



ANALYSIS

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1999, No. 117

An Act to amend the Medicines Act 1981

{14 October 1999

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

1. Short Title and commencement—(1) This Act may be cited as the Medicines Amendment Act 1999, and is part of the Medicines Act 1981 (“the principal Act”).

(2) This Act comes into force on the day after the date on which it receives the Royal assent.

PART 1

AMENDMENTS TO PRINCIPAL ACT

2. Interpretation—(1) Section 2 (1) of the principal Act is amended by repealing the definition of the term “dentist”, and substituting the following definition:

“ ‘Dentist’ means a person who is registered as a dentist under the Dental Act 1988.”

(2) Section 2 (1) of the principal Act is amended by repealing the definition of the term “veterinary surgeon”, and substituting the following definition:

“ ‘Veterinarian’ means a person who is registered as a veterinarian under the Veterinarians Act 1994.”

(3) Section 2 (1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Designated prescriber’ means a person, other than a practitioner or a registered midwife, who—

“(a) Belongs to a class of registered health professionals authorised by regulations made under this Act to prescribe any specified class or description of prescription medicines subject to the satisfaction of requirements specified in or imposed under those regulations; and

“(b) Satisfies any applicable requirement relating to competency, qualifications, or training specified in or imposed under regulations made under this Act:

“ ‘Health services’ has the same meaning as it has in section 2 of the Health and Disability Commissioner Act 1994:

“ ‘Registered health professional’ means—

“(a) A medical practitioner:

“(b) A dentist:

“(c) A clinical dental technician, which for the purposes of this Act means any person for the time being registered as a clinical dental technician under the Dental Act 1988, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:

“(d) A dental technician, which for the purposes of this Act means any person for the time being registered as a dental technician under the Dental Act 1988, including a holder of a provisional certificate of

registration, and a holder of a certificate of temporary registration, under that Act:

“(e) A pharmacist:

“(f) A nurse, which for the purposes of this Act means any person for the time being registered or enrolled as a nurse (whether as a comprehensive nurse, or a general nurse, or otherwise), or as a midwife, under the Nurses Act 1977, including a holder of a provisional certificate of registration or enrolment, and a holder of a certificate of temporary registration or a certificate of temporary enrolment, under that Act:

“(g) A psychologist, which for the purposes of this Act means any person for the time being registered as a psychologist under the Psychologists Act 1981, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:

“(h) A chiropractor, which for the purposes of this Act means any person for the time being registered as a chiropractor under the Chiropractors Act 1982, including a holder of a certificate of temporary registration under that Act:

“(i) An optician:

“(j) A dietitian, which for the purposes of this Act means any person for the time being registered as a dietitian under the Dietitians Act 1950, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:

“(k) An occupational therapist, which for the purposes of this Act means any person for the time being registered as an occupational therapist under the Occupational Therapy Act 1949, including a holder of a provisional certificate of registration under that Act:

“(l) A physiotherapist, which for the purposes of this Act means any person for the time being registered as a physiotherapist under the Physiotherapy Act 1949, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:

“(m) A person for the time being registered as a medical laboratory technologist or a medical

radiation technologist or a podiatrist under the Medical Auxiliaries Act 1966, including a holder of a provisional certificate of registration, and a holder of a certificate of temporary registration, under that Act:

“ ‘Standing order’ means—

“(a) A written instruction issued by a practitioner or registered midwife, in accordance with any applicable regulations, authorising any specified class of persons engaged in the delivery of health services to supply and administer any specified class or description of prescription medicines to any specified class of persons, in circumstances specified in the instruction, without a prescription:

“(b) A written instruction issued by a veterinarian, in accordance with any applicable regulations, authorising any specified class of persons to supply and administer any specified class or description of prescription medicines to any specified class of animals, in circumstances specified in the instruction, without a prescription:”.

3. Meaning of “medicine”, “new medicine”, “prescription medicine”, and “restricted medicine”—

(1) Section 3 (1) (b) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

“(ii) By a practitioner, or registered midwife, or designated prescriber, or in accordance with a standing order; or”.

(2) Section 3 (3) of the principal Act is amended by repealing the definition of the term “prescription medicine”, and substituting the following definition:

“ ‘Prescription medicine’ means a medicine that is declared by regulations made under this Act or by a notice given under section 106 to be one that, except as may be permitted by regulations made under this Act, may be—

“(a) Sold by retail only under a prescription given by a practitioner, registered midwife, veterinarian, or a designated prescriber; and

“(b) Supplied in circumstances corresponding to retail sale only—

“(i) Under a prescription given by a practitioner, registered midwife, veterinarian, or a designated prescriber; or

- “(ii) In accordance with a standing order; and
- “(c) Administered only in accordance with—
 - “(i) A prescription given by a practitioner, registered midwife, veterinarian, or a designated prescriber; or
 - “(ii) A standing order.”.

