

KENYA COUNSELORS AND PSYCHOLOGISTS BILL, 2012

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KENYA PSYCHOLOGISTS AND COUNSELORS BILL, 2012

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KENYA PSYCHOLOGISTS AND COUNSELORS BILL, 2012

An Act of Parliament to make provisions for the regulation of the professions of Counselling and Psychology, establishment of the counsellors and psychologists board and all other connected purposes.

PART I – PRELIMINARY

Short Title and commencement	1. This Act may be cited as the Counsellors and Psychologists Act and shall come into operation on such a date as the Cabinet Secretary may, by notice in the Gazette appoint, which date shall not exceed ninety days from the date of publication
Interpretation	2. In this Act, unless the context otherwise requires:- “Association” means the Kenya Counselling Association established under section 16; “Board” means the Kenya Counsellors and Psychologists Board established under section 3; “Cabinet Secretary” means the Cabinet Secretary responsible for Public Service. “Client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains, or is about to retain or employ a Counsellor or Psychologist or any other person who may be liable to pay a Counsellor or Psychologist any costs; “Costs” includes fees, charges, disbursements, expenses and any other remuneration; “Counselling” means the field and discipline related to the study that deals with mental process and behaviour that applies to research and applied work, counselling process and outcome, counsellor supervision and training, career guidance and development, and the offer of therapy and

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counselling services to any individual or the general public through media, internet, teaching and training.

“Counsellor” means any person whose name is duly registered in the Register of Counsellors and Psychologists as a Counsellor.

“Court” means the High Court of Kenya;

“Institute” means the Institute of Counselling and Psychology established under section 9

“Practising certificate” means a certificate issued under section 36;

“Psychology means the science that deals with mental processes and behaviour, the scientific study of all forms of human and animal behaviour, behavioural and cognitive characteristics of a specific individual group; activity or circumstance, the modification of behaviour, the study and treatment of mental diseases, the offer of therapy, psychological services and psycho education and all other attendant matters to any individual or the general public through media, internet, teaching and training.

‘Psychologist means any person whose name is duly registered in the registrar of Counsellors and Psychologists as a Psychologist and shall also refer to a Psychotherapist;

“Register” means, the Register of Counsellors and Psychologists under section 11;

“Registrar” means the Registrar of the Board;

“Society” means the Psychology society of Kenya established under section 13

“unqualified person” means a person not qualified under section 43 to act as a Counsellor or a Psychologist;

PART II – ADMINISTRATION

1. Kenya Counsellors and Psychologists Board

Establishment of
Kenya
Counsellors and
Psychologist
Board

3. (1) There is hereby established the Kenya
Counsellors and Psychologists Board.
- (2) The Board shall be a body corporate with perpetual
succession and a common seal and shall in its name be
capable of-
- (a) suing and being sued
 - (b) acquiring, holding, charging and disposing of movable
and immovable property;
 - (c) borrowing and lending money
 - (d) doing or performing such other things and acts as may
legally be done or performed by a body corporate for
the proper discharge of its functions under this Act

Composition of
the Board

4. (1) The Board shall consist of -
- (a) The Chairperson appointed by the Cabinet Secretary;
 - (b) The officer in charge of mental health in the ministry
or government department for the time being
responsible for health;
 - (c) The officer in charge of social development in the
ministry or government department for the time being
responsible for Social Development;
 - (d) The Registrar;
 - (e) Two persons nominated by the Psychology society of
kenya in the manner prescribed by the Cabinet
Secretary and appointed by the Cabinet Secretary;
 - (f) Two persons nominated by the Kenya Counselors
Association in the manner prescribed by the Cabinet
Secretary and appointed by the Cabinet Secretary;
 - (g) The principal of the Institute who shall be an ex-
officio member

(2) A person shall not be appointed a member of the Board
under sub-section (1) unless such person-

- (a) is a citizen of Kenya
- (b) is a Counsellor or Psychologist of good character and in
good standing

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(3) A person shall not be appointed as a chairperson of the Board under this section unless such person has at least ten years experience in psychology or Counselling.

