of the Medicines and Related Substances Act, 1965.

(6) Despite the provisions of this Act, the said Medicines and Related Substances Act, 1965, the Pharmacy Act, 1974 (Act No. 53 of 1974), and the Health Professions Act, 1974 (Act No. 56 of 1974), a nurse who is in the service of—

- (a) the national department;
- (b) a provincial department of health;
- (c) a municipality; or
- (d) an organisation performing any health service designated by the Director-General after consultation with the South African Pharmacy Council referred to in section 2 of the Pharmacy Act, 1974, and who has been authorised by the Director-General, the head of such provincial department of health, the medical officer of health of such municipality or the medical practitioner in charge of such organisation, as the case may be, may in the course of such service perform with reference to—
 - (i) the physical examination of any person;
 - (ii) the diagnosing of any physical defect, illness or deficiency in any person; or
 - (iii) the keeping of prescribed medicines and their supply, administering or prescribing on the prescribed conditions;

any act which the said Director-General, head of provincial department of health, medical officer of health or medical practitioner, as the case may be, may, after consultation with the Council, determine in general or in a particular case or in cases of a particular nature, if the services of a medical practitioner or pharmacist, as the circumstances may require, are not available.

(7) A person contemplated in subsection (1) is not entitled to keep an open shop or pharmacy.

(8) For the purpose of subsection (7) "open shop" means a situation where the supply of medicines and scheduled substances to the public is not done by prescription by a person authorised within the scope of practice concerned to prescribe medicine.

^{lvi} *Nursing Act, 2005 (Act No. 33 Of 2005)*

Registration as prerequisite to practise

31.

(2) The Minister, after consultation with the Council, may by notice in the *Gazette* create such other categories of persons to be registered to practise nursing as he or she considers necessary in the public interest.

^{lvii} *Nursing Act, 2005 (Act No. 33 Of 2005)*

Scope of profession and practice of nursing

30.

(5) The Minister may prescribe scopes of profession and practice for other categories of nurses contemplated in section 31(2).

^{lviii} National Road Traffic Act, 1996 -National Road Traffic Regulations GNR225, dated 17 March 2000, as amended

Chapter V: Fitness of Drivers Part II: Learner's and Driving Licenses - Manner of Application for Learner's License Reg 103 (1) (c)

Chapter V: Fitness of Drivers Part II: Instructors Reg 114 (A) (2) (b)

Chapter V: Fitness of Drivers Part II: Disqualification from Obtaining Professional Driving Permit Reg 117 (b)

Chapter V: Fitness of Drivers Part II: Application for professional driving permit Reg 118 (2) (e)

^{lix} Occupational Health and Safety Act, Act 85 of 1993 - Section 1: "occupational health practitioner" means an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council as referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), or the South African Nursing Council as referred to in the Nursing Act, 1978 (Act No. 50 of 1978);

^{lx} South African Society of Occupational Health Nursing Practitioners: POSITION STATEMENT ON THE ISSUING OF MEDICAL CERTIFICATES OF FITNESS BY OCCUPATIONAL HEALTH NURSES issued on 22 OCTOBER 2015

... "SANC has confirmed that nurses who have successfully completed training in occupational health nursing science and are registered with the additional qualification: 'post basic occupational health nursing science' are recognised by SANC as occupational health nurses and eligible to practise as such";
Furthermore, SANC has confirmed that a listed qualification in occupational health nursing is recognised by SANC as a qualification in occupational health for purposes of the OHS Act and all regulations made under that Act".

^{lxi} The Nursing Act (Act No. 33 of 2005)

Registration as prerequisite to practise

31. (1) Subject to the provisions of section 37, no person may practise as a practitioner unless he or she is registered to practise in at least one of the following categories:

- (a) Professional nurse;
- (b) midwife;
- (c) staff nurse;
- (d) auxiliary nurse; or
- (e) auxiliary midwife.

(2) The Minister, after consultation with the Council, may by notice in the *Gazette* create such other categories of persons to be registered to practise nursing as he or she considers necessary in the public interest.

