

PROOF

No. , 1936.

A BILL

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.

[MR. FITZSIMONS;— 1936.]

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, 1936." Short title.

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—A (3)

(2)

Medical Practitioners.

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

Division into Parts.

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

PART I.—PRELIMINARY—*ss.* 1-4. 5

PART II.—THE MEDICAL BOARD—*ss.* 5-10.

PART III.—REGISTRATION AND QUALIFICATIONS THEREFOR—*ss.* 11-27.

PART IV.—MISCELLANEOUS—*ss.* 28-40.

PART V.—LEGAL PROCEEDINGS—*ss.* 41, 42. 10

PART VI.—REGULATIONS—*s.* 43.

Definitions.

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

“ Board ” means the New South Wales Medical Board. 15

“ 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. 20

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

“ Regulations ” means regulations made under this Act. 25

“ 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. 30

Repeal.

4. The Medical Practitioners Act, 1912, and the Medical Practitioners (Amendment) Act, 1915, are hereby repealed. 35

PART II.

THE MEDICAL BOARD.

5. (1) The Governor shall appoint a board to be called the New South Wales Medical Board.

Constitution of board.

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

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

10 (3) Of the members one shall be appointed on the nomination of the Senate of the University of Sydney, and one other shall be appointed on the nomination of the New South Wales Branch of the British Medical Association.

The nominations shall be made in the manner prescribed.

15 (4) No person of or above the age of sixty-five years shall be appointed as a member.

(5) If any member attains the age of sixty-five years whilst holding office he shall retire immediately upon attaining that age.

20 (6) No person shall be eligible for appointment as a member unless at the time of appointment such person has been registered as a medical practitioner in New South Wales for not less than ten years, under this Act or the Acts repealed by this Act.

cf. *Ibid.* s. 7.

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

30 (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 nominate 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).

35 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)

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Medical Practitioners.

(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 nominated under this Act as president.

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Quorum.

7. 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.

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Defects in appointments not to invalidate proceedings of the board.

8. (1) No act or proceeding of the board shall be invalid or illegal in consequence only of the number of members of the board not being complete at the time of such act or proceeding.

(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.

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Secretary. Act No. 29, 1912, s. 3 (5).

Protection of board and members and others from liability.

9. The Governor shall, on the recommendation of the board, appoint a secretary to the board.

10. 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.

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PART III.

REGISTRATION AND QUALIFICATIONS THEREFOR.

11. (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) 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.

(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.

cf. Act No. 1,372 (S.A.), s. 28.

12. 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.

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

Qualifications for future registration. cf. Act No. 1,372 (S.A.), s. 19.

13. (1) In addition to the persons mentioned in section twelve 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 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) is registered, or possesses a qualification, entitling him to be registered, otherwise than as a colonial or foreign practitioner, in the general register kept under the Medical Acts of the United Kingdom or any Act amending or substituted for those Acts or any of them; or
- (c) has passed through a regular graded course of medical study in a school of medicine in some part of the British Empire or some other country, such course being recognised by 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—
 - (i) has received, after due examination, from such school of medicine, 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 country.

Reciprocity.

(2) Notwithstanding anything in this Act, the board, in considering an application to be registered, shall not be required to recognise any degree, diploma, or other qualification granted in any country, not being part of the British Empire, unless in such country a graduate in medicine in the University of Sydney is granted rights and advantages equal to those granted in such country to the holders of such degree, diploma or qualification.

cf. Act No. 25, 1927 (Irish Free State), s. 25 (2).

(3) 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

registered under this Act solely by reason of his being possessed of one of the qualifications mentioned in subsection one of this section.

(4) 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.

- 10 (a) who has in New South Wales been convicted of a felony or misdemeanour or elsewhere of any offence which if committed in New South Wales would have been a felony or misdemeanour; or
- 15 (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
- 20 (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.

(5) No person shall be registered under this Act unless the board is satisfied that such person is of good character. cf. *Ibid.* s. 8 (2).

40 14. (1) Any person desiring to be registered under this Act may make application to the board to be so registered. Application for registration. (2)

Medical Practitioners.

(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) The applicant shall attend in person before the board unless specially excused by the board from so doing.

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 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.

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

(6) 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.

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

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

15. (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.

(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.

Certificate of provisional registration may be granted. cf. Ibid. s. 24.

16. (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 fee required by section twenty-seven 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

5 (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
10 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 pro-
15 visional registration has been granted becomes registered, his registration shall, unless otherwise decided by the board, date from the granting of such certificate.

17. (1) The board shall, from time to time, remove from the register the names of all registered persons
20 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.

25 (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
30 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
35 notification; and subsection two of section fifteen of the said Act shall extend to such fees.

18. (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
40 of his new address, and the board shall thereupon alter the entry in the register relating to that person accordingly.

Notice of change of address to be given. cf. Act No. 74, 1914 (N.Z.), s. 18.

(2)

(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).

19. (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. 5

(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. 10

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

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

20. (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. 15

(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. 20 25

(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. 30

(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 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. 35 40

21.

