

## MEDICAL.

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No. 36 of 1894.

Reprinted pursuant to the Amendments Incorporation Act, 1938, as amended by the Acts 59 Vict., No. XVII,\* No. 24 of 1920,† and No. 51 of 1940.‡

### AN ACT to consolidate the Law relating to Medical Practitioners.

[Assented to, 28th November, 1894.]

**BE** it enacted by the Queen'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:—

#### PART I.—PRELIMINARY.

1. This Act may be cited as the *Medical Act*, 1894-1940, and shall come into operation on the first day of January, One thousand eight hundred and ninety-five, and is divided into Parts, as follows:—

PART I.—PRELIMINARY: SS. 1-3.

PART II.—MEDICAL BOARD: SS. 4-9.

PART III.—REGISTRATION: SS. 10-16.

[*Part IV.—Medical Witnesses: s.s. 16-20, repealed by No. 24 of 1920.*]

PART IV.—MISCELLANEOUS: SS. 17-23.

Short title and division of Act.  
58 Vict., No. XXXVI., s. 1;  
No. 24 of 1920; No. 51 of 1940, s. 5.

Formerly Part V.

2. The Ordinance mentioned in the First Schedule to this Act, to the extent to which the same is thereby expressed to be repealed, is hereby repealed: Provided that such repeal shall not affect any registration, regulation, by-law, or order made, or any certificate granted under the said Ordinance before the commencement of this Act; and every registration effected under the said

Repeal of Medical Ordinance, 1869.  
58 Vict., No. XXXVI., s. 2.

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\*Assented to 11th September, 1895; †Assented to 31st December, 1920; ‡Assented to 30th December, 1940.

Ordinance, and in force at the commencement of this Act, shall for all purposes be as valid and effectual as if it had been, and the same shall be deemed to be a registration effected under this Act.

Interpreta-  
tion.

58 Vict., No.  
XXXVI., s. 3.

3. In this Act, unless the context otherwise requires—

“Board” shall mean the Medical Board, as hereinafter constituted by this Act, and, until the nomination of a board under this Act, shall mean “The Medical Board” duly constituted under “The Medical Ordinance, 1869.”

“Minister” shall mean the responsible Minister of the Crown for the time being administering this Act.

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

“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.

“Medical Practitioner” shall mean a person registered under “The Medical Ordinance, 1869,” or under this Act, and whose name remains upon the register.

## PART II.—MEDICAL BOARD.

Constitution  
of Medical  
Board.

58 Vict., No.  
XXXVI., s. 4.

4. (1) For the purposes of this Act, there shall be constituted a Board, to be called the “Medical Board,” and such Board shall consist of not less than three nor more than seven medical practitioners, one of whom shall be the president.

Quorum.

(2) Any three members of the Board shall form a quorum, and the board may act, notwithstanding any vacancy or vacancies, provided that the number of the Board be not reduced below three.

President.

(3) The president of the Board shall be nominated from time to time by the Governor in Council, 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.

Voting power.

(5) The members shall hold office for seven years, provided that any member nominated to fill any vacancy caused by death, resignation, or removal shall hold office so long only as his predecessor would have done had no such vacancy occurred.

Term of office.

5. (1) The members of the Board shall be nominated from time to time by the Governor in Council.

Members to be nominated by Governor.  
58 Vict., No. XXXVI., s. 5.  
Who may remove any member.

(2) The Governor in Council may from time to time remove the members of the Board, or the president thereof, or any of them, and fill any vacancy caused by removal, death, resignation, or otherwise.

6. (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:—

Board may make by-laws.  
58 Vict., No. XXXVI., s. 6.

- (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 the conduct of the proceedings in connection with complaints or charges against medical practitioners alleged to be guilty of infamous conduct in a professional respect;
- (e) for generally carrying into effect the objects of this Act.

(2) By any such Rules the Board may impose and provide for the recovery of fines and penalties from any person or persons subject thereto, and 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.

And thereby provide for fines and penalties.

Not exceeding  
£10.

(3) All such rules shall, where the nature of the case permits, state some maximum fine or penalty for any neglect or breach thereof respectively, provided that no such fine or penalty shall exceed ten pounds.

Board may  
appoint  
examiner,  
registrar,  
and other  
officers.  
58 Vict., No.  
XXXVI., s. 7.

7. 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.

Board may  
sue.  
58 Vict., No.  
XXXVI., s. 8.

8. (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, complaint, information or proceeding whatsoever, both civil and criminal. Every Court of law 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.

Board may  
require  
attendance  
of any person.  
58 Vict., No.  
XXXVI., s. 9.

9. (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.

### PART III.—REGISTRATION.

Register to be  
kept by the  
Registrar.  
58 Vict.,  
No. XXXVI.,  
s. 10.

