

**MEDICAL PRACTICE ACT 1992—REGULATION**

(Medical Practice Regulation 1993)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Medical Practice Act 1992, has been pleased to make the Regulation set forth hereunder.

RON PHILLIPS. M.P.,  
Minister for Health

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**Citation**

1. This Regulation may be cited as the Medical Practice Regulation 1993.

**Commencement**

2. This Regulation commences on 1 July 1993

**Definition**

3. In this Regulation:

“the Act” means the Medical Practice Act 1992

**Notice of mental incapacity of registered medical practitioner**

4. (1) For the purposes of section 70 of the Act, the person required to cause notice of mental incapacity to be given to the Registrar is:

- (a) in the case of a registered medical practitioner who is a mentally incapacitated person and becomes a patient at an institution because of that incapacity—the medical superintendent of the institution; or

(b) in the case of a registered medical practitioner who is a mentally incapacitated person because of being a protected person under the Protected Estates Act 1983—the Protective Commissioner.

(2) Notice for the purposes of section 70 of the Act is to be given by telephone within 1 day, and by post within 7 days, after the registered medical practitioner is admitted to the institution or becomes a protected person, and is to specify the following:

- (a) the name and residential address of the medical practitioner;
- (b) the date on which the medical practitioner was admitted to the institution at which the medical practitioner is a patient or became a protected person.

**Offences for which notice of conviction of medical practitioner not required**

5. (1) All the offences under the Traffic Act 1909 and the Motor Traffic Regulations 1935 are prescribed offences for the purposes of section 71 of the Act except the following offences under that Act or those Regulations:

- (a) the offence under section 4 of that Act relating to driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public;
- (b) the offence under section 4 of that Act relating to driving a motor vehicle upon a public street negligently if the registered medical practitioner is, by way of penalty, sentenced to imprisonment or fined a sum of not less than \$200;
- (c) the offences under section 5 (1) of that Act (which relate to refusing to produce a motor vehicle driver's licence when required or to state name and place of abode, or stating a false name and place of abode);
- (d) the offences under section 5 (2) of that Act (which relate to driving etc. while under the influence of alcohol or any other drug);
- (e) the offences under sections 7A (2) (a), (b) and (c) of that Act (which relate to driving while unlicensed);
- (f) the offences under section 8 of that Act (which relate to failing to stop after an accident and give assistance or particulars);
- (g) the offences under section 4E of that Act (Prescribed concentration of alcohol in person's blood);
- (h) the offence under section 4AA of that Act (Menacing driving);

(i) any offence under that Act or those Regulations if the court orders the disqualification of the medical practitioner from holding a driver's licence.

(2) All offences relating to the parking of motor vehicles are prescribed offences for the purposes of section 71 of the Act.

#### **Appeal against decision of the Committee on point of law**

6. For the purposes of section 88 (2) of the Act, an appeal (being an appeal with respect to a point of law during an inquiry conducted by a Committee) must be made within 28 days of the date of the Committee's decision on the point of law which is the subject of the appeal.

#### **Prohibition against advertising cures for certain diseases**

7. The following diseases are prescribed as diseases to which section 108 of the Act applies:

acquired immunodeficiency syndrome (AIDS)  
cancer  
diabetes  
epilepsy  
hepatitis  
human immunodeficiency virus (HIV) infection  
leukemia  
multiple sclerosis  
poliomyelitis  
tuberculosis

#### **Advertising—general**

8. (1) A person (including a corporation) may advertise medical services in any manner, subject to the requirements of this Regulation. This clause applies to all forms of advertising, including advertising appearing on professional stationery.

(2) An advertisement of medical services must not be made by television or radio broadcast or by means of the public exhibition of a film (including a videotape), but this does not apply to public identification of authorship as provided by clause 10.

