

MEDICAL.

9° and 10° GEO. VI., No. XXII.

No. 22 of 1945.

AN ACT to amend the Medical Act, 1894-1940.

[Assented to 9th January, 1946.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Medical Act Amendment Act, 1945*, and shall be read as one with the Medical Act, 1894-1940 (58 Vict. No. XXXVI. as reprinted pursuant to the Amendments Incorporation Act, 1938, in Volume 2 of The Reprinted Acts of the Parliament of Western Australia), hereinafter referred to as the principal Act. Short title.

2. Section three of the principal Act is amended by adding thereto a definition as follows:— Amendment of s. 3.

“Publish” or “advertise” includes the acts of publishing or advertising or causing to be published or advertised by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

3. Section four of the principal Act is amended as follows:— Amendment of s. 4.

(a) by deleting subsection (1) and inserting in lieu thereof a subsection as follows:—

(1) For the purposes of this Act there shall be constituted a Board to be called the

“Medical Board” which shall consist of seven members to be appointed by the Governor, of whom six shall be medical practitioners and one shall be a person who is not a person employed in the public service of the State.

- (b) By deleting from subsection (3) the words “The president of the Board shall be nominated from time to time by the Governor in Council” in lines one and two of the subsection and inserting in lieu thereof the words “The president of the Board shall be one of the members thereof elected by the members of the Board.”
- (c) By deleting subsection (5) and inserting in lieu thereof a subsection as follows:—

(5) The members of the Board, including the president, shall each of them hold office for such term not exceeding three years from the date of his appointment as the Governor shall when making the appointment determine, and in determining the terms of office of the members first appointed under this section after the commencement of this subsection the Governor may fix varying terms of office in relation to the said members respectively with a view to creating a rotation for the retirement of members of the Board.

Provided that—

- (a) a member on retirement by effluxion of time shall be eligible for re-appointment; and
- (b) where a vacancy occurs in the office of any member by reason of death, resignation or removal during the currency of the term of office of such member, the person appointed to fill such vacancy shall hold office only during the unexpired portion of the term of office of the member in whose place he is appointed.

4. Section five of the principal Act is amended by deleting subsection (1) therefrom. Amendment of s. 5.

5. Section six of the principal Act is amended by inserting in paragraph (d) of subsection (1) after the word "infamous" in line four of the said paragraph the words "or improper." Amendment of s. 6.

6. A section is inserted in the principal Act after section eight as follows:— New section.

8A. No act, matter or thing done or suffered to be done by the Board or by any member of the Board 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 or the Registrar or any officer or servant of the Board or the Crown to any liability in respect thereof. Protection of Board and Registrar from liability.

7. Section nine of the principal Act is amended by adding thereto a subsection as follows:— Amendment of s. 9.

(3) The Board shall hold its inquiries under this Act in public unless the Minister, in any particular cases on the application of the Board approves of the inquiry being held in private.

8. Section eleven of the principal Act is amended by deleting subsection (1) and inserting in lieu thereof a subsection as follows:— Amendment of s. 11.

(1) Every person who after the commencement of this subsection applies to be registered as a medical practitioner under this Act shall be entitled to be so registered if and when he complies with the following provisions, that is to say:—

(a) He proves to the satisfaction of the Board that—

(i) he is the holder of a degree (obtained after due examination) in medicine and surgery of any legally constituted and recognised university in the Commonwealth

of Australia or the Dominion of New Zealand which is legally authorised to grant such degree; or

(ii) he is registered or possesses a qualification entitling him to be registered under the Medical Acts of the Parliament of Great Britain and Northern Ireland or any Act amending or substituted for those Acts or any of them; or

(iii) he has passed through a regular course of medical study of not less than five years' duration in a school or schools of medicine and has received after due examination from some university, college, or other body duly recognised for that purpose in the country in which such university, college, or other body is established a diploma, degree or license which in the opinion of the Board qualifies him to practise medicine and is not inferior to the degree qualifying a person to practise medicine, issued after due examination by the University of Sydney or of Melbourne or of Brisbane or of Adelaide.

