



LAWS OF KENYA

MENTAL HEALTH ACT

CHAPTER 248

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CHAPTER 248

MENTAL HEALTH ACT

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CHAPTER 248

MENTAL HEALTH ACT

[Date of assent: 27th November, 1989.]

[Date of commencement: 1st May, 1991.]

An Act of Parliament to amend and consolidate the law relating to the care of persons who are suffering from mental disorder or mental subnormality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals; and for connected purposes

[L.N. 143/1991, Act No. 11 of 1993.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Mental Health Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Board**” means the Kenya Board of Mental Health established under section 4;

“**court**” means the High Court;

“**Director**” means the Director of Medical Services;

“**magistrate**” means a magistrate holding a subordinate court of the first class;

“**manager**” means any person appointed under Part XII;

“**medical practitioner**” has the meaning assigned to that term in sections 2 and 3 of the Medical Practitioners and Dentists Act (Cap. 253);

“**mental hospital**” means a mental hospital established under section 9;

“**person in charge**”, in relation to a mental hospital, means the person for the time being authorized by the Director to be in medical charge of the mental hospital;

“**person suffering from mental disorder**” means a person who has been found to be so suffering under this Act and includes a person diagnosed as a psychopathic person with mental illness and person suffering from mental impairment due to alcohol or substance abuse;

“**substance abuse**” means the maladaptive pattern of use as indicated by either recurrent or continued use of any psychoactive substances (such as alcohol, amphetamine, cannabis sativa, cocaine, hallucinogens, inhalants, opioids, sedatives, hypnotics, or anxiolytics) where such use causes or exacerbates persistent or recurrent social, occupational, psychological or physical problems;

“**treatment**” includes medical treatment, nursing and care and training under medical supervision.

[Act No. 11 of 1993, Sch.]

PART II – RECEPTION OF PERSONS IN MENTAL HOSPITALS

3. Reception into mental hospital

Subject to the Criminal Procedure Code (Cap. 75), no person shall be received or detained for treatment in a mental hospital unless he is received and detained under this Act.

PART III – THE KENYA BOARD OF MENTAL HEALTH

4. Establishment of the Board

(1) There shall be established a Board to be known as the Kenya Board of Mental Health for the purposes of this Act.

(2) The Board shall consist of—

- (a) a chairman, who shall be the Director of Medical Services or a Deputy Director of Medical Services appointed by the Minister;
- (b) one medical practitioner with specialization and experience in mental health care appointed by the Minister;
- (c) one clinical officer with training and experience in mental health care appointed by the Minister;
- (d) one nurse with training and experience in mental health care appointed by the Minister;
- (e) the Commissioner for Social Services or, where the Commissioner cannot serve, his nominee appointed by the Minister;
- (f) the Director of Education or, where the Director cannot serve, his nominee appointed by the Minister;
- (g) a representative of each of the provinces of Kenya being persons resident in the provinces, appointed by the Minister;
- (h) the Deputy Director of Mental Health;
- (i) the Chief Nursing Officer.

(3) The members of the Board appointed by the Minister shall serve at the Minister's pleasure for a period not exceeding three years and shall be eligible for re-appointment.

(4) The Board may co-opt any person whose skills, knowledge or experience may be useful to the Board or to any committee of the Board.

(5) The Board may for any purpose or function establish committees of the Board.

(6) Subject to this section, the Board shall regulate its own procedure and the procedure of any committee established by it.

[Act No. 11 of 1993, Sch.]

5. Functions of the Board

The functions of the Board shall, under the control of and direction of the Minister, be—

- (a) to co-ordinate the mental health care activities in Kenya;

- (b) to advise the Government on the state of mental health and mental health care facilities in Kenya;
- (c) to approve the establishment of mental hospitals;
- (d) to inspect mental hospitals to ensure that they meet the prescribed standards;
- (e) to assist, whenever necessary, in the administration of any mental hospital;
- (f) to receive and investigate any matter referred to it by a patient or a relative of a patient concerning the treatment of the patient at a mental hospital and where necessary to take, or recommend to the Minister, any remedial action;
- (g) to advise the Government on the care of persons suffering from mental subnormality without mental disorder;
- (h) to initiate and organize community or family based programmes for the care of persons suffering from mental disorder; and
- (i) to perform such other functions as may be conferred upon it by or under this or other written law.

6. The Director of Mental Health and staff of the Board

(1) There shall be a Director of Mental Health whose office shall be an office in the public service and who shall be the secretary and chief executive officer of the Board.

