

MEDICAL PRACTITIONERS ACT.

Act No. 37, 1938.

An Act to consolidate and amend the law relating to the registration of medical practitioners; to regulate the qualifications for and the effect of such registration; to repeal the Medical Practitioners Act, 1912, and the Medical Practitioners (Amendment) Act, 1915; and for purposes connected therewith. [Assented to, 22nd December, 1938.]

George VI.  
No. 37, 1938.

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

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Medical Practitioners Act, 1938."

Short title.

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

2. This Act is divided into Parts as follows:—

Division  
into Parts.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—THE MEDICAL BOARD—ss. 5-14.

PART III.—REGISTRATION AND QUALIFICATIONS THEREFOR—ss. 15-32.

PART IV.—MEDICAL PRACTITIONERS' FEES—ss. 33-38.

PART V.—MISCELLANEOUS—ss. 39-50.

PART VI.—LEGAL PROCEEDINGS—ss. 51, 52.

PART VII.—REGULATIONS—s. 53.

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**Medical Practitioners Act.****No. 37, 1938.****Definitions.**

**3.** (1) In this Act unless the context or subject-matter otherwise indicates or requires—

“Board” means the New South Wales Medical Board.

“Member” means a member of the board.

“Prescribed” means prescribed by this Act or the regulations.

“President” means the president of the board.

“Register” means the Register of Medical Practitioners for New South Wales.

“Registered” means registered under this Act and includes “deemed to be so registered.”

“Regulations” means regulations made under this Act.

“The British Empire” means any of His Majesty’s dominions, and any territories under His Majesty’s protection, and includes India and also includes any territory in respect of which a mandate of the League of Nations is exercised by the Government of any part of His Majesty’s dominions.

(2) This Act shall be read and construed, subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof, to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected.

**Repeal.**

**4.** The Medical Practitioners Act, 1912, and the Medical Practitioners (Amendment) Act, 1915, are hereby repealed.

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**PART II.**
**THE MEDICAL BOARD.****Constitution of board.**

**5.** (1) There shall be a board to be called the New South Wales Medical Board the members of which shall be appointed by the Governor.

(2) The board shall consist of not less than seven nor more than nine members.

(3)

(3) Of the members one shall be appointed on the nomination of the Senate of the University of Sydney, and one other shall be a general practitioner who has for five years prior to his appointment practised his profession outside the county of Cumberland. Such member shall be appointed on the nomination of the New South Wales Branch of the British Medical Association.

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The nominations shall be made in the manner prescribed.

(4) No person shall be eligible for appointment as a member unless at the time of appointment such person is registered as a medical practitioner in New South Wales.

cf. Act No. 1,372 (S.A.) s. 7.

(5) No person shall be qualified to act as a member unless he is registered under this Act.

(6) The members of the board shall, subject to this Act, hold office for a period of seven years, but shall be eligible for re-appointment.

(7) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of any member of the board, and a member of the board shall not be subject to the provisions of any such Act during his term of office.

Public Service Act not to apply.

(8) The persons who, immediately before the commencement of this Act, hold office as members of the New South Wales Medical Board constituted under the Acts repealed by this Act, shall be deemed to have been appointed under this Act as members.

**6.** (1) The Governor shall appoint one of the members as president.

The president.

(2) The president, when present, shall preside at all meetings of the board.

cf. *Ibid.* s. 11 (2).

In the absence of the president from any meeting, another member, chosen for the purpose by the majority of members present and voting, shall preside.

(3) The person presiding, for the time being, shall have a casting vote as well as a deliberative vote.

cf. *Ibid.* s. 11 (3).

(4) The person who, immediately before the commencement of this Act, holds office as president of the New South Wales Medical Board constituted under the Acts repealed by this Act, shall be deemed to have been appointed under this Act as the first president.

**Medical Practitioners Act.****No. 37, 1938.**Vacation  
of office.**7.** The office of a member shall become vacant if he—

- (a) dies; or
- (b) resigns his office by notice in writing addressed to the Governor; or
- (c) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898; or
- (d) is absent without the leave of the board from four consecutive ordinary meetings of the board; or
- (e) is removed from office by the Governor; or
- (f) becomes disqualified for office; or
- (g) attains the age of seventy years.

Power of  
Governor to  
remove from  
office.**8.** The Governor may, for any cause which appears to him to be sufficient, remove any member from office.Casual  
vacancies.**9.** (1) Where a casual vacancy occurs in the office of a member, a member shall be appointed to fill the vacant office.

(2) Where the casual vacancy occurs in the office of a member appointed on the nomination of one of the bodies referred to in subsection three of section five of this Act, the member appointed to the vacant office shall be appointed on the nomination of the body by which his predecessor was nominated.

(3) A member appointed under the authority of this section shall hold office for the balance of his predecessor's term of office, but shall be eligible for re-appointment.

Quorum,  
etc.**10.** (1) At any meeting of the board three members shall constitute a quorum unless at the date of the meeting the number of members actually holding office exceeds seven, in which case five members shall constitute a quorum.

(2) The procedure for the calling of meetings of the board and for the conduct of business at such meetings shall, subject to any regulations in relation thereto and to this Act, be as determined by the board.

Ordinary  
meetings  
of the  
board.**11.** An ordinary meeting of the board shall be called in each calendar month by notice sent to the president and to each other member of the board at least seven days before the date of such meeting.**12.**

**12.** (1) No act or proceeding of the board shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member.

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Defects in appointments not to invalidate proceedings of the board.

(2) All acts and proceedings of the board shall, notwithstanding the subsequent discovery of any defect in the appointment of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed and was qualified to act and had acted as a member of the board, and as if the board had been properly and fully constituted.

**13.** The Governor shall, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint a secretary to the board.

Secretary. Act No. 29, 1912, s. 3 (c).

**14.** No matter or thing done or suffered by the board, or by any member or by the secretary, bona fide in the execution, or intended execution, of this Act, or the exercise or discharge, or intended exercise or discharge, of any of its or his powers or duties, shall subject the board or any member, or the secretary, or any other person, or the Crown, to any liability in respect thereof.

Protection of board and members and others from liability.

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PART III.

REGISTRATION AND QUALIFICATIONS THEREFOR.

**15.** (1) The board shall keep a register, to be called the "Register of Medical Practitioners for New South Wales"

Register of Medical Practitioners.

(2) A person shall be registered by the entering in the register of—

- (a) his full name and address;
- (b) the date upon which he is registered;
- (c) particulars of the qualification or qualifications in respect of which his registration is granted.

(3)

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(3) There may also be entered in the register in respect of any registered person, subject to payment of any fee which may be prescribed in relation to the entry—

- (a) particulars of such further or additional qualifications possessed by such registered person as the board may direct shall be so entered;
- (b) particulars of any certificate, diploma, membership, degree, license, letters, testimonial, or other title, status, document, or description which such registered person is authorised by the board to use in relation to himself as a medical practitioner or in the practice of his profession as such;
- (c) such other particulars and matters as are directed or authorised by this Act or the regulations to be so entered.

cf. Act No.  
1,372 (S.A.),  
s. 25.