10. (1) A register shall be kept by the Registrar and shall contain the names, addresses, and qualifications of all medical practitioners registered under "The Medical Ordinance, 1869," or hereafter registered under this Act.

(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 a fee not exceeding two shillings and sixpence.

In form prescribed by rules.

(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.

Certain entries may be erased.

(4) The Registrar shall from time to time erase the names of all medical practitioners who have died, and shall make such alterations and amendments in the register as the Board may from time to time direct, for the purpose of making the same an accurate record of the names, addresses, and qualifications of the medical practitioners for the time being; and to enable the Registrar to fulfil the duties hereby imposed upon him, it shall be lawful for the Registrar to post notice to any medical practitioner, addressed to him according to his address on the register, inquiring whether he has changed his address or residence, and if no answer shall be returned to such notice within the period of six months from the posting thereof, it shall be lawful to erase the name of such person from the register: Provided that the name may be restored by the Board.

Including names of practitioners who die.

11. (1) Every person (male or female) shall be entitled to be registered under this Act, who proves to the satisfaction of the Board that—

Persons entitled to be registered.  
58 Vict., No. XXXVI., s. 11; No. 51 of 1940, s. 2.

- (a) he is registered under the Medical Ordinance, 1869, hereby repealed; or that
- (b) he holds any one or more of the qualifications in the Second Schedule hereto mentioned; and that
- (c) the *testimonium*, diploma, license, certificate, or other document testifying to such qualification was obtained, after due examination, from some university, college, or other body duly recognised for such purpose in the country, to which such university, college, or other body may belong; and that
- (d) he is a person of good fame and character, and still entitled to practise under the qualification by virtue of which he applies to be so registered in the place where the same was granted.

Inserted by  
No. 51 of  
1940, s. 2, as  
ss. (2).

(2) Any person who satisfies the Board that he is a person of good fame and character and who has held a certificate of regional registration under section twelve of this Act for a period or periods aggregating seven years or more shall be entitled to be registered as a medical practitioner under this Act if in the opinion of the Minister and at the absolute discretion of the Minister it is desirable in the interests of the general community of the State to grant such registration.

Registration  
for the prac-  
tice of medi-  
cine and  
surgery in  
certain areas.  
Inserted by  
No. 51 of  
1940, s. 3, as  
s. 11A, now  
renumbered  
s. 12.  
Compare  
N.S.W. No. 5,  
1939, s. 3.

12. (1) Where the Governor is satisfied that—

(a) the residents of any area are not adequately provided for in respect of medical or surgical services; or

(b) any hospital within the meaning of the Hospitals Act, 1927, or the Lunacy Act, 1903-1920, or the Mental Treatment Act, 1927, requires for the proper administration thereof one or more resident medical officers to be employed or engaged on the staff of such hospital and a duly qualified medical practitioner or a sufficient number of such duly qualified medical practitioners is or are not available for such appointment or engagement—

he may by proclamation published in the *Gazette* declare such area or hospital, as the case may be, to be a region within the meaning of this section, and may in like manner alter any area aforesaid or revoke such proclamation.

(2) Where any area is declared by a proclamation under this section to be a region the Board shall, subject to this section, issue a certificate of regional registration in the prescribed form in respect of that region to a person who proves to the satisfaction of the Board that he—

(a) has passed through a regular graded course of medical study of five or more years duration in a school of medicine in some part of the British Empire or some other country and—

(i) has received, after due examination, from a university, college, or other body with which such school of medicine is associated and which is duly recognised for the purpose in such part or country, a degree or diploma certifying to his ability to practise medicine or surgery; and

- (ii) is or was by law entitled to be registered or to practise, as a medical practitioner in some part of the British Empire or some other country; and
- (b) has such experience in the practice of medicine and surgery as in the opinion of the Board is necessary for the proper provision of medical and surgical attention for the inhabitants of the proclaimed region;
- (c) has served as a junior resident medical officer in a hospital approved by the Minister for a period of not less than three months and has been certified by the responsible medical officers of that hospital as competent in the carrying out of the duties assigned to him in such hospital.

(3) Within seven days after the date of publication of a proclamation under this section declaring any area to be a region, and thereafter from time to time, as directed by the Minister, the Board shall, by advertisement published once at least in each of two or more newspapers published at Perth and circulating in Western Australia, invite applications from persons desirous of obtaining a certificate of regional registration in respect of that region.

Such advertisement shall specify a day (not being earlier than the seventh nor later than the fourteenth day after the day upon which the advertisement is published) on or before which such applications shall be lodged at or forwarded to the office of the Board.

The Minister may give a direction under this subsection in any case where he considers it desirable that a certificate of regional registration should be issued in respect of the region.