(4) The for the conduct of the business and affairs of the Board shall be as stipulated in the First Schedule and as may be prescribed

Functions of the Board

5. The functions of the Board shall be to -

- (a) establish standards of professional conduct and practice of psychologists or counselling practitioners and counselling practitioners;
- (b) register and license psychologists or counselling practitioners and counselling practitioners for the purposes of this Act upon payment of the prescribed fees;
- (c) supervise the professional conduct and practice of the psychologists or counselling practitioners and counselling practitioners to take the necessary disciplinary measures in the cases of violations of professional conduct discipline;
- (d) advise the Cabinet Secretary on appropriate policies and laws to adopted in the fields and practice of psychology and counselling.
- (e) recommend to the Cabinet Secretary, institutions to be approved as institutions for training of persons seeking registration under this Act

Registrar

6. (1) The Registrar of the Board shall be an officer in the public service appointed by the Cabinet Secretary in consultation with the Public Service Commission.

(2) The Registrar shall-

- (a) be the secretary of the Board;
- (b) subject to the directions of the Board be responsible for the day to day management of the affairs of the Board
- (c) perform such duties and may be assigned by the Board or as may be prescribed under this Act

(3) The terms and conditions of service of the Registrar shall be determined by the Board subject to the applicable law related to such terms and conditions on public officers

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Staff of the Board 7. The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine

Funds of the Board 8. The funds of the Board shall consist of-

- (a) such monies as may be appropriated by the National Assembly;
- (b) fees and licenses
- (c) charges levied by the Institute;
- (d) grants.

2. The Institute of Counselling and Psychology

Establishment of the Institute of Counselling and Psychology 9. (1) There is established the Institute of Counselling and Psychology.

(2) The Institute shall be a body corporate with perpetual succession and a common seal and shall in its name be capable of-

- (a) suing and being sued
- (b) acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money
- (d) doing or performing such other things and acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act

Composition of the Institute 10. The Institute shall consist of-

- (a) Principal Secretary for the time being responsible for the practice of counseling and psychology professions
- (b) Principal Secretary for the time being responsible for Finance
- (c) Secretary to the Commission for Higher Education
- (d) The officer in charge of mental health in the ministry or government department for the time being responsible for health
- (e) 1 person nominated by the Kenya Counselors Association and appointed by the Cabinet Secretary
- (f) 1 person nominated by the Psychology society of Kenya

and appointed by the Cabinet Secretary

- (g) The Principal of the Institute who shall be the secretary of the Institute
- (h) 1 person appointed by the Cabinet Secretary who is an expert in curriculum development
- (i) The Secretary of the Commission for Higher Education

Functions of the Institute

11. The Institute shall be responsible for-
- (a) Providing professional training in the fields of counseling and psychology
 - (b) Setting and administering professional examinations in counseling and psychology and issue certificates to candidates who have satisfied examination requirements
 - (c) Advising the Board on the appropriate standards for training of in the fields counseling and psychology
 - (d) Promoting research and development in counseling and psychology
 - (e) advise the Cabinet Secretary on the appropriate curriculum to be adopted by universities and institutions providing training in the fields of counseling psychology

Funds of the Institute

12. The funds of the Institute shall consist of-
- (e) such monies as may be appropriated by the National Assembly;
 - (f) fees and charges levied by the Institute;
 - (g) grants

PART III- PSYCHOLOGY SOCIETY OF KENYA AND KENYA COUNSELING ASSOCIATION AND COUNCIL

1. Psychologists Society of Kenya

Establishment of Psychology society of Kenya

13. (1) There s established the Psychology society of Kenya
- (2) The Institute shall be a body corporate with perpetual succession and a common seal and shall in its name be capable of-
- (a) suing and being sued
 - (b) acquiring, holding, charging and disposing of movable and immovable property;
 - (c) borrowing and lending money

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(d) doing or performing such other things and acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act

Membership of the Society

14. (1) The membership of the Society shall consist of -

- (a) any person registered as a Psychologist under section 32 of this Act;
- (b) any person elected as an honorary member by the Council who shall be any person whom the Council deems appropriate so to honour either for life or any other period as the Council may deem appropriate;

(2) A person who has been expelled from membership of the Institute shall not thereafter be re admitted as a member under this section without the authority of a special resolution

