

WESTERN AUSTRALIA

MEDICAL ACT 1894

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WESTERN AUSTRALIA

## MEDICAL ACT 1894

AN ACT to consolidate the Law relating to Medical Practitioners.

### PART I—PRELIMINARY

#### Short title and division of Act

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

PART I —PRELIMINARY: ss. 1-3.

PART II —MEDICAL BOARD: ss. 4-9.

PART III—REGISTRATION: ss. 10-16A.

PART IV—MISCELLANEOUS: ss. 17-23.

[Section 1 amended by No. 24 of 1920 s. 2.]

#### Repeal of *Medical Ordinance 1869*

2. [Section 2 omitted under *Reprints Act 1984* s. 7 (4) (f).]

#### Interpretation

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

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

“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;

“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;

“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 *locom 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.

(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.]

## PART II—MEDICAL BOARD

### Constitution of Medical Board

4. (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 9 persons as follows—

- (a) the Permanent Head, if the Permanent Head is a medical practitioner, or, if the Permanent Head is not a medical practitioner, an officer of the Public Service of the State who is a medical practitioner and is nominated by the Permanent Head;
- (b) 5 persons other than bodies corporate appointed by the Minister who are registered medical practitioners under this Act;
- (c) 1 person appointed by the Minister who is a legal practitioner;
- (d) the Permanent Head of the department principally assisting the Minister charged with the administration 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 4 members of whom not less than 2 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.]

**Governor may remove member**

5. (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 substituted by No. 70 of 1985 s. 5.]*

**Board may make rules**

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—

- (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 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 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.

(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 \$2 000.

(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.]*

**Officers of the Board**

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**

8. (1) The Board may, in its own name, by its Registrar or any person thereunto authorized, 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 authorization.

(2) In any proceedings by the Board it shall not be necessary to prove the appointment of the members or Registrar of the Board.

**Protection of Board and Registrar from liability**

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.

[Section 8A inserted by No. 22 of 1945 s. 6.]

**Board may require attendance of any person**

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.

(3) The Board shall hold its inquiries under this Act in public but where the Board is satisfied that for the purpose of protecting the confidentiality of any matter it is desirable that the proceedings or any part thereof be conducted *in camera*, the Board may make an order to that effect and may include in the order conditions relating to that purpose, and, if such an order is made, the proceedings shall be conducted in accordance with it.

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

### PART III—REGISTRATION

#### Register to be kept by the Registrar

**10.** (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 this section 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.]

### **Persons entitled to be registered**

**11.** (1) Subject to subsection (1ca), a natural person shall not be entitled to be registered as a medical practitioner unless—

- (a) not being a person referred to in subsection (2) (c) or (d), he pays to the Board together with his application for registration such registration fee as is prescribed, together with the annual practice fee prescribed for the purposes of section 16A;

and

- (b) he proves to the satisfaction of the Board—

- (i) that he has received, after due examination from a legally constituted and recognized university in the Commonwealth of Australia, the Dominion of New Zealand, the United Kingdom, or the Republic of Ireland, a degree in medicine and surgery which that university is legally authorized to grant; or
- (ii) that he has passed the examination of the body known as the Australian Medical Council;

[(iii) *deleted*]

and

- (iv) that he is not debarred from practising medicine and surgery in the dominion, province, state or country in which he received his degree, licence, diploma, or certificate;

and

- (v) where the degree, licence or diploma submitted as evidence of qualification was issued to the applicant as a result of study in more than one school, that he studied in one school for a continuous period of at least 3 years;

and

- (vi) except where he is exempted from the provisions of this subparagraph, that he has, after obtaining the degree or certificate by virtue of which he applies for registration, served—

- (I) for a period of 12 months or for periods amounting in the aggregate to 12 months;

- (II) where the course of medical study undertaken was of 5 years' duration, for a period of 24 months or for periods amounting in the aggregate to 24 months; or

- (III) for such lesser period as the Board, in such special circumstances as it thinks fit, may allow,

in the position of medical officer in one or more institutions or hospitals approved by the Board;

and

- (c) the Board is of the opinion that he is a person of good fame and character.