4. Sale of medicines by retail—(1) Section 18 (1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraphs:

“(a) Any prescription medicine unless—

“(i) He or she is a pharmacist and sells, supplies, or distributes the medicine in a pharmacy or hospital; or

“(ii) He or she is authorised to supply and administer any specified class or description of prescription medicine under a standing order and supplies the medicine in accordance with that standing order; or

“(aa) Any restricted medicine, unless he or she is a pharmacist and sells, supplies, or distributes the medicine in a pharmacy or hospital; or”.

(2) Section 18 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

“(2) No person may sell by retail any prescription medicine otherwise than under a prescription given by a practitioner, registered midwife, veterinarian, or designated prescriber.

“(2A) No person may supply, in circumstances corresponding to retail sale, any prescription medicine otherwise than—

“(a) Under a prescription given by a practitioner, registered midwife, veterinarian, or designated prescriber; or

“(b) In accordance with a standing order.

“(2B) Despite subsections (2) and (2A), a person may sell by retail, or supply, in circumstances corresponding to retail sale, any prescription medicine, where permitted by section 25 or section 30 or section 31 or section 69 or by regulations made under this Act.”

(3) Section 18 (3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) In any public place within the meaning of section 2 of the Summary Offences Act 1981,—”.

5. Administering prescription medicines—The principal Act is amended by repealing section 19, and substituting the following section:

“19. (1) A prescription medicine may be administered to any person only in accordance with—

“(a) The directions of the authorised prescriber who prescribed the medicine; or

“(b) A standing order.

“(2) Despite subsection (1), a prescription medicine may be administered where permitted by section 25 or by regulations made under this Act.

“(3) Every person commits an offence against this Act who contravenes subsection (1).

“(4) In this section, ‘authorised prescriber’ means a practitioner, registered midwife, or designated prescriber.”

6. Exemptions for practitioners and others—The principal Act is amended by repealing section 25, and substituting the following section:

“25. (1) An authorised prescriber may—

“(a) Manufacture, pack, and label a medicine that is specially prepared for, or intended for administration to, a particular patient of that authorised prescriber:

“(b) Sell or supply, or procure the sale or supply of, any medicine to any such patient or to a person who has the care of the patient:

“(c) Administer, or procure the administration of, any medicine to any such patient:

“(d) At the request of another authorised prescriber, pack, and label a medicine that is specially prepared for, or intended for administration to, a particular patient of that other authorised prescriber:

“(e) At the request of another authorised prescriber, sell or supply a medicine to that other authorised prescriber, or to a person who has the care of the patient:

“(f) At the request of another authorised prescriber, administer a medicine to a particular patient of that other authorised prescriber.

“(2) Despite subsection (1), in relation to any new medicine the distribution of which is prohibited under section 20,—

“(a) Paragraphs (a) and (d) of subsection (1) do not apply:

“(b) Paragraphs (b), (c), (e), and (f) of that subsection apply only for the purpose of enabling the medicine to be administered to a particular patient who is known

and identifiable at the time when the medicine is sold or supplied to the authorised prescriber.

“(3) Subsection (1) applies despite sections 17 to 24, but is subject to the other provisions of this Act and any regulations made under this Act.

“(4) In this section, ‘authorised prescriber’ means a practitioner, registered midwife, or designated prescriber.”

7. Exemptions for veterinarians and opticians—Section 27 of the principal Act is amended by omitting the words “veterinary surgeon” wherever they appear, and substituting in each case the word “veterinarian”.

8. Restrictions on possession of prescription medicines—(1) Section 43 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) Without limiting the meaning of the expression ‘reasonable excuse’ in subsection (1), a person has a reasonable excuse for the purpose of that subsection if—

“(a) The possession or act that might otherwise be a contravention of that subsection—

“(i) Is that of a person, licensed or otherwise authorised under this Act or any regulations made under this Act, to manufacture, sell, supply, pack, or administer the medicine or to be in possession of it; and

“(ii) Is necessary as incidental to the business, calling, or purpose for which the person is so licensed or otherwise authorised; or

“(b) The possession or act that might otherwise be a contravention of that subsection—