Functions of the Society

15. The functions of the Society shall be to:

- (a) promote, maintain and improve the standards of professional competence, practice, conduct and learning of the Psychology profession in Kenya;
- (b) facilitate the acquisition of psychology knowledge and skills by members of the Society;
- (c) coordinate with the Cabinet Secretary in matters of disaster related psychological preparedness, management and mitigation;
- (d) advice and assist the Cabinet Secretary in all matters affecting Psychology, administration and practice of the Psychology profession in Kenya;
- (e) represent, protect and assist members of the society in respect of conditions of practice and otherwise;
- (f) protect, educate and assist the public in Kenya in all matters touching, ancillary or incidental to the Psychology profession;
- (g) promote the international recognition of the Society;
- (h) advice the Institute on matters relating to examination standards and policies in the field of psychology;
- (i) promote research, study and sharing of knowledge in the field of psychology;
- (j) carry out any other functions prescribed under this Act or any other written law

2. Kenya Counsellors Association

- Establishment of Kenya Counsellors Association
16. (1) There is established the Kenya Counsellors Association.
- (2) The Association shall be a body corporate with perpetual succession and a common seal and shall in its name be capable of-
- (a) suing and being sued
 - (b) acquiring, holding, charging and disposing of movable and immovable property;
 - (c) borrowing and lending money
 - (d) doing or performing such other things and acts as may legally be done or performed by a body corporate for the proper discharge of its functions under this Act
- Membership of the Association
17. (1) The membership of the Association shall consist of -
- (a) any person registered as a Counsellor under section 32 of this Act;
 - (b) any person elected as an honorary member by the Council who shall be any person whom the Council deems appropriate so to honour either for life or any other period as the Council may deem appropriate;
- (2) A person who has been expelled from membership of the Institute shall not thereafter be re-admitted as a member under this section without the authority of a special resolution
- Functions of the Association
18. The functions of the Association shall be to:
- (a) promote, maintain and improve the standards of professional competence, practice, conduct and learning of the Counselling profession in Kenya;
 - (b) facilitate the acquisition of Counselling knowledge and skills by members of the Association;
 - (c) advise and assist the Cabinet Secretary in all matters affecting Counsellors, administration and practice of the Counselling profession in Kenya;
 - (d) represent, protect and assist members of the Association in respect of conditions of practice and otherwise;
 - (e) protect, educate and assist the public in Kenya in all matters touching, ancillary or incidental to the Counselling profession;
 - (f) promote the international recognition of the Association;
 - (g) advise the Institute on matters relating to examination standards and policies in the field of Counselling;
 - (h) promote research, study and sharing of knowledge in the

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field of Counselling;

- (i) carry out any other functions prescribed under this Act or any other written law

Application membership for 19. An application for membership of the Society or Association shall be made in writing, signed by the applicant, and sent to the secretary of the respective institution and the applicant shall, submit documentary evidence of his qualification for membership.

Annual Subscriptions 20. (1) The annual subscription for membership of the Society or Association shall be prescribed from time to time by Council of the Society or the Council of the Association

Resignation membership from 21. Any member may resign from the Society or Association at any time by giving written notice of his resignation to the respective Council and shall thereupon cease to be a member but shall remain liable for any annual subscription owing to the Society or Association for the current year if unpaid.

Expulsion 22. If any member shall, in the opinion of the respective Council, be guilty of any conduct or default which is prejudicial to the interests of the Society or Association, the respective profession or the public, or which for any reason renders such member unfit to continue as a member of the Society or Association, the respective Council may deal with the matter as it deems appropriate, and may, inter alia, invite him to resign or suspend him from voting or taking any other active part in the affairs of the Society or Association until a specified date or the happening of a specified event or recommend to a general meeting the expulsion of that member:

Provided that, before any resolution adverse or detrimental to the member is passed, he shall first have been given a reasonable opportunity of making, orally or in writing, an explanation or defence.

3. Council of The Psychology Society of Kenya and Council of Kenya Counsellors Association

Establishment and Composition of a Council 23. (1) There shall be a Council of the Psychology society of Kenya and a Council of Kenya Counsellors Association which shall be responsible for the Management and Governance of the Society or Association

(2) A Council shall consist of a Chairperson, a Deputy-chairperson, and 11 other members all of whom shall be members of the Society or Association.

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(3) The Chairperson, the Deputy-chairperson and the eleven other members mentioned in subsection (1) shall be elected every three years by the members of the Society or Association

(4) No more than two thirds of the membership of the Council shall be of the same gender.

(5) Every Psychologist or Counsellor registered under this Act shall, upon payment of such fees and subscriptions as a Council may determine become a member of the Society or Association.