(1a) Where a person whose application for registration has been refused, paid with his application the registration fee and the annual practice fee required pursuant to subsection (1) (a), the amount of the annual practice fee only shall be refunded to the applicant.

(1b) (a) The Board may, either unconditionally or subject to such conditions as the Board thinks fit, exempt from compliance with the provisions of subsection (1) (b) (vi) any person who has complied with all the other provisions of that subsection.

(b) (i) A person so exempted unconditionally is entitled to be registered as a medical practitioner without complying with the provisions of that subparagraph.

(ii) A person, so exempted subject to conditions, is entitled to be registered as a medical practitioner, without complying with the provisions of that subparagraph, after he complies with those conditions.

(1c) (a) Where a person has complied with all the provisions of subsection (1) excepting subparagraph (vi) of paragraph (b) or where a person is exempted from compliance with the provisions of that subparagraph subject to conditions, the Board may grant him a certificate of temporary registration as a medical practitioner to enable him to comply with the provisions of that subparagraph or with the conditions, as the case may be.

(b) (i) A certificate of temporary registration is valid and has effect for such period, not exceeding 12 months, as the Board specifies in the certificate, but the Board may at its discretion, and on payment of such fee as it may require, not exceeding the fee payable by a medical

practitioner under section 16A, renew a certificate or extend the validity of a certificate for such period or periods not exceeding 12 months in each case, as the Board thinks fit.

(ii) The Board may, if it thinks fit, cancel a certificate of temporary registration and upon cancellation the certificate ceases to have effect notwithstanding that the period of validity specified in the certificate has not expired.

(c) (i) The holder of a certificate of temporary registration granted to enable him to comply with the provisions of subsection (1) (b) (vi) shall, when serving in the capacity of a medical officer in an institution or a hospital approved by the Board, and during the currency of the certificate, for all purposes relating to the practice of medicine or surgery in that capacity, be deemed to be a medical practitioner registered under this Act.

(ii) The holder of a certificate of temporary registration granted to enable him to comply with conditions subject to which he is exempted from compliance with the provisions of that subparagraph shall during the currency of the certificate for all purposes relating to the practice of medicine or surgery in accordance with those conditions be deemed to be a medical practitioner registered under this Act.

(1ca) Notwithstanding subsection (1), the Board may, in its discretion, allow the registration of a natural person who proves to the satisfaction of the Board that he has passed through a regular graded course of medical study of not less than 5 years' duration in a school or schools of medicine in the United Kingdom or the Republic of Ireland and is—

(a) a Licentiate Member of—

- (i) the Royal College of Physicians of London; or
- (ii) the Royal College of Surgeons of England; or

(b) a Licentiate of—

- (i) the Royal College of Physicians of Edinburgh;
- (ii) the Royal College of Surgeons of Edinburgh;
- (iii) the Royal College of Physicians and Surgeons of Glasgow;
- (iv) the Royal College of Physicians of Ireland; or
- (v) the Royal College of Surgeons in Ireland.

(1d) Notwithstanding any other provision of this Act, where a person—

- (a) was not, at the time that his application for registration was made, ordinarily resident in the State;
- (b) has not taken up residence and commenced practice in the State within 6 months after the date on which his registration was granted,

the Board may order that his name be erased from the register, and in that event the person shall not, except with the special approval of the Board, be entitled to make a further application for registration or any

application for the restoration of his name to the register until the expiration of the period of five years commencing on the day on which his application for registration was granted.

