



Western Australia

## **Medical Act 1894**

Compare between:

[01 Aug 2007, 06-e0-01] and [19 Sep 2007, 06-f0-05]



Western Australia

## **Medical Act 1894**

**An Act to consolidate the law relating to medical practitioners.**

## Part I — Preliminary

### 1. Short title and commencement

This Act may be cited as the *Medical Act 1894*<sup>1</sup>, and shall come into operation on 1 January 1895.

*[Section 1 amended by No. 10 of 1998 s. 47(1).]*

*[2. Omitted under the Reprints Act 1984 s. 7(4)(f).]*

### 3. Interpretation

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

“**Board**” means the Medical Board established under section 4;

“**medical call service**” means any practice, method or arrangement under which a medical practitioner ensures that any person who needs or desires medical attention during the absence of the medical practitioner shall be attended by another medical practitioner other than a *locum tenens* in the place of the first mentioned medical practitioner;

“**medical practitioner**” means —

(a) a person not being a body corporate who is registered under this Act; or

(b) a body corporate which is registered under this Act;

“**member**” means —

(a) in relation to the Board, a member of the Board and includes the president;

(b) in relation to a body corporate, a shareholder or a director or a person in accordance with whose directions or instructions the affairs of the body corporate are customarily conducted;

“**professional standards committee**” means the professional standards committee appointed under section 8AA;

“**Register**” shall mean the register of medical practitioners hereinafter mentioned;

**“Registrar”** shall mean the Registrar appointed under the provisions of this Act;

**“Rules”** shall mean the rules for the time being made and prescribed by the Board under this Act.

- (2) For the purposes of this Act a statement is deemed to be published or advertised if it is —
- (a) inserted in any newspaper or other publication;
  - (b) publicly exhibited —
    - (i) in, on, over or under any building, vehicle, or place (whether a public place or private place); or
    - (ii) in the air;
  - (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person;
  - (d) made orally to any person; or
  - (e) publicly announced by means of transmission of light or sound.

*[Section 3 amended by No. 22 of 1945 s. 2; No. 43 of 1966 s. 3; No. 70 of 1985 s. 3; No. 55 of 2004 s. 720.]*

## **Part II — Medical Board and professional standards committee**

*[Heading amended by No. 55 of 2004 s. 721.]*

### **4. Constitution and proceedings of Medical Board**

- (1) For the purposes of this Act there shall be established a board to be known as the “Medical Board”.
- (1a) The Board shall consist of 12 persons as follows —
  - (a) a person nominated by the chief executive officer who is —
    - (i) a medical practitioner; and
    - (ii) a public service officer, as defined in the *Public Sector Management Act 1994*, or employed on the salaried staff of a public authority, as defined in the *Industrial Relations Act 1979*;
  - (b) 7 persons other than bodies corporate appointed by the Minister who are registered medical practitioners under this Act;
  - (c) 2 persons appointed by the Minister who are legal practitioners;
  - (d) the Commissioner as defined in section 4(1) of the *Consumer Affairs Act 1971* or an officer of the Public Service of the State nominated by him; and
  - (e) 1 person appointed by the Minister who is not a medical practitioner.
- (2) At any meeting of the Board a quorum shall be constituted by 5 members of whom not less than 3 shall be medical practitioners and the Board may Act notwithstanding any vacancies.
- (3) The president of the Board shall be one of the members thereof elected by the members of the Board, and be *ex officio*

chairman. In the absence of the president from any meeting, the members present may elect a chairman for such meeting.

- (4) Each member (including the chairman) shall have one vote, and the chairman shall, in case of an equality of votes, have, in addition to his ordinary vote, a casting vote. All questions at any meetings shall be determined by a majority of votes of the members present.
- (5) A member of the Board referred to in subsection (1a)(b), (c) or (e) shall hold office for such period not exceeding 3 years as is fixed in the instrument of appointment of the member.
- (6) Where a vacancy in the office of member referred to in subsection (1a)(b), (c) or (e) occurs otherwise than by effluxion of time the vacancy may be filled by the appointment of an eligible person but the person so appointed shall hold office only for the unexpired period of the term of office of the member in whose place that person is appointed.
- (7) Notwithstanding that a body corporate may be registered as a medical practitioner under this Act, a body corporate is not —
  - (a) eligible to be appointed as, or hold office as; or
  - (b) entitled to nominate, or to vote for, a person to be elected as,  
a member of the Board.
- (8) A nomination for the purposes of subsection (1a)(a) or (d) may be made from time to time and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination.

*[Section 4 amended by No. 22 of 1945 s. 3; No. 70 of 1985 s. 4; No. 67 of 1994 s. 4; No. 48 of 2000 s. 4; No. 28 of 2006 s. 272; No. 49 of 2006 s. 4.]*

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**5. Governor may remove member**

- (1) The Governor may remove a member referred to in section 4(1a)(b), (c) or (e).
- (2) A member referred to in section 4(1a)(b), (c) or (e) may resign from the office of member by notice in writing addressed to the Minister.

*[Section 5 inserted by No. 70 of 1985 s. 5.]*

**6. Rules and regulations**

- (1) The Board may, with the approval of the Governor in Council, from time to time make and prescribe, amend, repeal, or add to all such rules as to the Board may seem meet for all or any of the following purposes —
  - (a) for determining the evidence to be produced and conditions to be fulfilled by any person applying for registration under this Act;
  - (b) for regulating the manner of keeping and the form of the register;
  - (c) for regulating the meetings and proceedings of the Board and the conduct of the business thereof;
  - (d) for regulating the manner of making and handling complaints or charges against medical practitioners alleged to be guilty of infamous or improper conduct in a professional respect;
  - (da) for the control, regulation and prohibition of advertising by medical practitioners;
  - (db) for the control, regulation and prohibition of medical call services and the standards, terms and conditions that apply in relation to medical call services and the duties and responsibilities that apply to persons engaged in providing medical call services;
  - (e) for generally carrying into effect the objects of this Act.



- (2) By any such rules the Board may create an offence and specify a fine of not more than \$2 000 by which the offence is punishable and may prescribe a scale of fees to be charged and paid in respect of any application, registration, or other proceeding, act, or thing provided or required under this Act or the rules.

*[(3) repealed]*

- (4) The Governor may make regulations with respect to any matter on which the Board may make rules and where a regulation is inconsistent with a rule the former prevails to the extent of the inconsistency.

*[Section 6 amended by No. 22 of 1945 s. 5; No. 113 of 1965 s. 8; No. 70 of 1985 s. 6; No. 55 of 2004 s. 722.]*

## **7. Officers of the Board**

The Board shall have power to appoint and pay, and to dismiss, an examiner or examiners, and a Registrar and such other officers as the Board may deem necessary for carrying out this Act and the rules, and all such persons shall hold office subject to the rules.

## **8. Board may sue**

- (1) The Board may, in its own name, by its Registrar or any person thereunto authorised, in writing under the hand of the president, commence, carry on, prosecute, and defend any action, prosecution or proceeding whatsoever, both civil and criminal. Every court of law and the State Administrative Tribunal shall take judicial notice of the signature of the president to any such authorisation.
- (2) In any proceedings by the Board it shall not be necessary to prove the appointment of the members or Registrar of the Board.

*[Section 8 amended by No. 55 of 2004 s. 723; No. 84 of 2004 s. 80.]*

**s. 8A**

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**8AA. Professional standards committee**

- (1) The Board is to appoint persons to be members of a committee to be known as the professional standards committee.
- (2) Each member of the committee is to be a natural person chosen by the Board, and a member of the Board is not precluded from being a member of the committee.
- (3) The Board is to appoint one of the members of the committee to preside at a meeting of the committee and, if that person is unable to preside, a member chosen by the members present at the meeting is to preside.
- (4) The committee is to comply with any direction that the Board gives it about the conduct of its proceedings but otherwise is to determine its own procedures.
- (5) The committee is to ensure that —
  - (a) accurate records are made of the proceedings at its meetings, including details of each decision it makes; and
  - (b) those records are retained.

*[Section 8AA inserted by No. 55 of 2004 s. 724.]*

**8A. Protection of Board and Registrar from liability**

No act, matter or thing done or suffered to be done by the Board or the professional standards committee or by any member of the Board or the professional standards committee or by the Registrar or any officer or servant of the Board *bona fide* in the administration or intended administration of this Act or in the exercise or performance or intended exercise or performance of any of its or his powers or duties under this Act shall subject the Board or any member of the Board or committee or the Registrar or any officer or servant of the Board or the Crown to any liability in respect thereof.

*[Section 8A inserted by No. 22 of 1945 s. 6; amended by No. 55 of 2004 s. 725.]*

**9. Examination of persons and documents by Board, and public nature of proceedings**

- (1) The Board may require the attendance of any person who applies for registration, and of any other person or persons, and may examine or question any such persons or any witnesses who may attend before the Board, upon oath or affirmation, and for any such purposes the Chairman may administer any oath or affirmation.
- (2) Every summons issued by the Board requiring the attendance of any person or the production of any documents, and signed by the Registrar, shall have the same effect as a subpoena *ad test* or *duces tecum*, as the case may be, issued by the Supreme Court in a civil action; and the obedience thereto or non-observance thereof shall be enforced and punished by a Judge in chambers in the same manner as in the case of the disobedience or non-observance of a subpoena issued by the said court.

