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Mental Health Order, 1978

Act 20 of 1978

Legislation as at 1 December 1998

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Act 20 of 1978

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A King's Order-in-Council repealing the Mental Disorders Act [No. 48 of 1963](#) and to replace it by the Mental Health Order.

1. Short title

This King's Order-in-Council may be cited as the Mental Health Order, 1978.

2. Interpretation

In this Order, unless the context otherwise requires—

“**approved institution**” means any private hospital, or nursing-home approved in writing by the Minister at which provision has been made for the detention and treatment of two or more persons who are mentally ill;

“**Board**” means a Mental Hospital Board established under Part IV;

“**Court**” in relation to a patient, means the High Court of Swaziland;

“**criminal mental institution**” means a place of safe custody for the admission and treatment of patients pursuant to section 165 of the Criminal Procedure and Evidence Act, [No. 67 of 1938](#);

“**Director**” means the Director of Medical Services in the Ministry of Health;

“**duly registered medical practitioner**” means a practitioner registered as such with the Swaziland Medical and Dental Council;

“**husband and wife**” include persons married under the Marriage Act, [No. 47 of 1964](#) or by Swazi Law and Custom or who live together as man and wife;

“**judge**” means a judge of the High Court of Swaziland;

“**mental hospital**” means a government hospital at which provision has been made for the detention and treatment of persons who are mentally ill;

“**mental illness**” means any disorder or disability of the mind, and includes any mental disease, any arrested or incomplete development of the mind, and any psychopathic disorder; and “mentally ill” has a corresponding meaning;

“**mentally ill person**” is a person who by reasons of some mental illness is incapable of managing himself or his affairs, or who requires care, supervision and control for his own protection or for the protection of others;

“**Minister**” means the Minister for Health;

“**near relative**” in relation to a patient, means a descendant, ancestor, brother, sister, aunt, uncle, nephew, niece, cousin or husband or wife of the patient;

“**parent**” means the father of a minor, or failing him, the mother of the minor, or, failing them, the guardian of the minor, or failing him a person under whose care such minor is;

“**patient**” means a person mentally ill to such a degree that it is necessary that he be detained, supervised, controlled or treated, and it includes a person who is suspected of being mentally ill to such a degree;

“**superintendent**” means the medical practitioner in charge of a mental hospital or psychiatric ward, and includes any medical practitioner who has been appointed as deputy to the superintendent.

Part II – Reception and detention of patients

3. Classification of patients

- (1) Save as is provided for in this section no person shall detain another person in a mental hospital, psychiatric ward, approved institution or criminal mental institution.
- (2) A patient may be detained in a mental hospital, psychiatric ward or approved institution as a voluntary patient, a temporary patient or a patient detained under the Order of a Judge, or pending the pleasure of the King in terms of the Criminal Procedure and Evidence Act, [No. 67 of 1938](#).
- (3) A patient may be detained in a criminal mental institution—
 - (a) for observation and report upon the order of the Court trying any case in which the sanity of the accused or his ability to understand the proceedings of the trial comes into question;
 - (b) upon the order of the Court if an accused has been found unfit to understand the proceedings of a trial or has been found guilty but insane at the time of committing the act, and the signification of the King’s pleasure in the case is being awaited; or
 - (c) in cases where the King has signified his pleasure that the accused person referred to in [section 3](#) (b) be detained:

Provided that, notwithstanding anything in this section, an accused or convicted person may be ordered to be detained in a mental hospital instead of a criminal mental institution, if the Court has so recommended or ordered.

4. Admission of voluntary patients

- (1) The superintendent of a mental hospital may on application by any person admit such person to be treated as a patient in a mental hospital, if he is satisfied that—
 - (a) the person is in need of treatment or custodial care, and
 - (b) subject to subsection (3) the person understands the meaning and effect of such application.
- (2) The application referred to in subsection (1) shall be made on a prescribed form which shall bear either the signature or thumb print of the person making the application, but in the case of a minor under the age of 18 the application shall be made by his parent.
- (3) If the superintendent of a mental hospital is satisfied that the person referred to in subsection (1) is by reason of any mental illness incapable of understanding the meaning and effect of an application that he be admitted to such hospital for treatment and that such person is not in fact opposed to being so admitted, the superintendent may so admit and treat him on the application of a near relative of such person made on the prescribed form.

