

## MEDICAL PRACTITIONERS AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Medical Practitioners Act 1968, particularly in respect of professional discipline.

*Clause 1* relates to the Short Title and commencement of the Bill.

*Clause 2* amends the composition of the Medical Council of New Zealand. The nominee of the New Zealand College of Obstetricians and Gynaecologists replaces the nominee of the New Zealand Council of the Royal College of Obstetricians and Gynaecologists.

*Clause 3* relates to the composition and chairmanship of the Medical Education Committee. At present, the Chairman is the member of the Council appointed to the Committee, other than the Deans of the 2 medical schools. The effect of *subclauses (1) and (3)* is to allow the Council to nominate as Chairman of the Committee either that member of the Council or one of the Deans.

*Subclause (2)* effects in relation to the Committee the same change as that effected by *clause 2* of the Bill in relation to the Council.

*Clause 4* changes the name of the Penal Cases Committee to the Preliminary Proceedings Committee.

*Clause 5* empowers the Council to request from any medical practitioner statistical information relating to medical practice and practitioners.

*Clause 6* rewrites and reorganises sections 37 and 38 relating to the annual publication of the medical register. The only change of substance is to drop the requirement that the register be published in the *Gazette*.

*Clause 7* corrects an error in the principal Act.

*Clause 8* inserts in the principal Act a new section empowering the Convener of the Preliminary Proceedings Committee to provide counsel to assist any person (not being registered as a medical practitioner or conditionally registered) who is a party to any appeal proceedings under section 53 of the principal Act. These are appeals to the Council from decisions of Disciplinary Committees. Such a party is to be notified of his right to counsel by the Convener of the Preliminary Proceedings Committee. If that party indicates that he wishes counsel to be appointed, the Convener must appoint counsel and inform the party concerned of the name of the person appointed. The reasonable costs of counsel are to be met by the Council.

*Clause 9* sets up a new procedure where it comes to the Council's notice that a person who is registered as a medical practitioner or is conditionally registered has been convicted of an offence punishable by imprisonment for a term of 3 months or more. At present, this is one ground on which the Council may exercise its disciplinary powers.

Under the new procedure (which is now extended to cover cases where the conviction is entered in a foreign court), the matter will first be considered by the Preliminary Proceedings Committee. If that Committee considers that the matter should proceed no further, it may notify the convicted person accordingly. The Council will only consider the case if the Committee recommends that it should do so.

If the Committee does so recommend, the Council may hold a hearing to consider the matter, at which the convicted person is entitled to appear and be heard, and may be represented by counsel. The case against the convicted person is to be presented at the hearing by counsel appointed by the Preliminary Proceedings Committee.

*Clause 10* consolidates and amends sections 58 and 59 of the principal Act relating to the Council's disciplinary powers, and appeals arising from the Council's decisions. Largely, the exercise is a drafting one designed to make the present long section 58 more intelligible by dividing it into its component parts. However, the following changes are incorporated:

- (a) The new *section 58 (1) (a)* is reworded, consequent upon the new *section 56A* (set out in *clause 9* of the Bill);
- (b) *Section 58 (7)* renders it unnecessary to serve a copy of the Council's order on the medical practitioner concerned if he was present at the meeting of the Council at which the order was made, although he remains entitled to a copy if he requests it;
- (c) *Section 58B (6)* empowers the Council to make an order for costs against an applicant for re-registration under the Act;
- (d) *Clause 59* prescribes the same time period for all appeals and applications to the Court;
- (e) The special status given to findings of fact in certain domestic proceedings is omitted;
- (f) The requirement that appeals against certain disciplinary findings be heard by at least 3 Judges is also omitted.

*Clause 11* is purely consequential in nature.

