

PHYSIOTHERAPY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Physiotherapy Act 1949.

Clause 1 relates to the Short Title and commencement. With the exception of *clauses 2, 4, and 13*, the Bill will come into force on 1 January 1970. *Clauses 2 and 4* (relating to appointment of committees and payment of allowances and travelling expenses to members of those committees) are retrospective, being deemed to have come into force on 1 March 1969. *Clause 13* (relating to offences by companies) will come into force on 1 July 1970.

Clause 2 amends section 7 of the principal Act to enable payment of allowances and travelling expenses to be made to members of committees.

Clause 3 amends section 8 of the principal Act by omitting from paragraph (g) the word "renewal". This is consequential on the repeal of section 8 of the Physiotherapy Amendment Act 1953 (relating to renewal of licences) by *clause 17* of this Bill. A new paragraph (h) is added enabling the Physiotherapy Board to make provision for further training of registered physiotherapists and the recognition of teachers of physiotherapy.

Clause 4 inserts a new section 8A in the principal Act relating to the appointment of committees by the Physiotherapy Board.

Subsections (1) and (2) of the new section empower the Board to appoint committees to inquire into and report on those matters referred to each committee by the Board, and to exercise on behalf of the Board any of its powers conferred under the principal Act with the exception of powers conferred under Part II of that Act. Powers delegated to a committee under section 24 of the principal Act must be delegated, and exercised by the committee, subject to the provisions of that section.

Subsection (3) provides that except in the case of a committee appointed for the purposes of section 24 of the principal Act (relating to disciplinary powers of the Board) any committee under the new section 8A may include persons who are not members of the Board.

Subsection (4) makes every committee subject to the control of the Board.

Subsection (5) provides that any power delegated to a committee by the Board may be exercised with the same effect as if it had been conferred on the committee directly by the principal Act.

Subsection (6) provides that in the absence of proof to the contrary every committee purporting to act pursuant to delegated power shall be presumed to be acting in accordance with the terms of the delegation.

Subsection (7) provides that any delegation may be revoked.

Subsection (8) provides that no delegation shall prevent the exercise of any power or function by the Board.

Clause 5 amends section 9 of the principal Act by adding a new subsection (3) providing that the form of the Register of Physiotherapists shall be either as prescribed or if not prescribed as the Board may require.

Clause 6 amends section 10 of the principal Act by repealing paragraph (b), and substituting a new paragraph. Subparagraph (i) of the new paragraph (b) re-enacts the present provision enabling credit to be given for training undergone and an examination passed elsewhere than in New Zealand but dispensing with the requirement that the applicant hold a certificate in respect of that training and examination. Subparagraph (ii) of the new paragraph enables the Board to register an applicant who has passed an examination elsewhere than in New Zealand and who has undergone a course of training and acquired experience in the practice of physiotherapy whether in New Zealand or elsewhere sufficient to warrant his registration.

Clause 7: Section 18A (5) of the principal Act at present provides that section 21 of the principal Act (relating to annual practising certificates) is inapplicable to holders of provisional certificates. This clause amends section 18A (5) to provide that section 9 (relating to the Register of Physiotherapists) and section 13 (1) of the principal Act (relating to certificates and badges of registration) are also inapplicable to holders of provisional certificates.

Clause 8 inserts a new section 18B in the principal Act enabling the Board to grant certificates of temporary registration to persons temporarily visiting New Zealand who are suitably qualified and intend to practise physiotherapy at any institution or place in New Zealand. The right to practise physiotherapy under a certificate of temporary registration is limited to that institution or place in New Zealand for such period and subject to such restrictions as the Board may specify, during which time the holder of that certificate shall, except for the purposes of section 9, subsection (1) of section 13, and section 21 of the principal Act, be deemed to be registered as a physiotherapist while practising in the institution or place specified.

Clause 9 repeals section 20 of the principal Act and substitutes a new section to allow credit for examinations passed either in New Zealand or elsewhere in a subject or part of a subject which is included in a course of training and instruction or examination under the principal Act. At present, credit can be given only for a period of training as a physiotherapist undertaken elsewhere than in New Zealand.

