

# Physiotherapists Registration Act 1945 No 9

[1945-9]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2001](#)
- **Note**  
The Act is to be repealed on the commencement of sec 135 of the [Physiotherapists Act 2001 No 67](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Physiotherapists Registration Act 1945 No 9



New South Wales

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# Physiotherapists Registration Act 1945 No 9



New South Wales

An Act to make provision for the registration of physiotherapists; to regulate the qualifications for and the effect of such registration; to provide for the constitution of a Physiotherapists Registration Board and to define the powers and functions of that Board; and for purposes connected therewith.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Physiotherapists Registration Act 1945*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

## 2 Definitions

In this Act, unless the context or subject-matter otherwise indicates or requires:

**Appointed member** means a member referred to in section 5 (2) (b).

**Board** means the Physiotherapists Registration Board constituted under this Act.

**Corporation** means the Health Administration Corporation constituted by the *Health Administration Act 1982*.

**Elected member** means a member referred to in section 5 (2) (a).

**Member** means a member of the Board.

**Physiotherapist** means a person (whether male or female) registered under this Act.

**Physiotherapy** means the use by external application to the human body of massage, being the manipulation of the soft tissues of the human body, passive movements, remedial exercises, muscle re-education, electricity, heat, light, sound, water, ultrasonic therapy apparatus, or any proclaimed method, for the purpose of curing, alleviating or preventing any abnormal condition of the human body, and includes the application of any medical or surgical appliance so far as the application of such appliance is necessary in the use as aforesaid of massage, passive movements, remedial exercises, muscle re-education, electricity, heat, light, sound, water, or any proclaimed method.

**Proclaimed method** means any method of practising physiotherapy which on the recommendation of the Board the Governor by proclamation published in the Gazette declares to be for the purposes of this Act a proclaimed method.

**Public hospital** includes an area health service established in accordance with the [Health Services Act 1997](#).

**Register** means the register of physiotherapists under this Act.

**Regulations** means regulations under this Act.

**Secretary** means the secretary to the Board appointed under this Act.

**Ultrasonic therapy apparatus** means any apparatus employing ultrasonic mechanical vibrations that is capable of being used for the treatment of the human body by way of physiotherapy.

### **3 Physiotherapists Registration Board**

There shall be constituted a Board, to be called the Physiotherapists Registration Board, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred and imposed upon the Board by or under this Act.

### **4 (Repealed)**

### **5 Membership of the Board**

- (1) The Board shall consist of 12 members.
- (2) Of the members:
  - (a) 3 shall be physiotherapists elected by physiotherapists, and
  - (b) 9 shall be appointed by the Governor and shall comprise:
    - (i) 2 physiotherapists nominated by the Australian Physiotherapists Association, New South Wales Branch,
    - (ii) a physiotherapist engaged in physiotherapy nominated by the Faculty of Health Sciences, University of Sydney,
    - (iii) a barrister or solicitor nominated by the Minister,
    - (iv) a person nominated by the Minister, being an officer of the Department of Health or an employee of a public health organisation within the meaning of the [Health Services Act 1997](#), and
    - (v) 4 persons nominated by the Minister.

## **6 Elected members**

- (1) All elections of elected members shall be held and conducted in the manner prescribed.
- (2) Elections of elected members shall be held during the month of May in the year one thousand nine hundred and forty-seven and in each third year thereafter.
- (3) The persons elected at any such election shall assume office as elected members on the first day of July next after their election and, subject to the provisions of this Act, shall hold office for a period of three years and shall be eligible for re-election.

## **7 Appointed members**

The appointed members of the Board shall, subject to this Act, hold office for a period of three years, and shall be eligible for reappointment.

## **8 Public Service Act not to apply to appointments**

The provisions of the [Public Service Act 1979](#) shall not apply to any appointment of members of the Board, and such members shall not in their capacity as members of the Board be subject to the provisions of that Act.

## **9 Remuneration of members**

Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **10 President and Deputy President**

- (1) Of the members of the Board, one member (being a physiotherapist) shall, in and by any relevant instrument of appointment as such a member, or by another instrument executed by the Governor, be appointed as President of the Board and one member shall be so appointed as Deputy President of the Board.
- (2) The Deputy President, during the absence or illness of the President, shall act in the office of the President and, while so acting, has (except as provided by sections 21A and 21B (2)) all the powers, authorities, duties and functions of the President.
- (3) The President or, in the absence of the President, the Deputy President or, in the absence of both the President and the Deputy President, another member elected to chair the meeting by the members present shall preside at a meeting of the Board.
- (4) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (5) The Governor may remove a member from the office of President or Deputy President at any time.

- (6) A person vacates office as President or Deputy President if the person:
- (a) is removed from that office by the Governor,
  - (b) resigns that office by instrument in writing addressed to the Minister, or
  - (c) ceases to be a member.