(4) The register shall at all reasonable times be open to inspection at the office of the board by any person on payment of the prescribed fee.

Practitioners  
registered  
under repealed  
Acts to be  
registered  
under this  
Act.  
cf. *Ibid.*  
s. 18.

**16.** All persons whose names were, immediately before the commencement of this Act, registered in the register of medical practitioners kept in pursuance of the Acts repealed by this Act, shall, without application or inquiry, be registered under this Act, and shall be deemed to have been so registered as from such commencement, but shall be subject in all respects to the provisions of this Act except where otherwise provided.

Qualifica-  
tions for  
future  
registration.  
cf. *Ibid.*  
s. 15.

**17.** (1) In addition to the persons mentioned in section sixteen of this Act every person shall be entitled to be registered who proves to the satisfaction of the board that he—

- (a) is the holder of a degree (granted after due examination) in medicine or surgery of any University in the Commonwealth of Australia or the Dominion of New Zealand which is legally authorised to grant such degree; or
- (b) has passed through a regular graded course of medical study of five or more years' duration in a school of medicine in some part of the British Empire, such course being recognised by  
the

the board as not lower in standard than that required by the by-laws of the University of Sydney for the degree of bachelor of medicine, and—

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- (i) has received, after due examination, from a university, college, or other body with which such school of medicine is associated, and which is duly recognised for the purpose in such part, a degree or diploma, certifying to his ability to practise medicine or surgery; and
- (ii) is by law entitled to be registered or to practise as a medical practitioner in such part; or
- (c) has passed through a regular graded course of medical study of five or more years' duration in a school of medicine in some country not being part of the British Empire, and—
  - (i) has received after due examination from a university, college, or other body, with which such school of medicine is associated, and which is duly recognised for the purpose in such country, a degree or diploma certifying to his ability to practise medicine or surgery; and
  - (ii) is or was by law entitled to be registered or to practise as a medical practitioner in such country; and
  - (iii) in addition thereto has passed the Fourth, Fifth and Final Degree Examinations prescribed by the Senate of the University of Sydney for students in the Faculty of Medicine, after attending the courses of instruction prescribed by and otherwise complying with the by-laws of the University; or
- (d) has passed through a regular graded course of medical study of five or more years' duration in a school of medicine in some part of the British Empire or some other country and—
  - (i) has received after due examination from a university, college, or other body, with which

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which such school of medicine is associated and which is duly recognised for the purpose in such part or country, a degree or diploma certifying to his ability to practise medicine or surgery; and

- (ii) has held a certificate of registration for post graduate teaching or for research work in medicine or surgery under section twenty-one of this Act for a continuous period of three years or more:

Provided that a person shall not be entitled to be registered upon proof of the matters referred to in paragraph (b) of this subsection unless either the board is satisfied that, by the laws or regulations in force in that part of the British Empire, the right to be registered and to practise as a medical practitioner in that part is granted to graduates in medicine of the University of Sydney by virtue of their being such graduates and without further examination or such person has passed the Fourth, Fifth and Final Degree Examinations prescribed by the Senate of the University of Sydney for students in the Faculty of Medicine, after attending the courses of instruction prescribed by and otherwise complying with the by-laws of the University:

Provided further that a person shall not be entitled to be registered upon proof of the matters referred to in paragraph (c) of this subsection unless the board is satisfied that, by the laws or regulations in force in that country, the right to be registered and to practise as a medical practitioner in that country is granted to graduates in medicine of the University of Sydney by virtue of their being such graduates and either without further examination or subject to passing further examinations (either with or without an obligation to attend a course of instruction) which, in the opinion of the board, are not more onerous than those referred to in subparagraph (iii) of paragraph (c) of this subsection.

(2) Notwithstanding subsection one of this section a person may be registered if—

- (a) he proves to the satisfaction of the board that he has passed through a regular graded course  
of

of medical study of five or more years duration in a school of medicine in some part of the British Empire or in some other country and has received after due examination from a university, college or other body with which such school of medicine is associated, and which is duly recognised for the purpose in such part or country, a degree or diploma certifying to his ability to practise medicine or surgery; and

- (b) the board has reported to the Minister that such person has such special qualifications and has had such special experience in the practice of medicine or surgery or of any branch of medicine or surgery as would justify waiving compliance with the requirements of subsection one of this section, and has recommended that such requirements be waived in relation to such person; and
- (c) the Minister has approved of the recommendation of the board.

(3) Where any person is registered under this Act pursuant to this section the following provisions shall have effect:—

- (a) The registered person shall be—
  - (i) competent to accept or to hold any appointment as a medical officer in any public hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937, or as a medical officer in any private hospital or other institution approved by the Board;
  - (ii) qualified to sign any medical certificate of the cause of death of any deceased person where such certificate is given in the course of his duties as such a medical officer.
- (b) Except as provided in paragraph (a) of this subsection no such person shall practise his profession unless and until—
  - (i) he has, for a period of twelve months, or for periods amounting in the aggregate to twelve months, served as a medical officer

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officer in one or more of the hospitals or institutions referred to in subparagraph (i) of paragraph (a) of this subsection; or

- (ii) he satisfies the Board that he has, for a period of twelve months, or for periods amounting in the aggregate to twelve months, served as a medical officer in one or more hospitals or institutions (whether in New South Wales or elsewhere) approved by the Board.
- (c) If the Board is satisfied that the registered person is unable by reason of physical incapacity, to accept or to hold any such appointment as is referred to in subparagraph (i) of paragraph (a) of this subsection it may agree to accept, as the equivalent of the period of service referred to in paragraph (b) of this subsection, proof that the registered person has, for a period of twelve months or for periods amounting in the aggregate to twelve months, received special tuition of a nature and type approved by the Board in some branch of medicine or surgery approved by the Board.

Where the Board is satisfied that the registered person has complied with the requirements of this paragraph the registered person shall not be precluded by paragraph (b) of this subsection from practising his profession.

- (d) Any person who practises his profession in contravention of the provisions of this subsection shall be deemed not to be registered.

This subsection shall not apply to or in respect of any person registered upon proof of the matters referred to in paragraph (d) of subsection one of this section or in subsection two of this section.

This subsection shall commence on the first day of January in the year one thousand nine hundred and forty-one.

(4) Where it appears to the Governor that by reason of any emergency or of the occurrence of any epidemic conditions have arisen which render it necessary  
or

or desirable in the public interest that the operation of subsection three of this section should be suspended the Governor, may, by proclamation published in the Gazette suspend the operation of that subsection for a period to be specified in the proclamation. No. 37, 1928.

The power conferred by this subsection may be exercised from time to time but so that the period specified in any proclamation shall not exceed one year.

During any period for which the operation of subsection three of this section is suspended any registered person may practise his profession without compliance with the requirements of that subsection and any period during which a registered person so practises his profession may be accepted by the board, for the purposes of subparagraph (ii) of paragraph (b) of that subsection, as equivalent to a corresponding period of service as a medical officer in a hospital or institution approved by the Board.