Clause 10 (1) amends section 21 of the principal Act by repealing subsections (2) and (3), and substituting two new subsections. At present it is an offence against section 21 for a registered physiotherapist to practise as a physiotherapist without an annual practising certificate. The new subsection (2) makes it an offence for a registered physiotherapist without an annual practising certificate to practise under any title, name or description which if used by an unregistered person would constitute an offence against section 26 of the principal Act as amended by *clause 12*. *Clause 10 (2)* of the Bill increases the maximum penalty for breach of section 21 (2) of the principal Act from \$10 to \$20.

Clause 11 amends section 25 (1) of the principal Act by omitting the word "renewal". This is consequential on the repeal of section 8 of the Physiotherapy Amendment Act 1953 (relating to renewal of licences) by *clause 17* of this Bill.

Clause 12 repeals section 26 of the principal Act and substitutes a new section relating to offences by unregistered persons. The maximum penalty for an offence against section 26 is increased from \$40 to \$50. The practice of physiotherapy by an unregistered person under the title of masseuse is made an offence. At present it is an offence against section 26 for any person to use or cause to be used in connection with his business or calling any written words likely to cause any person to believe that he is engaged in the practice of massage or that he is qualified to practise massage. The word "massage" is now omitted, and any possible suggestion that the use of the word massage in this section extended the application of the Act beyond the definition of physiotherapy given in section 2 of the principal Act is now removed. Nothing in the new section 26 affects persons carrying on an occupation by virtue of registration under another enactment, or persons employed under a name or title by any Hospital Board, or student physiotherapists undergoing prescribed courses of training or instruction in physiotherapy.

Clause 13 inserts a new section 26A in the principal Act making it an offence for a company to carry on physiotherapy as therein described otherwise than through the services of a registered physiotherapist holding a current annual practising certificate or the holder of a provisional certificate or a certificate of temporary registration. The new section 26A also makes it an offence for a company to hold itself out as carrying on physiotherapy without having a registered physiotherapist or the holder of a provisional certificate or a certificate of temporary registration employed by it. Each offence carries a maximum penalty of \$100. The new section 26A comes into force on 1 July 1970.

Clause 14 inserts a new paragraph (gg) in section 31 of the principal Act empowering the making of regulations providing for the further training and examination of persons, or any class of persons, registered under the principal Act for the purpose of enabling them to obtain additional qualifications.

Licences to Use Ultrasonic Therapy Apparatus

Clause 15 amends section 4 of the Physiotherapy Amendment Act 1953. At present each application for a licence to use ultrasonic therapy apparatus is referred to the Board for its decision. This clause enables the Registrar acting on the general or specific directions of the Board to grant or refuse an application, provided that no licence may be refused by the Registrar unless he has first obtained a direction to that effect from the Board in the particular case. Subject to section 25 of the principal Act (relating to appeals) every decision of the Board or Registrar is final.

Clause 16 amends section 6 of the Physiotherapy Amendment Act 1953 to enable the Register of Physiotherapists kept under the principal Act to be combined with the Register of Licences under the Physiotherapy Amendment Act 1953. In the event of a combined register a separate subdivision may be kept in respect of licence holders, and a separate subdivision shall be kept in respect of licence holders who are not registered as physiotherapists.

Clause 17 repeals section 8 of the Physiotherapy Amendment Act 1953 requiring licences in respect of ultrasonic therapy apparatus to be renewed annually.

Clause 18 amends section 10 of the Physiotherapy Amendment Act 1953 and is consequential on the repeal, by *clause 17*, of section 8 of that Act requiring licences in respect of ultrasonic therapy apparatus to be renewed annually.

Clause 19 amends section 12 of the Physiotherapy Amendment Act 1953 relating to offences. This is also consequential on *clause 17* of the Bill dispensing with the requirement that licences in respect of ultrasonic therapy apparatus be renewed annually.

Hon. Mr McKay

PHYSIOTHERAPY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Physiotherapy Act 1949

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

1. **Short Title and commencement**—(1) This Act may be
cited as the Physiotherapy Amendment Act 1969, and shall
be read together with and deemed part of the Physiotherapy
Act 1949* (hereinafter referred to as the principal Act).
- 10 (2) Except as provided in sections 2, 4, and 13 of this Act,
this Act shall come into force on the 1st day of January 1970.