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*Hon. Mr Malcolm*

## MEDICAL PRACTITIONERS AMENDMENT

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### A BILL INTITULED

#### **An Act to amend the Medical Practitioners Act 1968**

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 1983, and shall be read together with and deemed part of the Medical Practitioners Act 1968\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

**2. Constitution of Medical Council of New Zealand**—Section 3 (2) (e) of the principal Act is hereby amended by omitting the expression "New Zealand Council of the Royal

\*R.S. Vol. 7, p. 535

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College of Obstetricians and Gynaecologists”, and substituting the expression “New Zealand College of Obstetricians and Gynaecologists”.

**3. Medical Education Committee**—(1) Section 8 (1) of the principal Act is hereby amended by repealing paragraphs (a) and (b), and substituting the following paragraphs: 5

“(a) The Dean of the Faculty of Medicine in the University of Otago and the Dean of the Faculty of Medicine in the University of Auckland:

“(b) One other member of the Council to be appointed by the Council.” 10

(2) Section 8 (1) of the principal Act is hereby further amended by omitting from paragraph (e) (as substituted by section 4 of the Medical Practitioners Amendment Act 1979) the expression “New Zealand Council of the Royal College of Obstetricians and Gynaecologists”, and substituting the expression “New Zealand College of Obstetricians and Gynaecologists”. 15

(3) Section 8 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) The Council shall appoint either one of the persons appointed under paragraph (a) of subsection (1) of this section or the person appointed under paragraph (b) of that subsection to be the Chairman of the Medical Education Committee.” 20

**4. Preliminary Proceedings Committee**—(1) Section 11 of the principal Act is hereby amended by omitting the expression “Penal Cases Committee” wherever it occurs, and substituting in each case the expression “Preliminary Proceedings Committee”. 25

(2) Section 2 of the principal Act is hereby amended by omitting the definition of the term “Convener of the Penal Cases Committee”, and substituting the following definition: 30

“ ‘Convener of the Preliminary Proceedings Committee’ or ‘Convener’ means the person who is for the time being the Convener of the Preliminary Proceedings Committee in accordance with subsection (2) or subsection (4) of section 11 of this Act.” 35

(3) Section 2 of the principal Act is hereby further amended by omitting the definition of the term “Penal Cases Committee”, and substituting the following definition:

“ ‘Preliminary Proceedings Committee’ means the committee of that name appointed under section 11 of this Act.” 40

(4) The principal Act is hereby further amended by omitting the expression "Penal Cases Committee" wherever it occurs in sections 12, 55 to 57, 61 to 63, and 66, and substituting in each case the expression "Preliminary Proceedings Committee".

5     **5. Council may request statistical information**—The principal Act is hereby amended by inserting in Part I, after section 14A (as inserted by section 4 of the Medical Practitioners Amendment Act 1970), the following section:

10     "14B. (1) The Council may from time to time, by notice in writing addressed to any medical practitioner, request that practitioner to supply the Council with such statistical information relating to medical practice or medical practitioners as may be specified in the notice and within the possession or knowledge of that practitioner.

15     "(2) Any statistical information requested under subsection (1) of this section shall be supplied within such time as may be specified in the notice or within such extended time as the Council may allow, and shall be supplied in the manner and form notified in writing to the medical practitioner by the  
20 Council."

**6. Two new sections (relating to register of medical practitioners) substituted in principal Act**—The principal Act is hereby amended by repealing sections 37 and 38, and substituting the following sections:

25     "**37. Council to publish copies of register**—(1) The Council shall, in each year, cause copies of the register of persons who are registered as medical practitioners or conditionally registered as at the 30th day of June in that year to be published as soon as practicable after that date, and may sell or authorise  
30 the sale of any such copies at such reasonable price as the Council may fix.

35     "(2) Every such copy of the register shall indicate with reference to each person whose name appears in it whether or not that person is the holder of an annual practising certificate for the then current year, and whether he is registered as a medical practitioner or is conditionally registered.

40     "**38. Evidence of registration**—(1) Any copy of the register published under section 37 of this Act shall, until the contrary is shown, be sufficient evidence in all judicial proceedings of the contents of the register as at the 30th day of June in the year to which it relates, and of everything stated or indicated in the copy.