(2) (a) Any natural person who satisfies the Board that he is a person of good fame and character and who satisfies the Board that prior to the coming into operation of the *Medical Amendment Act 1979*, he held a certificate of regional registration under section 12, or a certificate of auxiliary service registration under section 12A and has held such a certificate for a period of 5 years or more, or for periods aggregating 5 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, but in any other case, subject to paragraph (aa), he shall not be eligible to be registered as a medical practitioner under this Act, otherwise than by way of temporary registration, unless he has passed the examination of the body known as the Australian Medical Council.

(aa) Notwithstanding paragraph (a), where a natural person has held a certificate of auxiliary service registration under section 12A for such period as is prescribed by the Board and—

- (i) has a post graduate qualification in psychiatry obtained after receiving training in psychiatry in the United Kingdom, the Republic of Ireland, the Dominion of Canada, the Republic of South Africa, the Commonwealth of Australia or the Dominion of New Zealand; and
- (ii) has been employed or engaged on the staff of any approved hospital or service within the meaning of the *Mental Health Act 1962*,

the Board may, in its discretion, allow that person to be registered as a medical practitioner under this Act without requiring him to have passed the examination referred to in paragraph (a).

(b) Any natural person who—

- (i) satisfies the Board that he is of good fame and character; and
- (ii) is desirous of engaging in the occupation, as his sole professional occupation in the State, of teaching or research, or of a post-graduate scholar, in medicine or surgery under the direction and control of a teaching or research institution; and
- (iii) has such qualifications in medicine or surgery as in the opinion of the Board fit and qualify him for appointment to a position connected with, and to engage in the occupation of teaching or research, or of a post-graduate scholar, in medicine or surgery,

shall, upon his making application to the Board for registration, be entitled to be registered as a medical practitioner under this Act during such time as his appointment and engagement in such teaching or research or as a post-graduate scholar continues to be his sole

professional occupation in the State, 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.

For the purposes of this paragraph “teaching or research institution” means any university, college or school of medicine or surgery, research institute, hospital, clinic or other like institution which is engaged in this State in teaching or research in medicine or surgery and which is approved by the Board for the purposes of this paragraph.

(c) Any natural person who satisfies the Board that—

- (i) he is registered under any Act of a State or Territory of the Commonwealth as a person entitled to practise medicine or surgery; and
- (ii) his sole occupation is that of a medical officer in the employment of the Commonwealth, or a medical officer permanently attached to any of the Armed Services of the Commonwealth,

may, if the Minister in his absolute discretion thinks fit, 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 continues to fulfil the requirements of subparagraphs (i) and (ii).

(d) Any person who satisfies the Board that—

- (i) he has such qualifications in medicine or surgery and such experience in the practise thereof as in the opinion of the Board fit and qualify him to practise medicine or surgery in the State; and
- (ii) he is serving as a member of a visiting force in the capacity of a medical officer,

may, if the Minister in his absolute discretion thinks fit, be registered as a medical practitioner under this Act, without payment of any registration fee or practise fee payable under this Act, during such time as he continues to fulfil the requirements of subparagraphs (i) and (ii).

For the purposes of this paragraph—

“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 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 ss. 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.]

### **Determination of specialties and registration of specialists**

**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.

(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.

[Section 11A inserted by No. 22 of 1945 s. 9.]

### **Registration for the practice of medicine and surgery in certain areas**

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

- (a) the residents of any area are not adequately provided for in respect of medical, surgical services or any branch of medicine or surgery that is declared by Order in Council under section 11A (1) to be a speciality; or
- (b) any hospital within the meaning of the *Hospitals Act 1927*, or any approved hospital or service within the meaning of the *Mental Health Act 1962*, requires for the proper administration thereof one or more 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 or hospital 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 natural person who proves to the satisfaction of the Board that he—

- (a) has passed through a regular graded course of medical study of 5 or more years duration in a school of medicine not being a school of medicine referred to in section 11 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 recognized for the purpose under the laws of the country in which it is situate, 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 that 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 medical officer in a hospital approved by the Minister for a period of not less than 3 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, or has had such other experience as, in the opinion of the Board, renders compliance with the foregoing provisions of this paragraph unnecessary.

