

PHYSIOTHERAPY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Physiotherapy Act 1949, its principal purpose being to provide for the licensing of the use for physiotherapy purposes of ultrasonic therapy apparatus and apparatus of a like nature.

Ultrasonic therapy apparatus is defined in *clause 2* as any apparatus employing mechanical vibrations of a higher frequency than 600 kilocycles a second that is capable of being used for the treatment of the human body by way of physiotherapy. Under *subclause (2)* the Governor-General may, by Order in Council, declare to be subject to the Bill any other apparatus which is capable of being used for the treatment of the human body by way of physiotherapy and which if improperly used for that purpose would produce or be likely to produce ill effects on the human body. Ultrasonic therapy apparatus and any other type of apparatus to which the Bill relates are referred to in the Bill as "controlled therapy apparatus".

Clause 3 prohibits the use of controlled physiotherapy apparatus for treatment of the human body unless the user holds a licence under the Bill authorizing him to use the apparatus for that purpose or is a student at an approved training school acting under the supervision of a registered physiotherapist in charge who holds such a licence.

Clause 4 requires applications for licences to be made to the Registrar, who is required to refer the applications to the Physiotherapy Board for its decision thereon. Licences may be granted only to registered medical practitioners and registered physiotherapists, who must satisfy the Board as to their knowledge and qualifications. Where the applicant previously held a licence that has been cancelled or suspended, the Board may refuse the application or defer the issue of the licence. Before the Board refuses any application it must notify the applicant of its intention to do so, and must give him an opportunity of appearing before it or adducing further evidence in support of his application. Under *subclause (8)* licences remain in force until 31 March following the grant of the licence, but may be renewed.

Clause 5 authorizes the Board to attach conditions to licences, and prohibits licensees from using any controlled physiotherapy apparatus except in accordance with the conditions of the licence.

Clause 6 provides for the keeping of a register of licences, and specifies the manner in which the contents of the register may be proved.

Clause 7 provides for the cancellation or suspension of any licence where the licensee is convicted of an offence against the Bill, or commits a breach of any of the conditions of his licence, or the Board considers it in the public interest that the licence be cancelled or suspended. Where the Board cancels a

licence, it may declare the licensee to be disqualified from obtaining a further licence for such time as the Board specifies. Under *subclause (3)* the Director-General of Health is authorized to suspend any licence pending a decision of the Board as to whether the licence should be cancelled or suspended. The licensee is entitled to be heard or to adduce further evidence before the Board cancels or suspends any licence or confirms any interim suspension by the Director-General.

Under *clause 8* licences may be renewed from time to time. Under *subclause (6)* the licence continues in force until the application for renewal has been dealt with by the Board.

Clause 9 requires licensees to notify changes of address, and *clause 10* authorizes the fixing of fees by regulation.

Clause 11 confers powers of entry and inspection for the purposes of the Bill. Under this clause officers of the Department of Health are entitled, on producing proof of their authority, to enter any premises in which there is any controlled physiotherapy apparatus in respect of which a licence is in existence, for the purpose of examining and testing that apparatus, and also any other premises for the purpose of ascertaining whether there has been committed or is being committed in or in connection with the premises any offence under any of the provisions of the Bill. Under *subclause (2)* a Justice of the Peace may issue a warrant to enter and search any premises where entry in exercise of the right conferred by *subclause (1)* is refused and there are reasonable grounds for suspecting that an offence under the Bill has been or is being committed in or in connection with the premises.

Clause 12 makes it an offence for any person to act in contravention of or fail to comply with any provision of the Bill, to obstruct any person exercising or attempting to exercise powers of entry and search conferred by *clause 11*, or to make any false declaration or statement for the purpose of obtaining a licence.

Clause 13 provides that, where any person is convicted of the offence of using controlled physiotherapy apparatus without a licence or of failing to comply with the conditions of his licence or of making a false declaration for the purpose of obtaining a licence, the Magistrate may order that the apparatus shall be forfeited to the Crown. There is a right of appeal to the Supreme Court from every such order made by a Magistrate.