“(2) The absence of a person’s name from any such copy of the register shall, until the contrary is shown, be sufficient evidence that that person was not registered in the register at the 30th day of June in the year to which the copy relates; but a certified copy under the hand of the Secretary to the Council of the entry of the name of that person in the register shall be evidence of the contents of the register with respect to that entry. 5

“(3) Without restricting in any way the foregoing provisions of this section,— 10

“(a) A certificate of registration issued under section 24 of this Act shall be evidence of the registration of the holder of that certificate as at the date of the certificate; and

“(b) A certificate under the hand of the Secretary to the Council that any person is or is not registered as a medical practitioner or conditionally registered shall be evidence of that fact.” 15

**7. Complaints to Disciplinary Committee**—Section 42A of the principal Act (as inserted by section 9 of the Medical Practitioners Amendment Act 1970) is hereby amended by omitting from subsection (4) (as substituted by section 17 of the Medical Practitioners Amendment Act 1979) the expression “42A”, and substituting the expression “42B”. 20

**8. Counsel may be appointed to represent lay party to appeal**—The principal Act is hereby amended by inserting, after section 53 (as amended by section 7 of the Medical Practitioners Amendment Act 1982), the following section: 25

“53A. (1) Where any party (in this section called the lay party) in any appeal proceedings under section 53 of this Act is neither registered as a medical practitioner nor conditionally registered, the Secretary to the Council shall forward a copy of the notice of appeal to the Convener of the Preliminary Proceedings Committee. 30

“(2) Upon receipt of a copy of a notice of appeal under subsection (1) of this section, the Convener of the Preliminary Proceedings Committee may notify the lay party that, if the lay party so wishes, counsel may be appointed to represent the lay party at the appeal proceedings. 35

“(3) If the lay party indicates that he does wish counsel to be appointed, the Convener of the Preliminary Proceedings Committee shall appoint counsel accordingly and notify the lay party of the name of the person appointed. 40

“(4) The reasonable costs of counsel appointed under this section shall be paid by the Council.” 45

**9. Consideration of conviction**—The principal Act is hereby amended by inserting, after section 56, the following section:

5 “56A. (1) Where it appears to the Secretary to the Council that a person who is registered as a medical practitioner or is conditionally registered has been convicted by any Court in New Zealand or elsewhere of an offence punishable by imprisonment for a term of 3 months or more, the Secretary shall refer the matter to the Preliminary Proceedings  
10 Committee.

“(2) The Preliminary Proceedings Committee shall determine whether or not in its opinion the matter should be considered by the Council.

15 “(3) Where the Preliminary Proceedings Committee is of the opinion that the conviction should not be considered by the Council, it may notify the person convicted in writing that it has considered the conviction and has decided not to refer the matter to the Council.

20 “(4) Where the Preliminary Proceedings Committee is of the opinion that the conviction should be considered by the Council, it shall report its recommendation to the Council.

25 “(5) Where, after considering the recommendation of the Preliminary Proceedings Committee, the Council decides to hold a hearing to determine whether or not it should exercise its disciplinary powers against the person convicted, the Council shall—

“(a) Set a date and place for the hearing; and

“(b) Notify the person convicted by registered letter of the date and place of the hearing; and

30 “(c) Notify the Preliminary Proceedings Committee of the date and place of the hearing.

“(6) The date fixed for the hearing shall be such as to allow the person convicted at least 28 days’ notice of the hearing.

35 “(7) The person convicted may be required, in the notification given under **subsection (5) (b)** of this section, to notify the Council in writing, not later than a specified date (being earlier than the date of the hearing), whether or not he intends to appear before the Council at the hearing.

40 “(8) If the person convicted fails to give such notice, he shall be entitled to appear and be heard only on such conditions as to the payment of costs and expenses or otherwise as the Council thinks fit.

“(9) The person convicted may be represented at the hearing by his counsel.