(4) The Board shall, at its first meeting after the day specified in any advertisement published pursuant to subsection (3) of this section, consider the applications lodged or forwarded in response to such advertisement.

(5) Each applicant shall submit to the Board proof that he possesses the qualifications and experience referred to in subsection (2) of this section.

(6) Each applicant shall attend in person before the Board, unless specially excused by the Board from so doing.

Each applicant may be represented by his solicitor or counsel.

The Board may require the attendance of any other person.

(7) The provisions of section nine of this Act shall, subject to subsection (6) of this section, apply, *mutatis mutandis*, to an application under this section.

(8) The Board shall grant the application of the applicant who in its opinion is most suitable to be the holder of the certificate of regional registration in respect of the region.

Provided that the Board may refuse to grant any application where in its opinion none of the applicants is suitable to be the holder of such a certificate.

The Board shall, as soon as practicable after it has granted an application, or has decided that none of the applicants is suitable to be the holder of a certificate of regional registration, notify the Minister accordingly, and, in cases where no application has been granted, shall specify in writing the reasons for refusing each application refused by the Board.

In cases where the Board has decided that none of the applicants is suitable to be the holder of a certificate of regional registration in respect of a particular region, a local authority or the Minister may appeal in the prescribed manner to a Judge of the Supreme Court, sitting in Chambers, against the decision of the Board within one month from the date of notification of such decision to the Minister, and thereupon the applications of all the applicants shall be dealt with by the Judge by way of appeal from the decision of the Board.

The Judge may decide the appeal on the evidence before the Board, or he may deal with the matter by way of rehearing, and for that purpose may summon and enforce the attendance of witnesses and take evidence on oath or affirmation in the same manner and to the same extent and shall have the same powers and authority as in the exercise of his ordinary jurisdiction.

The local authority or the Minister, as the case may be, and the Board and any applicant may be represented by counsel at the hearing of the appeal, but no order for payment of costs shall be made by the Judge.

The decision of the Judge determining the appeal shall be final and conclusive, and notwithstanding anything contained in this Act the Board shall give effect to such decision.



Rules of Court may be made for regulating the practice and procedure to be followed and observed in appeals under this subsection.

Any local authority appealing against a decision of the Board is hereby authorised and empowered to defray the expense of such appeal out of its funds.

In this subsection "local authority" means any council of a municipality or any board of a road district having its administrative offices within the region in relation to which the applications for a certificate of regional registration have been refused by the Board.

(9) The Board shall not grant an application under this section, unless satisfied that the applicant is a person of good fame and character and fit to practise medicine and surgery, and the provisions of section thirteen and of any regulations made for the purposes specified in paragraph (d) of subsection (1) of section six of this Act shall, *mutatis mutandis*, extend to and in respect of the grant of an application under this section, and for the purposes of the application of such provisions and regulations a reference to a medical practitioner or to a person registered under this Act shall be construed as a reference to a person to whom a certificate of regional registration has been issued, and any provision relating to the erasure of the name of any person from the register shall be construed as a provision relating to the revocation of a certificate of regional registration.

(10) Where an application under this section is granted the Board shall, upon payment of the prescribed fee, issue a certificate of regional registration to the successful applicant.

(11) Where a certificate of regional registration has been issued to any person under this section, and while the same has effect, such person shall, for purposes connected with or relating to the practice of medicine and surgery within the region mentioned in the certificate of regional registration, be deemed to be a medical practitioner registered under this Act.

(12) The Minister may cancel a certificate of regional registration, if the person to whom the same was issued practises his profession outside the boundaries of the region mentioned in such certificate, and if, having regard to the circumstances in which such person

so practised his profession and to the purposes of this section, the Minister considers it just and reasonable so to do.

(13) Subject to this Act a certificate of regional registration shall have effect for a period of one year, but, if not cancelled or revoked, shall be renewed by the Board from time to time for a like period upon the application of the person to whom the same was issued.

Names of  
practitioners  
guilty of  
felony or mis-  
demeanour or  
of infamous  
conduct to be  
erased.  
58 Vict.,  
No. XXXVI.,  
s. 12.

13. The name of any person registered under this Act, who either before or after he is registered shall be convicted in any part of Her Majesty's dominions or elsewhere of any felony, 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 their opinion, of infamous conduct in a professional respect, shall be erased from the register.

Copy of  
register to be  
published.  
58 Vict.,  
No. XXXVI.,  
s. 13.

14. A copy of the register shall, in the month of January 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.

Register may  
be altered to  
insert new or  
additional  
qualifications.  
58 Vict.,  
No. XXXVI.,  
s. 14.