### **11 Vacation of office**

A member shall be deemed to have vacated the member's office if:

- (a) the member dies, or
- (b) the member resigns the member's office by writing under the member's hand addressed to the Secretary, or
- (c) the member becomes a mentally ill person, a protected person, or an incapable person within the meaning of the *Mental Health Act 1958*, or
- (d) the member is absent without the leave of the Board from three consecutive meetings of the Board, or
- (e) the member is removed from office by the Governor, or
- (f) (Repealed)
- (g) being an elected member, the member's registration under this Act is suspended or cancelled or the member's name is for any reason removed from the register.

### **12 Power of Governor to remove from office**

The Governor may, for any cause which appears to the Governor to be sufficient, remove any member from office.

### **13 Casual vacancies**

- (1) Where a casual vacancy occurs in the office of a member, a member shall be appointed by the Governor to fill the vacant office.
- (2)
  - (a) Where the casual vacancy occurs in the office of a member appointed on the nomination of the Minister or one of the bodies referred to in section 5 (2) (b), the member appointed to the vacant office shall be appointed on the nomination of the Minister or the body by which the member's predecessor was nominated, as the case may be.
  - (b) Where the casual vacancy occurs in the office of an elected member the member appointed to the vacant office shall be a person for the time being registered as a

physiotherapist (not being a medical practitioner) and such person shall be deemed to be an elected member.

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

#### **14 Quorum etc**

- (1) At any meeting of the Board 7 members shall form 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.

#### **15 Ordinary meetings of the Board**

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.

#### **16 Defects in appointments not to invalidate the proceedings of the Board**

- (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.
- (2) All acts and proceedings of the Board shall, notwithstanding the subsequent discovery of any defect in the appointment or election of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed or elected 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.

#### **17 Protection of the Board and others from liability**

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 the member's or secretary's 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.

#### **17A Committees**

- (1) The Board may establish advisory committees to make recommendations to it in connection with the exercise and discharge of any of its powers, authorities, duties and functions.
- (2) It does not matter that any or all of the members of a committee are not members of



the Board.

- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Board or (subject to any determination of the Board) by the committee.

## **18 Appointment of secretary and inspectors, search warrants etc**

- (1) A secretary to the Board and such inspectors and other staff as may be necessary to enable the Board to exercise and perform its powers, authorities, duties and functions are to be employed under the [Health Administration Act 1982](#) by the Corporation.
- (2) For the purpose of ascertaining:
  - (a) whether any provision of this Act or the regulations has been or is being contravened by any physiotherapist, or
  - (b) whether a physiotherapist is so conducting himself or herself as to be guilty of misconduct in a professional respect,an inspector duly appointed under this section may enter any premises of any physiotherapist in which such physiotherapist is carrying on the practice of physiotherapy and may make such inquiries therein as such inspector may think fit.
- (3) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been, or is being, contravened in any premises.
- (3A) An authorised justice to whom an application is made under subsection (3) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant:
  - (a) to enter the premises, and
  - (b) to make such inquiries in the premises as the inspector thinks fit.
- (3B) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) A person shall not wilfully delay or obstruct an inspector in the exercise of the inspector's powers under this section.
- (5) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

## **19 Powers and duties of Board**

Subject to this Act the powers and duties of the Board shall be:

- (a) to register physiotherapists,
- (b) to approve of, or arrange the conduct of, examinations required to be undertaken by persons applying for registration pursuant to section 21 (1) (b),
- (c) to issue and cancel certificates of registration,
- (d) to suspend the registration of any person under this Act and to annul such suspension,
- (e) to cancel the registration of any person under this Act and to annul such cancellation, and
- (f) generally, to do any other act or exercise any other power or perform any other duty necessary for carrying the provisions of this Act into effect.

## **20 Register**

- (1) The Board shall keep a register, to be called the "Register of Physiotherapists for New South Wales".
- (2) A person shall be registered by the entering in the register of:
  - (a) the person's full name,
  - (b) the date upon which the person is registered,
  - (c) particulars of the qualification or qualifications in respect of which the person's registration is granted.
- (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, licence, letters, testimonial or other title, status, document or description which such registered person is authorised by the Board to use in relation to himself or herself as a physiotherapist or in the practice of the person's profession as such,
  - (c) such other particulars and matters as are directed or authorised by this Act or the regulations to be so entered.
- (3A) The Board is to keep a separate record of the address of each person registered as a physiotherapist.
- (3B) Such a record is not to be made available to members of the public for inspection.
- (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.