“(i) Is that of a carrier, or an employee of a carrier; and

“(ii) Is necessary or incidental to the business of that carrier; or

“(c) The possession or act that might otherwise be a contravention of that subsection—

“(i) Is that of a person to whom the medicine has been lawfully supplied for his or her use, or for use by any other person, as a patient under the care of an authorised prescriber or in accordance with a standing order, and who does not have in his or her possession any other supplies of a prescription medicine prescribed or supplied for the same

purpose by another authorised prescriber or in accordance with a standing order; and

“(ii) Is necessary or incidental to such use; or

“(d) The possession or act that might otherwise be a contravention of that subsection—

“(i) Is that of a person who has possession of the medicine only for the purpose of administering it to the person for whom it has been prescribed; and

“(ii) Is necessary or incidental to that purpose; or

“(e) The possession or act that might otherwise be a contravention of that subsection—

“(i) Is that of a person in the service of the Crown; and

“(ii) Is necessary or incidental to the performance of that person’s duties.”

(2) Section 43 of the principal Act is amended by adding, after subsection (5), the following subsection:

“(6) In this section, ‘authorised prescriber’ means a practitioner, registered midwife, or designated prescriber.”

9. New sections substituted—The principal Act is amended by repealing section 48, and substituting the following sections:

“48. **Powers of Minister to prohibit prescribing, etc**—

(1) The Minister may at any time, by notice in the *Gazette*,—

“(a) Prohibit any specified practitioner, veterinarian, registered midwife, or designated prescriber from prescribing prescription medicines or any particular class or description of prescription medicines:

“(b) Prohibit, either generally or in relation to any particular class or description of medicines, any specified person from exercising all or any of the rights conferred by this Act, whether those rights are so conferred on persons generally or on a particular class to which that person belongs.

“(2) The Minister may not exercise any power conferred on him or her by subsection (1),—

“(a) In the case of a medical practitioner, except on the recommendation of the Medical Council of New Zealand; or

“(b) In the case of a dentist, except on the recommendation of the Dental Council of New Zealand; or

- “(c) In the case of a pharmacist, except on the recommendation of the Council of the Pharmaceutical Society of New Zealand; or
- “(d) In the case of a registered midwife or a nurse, except on the recommendation of the Nursing Council of New Zealand; or
- “(e) In the case of a veterinarian, except on the recommendation of the Veterinary Council of New Zealand; or
- “(f) In the case of any designated prescriber to whom paragraphs (c) and (d) do not apply, except on the recommendation of the Council or Board, specified in regulations made under this Act, which has jurisdiction in respect of the class of registered health professional to which the designated prescriber belongs.

“(3) The Minister may at any time, by notice in the *Gazette*, revoke any notice given under subsection (1).

“**48A. Powers of Councils and Boards**—(1) Despite anything in any other Act, each Council or Board referred to in section 48 has jurisdiction to inquire into any prescribing of or dealing in medicines by a member of the profession with which it is concerned, and any other incidental matter, for the purpose of considering and determining whether or not to make a recommendation to the Minister under that section, when such prescribing or dealing has been brought or otherwise comes to its attention.

“(2) For the purposes of subsection (1), each such Council or Board has and may exercise any powers with respect to summoning witnesses, administering oaths, hearing evidence and other matters of procedure, and with respect to the payment and receiving of costs and expenses, conferred on it or any disciplinary committee or disciplinary tribunal, in relation to disciplinary proceedings, by the enactment under which the Council or Board is constituted.

“(3) Despite subsection (2), it is not necessary, unless the Council or Board so requires, for any other body to conduct an investigation or inquiry or to be represented at the inquiry conducted by the Council or Board.

“(4) Without prejudice to the liability of any person under any other provision of this Act, a person who contravenes any notice given under section 48 (1) commits an offence against this Act.”

10. Restrictions on supply to particular persons—Section 49 (2) of the principal Act is amended by omitting the words “or registered midwife”, and substituting the words “, registered midwife, or designated prescriber”.

11. Statements regarding persons dependent on prescription medicines—Section 49A (3) of the principal Act is amended by inserting, after paragraph (g), the following paragraphs:

“(ga) Registered midwives:

“(gb) Designated prescribers:”.

12. Notification of conviction of practitioners, etc—Section 87 of the principal Act is amended by omitting the words “veterinary surgeon, pharmacist, or nurse” in both places where they appear, and substituting in each case the words “veterinarian, pharmacist, nurse, or designated prescriber”.

13. Power of Court to restrict publication of name of medicine—Section 100 (2) of the principal Act is amended by inserting, after the words “of those professions,” the words “or to designated prescribers,”.