^{lxii} *NURSING ACT, 2005 (ACT No. 33 OF 2005)*

Functions of Council

4. (1) The Council must—

- (a) in all its decisions, take cognisance of national health policies as determined by the Minister and implement such policies in respect of nursing;
- (b) where authorised by this Act, enter, remove from or restore to the register the name of a person;
- (c) conduct examinations, and appoint examiners and moderators and grant diplomas and certificates in respect of such examinations;
- (d) conduct inspections and investigations of nursing education institutions, nursing education programmes and health establishments, in order to ensure compliance with this Act and the rules and standards determined by the Council in terms of this Act;
- (e) report to the relevant statutory body any non-compliance established after an inspection and investigation referred to in paragraph (d);
- (f) ensure that persons registered in terms of this Act behave towards users of health services in a manner that respects their constitutional rights to human dignity, bodily and psychological integrity and equality, and that disciplinary action is taken against persons who fail to do so;
- (g) investigate complaints against persons registered in terms of this Act and take appropriate disciplinary action against such persons in accordance with the provisions of this Act in order to protect the interests of the public;
- (h) publish in the *Gazette* the details of the unprofessional conduct and the names and qualifications of the persons against whom disciplinary action was taken in terms of this Act within 30 days of the conclusion of such disciplinary action;

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- (i) ensure that a register of persons registered in terms of this Act is available to the public as prescribed;
- (j) investigate and take action against non-accredited nursing education institutions;
- (k) withdraw or suspend accreditation of a nursing education institution or nursing education programme if the education or training provided does not comply with the prescribed requirements and inform the relevant licensing authority;
- (l) determine—
- (i) the scope of practice of nurses;
 - (ii) the conditions under which nurses may practise their profession;
 - (iii) the acts or omissions in respect of which the Council may take steps against any person registered in terms of this Act; and
 - (iv) the requirements for any nurse to remain competent in the manner prescribed;
- (m) determine prescribed licence or registration fees, payable under this Act;
- (n) monitor the assessment by education and training providers, including the recognition of prior learning, register constituent assessors and moderators and grant diplomas and certificates in accordance with the requirements of this Act and any other law;
- (o) be regarded as an education and training quality assurer in terms of section 5 of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), for all nursing qualifications;
- (p) submit to the Minister—
- (i) a five-year strategic plan within six months of the Council coming into office which includes details as to how the Council plans to achieve its objectives under this Act;
 - (ii) a report every six months on the status of nursing and on matters of public importance compiled by the Council in the course of the performance of its functions under this Act; and
 - (iii) an annual report within six months of the end of the financial year;
- (q) ensure that an annual budget is drawn up in terms of sections 23 and 24 and that the Council operates within the parameters of such budget; and
- (r) perform such other functions as may be prescribed.
- (2) The Council may—
- (a) make extracts from the register;
 - (b) acquire, hire or dispose of property, borrow money on the security of the assets of the Council, accept or make any donation and administer any trust;
 - (c) institute or defend any legal action in its name;
 - (d) appoint experts and advisers as may be required to assist the Council in the performance of its functions in terms of this Act;
 - (e) delegate to any person or organisation any function referred to in this section, provided that the Council is not divested of any function so delegated;
 - (f) accredit nursing education institutions and nursing education programmes and monitor all assessments by education and training providers in accordance with this Act or any other law;
 - (g) carry out quality control inspections in accordance with the prescribed conditions;
 - (h) investigate complaints against any health establishment in respect of its nursing service;
 - (i) subject to prescribed conditions and upon payment of a prescribed fee, issue a licence for a professional nurse to conduct a private practice;
 - (j) consider any matter affecting nursing, and make representations to the Minister and Director-General or take such action in connection therewith as the Council may find advisable;
 - (k) require nursing education institutions to submit annual returns of learner nurses and to submit any information that the Council may require;
 - (l) require employers to submit annual returns of nurses in their employ and any other information necessary to enable the Council to perform its functions and fulfil its objectives;
 - (m) in consultation with the Minister of Finance, establish, manage and

administer a pension or provident fund for the employees of the Council;
 (n) recommend to the Minister regulations relating to any matter under this Act which may be prescribed; and
 (o) generally, do all such things as it may find necessary or expedient to achieve the objects of this Act.

