



## ANALYSIS

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1962, No. 18

**An Act to amend the Medical Practitioners Act 1950**

[30 October 1962]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Medical Practitioners Amendment Act 1962, and shall be read together with and deemed part of the Medical Practitioners Act 1950 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of April, nineteen hundred and sixty-three.

## PART I

### INCORPORATION OF MEDICAL COUNCIL

**2. Incorporation of Medical Council**—Section 3 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The Council shall be a body corporate with perpetual succession and a common seal, and may hold real and personal property, and sue and be sued, and do and suffer all that bodies corporate may do and suffer.”

**3. Deputy Chairman of Council**—(1) The principal Act is hereby amended by inserting, after section 4, the following section:

“4A. (1) The Council, at any meeting, may appoint one of its members to be the Deputy Chairman of the Council.

“(2) Unless the Deputy Chairman sooner resigns from that office, or is appointed to be the Chairman of the Council, or vacates his office as a member of the Council, he shall hold the office of Deputy Chairman of the Council for a term expiring with the day before the first meeting of the Council in the year following that in which he was last appointed as Deputy Chairman of the Council, and shall be eligible for reappointment.

“(3) If the Deputy Chairman is appointed to be the Chairman of the Council, or ceases to be a member of the Council, he shall thereupon vacate the office of Deputy Chairman.

“(4) During any vacancy in the office of Chairman or in the absence of the Chairman from New Zealand or while the Chairman is incapacitated by sickness or otherwise, the Deputy Chairman shall have and may exercise and perform all the powers and duties of the Chairman.”

(2) Section 4 of the principal Act is hereby amended by inserting in subsection (5), after the words “there is no Chairman of the Council”, the words “the Deputy Chairman shall preside at the meeting; and if the Deputy Chairman also is not present at the meeting or there is no Deputy Chairman”.

**4. Secretary and other officers, servants, and agents**—The principal Act is hereby amended by repealing section 5, and substituting the following section:

“5. (1) The Council may from time to time appoint a Secretary to the Medical Council and such other officers, servants, and agents as it thinks fit, and may pay them such remuneration as it considers appropriate.

“(2) Until a Secretary to the Medical Council who is not an officer of the Public Service is appointed under subsection (1) of this section, there shall from time to time be appointed as an officer of the Public Service a Secretary to the Medical Council. The office of Secretary to the Medical Council may be held either separately or in conjunction with any other office in the Public Service.”

**5. Meetings of Council**—Section 6 of the principal Act is hereby amended by omitting from subsection (1) the words “or of the Director-General of Health”.

**6. Fees and travelling allowances**—The following enactments are hereby repealed:

- (a) Section 7A of the principal Act, as inserted by subsection (1) of section 10 of the Fees and Travelling Allowances Act 1951:
- (b) So much of the First Schedule to the Fees and Travelling Allowances Act 1951 as relates to the Medical Council:
- (c) So much of the Second Schedule to the Fees and Travelling Allowances Act 1951 as relates to the principal Act.

**7. Applications for registration**—Section 13 of the principal Act is hereby amended by omitting from subsection (2) the words “office of the Department of Health”, and substituting the words “officer, servant, or agent of the Council”.

**8. Register to be open to inspection**—Section 28 of the principal Act is hereby amended by omitting the words “Director-General of Health in Wellington”, and substituting the word “Council”.

**9. Publication of copies of register**—The principal Act is hereby amended by inserting, after section 29, the following section:

“29A. Without restricting in any way the provisions of section 29 of this Act, it is hereby declared that the Council may at any time cause copies of the register of persons who are

registered as medical practitioners or conditionally registered under this Act to be published otherwise than as required by that section, and may sell or authorise the sale of copies of the register published under this section at such reasonable price as the Council may fix.”

**10. Remuneration of members of Investigation Committee and expenses of witnesses**—Section 43E of the principal Act, as inserted by subsection (1) of section 6 of the Medical Practitioners Amendment Act 1957, is hereby amended—

- (a) By omitting the words “out of money appropriated by Parliament for the purpose”, and substituting the words “by the Council”;
- (b) By omitting from paragraph (a) the words “who is not a member of the Public Service”;
- (c) By adding to paragraph (b) the words “as if they were members of a statutory Board within the meaning of that Act”.

**11. Penalties, etc., to be paid to Council**—Section 44 of the principal Act is hereby amended by omitting from subsection (8) the words “Crown, and shall be paid into the Public Account and form part of the Consolidated Fund”, and substituting the word “Council”.

