

Queensland



MEDICAL ACT 1939

Reprinted as in force on 9 May 1997
(includes amendments up to Act No. 61 of 1996)

Warning—see last endnote for uncommenced amendments

Reprint No. 2A

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Information about this reprint

This Act is reprinted as at 9 May 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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MEDICAL ACT 1939

[as amended by all amendments that commenced on or before 9 May 1997]

An Act to consolidate and amend the law relating to medical practitioners and the control of the practice of medicine, and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Medical Act 1939*.

Definitions

4. In this Act—

“**anatomy**” means anatomy of the human body only.

“**approved form**” see section 16A.¹

“**Australian Medical Council**” means the body incorporated on and from 22 February 1985, as the Australian Medical Council Incorporated, pursuant to the *Associations Incorporation Ordinance 1953* made under the *Seat of Government (Administration) Act 1910* (Cwlth).

“**board**” means the Medical Board of Queensland constituted under this Act.

“**body**” means dead human body.

“**certificate of approval**” means a certificate of approval issued or renewed pursuant to section 55.

¹ Section 16A (Approval of forms)

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“chief health officer” means the chief health officer (Department of Health) for the State within the meaning of the *Health Act 1937*.

“company” means a company or recognised company within the meaning of the Corporations Law.

“competent to practise medicine” has the meaning given by section 4A.

“complaints investigation committee” means a committee constituted by the board under section 37(3)(c).

“coroner” means a coroner within the meaning of or appointed under the *Coroners Act 1958*.

“fee” includes tax.

“general registration” means registration that is not subject to a condition.

“impairment” has the meaning given by section 4B.

“medical call service” means any practice, method, or arrangement whereby it is arranged by or on behalf of a medical practitioner that any person who needs or desires medical attention during the medical practitioner’s absence shall be attended by another medical practitioner other than a locum tenens in the place of such first mentioned medical practitioner.

“medical company” means a company that is authorised by its memorandum or articles of association to engage in providing any medical or surgical advice, service, attendance, treatment, or operation and, where it does so engage, does so by way of a medical practitioner or medical practitioners only.

“medical director”, in respect of a medical call service, means the medical practitioner nominated as the person responsible for all medical aspects of that service.

“medical practitioner” means a person registered as a medical practitioner, and whose name remains upon the register of medical practitioners, Queensland.

“mentally ill” means a condition such that a person so described is within the definition of “patient” as defined in the *Mental Health Act 1974*, section 5.

“president” means the president of the board and, whenever necessary,

includes the deputy president.

“primary” where qualifying the terms degree or diploma or certificate the qualified term means a practising certificate, but any such term so qualified does not include or refer to a postgraduate degree, diploma or certificate.

“qualification” means any degree or diploma of any university or institution legally authorised to grant that degree or diploma, and which degree or diploma is approved of by the board.

“register” means—

- (a) for a medical practitioner—the register of medical practitioners; or
- (b) for a specialist—the register of medical practitioners and the register of specialists.

“register of medical practitioners” means the register of medical practitioners, Queensland, hereinafter mentioned.

“register of specialists” means the register of specialists, Queensland, hereinafter mentioned.

“registrar” means the registrar appointed as prescribed, and includes a person appointed to be the deputy registrar and any person who for the time being occupies the office or performs the duties of the registrar.

“responsible person” means a medical practitioner, registered nurse or other natural person considered by the board to be a suitable applicant for a certificate of approval.

“specialist” means a medical practitioner registered under this Act as a specialist with respect to a specialty, and whose name remains upon the register of specialists, Queensland, with respect to such specialty.

“specialty” means a branch of medicine prescribed under this Act to be a specialty.

“tribunal” means the Medical Assessment Tribunal constituted under this Act.

Meaning of “competent to practise medicine”

4A. A person is competent to practise medicine only if the person—

- (a) has sufficient physical capacity, mental capacity and skill to practise medicine; and
- (b) has sufficient communication skills for the practice of medicine, including an adequate command of the English language.

Meaning of “impairment”

4B.(1) A person is considered to suffer from impairment if the person suffers from a physical or mental impairment, disability, condition or disorder that detrimentally affects or is likely to detrimentally affect the person’s physical or mental capacity to practise medicine.

(2) Habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.

References to legally qualified medical practitioners

4C. In an Act, a reference to a ‘legally qualified medical practitioner’ or words that imply a person is recognised in law as a medical practitioner or is a member of the medical profession, is a reference to a medical practitioner.

PART 2—CENTRAL AUTHORITY

Governor in Council may refer matters to tribunal

Tribunal to investigate matters referred to it by the Governor in Council

6.(1) The Governor in Council may refer to the tribunal for investigation any matter respecting the administration of this Act or affecting or likely to affect the medical profession or the practice of medicine or any other matter considered to require investigation by the tribunal in the public interest, and the tribunal shall investigate any such matter so referred to it, and shall report the result of its investigation to the Governor in Council.

(2) Without prejudice to the powers and authorities conferred upon the judge constituting the tribunal the tribunal shall, for the purposes of this section have and may exercise all the powers, authorities, functions, jurisdiction, and protection of a commission under the *Commissions of Inquiry Act 1950*.

(3) The costs, charges, and expenses of any investigation pursuant to this section shall be paid out of the consolidated fund which is hereby appropriated accordingly.

PART 3—MEDICAL BOARD OF QUEENSLAND

Constitution

Constitution of board

8.(1) For the purposes of this Act there is hereby constituted the Medical Board of Queensland (“**the board**”) which board, shall, and notwithstanding anything to the contrary contained in this Act, be and be deemed to be so constituted on the date of the first appointment of the members thereof, and shall consist of 9 members as follows, namely—

- (a) the chief health officer;
- (b) 3 members nominated by the Minister to represent the Government, who shall be appointed by the Governor in Council;
- (c) 3 members nominated by the association or associations recognised by the Minister as representative of medical practitioners, who shall be appointed by the Governor in Council;
- (d) 1 member representing users of the services of medical practitioners;
- (e) a barrister or solicitor of the Supreme Court.

(1A) However, if more than 1 association is recognised by the Minister as representative of medical practitioners, the Governor in Council may apportion the members mentioned in subsection (1)(c) among such

recognised associations in such manner as the Governor in Council shall think fit; and moreover the Governor in Council may, at any time and from time to time, re-apportion such members among the associations so recognised for the time being in such manner as the Governor in Council shall think fit.

(2) Subject to this Act every member of the board other than the chief health officer shall be appointed by the Governor in Council for a period of 5 years and shall be eligible for reappointment.

(2A) The Governor in Council is to appoint a member who is a medical practitioner to be the president.

Appointment of members representative of medical practitioners failing their due nomination

(3) If—

- (a) within 7 days after a date appointed by the Minister (who is hereby authorised to appoint such date) the 3 persons to be appointed as members of the board under subsection (1)(c) have not been duly nominated by the association or associations recognised by the Minister as representative of medical practitioners; or
- (b) at any time 1 or more of the persons so duly nominated has or have signified to the Minister his, her or their refusal to act as a member of the board;

the Governor in Council may nevertheless appoint 3 persons to be members of the board under and pursuant to the powers conferred upon the Governor in Council in that behalf under subsection (1)(c) and, subject as hereinafter provided, every person so appointed shall be and be deemed to be a duly appointed member of the board.

(3A) However, the Governor in Council shall include in such appointments every eligible person who has been duly nominated by any such association or associations as aforesaid and who has not signified to the Minister the person's refusal to act as a member of the board.

(3B) A vacancy occurs in the office of president when the person holding the office resigns the office or ceases to be a member.

(3C) A person resigning the office of president may continue to be a member.

Removal from office

(4) The Governor in Council may remove any member of the board from office and, in the event of a vacancy occurring in the office of president either through removal as aforesaid or otherwise howsoever, the Governor in Council is to appoint another member who is a medical practitioner to be the president of the board.

(4A) However, the appointment of a member to be president made under subsection (4) may be so made without limit of time or may be for a limited period only.

Filling of vacancies on board

(5) Any extraordinary vacancy which at any time occurs in the office of member by death, removal, resignation, or otherwise shall be filled as soon as may be by the appointment by the Governor in Council of another member; but a member appointed to fill any such vacancy shall be deemed to hold the office of the member's predecessor, and shall hold office only so long as the member's predecessor would have done had no such vacancy occurred.

Appointment of deputy member

(6) If a member is likely from any cause to be absent from meetings of the board for more than 3 consecutive months, the Governor in Council may appoint a deputy to act for such member during the member's absence.

Powers of deputy

(7) A deputy shall have the same powers, rights, and duties as the member in whose place the deputy is appointed.

Appointment of deputy for president

(8) Notwithstanding anything hereinbefore in this section contained, if the president is the member likely from any cause to be absent for more than 3 consecutive months, the Governor in Council may appoint—

- (a) a deputy for the president, who shall be the deputy president and have the same powers, rights, and duties as the president while he or she acts as such deputy; or
- (b) 1 of the representatives of the government to be the deputy president, who shall have the same powers, rights, and duties as

the president while he or she acts as deputy president, and another person to be the deputy for the member so appointed deputy president while he or she acts as such, who shall have the same powers, rights, and duties as the member whose deputy he or she is while he or she acts as such deputy.

Absence of deputy president

(9) In the absence of such deputy president from any meeting of the board, the members of the board present at the meeting shall elect a member present thereat to act as chairperson of the meeting concerned, and while such member so acts he or she shall have the same powers, rights, and duties as such deputy president.

Increase in number of members

8A. If the number of members required to constitute the board is increased, an extraordinary vacancy is taken to exist in the office of a member or members to the number of the increase and—

- (a) each extraordinary vacancy may be filled under section 8(5); and
- (b) the Governor in Council may nominate the term of appointment of the person appointed to fill each vacancy.