Clause 14 amends the provisions of section 8 of the principal Act, which specifies the functions of the Physiotherapy Board, and extends those functions to include the giving of directions to the Registrar with respect to the grant, renewal, suspension, and cancellation of licences to use controlled physiotherapy apparatus.

Section 3 of the principal Act provides that the Director-General of Health is to be the Registrar of the Physiotherapy Board. *Clause 15* amends this provision, and provides that the Inspector of Physiotherapy in the Department of Health is to be the Registrar of the Board.

Hon. Mr. Marshall

PHYSIOTHERAPY AMENDMENT

ANALYSIS

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A BILL INTITULED

AN ACT to amend the Physiotherapy Act 1949.

Title.

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

1. This Act may be cited as the Physiotherapy Amendment Act 1953, and shall be read together with and deemed part of the Physiotherapy Act 1949 (hereinafter referred to as the principal Act).

Short Title.

1949, No. 8

2. (1) In this Act, unless the context otherwise requires,—

Interpretation.

“ Controlled physiotherapy apparatus ” means ultrasonic therapy apparatus; and includes any other apparatus of whatever kind that is capable of being used for the treatment

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of the human body by way of physiotherapy and is declared under subsection *two* of this section to be controlled physiotherapy apparatus:

“ Director-General of Health ” means the Director-General of Health appointed under the Health Act 1920: 5

“ Licence ” means a licence to use controlled physiotherapy apparatus for the treatment of the human body granted under this Act: 10

“ Ultrasonic therapy apparatus ” means any apparatus employing mechanical vibrations of a higher frequency than six hundred kilocycles a second that is capable of being used for the treatment of the human body by way of physiotherapy. 15

(2) Where the Governor-General is of opinion that any apparatus (not being ultrasonic therapy apparatus) that is capable of being used for the treatment of the human body by way of physiotherapy would, if improperly used for that purpose, produce or be likely to produce ill effects on the human body, he may, by Order in Council, declare that apparatus to be controlled physiotherapy apparatus for the purposes of this Act. 20

3. (1) Subject to the provisions of subsection *two* of this section, no person shall, at any time after one month after the passing of this Act, use any controlled physiotherapy apparatus for the treatment of the human body unless he is the holder of a licence for the time being in force authorizing him to use for that purpose controlled physiotherapy apparatus of the kind to which that apparatus belongs. 25 30

(2) A person undergoing a course of training and instruction at a training school approved under Part III of the principal Act may use controlled physiotherapy apparatus for the treatment of the human body without being the holder of a licence, if that apparatus is used under the supervision of a physiotherapist in charge who holds a licence for the time being in force authorizing him to use for that purpose controlled physiotherapy apparatus of the kind to which that apparatus belongs. 35 40

See Reprint
of Statutes,
Vol. VI, p. 1061

Users of
controlled
therapy
apparatus to
be licensed.

4. (1) Every application for a licence under this Act shall be made to the Registrar in a form to be provided by him for the purpose, and shall be accompanied by such information as the Registrar may require.

Application
for licence.

(2) The Registrar shall refer every such application to the Board for its decision thereon.

(3) A licence may be granted only to a registered medical practitioner or registered physiotherapist.

10 (4) A licence may be granted to any applicant who satisfies the Board that his knowledge and qualifications are such that he is a fit and proper person to use for the treatment of the human body by way of physiotherapy controlled physiotherapy apparatus of
15 the kind in respect of which the application is made:

Provided that, where the licence last held by the applicant had been cancelled under this Act or was suspended at the time of his application, the Board may direct the Registrar to refuse the application or to defer
20 the issue of the licence until such date as the Board specifies.

(5) Every applicant for a licence shall submit to the Board such evidence as to his knowledge and qualifications as the Board may require, and the Board
25 may, if it thinks fit, require him to verify his evidence by statutory declaration.