**12. Council to receive fees and pay expenses**—(1) Section 53 of the principal Act is hereby amended—

- (a) By omitting from subsection (1) the words “Department of Health authorised in that behalf by the Director-General of Health”, and substituting the words “Council authorised in that behalf by the Council”;
  - (b) By omitting from subsection (2) the words “Department of Health”, and substituting the word “Council”.
- (2) Section 53 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsections:

“(3) All fees and other money payable to the Council under this Act in respect of any period after the thirty-first day of March, nineteen hundred and sixty-three, shall, notwithstanding that they were received on or before that date and became payable into the Public Account, be paid without further appropriation than this section to the Council.

“(4) Subject to the provisions of this Act and to the terms of any trust or endowment, all fees received under this section and all other money received by the Council shall be applied

by the Council in paying all amounts which by this Act are required to be paid by the Council; and, subject thereto, all such fees and money may be applied by the Council as follows:

“(a) In payment of remuneration and travelling allowances and expenses to its members, officers, servants, and agents:

“(b) In payment of all costs and expenses incurred in doing whatever the Council considers expedient in order that it may best accomplish the purposes for which it is established:

“(c) In contributing towards the cost of medical education and research, and providing scholarships and fellowships and making donations for any such purpose.

“(5) The Council may from time to time, as it thinks fit, invest any such fees and money not for the time being required for any of the purposes mentioned in subsection (4) of this section in any manner authorised by the Trustee Act 1956 for the investment of trust funds.

“(6) At the end of any financial year in which the Council has made use of accommodation provided by the Crown, or of the services of persons in the Government service, the Council shall pay to the Crown such sum in respect of that year as the Minister considers to be reasonable. Any such sum shall be recoverable by the Crown as a debt due by the Council.”

## PART II

### MISCELLANEOUS AMENDMENTS

**13. Interpretation**—Section 2 of the principal Act is hereby amended by inserting in its appropriate alphabetical order the following definition:

“‘Crown Solicitor’ means a solicitor holding a warrant of appointment as such from the Governor-General; and includes any barrister or solicitor employed in the Crown Law Office:”.

**14. Notification of disability and suspension from practice**—The principal Act is hereby amended by repealing section 26, and substituting the following section—

“26. (1) In this section—

“‘Hospital’ means—

“(a) Any institution or separate institution within the meaning of the Hospitals Act 1957:

“(b) Any licensed hospital within the meaning of Part V of the Hospitals Act 1957:

“(c) Any institution within the meaning of the Mental Health Act 1911:

“‘Medical Superintendent’, in relation to any hospital, means—

“(a) In the case of any institution or separate institution within the meaning of the Hospitals Act 1957, the medical officer (if any) who is in charge of that hospital:

“(b) In the case of any licensed hospital within the meaning of Part V of the Hospitals Act 1957, the manager of that hospital if he is a registered medical practitioner:

“(c) In the case of any institution within the meaning of the Mental Health Act 1911, the Medical Superintendent of that institution.

“(2) In any case where any person who is registered as a medical practitioner or conditionally registered is a patient of a hospital of which there is a Medical Superintendent, if the Medical Superintendent considers that the person is (owing to mental or physical disability) unable to perform his professional duties satisfactorily, and that because he may attempt to perform those duties, it is necessary in the public interest to prevent him from so doing, the Medical Superintendent shall forthwith give written notice to the Secretary to the Council of all the circumstances.

“(3) In any case where any person who is registered as a medical practitioner or conditionally registered is not a patient of a hospital of which there is a Medical Superintendent, if any registered medical practitioner is in attendance on that person and considers that the person is (owing to mental or physical disability) unable to perform his professional duties satisfactorily and that, because he may attempt to perform those duties, it is necessary in the public interest to prevent him from so doing, the medical practitioner in attendance on that person shall forthwith give written notice to the Secretary to the Council of all the circumstances.

“(4) In any case where any Medical Superintendent or registered medical practitioner contemplates giving any such written notice to the Secretary to the Council, he may seek whatever medical advice, whether psychiatric or otherwise, he considers appropriate to assist him in forming his opinion. Any written notice thereafter so given shall mention any difference between any such advice and the views of the

Medical Superintendent or registered medical practitioner as set out in the notice.

“(5) Upon receipt of any such notice, the Secretary to the Council shall forthwith take all steps necessary to have it considered by the Council or by a committee of the Council set up under subsection (9) of this section.

“(6) Whether or not the Secretary to the Council has received any such written notice as aforesaid in connection with the matter, if the Council or any committee set up by it under subsection (9) of this section is satisfied that any person who is registered as a medical practitioner or conditionally registered is (owing to mental or physical disability) unable to perform his professional duties satisfactorily, and that, because he may attempt to perform those duties, it is necessary in the public interest to prevent him from so doing, the Council or committee may, by writing under the hand of the Chairman or Deputy Chairman, suspend that person from practice as a registered medical practitioner or as a person conditionally registered under this Act, as the case may be.