Disqualifications from membership of board

9. The office of a member shall become vacant if such member—

- (a) dies, or becomes mentally ill; or
- (b) becomes bankrupt or compounds or makes an arrangement with his or her creditors, or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (c) is absent without leave of the board from 3 consecutive ordinary meetings of which due notice has been given to the member; or
- (d) resigns office by signed notice served personally or by post upon the registrar; or
- (e) is removed from office by the Governor in Council; or

- (f) is convicted of an indictable offence or of an offence against this Act, or is subjected to disciplinary punishment under this Act.

Committees

9A.(1) The board may select persons to form an advisory committee or advisory committees to advise the board on any matter within the scope of the board's functions referred to the committee or to a particular committee by the board.

(2) A person may be a member of such a committee whether or not the person is a member of the board.

Entitlements of members of board or committees

9B.(1) Members of the board and members of a committee formed pursuant to section 9A shall be entitled to such fees and allowances as are approved by the Governor in Council save that a member of the board or that committee who is an officer of the public service shall not receive fees or allowances for attendance at a meeting of the board or that committee during the member's ordinary hours of duty.

(2) Members of the board and members of a committee shall be entitled to be reimbursed such out of pocket expenses necessarily incurred by them in the performance of their duties as such members as are approved by the board.

Board to be body corporate

Board to be a body corporate

10.(1) The board shall be a body corporate under the name and style of 'The Medical Board of Queensland', and by that name shall have perpetual succession and an official seal, and shall be capable in law of suing and being sued in its corporate name and of acquiring, holding, and disposing of real and personal property (including, without prejudice to this subsection, the power conferred upon the medical board under the *Medical and Other Acts Amendment Act 1933*), section 41(2).

Judicial notice of seal of board

(2) All courts, judges, justices, and persons acting judicially shall take judicial notice of the seal of the board affixed to any document or notice, and shall presume that it was duly affixed.

Proceedings and business**President to be executive officer of board**

11.(1) The president shall be the executive officer of the board.

(1A) Every appointment and every order, notice, certificate, or other document of the board relating to the execution of this Act shall be sufficiently authenticated if signed by the president.

(1B) However, the president may authorise the registrar, either generally or in a particular case, to sign such order, notice, certificate, or other document and the signature of the registrar appearing thereon shall be evidence, and in the absence of evidence to the contrary, conclusive evidence of such authorisation.

Duties of president

(2) The president shall preside at all meetings of the board at which the president is present and, in the event of the president's absence at any time when there is no deputy president, 1 of the members of the board present at the meeting elected by the members present thereat (who shall be deemed to be the deputy president while he or she so acts) shall so preside.

(2A) The fact that a member so presides shall be conclusive evidence of the absence of the president and that there is no deputy president.

(2B) The person presiding at any meeting of the board shall have a casting as well as a deliberative vote.

Business

(3) Subject to this Act, the board shall meet at such times and conduct its business in such manner as may be prescribed or, in so far as not prescribed, as it may decide.

Special meetings

(4) Special meetings may be summoned at any time by the president, and shall be so summoned by the president upon receipt of a requisition in writing signed by any 2 members.

Quorum

(5) No business shall be transacted at any meeting of the board unless at least 5 of the members are present when such business is transacted.

Voting

(6) All powers vested in the board may be exercised by the majority of the members present at any meeting duly held, and all questions shall be decided by a majority and by open voting.

(6A) At all meetings, save as herein otherwise provided all members present shall vote.

(6B) If a member refuses to vote, the member's vote shall be counted for the negative.

Pecuniary interest

(7) No member shall vote or take part in any debate with respect to any matter in which the member has directly or indirectly, personally or his or her partners, any pecuniary interest.

Adjournments

(8) The members present at a meeting may from time to time adjourn the meeting.

(8A) If a quorum is not present within 30 minutes after the time appointed for a meeting, the members present or the majority of them, or any 1 member if 1 one is present, or the registrar if no member is present, may adjourn such meeting to any time not later than 7 days from the date of such adjournment.

(8B) However, nothing herein contained shall be construed to prevent the adjournment of any meeting to a later hour of the same day on which such meeting was appointed to be held.

Notice of meetings

(9) All notices of any meeting or adjourned meeting (other than of a

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meeting adjourned to a later hour of the same day on which such meeting was appointed to be held) shall be in writing, and shall be delivered, or sent by post or otherwise, to the address of each of the members previous to the meeting.

(9A) Every such notice shall specify the time of meeting and, in case of a special meeting, shall specify the object thereof.

(9B) No business shall be transacted at any special meeting except such as is stated in the notice thereof.

Validation of proceedings

(10) If any member refuses or neglects to act or attend any duly convened meeting of the board, all lawful acts and proceedings of the board shall be as valid and effectual as if they had been done or authorised by the full board.

(10A) No proceedings of the board or of any person acting as president or member shall be invalidated by reason of any defect in his or her appointment or, in the case of a nominated member, nomination, or of any disqualification of any such person, or by reason of there being any vacancy in the number of members at the time of such proceedings, provided that the number of members is not reduced below 4.

Registrar and officers

(11) Nothing in this Act shall prejudice the *Medical and Other Acts Amendment Act 1933*, section 42, and the Governor in Council may, pursuant to the said section, appoint a registrar as often as a vacancy occurs in that office and may, pursuant to the said section, appoint, from time to time, such other officers as the Governor in Council may deem necessary to carry out the provisions and objects of this Act.

Powers of inquiry**Power of board to examine on oath**

12.(1) The board may for the purposes of this Act examine any person on oath or take a statutory declaration from any person.

(2) Nothing in this Act shall prejudice the power of the judge constituting the tribunal to punish any person for contempt of the tribunal.

Board a commission of inquiry

13.(1) For the purpose of hearing any application or making any investigation or holding any inquiry into any matter under this Act, the board shall be deemed to be a commission of inquiry within the meaning of the *Commissions of Inquiry Act 1950* and the provisions of that Act, other than sections 4, 4A, 10(3) and 13, shall apply accordingly.

(2) For the purpose of applying the provisions of the *Commissions of Inquiry Act 1950*, each member of the board shall be deemed to be a commissioner, and the president shall be deemed to be the chairperson, within the meaning of that Act.

Stipendiary magistrate may take evidence on behalf of board

13A.(1) For any purpose for which the board is deemed to be a commission of inquiry pursuant to section 13, the president may, by signed notice, summon a person to attend before a stipendiary magistrate at a time and place named in the summons, and then and there to give evidence in respect of any matter specified therein and may further require the person to produce any books, documents, or writings in the person's custody or control, which the person is required by the summons to produce.

(2) The president shall not issue a summons under subsection (1) without first obtaining the approval of the Minister.

(3) A stipendiary magistrate before whom a person is summoned pursuant to subsection (1) shall take the person's evidence and for that purpose the stipendiary magistrate shall be deemed to be a commission of inquiry within the *Commissions of Inquiry Act 1950* and the provisions of that Act, other than sections 4, 4A, 10(3) and 13, shall apply accordingly.

(4) For the purpose of applying the provisions of the *Commissions of Inquiry Act 1950*—

- (a) the stipendiary magistrate shall be deemed to be a commissioner and the chairperson within the meaning of that Act;
- (b) a person summoned pursuant to subsection (1) shall be deemed

to have been summoned by the stipendiary magistrate in the person's capacity as the chairperson within the meaning of that Act.

(5) After taking the evidence of a person summoned, the stipendiary magistrate shall forward it to the president.

(6) Evidence taken by a stipendiary magistrate pursuant to this section shall have the same force and effect as if it were taken before the board.

Offences in respect of inquiry

13B. A person who, without reasonable excuse—

- (a) having been served pursuant to this Act with a summons to attend before the board or a stipendiary magistrate as a witness, fails to attend in obedience to the summons; or
- (b) having been served pursuant to this Act with a summons to attend before the board or a stipendiary magistrate, fails to produce any book, document or writing in the person's custody or control, which the person is required by the summons to produce; or
- (c) being called or examined pursuant to this Act as a witness before the board or a stipendiary magistrate, refuses to be sworn or to make an affirmation or declaration or refuses or otherwise fails to answer any relevant question put to the person by the board or the stipendiary magistrate;

commits an offence against this Act.

Allowances to witness

13C.(1) Subject to this section, a witness appearing before the board, or before a stipendiary magistrate, when deemed, pursuant to this Act to be a commission of inquiry within the meaning of the *Commissions of Inquiry Act 1950*, shall be paid allowances in accordance with section 24 of that Act.

(2) The claim to any such allowances of any witness, certified by the president, shall be paid by the board out of its funds.

(3) A witness who subsequently to an investigation carried out by the

board is found guilty by the tribunal of misconduct in a professional respect shall not be paid by the board any allowance, or further allowance, outstanding in respect of his or her appearance as a witness during the investigation.

Funds

Funds of board

14.(1) All moneys received by the board or the registrar, including fees and penalties, shall be paid into the funds of the board.

(1A) Without prejudice to any other right or remedy conferred upon the board with respect thereto, all moneys, including fees, due and owing to the board may, if not duly paid, be recovered by the board as a debt by action in any court of competent jurisdiction.

(2) The remuneration of the registrar and other officers appointed under this Act, and all other expenses of and incidental to the administration of this Act, including all expenses incurred by or in connection with the tribunal, shall be paid by the board out of its funds.

(2AA) The board may pay out of its funds any sum due under an agreement lawfully made for the purposes of this Act and any sum recoverable against the board by process of law.

(2A) The board may, with the approval of the Minister, appropriate any portion of its funds, not required by the board for any of the purposes mentioned in subsection (2) or (2AA) or for the purposes of the *Medical Act and Other Acts (Administration) Act 1966*, for medical education and research.

Power to make by-laws

Power to make by-laws

16.(1) The board may make by-laws under this Act.

(1A) A by-law must be approved by the Governor in Council.²

(1B) A by-law may create offences and prescribe penalties of not more than 30 penalty units for each offence.