*1957 Reprint, Vol. 11, p. 781
Amendments: 1961, No. 93; 1964, No. 17

2. Allowances and travelling expenses—(1) Section 7 of the principal Act (as substituted by section 10 (1) of the Fees and Travelling Allowances Act 1951) is hereby amended—

- (a) By inserting, after the word “Board” where it first appears, the words “, to the members of any committee appointed by the Board,”: 5
- (b) By inserting, after the word “Board” where it appears for the second time, the words “or of any such committee”.

(2) This section shall be deemed to have come into force on the 1st day of March 1969. 10

3. Functions of Board—(1) Section 8 of the principal Act (as amended by section 14 of the Physiotherapy Amendment Act 1953) is hereby further amended by omitting from paragraph (g) the word “renewal”. 15

(2) The said section 8 is hereby further amended by adding the following paragraph:

- “(h) To make provision for the further training and examination of registered physiotherapists and for the qualification and recognition of teachers of physiotherapy.” 20

4. Committees of Board—(1) Part I of the principal Act is hereby amended by inserting, after section 8, the following section:

“8A. (1) The Board may from time to time appoint committees consisting in each case of two or more persons— 25

- “(a) To inquire into and report to the Board on such matters within the scope of the functions of the Board as are referred to each committee by the Board; or 30

- “(b) To exercise on behalf of the Board any of its powers or functions—

and may from time to time delegate to any such committee any of its powers or functions under this Act:

“(2) Notwithstanding anything in subsection (1) of this section— 35

- “(a) No power, function, or matter within the scope of any function, of the Board under Part II of this Act may be delegated by the Board to any committee; and 40

5 “(b) Any power, function, or matter within the scope of any function, of the Board which under section 24 of this Act may be delegated by the Board to a committee shall be delegated by the Board and reported on or exercised by the committee subject to the provisions of that section.

10 “(3) Except in the case of a committee appointed for the purposes of section 24 of this Act, any committee appointed by the Board under this section may include persons who are not members of the Board.

“(4) Every committee shall be subject in all things to the control of the Board, and may at any time be discharged, altered, or reconstituted by the Board.

15 “(5) Subject to any general or special directions given or conditions imposed by the Board, any committee to whom any power or function is delegated under this section may exercise that power or function in the same manner and with the same effect as if it had been conferred directly by this Act and not by delegation.

20 “(6) Every committee purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

25 “(7) Any delegation under this section may be revoked at any time.

“(8) No delegation under this section shall prevent the exercise of the same or any other power or function by the Board.”

30 (2) This section shall be deemed to have come into force on the 1st day of March 1969.

5. Form of register—Section 9 of the principal Act is hereby amended by adding the following subsection:

35 “(3) The register shall be kept in such form, either in a bound book or otherwise, as may be prescribed, or, if no such form is prescribed, as the Board may require.”

6. Qualifications for registration—Section 10 of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) In the case of any other applicant—

“(i) That he has undergone a course of training and passed an examination elsewhere than in New Zealand equivalent to the training and examination required in the case of physiotherapists trained in New Zealand and qualified by examination under this Act; or 5

“(ii) That he has passed an examination in physiotherapy elsewhere than in New Zealand and has either in New Zealand or elsewhere, whether before or after passing that examination, undergone a course of training and acquired sufficient experience in the practice of physiotherapy to warrant his registration under this Act.” 10

7. Provisional certificates—Section 18A of the principal Act (as inserted by section 8 of the Physiotherapy Amendment Act 1964) is hereby amended by omitting from subsection (5) the words “section 21”, and substituting the words “section 9, subsection (1) of section 13, or section 21”. 15

8. Temporary registration—Part II of the principal Act is hereby amended by inserting, after section 18A (as inserted by section 8 of the Physiotherapy Amendment Act 1964), the following section: 20

“18B. (1) Subject to section 11 but notwithstanding any other provision of this Act, if the Board is satisfied that any person— 25

“(a) Is or will be temporarily visiting New Zealand and proposes to practise physiotherapy at any institution or place in New Zealand; and

“(b) Has sufficient knowledge and experience for the efficient practice of physiotherapy in that institution or place subject to such restrictions (if any) as the Board may specify— 30

the Board may, if it thinks fit, and on payment if required by the Board of any fee that may be prescribed for the purposes of this section, issue to him a certificate of temporary registration entitling him to practise as a physiotherapist in that institution or place subject to such restrictions (if any), and for such period, as may be specified in the certificate. 35

“(2) The Board may from time to time, in its discretion, extend the period specified in any certificate issued under this section if it is satisfied that the circumstances in which it was issued still exist. Any extension shall be endorsed on the certificate, which for that purpose shall be surrendered by the holder to the Registrar.