*[Section 9 amended by No. 22 of 1945 s. 7; No. 70 of 1985 s. 7; No. 55 of 2004 s. 726.]*

### **Part III — Registration**

**10. Register to be kept by the Registrar**

- (1) For the purposes of this Act, the Registrar shall keep a register of medical practitioners.
- (1a) The Registrar shall, at the direction of the Board, and on payment of the prescribed fee —
  - (a) where a person, not being a body corporate, has the necessary qualifications under this Act register that person by entering his name together with such other particulars as are prescribed under subsection (2); and
  - (b) where, in relation to a body corporate, the Board approves of the application pursuant to section 11 register that body corporate by entering the name by which it is incorporated and any other name by reference to which it carries on business, together with such other particulars as may be prescribed,in the register.
- (2) The Register shall be kept in such manner and form, and contain such particulars as prescribed by the rules, and shall at all times be open to inspection by any person on payment of the prescribed fee.
- (3) The Board shall, from time to time, erase any entry which shall be proved to the satisfaction of the Board to have been fraudulently or incorrectly made.
- (4) The Board may cause to be made any necessary alterations in the register so as to ensure that the register is kept correctly posted.
- (5) The Board may cause the Registrar to send a letter to any person registered under this Act addressed to that person at the address appearing in the register, and if no answer is received from that person within 2 months after the date of the posting of that letter, the Board may erase the name of that person from the register.

- (6) If the name of a person is erased from the register under subsection (5) the Board may restore that name to the register if the medical practitioner whose name is so erased —
- (a) applies to the Board in the prescribed form;
  - (b) pays the prescribed practice fee;
  - (c) pays the prescribed restoration fee;
  - (d) pays a fine not exceeding the prescribed amount that may be imposed by the Board for the non-payment of the annual practice fee on or before the date fixed by the rules;
  - (e) satisfies the Board that he or she is a person of good fame and character or if requested by the Board produces to the Board his or her certificate of registration.

*[Section 10 amended by No. 10 of 1955 s. 2; No. 113 of 1965 s. 8; No. 70 of 1976 s. 3; No. 70 of 1985 s. 8; No. 55 of 2004 s. 727.]*

**11. Persons entitled to be registered and special provisions for bodies corporate**

- (1) Subject to section 11AA a person is entitled to be registered as a medical practitioner if the person —
- (a) has recognised medical qualifications;
  - (b) has successfully completed a period of internship or supervised clinical practice as required by the Board; and
  - (c) not being a person referred to in section 11AB, pays to the Board together with his or her application for registration such registration fee as is prescribed, together with the annual practice fee prescribed for the purposes of section 16A.

**s. 11**

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- (2) The entitlement to registration of a person referred to in subsection (1) is an entitlement to general registration and not subject to any condition.
- (2a) For the purposes of subsection (1) a person has **“recognised medical qualifications”** if the person is a graduate of a Medical School within Australia or the Dominion of New Zealand accredited by the Australian Medical Council or has successfully completed examinations held by that Council for the purposes of registration as a medical practitioner.
- (3) Subject to this section, a person, being a body corporate, may at the discretion and direction of the Board be registered as a medical practitioner under this Act if it is proved to the satisfaction of the Board that the body corporate —
- (a) is composed entirely of members, not being bodies corporate, who are registered under this Act; or
  - (b) comprises 2 members, neither of whom is a body corporate, of whom one is registered under this Act and the other is a person who is in the opinion of the Board of good fame and character.
- (4) A body corporate is not eligible to be registered as a medical practitioner under this section unless in the opinion of the Board —
- (a) it has a place of business within the State and the Board is satisfied that the principal executive officer of the corporation is a medical practitioner;
  - (b) the control of the affairs of the body corporate is vested in a medical practitioner registered under this Act;
  - (c) any member of the body corporate who is not a medical practitioner holds shares in the body corporate only for the benefit of a member who is a medical practitioner;
  - (d) the Board is satisfied that the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the body corporate or to dispose of,

or to exercise control over the disposal of, such shares is such that the personal supervision and management of the affairs of the body corporate cannot become vested in a person who is not a medical practitioner;

- (e) full personal professional responsibility for the conduct of the affairs of the body corporate in relation to the practice of medicine remains an obligation of each member who is a medical practitioner and no person, other than a medical practitioner has authority over professional matters;
  - (f) proper and adequate provision is made for disclosure to the Board of the affairs of the body corporate, on request in writing by the Board to any member who is a medical practitioner, or an undertaking to that effect is given to and accepted by the Board;
  - [(g) deleted]*
  - (h) the memorandum and articles of association of the body corporate are acceptable to the Board and contain a provision that the Board be notified of any intention to amend that memorandum or articles and be furnished with a copy of any proposed resolution or other form of proposal to give effect to that intention; and
  - (i) there are no grounds upon which the application ought to be refused.
- (5) Any civil liability in connection with the practice of medicine incurred by a body corporate that is a registered medical practitioner under this Act is enforceable jointly and severally against the body corporate and any person who at the time that the liability was incurred, was a member of the body corporate.
- (6) In relation to a body corporate, the Board may impose conditions as to the registration or restriction on the practice of medicine, and failure to comply with any such condition or restriction may be taken to constitute improper conduct in a professional respect.

**s. 11AA**

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*[Section 11 amended by No. 51 of 1940 s. 2; No. 22 of 1945 s. 8; No. 8 of 1946 s. 2; No. 21 of 1950 s. 3; No. 65 of 1952 s. 2, 3 and 4; No. 18 of 1955 s. 2; No. 35 of 1956 s. 2; No. 42 of 1961 s. 2; No. 19 of 1968 s. 2; No. 70 of 1976 s. 4; No. 56 of 1979 s. 2; No. 28 of 1981 s. 3; No. 70 of 1985 s. 9 (as amended by No. 45 of 1988); No. 29 of 1991 s. 3; No. 67 of 1994 s. 5.]*

**11AA. Applicants to be competent and of good character**

Notwithstanding section 11 and sections 11AC, 11AD, 11AF and 11AG, the Board shall not register a person as a medical practitioner unless satisfied that the person —

- (a) is competent to practise medicine (that is, the person has sufficient physical capacity, mental capacity and skill to practise medicine);
- (b) has a sound knowledge of the English language and possesses sufficient skill in the expression of that language, both written and oral, for the practice of medicine; and
- (c) is of good character.

*[Section 11AA inserted by No. 67 of 1994 s. 6; amended by No. 48 of 2000 s. 5.]*

**11AB. Armed forces exempted from fees in certain circumstances**

- (1) A person who satisfies the Board that —
  - (a) he or she is registered under any Act of a State or Territory of the Commonwealth as a person entitled to practise medicine or surgery; and
  - (b) his or her sole occupation is that of a medical officer permanently attached to any of the Armed Services of the Commonwealth,

may be registered as a medical practitioner under this Act, without payment of any registration fee or practice fee payable under this Act, during such time as he or she continues to fulfil the requirements of paragraphs (a) and (b).



- (2) A person who satisfies the Board that —
- (a) he or she has —
    - (i) such qualifications in; and
    - (ii) such experience in the practice of,  
medicine and surgery as in the opinion of the Board  
qualify the person to practise medicine and surgery in  
the State; and
  - (b) he or she is serving as a member of a visiting force in  
the capacity of a medical officer,

may be registered as a medical practitioner under this Act,  
without payment of any registration fee or practice fee payable  
under this Act, during such time as he or she continues to fulfil  
the requirements of paragraphs (a) and (b).

- (3) For the purposes of subsection (2) —

**“force”**, in relation to a country, means the naval, military or  
air force of that country;

**“visiting force”** means any body, contingent or detachment of  
the forces of a country that is for the time being present in the  
State by arrangement with the Minister of State for Defence for  
the Commonwealth.

*[Section 11AB inserted by No. 67 of 1994 s. 7.]*

#### **11AC. Entitlement to conditional registration for interns**

- (1) Subject to section 11AA, the Board may register a person as a  
medical practitioner subject to appropriate conditions if the  
person would be entitled to registration under section 11(1)  
except for the fact that he or she has not completed a period of  
internship required by the Board.
- (2) The **“appropriate conditions”** of registration are such  
conditions as the Board thinks appropriate for the purpose of  
enabling the person to complete that internship.

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*[Section 11AC inserted by No. 67 of 1994 s. 7; amended by No. 48 of 2000 s. 6.]*

**11AD. Entitlement to conditional registration for supervised clinical practice**

- (1) Subject to section 11AA, the Board may register a person as a medical practitioner subject to appropriate conditions if the person would be entitled to registration under section 11(1) except for the fact that he or she has not completed a period of supervised clinical practice required by the Board.
- (2) The “*appropriate conditions*” of registration are such conditions as the Board thinks appropriate for the purpose of enabling the person to complete that supervised clinical practice.

*[Section 11AD inserted by No. 67 of 1994 s. 7; amended by No. 48 of 2000 s. 6.]*

**11AE. Entitlement to general or conditional registration based on registration elsewhere in Australia**

- (1) A person who is registered as a medical practitioner under the law in force in another State or Territory is entitled to be registered as a medical practitioner under this Act.
- (2) If the person’s registration in the other State or Territory is not subject to any condition or restriction, the person’s entitlement to registration under this Act is an entitlement to general registration and not subject to any condition.
- (3) If the person’s registration in the other State or Territory is subject to any condition or restriction, the person’s entitlement to registration under this Act is an entitlement to registration subject to the conditions to which that registration is subject or conditions, as the Board thinks fit, appropriate to give effect to any restriction to which that registration is subject.