(1C) A by-law may be made for or about any of the following matters—

- (a) the powers, duties and functions of the registrar, officers and inspectors appointed for the effectual administration of this Act;
- (b) the register of medical practitioners and the register of specialists and the manner of keeping them;
- (c) the making of applications to the board, and the effect of furnishing false particulars therein;
- (d) the conduct of meetings of the board;
- (e) the entitlement of members to vote upon business before a meeting;
- (f) the seal of the board and the attesting of documents by and on behalf of the board;
- (g) the purposes for which fees are payable under this Act, the amounts of fees, the persons who are liable to pay fees, when fees are payable, the waiver of fees and the recovery of unpaid amounts of fees;
- (h) the forms to be used for the purposes of this Act;
- (i) regulating and controlling the use by medical practitioners (including specialists) of titles, letters or words indicating or describing their qualifications;
- (j) prescribing titles, letters or words that shall or may be used to indicate or describe that any person is a medical practitioner or to indicate or describe any particular medical qualification;
- (k) prohibiting the use by medical practitioners, in relation to their qualifications as medical practitioners or the practice by them of medicine of any titles, letters or words, other than those prescribed for such use or prohibiting any prescribed titles, letters

² A by-law is subordinate legislation (see *Statutory Instruments Act 1992*, sections 7, 8(b)(i) and 9(1)(a)).

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or words from being so used and, in relation to medical qualifications, either generally or except to indicate or describe a particular qualification;

- (l) regulating, controlling and prohibiting canvassing or soliciting work or business by, for or on behalf of medical practitioners;
- (m) providing for and regulating advertisements, signs and notices concerning the provision of professional services by a medical practitioner and the use by a medical practitioner of any mode or form of advertising, either generally or in a particular case;
- (n) prescribing the minimum requirements for any such advertisements, signs or notices that the board may require of a medical practitioner, either generally or in a particular case;
- (o) prescribing the modes and forms of advertising and the practices associated with advertising by a medical practitioner that are prohibited;
- (p) providing for and regulating the conduct of persons suspended from registration under this Act during the period of suspension;
- (q) prescribing what practices by such persons shall be prohibited, and providing for and regulating applications for removal of such suspension;
- (r) prescribing the experience in medicine and surgery and the aggregate amount of the period or periods of such experience to be obtained as part of the qualification for registration as a medical practitioner or specialist;
- (s) prescribing the duties and responsibilities of medical practitioners and the procedures to be adopted by them in providing a continuous service for their patients;
- (t) prohibiting or restricting the establishment, use, conduct of or participation in medical call services;
- (u) prescribing where, in what circumstances and subject to what standards, terms, conditions, duties or responsibilities a responsible person may establish, use, conduct or participate in medical call services;
- (v) prescribing such other matters and things as in the board's

opinion are necessary or desirable in relation to medical call services;

- (w) all matters required or permitted by this Act to be prescribed by by-laws.

(2) In subsection (1)(m) to (o)—

“advertising” includes giving, sanctioning, participating in or assisting in the preparation of a public television or radio interview or other broadcast, or public address or by providing, sanctioning, contributing to or assisting in the preparation of a newspaper or other written interview or other report that is calculated to provide publicity concerning the practice of a medical practitioner, and **“advertisement”** has a corresponding meaning.

Approval of forms

16A. The board may approve forms for use under this Act.

PART 4—REGISTRATION

Division 1—Qualifications for registration

Entitlement to general registration based on qualifications and training

17.(1) A person is entitled to general registration as a medical practitioner if the person has recognised medical qualifications and has successfully completed a period of internship or supervised training required by the board.

(2) A person has **“recognised medical qualifications”** if the person is a graduate of a medical school (whether within or outside Australia) accredited by the Australian Medical Council or has successfully completed examinations held by the council for the purposes of registration as a medical practitioner.

Entitlement to conditional registration for interns

17A.(1) A person is entitled to be registered as a medical practitioner subject to appropriate conditions if the person would be entitled to registration under section 17 except for the fact that the person has not completed a period of internship or supervised training required by the board.

(2) The “**appropriate conditions**” of registration are the conditions that the board considers appropriate for the purpose of enabling the person to complete the internship or training.

Conditional registration at the discretion of the board

17C. The board may register a person as a medical practitioner under any of the following paragraphs and may impose such conditions on the registration as the board considers appropriate—

(a) Graduates from non-accredited institutions—postgraduate training

- A person who is a graduate of medicine from an institution which is not accredited by the Australian Medical Council may be registered on a temporary basis to enable the person to undertake a period of postgraduate training in medicine approved by the board;

(b) Candidates for council examinations approved for supervised training

- A person who is a candidate for an examination held by the Australian Medical Council and has been approved by the council to undertake a period of supervised training approved by the board before sitting for the examination may be registered for the purpose of enabling the person to undertake the training;

(c) Medical teaching or research

- A person may be registered for the purpose of enabling the person to fill a medical teaching or research position if the person has qualifications that the board recognises for the purpose;

(d) Unmet areas of need

- A person may be registered for the purpose of enabling an unmet area of need to be met if the board is satisfied that the person has suitable qualifications and experience to practise medicine in the area of need;

(e) Recognised specialist qualifications and experience

- A person may be registered if the board is satisfied that the person has specialist qualifications and experience in medicine recognised by the relevant Australian specialist college or institution and registration is for the purpose of enabling the person to practise within that specialty;

(f) Foreign specialist qualifications and experience—further training

- A person may be registered if the board is satisfied that the person has specialist qualifications and experience in medicine obtained outside Australia that are not recognised by the relevant Australian specialist college or institution, and that registration is for the purpose of enabling the person to undergo further specialist training or examination before being assessed for recognition by the college or institution;

(g) Temporary registration in the public interest

- A person may be registered on a temporary basis if the board is satisfied that it is in the public interest to do so.

Interim registration available in certain cases

17D.(1) An applicant for registration may be granted interim registration in either of the following cases—

- (a) if the applicant is entitled to registration under section 17 but it is not practicable to wait until the board can consider the application;
- (b) if the applicant would be entitled to registration under section 17A except for the fact that a degree or award to which the applicant is entitled has not yet been conferred or granted by the institution concerned.

(2) A person authorised by the board for the purposes of this section may grant an applicant interim registration under this section.

(3) A person's interim registration is in force from the time of its grant until the person is given written notice that any of the following things has happened—

- (a) the board has granted the person registration;
- (b) the board has refused the application for registration;
- (c) the board has cancelled the interim registration.

(4) The board may cancel a person's interim registration for a reason that it considers appropriate.

(5) If the board acts under subsection (4), it must immediately give the person written notice of the cancellation.

(6) A person who holds interim registration is, for all purposes, taken to be registered as a medical practitioner.

(7) If a person was the holder of interim registration immediately before the person is registered, the person's registration is taken to have commenced on the day on which interim registration was granted.

(8) Interim registration granted under this section is taken to have been granted by the board.

Non-practising registration

17E.(1) A person who is entitled to, or eligible for, registration under another provision of this part, but who does not intend to practise, may elect to be registered subject to the condition that the person is not to practise medicine.

(2) The board may register the person mentioned in subsection (1) subject to such a condition.

Conditions may be imposed in cases of impairment

17F.(1) The board may impose conditions on a person's registration if the board is satisfied that the person suffers from an impairment and the conditions are reasonably required having regard to the impairment.

(2) A medical practitioner who has had conditions imposed on the person's registration under this section (including on a review under this section) may apply to the board for a review of the conditions.

(3) The board may decline to review the conditions if the application is made within 6 months after the conditions were last reviewed under this section.

(4) On a review of conditions, the board may alter or remove conditions or impose new conditions, as it considers appropriate.

(5) If the board acts under subsection (3) or (4), it must immediately give the medical practitioner written notice of the conditions imposed, altered or removed.

Entitlement to registration does not prevent conditions being imposed

17G. An entitlement to registration under this Act does not prevent conditions being imposed on that registration under this Act.

Division 2—Specialists

Specialists

18.(1) A medical practitioner is entitled to specialist registration if the medical practitioner has recognised specialist qualifications in a prescribed speciality of medicine.

(2) A person has “**recognised specialist qualifications in a prescribed speciality of medicine**” if the person satisfies the board that the person—

- (a) has gained special skill in the particular speciality, with respect to which the application relates, by adequate experience in the speciality gained in the prescribed way; and
- (b) is the holder of a qualification in a prescribed speciality of medicine; and
- (c) satisfies the prescribed conditions that relate to the qualification.

Division 3—Grounds for refusing registration

Registration may be refused despite entitlement or eligibility

19. This division overrides an entitlement to, or eligibility for, registration under divisions 1 and 2.

Applicants must be competent and of good character

19A. The board may register a person as a medical practitioner only if it is satisfied that the person—

- (a) is competent to practise medicine; and
- (b) is of good character.

Restrictions on registration of deregistered persons

19B.(1) The board must reject an application for registration by a person who has been deregistered under this Act.

(2) A person is “**deregistered**” when—

- (a) the person’s name is removed from the register under an order of the tribunal or the Supreme Court; or
- (b) the tribunal or the Supreme Court orders that the person not be re-registered.

(3) The only way such a person can again be registered is on a review under part 4B, division 3 of the order by which the person was deregistered.

Registration may be refused if applicant convicted of offence

19C.(1) The board may refuse an application for registration if—

- (a) the applicant has been convicted in Queensland of an offence or has been convicted elsewhere by a court for or in respect of an act or omission that would, had it taken place in Queensland, have constituted an offence; and
- (b) the board is of the opinion that the conviction renders the person unfit in the public interest to practise medicine.

(2) In making a decision under this section, the board is to have regard to the nature of the offence (such as, for example, whether it is of a trivial nature) and the circumstances in which it was committed.