(5) No person whose name shall have been removed from the register under this Act or from the register of medical practitioners kept in pursuance of the Acts repealed by this Act, shall be entitled to be registered under this Act solely by reason of his being possessed of one of the qualifications mentioned in subsection one of this section. cf. Act No. 25, 1927 (Irish Free State), s. 25 (2).

The Board shall not refuse to register the name of any person on the ground specified in this subsection unless it is of opinion that if the act or omission which was the reason for such removal, had been done or omitted after the commencement of this Act, the disciplinary tribunal would, in the exercise of its discretion, have directed that the name of such person be removed from the register; but in any such case the Board may direct that the name of such person shall not be registered until the expiration of such period (not exceeding twelve months from the date of the application for registration) as the Board may think fit.

(6) The board may refuse to register the name of any person who is otherwise entitled to be registered but— cf. Act No. 4,131 (Vict.), s. 7.

- (a) who has in New South Wales been convicted of a felony or misdemeanour or elsewhere of any offence

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offence which if committed in New South Wales would have been a felony or misdemeanour; or

- (b) whose name has been, for any reason affecting the conduct of such person in any professional respect, erased or removed from any register or roll established or kept under any law in any other part of the British Empire or in any foreign country providing for the registration or certification of medical practitioners under a public authority; or
- (c) who is of unsound mind or has been guilty of habitual drunkenness or of addiction to any deleterious drug.

The board shall not refuse to register the name of any person on the ground specified in paragraph (a) of this subsection when the offence was not from its trivial nature or from the circumstances under which it was committed such as to render such person unfit in the public interest to practise his profession or on the ground specified in paragraph (b) of this subsection unless the reason for such erasing or removal was an act or omission of a nature affecting his conduct in any professional respect for which, if done or omitted to be done in New South Wales, the disciplinary tribunal would have been authorised under this Part of this Act to direct that the name of such person be removed from the Register of Medical Practitioners for New South Wales if registered therein.

ef. Act No.  
4, 131  
(Vict.),  
s. 8 (2).

(7) No person shall be registered under this Act unless the board is satisfied that such person is of good character.

Application  
for registra-  
tion.

**18.** (1) Any person desiring to be registered under this Act may make application to the board to be so registered.

(2) At its first meeting after any such application has been made to it, or so soon thereafter as is practicable, the board shall consider the application.

(3) The applicant shall submit to the board proof of the qualification upon which he relies.

(4)

(4) The applicant shall attend in person before the board unless specially excused by the board from so doing. Such applicant may be represented by his solicitor or counsel.

The board may require the attendance of any other person.

(5) For the purpose of dealing with any application under this section the board and the president or other member presiding at the meeting at which the application is considered shall have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923-1934, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and the said Act, section thirteen and Division 2 of Part II excepted, shall *mutatis mutandis*, apply to any witness summoned by or appearing before the board.

(6) The board shall not, in any one year, grant the applications of more than eight persons who are not natural born British subjects.

This subsection shall not apply to or in respect of any person who proves that he possesses the qualification referred to in paragraph (a) or paragraph (b) of subsection one of section seventeen of this Act.

(7) If not satisfied that the applicant is entitled to be registered, the board may refuse the application or may adjourn the same for further consideration.

*cf. Act No.*  
1,372  
(S.A.),  
s. 20 (5).

(8) This section shall not apply to a person registered pursuant to section sixteen of this Act.

**19.** (1) If any person who applies for registration is dissatisfied with the decision of the board he may apply to the Supreme Court, in accordance with rules of court, for an order directing the board to register him.

*Appeal from*  
board.  
*cf. Ibid.*  
s. 21.

(2) The court may order that the person applying be registered, or that he be registered conditionally or on terms, or may decline to make such or any order.

**20.** (1) When a person has applied to be registered, the president, or, in his absence from the City of Sydney, any other member of the board authorised generally in that behalf by the board, upon being satisfied that such person is entitled to be registered, and on payment of the registration

*Certificate*  
of pro-  
visional  
registration  
may be  
granted.  
*cf. Ibid.*  
s. 24.

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registration fee required by section thirty-two of this Act may grant to such person a certificate of provisional registration in the prescribed form.

(2) Where a person has obtained a certificate of provisional registration he shall be deemed to be registered under this Act until—

(a) the date stated in such certificate; or

(b) such later date as is fixed by the board, which in no case shall be later than three months from the granting of such certificate:

Provided that if the board, before the date so stated or fixed, has reason to believe that such person is not entitled to be registered, it may, without prejudice to his application to be registered, cancel such certificate; and such person shall thereupon cease to be deemed to be registered.

(3) If a person to whom a certificate of provisional registration has been granted becomes registered, his registration shall, unless otherwise decided by the board, date from the granting of such certificate.

Registration for post-graduate teaching in medicine.

**21.** (1) The board may, at the request of any institution or organisation interested in post-graduate teaching in medicine or surgery grant to any person a certificate of registration for post-graduate teaching or for research work in medicine or surgery.

The provisions of section eighteen and of subsections one, two and three of section seventeen of this Act shall not apply to or in respect of any such person.

No fee shall be payable in respect of the issue of any such certificate.

(2) Where a certificate of registration for post-graduate teaching or for research work in medicine or surgery has been issued to any person such person shall be deemed to be registered under this Act (but only for the purposes set out in subsection three of this section) until the date specified in the certificate or such later date as may be fixed by the board:

Provided that in no case shall a certificate issued under this section have effect for a longer period than one year but any such certificate may be renewed by the board from time to time for a like period.

(3)

(3) (a) Where a certificate of registration for post-graduate teaching or for research work in medicine or surgery has been issued under this section to any person such person shall, for all purposes connected with or relating to post-graduate teaching or research work in medicine or surgery be deemed to be registered during the period for which such certificate has effect.

(b) In particular and without prejudice to the generality of paragraph (a) of this subsection such person shall be—

(i) competent to accept or to hold any appointment as a medical officer (including an appointment as an honorary medical officer or as an associate honorary medical officer) for the purpose of assisting in or undertaking post-graduate teaching or research work in medicine or surgery in any public hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937;

(ii) qualified to sign any medical certificate of the cause of death of any deceased person where such certificate is given in the course of his duties as such a medical officer.

**22.** (1) The Board shall, from time to time, remove from the register the names of all registered persons who have died, and shall make such alterations and amendments in the register as may be necessary for the purpose of making the same an accurate record of the names, addresses and qualifications of all persons for the time being registered.

Correction of register. cf. Act No. 1,372 (S.A.), s. 27.

(2) Every district registrar appointed under the Registration of Births, Deaths and Marriages Act, 1899-1934 (including the Registrar-General in respect of deaths registered in the district of Sydney) upon registering the death of any medical practitioner, shall transmit notice of such death to the secretary of the board at Sydney in the manner and within the time prescribed.

Death of medical practitioner to be reported to board. cf. Act No. 26, 1912, s. 7 (2) (3).