21. (1) If the board is satisfied that any person registered under this Act on the grounds mentioned in paragraph (b) of subsection one of section thirteen of this Act, has since been removed for misconduct from any register of medical practitioners in the United Kingdom or elsewhere in any part of the British Empire or that any person registered under this Act on the grounds mentioned in paragraph (c) of the same subsection has since been removed for misconduct from any register of medical practitioners in the part of the British Empire or other country in which the degree or diploma referred to in that paragraph 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. 4,131 (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 one month 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.

Disciplinary provisions.

22. (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 5
- (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, 10

may be preferred to the Director-General of Public Health, who shall cause the same to be investigated.

Where, in the opinion of the Director-General, the circumstances warrant such a course, he may refer the complaint or charge to the disciplinary tribunal constituted under section twenty-three 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. 15 20

(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— 25

- (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 30
- (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 attend, treat, or perform any operation upon a patient in respect of any matter requiring professional discretion or skill, to issue 35 40

5 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,

but shall not be deemed to be guilty of such
 offence by reason only of acts performed in
 relation to the proper training and instruction
 of bona fide students or of the legitimate
 10 employment of dressers, nurses, dispensers,
 surgery attendants, technicians, and skilled
 mechanics under the immediate personal super-
 vision of such registered person; or

15 (b) uses any certificate, diploma, membership,
 degree, license, letters, testimonial, or other
 title, status, document or description in rela-
 tion 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,
 20 in pursuance of paragraph (b) of subsection
 three of section eleven of this Act, to be entered
 in respect of such registered person in the regis-
 ter, but shall not be deemed to be guilty of such
 offence by reason only of the use by him of
 25 any certificate, diploma, membership, degree,
 license, letters, testimonial or other title, status,
 document or description which was lawfully
 used by him immediately before the commence-
 ment of this Act or of the use by him of the
 30 description "doctor," "physician," "surgeon"
 or "medical practitioner."

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

Disciplinary
 tribunal.
 cf. Act
 No. 33, 1928,
 s. 3 (1).

35 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 chair-
 40 man") to act as chairman of the disciplinary tribunal.

Any

Medical Practitioners.

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 have similar qualifications to that of the chairman, and who, during such absence, 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 counsel.

The person who preferred the complaint or charge may be represented 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 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; and in any such case it shall not be necessary for any such witness whose depositions or the transcript of whose evidence is so produced to the disciplinary tribunal, to be present at the inquiry concerned.

(8)

(8) For the purpose of any inquiry, the disciplinary tribunal and the chairman shall have the powers 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.

10 (9) (a) The decisions 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 opinion of the chairman shall prevail.

(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.

25 **24.** (1) Where any registered person has been adjudged guilty by the disciplinary tribunal, that tribunal may by order— Penalties.

- (a) reprimand or caution such person; or
- (b) suspend such person from practice for a period not exceeding twelve months; or
- 30 (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.

(3)

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. 5

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, 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. 10

cf. Ibid. s. 6 (7).

Any such appeal shall be in the nature of a rehearing, and shall be made in accordance with rules of court. 15

(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. 20

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. 25

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. 30

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

(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. 35

cf. Ibid. s. 22 (3).

(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. 40 (8)

(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 be restored to the register.

25. (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.

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-four 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.

26. (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.

Publication of copy of register. cf. Act No. 1,372 (S.A.), s. 29 (1).

(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

cf. Act No. 25, 1927 (Irish Free State), s. 31 (5).

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whose

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. Act No. 25, 1927 (Irish Free State), 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, 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.

Fees.

27. 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 | 30 |
| (b) for entering in the register any of the particulars referred to in paragraph (a) or paragraph (b) of subsection three of section eleven of this Act .. | 0 | 10 | 6 | 35 |
| (c) for restoring the name of any person, other than a person to whom a license under section twenty-five of | | | | |

this

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£ s. d.

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

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PART IV.

MISCELLANEOUS.

- 28. 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.

Reference in other Acts to legally qualified or duly qualified medical practitioners. cf. Act No. 1,372 (S.A.), s. 30.
- 29. (1) Every registered person shall be entitled to sue in any court of competent jurisdiction for the recovery of his fees or other remuneration for professional services of any kind.

Duly registered practitioners may recover fees. cf. *Ibid.* s. 31.

(2) No person shall be entitled to recover fees or other remuneration for professional services of any kind as a medical practitioner unless the person whose fees or remuneration is sued for, was registered in the register at the date on which the professional services were performed.

cf. Act No. 25, 1927 (Irish Free State), s. 34.
- 30. (1) No person other than a registered person shall be competent to hold, or shall hold, any appointment (whether honorary or not)—

Disqualification of unregistered person from holding certain appointments.

 - (a) as a medical officer in any public hospital or separate institution within the meaning of the Public Hospitals Acts, 1929-1934, 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.

cf. Act No. 1,372 (S.A.), s. 32 (1).
cf. Act No. 74, 1914 (N.Z.), s. 29.