(2) There may be appointed such staff for the Board, who may be public officers, as are necessary to enable the Board to effectively carry out its functions.

7. District mental health councils

(1) The Minister may, in consultation with the Board, appoint district mental health councils to perform, at the district level, such of the Board's functions as the Minister shall direct and report thereon to the Board in such manner as the Minister shall approve.

(2) A district mental health council shall consist of not less than five and not more than seven persons including the district medical officer of health.

(3) The members of a district mental health council other than the district medical officer of health shall serve thereon at the Minister's pleasure but for not more than three years at one time and shall be eligible for re-appointment.

(4) For the purposes of this section the Nairobi Area shall be a district for which a district mental health council may be appointed.

8. Expenses of the Board and the district mental health councils

(1) The expenses of the Board and the district mental health councils shall be met out of funds voted for the purpose by Parliament.

(2) There may be paid to the members of the Board, other than public officers in receipt of a salary, such allowances as the Minister, in consultation with the Minister for the time being responsible for finance, shall determine.

PART IV – MENTAL HOSPITALS

9. Establishment of mental hospitals

(1) A mental hospital authorized by the Director under section 2 of the Mental Treatment Act (Cap. 248 (1970)) now repealed) shall be deemed to have been established under this Act.

(2) A hospital or part of a hospital or other place may be authorized by the Board, by notice in the *Gazette*, to be a mental hospital and a place for the reception and treatment as in-patients of two or more persons who are suffering from mental disorder.

(3) The Board may, under this section, authorize places within prisons established under the Prisons Act (Cap. 90) to be places for the reception and treatment during their term of remand or imprisonment of remand prisoners and convicted criminal prisoners who are persons suffering from mental disorder.

(4) An application to the Board for authority to establish a mental hospital shall be in the prescribed form accompanied by the prescribed fee.

(5) The Minister may, in consultation with the Board, make rules for the control and proper management of mental hospitals and may by such rules prescribe the standards to be maintained for mental hospitals.

(6) Every mental hospital shall have facilities for in-patient and out-patient treatment of persons suffering from mental disorder.

(7) There may be established public mental hospitals operated and managed by the Government and private mental hospitals operated and managed by persons other than the Government.

PART V – VOLUNTARY PATIENTS

10. Power to receive voluntary patients

(1) Any person who has attained the apparent age of sixteen years, who desires to voluntarily submit himself to treatment for mental disorder and who makes to the person in charge a written application in duplicate in the form prescribed, may be received as a voluntary patient into a mental hospital.

(2) Any person who has not attained the apparent age of sixteen years and whose parent or guardian desires to submit him to treatment for mental disorder may, if the parent or guardian makes to the person in charge of a mental hospital a written application in duplicate in the prescribed form, be received as a voluntary patient.

(3) Any person received as a voluntary patient under this section may leave the mental hospital, upon giving to the person in charge seventy-two hours' notice in writing of his intention to leave and if he is a person who has not attained the apparent age of sixteen years, upon such notice being given by his parent or guardian, and the release shall be at the discretion of the person in charge of the mental hospital concerned.

11. Voluntary patient to be reviewed within seventy-two hours

Where a person is received into a mental hospital as a voluntary patient under section 10, the person in charge shall within seventy-two hours review the condition of that patient or cause the condition to be reviewed within that time.

12. Notification of reception, death or departure of voluntary patient

Where a person is received into a mental hospital as a voluntary patient under section 10, or where a person so received dies in or departs from a mental hospital, information of his reception, death or departure shall be given by the person in charge to the district mental health council.

13. Voluntary patient not to be retained for more than forty-two days after becoming incapable of expressing himself

(1) A voluntary patient received into a mental hospital under section 10 who at any time becomes incapable of expressing himself as willing or unwilling to continue to receive treatment, shall not be retained as a voluntary patient for more than forty-two days thereafter, and shall be discharged on or before the expiration of that period unless, in the meantime he has again become capable of so expressing himself and the person in charge, in consultation with the district mental health council, considers that his continued stay in the mental hospital may be of benefit to the voluntary patient and the person in charge of the patient shall subject to sections 15 and 22, retain the person in the mental hospital until an order for discharge can be made under section 21.

(2) If a voluntary patient who has not attained the age of sixteen years and who has been received in a mental hospital under section 10 ceases to have any parent or guardian or if his parent or guardian is incapable of performing or refuses or persistently neglects to perform, his duty as parent or guardian, the person in charge shall report the circumstances of the case and the condition of the voluntary patient to the district mental health council who shall forthwith consider the report and give such directions for the retention or discharge of the patient as may be proper.