(3) Every such district registrar shall be entitled to receive a fee of two shillings for each such notification; and subsection two of section fifteen of the said Act shall extend to such fees.

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Notice of  
change of  
address to  
be given.

cf. Act No.  
74, 1914  
(N.Z.),  
s. 18.

**23.** (1) Every registered person who at any time changes his address as appearing in the register shall, within three months thereafter, send to the board a notice of his new address, and the board shall thereupon alter the entry in the register relating to that person accordingly.

(2) Every registered person who fails to comply with the provisions of subsection one of this section shall be liable to a penalty not exceeding five pounds.

Power to  
remove name  
of registered  
person who  
cannot be  
found, etc.  
cf. Act No. 74,  
1914 (N.Z.),  
s. 19.  
(1) (2).  
cf. Act No. 24,  
1925 (Q.),  
s. 13 (3) (4).

**24.** (1) The board may send to any registered person, by registered letter addressed to him at his address as appearing in the register, an inquiry as to whether or not he has changed his address or residence.

(2) If no reply is received to that letter within six months from the posting thereof, or if the letter is not delivered or is returned to the board, the board may remove from the register the name of such person.

(3) Any name removed from the register pursuant to this section may be restored by the board.

Amendment of  
register if  
person wrong-  
fully registered  
or if particulars  
incorrect.  
cf. Act No. 74,  
1914 (N.Z.),  
s. 21.

**25.** (1) If any person has been registered under this Act by reason of any false or fraudulent representation or declaration, made either verbally or in writing, or if any person not entitled to be registered under this Act has been so registered, the board shall remove the name of that person from the register.

(2) If any particulars appearing on the register in respect of the qualifications of any registered person are proved to the satisfaction of the board to be or are to the knowledge of the board false or erroneous in any respect, the board shall remove those particulars from or otherwise amend the register.

(3) The provisions of subsection two of this section shall apply notwithstanding the fact that, at the time when the entry in the register was made, the registered person was actually possessed of the qualifications particulars whereof appear in the register, or that at that time the entry was otherwise correct.

(4) Any person whose name has been removed from the register in pursuance of subsection one of this section, or any person the particulars of whose qualifications have been altered in pursuance of subsection two  
of

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of this section, may apply to the Supreme Court, in accordance with rules of court, for an order to the board for the restoration of his name to the register, or for the restoration to the register of any particulars as to his qualifications, and thereupon the court may make such order in the matter as it thinks fit, or may refuse to make any order.

**26.** (1) If the board is satisfied that any person registered under this Act on the grounds mentioned in paragraph (b) or in paragraph (c) of subsection one of section seventeen of this Act, has since been removed for misconduct from any register of medical practitioners in the United Kingdom or in the part of the British Empire or other country in which the degree or diploma referred to was granted, the board may remove his name from the register:

Removal from New South Wales register after removal from British or other register. cf. Act No. 28, 1924 (N.Z.), s. 5.

Provided that the board shall not remove the name of such person from the register pursuant to this subsection if the reason for the previous erasing or removal from a register was an act or omission affecting his conduct in a professional respect unless such act or omission was of a nature for which, if done or omitted to be done in New South Wales, the disciplinary tribunal would have been authorised under this Part of this Act to direct that the name of such person be removed from the Register of Medical Practitioners for New South Wales if registered therein.

cf. Act No. 4, 1931 (Vict.), s. 4.

(2) Notice of intention to remove the name of any person from the register pursuant to this section shall be given by the board to the person affected either personally or, if his whereabouts are unknown to the board, by advertisement in such manner as the board thinks sufficient, and his name shall not be removed from the register before the expiration of two months from the date of service of such notice or from the date of such advertisement as the case may be.

(3) Any person whose name has been removed from the register pursuant to this section may appeal to the Supreme Court in accordance with rules of court; and the court may make such order in the matter as it thinks fit, having regard to the merits of the case and to the public welfare.

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Disciplinary provisions.

**27.** (1) A complaint or charge that any registered person—

- (a) has been convicted in New South Wales of a felony or misdemeanour, or elsewhere of an offence which, if committed in New South Wales would have been a felony or misdemeanour; or
- (b) has been guilty of habitual drunkenness or of addiction to any deleterious drug; or
- (c) has been guilty of infamous conduct in any professional respect,

may be preferred to the Board of Health, which shall cause the same to be investigated.

The court before which any registered person is convicted of a felony or misdemeanour shall forward particulars of such conviction to the Board of Health. Any Coroner may direct a transcript of evidence given in proceedings before him which appears to implicate any registered person to be forwarded to the Board of Health.

Where, in the opinion of the Board of Health the circumstances warrant such a course, it may refer the complaint or charge to the disciplinary tribunal constituted under section twenty-eight of this Act, and, in such case, shall, where practicable, cause to be served on such registered person a notice specifying, with sufficient particularity to enable such registered person to answer the same, the grounds of the complaint or charge, and informing such registered person that the same has been referred to the disciplinary tribunal.

(2) Without limiting the meaning of the expression "infamous conduct in any professional respect" a registered person shall be deemed to be guilty of such conduct who—

- (a) (i) employs in connection with his professional practice an assistant who is not duly qualified or registered, and who permits such assistant to attend, treat or perform operations upon patients in respect of matters requiring professional discretion or skill; or

(ii)

- (ii) by his presence, countenance, advice, assistance or co-operation, knowingly enables an unqualified or unregistered person, whether described as an assistant or otherwise, to perform any act of operative as distinct from manipulative surgery upon a patient in respect of any matter requiring professional discretion or skill, to issue or procure the issue of any certificate, notification, report or other document of a like character or to engage in professional practice as if the said person were duly qualified and registered.

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- but shall not be deemed to be guilty of such conduct by reason only of acts performed in relation to the proper training and instruction of bona fide students or of the legitimate employment of dressers, nurses, dispensers, surgery attendants, technicians, and skilled mechanics under the immediate personal supervision of such registered person or of collaborating in any experimental or research work in medicine with any person who is the holder of a degree in Science of any University in the Commonwealth of Australia or the Dominion of New Zealand which is legally authorised to grant such degree or who is the holder of a degree in Science of any other university recognised by the board; or
- (b) uses any certificate, diploma, membership, degree, license, letters, testimonial, or other title, status, document or description in relation to himself as a medical practitioner or in the practice of his profession as such, other than those (if any) which the board has authorised, in pursuance of paragraph (b) of subsection three of section fifteen of this Act, to be entered in respect of such registered person in the register, but shall not be deemed to be guilty of such offence by reason only of the use by him of any certificate, diploma, membership, degree, license, letters, testimonial or other title, status, document or description which was lawfully used

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used by him immediately before the commencement of this Act or of the use by him of the description "doctor," "physician," "surgeon" or "medical practitioner."

Disciplinary  
tribunal.  
cf. Act  
No. 33, 1923,  
s. 3 (1).

**28.** (1) The disciplinary tribunal shall consist of a chairman, appointed as in this section provided, and the members of the board.