(6) The Chairperson, the Deputy Chairperson and the other members of the Council shall take office immediately after the Annual General Meeting of the Society or Association and shall hold office as such until the conclusion of the Annual General Meeting held in the third year, after their election and shall be eligible for re-election only once.

24. In the event of the death, resignation or removal of the Chairperson, the Deputy Chairperson or any other member of a council during his term of office, the vacancy so created shall be filled by a Council in the case of the Chairperson or Deputy Chairperson, from persons who are members of a Council

Vacating office

25. No person shall be qualified for election as Chairperson, Deputy-chairperson or a Council member of the Society or Association unless he is proposed and seconded in writing by at least two members who are in good standing and his consent to accept such office is signified by him in writing or on his behalf, prior to the time of election.

Proposition for election

26. The Chairperson, the Deputy-Chairperson or any other member of a Council may, without prejudice to his election, resign at any time by giving written notice of such resignation to a Council; and his office shall be deemed to have become vacant on, but not before, acceptance of his resignation by a Council.

Resignation

27. (1) The Chairperson, the Deputy-chairperson, or any other member of a Council shall be deemed to have vacated office on ceasing to be a member of the Society or Association.

Removal from office

(2). The Chairperson, the Deputy-chairperson, or any other member of a Council may at any time be removed from his office by special resolution on any of the following reasons:-

- a) is adjudged bankrupt or makes any arrangement with his creditors generally or;
- b) becomes of unsound mind; or
- c) resigns his office by notice in writing
- d) when the person name has been removed from the register

28. A Council may continue to act and exercise all its powers notwithstanding any vacancy in its number but subject to section 27.

Procedure of a council

Powers of Council in spite of Vacancy

29. A Council may meet together for the dispatch of business, adjourn, and, subject as expressly provided by any regulations made by a Council, otherwise regulate its meetings and proceedings as it deems appropriate.

Council regulations and proceedings

(2) For the purpose of transaction at any business of a Council seven members of a Council shall constitute a quorum.

(3) At all meetings of a Council, the Chairperson of the Institute, or in his absence the Deputy-Chairperson, shall preside; and in the absence of both Chairperson and Deputy-Chairperson a Chairperson shall be elected from amongst and by the members present.

(4) Questions arising at any meetings of a Council shall be decided by a majority of votes, and, in the case of equality or a tie of votes, the Chairperson shall have a second or casting vote.

30. A Council shall employ appropriate secretariat with such number of personnel as it deems appropriate and shall be headed by a Chief Executive Officer.

Secretariat

(2) All documents made by a Council, other than those made under seal, shall be executed, and all decisions of a Council shall be signified, under the hand of the Secretary.

(3) Any notice or other communication sent by the Secretary to a member at the latest address registered by that member with the Institute shall be deemed to have been duly sent to that member and to have been received by him within forty-eight hours after dispatch.

**PART IV –PRACTICING AS A COUNSELLOR OR
PSYCHOLOGIST**

Qualification for
registration as Counsellor
or Psychologist

31. (1) Subject to this Act, no person shall be registered as a Counsellor or Psychologist unless:

- (a) he is a citizen of Kenya; and,
- (b) for a psychologist, the person is a holder of a masters degree in psychology from a recognised university or other institution as the Board may from time to time approve; or
- (c) for a counsellor, the person is a holder of a degree or a diploma in counselling from a recognised university or other institution as the Board may from time to time; and
- (d) the person has passed the examinations of the Institute and has attained the professional qualification granted by the institute; and
- (e) he is a Counsellor or a registered Psychologist for the time being of a foreign country.

(2) The Board may exempt any person from any or all of the requirements prescribed upon such conditions, if any, as the Board may impose.

Application for
Registration

32. Every person who is duly qualified in accordance with this Part may apply for registration as a Counsellor or a Psychologist and the application shall be made in the prescribed form and filed together with such other documents as may be prescribed therewith to the Board.

Register of Counsellors
or Psychologists

33. The Registrar shall keep the Register of Counsellors and Psychologists in accordance with this Act and any directions as to its form and the information to be recorded as the Board may direct, and shall allow any person upon application to inspect the Register during office hours upon payment, of a fee as prescribed by the board.