(3) The person in charge shall act on any direction given by the district mental health council under subsection (2).

PART VI – INVOLUNTARY PATIENTS**14. Temporary treatment without certificate of certain persons**

(1) Subject to this section, a person who is suffering from mental disorder and is likely to benefit by treatment in a mental hospital but is for the time being incapable of expressing himself as willing or unwilling to receive treatment, may, on a written application under this section, be received into a mental hospital as an involuntary patient for treatment.

(2) An application under this section shall be made in the prescribed form to the person in charge and shall be made—

- (a) by the husband or wife, or by a relative, of the person to whom it relates; or

- (b) if there is no husband, wife or relative available or willing to make an application, by any other person who shall state in his application the reason why it is not made as provided under paragraph (a), the connection of the applicant with the person to whom the application relates and the circumstances in which the application is made.

(3) The application shall be accompanied by a recommendation in duplicate, in the prescribed form, signed by a medical practitioner, who shall where practicable be the usual medical practitioner attending the person concerned and where this is not practicable a medical practitioner approved by the Director for the purpose of making any such recommendation, shall make it.

(4) The medical practitioner who makes a recommendation under this section shall, before signing the recommendation, examine the person to whom the recommendation relates and specify in the recommendation the date or dates on which he examined the person and the grounds on which the recommendation is based.

(5) A recommendation shall cease to have effect on the expiration of fourteen days from the last date on which the person to whom the recommendation relates was examined by the medical practitioner.

(6) A person received as an involuntary patient into a mental hospital may be admitted in the hospital for a period not exceeding six months which period may be extended by the person in charge for a further period not exceeding six months:

Provided that an involuntary patient shall not be admitted in a mental hospital for any continuous period exceeding twelve months.

(7) Where a person has been received into a mental hospital as an involuntary patient under this section, or if a patient so received dies in or departs from the mental hospital, information of the reception, death or departure shall be given by the person in charge to the district mental health council.

15. Board's powers of discharge

Where any person has been received into a mental hospital under Part V or this Part, the Board may at any time order that the person shall be discharged or otherwise dealt with under this Act.

PART VII – EMERGENCY ADMISSION

16. Power to take person suffering from mental disorder into custody

(1) Any police officer of or above the rank of inspector, officer in charge of a police station, administrative officer, chief or assistant chief may take or cause to be taken into his custody—

- (a) any person whom he believes to be suffering from mental disorder and who is found within the limits of his jurisdiction; and
- (b) any person within the limits of his jurisdiction whom he believes is dangerous to himself or to others, or who, because of the mental disorder acts or is likely to act in a manner offensive to public decency; and

- (c) any person whom he believes to be suffering from mental disorder and is not under proper care and control, or is being cruelly treated or neglected by any relative or other person having charge of him.

(2) Any person taken into custody under subsection (1) shall be taken to a mental hospital by the person taking him into custody within twenty-four hours of being taken into custody or within a reasonable time, and the burden of proving that the person was taken to a mental hospital within a reasonable time shall lie on the person taking him into custody.

(3) The person in charge of the mental hospital to which a person is taken under this section shall admit that person for a period not exceeding seventy-two hours for the purpose of enabling him to be examined and of making any necessary arrangements for his treatment and care.

(4) The person in charge may after examination under subsection (3), if he thinks fit, make the person admitted into the mental hospital over to the care of any relative or detain the person in the mental hospital as an involuntary patient deemed to be admitted under Part VI.

PART VIII – ADMISSION AND DISCHARGE OF MEMBERS OF THE ARMED FORCES

17. Admission of member of armed forces into mental hospital for observation and treatment

(1) Notwithstanding anything to the contrary in this Act, any member of the armed forces may be admitted into a mental hospital for observation if a medical officer of the armed forces by a letter addressed to the person in charge certifies that—

- (a) he has examined the member of the armed forces within a period of forty-eight hours before issuing the letter; and
- (b) for the reasons recorded in the letter the member of the armed forces is a proper person to be admitted to a mental hospital for observation and treatment.

(2) A member of the armed forces may be admitted to a mental hospital under subsection (1) for an initial period not exceeding twenty-eight days from the date of admission and that period may be extended if at or before the end of the twenty-eight days two medical practitioners, one of whom shall be a psychiatrist, recommend the extension after re-examining the patient.