“(10) On being notified under **subsection (5) (c)** of this section of the hearing, the Preliminary Proceedings Committee shall appoint counsel to present the evidence at the hearing against the person convicted.

“(11) The Council shall observe the rules of natural justice at the hearing, but, subject to that requirement, it may receive evidence notwithstanding that it would not be admissible in a Court of law.” 5

**10. Five new sections (relating to disciplinary proceedings and appeals) substituted in principal Act—** 10  
The principal Act is hereby amended by repealing sections 58 and 59, and substituting the following sections:

“**58. Disciplinary powers of Council—**(1) Where the Council—

“(a) Has held a hearing under **section 56A** of this Act in respect of the conviction of any person who is registered as a medical practitioner or is conditionally registered; or 15

“(b) After due inquiry has judged any person who is so registered or conditionally registered to have been guilty of disgraceful conduct in a professional respect,— 20

the Council may if it thinks fit, by writing under the hand of the Chairman, exercise in respect of that person all or any of the disciplinary powers specified in **subsection (2)** of this section. 25

“(2) Those powers are as follows:

“(a) Subject to **subsection (4)** of this section, to order the name of the person concerned to be removed from the register; and thereupon, subject to the provisions of this Act, that person shall cease to be registered as a medical practitioner or conditionally registered, as the case may require: 30

“(b) Subject to **subsection (4)** of this section, to suspend that person from practice as a medical practitioner for a period not exceeding 12 months: 35

“(c) To impose a penalty upon that person not exceeding \$1,000:

“(d) To impose, for a period not exceeding 3 years, such conditions on that person’s right to practise as a medical practitioner as it thinks fit for the protection of the public or in that person’s interests; and thereupon that person may, for the specified period, practise as a medical practitioner subject to those conditions, but not otherwise: 40

“(e) To censure that person:

“(f) To order that person to pay any costs and expenses of and incidental to the inquiry by the Council and any investigation made by the Preliminary Proceedings Committee.

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“(3) No person shall be guilty of disgraceful conduct in a professional respect merely because he has adopted and practised any theory of medicine or surgery, if in so doing he has acted honestly and in good faith.

10 “(4) No name of any person shall be removed from the register under **paragraph (a) of subsection (2)** of this section, and no person shall be suspended from practice as a medical practitioner under **paragraph (b)** of that subsection, because of any offence committed before the date of his registration, if  
15 at that date the Council was aware of his conviction in respect of that offence.

“(5) Notwithstanding anything in **subsection (2)** of this section, the Council may, without making any finding under **subsection (1)** of this section, order the person concerned to pay any costs  
20 and expenses of and incidental to the inquiry by the Council and any investigation made by the Preliminary Proceedings Committee, if the Council considers that any such inquiries were justified and that it is just that such costs and expenses be imposed.

25 “(6) Subject to **subsection (7)** of this section, a copy of every decision of the Council under this section shall be served by the Secretary to the Council on the medical practitioner in respect of whom it was made, and shall take effect from the day on which such service was effected, or such later date as  
30 may be specified in the decision.

“(7) Where the medical practitioner in respect of whom an order is made under this section is present at the meeting of the Council at which it is made, the medical practitioner shall be deemed for the purposes of **subsection (6)** of this section to  
35 have been served with a copy of the order of the Council; but nothing in this subsection shall prevent the medical practitioner from obtaining a written copy of the order on application to the Secretary to the Council.

“(8) While any order of suspension from practice as a medical  
40 practitioner under this section remains in force, the person in respect of whom the order was made shall be deemed for the purposes of this Act other than this Part not to be registered as a medical practitioner or conditionally registered, as the case may be; but forthwith on the expiry of the order his rights

and privileges as a registered medical practitioner or person conditionally registered shall be revived as from the date of the expiry.