“(7) Any such suspension shall take effect forthwith upon its being made, but may at any time be revoked—

“(a) By the Council or any committee set up by it under subsection (9) of this section; or

“(b) By the Supreme Court either—

“(i) On an appeal by the person so suspended to that Court made within twenty-eight days after the date on which the Council or Committee has suspended that person or has last refused to revoke the suspension on an application made to it in that behalf by that person; or

“(ii) On an application by the person so suspended to that Court in any case where the person has applied in writing to the Secretary to the Council for the revocation of the suspension under paragraph (a) of this subsection and has not been advised of the decision of the Council or any such committee in connection with his application within twenty-eight days after the date on which the application was delivered to the Secretary.

“(8) While any person is so suspended from practice under this section, that person shall be deemed for the purposes of this Act other than Part III not to be a registered medical practitioner or conditionally registered, as the case may be.

“(9) The Council may from time to time, for the purposes of this section, appoint a committee comprising the Chairman or Deputy Chairman of the Council and at least one other

member of the Council. The appointment of any such committee may be revoked by the Council at any time."

**15. Functions of Disciplinary Committee**—(1) Section 32 of the principal Act, as amended by section 5 of the Medical Practitioners Amendment Act 1957, is hereby further amended by revoking the proviso, and substituting the following provisos:

"Provided that, where, before it has completed its inquiry into any such charge, the Disciplinary Committee is of the opinion that the charge amounts to a charge of grave impropriety or infamous conduct in a professional respect, the Disciplinary Committee shall not inquire further into or deal with the charge but shall refer it for investigation by an Investigation Committee:

Provided also that, where, after it has completed its inquiry into any such charge, the Disciplinary Committee is of the opinion that the charge amounts to a charge of grave impropriety or infamous conduct in a professional respect and ought to be referred to the Medical Council, the Disciplinary Committee shall not deal with the charge but shall refer it to the Solicitor-General, who shall take action to have the charge considered by the Council or arrange for that action to be taken."

(2) Section 5 of the Medical Practitioners Amendment Act 1957 is hereby consequentially repealed.

**16. Enforcement of contracts of service entered into by medical bursars**—Section 33 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

"(1) This section applies to any contract entered into by any person with the Crown (whether before or after the commencement of this Act) whereby that person has undertaken to serve for such period or periods as may be specified in the contract in either or both of the following types of employment, namely, employment as a medical practitioner in the service of a Hospital Board, or such employment (whether in the service of a Hospital Board or otherwise) as the Director-General of Health may require.

"(2) Where any medical practitioner has committed a wilful breach of any such undertaking in a contract to which this section applies, the Disciplinary Committee shall have



and may exercise the powers conferred on it by section 32 of this Act; and the provisions of this Act shall, so far as they are applicable and with any necessary modifications, apply accordingly as if such a breach were professional misconduct.”

**17. Appeals from decisions of Disciplinary Committee**—Section 42 of the principal Act is hereby amended by adding the following subsection:

“(4) Unless the Medical Council otherwise directs, on any such rehearing the record of the evidence adduced at the hearing before the Disciplinary Committee shall be placed before the Medical Council, and it shall not be permissible to recall witnesses who gave evidence before the Disciplinary Committee or to call other witnesses.”

**18. Disciplinary powers of Council**—(1) Section 43B of the principal Act, as inserted by section 6 of the Medical Practitioners Amendment Act 1957, is hereby amended by omitting from subsection (1) the words “or has conducted himself in such a manner as to render the exercise of the powers of the Medical Council expedient in the interests of the public”.

(2) Section 44 of the principal Act is hereby amended by omitting the words “or to have conducted himself in such a manner as to render the exercise of the powers of the Council expedient in the interests of the public” where they appear in paragraph (b) of subsection (1) and also where they appear in subsection (7).

(3) Section 44 of the principal Act is hereby further amended by inserting in subsection (9), after the word “deemed”, the words “for the purposes of this Act other than Part III”.

**19. Investigation Committees**—Section 43c of the principal Act, as inserted by section 6 of the Medical Practitioners Amendment Act 1957, is hereby amended—

(a) By inserting, after the word “complaint” where it first appears in subsection (1), the words “or upon any charge being referred to it by the Disciplinary Committee under subsection (1) of section 32 of this Act”:

(b) By inserting, after the word “complaint” in each other place where it appears in the section, the words “or charge”.

**20. Medical Council and Disciplinary Committees may require evidence to be given**—Section 48 of the principal Act is hereby amended by inserting in subsection (3), after the words “produce to the”, the words “Council or”.

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This Act is administered in the Department of Health.

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