(3) A member of the armed forces admitted to a mental hospital under subsection (1) may be discharged from that hospital if two medical practitioners, one of whom shall be psychiatrist, by a letter addressed to the person in charge certify that—

- (a) they have examined the member of the armed forces within a period of seventy-two hours before issuing the letter; and
- (b) for the reasons recorded in the letter it is desirable that the member of the armed forces be discharged from the mental hospital and where the mental hospital is not an armed forces hospital the member of the armed forces shall be discharged to the nearest armed forces health unit which shall arrange to transport the patient to his armed forces unit.

(4) Where any member of the armed forces suffers from mental disorder while away from his armed forces unit, and is in any circumstances admitted into a mental hospital, the person in charge shall inform the nearest armed forces unit directly or through an administrative officer or gazetted police officer.

(5) If a member of the armed forces admitted to a mental hospital under this section ceases to be a member of the armed forces while admitted, the relevant authority in the armed forces shall inform the person in charge of that fact and the patient shall be deemed to be an involuntary patient under Part VI admitted from the date the information is received.

PART IX – ADMISSION OF PATIENTS FROM FOREIGN COUNTRIES

18. Admission of patients from foreign countries to be under this Part

(1) No person suffering from mental disorder shall be admitted into a mental hospital in Kenya from any place outside Kenya except under this Part.

(2) This Part shall not apply to persons ordinarily resident in Kenya.

19. Admission of patients from foreign countries

(1) Where it is necessary to admit a person suffering from mental disorder from any foreign country into any mental hospital in Kenya for observation or treatment the Government or other relevant authority in that country shall apply in writing to the Board to approve the admission and no mental hospital shall receive a person suffering from mental disorder from a foreign country without the Board's written approval.

(2) The application for the Board's approval under subsection (1) shall indicate that the person to whom it relates has been legally detained in the foreign country for a period not exceeding two months under the law in that country relating to the detention and treatment of persons suffering from mental disorder and his admission into the mental hospital in Kenya has been found necessary.

(3) No person shall be admitted into a mental hospital under this section unless he is accompanied by a warrant or other document duly authorizing his detention in and removal from the foreign country and the warrant or other document together with the Board's approval under subsection (2) shall be sufficient authority for his conveyance to, admission and treatment in the mental hospital to which the Board's approval relates.

(4) On the admission of a person into a mental hospital under this section, not being a person transferred to the mental hospital under section 23, the person in charge shall within seventy-two hours or such longer period as the Board may approve—

- (a) examine the person or cause the person to be examined to determine the extent of mental disorder and the nature of treatment; and
- (b) within that period forward to the Board his report on the findings together with the warrant or other document from the foreign country concerned accompanying the person.

(5) A person shall not be detained in a mental hospital under this section for a period longer than two months from the date of admission to the mental hospital unless the Board, on application in the prescribed form by the person in charge, approves.

20. Admission fees under this Part

(1) The Minister may, after consultation with the Minister for the time being responsible for Finance, by notice in the *Gazette*, prescribe the fees payable for admission of persons into Government mental hospitals under this Part and the manner of payment of those fees.

(2) A non-Government mental hospital admitting persons under this Part may charge such fees and in such manner as the Minister for the time being responsible for finance may from time to time approve in writing.

PART X – DISCHARGE AND TRANSFER OF PATIENTS

21. Discharges

The person in charge of a mental hospital may, by order in writing and upon the recommendation of the medical practitioner in charge of any person's treatment in the mental hospital, order the discharge of any person admitted to the mental hospital and that person shall thereupon be discharged as having recovered from mental disorder:

Provided that—

- (i) an order shall not be made under this section for a person who is detained under the Criminal Procedure Code (Cap. 75); and
- (ii) this section shall not prejudice the Board's powers under section 15.

22. Order for delivery of patient into care of relative or friend

(1) If any relative or friend of a person admitted into any mental hospital under this Act desires to take the person into his custody and care, he may apply to the person in charge, who may, subject to subsection (2), order that the person be delivered into the custody and care of the relative or friend upon such terms and conditions to be complied with by the relative or friend.

(2) In the exercise of his powers under subsection (1) the person in charge shall consult with the medical practitioner in charge of the person's treatment in the mental hospital and the Board or the relevant district mental health council which is performing the Board's functions under section 7(1):

Provided that the consultation shall be conducted with the minimum delay.