(5) (Repealed)

## **21 Qualifications for registration**

- (1) A person who is, in the opinion of the Board, of good character and who has attained such age as may be prescribed by the regulations is entitled to be registered as a physiotherapist if:
- (a) the person is the holder of a degree, diploma or other award prescribed by the regulations for the purposes of this paragraph,
  - (b) the Board is satisfied that the person has the requisite knowledge and skill to practise physiotherapy in New South Wales by reason that the person:
    - (i) has undertaken a course of study and training in, or practised, physiotherapy in any country (including Australia), and
    - (ii) has passed such examinations (if any), and undertaken such course of study and training (if any), as the Board may require in any particular case or class of cases, or
  - (c) the person was registered under this Act as a physiotherapist before the commencement of the *Physiotherapists Registration (Amendment) Act 1985* and ceased to be registered otherwise than by virtue of section 23 (1) (b).
- (1A) Notwithstanding the provisions of subsection (1) but subject to the provisions of subsection (1B), a person shall not be entitled to be registered as a physiotherapist unless:
- (a) the Board is satisfied that the person has, for a period of or for periods amounting in the aggregate to at least twelve months, satisfactorily practised physiotherapy as the holder of a certificate of conditional registration in such government department, State hospital, mental hospital, public hospital within the meaning of the *Health Services Act 1997*, private hospital or other institution, as the Minister may approve, or
  - (b) the Board is satisfied that:
    - (i) the person is unable, by reason of the person's physical incapacity, to comply with the requirements of paragraph (a),
    - (ii) the person has for a period of or periods amounting in the aggregate to at least twelve months received special tuition in physiotherapy approved by the Board, and
    - (iii) the person was, during the period or periods referred to in subparagraph (ii),

the holder of a certificate of conditional registration.

- (1B) Where a person would, but for subsection (1A), be entitled to be registered as a physiotherapist, the Board may:
- (a) exempt the person or persons of the class to which the person belongs from the operation of subsection (1A), or
  - (b) determine that the period or aggregate of periods referred to in subsection (1A) (a) or (b) shall be reduced, in respect of the person or persons of the class to which the person belongs, by such period as the Board thinks fit.
- (2), (3) (Repealed)

### **21A Certificate of provisional registration may be granted**

- (1) Where a person applies to be registered, the prescribed person, if satisfied that the applicant:
- (a) is entitled to be registered under this Act, or
  - (b) has satisfied all the requirements for a degree, diploma or other award referred to in section 21 (1) (a) and, but for the conferring of the degree, diploma or award, would be entitled to be registered under this Act,
- may, upon payment of the prescribed fee, grant to the applicant a certificate of provisional registration in or to the effect of the prescribed form.
- (2) Where a person has, whether before or after the commencement of paragraph (e) of section 2 of the *Physiotherapists Registration (Amendment) Act 1972*, been granted a certificate of provisional registration the person shall be deemed to be registered until:
- (a) the date stated in the certificate, or
  - (b) such later date as may be fixed by the Board,
- which date shall, in either case, be not later than three months after the granting of such certificate.
- (2A) The Board may, at any time before the date so stated or fixed, for such cause as to it seems proper, cancel a certificate of provisional registration without prejudice to the application of the holder of such certificate to be registered under this Act.
- (2B) Upon the cancellation of a certificate of provisional registration, the holder of such certificate shall thereupon cease to be deemed to be registered under this Act.
- (3) If a person to whom a certificate of provisional registration has been granted becomes registered under this Act, the person's registration shall, unless otherwise decided by the Board, date from the granting of such certificate.

- (4) In subsection (1), ***the prescribed person*** means:
- (a) the President, or, in the President's absence from the City of Sydney, any other member of the Board authorised generally in that behalf by the Board, or
  - (b) the secretary.

**21B Certificate of conditional registration**

- (1) Where a person would, but for the operation of subsection (1A) of section 21 be entitled to be registered as referred to in that section, the Board may, upon application made to it and on payment of the prescribed fee, grant to the person a certificate of conditional registration in the prescribed form.
- (2) Where a person applies for a certificate of conditional registration under subsection (1) the prescribed person (within the meaning of subsection (4) of section 21A) if satisfied that the applicant:
- (a) is entitled to a certificate of conditional registration under subsection (1), or
  - (b) has satisfied all the requirements for a degree, diploma or other award referred to in section 21 (1) (a) and, but for the conferring of the degree, diploma or award, would be entitled to a certificate of conditional registration under subsection (1),
- may, upon payment of the prescribed fee, provisionally grant to the applicant a certificate of conditional registration in the prescribed form.
- (3) While a certificate of conditional registration granted to a person under subsection (1) or provisionally granted under subsection (2) has effect, the person shall:
- (a) be competent to practise physiotherapy in such government department, State hospital, mental hospital, public hospital within the meaning of the *Health Services Act 1997*, private hospital or other institution, as the Minister may approve, and
  - (b) for purposes connected with or relating to the person's so practising physiotherapy, be deemed to be registered under this Act.
- (4) Subject to this Act, a certificate of conditional registration granted under subsection (1):
- (a) shall have effect for a period of twelve months, and
  - (b) may be renewed by the Board from time to time for a like period upon payment of the prescribed fee.
- (5) A certificate of conditional registration provisionally granted under subsection (2) shall, subject to this Act, have effect until:
- (a) the date stated in such certificate, or

(b) such later date as may be fixed by the Board,

which date shall, in either case, be not later than three months after the granting of such certificate.