(6) All licences shall be granted or refused by the Registrar acting on the directions of the Board, and every decision of the Board or the Registrar under this
30 subsection shall be final.

(7) Except in any case where at the time of the application the licence last held by the applicant was suspended or the applicant was disqualified pursuant to subsection *three* of section *seven* of this Act, the Board,
35 before directing the Registrar to refuse any application for a licence, shall notify the applicant of its intention to do so, and shall give him an opportunity of appearing before it or adducing further evidence on the matter.

(8) Every licence shall, unless previously cancelled
40 or suspended under this Act, or unless some earlier expiry date is specified therein, continue in force until the thirty-first day of March next following the date on which it was granted, but may from time to time be renewed pursuant to this Act.

Conditions
of licences.

5. (1) Every licence under this Act shall be granted subject to such conditions (if any) as the Board directs. Any conditions so imposed shall, if the Board so directs, be varied, added to, or revoked by the Registrar.

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(2) No licensee shall use any controlled physiotherapy apparatus for the treatment of the human body otherwise than in accordance with the conditions of his licence in respect of that apparatus.

Register
of licences.

6. (1) The Registrar shall keep or cause to be kept in such form as he thinks fit a register of licences issued under this Act.

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(2) The contents of the register may be evidenced in any proceedings by a certificate under the hand of the Registrar, and every such certificate shall be *prima facie* evidence of the matters stated therein.

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(3) A certificate under the hand of the Registrar that on a date specified in the certificate the name of any person did or did not appear in the register as the holder of a licence under this Act shall, until the contrary is proved, be sufficient evidence of the matters therein specified.

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Cancellation
or suspension
of licences.

7. (1) Where the holder of any licence is convicted of an offence against this Act or commits a breach of any of the conditions of his licence or the Board considers it in the public interest to do so, the Board may direct the Registrar to cancel the licence or suspend it for such period as the Board thinks fit, and the Registrar shall cancel or suspend the licence accordingly.

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(2) Notwithstanding anything in subsection *one* of this section, where the Director-General considers it in the public interest to do so, he may immediately suspend any licence pending a decision of the Board as to whether the licence should be cancelled or suspended. In every such case the Director-General shall forthwith report the interim suspension to the Board, which shall determine whether the interim suspension shall be revoked immediately or on a specified date or that the licence be cancelled, and the Registrar shall give effect to the determination of the Board accordingly.

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(3) Where under the provisions of this section the Board directs the Registrar to cancel any licence it may declare the licensee to be disqualified from obtaining a

further licence for such period as the Board directs, and the licensee shall thereupon be deemed to be disqualified accordingly.

(4) Every decision of the Board or of the Registrar under this section shall be final.

(5) Before directing the Registrar to cancel or suspend any licence or confirming any interim suspension by the Director-General, the Board shall notify the licensee of its intention to do so, and shall give him an opportunity of appearing before it or adducing further evidence on the matter.

8. (1) On application being made to the Registrar in writing, the Board may direct the Registrar to grant the applicant a renewal of any licence held by the applicant or to refuse to grant a renewal of the licence.

Renewal
of licences.

(2) Sections *four* and *five* of this Act shall apply to every application for the renewal of a licence as if it were an application for a new licence.

(3) In granting any renewal of a licence the Registrar may endorse the existing licence or he may issue a new licence in lieu thereof, but every such new licence shall show on the face thereof that it is in renewal of a licence.

(4) Every application under this section shall be made not later than the twentieth day of February in any year, or within such further time as may be allowed by the Registrar in any particular case.

(5) The renewal of a licence shall, unless the Board, under subsection *four* of section *four* of this Act, directs the Registrar to defer the issue of the renewal licence, take effect from the expiry of the licence in renewal of which it is granted, but any such renewal may be granted in advance to take effect as aforesaid.

(6) Where application for renewal of a licence (not being a licence that is for the time being suspended under this Act) is duly made under this section, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of.

(7) Every decision of the Board or the Registrar under this section shall be final.