(3) A relative or friend who takes a person from a mental hospital under this section but is subsequently unable or unwilling to continue to take care of the person, shall report the matter to the person in charge of the mental hospital from which the person was taken and the person in charge may admit the person back to the mental hospital under the terms and conditions he had been admitted before delivery to the relative or friend.

(4) The person in charge shall report the re-admission under subsection (3) to the Board or the relevant district mental health council as the case may be.

(5) Subsection (3) shall not apply to any person from a foreign country who may only be readmitted under Part IX.

(6) The person in charge of a mental hospital from which a person has been taken into the custody and care of a relative under subsection (3) may at any time during such custody and upon the recommendations of the medical practitioner in charge of the person's treatment in the mental hospital order that the person be discharged as having recovered from mental disorder.

23. Transfer of patients in Government hospitals

(1) Any person detained in a Government mental hospital under this Act may be transferred by order of the Director from one Government mental hospital to another.

(2) Where a person is transferred under subsection (1), the person responsible for conveying him shall produce to the person in charge of the mental hospital to which the transfer is made a certified copy of the order of the Director.

PART XI – REMOVAL OF PATIENTS TO OTHER COUNTRIES

24. Removal of patients to other countries

(1) A friend or relative of a person suffering from mental disorder and who desires that the person, whether admitted into a mental hospital or not, should be removed from Kenya to a foreign country for subsequent treatment and care, shall apply to the Board for approval of the removal.

(2) The Board shall inquire into the case of the person to whom the application under subsection (1) relates in such manner as it deems fit, and if satisfied that the removal is likely to be for the person's benefit, and that proper arrangements have been made for the proper removal and subsequent treatment and care the Board may by warrant in the prescribed form and subject to subsection (3), direct that the person be delivered to a person, named in the warrant, for the purpose of being removed to the foreign country specified in the warrant.

(3) No warrant for the removal of any person to a foreign country shall be issued by the Board under subsection (2) unless a prior consent to receive the person has been obtained from the proper authorities in the foreign country.

25. Cost of removal and maintenance

The cost of removal under this Part of any person, of his maintenance after removal, of his return and of his being sent, in the event of discharge after recovery, to any place shall be paid in such manner as may be arranged between the Government and the proper authorities in the country concerned:

Provided that nothing in this Part shall affect any power to recover any part, or the whole, of the cost of the removal from the property of the person removed or from any person legally liable to maintain him, or otherwise.

PART XII – JUDICIAL POWER OVER PERSONS AND ESTATES OF
PERSONS SUFFERING FROM MENTAL DISORDER

26. Order for custody, management and guardianship

(1) The court may make orders—

- (a) for the management of the estate of any person suffering from mental disorder; and
- (b) for the guardianship of any person suffering from mental disorder by any near relative or by any other suitable person.

(2) Where there is no known relative or other suitable person, the court may order that the Public Trustee be appointed manager of the estate and guardian of any such person.

(3) Whereupon inquiry it is found that the person to whom the inquiry relates is suffering from mental disorder to such an extent as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others or likely to act in a manner offensive to public decency, the court may make such orders as it may think fit for the management of the estate of such person, including proper provision for his maintenance and for the maintenance of such members of his family as are dependent upon him for maintenance, but need not, in such case, make any order as to the custody of the person suffering from mental disorder.

27. Power of manager in respect of estate

(1) Where a manager is appointed under this Part, the court may order that the manager shall have such general or special powers for the management of the estate as the court considers necessary and proper regard being had to the nature of the property whether movable or immovable, of which the estate may consist:

Provided that—

- (i) a manager so appointed shall not, without the special permission of the court—
 - (a) mortgage, charge or transfer by sale, gift, surrender, exchange or otherwise any immovable property of which the estate may consist;
 - (b) lease any such property for a term exceeding five years; or
 - (c) invest in any securities other than those authorized by section 4 of the Trustee Act (Cap. 167);
- (ii) no manager may invest any funds belonging to the estate of which he is manager in any company or undertaking in which he himself has an interest, nor on the purchase of immovable property under the authority of paragraph (d) of section 4(1) of the Trustee Act without the prior consent of the court.

(2) Where the person appointed to be manager of an estate or guardian of a person under this Part is unwilling to act gratuitously, the court may fix such allowance to be paid out of the estate of the person in respect of whom the manager or guardian has been appointed as, in the circumstances of the case, the court may think fit.

