

The Orissa Clinical Establishments (Control and Regulation) Act, 1990

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AN ACT TO PROVIDE FOR THE CONTROL AND THE REGULATION OF REGISTRATION AND PROPER FUNCTIONING OF PRIVATE NURSING HOMES AND OTHER CLINICAL ESTABLISHMENTS IN THE STATE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Be it enacted by the Legislature of the State of Orissa in the Forty second Year of the Republic of India as follows:

1. Short title, extent, commencement and application- (1) This Act may be called the Orissa Clinical Establishments (Control and Regulation) Act, 1991.

(2) It extends to the whole of the State of Orissa.

(3) It shall come into force on such date as the State Government may by Notification, appoint [Published vide Orissa Gazette Ext. No. 1183/1.10. 1994-SRO. No. 83/94/26/26.9.1994] [w.e.f., 1.10.1994].

(4) It shall not apply to

- (a) a clinical establishment which is owned, controlled, managed or maintained by Government or any authority or body established or constituted by an Act of Parliament or of the State Legislature;
- (b) any asylum or mental hospital for lunatics established or licensed, if any, under the Indian Lunacy Act, 4 of 1912 ;
- (c) a clinical establishment having four or less numbers of beds or a clinical laboratory established and maintained, in any area not included within any municipal or notified area, by a qualified Medical Practitioner for treatment of emergency patients or for diagnosis of disease of his own patients.

2. Definitions- In this Act, unless the context otherwise requires-

- (a) “**certificate of registration**” means a certificate of registration issued under :Section 5 ;
- (b) “**clinical establishment**” means a nursing home, a physical therapy establishment, a clinical laboratory or an establishment analogous to any of them, by whatever name called and included maternity home, a blood bank, a private hospital, a dispensary a place used for medical

termination of pregnancy as approved under the Medical Termination of Pregnancy Act, 1971 an X-Ray institution or establishment and such other institutions or establishments as the Director of Health Services may with the approval of the State Government, by Notification from time to time, specify:

- (c) **“clinical laboratory”** means an establishment where-
 - (i) biological, pathological, bacteriological, radiological, chemical, biochemical or other tests examinations or analysis: or
 - (ii) the preparation of cultures, vaccines, serums of other biological or bacteriological products, in connection with the diagnosis or treatment of diseases; are or is usually carried on ;
- (d) **“hospital”** means any premises used for the reception of the sick and their treatment as indoor patient;
- (e) **“maternity home”** means an establishment where women are usually received or accommodated for the purpose of antenatal and postnatal care in connection with child-birth:
- (f) **“nursing home”** means an establishment or premises used or intended to be used for the reception of, and providing medical care including nursing care in any form to, persons suffering from sickness, injury or infirmity:
- (g) **“physical therapy establishment”** means a centre where persons are usually treated by physical means such as massage, electrotherapy, hydrotherapy, remedial gymnastics or the like:
- (h) **“prescribed”** means prescribed by Rules:
- (i) **“qualified medical practitioner”** means a medical practitioner registered in any State in India under a Law for the registration of medical practitioners;
- (j) **“qualified midwife”** means a midwife registered in any State in India under a Law for the registration of midwives;
- (k) **“qualified nurse”** means a nurse registered in any State in India under a Law for the registration of nurses:
- (l) **“registered clinical establishment”** means a clinical establishment registered or deemed ‘to be registered under this Act:
- (m) **“Rules”** means Rules made under this Act;
- (n) **“supervising authority”** means the Director of Medical Education and Training or any other officer as the State Government may; by Notification, specify in that behalf.

3. Clinical establishment not to be established or maintained without registration- (1) On and after the commencement of this Act no person shall establish or maintain a clinical establishment unless he holds a valid certificate of registration and except under and in accordance with the terms and conditions as maybe prescribed which shall be specified in the certificate of registration.

(2) Notwithstanding anything contained in Sub-section (1), a clinical establishment established and maintained as such immediately before the commencement of this Act may continue to be maintained and shall be deemed to be a registered clinical establishment under this Act-

- (a) for a period of three months from the date of commencement of this Act; or
- (b) if an application for registration is made to the supervising authority, within the period specified in Clause (a) in accordance with Section 4, till the disposal of such application.