Registration may be refused if applicant deregistered on disciplinary grounds in another jurisdiction

19D.(1) The board may refuse an application for registration if the applicant's name has been removed or erased from a foreign medical register for a reason relating to conduct of the person amounting to misconduct in a professional respect, or on a basis relating to the person's physical or mental capacity to practise medicine.

(2) In this section—

“foreign medical register” means a register or roll established or kept under a law of another State or a Territory or of a foreign country providing for the registration, licensing or certification of medical practitioners under an authority established by a law of the State, Territory or country.

Division 4—Suspension of registration for the protection of the public

Suspension or imposition of conditions to protect life

20.(1) If the board is satisfied that such action is necessary for the purpose of protecting the life or the physical or mental health of a person, the board may—

- (a) by order, suspend a medical practitioner from practising medicine for such period (not longer than 30 days) as is specified in the order; or
- (b) impose on a medical practitioner's registration, conditions, relating to the practitioner's practising medicine, that it considers appropriate.

(2) The board may take the action whether or not a complaint has been made to the board about the medical practitioner.

(3) The board must refer the matter to the tribunal, together with details

of the action taken by the board under this section.

(4) This division does not affect the provisions of the *Health Rights Commission Act 1991* relating to the investigation of complaints against registered providers (within the meaning of that Act).

Extension of suspension

20A.(1) A period of suspension imposed under this division may be extended by order of the board for further periods, each of which is not longer than 30 days.

(2) Subsection (1) applies only if the matter has not been disposed of.

Expiration of suspension

20B. On the expiry of a period of suspension imposed under this division, the person's rights and privileges as a medical practitioner are revived, subject to any order of the tribunal on the complaint that is referred to the tribunal.

Effect of conditions imposed

20C.(1) Conditions imposed under this division have effect until the matter is disposed of.

(2) This section does not prevent conditions being imposed under another provision of this Act.

Division 5—Appeals

Right of appeal

21.(1) A person may appeal to the tribunal against any of the following determinations of the board—

- (a) a determination to refuse a person's application for registration;
- (b) a determination imposing a condition on the person's registration;
- (c) a determination in respect of a review under section 17F of the

conditions to which a person's registration is subject;

- (d) a determination made under section 30, 30K(1), 31A(3) or 91 to remove a medical practitioner's name from the register;
- (e) a determination made under section 30A, 30K(2) or 31B(3) to alter the records of the register in respect of a medical practitioner.

(2) An appeal must be made within 28 days (or such longer period as the registrar may allow in a particular case) after notice of the determination or action is given to the person.

Appeal to be lodged with registrar

21A. An appeal must be lodged with the registrar who is to refer it to the tribunal.

Appeal from inquiry decision to be by way of rehearing

21B.(1) If the determination in respect of which an appeal is made was made because of an inquiry held by the board, the appeal is to be dealt with by way of rehearing.

(2) Fresh evidence or evidence in addition to or in substitution for the evidence received at the inquiry may be given at the rehearing.

Pending appeal does not affect board's determination

21C. An appeal does not affect a determination with respect to which it is made until the appeal is determined.

Determination of appeal

21D.(1) When it determines an appeal, the tribunal may dismiss the appeal or order that the determination of the board be revoked and replaced by a different determination made by the tribunal and specified in the order.

(2) The tribunal may also make such ancillary orders as it considers appropriate.

(3) The tribunal's decision—

- (a) is taken to be the determination of the board; and
 - (b) does not confer a right of appeal under this division in respect of the decision.
- (4) The board is to give effect to an order made by the tribunal.

Division 6—Notification to medical registration authorities

Notification of certain matters to other States

22. The board must give medical registration authorities in other States or in a Territory such notice and details of the following matters as the board considers appropriate or desirable in the particular case—

- (a) a complaint made against a medical practitioner under this Act, unless it is determined that no further action should be taken in respect of the complaint;
- (b) an order made under this Act in respect of such a complaint;
- (c) the removal of the name of a person from the register and the reasons for the removal;
- (d) the placing of conditions on a person's registration.

PART 4A—REGISTRATION PROCEDURES

Division 1—Applying for registration

Form etc. of application

23. An application for registration must be in the approved form and must be lodged with the registrar.

Application fee

23A.(1) The application is to be accompanied by the prescribed fee.

(2) The board may waive the requirement for a fee in a particular case.

Evidence to accompany application

23B. The application is to be accompanied by such evidence as the board requires.

Time within which application to be determined

23C.(1) For the purposes of an appeal under this Act, the board is taken to have determined that an applicant for registration is not entitled to be registered and to have refused the application if the board does not consider and determine the application within 3 months after the application is lodged with the registrar.

(2) The board and the applicant may agree on a longer period than 3 months for the purposes of this section, in which case the agreed longer period applies.

Division 2—Dealing with applications

Applications to be considered and determined

24. The board is to consider and determine all applications for registration by either—

- (a) registering the applicant (unconditionally or subject to conditions);
or
- (b) refusing the application.

Notice to applicant of decision on application

24A.(1) The board is to give an applicant for registration written notice of the board's decision on the application as soon as practicable after the decision is made.

(2) If the decision is to grant registration, the board is to issue to the applicant a certificate of registration in the approved form stating the particulars recorded in the register with respect to the applicant.

How a person is registered

24B. The board registers a person by recording in the register the particulars that the board considers appropriate and any conditions to which the registration is subject.

Conditions on registration

24C. The conditions that may be imposed on registration under this Act at the time of registration include—

- (a) conditions relating to the duration of registration; and
- (b) the aspects of the practice in which the person who is registered may be engaged; and
- (c) conditions relating to any other matter that the board considers appropriate.

Division 3—Inquiries**Board may hold inquiry into eligibility**

25.(1) The board may hold an inquiry, in such cases as it considers appropriate, into the eligibility of an applicant to be registered as a medical practitioner.

(2) The inquiry may include an inquiry into the applicant's competence to practise medicine.

Board must hold inquiry in certain cases

25A. If the board is not satisfied as to the eligibility of an applicant to be registered after considering the application for registration, the board is to hold an inquiry under this division for the purpose of satisfying itself as to eligibility.

Constitution of board for inquiry

25B. For the purposes of conducting an inquiry under this part, the board

may appoint a committee of assessors comprised of medical practitioners (whether or not they are members of the board).

Applicant to be notified of inquiry

25C. The board or committee of assessors is to fix a time and place for the holding of an inquiry and is to give the applicant concerned at least 14 days written notice of the time and place for the inquiry.

Practitioner entitled to attend

25D. The applicant concerned is entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but is not entitled to be represented by a barrister or solicitor or other adviser.

Preliminary medical examinations of applicants for registration

25E. Before or during an inquiry under this division, the board may require the applicant for registration, by written notice given to the applicant, to undergo, at the board's expense, a medical examination by a specified medical practitioner, at a specified reasonable time and place.

Decision of the committee of assessors in an inquiry

25F. On completion of the inquiry, the committee of assessors is to advise the board of its decision about the eligibility of the applicant to be registered as a medical practitioner.

Details of decision to be supplied to applicant

25G.(1) The board must give written notice of the decision on an inquiry to the applicant and must do so within 1 month after the decision is made.

(2) The notice must give the reasons for the decision.

(3) The board may also give written notice of a decision to such other persons as the board considers appropriate.

Division 4—Keeping and alteration of the register**Board is to keep the register**

26.(1) The board is to keep—

- (a) a register called the register of medical practitioners, Queensland; and
- (b) a register called the register of specialists, Queensland.

(2) The register must be made available, at all reasonable times, for inspection at the office of the board by any person on payment of the prescribed fee.

(3) The board may carry out a search of the register on a person's behalf and is entitled to charge such fee as it determines for the search.

Additional information may be recorded in the register

26A.(1) On application by a medical practitioner and payment of the prescribed fee, the board may record in the register any particulars, in addition to those required to be recorded in the register, as the board approves.

(2) The board must make other recordings in the register necessary for the purpose of maintaining the register as an accurate record of the particulars relating to each medical practitioner.

Method of removal from the register

26B.(1) The name of a medical practitioner is removed from the register by the making in the register of the recording the board directs.

(2) If a person's name is removed from the register otherwise than in accordance with an order of the tribunal or the Supreme Court, the board must give written notice to the person.

Surrender of certificates

26C.(1) The board may, by written notice, require a person who has ceased to be registered to give to the board within a specified reasonable

time a certificate issued to the person under this Act in respect of the registration.

(2) The person must not, without reasonable excuse, fail to comply with the notice.

Maximum penalty—1 penalty unit.

Making a recording in the register—extended meaning

26D. A reference in this Act to “**the making of a recording in the Register**” includes a reference to amending, cancelling or deleting a recording in the register.

Division 5—Annual registration fees

Annual registration fee payable

27. A medical practitioner must, on or before a day notified in writing to the practitioner at least 1 month in advance, pay to the board the prescribed annual registration fee.

Practitioner’s name may be removed from register for non-payment

27A.(1) The board must give written notice to a medical practitioner who does not pay the annual registration fee on or before the due day that, if the fee is not paid on or before a later specified day, the practitioner’s name will be removed from the register.

(2) The board may remove from the register the name of a medical practitioner who has been so notified and fails to pay the fee on or before the later day.

Entitlement to restoration if fee paid

27B.(1) A person whose name has been removed from the register for failure to pay the annual registration fee is entitled to have their name restored to the register if the person pays to the board the unpaid annual registration fee or fees together with the prescribed restoration fee.

(2) The board may waive payment of the restoration fee in a particular case.

(3) The entitlement of a person to have their name restored to the register is an entitlement to registration on the same terms and subject to the same conditions (if any) as applied to the person's registration immediately before the removal of the person's name from the register.

(4) A person registered under an entitlement to have their name restored to the register under this section is taken to have been so registered on and from the day the person's name was removed from the register or on and from such later day as the board determines and notifies to the person.