- (6) Upon the grant under subsection (1) to a person of a certificate of conditional registration during the currency of such a certificate provisionally granted to the person under subsection (2), the lastmentioned certificate shall cease to have effect and the firstmentioned certificate shall, unless otherwise decided by the Board, date from the granting of that lastmentioned certificate.
- (7) If the holder of a certificate of conditional registration becomes registered, the certificate shall have no further effect.
- (8) The Board may on any ground specified in section 23 (1) (c) or 24 (1) (a) or (c), or on such other grounds as to it seem proper, cancel or suspend a certificate of conditional registration which shall thereupon cease to have effect.
- (9) Where the Board cancels a certificate of conditional registration, the person who was the holder of the cancelled certificate shall not, except by direction of the Board or by order of a court of competent jurisdiction, be granted a further certificate of conditional registration.
- (10) The Board may, in respect of a further certificate of conditional registration granted in accordance with subsection (9), direct that the certificate be granted without fee, or on payment of such fee, not exceeding the prescribed fee referred to in subsection (1), as the Board may direct.

### **21C Approval to practise in certain cases**

- (1) In this section, **prescribed member** means a member of the Board who is a physiotherapist and who is authorised by the Board for the purposes of this section.
- (2) Where a person proposes to practise physiotherapy for the purpose of qualifying for registration pursuant to section 21 (1) (b), the Board or a prescribed member may approve of the person practising physiotherapy for that purpose for such period and subject to such conditions as may be specified in the approval.
- (3) Where a person:
  - (a) practises physiotherapy outside New South Wales or is undertaking a course of study and training in physiotherapy outside New South Wales, and
  - (b) proposes to practise physiotherapy in New South Wales temporarily for the purpose of undertaking research, teaching or obtaining tuition,the Board or a prescribed member may approve of the person practising physiotherapy for that purpose for such period and subject to such conditions as may

be specified in the approval.

- (4) An approval under subsection (2) or (3) may be revoked or varied by the Board or by a prescribed member.

## **22 Annual roll fee**

- (1) Every physiotherapist shall in or before the month of October in each year pay to the secretary a roll fee of such amount as may be prescribed for the following year.
- (2) If any physiotherapist does not pay the prescribed roll fee before the thirty-first day of October in any year the Board shall forthwith notify the physiotherapist by letter addressed to the physiotherapist at the address appearing in the record kept by the Board under section 20 (3A) that if the fee be not paid before the first day of January next following the physiotherapist's name will be removed from the register. If any physiotherapist who has been so notified fails to pay such fee before the said first day of January, the Board shall remove the physiotherapist's name from the register.
- (3) If the name of any physiotherapist is removed from the register under this section, the Board shall, upon application in the prescribed form, restore the physiotherapist's name to the register upon payment of such fees as are prescribed by regulations made under this Act. The regulations may provide for the waiver of such part of the fees as the Board may in a particular case deem proper.
- (4) Together with the roll fee the physiotherapist shall furnish particulars of the physiotherapist's address for entry in the record kept by the Board under section 20 (3A).
- (5) Where the name of a physiotherapist has been removed from the register, and until the name has been restored thereto, the physiotherapist shall be deemed to be a person not registered as a physiotherapist under this Act.

## **23 Removal of names of deceased physiotherapists etc**

- (1) The Board shall cause to be removed from the register the names of:
- (a) every deceased physiotherapist,
  - (b) every physiotherapist who has ceased to possess or does not possess the qualifications in respect of which the physiotherapist was registered,
  - (c) every physiotherapist who has become a mentally ill person, a protected person, or an incapable person within the meaning of the [Mental Health Act 1958](#).
- (2), (3) (Repealed)

## **24 Misconduct**

- (1) Where a person registered in the register:

- (a) has been convicted, either in New South Wales of an offence, or elsewhere of an offence which, if committed in New South Wales, would have been an offence, or
  - (b) (Repealed)
  - (c) has been adjudged by the Board, after an inquiry conducted by it or a Professional Standards Committee, to have been guilty of misconduct in a professional respect, the Board may:
  - (d) caution or reprimand the person,
  - (e) order that the person seek medical or psychiatric treatment or counselling,
  - (f) direct that such conditions, relating to the person's practising physiotherapy, as it considers appropriate be imposed on the person's registration,
  - (g) order that the person complete such educational courses as are specified by the Board,
  - (h) order that the person report on the person's physiotherapy practice at the times, in the manner and to the persons specified by the Board,
  - (i) order that the person seek and take advice, in relation to the management of the person's physiotherapy practice, from such persons as are specified by the Board,
  - (j) by its order impose a fine on the person of an amount, not exceeding 40 penalty units, specified in the order,
  - (k) suspend the person's registration for such period as the Board thinks fit, or
  - (l) remove the person's name from the register,
- or exercise any combination of the powers conferred on it by paragraphs (d)-(l).