A quorum at any sitting of the disciplinary tribunal shall consist of the chairman and four members of the board.

(2) The Governor may appoint a judge of the District Court (in this section referred to as "the chairman") to act as chairman of the disciplinary tribunal.

Any such appointment shall be for a term of seven years.

(3) The chairman and members of the board sitting on the disciplinary tribunal shall receive such fees and allowances as may be prescribed.

cf. Act  
No. 33, 1923,  
s. 4 (1).

(4) In the case of and during the absence, from whatever cause, of the chairman, the Governor may appoint a deputy of the chairman, who shall be a judge of the District Court, and who, whilst acting as such deputy shall have and may exercise and perform all the powers, authorities, duties and functions by this Act conferred or imposed upon the chairman.

cf. *Ibid.*  
s. 6 (3).

(5) The chairman shall fix a date and place for the hearing of any inquiry by the disciplinary tribunal, and shall give at least seven days' notice to the registered person concerned of the date and place of such hearing.

(6) The disciplinary tribunal shall, in making any inquiry, sit in open court, and the registered person concerned shall be afforded an opportunity of defence either in person or by his solicitor or counsel.

The person who preferred the complaint or charge shall unless exempted from attendance by the disciplinary tribunal be present and may be represented by his solicitor or counsel at the inquiry.

(7) Where the inquiry is in respect of a charge of infamous conduct in any professional respect, the disciplinary tribunal may receive and admit on production, as evidence in the inquiry concerned, the judgment and findings of any court (whether civil or criminal),

the

the verdict or findings of a jury, or a certificate of the conviction of any person, in any case where such judgment, findings, verdict or certificate are, in the opinion of the disciplinary tribunal, relevant to the nature of the charge; and may receive and admit on production, as evidence in the inquiry concerned, a transcript of the depositions or of shorthand notes, duly certified as correct, of the evidence of witnesses taken in any court in any case where, in the opinion of the disciplinary tribunal, such evidence is relevant to the nature of the charge.

(8) For the purpose of any inquiry, the disciplinary tribunal and the chairman shall have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923-1934, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and the said Act, section thirteen and Division 2 of Part II excepted, shall, mutatis mutandis, apply to any witness summoned by or appearing before the disciplinary tribunal.

(9) (a) The decision of the chairman upon any question of law or procedure which may arise in any inquiry, shall be the decision of the disciplinary tribunal.

(b) Where the persons constituting the disciplinary tribunal are divided in opinion as to the decision to be given upon any question (not being a question to which paragraph (a) of this subsection relates) the question shall be decided according to the opinion of the majority, if there is a majority, but if such persons are equally divided in opinion, the decision shall be in favour of the person charged.

(10) The secretary to the board shall convene all meetings of the disciplinary tribunal, and shall keep a record of all proceedings and decisions of such tribunal.

**29.** (1) Where any registered person has been adjudged guilty by the disciplinary tribunal, that tribunal may by order—

- (a) reprimand or caution such person; or
- (b) suspend such person from practice for a period not exceeding twelve months; or

(c)

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(c) direct that the name of such person be removed from the register.

(2) Where any registered person has been so adjudged guilty, the tribunal shall not make an order suspending such person from practice or directing that his name be removed from the register where the offence is such that, either from its trivial nature or from the circumstances in which it was committed, or the conduct is such that it does not, in the public interest, disqualify the person from practising his profession.

*cf. Act No.*  
28, 1924  
(N.Z.), s. 6  
(5).

(3) While any order of suspension from practice under this section remains in force the person concerned shall be deemed not to be registered, but forthwith on the expiry of such order his rights and privileges as a registered person shall be revived as from the date of such expiry.

*cf. Ibid.*  
s. 6 (6).

(4) There shall be a right of appeal to the Supreme Court from an order of suspension or an order directing that the name of any person be removed from the register pursuant to this section or against any refusal of the restoration of any name to the register and on any such appeal the court may make such order as it thinks proper, having regard to the merits of the case and the public welfare.

Any such appeal shall be in the nature of a rehearing, and shall be made in accordance with rules of court.

*cf. Ibid.*  
s. 6 (7).

(5) An order of suspension or an order directing that the name of a registered person be removed from the register shall not take effect until the expiration of a period of twenty-one days after notification in the prescribed manner by the disciplinary tribunal to the registered person of the making of such order.

If within such period the registered person gives due notice of appeal to the Supreme Court, such order shall not take effect unless and until the order is confirmed by the Supreme Court or the appeal is for any reason dismissed by that court.

Unless the Supreme Court otherwise orders the period of suspension named in the order appealed from shall commence on the day when that order commences to have effect.

(6)

(6) In any case where the court confirms or dismisses an appeal against an order directing that the name of any registered person be removed from the register, the court may fix a time after which the person whose name is removed from the register may apply to have his name restored to the register.

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cf. Act No. 74, 1914 (N.Z.), s. 22 (2).

(7) At the expiration of such time any person whose name has been removed from the register may apply to have his name restored to the register, and all the provisions relating to applications for registration shall, so far as applicable, apply to applications for restoration.

cf. *Ibid.* s. 22 (3).

(8) The disciplinary tribunal may, if it thinks fit, terminate any period of suspension under this section before the expiration of the period specified in the order of suspension, or, subject to subsections six and seven of this section may by order direct that any name removed from the register pursuant to this section or by the Medical Board as constituted under any Act repealed by this Act be restored to the register.

(9) The powers exercisable by the Supreme Court on appeal in accordance with this section shall also be exercisable in respect of any appeal pending which may be made against the decision of the Medical Board as constituted under any Act repealed by this Act.

**30.** (1) If any registered person is at the commencement of this Act or becomes after such commencement an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898, the board may remove the name of such person from the register.

Insanity of registered person.

(2) The Inspector-General of the Insane shall, when any medical practitioner becomes an insane patient within the meaning of the Lunacy Act of 1898, forward to the secretary to the board at Sydney, in the manner and within the time prescribed, notice of such fact.

(3) Where the name of any registered person has been removed from the register pursuant to subsection one of this section the name of such person shall be restored to the register only if and when the board grants to such person a license to resume practice.

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No fee shall be payable for restoring to the register the name of any person to whom any such license has been granted.

(4) Any person who has applied for a license under this section, and to whom the board has refused to grant a license shall have the like right of appeal to the Supreme Court as if an order of suspension from practice under section twenty-nine of this Act had been made by the disciplinary tribunal, and the court may deal with such appeal as if it were an appeal from an order of suspension.

Publication of  
copy of  
register.  
cf. Act No.  
1,372 (S.A.),  
s. 29 (1).  
cf. Act No.  
25, 1927  
(Irish Free  
State),  
s. 31 (5).

**31.** (1) A copy of the register shall, in the month of January in each year be sent by the board to the Minister, and shall, by him, be published in the Gazette.

(2) A copy of the register appearing in the Gazette which is for the time being the latest copy so published, shall be evidence in any court or before any person, until the contrary is proved, that every person whose name appears in such copy is registered in the register under and in accordance with this Act, and that any person whose name does not appear in such copy is not so registered.

cf. *Ibid.*  
s. 31 (6).