5. Discharge of voluntary patient

- (1) A person admitted as a voluntary patient under [section 4](#) shall be discharged from the hospital if—
 - (a) the superintendent of such hospital has certified in writing that he has recovered sufficiently to leave the hospital; or

- (b) within seven days after the patient or in the case of a minor under the age of 18, a parent has requested his discharge:

Provided that if the superintendent is of the opinion that the person will be a danger to himself and others by reason of his mental illness, he shall forthwith in writing notify the Registrar of the High Court for presentation to a judge of the circumstances of the case and furnish him with a report on the mental condition of such patient, and the superintendent shall at the same time forward a copy of such report to the Director.

- (2) The superintendent shall immediately cause a copy of a request made by or on behalf of the patient in terms of subsection (1)(b) to be served by a member of the Royal Swaziland Police Force upon the closest near relative of the patient who can be traced.
- (3) The relative upon whom the superintendent's report under subsection (2) is served may within seven days after the service thereof make such representations to a judge as he deems fit.
- (4) Upon a consideration of the request and the report referred to in subsection (2) and any representations in terms of subsection (3) a judge may order the release of the patient or his detention on such terms as to the judge may deem fit:

Provided that the judge may condone any delay in the making of such representations on good cause shown in which event he may rescind or alter any such order made by him.

- (5) The superintendent shall advise the Director in writing of the death or discharge of a voluntary patient.

6. Temporary patients

- (1) The husband, wife or any other near relative over the age of 18 years of any person who believes that such person is suffering from a mental illness to such a degree that he requires treatment in a mental hospital may make written application in a prescribed form to the superintendent for admission of the patient to the hospital.
- (2) Should no husband, wife or any other near relative be available the application may be made by a member of the Royal Swaziland Police, a social worker, a staff member at a hospital caring for the patient, the employer, or any other person who is in a position of responsibility in relation to the patient.
- (3) The application form shall be in triplicate and contain the information set out in Form 1 of the Schedule hereto and shall be accompanied by a medical certificate signed by a duly registered medical practitioner and in the prescribed form containing the information set out in Form 2 of the Schedule hereto.
- (4) The superintendent shall admit and treat the person in respect of whom the application is made upon receipt for the application and a medical certificate duly completed:

Provided that in the case of an emergency the superintendent may admit a patient under this section on a written application only, in which case the superintendent shall within three days thereof forward a copy of such application and certificate to the Director who may appoint a medical practitioner to examine the patient and report the result of such examination to the Director.

- (5) The superintendent shall notify the Director of the admission by him of a patient under this section, and submit a report to the Director upon the condition of the patient, based upon an examination or examinations made not less than two nor more than ten days after the admission of the patient, which report shall be accompanied by copies of the application form and the medical certification referred to in subsection (3).
- (6) The superintendent shall forthwith transmit a notice of the admission of the patient to the Regional Administrator of the district where the patient was residing prior to his admission, which notice shall be retained by the Regional Administrator for not less than two years after his receipt thereof.

- (7) If the superintendent has certified in writing that a temporary patient has recovered or improved sufficiently for discharge he shall be discharged permanently or on leave:
- Provided that such patient may not be re-admitted from such leave at any date later than three months from the date of original admission without a new application made in terms of this section.
- (8) The superintendent shall forthwith transmit to the Director and to the District Commissioner of the district where the patient was residing, notification of such patient's discharge from the hospital (whether permanently or on leave) or notification of his death should that occur.
- (9) No patient may be held as a temporary patient for a period longer than three months:
- Provided that if it appears that further detention is likely to be required, the superintendent shall forward to the Registrar of the High Court not later than 2 weeks before the expiry of the 3 months period—
- (a) the original application;
 - (b) the original medical certificate;
 - (c) copy of his report to the Director made under subsection (5); and
 - (d) a report upon the progress and present condition of the patient including an estimate of the period for which the patient should be further detained, or, if this is not possible, a request for detention for an indefinite period.
- (10) A copy of the report referred to in subsection (9)(d) shall be sent to the Director by the Superintendent.
- (11) The Registrar of the High Court shall place the documents referred to in subsection (9) before a judge in chambers who may, subject to [section 7\(1\)](#), thereupon make such order as he deems fit, including an authorisation for the detention of the patient for such a period as he may determine, or for an indefinite period.
- (12) Any patient detained under this section or any person having a special interest in the patient may apply to the Court for his discharge as a patient.
- (13) The superintendent shall forthwith give written notification of the absconding of any patient to the Director and the police officer in charge of the police station nearest to him, who shall take immediate steps to apprehend the patient and return him to the mental hospital.