(1A) Without limiting the meaning of the expression "misconduct in a professional respect" in subsection (1), a physiotherapist shall be guilty of such misconduct who:

- (a) carries on the practice of physiotherapy under a name other than the physiotherapist's own name except whilst the physiotherapist is acting as the duly appointed locum tenens of another physiotherapist, or
- (b) allows the use of the physiotherapist's name in connection with the practice of physiotherapy at premises at which the physiotherapist or the physiotherapist's duly appointed locum tenens is not in regular attendance for the purpose of practice and supervision during the hours in which such premises are open for the practice of physiotherapy, or
- (c) allows any person, not being a physiotherapist, to practise physiotherapy in



contravention of the provisions of section 26 at premises used by the physiotherapist or the physiotherapist's duly appointed locum tenens for the purpose of carrying on the practice of physiotherapy, or

- (d) advertises otherwise than in accordance with the regulations or advertises in contravention of the regulations, or
- (e) by any act or omission, demonstrates a lack of adequate knowledge, experience, skill, judgment or care in the practice of physiotherapy, or
- (f) has been guilty of habitual drunkenness or of addiction to any deleterious drug, or engages in any other improper or unethical conduct relating to the practice of physiotherapy.

(1B) For the purposes of this section, no person shall be deemed to be a duly appointed locum tenens unless:

- (a) the person is appointed in writing by a physiotherapist,
- (b) the person is a physiotherapist at the time of taking up the person's duties, and
- (c) the person is employed only during the temporary absence of the person's employer and for a period not exceeding twelve months or for such further period as the Board may in any particular case permit.

(1C) A physiotherapist carrying on the practice of physiotherapy as or for the legal personal representative of a deceased physiotherapist who before the physiotherapist's death carried on such practice (other than as a duly appointed locum tenens) shall not, by reason of the physiotherapist carrying on such practice for a period not exceeding twelve months after the date of death of such deceased physiotherapist or for such further period as the Minister may allow in writing in any particular case, be deemed to be guilty of misconduct in a professional respect pursuant to paragraph (a) or (e) of subsection (1A).

(2) In the case of a conviction as referred to in paragraph (a) of subsection (1), no person shall have the person's name removed from the register or have the person's registration suspended or have the person's certificate of conditional registration cancelled or suspended on account thereof if the act in respect of which such person is so convicted does not, either from its trivial nature or from the circumstances under which it was committed, render such person unfit in the public interest to practise physiotherapy.

(2A) The court before whom a physiotherapist or the holder of a certificate of conditional registration is convicted of an offence in New South Wales shall, except in such classes of cases as may be specified in the regulations, notify the Board or cause the Board to be notified, of the fact that the physiotherapist or the holder of the certificate has

been so convicted.

- (2B) A coroner holding an inquest in which a physiotherapist or the holder of a certificate of conditional registration is involved shall supply the Board with a copy of the depositions taken at that inquest where it appears in the coroner's opinion that the physiotherapist might be guilty of misconduct in a professional respect.
- (2C) The supply to the Board of the depositions taken at an inquest pursuant to subsection (2B) shall be deemed to be a complaint to the Board alleging misconduct in a professional respect made by the coroner so supplying the depositions.
- (2D) The provisions of subsection (4) shall not apply to and in respect of a complaint referred to in subsection (2C).
- (2E) The Board shall, after receiving a complaint alleging misconduct in a professional respect against a physiotherapist or the holder of a certificate of conditional registration, inform the physiotherapist or the holder of the certificate of the nature of the complaint and, by notice, invite the physiotherapist or the holder of the certificate to make, within such time as the Board specifies in the notice, such representations to the Board with respect to the complaint as the physiotherapist or the holder of the certificate thinks fit.
- (2F) The Board may, after receiving such representations or after the expiry of the time specified in the notice, whichever first happens, dismiss the complaint or set it down for inquiry under this section or, if the Board refers the matter to a Professional Standards Committee under section 24D, for inquiry by a Professional Standards Committee.
- (3) In the case of a charge of misconduct in a professional respect the Board, in making due inquiry, shall sit as in open court, and the person charged shall be afforded an opportunity of defence either in person or by counsel.
- (4) Every person, other than a member of the police force or a member of the public service acting in the member's capacity as such a member, who makes a complaint to the Board alleging misconduct in a professional respect against any person, shall deposit with the Board the sum of ten dollars at the time of lodging the complaint.

If after considering the complaint the Board is of opinion that the complaint is vexatious or frivolous in its nature it shall so declare, and thereupon the sum so deposited shall be forfeited.

In the absence of such declaration the sum so deposited shall be refunded to the complainant.

- (5) Whenever the registration of a physiotherapist is suspended under the provisions of this section the secretary shall enter in the register a memorandum of that fact and of the date and cause thereof.

