

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

19th October, 1949.

Hon. Miss Howard

MEDICAL PRACTITIONERS AMENDMENT

ANALYSIS

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A BILL INTITULED

AN ACT to Amend the Medical Practitioners Act, 1914. Title.
 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority
 5 of the same, as follows:—

Short Title.

See Reprint
of Statutes,
Vol. V, p. 669

Interpretation.

1. This Act may be cited as the Medical Practitioners Amendment Act, 1949, and shall be read together with and deemed part of the Medical Practitioners Act, 1914 (hereinafter referred to as the principal Act).

2. For the purposes of the principal Act (including this Act), unless the context otherwise requires,—

“ Association ” means the New Zealand Branch of the British Medical Association:

“ Disciplinary Committee ” means the Medical Practitioners Disciplinary Committee established under this Act:

“ Division ” means a Division of the Association duly formed in accordance with the by-laws of the Association:

“ Divisional Disciplinary Committee ” means a Divisional Medical Practitioners Disciplinary Committee appointed under this Act:

“ Medical Council ” means the Medical Council established under the principal Act:

“ Minister ” means the Minister of Health.

Disciplinary Committees

Constitution of
Medical
Practitioners
Disciplinary
Committee.

3. (1) There shall be a Committee (to be known as the Medical Practitioners Disciplinary Committee) appointed in accordance with this section to exercise the powers and functions hereinafter conferred on it.

(2) The Disciplinary Committee shall consist of five registered medical practitioners, of whom—

(a) Four shall be appointed by the Council of the Association:

(b) One, not being a member of the Medical Council, shall be appointed by the Minister.

(3) The Disciplinary Committee may from time to time elect one of its members to be the Chairman of the Committee, and may from time to time fix the term of office of the Chairman. If at the time of any meeting of the Committee no such Chairman is in office or the Chairman is not present, the Committee may elect one of its members to be the Chairman at that meeting.

(4) The Council of the Association may from time to time remove from office any member of the Disciplinary Committee appointed by the Council, and may fill any vacancy caused by the resignation, removal, or death of

any such member. The Minister may from time to time remove from office any member of the Disciplinary Committee appointed by the Minister and may fill any vacancy caused by the resignation, removal, or death of any such member.

5 any such member.
(5) Three members of the Disciplinary Committee shall form a quorum.

(6) The General Secretary of the Association shall be the Secretary of the Disciplinary Committee.

10 4. (1) In respect of any Division of the Association, or in respect of any group of Divisions, the Council of the Association, after consultation with the Division or Divisions concerned, may from time to time appoint a Divisional Medical Practitioners Disciplinary Committee
15 to exercise the powers and functions hereinafter conferred on it and also to inquire into such accounts for medical services as may be referred to it under *Part III* of the *Social Security Amendment Act, 1949*.

Divisional
Disciplinary
Committees.

20 (2) In the case of the Auckland, Wellington, Canterbury, and Otago Divisions, or of any group that includes any of those Divisions, the Divisional Disciplinary Committee shall consist of six registered medical practitioners, of whom three shall form a quorum. In every other case the Divisional Disciplinary Committee shall
25 consist of three registered medical practitioners, of whom two shall form a quorum.

(3) A Divisional Disciplinary Committee may from time to time elect one of its members to be the Chairman of the Committee, and may from time to time fix the term
30 of office of the Chairman. If at the time of any meeting of a Divisional Disciplinary Committee no such Chairman is in office or the Chairman is not present, the Committee may elect one of its members to be the Chairman at that meeting.

35 (4) The Council of the Association, after consultation with the Division concerned, may from time to time remove from office any member of a Divisional Disciplinary Committee, and may fill any vacancy caused by the resignation, removal, or death of any member.

(5) Each Divisional Disciplinary Committee shall appoint one of its members to act as the honorary Secretary of the Committee.

Functions of
Disciplinary
Committee.

5. (1) The Disciplinary Committee shall have power, where a charge of professional misconduct has been made by any person against a registered medical practitioner, to inquire into that charge: 5

Provided that, where in the opinion of the Disciplinary Committee any such charge amounts to a charge of grave impropriety or infamous conduct in a professional respect, the Disciplinary Committee shall not deal with the charge but shall refer it to the Medical Council. 10

(2) If after inquiring into any charge the Disciplinary Committee is of opinion that the practitioner has been guilty of professional misconduct, it may, if it thinks fit, but subject to the following provisions of this Act as to appeals, do one or more of the following things namely:— 15

(a) Order him to pay a penalty not exceeding one hundred pounds to the Association: 20

(b) Censure him:

(c) Order him to pay any costs or expenses of and incidental to the inquiry.