7. Patients detained under a judge's order

- (1) A judge in chambers after considering the certificates and reports referred to in [section 5\(b\)](#), [6\(11\)](#) or on an application made under subsection (12) may—
- (a) if he is satisfied that an order for the further detention of the patient should be made, make such an order for such period as he may deem necessary, or for an indefinite period;
 - (b) direct that the patient be discharged; or
 - (c) direct that evidence be given before him by the superintendent or the patient or his near relatives if they so desire.
- (2) The Registrar shall transmit a copy of a judge's order made under this section to the Director.
- (3) Any person detained under this section or any person having a special interest in such patient may apply to the Court for an enquiry into the reason or grounds for his detention and the Court may make such order on the application as it deems fit.
- (4) If a patient is detained in a mental hospital, the superintendent shall transmit in the prescribed form annually for the first three years, and thereafter once every third year, a report to the Director.

- (5) If the patient in the opinion of the superintendent has improved and is not a danger to himself or others, the superintendent may grant him leave for a period not exceeding twelve months.
- (6) If the superintendent is of the opinion that the patient is fit to be discharged, he shall advise the Court thereof and the Court may thereupon make such order as it thinks fit.
- (7) Should a patient on leave relapse, he may be returned to the mental hospital and the superintendent may re-admit him and detain him as if leave had not been granted.
- (8) If a patient on leave has not been re-admitted to the hospital within a period of 12 months, the superintendent shall request the Court to discharge him and shall send a copy of the request to the Director and the Court may thereupon make such order as it deems fit.
- (9) The superintendent shall give written notification of any leave and re-admission to the Director.
- (10) The superintendent shall give written notification of the death of any patient detained under order of Court forthwith to the Registrar of Court and to the Director.
- (11) The superintendent shall forthwith give written notification of the absconding of any patient to the Registrar of the High Court, the Director and to the officer commanding the nearest station of the Royal Swaziland Police, who shall take immediate steps to apprehend the absconding patient and return him to the mental hospital.
- (12) The Registrar of the Court shall forward to the Director a copy of any order made by a judge or Court under this section.
- (13) If a medical practitioner is of the opinion that any person examined or treated by him is mentally ill to such a degree that he is a danger to others, and he has reason to believe that no steps are being taken to secure his admission to a mental hospital, psychiatric ward or licensed institution, he shall forthwith in writing report his opinion to the Registrar of the High Court for submission to a judge, whereupon the judge shall make such order for the detention and examination of the patient as he deems fit.

Part IV – The Mental Hospital Board and its functions

8. Establishment of Mental Hospital Board

- (1) The Minister shall, by notice in the *Gazette*, establish for every mental hospital a Board, to be styled the Mental Hospital Board, consisting of four members, one of whom shall be—
 - (a) a member of the Attorney-General's staff;
 - (b) the Director or a medical practitioner in the employ of the Government nominated by the Director;
 - (c) a practising attorney, a medical practitioner, social worker or clergyman appointed by the Minister of Health; and
 - (d) one appointed by the King.
- (2) The Minister shall designate one member of the Board as its chairman.
- (3) An appointed member of the Board shall hold office for a period of three years and shall be eligible for re-appointment at any time after the expiry of his period of office.
- (4) A member of the Board shall vacate his office if—
 - (a) he is convicted of an offence and sentenced to imprisonment without the option of a fine;
 - (b) he is absent from three consecutive ordinary meetings of the Board without the leave of the chairman of the Board;

- (c) he gives one months' notice in writing to the Minister of his intention to resign office.
- (5) In the event of the death, or vacation of office of any member, the vacancy so caused shall be filled by the Minister by a person possessing the same qualifications as the deceased or vacating member and for the period which he would but for such death or vacation of office have continued in office.
- (6) In the event of the chairman of the Board granting leave of absence to a member for a period in excess of three consecutive ordinary meetings, the Minister shall fill the vacancy so caused by a person, with the same qualifications as the member granted leave, for such period as he has been granted leave.
- (7) Any member of the Board who is not a public officer shall be entitled to travelling and subsistence expenses when performing the duties of a member of the Board at rates to be decided by the Minister.