(5) The entitlement of a person to have their name restored to the register under this section does not override any other provision of this Act under which the person's name is authorised or required to be removed from the register.

Board may waive registration fee

27C. The board may, for such reason as it considers appropriate, waive the requirement that an annual registration fee be paid by a medical practitioner in a particular year.

How registration ceases

27D. A medical practitioner ceases to be registered when—

- (a) the board gives the person written notice that the person's name has been removed from the register under this Act; or
- (b) if registration is conditional and the period of the registration is specified in a condition—the period of the registration expires.

Division 6—The practice of medicine

Right to practise medicine

28. A person other than a medical practitioner may not hold an appointment as—

- (a) a physician, surgeon or other medical officer—
 - (i) in a passenger or other vessel leaving a port and registered in Queensland; or
 - (ii) in a public or private hospital or other institution or society for affording medical relief in sickness, infirmity or old age; or
- (b) a medical inspector, medical officer of health or health officer.

Medical certificates

29.(1) A person who is not a medical practitioner must not sign a medical certificate of the cause of death of a deceased person.

(2) A certificate required by law to be signed by a physician, surgeon or medical practitioner is invalid if the person signing the certificate is not a medical practitioner.

PART 4B—REMOVAL FROM AND ALTERATION OF THE REGISTER

Division 1—General powers to remove from or alter the register

Removal of person wrongfully registered

30. The board may remove from the register the name of a person who—

- (a) has been registered because of a false or fraudulent representation or declaration, made either verbally or in writing; or
- (b) is not entitled or eligible to be registered.

Amendment of incorrect particulars concerning qualifications

30A.(1) The board may remove particulars from, or otherwise amend,

the register if the particulars appearing on the register in respect of the qualifications of a medical practitioner are proved to the satisfaction of the board to be, or are to the board's knowledge, false or erroneous in any respect.

(2) This requirement applies even if the practitioner had the relevant qualifications or the entry was otherwise correct when the entry was made in the register.

Removal on death or at own request

30B. The board must remove the name of a medical practitioner from the register if the practitioner has died or has requested the board to remove his or her name.

Removal or amendment under disciplinary order

30C.(1) The board must remove the name of a person from the register if removal of the person's name is required by an order under this Act of the tribunal or the Supreme Court.

(2) The board is to make the recordings in the register necessary to give effect to an order under this Act of the board, the tribunal or the Supreme Court about the conditions to be imposed on a person's registration.

Board may hold inquiry into eligibility

30D.(1) If the board is concerned that a person whose name is on the register may be unfit to practise medicine, the board may hold an inquiry into the eligibility of the person to remain registered as a medical practitioner.

(2) The inquiry may include an inquiry into the medical practitioner's competence to practise medicine.

Constitution of board for inquiry

30E. For the purposes of conducting an inquiry under this part, the board may appoint a committee of assessors consisting of medical practitioners (whether or not they are members of the board).

Medical practitioner to be notified of inquiry

30F. The board or committee of assessors is to fix a time and place for the holding of an inquiry and is to cause the medical practitioner concerned to be given at least 14 days written notice of the time and place for the inquiry.

Medical practitioner entitled to attend

30G. The medical practitioner in relation to whom an inquiry is being held is entitled to attend and to be accompanied by a barrister or solicitor or another adviser, but is not entitled to be represented by a barrister or solicitor or other adviser.

Preliminary medical examination of medical practitioner

30H. Before or during an inquiry under this part, the board may require the medical practitioner, by written notice given to the practitioner, to undergo at the board's expense a medical examination by a specified medical practitioner at a reasonable specified time and place.

Decision of the committee of assessors in an inquiry

30I. On completion of the inquiry, the committee of assessors must advise the board of its decision about the medical practitioner's eligibility to remain registered as a medical practitioner, with or without conditions.

Details of decision to be supplied to medical practitioner

30J.(1) The board must give a written notice of the decision on an inquiry to the medical practitioner concerned within 1 month after the decision is made.

(2) The notice must give the reasons for the decision.

(3) The board may also give written notice of a decision to any other persons the board considers appropriate.

Removal or imposition of conditions relating to competence to practise

30K.(1) If, because of the inquiry, the board is of the opinion that the medical practitioner is not competent to practise medicine, the board may remove the medical practitioner's name from the register.

(2) If, because of the inquiry, the board is of the opinion that conditions should be imposed on the medical practitioner's registration to practise medicine, the board may make the necessary recordings in the register.

Medical practitioner to be notified of action

30L. The board must give the medical practitioner concerned written notice of action taken by the board under this division and the action does not take effect until the notice is given.

Appeal

30M. A person—

- (a) whose name has been removed from the register under section 30 or 30K(1); or
- (b) in respect of whom, conditions, to which the person's registration is subject to, have been altered under section 30A or 30K(2);

may appeal to the tribunal against the removal or alteration.

Division 2—Powers resulting from action under foreign law**Meaning of “foreign law”**

31. In this division—

“**foreign law**” means a law of another State, a Territory or a foreign country providing for the registration, licensing or certification of medical practitioners under an authority established by a law of the State, Territory or country.

Deregistration on basis of disciplinary action under foreign law

31A.(1) This section applies if it is proved to the satisfaction of the board that the name of a person has, after the person was registered under this Act, been removed from a register or roll under a foreign law—

- (a) for a reason relating to conduct of the person amounting to misconduct in a professional respect; or
- (b) for a reason relating to the person's physical or mental capacity to practise medicine.

(2) If this section applies and the foreign law concerned is a law of a place in Australia, the board must remove the name of the person from the register.

(3) If the foreign law is a law of a place outside Australia, the board may remove the name of the person from the register.

(4) The board may restore a name removed from the register.

Imposition of conditions imposed under foreign law

31B.(1) This section applies if it is proved to the satisfaction of the board that, after a person was registered under this Act, a condition has been placed on the person's registration, licensing or certification under a foreign law.

(2) If this section applies and the foreign law concerned is a law of a place in Australia, the board must make such recordings in the register as are necessary to impose the condition on the person's registration under this Act.

(3) If the foreign law is a law of a place outside Australia, the board may make those recordings in the register.

Medical practitioner to be notified of action

31C. The board must give the medical practitioner concerned written notice of action taken by the board under this division and the action does not take effect until the notice is given.

Appeal

31D.(1) Subject to subsection (2), a person—

- (a) whose name has been removed from the register under this division; or
- (b) in respect of whom, conditions to which the person's registration is subject to have been altered under this division;

may appeal to the tribunal against the removal or alteration.

(2) There is no right of appeal when the board is required under section 31A(2) or 31B(2) to remove the person's name.

(3) The institution of an appeal does not affect the removal of a person's name from the register unless the tribunal orders that it be restored to the register.

(4) If the tribunal dismisses the appeal, it may, by order, fix a time after which the person may apply to be re-registered.

(5) If the tribunal fixes a time under subsection (4), the person is not entitled to be re-registered before the time specified by the tribunal (despite an entitlement under this Act to be re-registered).

Division 3—Review of suspension, deregistration or conditions

Right of review

32.(1) A person may apply to the appropriate review body for a review of an order of the board, the tribunal or the Supreme Court—

- (a) that the person is suspended from practising medicine; or
- (b) that the person's name be removed from the register or that the person not be re-registered; or
- (c) that conditions be placed on the person's registration.

(2) A person may also apply to the appropriate review body for a review of an order made under this division.

(3) An application for review of an order may not be made—

- (a) while the terms of the order provide that an application for review

may not be made; or

- (b) while an appeal to the tribunal or the Supreme Court in respect of the same matter is pending.

The appropriate review body

32A.(1) The “**appropriate review body**” is—

- (a) the tribunal; or
- (b) if the order being reviewed provides that it may be reviewed by the board—the board.

(2) An application for review must be lodged with the registrar who is to refer it to the appropriate review body.

Powers on review

32B.(1) The appropriate review body is to conduct an inquiry into an application for review and may then do any of the following—

- (a) dismiss the application;
- (b) by its order, terminate or shorten the period of the suspension concerned;
- (c) make a reinstatement order;
- (d) make an order altering the conditions to which the person’s registration is subject (including by imposing new conditions).

(2) A “**reinstatement order**” is an order that the person be re-registered subject to the same conditions and limitations (if any) to which the person’s registration was subject to immediately before the person ceased to be registered.

(3) The appropriate review body may also impose conditions on the person’s registration or alter the conditions to which the person’s registration is to be subject to under the reinstatement order.

(4) The board must make the recordings in the register necessary to give effect to a reinstatement order.

(5) The order on a review under this section may also provide that the order is not to be reviewed under this division until after a specified time.

PART 5—THE MEDICAL ASSESSMENT TRIBUNAL

Constitution

Medical Assessment Tribunal constituted

33.(1) For the better control and discipline of medical practitioners (including specialists) and for the better determination of prescribed matters having a medical element there shall be a Medical Assessment Tribunal which shall be constituted by a judge of the Supreme Court.

(1A) The tribunal shall be a Superior Court of Record.

Supreme Court judge to constitute

(2) Subject to this Act the judge shall have all the powers, jurisdiction, and authority of a judge of the Supreme Court in and with respect to the exercise by the judge of all or any of the judge's powers, authorities, and jurisdiction under this Act.

Assessors upon

(3) The Governor in Council shall appoint 2 eligible medical practitioners who shall sit as assessors with the judge for the time being constituting the tribunal.

(3A) One of such medical practitioners shall be nominated by the Minister to represent the government, and the other such medical practitioner shall be nominated by the association or associations recognised by the Minister as representative of medical practitioners.

Power of assessors

(4) It shall be the duty of the assessors to advise the judge as to what in their opinion is the proper determination of any question of fact which may arise in respect of any matter before the tribunal: moreover for the purpose of arriving at a proper determination of any such question of fact, the

assessors shall have power and authority to put any question or questions to any witness attending before the tribunal, and moreover may discuss, during the hearing of the proceedings before the tribunal, any such questions of fact with any counsel appearing for any of the parties before such tribunal.

