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**THE JAMMU AND
KASHMIR NURSING
HOMES AND CLINICAL
ESTABLISHMENTS
(REGISTRATION AND
LICENSING) ACT, 1963**

Act No. XXXIX OF 1963

Received the assent of the Sadar-i-Riyasat on 16th October, 1963 and published in Government Gazette dated 17th October, 1963.

An Act to introduce a system of registration and licensing of nursing homes and clinical establishments.

Be it enacted by the Jammu and Kashmir State Legislature in the Fourteenth Year of the Republic of India as follows :-

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement

(1) This Act may be called the Jammu and Kashmir Nursing Homes and Clinical Establishments (Registration and Licensing) Act, 1963.

(2) It extends to the whole State.

(3) It shall come into force on such date and in such area as the Government may, by notification in the Government Gazette, appoint and different dates may be appointed for different areas.

2. Definitions

In this Act, unless the context otherwise requires:—

- (a) "clinical establishment" means a Medical Laboratory, a physio-therapy establishment, a clinical, or an establishment analogous to any of them, by whatever name called;
- (b) "hospital" means any premises used for the reception of the sick;
- (c) "maternity home" means an establishment where women are usually received and accommodated for the purpose of confinement and ante-natal and post-natal care in connection with childbirth or anything connected therewith;
- (d) "medical laboratory" means an establishment where-
- (i) biological, bacteriological, radiological, microscopic, chemical or other tests, examinations or analysis, or
 - (ii) the preparation of cultures, vaccines, sera or other biological or bacteriological products, in connection with the diagnosis or treatment of diseases, are or is usually carried on;
- (e) "nursing home" means any establishment or premises used or intended to be used, for the reception and accommodation of persons suffering from any sickness, injury or infirmity whether of body or mind and the providing of treatment or nursing or both for them, and includes a maternity home, but does not include-
- (i) any hospital or other establishment or premises maintained or controlled by the Central or the State Government or any other authority or body constituted by or under any law for the time being in force;
 - (ii) any asylum established or licensed under the Lunacy Act, Samvat 1977;
- (f) "physio-therapy establishment" means an establishment where massaging, electrotherapy, hydrotherapy, remedial gymnastic or similar processes are usually carried on, for the purpose of treatment of diseases or of infirmity or for improvement of health, or for the purpose of relaxation or for

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- any other purpose whatsoever, whether or not analogous to the purposes hereinbefore mentioned in this clause;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "qualified medical practitioner" means a medical practitioner registered in the State or any other State in India under any law for the time being in force for the registration of medical practitioners;
- (i) "qualified midwife" means a midwife or an auxiliary nurse-midwife who possesses the prescribed qualifications;
- (j) "qualified nurse" means a person who possesses the prescribed qualifications;
- (k) "register" means a register kept under this Act and the expression "registered" and "registration" shall be construed accordingly;
- (l) "supervising authority" means the person or authority appointed by the Government by notification in Government Gazette to perform all or any of the functions of the supervising authority under this Act.

CHAPTER II REGISTRATION AND LICENCING OF NURSING HOMES AND CLINICAL ESTABLISHMENTS

3. Nursing home or clinical establishment not to be opened, kept or carried on without registration and licence.

No person shall open, keep or carry on a nursing home or a clinical establishment without being registered in respect thereof and except under and in accordance with the terms of a licence granted therefor.

Explanation.—The expression "carry on a nursing home" means to receive persons in a nursing home for any of the purposes mentioned in clause (e) of section 2 and to provide treatment or nursing or both for them.

4. Application for registration and licence

(1) Every person intending to open, keep or carry on a nursing home or a clinical establishment shall make an application for regis-

tration in respect of the nursing home or the clinical establishment and for the grant of a licence therefor to the supervising authority.

(2) Notwithstanding anything contained in sub-section (1), a person already keeping or carrying on a nursing home or a clinical establishment on the commencement of this Act, shall apply for registration to the supervising authority within three months from the aforesaid date.

(3) Every application for registration in respect of a nursing home or a clinical establishment and for the grant of licence therefor or for the renewal of the registration and the licence shall contain such particulars and shall be accompanied by such fees, as may be prescribed.