14. Regulations—Section 105 (1) of the principal Act is amended by repealing paragraph (q), and substituting the following paragraphs:

“(q) Regulating the issue by practitioners, veterinarians, registered midwives, and designated prescribers of prescriptions for the supply of any medicine, and requiring persons issuing or dispensing prescriptions in respect of any medicine to furnish such information relating to those prescriptions as may be prescribed:

“(qa) Authorising any class of registered health professional, other than a practitioner or registered midwife, to prescribe prescription medicines of a specified class or description in accordance with such conditions, limitations, requirements, or restrictions specified in or imposed under the regulations:

“(qb) Regulating the issue of standing orders, imposing conditions, limitations, requirements, or restrictions in relation to the contents of standing orders and their use, and providing for such other matters as

are necessary or desirable for the administration of standing orders.”.

15. New sections inserted—The principal Act is amended by inserting, after section 105, the following sections:

“105A. Regulations relating to practitioners, veterinarians, and registered midwives—(1) Without limiting the generality of section 105 (1) (d), regulations may be made under that provision—

“(a) Requiring any practitioner, veterinarian, or registered midwife, or a specified class of such persons, before commencing for the first time to prescribe prescription medicines or prescription medicines of a specified class or description, to satisfy 1 or more of the following requirements:

“(i) To obtain any specified qualification or any qualification specified from time to time by notice in the *Gazette* by the Minister, or by the relevant professional organisation:

“(ii) To undertake specified training or any training specified from time to time by notice in the *Gazette* by the Minister, or by the relevant professional organisation:

“(iii) To demonstrate, to the satisfaction of the relevant professional organisation, that the person is sufficiently knowledgeable to safely prescribe prescription medicines or prescription medicines of a specified class or description:

“(b) Requiring any practitioner, veterinarian, or registered midwife, or any class of such persons, to undergo specified training or to undergo training specified from time to time by notice in the *Gazette* by the Minister, or by the relevant professional organisation (including training of an ongoing nature):

“(c) Requiring any practitioner, veterinarian, or registered midwife, or any class of such persons, to undergo an assessment of competence to prescribe prescription drugs of a specified class or description (including an assessment at regular intervals):

“(d) Requiring any practitioner, veterinarian, or registered midwife, or any class of such persons who prescribes prescription medicines of any specified class or description to undertake those duties under the

supervision of a practitioner or a specified class of practitioner:

“(e) Prohibiting any practitioner, veterinarian, or registered midwife who fails to comply with any requirement imposed by or under regulations referred to in paragraphs (a) to (d) from prescribing prescription medicines or prescription medicines of any specified class or description.

“(2) In this section, ‘relevant professional organisation’ means,—

“(a) In the case of a practitioner or registered midwife or any class of practitioner or registered midwife, the Council or Board that has jurisdiction in respect of the class of registered health professional to which the practitioner or registered midwife or the class of practitioner or registered midwife belongs:

“(b) In the case of a veterinarian or any class of veterinarian, the Veterinary Council of New Zealand.

“105B. **Regulations relating to designated prescribers—**

(1) Without limiting the generality of section 105 (1) (d) or (qa), regulations may be made under section 105 (1) (qa)—

“(a) Requiring any person who belongs to any class of registered health professional authorised to prescribe prescription medicines of any specified class or description by regulations made under section 105 (1) (qa), or a specified class of such persons, before commencing for the first time to prescribe prescription medicines or prescription medicines of a specified class or description, to satisfy 1 or more of the following requirements:

“(i) To obtain any specified qualification or any qualification specified from time to time by notice in the *Gazette* by the Minister, or by the relevant professional organisation:

“(ii) To undertake specified training or any training specified from time to time by notice in the *Gazette* by the Minister, or by the relevant professional organisation:

“(iii) To demonstrate, to the satisfaction of the relevant professional organisation, that the person is sufficiently knowledgeable to safely prescribe prescription medicines or prescription medicines of a specified class or description:

- “(b) Requiring any designated prescriber or any class of designated prescriber to undergo specified training or to undergo training specified from time to time by notice in the *Gazette* by the Minister, or by the relevant professional organisation (including training of an ongoing nature):
 - “(c) Requiring any designated prescriber or any class of designated prescriber to undergo an assessment of competence to prescribe prescription drugs of a specified class or description (including an assessment at regular intervals):
 - “(d) Requiring any designated prescriber or any class of designated prescriber who prescribes prescription medicines of any specified class or description to undertake those duties under the supervision of a practitioner, or a specified class of practitioner:
 - “(e) Prohibiting any person who fails to comply with any requirement imposed by or under regulations referred to in paragraphs (a) to (d) from prescribing prescription medicines or prescription medicines of any specified class or description.
- “(2) In this section, ‘relevant professional organisation’ means the Council or Board that has jurisdiction in respect of the class of registered health professional to which a designated prescriber, or a class of designated prescriber, belongs.”