*[Section 11AE inserted by No. 67 of 1994 s. 7.]*

**11AF. Conditional registration at the discretion of the Board**

- (1) Subject to section 11AA, the Board may register a person as a medical practitioner under any of the following provisions and may impose such conditions on the registration as the Board thinks appropriate:

**A. *Graduates from non-accredited institutions — postgraduate training***

A person who is a graduate of medicine from an institution which is not accredited by the Australian Medical Council may be registered on a temporary basis to enable the person to undertake a period of postgraduate training in medicine approved by the Board.

**B. *Medical teaching***

A person may be registered for the purpose of enabling the person to fill a medical teaching position if the person has the qualifications that the Board recognises for that purpose.

**C. *Medical research***

A person may be registered for the purpose of enabling the person to fill a medical research position if the person has the qualifications that the Board recognises for that purpose.

**D. *Unmet areas of need***

A person may be registered for the purpose of enabling an unmet area of need to be met if the Board is satisfied that the person has suitable qualifications and experience to practise medicine in that area of need.

**E. *Recognised specialist qualifications and experience***

A person may be registered if the Board is satisfied that the person has specialist qualifications and experience in medicine obtained outside Australia and registration is

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for the purpose of enabling the person to practise within that specialty.

**F. *Foreign specialist qualifications and experience — further training***

A person may be registered if the Board is satisfied that the person has specialist qualifications and experience in medicine obtained outside Australia and registration is for the purpose of enabling the person to undergo further specialist training or examination as required by the Board.

**G. *Temporary registration in the public interest***

A person may be registered on a temporary basis if the Board is satisfied that it is in the public interest to do so.

(2) For the purposes of subsection (1)D —

**“an unmet area of need”** means an area of need determined by the Minister.

*[Section 11AF inserted by No. 67 of 1994 s. 7; amended by No. 48 of 2000 s. 7.]*

**11AG. Conditional registration for general practice in remote and rural WA**

(1) Subject to section 11AA, the Board may register a person as a medical practitioner if —

- (a) the Board is satisfied that the person —
  - (i) has qualifications and experience in general practice obtained outside Australia;
  - (ii) is competent, having regard to the person’s qualifications and experience, to practise as a general practitioner in this State; and
  - (iii) has undertaken to comply with the conditions imposed by subsection (2);

and

- (b) the person pays to the Board together with his or her application for registration such registration fee as is prescribed, together with the annual practice fee prescribed for the purposes of section 16A.
- (2) The registration of a person under this section is subject to the following conditions —
  - (a) that the person practise only as a general practitioner;
  - (b) that the person must practise in remote and rural WA for 5 years after being registered; and
  - (c) if the person is not a Fellow of the Royal Australian College of General Practitioners at the time of registration under this section, that he or she must become such a Fellow within 2 years of being so registered.
- (3) The Board may impose such other conditions as it thinks appropriate on the registration of a person under this section, but a condition under this subsection must not restrict the parts of the State in which the person may practise after the expiration of the 5 years referred to in subsection (2)(b).
- (4) If a person who is registered under this section satisfies the Board that there is a good reason why he or she should not be required to comply with the condition imposed by subsection (2)(b) or (c) the Board may vary that condition as the Board thinks appropriate.
- (5) If the Board is satisfied that a person registered under this section has failed to comply with a condition imposed by subsection (2) the Board may, without an inquiry, remove the name of the person from the register.
- (6) Subject to subsection (5) and sections 10(5), 13, 13A and 16A(2), the Board shall not remove the name of a person registered under this section from the register or suspend the registration of a person so registered after the person has

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complied with the conditions imposed by subsection (2)(b) and (c).

(7) In this section —

“**practise as a general practitioner**” means practise as a medical practitioner engaged in primary, continuing, comprehensive, whole-patient care of individuals, families and their community;

“**remote and rural WA**” means any part of the State, outside the Perth metropolitan area, determined by the Minister to be remote and rural WA for the purposes of this section.

*[Section 11AG inserted by No. 48 of 2000 s. 8.]*

**11A. Determination of specialties and registration of specialists**

- (1) The Governor may upon the recommendation of the Board from time to time by Order in Council declare what branches of medicine and surgery shall for the purposes of this Act be and be deemed to be specialties with respect to which medical practitioners who are duly qualified may be registered as specialists.
- (2) The Board may with the approval of the Governor and in relation to the registration of medical practitioners as specialists make rules in relation to —
  - (a) the manner in which application shall be made and registration shall be effected;
  - (b) the experience and/or qualifications necessary;
  - (c) the appointment of examiners and the holding of examinations;
  - (d) the prescribing of the registration fee; and
  - (e) such other matters as the Board deems necessary to implement this section.
- (3) The registration of a medical practitioner as a specialist under this section shall continue only so long as the registration of the

medical practitioner as a medical practitioner, and when the last mentioned registration is suspended or is erased from the Register of Medical Practitioners the registration of the medical practitioner shall also be simultaneously and similarly suspended or erased from the register of specialists.

- (4) The provisions of this Act relating to the restoration to the Register of Medical Practitioners of the registration of a medical practitioner which has been erased therefrom shall, with such adaptations as may be necessary, apply also to the restoration to the register of specialists of the registration of a specialist which has been erased therefrom.
- (5) This section applies to a medical practitioner who is registered under section 11(1) and to a medical practitioner who is registered under section 11AF(1)B, C, D, E or G.

*[Section 11A inserted by No. 22 of 1945 s. 9; amended by No. 67 of 1994 s. 8.]*

*[12 and 12A. Repealed by No. 67 of 1994 s. 9.]*

**12B. Provisional certificate may be granted**

- (1) When a person has applied to be registered under section 11(1), 11AB, 11AC, 11AD, 11AE, 11AF(1) or 11AG the Registrar, or in the absence of the Registrar, the Assistant Registrar or any member of the Board, upon being satisfied that the person is entitled to be registered, and upon payment of the registration fee (if any), may grant to the person in the prescribed form a provisional certificate of registration or a provisional certificate of conditional registration, as the case may require.
- (2) When a person has obtained a provisional certificate he shall be deemed to be registered under this Act until —
  - (a) the date stated in such certificate; or
  - (b) such later date as is fixed by the Board,

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which in no case shall be later than 3 months from the granting of such certificate.

- (3) If the Board, before the date so stated or fixed pursuant to subsection (2), has reason to believe that such person is not entitled to be registered, the Board may, without prejudice to his application to be registered, cancel his provisional certificate and such person shall thereupon cease to be deemed to be registered.
- (4) If a person to whom a provisional certificate has been granted becomes registered or is granted a certificate of conditional registration under section 11AC, 11AD, 11AE, 11AF(1) or 11AG, his registration or conditional registration, as the case may be, shall, unless otherwise decided by the Board, date from the granting of his provisional certificate.

*[Section 12B inserted by No. 28 of 1981 s. 4; amended by No. 70 of 1985 s. 12; No. 67 of 1994 s. 10; No. 48 of 2000 s. 9.]*

**12BA. Interim constraint on practice**

- (1) If the Board is of the opinion that an activity of a medical practitioner, not being a body corporate, involves or will involve a risk of imminent injury or harm to the physical or mental health of any person, the Board may, without further inquiry, order that for a period of not more than 30 days specified in the order —
  - (a) either generally or in relation to particular circumstances or services as specified in the order, the medical practitioner is not to practise medicine;
  - (b) the medical practitioner is not to practise medicine except on any conditions and restrictions specified in the order;
  - (c) the medical practitioner is prohibited from carrying on an activity; or



- (d) the medical practitioner is subject to any combination of the restrictions that could be imposed under paragraphs (a), (b), or (c).
- (2) An order under subsection (1) has no effect until it is given personally to the medical practitioner.
- (3) The order has to —
  - (a) state the Board’s opinion that is the basis for the order;
  - (b) specify the activity that in the Board’s opinion involves or will involve the risk and the matters that give or will give rise to the risk; and
  - (c) advise the medical practitioner against whom the order is made of the right given by subsection (5) to apply to the State Administrative Tribunal for a review of the order.
- (4) The Board may, by a further order given to the medical practitioner, revoke or vary an order under subsection (1) at any time before making an allegation to the State Administrative Tribunal under section 12BB.
- (5) The person against whom an order is made under subsection (1) may apply to the State Administrative Tribunal for a review of the order.

*[Section 12BA inserted by No. 55 of 2004 s. 728.]*

**12BB. Allegation to be made**

- (1) Within a period of 14 days after the day on which the Board makes an order under section 12BA(1), the Board is required to —
  - (a) make an allegation to the State Administrative Tribunal of the matter because of which the order was made; or
  - (b) revoke the order under section 12BA(4).
- (2) Upon an allegation made under subsection (1) the State Administrative Tribunal may —

**s. 12BC**

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- (a) make any order that it could make if an application had been for a review of the order under section 12BA(1); and
- (b) make an order under section 13(3a).

*[Section 12BB inserted by No. 55 of 2004 s. 728.]*

**12BC. Power to make interim constraint additional to other powers**

The Board may deal under sections 12BA and 12BB with a matter even if —

- (a) the Board is already dealing with the matter under another provision of this Act; or
- (b) a complaint about the matter, or a matter involving substantially the same elements, has been made under the *Health Services (Conciliation and Review) Act 1995* or is being treated as a complaint that was made under that Act.

*[Section 12BC inserted by No. 55 of 2004 s. 728.]*

**12C. Appointment of investigator**

- (1) The Board may appoint a person to investigate a matter relevant to the performance of the Board's functions under this Act and report to the Board.
- (2) The Board is to issue to each investigator it appoints a certificate of appointment in an approved form.
- (3) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

*[Section 12C inserted by No. 55 of 2004 s. 728.]*

**12D. Report of investigator**

- (1) An investigator must —

- (a) within such period as the Board requires prepare a report on the investigation, and make recommendations as to the manner in which the matter should be dealt with; and
  - (b) immediately after preparing the report, provide the Board with a copy of the report.
- (2) The investigator must return his or her certificate of appointment at the time the Board is provided with a copy of the report.