“(3) The Registrar may cancel any certificate issued under this section at any time on the direction of the Board.

“(4) During the period specified in any such certificate, or any extension thereof, and subject to such restrictions (if any) as may be specified by the Board, the holder of the certificate shall, unless it has been cancelled under this section, be deemed for all purposes, subject to subsection (5) of this section, to be registered as a physiotherapist while he is practising physiotherapy in the institution or place specified in the certificate but not otherwise.

“(5) Nothing in section 9, subsection (1) of section 13, or section 21 of this Act shall apply to the holder of a certificate under this section.”

9. Credit for previous training or examination—The principal Act is hereby further amended by repealing section 20, and substituting the following section:

“20. (1) If a person seeking registration as a physiotherapist has, either in New Zealand or elsewhere, undergone any period of training or passed any examination which includes any training or examination in a subject or part of a subject included, as the case may require, in a course of training and instruction or examination prescribed under this Act, the Board may from time to time, in its discretion, direct that it shall not be necessary for that person to undergo and receive such portion or portions of the prescribed course of training and instruction, or to be examined in such subject or subjects, as the Board may determine.

“(2) In giving any direction under this section the Board may make such other modifications and impose such conditions as it thinks fit in respect of the training and instruction to be undergone, or the examination to be passed, by the person in respect of whom the direction is given.

“(3) Every person in respect of whom any direction has been given under this section shall, when he has completed the course of training and instruction, or passed the examination, as modified by any such direction as aforesaid, and complied with any conditions imposed by the Board under this section, be deemed for the purpose of section 10 of this Act to have undergone the prescribed course of training and instruction or to have passed the prescribed examination as the case may be.”

10. Annual practising certificates—Section 21 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) No person registered under this Act shall in any year be entitled to practise his calling under the style or title of physiotherapist, physiotherapy expert, physical therapist, physical therapy expert, masseur, masseuse, or massage expert, or under any name, title, addition, or description implying that he holds any diploma or degree in physiotherapy or is otherwise qualified to practise physiotherapy or any branch of physiotherapy, unless he is the holder of an annual practising certificate issued in respect of that year.

“(3) Every person who practises his calling in breach of subsection (2) of this section commits an offence and is liable to a fine not exceeding \$20.”

11. Appeals—Section 25 of the principal Act (as amended by section 15 of the Physiotherapy Amendment Act 1953) is hereby further amended by omitting from subsection (1) the word “renewal”.

12. Offences by unregistered persons—The principal Act is hereby further amended by repealing section 26, and substituting the following section:

“26. (1) Every person commits an offence and is liable to a fine not exceeding \$50 who, not being registered under this Act,—

“(a) Takes or uses, either alone or in combination with any other words or letters, the name or title of physiotherapist or physical therapist or masseur; or

- 5 “(b) Practises physiotherapy under the title of masseuse or massage expert, or under any similar name or title, or under any name, title, addition, or description implying that he holds any diploma or degree in physiotherapy or is otherwise qualified to practise physiotherapy or any branch of physiotherapy; or
- 10 “(c) Uses or causes to be used in connection with his business, profession, occupation, or calling any written words, initials, or abbreviations of words intended or likely to cause any person to believe that he is registered under this Act or is engaged in the practice of physiotherapy or any branch of physiotherapy or that he is qualified to practise physiotherapy or any branch of physiotherapy.
- 15 “(2) Nothing in subsection (1) of this section shall affect—
- “ (a) The carrying on of a profession, occupation, or calling, under a style or title appropriate thereto, by a person who is registered under some other enactment in relation to the practice thereof; or
- 20 “ (b) The use by any person of the name or title of a position in which he is employed by any Hospital Board; or
- “ (c) The use of the name or title student physiotherapist by any person undergoing a course of training or instruction prescribed by regulations under this Act.”
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13. Offences by companies—(1) Part IV of the principal Act is hereby amended by inserting, after section 26, the following section:

30 “26A. (1) In this section ‘company’ means a company within the meaning of the Companies Act 1955; and includes an overseas company as defined in that Act having a place of business in New Zealand.