Powers of judge

(5) In the case of every matter heard before the tribunal all questions of law and fact shall be determined by the judge, but in determining any question of fact the judge may give such effect as the judge shall think just to the opinion (if any) of the assessors or either of them thereupon.

Chief justice to nominate tribunal judge

(6) The chief justice shall, and may from time to time, notify to the Minister the name of one of the judges of the Supreme Court at Brisbane who will be the judge to preside at sittings of the tribunal until the name of another such judge is nominated in his or her place, and it shall be the duty of the judge so named to so preside.

(6A) In the event of the judge so named being unable for any reason to constitute the tribunal, the chief justice shall notify to the Minister the name of another judge of the Supreme Court to act in his or her place, and it shall be the duty of the judge so named to act in his or her place accordingly.

Power to appoint assessors failing nomination

(7) If the medical practitioner to be nominated from time to time by the association or associations referred to in subsection (3A) is not duly nominated at any time within 7 days after a date fixed by the Minister in that behalf, the Governor in Council may nevertheless appoint 2 medical practitioners to be assessors as hereinbefore prescribed.

Tenure of office by assessors

(8) The assessors and each of them shall hold office at the pleasure of the Governor in Council.

(8A) However, the Governor in Council may from time to time appoint another medical practitioner to act in the place of an assessor who is unable for any reason or who refuses to act, and the medical practitioner so appointed shall have power and authority to act and shall act accordingly.

Gazette notice of name of tribunal judge and assessors

(9) The Governor in Council shall notify in the gazette the name of the judge who is to constitute the tribunal and the names of the assessors appointed as aforesaid.

(10) Every sitting of the tribunal shall be held at such time and place as the judge shall appoint, and the judge may adjourn any sitting thereof from time to time or place to place.

Jurisdiction**Jurisdiction of the tribunal**

34.(1) The tribunal shall have power and authority to hear and determine or, as the case may require, investigate—

- (a) any charge made against any medical practitioner (including any specialist) under this Act; or
- (b) any application which, under this Act, may be made to the tribunal; or
- (c) any other matter or proceeding which, under this Act, may be referred to or heard and determined by the tribunal, and either in its appellate or original jurisdiction.

(2) The tribunal may order that the name of any medical practitioner (including any specialist) erased from the register or registers by order of—

- (a) the tribunal; or
- (b) the board;

be restored to such register or registers.

(3) However, in ordering the removal of any suspension the tribunal shall have regard to any by-laws in that behalf and to any representations made by the board arising out of its investigations (which are hereby authorised) of any matter relevant to such removal of suspension.

Misconduct in a professional respect

Extension of meaning of term “misconduct in a professional respect”

35.(1) Without limiting the meaning of the expression “**misconduct in a professional respect**” a medical practitioner (including a specialist) shall be guilty of such misconduct who—

- (a) was within the period of 12 months next preceding the date when he or she is so charged addicted to intoxicating liquor or to any deleterious drug; or
- (b) in connection with the practice of his or her profession makes use of any title, description, designation word, letter or symbol other than his or her authorised designation; or
- (c) is guilty of infamous conduct in a professional respect, malpractice, or unprofessional conduct or practice; or
- (d) signs or gives under his or her name and authority any certificate, notification, report, or any document of a kindred character, signed or given by him or her in his or her professional capacity for subsequent use in any court of law, or for administrative or governmental purposes, or for the pecuniary interest of himself, herself or other person concerned, where such certificate, notification, report, or other document of a kindred character is untrue, misleading, or improper; or
- (e) shall by his or her presence, countenance, advice, assistance, or cooperation knowingly enable any person other than a medical practitioner or specialist to attend, treat, or perform any operation upon a patient in respect of any matter requiring professional discretion or skill where such conduct has been, is, or is likely to be, dangerous to the health of the public or of any individual.

However, this paragraph shall be read and construed subject to section 19, and, in addition, shall not restrict the proper training and instruction of medical students bona fide admitted to any faculty of medicine in any university in Australia, or the legitimate employment of dressers, midwives, nurses, dispensers, surgery attendants, masseurs or masseuses, and skilled mechanics under the immediate personal supervision of

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the said medical practitioner.

In addition, this paragraph shall not apply to advice given in case of emergency to enable urgent treatment of or the performance of an operation upon a patient where no medical practitioner is available for such purpose and the circumstances warrant such advice being given; or

- (f) contravenes or fails to comply with, or counsels, procures, aids, abets, or does or omits to do any act for the purpose of enabling any other person to contravene or fail to comply with, any act or law respecting dangerous drugs whether or not such contravention or failure to comply has been the subject of penal proceedings; or
- (g) otherwise than in accordance with the by-laws, with a view to his or her own gain advertises, either directly or indirectly, or sanctions advertisements, or employs or sanctions the employment of agents or canvassers for the purpose of procuring patients to the detriment of other practitioners, or associates with or accepts employment under any association which canvasses or advertises for the purpose of procuring patients; or
- (i) upon obtaining information which indicates an attempted or completed crime or any illegal operation fails to advise the police officer in charge of the nearest police station by the most speedy method of correspondence, whether the same be by telephone, telegraph, or letter, of such indication of attempted or completed crime or illegal operation; or
- (j) when called to treat any wound from a cutting instrument or other weapon (not being a firearm) which the medical practitioner or specialist is not satisfied was accidentally incurred, or to treat any wound from a bullet, fails to advise the police officer in charge of the nearest police station by the most speedy method of correspondence, whether the same be by telephone, telegraph, or letter; or
- (k) when called to resuscitate or otherwise treat any person suffering from partial strangulation, asphyxiation, or trauma caused by heat, which the medical practitioner or specialist is not satisfied was accidentally incurred, or to resuscitate any person suffering

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from trauma caused by electricity, fails to advise the police officer in charge of the nearest police station by the most speedy method of correspondence, whether the same be by telephone, telegraph, or letter; or

- (l) whether in his or her capacity as a general practitioner or as a specialist omits through negligence to do something which any reasonable person guided by those considerations which ordinarily regulate the conduct of human affairs would do, or does something which a reasonable person claiming such general or special qualifications would not do, or shows in any other way the absence of such reasonable skill and attention as shall have endangered the health of the patient or prolonged the patient's illness or period of convalescence; or
- (m) makes payment to or bestows any benefit or favour of whatsoever nature upon another medical practitioner or offers or attempts so to do in consideration of or in contemplation of that other medical practitioner having referred or referring to him or her for the performance or provision of any medical or diagnostic service on behalf of any patient of that other medical practitioner; or
- (n) accepts any payment, benefit or favour of whatsoever nature or agrees to so accept from any person (whether a medical practitioner or otherwise) in consideration of the referral by him or her to that person for the performance or provision of a medical or diagnostic service on behalf of any patient of that medical practitioner; or
- (o) is convicted of 2 offences against the by-laws committed within any period of 12 months.

(2) Where any Act or law expressly or impliedly authorises a medical practitioner to associate with or accept employment under any association, then the association with or employment under such association of a medical practitioner in terms of such express or implied authority shall not be or be deemed to be misconduct in a professional respect.

(3) In this section—

“authorised designation” means—

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- (a) in the case of a medical practitioner—the medical practitioner’s name prefixed by the title ‘Doctor’, ‘Mister’ or other lawful title, or any abbreviation thereof, and followed by the letters of any degree, diploma, certificate or other award held by the medical practitioner and appearing in his or her registration in the register of medical practitioners and accompanied by the words ‘medical practitioner’;
- (b) in the case of a specialist—the specialist’s authorised designation as a medical practitioner and, in addition—
 - (i) the words ‘specialist in (*the prescribed name of the specialty with respect to which he or she is registered as a specialist*)’; or
 - (ii) the prescribed name of the specialty with respect to which he or she is registered as a specialist; or
 - (iii) the prescribed title of a specialist in the specialty with respect to which he or she is registered as a specialist;
- (c) in either of the cases specified in paragraph (a) or (b)—his or her hours for consultation, and the word ‘clinic’ and any title, letter or word approved for the use of medical practitioners or specialist by by-laws made under this Act;

and any part or combination of parts thereof.

(4) Subsection (1)(b) shall apply so that a person who is both a medical practitioner and registered as a dentist under the *Dental Act 1971* shall not be or be deemed to be guilty of misconduct in a professional respect for making use of a title or description of medical significance the use whereof by the person is authorised by the *Dental Act 1971* or the by-laws thereunder.

(5) In subsection (1)(g)—

“**advertises**” and “**advertisements**” have meanings that correspond to the meaning of the term “advertising” in section 16(1)(m) to (o).

Rules of practice

35A.(1) The board may make rules under this Act governing the professional conduct of medical practitioners.

(1AA) The rules must be approved by regulation.

(1A) A medical practitioner who fails to comply with such rules shall be guilty of misconduct in a professional respect.

(2) Nothing in this section prevents any matter not dealt with in the rules formulated under this section from being treated for the purposes of this Act as misconduct in a professional respect.

Institution of proceedings and charges before tribunal

Board may require tribunal to make investigations

36.(1) Subject to this Act, the board may refer to the tribunal for investigation and determination any question as to the conduct or qualifications of any medical practitioner (including any specialist) which, in the opinion of the board, requires investigation in the public interest.

(2) For the purposes of the hearing thereof, any such reference shall be deemed to be a charge made by the board.