*[Section 12D inserted by No. 55 of 2004 s. 728.]*

**12E. Powers of investigator**

- (1) An investigator may for the purposes of an investigation —
- (a) enter and inspect the premises of a person named in a warrant issued under section 12G(1), and exercise the powers referred to in section 12G(2)(b) and (c);
  - (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
  - (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
  - (d) require a person —
    - (i) to give the investigator such information as the investigator requires; and
    - (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
  - (e) exercise other powers conferred on an investigator by the regulations.
- (2) A requirement made under subsection (1)(b) —

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- (a) must be made by notice in writing given to the person required to produce the document or other thing;
  - (b) must specify the time at or within which the document or other thing is to be produced;
  - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
  - (d) where the document required is not in a readable format, must be treated as a requirement to produce —
    - (i) the document itself; and
    - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(d) —
- (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
  - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
  - (c) may, by its terms, require that the information or answer required —
    - (i) be given orally or in writing;
    - (ii) be given at or sent or delivered to a place specified in the requirement;
    - (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; and
    - (iv) be verified by statutory declaration.
- (4) If under subsection (1)(d) an investigator requires a person to give information or answer a question, the investigator must inform that person that the person is required under this Act to give the information or answer the question.

- (5) An investigator must produce his or her certificate of appointment if requested to do so by a person in respect of whom the investigator has exercised, or is about to exercise, a power under this section.

*[Section 12E inserted by No. 55 of 2004 s. 728.]*

**12F. Warrant to enter premises**

- (1) If the Board has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating a matter that may involve a threat to the physical or mental health of a person the investigator may apply to a magistrate for a warrant to be issued in respect of those premises.
- (2) An application for a warrant must —
- (a) be in writing;
  - (b) be accompanied by a notice in writing from the Board stating that it has determined in the particular case that the investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of substantiating the matter that may involve a threat to the physical or mental health of a person;
  - (c) set out the grounds for seeking the warrant; and
  - (d) describe the premises that are to be entered.
- (3) A magistrate to whom an application is made under this section must refuse it if —
- (a) the application does not comply with the requirements of this Act; or
  - (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.
- (4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or

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affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.

*[Section 12F inserted by No. 55 of 2004 s. 728.]*

**12G. Issue of warrant**

- (1) A magistrate to whom an application is made under section 12F may issue a warrant if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
  - (a) to enter and inspect the premises named in the warrant;
  - (b) to require a person on the premises to answer questions or produce documents or other things in the person's possession concerning the investigation; and
  - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
  - (a) the purpose for which the warrant is issued;
  - (b) the name of the person to whom the warrant is issued; and
  - (c) a description of the premises that may be entered.
- (4) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

*[Section 12G inserted by No. 55 of 2004 s. 728.]*

**12H. Execution of warrant**

- (1) If asked by the occupier or a person in charge of the premises to do so, the person executing a warrant must produce it for inspection.

- (2) A warrant ceases to have effect —
- (a) at the end of the period of one month after its issue;
  - (b) if it is withdrawn by the magistrate who issued it; or
  - (c) when it is executed,

whichever occurs first.

*[Section 12H inserted by No. 55 of 2004 s. 728.]*

**12I. Incriminating information, questions, or documents**

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 12E a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

he or she shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by the person shall not be admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 12J(1)(b).

*[Section 12I inserted by No. 55 of 2004 s. 728.]*

**12J. Failure to comply with investigation**

- (1) Where under section 12E a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him or her) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement;
  - (b) gives any information or answer that is false in any particular; or

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- (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show —
  - (a) that, in the case of an alleged offence arising out of a requirement made orally under section 12E, the investigator did not, when making the requirement, inform the defendant that he or she was required under this Act to give the information or answer the question, as the case may be;
  - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 12E, the notice did not state that he or she was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;
  - (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable him or her to comply with the requirement; or
  - (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

*[Section 12J inserted by No. 55 of 2004 s. 728.]*

**12K.    Obstruction of investigator**

A person shall not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his or her powers under section 12E.

Penalty: \$2 000.



*[Section 12K inserted by No. 55 of 2004 s. 728.]*

**13. Inquiries into, and striking off and suspension of, medical practitioner**

- (1) Where it appears to the Board that a medical practitioner, not being a body corporate, may be —
- (a) guilty of infamous or improper conduct in a professional respect;
  - (b) affected by a dependence on alcohol or addiction to any deleterious drug;
  - (c) guilty of gross carelessness or incompetency;
  - (d) guilty of not complying with or contravening a condition or restriction imposed by the Board with respect to the practice of medicine by that medical practitioner; or
  - (e) suffering from physical or mental illness to such an extent that his or her ability to practise as a medical practitioner is or is likely to be affected,

the Board may allege to the State Administrative Tribunal that disciplinary action should be taken against the medical practitioner for that reason.

- (2) Where it appears to the Board that a medical practitioner or a person who is a member of a body corporate that is registered as a medical practitioner under this Act has been convicted of an offence in this State or elsewhere that in the opinion of the Board renders that person, or would, if that person were a medical practitioner, render that person, unfit to practise as a medical practitioner the Board may allege to the State Administrative Tribunal that disciplinary action should be taken against the medical practitioner for that reason.
- (2a) Instead of making an allegation to the State Administrative Tribunal, if the Board is of the opinion that the nature of the matter might not warrant a proceeding before the Tribunal it

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- may send the matter, and any material or report relating to the matter, to the professional standards committee.
- (2b) Sending a matter to the professional standards committee under subsection (2a) does not prevent the Board from making an allegation about it to the State Administrative Tribunal if the committee advises the Board to do so.
- (3) The State Administrative Tribunal may, on dealing with an allegation under subsection (1)(a), (b), (c) or (d) —
- (a) order the removal of the name of the medical practitioner from the register;
  - (b) order that the registration of the medical practitioner be suspended for such period not exceeding 12 months as is specified in the order;
  - (c) impose a fine not exceeding \$10 000;
  - (d) reprimand the medical practitioner.
- (3a) The State Administrative Tribunal may, on dealing with an allegation under subsection (1)(e) —
- (a) order the removal of the name of the medical practitioner from the register;
  - (b) order that the registration of the medical practitioner be suspended; or
  - (c) impose restrictions or conditions or both on the practice of medicine by the medical practitioner.
- (3b) The State Administrative Tribunal may, on dealing with an allegation under subsection (2) —
- (a) order the removal of the name of the medical practitioner from the register; or
  - (b) order that the registration of the medical practitioner be suspended.
- (4) Notwithstanding subsection (3) or (3b), the State Administrative Tribunal may, in lieu of making an order under subsection (3)(a)

or (b) or (3b), require the medical practitioner to give a written undertaking to the Board to be of good behaviour for such period as the Tribunal thinks fit and to comply, during that period, with such restrictions or conditions, or both, if any, relating to the practice of medicine and training for that practice as the Tribunal thinks fit.

- (5) If, under subsection (2a), the Board sends a matter to the professional standards committee, the committee may, if —
- (a) it has given the medical practitioner the option of having the matter dealt with before the State Administrative Tribunal and the medical practitioner has not chosen that option by notice in writing to the committee; and
  - (b) it has given the medical practitioner an opportunity to make submissions about the matter,

make an order described in subsection (6), otherwise it has to advise the Board to make an allegation to the State Administrative Tribunal or to take no further action.

- (6) The orders that a professional standards committee may make are —
- (a) that the Board reprimand the medical practitioner;
  - (b) that the medical practitioner pay to the Board a fine of an amount not exceeding \$5 000 specified in the order;
  - (c) that the Board impose restrictions or conditions or both on the practice of medicine by the medical practitioner; or
  - (d) a combination of the orders described in paragraphs (a) to (c).
- (6a) The Board has to act according to any advice that the professional standards committee gives the Board under subsection (5) and has to give effect to an order that the professional standards committee makes under subsection (6), and a fine that the professional standards committee imposes

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under subsection (6) is recoverable in a court of competent jurisdiction as a debt due to the Board.

*[(6b)-(6e) repealed]*

- (6f) Where the Board receives a report that the physical or mental health of a medical practitioner is affected to such an extent that his or her ability to practise as a medical practitioner is affected or is likely to be affected the Board may, and where an allegation is made to the State Administrative Tribunal under subsection (1)(e) the Tribunal may, direct the medical practitioner to submit himself or herself within the time specified in the direction to an examination by —
- (a) 1 medical practitioner appointed by the body giving the direction and 1 medical practitioner nominated by the medical practitioner in question; or
  - (b) if the medical practitioner in question fails to nominate a medical practitioner for the purposes of paragraph (a), by 2 medical practitioners appointed by the body giving the direction.

*[(6g) repealed]*

- (6h) Where a medical practitioner fails to submit himself or herself for examination pursuant to subsection (6f) within the time specified by the Board or the Tribunal, the registration of the medical practitioner shall by force of this subsection be suspended until —
- (a) the medical practitioner submits himself or herself for examination as directed by the Board or the Tribunal; and
  - (b) the Board or the Tribunal has received reports from each of the medical practitioners who have conducted the examination as required by subsection (6f).
- (7) Upon the making of an order of suspension of registration and during the period specified in such order the name of the medical practitioner concerned shall be deemed to be erased

from the Register and he shall for the period aforesaid be deemed not to be a medical practitioner within the meaning of this Act.