4. Application for certificate of registration- (1) Every person who continues to maintain, at the commencement of this Act, a clinical establishment, shall, if the said person intends to continue the maintenance of such establishment after the expiry of the period referred to in Clause (a) of Sub-section (2) of Section 3, make, at least one month before the expiry of such period, an application to the supervising authority for the grant of a certificate of registration.

(2) A person, who intends to establish or maintain, after the commencement of this Act, a clinical establishment shall make an application to the supervising authority for the grant of a certificate of registration

(3) Every application under Sub-section (1) or Sub-section (2) shall be in such form and be accompanied by such fee as may be prescribed

5. Grant or refusal of certificate of registration- (1) On receipt of an application under Section 4, the supervising authority shall make such inquiries as it may deem fit and where it is satisfied that

- (a) the applicant or any person proposed to be employed or employed by him at the clinical establishment is a fit person to maintain or, as the case maybe, to be employed at the clinical establishment named in the application; or
- (b) the clinical establishment is under the supervision of a person who is a qualified medical practitioner, and that person or a qualified nurse is resident in the establishment, or there is adequate representation of qualified nurses among the persons having the superintendence of or employed in the nursing of the patients in such establishment; or
- (c) in the case of maternity home, its staff includes a qualified midwife and a qualified medical practitioner; or

- (d) for reasons connected with the situation, construction, accommodation, staff or equipment, the nursing home or any premises used in connection therewith is or are fit to be used for a clinical establishment of the description mentioned in the application or that the clinical establishment or any of its premises is or are used or to be used for purposes which are not in way improper or undesirable ;It shall grant a certificate of registration to the applicant in the prescribed Form and where it is not so satisfied, it shall by order, refuse to grant the certificate of registration:

Provided that in the case of a clinical establishment referred to in Clause (b) or a maternity home referred to in Clause (c) which has been established prior to the commencement at this Act and continues to be maintained as such after such commencement, the supervising authority shall not refuse to grant a certificate of registration to the applicant on the ground that

- (a) a qualified nurse is not resident in such clinical establishment, or
- (b) the staff of such maternity home does not include a qualified midwife as the case may be, if
 - (i) a nurse resident in such clinical establishment; or
 - (ii) a midwife includes in the staff of such maternity home, as the case may be, is continuing therein as such, for a period not less than five years, subject to the condition that, .after the grant of a certificate of registration to the applicant, the nurse or, as the case may be, midwife shall qualify in a test to be conducted by the Chief District Medical Officer of the District in such manner and within such period, as maybe prescribed and where any such nurse or midwife fails to qualify such test within the prescribed period the registration certificate shall be deemed to have been revoked from the date when the said prescribed period expires, unless such nurse or midwife is substituted by a qualified nurse by the clinical establishment, or, as the case may be, by a qualified midwife by the maternity home before the expiry of the said period:

Provided further that the supervising authority shall, before making any order refusing to grant a certificate of registration, give the applicant a reasonable opportunity of being heard and every order of refusal shall set out therein the reasons for such refusal and shall be communicated to the applicant in such manner as may be prescribed

(2) The certificate of registration issued under this section in respect of a clinical establishment shall be kept or affixed in a conspicuous place in the clinical establishment.

6. Duration and renewal of registration certificate- (1) A certificate of registration shall not be heritable.

(2) Where the holder of a certificate of registration (hereinafter referred to as the certificate-holder) is unable to function as such for any reason or where a certificate-holder dies, the certificate-holder or, as the case may be, the legal representative of such certificate-holder shall forthwith report the matter in the prescribed manner to the supervising authority and notwithstanding anything contained in Sub-section (1), the clinical establishment concerned may continue to be maintained and shall be deemed to be a registered clinical establishment

- (a) for a period of three months from the date of such report or in the case of the death of the certificate-holder from the date of his death, or
- (b) if an application made in accordance with Sub-section (3), for a certificate of registration, is pending on the expiry of the period specified in Clause (a) till the disposal of such application.

