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1995, No. 95

An Act to consolidate and amend the law relating to medical practitioners, and, in particular,—

- (a) To impose various restrictions on the practice of medicine; and**
- (b) To provide for the registration of medical practitioners, and the issue of annual practising certificates; and**
- (c) To provide for the review of the competence of medical practitioners to practise medicine; and**
- (d) To provide for the notification of any mental or physical condition affecting the fitness of a medical practitioner to practise medicine; and**

(e) To provide for the disciplining of medical practitioners; and

(f) To provide for matters incidental thereto

[20 December 1995]

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 Act 1995.

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

PART I

PRELIMINARY PROVISIONS

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

“Annual practising certificate” means an annual practising certificate issued under Part IV of this Act:

“Approved institution” means any medical school or university for the time being approved by the Council pursuant to section 4 of this Act:

“Approved person” means a person (or a person of a kind) approved or deemed to be approved by the Council for the purposes of section 15 (1) of this Act:

“Certificate of registration” means a certificate of registration issued under section 38 (1) of this Act:

“Chairperson” means the chairperson of the Tribunal:

“Competence programme” means a programme set or recognised by the Council under section 62 of this Act:

“Complaint” means a complaint made under section 83 (1) of this Act:

“Complaints assessment committee” means a complaints assessment committee appointed under section 88 of this Act:

“Council” means the Medical Council of New Zealand continued by section 122 of this Act:

“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:

“Document” has the same meaning as it has in the Official Information Act 1982:

“Financial year”, in relation to the Council, means the period commencing on the 1st day of April in any

year and ending with the close of the 31st day of March in the following year:

“General registration” means registration under Part III of this Act that has the effect specified in section 20 of this Act:

“Health and Disability Commissioner” means the Health and Disability Commissioner appointed under the Health and Disability Commissioner Act 1994:

“Hospital” means—

(a) A licensed hospital within the meaning of Part V of the Hospitals Act 1957:

(b) A hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

(c) An institution within the meaning of the Alcoholism and Drug Addiction Act 1966:

“Interim practising certificate” means an interim practising certificate issued under section 57 of this Act:

“Interim registration” means registration under Part III of this Act that has the effect specified in section 30 of this Act:

“Medical officer of health” has the same meaning as in section 2 (1) of the Health Act 1956:

“Medical practitioner” or “practitioner” means a person registered under this Act:

“Medical Practitioners Disciplinary Tribunal” or “Tribunal” means the Medical Practitioners Disciplinary Tribunal constituted under section 96 of this Act:

“Medicine” includes surgery; and “medical” has a corresponding meaning:

“Mental or physical condition” means any mental or physical condition or impairment; and, without limiting the generality of the foregoing, includes alcohol or drug abuse:

“Minister” means the Minister of Health:

“Practising certificate” means an annual practising certificate or an interim practising certificate:

“President” means the president of the Council:

“Probationary registration” means registration under Part III of this Act that has the effect specified in section 17 of this Act:

- “Recertification programme” means a programme set or recognised by the Council under section 63 of this Act:
- “Register” means the register of medical practitioners maintained under section 37 of this Act, or where separate registers are maintained in terms of that section, any or all of the registers maintained, as the case may be:
- “Registered health professional” has the same meaning as in section 4 (1) of the Health and Disability Commissioner Act 1994:
- “Registrar” means the Registrar to the Council appointed under clause 17 of the Second Schedule to this Act:
- “Registration” means any of the following types of registration:
- (a) Probationary registration:
 - (b) General registration:
 - (c) Vocational registration:
 - (d) Temporary registration:
 - (e) Interim registration;—
- and “registered” has a corresponding meaning:
- “Secretary” means the secretary of the Tribunal:
- “Supervisor”, in relation to a person who holds probationary registration, means a medical practitioner appointed, pursuant to section 16 (1) of this Act, to supervise that person:
- “Temporary registration” means registration under Part III of this Act that has the effect specified in section 25 of this Act:
- “Title of a medical practitioner” means—
- (a) The style or title of a physician, surgeon, doctor, licentiate in medicine, bachelor of medicine, or medical practitioner; or
 - (b) Any name, title, or description stating or implying that a person holds any diploma or degree in medicine or is otherwise specially qualified to practise medicine:
- “Vocational register” means the part of the register, or the separate register, maintained under section 37 (1) (c) of this Act which relates to medical practitioners who hold vocational registration:
- “Vocational registration” means registration under Part III of this Act that has the effect specified in section 23 of this Act:
- “Working day” means a day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, and Waitangi Day; and

(b) A day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year; and

(c) If the 1st day of January in any year falls on a Friday, the following Monday; and

(d) If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

(2) In this Act, unless the context otherwise requires, a reference to medicine shall be deemed to include a reference to any branch of medicine.

3. Principal purpose—(1) The principal purpose of this Act is to protect the health and safety of members of the public by prescribing or providing for mechanisms to ensure that medical practitioners are competent to practise medicine.

(2) Without limiting the generality of subsection (1) of this section, this Act seeks to attain its principal purpose by, among other things,—

(a) Imposing various restrictions on the practice of medicine:

(b) Providing for the registration of medical practitioners, and the issue of annual practising certificates:

(c) Providing for the review of the competence of medical practitioners to practise medicine:

(d) Providing for the notification of any mental or physical condition affecting the fitness of a medical practitioner to practise medicine:

(e) Providing for the disciplining of medical practitioners:

(f) Providing certain protections for medical practitioners who take part in approved quality assurance activities.

4. Approved medical schools and universities—(1) The Council may from time to time, by notice in the *Gazette*, approve any institution (being a medical school or a university) for the purposes of sections 14, 19, and 24 of this Act.

(2) Any approval of an institution under this section may be given on such terms and conditions as the Council thinks fit and as are specified in the notice approving the institution.

(3) Any notice issued under this section may be in like manner amended or revoked at any time.

5. Council to review approvals—Where the Council approves an institution pursuant to section 4 of this Act, the Council shall from time to time, at such intervals (not exceeding 10 years) as the Council thinks fit, review that approval.

6. Provisions relating to requirements, approvals, and agreements—(1) Where any provision of this Act includes or refers to a requirement of, or a requirement for the approval or agreement of, a specified person, then, unless the context otherwise requires,—

- (a) The requirement is deemed to be a requirement of, or a requirement for the approval or agreement of, that person for the purposes of that provision; and
- (b) The requirement, approval, or agreement may be made or given on such terms and conditions as the specified person determines; and
- (c) Unless the requirement, approval, or agreement expressly states otherwise, the requirement, approval, or agreement may be amended or revoked at any time by the specified person.

(2) Nothing in this section applies in respect of section 4 of this Act.

7. Exercise of powers in relation to multiple registration—Except where this Act otherwise provides, where—

- (a) Any provision of this Act confers power to remove the name of any person from the register, or to suspend the registration of any person, or to impose conditions on a person's registration; and
- (b) Any person holds more than 1 type of registration under this Act,—

the power so conferred may be exercised in relation to all or any of the types of registration so held by that person, as appropriate in the circumstances of the case.

8. Act binds the Crown—This Act binds the Crown.

PART II

RESTRICTIONS ON PRACTICE OF MEDICINE

9. Practice of medicine—No person shall practise medicine under the title of a medical practitioner (as defined in section 2 of this Act) unless he or she holds—

- (a) Both—

- (i) Probationary registration, general registration, or vocational registration; and
 - (ii) A current practising certificate; or
- (b) Temporary registration or interim registration.
Cf. 1968, No. 46, s. 69 (1)

10. Misleading descriptions—(1) No person shall hold that person, or any other person, out (whether directly or indirectly) as practising medicine, or being entitled, qualified, able, or willing to practise medicine, under the title of a medical practitioner (as defined in section 2 of this Act) if that person or, as the case may be, that other person is prohibited by section 9 of this Act from practising medicine under that title.

(2) No person shall use or permit to be used any words, letters, or symbols that the person intends to cause, or are reasonably likely to cause, anyone else to believe that the first-mentioned person or any other person—

- (a) Holds any type of registration, or a certificate, under this Act; or
- (b) Possesses a qualification in medicine or any branch of medicine,—

unless the first-mentioned person or, as the case requires, that other person holds that registration, certificate, or qualification.

Cf. 1968, No. 46, s.69 (3)

11. Duty of practitioners in respect of family planning—Every medical practitioner who—

- (a) Is requested by a person to provide any advice or other service with respect to contraception, sterilisation, or other family planning matters; and
- (b) Objects on the grounds of conscience to providing that service—

shall inform the person that he or she may obtain that service from another medical practitioner or a family planning clinic.

Cf. 1968, No. 46, s.43A; 1977, No. 118, s. 2

PART III

REGISTRATION

General Provisions

12. Types of registration—This Act provides for the following types of registration:

- (a) Probationary registration:
- (b) General registration:
- (c) Vocational registration:

- (d) Temporary registration:
- (e) Interim registration.

13. Fitness for registration—No person shall be registered under this Act if—

- (a) He or she does not satisfy the Council that he or she has a reasonable ability to communicate effectively in English; or
- (b) He or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer, and he or she does not satisfy the Council that the offence does not reflect adversely on his or her fitness to practise medicine; or
- (c) The Council is satisfied that the person is not fit to practise medicine by reason of any mental or physical condition; or
- (d) Either—
 - (i) He or she is the subject of professional disciplinary proceedings in New Zealand or in another country; or
 - (ii) He or she is under investigation, in New Zealand or in another country, in respect of any matter that may be the subject of professional disciplinary proceedings,—and he or she does not satisfy the Council that those proceedings or, as the case may be, that investigation does not reflect adversely on his or her fitness to practise medicine; or
- (e) He or she—
 - (i) Is subject to an order of the Tribunal or the Council or of a medical organisation, medical disciplinary tribunal, or similar tribunal in another country; and
 - (ii) Does not satisfy the Council that that order does not reflect adversely on his or her fitness to practise medicine; or
- (f) He or she does not satisfy the Council that he or she has adequate skill and knowledge to practise medicine; or
- (g) The Council is otherwise satisfied that the person is not fit to practise medicine.

Cf. 1968, No. 46, s. 22 (1); 1988, No. 150, s. 22

Probationary Registration

14. Qualifications for probationary registration—

(1) Subject to section 13 of this Act, a person is entitled to probationary registration if he or she satisfies the Council that he or she intends to reside and practise medicine in New Zealand and that he or she—

- (a) Is a graduate in medicine of, or is qualified to graduate in medicine at, an approved institution; or
- (b) Has satisfied any requirements of the Council, which (without limitation) may consist of or include an examination or assessment set or approved by the Council.

(2) For the purposes of subsection (1) of this section, a certificate signed by or on behalf of a registrar of an approved institution to the effect that the person named in the certificate is a graduate in medicine of the institution, or is qualified to graduate in medicine at the institution, by reason of—

- (a) Having passed, or been credited with passing, the examinations; and
- (b) Having undergone the period of training (if any)—required for such graduation, shall be sufficient evidence that the person named is a graduate of the institution or is qualified to graduate at the institution, as the case may require.

(3) Notice shall be taken judicially, without further proof of appointment, of the signature on any certificate referred to in subsection (2) of this section.

Cf. 1968, No. 46, s.15 (1)–(3); 1979, No. 53, s. 5 (1)

15. Holders of probationary registration to practise only with approved persons—(1) No medical practitioner who holds probationary registration shall practise medicine except in the employ of, or in association with, an approved person.

(2) Where the approval of any approved person (in this subsection referred to as the approval-holder) is revoked, the following provisions apply:

- (a) Notwithstanding that revocation, the Council may permit any person (in this subsection referred to as the probationer) who, at the date on which the revocation takes effect,—
 - (i) Holds probationary registration; and
 - (ii) Is practising medicine in the employ of, or in association with, the approval-holder—

to continue to so practise for such period (not exceeding 4 months) as the Council thinks fit:

- (b) While the probationer continues to so practise during that period, the probationer shall be deemed, for the purposes of subsection (1) of this section and sections 17 and 19 (a) of this Act, to be practising medicine in the employ of or, as the case requires, in association with, an approved person.

16. Supervision of practitioners holding probationary registration—(1) Every person who employs, or practises in association with, a medical practitioner who holds probationary registration (in this section referred to as a probationer) shall appoint, as the supervisor of that probationer, one or more medical practitioners (or medical practitioners of a kind) approved by the Council in order to ensure that the probationer receives appropriate education or training, and appropriate supervision, of the kinds specified by the Council (either generally or in relation to any particular case or class of case).

(2) A person who employs, or practises in association with, a probationer may appoint himself or herself pursuant to subsection (1) of this section as the supervisor of the probationer, if he or she is a medical practitioner (or a medical practitioner of a kind) approved by the Council for the purposes of subsection (1) of this section.

(3) Where a probationer is practising in association with 2 or more persons, nothing in subsection (1) of this section shall require each of those persons to appoint a supervisor in respect of that probationer, but those persons shall be jointly responsible for ensuring that the requirements of subsection (1) of this section are complied with in respect of that probationer.

(4) Every supervisor of a probationer shall,—

- (a) Assess, and report to the Council at intervals specified by the Council (whether generally or in relation to any particular case or class of case), on the performance of the probationer; and
- (b) In each such report, make a recommendation on whether or not the probationer should be granted general registration.

17. Effect of probationary registration—A person who holds probationary registration shall be deemed for all purposes to have general registration while he or she is in the

employ of, or practising in association with, an approved person.

Cf. 1968, No. 46, s. 16 (1)

18. Cancellation of probationary registration—(1) The Council may at any time order the Registrar to cancel the probationary registration of any person, and to give notice of that cancellation to the person, if—

- (a) The Council considers that, by virtue of any of the provisions of section 13 of this Act, the person is not fit to hold probationary registration; or
- (b) The supervisor of the person has not, within 3 years from the date on which the person is granted probationary registration, recommended, pursuant to section 16 (4) (b) of this Act, that the person be granted general registration; or
- (c) The Council considers that the person is no longer—
 - (i) In the employ of, or practising in association with, an approved person; or
 - (ii) Receiving appropriate education or training, and appropriate supervision, in accordance with section 16 (1) of this Act; or
- (d) The Council is satisfied that the person has not, within 18 months from the date on which the person is granted probationary registration, sought to practise medicine in the employ of, or in association with, an approved person.

(2) The Registrar shall cancel the probationary registration of a person upon the person being granted general registration.

(3) Every notice given under subsection (1) of this section shall specify the reasons for the cancellation of registration.

Cf. 1968, No. 46, s. 17

General Registration

19. Qualifications for general registration—Subject to section 13 of this Act, a person is entitled to general registration if he or she satisfies the Council that he or she intends to reside and practise medicine in New Zealand, and that he or she—

- (a) Has been granted probationary registration and has, after that, had, for a period of at least 1 year, satisfactory experience of the practice of medicine in the employ of, or in association with, an approved person; or

- (b) Has been granted or is eligible to be granted probationary registration and has had, for a period of at least 1 year, experience of the practice of medicine outside New Zealand which the Council is satisfied is sufficient to allow exemption from a period of probationary registration in New Zealand; or
- (c) Is a graduate in medicine of any approved institution, and—
 - (i) Has practised medicine competently over a period of at least 3 years during the 5 years immediately before his or her application for general registration, which shall be proved by the production to the Council of written evidence of such practice; and
 - (ii) Has been assessed by the Council, in such manner as the Council thinks fit, as competent to practise medicine; or
- (d) Has been granted probationary registration and has passed or been exempted from such examinations or assessments as may be required by the Council for general registration.

Cf. 1968, No. 46, s. 18 (1)

20. Effect of general registration—(1) A person who holds general registration may practise any branch or sub-branch of medicine, but only while he or she is subject to the general oversight of a person who holds vocational registration in the branch or sub-branch of medicine concerned.

(2) The Council may, by notice to a person who holds general registration, set the conditions of general oversight of the person, and—

- (a) Any conditions set in respect of the person shall be conditions of his or her registration; and
- (b) Different conditions may be set in respect of different persons or classes of persons, and in respect of different branches or sub-branches of medicine.

Vocational Registration

21. Recognised branches and sub-branches of medicine—(1) The Governor-General may from time to time, by Order in Council made on the advice of the Minister given after consultation with the Council,—

- (a) Designate particular branches or sub-branches of medicine as branches or, as the case requires, sub-

branches of medicine in respect of which vocational registration may be granted:

- (b) Prescribe, in respect of each such designated branch or sub-branch of medicine, the requirements that must be satisfied by a medical practitioner for the purpose of being granted vocational registration in respect of that branch or sub-branch of medicine, which requirements may include (without limitation) any 1 or more of the following:

(i) The holding of such qualifications as are prescribed in the order or as the Council determines are appropriate for vocational registration in respect of that branch or sub-branch of medicine:

(ii) The possession of such training and experience as are prescribed in the order or as the Council determines are appropriate for such vocational registration.

(2) Any Order in Council under subsection (1) of this section may, in like manner, be amended or revoked at any time.

(3) Every Order in Council under this section shall be deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989.

22. Qualifications for vocational registration—Subject to section 13 of this Act, a person is entitled to vocational registration in respect of a particular branch or sub-branch of medicine if he or she satisfies the Council that he or she—

(a) Holds general registration; and

(b) Has satisfied such requirements as are—

(i) Prescribed by Order in Council made under section 21 of this Act; or

(ii) Determined by the Council pursuant to such an Order in Council—

as the requirements that must be satisfied by a medical practitioner for the purpose of being granted vocational registration in respect of that branch or sub-branch of medicine; and

(c) Is competent to practise that branch or sub-branch of medicine.

23. Effect of vocational registration—A person who holds vocational registration in respect of a branch or sub-branch of medicine may practise that branch or sub-branch of medicine.

Temporary Registration

24. Qualifications for temporary registration—Subject to section 13 of this Act, a person is entitled to temporary registration if he or she satisfies the Council—

- (a) That he or she is or will be visiting New Zealand—
 - (i) For the purposes of giving post-graduate instruction in medicine; or
 - (ii) For the purposes of obtaining post-graduate training or post-graduate experience, or carrying out research, in medicine in a hospital, or other place, approved (or of a kind approved) by the Council; or
 - (iii) For any other purpose approved by the Council; and
- (b) That he or she—
 - (i) Is qualified for probationary registration or general registration; or
 - (ii) Holds a qualification in medicine from an approved institution; or
 - (iii) Is, in the Council's opinion, otherwise suitable for temporary registration.

Cf. 1968, No. 46, s. 33 (1)–(3)

25. Effect of temporary registration—A person who holds temporary registration shall be deemed for all purposes to have general registration, but only—

- (a) In respect of those branches or sub-branches of medicine that are determined by the Council and specified in the register in respect of the person; and
- (b) For such period (not exceeding 2 years) as is determined by the Council and specified in the register in respect of the person; and
- (c) In the case of a person who is granted temporary registration for the purpose specified in section 24 (a) (ii) of this Act, while he or she is practising in a hospital, or other place, approved (or of a kind approved) by the Council and specified in the register in respect of the person; and
- (d) So long as he or she complies with all conditions imposed by the Council in relation to his or her temporary registration and specified in the register in respect of the person.

Cf. 1968, No. 46, s. 33 (6), (7)

26. Amendment of temporary registration—The Council may, if it thinks fit, do any of the following in respect of any person who holds temporary registration:

- (a) Vary any branches or sub-branches of medicine in respect of which the person is deemed to hold general registration:
- (b) Extend the period specified in the register pursuant to section 25 (b) of this Act for 1 further period of not more than 1 year:
- (c) Substitute another hospital or place (or another kind of hospital or place) for any hospital or place (or kind of hospital or place) specified in the register pursuant to section 25 (c) of this Act:
- (d) Vary any conditions of practice specified in the register pursuant to section 25 (d) of this Act.