Provided that this subparagraph shall apply only when, by the laws and regulations in force in the country in which is established the university, college or other recognised body granting the said diploma, degree or license, medical practitioners duly qualified to practise as such in the Commonwealth of Australia are permitted to practise as such in such country without further examination; and

(iv) he is a person of good fame and character; and

(v) in the case of a person applying under either subparagraph (ii) or subparagraph (iii) of this paragraph, he is not debarred from practising as a medical practitioner in the country in which he has received his degree, diploma, or license; and

- (vi) where the diploma submitted as evidence of qualification was issued to the applicant as a result of study in more than one school, he studied continuously in one school for a period of at least three years.
- (b) he pays to the Board with his application the first annual practice fee of three pounds three shillings, which amount shall be deemed to include a fee for registration, provided that in the event of his application for registration being refused he shall be refunded the amount of the said fee.

9. A section is inserted in the principal Act after section eleven as follows:—

New section.

11A. (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.

Determination of specialties and registration of 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.

Amendment
of s. 13.
Repeal and
new section.

Provision for
striking off or
suspending
medical
practitioners
in certain cir-
cumstances.

10. Section thirteen of the principal Act is repealed and a section is inserted in lieu thereof as follows:—

13. (1) Subject as in this subsection hereafter provided, the name of any person registered as a medical practitioner under this Act, who either before or after he is registered shall have been or be convicted in any part of His Majesty's Dominions or elsewhere of any felony, crime or misdemeanour or of any other offence which in the opinion of the Board renders him unfit to practise, or who after due inquiry is adjudged by the Board to have been guilty in its opinion of infamous or improper conduct in a professional respect, or of drunkenness, frequently at short intervals of time, or of addiction to any deleterious drug, shall be erased from the register.

Provided that, in lieu of causing the name of such person to be erased from the register as aforesaid, the Board may order that the registration of such person be suspended for such time as shall be specified in the order of suspension.

(2) Any medical practitioner who after due inquiry which the Board may initiate of its own motion shall be adjudged by the Board to have been guilty in its opinion of professional misconduct or gross carelessness or incompetency shall be liable to reprimand, imposition of a fine, or suspension of registration as the Board may deem fit.

(3) If any medical practitioner is at the commencement of this section or thereafter becomes an insane patient or an insane person within the meaning of the Lunacy Act, 1903-1920, the Inspector General of the Insane shall notify the Board thereof, and thereupon the Board may without further inquiry order the name of such medical practitioner to be erased from the register or the suspension of

the registration of such medical practitioner as it may think fit.

(4) 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.

(5) (a) Any person, who is aggrieved by any decision of the Board by reason whereof his name is erased from the register or his registration is suspended may in accordance with Rules of Court, which the Judges of the Supreme Court are hereby authorised to make or prescribe, appeal to a Judge of the Supreme Court against such decision.

(b) Any such appeal shall be in the nature of a rehearing, and the Judge hearing the same may confirm, quash or vary the order made by the Board.

(c) The decision of the Judge shall be final and the Board shall give effect thereto according to the tenor thereof.

(6) (a) Any person whose name has been erased from the register may at intervals of twelve 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) 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.

11. Section fourteen of the principal Act is amended by deleting the word "January" in line two and inserting in lieu thereof the word "May."

Amendment
of s. 14.

12. Section fifteen of the principal Act is repealed, and a section is inserted in lieu thereof as follows:—

Amendment
of s. 15.
Repeal and
new section.

15. Any medical practitioner who shall obtain any diploma or certificate from any recognised training university or college recognised by the Board

Register may
be altered to
insert new or
additional
qualification.

may with the approval of the Board 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.

New section.

13. A new section is inserted in the principal Act after section sixteen, and in the same Part as that section as follows:—

Annual practice fees.