Board to refer matters to tribunal

37.(1) If the board is of opinion that any medical practitioner (including any specialist)—

- (a) has had the qualification upon which he or she relied for registration as a medical practitioner withdrawn or cancelled by the university, college, or other body by which it was conferred; or
- (b) has had his or her name erased or suspended from the register of any other body duly authorised to register medical practitioners; or
- (c) has been convicted in Queensland of an indictable offence, or has been convicted in any other part of Her Majesty's dominions or elsewhere of an offence which would be indictable if committed in Queensland, or has been convicted in Queensland or in any other part of Her Majesty's dominions or elsewhere of any other offence for which in the opinion of the board he or she should be

subjected to disciplinary punishment under this Act; or

(d) is guilty of misconduct in a professional respect;

it may proceed to have the medical practitioner concerned charged accordingly before the tribunal and, upon so doing, shall have the conduct of the charge as prosecutor.

(1A) However, the tribunal shall not order that the name of any medical practitioner (including any specialist) be erased from the register under subsection (1)(a) or (b) except with respect to a withdrawal or cancellation of a qualification or an erasure of a registration which, if it had occurred in Queensland, would have been an adequate cause for the erasure of the name of the medical practitioner concerned from the register.

(2) Any person aggrieved by any alleged misconduct in a professional respect of a medical practitioner (including a specialist) may make a complaint to the board with respect thereto.

(3) Upon a complaint made to it under subsection (2) the board shall investigate such complaint and, without limiting its powers to so investigate, may—

- (a) require further particulars of the complaint;
- (b) require the complaint or the particulars of the complaint to be verified by statutory declaration;
- (c) in respect of the complaint, appoint 2 or more of its members to constitute a complaints investigation committee, 1 of whom shall be appointed by the board to be chairperson, and refer the complaint to it for investigation.

(3A) Where the board appoints a complaints investigation committee and refers a complaint to it under subsection (3)(c), the following provisions shall apply—

- (a) the board may give such directions from time to time to the complaints investigation committee as it thinks fit concerning the exercise by the committee of its powers and the committee shall comply with the directions;
- (b) the complaints investigation committee shall have the same powers as the board has to investigate the complaint as provided for in subsection (3)(a) and (b), and sections 12, 13(1), 13B, 13C,

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37B and 40 shall apply as if references therein to the board were references to the complaints investigation committee;

- (c) for the purpose of applying the provisions of the *Commissions of Inquiry Act 1950*, each member of the complaints investigation committee shall be deemed to be a commissioner, and the chairperson of the complaints investigation committee shall be deemed to be the chairperson, within the meaning of that Act;
- (d) without limiting the effect of paragraph (a), the complaints investigation committee shall investigate the complaint and shall deliver its findings and recommendations to the board, which may act on the findings as if they were its own;
- (e) the board may continue to exercise all of its powers in the investigation of the complaint notwithstanding the reference, and it shall not be bound by the findings and recommendations of the complaints investigation committee.

(4) If upon such investigation the board is of opinion that the evidence has sufficiently established a prima facie case, it shall proceed to charge the person concerned before the tribunal according to the complaint.

(5) If upon such investigation the board is of opinion that the evidence has not sufficiently established a prima facie case it shall dismiss the complaint.

(6) Notwithstanding anything contained in this section, when the Governor in Council directs that the subject matter of any such complaint it to be heard and determined by the tribunal, such direction shall prevail and the tribunal and the board shall give effect thereto.

(7) The tribunal may hear and determine any charge notwithstanding that any complaint relating to the subject-matter thereof has been dismissed by the board.

When board may impose disciplinary punishment

37A.(1) Where, upon investigation, the board is of opinion—

- (a) that a medical practitioner has been guilty of any misconduct in a professional respect or of any other charge which may be made against that medical practitioner before the tribunal under this Act;

and

- (b) that the import of the misconduct or matter of the other charge in question, while not sufficiently serious to warrant the board charging the medical practitioner concerned therewith before the tribunal, nevertheless warrants disciplinary action;

then, subject to this section, the board in lieu of charging the medical practitioner concerned before the tribunal, may according as it shall deem just in the circumstances—

- (c) order that the medical practitioner pay to the board by way of a pecuniary penalty such sum not exceeding 30 penalty units as it shall specify;
- (d) reprimand the medical practitioner;
- (e) adjourn the matter of dealing with the medical practitioner under this subsection for such period not exceeding 12 months as the board thinks fit;
- (f) give such counselling to the medical practitioner as the board thinks fit.

(1AA) Where the board deals with a medical practitioner under subsection (1) it may in addition to any order made by it order that the medical practitioner pay such costs of the investigation as are prescribed.

(1AAB) The provisions of section 41(5) to (8) shall apply with respect to pecuniary penalty imposed by the board under this subsection.

(1A) When the board adjourns the matter of dealing with a medical practitioner for a period under subsection (1)(e), the board shall reconsider the matter at the end of that period, taking into consideration the conduct, demeanour and behaviour of such medical practitioner during the period of such adjournment and then may take any of the steps provided by subsection (1) (excluding paragraph (e)) or take no further action.

(2) Before dealing with a medical practitioner under this section the board shall notify the medical practitioner in writing of its intention so to deal with the medical practitioner and shall state in that notice—

- (a) the misconduct in a professional respect or matter of the other charge whereof the medical practitioner is guilty in the opinion of the board; and

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- (b) a time not earlier than 14 days after the date of that notice within which the medical practitioner may make representations in writing to the board, or a time not earlier than 14 days after the date of that notice at which the medical practitioner may appear in person and be heard by the board at a place stated in the notice; and
- (c) that the medical practitioner may elect, in writing given to the board within the time referred to in paragraph (b), to be dealt with by the tribunal in lieu of the board.

(2A) The board and the medical practitioner concerned may in writing agree to waive the foregoing requirements of subsection (2) whereupon the board may deal with the medical practitioner without regard to that subsection.

(3) In dealing with a medical practitioner under this section, the board shall give due consideration and weight to any representations in writing made to it by the medical practitioner within the time allowed by the notice in writing under subsection (2) (if any) and shall hear the medical practitioner if the medical practitioner appears in person before it pursuant to that notice.

(4) Where within the time allowed in his or her case by the notice under subsection (2), a medical practitioner elects in writing given to the board to be dealt with by the tribunal in lieu of the board, the board shall not deal with the medical practitioner under this section.

(5) Where the board has dealt with a medical practitioner under the provisions of subsection (1), the board may order that the medical practitioner pay to the board by way of costs such sum of money as it thinks fit.

Misconduct in respect of inquiry

Certain contempts deemed misconduct in a professional respect

37B. A medical practitioner who, without reasonable excuse, in relation to an investigation by the board under section 37 or 37A—

- (a) having been served with a summons to attend before the board or

a stipendiary magistrate as a witness, fails to attend in obedience to the summons; or

- (b) having been served with a summons to attend before the board or a stipendiary magistrate, fails to produce any book, document or writing in the medical practitioner's custody or control, which the medical practitioner is required by the summons to produce; or
- (c) being called or examined as a witness before the board or a stipendiary magistrate, refuses to be sworn or to make an affirmation or declaration or refuses or otherwise fails to answer any relevant question put to the medical practitioner by the board or the stipendiary magistrate (as the case may be);

shall be guilty of misconduct in a professional respect.

Requisitions

Power to obtain written information

37C.(1) The board, by written requisition signed by the president, for the purposes of an investigation by it pursuant to section 37 or 37A, may require a medical practitioner in respect of whom the investigation is being undertaken, to furnish to the board—

- (a) an answer in writing to any question put by the board to the medical practitioner;
- (b) such information in writing as the board requires.

(2) A requisition made under subsection (1) may require that the written answer or information be delivered—

- (a) by or within a specified time;
- (b) to a specified place;
- (c) in person or by certified mail or in a specified manner.

(3) A medical practitioner who fails to comply with a requisition made pursuant to this section shall be guilty of misconduct in a professional respect.

(4) Subsection (3) shall not apply with respect to a failure to make an

answer, or to furnish information, that would tend to incriminate the medical practitioner or that the medical practitioner would not be obliged to make or furnish, because of the provisions of the *Commissions of Inquiry Act 1950*, section 14, had the requisition been made orally by the board at an inquiry conducted by it when deemed to be a commission of inquiry under that Act.

(4A) A claim by a medical practitioner pursuant to subsection (4) that the medical practitioner is not obliged to make the answer or to furnish the information required of the medical practitioner shall not be effectual unless it is substantiated in writing to the board in accordance with directions given by the board under subsection (2) in relation to the requisition in question.

(5) An answer made or information furnished by a medical practitioner under this section shall not be admissible against the medical practitioner in any proceedings except proceedings under this part and any proceedings in which it may be admissible by reason of the application of the *Commissions of Inquiry Act 1950* to the board.

Matters having a medical element

When matter deemed to contain a medical element

38.(1) The Governor in Council may by regulation prescribe what matters shall be matters having a medical element to which section 33(1) refers.

(2) A regulation may be made with respect to any such matter either generally or with respect to any court, judge, justice, or person acting judicially before which such matter occurs.

(3) The court, judge, justice, or person acting judicially having jurisdiction with respect to any such prescribed matter may refer the medical element thereof to the tribunal for its determination, and such determination shall have the following effect, namely—

- (a) if the reference has been made by a Magistrates Court or by a magistrate or industrial magistrate, or by justices, or by any other person (not being a judge of the Supreme Court) acting judicially, such determination shall be the decision in the matter with respect to the medical element involved and shall have effect accordingly;

- (b) if the reference was made by any other court or judge, the court or judge may give such effect to such determination as the court or judge shall think fit, and the effect so to be given shall be decided by the court or judge concerned as a matter of law.

Proceedings

How tribunal to conduct its proceedings

39. The tribunal shall, in the hearing of any charge against, or application by or with respect to, or investigation into any question respecting the conduct or qualifications of, a medical practitioner (including a specialist) if so required by the board or other complainant or by the medical practitioner concerned, sit in open court, and every party to any such proceedings shall have the right to appear either in person or by an agent, solicitor, or counsel.