Cf. 1968, No. 46, s. 33 (5)

27. Cancellation of temporary registration—(1) The Council may at any time order the Registrar to cancel the temporary registration of any person, and to give notice of that cancellation to the person, if the Council considers that,—

- (a) By virtue of any of the provisions of section 13 of this Act, the person is not fit to hold temporary registration; or
- (b) The person no longer qualifies for temporary registration under section 24 of this Act; or
- (c) The person has breached any of the conditions imposed by the Council in relation to the person's temporary registration.

(2) Every notice given under this section shall specify the reasons for the cancellation of registration.

Cf. 1968, No. 46, s. 33 (8)

Interim Registration

28. Qualifications for interim registration—A person is eligible for interim registration if he or she has applied for probationary registration or general registration, but the application has not been considered by the Council.

Cf. 1968, No. 46, s. 32 (1)

29. Granting of interim registration—(1) The Registrar shall, on the order of the president, grant interim registration for a period not exceeding 4 months to any person who is eligible under section 28 of this Act, pending the consideration

by the Council of his or her application for probationary registration or general registration.

(2) An order may be given by the president under this section in respect of any person or class of persons.

(3) No order shall be given by the president under this section in respect of any applicant or class of applicant unless he or she is satisfied that the applicant or, as the case requires, applicants of that class appear to satisfy all the qualifications necessary to be registered in the manner specified in the application or applications concerned.

Cf. 1968, No. 46, s. 32 (1), (6)

30. Effect of interim registration—A person who holds interim registration shall,—

(a) In the case of a person who has applied for probationary registration, be deemed for all purposes to hold probationary registration:

(b) In the case of a person who has applied for general registration, be deemed for all purposes to hold general registration.

Cf. 1968, No. 46, s. 32 (4)

31. Extension of interim registration—The Registrar shall, on the order of the president, extend the period specified in the register in respect of any interim registration for 1 further period of not more than 4 months.

Cf. 1968, No. 46, s. 32 (3)

32. Cancellation of interim registration—(1) The president may at any time order the Registrar to cancel the interim registration of any person, and give notice of the cancellation to the person, if the president considers that the person no longer appears to satisfy all the qualifications necessary for registration of the kind applied for by the person.

(2) The Registrar shall cancel the interim registration of a person upon the person being granted probationary registration or general registration.

(3) Every notice given under subsection (1) of this section shall specify the reasons for the cancellation of registration.

Cf. 1968, No. 46, s. 32 (5)

Procedure for Registration

33. Applications for registration—(1) Every person who wishes to be granted registration (other than interim

registration) shall apply to the Registrar in accordance with this section.

(2) Every application for registration shall—

- (a) Be made in such form, and contain such information, as is determined from time to time by the Council; and
- (b) Be accompanied by—
 - (i) The fee (if any) set by the Council; and
 - (ii) Such evidence in support of the application as may from time to time be required by the Council.

(3) Subject to subsection (4) of this section, on receipt by the Registrar of an application for registration made in accordance with this section, the Registrar shall, as soon as reasonably practicable, submit the application to the Council for its consideration.

(4) Where any fine imposed on a medical practitioner under section 110 of this Act, or any costs payable under an order made under that section, or any costs or expenses payable under an order made under section 103 (4) of this Act, remain unpaid, the Registrar may decline to do any act, or to permit any act to be done, in relation to the registration of that practitioner until the fine or costs or expenses are paid.

(5) Where, pursuant to subsection (4) of this section, the Registrar declines to do any act, or to permit any act to be done, in relation to the registration of a medical practitioner, that medical practitioner may, by application in writing made to the Council, request the Council to review the Registrar's decision, and on any such application—

- (a) The Council shall, as soon as practicable, review the Registrar's decision, and shall either confirm or revoke that decision; and
- (b) The Registrar's decision shall have effect, or cease to have effect, accordingly.

Cf. 1968, No. 46, s. 19

34. Procedure for considering applications—(1) The Council shall consider an application for registration as soon as reasonably practicable after its receipt.

(2) The Council may, if it thinks fit, receive any information from or question the applicant, or any other person, in respect of an application being considered by the Council; and, for the purposes of any such questioning, the president may administer an oath to any person.

(3) The Council may, if it thinks fit, require any person to verify by statutory declaration any statement made by the

person in respect of an application being considered by the Council.

(4) The Council may, before authorising the registration of any applicant, require the applicant to take and pass an examination or other assessment that is set or recognised by the Council, for the purpose of satisfying the Council that the applicant has either or both of the following:

- (a) Sufficient knowledge and experience to practise medicine (or a branch or sub-branch of medicine) in New Zealand;
- (b) A reasonable ability to communicate effectively in English.

(5) If the Council proposes to decline any application or to impose any conditions on registration, it shall give the applicant,—

- (a) A notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the Council proposes to decline the application or impose conditions; and
- (b) Subject to section 134 of this Act, a copy of any information on which the Council relies in proposing to decline the application or impose conditions; and
- (c) A reasonable opportunity to make written submissions and be heard, either personally or by the applicant's representative, in respect of the matter.

Cf. 1968, No. 46, s. 20; 1988, No. 150, s. 25

35. Applications for re-registration—Without limiting section 34 of this Act, where, pursuant to section 111 (1) (b) of this Act, the Tribunal has imposed any conditions that must be satisfied by a person before he or she may apply to have his or her name restored to the register or any part of the register, the Council shall not authorise the registration of that person unless the Council is satisfied that the person has satisfied those conditions.

36. Decisions of Council on registration—(1) If the Council, after considering any application for registration, decides that—

- (a) The applicant should be registered as specified in the application; or
- (b) The applicant should be registered as specified in the application, but on conditions specified by the Council,—

it shall so order, and the Registrar shall register the applicant as ordered by the Council and notify him or her accordingly (including, where conditions are imposed, the reasons for the conditions).

(2) If the Council, after considering any application for registration, decides that the applicant should not be registered, it shall so order, and the Registrar shall notify the applicant of the decision and the reasons for it.

Cf. 1968, No. 46, s. 21; 1988, No. 150, s. 26

Register of Medical Practitioners

37. Register—(1) The Council shall maintain 1 or more registers of medical practitioners, and shall make provision as part of the register, or maintain separate registers, in respect of the following:

- (a) Persons holding probationary registration:
- (b) Persons holding general registration:
- (c) Persons holding vocational registration, grouped according to the branch or sub-branch of medicine to which the registration relates:
- (d) Persons holding temporary registration:
- (e) Persons holding interim registration, grouped according to the registration applied for:
- (f) Persons holding current annual practising certificates:
- (g) Persons holding interim practising certificates.

(2) The Registrar shall enter the following information in the register in respect of each medical practitioner:

- (a) The type of registration held:
- (b) The name of the practitioner:
- (c) Either—
 - (i) The practitioner's residential address; or
 - (ii) The practitioner's professional address,—
 whichever the practitioner prefers:
- (d) Particulars of the qualifications by virtue of which the practitioner is registered, and any additional qualifications authorised for inclusion in the register by section 39 of this Act:
- (e) The date of the practitioner's registration:
- (f) Particulars of annual practising certificates or interim practising certificates issued in respect of the practitioner:
- (g) Any current conditions of registration, or of a practising certificate, imposed under this Act:

(h) If the practitioner's registration or practising certificate is suspended under this Act, the fact of that suspension, and any current conditions relating to the suspension:

(i) Any note under section 46 (3) (a) of this Act:

(j) Such other particulars as the Council considers appropriate.

(3) The Registrar shall from time to time make such amendments to the register as are necessary to reflect any changes in the information referred to in subsection (2) of this section.

(4) The register may be kept in such manner as the Registrar thinks fit, including, either wholly or partly, by means of a device or facility—

(a) That records or stores information electronically or by other means; and

(b) That permits the information so recorded to be readily inspected or reproduced in usable form.

Cf. 1968, No. 46, s. 24 (1); 1979, No. 53, s. 9

38. Certificates relating to registration—(1) The Registrar shall, on the application of any medical practitioner and on payment of the fee (if any) set by the Council, issue to that practitioner a certificate of registration containing such information as may be prescribed by the Council.

(2) The Registrar shall, on payment of the fee (if any) set by the Council, supply a certified copy of any entry in the register to any person who so requests.

Cf. 1968, No. 46, s. 24 (2); 1988, No. 150, s. 27 (5), (6)

39. Entry of additional qualifications in register—(1) Any medical practitioner who at the time of his or her registration holds, or who after registration obtains, any qualification other than that by virtue of which he or she is registered, may apply to the Council to have that qualification included in the register.

(2) If the Council is satisfied that—

(a) A practitioner who has applied under this section holds the qualification stated; and

(b) The qualification is of sufficient standing and relevance to be included in the register,—

the Council shall order the Registrar to include the qualification in the register.

Cf. 1968, No. 46, s. 28; 1970, No. 142, s. 7; 1988, No. 150, s. 28

40. Practitioner to notify change of name or address—

(1) Every medical practitioner who at any time changes his or her name or the address appearing in the register in respect of that person shall, no later than 1 month after the change, give notice to the Registrar of the new name or address.

(2) The Registrar shall, on receipt of any notice given under this section, amend any entry in the register relating to the medical practitioner accordingly.

Cf. 1968, No. 46, s. 26 (1); 1988, No. 150, s. 29

41. Correction of register—(1) If any particulars appearing in the register in respect of any medical practitioner are proved to the satisfaction of the Council to be, or are to the knowledge of the Council, incorrect in any respect (whether or not they were correct at the time they were included in the register), the Council shall order the Registrar to amend the register accordingly.

(2) Where any entry in the register relating to a medical practitioner is altered under this section, the Registrar shall forthwith give notice of the alteration to the practitioner.

Cf. 1968, No. 46, s. 29 (2)

42. Revision of register—(1) The Registrar may at any time, and shall if the Council so orders, inquire, by notice to any medical practitioner, whether or not the practitioner—

- (a) Wishes to have his or her name retained in the register; or
- (b) Has ceased to practise medicine.

(2) If no reply is received to a notice under this section within 6 months after it has been sent, or if the notice is returned undelivered to the Registrar, the Council may order the Registrar to remove from the register the name of the medical practitioner to whom the notice was sent.

(3) Notwithstanding anything in section 137 of this Act, any notice under subsection (1) of this section shall be sent by registered post, addressed to the medical practitioner at his or her usual or last known place of residence or business.

(4) If the Council believes on reasonable grounds that any medical practitioner has died, it may order the Registrar to remove the name of the practitioner from the register.

Cf. 1968, No. 46, s. 27 (1)–(3); 1988, No. 150, s. 31

43. Notification of death of medical practitioner—Every Registrar within the meaning of the Births, Deaths, and Marriages Registration Act 1995, on receiving notice under that Act of the death of any medical practitioner, shall

forthwith send to the Registrar a written notification of that death, with the particulars of the date and place of death; and on receipt of that notification the Registrar shall remove the name of the practitioner from the register.

Cf. 1968, No. 46, s. 25

44. Removal from register on request—(1) The Council shall, on the application of any medical practitioner, order the Registrar to remove the name of that practitioner from the register.

(2) The Council shall, on the application of any medical practitioner who is registered on the vocational register in respect of a branch or sub-branch of medicine, order the Registrar to remove the name of that practitioner from the vocational register in respect of that branch or sub-branch of medicine.

(3) The removal, under this section, of a practitioner's name from the register or any part of the register does not affect that practitioner's liability for any act done or default made before the date of the removal.

Cf. 1968, No. 46, s. 31 (2); 1988, No. 150, s. 30 (2), (3)

45. Removal from register on Council's order—(1) If—

(a) Any person has been registered under this Act by reason of any false or misleading representation or declaration, made either orally or in writing; or

(b) Any person not entitled to be registered under this Act has been so registered; or

(c) The Council believes on reasonable grounds that any medical practitioner who holds general registration (whether or not that person also holds vocational registration) has not resided in New Zealand for a period of 6 consecutive months in any period of 3 consecutive years since being granted general registration (other than a period of absence from New Zealand of not more than 3 years for the purpose of post-graduate study),—

the Council—

(d) Shall order the Registrar to remove the name of that person from the register and give notice of the removal to the person; and

(e) May, if no appeal against the order has been made under this Act, order the Registrar to notify the fact of the removal in such publications as the Council may order.

(2) Nothing in subsection (1) (c) of this section applies in respect of any period of absence from New Zealand before the 1st day of April 1980.

(3) Where subsection (1) (c) of this section applies in respect of any person who holds both general registration and vocational registration, the person's name shall be removed from the register in respect of both types of registration.

(4) The removal, under subsection (1) (c) of this section, of a practitioner's name from the register does not affect that practitioner's liability for any act done or default made before the date of the removal.

Cf. 1968, No. 46, ss. 27A (1), 29 (1); 1979, No. 53, s. 12

46. Removal of qualifications or overseas registration—(1) If the Council is satisfied that—

(a) Any university or other educational establishment, having granted to a medical practitioner a qualification that may be entered in the register, has lawfully cancelled or suspended the qualification; or

(b) Any overseas registering authority that maintains a register of persons who practise medicine—

(i) Has removed the name of a medical practitioner from that register; or

(ii) Has suspended a medical practitioner's registration,—

the Council may review the registration of that medical practitioner.

(2) The form of any review under this section shall be at the Council's discretion, but in every case the Council shall give to the medical practitioner whose registration is under review,—

(a) A notice containing such particulars as will clearly inform that practitioner of the substance of the grounds on which the Council has decided to carry out the review; and

(b) Subject to section 134 of this Act, any information in the possession of the Council relating to the cancellation or suspension of a qualification, or removal or suspension of any overseas registration, held by that practitioner; and

(c) A reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.

(3) After a review under this section, the Council may, if it thinks it appropriate to do so,—

- (a) Order the Registrar to make a note in the register of the fact of cancellation or suspension of the qualification, or removal or suspension of the overseas registration; or
 - (b) Order that the practitioner's registration be suspended for such period as the Council thinks fit; or
 - (c) Order that the practitioner's name be removed from the register.
- (4) The Registrar shall ensure that a copy of any order made under subsection (3) of this section is given to the medical practitioner in respect of whom it is made.

Cf. 1968, No. 46, ss. 30, 58A; 1983, No. 40, s. 9; 1988, No. 150, s. 61 (4)

47. Effect of suspension of registration—Any medical practitioner whose registration is suspended under any Part of this Act shall be deemed, for the purposes of this Act (other than the Part under which the practitioner's registration was suspended), not to be registered during the time his or her registration is suspended; but forthwith on the expiry of that period, his or her registration shall be revived.

Cf. 1988, No. 150, s. 57

48. Surrender of certificate of registration—Any medical practitioner—

- (a) Whose name is removed from the register; or
 - (b) Whose registration is suspended; or
 - (c) On whose registration conditions are placed; or
 - (d) Whose type of registration changes—
- shall, within 14 days after the date on which notice of the removal, suspension, conditions, or change is given to him or her, deliver to the Registrar any certificate of registration held by him or her at the time of receiving the notice.

Cf. 1988, No. 150, s. 66

49. Publication and inspection of register—(1) The Council shall from time to time cause the register to be published in such form as it thinks fit.

(2) Without limiting the generality of subsection (1) of this section,—

- (a) Any register published pursuant to that subsection may be in a printed or an electronic form;
- (b) Any information included in such a register may be abbreviated.

(3) The Registrar shall keep the register open for public inspection at the offices of the Council during the ordinary office hours of the Council.

(4) The Council may charge any person who—

(a) Wishes to purchase a copy of the register (or any part of the register); or

(b) Wishes to inspect the register—

such fee (if any) as is set by the Council in respect of the matter.

Cf. 1968, No. 46, ss. 36, 37 (1); 1983, No. 40, s. 5; 1988, No. 150, s. 27 (4), (7)

50. Notice of conditions imposed on registration or practising certificate—The Registrar shall, if so ordered by the Council or the Tribunal, give notice, to any person who employs a medical practitioner or practises in association with a practitioner, of any conditions imposed on that practitioner's registration or annual practising certificate.

PART IV

PRACTISING CERTIFICATES

51. Applications for annual practising certificate—

(1) Every medical practitioner who holds probationary registration, general registration, or vocational registration and who wishes to obtain an annual practising certificate shall apply to the Registrar in accordance with this section.

(2) Every application for an annual practising certificate shall—

(a) Be in such form and include such information as may be determined by the Council, including a statement specifying whether or not the applicant is, at the date of the application, engaged in the practice of medicine; and

(b) Be accompanied by the fee (if any) set by the Council.

(3) Subject to subsection (4) of this section and to section 52 of this Act, on receiving an application that complies with this section, the Registrar shall issue to the applicant an annual practising certificate.

(4) Where any fine imposed on a medical practitioner under section 110 of this Act, or any costs payable under an order made under that section, or any costs or expenses payable under an order made under section 103 (4) of this Act, remain unpaid, the Registrar may decline to do any act, or to permit any act to be done, in relation to the issue of a practising

certificate to that practitioner until the fine or costs or expenses are paid.

(5) Where, pursuant to subsection (4) of this section, the Registrar declines to do any act, or to permit any act to be done, in relation to the issuing of a practising certificate to a medical practitioner, that medical practitioner may, by application in writing made to the Council, request the Council to review the Registrar's decision, and on any such application—

- (a) The Council shall, as soon as practicable, review the Registrar's decision, and shall either confirm or revoke that decision; and
- (b) The Registrar's decision shall have effect, or cease to have effect, accordingly.

Cf. 1968, No. 46, s. 67 (2)

52. Restrictions on issue of annual practising certificate—(1) Subject to section 51 (4) of this Act, if, in respect of any application for an annual practising certificate, the Registrar believes on reasonable grounds that—

- (a) The applicant has at any time failed to maintain a reasonable standard of professional competence; or
- (b) The applicant has not satisfactorily completed the requirements of any competence programme that applies to him or her or that he or she has been ordered by the Council to complete; or
- (c) The applicant is a medical practitioner to whom a recertification programme applies; or
- (d) The applicant has not held an annual practising certificate within the 3 years immediately preceding the date of application; or
- (e) The applicant has not engaged in the practice of medicine within the 3 years immediately preceding the date of application,—

the Registrar shall refer the application to the Council.

(2) The Registrar or the Council may decline to issue an annual practising certificate if satisfied that any information included in the application is false or misleading.

Cf. 1968, No. 46, s. 67 (2); 1979, No. 53, s. 27 (2); 1980, No. 122, s. 3 (2)

53. Procedure for considering applications—(1) The Council shall consider an application for an annual practising certificate referred to it by the Registrar as soon as reasonably practicable after receiving it.

(2) If the Council proposes to decline an application for an annual practising certificate or to impose conditions on an annual practising certificate, it shall give the applicant,—

- (a) A notice containing such particulars as will clearly inform the applicant of the substance of the grounds on which the Council proposes to decline the application or impose conditions; and
- (b) Subject to section 134 of this Act, a copy of any information on which the Council relies in proposing to decline the application or impose conditions; and
- (c) A reasonable opportunity to make written submissions and be heard, either personally or by his or her representative, in respect of the application.

54. Decisions of Council as to practising certificates—

(1) When an application for an annual practising certificate has been referred to the Council by the Registrar, the Council shall not decide that the certificate should be issued unless it is satisfied that the applicant is competent to practise medicine in accordance with his or her registration (or, if the Council imposes conditions on the annual practising certificate, that the applicant is competent to do so if he or she complies with those conditions).

(2) If the Council, after considering any application for an annual practising certificate, decides that—

- (a) The applicant should be issued with an annual practising certificate; or
- (b) The applicant should be issued with an annual practising certificate, but subject to conditions specified by the Council,—

the Council shall so order; and the Registrar shall issue the certificate, and notify the applicant, accordingly.

(3) If the Council, after considering any application for an annual practising certificate, decides that—

- (a) The applicant should not be issued with an annual practising certificate until the applicant has fulfilled 1 or more conditions determined by the Council; or
- (b) The applicant should not be issued with an annual practising certificate,—

the Council shall so order; and the Registrar shall notify the applicant of the decision and the reasons for it.