- (8) Any person who is or was registered as a medical practitioner and who is aggrieved by any decision of the Board or the professional standards committee, other than a decision to make or advise the making of an allegation to the State Administrative Tribunal, may apply to the State Administrative Tribunal for a review of the decision.
- (9) (a) Subject to subsection (9a), any person whose name has been erased from the Register may at intervals of 12 months apply to the Board for the restoration of his name to the Register, and all the provisions of this Act relating to application for registration shall with such adaptations as may be necessary apply to an application for restoration aforesaid.
- (b) Subject to subsections (9a), (9b) and (9ba), on the expiration of a period of suspension of registration the name of the person concerned shall be deemed automatically to be restored to the Register, and his rights and privileges as a medical practitioner shall thereupon be revived.
- (9a) Where —
- (a) the Board orders the restoration to the Register of the name of a person pursuant to subsection (9)(a) or subsection (9c); or
- (b) the name of a person is deemed automatically to be restored to the Register pursuant to subsection (9)(b),
- the Board may, in either case, impose any conditions which it thinks necessary to impose in the public interest limiting or otherwise qualifying or affecting the manner in or places at which that person may practise, and may from time to time either of its own motion or on application by the person, vary or revoke any condition so imposed.

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- (9b) Where, pursuant to this Act, an order has been made suspending the registration of a person as a medical practitioner and the Board is of opinion that, having regard to the conduct or state of health of that person during the period of suspension, he ought not to be permitted to resume practice upon the expiration of the period of his suspension, the Board may order that the period of suspension be extended for a period of not more than 30 days specified in the order.
- (9ba) If the Board makes an order under subsection (9b) (an **“interim order”**) it is required to refer the making of the order to the State Administrative Tribunal, within 14 days after the order is made, and the State Administrative Tribunal may affirm or revoke the interim order or order that —
- (a) the period of suspension be extended for such further period not exceeding 12 months, as the Tribunal thinks fit; or
  - (b) the name of that person be removed from the Register immediately upon the expiration of the period of suspension.
- (9bb) A person against whom an interim order is made may apply to the State Administrative Tribunal for a review of the interim order.
- (9c) Notwithstanding any other provision of this Act, where a person is not qualified for registration under this Act as amended but that person has been registered as a medical practitioner in the State and has had his name removed from or erased from the register pursuant to section 10, 13 or 16A, the Board may, in its discretion, allow the name of that person to be restored to the register.
- (9d) The Board, the professional standards committee, or the State Administrative Tribunal may exercise its powers under this section in relation to any matter referred to in subsection (1)(a), (b), (c) or (d) notwithstanding the fact that at the time that it does so the person concerned has ceased to be registered as a medical practitioner.

*[Section 13 inserted by No. 22 of 1945 s. 10; amended by No. 10 of 1955 s. 3; No. 43 of 1966 s. 5; No. 70 of 1976 s. 6; No. 28 of 1981 s. 5; No. 28 of 1984 s. 61; No. 70 of 1985 s. 13; No. 55 of 2004 s. 729.]*

**13A. Medical practitioner struck off or suspended in another State or Territory**

Where the Board is satisfied that a person who is registered as a medical practitioner under this Act has been suspended or that his or her name has been erased from the register of medical practitioners under the laws of another State or Territory of the Commonwealth, the Board may, without further inquiry, suspend the medical practitioner or erase the name of the medical practitioner from the register, as the case may be.

*[Section 13A inserted by No. 70 of 1985 s. 14.]*

**14. Copy of register to be published**

A copy of the Register shall, in the month of June in each year, be published by the Board in the *Government Gazette*.

Any copy of the Register, purporting to be certified as a true copy by the Registrar, shall in all courts of law be prima facie evidence that the persons therein named are registered medical practitioners and possess the qualifications therein mentioned; and the absence of the name or the qualification of any person shall be prima facie evidence that such person is not so registered or so qualified.

*[Section 14 amended by No. 22 of 1945 s. 11; No. 70 of 1985 s. 15.]*

**15. Register may be altered to insert new or additional qualification**

Any medical practitioner who shall obtain any diploma or certificate from any recognised training university or college recognised by the Board may with the approval of the Board

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have a memorandum of such diploma or certificate entered in the Register on payment of such fee as may be prescribed by the rules of the Board.

*[Section 15 inserted by No. 22 of 1945 s. 12.]*

**16. Practitioner on registration entitled to certificate**

Every medical practitioner shall be entitled to obtain from the Registrar a certificate of his registration, in such form as may be prescribed by the rules.

**16A. Annual practice fees**

- (1) (a) Subject to this section, every person registered under this Act shall pay a prescribed fee to the Board on or before 1 October in each year.
  - (aaa) The practice fee payable by a medical practitioner who was practising in the State before the commencement of section 11 of the *Medical Amendment Act 1994* in relation to the period commencing 1 January 1995 and ending on 30 September 1995 is three-quarters of the fee prescribed under paragraph (a).
  - (aa) Where a person commences practice as a medical practitioner or specialist, after 31 March in any year, the fee payable under paragraph (a) shall be only one-half the fee prescribed for the purposes of that provision.
  - (b) A person whose name appears in the Register but who has not been practising in the State under the authority of this Act during a period of at least 2 years and who for that reason has not paid a fee prescribed for the purposes of paragraph (a) shall not so practise unless he first obtains authorisation to do so granted by the Board under subsection (4).

Penalty: For a first offence, \$500.

For a subsequent offence, \$1 000.



- (1a) The Board may require a medical practitioner, when remitting to the Board a fee payable under subsection (1), to furnish the following particulars to the Board in writing —
- (a) the nature of his or her practice;
  - (b) the place or places at which the medical practitioner conducts his or her practice;
  - (c) any additional qualifications which he or she has gained —
    - (i) since he or she was registered under this Act; or
    - (ii) since he or she last furnished particulars pursuant to this subsection,whichever is the later; and
  - (d) any other particulars which the Board may require.
- (2) If any person liable under subsection (1) to pay a fee prescribed for the purposes of that subsection fails in any year to pay such fee within 3 months after the commencement of that year or within such further time as the Board shall appoint the Board shall direct the Registrar to erase the name, and the Registrar shall thereupon erase the name of such person from every register kept under this Act in which such person is registered, but the Registrar by authorisation granted under subsection (4) by the Board may at any time restore to the said register or registers the name of such person upon payment by him to the Board of the prescribed fee, all fees in arrear and of any fine imposed by the Board for such default under the authority of the rules of the Board.
- (3) Notwithstanding anything to the contrary contained in this section, this section shall not apply —
- (a) to a person, who but for this section would be subject to the provisions of this section, while during a time of any war in which the Crown is engaged he is a member of any of the Crown's naval, military or air Forces and is

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- employed full-time on active service with such Forces in connection with such war; or
- (b) to a medical practitioner or person holding a current certificate of regional registration under this Act who is absent from this State for a period of not less than one year, while he is so absent if the Board exempts such medical practitioner or person aforesaid from the operation of this section.
- (4) Where a person who desires the Board to grant an authorisation mentioned in subsection (1)(b) or mentioned in subsection (2) —
- (a) makes application in the manner prescribed by the rules;
- (b) pays at the time prescribed by the rules any fee prescribed for the purposes of subsection (1); and
- (c) satisfies the Board in manner prescribed by the rules that he is not and has not been the subject of an order under section 13(3), (3a), (3b), or (9b),
- the Board shall grant the authorisation.
- (5) Section 45(1) and (2) of the *Interpretation Act 1984* applies to rules made by the Board for the purposes of this section.

*[Section 16A inserted by No. 22 of 1945 s. 13; amended by No. 10 of 1955 s. 4; No. 113 of 1965 s. 8; No. 70 of 1976 s. 7; No. 70 of 1985 s. 16; No. 67 of 1994 s. 11; No. 38 of 1996 s. 3; No. 10 of 1998 s. 47(2); No. 50 of 2003 s. 79(2); No. 55 of 2004 s. 730.]*

## **Part IV — Miscellaneous**

### **17. Offences to do with registration**

Any person who —

- (1) makes or causes to be made any falsification in any matter relating to the Register; or
- (2) knowingly presents or causes to be presented to the Board any forged, false, altered or counterfeit testimonium, certificate, diploma, degree, licence, or other document or writing; or
- (3) personates or represents himself as being the person referred to in any testimonium, certificate, diploma, degree, licence, document, or writing presented to the Board, or in any certificate granted under this Act; or
- (4) procures or attempts to procure registration under this Act for himself or herself or for any other person by making, or producing or causing to be made or produced, any false or fraudulent declaration or representation, either orally or in writing; or
- (5) wilfully makes any false statement in any declaration, or on any examination required or held by the Board under this Act or the rules; or
- (6) falsely advertises or publishes himself as having obtained a certificate, or as being registered or qualified under this Act, or permits any such advertisement or publication,

shall be guilty of a crime, and shall, on conviction thereof, be liable to be imprisoned for any term not exceeding 3 years.

*[Section 17 amended by No. 67 of 1994 s. 12; No. 55 of 2004 s. 731; No. 70 of 2004 s. 82.]*

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**17A.    Making false statement to the professional standards committee**

A person who wilfully makes a false statement to the professional standards committee in relation to a matter being dealt with by the committee under this Act commits an offence.

Penalty: Imprisonment for 3 years.