9. Every holder of a licence under this Act who at any time changes his address as appearing in the register of licences shall, within three months

Licensees to
notify changes
of address.

thereafter, send to the Registrar a notice of his new address, and the Registrar shall thereupon correct the entry in the register relating to that licensee accordingly.

Fees.

10. There shall be payable in respect of the grant or renewal of licences under this Act such fees as may be prescribed by regulations made under section thirty-one of the principal Act. 5

Entry and inspection.

11. (1) Any officer of the Department of Health authorized in writing by the Director-General to act under this section shall, on producing, if so required, his authority, have a right to enter at all reasonable hours— 10

(a) Any premises in which there is any controlled physiotherapy apparatus in respect of which a licence under this Act is for the time being in force, for the purpose of examining and testing that apparatus: 15

(b) Any premises, for the purpose of ascertaining whether there has been committed or is being committed in or in connection with the premises any offence under any of the provisions of this Act. 20

(2) If a Justice of the Peace is satisfied on oath by a person authorized as aforesaid that—

(a) Entry in exercise of the right conferred by subsection *one* of this section has been refused or that the case is one of urgency or that an application or request for admission would defeat the object of the entry; and 25

(b) There are reasonable grounds for suspecting that an offence under any of the provisions of this Act has been or is being committed in or in connection with the premises in question,— 30

the Justice may by warrant under his hand authorize that person, or any other person named in the warrant, and any constable to enter and search any premises, if necessary by force. 35

(3) Every warrant granted under this section shall continue in force until the purpose for which it was granted has been satisfied. 40

12. (1) Every person commits an offence against this Act who— Offences.

- (a) Without lawful excuse acts in contravention of or fails to comply in any respect with any provision of this Act:
- (b) Wilfully obstructs any person exercising or attempting to exercise powers under section *eleven* of this Act:
- (c) For the purpose of obtaining, whether for himself or any other person, the grant or renewal of any licence under this Act, or for any other purpose in relation to this Act, makes any declaration or statement which to his knowledge is false in any particular, or utters, produces, or makes use of any such declaration or statement or any document containing the same, or knowingly utters, produces, or makes use of any document which is not genuine.

(2) Every person who commits an offence against this Act is liable on summary conviction to a fine not exceeding one hundred pounds, and, where the offence is a continuing one, to a further fine not exceeding five pounds for every day or part of a day during which the offence continues.

(3) All proceedings in respect of offences against this Act shall be heard before a Magistrate alone.

13. (1) Where any person is convicted of any offence against section *three* or subsection *two* of section *five* or paragraph (c) of subsection *one* of section *twelve* of this Act, the Magistrate may, in addition to imposing any penalty under section *twelve* of this Act, order that the controlled physiotherapy apparatus in respect of which the offence was committed shall be forfeited to Her Majesty, and every such controlled physiotherapy apparatus shall thereupon be deemed to be forfeited to Her Majesty accordingly. Forfeiture of controlled physiotherapy apparatus on conviction.

(2) Every controlled physiotherapy apparatus forfeited under the provisions of subsection *one* of this section shall be sold or otherwise disposed of in such manner as the Minister of Health directs.

(3) From every order made by a Magistrate in accordance with this section there shall be a right of appeal to the Supreme Court, and in every such case

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of Statutes,
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Amending
provisions as
to functions of
Physiotherapy
Board.

Amending
provisions as
to Registrar of
Physiotherapy
Board.

the provisions of Division III of the Justices of the Peace Act 1927 shall, as far as they are applicable and with the necessary modifications, apply.

14. Section eight of the principal Act is hereby amended by adding the following paragraph: 5

“(g) To give directions to the Registrar with respect to the grant, renewal, suspension, and cancellation of licences to use controlled physiotherapy apparatus under the Physiotherapy Amendment Act 1953.” 10

15. Section three of the principal Act is hereby amended by omitting the words “as the Director-General of Health under the Health Act 1920”, and substituting the words “in the Department of Health as the Inspector of Physiotherapy”. 15