

**CHAPTER 63:05**  
**PRIVATE HOSPITALS AND NURSING HOMES**  
ARRANGEMENT OF SECTIONS

SECTION

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Act 18, 1989.

**An Act to regulate private hospitals, nursing homes and similar institutions and for purposes connected therewith.**

*[Date of Commencement: 1st November, 2001]*

**1. Short title**

This Act may be cited as the Private Hospitals and Nursing Homes Act.

**2. Interpretation**

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

**"house"** means a building or other structure, whether permanent or temporary, intended for habitation by patients; and where two or more houses are situated on adjacent pieces of land and are occupied by the same person, they shall be deemed to constitute a single house for the purposes of this Act;

**"inspector"** means an inspector appointed under section 14;

**"licence"** means a licence issued under this Act to operate a private hospital, and **"licensee"** shall be construed accordingly;

**"maternity home"** means any house used or intended to be used for the reception, treatment and confinement of pregnant women, or for the care and treatment of women immediately after childbirth;

**"medical practitioner"** means a person registered as such in accordance with the provisions of the Botswana Health Professions Act;

**"midwife"** means a person registered as a midwife in accordance with the provisions of the Nurses and Midwives Act;

**"nurse"** means a person registered as a nurse in accordance with the provisions of the Nurses and Midwives Act;

**"private hospital"** means a house where persons suffering from any sickness, injury or

infirmity are given medical or surgical treatment, or nursing care, and includes a maternity hospital or home, a convalescent home, a nursing home or a rejuvenation centre, but does not include a hospital or other establishment or institution for the care and treatment of persons suffering from any sickness, injury or infirmity operated or maintained by the Government or by a local authority;

"**superintendent**" means the person who has for the time being the direct and actual superintendence and charge of a private hospital;

"**treatment**" means the accommodation, maintenance, observation, nursing, medical care or supervision of a patient.

(2) Where by or under this Act any officer or member of the staff of a private hospital is required to be resident, it shall not be necessary that such person actually resides within the hospital, provided that he is on call and readily available.

### **3. Licensing of private hospitals**

(1) The Minister may, subject to the provisions of this Act, grant a licence for the use of any house as a private hospital.

(2) Except under the authority of a licence issued under this Act no house shall be used as a private hospital.

(3) Where a house is used as a private hospital in contravention of this section, the owner or tenant and every person concerned in the management of the house or in the admission thereto or treatment of any patient therein shall be guilty of an offence.

(4) The occupier of any house which at the commencement of this Act is being used as a private hospital, and who wishes to continue using the house as a private hospital, shall within three months after the commencement of this Act apply for the grant of a licence, and pending determination of the application may continue using the house as a private hospital.

### **4. Use of term "hospital"**

(1) The term hospital shall not be used in connection with any house unless such house is licensed under this Act.

(2) Any person who uses the term "hospital" in connection with the use of any house in which he has an interest as a place of care or treatment for persons who are sick, injured or infirm, or receiving maternity care or treatment and which is not licensed under this Act shall be guilty of an offence.

### **5. Application for licence**

(1) An application for a licence to operate a private hospital shall be submitted in writing to the Minister in the prescribed form.

(2) Before granting a licence under this Act the Minister may call for the report of an inspector to determine that the location of the house and its purpose, facilities and equipment in relation to their proposed purpose are satisfactory and that the applicant and every person concerned with the proposed operation of the private hospital is of satisfactory fitness.

### **6. Classes of private hospitals**

(1) Every licence for a private hospital shall specify the nature of the service that may be provided, and without limiting the generality of the foregoing, may be issued in respect of-

- (a) a medical or surgical hospital;
- (b) a medical, surgical and maternity hospital;
- (c) a maternity hospital;
- (d) a home for the care and accommodation of convalescent or chronically ill persons;
- (e) a hospital for the care of any specified class of patients suffering from any specified disease, disorder or illness;
- (f) a rejuvenation centre.

(2) Subsection (1) shall not prevent the carrying out at a private hospital, in a case of emergency, of such surgical treatment as may, in the opinion of a medical practitioner be necessary.

(3) If the treatment referred to in subsection (2) is not within the terms of the licence relating to the private hospital, a report shall be made by the superintendent thereof, to the Minister, within forty-eight hours after the treatment has been administered, stating the nature of the treatment and the name or names of the medical practitioner or medical practitioners who recommended and performed the treatment.