(4) If the Council declines an application for an annual practising certificate under subsection (3) (a) of this section, it may nevertheless order that the Registrar issue an interim

practising certificate to the applicant under section 57 of this Act, pending fulfilment of the conditions imposed.

55. Currency of annual practising certificate—

(1) Subject to subsection (2) of this section, every annual practising certificate shall be in force,—

(a) In the absence of any rules made under section 56 of this Act,—

(i) If the practising certificate is issued before the date of expiry of the current annual practising certificate held by the applicant, from the commencement of the 1st day of April next after the date of its issue until the close of the following 31st day of March; and

(ii) In any other case, from the commencement of the date of its issue until the close of the following 31st day of March; or

(b) Where any rules made under section 56 of this Act are in force, in accordance with the provisions of those rules.

(2) If, at any time during the currency of an annual practising certificate, its holder ceases to be registered, the certificate shall be deemed to be cancelled.

(3) Every medical practitioner who is entitled to receive an annual practising certificate under section 51 (3) of this Act shall be deemed to be the holder of that certificate from the date when he or she applied for it in accordance with that section until the date it is issued or he or she is sooner notified by the Registrar that it will not be issued.

Cf. 1968, No. 46, s. 67 (2); 1988, No. 150, s. 16

56. Council may make rules prescribing when annual practising certificates in force—(1) Subject to subsection (2) of this section, the Council may, from time to time, make rules—

(a) Prescribing, for the purposes of section 55 of this Act, when annual practising certificates shall be in force, including (without limitation)—

(i) Provision for annual practising certificates issued to different medical practitioners or different classes of medical practitioners to expire on different dates:

(ii) Provision for determining the dates on which annual practising certificates are to expire, including (without limitation) provision for such dates to be determined by random selection:

(iii) Provision for the transition between different systems for determining when annual practising certificates shall be in force (including the system set out in section 55 (1) (a) of this Act).

(2) Rules made under this section shall give effect to the general principle that annual practising certificates shall be in force for 1 year, but such rules may provide that such certificates are to have effect for a shorter or a longer period in any of the following cases:

- (a) When an annual practising certificate is first issued to a medical practitioner:
- (b) When an annual practising certificate is issued to a medical practitioner after a period during which that medical practitioner has not held such a certificate:
- (c) In order to provide for the transition between different systems for determining when annual practising certificates shall be in force.

(3) No rules made under this section shall have any force or effect until a copy of the rules has been published in the *Gazette*.

(4) The publication in the *Gazette* of a copy of any rules purporting to have been made under this section by the Council shall be sufficient evidence, in the absence of proof to the contrary, that the rules have been duly made.

(5) The Council may, from time to time, amend or revoke any rules made under this section, and the provisions of subsections (3) and (4) of this section, with all necessary modifications, shall apply in respect of any such amendment or revocation.

(6) The Council shall take such steps as it considers reasonably necessary to ensure that all rules made under this section are brought to the attention of those persons to whom the rules apply.

57. Interim practising certificate—(1) Where, under section 54 (4) of this Act, the Council orders the Registrar to issue to an applicant for an annual practising certificate an interim practising certificate, the Registrar shall, on payment by the applicant of the fee (if any) set by the Council, issue the interim practising certificate, which shall, subject to subsections (2) and (3) of this section,—

- (a) Be in force for such period, not exceeding 4 months; and
- (b) Be subject to such conditions—
as the Council specifies.

(2) If, at any time during the currency of an interim practising certificate,—

- (a) The holder of the certificate ceases to be registered; or
- (b) An annual practising certificate is issued to the holder of the certificate,—

the interim practising certificate shall be deemed to be cancelled.

(3) The Council may at any time order the Registrar to cancel any interim practising certificate and give notice of the cancellation, and the reasons for the cancellation, to the medical practitioner concerned.

58. Endorsements on practising certificates—The Registrar shall endorse on every annual practising certificate or interim practising certificate issued to a medical practitioner under this Act—

- (a) The type of registration held by the practitioner; and
- (b) If the practitioner holds vocational registration, the branch or sub-branch of medicine to which that registration relates; and
- (c) Any conditions imposed under this Act on the registration of the practitioner or the certificate.

59. Surrender of practising certificate—Any medical practitioner—

- (a) Whose name is removed from the register; or
- (b) Whose registration or practising certificate is suspended;

or

(c) Whose practising certificate is required for endorsement by the Registrar under section 58 of this Act—
shall, within 14 days after the date on which notice of the removal, suspension, or requirement for endorsement, is given to him or her, deliver to the Registrar any current annual practising certificate or interim practising certificate then held by him or her.

Cf. 1988, No. 150, s. 66

PART V

COMPETENCE

60. Review of practitioner's competence—(1) The Council—

- (a) May, at any time; and
- (b) Shall, on receiving notification of a determination made under section 92 (1) (a) of this Act,—

review the competence to practise medicine of any medical practitioner who holds a current practising certificate, whether or not there is reason to believe that the practitioner's competence may be deficient.

(2) In conducting a review under subsection (1) of this section, the Council shall consider the following matters:

- (a) Whether, in the Council's opinion, the practitioner has the skill and knowledge required to practise medicine in accordance with his or her registration; and
- (b) Whether, in the Council's opinion, the practitioner's practice of medicine meets the standard reasonably to be expected of a medical practitioner who holds registration of the type held by the practitioner.

61. Procedure on review of competence—(1) The form of a review under section 60 of this Act shall be at the Council's discretion, but in every case the Council shall give to the practitioner under review,—

- (a) A notice containing such particulars as will clearly inform that practitioner of the substance of the grounds (if any) on which the Council has decided to carry out the review; and
- (b) Subject to section 134 of this Act, any information relating to his or her competence that is in the possession of the Council; and
- (c) A reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.

(2) Where any medical practitioner exercises the right conferred by subsection (1) (c) of this section to be heard on the matter personally, the medical practitioner is entitled to have present, during the practitioner's appearance, any person chosen by that practitioner and who consents to be present.

(3) If, after conducting a review under section 60 of this Act, the Council has reason to believe that the competence of a medical practitioner is deficient, the Council may make either or both of the following orders:

- (a) That the practitioner undertake a competence programme;
- (b) That 1 or more conditions be placed on the practitioner's registration or practising certificate, or both.

(4) The Registrar shall ensure that, within 5 working days of the making of an order under subsection (3) of this section,—

- (a) A copy of the order is given to the medical practitioner concerned; and

(b) All administrative steps are taken to give effect to the order.

(5) An order made under subsection (3) of this section shall take effect from the day on which a copy of the order is given under subsection (4) of this section to the practitioner concerned or from such date as may be specified in the order, whichever is the later.

62. Competence programmes—(1) For the purpose of examining or improving the competence of medical practitioners to practise medicine, the Council may from time to time set or recognise competence programmes in respect of medical practitioners who hold or apply for practising certificates.

(2) Any competence programme may be made to apply generally in respect of all such medical practitioners, or in respect of a specified medical practitioner, or in respect of any specified class or classes of such medical practitioners.

(3) Any competence programme may require a medical practitioner to do any 1 or more of the following, within such period, or at such intervals, prescribed in the programme:

(a) Pass an examination:

(b) Complete a period of practical training:

(c) Complete a period of practical experience:

(d) Undertake a course of instruction:

(e) Permit a registered health professional specified by the Council to examine the clinical records kept by the practitioner in relation to his or her patients:

(f) Anything else that the Council considers appropriate.

(4) The Council may specify a period within which the medical practitioners to which a competence programme applies must comply with the requirements of the programme.

(5) The Council may exempt any medical practitioner or class of medical practitioners from all or any of the requirements of a competence programme.

(6) Within 15 working days after a competence programme is set or recognised by the Council, the Registrar shall notify every medical practitioner who is required to undertake the programme of that fact and of the details of the programme.

63. Recertification programmes—(1) For the purpose of ensuring that medical practitioners who hold vocational registration are competent to practise the branch or sub-branch of medicine in respect of which they are registered, the Council

may from time to time set or recognise recertification programmes in respect of such practitioners.

(2) Any recertification programme may be made to apply generally in respect of all such medical practitioners, or in respect of a specified medical practitioner, or in respect of any specified class or classes of such medical practitioners.

(3) Any recertification programme may require a medical practitioner to do any 1 or more of the following at such intervals (if any) prescribed in the programme:

(a) Pass an examination:

(b) Complete a period of practical training:

(c) Undertake a course of instruction:

(d) Permit a registered health professional specified by the Council to examine—

(i) Any or all of his or her clinical and other practices:

(ii) Any or all of his or her relations with other registered health professionals:

(iii) Any or all of the clinical records kept by the practitioner in relation to his or her patients:

(e) Undergo an inspection or assessment:

(f) Adopt and undertake a systematic process for ensuring that the services provided by the practitioner are of a quality appropriate to his or her registration:

(g) Anything else that the Council considers appropriate.

(4) Every recertification programme shall allow a reasonable time (being not less than 3 years) for a medical practitioner to whom it relates to comply with its requirements.

(5) The Council may exempt any medical practitioner or class of medical practitioners from all or any of the requirements of any recertification programme.

(6) Within 15 working days after a recertification programme is set or recognised by the Council, the Registrar shall notify every medical practitioner who is required to undertake the programme of that fact and of the details of the programme.

64. Unsatisfactory results of competence programme or recertification programme—(1) If any medical practitioner who is required to complete a competence programme or a recertification programme does not satisfy the requirements of the programme, the Council may make any 1 or more of the following orders:

(a) That the practitioner's registration or practising certificate, or both, be subject to such condition or conditions as the Council considers appropriate:

(b) In the case of a practitioner who holds vocational registration, that the practitioner's vocational registration be suspended, (in which case the practitioner shall be deemed to hold general registration):

(c) That the practitioner's registration or practising certificate be suspended.

(2) If the Council proposes to make an order under subsection (1) of this section, it shall give to the medical practitioner concerned,—

(a) A notice containing such particulars as will clearly inform the practitioner of the substance of the grounds on which the Council proposes to make the order; and

(b) Subject to section 134 of this Act, a copy of any information on which the Council relies in proposing to make the order; and

(c) A reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.

(3) Any order made under subsection (1) of this section shall remain in effect until such time as the medical practitioner concerned has satisfied all the requirements of the competence programme or, as the case may be, the recertification programme, and for that purpose the Council may extend the period within which the practitioner is required to satisfy those requirements.

(4) The failure of a medical practitioner to satisfy the requirements of any competence programme or recertification programme that applies to the medical practitioner shall not, of itself, be grounds for the taking of disciplinary action under Part VIII of this Act against that medical practitioner.

65. Confidentiality of information—(1) No person who examines any clinical records of any medical practitioner pursuant to a requirement of a competence programme or a recertification programme shall disclose any information (being information about any identifiable individual) obtained by that person as a result of that examination, except for 1 or more of the following purposes:

(a) For the purposes of making a report to the Council in relation to the medical practitioner concerned:

(b) For the purposes of any criminal investigation or any criminal proceedings taken against that practitioner:

(c) For the purpose of making the information available to the person to whom the information relates, in any case where—

(i) The Council directs that the information be made available; or

(ii) The person requests access to the information.

(2) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who discloses any information in contravention of subsection (1) of this section.

(3) No information, statement, or admission that is disclosed or made by any medical practitioner in the course of, or for the purposes of satisfying the requirements of, any competence programme or recertification programme and that relates to any conduct of that medical practitioner (whether that conduct occurred before or during that programme)—

(a) Shall be used or disclosed for any purpose other than the purposes of that programme; or

(b) Shall be admissible against that person, or any other person, in any proceedings in any court or before any person acting judicially.

PART VI

QUALITY ASSURANCE ACTIVITIES

66. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Declared quality assurance activity” means a quality assurance activity in respect of which a declaration made under section 68 of this Act is in force when the activity is engaged in:

“Health service” includes any administrative or other service related to a health service:

“Judicial proceeding” means any proceeding that is a judicial proceeding within the meaning of section 108 of the Crimes Act 1961:

“Ministerial authority” means an authority given by the Minister under section 72 of this Act and for the time being in force:

“Quality assurance activity” means an activity that consists of, or includes, or results in, an assessment or evaluation of any health services provided by a medical practitioner (whenever those services are or were provided), where the assessment or evaluation is carried out for the purpose of improving the practices

or competence of the medical practitioner; and, without limiting the generality of the foregoing, includes—

(a) Any study of the incidence or causes of conditions or circumstances that may affect the quality of health services provided by a medical practitioner:

(b) The making of recommendations about the provision of such services as a result of such an assessment, evaluation, or study:

(c) The monitoring of the implementation of any such recommendations:

“Serious offence” means an offence punishable by imprisonment for a term of 2 years or more.

(2) For the purposes of this Part of this Act,—

(a) Information about a matter is not to be taken to have become known merely because of the existence or dissemination of suspicions, allegations, or rumours about that matter:

(b) Information may be taken to have become known solely as a result of a declared quality assurance activity even though the information was previously known to a person whose conduct has been or is being investigated by the persons engaging in the declared quality assurance activity.

Cf. Health Insurance Act 1973 (Aust.), s. 124w

67. Purpose of this Part—The purpose of this Part of this Act is to encourage effective quality assurance activities in relation to health services provided by medical practitioners by—

(a) Protecting the confidentiality of—

(i) Information that becomes known solely as a result of such activities; and

(ii) Documents brought into existence solely for the purposes of such activities; and

(b) Giving immunity from civil liability to persons who engage in such activities in good faith.

Cf. Health Insurance Act 1973 (Aust.), s. 124v

68. Minister may declare activity to be quality assurance activity—(1) Subject to this Part of this Act, the Minister may from time to time, by notice in writing signed by the Minister, declare any quality assurance activity to be a quality assurance activity to which this Part of this Act applies.

(2) A notice issued under this section may describe a quality assurance activity in any way, including any 1 or more of the following ways:

- (a) By reference to the nature of the activity;
- (b) By reference to a person who is engaging, or who proposes to engage, in the activity;
- (c) By reference to circumstances in which the activity is being, or is proposed to be, engaged in.

(3) The Minister may not make a declaration under this section in respect of a quality assurance activity unless the Minister is satisfied—

- (a) That any medical practitioner who is engaging, or who proposes to engage, in the activity is authorised to do so—
 - (i) By or under this Act; or
 - (ii) By a person that provides health services; or
 - (iii) By an educational institution; or
 - (iv) By a body established wholly or partly for the purposes of research; or
 - (v) By any body or association the purpose of which, or 1 of the purposes of which, is to represent the interests of medical practitioners or any class or classes of medical practitioners; and
- (b) That it is in the public interest that the protections conferred by this Part of this Act should apply in respect of the activity.

Cf. Health Insurance Act 1973 (Aust.), s. 124x

69. Duration of declaration—Every notice issued under section 68 of this Act shall, unless sooner revoked, remain in force for a period of 5 years after the date on which it is issued, but nothing in this section shall prevent the Minister from issuing another notice in respect of the same quality assurance activity.

Cf. Health Insurance Act 1973 (Aust.), s. 124x

70. Confidentiality of information—(1) Subject to section 71 of this Act, no person who obtains any information that became known solely as a result of a declared quality assurance activity shall—

- (a) Make a record of that information; or
- (b) Disclose that information to another person or in any judicial proceeding—

except for the purposes of that activity or in accordance with a Ministerial authority.

(2) Subsection (1) of this section applies whether the person obtained the information in the course of engaging in the declared quality assurance activity, or as a result of a disclosure in accordance with a Ministerial authority, or in any other way.

(3) Subject to section 71 of this Act, no person shall be required—

(a) To produce in any judicial proceeding any document that was brought into existence solely for the purposes of a declared quality assurance activity; or

(b) To disclose in any judicial proceeding any information that became known solely as a result of any such activity—

except where it is necessary to produce the document or disclose the information for the purposes of the declared quality assurance activity or in accordance with a Ministerial authority.

(4) This section continues to apply in respect of—

(a) Information that became known solely as a result of an activity that is a declared quality assurance activity; and

(b) Documents brought into existence solely for the purposes of such an activity,—

even though that activity has since ceased to be a declared quality assurance activity.

Cf. Health Insurance Act 1973 (Aust.), s. 124v (1), (2), (7)

71. Exceptions to prohibition on disclosure—

(1) Nothing in section 70 of this Act prohibits the production, disclosure, or recording of any information that does not identify, either expressly or by implication, a particular individual.

(2) Nothing in section 70 (3) of this Act prohibits the production or disclosure of a document that does not identify, either expressly or by implication, a particular individual.

(3) Nothing in section 70 of this Act prohibits the disclosure of any information with the consent of every person who would be directly or indirectly identified by the disclosure.

(4) Nothing in section 70 of this Act prohibits the disclosure of any information to the Minister, or to any person authorised by the Minister, for the purpose of enabling the Minister to decide whether or not to authorise the disclosure of the information under section 72 of this Act.

(5) Nothing in section 70 of this Act prohibits the disclosure of any information for the purposes of the prosecution of an offence against section 142 (1) (b) of this Act.

Cf. Health Insurance Act 1973 (Aust.), s. 124v (3)-(6)

72. Minister may authorise disclosure of information—(1) Subject to subsection (2) of this section, if the Minister is satisfied, in respect of any information to which section 70 of this Act applies, that the information relates to conduct (whenever occurring) that constitutes or may constitute a serious offence, the Minister may, by notice in writing signed by the Minister, authorise the disclosure of that information, in such manner and on such conditions (if any) as are specified in the notice, for any 1 or more of the following purposes:

- (a) For the purposes of the investigation and prosecution of offences:
- (b) For the purposes of a Royal Commission, or a commission of inquiry appointed by an Order in Council made under the Commissions of Inquiry Act 1908.

(2) Subsection (1) of this section does not authorise the Minister to authorise the disclosure of information of a non-factual nature (such as expressions of opinion) unless the information consists only of matter contained in a report prepared by a person who engaged in the declared quality assurance activity.

(3) The Minister may at any time—

- (a) Revoke any Ministerial authority; or
- (b) Revoke, amend, or add to any condition imposed on a Ministerial authority.

(4) The fact that a Ministerial authority authorises the disclosure of information does not—

- (a) Require the disclosure of that information; or
- (b) Create a duty to disclose that information.

Cf. Health Insurance Act 1973 (Aust.), s. 124z

73. Exclusion of liability—(1) Where—

- (a) Any person (in this subsection referred to as the relevant person) engages in any conduct in good faith in connection with a declared quality assurance activity; and
 - (b) That conduct adversely affects any right or interest of another person who is a medical practitioner,—
- no civil proceedings, other than proceedings in respect of a breach of the rules of natural justice that is alleged to have

occurred in the course of that conduct, shall lie against the relevant person in respect of that conduct.

(2) This section continues to apply in respect of conduct that was engaged in by any person in connection with a declared quality assurance activity even though that activity has since ceased to be a declared quality assurance activity.

Cf. Health Insurance Act 1973 (Aust.), s. 124zB

74. Notices deemed to be regulations—Every notice issued under section 68 of this Act, and every amendment or revocation of any such notice, shall be deemed to be a regulation for the purposes of the Acts Interpretation Act 1924, the Acts and Regulations Publication Act 1989, and the Regulations (Disallowance) Act 1989.

75. Review of operation of this Part—(1) As soon as practicable after the expiry of the period of 2 years beginning on the commencement of this section, the Director-General of Health shall—

(a) Review the operation of this Part of this Act since the date of the commencement of this section; and

(b) Consider whether—

(i) This Part of this Act should be retained or repealed; and

(ii) Any amendments to this Part of this Act are necessary or desirable; and

(c) Report his or her findings to the Minister.

(2) As soon as practicable after receiving a report from the Director-General of Health under subsection (1) (c) of this section, the Minister shall lay a copy of that report before the House of Representatives.