- (6) A fine imposed under this section:
  - (a) is to be paid to the secretary who is to pay it to the credit of the Consolidated Fund in such manner as the Treasurer may direct, and
  - (b) may be recovered as a debt due to the Crown in a court of competent jurisdiction.
- (7), (8) (Repealed)

**24AA Notification of complaints to, and their investigation by, the Health Care Complaints Commission**

- (1) The Board must notify the Health Care Complaints Commission of any complaint made to it concerning the practice of physiotherapy by a physiotherapist. The complaint is to be notified as soon as practicable after the complaint is made.
- (2) The Board may, instead of making inquiry under section 24, refer the matter that would otherwise be subject of inquiry for investigation by the Health Care Complaints Commission under the *Health Care Complaints Act 1993*.
- (3) Such an investigation by the Health Care Complaints Commission is taken, for the purposes of this Act, to be an inquiry made by the Board but does not prevent the Board from making any further or additional inquiry.

**24A Professional Standards Committees**

- (1) There shall be Professional Standards Committees.
- (2) The Committees shall have and may exercise and perform, in accordance with such terms of reference as are determined generally or in any particular case by the Board, the jurisdiction and the powers, authorities, duties and functions conferred or imposed on them by or under this Act.
- (3) When the Board decides to refer a matter to a Committee, the Board shall appoint 3 persons to sit as the Committee for the purpose of inquiring into the matter.
- (4) For the purposes of inquiring into a matter, a Committee shall consist of:
  - (a) 2 physiotherapists, and
  - (b) one lay person (that is, a person who is neither a physiotherapist nor qualified to apply to be registered as a physiotherapist) appointed from among a panel of lay persons for the time being nominated by the Minister,one of whom shall be appointed by the Board as chairperson of that Committee.
- (5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board.

- (6) One or more Committees may inquire into more than one matter at the same time.
- (7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board in accordance with the regulations.

#### **24B Proceedings before Professional Standards Committees**

Proceedings before a Professional Standards Committee shall be conducted in accordance with the regulations.

#### **24C Decisions of Professional Standards Committees**

- (1) A decision supported by at least 2 members of a Professional Standards Committee on any question is the decision of the Committee.
- (2) A Professional Standards Committee shall, as soon as practicable after concluding an inquiry into a matter, furnish its report to the Board.

#### **24D Reference of matters to Professional Standards Committees**

The Board may, despite the other provisions of this Act, refer to a Professional Standards Committee for inquiry and report:

- (a) an application to be registered as a physiotherapist or for the grant of a certificate of conditional registration,
- (b) an application, under section 21C, to practise physiotherapy,
- (c) the question of whether the Board should, on the grounds set out in section 23 (1) (b) or (c), cause the name of a physiotherapist to be removed from the register, or
- (d) the question of whether a physiotherapist is guilty of misconduct in a professional respect.

#### **24E Appeals**

- (1) Any person aggrieved by a decision of the Board under section 24 (1) concerning the person may, within 3 months after the date on which notice of the decision is given to the person by the secretary, appeal against the decision to the District Court.
- (2) Any person aggrieved by the failure of the Board or other authorised person:
  - (a) to register the person as a physiotherapist,
  - (b) to grant the person a certificate of conditional registration, or
  - (c) to approve, under section 21C, of the person practising physiotherapy,may, within 6 months after the date of the relevant application, appeal against the failure to the District Court.

- (3) An appeal shall be made in accordance with the rules of court and shall be in the nature of a new hearing.
- (4) The District Court may make such order as it thinks fit which shall be final and without appeal.
- (5) The Board shall give effect to the District Court's order.

## **25 Restoration of name to register**

Where the Board directs the removal from the register of the name of any person, the name of that person shall not be again entered on the register, except by direction of the Board or by order of a court of competent jurisdiction. The Board may, if it thinks fit in any case, direct the secretary to restore to the register any name removed therefrom without fee, or on payment of such fee, not exceeding the registration fee, as the Board may from time to time direct, and the secretary shall restore the name accordingly.

### **25A Written statements of decisions**

- (1) If the Board decides under section 24 to remove a person's name from the register or suspend a person's registration, the Board shall, within one month of its decision, provide the person, any person who made a complaint which resulted in the decision and such other persons as it considers appropriate, with a written statement of its decision.
- (2) If the Board makes a decision in relation to a person under any provision of this Act, other than section 24, the person may request in writing that the Board provide the person with a written statement of the decision.
- (3) Any such request shall be made within 60 days after the decision to which it relates.
- (4) The Board shall provide a written statement of the decision within one month of receipt of such a request.
- (5) A written statement of a decision shall:
  - (a) set out any findings on material questions of fact,
  - (b) refer to any evidence or other material on which the findings were based, and
  - (c) give the reasons for the decision.
- (6) Despite any other provision of this section, the Board is not required to include confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.
- (7) If, because of subsection (6), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the Board

shall, within one month of a decision under section 24 or receipt of a request under subsection (2), give notice in writing to the person to whom the Board is required (or would, but for subsection (6), be required) to provide the statement, indicating that:

- (a) the confidential information is not included, or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(8) In this section:

**confidential information** means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared,
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subsection (6), be required) to provide a written statement of a decision, and
- (c) is information:
  - (i) that was supplied in confidence,
  - (ii) the publication of which would reveal a trade secret,
  - (iii) that was provided in compliance with a duty imposed by an enactment, or
  - (iv) the provision of which by the Board would be in breach of any enactment.