Functions as
to complaints
under Social
Security Act,
1938.
1938, No. 7

6. (1) The Disciplinary Committee shall inquire into such complaints against registered medical practitioners in connection with matters arising under Part III of the Social Security Act, 1938, as may be referred to it by the Minister, and it may, if it thinks fit, but subject to the following provisions of this Act as to appeals, make recommendations to the Minister regarding any such complaint, and order the practitioner concerned to pay any costs or expenses of and incidental to the inquiry. 25 30

(2) If any such complaint involves professional misconduct on the part of a registered medical practitioner, that complaint may also be the basis of a charge of professional misconduct against him, and the charge may be inquired into and dealt with by the Disciplinary Committee in accordance with the provisions of this Act. 35

Right of
medical
practitioner
to be heard.

7. The Disciplinary Committee shall not, with respect to any registered medical practitioner, exercise any of the disciplinary functions conferred on it by this Act, or 40

make any recommendation to the Minister under the last preceding section, without giving the practitioner a reasonable opportunity of being heard in his own defence.

8. (1) If the Disciplinary Committee in any case thinks fit, it may authorize the appropriate Divisional Disciplinary Committee to conduct wholly or in part the hearing of any inquiry under this Act.

Preliminary inquiries may be made by Divisional Disciplinary Committee.

(2) On the completion of the hearing before it, the Divisional Disciplinary Committee shall furnish to the Disciplinary Committee a full report of the hearing, and its recommendations thereon, and thereupon the Disciplinary Committee, whether or not the matter is further heard before it or before any other Divisional Disciplinary Committee, may make any order or may make any recommendation to the Minister in the matter of the inquiry that it could have made if the inquiry had been wholly heard by it.

9. After the hearing of any inquiry under this Act the Disciplinary Committee or Divisional Disciplinary Committee may make such order as to the payment of costs as it thinks fit, and in particular may order that costs be awarded to any registered medical practitioner in relation to whom an inquiry has been made, and that those costs be paid by the Association.

Disciplinary Committee may make order as to costs.

10. (1) Any penalty or costs or expenses ordered by the Disciplinary Committee and any costs ordered by a Divisional Disciplinary Committee to be paid by a registered medical practitioner under this Act shall be deemed to be a debt due from that practitioner to the Association and shall be recoverable accordingly in any Court of competent jurisdiction.

Penalties, costs, and expenses recoverable by the New Zealand Branch of the British Medical Association.

(2) All penalties, costs, and expenses recovered by the Association shall be applied towards the costs and expenses of and incidental to the performance by the Disciplinary Committee and the Divisional Disciplinary Committees of their functions under this Act.

11. The costs and expenses of and incidental to the performance by the Disciplinary Committee and the Divisional Disciplinary Committees of their functions under this Act shall be paid partly by the Association and partly out of moneys to be appropriated by Parliament for the purpose, in proportions to be agreed upon between the Council of the Association and the Minister with the approval of the Minister of Finance.

Costs of administration of this Act.

Rules of
procedure.

12. (1) The Governor-General may from time to time, by Order in Council, make rules for regulating the procedure of the Disciplinary Committee and Divisional Disciplinary Committees.

(2) Subject to any such rules and to the provisions of this Act, the Disciplinary Committee and each Divisional Disciplinary Committee may regulate its own procedure as it thinks fit. 5

Orders,
recommendations,
and
reports.

13. (1) Every order made by the Disciplinary Committee shall contain a statement of the findings of the Disciplinary Committee in relation to the case, and shall be signed by the Chairman. A copy of every such order shall be forwarded to the Council of the Association. 10

(2) Every recommendation of the Disciplinary Committee to the Minister shall contain a statement of the findings of the Disciplinary Committee in relation to the case, and shall be signed by the Chairman. 15

(3) Every report of a Divisional Disciplinary Committee on an account referred to it under *Part III* of the *Social Security Amendment Act, 1949*, shall be signed by the Chairman, and shall be forwarded to the person chargeable or to the Court referring the account to the Committee, as the case may be. A copy of every such report shall be forwarded to the medical practitioner delivering the account, and to the Council of the Association. 20 25

(4) A copy of every such order, recommendation, or report shall be forwarded to the Medical Council on its request.

Appeals from
decisions of
Disciplinary
Committee.

14. (1) An appeal against any order of the Disciplinary Committee, or against any recommendation made by it to the Minister, shall lie to the Medical Council at the instance of the registered medical practitioner to whom the order relates, or who is affected by the recommendation, or, in cases where the proceedings before the Disciplinary Committee have been taken on the application of any person other than the practitioner concerned, then at the instance of the applicant. 30 35

(2) Every such appeal shall be brought by notice of appeal delivered to the Secretary of the Medical Council within twenty-eight days after the day on which the order or recommendation was notified to the medical 40

practitioner concerned. A copy of the notice of appeal shall be forwarded within the same period to each party directly affected by the appeal and to the Secretary of the Disciplinary Committee.