(3) A certificate purporting to be signed by the secretary to the board and to certify that—

- (a) on a specified day or days or during the whole of a specified period, a particular person was duly registered in the register or was the holder of a certificate of provisional registration; or
- (b) on a specified day or days or during the whole of a specified period a particular person was not registered in the register or was not the holder of a certificate of provisional registration; or
- (c) on a specified day the name of a particular person was removed from the register or the certificate of provisional registration of a particular person was cancelled; or
- (d) as from a specified day a particular person was suspended from practice for a specified period, shall,

shall, without proof of the signature of the person purporting to sign such certificate or that he was the secretary to the board, and notwithstanding any discrepancy between such certificate and the register, be conclusive evidence of the matters certified in and by such certificate.

**32.** The following fees shall be paid to the board in respect of the several matters hereinafter referred to:—

	£	s.	d.
(a) for registering any person .....	3	3	0
(b) for entering in the register any of the particulars referred to in paragraph (a) or paragraph (b) of subsection three of section fifteen of this Act ..	0	10	6
(c) for restoring the name of any person, other than a person to whom a license under section thirty of this Act has been granted, or a person whose name has been ordered by the Supreme Court to be restored to the register .....	1	1	0

PART IV.

MEDICAL PRACTITIONERS' FEES.

**33.** In this Part of this Act unless the context or subject-matter otherwise indicates or requires—

Interpretation.

“Bill” means a memorandum of any charge or remuneration for any medical or surgical advice, service, attendance, or operation.

“Committee” means the Medical Practitioners Charges Committee.

**34.** (1) There shall be a committee to be called the Medical Practitioners Charges Committee.

Medical Practitioners Charges Committee.

(2)

**Medical Practitioners Act.**

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(2) The committee shall consist of three members of whom two shall be the persons who for the time being are the holders of the following offices:—

(a) Director-General of Public Health;

(b) Under Secretary, Department of Public Health; and of whom one shall be a member of the board appointed for the purpose by the board.

The member of the committee who is a member of the board shall be entitled to such remuneration for his services as a member of the committee (whether by way of fees or otherwise) as may be determined by the Governor.

(3) Two members shall constitute a quorum of the committee and any meeting of the committee at which a quorum is present shall be competent to transact any business of the committee.

(4) At any meeting of the committee the decision of the majority shall be the decision of the committee.

If at any meeting of the committee at which two members only are present such members are divided in opinion as to the decision of any matter the determination of such matter shall be postponed to a meeting at which all the members are present.

Registered persons may recover fees. cf. Act No. 1,372 (S.A.), s.31.

**35.** (1) Every registered person shall be entitled to sue in any court of competent jurisdiction for the recovery of the charge or remuneration for any medical or surgical advice, service, attendance, or operation rendered or performed by him.

Bill of charges to be served before action.

(2) No action or suit for the recovery of fees or remuneration for professional services of any kind as a medical practitioner shall be commenced until the expiration of one month after a bill setting out the amount claimed and containing a brief statement, indicating the nature of the professional services in respect of which such amount is claimed has been served personally or by post on the party to be charged with the same.

(3) Notwithstanding anything contained in subsection two of this section proceedings may be taken under the Arrest on Mesne Process Act, 1902, at any time, notwithstanding that the bill may not have been served or that the period of one month had not elapsed.

**36.**

**36.** (1) The party chargeable may within one month after service upon him of a bill apply in the prescribed manner to the committee to review the same.

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Applica-  
tion to  
review bill.

(2) Where an application is made pursuant to subsection one of this section to review a bill the committee shall proceed to review the bill and certify what, upon such review, is found to be a reasonable charge or remuneration in respect of the medical or surgical advice, service, attendance, or operation to which the bill relates.

(3) The committee may require such evidence to be furnished as it may think necessary or desirable for the purpose of such review and may fix a time within which such evidence shall be furnished.

If any person neglects or fails to furnish any evidence so required within the time so fixed the committee may proceed to review the bill without such evidence.

(4) In the review of any bill the committee shall have regard to the following matters—

- (a) the time occupied in and the nature of the medical or surgical advice, service, attendance, or operation rendered;
- (b) the distance between the consulting room or residence of the medical practitioner and the place at which he rendered the advice, service, attendance, or operation;
- (c) the hours of the day or night at which such advice, service, attendance, or operation was rendered;
- (d) the degree of skill, knowledge or experience required or given in the rendering of such advice, service, attendance, or operation;
- (e) whether the medical practitioner rendered such advice, service, attendance, or operation in the capacity of specialist, consultant, or general practitioner;
- (f) any other matter which to the committee appears relevant.

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Certain bills exempt from review.

**37.** Section thirty-six and subsection two of section thirty-five of this Act shall not apply in any case where the bill is in respect of the costs of medical treatment within the meaning of the Workers' Compensation Act, 1926-1929.

Certificate admissible as evidence.

**38.** The certificate of the committee shall be admissible as evidence in any proceedings for the recovery of the charge or remuneration to which the bill referred to in the certificate relates.

## PART V.

### MISCELLANEOUS.

Reference in other Acts to legally qualified or duly qualified medical practitioners.

cf. Act No. 1,372 (S.A.), s. 30.

Disqualification of unregistered person from holding certain appointments.

cf. *Ibid.* s. 32 (1).  
cf. Act No. 74, 1914 (N.Z.), s. 29.

**39.** Where in any other Act now or hereafter in force, or in any other instrument the expression "legally qualified medical practitioner" or "duly qualified medical practitioner" or "qualified medical practitioner" or "medical practitioner" is used, such expression shall, from the commencement of this Act, unless a contrary intention clearly appears, be deemed to mean a person registered under this Act.

**40.** (1) No person other than a registered person shall be competent to hold, or shall hold, any appointment (whether honorary or not)—

- (a) as a medical officer in any public hospital or separate institution within the meaning of the Public Hospitals Act, 1929-1937, or in any private hospital or in any other institution or society for affording medical relief in sickness, infirmity or old age; or
- (b) as a medical officer of health.

(2) Any person who accepts or holds any appointment for which he is disqualified by reason of this section shall be guilty of an offence and shall be liable to a penalty not exceeding twenty pounds.

**41.**

**41.** (1) No person other than a registered person shall sign any medical certificate of the cause of death of any deceased person.

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Disqualification of unregistered person from signing certain certificates.

(2) No certificate required by or under any Act, from any physician, surgeon, licentiate in medicine and surgery or other medical practitioner shall be valid unless the person signing the same is registered under this Act.

cf. Act No. 24, 1925 (Q), s. 18 (2) (3).

(3) Nothing in this section shall prevent a person holding a medical diploma entitling him to practise medicine or surgery in a British or foreign country who holds an appointment as a medical officer in any vessel registered in that possession, from signing any medical certificate of the cause of death of any person who dies on the vessel or from signing a certificate required by or under any Act, in relation to any passenger on or member of the crew of the vessel.