(4) The supervising authority shall, if satisfied that the applicant and the nursing home or the clinical establishment, as the case may, fulfil such conditions as may be prescribed, register the applicant in respect of such nursing home or clinical establishment and shall grant him a licence in the prescribed form therefor.

(5) The Supervising authority may reject an application if he is satisfied—

- (a) that the applicant, or any person employed by him at the nursing home or the clinical establishment, is not a fit person, whether by reason of age or otherwise, to carry on, or to be employed at, the nursing home or the clinical establishment of such a description as the nursing home or clinical establishment named in the application; or
- (b) that the applicant or the nursing home or the clinical establishment does not fulfil the prescribed conditions; or
- (c) that the real object of the applicant is to use, or allow the nursing home or clinical establishment to be used, for unsocial or immoral purposes; or
- (d) that the nursing home, other than a maternity home, is not under the charge of a qualified medical practitioner resident therein and that the nursing of persons received and accommodated therein is not or will not be under the superintendence of a qualified nurse resident therein; or

(e) in the case of a maternity home, that such maternity home is not under the charge of a qualified midwife and that the attendance on every woman before, at, or after child-birth or on any child born is not or will not be under the superintendence of a qualified midwife resident therein;

(f) that for reasons connected with the situation, construction, accommodation, staffing or equipment, the nursing home, or clinical establishment, is not fit to be used for a nursing home or clinical establishment of such a description as the nursing home or the clinical establishment mentioned in the application,

and shall in every case, where the application is rejected, record the grounds for rejection.

(6) Every licence granted under sub-section (4) shall be upon such terms as may be prescribed and such terms may, inter-alia, require—

- (a) such precautions to be taken for safeguarding that the nursing home or the clinical establishment is not used for unsocial or immoral purposes;
- (b) such sanitary and hygienic measures to be taken and such accommodation to be provided, as may be specified by the supervising authority;
- (c) such minimum equipment to be possessed as may be specified by the supervising authority in this behalf;

~~(d) the nursing homes to keep records of persons received and accommodated and intimate to specified authorities all births, deaths, and miscarriages happening therein. Such statistics shall be transmitted each month, besides an annual report, to such authorities as may be prescribed;~~

(e) the clinical establishments to keep records of persons investigated or treated therein. Such statistics shall be forwarded each month to such authorities as may be prescribed.

(7) A certificate of registration and licence issued under this section shall, subject to the provisions of section 5, be in force and shall be valid until the 31st day of March next following the date on which such certificate was issued.

(8) A certificate of registration issued in respect of nursing home or a clinical establishment shall be kept affixed in a conspicuous place in the nursing home or the clinical establishment, as the case may be.

5. Cancellation of registration and licence

If at any time after any person has been registered in respect of any nursing home or clinical establishment and granted a licence therefor, the supervising authority is satisfied :-

- (i) that the terms of the licence are not being complied with, or
- (ii) that any of the grounds which would have entitled him to refuse the application for registration or licence, exist, or
- (iii) that the person registered and licensed, has been convicted of an offence punishable under this Act, or
- (iv) that any other person who has been convicted of an offence under this Act is materially interested in the nursing home or the clinical establishment,

he may cancel such registration and the licence.

6. Notice of refusal or of cancellation of registration

(1) Before making an order refusing an application for registration and licence in respect of a nursing home or clinical establishment or an order cancelling any registration and licence in respect thereof, the supervising authority shall give to the applicant or to the person registered and licensed not less than one calendar month's notice of its intention to make such an order, and every such notice shall state the grounds on which the supervising authority intends to make the order and shall contain an intimation to the effect that if within a calendar month of the receipt of the notice the applicant or the person registered informs the authority in writing that he desires so to do, the supervising authority shall, before making the order, give him an opportunity of showing cause (in person or by representative) as to why the order should not be made.

(2) If the supervising authority after giving the applicant or the person registered an opportunity of showing cause as aforesaid, decides to refuse the application for the registration and licence or to cancel the registration and the licence, as the case may be, it shall make an order to that effect and shall send a copy of the order by registered post to the applicant or the person registered.

(3) Any person aggrieved by an order, refusing an application for registration and licence, or cancelling any registration and licence may, within a period of a calendar month after the date on which the copy of the order was received by him, appeal to the Minister-in-Charge Health Department against such order or refusal. The decision of the Minister on any such appeal shall be final and shall not be called into question in any Court.