PART 2

AMENDMENTS TO OTHER ENACTMENTS

16. Amendments to other enactments—The enactments specified in the Schedule are amended in the manner indicated in that schedule.

17. Repeals—Sections 20 to 26 of the Nurses Amendment Act 1990 are consequentially repealed.

SCHEDULE
AMENDMENTS TO OTHER ENACTMENTS

Section 16

Title of Act	Amendments to Other Enactments
<p>1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)</p>	<p>By inserting in section 2, in their appropriate alphabetical order, the following definitions:</p> <p>“‘Designated prescriber’ has the same meaning as it has in section 2 (1) of the Medicines Act 1981:</p> <p>“‘Standing order’ has the same meaning as it has in section 2 (1) of the Medicines Act 1981.”</p> <p>By inserting in section 8, after subsection (2), the following subsections:</p> <p>“(2A) Despite sections 6 and 7, but subject to sections 22 to 25 and any prohibitions, limitations, restrictions, or conditions imposed under those sections or any regulations made under this Act,—</p> <p>“(a) A designated prescriber or any registered midwife who is authorised by regulations made under this Act to prescribe controlled drugs of any specified class or description, may prescribe, supply, or administer such drugs:</p> <p>“(b) A person who is authorised to issue a standing order may include in a standing order authority to supply and administer controlled drugs of any specified class or description, and a person who is authorised under a standing order to supply and administer any controlled drugs may supply and administer those drugs in accordance with that standing order.</p> <p>“(2B) In subsection (2A),—</p> <p>“(a) References to a designated prescriber or a person authorised under a standing order to supply and administer any controlled drugs, mean a designated prescriber or person acting in the course of his or</p>

SCHEDULE—*continued*AMENDMENTS TO OTHER ENACTMENTS—*continued*

Title of Act	Amendments to Other Enactments
1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)— <i>continued</i>	<p>her practice or employment; and</p> <p>“(b) References to the supply of controlled drugs include an offer to supply controlled drugs.”</p> <p>By inserting in section 20 (3), after paragraph (fa), the following paragraph: “(fb) Designated prescribers:”.</p> <p>By inserting in section 23 (1) (a), after the word “dentist,” the words “registered midwife, designated prescriber,”.</p> <p>By adding to section 23 (2) the following paragraph: “(e) In the case of any designated prescriber to whom paragraph (d) does not apply, except on the recommendation of the Council or Board, specified in regulations made under this Act, that has jurisdiction in respect of the class of registered health professional to which the designated prescriber belongs.”</p> <p>By omitting from section 23 (4) the words “the Board”, and substituting the words “each Board”.</p> <p>By repealing section 23 (5), and substituting the following subsections: “(5) For the purposes of subsection (4), each such Council or Board has and may exercise any powers with respect to summoning witnesses, administering oaths, hearing evidence and other matters of procedure, and with respect to the payment and receiving of costs and expenses, conferred on it or any disciplinary committee or disciplinary tribunal, in relation to disciplinary proceedings, by the enactment under which the Council or Board is constituted. “(5A) Despite subsection (5), it is not necessary, unless the Council or Board so requires, for any other body to conduct</p>

SCHEDULE—*continued*
 AMENDMENTS TO OTHER ENACTMENTS—*continued*

Title of Act	Amendments to Other Enactments
<p>1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)—<i>continued</i></p>	<p>an investigation or inquiry or to be represented at the inquiry conducted by the Council or Board.”</p> <p>By inserting in section 23 (6), after the word “dentist,” the words “registered midwife, designated prescriber,”.</p> <p>By inserting in section 24, after subsection (1), the following subsection: “(1A) Every registered midwife or designated prescriber commits an offence against this Act who prescribes, administers, or supplies any controlled drug for or to any person, whom the midwife or prescriber has reason to believe is dependent on that or any other controlled drug, in the course, or for the purpose, of treatment for dependency.”</p> <p>By inserting in section 33, after the words “registered midwife,” in both places where they appear, the words “designated prescriber,”.</p> <p>By inserting in section 37 (1)(g), after the words “registered midwives,” the words “designated prescribers,”.</p>

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This Act is administered in the Ministry of Health.

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