lxiii *NURSING ACT, 2005 (ACT No. 33 OF 2005)*

Duties of Registrar

19. (1) The Registrar must—

- (a) exercise the powers and perform the functions assigned to the Registrar in terms of this Act;
- (b) keep the registers in respect of practitioners and must on the instructions of the Council enter in the appropriate register the name, physical address, qualifications, date of initial registration and such other particulars, including, where applicable, the details of the category of practitioner, learner midwife or learner nurse, as the Council may determine, of every person whose application for registration in terms of this Act has been granted;
- (c) update the registers correctly and in accordance with the provisions of this Act and remove therefrom the names of all practitioners who have been removed in terms of this Act and must from time to time record changes in the addresses or qualifications of registered persons;
- (d) be the secretary of the Council and maintain the records of its meetings;
- (e) provide guidance and advice on compliance with this Act to the Council and the officials;
- (f) act with fidelity, honesty, integrity and in the best interest of the Council in managing its financial affairs;
- (g) disclose to the Council all material facts and information which in any way might influence the decisions or actions of the Council or the chairperson; and
- (h) prevent any prejudice to the financial and administrative interests of the Council.

(2) The Registrar may not—

- (a) act in a way that is inconsistent with the duties assigned to him or her in terms of this Act; or
- (b) use the position or privileges of, or confidential information obtained as, Registrar for personal gain or to improperly benefit another person.

20. Accounting duties of Registrar

20. (1) The Registrar must, in a format and for periods as may be prescribed, report to the Council on all revenue received and expenditure incurred by the Council including, but not limited to—

- (a) all fees collected and funds received;
- (b) salaries and wages;
- (c) contributions for pensions and medical aid, if any;
- (d) travel, motor car, accommodation, subsistence and other allowances;
- (e) housing benefits and allowances;
- (f) overtime payments;
- (g) loans and advances; and
- (h) any type of benefit or allowance related to staff.

(2) The Registrar must—

- (a) assist the Council in performing the budgetary functions assigned to it in terms of this Act; and
- (b) provide the chairperson with the administrative support, resources and information necessary for the performance of those functions.

(3) The Registrar is responsible for implementing the Council's approved budget, including taking all reasonable steps to ensure that—

- (a) the spending of funds is reduced if necessary when revenue is anticipated to be less than projected in the budget; and
- (b) revenue and expenditure are properly monitored.

(4) When necessary, the Registrar must prepare an adjustments budget and submit it to the chairperson for consideration and tabling in the Council.

(5) The Registrar must no later than 14 days after the approval of an annual budget submit to the chairperson—

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- (a) a draft service delivery and budget implementation plan for the budget year; and
- (b) drafts of the annual performance agreements as required for the Registrar and all senior managers.
- (6) The Registrar must report in writing to the Council—
- (a) any impending—
- (i) shortfalls in budgeted revenue;
- (ii) overspending of the Council's budget; and
- (iii) any steps taken to prevent or rectify such shortfalls or overspending.
- (7) The Registrar must by no later than 10 working days after the end of each month submit to the chairperson a statement in the prescribed format on the state of the Council's budget.
- (8) The Registrar must inform the Director-General, in writing, of—
- (a) any failure by the Council to adopt or implement a budget-related policy, any other policy approved by the Council or a statutory function or responsibility in terms of this Act or any other legislation; or
- (b) any non-compliance by a member or official of the Council with any such policy.
- (9) The Registrar must submit to the Council and the Director-General such information, returns, documents, explanations and motivations as may be prescribed or required.
- (10) If the Registrar is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the Council and the Director-General.
- (11) Any action taken by the Council or member of the Council against the Registrar solely because of the Registrar's compliance with a provision of this Act is an unfair labour practice for the purposes of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (12) The Registrar may delegate to a staff member or any other official of the Council—
- (a) any power or duty assigned to the Registrar in terms of this Act; or
- (b) any power or duty necessary to assist the Registrar in complying with a duty which requires the Registrar to take appropriate steps to ensure the achievement of the aims of a specific provision of this Act.
- (13) The Registrar may not delegate to any member of the Council any power or duty assigned to him or her in terms of this Act.
- (14) A delegation in terms of subsection (12)—
- (a) must be in writing;
- (b) is subject to such limitations and conditions as the Registrar may impose in a specific case;
- (c) may either be to a specific individual or to the holder of a specific post in the Council;
- (d) may, in the case of a delegation to a senior manager, authorise that senior manager to sub-delegate the delegated power or duty to an official or the holder of a specific post in that senior manager's area of responsibility; and
- (e) does not divest the Registrar of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.
- (15) The Registrar may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this Act, but no such variation or revocation of a decision