Qualifications for
practising as a Counsellor
or Psychologist

34. (1) Subject to this Act, no person shall be qualified to act as a Counsellor or a Psychologist unless: -

- (a) he has been registered as a Counsellor or a Psychologist;

(b) his name is for the time being in the Register;

(c) he has in force a practising certificate for the previous year;

and for the purpose of this Act, a practising certificate shall be deemed not to be in force at any time while a member is under an order to pay a fine or penalty.

(2) A practitioner who is entitled to practise in a foreign country, if such person has come or intends to come to Kenya for the purpose of practise, and is not disqualified or suspended by virtue of this Act, may be registered as a Counsellor or a Psychologist and a person so registered shall be referred to as a “Foreign Counsellor or Psychologist.”

(4) No Foreign Counsellor or Psychologist shall be entitled to practise until he has paid to the Registrar the prescribed registration fee.

(5) Every Foreign Counsellor or Psychologist shall, during and for the purposes of his registration, be deemed to be a Counsellor or Psychologist for the purposes of this Act.

PART V - PRACTICING CERTIFICATE

Registrar to issue practising certificate

35. The Registrar shall issue in accordance with, but subject to this Part and any rules made under this Act a certificate authorizing a Counsellor or a Psychologist named therein to practise.

Application for and issue of practising certificate

36. (1) Application for a practising certificate shall be made to the Board:

(a) by delivering to the Registrar an application in duplicate, signed by the applicant specifying his name, place of business, and the date of his registration as a Counsellor or Psychologist.

(b) by producing evidence satisfactory to the Registrar that the applicant has paid to his respective Association the fee prescribed for annual subscriptions payable for the time being to the Association and has complied with all the Rules and Regulations made by the Committee of the

Association.

- (2) The Registrar shall cause one copy of practising certificate to be filed in a register kept for that purpose, and any person may upon application inspect the register during office hours without payment.

Non-approval for Application

37. The Registrar may refuse to approve an application for practicing certificate for a Counsellor or a Psychologist if:-

- (a) whilst he is an undercharged bankrupt or a receiving order in bankruptcy is in force against him; or
- (b) when, having been suspended from practice or having had his name removed from or struck off the Register, the period of his suspension has not expired or his name has not been restored to the Register, as the case may be; or
- (c) not having held a practising certificate in force within twelve months next following the date of his registration; or
- (d) whilst he is a person to whom the powers and provisions of the Mental Health Act relating to management and administration apply; or

Date and Validity of practicing certificate

38. (1) Every practising certificate shall bear the date of the day on which it is issued and shall have effect from the beginning of that day:

Provided that a practising certificate which is issued during the first month of any practising year shall have effect for all purposes from the beginning of that month.

(2) The practising year shall be from the 1st January to 31st December.

(3) Every practising certificate shall expire at the end of the practising year in which it was issued:

Provided that, where the name of a Counsellor or Psychologists is removed from or struck off the Register, the practising certificate (if any) of that Counsellor or Psychologist shall expire forthwith.

(4) The Registrar shall enter upon the Register a note of the date of the issue of every practising certificate.

Appeals in connection with issue of

39. Where under section 51 the Registrar either refuses to grant a practising certificate or decides to issue that certificate subject to terms and conditions, the applicant may by petition presented

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practising certificate within one month after being notified of the decision of the Registrar, appeal upon that decision to the Court.

Publication of suspension and termination of practising certificates 40. Where a practising certificate has become suspended the Registrar shall forthwith cause notice of that suspension to be published in the Gazette and thereof to be entered against the name of the Counsellor or Psychologist in the Register; and where the suspension is terminated, the Registrar shall forthwith cause a note of that termination to be entered against the name of the Counsellor or Psychologist in the Register and, if so requested in writing by the Counsellor or Psychologist, a note thereof to be published in the Gazette, at the Counsellor's or Psychologist's expense.

Evidence as to holding of practising certificate 41. (1) Any list published by authority of the Registrar containing the names of Counsellors and Psychologists who have obtained practising certificates for the current year before the 1st February in that year shall, until the contrary is proved, be evidence that the persons named therein are Counsellors or Psychologists holding such certificates for the current year.

(2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that that person is not qualified to practise as a Counsellor or a Psychologist for the current year, but in the case of any such person an extract from the Register certified as correct by the Registrar shall be evidence of the facts appearing in the extract.