35 “(2) For the purposes of this section a company carries on physiotherapy if it employs any person, or causes or permits any person employed by it, to practise physiotherapy in the course of the business of the company:

40 “Provided that a company shall not be held to carry on physiotherapy by reason only of the fact that it employs a person, or causes or permits a person employed by it, to practise a profession, occupation, or calling in respect of which that person is registered under some other enactment.

“(3) If any company—

“(a) Carries on physiotherapy otherwise than through the services of a registered physiotherapist holding a current annual practising certificate issued under section 21 of this Act, or the holder of a provisional certificate issued under section 18A of this Act, or the holder of a certificate of temporary registration issued under section 18B of this Act; or 5

“(b) Without naming a registered physiotherapist employed by it, holds itself out, either directly or by implication, as carrying on physiotherapy— 10

the company and every director of the company and every person concerned in the management of the company commits an offence and is liable to a fine not exceeding \$100.”

(2) This section shall come into force on the 1st day of 15 July 1970.

14. Regulations—Section 31 of the principal Act is hereby amended by inserting, after paragraph (g), the following paragraph:

“(gg) Providing for the further training and examination of persons or any class of persons registered under this Act for the purpose of enabling them to obtain additional qualifications, and for the issue of diplomas or certificates to persons who undergo any such training or pass any such examination:”. 25

Licences to Use Ultrasonic Therapy Apparatus

15. Application for licence—(1) Section 4 of the Physiotherapy Amendment Act 1953 is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) A licence shall be in such form as the Board may from time to time direct, and may, if the Board thinks fit, be included in an annual practising certificate, or a provisional certificate, or a certificate of temporary registration issued to the applicant under the principal Act.” 30

(2) The said section 4 is hereby further amended— 35

(a) By omitting the word “Board”, where it first appears in subsection (4), and substituting the word “Registrar”; and

(b) By omitting the words “the Board”, where they first appear in the proviso to subsection (4), and substituting the words “the Registrar shall refer the application to the Board which”. 40

(3) The said section 4 is hereby further amended by repealing subsection (6), and substituting the following subsections:

5 “(6) All licences shall be granted or refused by the Registrar acting on the general or special directions of the Board; but no licence shall be refused by the Registrar unless he has first sought and obtained a direction to that effect from the Board in the particular case.

10 “(6A) Subject to section 25 of the principal Act, every decision of the Board or the Registrar under subsection (6) of this section shall be final.”

(4) The said section 4 is hereby further amended by repealing subsection (8), and substituting the following subsection:

15 “(8) Every licence shall continue in force until it is cancelled or suspended under section 7 of this Act, or until the holder thereof, being a physiotherapist, ceases to hold a current annual practising certificate, or a provisional certificate, or a certificate of temporary registration, issued under the principal Act, as the case may require.”

20 **16. Register of licences**—Section 6 of the Physiotherapy Amendment Act 1953 is hereby amended by inserting, after subsection (1), the following subsection:

25 “(1A) The register kept under this section may be combined with the Register of Physiotherapists kept under the principal Act; but if both registers are combined the names of holders of licences may, and the names of holders of licences who are not registered as physiotherapists shall, be kept in a separate subdivision of the combined register.”

30 **17. Repeal of provisions as to renewal of licences**—The Physiotherapy Amendment Act 1953 is hereby further amended by repealing section 8.

18. Fees—Section 10 of the Physiotherapy Amendment Act 1953 is hereby amended by omitting the words “or renewal of licences under this Act such fees”, and substituting the words
35 “of licences under this Act such fees (if any)”.

19. Offences—Section 12 of the Physiotherapy Amendment Act 1953 is hereby amended by omitting from paragraph (c) of subsection (1) the words “or renewal”.