(3) Within 7 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 2 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 7th nor later than the 14th 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) 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).

(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 9 shall, subject to subsection (6), 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 authorized and empowered to defray the expense of such appeal out of its funds.

In this subsection "local authority" means any council of a municipality 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 13 and of any regulations made for the purposes specified in section 6 (1) (d) 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.

[Section 12<sup>2</sup> inserted by No. 51 of 1940 s. 3 as s. 11A; renumbered as s. 12 in 1943 reprint and amended by No. 43 of 1966 s. 4; No. 70 of 1976 s. 5; No. 56 of 1979 s. 3; No. 70 of 1985 s. 10.]

**Certificate of auxiliary service registration**

**12A.** (1) Where the Governor is satisfied that a duly qualified medical practitioner or a sufficient number of duly qualified medical practitioners is or are not available to provide a medical or surgical service or any branch of medical or surgical service that is declared a speciality under section 11A (1), he may from time to time by Proclamation declare the service to be an auxiliary service in the whole or part of the State.

(2) From time to time the Governor may by Proclamation vary the provisions and operation of a Proclamation made and promulgated pursuant to the power conferred by this section, by cancelling those provisions and that operation wholly or in part absolutely, or by cancelling those provisions and that operation wholly or in part and substituting other provisions and their operation for those so cancelled.

(3) (a) The provisions of subsections (2) to subsection (13), both inclusive, of section 12 shall apply in respect of a service so declared by Proclamation to be an auxiliary service as if they were repeated in this section, with the adaptations contained in the next succeeding paragraph.

(b) The adaptations referred to in the last preceding paragraph are as follows:—

- (i) For the word “area” wherever it appears substitute the word “service”.
- (ii) For the words “a region” or “region” wherever they appear, substitute the words “an auxiliary service” or “auxiliary service”, as the case requires.
- (iii) For the words “a certificate of regional registration” wherever they appear, substitute the words “a certificate of auxiliary service registration”.
- (iv) For the words “for the inhabitants of the proclaimed region” in lines 4 and 5<sup>3</sup> of section 12 (2) (b), substitute the words “for providing the proclaimed auxiliary service”.
- (v) For the words “within the region” in line 5<sup>4</sup> of section 12 (11), substitute the words “to the extent only, but to no greater extent than that required for the auxiliary service”.
- (vi) For the words “outside the boundaries of the region” in lines 3 and 4<sup>5</sup> of section 12 (12), substitute the words “to an extent greater than that required for the auxiliary service”.

[Section 12A inserted by No. 21 of 1950 s. 4; amended by No. 70 of 1985 s. 11.]

**Provisional certificate may be granted**

**12B.** (1) When a natural person has applied to be registered pursuant to section 11 (1), section 11 (1c), or paragraph (b), (c) or (d) of section 11 (2) the Registrar, or, in his absence, any member of the Board, upon being satisfied that such person is entitled to be registered, and upon payment of such registration fee (if any) as is payable by him, may grant to such person in the prescribed form a provisional certificate of registration or a provisional certificate of temporary 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,

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 temporary registration under section 11 (1c), his registration or temporary 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.]*

**Provision for striking off or suspending medical practitioners in certain circumstances**

**13.** (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 shall hold an inquiry into the matter.

(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 without an inquiry order the suspension of the registration of the medical practitioner or the removal of the name of the medical practitioner from the register.

(3) Where after an inquiry the Board is satisfied in relation to a matter referred to in subsection (1) (a), (b), (c) or (d) with respect to a medical practitioner the Board may by order impose any one or more of the following penalties, namely—

- (a) remove the name of the medical practitioner from the register;
- (b) suspend the registration of the medical practitioner for such period not exceeding 12 months as is specified in the order;
- (c) a fine not exceeding \$10 000;
- (d) a reprimand.