PART VI – PROVISIONS WITH RESPECT TO UNQUALIFIED PERSONS ACTING AS COUNSELLORS AND OFFENCES BY COUNSELLORS AND PSYCHOLOGISTS

Unqualified person not to act as a Counsellor or a Psychologist 42. (1) Subject to section 23, no unqualified person shall act as a Counsellor or a Psychologist or carry on any counselling or offer any Counselling or Psychological services in his name or the name of any other person in any place.

- (2) Any person who contravenes subsection (1) shall –
 - (a) be deemed to have committed a breach of professional misconduct, and may be punished accordingly; and
 - (b) in addition be guilty of an offence.

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Qualification for practice on own behalf

43. (1) Notwithstanding that a Counsellor or a Psychologist has been issued with a practising certificate under this Act, he shall not engage in practice on his own behalf either full-time or part time unless he has practised in Kenya continuously on a full time basis for a period of not less than one year after obtaining the first practising certificate in a salaried post either as an employee in Public Service or an organization approved by the Board or of a Counsellor or a Psychologist who has been engaged in continuous full-time private practice on his own behalf in Kenya for a period of not less than five years.

(2) Section 57(1) does not apply to those who were in practice at the commencement of this Act.

(3) The person employing a Counsellor or Psychologist under sub section (i) shall in the prescribed form notify the Board and the Registrar of the commencement and termination of the employment.

Penalty for purporting to be a Counsellor or Psychologist

44. Any unqualified person who wilfully purports to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognized by law as qualified to act as a Counsellor or a Psychologist shall be guilty of an offence.

Unqualified person not to prepare certain documents

45. (1) No unqualified person shall, either directly or indirectly, take instructions or draw or prepare any document relating to any counselling or psychological procedures nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document.

Provided that this subsection shall not apply to –

- (i) any public officer preparing documents in the course of his duty; or
- (ii) any person employed by a Counsellor or Psychologist and acting within the scope of that employment.

(2) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable

summarily.

(3) Any person who contravenes subsection (1) shall be guilty of an offence.

Documents to be endorsed with name and address of drawer

46. (1) Every person who prepares, or causes to be prepared, any document referred to in section 23 shall at the same time endorse or cause to be endorsed thereon his name and address, or the name and address of the organization of which he is a partner and any person omitting so to do shall be guilty of an offence and liable to a fine not exceeding twenty thousand shillings in the case of an unqualified person or a fine not exceeding five thousand shillings in the case of a Counsellor or Psychologist.

Provided that, in the case of any document prepared by a person employed, and whilst acting within the scope of his employment, by a Counsellor or Psychologist or by an organization of Counsellor or Psychologists the name and address to be endorsed thereon shall be the name and address of such a Counsellor or a Psychologist or organization.

Undercutting

47. (1) Any Counsellor or Psychologist who holds himself out or allows himself to be held out, directly or indirectly whether or not by name, as being prepared to do professional business at less than the remuneration prescribed, by order, under this Act shall be guilty of an offence.

(2) No Counsellor or Psychologists shall charge or accept, otherwise than in part payment, any fee or other consideration in respect of professional business which is less than the remuneration prescribed, by order, under this Act.

Sharing profits

48. Any Counsellor or Psychologist who agrees to share his profits in respect of any professional business, with a person not being a Counsellor or Psychologist shall be guilty of an offence:

Provided that this section shall not apply to the payment of any bonus to any of employees by a Counsellor or a Psychologist, being a bonus based or calculated on the Counsellor's or Psychologist's total earnings or profits in respect of any period.

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Touting	<p>49. (1) Any unqualified person who, in consideration of any payment or other advantage to himself or any other person, procures or attempts to procure the employment of a Counsellor or Psychologist as such or solicits from a Counsellor or Psychologist any such payment or advantage in consideration of such employment shall be deemed to be a tout for the purposes of this section.</p> <p>(2) The Board, if satisfied that any member has acted as a tout, or utilised services of a tout, may recommend for the suspension, cancellation of the members practicing certificate or impose any other fine or penalty as may be necessary against such member.</p>
Counsellor or Psychologist not to act as agent for unqualified person	<p>50. Any Counsellor or Psychologist who acts as an agent in the offer of Counselling or Psychological services for any unqualified person, or permits his name, or that of any organization of which he is a partner, to be made use of in any such services, upon the account or for the profit of any unqualified person to act or practise in any respect as a Counsellor or Psychologist in such services or who in any way assists any unqualified person in any Counselling or Psychological services in which he knows that such person is contravening or intends to contravene this Act, shall be guilty of an offence.</p>
No costs recoverable where unqualified person acts as a Counsellor or Psychologist	<p>51. No costs in respect of anything done by an unqualified person in contravention of this Part shall be recovered in any suit or matter by any person.</p>
Employment by Counsellor or Psychologists of persons struck off the Register or suspended	<p>52. (1) No Counsellor or Psychologist shall, in connection with his practice as a Counsellor or Psychologist, without the written permission of the Board which may be given for such period and subject to such conditions as the Board deems appropriate, employ or remunerate any person who to his knowledge is disqualified from practising as a Counsellor or a Psychologist by reason of the fact that his name has been struck off the Register, otherwise than at his own request, or is suspended from practising as a Counsellor or a Psychologist.</p> <p>(2) A Counsellor or a Psychologist aggrieved by the refusal of the Board to grant any permission referred to in subsection (1), or by conditions attached by the Board to the grant thereof, may apply to the Court.</p>

