



ANALYSIS

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1994, No. 93

An Act to amend the Medical Practitioners Act 1968

[20 October 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Medical Practitioners Amendment Act 1994, and shall be read together with and deemed part of the Medical Practitioners Act 1968 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. New heading and sections inserted—The principal Act is hereby amended by inserting in Part III, after section 66, the following heading and sections:

“Application of Health and Disability Commissioner Act 1994

“66A. **Interpretation**—In this section and sections 66B to 66G of this Act, unless the context otherwise requires,—

“‘Code’ means the Code of Health and Disability Services Consumers’ Rights for the time being prescribed by regulations made under section 74 of the Health and Disability Commissioner Act 1994:

“‘Commissioner’ means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

“‘Director of Proceedings’ means the person for the time being designated under section 15 of the Health and Disability Commissioner Act 1994 as the Director of Proceedings:

“‘Nominated body’ means such person or body as the Council from time to time designates for the purpose of this Part of this Act and notifies to the Commissioner.

“66B. Complaints to be notified to Commissioner—

(1) Where a complaint is made under section 42A of this Act to the Disciplinary Committee, the Secretary of the Disciplinary Committee shall forthwith notify the Commissioner of that complaint.

“(2) Where a complaint is made under section 55 of this Act to the Council, the Secretary to the Council shall forthwith notify the Commissioner of that complaint.

“(3) Where any matter is reported to the Preliminary Proceedings Committee under section 56 (6A) of this Act, the Convener of the Committee shall forthwith notify the Commissioner of that matter.

“66C. Consultation with Commissioner—Where, in accordance with section 66B of this Act, a complaint or matter is notified to the Commissioner, the Commissioner may at any time after receiving the notification, consult with the nominated body in relation to the complaint or matter.

“66D. Suspension of action under this Act—

(1) Notwithstanding anything in this Part of this Act, but subject to subsection (2) of this section and to subsections (3) to (5) of section 66E of this Act, where a complaint or matter is notified to the Commissioner in accordance with section 66B of this Act, no action shall be taken under this Act concerning the complaint or matter until—

“(a) The Commissioner notifies the nominated body—

“(i) That the complaint or matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or

“(ii) That the complaint or matter has been resolved; or

“(iii) That the complaint or matter has been investigated under that Act and the complaint or matter is not to be referred to the Director of

Proceedings in accordance with section 45 (f) of that Act; or

“(b) The Director of Proceedings notifies the nominated body that the Director of Proceedings has decided, pursuant to section 49 of that Act, not to institute disciplinary proceedings under this Act in relation to the complaint or matter.

“(2) Nothing in this section prevents the taking of any action under section 34 of this Act.

“66E. Director of Proceedings may lay charge under this Part of this Act—(1) This section applies where,—

“(a) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Commissioner is of the opinion that any action (within the meaning of that Act) that was the subject-matter of the investigation, being the action of a person who is a registered medical practitioner or who is conditionally registered under this Act, was in breach of the Code; and

“(b) The Director of Proceedings decides, pursuant to section 49 of that Act, that proceedings should be taken under this Part of this Act against that person.

“(2) Where this section applies, the Director of Proceedings shall frame an appropriate charge (being a charge of conduct unbecoming a practitioner, or of professional misconduct, or of disgraceful conduct in a professional respect) and lay the charge,—

“(a) In the case of a charge of conduct unbecoming a practitioner, before the appropriate Divisional Disciplinary Committee or the Disciplinary Committee:

“(b) In the case of a charge of professional misconduct, before the Disciplinary Committee:

“(c) In the case of a charge of disgraceful conduct in a professional respect, before the Council.

“(3) Where the Director of Proceedings lays a charge of conduct unbecoming a practitioner before a Divisional Disciplinary Committee, that Committee shall inquire into the charge as if it were a complaint which the Committee were authorised under section 42A (3) of this Act to inquire into, and, subject to section 66F of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

“(4) Where the Director of Proceedings lays a charge of conduct unbecoming a practitioner, or of professional misconduct, before the Disciplinary Committee, the Committee shall inquire into the charge under section 43 of this Act as if it were a complaint made under section 42A (1) of this Act, and, subject to section 66F of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

“(5) Where the Director of Proceedings lays a charge of disgraceful conduct in a professional respect before the Council, the Council shall hear the charge as if it were a charge referred to the Council by the Preliminary Proceedings Committee under section 56 (3) of this Act, and, subject to section 66F of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

“**66F. Director of Proceedings to prosecute charge—** (1) Notwithstanding anything in this Part of this Act, any charge laid under section 66E of this Act by the Director of Proceedings shall be prosecuted at the hearing by the Director of Proceedings, who for that purpose may be represented by counsel or otherwise.

“(2) Subsection (1) of this section shall apply not only where the charge is dealt with by the body before which the charge was laid but also where the charge is dealt with under this Part of this Act by any other body to which the charge is referred in accordance with any provision of this Part of this Act.

“**66G. Costs may be awarded to or against Commissioner—**(1) In any proceedings under this Part of this Act relating to a charge laid by the Director of Proceedings under section 66E of this Act, the person so charged may be ordered to pay—

“(a) Any costs and expenses of and incidental to any investigation made by the Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:

“(b) The costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings.

“(2) Any costs and expenses payable pursuant to subsection (1) of this section—

“(a) Shall be recoverable as a debt due to the Association or, as the case requires, the Council; and

“(b) Notwithstanding anything in section 14 or section 49 (2) of this Act, shall be paid to the Commissioner.

“(3) An appeal against an order made pursuant to subsection (1) of this section by a Divisional Disciplinary Committee shall lie under section 52A of this Act as if that order were an order made under section 42B of this Act, and the provisions of section 52A of this Act shall apply accordingly with all necessary modifications.

“(4) Nothing in subsection (1) of this section limits section 43 (2) (c) or section 48 or section 58 (2) (f) of this Act.

“(5) Where, after the hearing of any inquiry under this Act into a charge laid by the Director of Proceedings under section 66E of this Act, the Disciplinary Committee or Divisional Disciplinary Committee awards costs under section 48 of this Act to any person who is a registered medical practitioner or who is conditionally registered under this Act and in relation to whom the inquiry was made, the Disciplinary Committee or Divisional Disciplinary Committee may, instead of ordering that those costs be paid by the Association, order that those costs be paid by the Commissioner.”

This Act is administered in the Ministry of Health.