(4) Notwithstanding subsection (2) or (3), the Board may, in lieu of imposing a punishment referred to in subsection (2) or (3) (a) or (b) on a medical practitioner, require the medical practitioner to give a written undertaking to be of good behaviour for such period as the Board 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 Board thinks fit.

(5) The Board shall for the purposes of an inquiry relating to a matter referred to in subsection (1) (e) obtain a preliminary report from a medical practitioner.

(6) The Board shall give the medical practitioner concerned reasonable notice of the time and place of any inquiry to be held under subsection (1) and shall afford the medical practitioner reasonable opportunity to call or give evidence and cross-examine witnesses and to make submissions.

(6a) If the medical practitioner to whom notice has been given pursuant to subsection (6) does not attend at the time and place fixed by the notice, the Board may conduct the inquiry in the absence of the medical practitioner.

(6b) The Board may appoint a legal practitioner to appear in the inquiry to assist the Board.

(6c) A medical practitioner may be represented by a person other than a legal practitioner.

(6d) A person other than a legal practitioner shall not demand or receive any fee or reward for representing a party in an inquiry by the Board.

Penalty: \$500.

(6e) A person authorized by or under this Act to appear before the Board for the purposes of representing a medical practitioner has the same protection and immunity as a barrister has in appearing for a party in proceedings before the Supreme Court and, where the person so authorized is a barrister or solicitor, he or she is subject to the same liabilities as he or she would be in appearing before that Court.

(6f) Where pursuant to subsection (5) 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 direct the medical practitioner to submit himself or herself within the time specified by the Board to an examination by—

- (a) 1 medical practitioner appointed by the Board 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 Board.

(6g) Where after receiving the reports referred to in subsection (6f) the Board is satisfied that the medical practitioner in respect of whom the reports are made is 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—

- (a) remove the name of the medical practitioner from the register;
- (b) suspend the registration of the medical practitioner; or
- (c) impose restrictions or conditions or both on the practice of medicine by the medical practitioner.

(6h) Where a medical practitioner fails to submit himself or herself for examination pursuant to subsection (6f) within the time specified by the Board, 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; and
- (b) the Board has received reports from each of the medical practitioners who have conducted the examination as required by subsection (6f).

(6i) The Board may make such order as to the payment of the costs of the inquiry by the medical practitioner into whose conduct the inquiry has been held as the Board thinks fit.

(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) (a) Any person who is or was registered as a medical practitioner and who is aggrieved by any decision of the Board may in accordance with Rules of Court, which the Judges of the Supreme Court are hereby authorized 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.

(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) and (9b), 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) of this section,

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.

(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—

(a) the period of suspension be extended for such further period not exceeding 12 months, as the Board thinks fit; or

(b) the name of that person be removed from the Register immediately upon the expiration of the period of suspension.

(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 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 commences an inquiry under this section the person the subject of the inquiry has ceased to be registered as a medical practitioner.

[Section 13 substituted 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.]

### **Medical practitioner struck off or suspended in another State or Territory**

**13A.** 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.]

### **Copy of register to be published**

**14.** 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<sup>2</sup> amended by No. 22 of 1945 s. 11; No. 70 of 1985 s. 15.]

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

15. 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 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 substituted by No. 22 of 1945 s. 12.]*

**Practitioner on registration entitled to certificate**

16.<sup>2</sup> 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.

**Annual practice fees**

16A. (1) (a) Subject to this section, there shall be paid to the Board annually in advance by all persons registered under this Act and practising in this State such practice fee as is prescribed.

(aa) Where a person commences practice as a medical practitioner or specialist, after 30 June in any year, the practice 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 the fee prescribed for the purposes of paragraph (a) shall not so practise unless he first obtains authorization to do so granted by the Board under subsection (4).

Penalty: For a first offence, \$500, and for a subsequent offence \$1 000 or imprisonment for 6 months or both.