- 5 (3) Every such appeal shall be by way of rehearing and on any such appeal the Medical Council may make such order or recommendation, as the case may be, as it thinks proper, having regard to the merits of the case and the public welfare.

10 *Medical Council*

15 **15.** There shall from time to time be appointed as an officer of the Public Service a Secretary of the Medical Council. Secretary of Medical Council.

- 15 **16.** (1) An appeal against any order or recommendation made by the Medical Council on an appeal to the Council under this Act shall lie to the Supreme Court at the instance of any party to the appeal to the Council. Appeals to Supreme Court.

20 (2) Every such appeal shall be brought by notice of appeal filed in the Supreme Court within twenty-eight days after the day on which the order or recommendation was notified to the medical practitioner concerned. A copy of the notice of appeal shall be forwarded within the same period to each party directly affected by the appeal, and to the Secretary of the Medical Council.

- 25 (3) Every such appeal shall be by way of rehearing, and on any such appeal the Court may make such order or recommendation as it thinks proper, having regard to the merits of the case and to the public welfare.

30 **17.** Section six of the Medical Practitioners Amendment Act, 1924, is hereby amended by omitting from subsection three the words " fifty pounds ", and substituting the words " one hundred pounds ". Increasing fine that may be imposed by Medical Council. See Reprint of Statutes, Vol. V, p 686

Procedure

- 35 **18.** The Medical Council, the Disciplinary Committee, and any Divisional Disciplinary Committee may appoint a legal assessor to be present at any inquiry or appeal to advise the Council or Committee on matters of law, procedure, and evidence. Legal assessors.

Medical Council and Disciplinary Committees may require evidence to be given.

19. (1) The Medical Council, the Disciplinary Committee, or any Divisional Disciplinary Committee, by notice in writing under the hand of its Chairman or Secretary, may require any person to attend and give evidence before it at any inquiry or appeal under the principal Act or this Act, and to produce all books and documents in that person's custody or under his control relating to the subject-matter of any such inquiry. 5

(2) The Council or Committee may require any such evidence to be given on oath, and either orally or in writing, and for that purpose the Chairman of the Council or Committee may administer an oath. 10

(3) Every person who without lawful justification refuses or fails to give evidence when required to do so by the Medical Council, the Disciplinary Committee, or a Divisional Disciplinary Committee, or to answer truly and fully any question put to him by the Council or Committee, or to produce to the Committee any book or document required of him, commits an offence against this section, and shall be liable on summary conviction to a fine not exceeding one hundred pounds. 15 20

Immunity of witnesses and counsel.

20. Witnesses and counsel shall have the same privileges and immunities in relation to inquiries and appeals before the Medical Council, the Disciplinary Committee, or any Divisional Disciplinary Committee as if they were proceedings in a Court of law. 25

Witnesses' expenses.

21. (1) Every witness giving evidence or intending to give evidence at the hearing of any inquiry or appeal under the principal Act or this Act shall be entitled in the discretion of the Medical Council or Disciplinary Committee or Divisional Disciplinary Committee to such sum for his expenses and loss of time as the Council or Committee may determine. 30

(2) Subject to any order made by the Council or Committee as to the payment of costs or expenses, all such witnesses' expenses shall be paid by the Association. 35

General

Publication of orders in *New Zealand Medical Journal*.

22. Where—

(a) An order has been made against any registered medical practitioner by the Disciplinary Committee or by the Medical Council on any inquiry or appeal under this Act, and no appeal therefrom has been brought within the time limited in that behalf: or 40

(b) An order has been made against any registered medical practitioner by the Supreme Court on any appeal under this Act or the principal Act,—

- 5 the Secretary of the Committee in the case of an order made by the Committee, and the Secretary of the Council in any other case, shall, if the Committee or Council in its discretion so directs, cause a notice stating the effect of the order to be published in the *New Zealand Medical*
10 *Journal*.

23. Neither the Medical Council, the Disciplinary Committee, nor any Divisional Disciplinary Committee, nor any member or servant of the same, shall be under any criminal or civil liability whatsoever in respect of
15 anything done or omitted to be done or of any words spoken or written at or for the purposes of the hearing of any inquiry, appeal, or other proceedings under this Act unless it is proved to the satisfaction of the Court before which any proceedings are taken that the defend-
20 ant in the proceedings has acted in bad faith.

Protection of Medical Council, Disciplinary Committee, and other persons.

24. Except as expressly provided in this Act, nothing in this Act shall be construed to limit the jurisdiction of the Supreme Court or of the Medical Council.

Jurisdiction of Court and Medical Council not limited.