^{lxiv} South African Society of Occupational Health Nursing Practitioners: POSITION STATEMENT ON THE ISSUING OF MEDICAL CERTIFICATES OF FITNESS BY OCCUPATIONAL HEALTH NURSES issued on 22 OCTOBER 2015

.... "SANC has confirmed that nurses who have successfully completed training in occupational health nursing science and are registered with the additional qualification: 'post basic occupational health nursing science' are recognised by SANC as occupational health nurses and eligible to practice as such";
 Furthermore, SANC has confirmed that a listed qualification in occupational health nursing is recognised by SANC as a qualification in occupational health for purposes of the OHS Act and all regulations made under that Act".

^{lxv} **Health Professions Act 56 Of 1974 17. Registration a prerequisite for practising** (1) No person shall be entitled to practise within the Republic - (a) any health profession registrable in terms of this Act; or (b) except in so far as it is authorised by legislation regulating health care providers and sections 33, 34 and 39 of this Act, any health profession the practice of which mainly consists of- (i) the physical or mental examination of persons; (ii) the diagnosis, treatment or prevention of physical or mental defects, illnesses or deficiencies in man humankind; (iii) the giving of advice in regard to such defects, illnesses or deficiencies; or (iv) the prescribing or providing of medicine in connection with such defects, illnesses or deficiencies, unless he or she is registered in terms of this Act. [Subs. (1) amended by s. 2 of Act 33/76, s. 8 of Act 58/92 and s. 15 of Act 89/97 and substituted by s.17 of Act 29/2007] (1A) The provisions of subsection (1)(b) must not be construed as permitting the performance by a person registered under any of the laws contemplated in that subsection of any act which is not performed in the ordinary course of the practising of his or her profession. [Subs. (1A) inserted by s.17 of Act 29/2007] (2) Every person desiring to be registered in terms of this Act shall apply to the registrar and shall submit the qualification which, in his or her submission, may entitle him or her to registration, together with such proof of identity and good character and of the authenticity and validity of the qualifications submitted as may be required by the professional board concerned. [Subs. (2) substituted by s. 15 of Act 89/97 and s. 17 of Act 29/2007] (3) If the registrar is satisfied that the qualifications and the other documents submitted in support of the application satisfy the requirements of this Act, he or she shall, upon payment by the applicant of the prescribed registration fee, issue a registration certificate authorising the applicant, subject to the provisions of this Act or of any other law, to practise the health profession in respect whereof he or she has applied for registration, within the Republic. [Subs. (3) substituted by s. 47 of Act 57/75 and s. 17 of Act 29/2007] (4) If the registrar is not satisfied that the qualification or other documents submitted in support of the application satisfy the requirements of this Act, he or she shall refuse to issue a registration certificate to the applicant, but shall, if so required by the applicant, submit the application to the professional board concerned for decision. [Subs. (4) substituted by s. 15 of Act 89/97] (5) Any person who is not registered in terms of this Act and practises a health profession in contravention of this section or who pretends to hold such registration is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. [Subs. (5) added by s. 17 of Act 29/2007]