(3) An advertisement of medical services must not:

- (a) be false, misleading or deceptive or likely to mislead or deceive;  
or
- (b) be vulgar or sensational; or

- (c) claim or imply that any particular medical practitioner is superior to another or other medical practitioners; or
  - (d) contain testimonials or other endorsements of a particular medical practitioner; or
  - (e) be unprofessional or likely to bring the profession into disrepute.
- (4) An advertisement is taken to be false, misleading or deceptive if:
- (a) it contains a material misrepresentation of fact; or
  - (b) it is likely to create an unjustified expectation of beneficial treatment.
- (5) An advertisement of medical services must not indicate that a particular medical practitioner practises at a place unless the medical practitioner is in regular attendance at that place.
- (6) An advertisement of medical services must not advertise the provision of emergency, casualty or similar services unless the advertisement complies with the guidelines (if any) notified to medical practitioners by the Board with the approval of the Director-General.

### **Examples of content of advertisements**

9. The following are examples of information which may be contained in an advertisement of medical services:
- (a) the name of each medical practitioner who performs the medical services to which the advertisement relates;
  - (b) the qualifications recorded in the Register for each such medical practitioner;
  - (c) the address and telephone number of the premises at which each medical practitioner to whom the advertisement relates practises medicine or surgery;
  - (d) the days and hours of practice of each such medical practitioner;
  - (e) information as to the availability of after-hours medical services;
  - (f) a list of languages spoken fluently by any medical practitioner to whom the advertisement relates, or by a member of his or her staff,
  - (g) the method of billing the medical services advertised;
  - (h) the availability of wheelchair access to any premises to which the advertisement relates;
  - (i) any specialist qualifications of any medical practitioner to whom the advertisement relates, being qualifications recognised by the National Specialist Qualifications Advisory Committee;

- (j) any field of practice of a medical practitioner to whom the advertisement relates, being a field of practice which is recognised by the Board, but not so as to imply the possession of specialist qualifications;
- (k) details of any appointment held by the medical practitioner to whom the advertisement relates as a visiting practitioner at a public or private hospital.

#### **Advertising—identification of authorship**

**10.** A registered medical practitioner may publicly identify himself or herself as the author of a statement (whether written or oral) made in respect of a medical matter on behalf of an organisation or in the public interest, but not so as to advertise the professional services of the medical practitioner.

#### **Record to be kept of advertisements**

**11. (1)** A medical practitioner or corporation engaged in the provision of medical services must make a record of the details of each advertisement of medical services authorised by the practitioner or corporation and must keep the record for at least 12 months after publication of the advertisement.

Maximum penalty: 20 penalty units.

**(2)** This clause does not apply to any advertising appearing on any invoice, statement, order, letterhead, business card, cheque or similar document ordinarily used in the course of the business of providing medical services.

#### **Fee for inspection of Register**

**12.** For the purposes of clause 21 (2) of Schedule 1 to the Act, the prescribed amount (being the maximum fee for an inspection of the Register) is \$10.

#### **Fee for additional information to be recorded in Register**

**13.** For the purposes of clause 22 (1) of Schedule 1 to the Act, the prescribed fee (being the fee for recording additional particulars in the Register) is \$20.

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**EXPLANATORY NOTE**

The object of this Regulation is to prescribe certain matters under the Medical Practice Act 1992, for the purposes of the administration of that Act.

The Regulation makes provision for:

- (a) the persons who are required to give notice to the Registrar of the mental incapacity of a registered medical practitioner and the contents of that notice; and
- (b) the offences which are exempted from section 71 of the Act (which requires a court to notify the Registrar if a registered medical practitioner is convicted of an offence); and
- (c) the time in which an appeal against a decision on a point of law by a Professional Standards Committee must be made; and
- (d) the diseases in respect of which it is unlawful to advertise a cure, including such diseases as AIDS, cancer and diabetes; and
- (e) restrictions on advertising by medical practitioners and records to be kept in respect of advertising; and
- (f) prescribed fees for inspecting, and having additional information recorded in the Register of the New South Wales Medical Board.

The Regulation is made under the Medical Practice Act 1992, including section 194 (general regulation making power), section 114 (advertising), section 126 (records to be kept) and the sections referred to in the Regulation.

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