(3) The legal representative of the certificate-holder referred to in Sub-section (2) shall, if he intends to continue the maintenance of the clinical establishment after the expiry of the period referred to in Subsection (2), make, at least one month before the expiry of such period an application to the supervising authority for the grant of a fresh certificate or registration for the maintenance of such establishment and the provisions of Section 5 shall apply in relation to such application as they apply in relation to an application made under Section 4.

(4) Every certificate of registration shall, unless revoked earlier under Section 8 or deemed to be revoked under the first proviso to Sub-section (1) of Section 5 be valid for a period of two years with effect from the date on which it is granted.

(5) A certificate of registration may be renewed from time to time on an application made in that behalf to the supervising authority, in such form and accompanied by such fee, as may be prescribed, and every such application shall be made not less than one month before the date on which the period of validity of the certificate of registration is due to expire:

Provided that the renewal of a certificate of registration shall not be refused unless the supervising authority is satisfied that the certificate-holder

- (i) is not in a position to comply the requirements envisaged in Section 5 ; or
- (ii) has contravened any of the provisions of this Act or any rules made thereunder.

7. Transfer of ownership of clinical establishment- (1) in the case of transfer of ownership, proprietorship or management of a clinical establishment the certificate of registration in respect thereof shall cease to have effect from the date on which such transfer is effected.

(2) Within fifteen days from the date of every transfer referred to in Sub-section (1), the transferor and the transferee shall jointly communicate the fact of such transfer to the supervising authority and the transferee shall for the maintenance of the clinical

establishment, make an application for a fresh certificate of registration in accordance with the provisions of Section 4.

(3) Where any transfer is effected as referred to in Sub-section (I) notwithstanding anything contained in this Act, the clinical establishment so transferred shall be deemed to be a registered clinical establishment

- (a) for a period of thirty days from the date when such transfer is effected, or
- (b) if an application made in accordance with Sub-section (2), for a fresh certificate of registration, is pending on the expiry of the period specified in Clause (a) till the disposal of such application.

8. Revocation of certificate of registration- (1) The supervising authority may without prejudice to any other penalty that may be imposed on the certificate-holder by order in writing, revoke the certificate of registration in respect of any clinical establishment

- (a) on any ground which would entitle it to refuse an application for registration under Section 5; or
- (b) if the clinical establishment fails to comply with the requirements prescribed under Section 10 ; or
- (c) if the certificate-holder has been convicted of any offence in respect of that establishment:

Provided that no such order shall be made except after giving the certificate-holder a reasonable opportunity of being heard and every such order shall set out therein the grounds for the revocation of the certificate of registration and such grounds shall be communicated to the certificate holder in such manner as may be prescribed.

(2) Every order made under Sub-section (I) shall contain a direction that the inpatients of the clinical establishment shall be transferred to such other clinical establishment as the patient or his attendant opts or where, it is not practicable to transfer the inpatient to the clinical establishment so opted to the nearest Government Hospital, which shall be specified in that order and it shall also contain such provisions (including provisions by way of direction) as to the care and custody of such inpatients pending such transfer.

9. Appeal- (1) Any person aggrieved by an order of the supervising authority refusing to grant or renew a certificate of registration or revoking a certificate of registration may in such manner and within such period as may be prescribed prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) Every appeal under Sub-section (I) shall be made in such form and accompanied by such fee as may be prescribed.

10. Clinical establishment to comply with the certain requirements-Every clinical establishment registered or deemed to be registered under this Act shall comply with such requirements in relation to location accommodation, equipments and instruments and personnel (Medical and Paramedical) as may be prescribed:

Provided that the State Government may relax any such requirements in respect of clinical establishments situated in rural areas.

Explanation- The expression “rural areas” shall mean areas not included in any Municipal or Notified Area within the meaning of the Orissa Municipal Act, 23 of 1950.