(3) Any manager appointed under any other law in force before the commencement of this Act shall be deemed to have been appointed under this Act as from such commencement, but shall not be required to file any inventory or statement under subsection (1) of section 33 if he has already done so before such commencement.

(4) For the purposes of this Act and the Penal Code (Cap. 63), a manager shall be deemed to be a trustee under any other law for the time being in force.

28. Power to make order concerning any matter with the person

(1) The court may, upon application made to it by petition concerning any matter connected with a person suffering from mental disorder or with his estate, make such order, subject to this Part, regarding such application as, in the circumstance's of the case, the court may think fit.

(2) The Minister, the Public Trustee or a manager may take out, as a matter of course, an application in chambers for the determination of any question arising out of the management of any estate in respect of which an order has been made under this Part.

29. Power to apply property for maintenance of person suffering from mental disorder without appointing manager

(1) Where it appears to the court that, having regard to the circumstances of a person who is suffering from mental disorder and of his family and any other relative circumstance, it is expedient that his property should be made available for his or their maintenance it may, instead of appointing a manager or, notwithstanding such appointment, order that the property or the proceeds thereof when realized be paid to such person as the court may think fit, to be applied for such maintenance.

(2) Where it appears to the court that a person is suffering from mental disorder of a temporary nature and that it is expedient to make temporary provision for his maintenance or for the maintenance of such members of his family as are dependent upon him for their maintenance, the court may in the manner provided in subsection (1), direct that his property or sufficient part of it be applied for such purpose.

(3) The receipt of any person under subsection (1) shall be a valid discharge to any person who pays any money delivers any property of the person suffering from mental disorder to the person so appointed.

30. Powers of court over property of person who has no manager appointed

Where no manager is appointed, the court may, if it appears to be just or for the benefit of the person suffering from mental disorder, order that any property of such person, be sold, charged, mortgaged or otherwise disposed of as may seem most expedient for the purpose of raising, securing or repaying, with or without interest money to be applied, or which has been applied to all or any of the following purposes—

- (a) the payment of the debts or engagements of such person;
- (b) the discharge of any encumbrance on his property;

- (c) the payment of any debt or encumbrance on his property for the maintenance of such person or otherwise for his benefit;
- (d) the payment of or provision for the expenses of his future maintenance and the maintenance of such members of his family as are dependent upon him for maintenance, including the expenses of his removal from Kenya if he is so removed and all expenses incidental thereto; or
- (e) the payment of the costs of any inquiry under this Act and of any costs incurred by order or under the authority of the court.

31. Power to order transfer of property of person residing out of Kenya

Where any movable or immovable property is vested in any person residing out of Kenya, the court may, upon being satisfied that such person is suffering from mental disorder and that a manager has been appointed for his estate according to the law of the place where he is residing, order some fit person to pay, deliver or transfer such property, or any part of that property, to the name of the appointed, as the court may think fit.

32. Execution of conveyances and powers by manager under order of court

A manager, or such other person as the court may appoint for the purpose, shall on behalf of the person suffering from mental disorder execute any conveyance and instrument relating to any sale, mortgage or other disposition of such person's estate as the court may order, and any conveyance or other instrument executed by such manager, or any other such person, with the sanction of the court, shall be as valid and effectual in all respects as if it had been executed by the person suffering from mental disorder while he was not so suffering.

33. Manager to furnish inventory and annual accounts

(1) Every person appointed by the court to be manager of the estate of a person under this Part shall, within six months of the date of his appointment, deliver to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) an inventory of the property belonging to the person of whose estate he has been appointed manager and all such sums of money, goods and effects as he receives on account of the estate, together with a statement of all debts owed by or due to such person, and every such manager shall furnish to the court and to the Public Trustee (to whom he shall pay such fee as may be prescribed) annually, within three months of the 31st December, an account of the property in his charge showing the sums received and disbursed on account of the estate during the year and the balance; such inventory, statement and account shall be in the prescribed form.

(2) Any person may, on payment of such fee as may be prescribed, inspect and obtain a copy of any inventory, statement or account delivered to the court and to the public Trustee under subsection (1).

(3) The Public Trustee shall report to the Minister annually on all accounts delivered to him under subsection (2).

(4) Where any person, by petition to the court, impugns the accuracy of any inventory or statement or of any annual account made under this section, the court may summon the manager and inquire summarily into the matter, and make such order as it thinks proper or the court may refer the petition to a magistrate having jurisdiction in the place where the property belonging to the estate concerned is situated, for inquiry and report, and upon receipt of the magistrate's report the court may make such order as it thinks fit.