(4) Every licence shall state the maximum number of patients who may be accommodated in the hospital at any time, which may be limited to a particular class or classes of patient.

(5) Every licence shall remain in force for a period of five years from the date of issue, and may be renewed from time to time for further periods of five years.

#### **7. Refusal to renew licence and revocation of licence**

(1) The Minister may refuse to renew the licence of a private hospital if it is operated or managed in a manner that contravenes any provision of this Act.

(2) The Minister may, at any time, revoke the licence of a private hospital-

- (a) if the licensee or superintendent has been or is convicted of an offence against this Act, or wilfully neglects or refuses to comply with any of the provisions of the Act, or obstructs, impedes or hinders any person carrying out any duties or responsibilities thereunder;
- (b) if, in the opinion of the Minister, the premises are insanitary or without proper fire protection, or the hospital is managed or conducted in a manner contrary to the provisions of the Act, or in such a manner that the revocation is required in the public interest.

(3) Where the renewal of a licence is refused or where a licence is revoked, the licence shall not be displayed in a manner that may induce a person to believe that it is still in force, and any person who so wrongfully displays a licence shall be guilty of an offence.

#### **8. Notice of grounds of refusal or revocation**

(1) Before the Minister refuses to grant, or to renew a licence, or before he revokes a licence, he shall give notice to the applicant for a licence, or the licensee, as the case may be, of the grounds on which he proposes to refuse the grant, or renewal of, or proposes to revoke, the licence.

(2) The Minister shall allow the applicant for a licence, or licensee, as the case may be, within such time as he may stipulate, an opportunity to show cause why the licence should be granted or renewed, or should not be revoked, and may give to the applicant or licensee, an opportunity to remedy any default within a reasonable period.

#### **9. Death of licensees**

(1) Where a licence has been issued to two or more persons jointly, the death of one of them shall not affect the validity of the licence in respect of the survivor or survivors.

(2) Where a sole licensee, or the sole surviving licensee of a private hospital dies, the Minister may, after considering the representations of the executors or administrators of the deceased licensee, or of other interested parties, transfer the licence to such person or persons as shall seem proper, and pending such transfer the Minister may grant a temporary licence for a period not exceeding six months at a time and subject to such terms and conditions as he considers appropriate.

#### **10. Transfer of licence**

On the application in writing signed by the licensee and by any person to whom he desires that his licence be transferred, the Minister may, if he is satisfied as to the character and fitness of such person, by endorsement on the licence or otherwise in writing, transfer the licence to that person, and thereupon that person shall become the licensee of the private hospital with the same rights and obligations as if the licence had been issued to him in the first instance.

#### **11. Resident superintendent**

(1) Every private hospital shall, at all times, have a superintendent resident thereat.

(2) A superintendent shall possess such qualifications for the post as may be prescribed, and the licensee may, if so qualified, himself be designated as the superintendent.

(3) Save as otherwise provided by subsection (4), no person shall be designated as the superintendent of a private hospital until his name and qualifications have been supplied to the Minister and the Minister has approved of the person being so designated.

(4) During the temporary absence, illness or incapacity of the superintendent, the licensee may designate some other suitably qualified person to perform the functions of superintendent and any person so designated shall, whilst he so acts, and for the purposes of this Act, be deemed to be the superintendent, and is required to be resident at the private hospital.

(5) If at any time a private hospital is used as such without there being a superintendent, or a person acting as superintendent in accordance with subsection (4), resident thereat the licensee shall be guilty of an offence.

## **12. Register of patients etc.**

(1) There shall be kept at every private hospital a register of patients in which shall be recorded-

(a) the name, age, sex and usual place of abode of each patient, and the date of his admission to the hospital;

(b) each patient's diagnosis;

(c) the name of the medical practitioner attending each patient;

(d) the date on which each patient leaves the hospital and, if transferred to another hospital, the name of the other hospital, or in the event of the death of a patient in hospital, the date of his death; and

(e) such other particulars as may be prescribed.

(2) The particulars required by subsection (1) shall be entered in the register as soon as practicable after the occurrence of the act or event to which the entry relates.

(3) The superintendent shall, within forty eight hours after the death of a patient, make a report thereof to the Minister or any other person designated by the Minister, giving the name of the patient, the cause of death, and the name of the attending medical practitioner.

(4) The superintendent shall, within forty-eight hours after its occurrence, report to the officer in charge of the nearest police station, any death occurring within twenty-four hours following surgery, childbirth or anaesthesia, or any death which the superintendent is not satisfied was the result of natural causes.