(1a) A medical practitioner shall, when remitting to the Board the practice fee payable under subsection (1), also furnish to the Board in writing such particulars concerning the nature of his practice, the place or places at which he conducts his practice, and of any additional qualifications which he has gained since he was registered under this Act or last furnished particulars pursuant to this subsection, whichever is the later, as are prescribed.

(2) If any person liable under subsection (1) to pay the annual practice 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 authorization 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 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 authorization 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 the fees prescribed for the purposes of subsection (1); and
- (c) satisfies the Board in manner prescribed by the rules that he has not been convicted or adjudged as mentioned in section 13 (1);

the Board shall grant the authorization.

[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.]

#### PART IV<sup>2</sup>—MISCELLANEOUS

##### **Every person who falsifies register, etc.**

17.<sup>2</sup> 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 himself for 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 12 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,

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

**No person other than a medical practitioner  
to hold certain appointments**

**18.<sup>2</sup>** 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.

**Prohibition on person other than a medical practitioner  
practising medicine, etc.**

**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, 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.

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, and for a subsequent offence \$5 000 or imprisonment for 6 months or both.

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*<sup>6</sup>.

[Section 19<sup>2</sup> amended by No. 22 of 1945 s. 14; No. 113 of 1965 s. 8; No. 70 of 1985 s. 17.]

#### **Person advertising himself contrary to s. 19 liable to penalty**

**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 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<sup>2</sup> amended by No. 113 of 1965 s. 8; No. 70 of 1985 s. 18.]

#### **Every medical practitioner may sue for fees, etc.**

**21.<sup>2</sup>** 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.

**Treatment by means of radium or X-ray**

**21A.** (1) Subject to subsection (2), 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, \$1 000, and for a subsequent offence imprisonment for 6 months.

(2) Subsection (1) shall not apply 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.]*

**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 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.

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

**Restriction on administration of anaesthetics in certain cases**

**21C.** 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 substituted by No. 70 of 1985 s. 21.]

### **Approval for medical call services**

**21CA.** (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 within 30 days of that decision appeal to the District Court in accordance with the rules of court.

(9) In subsection (1)—

“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.]

### **Register of medical call services**

**21CB.** 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.]

### **Changes to be notified**

**21CC.** (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.]

### **Cancellation and suspension of approval**

**21CD.** (1) The Board shall cancel or suspend a certificate of approval given under section 21CA if the Board is satisfied that—

- (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.

(2) Where the Board 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) A person who is aggrieved by a decision of the Board under subsection (1) may within 30 days of the decision appeal to the District Court in accordance with the rules of court.

(4) Where the Board 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 Board within 7 days of the date of the decision of the Board.

(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.]

### **Application of funds of Board**

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

- (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.]

**Accounts**

**21E.** (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: Section 21E repealed and sections 21E, 21F and 21G substituted by No. 77 of 1987 Schedule 1.]*

**Audit**

**21F.** 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: Section 21E repealed and sections 21E, 21F and 21G substituted by No. 77 of 1987 Schedule 1.]*

**Annual report**

**21G.** (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.

(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: Section 21E repealed and sections 21E, 21F and 21G substituted by No. 77 of 1987 Schedule 1.]*

**Recovery of penalties, etc.**

**22<sup>2</sup>.** 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 2 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.



**Interpretation Act 1918**

**23.** Sections A, E, F, G and H of the Second Schedule to the *Interpretation Act 1918*<sup>1</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<sup>2</sup> amended by No. 22 of 1945 s. 16.]