9. Visits of the Board

- (1) The Board shall visit each institution or other place in respect of which it has been appointed at least once every two months and on each visit shall give personal observation to every patient admitted since the Board's previous visit, and shall inspect every ward, the kitchens and the places where patients are ordinarily occupied.
- (2) The Board shall investigate every reasonable complaint made to it by a patient.
- (3) If a patient was a child at the date when the reception order relating to him was made, the Board shall give his case special consideration within three months after he attains the age of 16 years.
- (4) The superintendent shall so arrange it that the Board is given every opportunity and facility to the better discharge of its functions.

10. Reports by the Board

- (1) The Board may, from time to time or when called upon by the Minister, make to the Director such suggestions and observations as it deems desirable regarding the welfare of patients in the institution or other place of detention, and shall in all cases report to the Director the result of any visit or inspection made by it.
- (2) A copy of any such report shall be sent to the Government Psychiatrist, or to the medical superintendent in charge of the hospital.

11. Meetings of the Board

- (1) The Board shall hold an ordinary meeting once every two months for the despatch of business but in addition may hold an extraordinary meeting whenever required.
- (2) Due notice of every meeting of the Board shall be given by the clerk to the Board where such clerk has been appointed, and failing him, by the chairman of the Board.
- (3) The Board shall as far as practicable hold its meeting immediately after any visit carried out by it under [section 9](#).

12. Procedure of the Board

- (1) The chairman of the Board shall arrange for the keeping of proper minutes of any meetings of the Board, and such minutes shall, if approved by the Board as correct at a subsequent meeting, be certified as being correct.
- (2) The Board shall make its own rules as to the conduct of its meetings and the giving of notice of any meeting.

13. Board to have no authority over officers

The Board shall have no authority over the superintendent or any other officer of any institutions or any other place of detention to which it is appointed.

Part V – Offences and penalties**14. Detaining patients except under provisions of Order**

Every person who, otherwise than in accordance with this Order, receives or detains a patient shall be guilty of an offence.

15. False statements, entries and wilful obstruction

A person shall be guilty of an offence who—

- (a) makes any wilful misstatement of any material fact in any petition, application, statement of particulars, report or reception order under this Order;
- (b) makes a wilful misstatement of any material fact in any medical certificate, recommendation or other certificate or in any statement or report of bodily or mental condition under this Order;
- (c) knowingly makes in any book statement or return any false entry as to any matter in regard to which he is by this Order or by any regulations made under it required to make an entry;
- (d) wilfully obstructs any person specially or generally authorized under this Order or by the Minister or the Director, or under any order of Court, in the exercise of any of the powers conferred by this Order or any regulation made under it in the exercise of such authority.

16. Ill-treatment by nurses or other person in charge

Any officer, nurse, attendant, servant or other person having the care or charge of a patient, whether by reason of any contract or any tie or relationship or marriage or otherwise, who ill-treats or wilfully neglects any patient shall be guilty of an offence.

17. Conniving at escape of patient

Any person who wilfully assists or permits or connives at the escape or attempted escape of any patient, or who secrets or harbours a patient who has escaped, shall be guilty of an offence.

18. Employment of male persons in personal custody of female patient

- (1) Subject to subsection (2), no male person may be employed in any institution or other place to exercise personal custody or restraint over any female patient and any person employing a male person contrary to this subsection is guilty of an offence.
- (2) Nothing in this section shall be construed as prohibiting or imposing a penalty on the employment of male persons on such occasions of urgency as may, in the opinion of the superintendent or matron of the institution or other place render such employment necessary.

19. Penalties

- (1) Any person convicted of an offence under sections [14](#) or [15](#) shall be liable on conviction to a fine of four hundred emalangeni or imprisonment for one year, or both.
- (2) Any person convicted of an offence under sections [16](#), [17](#) or [18](#) shall be liable to a fine of two hundred emalangeni or imprisonment for six months, or both.