(9) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

## **26 Unregistered person not to practise as or hold out to be a physiotherapist**

(1) A person who is not registered under this Act shall not:

- (a) practise physiotherapy,
- (b) take or use the name or title of physiotherapist, physiotherapist, physical therapist or physical therapist or electrotherapist, hold himself or herself out as being a physiotherapist or a physiotherapist or a physical therapist or physical therapist or electrotherapist or assume, take, or use, any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is assumed, taken or used, indicates, or is capable of being understood to indicate, or is calculated to lead persons to infer, that the person is registered under this Act as a physiotherapist, or is qualified to be registered under this Act

as a physiotherapist, or is competent or willing to practise physiotherapy in contravention of this section.

- (1A) A person deemed to be registered by reason of the operation of section 21B shall not:
- (a) practise physiotherapy otherwise than as provided by paragraph (a) of subsection (3) of that section,
  - (b) otherwise than for purposes connected with or relating to the person's practising physiotherapy as provided by paragraph (a) of subsection (3) of that section, take or use the name or title of physiotherapist, physiotherapist, physical therapist or physical therapist or electrotherapist, hold himself or herself out as being a physiotherapist or a physiotherapist or a physical therapist or physical therapist or electrotherapist or assume, take, or use, any name, initials, word, title, addition, symbol or description which, having regard to the circumstances in which it is assumed, taken or used, indicates, or is capable of being understood to indicate, or is calculated to lead persons to infer, that the person is registered or deemed to be registered under this Act as a physiotherapist, or is qualified to be registered under this Act as a physiotherapist, or is competent or willing to practise physiotherapy.
- (2) Nothing in this section shall operate to prevent the practice of physiotherapy:
- (a) by any person in the ordinary course of the person's practice as a legally qualified medical practitioner, a dentist registered under the *Dentists Act 1934*, a chiropractor or osteopath registered under the *Chiropractic Act 1978* or a chiropodist registered under the *Chiropodists Registration Act 1962*,
  - (b) by a nurse (being a nurse whose name is entered in the Register of Nurses kept under the *Nurses Registration Act 1953*) acting under the instructions given to the nurse by:
    - (i) a physiotherapist, or
    - (ii) a person referred to in paragraph (a),
  - (c) by a person who practises physiotherapy in connection with a course of study and training for a degree, diploma or other award referred to in section 21 (1) (a) and who so practises physiotherapy under the direct instructions and personal supervision of a medical practitioner, a dentist registered under the *Dentists Act 1934* or a physiotherapist,
  - (c1) by a person who practises physiotherapy in accordance with an approval under section 21C,
  - (d) being such part of the practice of physiotherapy as consists of the use by external

application to the human body of ultrasonic therapy apparatus, by any person authorised by the Board to so use such apparatus,

(e) being such part of the practice of physiotherapy as consists of the use by external application to the human body of massage, being the manipulation of the soft tissues of the human body, passive movements, remedial exercises, muscle re-education, or heat:

(i) (Repealed)

(ii) by any person in conjunction with the practice by the person of face or scalp massage where such part of the practice of physiotherapy as aforesaid is practised for cosmetic purposes only, or

(iii) by any person in the course of training persons engaged in or training for physical culture or any games, sports or athletics or for the purpose of curing or alleviating injuries received by persons in the course of their being engaged in or training for physical culture or any games, sports or athletics.

(2A) Nothing in this section shall operate to prevent the legal personal representative of a deceased physiotherapist from appointing a physiotherapist to carry on the practice of the deceased physiotherapist for a period not exceeding twelve months after the date of death of such deceased physiotherapist or for such further period as the Minister may allow in writing in any particular case.

(3) (Repealed)

(4) A person guilty of an offence against this section shall be liable to a penalty not exceeding 10 penalty units.

#### **26A (Repealed)**

#### **27 False entries in register, misrepresentation etc**

Any secretary or other person who wilfully makes or causes to be made any false entry in or falsification of the register, and any person who wilfully procures or attempts to procure himself or herself or any other person to be registered or to become the holder of a certificate of conditional registration under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting therein, shall be guilty of an indictable offence and shall, on conviction, be liable to be imprisoned for any term not exceeding twelve months.

#### **28 Board may examine witnesses on oath**

(1) The Board may examine any person upon oath or take a solemn declaration from any person for the purposes of this Act, and if any person wilfully makes any false statement upon such examination or in such declaration, or utters or attempts to



utter, or put off as true before the Board any false, forged or counterfeit certificate, diploma, licence, letter, testimonial or other document or writing the person shall be guilty of an indictable offence and shall on conviction be liable to be imprisoned for any period not exceeding twelve months.

- (2) This section does not apply to an inquiry conducted by the Board under section 24 or by a Professional Standards Committee to which a matter has been referred by the Board under section 24D.