*[Section 17A inserted by No. 55 of 2004 s. 732.]*

**18.    Only a medical practitioner to hold certain appointments**

No person other than a medical practitioner registered under this Act shall hold any appointment as a physician, surgeon, or other medical officer in passenger or other vessels leaving any port and registered in any part of Western Australia, or in any public or private hospital or other institution or society for affording medical relief in sickness, infirmity, or old age, or as a medical officer of health, and no certificate required by any Act now or hereafter in force from any physician, surgeon, licentiate in medicine and surgery, or other medical practitioner, shall be valid unless the person signing the same be registered under this Act.

**19.    Only a medical practitioner to practise or profess to practise medicine**

From and after the passing of this Act no person other than a medical practitioner shall be entitled to —

- (1) practise medicine or surgery in all or any one or more of its branches; or to
- (2) advertise or hold himself out as being, or in any manner to pretend to be, or to take or use the name or title, (alone or in conjunction with any other title, word, or letter) of a physician, doctor of medicine, licentiate in medicine or surgery, master in surgery, bachelor of medicine or surgery, doctor, surgeon, medical qualified

- or registered practitioner, apothecary, accoucheur, or any other medical or surgical name or title; or to
- (3) advertise or hold himself out, directly or indirectly, by any name, word, title or designation, whether expressed in words or by letters or partly in the one and partly in the other (either alone or in conjunction with any other word or words) or by any other means whatsoever, as being entitled or qualified, able, or willing or by implication suggests that he is able or willing or in any manner pretends to practise medicine or surgery in any one or more of its or their branches or to give or perform any medical or surgical service, attendance, operation or advice or any service, attendance, operation or advice which is usually given or performed by a medical practitioner.

Provided that this paragraph shall not apply to a nurse practitioner registered under the *Nurses ~~and Midwives Act 1992~~ 2006* while carrying out the functions of a nurse practitioner, or to a person practising as a dietitian or as a chiropractor registered under the *Chiropractors Act 2005* who gives advice or service to persons requiring dietetic or chiropractic advice or service.

And every person who, for himself or as assistant, servant, agent, or manager, does or permits any act, matter, or thing contrary to this section or any part thereof, shall be guilty of an offence.

Penalty: For a first offence, \$1 000.

For a subsequent offence, \$5 000.

Nothing in subsection (1) contained shall prejudice or affect the lawful business or occupation of a chemist and druggist, or of a pharmaceutical chemist, and nothing in this section contained shall prejudice or affect the lawful business or occupation of a dentist registered under the *Dental Act 1939*.

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*[Section 19 amended by No. 22 of 1945 s. 14; No. 113 of 1965 s. 8; No. 70 of 1985 s. 17; No. 9 of 2003 s. 25; No. 50 of 2003 s. 79(3); No. 31 of 2005 s. 109; [No. 50 of 2006 s. 114.](#)]*

**20.        Offence of publishing prohibited advertisement**

Every person who shall exhibit or publish, or cause, permit, or suffer to be exhibited or published any letter, circular, placard, handbill, card, or advertisement of any kind whereby any person advertises or holds himself out contrary to any part of section 19, or attempts so to do, shall be liable for each and every such offence, upon conviction, to a penalty not exceeding \$1 000.

Provided that this section shall not apply to any newspaper proprietor or printer publishing such advertisement before written notice from the Registrar that such advertisement is contrary to some part of the said section.

*[Section 20 amended by No. 113 of 1965 s. 8; No. 70 of 1985 s. 18.]*

**21.        Medical practitioner may sue for fees, etc.**

Every medical practitioner registered under this Act may, whilst so registered, sue in any court of law of competent jurisdiction for the recovery of his fees or other remuneration for professional services, whether medical or surgical; and no person other than such registered medical practitioner shall be entitled to sue or counterclaim for set-off or recover any charge or remuneration for any medical or surgical advice, attendance, service, or operation, or for any medicine which he shall have both prescribed and supplied.

**21A.      Treatment by means of radium or X-ray**

- (1) Subject to the provisions of the *Radiation Safety Act 1975*, any person, other than a medical practitioner, who uses or implies that he uses radium or X-ray for the diagnosis, examination, or the treatment of any human ailment or physical defect otherwise

than under the supervision of a medical practitioner shall be guilty of an offence.

Penalty: \$1 000.

- (2) Subsection (1) shall not apply to a nurse practitioner registered under the *Nurses and Midwives Act* ~~1992~~ 2006 while carrying out the functions of a nurse practitioner, or to a chiropractor or a registered dentist who uses X-ray as an aid to diagnosis in the practice of chiropractic or of dentistry respectively.

*[Section 21A inserted by No. 22 of 1945 s. 15; amended by No. 113 of 1965 s. 8; No. 70 of 1985 s. 19; No. 9 of 2003 s. 26; No. 50 of 2003 s. 79(4); No. 31 of 2005 s. 109; No. 50 of 2006 s. 114.]*

**21B. Medical practitioners to arrange consultation in certain cases**

- (1) Any medical practitioner who is requested so to do by a patient or by a relative of a patient who for any reason is unable to make the request himself, shall endeavour to arrange for a professional consultation between such medical practitioner and another medical practitioner with respect to the condition of the patient and the medical or surgical treatment appropriate in the circumstances.
- (2) Any medical practitioner who without lawful excuse contravenes subsection (1) shall be guilty of an offence.  
Penalty: \$1 000.
- (3) A medical practitioner who arranges a consultation with another medical practitioner in accordance with the provisions of subsection (1) shall not thereby become liable for the charges of such other medical practitioner in relation to such consultation.
- (4) In subsection (1) —  
**“relative”**<sub>2</sub> in relation to a patient, includes a de facto partner of the patient.

**s. 21C**

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*[Section 21B inserted by No. 22 of 1945 s. 15; amended by No. 113 of 1965 s. 8; No. 70 of 1985 s. 20; No. 28 of 2003 s. 132.]*

**21C.    Restriction on administration of anaesthetics in certain cases**

Except in an emergency, a medical practitioner shall not —

- (a) administer a general anaesthetic to a patient on whom the medical practitioner is operating; or
- (b) cause or permit any person other than another medical practitioner to administer a general anaesthetic to such a patient.

Penalty: \$1 000.

*[Section 21C inserted by No. 70 of 1985 s. 21.]*

**21CA.    Approval for medical call services**

- (1) On and after the appointed day a person shall not establish or conduct a medical call service unless that person is the holder of a certificate of approval for the medical call service.

Penalty: \$1 000.

- (2) A person who desires to obtain a certificate of approval referred to in subsection (1) shall apply to the Board in the form of a form approved by the Board.
- (3) The Board shall not issue a certificate of approval referred to in subsection (1) unless the Board is satisfied that —
  - (a) the applicant is a fit and proper person or where the applicant is a body corporate the natural persons who manage and control the body corporate are fit and proper persons;
  - (b) the applicant or where the applicant is a body corporate each person who manages and controls the body corporate, has the ability to properly manage and provide a medical call service;



- (c) the applicant or where the applicant is a body corporate, each person who manages or controls the body corporate, understands the duties and obligations imposed on him or her in relation to the conduct and management of a medical call service;
  - (d) a person who is a medical practitioner is nominated by the applicant as the person responsible for the direction of medical aspects of the services provided by the medical call service;
  - (e) the medical services provided by the medical call service are provided only by a person who is a medical practitioner; and
  - (f) the prescribed fee has been paid.
- (4) The Board may approve a medical call service subject to such conditions, restrictions and prohibitions as it specifies in its approval.
- (5) An approval to establish and conduct a medical call service remains in force until 31 December next following from the date of the grant thereof unless it is sooner cancelled or suspended by the Board.
- (6) A person to whom an approval is granted may apply for the renewal of the approval in accordance with the rules.
- (7) An application under subsection (6) shall be in the form of a form approved by the Board and shall be accompanied by the prescribed fee.
- (8) A person who is aggrieved by a decision of the Board not to issue a certificate of approval or to impose any condition, restriction or prohibition in any approval given by the Board under this section may apply to the State Administrative Tribunal for a review of the decision.
- (9) In subsection (1) —

**s. 21CB**

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“**appointed day**” means a day fixed by the Board by notice published in the *Government Gazette* for the purposes of subsection (1).

*[Section 21CA inserted by No. 70 of 1985 s. 22; amended by No. 55 of 2004 s. 733.]*

**21CB. Register of medical call services**

The Board shall maintain a register of medical call services established and conducted under this Act.

*[Section 21CB inserted by No. 70 of 1985 s. 22.]*

**21CC. Changes to be notified**

- (1) Where any change occurs in the particulars submitted in an application for the grant of an approval to establish and conduct a medical call service or for the renewal of an approval the person to whom the approval is granted shall notify the Board.
- (2) A person who fails to comply with subsection (1) commits an offence.

Penalty: \$1 000.

*[Section 21CC inserted by No. 70 of 1985 s. 22.]*

**21CD. Cancellation and suspension of approval**

- (1) Where it appears to the Board that a certificate of approval given under section 21CA should be cancelled or suspended because —
  - (a) the name of the medical practitioner responsible for the direction of medical aspects of the services provided by the medical call service is removed from the register or the registration of the medical practitioner is suspended under this Act;
  - (b) the medical call service is not provided in an efficient and reliable manner;

- (c) the medical call service is provided in a manner that does not conform to, or that contravenes, the rules;
- (d) any person who manages or controls the medical call service who is not a medical practitioner is not a fit and proper person or is guilty of conduct that would, if that person were a medical practitioner, constitute infamous or improper conduct in a professional respect; or
- (e) any matter prescribed in the rules for the purposes of this paragraph has been proved,

the Board shall refer the matter to the State Administrative Tribunal which may suspend or cancel the certificate of approval.