PART VII

CONDITION AFFECTING FITNESS TO PRACTISE MEDICINE

76. Notification of condition affecting fitness to practise medicine—(1) If the Dean of a school or faculty of a university in New Zealand has reason to believe that a person who is graduating from that school or faculty with a degree in medicine would be unfit to practise medicine because of some mental or physical condition, the Dean shall give notice to the Registrar of all the circumstances as soon as reasonably practicable.

(2) If a person who is—

(a) In charge of a hospital; or

(b) A medical practitioner; or

(c) A medical officer of health—
has reason to believe that a medical practitioner is not fit to practise medicine because of some mental or physical condition, the person shall give notice to the Registrar of all the circumstances as soon as reasonably practicable.

(3) Any person who has reason to believe that a medical practitioner is not fit to practise medicine because of some mental or physical condition may give notice of the matter to the Registrar.

Cf. 1968, No. 46, ss. 22 (2), 34 (1)–(3A); 1979, No. 53, s. 15 (2); 1988, No. 150, ss. 39–42; 1993, No. 23, s. 32

77. Power to seek medical advice—(1) Where a person contemplates giving a notice under section 76 of this Act to the Registrar, he or she may seek whatever medical advice, whether psychiatric or otherwise, he or she considers appropriate to assist him or her in forming his or her opinion.

(2) Any notice given under section 76 of this Act shall state any medical advice obtained under this section in respect of that notice.

Cf. 1968, No. 46, ss. 22 (3), 34 (4); 1988, No. 150, s. 43

78. Duty of Registrar—On receiving a notice given under section 76 of this Act, the Registrar shall take all reasonable steps to have the notice considered by the Council as soon as reasonably practicable.

Cf. 1968, No. 46, ss. 22 (4), 34 (5); 1988, No. 150, s. 44

79. Interim suspension of registration in cases of suspected condition affecting fitness to practise—

(1) Where,—

(a) The president of the Council (whether or not as a result of a notice forwarded to him or her under section 78 of this Act) considers that any medical practitioner may not be fit to practise medicine because of some mental or physical condition; and

(b) After consulting with 2 other members of the Council (of whom 1 must be a medical practitioner), the president is satisfied that it is necessary or desirable to do so, having regard to the need to protect the health or safety of members of the public,—

the president may order that the registration of the practitioner be suspended for a period of not more than 10 working days from the date a copy of the order is given to the practitioner under subsection (4) of this section.

(2) The president shall not be obliged to give any notice to a medical practitioner that the president intends to make an order under this section.

(3) Every order made under this section shall—

(a) Be in writing; and

(b) Contain a statement of the reasons on which it is based; and

(c) Be signed by the president or deputy president of the Council.

(4) The Registrar shall ensure that a copy of any order made under this section is given to the medical practitioner concerned forthwith after it is made.

80. Power to order medical examination—(1) Where it appears to the Council (whether or not as a result of a notice forwarded under section 78 of this Act) that any medical practitioner is not fit to practise medicine because of some mental or physical condition, the Council may, by notice given to the medical practitioner, require him or her to submit himself or herself for examination by another medical practitioner at the expense of the Council.

(2) Every notice given under this section shall—

(a) Specify—

(i) The name and address of the medical practitioner who is to conduct the examination; and

(ii) The date before which the examination is to be conducted, being a date that is not less than 5 working days after the date on which the notice is given to the practitioner to be examined; and

(b) Be signed by the president or the Registrar.

(3) A medical practitioner who is required by a notice given under this section to submit himself or herself for examination by a medical practitioner may have another medical practitioner chosen by him or her attend the examination as an observer.

(4) Where a medical practitioner has examined another medical practitioner under this section, he or she shall, as soon as reasonably practicable after the examination, make a written report to the Registrar on the mental and physical condition of the practitioner so far as it affects the capacity of the practitioner to practise medicine satisfactorily.

(5) The Registrar shall, as soon as practicable after receiving a report under subsection (4) of this section, send a copy to the medical practitioner to whom the report relates.

Cf. 1988, No. 150, s. 37 (1)–(3)

81. Restrictions may be imposed on practice on account of condition affecting fitness to practise—

(1) Where—

(a) A notice has been given to a medical practitioner under section 80 of this Act; and

(b) Either—

(i) The practitioner has not, by the time specified in the notice, submitted himself or herself for examination by the medical practitioner named in the notice; or

(ii) The Registrar has received a written report in respect of the practitioner from the medical practitioner named in the notice; and

(c) The Council has given the practitioner a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative,—

the Council shall consider the report (if any) and all the relevant circumstances of the case.

(2) Where the Council has considered the case of a medical practitioner under this section, and the Council is satisfied that—

(a) The practitioner is not fit to practise medicine because of some mental or physical condition; or

(b) The practitioner has not submitted himself or herself for examination in accordance with a notice under section 80 of this Act,—

the Council may order that the practitioner's registration be suspended, or that conditions be placed on the practitioner's registration or practising certificate.

(3) Every order made under subsection (2) of this section shall—

(a) Be in writing; and

(b) Contain a statement of the reasons on which it is based; and

(c) Be signed by the president or deputy president of the Council.

(4) The Registrar shall ensure that, within 5 working days of the making of an order under subsection (2) of this section,—

(a) A copy of the order is given to the medical practitioner concerned; and

(b) All administrative steps are taken to give effect to the order.

(5) An order made under subsection (2) of this section shall take effect from the day on which a copy of the order is given

under subsection (4) of this section to the practitioner concerned, or such date as may be specified in the order, whichever is the later.

Cf. 1968, No. 46, s. 34 (6), (9); 1988, No. 150, ss. 37 (4), 38 (1), (2)

82. Revocation of suspension or conditions—(1) The Council may at any time make an order revoking any suspension imposed under section 81 of this Act if it is satisfied that the medical practitioner is again able to practise medicine satisfactorily.

(2) The Council may at any time make an order revoking any conditions imposed under section 81 of this Act if it is satisfied that those conditions are no longer necessary.

(3) The Registrar shall ensure that, within 5 working days of the making of an order under this section,—

- (a) A copy of the order is given to the medical practitioner concerned; and
- (b) All administrative steps are taken to give effect to the order.

Cf. 1968, No. 46, s. 34 (7), (9); 1988, No. 150, ss. 37 (5), (6), 38 (3)

PART VIII

DISCIPLINE

Complaints against Medical Practitioners

83. Complaints against practitioners—(1) Any person who wishes to make a complaint against a medical practitioner may give notice of the complaint to the Health and Disability Commissioner or the Registrar.

(2) A complaint may be made either orally or in writing.

(3) Without limiting the right of any person to make a complaint in accordance with subsection (1) of this section, a complaint may be made under that subsection by—

- (a) The Minister; or
- (b) Any person in the service of the Crown acting in an official capacity; or
- (c) Any member of the Council or the Tribunal; or
- (d) Any person on behalf of the Accident Rehabilitation and Compensation Insurance Corporation.

(4) Where a complaint is made under this section to the Registrar, the Registrar shall forthwith notify the Health and Disability Commissioner and the president of that complaint.

84. Notification of complaint made to Health and Disability Commissioner—Where, under Part IV of the Health and Disability Commissioner Act 1994, the Health and Disability Commissioner receives a complaint, and that complaint is made against or directly involves a medical practitioner, the Health and Disability Commissioner may, under section 38 of that Act, notify the president of that complaint.

85. Notification of convictions—Unless the court expressly orders otherwise in any particular case, the registrar of a court in New Zealand in which a person whom the registrar knows to be a medical practitioner is convicted of—

(a) An offence punishable by imprisonment for a term of 3 months or longer; or

(b) An offence against the Health Act 1956, the Medicines Act 1981, the Misuse of Drugs Act 1975, the Accident Rehabilitation and Compensation Insurance Act 1992, the Contraception, Sterilisation, and Abortion Act 1977, the Births, Deaths, and Marriages Registration Act 1995, or the Coroners Act 1988—

shall send a notice of the conviction to the president.

Cf. 1968, No. 46, s. 56A; 1983, No. 40, s. 8

86. Suspension of action while matter under investigation by Health and Disability Commissioner—Subject to section 102 (1)(a) of this Act, where, in accordance with section 83 (4) of this Act, a complaint is notified to the Health and Disability Commissioner, no action shall be taken under this Part of this Act concerning the complaint until—

(a) The Health and Disability Commissioner notifies the president—

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

(ii) That the complaint has been resolved; or

(iii) That the complaint has been investigated under that Act and the complaint 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 president that the Director of Proceedings has decided, pursuant to section 49 of that Act, not to lay a charge under

section 102 (1) (a) of this Act in relation to the complaint.

Cf. 1968, No. 46, s. 66D; 1994, No. 93, s. 2

87. Referral of complaints and notices of conviction to complaints assessment committee—(1) Subject to section 86 of this Act and to section 39 of the Health and Disability Commissioner Act 1994, where a complaint is notified to the president—

(a) By the Registrar in accordance with section 83 (4) of this Act; or

(b) Pursuant to section 84 of this Act by the Health and Disability Commissioner,—

the president shall, as soon as reasonably practicable after receiving the notification, refer the complaint to a complaints assessment committee, unless the president and the Health and Disability Commissioner agree that the complaint should not be so referred.

(2) Where a notice of conviction is given under section 85 of this Act to the president, the president shall, as soon as reasonably practicable after receiving the notice, refer the notice to a complaints assessment committee.

Complaints Assessment Committee

88. Complaints assessment committee—(1) Subject to section 91 of this Act, the president may from time to time appoint, in relation to a particular case or class of cases, 2 medical practitioners and 1 person who is not a medical practitioner to be a complaints assessment committee, and may at any time revoke any such appointment or reconstitute any such committee.

(2) Before making any such appointment, revocation, or reconstitution, the president shall consult with at least 3 members of the Council (including at least 1 member who is not a medical practitioner).

(3) No member of the Council or the Tribunal shall be appointed to be a member of a complaints assessment committee.

(4) The president shall appoint 1 of the members of each complaints assessment committee to preside at meetings of that committee.

Cf. 1988, No. 150, s. 45 (1), (4)–(6), (9)

89. Complaints assessment committee to regulate own procedure—(1) Subject to this Act and any regulations made

under this Act, a complaints assessment committee may regulate its procedure in such manner as it thinks fit.

(2) A complaints assessment committee may appoint a legal assessor, who, subject to subsection (3) of this section, may—

- (a) Be present at meetings of the committee; and
- (b) At any time advise the committee on matters of law, procedure, or evidence.

(3) No legal assessor shall be entitled to be present during the deliberations of a complaints assessment committee.

90. Information to be given to practitioner and complainant—Where a complaint about, or a notice of conviction of, a medical practitioner is referred to a complaints assessment committee, the president shall ensure,—

- (a) That the medical practitioner is advised, as soon as practicable, by notice in writing, of—
 - (i) The particulars of the complaint or conviction; and
 - (ii) The intended membership of the complaints assessment committee that is to consider the complaint or conviction; and
- (b) In the case of a complaint, that the complainant is advised, as soon as practicable, by notice in writing, of the intended membership of the complaints assessment committee that is to consider the complaint.

Cf. 1988, No. 150, s. 45 (7)

91. Requests for changes to membership of complaints assessment committee—(1) Within 5 working days of being informed under section 90 of this Act of the intended membership of the complaints assessment committee that is to consider a complaint about, or conviction of, a medical practitioner,—

- (a) That medical practitioner; or
 - (b) In the case of a complaint, the complainant,—
- or both, may request that any or all of the intended members not be appointed as members of that committee.

(2) Every such request shall be made in writing to the president, and shall be accompanied by the reasons for the request.

(3) The president shall have regard to any request made under this section, but shall not be obliged to comply with it.

Cf. 1988, No. 150, s. 45 (8)

92. Determination of complaint by complaints assessment committee—(1) On the referral to a complaints assessment committee under section 87 of this Act of a complaint or notice of conviction in relation to a medical practitioner, the complaints assessment committee shall determine whether,—

- (a) The Council should review, under Part V of this Act, the competence of the practitioner to practise medicine; or
- (b) The Council should review, under Part VII of this Act, the ability of the practitioner to practise medicine; or
- (c) In the case of a complaint, the complaint should be the subject of conciliation under section 94 of this Act; or
- (d) The complaint or conviction should be considered by the Tribunal; or
- (e) No further steps should be taken under this Act in relation to the complaint or conviction.

(2) A complaints assessment committee shall make a determination under subsection (1) of this section as soon as reasonably practicable after the complaint or notice of conviction is referred to it.

(3) Before a complaints assessment committee makes a determination under subsection (1) of this section,—

- (a) The committee shall give the medical practitioner concerned and, in the case of a complaint, the complainant a reasonable opportunity to make a written explanation or statement in relation to the complaint or conviction; and
- (b) The committee may, on the application of the medical practitioner concerned or the complainant, or on its own motion, give that medical practitioner and, where applicable, the complainant a reasonable opportunity to appear before the committee to make an explanation or statement in relation to the complaint or conviction.

(4) A complaints assessment committee may require that any complaint referred to it under section 87 of this Act be supported by such statutory declaration as it thinks fit.

Cf. 1988, No. 150, s. 53

93. Procedure after complaints assessment committee makes determination—(1) A complaints assessment committee shall,—

- (a) In the case of a determination made under paragraph (a) or paragraph (b) of section 92 (1) of this Act, give

written notice of that determination, and the reasons on which that determination is based, to,—

- (i) The Registrar; and
 - (ii) The medical practitioner concerned; and
 - (iii) In the case of a complaint, the complainant:
- (b) In the case of a determination made under paragraph (d) of section 92 (1) of this Act,—
- (i) Frame an appropriate charge and lay it before the Tribunal by submitting it in writing to the chairperson of the Tribunal; and
 - (ii) In the case of a complaint, give written notice of that determination to the complainant:
- (c) In the case of a determination made under paragraph (e) of section 92 (1) of this Act, advise the medical practitioner concerned, the president, and, in the case of a complaint, the complainant, by written notice, of—
- (i) That determination; and
 - (ii) The reasons on which that determination is based.

(2) On receiving notice under subsection (1) (a) of this section of a determination of a complainants assessment committee, the Registrar shall—

- (a) Forthwith forward the notice to the president; and
- (b) Take all reasonable steps to have the determination considered by the Council.

94. Settlement of complaint by conciliation—(1) Where, pursuant to section 92 (1) (c) of this Act, a complaints assessment committee has decided that a complaint should be the subject of conciliation, the committee shall attempt to assist the persons concerned to resolve the complaint by agreement.

(2) If conciliation of a complaint under subsection (1) of this section has in the view of a complaints assessment committee been successful, the committee shall forthwith forward notice to that effect to the president of the Council.

(3) If conciliation of a complaint under subsection (1) of this section has in the view of a complaints assessment committee been unsuccessful, the committee shall determine whether—

- (a) The complaint should be considered by the Tribunal; or
- (b) No further steps should be taken under this Act in relation to the complaint.

(4) In the case of a determination made under subsection (3) (a) of this section, the complaints assessment committee shall—

- (a) Frame an appropriate charge and lay it before the Tribunal by submitting it in writing to the chairperson of the Tribunal; and
 - (b) Give written notice of that determination to the complainant.
- (5) A complaints assessment committee shall submit with any charge laid before the Tribunal pursuant to subsection (4) of this section a statement showing—
- (a) Those matters on which agreement was reached between the persons concerned; and
 - (b) Those matters on which no agreement was reached between those persons.
- (6) In the case of a determination made under subsection (3)(b) of this section, the complaints assessment committee shall advise the medical practitioner concerned and the complainant, by written notice, of—
- (a) That determination; and
 - (b) The reasons on which that determination is based.

95. Complaints assessment committee may recommend exercise of powers under section 104—

Where a complaints assessment committee lays a charge before the Tribunal pursuant to section 93 (1)(b) or section 94 (4) of this Act, the committee may recommend to the Tribunal that, pending the determination of the charge,—

- (a) The registration of the medical practitioner in respect of whom the charge is laid be suspended pursuant to section 104 of this Act; or
- (b) Conditions be imposed, pursuant to section 104 of this Act, on the practice of medicine by that medical practitioner.

Medical Practitioners Disciplinary Tribunal

96. Medical Practitioners Disciplinary Tribunal—There shall be a Tribunal known as the Medical Practitioners Disciplinary Tribunal.

97. Functions of Tribunal—The functions of the Tribunal are—

- (a) To consider and adjudicate on proceedings brought pursuant to section 102 of this Act;
- (b) To exercise and perform such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.

98. Membership of Tribunal—(1) The Tribunal shall consist of—

- (a) A chairperson and 1 or more deputy chairpersons, each of whom shall be a barrister or solicitor of the High Court of not less than 7 years' practice, whether or not he or she holds or has held judicial office; and
- (b) Four other persons, (of whom 3 shall be medical practitioners and 1 shall be a person who is not a medical practitioner), appointed by the chairperson for the purposes of each hearing from the panel maintained by the Minister under section 99 of this Act.

(2) The chairperson and each deputy chairperson shall be appointed by the Minister by notice in the *Gazette*, after consultation by the Minister with such persons as the Minister thinks fit.

(3) No person who is a member of the Council shall be eligible for appointment as chairperson or as a deputy chairperson or as a member of the panel.

Cf. 1988, No. 150, s. 46

99. Panel—(1) The Minister shall maintain a panel of not fewer than 12 persons who may be appointed pursuant to section 98 (1) (b) of this Act.

(2) In considering the suitability of any person for inclusion on the panel, the Minister shall—

- (a) Have regard not only to his or her personal attributes but also to his or her knowledge of and experience of matters likely to come before the Tribunal; and
- (b) Have regard to the need to ensure that the panel contains a sufficient number of medical practitioners and persons who are not medical practitioners so that the Tribunal may be constituted in accordance with section 98 (1) (b) of this Act.

(3) The name of a person shall be removed from the panel if—

- (a) The person dies or is, under the Insolvency Act 1967, adjudged bankrupt; or
- (b) The Minister directs that the name of the person be removed from the panel on the grounds of a mental or physical condition affecting performance of duty, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister; or
- (c) The person becomes a member of the Council; or

- (d) A period of 5 years has elapsed since the date on which the Minister last approved the entry of the person's name; or
 - (e) The person requests by writing addressed to the Minister that his or her name be removed.
- (4) Where subsection (3) (d) or subsection (3) (e) of this section applies, the name of the person shall not be removed from the panel until any hearings in respect of which that person was appointed to the Tribunal have concluded.

100. Hearings by Tribunal—(1) For the purposes of any hearing by the Tribunal, the Tribunal shall comprise—

- (a) As presiding officer, the chairperson or (if the chairperson so decides) a deputy chairperson; and
 - (b) The members of the panel appointed for that purpose pursuant to section 98 (1) (b) of this Act.
- (2) The Tribunal may from time to time, as the chairperson directs, sit in 2 or more divisions, and each such division—
- (a) Shall have and may exercise or perform all the powers and functions of the Tribunal; and
 - (b) May exercise or perform any power or function of the Tribunal even though another division of the Tribunal is exercising or performing any such power or function at the same time.
- (3) Hearings of the Tribunal shall be held at such times and places as the Tribunal for that hearing or the presiding officer appoints.
- (4) Any hearing of the Tribunal may be adjourned from time to time and from place to place by the Tribunal or the presiding officer.
- (5) No hearing shall take place unless all members of the Tribunal for that hearing are present, but a decision of a majority of those members shall for the purposes of the hearing be the decision of the Tribunal.

101. Further provisions relating to Tribunal in First Schedule—The provisions set out in the First Schedule to this Act shall apply to the Tribunal and its proceedings.

Procedure and Decisions of Tribunal

102. Laying of charge before Tribunal—(1) A charge against a medical practitioner may be laid before the Tribunal by—

- (a) The Director of Proceedings, in any case where—

(i) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Health and Disability 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 that medical practitioner, was in breach of the Code of Health and Disability Services Consumers' Rights for the time being in force under that Act; and

(ii) 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 medical practitioner; or

(b) A complaints assessment committee, pursuant to section 93 or section 94 of this Act.

