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1994, No. 92

An Act to amend the Medical Auxiliaries Act 1966

[20 October 1994]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Medical Auxiliaries Amendment Act 1994, and shall be read together with and deemed part of the Medical Auxiliaries Act 1966 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. Removal of name from register—Section 27 of the principal Act is hereby amended by adding the following subsection:

“(3) All costs and expenses payable under this section shall be recoverable as a debt due to the Crown.”

3. New heading and sections inserted—The principal Act is hereby amended by inserting in Part III, after section 31, the following heading and sections:

“Application of Health and Disability Commissioner Act 1994

“31A. Interpretation—In this section and sections 31B to 31G of this Act, unless the context otherwise requires,—

“‘Code’ means the Code of Health and Disability Services Consumers’ Rights for the time being prescribed by regulations made under section 74 of the Health and Disability Commissioner Act 1994:

“‘Commissioner’ means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

“‘Director of Proceedings’ means the person for the time being designated under section 15 of the Health and Disability Commissioner Act 1994 as the Director of Proceedings.

“31B. Complaints to be notified to Commissioner—Where—

“(a) A complaint is made under section 26 of this Act; or

“(b) A Board otherwise becomes aware, in respect of any registered person, that there might be grounds entitling the Board to exercise its disciplinary powers under section 27 or section 31 of this Act,—the appropriate Secretary shall forthwith notify the Commissioner of that complaint or matter.

“31C. Consultation with Commissioner—Where, in accordance with section 31B of this Act, a complaint or matter is notified to the Commissioner, the Commissioner may at any time after receiving the notification, consult with the Board having jurisdiction in the matter in relation to the complaint or matter.

“31D. Suspension of action under this Act—(1) Notwithstanding anything in this Part of this Act, but subject to subsection (2) of this section and to section 31E (3) of this Act, where a complaint or matter is notified to the Commissioner in accordance with section 31B of this Act, no action shall be taken under this Act concerning the complaint or matter until—

“(a) The Commissioner notifies the Board having jurisdiction in the matter—

“(i) That the complaint or matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or

“(ii) That the complaint or matter has been resolved; or

“(iii) That the complaint or matter has been investigated under that Act and the complaint or matter is not to be referred to the Director of Proceedings in accordance with section 45 (f) of that Act; or

“(b) The Director of Proceedings notifies the Board having jurisdiction in the matter that the Director of Proceedings has decided, pursuant to section 49 of that Act, not to institute disciplinary proceedings under this Act in relation to the complaint or matter.

“(2) Nothing in this section prevents the taking of any action under any regulations made pursuant to section 40 (1) (f) of this Act.

“31E. Director of Proceedings may lay charge under this Part of this Act—(1) This section applies where,—

“(a) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Commissioner is of the opinion that any action (within the meaning of that Act) that was the subject-matter of the investigation, being the action of a registered person, was in breach of the Code; and

“(b) The Director of Proceedings decides, pursuant to section 49 of that Act, that proceedings should be taken under this Part of this Act against that person.

“(2) Where this section applies, the Director of Proceedings shall frame an appropriate charge against the registered person and lay the charge with the Board having jurisdiction in the matter.

“(3) Where the Director of Proceedings lays a charge with a Board under subsection (2) of this section, the Board shall deal with the matter as if the laying of the charge were the referral of a complaint to that Board by an investigator under section 26 (3) of this Act, and, subject to section 31F of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

“31F. Director of Proceedings to prosecute charge—Notwithstanding anything in this Part of this Act, any charge laid under section 31E of this Act by the Director of Proceedings shall be prosecuted at the hearing by the Director of Proceedings, who for that purpose may be represented by counsel or otherwise.

“31G. Costs may be awarded to Commissioner—(1) In any proceedings under this Part of this Act relating to a charge laid by the Director of Proceedings under section 31E of this Act, the person so charged may be ordered to pay—

“(a) Any costs and expenses of and incidental to any investigation made by the Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:

“(b) The costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings.

“(2) Any costs and expenses payable pursuant to subsection (1) of this section—

“(a) Shall be recoverable as a debt due to the Crown; and

“(b) Notwithstanding anything in section 36 (3) of this Act, shall be paid to the Commissioner.

“(3) Nothing in this section limits section 27 (1) of this Act.”

This Act is administered in the Ministry of Health.