7. Inspection of Nursing Homes and Clinical Establishments

(1) Subject to the rules made under this Act, any officer of the Government, authorised by the Government in this behalf, may—

- (a) enter at any time by night or by day, with or without notice, any place or establishment which he has reason to believe is being used as nursing home or a clinical establishment;
- (b) make such examination of the place or establishment and inspect any equipment, articles or documents found therein and seize and take out therefrom any such equipment, article or document as he deems necessary for the purpose of examination, analysis, investigation, or evidence and retain them as long as he thinks it necessary to do so for such purposes;
- (c) make such inquiries, and put such questions to any person found in such place or establishment, as he deems necessary in order to ascertain whether the place or the establishment is being used as a nursing home or clinical establishment or not.

(2) No person shall obstruct an officer authorised under sub-section (1) in the exercise of any power conferred by that sub-section or make any false or reckless statement in answer to a question put by such officer in exercise of the powers conferred on him under clause (c) of that sub-section.

CHAPTER III PENALTIES

8. Penalties for offences under this Act

Any person—

- (a) who contravenes the provisions of section 3, or

- (b) who contravenes the provisions of sub-section (2) of section 7, or
- (c) who, being the holder of a licence granted under this Act in respect of any nursing home or clinical establishment, uses or allows such nursing home or clinical establishment to be used for unsocial or immoral purposes,

shall be guilty of an offence and shall,—

- (i) on conviction for a first offence, be punishable with fine which may extend to five hundred rupees, and
- (ii) on conviction for a second or subsequent offence, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both,

and shall in addition be liable to fine which may extend to twenty-five rupees for everyday for which the offence continues after conviction.

9. Offence by Corporations

Where a person committing an offence under this Act is a company or other body corporate or an association of persons (whether incorporated or not), every person who, at the time of the commission of the offence, was a director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge, be deemed to be guilty of such offence.

10. Penalty for serving in an unlicensed and unregistered nursing home or clinical establishment

Any person who knowingly serves in a nursing home or clinical establishment which is not duly registered and licensed under this Act or which is used for unsocial or immoral purposes, shall be guilty of an offence and shall be punishable with fine which may extend to five hundred rupees.

CHAPTER IV MISCELLANEOUS

11. Offences under this Act to be cognizable
All offences under this Act shall be cognizable.

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12. Courts competent to try offences under this Act
Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, no Court inferior to that of a ¹[Judicial Magistrate] of the first class shall try an offence punishable under this Act.

13. Protection of action taken in good faith

(1) No suit, prosecution or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

14. Credit of fees and fines

Any fees received or fines paid under this Act shall be credited to the Consolidated Fund of the State.

15. Expenses of supervising authority

All expenses incurred by the supervising authority under and for the purposes of this Act and the rules made thereunder shall be paid out of the Consolidated Fund of the State.

16. Power to make rules

(1) The Government may, by notification in the Government Gazette, make rules for carrying out all or any of the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form of the application to be made under section 4, the date on which such application is to be made and the fees to be paid for such registration or renewal of registration;
- (b) the authority to whom an application under section 4 shall be made and the particulars which such application shall

¹ Substituted by Act XL of 1966 for "Magistrate".

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contain and the fee with which such application shall be accompanied;

- (c) the conditions which an applicant and a nursing home or a clinical establishment shall fulfil under sub-section (3) of section 4;
- (d) the fees to be paid for an appeal under sub-section (3) of section 6 and procedure of such appeal;
- (e) the form of the register to be maintained under this Act;
- (f) the form and the terms of the licence to be issued under section 4;
- (g) the records to be kept of the patients received in a nursing home and in the case of the maternity home, of miscarriage, abortions or still-births occurring in the nursing home and of the children born therein and of the children so born who are removed from the nursing home otherwise than to the custody or care of any parent, guardian or relative;
- (h) the notification required to be given of any death occurring in the nursing home;
- (i) the conditions regarding accommodation, sanitary and other facilities and minimum equipments;
- (j) conditions subject to which an officer authorised under sub-section (1) of section 7 may exercise his powers under that sub-section;
- (k) any other matter which has to be, or may be prescribed

(3) The power to make rules under this section shall be subject to the condition of previous publication in the Government Gazette.