16A. (1) Commencing on the first day of January, One thousand nine hundred and forty-seven, and in respect of the year commencing on that date, and thereafter in each and every year, there shall be paid to the Board annually in advance by all persons practising in this State under the authority of this Act, the following practice fee that is to say—by a medical practitioner and by a person holding a current certificate of regional registration issued to him under section twelve of this Act—a fee of three pounds three shillings:

Provided that where a medical practitioner or a person holding a certificate of regional registration as aforesaid does not commence to practise before the thirtieth day of June in the year when he first commences to practise, or where a medical practitioner is not registered as a specialist before the thirtieth day of June in the year when he is registered as a specialist such medical practitioner, holder of a certificate of regional registration, or specialist as the case may be shall in respect of that year be liable under this section to pay only one half of the annual practice fee prescribed.

(2) If any person liable under subsection (1) of this section to pay the annual practice fee prescribed in that subsection fails in any year to pay such fee within three 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 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 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 His Majesty is engaged he is a member of any of His Majesty's naval, military or air Forces and is 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.

14. Section nineteen of the principal Act is amended as follows:—

Amendment
of s. 19.

- (a) By deleting paragraph (3) and inserting in lieu thereof a paragraph as follows:—

(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 person practising as a dietitian or as a chiropractor who gives advice or service to persons requiring dietetic or chiropractic advice or service.

- (b) by deleting the words “liable for each and every such offence upon conviction to a penalty not exceeding fifty pounds nor less than two pounds and all costs of suit” in lines twenty-nine, thirty and thirty-one of the section and inserting in lieu thereof words as follows:—
“guilty of an offence.

Penalty—For a first offence, fifty pounds with a minimum of two pounds, and for any subsequent offence, one hundred pounds or imprisonment for six months.”

New sections.

15. New sections are inserted in the principal Act after section twenty-one as follows:—

Treatment by means of radium or X-ray.

21A. (1) Subject to subsection (2) hereof, 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—For a first offence, fifty pounds; and for any subsequent offence imprisonment for six months without the option of a fine.

(2) Subsection (1) of this section shall not apply to a chiropractor or a registered dentist who uses X-ray as an aid to diagnosis in the practice of chiropractice or of dentistry respectively.

Medical practitioners to arrange consultation in certain cases.

21B. (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 prac-

itioner 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) of this section shall be guilty of an offence.

Penalty—Ten pounds.

(3) A medical practitioner who arranges a consultation with another medical practitioner in accordance with the provisions of subsection (1) of this section shall not thereby become liable for the charges of such other medical practitioner in relation to such consultation.

21C. Except in a case of extreme urgency, a medical practitioner shall not, in connection with a major operation and where another medical practitioner is in practice and present within five miles of the place of operation, himself administer the anaesthetic to the patient or cause or permit any person other than a medical practitioner to administer such anaesthetic.

Restriction on administration of anaesthetics in certain cases.

Penalty—Fifty pounds.

21D. The funds of the Board may be applied and used for all or any of the following purposes, namely—

Application of funds of Board.

- (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.

21E. The Board shall keep proper accounts of all receipts and payments, and such accounts shall be audited at least once a year by the Auditor General at the expense of the Board; and in relation to such auditing the Auditor General shall have and may exercise all the powers which are exercisable by him under the Audit Act, 1904, in relation to the collection and audit of public moneys and accounts.

Accounts.

Amendment
of s. 23.

16. Section twenty-three of the principal Act is amended by deleting the words and letters and figures "Sections A, D, F, G, H and I of 'The Shortening Ordinance, 1853'" in lines one and two of the section and inserting in lieu thereof the words, letters and figures as follows:—"Sections A, E, F, G and H of the Second Schedule to the Interpretation Act, 1918-1938."

Citation of
principal Act
as amended.

17. The principal Act as amended by this Act may be cited as the Medical Act, 1894-1945.