(2) Where, under subsection (1) of this section, a charge is laid before the Tribunal, the chairperson of the Tribunal shall, as soon as reasonably practicable after the laying of the charge, convene a hearing of the Tribunal to consider the charge.

(3) Every charge laid under subsection (1) of this section shall include a statement to the effect that the Director of Proceedings or complaints assessment committee, as the case may be, has reason to believe that a ground exists entitling the Tribunal to exercise its powers under section 109 of this Act.

(4) Any charge laid under this section shall be prosecuted at the hearing,—

(a) Where the charge is laid by the Director of Proceedings, by the Director of Proceedings; or

(b) Where the charge is laid by a complaints assessment committee, by that complaints assessment committee,—

who for that purpose may be represented by counsel or otherwise.

103. Notice of disciplinary proceedings to be given to practitioner—(1) Where the chairperson of the Tribunal is required to convene a hearing of the Tribunal to consider a charge against a medical practitioner, he or she shall forthwith cause to be given to the practitioner a notice—

(a) Stating that the Director of Proceedings, or a complaints assessment committee, as the case may be, has reason to believe that a ground exists entitling the Tribunal to exercise its powers under section 109 of this Act; and

- (b) Containing such particulars as will clearly inform the practitioner of the substance of the ground believed to exist; and
- (c) Specifying the particulars of the charge; and
- (d) Specifying a date (being not less than 20 working days, and not more than 60 working days, after the date on which the notice is received by the practitioner) on which the Tribunal intends to hear the matter.

(2) Where applicable, the chairperson of the Tribunal shall, without delay, cause to be given to the complainant a copy of the notice required to be given to the medical practitioner under this section.

(3) Every notice given to a medical practitioner under this section shall require the practitioner to notify the Tribunal in writing, not later than a specified date (being not less than 10 working days after the date on which the notice is received by the practitioner), whether or not he or she wishes to be heard by the Tribunal, either personally or by his or her representative.

(4) If a practitioner fails to notify the Tribunal as required by a notice under this section, the practitioner shall be entitled to appear and be heard at the hearing only on such conditions as to payment of costs and expenses or otherwise as the Tribunal thinks fit and so orders.

Cf. 1968, No. 46, ss. 56A (5)–(8), 58 (3); 1983, No. 40, ss. 8, 9; 1988, No. 150, s. 61 (1)–(3)

104. Interim suspension of registration or imposition of conditions of practice in disciplinary matters—(1) At any time after a notice has been given under section 103 (1) of this Act to a medical practitioner, the Tribunal may, if it is satisfied that it is necessary or desirable to do so having regard to the need to protect the health or safety of members of the public, make an order that, until the disciplinary proceedings in respect of which that notice was issued have been determined,—

- (a) The registration of that medical practitioner be suspended; or
- (b) That medical practitioner may practise medicine only in accordance with such conditions as are specified in the order.

(2) The Tribunal may make an order under this section on the recommendation of the Director of Proceedings, or a complaints assessment committee, or of its own motion.

(3) The Tribunal shall not be obliged to give any notice to a medical practitioner that it intends to make an order under this section.

(4) Every order made under this section shall—

(a) Be in writing; and

(b) Contain a statement of the reasons on which it is based; and

(c) Contain a clear statement of the medical practitioner's right to apply to the Tribunal for the revocation of the order; and

(d) Be signed by the chairperson or a deputy chairperson of the Tribunal.

(5) The Secretary shall ensure that a copy of an order made under this section is given to the medical practitioner concerned as soon as reasonably practicable, and the order shall take effect from the day on which the copy is given to the practitioner.

Cf. 1976, No. 9, s. 98; 1982, No. 123, s. 115; 1982, No. 129, s. 21

105. Practitioner may apply for revocation of order—

(1) A medical practitioner in respect of whom an order is made under section 104 of this Act may at any time apply to the Tribunal for the revocation of the order.

(2) Every application under this section shall be in writing and delivered to the Secretary.

(3) An application under this section shall be heard within 10 working days after it is received by the Secretary, and the Tribunal may grant or refuse the application as it thinks fit.

(4) The Secretary shall give notice of the decision of the Tribunal under this section to the medical practitioner concerned as soon as reasonably practicable.

(5) The Tribunal may at any time, of its own motion, revoke an order made under section 104 of this Act.

Cf. 1982, No. 123, s. 115

106. Hearings of Tribunal to be in public—(1) Except as provided in this section and in section 107 of this Act, every hearing of the Tribunal shall be held in public.

(2) Where the Tribunal is satisfied that it is desirable to do so, after having regard to the interests of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:

- (a) An order that the whole or any part of a hearing shall be held in private:
- (b) An order prohibiting the publication of any report or account of any part of any hearing by the Tribunal, whether held in public or in private:
- (c) An order prohibiting the publication of the whole or any part of any books, papers, or documents produced at any hearing:
- (d) Subject to subsection (7) of this section, an order prohibiting the publication of the name, or any particulars of the affairs, of any person.

(3) Every application to the Tribunal for an order under this section shall be heard in private, but the other parties to the proceedings and the complainant (if any) shall be entitled to be present and to make submissions with regard to the application.

(4) In any case where a hearing of the Tribunal is held in private, the Tribunal may allow any particular person to attend the private hearing if it is satisfied that the person has a particular interest in the matter to be heard.

(5) An order made under this section shall continue in force until such time as may be specified in the order, or, if no time is specified, until revoked by the Tribunal under section 108 of this Act.

(6) The Tribunal may in any case deliberate in private as to its decision or as to any question arising in the course of a hearing.

(7) Subsection (2) (d) of this section shall not apply to or in respect of—

- (a) Any communication by or on behalf of the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994; or
- (b) Any communication between any of the Health and Disability Commissioner, the Council, and the Tribunal; or
- (c) The publication, under section 138 of this Act, of the effect of any order.

Cf. 1988, No. 150, s. 62

107. Special protections for complainants—(1) This section applies in respect of any hearing of the Tribunal on a charge laid under section 102 of this Act, where the charge relates to or involves—

- (a) Any matter of a sexual nature; or

- (b) Any matter that may require or result in the complainant giving evidence of matters of an intimate or distressing nature.
- (2) Without limiting section 106 (2) of this Act, where this section applies in respect of any hearing of the Tribunal,—
- (a) Before the complainant begins to give oral evidence, the presiding officer shall—
- (i) Advise the complainant of the complainant's right to give his or her oral evidence in private; and
 - (ii) Ascertain whether or not the complainant wishes to exercise that right; and
- (b) If the complainant wishes to exercise that right, the presiding officer shall—
- (i) Ensure that no person other than one referred to in paragraph (c) of this subsection is present in the room in which the hearing is being held; and
 - (ii) Advise the complainant of the complainant's right to request the presence of any person under paragraph (c) (viii) of this subsection; and
 - (iii) Advise the medical practitioner to whom the charge being heard relates of his or her right to request the presence of any person under paragraph (c) (ix) of this subsection; and
- (c) If the complainant chooses to exercise the right to give his or her oral evidence in private, then, while the complainant is giving oral evidence at the hearing, no person shall be present in the room in which the hearing is being held except the following:
- (i) The members of the Tribunal;
 - (ii) The medical practitioner to whom the charge being heard relates;
 - (iii) The person who is prosecuting the charge;
 - (iv) Any barrister or solicitor engaged in the proceedings;
 - (v) Any officer of the Tribunal;
 - (vi) Any person who is for the time being responsible for recording the proceedings;
 - (vii) Any accredited news media reporter;
 - (viii) Any person whose presence is requested by the complainant;
 - (ix) Any person whose presence is requested by the medical practitioner to whom the charge being heard relates, unless the complainant objects to that person being present;

(x) Any person expressly permitted by the Tribunal to be present.

(3) Without limiting section 106 (2) of this Act, where this section applies in respect of any hearing of the Tribunal, the Tribunal may, if it is of the opinion that the interests of the complainant so require, make an order under section 106 (2) (b) of this Act forbidding publication of any report or account giving details of any acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in.

Cf. 1961, No. 43, s. 375A; 1985, No. 160, s. 5; 1989, No. 103, s. 2

108. Application for revocation of order made under section 106—(1) Any person may at any time apply to the Tribunal for the revocation of any order made by it under section 106 of this Act.

(2) An application may be made under subsection (1) of this section by any person who was a party to the proceedings in which the order was made or by any other person.

(3) The Tribunal may grant or refuse an application made under this section as it thinks fit.

109. Grounds on which medical practitioner may be disciplined—(1) Subject to subsections (3) and (4) of this section, if the Tribunal, after conducting a hearing on a charge laid under section 102 of this Act against a medical practitioner, is satisfied that the practitioner—

- (a) Has been guilty of disgraceful conduct in a professional respect; or
- (b) Has been guilty of professional misconduct; or
- (c) Has been guilty of conduct unbecoming a medical practitioner, and that conduct reflects adversely on the practitioner's fitness to practise medicine; or
- (d) Has been convicted of any offence against the Health Act 1956, the Medicines Act 1981, the Misuse of Drugs Act 1975, the Accident Rehabilitation and Compensation Insurance Act 1992, the Contraception, Sterilisation, and Abortion Act 1977, the Births, Deaths, and Marriages Registration Act 1995, or the Coroners Act 1988; or
- (e) Has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer, and

the circumstances of that offence reflect adversely on the practitioner's fitness to practise medicine; or

(f) Has practised medicine outside the extent permitted by, or not in accordance with the conditions of, his or her registration or any practising certificate held by him or her; or

(g) Has breached any order of the Tribunal made under section 110 of this Act,—

the Tribunal may make any 1 or more of the orders authorised by section 110 of this Act.

(2) For the purposes of subsection (1) of this section, a medical practitioner is guilty of professional misconduct if that medical practitioner,—

(a) Breaches section 11 of this Act; or

(b) Being the holder of probationary registration, general registration, or vocational registration, practises medicine while not holding a current practising certificate.

(3) The Tribunal shall not make an order under section 110 of this Act in respect of any offence for which a medical practitioner has been convicted before the date of the practitioner's registration if, at that date, the Council was aware of the conviction.

(4) No person shall be found guilty of a disciplinary offence under this Part of this Act merely because that person has adopted and practised any theory of medicine or healing, if in doing so the person has acted honestly and in good faith.

Cf. 1968, No. 46, s. 58 (1); 1983, No. 40, s. 9; 1988, No. 150, s. 54

110. Penalties—(1) In any case to which section 109 of this Act applies, the Tribunal may,—

(a) Subject to subsection (2) of this section, order that the name of the medical practitioner be removed from the register or any part of the register:

(b) Order that the registration of the medical practitioner be suspended for a period not exceeding 12 months:

(c) Order that the medical practitioner may, for a period not exceeding 3 years, practise medicine only in accordance with such conditions as to employment, supervision, or otherwise as are specified in the order:

(d) Order that the medical practitioner be censured:

(e) Subject to subsections (3) and (4) of this section, order that the medical practitioner pay a fine not exceeding \$20,000:

(f) Order that the medical practitioner pay part or all of the costs and expenses of and incidental to any or all of the following:

(i) Any investigation made by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:

(ii) Any inquiry made by a complaints assessment committee in relation to the subject-matter of the charge:

(iii) The prosecution of the charge by the Director of Proceedings or complaints assessment committee, as the case may be:

(iv) The hearing by the Tribunal.

(2) The Tribunal shall not make an order under subsection (1) (a) of this section ordering that the name of a medical practitioner be removed from the register or any part of the register, unless the Tribunal has found the medical practitioner—

(a) Guilty of disgraceful conduct in a professional respect; or

(b) Guilty of a disciplinary offence against paragraph (e) or paragraph (f) of section 109 (1) of this Act.

(3) Where the Tribunal is dealing with any matter that constitutes an offence for which the medical practitioner has been convicted by a court, the Tribunal shall not impose a fine under subsection (1) (e) of this section.

(4) In determining whether or not to make an order under subsection (1) (e) of this section that a medical practitioner pay a fine in respect of any conduct of that medical practitioner, and in determining the amount of any such fine, the Tribunal shall, where damages have been awarded against the medical practitioner, in respect of that conduct, under section 57 of the Health and Disability Commissioner Act 1994, have regard to the amount of that award of damages.

Cf. 1968, No. 46, ss. 58 (2), 58B (1); 1983, No. 40, s. 9; 1988, No. 150, ss. 55, 56, 58

111. Powers of Tribunal in relation to restoration to register—(1) Where the Tribunal makes an order under section 110 (1) (a) of this Act in relation to any person, it may, in that order, exercise either or both of the following powers:

(a) Fix a time after which that person may apply to have his or her name restored to the register or any part of the register:

(b) Impose 1 or more conditions that must be satisfied by the person before he or she may apply to have his or her name restored to the register or any part of the register, which conditions may (without limitation) consist of, or include,—

(i) A requirement that the person undertake a specified course of education or training:

(ii) A requirement that the person undergo any specified medical examination and treatment or any specified psychological or psychiatric examination, counselling, and therapy:

(iii) A requirement that the person attend any course of treatment or therapy for alcohol or drug abuse:

(iv) Any other requirement designed to address the matter that gave rise to the person's removal from the register or part of the register.

(2) The Tribunal shall not impose any condition under subsection (1) (b) of this section requiring a person to undergo any medical, psychiatric, or psychological examination or treatment, or any psychological or psychiatric counselling or therapy, unless the person consents to the examination, treatment, counselling, or therapy.

(3) If, pursuant to subsection (1) (a) of this section, the Tribunal fixes a time after which a person may apply to have his or her name restored to the register or any part of the register, no application under section 33 of this Act for the restoration of that person's name to the register or, as the case requires, that part of the register may be made or considered until that time has expired.

112. Orders of Tribunal—(1) Every order made under section 103 (4) or section 106 or section 110 of this Act shall—

(a) Be in writing; and

(b) Contain a statement of the reasons on which it is based; and

(c) Be signed by the chairperson or a deputy chairperson of the Tribunal.

(2) The Secretary shall ensure that a copy of an order made under section 106 or section 110 of this Act is given to—

(a) The person or body that laid the charge; and

(b) The medical practitioner concerned; and

(c) The complainant (if any);—

and the order shall take effect from the day on which the copy is given to the practitioner, or such date as may be specified in the order, whichever is the later.

(3) The Secretary shall ensure that a copy of an order made under section 103 (4) of this Act is given to the medical practitioner concerned.

(4) The Secretary shall ensure that—

(a) A copy of every order of the Tribunal made under section 104 or section 110 of this Act; and

(b) Notice of any decision of the Tribunal made under section 105 of this Act—

is given to the Registrar as soon as practicable.

Cf. 1988, No. 150, s. 61 (7), (8)

Miscellaneous Provisions

113. Funding of Tribunal and disciplinary proceedings—(1) Without limiting section 114 of this Act, all costs of and incidental to—

(a) The Tribunal; or

(b) Any complaints assessment committee; or

(c) Any proceedings before the Tribunal—

shall be paid by the Council.

(2) For the purpose of funding the costs referred to in subsection (1) of this section, the Council may impose, under section 127 of this Act, a levy to be known as a disciplinary levy.

Cf. 1968, No. 46, s. 50

114. Recovery of fines and costs—(1) Every fine imposed under subsection (1) (e) of section 110 of this Act, and all costs payable under an order made under subsection (1) (f) of that section, and all costs payable under an order made under section 103 (4) of this Act, shall be recoverable as a debt due to the Council.

(2) Notwithstanding subsection (1) of this section,—

(a) All costs payable under an order made under subsection (1) (f) (i) of section 110 of this Act; and

(b) All costs payable under an order made under subsection (1) (f) (iii) of that section in relation to the prosecution of a charge by the Director of Proceedings—

shall be recoverable as a debt due to the Health and Disability Commissioner.

Cf. 1988, No. 150, s. 59

PART IX

APPEALS

115. Notice of right to appeal—Where, in accordance with any provision of this Act, the Registrar or the Secretary notifies a person of any decision or order made under this Act in respect of which that person has a right of appeal under section 116 of this Act, the Registrar or, as the case requires, the Secretary shall at the same time notify the person of that right of appeal, including the time within which the appeal must be lodged.

116. Rights of appeal—(1) Any person who is dissatisfied with the whole or any part of—

- (a) Any decision or order made in relation to that person under any of sections 18, 27, 32, 36, 41, 45, 46, 52, 54, 57, 60, 61, 64, 81, 82, 103 (4), 105, and 110 of this Act; or
- (b) Any order made under section 106 of this Act in respect of that person, or any decision of the Tribunal to refuse to make such an order; or
- (c) Any decision of the Tribunal on an application made under section 108 of this Act—

may appeal to a District Court against the decision or order.

(2) Where—

- (a) Any competence programme or recertification programme is made to apply in respect of a specified medical practitioner; and
- (b) That medical practitioner is dissatisfied with the whole or any part of any decision of the Council made under section 62 (3) or, as the case may be, section 63 (3) of this Act in relation to that programme,—

that medical practitioner may appeal to a District Court against that decision.

(3) Where—

- (a) The Director of Proceedings or a complaints assessment committee lays a charge under section 102 of this Act against a medical practitioner; and
- (b) The Director of Proceedings or, as the case may be, that committee is dissatisfied with the whole or any part of any decision or order of the Tribunal relating to that charge,—

the Director of Proceedings or, as the case may be, that committee may appeal to a District Court against the decision or order.

- (4) Every appeal under this section shall—
- (a) Be brought by way of notice of appeal in accordance with rules of Court; and
 - (b) Be lodged within 20 working days after notice of the decision or order is communicated to the appellant, or within such further time as a District Court Judge may allow on application made before or after the expiration of that period.

117. Orders to have effect pending determination of appeal—Subject to any order of a District Court or, as the case may be, the High Court, every decision or order against which an appeal is lodged under section 116 or section 121 of this Act shall continue in force and have effect according to its tenor pending the determination of the appeal.

Cf. 1968, No. 46, s. 23; 1988, No. 150, s. 64 (1)

118. Procedure on appeal—(1) Every appeal under section 116 of this Act shall be heard as soon as reasonably practicable after the appeal is lodged.

(2) On the hearing of an appeal under section 116 of this Act, a District Court Judge may confirm, reverse, or modify the decision or order appealed against, or may make any decision or order that could have been made by the person or body that made the decision or order appealed against.

(3) Nothing in this section gives a District Court Judge power to review any part of the decision or order other than the part appealed against.

(4) Subject to section 121 of this Act, the decision of a District Court Judge on any appeal under section 116 of this Act shall be final.

Cf. 1988, No. 150, s. 64 (3), (4)

119. District Court may refer appeals back for reconsideration—(1) A District Court Judge may, instead of determining any appeal under section 116 of this Act, direct the person or body whose decision or order is appealed against to reconsider, either generally or in respect of any specified matters, the whole or any part of the decision or order.

(2) In giving any direction under subsection (1) of this section, a District Court Judge shall—

- (a) Advise his or her reasons for doing so; and
- (b) Give such directions as the Judge thinks just as to the whole or any part of the decision or order that is referred back for reconsideration.

(3) Where any decision or order is referred back to a person or body under subsection (1) of this section, the person or body shall, in reconsidering that matter, take into account the District Court Judge's reasons for giving a direction under that subsection, and give effect to the Judge's directions under subsection (2) (b) of this section.

120. Orders as to costs and publication of names, etc.—

(1) On any appeal under section 116 of this Act, a District Court Judge may make an order for the payment by the person or body whose decision or order is appealed against, or the appellant, of the costs incurred in respect of the appeal by the other party to the appeal.

(2) On any appeal under section 116 of this Act, a District Court Judge may, if in the Judge's opinion it is proper to do so having regard to the interests of any person (including, where applicable, and without limitation, the privacy of the complainant (if any)) and to the public interest, make an order prohibiting the publication of the name or particulars of the affairs of any medical practitioner or any other person.