- (2) Where the Tribunal suspends or cancels an approval under this section a person shall not conduct or operate the medical call service in question.

Penalty: \$1 000.

*[(3) repealed]*

- (4) Where the Tribunal cancels or suspends a certificate of approval given under section 21CA the person who manages or controls the medical call service shall return the certificate of approval to the Tribunal within 7 days of the date of the decision of the Tribunal.

- (5) A person who fails to comply with subsection (4) commits an offence.

Penalty: \$1 000.

*[Section 21CD inserted by No. 70 of 1985 s. 22; amended by No. 55 of 2004 s. 734.]*

**21D. Application of funds of Board**

The funds of the Board may be applied and used for all or any of the following purposes, namely —

**s. 21E**

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- (a) all purposes incidental to the administration and enforcement of this Act;
- (b) the advancement of scientific and educational purposes relating to the practice of medicine and surgery; and
- (c) such other purposes as the Board may recommend and the Minister approve.

*[Section 21D inserted by No. 22 of 1945 s. 15.]*

**21E. Accounts**

- (1) The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Board determines otherwise.

*[Section 21E inserted by No. 77 of 1987 s. 3.]*

**21F. Audit**

The accounts and financial statements of the Board shall be audited at least once a year, at the expense of the Board, by an auditor appointed by the Board with the prior approval of the Minister.

*[Section 21F inserted by No. 77 of 1987 s. 3.]*

**21G. Annual report**

- (1) The Board shall on or before 31 December in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 30 June together with a copy of the financial statements and the auditor's report.
  - (1a) The Board's annual report is to include details of —
    - (a) the number, nature, and outcome, of —

- (i) investigations and inquiries undertaken by, or at the direction of, the Board;
  - (ii) matters that have been referred to the professional standards committee; and
  - (iii) matters that have been brought before the State Administrative Tribunal by the Board;
- (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
  - (c) any trends or special problems that may have emerged;
  - (d) forecasts of the workload of the Board in the year after the year to which the report relates; and
  - (e) any proposals for improving the operation of the Board.
- (2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

*[Section 21G inserted by No. 77 of 1987 s. 3; amended by No. 55 of 2004 s. 735.]*

**22. Proceedings for offences etc.**

- (1) Proceedings for an offence against this Act or the rules shall be dealt with summarily in a court of summary jurisdiction.

*[(2) repealed]*

- (3) All —
- (a) fees paid under this Act or the rules; and
  - (b) fines imposed by the Board or the professional standards committee under this Act or the rules that are paid to or recovered by the Board,

shall be credited to the Board.

*[Section 22 inserted by No. 92 of 1994 s. 25; amended by No. 55 of 2004 s. 736.]*

**s. 22A**

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**22A.    Constitution of State Administrative Tribunal under this Act**

- (1) For the purpose of exercising jurisdiction conferred by or under this Act, the State Administrative Tribunal is to be constituted by 4 members being —
  - (a) one person who is a legally qualified member as defined in section 3(1) of the *State Administrative Tribunal Act 2004*;
  - (b) 2 persons who are medical practitioners with extensive or special experience as medical practitioners; and
  - (c) one person who is not a medical practitioner but is familiar with the interests of medical practitioners or has knowledge and experience enabling understanding of those interests.
- (2) Despite subsection (1), if the President is satisfied that it is appropriate to do so in particular circumstances, the President can specify that the Tribunal is to be constituted by 4 members as referred to in subsection (1) and a 5<sup>th</sup> member who is to be a person of a kind referred to in subsection (1)(a) or (c).
- (3) The member referred to in subsection (1)(a) is to be the presiding member.
- (4) Subsections (1), (2), and (3) do not apply when the Tribunal is holding a directions hearing or other procedural hearing.

*[Section 22A inserted by No. 55 of 2004 s. 737.]*

**23.    Interpretation Act 1918**

Sections G and H of the Second Schedule to the *Interpretation Act 1918*<sup>2</sup>, shall be incorporated with and taken to form part of this Act to all intents and purposes, and in as full and ample a manner as if the said sections had been introduced and fully set forth in this Act.

*[Section 23 amended by No. 22 of 1945 s. 16; No. 59 of 2004 s. 141.]*

**24. Review of Act**

- (1) The Minister shall carry out a review of the operation of this Act as soon as is practicable after 1 January 1991 and every 5<sup>th</sup> anniversary of that day and in the course of such review the Minister shall consider —
  - (a) the attainment of the objects of this Act;
  - (b) the administration of this Act;
  - (c) the effectiveness of the operations of the Board;
  - (d) the need for the continuation of the Board; and
  - (e) such other matters as appear to the Minister to be relevant.
  
- (2) The Minister shall prepare a report based on the review referred to in subsection (1) and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

*[Section 24 inserted by No. 70 of 1985 s. 23.]*

## **The Schedules**

*[Schedule I omitted under the Reprints Act 1984 s. 7(4)(f).]*

*[Schedule II repealed by No. 56 of 1979 s. 5.]*



## Notes

- <sup>1</sup> This is a compilation of the *Medical Act 1894* and includes the amendments made by the other written laws referred to in the following table<sup>1a-3, 4</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Medical Act 1894</i>	58 Vict. No. 36	28 Nov 1894	1 Jan 1895 (see s. 1)
<i>The Medical Act Amendment Act 1895</i>	59 Vict. No. 17	11 Sep 1895	11 Sep 1895
<i>Coroners Act 1920 s. 2</i>	24 of 1920	31 Dec 1920	1 Jan 1921 (see s. 1)
<i>Medical Act Amendment Act 1940</i>	51 of 1940	30 Dec 1940	30 Dec 1940
<b>Reprint of the <i>Medical Act 1894</i> in Volume 2 of Reprinted Acts</b> (includes amendments listed above)			
<i>Medical Act Amendment Act 1945</i>	22 of 1945	9 Jan 1946	9 Jan 1946
<i>Medical Act Amendment Act 1946</i>	8 of 1946	13 Nov 1946	13 Nov 1946
<i>Medical Act Amendment Act 1950</i>	21 of 1950	29 Nov 1950	29 Nov 1950
<i>Medical Act Amendment Act 1952</i>	65 of 1952	7 Jan 1953	7 Jan 1953
<b>Reprint of the <i>Medical Act 1894</i> approved 12 Feb 1954 in Volume 6 of Reprinted Acts</b> (includes amendments listed above)			
<i>Medical Act Amendment Act 1955</i>	10 of 1955	21 Oct 1955	21 Oct 1955
<i>Medical Act Amendment Act (No. 2) 1955</i>	18 of 1955	1 Nov 1955	1 Nov 1955
<i>Medical Act Amendment Act 1956</i>	35 of 1956	18 Dec 1956	6 Nov 1959 (see s. 1(1) and <i>Gazette</i> 6 Nov 1959 p. 2746)
<i>Medical Act Amendment Act 1961</i>	42 of 1961	16 Nov 1961	16 Nov 1961
<i>Medical Act Amendment Act 1966</i>	43 of 1966	18 Nov 1966	12 May 1967 (see s. 2 and <i>Gazette</i> 12 May 1967 p. 1219)

## Medical Act 1894

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Short title	Number and year	Assent	Commencement
<i>Medical Act Amendment Act 1968</i>	19 of 1968	16 Oct 1968	16 Oct 1968
<b>Reprint of the <i>Medical Act 1894</i> approved 23 Jan 1969 in Volume 22 of Reprinted Acts</b> (includes amendments listed above)			
<i>Medical Act Amendment Act 1975</i>	75 of 1975	14 Nov 1975	14 Nov 1975
<i>Medical Act Amendment Act 1976</i>	70 of 1976	6 Oct 1976	24 Dec 1976 (see s. 2 and <i>Gazette</i> 24 Dec 1976 p. 5028)
<i>Medical Act Amendment Act 1979</i>	56 of 1979	12 Nov 1979	12 Nov 1979
<i>Medical Amendment Act 1981</i>	28 of 1981	26 May 1981	7 Aug 1981 (see s. 2 and <i>Gazette</i> 7 Aug 1981 p. 3203)
<i>Health Legislation Amendment Act 1984 Pt. XII</i>	28 of 1984	31 May 1984	1 Jul 1984 (see s. 2 and <i>Gazette</i> 15 Jun 1984 p. 1629)
<i>Medical Amendment Act 1985</i> <sup>5</sup>	70 of 1985 (as amended by No. 45 of 1988 s. 3)	15 Nov 1985	s. 16(a): 1 Jan 1986 (see s. 2 and <i>Gazette</i> 29 Nov 1985 p. 4447); Act other than s. 9(d) and 16(a): 1 Jan 1988 (see s. 2 and <i>Gazette</i> 31 Dec 1987 p. 4567); s. 9(d): 17 Nov 1989 (see s. 2 and <i>Gazette</i> 17 Nov 1989 p. 4090)
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987 s. 3</i>	77 of 1987	26 Nov 1987	1 Jan 1988 (see s. 2)
<b>Reprint of the <i>Medical Act 1894</i> as at 10 Mar 1988</b> (includes amendments listed above except those in the <i>Medical Amendment Act 1985</i> s. 9(d))			
<i>Medical Amendment Act 1991</i>	29 of 1991	23 Nov 1991	12 Nov 1979 (see s. 2)
<i>Medical Amendment Act 1994</i> <sup>6</sup>	67 of 1994 (as amended by No. 38 of 1996 s. 4)	30 Nov 1994	Act other than s. 4 and 7-12: 1 Feb 1992 (see s. 2(1)); s. 7-12: 28 Dec 1994 (see s. 2(2)); s. 4: 19 Aug 1995 (see s. 2(3) and <i>Gazette</i> 18 Aug 1995 p. 3729)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 14</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
<i>Medical Amendment Act 1996 s. 3</i>	38 of 1996	27 Sep 1996	2 Jul 1997 (see s. 2 and <i>Gazette</i> 1 Jul 1997 p. 3250)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 47</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<b>Reprint of the Medical Act 1894 as at 25 Feb 2000</b> (includes amendments listed above)			
<i>Medical Amendment Act 2000</i> <sup>7</sup>	48 of 2000	17 Nov 2000	s. 1-4: 17 Nov 2000 (see s. 2(1)); s. 5-10: 31 Jan 2001 (see s. 2(2) and <i>Gazette</i> 30 Jan 2001 p. 616)
<i>Nurses Amendment Act 2003 Pt. 3 Div. 1</i>	9 of 2003	9 Apr 2003	9 Apr 2003 (see s. 2)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 40</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 79</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 80</i> <sup>8</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 6: The Medical Act 1894 as at 12 Aug 2005</b> (includes amendments listed above)			