34. Removal of managers and guardians

(1) The court may, for any sufficient cause, remove any manager or guardian appointed by it under this Part, and may appoint any other fit person in his place; and may make such order as it considers necessary to ensure that the person removed transfers the property under his care, and of which he was manager, to his successor, and accounts to the successor for all money received or disbursed by him in connection with the property.

(2) The court may also, for any sufficient cause, remove the guardian of a person appointed by it and appoint any other fit person in his place.

35. Termination of appointment of manager

(1) On any termination of the appointment of any manager, that manager shall deliver an account, in the prescribed form, of the property of which he was manager, to the court which made his appointment.

(2) No such account shall be accepted as correct until it is approved by the Public Trustee who may charge such fee as may be prescribed.

(3) Any manager who, within a time fixed by the court, neglects or refuses to deliver on account under this section, or deliver to a person named by the court any property belonging to the estate of which he was manager, shall be guilty of an offence.

36. Orders on recovery of person previously suffering from mental disorder

Where any person has been found under this Act to be suffering from mental disorder, and it is subsequently shown to the court that there is reason to believe that he has recovered from the mental disorder, the court may, after receiving evidence by affidavit or otherwise, make such order as in the circumstances it deems just and expedient.

37. Examination of females

The attendance and examination of any person under this Act shall, if such person is a woman who according to the custom or religion of such woman ought not to be compelled to appear in public, be regulated by the law and practice for the examination of any such woman in civil cases.

38. Court procedure

Where a person alleged to be suffering from mental disorder is before the court or magistrate, such court or magistrate shall, whenever possible, sit in camera.

39. Chief Justice may delegate power to magistrates

The Chief Justice may, by notice in the *Gazette* confer upon any magistrate, either generally or in respect of a particular person or class of persons all or any of the powers conferred upon or vested in the court under this Act.

PART XIII – GENERAL PROVISIONS**40. Letters of patients**

(1) The person in charge of a mental hospital or every person having charge of any patient in the mental hospital shall forward all letters written by the patient and addressed to the Board or the relevant district mental health council, or to any member of the Board or relevant council as soon as practicable after such letters come to his notice.

(2) Letters addressed by patients to persons other than those mentioned in subsection (1) shall be forwarded as the person in charge may, in his discretion, decide.

(3) Every person in charge of a mental hospital and every person having charge of any patient in a mental hospital shall be entitled to examine and at his discretion, retain any letters addressed to persons other than to those mentioned in subsection (1).

41. Power to refuse reception into mental hospital

Notwithstanding anything in this Act, a person in charge of a mental hospital may refuse to receive any person into the hospital if there is insufficient or unsuitable accommodation available therein.

42. Protection of persons acting under Act

(1) Any person who does any act in pursuance or intended pursuance of this Act shall not be under any civil or criminal liability in respect thereof, if the court is satisfied that he has acted in good faith and with reasonable care.

(2) Any proceedings taken against any person for any act under subsection (1) may, upon application to the court in which they are taken, be stayed, if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious, and the court may award to the defendant such costs or compensation, or both, as it considers reasonable.

(3) No proceedings under this section shall be commenced after the expiry of six months from the act complained of or, in the case of a continuance of injury or damage, after the expiry of six months from the discovery of such Act.

(4) Nothing in this section shall be construed as depriving any person of any defence.

(5) No criminal proceedings shall be commenced under this Act without the prior consent in writing of the Attorney-General.

43. Who may not give certificates

No medical recommendation for admission of a person to a mental hospital and no medical certificate for the purposes of Parts V, VI, and VII shall be signed

by any person owning a financial interest in such mental hospital unless the person in respect of whom the recommendation or certificate is signed, is at the time of signing, admitted to the mental hospital or is lawfully detained in some other suitable place for observation as to his mental condition, by the person who signs the certificate.

[Act No. 11 of 1993, Sch.]

44. Amendment of order of certification

Where, after a person has been admitted into any mental hospital, the person in charge discovers any defect in the admission procedure or the medical recommendation upon which the person was admitted is defective, he may require the defect to be corrected at any time within fourteen days after the person is admitted into the mental hospital.

45. Detention of escapee

Every person admitted into a mental hospital under this Act shall remain admitted until he leaves or is removed or discharged, in accordance with this Act; and, if any person admitted to a mental hospital escapes, he may be taken by any police officer, by any person employed in such mental hospital or by any other person authorized by the person in charge of the mental hospital, and conveyed to and received into the mental hospital.