(5) In the event of any contravention of the provisions of subsection (1), (2), (3), (4) or (5) the licensee and the superintendent shall be guilty of an offence.

(6) Any person who knowingly makes a false entry in the register required by subsections (1) and (2) shall be guilty of an offence.

## **13. Structural alterations**

(1) No structural alteration or addition shall be made to a private hospital unless a plan of the proposed alteration or addition has been submitted to and approved by the Minister.

(2) Where an alteration or addition is made to a private hospital in contravention of subsection (1) the licensee shall be guilty of an offence.

## **14. Inspection of private hospitals**

(1) The Minister may appoint one or more medical practitioners to be inspectors for the purposes of this Act, and shall supply to such inspector or inspectors certificates of their appointments.

(2) Every private hospital shall be inspected at least once annually, and such hospital, the operation thereof and its registers and records shall at all times be open to inspection by an inspector.

(3) Where an inspector has reasonable grounds to believe or to suspect that any house

is being used as a private hospital without being licensed under this Act, he, upon presentation of his certificate of appointment, at any time and from time to time, by himself or with such assistance as he may require, enter and inspect the building and every part thereof.

(4) The Minister may designate teams consisting of a medical practitioner and a midwife and such other persons as the Minister may consider necessary, which shall be authorized to make inspection and examination of any private hospital or any house reasonably suspected of being used as a private hospital without being licensed under this Act, or any aspects of the administration, operation or management thereof as may be specified, and to report thereon to the Minister.

(5) Any person who prevents, or obstructs or hinders the entry, inspection or examination by an inspector or a team exercising powers granted under this section shall be guilty of an offence.

#### **15. Hospital restricted in terms of licence**

(1) A private hospital shall not, except as provided for in section 6(2), be used for any purpose other than the purpose or purposes for which its licence is issued, and for purposes incidental thereto.

(2) Where a private hospital is used in any manner contrary to (1), the licensee and the superintendent shall be guilty of an offence.

#### **16. Offences by body corporate**

(1) Where an offence under this Act is committed by a body corporate, every person who at the time of the commission of the offence is a director or officer of that body shall be guilty of the same offence unless he proves that the act or commission, or omission constituting the offence took place without his knowledge or that he exercised all due diligence to prevent the contravention of the Act.

#### **17. Burden of proof**

In a prosecution for an offence under this Act the burden of proving-

- (a) that a person found in a house, and there receiving medical treatment, is not a patient within the meaning of this Act;
- (b) that a licence is in force, and its terms; and
- (c) that a person having apparent charge, control or management of a private hospital is not the superintendent thereof within the meaning of this Act,

shall be upon the person charged.

#### **18. Regulations**

The Minister may make regulations with respect to private hospitals either generally or as regards any particular class of private hospital as may be deemed necessary or desirable for the carrying out or better carrying out of the purposes of this Act, and, without limiting the generality of the foregoing, may provide for-

- (a) the constitution, establishment, licensing, alteration, addition to, safety, equipment, maintenance and repair of private hospitals;
- (b) the classification, grades and standards of private hospitals;
- (c) the inspection, control, government, management, conduct, operation and use of private hospitals;
- (d) the particulars to be contained in applications for a licence;
- (e) the qualifications required of superintendents and other professional and administrative staff of private hospitals, including their powers and duties;
- (f) the powers and duties of inspectors;
- (g) prescribing or restricting the type and amount of surgery, gynaecology or obstetrics that may be performed in any class of private hospital and the facilities and equipment that shall be provided for such purposes;
- (h) the admission, treatment, care and discharge of patients and for the control of the admission of any class of patient;

- (i) the records, books, reports, returns and other documents to be made and kept in respect of private hospitals;
- (j) the reports and returns to be submitted to the Minister by private hospitals;
- (k) prescribing anything authorized or requiring to be prescribed under this Act.

**19. Restriction on number of patients**

Where, except in the case of emergency, not exceeding seven days, or such further time as may be authorized by the Minister, a private hospital is used for the treatment of a greater number of patients than is permitted by the licence, or where a patient of a class not permitted by the licence is admitted, the licensee and the superintendent shall be guilty of an offence.

**20. Penalties**

Any person guilty of an offence under this Act shall be liable to a fine of five hundred Pula and to imprisonment for twelve months, and in the case of a continuing offence to an additional fine of twenty five Pula for every day during which the offence continues subsequent to the date to which the conviction relates.