**Review of Act**

**24.** (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 5th 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**

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

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

## NOTES

<sup>1</sup>. This reprint is a compilation as at 10 March 1988 of the *Medical Act 1894*<sup>2, 8, 9</sup>, and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>The Medical Act 1894</i>	58 Vict. No. 36	28 November 1894	1 January 1895 (see section 1)	Short title subsequently amended see Act No. 51 of 1940 s. 5.
<i>The Medical Act Amendment Act 1895</i>	59 Vict. No. 17	11 September 1895	11 September 1895	
<i>Coroners Act 1920</i> , section 2	24 of 1920	31 December 1920	1 January 1921 (see section 1)	
<i>Medical Act Amendment Act 1940</i>	51 of 1940	30 December 1940	30 December 1940	
<i>Medical Act Amendment Act 1945</i>	22 of 1945	9 January 1946	9 January 1946	
<i>Medical Act Amendment Act 1946</i>	8 of 1946	13 November 1946	13 November 1946	
<i>Medical Act Amendment Act 1950</i>	21 of 1950	29 November 1950	29 November 1950	
<i>Medical Act Amendment Act 1952</i>	65 of 1952	7 January 1953	7 January 1953	
<i>Medical Act Amendment Act 1955</i>	10 of 1955	21 October 1955	21 October 1955	
<i>Medical Act Amendment Act (No. 2) 1955</i>	18 of 1955	1 November 1955	1 November 1955	
<i>Medical Act Amendment Act 1956</i>	35 of 1956	18 December 1956	6 November 1959 (see <i>Gazette</i> 6 November 1959 p. 2746)	
<i>Medical Act Amendment Act 1961</i>	42 of 1961	16 November 1961	16 November 1961	
<i>Medical Act Amendment Act 1966</i>	43 of 1966	18 November 1966	12 May 1967 (see <i>Gazette</i> 12 May 1967 p. 1219)	
<i>Medical Act Amendment Act 1968</i>	19 of 1968	16 October 1968	16 October 1968	
<i>Medical Act Amendment Act 1975</i>	75 of 1975	14 November 1975	14 November 1975	
<i>Medical Act Amendment Act 1976</i>	70 of 1976	6 October 1976	24 December 1976 (see <i>Gazette</i> 24 December 1976 p. 5028)	
<i>Medical Act Amendment Act 1979</i>	56 of 1979	12 November 1979	12 November 1979	
<i>Medical Amendment Act 1981</i>	28 of 1981	26 May 1981	7 August 1981 (see <i>Gazette</i> 7 August 1981 p. 3203)	

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Health Legislation Amendment Act 1984, Part XII</i>	28 of 1984	31 May 1984	1 July 1984 (see section 2)	
<i>Medical Amendment Act 1985</i> <sup>5</sup>	70 of 1985	15 November 1985	Section 16(a): 1 January 1986 (see <i>Gazette</i> 29 November 1985 p. 4447); except for section 9(d) <sup>9</sup> balance 1 January 1988 (see <i>Gazette</i> 31 December 1987 p. 4567)	S. 24. Savings and transitional
<i>Acts Amendment (Financial Provisions of Regulatory Bodies) Act 1987, Schedule I</i>	77 of 1987	26 November 1987	1 January 1988 (see section 2)	

N.B. The *Medical Act 1894* is affected by the *Justices Act Amendment Act 1932* sections 2 and 6 (No. 26 of 1932) and by the *Acts Amendment (America's Cup Defence and Special Events) Act 1985* which has now expired.

<sup>2</sup> In this reprint the numbering of Parts, sections, Divisions, 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 that reprint.

<sup>3</sup> In this reprint see lines 3 and 4.

<sup>4</sup> In this reprint see line 4.

<sup>5</sup> In this reprint see lines 2 and 3.

<sup>6</sup> Previously *The Dentists Act 1894* and amended pursuant to the *Reprints Act 1984*.

<sup>7</sup> Now see section 77 (4) of the *Interpretation Act 1984*.

<sup>8</sup> Marginal notes in the *Medical Act 1894* referring to legislation of other jurisdictions have been omitted from this reprint.

<sup>9</sup> As at 10 March 1988 section 9 (d) of the *Medical Amendment Act 1985* (No. 70 of 1985) was not in operation.