46. Insurance for treatment of persons suffering from mental disorder

(1) Every person in Kenya shall, be entitled, if he wishes, to insurance providing for his treatment as a person suffering from mental disorder and no insurance company shall make any insurance policy providing insurance against sickness, which excludes or restricts the treatment of persons suffering from mental disorder.

(2) An insurance company which makes any insurance policy which expressly excludes or puts restrictions on the treatment of any person suffering from mental disorder shall be guilty of an offence.

PART XIV – OFFENCES

47. Person other than medical practitioner signing certificates

Any person who, not being a medical practitioner or a person approved and authorised by the Director, knowingly and wilfully signs any medical certificate for the purposes of any of the provisions of this Act shall be guilty of an offence.

[Act No. 11 of 1993, Sch.]

48. False certificates

Any medical practitioner who knowingly, wilfully or recklessly, certifies anything in a certificate made under this Act, which he knows to be untrue, shall be guilty of an offence.

49. Escape of person suffering from mental disorder

Any person who wilfully assists the escape of any person suffering from mental disorder being conveyed to or from, or while under care and treatment in, a mental hospital, or who harbours any person suffering from mental disorder whom he knows has escaped from a mental hospital, shall be guilty of an offence.

50. Permitting patient to quit mental hospital unlawfully

Any person in charge of, or any person employed at, a mental hospital who through wilful neglect or connivance permits any patient in a mental hospital to leave such hospital other than under this Act or any other law for the time being in force shall be guilty of an offence.

51. Ill-treatment of person in mental hospital

Any person in charge of, or any person employed at, a mental hospital who strikes, ill-treats, abuses or wilfully neglects any patient in the mental hospital shall be guilty of an offence; but nothing in this section shall be deemed to make it an offence for the person in charge of, or any person employed at, a mental hospital to take steps he considers necessary in the interests of a patient to prevent the patient from causing physical injury to himself or to others.

52. Dealings with patients

Any person who, without the consent of the person in charge gives, sells or barter any articles or commodity of any kind to any patient in a mental hospital, whether inside or outside the grounds of the mental hospital, shall be guilty of an offence.

53. General penalty

Any person who is guilty of an offence under this Act, or who contravenes any of the provisions of this Act or of any regulations made under this Act shall, where no other penalty is expressly provided, be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

PART XV – POWER TO MAKE REGULATIONS AND
RULES OF COURT, ETC.

54. Regulations

The Minister may, in consultation with the Board, make regulations—

- (a) prescribing anything which under this Act may be prescribed;
- (b) generally for regulating the equipment, administration, control and management of mental hospitals;
- (c) for the care, treatment and rehabilitation of person suffering from mental disorder;
- (d) for the procedure of admission of out-patient patients;
- (e) for the better carrying out of the provisions of this Act.

55. Rules of court

The Chief Justice may make rules to provide for any matters relating to the procedure of the court, or of a magistrate, under this Act.

56. Repeal of the Mental Treatment Act (Cap. 248)

The Mental Treatment Act is repealed.

CHAPTER 248

MENTAL HEALTH ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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MENTAL HEALTH ACT (BOARD MEETINGS) REGULATIONS, 2000

ARRANGEMENT OF REGULATIONS

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 5. Disclosure of interest.
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MENTAL HEALTH ACT (BOARD MEETINGS) REGULATIONS, 2000

[L.N. 128/2000.]

1. Citation

These Regulations may be cited as the Mental Health Act (Board Meetings) Regulations, 2000.

2. Vice-Chairman

The Board shall elect a vice-chairman from amongst its members.

3. Vacation of office

A member other than the chairman or an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Minister;
- (b) be removed from office by the Minister if the member—
 - (i) has been absent from three consecutive meetings of the Board without permission from the Board;
 - (ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (iii) is incapacitated by prolonged physical or mental illness; or
 - (iv) is otherwise unable or unfit to discharge his functions.

4. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subregulation (1), the chairman may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be nine members.

(5) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the vice-chairman shall preside and shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(6) In the event of the absence of both the chairman and the vice-chairman, the members present shall elect one of their member to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(7) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by majority of the votes of the members present and voting and in the case of an equality of votes, the chairman or the vice-chairman or the person presiding shall have a casting vote.

(8) Subject to subregulation (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members of thereof.

5. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting on the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this subregulation shall be recorded in the minutes of the meeting at which it is made.