11. Inspection of Clinical establishment- (1) The supervising authority or any officer empowered by it in that behalf may, subject to such general or special order as may be made by the State Government, at any time enter and inspect any premises which are used or which the supervising authority or, as the case may be, the Officer empowered by it has reason to believe to be used for the purpose of a clinical establishment and require to production of any records which are required to be kept in accordance with the provisions of this Act or the Rules, for inspection:

Provided that any personal records of patient ,if inspected during the course of inspection shall be kept confidential except for the purpose of Sub-section (4).

(2) If any person refuses to allow the supervising authority or the officer empowered by it to enter or inspect any premises or to inspect any records under Sub-section (1) or obstructs such authority or officer in the exercise of his powers under this section, he shall on conviction, be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

(3) The supervising authority may interview any private inpatient receiving treatment and care in the clinical establishment

(a) for the purpose of inquiry into any complaint made by or on behalf of such patient as to the treatment and care; or

(b) in any case where the supervising authority has reason to believe that any inpatient is not receiving proper treatment and care.

(4) Where the supervising authority is satisfied that any inpatient in a clinical establishment is not receiving proper treatment and care, he may issue such directions as deemed fit to the certificate-holder and every such certificate-holder shall be bound to comply with such directions.

12. Information as to change of address of clinical establishments- Any change in the address or situation of, or of staff belonging to, a clinical establishment shall be communicated by the owner, proprietor or management thereof to the supervising authority not later than seven days after such change with specific mention as to the exact date when such change occurred.

13. Loss of certificate of registration- (I) In the event of a certificate of

registration being lost damaged or destroyed the holder thereof shall apply to the supervising authority for issue of a duplicate thereof and, on the receipt of such application, the supervising authority shall having been satisfied about the fact of such loss, damage or destruction and on payment by the certificate-holder, of such fee and in such manner as may be prescribed issue such certificate.

(2) Every certificate issued under Sub-section (I) shall be marked "Duplicate"

14. Maintenance of registers and records - There shall be maintained by the owner, proprietor or the management of every clinical establishment such registers and records as may be prescribed.

15. Information of death occurring in clinical establishments-If any death occurs in a clinical establishment, the owner, proprietor or the management thereof shall within twenty-four hours from the time of such occurrence, furnish such informations in respect thereof in the prescribed form to the supervising authority and to such other authority or authorities as may be prescribed.

16. Penalty for offences- (1) Any person who establishes or maintains a clinical establishment in contravention of the provision of Section 3 or who being a certificate-holder, fails, without reasonable, excuse, to keep or affix the certificate of registration in the clinical establishment in contravention of Sub-section (2) of Section 5, shall, on conviction, be punishable with fine which may extend to ten thousand rupees and where such person after being convicted under this section for any offence continues to commit the offence or commits it for the second or any subsequent time he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twenty thousand rupees or with both.

(2) Any person who contravenes any of the provisions of this Act other than those mentioned in Sub-section (I), shall on conviction, be punishable with fine which may extend to one thousand rupees and in the case where any such person after conviction under this Sub-section for any offence, continues to commit the offence, he shall, on conviction be punishable with further fine of one hundred rupees for everyday after the first day during which contravention is continued.

17. Offences of companies- (1) Where an offence under this Act has been committed by a Company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the communication of such offence.

(2) Notwithstanding anything contained in Sub-section (I), where an offence under this Act has been committed by a company and It is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager,

secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this section-

- (a) **“Company”** means a body corporate and includes a firm or other association of individuals; and
- (b) **“Director”** in relation to a firm, means a partner in the firm.

18. Court competent to try offences-No Court interior to that of a Magistrate of the first class shall try any offence punishable under this Act.

19. Protection of action taken in good faith- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or and Rules or Orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any Rules or Orders made thereunder.

20. Power to make rules- The State Government may, subject to previous publication by giving notice for a period of not less than ninety days make Rules for carrying out the provisions of the Act.

21. Effect of Act on other laws-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

22. Power to remove doubts and difficulties-If any doubt or difficulty arises in giving affect to the provisions of this Act, the State Government may, as occasion may require, by order, do anything not inconsistent with the provisions of this Act or the rules made thereunder, which appears to them necessary for the purpose of removing the doubt or difficulty:

Provided that no order shall be issued under this section after the expiry of a period of two years from the date of commencement of this Act.