“(9) Every monetary penalty imposed, and all costs and expenses payable, under this section shall be recoverable as a debt due to the Council. 5

“(10) Notwithstanding anything in subsections (1) and (2) of this section, if the Council, after due inquiry under this section into any complaint against any person, considers that he is not guilty of disgraceful conduct in a professional respect but is guilty of professional misconduct, it may exercise in respect of him all or any of the powers which the Disciplinary Committee is authorised to exercise in respect of a person whom it finds guilty of professional misconduct. 10

“58A. **Removal of educational qualification may be treated by Council as conclusive evidence**—If any University or institution, having granted to any person a degree or diploma or other qualification registrable under this Act, exercises any power conferred by law of striking off the name of that person and notifies to the Council the fact of the striking off,— 15 20

“(a) The Secretary to the Council shall make a note of the fact in the register:

“(b) If the said University or institution notifies to the Council the findings of fact on which the decision to strike off the name was based, the findings may (if the Council thinks fit) be treated, for the purposes of any inquiry under this section, as conclusive evidence of the facts found. 25

“58B. **Re-registration of person whose name has been removed from register**—(1) In any order under section 58 (2) (a) of this Act for the removal from the register of the name of any person, the Council, and (in the event of an appeal against any such order) the High Court, may fix a time after which the person whose name is so removed may apply for re-registration under this Act. 30 35

“(2) At the expiration of that time, the person whose name has been so removed may apply for re-registration, and all the provisions of this Act as to registration shall, so far as they are applicable, apply to re-registration under this section. 40

“(3) Subject to subsection (4) of this section, if neither the Council nor the High Court fixes any such time, the Council may refuse to consider any such application for such time as it thinks fit.

“(4) Any person aggrieved by the refusal of the Council to consider any such application may apply to the High Court for an order directing the Council to consider that application, or directing the Secretary to the Council to enter in the register  
5 the name of that person, and the Court may make such order in the matter as it thinks fit.

“(5) Notwithstanding any of the foregoing provisions of this section, on an application made to it under this section the Council may if it thinks fit, instead of re-registering the  
10 applicant, issue to him a certificate of probationary registration entitling him to practise as a medical practitioner for such period as the Council thinks fit in such hospital or institution or with such general practitioner as may be specified in the certificate; and in any such case the provisions of subsections  
15 (5) to (13) of section 33A of this Act shall apply as if the certificate had been issued under that section.

“(6) On any application for re-registration under this section, the Council may make an order for the payment to the Council by the applicant of the costs and expenses of the application;  
20 and all such costs and expenses so ordered to be paid shall be a debt due to the Council from the applicant, and shall be recoverable accordingly in any Court of competent jurisdiction.

“59. **Appeals to High Court**—(1) There shall be a right of appeal to the High Court against—

25 “(a) An order of the Council made under **subsection (2) or subsection (5) or subsection (10) of section 58** of this Act:

“(b) An order or a recommendation made by the Council on an appeal to the Council under this Act.

“(2) Every such appeal shall be brought by notice of appeal  
30 filed in the Court within 28 days after the day on which the order or recommendation was notified to the medical practitioner concerned.

“(3) A copy of the notice of appeal shall be forwarded within the same period to each party directly affected by the appeal,  
35 and to the Secretary to the Council.

“59A. **Further provisions relating to applications and appeals to High Court**—(1) The decision of the High Court in respect of any application under **section 58a** of this Act and any appeal under **section 59** of this Act shall be final and  
40 conclusive.

“(2) Subject to any order of the Court, every decision of the Council against which an appeal is lodged shall continue in force and have effect according to its tenor pending the determination of the appeal.

“(3) On any appeal from any order of the Council, the Court may revoke or vary the order, and may make any order that could have been made by the Council in the first instance.”

**11. Repeals**—The following enactments are hereby repealed:

- (a) Section 12 of the Medical Practitioners Amendment Act 1970: 5
- (b) Section 23 of the Medical Practitioners Amendment Act 1979:
- (c) Section 8 of the Medical Practitioners Amendment Act 1982. 10