15. Every person registered under this Act, who shall obtain any higher degree or any qualification other than the qualification in respect of which he is registered, shall be entitled to have such higher degree or additional qualification inserted in the register on payment of such fee as may be prescribed by the rules.

Practitioner  
on registra-  
tion entitled  
to certificate.  
58 Vict.,  
No. XXXVI.,  
s. 15.

16. 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.

[Part IV.—Medical witnesses, s.s. 16 to 20, repealed by No. 24 of 1920, s 2, and First Schedule.]

PART IV.—MISCELLANEOUS.\*

17. 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, license, or other document or writing; or
- (3) personates or represents himself as being the person referred to in any *testimonium*, certificate, diploma, degree, license, document, or writing presented to the Board, or in any certificate granted under this Act; or
- (4) procures or attempts to procure himself or any other person to be registered under this Act or for himself or any other person, obtains or attempts to obtain the issue of a certificate of regional registration under section twelve by making, or producing or causing to be made or produced, any false or fraudulent declaration or representation, either verbally or in writing; or
- (5) wilfully makes any false statement in any declaration, or on any examination or inquiry 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;

Every person who falsifies register, or  
58 Vict.,  
No. XXXVI.,  
s. 21; No. 51  
of 1940, s. 4.

Presents false documents,  
or

Is guilty of personation,  
or

Makes a false declaration,  
or

False statement, or

Falsely advertises himself as a practitioner,

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

Liable to imprisonment.

18. 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

No person other than a medical practitioner to hold certain appointments.  
58 Vict.,  
No. XXXVI.,  
s. 22.

\*Formerly Part V, now renumbered Part IV.

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.

No person other than a medical practitioner shall 58 Vict., No. XXXVI., s. 23.

Practise medicine or surgery.

Pretend to be or take the title of a doctor, etc.

Advertise himself as qualified.

Penalty in case of breach.

Exceptions.

19. 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, letter, title or designation, whether expressed in words or by letters, or partly in 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 to practise medicine or surgery in any one, more, or all its branches, or to give or perform any medical or surgical service, attendance, operation, or advice.

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 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.

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 Dentists Act, 1894."

20. 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 nineteen, or attempts so to do, shall be liable for each and every such offence, upon conviction, to a penalty not exceeding ten pounds.

Person advertising himself contrary to S. 19 liable to penalty.  
58 Vict., No. XXXVI., s. 24.

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.

21. 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.

Every medical practitioner may sue for fees, etc.  
58 Vict., No. XXXVI., s. 25.

22. Except where otherwise expressly provided to the contrary by this Act or the rules, all offences, penalties, fines, or fees under this Act or the said rules may be tried and determined, enforced, and recovered summarily before any two or more Justices of the Peace in Petty Sessions. All fines, fees, and penalties recovered under this Act or the rules shall be paid and belong to the Board.

Recovery of penalties, etc.  
58 Vict., No. XXXVI., s. 26.

23. Sections A, D, F, G, H, and I of "The Shortening Ordinance, 1853," 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.

Shortening Ordinance.  
58 Vict., No. XXXVI., s. 27.

## THE SCHEDULES.

### SCHEDULE I.

58 Vict., No. XXXVI., Sch. I.

Date of Ordinance.	Title of Ordinance.	Extent of Repeal.
33 Vict., No. 8, 12th July, 1869.	An Ordinance to regulate the Registration of Medical Practitioners	The whole.

## SCHEDULE II.

58 Vict.,  
No. XXXVI.,  
Sch. II.  
59 Vict.,  
No. XVII.,  
ss. 2 and 3.

1. Fellow, Member, Licentiate, or Extra Licentiate of the Royal College of Physicians of London.
2. Fellow, Member, or Licentiate of the Royal College of Physicians of Edinburgh.
3. Fellow or Licentiate of the King and Queen's College of Physicians of Ireland.
4. Fellow or Member of the Royal College of Surgeons of England.
5. Fellow or Licentiate of the Royal College of Surgeons of Edinburgh.
6. Fellow or Licentiate of the Faculty of Physicians and Surgeons of Glasgow.
7. Fellow or Licentiate of the Royal College of Surgeons in Ireland.
8. Licentiate of the Society of Apothecaries, London.
9. Licentiate of the Apothecaries' Hall, Dublin.
10. Doctor or Bachelor of Medicine or Master or Bachelor in Surgery of some British or legally constituted and recognised Australian, Tasmanian or New Zealand University.
11. Any legally qualified practitioner registered in the United Kingdom under any Act or Acts of the Parliament of the United Kingdom of Great Britain and Ireland now or hereafter in force.
12. Medical officers duly appointed and confirmed of Her Majesty's Sea or Land Service.

[Paragraph 13 repealed by 59 Vict. No. xvii s. 3.]