**42.** (1) Any person, not registered under this Act, who takes or uses any name, initials, word, title, addition, description or symbol which having regard to the circumstances in which it is taken or used indicates or is capable of being understood to indicate or is calculated to lead persons to infer that he possesses a degree, diploma, or other qualification of a nature which would entitle him to be registered as a medical practitioner, or that he is registered as a medical practitioner under this Act, shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding fifty pounds.

Penalty for posing as medical practitioner when not registered.

(2) No person shall, otherwise than in accordance with the regulations, advertise himself to be entitled, qualified, able or willing to practise medicine or surgery in any of its branches or to give or perform any medical or surgical advice, service, attendance or operation.

Advertising.

Any person who contravenes any of the provisions of this subsection shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding fifty pounds.

This subsection shall not apply until the regulations relating to this subsection shall come into operation in accordance with section fifty-three of this Act.

(3)

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(3) Subsection two of this section shall not apply to an advertisement by any member of a life-saving, ambulance or first-aid association, being a charitable institution, or by a member of a mine rescue corps, in relation to the lawful exercise of his functions or duties as a member of such association or corps, but shall apply to every advertisement by any other person whether or not registered under this Act.

Penalties  
for certain  
offences.

**43.** (1) Every person who—

- (a) causes, permits or suffers to be done for him or on his behalf or in relation to himself, any act, matter or thing which, if done by him personally, would render him liable to conviction for an offence against section forty-two of this Act; or
- (b) does or causes, permits or suffers to be done for or on behalf of, or in relation to any other person, any act matter or thing which, if done by such other person personally, would render him liable to conviction for an offence of the nature referred to in paragraph (a) of this subsection,

shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding twenty pounds.

cf. Act No.  
1,372 (S.A.)  
s. 36.

(2) Every person who exhibits or publishes, or causes, permits or suffers to be exhibited or published any letter or any circular, handbill, placard, card, letter paper, billhead, receipt form, or invoice, or any document or paper to be used in connection with any business, practice, or profession, or other advertisement of any kind whatsoever, whereby any person advertises or holds himself out contrary to any provision of section forty-two of this Act, or attempts so to do, shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding twenty pounds.

Without prejudice to the generality of the expression “publishes” that expression shall, in this section, include publishing or causing to be published by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

Provided

Provided that this subsection shall not apply to any newspaper or magazine proprietor, publisher or printer publishing such advertisement before written notice to him from the Board of Health that such advertisement is contrary to the said section.

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**44.** Any person not registered under this Act who uses radium or X-rays for the treatment of any human ailment or physical defect, otherwise than under the immediate personal supervision of a registered person who has had not less than six months' training in a recognised radiological clinic shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding fifty pounds.

Treatment by means of radium or X-ray.

**45.** (1) Any person who publishes by any means whatsoever, or causes to be so published, any advertisement to promote the sale of any food or drug whatsoever, or of any appliance, preparation, product, treatment or course of treatment for the prevention, alleviation, or cure of any human ailment or physical defect, and who, in such advertisement, uses concerning or in relation to the human ailment or physical defect or to the food, drug, appliance, preparation, product, treatment or course of treatment any name or title purporting to be that of a medical practitioner, doctor of medicine, physician or surgeon or any name or title which, having regard to the circumstances in which it is so used, indicates or is capable of being understood to indicate or is calculated to lead persons to infer that it is the name or title of a medical practitioner, doctor of medicine, physician or surgeon shall unless he has obtained the approval of the Board of Health to such use be guilty of an offence and shall be liable on conviction to a penalty not exceeding twenty pounds.

Advertisement to promote sale of food, drug or appliance.

This subsection shall not apply to or in respect of any such advertisement which is published exclusively to or amongst persons who are medical practitioners, registered pharmacists, registered dentists, registered veterinary surgeons, or are engaged in the business of selling by wholesale any foods or drugs whatsoever or any appliances, preparations, products, treatments or courses of treatment for the prevention, alleviation or cure of any human ailment or physical defect, whether such advertisement

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advertisement is contained in any journal the circulation of which is limited to such persons or is contained in any other document published exclusively to or amongst such persons.

(2) If any such advertisement is published in a newspaper printed and published in New South Wales, the proprietor, publisher, and printer of that newspaper shall severally (and without excluding the liability of any other person) be guilty of the offence and liable to the penalty referred to in subsection one of this section.

(3) Where any person is charged with an offence against this section in respect of the publication of an advertisement to promote the sale of a food, drug, appliance, preparation, product, treatment or course of treatment it shall be a sufficient defence if such person proves that the advertisement to which the charge relates is in the same terms or is substantially to the same effect as advertisements, published on or before the fifteenth day of July, one thousand nine hundred and thirty-eight, to promote the sale of that food, drug, appliance, preparation, product, treatment or course of treatment.

(4) Without prejudice to the generality of the expression "publishes by any means whatsoever, or causes to be so published" that expression shall, in this section, include publishing or causing to be published by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

**46.** (1) Any person who publishes, by any means whatsoever, or causes to be so published, any advertisement which—

Publication of advertisements containing false statements concerning medicines, etc.  
cf. Act No. 3697 (Vict.) s. 226.

(a) is intended or apparently intended by such person or any other person to promote the sale of any article as a medicine, preparation, product or appliance for, or of any treatment or course of treatment for the prevention, alleviation or cure of any human ailment or physical defect; and

(b) contains any statement which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the medicine, preparation, product, appliance, treatment

treatment or course of treatment or to the effects which have followed or may follow the use thereof,

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shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding fifty pounds.

(2) If any such advertisement is published in a newspaper printed and published in New South Wales the printer, publisher and proprietor of that newspaper shall severally (and without excluding the liability of any other person) be guilty of the offence and be liable to the penalty referred to in subsection one of this section.

Offence in respect of publication in New South Wales.

Provided that no prosecution shall be instituted against the printer, publisher or proprietor of any newspaper printed and published in New South Wales or the proprietor or manager of a broadcasting station for the publication of any advertisement in contravention of this section unless he has been warned within a period of one year before such publication, by the Board of Health, that the falsity of the statement or of some other statement substantially to the same effect has been established in proceedings taken under subsection one of this section or under the provisions of any enactment in force in any other State or part of the Commonwealth which are substantially to the same effect as the provisions of that subsection and that the publication of the advertisement is an offence.

Proviso.

(3) Every person who sells or distributes any newspaper or publication printed outside of New South Wales containing any advertisement which—

Offence in respect of selling in New South Wales publications, etc., published elsewhere.

- (a) is intended or apparently intended to promote the sale of any article as a medicine, preparation, product or appliance for, or of any treatment or course of treatment for the prevention, alleviation or cure of any human ailment or physical defect; and
- (b) contains any statement which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the medicine, preparation, product, appliance, treatment or course of treatment or to the effects which have followed or may follow the use thereof,

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shall

**No. 37, 1938.** shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding fifty pounds.

**Proviso.** Provided that no prosecution shall be instituted against any such person unless he has been warned within a period of one year before such publication, by the Board of Health, that the falsity of the statement or of some other statement substantially to the same effect has been established in proceedings taken under subsection one of this section or under the provisions of any enactment in force in any other State or part of the Commonwealth which are substantially to the same effect as the provisions of that subsection and that the selling or distributing of any such newspaper or publication is an offence.