121. Appeal on question of law—(1) Where, in respect of any appeal under section 116 of this Act, the person or body whose decision or order is appealed against, or the appellant, is dissatisfied with any decision of the District Court Judge as being erroneous in point of law, the person or body or the appellant may appeal to the High Court by way of case stated for the opinion of that Court on the question of law only.

(2) Subject to subsection (3) of this section, every appeal under this section shall be heard and determined in accordance with rules of Court.

(3) The provisions of Part IV of the Summary Proceedings Act 1957 (including the other provisions of that Act which are applied in that Part), so far as they relate to appeals by way of case stated on questions of law only, shall apply, so far as they are applicable and with all necessary modifications, to every appeal under this section.

PART X

MEDICAL COUNCIL OF NEW ZEALAND

122. Medical Council of New Zealand—(1) There shall continue to be a council known as the Medical Council of New Zealand, which shall be the same council as the council constituted under section 3 of the Medical Practitioners Act 1968.

(2) The Council shall continue to be a body corporate with perpetual succession and a common seal, and shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

Cf. 1968, No. 46, s. 3 (1), (3)

123. Functions of Council—The functions of the Council are as follows:

- (a) To authorise the registration of medical practitioners under this Act, and to maintain the register:
- (b) To consider applications for annual practising certificates referred to it by the Registrar:
- (c) To review the competence of medical practitioners to practise medicine:
- (d) To consider the cases of medical practitioners who, because of some mental or physical condition, may not be fit to practise medicine:
- (e) To promote medical education and training in New Zealand:
- (f) To provide administrative and related services for the Tribunal:
- (g) To advise, and make recommendations to, the Minister in respect of any matter relating to the practice of medicine:
- (h) To exercise and perform such other functions, powers, and duties as are conferred or imposed on it by or under this Act or any other enactment.

124. Membership of Council—The Council shall consist of—

- (a) The Director-General of Health; and
- (b) A member of the academic staff of a faculty of medicine in a New Zealand university, who shall be appointed by the Minister after consultation by the Minister with the deans of the faculties of medicine of New Zealand universities; and
- (c) Four medical practitioners elected by medical practitioners in accordance with—
 - (i) Rules made under section 125 of this Act; or
 - (ii) Regulations made under section 140 of this Act;and
- (d) Four other persons appointed by the Minister, of whom only 1 may be a medical practitioner.

Cf. 1968, No. 46, s. 3 (2); 1988, No. 150, s. 71

125. Council to make rules relating to elections—

- (1) The Council shall, from time to time, make rules—
 - (a) Prescribing the manner of holding elections of members to the Council, and providing for the coming into force of such elected members; and
 - (b) Prescribing circumstances in which an election to fill a vacancy in the membership of the Council need not be held, and authorising the Council to appoint any person to fill any such vacancy.
- (2) No rules made under this section shall have any force or effect until—
 - (a) The rules have been approved by the Minister, who, before approving the rules, may require the Council to make such amendments or additions to the rules as the Minister thinks fit; and
 - (b) A copy of the rules, as approved by the Minister and showing the date of that approval, has been published in the *Gazette*.
- (3) The publication in the *Gazette* of a copy of any rules purporting to have been made under this section by the Council and to have been approved by the Minister shall be sufficient evidence, in the absence of proof to the contrary, that the rules have been duly made and approved under this section.
- (4) All rules made under this section shall be deemed to be regulations for the purposes of the Acts Interpretation Act 1924 and the Regulations (Disallowance) Act 1989, but shall not be regulations for the purposes of the Acts and Regulations Publication Act 1989.
- (5) The Council may from time to time amend or revoke any rules made under this section, and the provisions of subsections (2) to (4) of this section, with all necessary modifications, shall apply in respect of any such amendment or revocation.
- (6) If no rules are approved under this section by the Minister within 6 months after the commencement of this section, regulations may be made under section 140 of this Act providing for those matters in respect of which rules may be made under subsection (1) of this section.

126. Council may set fees—(1) The Council may from time to time, by notice in the *Gazette*, set the fees payable in respect of the following matters:

- (a) An application for registration under this Act;
- (b) An addition or alteration to the register;
- (c) The issue of a practising certificate:

- (d) The issue of any other certificate, or a copy of any certificate:
 - (e) The supply of a copy of any entry in the register:
 - (f) Inspection of the register, or of any other documents kept by the Council that are open for inspection:
 - (g) The supply to any medical practitioner of any documents, other than certificates of registration, required by him or her for the purpose of seeking registration overseas:
 - (h) Examinations set or approved by the Council:
 - (i) Any other matter that relates to anything the Council is required to do in order to carry out its functions.
- (2) Different fees may be set under this section for different classes of medical practitioner.
- (3) Any notice setting any fee under this section may exempt any class or classes of person from liability to pay any such fee, and may provide for the waiver or refund of any such fee.

127. Disciplinary levy—(1) The Council may from time to time, by notice in the *Gazette*, impose on every medical practitioner a disciplinary levy of such amount as it thinks fit for the purpose of funding the costs referred to in section 113 of this Act.

(2) Any notice imposing any levy under this section may exempt from liability to pay such levy any class or classes of medical practitioner, and may provide for the waiver or refund of any such levy.

Cf. 1968, No. 46, s. 50 (1); 1980, No. 122, s. 3 (1)

128. Further provisions relating to fees and levy—(1) Any notice under section 126 or section 127 of this Act may, by notice in the *Gazette*, be amended or revoked by the Council at any time.

(2) Every notice under section 126 or section 127 of this Act shall come into force on such date as is specified in the notice, being not less than 28 days after the date of publication of the notice in the *Gazette*.

(3) Every notice under section 126 or section 127 of this Act shall be deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989, but shall not be a regulation for the purposes of the Acts and Regulations Publication Act 1989.

(4) Every fee set under section 126 of this Act, and every levy imposed under section 127 of this Act, shall be payable, and recoverable as a debt due, to the Council.

(5) Where any fee is payable to the Council under this Act, the Registrar may decline to do any act, or to permit any act to be done, or to receive any document in respect of which that fee is payable, until the fee is paid.

129. Application of fees and other money—All fees, levies, fines, and other money received by the Council shall be applied by the Council as it considers appropriate in the performance of its functions and duties and the exercise of its powers.

Cf. 1968, No. 46, s. 14 (3)

130. Annual report—(1) The Council shall, as soon as practicable after the end of each financial year, deliver to the Minister a report on the operations of the Council during that financial year, and every such report shall include an audited statement of accounts for that financial year.

(2) The Minister shall lay a copy of an annual report of the Council before the House of Representatives not later than the 16th sitting day of the House of Representatives after the day on which the report is received by the Minister.

Cf. 1968, No. 46, s. 14 (5A); 1982, No. 36, s. 3

131. Statistical information—(1) In this section, the term “statistical information” does not include information about an identifiable individual.

(2) The Minister may from time to time, by written notice to the Council, require the Council to supply him or her with such statistical information as may be specified in the notice relating to the discharge of the functions of the Council or of any of its committees, or to any matters connected with those functions.

(3) Subject to subsection (4) of this section, any statistical information required by the Minister under this section shall be supplied within such time as may be specified in the notice or within such extended time as the Minister may allow, and shall be supplied in the manner and form notified to the Council by the Minister.

(4) Nothing in this section shall require the Council to supply any information that is not already in its possession.

(5) If the Minister is satisfied that compliance with any requirement made under this section would involve the Council in monetary expense, he or she shall, out of money appropriated by Parliament, make a grant to the Council to enable it to meet that expense.

Cf. 1968, No. 46, s. 14A; 1970, No. 142, s. 4

132. Further provisions relating to Council in Second Schedule—The provisions set out in the Second Schedule to this Act shall apply to the Council and its proceedings.

PART XI

MISCELLANEOUS PROVISIONS

General

133. Certificate of Registrar or Secretary to be evidence—(1) A certificate purporting to be signed by the Registrar—

- (a) To the effect that any person was or was not registered, or was or was not the holder of a practising certificate, at any particular time or during any period specified in the certificate; or
- (b) As to any entry in the register; or
- (c) As to any act or proceeding of the Council or a complaints assessment committee, or of any committee of the Council,—

shall for all purposes be sufficient evidence of the matters specified in the certificate, in the absence of proof to the contrary.

(2) A certificate purporting to be signed by the Secretary of the Tribunal as to any act or proceeding of the Tribunal shall for all purposes be sufficient evidence of the matters specified in the certificate, in the absence of proof to the contrary.

Cf. 1968, No. 46, s. 38; 1983, No. 40, s. 5; 1988, No. 150, s. 77

134. Council may withhold information in certain circumstances—Where, pursuant to section 34 (5) (b) or section 46 (2) (b) or section 53 (2) (b) or section 61 (1) (b) or section 64 (2) (b) of this Act, the Council is required to make available to any person any information or any copy of any information, nothing in any of those provisions requires the Council to make available any information—

- (a) The making available of which would be likely—
 - (i) To prejudice the maintenance of the law; or
 - (ii) To endanger the safety of any person; or
 - (iii) To prejudice the supply of similar information, or information from the same source; or
- (b) The withholding of which is necessary—
 - (i) To protect the privacy of natural persons; or
 - (ii) To protect any person from improper pressure or harassment.

135. Exclusion of liability—(1) Neither the Council, nor a complaints assessment committee, nor the Tribunal, nor any member, officer, or employee of any of those bodies, shall be under any criminal or civil liability in respect of—

(a) Any act done or omitted to be done in the course of performing or exercising any of their functions, duties, or powers; or

(b) Any words spoken or written at or for the purposes of the hearing of any inquiry or other proceedings under this Act; or

(c) Anything contained in any notice given under this Act,— unless that body or person has acted in bad faith or without reasonable care.

(2) No person shall be under any civil liability in respect of—

(a) Anything done or omitted to be done, or for any words spoken or written, in the course of making any assessment under section 16 (4) of this Act; or

(b) Any report made under section 16 (4) of this Act by that person,—

unless the person has acted in bad faith or without reasonable care.

(3) No person shall be under any civil liability in respect of anything done or omitted to be done, or for any words spoken or written, in the course of conducting or assisting in conducting any competence programme or recertification programme, unless the person has acted in bad faith or without reasonable care.

(4) No civil, criminal, or disciplinary proceedings shall lie against any person in respect of—

(a) Any notice given under section 76 of this Act by that person; or

(b) Any report made under section 80 (4) of this Act by that person,—

unless the person has acted in bad faith or without reasonable care.

Cf. 1968, No. 46, s. 66; 1988, No. 150, s. 76

136. Proceedings not invalid on account of defect in appointment—No act or proceeding of the Council, a complaints assessment committee, or the Tribunal, or of any person acting as a member of any such body, shall be invalidated because of the subsequent discovery that there was a defect in the appointment of a person so acting, or that the person was incapable of being, or had ceased to be, a member.

137. Notice and service of documents—(1) Except where this Act otherwise provides, where any provision of this Act or of any regulations made under this Act requires or authorises any notice or other document, or any notification, to be given to a person, the notice, document, or notification shall be given in writing to that person by—

- (a) Delivering it personally to that person; or
- (b) Sending it by pre-paid post addressed to that person at that person's usual or last known place of residence or business; or
- (c) Giving it in such other manner as a District Court Judge may direct.

(2) Every notice, document, or notification sent by post to a person in accordance with subsection (1) of this section shall be deemed, in the absence of proof to the contrary, to have been given to that person at the time at which the letter would have been delivered in the ordinary course of the post.

(3) If a person is absent from New Zealand, a notice, document, or notification given to the person's agent in New Zealand, in any manner referred to in subsection (1) of this section, shall be deemed to have been given to that person.

(4) If a person is deceased, a notice, document, or notification may be given, in any manner referred to in subsection (1) of this section, to the person's personal representative.

Cf. 1988, No. 150, s. 82

138. Publication of orders—(1) Where the Council makes an order under this Act in respect of any medical practitioner, the Registrar shall, if the Council in its discretion so directs, cause a notice stating the effect of the order, and the name of the medical practitioner in respect of whom the order is made, to be published in such publications as the Council may order.

(2) Where the Tribunal makes an order under this Act in respect of any medical practitioner, the Secretary shall cause a notice stating—

- (a) The effect of the order; and
- (b) The name of the medical practitioner in respect of whom the order is made; and
- (c) A summary of the proceedings in which the order is made—

to be published in such publications as the Tribunal may order.

(3) Where a court makes an order under this Act in respect of any medical practitioner, the Registrar or the Secretary, whichever is appropriate, shall cause a notice stating—

- (a) The effect of the order; and
- (b) The name of the medical practitioner in respect of whom the order is made; and
- (c) A summary of the proceedings in which the order is made—

to be published in such publications as the Council or, as the case requires, the Tribunal may order.

(4) Subsections (2) and (3) of this section shall apply subject to—

- (a) Any order made under section 106 of this Act; and
- (b) Any order of any court.

Cf. 1968, No. 46, s. 65; 1988, No. 150, s. 67

139. Reference to medical practitioners in other Acts—

Every reference in any enactment to a medical practitioner or registered medical practitioner or duly qualified medical practitioner shall, unless a different intention appears, be deemed to be a reference to a person registered under this Act who is practising in accordance with any conditions of his or her registration or practising certificate.

Cf. 1968, No. 46, s. 74

Regulations

140. Regulations—The Governor-General may from time to time, by Order in Council made on the advice of the Minister given after consultation by the Minister with the Council, make regulations for all or any of the following purposes:

- (a) Regulating the procedure of the Council, the Tribunal, and complaints assessment committees, or any of them;
- (b) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Offences and Penalties

141. False declarations and representations—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who, for any purpose relating to this Act, either on his or her own behalf or on behalf of any other person,—

- (a) Either orally or in writing, makes any declaration or representation that, to his or her knowledge, is false or misleading in any material particular; or

- (b) Produces to the Council, the Tribunal, or a complaints assessment committee, or makes use of, any document knowing it to contain any such declaration or representation; or
- (c) Produces to the Council, the Tribunal, or a complaints assessment committee, or makes use of, a document knowing that it is not genuine; or
- (d) In any application or document produced to the Council, the Tribunal, or a complaints assessment committee, fails to disclose any information that to his or her knowledge is relevant.

Cf. 1968, No. 46, s. 35; 1988, No. 150, s. 36

142. Failure to comply with Act—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who acts in contravention of, or fails to comply in any respect with, any of the following provisions of this Act, or with any requirement or order imposed under any such provision:

- (a) Section 9 (practice of medicine):
- (b) Section 70 (1) (confidentiality of information):
- (c) Section 76 (1) or section 76 (2) (notification of condition affecting fitness to practise medicine):
- (d) Section 106 (2) (hearings of Tribunal to be in public):
- (e) Section 120 (2) (publication of name or particulars).

(2) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000 who acts in contravention of section 10 of this Act (which relates to misleading descriptions).

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who acts in contravention of, or fails to comply in any respect with, any of the following provisions of this Act, or with any requirement or order imposed under any such provision:

- (a) Section 48 (surrender of certificate of registration):
- (b) Section 59 (surrender of practising certificate).

Consequential Amendments, Repeals, and Revocations

143. Consequential amendments, repeals, and revocations—(1) The enactments specified in the Third Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(2) The enactments specified in the Fourth Schedule to this Act are hereby repealed.

(3) The regulations and orders specified in the Fifth Schedule to this Act are hereby revoked.

Transitional Provisions

144. Specialists and general practitioners—(1) Every person who was registered as a specialist under the Medical Practitioners (Registration of Specialists) Regulations 1971 immediately before the commencement of this Act shall, on the commencement of this Act, be deemed to hold vocational registration in respect of the branch of medicine in which that person was so registered as a specialist.

(2) Every person who, immediately before the commencement of this Act, was registered on the register of general practitioners established under the Medical Practitioners (Registration of General Practitioners) Regulations 1987 shall, on the commencement of this Act, be deemed to hold vocational registration in respect of the general practice of medicine.

145. Registered medical practitioners—(1) Every person who, immediately before the commencement of this Act,—

(a) Was registered as a medical practitioner under the Medical Practitioners Act 1968; and

(b) Was not registered—

(i) As a specialist under the Medical Practitioners (Registration of Specialists) Regulations 1971; or

(ii) As a general practitioner under the Medical Practitioners (Registration of General Practitioners) Regulations 1987—

shall, on the commencement of this Act, be deemed to hold general registration.

(2) Notwithstanding anything in section 20 (1) of this Act, where any person to whom subsection (1) of this section applies has held an annual practising certificate issued under section 67 of the Medical Practitioners Act 1968 for a period of at least 5 consecutive years since gaining registration as a medical practitioner under that Act, then, during the period of 5 years beginning on the commencement of this Act, that person shall not be subject to the requirement of general oversight specified in section 20 (1) of this Act.

(3) Subject to any conditions set by the Council pursuant to section 20 (2) of this Act,—

(a) Any person to whom subsection (2) of this section applies may, during the period of 5 years beginning on the commencement of this Act, provide general oversight

in relation to the practice, by any person who holds general registration, of any branch or sub-branch of medicine; and

- (b) During that period, such general oversight shall be deemed, for the purposes of section 20 (1) of this Act, to be general oversight by a person who holds vocational registration in that branch or sub-branch of medicine, even though the person providing general oversight does not hold vocational registration in that branch or sub-branch of medicine.

146. Persons conditionally registered—(1) Every person who, immediately before the commencement of this Act, was conditionally registered under the Medical Practitioners Act 1968 shall, on the commencement of this Act, be deemed to hold probationary registration, and, for the purposes of section 19 of this Act, shall be deemed to have held probationary registration from the date on which that person was granted conditional registration under the Medical Practitioners Act 1968.

(2) Any period before the commencement of this Act during which any person who was conditionally registered under the Medical Practitioners Act 1968 has practised medicine or surgery—

- (a) In a hospital or other institution approved by the Minister for the purposes of section 16 of that Act; or

(b) As permitted under subsection (3) of that section— shall be deemed, for the purposes of section 19 (a) of this Act, to be a period of practice in the employ of an approved person.

147. Persons holding provisional certificates or probationary or temporary registration—(1) Every person who, immediately before the commencement of this Act, held a provisional certificate under the Medical Practitioners Act 1968 shall, on the commencement of this Act, be deemed to hold interim registration, and, subject to sections 31 and 32 of this Act, that registration shall expire at the same time as the certificate would have expired if this Act had not been enacted.

(2) Every person who, immediately before the commencement of this Act, held a certificate of temporary registration under the Medical Practitioners Act 1968 shall, on the commencement of this Act, be deemed to hold temporary registration on the same basis as appeared in the certificate, and, subject to sections 26 and 27 of this Act, that registration

shall expire at the same time as the certificate would have expired if this Act had not been enacted.

(3) Every person who, immediately before the commencement of this Act, held a certificate of probationary registration under the Medical Practitioners Act 1968 shall, on the commencement of this Act, be deemed to hold probationary registration, and, subject to section 18 of this Act, that registration shall expire at the same time as the certificate would have expired if this Act had not been enacted.

148. Transitional provisions relating to persons whose registration is suspended—(1) This section applies to any person who, immediately before the commencement of this Act, is suspended from practice as a medical practitioner under the Medical Practitioners Act 1968.

(2) Where this section applies to any person,—

(a) Sections 144 to 147 of this Act shall apply, in relation to that person, as if, at the commencement of this Act, that person held the registration under the Medical Practitioners Act 1968 that he or she would have held at the expiry of his or her suspension if this Act had not been enacted; but

(b) The registration that he or she is deemed, by virtue of any of the provisions of sections 144 to 147 of this Act, to hold at the commencement of this Act shall be deemed to be suspended until that person's suspension from practice under the Medical Practitioners Act 1968 would have expired if this Act had not been enacted.

149. Registrar to give effect to transitional provisions—The Registrar shall, as soon as practicable after the commencement of this Act, and without further authority than this section, do everything necessary to give effect to sections 144 to 148 of this Act.