**28A Power to summon witnesses, take evidence and obtain documents at inquiries**

- (1) The President of the Board or the chairperson of a Professional Standards Committee may summon a person to appear at an inquiry conducted by the Board or the Committee to give evidence and to produce such documents (if any) as are specified in the summons.
- (2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.
- (3) The Board or a Professional Standards Committee may, at an inquiry conducted by it, take evidence on oath and, for that purpose a member of the Board or Committee:
- (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (4) A person served with a summons to appear at any such inquiry and to give evidence must not, without reasonable excuse:
- (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or the Committee.
- (5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:
- (a) when required to be sworn or affirm—fail to comply with the requirement, or
  - (b) fail to answer a question that the person is required to answer by the person presiding, or
  - (c) fail to produce a document that the person is required to produce under this section.

Maximum penalty (subsections (4) and (5)): 20 penalty units.

- (6) A member of the Board or a Professional Standards Committee may, by notice in writing served on a person, require the person:
- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or the Committee or a person authorised by the Board or Committee in that behalf, and
  - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (7) A person who fails, without reasonable excuse, to comply with a notice served on the person under subsection (6) is guilty of an offence.

Maximum penalty: 20 penalty units.

## **29 Penalty for offences etc**

Any person who contravenes any of the provisions of this Act for which a penalty is not expressly provided or who contravenes any provision of the regulations shall be liable to a penalty not exceeding 5 penalty units.

All informations for offences against this Act and regulations shall be laid by the secretary or by some other person appointed by the Board for the purpose either generally or in any particular case, or a member of the police force.

## **29A Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

## **30 Documents under hand of secretary to be prima facie evidence**

A document purporting to be a certificate under the hand of the secretary and stating any one or more of the following matters:

- (a) that any person was or was not on any date or during any period mentioned in the certificate registered or the holder of a certificate of conditional registration under this Act, or
- (b) that on any date or during any period mentioned in the certificate the registration or certificate of conditional registration of any person was suspended,

shall in all courts and before all persons and bodies authorised by law to receive evidence, be prima facie evidence of the facts stated.

## **31 Prima facie evidence of entry in register may be given in all courts**

- (1) Prima facie evidence of any entry in the register may be given in all courts and before all such persons and bodies as aforesaid:

(a) by production of a document purporting to be a true copy of such entry, and purporting to be certified as such by the secretary, or

(b) (Repealed)

(2) An entry in the register shall be prima facie evidence in all courts and before all such persons and bodies as aforesaid of the truth of all matters contained in it.

### **32 Fees etc**

The secretary is required to transmit to the Corporation for payment into an account established under section 13A of the *Health Administration Act 1982* all money received by the Board (whether for fees or otherwise), not being fines or penalties or money which is required to be dealt with in some other manner.

### **32AA Board may waive fees**

The Board may, for any reason the Board considers sufficient, exempt a person from the requirement to pay a fee, or waive or wholly or partly refund a fee, that would otherwise be payable or has been paid in accordance with this Act or the regulations.

### **32A Physiotherapy Education and Research Account**

(1) The Board shall establish a Physiotherapy Education and Research Account.

(2) Such amounts as are determined by the Minister from time to time shall be paid by the secretary from fees payable under this Act or the regulations into the Physiotherapy Education and Research Account.

(3) The Board may appropriate amounts from the Physiotherapy Education and Research Account for or towards any one or more of:

(a) physiotherapy education,

(b) education or research for any public purpose connected with the practice of physiotherapy,

(c) the publication and distribution of information concerning this Act and the regulations, or

(d) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(4) An appropriation under subsection (3) shall not be made unless it is authorised by a resolution supported by at least 8 members.

### 33 Regulations

- (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 the provisions of this Act.

In particular and without prejudice to the generality of the foregoing provision, regulations may be made:

- (a) regulating the proceedings of the Board,
  - (b) regulating the issue and cancellation of certificates of registration under this Act and the conditions of registration,
  - (c) prescribing the manner in which a complaint or charge of misconduct in a professional respect may be preferred to the Board,
  - (d) prescribing the procedure to be followed at and any matters incidental to the holding of an inquiry in respect of any complaint or charge as aforesaid,
  - (e) regulating the circumstances in which a physiotherapist or the holder of a certificate of conditional registration, for fee or reward, may or shall not:
    - (i) diagnose or attempt to diagnose any abnormal condition of the human body,
    - (ii) prescribe any diet for any person, or
    - (iii) prescribe any drug or medicine for internal use by any person,
  - (f) (Repealed)
  - (g) prescribing the fees to be paid for examinations, certificates and registration,
  - (h) specifying the manner in which and the extent to which a physiotherapist or a corporation engaged or associated in the practice of physiotherapy is authorised to advertise,
  - (i) for or with respect to infection control standards to be followed by physiotherapists in the practice of physiotherapy.
- (1A) A regulation prescribing the fees to be paid for registration pursuant to paragraph (g) of subsection (1) may prescribe different fees for different classes of cases of registration.
- (2) Before a regulation is made, the Minister is to give the Board an opportunity to comment on the proposal concerned.
- (3) (Repealed)