(4) Without prejudice to the generality of the expression "publishes, by any means whatsoever, or causes to be so published" that expression shall, in this section, include publishing or causing to be published by spoken words whether directly or through the medium of any apparatus for the reproduction of sound.

**47.** Any person who—

Penalties  
for false  
statements,  
etc.

cf. Act No.  
1,372  
(S.A.),  
s. 37.

Act No. 29,  
1912, s. 10.

- (a) makes or causes to be made any falsification in the register or in any matter relating to the register; or
- (b) knowingly makes any false statement upon any examination before the board or the disciplinary tribunal or in any document to be used in evidence before or to be submitted to the board or the disciplinary tribunal; or
- (c) utters or puts off or attempts to utter or put off, as true before the board any false, forged, or counterfeit degree, diploma, license, certificate, or other document or writing; or
- (d) procures or attempts to procure himself or any other person to be registered by making or producing or causing to be made or produced, any false or fraudulent statement, declaration, or representation, either verbal or in writing; or
- (e) personates or represents himself as being the person referred to in any degree, diploma, license,

license, certificate, document, or writing presented to the board, or in any certificate granted under this Act or the Acts repealed by this Act:  
or

- (f) fraudulently or by false representation procures himself or any other person to be registered, or obtains any certificate of provisional registration under this Act; or
- (g) forges, alters, or counterfeits any such certificate or any certificate under the Acts repealed by this Act; or
- (h) utters or uses or attempts to utter or use any such forged certificate knowing the same to have been forged; or
- (i) falsely advertises or publishes himself as having obtained any such certificate, or as being registered under this Act, or permits any such advertisement or publication; or
- (j) aids or assists in the commission of any such offence,

shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for any term not exceeding three years.

**48.** All moneys received by the board under this Act shall be paid to the credit of the Consolidated Revenue Fund. Financial. cf. Act No. 1,372 (S.A.), s. 38.

**49.** (1) Nothing in this Act shall prejudice or affect the lawful occupation, trade, or business of any registered pharmacist, registered dentist, registered nurse, registered optometrist, masseur or registered veterinary surgeon. Act not to extend to chemists, etc. cf. Act No. 74, 1914 (N.Z.), s. 33.

(2) Without prejudice to the generality of subsection one of this section a registered dentist shall not be guilty of an offence under this Act by reason only that in relation to himself as a dentist or the practice of dentistry by him—

- (a) he uses any certificate, diploma, membership, degree, license, letters, testimonial or description which he is authorised to use, or is not precluded from using, for those purposes, by or under the Dentists Act, 1934; or

(b)

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(b) he advertises in a manner which is authorised or is not prohibited by or under the Dentists Act, 1934.

Rules of association prohibiting consultations void.

**50.** (1) Any provision in the rules of an association or organisation whether made before or after the commencement of this Act whereby any registered person, being a member of that association or organisation, is prohibited or restricted from or is rendered liable to any disability for consulting or associating with or assisting any other registered person, not being a member of that association or organisation, in any matter arising out of the practise of medicine or surgery in any of its branches or arising out of the giving or performing of any medical or surgical advice, service, attendance or operation, shall be void and of no effect.

(2) If any action is taken by any such association or organisation to enforce any provision rendered void by subsection one of this section, or to impose any disability on any registered person for a breach of or failure to comply with any such provision the members of the council or other governing body of that association or organisation shall severally be guilty of an offence and shall be liable to a penalty not exceeding fifty pounds.

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## PART VI.

### LEGAL PROCEEDINGS.

Jurisdiction, how exercised.

**51.** (1) The jurisdiction conferred by this Act on the Supreme Court may be exercised by a judge of the court sitting in court or in chambers.

Costs.

(2) The costs of any proceedings before the Supreme Court shall be in the discretion of the court.

Offences and penalties. cf. Act No. 1,372 (S.A.), s. 41.

**52.** All proceedings in respect of offences against this Act, not being indictable offences, shall be disposed of in a summary manner before a stipendiary or police magistrate or any two justices in petty sessions.

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PART

## PART VII.

## REGULATIONS.

**53.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular and without prejudice to the generality of the foregoing power may make regulations—

- (a) prescribing the procedure to be followed at all meetings of the board, and at all inquiries made by the board;
- (b) prescribing the manner in which a complaint or charge against a registered person may be preferred to the Board of Health;
- (c) prescribing the procedure to be followed at and any matters incidental to the holding of an inquiry in respect of any complaint or charge referred by the Board of Health to the disciplinary tribunal;
- (d) regulating the manner of keeping and the form of the register;
- (e) prescribing forms to be used and fees to be paid, either in addition to or in substitution for any forms and fees prescribed by this Act;
- (f) prescribing the manner in which any notice or notification under this Act may be served;
- (g) prohibiting any registered person demanding payment of or collecting the charge or remuneration for any medical or surgical advice, service, attendance or operation rendered or performed by any other registered person except in such circumstances and subject to such conditions as may be prescribed;
- (h) prohibiting any registered person sharing or agreeing to share the charge or remuneration for any medical or surgical advice, service, attendance or operation rendered or performed by him with any other registered person except in such circumstances and subject to such conditions as may be prescribed.

(2)

No. 37, 1938.

(2) A regulation in relation to any of the matters referred to in paragraph (a), paragraph (d) or paragraph (e) of subsection one of this section shall be made on the recommendation of the board.

(3) (a) A regulation in relation to any of the matters referred to in paragraph (g) or paragraph (h) of subsection one of this section may impose a minimum as well as a maximum penalty, and may impose different penalties according as the offence is a first or a subsequent offence but no such penalty shall exceed two hundred pounds.

(b) Any other regulation may impose a penalty not exceeding ten pounds for any breach thereof.

(c) Any penalty imposed by the regulations may be recovered in like manner as a penalty imposed by the Act.

(4) (a) The regulations first made under this Act shall—

- (i) be published in the Gazette;
- (ii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;
- (iii) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(b) The day so appointed shall not be earlier than the day next following—

- (i) the fifteenth sitting day after such regulations have been laid before both Houses of Parliament if notice of motion for the disallowance or amendment of such regulations or any part thereof is not given in either House of Parliament within fifteen sitting days after such regulations have been laid before such House; or
- (ii) the day upon which a notice of motion for the disallowance or amendment of such regulations or any part thereof duly given in either House  
of

of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days. **No. 37, 1938.**

(c) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall not take effect.

(d) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House amending any regulation, and such amendment is agreed to by the other House of Parliament by resolution of that House of which notice has been duly given the regulation shall be amended accordingly and the proclamation under paragraph (a) of this subsection shall set forth such amendment.

(5) Subject to subsection four of this section all regulations made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(6) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