150. Transitional provisions relating to membership of Council—Notwithstanding section 124 of this Act, the persons holding office immediately before the commencement of this Act as members of the Council constituted under section 3 of the Medical Practitioners Act 1968—

(a) Shall continue to hold office; and

(b) Shall be deemed to be members of the Council constituted under section 122 of this Act; but

- (c) Unless sooner vacating office under clause 6 of the Second Schedule to this Act, shall vacate office—
- (i) When the first persons elected to the Council pursuant to this Act come into office; or
 - (ii) On the expiry of the period of 1 year beginning on the commencement of this Act,—
- whichever occurs first.

151. Auckland and Otago medical schools deemed to be approved institutions—(1) The Faculty of Medicine in the University of Auckland and the Faculty of Medicine in the University of Otago shall, on the commencement of this Act, each be deemed to be an approved institution as if there had been issued under section 4 of this Act and published in the *Gazette*, in respect of each such Faculty of Medicine, a notice of approval, and all the provisions of this Act (including, without limitation, subsections (2) and (3) of section 4 of this Act) shall apply accordingly.

(2) For the purposes of the application of section 5 of this Act in respect of the approvals that are deemed, by subsection (1) of this section, to have been issued in respect of each of those Faculties of Medicine, those approvals shall be deemed to have been issued on the date of the commencement of this section.

152. Hospitals and other institutions approved under section 16 of Medical Practitioners Act 1968—(1) Subject to subsection (3) of this section, the operator of a hospital or other institution approved by the Minister pursuant to section 16 (1) of the Medical Practitioners Act 1968 shall, where that approval was in force immediately before the commencement of this Act, be deemed—

- (a) To have been approved by the Council for the purposes of section 15 of this Act; and
- (b) To be an approved person for the purposes of section 15 of this Act.

(2) Where, immediately before the commencement of this Act, any person who is conditionally registered under the Medical Practitioners Act 1968 is, with the permission of the Council given pursuant to subsection (3) of section 16 of that Act, practising medicine in a hospital or other institution whose approval pursuant to subsection (1) of that section has been revoked, the operator of that hospital or institution shall, subject to subsection (3) of this section, be deemed, in respect of the person who was so practising,—

- (a) To have been approved by the Council for the purposes of section 15 of this Act; and
- (b) To be an approved person for the purposes of section 15 of this Act.

(3) The Council may at any time, by notice in the *Gazette*, revoke the approval of any person to whom subsection (1) or subsection (2) of this section applies.

(4) In this section, the term “operator”, in relation to a hospital or other institution to which this section applies, means,—

- (a) In relation to a licensed hospital within the meaning of the Hospitals Act 1957, the licensee of that hospital:
- (b) In relation to a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, the controlling authority of that hospital:
- (c) In the case of any other institution, the person for the time being in charge of that institution.

153. Transitional provisions relating to existing proceedings—All investigations, inquiries, and other proceedings under Part III of the Medical Practitioners Act 1968 that have been commenced before the commencement of this Act and have not been completed before that date shall be continued and completed as if this Act had not been passed.

154. Disciplinary offences committed before commencement of this Act—Where,—

- (a) Before the commencement of this Act, any person (being a registered medical practitioner or a person who is conditionally registered under the Medical Practitioners Act 1968) has engaged in conduct that, in the opinion of the Council, would have justified the taking of proceedings of a disciplinary nature under Part III of that Act; and
- (b) Disciplinary proceedings could have been taken against that person under Part VIII of this Act if that conduct had been engaged in by that person after the commencement of this Act; and
- (c) No proceedings of a disciplinary nature have been taken under the Medical Practitioners Act 1968 against that person in respect of that conduct,—

the following provisions shall apply:

- (d) A complaint may be made under section 83 of this Act to the Registrar in respect of that conduct, and that complaint shall be dealt with under Part VIII of this

Act, as if that person had engaged in that conduct after the commencement of this Act, but, unless the conduct was engaged in on or after the commencement of Part IV of the Health and Disability Commissioner Act 1994,—

- (i) The complaint shall not be notified, pursuant to section 83 (4) of this Act, to the Health and Disability Commissioner; and
 - (ii) Section 86 of this Act shall not apply in respect of the complaint:
- (e) Disciplinary proceedings may be taken against that person under Part VIII of this Act as if that person had engaged in that conduct after the commencement of this Act:
- (f) If the person is found guilty of a disciplinary offence under Part VIII of this Act in respect of that conduct,—
- (i) That person may be dealt with under that Part of this Act; but
 - (ii) Except with the consent of that person, neither the Tribunal nor any court shall have power to make against that person, in respect of that conduct, any order in the nature of a penalty that could not have been made against that person at the time when he or she engaged in that conduct.

Cf. 1992, No. 122, s. 182 (3)

SCHEDULES

Section 101

FIRST SCHEDULE

PROVISIONS APPLYING IN RESPECT OF THE MEDICAL PRACTITIONERS DISCIPLINARY TRIBUNAL

1. Deputy chairperson—(1) If—

- (a) The chairperson of the Tribunal becomes incapable of acting as chairperson because of illness, absence, or any other reason; or
- (b) There is a vacancy in the office of chairperson,—
the deputy chairperson of the Tribunal shall have and may exercise or perform all the functions, duties, and powers of the chairperson.
- (2) The deputy chairperson shall, while acting for the chairperson, be deemed to be the chairperson of the Tribunal.
- (3) No act done by the deputy chairperson while acting for the chairperson, and no act done by the Tribunal while the deputy chairperson is acting for the chairperson, shall in any proceedings be questioned on the ground that the occasion for the deputy chairperson's so acting had not arisen or had ceased.
- (4) Where there are 2 or more deputy chairpersons of the Tribunal,—
- (a) The Minister shall from time to time, by written notice, nominate which of those deputy chairpersons shall, in the circumstances specified in subclause (1) of this clause, exercise or perform the functions, duties, and powers of the chairperson; and
- (b) References in this clause to the deputy chairperson shall be read as references to the deputy chairperson for the time being so nominated.

2. Term of office—(1) The chairperson and each deputy chairperson of the Tribunal shall—

- (a) Be appointed for a term not exceeding 3 years; and
- (b) Take office from the date of the notice of appointment or such later date as may be specified in the notice; and
- (c) Subject to subclause (2) of this clause, be eligible for re-appointment from time to time.
- (2) No person shall hold office as the chairperson or as a deputy chairperson of the Tribunal for more than 6 consecutive years.
- (3) Notwithstanding subclauses (1) and (2) of this clause, any person whose term of office as the chairperson or as a deputy chairperson of the Tribunal has expired or who has resigned from office as chairperson or as a deputy chairperson of the Tribunal shall continue in office for the purpose of completing any proceedings heard by the Tribunal before the expiry of the person's term of office or the person's resignation, whether or not that person's successor has come into office.

3. Vacation of office—(1) Any person who holds office as the chairperson or as a deputy chairperson of the Tribunal may resign his or her office by giving a notice to that effect to the Minister.

- (2) A person who holds office as the chairperson or as a deputy chairperson of the Tribunal shall be deemed to have vacated his or her office if—
- (a) He or she dies; or
- (b) He or she is adjudged bankrupt under the Insolvency Act 1967; or
- (c) He or she becomes a member of the Council.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF THE MEDICAL PRACTITIONERS
DISCIPLINARY TRIBUNAL—*continued*

(3) Any person who holds office as the chairperson or as a deputy chairperson of the Tribunal may at any time be removed from office by the Minister, by notice given to the person, on the grounds of a mental or physical condition affecting performance of duty, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister.

4. Expenses of Tribunal—(1) There may be paid to the members of the Tribunal, and to any secretary or other officer of the Tribunal, such remuneration (by way of fees, salary, or otherwise) and allowances and expenses as the Council from time to time determines.

(2) All remuneration, allowances, and expenses under subclause (1) of this clause, and all other expenses of the Tribunal approved by the Council, shall be paid out of the funds of the Council.

5. Procedure of Tribunal—(1) Subject to this Act and to any regulations made under this Act, the Tribunal may—

- (a) Regulate its procedure in such manner as it thinks fit; and
- (b) Prescribe or approve forms for the purposes of hearings.

(2) The Tribunal shall publish any rules of procedure made by it.

(3) The Tribunal shall observe the rules of natural justice at each hearing.

6. Evidence—(1) Subject to clause 5 (3) of this Schedule, the Tribunal may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not it would be admissible in a court of law.

(2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.

(3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

(4) Subject to subclauses (1) to (3) of this clause, the Evidence Act 1908 shall apply to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

Cf. 1993, No. 82, s. 106

7. Powers of investigation—(1) For the purposes of dealing with the matters before it, the Tribunal or any person authorised by it in writing to do so may—

(a) Inspect and examine any papers, documents, records, or things:

(b) Require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:

(c) Require any person to furnish, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records.

(2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this clause shall be verified by statutory declaration or otherwise as the Tribunal may require.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF THE MEDICAL PRACTITIONERS
DISCIPLINARY TRIBUNAL—*continued*

(3) For the purposes of its proceedings, the Tribunal may of its own motion, or on the application of any party to the proceedings, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Tribunal, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.

Cf. 1908, No. 25, s. 4c; 1980, No. 2, s. 4

8. Witness summons—(1) The Tribunal may of its own motion, or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.

(2) The witness summons shall state—

- (a) The place where the person is to attend; and
- (b) The date and time when the person is to attend; and
- (c) The papers, documents, records, or things which that person is required to bring and produce to the Tribunal; and
- (d) The entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and
- (e) The penalty for failing to attend.

(3) The power to issue a witness summons may be exercised by the Tribunal, the chairperson, a deputy chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal, the chairperson, or a deputy chairperson.

Cf. 1993, No. 82, s. 109

9. Service of summons—(1) A witness summons may be served—

- (a) By delivering it personally to the person summoned; or
- (b) By posting it by registered letter addressed to the person summoned at that person's usual place of residence or business.

(2) The summons shall,—

- (a) Where it is served under subclause (1) (a) of this clause, be served at least 24 hours before the attendance of the witness is required; or
- (b) Where it is served under subclause (1) (b) of this clause, be served at least 10 days before the date on which the attendance of the witness is required.

(3) If the summons is posted by registered letter, it shall be deemed for the purposes of subclause (2) (b) of this clause to have been served at the time when the letter would be delivered in the ordinary course of post.

Cf. 1993, No. 82, s. 110

10. Witnesses' allowances—(1) Every witness attending before the Tribunal to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations shall apply accordingly.

(2) On each occasion on which the Tribunal issues a summons under clause 8 (1) of this Schedule, the Tribunal, or the person exercising the

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF THE MEDICAL PRACTITIONERS
DISCIPLINARY TRIBUNAL—*continued*

power of the Tribunal under subclause (3) of that clause, shall fix an amount which, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, shall be paid or tendered to the witness.

(3) The amount fixed under subclause (2) of this clause shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.

(4) Where a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness shall be paid by that party.

(5) Where the Tribunal has of its own motion issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses—

- (a) Form part of the costs of the proceedings; or
- (b) Be paid out of the funds of the Council.

Cf. 1993, No. 82, s. 111

11. Privileges and immunities—(1) Every person shall have the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records, and things to the Tribunal as witnesses have in courts of law.

(2) Witnesses and counsel appearing before the Tribunal shall have the same privileges and immunities as witnesses and counsel have in proceedings in a District Court.

Cf. 1908, No. 25, ss. 4c (4), 6; 1980, No. 2, s. 5

12. Non-attendance or refusal to co-operate—(1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—

- (a) Fails to attend in accordance with the summons; or
- (b) Refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or

(c) Fails to produce any such paper, document, record, or thing.

(2) Every person commits an offence who,—

- (a) Wilfully obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things pursuant to clause 7 (1) (a) of this Schedule; or

(b) Without sufficient cause, fails to comply with any requirement of the Tribunal or any authorised person made under clause 7 (1) (b) or (c) of this Schedule; or

(c) Without sufficient cause, acts in contravention of, or fails to comply with, any order made by the Tribunal under clause 7 (3) of this Schedule or any term or condition of the order.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF THE MEDICAL PRACTITIONERS
DISCIPLINARY TRIBUNAL—*continued*

(3) Every person who commits an offence against subclause (1) or subclause (2) of this clause is liable on summary conviction to a fine not exceeding \$1,500.

(4) No person summoned to attend before the Tribunal shall be convicted of an offence against subclause (1) of this clause unless there was tendered or paid to that person travelling expenses in accordance with clause 10 of this Schedule.

Cf. 1908, No. 25, s. 9; 1980, No. 2, s. 5; 1993, No. 82, s. 113

13. Contempt of Tribunal—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

- (a) Assaults, threatens, or intimidates, or intentionally insults, the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or
- (b) Intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
- (c) Intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal.

(2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in that member's opinion, constitutes an offence against subclause (1) of this clause, whether or not such person is charged with the offence; and any member of the Police may take such steps as are reasonably necessary to enforce such an exclusion.

Cf. 1994, No. 143, s. 221

14. Power to amend charges—(1) The Tribunal may, at any time during the hearing of any charge laid under section 102 of this Act, amend the charge in any way.

(2) The Tribunal may, at the request of the medical practitioner concerned, if the Tribunal is of the opinion that the medical practitioner would be embarrassed in his or her defence by reason of an amendment made or proposed to be made under this clause, adjourn the hearing.

Cf. 1957, No. 87, s. 43

15. Legal and medical assessors—(1) The Tribunal may from time to time appoint a legal assessor, who, subject to subclause (3) of this clause, may—

- (a) Be present at any hearing of the Tribunal; and
- (b) At any time advise the Tribunal on matters of law, procedure, or evidence.

(2) The Tribunal may from time to time appoint a medical assessor, who, subject to subclause (3) of this clause, may—

- (a) Be present at any hearing of the Tribunal; and
- (b) At any time advise the Tribunal on medical matters.

(3) No legal assessor or medical assessor shall be entitled to be present during any deliberations of the Tribunal.

SECOND SCHEDULE

Section 132

PROVISIONS APPLYING IN RESPECT OF MEDICAL COUNCIL OF NEW ZEALAND

Members

1. President and deputy president—(1) At its first meeting after the commencement of this Act, and at its first meeting in every subsequent year commencing with the 1st day of January, the Council shall elect one of its members to be its president, and another to be its deputy president.

(2) Any member holding the office of president or deputy president of the Council shall, unless he or she sooner resigns or vacates office as a member of the Council, hold office until his or her successor is elected under this clause, and shall be eligible for re-election.

(3) Any member holding the office of president or deputy president of the Council may—

(a) At any time be removed from the office of president or deputy president by the Council; or

(b) Resign his or her office by giving a notice to that effect to the Registrar.

(4) If the president or deputy president of the Council ceases to be a member of the Council, he or she shall thereupon vacate the office of president or deputy president; and in any such case an election to fill the vacancy in the office of president or deputy president shall be held as soon as reasonably practicable after its occurrence.

(5) Where the office of president or deputy president becomes vacant in any other case, the Council shall elect one of its members to fill that vacancy as soon as reasonably practicable after its occurrence.

Cf. 1968, No. 46, ss. 4 (1), (3), (4), 5

2. Deputy president may act for president—(1) If—

(a) The president of the Council is at any time incapable of acting as president because of illness, absence, or any other reason; or

(b) There is a vacancy in the office of president,—
the deputy president of the Council shall have and may exercise or perform all the functions, duties, and powers of the president.

(2) The deputy president shall, while acting for the president, be deemed to be the president of the Council.

(3) No act done by the deputy president while acting for the president, and no act done by the Council while the deputy president is acting for the president, shall in any proceedings be questioned on the ground that the occasion for the deputy president's so acting had not arisen or had ceased.

Cf. 1968, No. 46, s. 5 (4)

3. Term of office of appointed members—Every member of the Council (other than the Director-General of Health and the members elected to the Council under section 124 (c) of this Act) shall—

(a) Be appointed by notice in the *Gazette*; and

(b) Be appointed for a term not exceeding 3 years; and

(c) Take office from the date of the notice of appointment or such later date as may be specified in the notice; and

(d) Subject to clause 5 of this Schedule, be eligible for re-appointment from time to time.

Cf. 1968, No. 46, s. 3 (7)

SECOND SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF MEDICAL COUNCIL OF NEW ZEALAND—*continued*

4. Term of office of elected members—Every member of the Council elected under section 124 (c) of this Act shall,—

- (a) Be elected for a term of 3 years; and
- (b) Subject to clause 5 of this Schedule, be eligible for re-election from time to time.

5. Limit on term of office—(1) No person (other than the Director-General of Health) shall be a member of the Council for more than 6 consecutive years.

(2) Notwithstanding subclause (1) of this clause, any member of the Council whose term of office has expired or who has resigned from office shall continue in office for the purpose of completing any proceedings heard by the Council before the expiry of the member's term of office or the member's resignation, whether or not that member's successor has come into office.

6. Vacation of office—(1) Any member of the Council may at any time resign his or her office by giving a notice to that effect to the Minister.

(2) A member of the Council shall be deemed to have vacated his or her office if—

- (a) He or she dies; or
- (b) He or she is adjudged bankrupt under the Insolvency Act 1967.

(3) Any member of the Council may be removed from office by the Minister, by notice given to the member, on the grounds of a mental or physical condition affecting performance of duty, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(4) If a person ceases to be a member of the Council in accordance with any of subclauses (1) to (3) of this clause,—

- (a) Subject to any rules made under section 125 of this Act or any regulations made under this Act, the vacancy so created shall be filled in the manner in which the appointment or election to the vacant office was originally made; and
- (b) The person so appointed or elected to fill the vacancy shall be appointed or elected for the residue of the term for which the person's predecessor was appointed or elected.

(5) The powers of the Council shall not be affected by any vacancy in its membership.

Cf. 1968, No. 46, s. 3 (7), (8)

7. Alternates for certain members—(1) The Director-General of Health may appoint any employee of the Ministry of Health to attend 1 or more meetings of the Council in his or her place.

(2) A person appointed under section 124 (b) of this Act may appoint any other member of the academic staff of a Faculty of Medicine of a New Zealand university to attend 1 or more meetings of the Council in his or her place.

(3) A person appointed under subclause (1) or subclause (2) of this clause to attend 1 or more meetings of the Council shall for the purposes of those meetings be deemed to be a member of the Council, and the fact that he or

SECOND SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF MEDICAL COUNCIL OF NEW ZEALAND—
continued

she attends any such meeting shall be sufficient evidence of his or her authority to do so.

Cf. 1968, No. 46, s. 7 (5A), (6); 1987, No. 38, s. 2

Meetings

8. Meetings—(1) Meetings of the Council shall be held—

(a) At such times; and

(b) Subject to clause 12 of this Schedule, at such places—
as the Council from time to time appoints.

(2) Notice of a meeting of the Council shall be given by the Registrar to each member of the Council, except that it shall not be necessary to give notice to any member for the time being absent from New Zealand.

(3) At any meeting of the Council, the quorum necessary for the transaction of business shall be 5 members, of whom—

(a) At least 3 members shall be medical practitioners; and

(b) At least 2 members shall not be medical practitioners.

(4) A meeting of the Council at which the quorum is present shall be competent to perform or exercise all or any of the functions, duties, and powers exercisable by the Council.

Cf. 1968, No. 46, s. 7 (1)–(3)

9. President to preside at meetings—(1) The president of the Council shall preside at each meeting of the Council if he or she is present and willing to preside.

(2) If the president is not present or willing to preside at a meeting of the Council, the deputy president, if present and willing to preside, shall preside.

(3) If neither the president nor the deputy president is present and willing to preside at a meeting of the Council, the members present shall elect a member who is present to preside at that meeting.

Cf. 1968, No. 46, s. 4 (2), (5)

10. Voting at meetings—(1) All questions arising at any meeting of the Council shall be decided by a majority of the votes cast by the members present.