(2)

(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.

Disqualification of unregistered person from signing certain certificates.

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

31. (1) No person other than a registered person shall sign any medical certificate of the cause of death of any deceased person. 5

(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. 10

Penalty for posing as medical practitioner when not registered.

32. (1) Any person, not registered under this Act, who takes or uses any name, initials, word, title, addition, description or symbol which either alone or in conjunction with other words or 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 as a medical practitioner, doctor of medicine, physician, surgeon or accoucheur, 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. 15 20

Advertising.

(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. 25

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. 30

(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. 35 40

33.

33. (1) Every person who—

Penalties for certain offences.

- 5 (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 thirty-two of this Act; or
- 10 (b) does or causes or permits 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.

- 20 (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
- 25 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 thirty-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:

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

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 secretary to the board that such advertisement is contrary to the said section.

- 35 34. (1) Where in any proceedings for an offence against section thirty-two of this Act it appears from any document or paper that the defendant is advertised or held out contrary to any provision of that section, the defendant shall be presumed to have advertised or held himself out contrary to that section unless he proves to the satisfaction of the court that he did not authorise and was not responsible for such advertisement or holding out.

Onus of proof in certain cases. cf. *Ibid.* s. 36A (inserted by Act No. 1,495, s. 3).

(2) Where in any proceedings for an offence against subsection one of section thirty-three of this Act, the defendant is charged with causing, permitting or suffering the doing of any act, matter or thing which constitutes the offence, and the fact that such act, matter or thing was done is proved to the satisfaction of the court, the defendant shall, in the absence of proof to the contrary, be presumed to have caused, permitted or suffered the doing of such act, matter or thing.

Treatment by means of X rays or radium.

35. Any person not registered under this Act who uses X rays or radium for the treatment of any human ailment or physical defect shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding *fifty* pounds.

Advertisement to promote sale of food, drug or appliance.

36. (1) Any person who publishes by any means whatsoever, including radio broadcasting, or causes to be so published, any advertisement to promote the sale of any food or drug whatsoever, or of any appliance 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 food, drug or appliance any name or title purporting to be that of a medical practitioner, doctor of medicine, physician or surgeon, shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding *twenty* pounds.

(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.

Publication of advertisements containing false statements concerning medicines, etc.

cf. Act No. 3697 (Vict.) s. 226.

37. (1) Any person who publishes, by any means whatsoever, including radio broadcasting, or causes to be so published, any advertisement which—

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

5 (b) contains any statement which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the medicine, preparation or appliance or to the effects which have followed or may follow the use thereof,

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

10 (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.

15 Provided that no prosecution shall be instituted against the printer, publisher or proprietor of any newspaper printed and published in New South Wales for the publication of any advertisement in contravention of this section unless he has been warned by the Director-General
20 of Public Health of the falsity of the statement or of some other statement substantially to the same effect and that the publication of the advertisement is an offence.

Proviso.

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

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

30 (a) is intended or apparently intended to promote the sale of any article as a medicine, preparation or appliance for the prevention, cure or relief of any human ailment or physical defect; and

35 (b) contains any statement which is false in any material particular relating to the ingredients, composition, structure, nature or operation of the medicine, preparation or appliance or to the effects which have followed or may follow the use thereof,

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

40 Provided that no prosecution shall be instituted against any such person unless he has been warned by the Director-General

Proviso.

Director-General of Public Health of the falsity of the statement or of some other statement substantially to the same effect and that the selling of any such newspaper or publication is an offence.

Penalties for false statements, etc.
cf. Act No. 1,372 (S.A.), s. 37.
Act No. 29, 1912, s. 10.

38. Any person who—

- (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, 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)

- (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
- 5 (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.
- 10 **39.** 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. 83.
- 15 **40.** Nothing in this Act shall 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.

PART V.

LEGAL PROCEEDINGS.

- 20 **41.** (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. Jurisdiction, how exercised.
- (2) The costs of any proceedings before the Supreme Court shall be in the discretion of the court. Costs.
- 25 **42.** 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. Offences and penalties. cf. Act No. 1,372 (S.A.), s. 41.

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PART VI.

REGULATIONS.

Regulations. **43.** (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 limiting 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; 5
- (b) prescribing the manner in which a complaint or charge against a registered person may be preferred to the Director-General of Public Health; 15
- (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 Director-General of Public Health to the disciplinary tribunal; 20
- (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; 25
- (f) prescribing the manner in which any notice or notification under this Act may be served.

(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. 30

(3) A regulation may impose a penalty not exceeding *ten* pounds for any breach thereof and any penalty so imposed may be recovered in like manner as a penalty imposed by the Act. 35

(4) Such regulations 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) 40

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(c) be laid before both Houses of Parliament within
fourteen sitting days after publication if Parliam-
ent is then in session, and if not, then within
5 fourteen sitting days after the commencement
of the next session.

(5) If either House of Parliament passes a reso-
lution 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
10 thereof, such regulation or part shall thereupon cease to
have effect.