Short title	Number and year	Assent	Commencement
<i>Chiropractors Act 2005</i> s. 109	31 of 2005	12 Dec 2005	1 Aug 2007 (see s. 2 and <i>Gazette</i> 31 Jul 2007 p. 3789)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 9 Div. 8	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Medical Amendment Act 2006</i>	49 of 2006	6 Oct 2006	6 Oct 2006 (see s. 2)

~~<sup>1a</sup> — On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and Year	Assent	Commencement
<i>Nurses and Midwives Act 2006</i> s. 114 <sup>49</sup>	50 of 2006	6 Oct 2006	<del>To be proclaimed</del> <a href="#">19 Sep 2007</a> (see s. <del>2</del> <a href="#">2</a> and <i>Gazette</i> <a href="#">18 Sep 2007</a> p. 4711)

- <sup>2</sup> Now see section 77(4) of the *Interpretation Act 1984*.
- <sup>3</sup> The numbering of Parts, sections, etc., effected in the 1943 reprint (in Volume 2 of the Reprinted Acts of the Parliament of Western Australia) and subsequent reprints has been retained. References to the original numbering are contained in the 1943 reprint.
- <sup>4</sup> The *Hospitals Amendment Act 1994* s. 18 had no effect on the *Medical Act 1894* because the section it would have amended was repealed by the *Medical Amendment Act 1994* s. 9.
- <sup>5</sup> The *Medical Amendment Act 1985* s. 24 is a savings and transitional provision that is of no further effect.

<sup>6</sup> The *Medical Amendment Act 1994* Sch. 1 and 2 read as follows:  
“

## Schedule 1

[Section 13]

### Savings and transitional provisions

**1. Interpretation**

In this Schedule —

“**assent day**” means the day on which this Act receives the Royal Assent;

“**Board**” means the Board as defined in section 3 of the principal Act;

“**Separate Register**” means the Separate Register referred to in clause 2(1).

**2. Certain medical practitioners transferred to a Separate Register**

- (1) The name of a person who was registered as a medical practitioner during the period commencing on 1 February 1992 and ending on the assent day but who is not entitled to be registered as a medical practitioner under section 11 of the principal Act as amended by section 5 of this Act is, by force of this clause, removed from the register kept under section 10 of the principal Act and transferred to a register to be kept by the Board that is to be known as the “Separate Register”.
- (2) Notwithstanding anything in this Act, a medical practitioner —
  - (a) whose name appears on the Separate Register; and
  - (b) who satisfies the Board that he or she is a permanent resident in Australia and has practised medicine in Australia for not less than 2 years before the assent day,
 is entitled to general registration.

**3. The operation of section 37 of the *Interpretation Act 1984* excluded**

Notwithstanding section 37 of the *Interpretation Act 1984*, but subject to this Schedule, a medical practitioner whose name appears on the Separate Register is to be taken to have been granted special conditional registration under this Schedule but is otherwise, subject to the principal Act, to be taken to have been granted general registration.

- 4. Medical practitioner entitled to continuing special conditional registration**
- (1) A medical practitioner whose name appears on the Separate Register who, not later than 6 months after the assent day, satisfies the Board that he or she is a permanent resident in Australia and that he or she has practised medicine in Australia for a period of not less than 6 months ending on the assent day is entitled to be granted continuing special conditional registration by the Board.
- (2) A medical practitioner who is granted continuing special conditional registration under subclause (1) who satisfies the Board that he or she —
- (a) is a permanent resident in Australia; and
  - (b) has practised medicine in Australia for not less than 2 years,
- is entitled to general registration under the principal Act as amended by this Act.
- 5. Certain medical practitioners granted non-continuing special conditional registration**
- (1) A medical practitioner whose name appears on the Separate Register who is not entitled to continuing special conditional registration under clause 4 may, within a period of 3 months commencing on the assent day, apply to the Board for non-continuing special conditional registration.
- (2) The Board may grant a medical practitioner who makes an application under subclause (1) non-continuing special conditional registration for a period of 12 months.
- 6. Board may remove the name of a medical practitioner from the Separate Register**
- A medical practitioner whose name appears on the Separate Register who —
- (a) does not apply to the Board under clause 4(1) or 5(1);
  - (b) is not granted continuing special conditional or non-continuing special conditional registration under clause 4 or 5;
  - (c) is not a medical practitioner to whom clause 4(2) applies; or
  - (d) is not within the period of 12 months commencing on the day that he or she is granted non-continuing special conditional registration under this Schedule, granted general registration under section 11 of the principal

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Act as amended by this Act or conditional registration under section 11AC, 11AD, 11AE or 11AF(1) of the principal Act as amended by this Act,  
is not entitled to practise medicine and the Board shall remove his or her name from the Separate Register.

## Schedule 2

### Further transitional provisions

1. **Persons whose names removed from Separate Register may obtain general registration in certain circumstances**
  - (1) This clause applies to a person if his or her name —
    - (a) was transferred to the Separate Register under clause 2(1) of Schedule 1; and
    - (b) was removed from that Register under clause 6 of that Schedule.
  - (2) A person is entitled to general registration under the principal Act if he or she —
    - (a) is a person to whom this clause applies; and
    - (b) in an application made to the Board not later than 31 December 1996 establishes to the satisfaction of the Board that he or she —
      - (i) has become a permanent resident in Australia or intends to do so and has taken steps that demonstrate the genuineness of that intention; and
      - (ii) practises medicine in Australia or intends to do so and has taken steps that demonstrate the genuineness of that intention.
2. **Board may register persons who formerly held regional or auxiliary registration**
  - (1) This clause applies to a person who immediately before the assent day referred to in Schedule 1 was —
    - (a) the holder of a certificate of regional registration under section 12; or
    - (b) the holder of a certificate of auxiliary registration under section 12A,of the principal Act as in force immediately before the commencement of section 9 of this Act.

- (2) A person to whom this clause applies may apply to the Board for general registration and the Board may grant the application.
- (3) Despite section 11 of the principal Act the Board may under this clause —
  - (a) grant general registration for the purposes of that section; and
  - (b) impose such conditions on the registration as it thinks appropriate.

**3. Fees**

An application under clause 1 or 2 is to be accompanied by the fee prescribed for the purposes of that clause by rules made by the Board under section 6 of the principal Act.

<sup>7</sup> The *Medical Amendment Act 2000* s. 10 reads as follows:

“

**10. Transfer of certain existing registrations**

- (1) On the commencement of this section the Board is to register under section 11AG all eligible persons.
- (2) For the purpose of calculating any period of time in relation to a condition imposed by section 11AG(2), an eligible person is taken to have been registered under section 11AG on the day on which the State Interview Panel assessed the person as being suitable to be a general practitioner in remote and rural WA.
- (3) In this section —

“**eligible person**” means a person —

  - (a) who is registered as a medical practitioner under section 11AF;
  - (b) who was so registered on or after 26 April 1999 but before the commencement of this Act; and
  - (c) who has been assessed by the State Interview Panel as being suitable to be a general practitioner in remote and rural WA;

“**remote and rural WA**” has the same meaning as in section 11AG;

“**section**” means a section of the *Medical Act 1894*;

“**State Interview Panel**” means the panel established by the Western Australian Centre for Remote and Rural Medicine for the purposes of assessing, and advising the Board as to, the suitability



of overseas trained persons to be general practitioners in remote and rural WA.

”.

<sup>8</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>9</sup> ~~Footnote no longer applicable.~~

<sup>10</sup> ~~On the date as at which this compilation was prepared, the *Nurses and Midwives Act 2006* s. 114, which gives effect to Sch. 3, had not come into operation. It reads as follows:~~

“

~~**114. Consequential amendments**~~

~~Schedule 3 sets out consequential amendments.~~

”.

~~Schedule 3 cl. 13 reads as follows:~~

“

~~**Schedule 3 Consequential amendments**~~

[s. 114]

~~**13. Medical Act 1894 amended**~~

~~(1) The amendments in this clause are to the *Medical Act 1894*.~~

~~(2) Section 19 is amended by deleting “*Nurses Act 1992*” and inserting instead —~~

~~“ *Nurses and Midwives Act 2006* ”.~~

~~(3) Section 21A(2) is amended by deleting “*Nurses Act 1992*” and inserting instead —~~

~~“ *Nurses and Midwives Act 2006* ”.~~

”.