(3) If any Counsellor or Psychologist acts in contravention of this section or of the conditions subject to which any permission has been given thereunder he shall be liable to penalties from the Board.

Penalty for failure to disclose fact of having been struck off, etc.

53. (1) Any person who, whilst he is disqualified from practising as a Counsellor or a Psychologist by reason of the fact that he has been struck off the Register otherwise than at his own request, or is suspended from practising as a Counsellor or a Psychologist, seeks or accepts employment by a Counsellor or a Psychologist in connection with the Counsellor's or Psychologist's practice without previously informing him that he is so disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

Offences by corporate body

54. (1) If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified, to act as a Counsellor or a Psychologist, the body corporate shall be guilty of an offence and liable to a fine not exceeding fifty thousand shilling for each offence, and, in the case of an act done by any director, officer or servant of the corporation, he shall, without prejudice to the liability of the corporation, be guilty of an offence and liable to a fine not exceeding twenty-five thousand shillings for each such offence.

(2) In this Part, references to unqualified persons and to persons include references to bodies corporate.

PART VII – REMUNERATION OF COUNSELLORS AND PSYCHOLOGISTS

Orders prescribing remuneration

55. The Board may by order, prescribe and regulate in such manner as it deems appropriate the remuneration of Counsellors and Psychologists in respect of all professional transactions.

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Agreements with respect to remuneration 56. Subject to section 35 and whether or not an order is in force under section 33, a Counsellor or a Psychologist and his client may before, after or in the course of offering any counselling or psychological services make an agreement fixing the amount of the Counsellor's or Psychologist's remuneration in respect thereof and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

Invalid agreements 57. Nothing in this Act shall give validity to any agreement relieving any Counsellor or Psychologist from responsibility for professional negligence or any other responsibility to which he would otherwise be subject as a Counsellor or a Psychologist; or any agreement by which a Counsellor or a Psychologist retained or employed to offer services for payment only in the event or success in such counselling or any psychological process the Counsellor or Psychologist shall be remunerated at different rates according to the success or failure thereof.

Action for recovery of costs 58. (1) Subject to this Act no suit shall be brought for the recovery of any costs due to a Counsellor or a Psychologist or his organization until the expiry of one month after an invoice for such costs, signed by the Counsellor or Psychologist or a partner in his organization, has been delivered or sent by registered post to the client, unless there is unreasonable cause, to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to a Counsellor or a Psychologist in any Court of competent jurisdiction.

(3) Where, in the absence of an agreement for remuneration made by virtue of section 34, a suit has been brought by a counsellor or psychologist for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof no judgement shall be entered for the claimant, except by consent; and, unless the invoice of costs on which the suits is based is fully itemized, the plaintiff shall file a fully itemized invoice of costs within fourteen days from the date of service of the defence, or such further period as may be allowed by the Court, and shall serve a copy thereof on the defendant, and, if the total amount of such invoice exceeds the amount sued for, the prayer of the plaintiff shall, subject to the Court's pecuniary jurisdiction, be deemed to be increased accordingly and all consequential amendments to the

pleadings may be made.