(2) The person presiding at the meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(3) No member of the Council shall be entitled to be present or vote or otherwise participate in the capacity of a member of the Council at any part of a meeting of the Council where any matter relating to the member's registration, suspension, competence, fitness to practise, or discipline under this Act is being considered.

Cf. 1968, No. 46, s. 7 (4), (5)

11. Resolution assented to by members—(1) A resolution in writing signed or assented to by letter, facsimile, or other written message, by a majority of the members for the time being of the Council shall be as valid and effective as if it had been passed at a meeting of the Council duly called and constituted.

SECOND SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF MEDICAL COUNCIL OF NEW ZEALAND—*continued*

(2) Any such resolution may consist of several documents in like form, each signed or purported to have been sent by one or more members.

Cf. 1993, No. 22, Second Schedule, cl. 9

12. Teleconference meeting—(1) The contemporaneous linking together by telephone or other means of communication of a number of members being not less than the quorum stated in clause 8(3) of this Schedule, whether or not 1 or more of the members is out of New Zealand, shall be deemed to constitute a meeting of the Council, and all of the provisions of this Schedule shall apply to that meeting, if the following conditions are met:

- (a) Notice shall have been given, by telephone or other means of communication, to every member of the Council for the time being entitled to receive notice of a meeting of the Council; and
- (b) Each of the members taking part in the meeting by telephone or other means of communication must—
 - (i) Be linked by telephone or such other means for the purposes of the meeting; and
 - (ii) At the commencement of the meeting acknowledge, to all the other members taking part, the member's presence for the purpose of a meeting of the Council; and
 - (iii) Be able throughout the meeting to hear each of the other members taking part; and
 - (iv) On any vote, individually express his or her vote to the meeting.

(2) A member shall not leave a meeting held under this clause by disconnecting the member's telephone or other means of communication unless the member has previously obtained the express consent of the person presiding at the meeting.

(3) A member shall be conclusively presumed to have been present, and to have formed part of the quorum, at all times during a meeting held under this clause unless the member has left the meeting with the express consent of the person presiding at the meeting.

(4) A minute of the proceedings at a meeting held under this clause shall be sufficient evidence of those proceedings, and the observance of all necessary formalities, if certified as a correct minute by the person presiding at the meeting.

Cf. 1993, No. 22, Second Schedule, cl. 10

13. Procedure—(1) The Council shall observe the rules of natural justice but, subject to that requirement, may receive as evidence any statement, document, information, or matter, whether or not it would be admissible in a court of law.

(2) Subject to this Act and any regulations made under this Act, the Council may regulate its procedure in such manner as it thinks fit.

Cf. 1968, No. 46, s. 7 (7)

Delegations

14. Committees—The Council may from time to time appoint 1 or more committees of the Council, and—

SECOND SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF MEDICAL COUNCIL OF NEW ZEALAND—*continued*

- (a) Any such committee shall consist of at least 2 members of the Council and such other persons (if any) as the Council thinks fit; and
- (b) The Council shall regulate the procedure of each such committee in such manner as it thinks fit; and
- (c) The Council may at any time discharge, alter, or reconstitute any such committee.

Cf. 1968, No. 46, s. 13 (1), (3), (4)

15. Delegations—(1) The Council may from time to time, by written notice, delegate any of its functions, duties, or powers (other than the functions, duties, and powers relating to registration under this Act) to any committee of the Council.

(2) Unless otherwise provided in the delegation, a delegate may exercise a function, duty, or power of the Council delegated to it under this clause in the same manner and with the same effect as if the delegate were the Council, but may not further delegate the function, duty, or power.

(3) Every delegation under this clause shall be revocable by the Council at will, and no such delegation shall prevent the exercise of the function, duty, or power by the Council.

(4) Every delegate purporting to act under any delegation under this clause shall, until the contrary is proved, be presumed to be acting in accordance with the terms of the delegation.

Cf. 1968, No. 46, s. 13 (1), (5)–(8)

Miscellaneous Provisions

16. Expenses of Council—(1) There may be paid to the members of the Council such remuneration (by way of fees, salary, or otherwise) and allowances and expenses as the Council from time to time determines.

(2) All expenses of the Council (whether under subclause (1) of this clause, clause 17 of this Schedule, any other provision of this Act, or any regulations made under this Act) shall be paid out of the funds of the Council.

17. Registrar and other staff—(1) The Council shall appoint a Registrar, and may appoint such other officers, and such employees and agents, as it considers are necessary for the efficient carrying out of its functions, duties, and powers.

(2) An officer, employee, or agent appointed under subclause (1) of this clause shall be appointed on such terms and conditions as the Council agrees with the officer, employee, or agent.

(3) Where, under this Act or any regulations made under this Act, the Council orders or requires the Registrar to do any act, the Registrar shall comply with the order or requirement as soon as reasonably practicable.

Cf. 1968, No. 46, s. 6

18. Legal assessors—(1) The Council may appoint a legal assessor who, subject to subclause (2) of this clause, may—

- (a) Be present at any proceedings of the Council; and
- (b) At any time advise the Council on matters of law, procedure, or evidence.

SECOND SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF MEDICAL COUNCIL OF NEW ZEALAND—
continued

(2) No legal assessor shall be entitled to be present during any deliberations of the Council.

Cf. 1968, No. 46, s. 60

19. Common seal—(1) The Council shall provide for the safe custody of its common seal, which shall be in such form as the Council shall decide.

(2) The common seal shall be used only by the authority of a resolution of the Council, or of a committee of the Council authorised in that behalf, and every document to which the common seal is affixed shall be signed by 2 persons, each of whom is—

(a) A member of the Council; or

(b) A person appointed by the Council for the purpose of signing that document or documents of that kind.

(3) The common seal of the Council shall be judicially noticed in all courts and for all purposes.

Cf. 1993, No. 22, Second Schedule, cl. 17

20. Powers of the Council—The Council shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions and duties.

21. Auditor—The Council shall appoint a chartered accountant to audit the accounts of the Council.

Cf. 1968, No. 46, s. 14(5)

THIRD SCHEDULE
ENACTMENTS AMENDED

Section 143 (1)

Enactment	Amendment
<p>1908, No. 56—The Evidence Act 1908 (R.S. Vol. 28, p. 451)</p>	<p>By repealing paragraph (a) of section 23C (1) (as inserted by section 3 of the Evidence Amendment Act 1989), and substituting the following paragraph: “(a) A medical practitioner holding vocational registration in the speciality of psychiatry, practising or having practised in the field of child psychiatry and with experience in the professional treatment of sexually abused children; or”.</p>
<p>1956, No. 27—The Health Act 1956 (R.S. Vol. 31, p. 467)</p>	<p>By repealing subsection (2) of section 7A (as inserted by section 4 of the Health Amendment Act 1993), and substituting the following subsection: “(2) Each such person designated as a Medical Officer of Health shall be a medical practitioner suitably qualified and experienced in public health medicine.”</p>
	<p>By repealing section 22 (as substituted by section 10 (1) of the Health Amendment Act 1987, and amended by section 9 of the Health Amendment Act 1993), and substituting the following section: “22. Certain officers to have functions of medical officers of health— (1) Every person who holds the office of Director-General of Health shall, if that person is a medical practitioner suitably experienced and qualified in public health medicine, have all the functions of a Medical Officer of Health, and may exercise those functions in any part of New Zealand. “(2) Every person who holds the office of Director-General of Health and is not a medical practitioner suitably experienced and qualified in public health medicine shall designate a medical practitioner or medical practitioners who is or are employed in the Ministry and who is or are suitably experienced and qualified in public health medicine to exercise the functions of a Medical Officer of Health in any part of New Zealand.”</p>

THIRD SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)	By omitting from Part II of the First Schedule the item relating to section 35 of the Medical Practitioners Act 1968.
1962, No. 135—The Transport Act 1962 (R.S. Vol. 16, p. 659)	By repealing the definition of the term “registered medical practitioner” in section 57A (1) (as substituted by section 7 of the Transport Amendment Act (No. 2) 1988), and substituting the following definition: “‘Registered medical practitioner’ means a person registered as a medical practitioner under the Medical Practitioners Act 1995.”
1964, No. 19—The Human Tissue Act 1964 (R.S. Vol. 16, p. 169)	By repealing the definition of the term “medical practitioner” in section 2 (as substituted by section 2 of the Human Tissue Amendment Act 1968), and substituting the following definition: “‘Medical practitioner’ means a person registered as a medical practitioner under the Medical Practitioners Act 1995.” By repealing section 4A (as inserted by section 3 of the Human Tissue Amendment Act 1968), and substituting the following section: “4A. Restrictions on persons holding probationary registration —For the purposes of sections 3 and 4 of this Act, but for no other purpose of this Act, a person who holds probationary registration under the Medical Practitioners Act 1995 shall be subject to the restrictions imposed by section 15 of the last-mentioned Act.”
1966, No. 42—The Medical Auxiliaries Act 1966 (R.S. Vol. 17, p. 331)	By repealing paragraph (d) of section 39 (1), and substituting the following paragraph: “(d) The Medical Practitioners Act 1995; or”.
1975, No. 116—The Misuse of Drugs Act 1975 (R.S. Vol. 26, p. 567)	By repealing the definition of the term “medical practitioner” in section 2, and substituting the following definition: “‘Medical practitioner’ means a person registered as a medical practitioner under the Medical Practitioners Act 1995.”

THIRD SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1976, No. 61—The Optometrists and Dispensing Opticians Act 1976 (R.S. Vol. 27, p. 711)	By repealing paragraph (d) of section 3 (2), and substituting the following paragraph: “(d) Two medical practitioners who hold vocational registration in the speciality of ophthalmology, to be appointed on the nomination of the New Zealand Medical Association:”.
1977, No. 53—The Nurses Act 1977 (R.S. Vol. 33, p. 353)	By repealing the definition of the term “medical practitioner” in section 2 (1), and substituting the following definition: “‘Medical practitioner’ means a person registered as a medical practitioner under the Medical Practitioners Act 1995:”.
1977, No. 112—The Contraception, Sterilisation, and Abortion Act 1977 (R.S. Vol. 28, p. 1)	By repealing the definition of the term “practising obstetrician or gynaecologist” in section 2, and substituting the following definition: “‘Practising obstetrician or gynaecologist’ means a registered medical practitioner who— “(a) Holds vocational registration in the speciality of obstetrics or gynaecology, or obstetrics and gynaecology; or “(b) In the opinion of the Supervisory Committee, is experienced in one or both of those branches of medicine:”.
	By repealing subsection (3) of section 5, and substituting the following subsection: “(3) Without limiting section 109 of the Medical Practitioners Act 1995, every registered medical practitioner who fails to comply with subsection (1) or subsection (2) of this section is guilty of professional misconduct, and shall be dealt with under section 110 of that Act accordingly.”
	By repealing subsection (4) of section 46, and substituting the following subsection: “(4) Nothing in this section limits or affects the provisions of section 5 of this Act or section 11 of the Medical Practitioners Act 1995.”

THIRD SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1978, No. 103—The Securities Act 1978 (R.S. Vol. 15, p. 533)	<p>By repealing clauses 2 to 4 of the Second Schedule, and substituting the following clause:</p> <p>“2. Registration (including interim or temporary registration) as a medical practitioner under the Medical Practitioners Act 1995.”</p>
1981, No. 118—The Medicines Act 1981	<p>By repealing the definition of the term “medical practitioner” in section 2 (1), and substituting the following definition:</p> <p>“‘Medical practitioner’ means a person who is registered as a medical practitioner under the Medical Practitioners Act 1995.”.</p>
1988, No. 4—The Protection of Personal and Property Rights Act 1988	<p>By repealing subparagraph (i) of section 32 (2) (c) (as amended by section 2 of the Protection of Personal and Property Rights Amendment Act 1994), and substituting the following subparagraph:</p> <p>“(i) Certificates from 2 registered medical practitioners (at least 1 of whom shall be a medical practitioner who holds vocational registration and who is independent of the applicant or a relative of the applicant) as to the extent of the applicant’s lack of competence to manage his or her own affairs in relation to his or her property; and”.</p> <p>By repealing paragraph (c) of section 33 (3) (as amended by section 3 of the Protection of Personal and Property Rights Amendment Act 1994), and substituting the following paragraph:</p> <p>“(c) Be accompanied by certificates from 2 registered medical practitioners (at least 1 of whom shall be a medical practitioner who holds vocational registration and who is independent of the applicant and the person in respect of whom the application is made) as to whether or not that person—</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1988, No. 4—The Protection of Personal and Property Rights Act 1988—<i>continued</i></p>	<p>“(i) Lacks the competence to manage his or her own affairs in relation to his or her property, and, if so, to what extent; and</p> <p>“(ii) Is able to understand the nature, purpose, and consequences of the application; and”.</p> <p>By repealing paragraph (a) of section 87 (1B) (as substituted by section 9 (1) of the Protection of Personal and Property Rights Amendment Act 1994), and substituting the following paragraph:</p> <p>“(a) A report from each of 2 registered medical practitioners (at least 1 of whom shall be a medical practitioner who holds vocational registration and who is independent of the applicant or any relative of the applicant) as to the extent to which the person subject to the order has the competence or lacks the competence to manage his or her own affairs in relation to his or her property; and”.</p> <p>By repealing paragraph (a) of section 87 (1F) (as so substituted), and substituting the following paragraph:</p> <p>“(a) A report from each of 2 registered medical practitioners (at least 1 of whom shall be a medical practitioner who holds vocational registration and who is independent of the applicant or any relative of the applicant) as to the extent to which the person subject to the order has the competence to manage his or her own affairs in relation to his or her property; and”.</p>

THIRD SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1988, No. 150—The Dental Act 1988	<p>By repealing the definition of the term “medical practitioner” in section 2, and substituting the following definition:</p> <p>“‘Medical practitioner’ means a medical practitioner registered under the Medical Practitioners Act 1995:”.</p> <p>By omitting from section 33 (1) the expression “Medical Practitioners Act 1968”, and substituting the expression “Medical Practitioners Act 1995”.</p>
1989, No. 24—The Children, Young Persons, and Their Families Act 1989	<p>By repealing subsection (2) of section 179, and substituting the following subsection:</p> <p>“(2) Every psychiatric examination carried out under subsection (1) or subsection (2) of section 178 of this Act shall be carried out by a registered medical practitioner holding a specialist psychiatric appointment or holding vocational registration in the speciality of psychological medicine or psychiatry.”</p> <p>By repealing paragraph (a) of section 179 (3) (as substituted by section 27 of the Children, Young Persons, and Their Families Amendment Act 1994), and substituting the following paragraph:</p> <p>“(a) A registered medical practitioner holding a psychiatric appointment or holding vocational registration in the speciality of psychological medicine or psychiatry; or”.</p>
1992, No. 46—The Mental Health (Compulsory Assessment and Treatment) Act 1992	<p>By repealing subsection (3) of section 181, and substituting the following subsection:</p> <p>“(3) The examination required by an order made under subsection (1) of this section shall be carried out by a medical practitioner holding a specialist psychiatric appointment or holding vocational registration in the speciality of psychological medicine or psychiatry.”</p> <p>By repealing the definitions of the terms “medical practitioner” and “psychiatrist” in section 2 (1), and substituting in their appropriate alphabetical order the following definitions:</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1992, No. 46—The Mental Health (Compulsory Assessment and Treatment) Act 1992— <i>continued</i>	<p>“ ‘Medical practitioner’ means a person registered as a medical practitioner under the Medical Practitioners Act 1995:</p> <p>“ ‘Psychiatrist’ means a medical practitioner holding vocational registration in the speciality of psychiatry.”</p>
1994, No. 88—The Health and Disability Commissioner Act 1994	<p>By repealing paragraph (a) of section 4 (1), and substituting the following paragraph:</p> <p>“(a) A medical practitioner, which for the purposes of this Act means any person for the time being registered under the Medical Practitioners Act 1995, including a person who holds probationary registration or temporary registration or interim registration under that Act.”</p> <p>By repealing paragraph (a) of section 38 (2), and substituting the following paragraph:</p> <p>“(a) In the case of a medical practitioner, the president of the Medical Council of New Zealand.”</p> <p>By adding to section 39, as subsection (4), the following subsection:</p> <p>“(4) Nothing in this section prevents—</p> <p>“(a) The laying of a charge, under any health registration enactment, by the Director of Proceedings:</p> <p>“(b) The taking of any action under any health registration enactment in relation to such a charge.”</p> <p>By omitting from the First Schedule the item relating to the Medical Practitioners Act 1968, and substituting the item “Medical Practitioners Act 1995”.</p>

Section 143 (2)

FOURTH SCHEDULE

ENACTMENTS REPEALED

- 1968, No. 46—The Medical Practitioners Act 1968 (R.S. Vol. 7, p. 535).
- 1968, No. 85—The Human Tissue Amendment Act 1968 (R.S. Vol. 16, p. 177).
- 1970, No. 142—The Medical Practitioners Amendment Act 1970 (R.S. Vol. 7, p. 598).
- 1972, No. 82—The Medical Practitioners Amendment Act 1972 (R.S. Vol. 7, p. 600).
- 1973, No. 74—The Medical Practitioners Amendment Act 1973 (R.S. Vol. 7, p. 600).
- 1977, No. 118—The Medical Practitioners Amendment Act 1977 (R.S. Vol. 7, p. 601).
- 1977, No. 163—The Medical Practitioners Amendment Act (No. 2) 1977 (R.S. Vol. 7, p. 601).
- 1978, No. 112—The Medical Practitioners Amendment Act 1978 (R.S. Vol. 7, p. 601).
- 1979, No. 53—The Medical Practitioners Amendment Act 1979 (R.S. Vol. 7, p. 602).
- 1980, No. 122—The Medical Practitioners Amendment Act 1980 (R.S. Vol. 7, p. 605).
- 1982, No. 36—The Medical Practitioners Amendment Act 1982.
- 1983, No. 40—The Medical Practitioners Amendment Act 1983.
- 1986, No. 100—The Medical Practitioners Amendment Act 1986.
- 1987, No. 10—The Health Amendment Act 1987: Section 10 (R.S. Vol. 31, p. 578).
- 1987, No. 38—The Medical Practitioners Amendment Act 1987.
- 1991, No. 60—The Judicature Amendment Act 1991: So much of the Schedule as relates to the Medical Practitioners Act 1968.
- 1993, No. 23—The Health Reforms (Transitional Provisions) Act 1993: So much of the Fourth Schedule as relates to the Medical Practitioners Act 1968.
- 1993, No. 24—The Health Amendment Act 1993: Section 9 (R.S. Vol. 31, p. 585).
- 1994, No. 54—The Protection of Personal and Property Rights Amendment Act 1994: Sections 2, 3.
- 1994, No. 93—The Medical Practitioners Amendment Act 1994.
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FIFTH SCHEDULE
REGULATIONS AND ORDERS REVOKED

Section 143 (3)

Title	Statutory Regulations Serial Number
The Medical Practitioners Registration Regulations 1952	1952/153
The Medical Practitioners (Registration of Specialists) Regulations 1971	1971/79
The Medical Practitioners (Registration of Specialists) Regulations 1971, Amendment No. 5	1980/66
The Medical Practitioners (Registration of Specialists) Regulations 1971, Amendment No. 6	1982/260
The Medical Practitioners (Overseas Qualifications) Order 1985	1985/150
The Medical Practitioners (Registration of Specialists) Regulations 1971, Amendment No. 7	1985/187
The Medical Practitioners (Registration of Specialists) Regulations 1971, Amendment No. 8	1990/58
The Medical Practitioners (Registration of General Practitioners) Regulations 1987	1987/61
The Medical Practitioners (Registration of General Practitioners) Regulations 1987, Amendment No. 1	1990/59
The Medical Practitioners (Fees) Regulations 1993	1993/29
The Medical Practitioners (Overseas Qualifications) Order 1994	1994/163
The Medical Practitioners (Registration of Specialists) Regulations 1971, Amendment No. 9	1995/192

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This Act is administered in the Ministry of Health.

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