Part VI – General and supplementary

20. Order not to be taken to limit powers of Court

Nothing in this Order shall be construed to affect, limit or abridge the power which the Court possesses by law in regard to inquiring into a person's mental capacity, to declaring persons to be mentally disordered or defective or as to the appointment of curators to the person or property of any patient whether a reception order has been issued or not.

21. Limitation of actions by patients

- (1) If a person has done anything in pursuance or in intended pursuance of any of the provisions of this Order he shall not be liable in any civil proceedings whether on the ground of want of jurisdiction or on any other ground unless it is proved that he has acted in bad faith or without reasonable care.
- (2) No such proceedings shall be commenced after the expiry of six months from the act complained of, or, in the case of continuance of injury or damage, after the expiry of six months from the cessation thereof:

Provided that in estimating such period of six months no account shall be taken of any time or times during which the person alleged to be injured was under detention, lawfully or unlawfully, as a mentally disordered or defective person, or was ignorant of the facts which constitute the cause of action.

22. Regulations

The Minister may, by notice in the *Gazette*, make regulations for carrying into effect the purposes of this Order and in particular and without prejudice to the generality of a foregoing, such regulations may—

- (a) prescribe the manner in which patients may be transferred from one place of detention to another;
- (b) prescribe what books and records shall be kept in any institution or office and what entries shall be made therein, and by whom and when;
- (c) prescribe the fees and charges to be imposed in respect of patients in institutions;
- (d) prescribe forms to be used for the purposes of this Order;
- (e) regulate the unpaid employment for therapeutic purposes of patients in institutions;
- (f) regulate the manner in which any institution, or any place of detention other than a prison, shall be conducted.

23. Repeal and Saving

The Mental Disorders Act [No. 48 of 1963](#) is hereby repealed:

Provided that any warrant or order for the detention of any patient, lawfully in force at the date of the commencement of this Order, shall continue to be lawfully in force and shall be subject to the provisions of this Order.

Schedule

Form 1 – Application for patient's admission (Under section 6(1) and (3))

Mental Health Order No. 20 of 1978

To:

The Medical Superintendent,

_____ Hospital

(a) Particulars of applicant:

Name: _____

Age: _____

Occupation: _____

Address: _____

(b) Particulars of person for whom admission is sought — (thereafter called the patient):

Name: _____

Age: _____

Occupation: _____

Sex: _____

of Chief: _____

Indvuna: _____

Address: _____

(c) Name and address of relative or other person who will be responsible for the patient on his/her discharge:

Name: _____

Relationship: _____

Chief: _____

Indvuna: _____

Address: _____

(d) I declare I am the person described in (a) and I hereby make an application for admission of the patient described in (b).

(e) I believe that the patient is mentally disordered or defective and my reasons for so believing are as follows:

(f) State relationship to the patient: He/She is my

(g) I am not related to the patient but I have made the application because

(h) I personally saw the patient on the _____ day of _____ 20 _____

(Within seven days immediately preceding the date of the signing of this application).

Date: _____

Signature of Applicant.

Notes:

This form is to be completed in triplicate and is to accompany the patient.

Names and addresses to be printed in BLOCK CAPITALS.

Form 2 – Medical certificate (Under section 6(3))

Mental Health Order No. 20 of 1978

- (a) I _____ residing at _____ being a registered Medical Practitioner hereby certify that on the ____ day of _____ 20 ____ at _____

I personally examined _____ (hereinafter called the patient) of:

Chief: _____

Indvuna: _____

whose address is: _____

- (b) As a result of the examination I am of the opinion that the patient is mentally disordered.
- (c) The following facts indicative of mental disorder or defect have been observed by me at the time of the examination above:

- (d) The following facts indicative of mental disorder have been communicated to me:

(Set out communications by other persons, with names and addresses of these persons).

- (e) The following treatment has been given the patient in respect of his/her mental condition:

- (f) The bodily health and condition of the patient is as follows:

- (g) Is any communicable disease or any injury present: YES - NO?

If yes, what:

(h) In my opinion the patient is approximately _____ years of age

I hereby certify that I am a registered Medical Practitioner.

Signature and qualification of Medical Practitioner.

Dated at _____ this _____ days of _____ 20 _____

Notes:

This Certificate is to be completed in triplicate, names and addresses printed in block capitals.

N.B.: This medical certificate may not be signed by the person applying for the admission of the patient.