PART VIII – MISCELLANEOUS PROVISIONS

Power to make regulations

59. (1) The Cabinet Secretary may make rules with regard to-

- a) the professional practice, code of conduct and ethics and disciplines of Counsellors and Psychologists;
- b) the issue of certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;
- c) the procedure for the conferment of, and the privileges attached to Accreditation of Counsellors and Psychologists;
- d) continuing professional education for all Counsellors and Psychologists practising in Kenya;
- e) annual subscriptions and all other monies payable;
- f) professional indemnity insurance applicable to all members of the Profession;
- g) Administration of Counsellors and Psychologists clinics of Counsellors and Psychologists who are incapacitated from practising or deceased;
- h) Disaster related psychological preparedness, management and mitigation;
- i) Members with special needs
- j) Generally for the better carrying out of the provisions of this Act, other than Parts II and III,

(2) If a Counsellor or a Psychologist fails to comply with any rules and regulations made under this section shall be guilty of an offence.

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Savings of other laws	60. Nothing in this Act or any rules made there under shall affect the provisions of any other written law empowering any unqualified person to conduct, or otherwise act in relation to the offer of any Counselling or Psychological services.
Payment of fees, etc	61. All registration fees and practising certificate fees shall be paid to the Registrar.
Penalty for practising without practising certificate	62. Any persons purporting to, or practicing or offering Counselling and Psychology services including teaching, training, workshops, seminars, therapy, public advice or comment via media, internet or other electronic transmission without a practicing certificate and without having been registered as a Counsellor or Psychologist by the Board shall be guilty of an offence and liable to imprisonment for a period of one year or a fine of Kshs.100, 000/= or to both such imprisonment and fine.
General penalty	63. Any person who is guilty of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment
Transition	64. A person who immediately prior to the commencement of this Act was practicing as a psychologist or a counsellor shall continue practicing as such but shall within 60 days after the board has been established seek registration with the Board in accordance with this Act..

FIRST SCHEDULE

(s. 4)

**PROCEDURE OF CONDUCT OF BUSINESS AND
AFFAIRS OF THE BOARD**

1. (1) A member of the Board including the Chairperson and the Deputy-Chairperson shall hold office for the period of three years next following his appointment unless he earlier ceases to hold office and shall be eligible for re-appointment only once.
- (2) Any member of the Board including the Chairperson and the Deputy-Chairperson may resign the office by writing under his hand addressed to the Cabinet Secretary.
- (3) Subject to section 4 (1) a member of the Board who ceases to hold office is eligible for re-appointment.
- (4) The Cabinet Secretary shall appoint a Chairperson and a Deputy Chairperson of the Board from amongst the members of the Registration Board.
- (5) The Deputy-Chairperson may exercise any of the functions of the Chairperson if the Chairperson is unable to exercise and perform those functions.
- (6) The arrangements relating to meetings of the Board shall be such as the Registration Board may determine but the quorum at meetings of the Board shall be Six.
- (7) The person presiding at a meeting of the Board has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.
- (8) Minutes of the proceedings of the Board shall be kept in such a manner as the Board directs, and, on the written request of the Cabinet Secretary shall be made available to him or any person nominated by him.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide a comprehensive legal regime of Counselling and Psychology professions and services in Kenya. It achieves this by incorporating Board of Counsellors and Psychologists, the Kenya Counselling Association, the Psychology Society of Kenya; right to practice as a Counsellor or Psychologist; registration of Counsellor or Psychologist; issuing of practicing certificates; provision of offences for unqualified persons; remuneration of Counsellor and Psychologists and discipline to ensure coordinated; efficient; effective and consultative approach in administration of Counselling and Psychology profession and services in Kenya.

Part I provides for the short title and interpretation of terms.

Part II provides for the Board of Counsellors and Psychologists, its membership, functions, the Registrar, regulations and expenses.

Part III provides for right relating to practise as a counselling or a psychologist, Qualifications and Application for Registration, Register for Counsellors and Psychologists and Qualifications for practising as a Counsellor or Psychologist

PART IV provides for the issuing of practising certificates, date and validity of practising certificates, and suspension or termination of practising certificates.

Part V provides for unqualified persons acting as Counsellors or Psychologists and the offences by body corporate.

PART VI provides for remuneration of Counsellors and Psychologists, invalid agreements and action for recovery of costs.

Part VII provides for the power to make rules and general penalty.

PART VIII provides for the transitions provisions for bringing into effect this Legislation

The enactment of this Act shall occasion additional expenditure of public funds which shall be provided for through estimates.

Dated this 15th April, 2012

MINISTER FOR STATE FOR PUBLIC SERVICE