Evidence in proceedings before tribunal

40.(1) Notwithstanding any other Act or rule of law or practice, the Medical Assessment Tribunal may, in proceedings before it, admit as evidence for all purposes a record of proceedings, or part thereof, of a court of law either in Queensland or elsewhere where it appears to it that the record or, as the case may be, part thereof, is a reliable record, and the evidence thereby introduced is relevant to any matter before it.

(1A) Where the Medical Assessment Tribunal admits before it a record of proceedings or part thereof under subsection (1) it shall not be necessary for a witness whose evidence is thereby admitted, to be present at the proceedings before the Medical Assessment Tribunal, unless it determines otherwise.

(1B) In subsections (1) and (1A)—

“**record of proceedings**” includes a reference to the evidence of a witness, any other evidence, and a judgment, verdict, finding, sentence or other dealing.

(2) The *Commissions of Inquiry Act 1950*, section 14(2) shall not apply in relation to the admission before the tribunal in proceedings concerning a charge against a medical practitioner of a statement or disclosure made by

the medical practitioner under this Act to the board or a stipendiary magistrate when deemed to be a commission of inquiry under the *Commissions of Inquiry Act 1950*.

Disciplinary punishment

Disciplinary punishment

41.(1) If the tribunal finds any medical practitioner (including any specialist) guilty of any charge made against him or her under this Act it may, according as it shall deem just under the circumstances—

- (a) order his or her name to be erased from the register of medical practitioners, Queensland; or
- (b) order that his or her registration as a medical practitioner be suspended for such time as it shall specify; or
- (c) order that the medical practitioner pay to the board by way of a pecuniary penalty such sum, not exceeding 40 penalty units, as it shall specify.

(2) When the name of a medical practitioner who is also a specialist is ordered to be erased from the register of medical practitioners, Queensland, under subsection (1)(a), the medical practitioner's name shall also be erased from the register of specialists, Queensland.

(3) When the registration of a medical practitioner who is also a specialist is suspended under subsection (1)(b), the order shall also suspend and be deemed to suspend the medical practitioner's registration as a specialist for the period during which it suspends his or her registration as a medical practitioner.

(4) During the period of suspension specified in an order made under subsection (1)(b), the name of the medical practitioner concerned shall be deemed to be erased from the register of medical practitioners, Queensland, and also, if the medical practitioner is a specialist, from the register of specialists, Queensland; and such person for such period shall be deemed to be not registered under this Act either as a medical practitioner or, as the case may be, as a medical practitioner and specialist.

(5) An order made under subsection (1)(c) may direct that the

registration of the medical practitioner concerned be suspended if the medical practitioner fails to pay the penalty imposed within the time allowed by the order.

(6) However, when no time is allowed by the order for payment of the penalty, the amount thereof shall be due and payable to the board forthwith.

(7) In addition, if the order does not direct registration to be suspended upon failure to duly pay the penalty, then, if the penalty is not duly paid, the board may apply to the tribunal for an order suspending the registration of the medical practitioner concerned, and the tribunal may make an order suspending the medical practitioner's registration for such period as it shall think just.

(8) The provisions of subsections (3) and (4) shall, *mutatis mutandis*, apply and extend with respect to the suspension of registration of a medical practitioner ordered under subsection (5) or (7).

Extended definition of medical practitioner

Extended definition of medical practitioner

41A.(1) In sections 34(1), 36 to 37C, 40(2) and 41—

“medical practitioner” includes a person who was a medical practitioner at the time that the matter arose that is the subject of the charge or investigation referred to in those provisions and whose name is later removed from the register under section 27A.

(2) Where the tribunal, pursuant to section 41(1)(a), orders a name to be erased from the register of medical practitioners and the name was previously removed under section 27A, from the time of the order made by the tribunal it shall be deemed that the name is erased by reason of the order made by the tribunal.

(3) Where the tribunal, pursuant to section 41(1)(b) orders that the registration of a person as a medical practitioner be suspended for a specified time and the name of that person has previously been removed under section 27A, from the time of the order made by the tribunal and during the period of suspension, it shall be deemed that the name is erased by reason of the order made by the tribunal.

Recording of decision of tribunal

Decision of tribunal to be filed

42.(1) Every order, determination, or other finding made by the tribunal shall be signed by the judge constituting the tribunal, and shall be prefaced by a statement of the findings of the tribunal in relation to the facts of the case and shall be filed with the registrar of the board (who shall be for all purposes the registrar of the tribunal) and shall thereupon be deemed to be served upon the board.

(2) No order, determination, or other finding so filed shall be open to inspection by any person other than by persons directly implicated, but the board may and is hereby authorised in its absolute discretion to publish such order, determination, or finding or to withhold publication of the same.

Appeal from tribunal

Appeal to Court of Appeal on questions of law

43.(1) Any person aggrieved by a decision of the tribunal, who desires to appeal therefrom on the ground that the decision is erroneous in point of law, or is in excess of jurisdiction, may, within 6 weeks after the pronouncing of the decision or such further time as the tribunal may allow, apply in writing to the judge to state and sign a case setting forth the facts and the grounds of decision for appeal thereon to the Court of Appeal.

(2) The appellant shall, before a case is stated, enter into a recognisance before the judge or a justice of the peace, with or without a surety or sureties, conditioned to prosecute the appeal without delay and pay such costs as the Court of Appeal shall award.

(3) The appellant shall, within 10 days after receiving the case, transmit the same to the registrar of the Supreme Court, first giving notice in writing of the appeal with a copy of the case to the other or respondent parties (if any).

(4) A case may be stated by the judge at the instance of the Governor in Council, or the board, or of the judge's own motion.

When tribunal may refuse to state a case

44.(1) In any case in which the judge is of opinion that the application is frivolous, but not otherwise, the judge may refuse to state a case, and thereupon shall, at the request of the applicant, sign and deliver to the applicant a certificate of such refusal.

(2) When the judge refuses to state a case, the applicant may, within 6 weeks after such refusal, apply to the Supreme Court or another judge thereof, upon an affidavit of the facts, for an order calling upon the judge, and also upon any party interested in supporting the decision, to show cause why a case should not be stated.

(3) The order may be made returnable on any day on which the Court of Appeal is appointed to sit; and whether cause is then shown or not, the Court of Appeal may make the order absolute, or discharge it with or without costs.

(4) The judge, upon being served with an order absolute, shall state a case accordingly.

Court of Appeal to determine the questions on the case

45. The Court of Appeal, when a case is transmitted under this Act, shall hear and determine every question of law arising thereon, and may remit the matter to the tribunal with the opinion of the Court of Appeal thereon, or may make such order in relation to the matter as seems proper, and may make such order as to costs as to the Court of Appeal may seem fit.

Case may be sent back for amendment

46. The Court of Appeal may cause a case to be sent back to the judge for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered by the Court of Appeal after it is amended.

PART 6—PROHIBITED PRACTICES

Prohibited practices

47.(1) No person other than a medical practitioner shall advertise or hold himself or herself out as being, or in any manner pretend to be or possess the status of, or take or use or by inference adopt (either alone or in conjunction with any other title, word, or letter) the name, title, or letters of a physician, doctor of medicine, licentiate in medicine or surgery, master in surgery, bachelor of medicine or surgery, doctor, surgeon, medical or qualified or registered practitioner, apothecary, accoucheur, or take or use or by inference adopt any other medical or surgical name, title, or letters implying, or that may be construed to imply, that the person is a medical practitioner, or that the person is qualified to practise medicine.

(1A) Subsection (1) does not apply in respect of anything said or done by a person authorised to practise medicine or any branch thereof under a law of any other State or a Territory, for the purpose of the person giving to another person medical aid which is reasonable having regard to that other person's condition at the time and to all the circumstances of the case.

(2) No person other than a medical practitioner shall advertise or hold himself or herself out as being, or in any manner pretend to be or possess the status of, or take or use or by inference adopt (either alone or in conjunction with any other title, word, or letter) the name, title, or letters of a specialist with respect to any branch of medicine, or take or use or by inference adopt any other medical or surgical name, title, or letters implying, or that may be construed to imply, that the person is a specialist or qualified to practise as a specialist with respect to any branch of medicine.

(3) On and after 1 January 1942, no medical practitioner other than a specialist shall advertise or hold himself or herself out as being, or in any manner pretend to be or possess the status of, or take or use or by inference adopt (either alone or in conjunction with any other title, word, or letter) the name, title, or letters of a specialist with respect to any branch of medicine, or take or use or by inference adopt any other medical or surgical name, title, or letters implying, or that may be construed to imply, that the specialist is or is qualified to practise as a specialist with respect to any branch of medicine.

(4) Any person who advertises or holds himself or herself out as being

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or in any manner pretends to be or possess the status of, or takes or uses (either alone or in conjunction with any other title, word, or letter) the name, title, or letters of ‘consultant’ (or of any word or words which may be construed to imply that the person is a ‘consultant’) with respect to medicine or any branch of medicine, shall—

- (a) if the person is not a medical practitioner—be deemed to hold himself or herself out as being a medical practitioner; or
- (b) if the person is a medical practitioner—be deemed to hold himself or herself out as being a specialist.

(4AA) In the case of a medical practitioner referred to in subsection (4)(b) it shall be immaterial that the holding out does not refer to any particular specialty.

(4A) Any person who advertises or exhibits any diploma, certificate, membership, licence, letters, testimonial or any title, status or document, or takes or uses any letters (either alone or in conjunction with any title, word or letter) which may be construed to imply that the person is qualified to practise medicine or any branch of medicine shall, if the person is not a medical practitioner, be deemed to hold himself or herself out as being a medical practitioner.

(4AB) It shall be immaterial that the holding out does not refer to the actual practice of medicine.

(4AC) Subsection (4A) does not apply to the advertising or exhibiting by a person who is duly registered under an Act of this State (whether passed before or after the enactment of subsection (4A)) which provides for the registration of persons practising any branch of medicine—

- (a) of a certificate of that registration; or
- (b) of any diploma or other document evidencing the qualification entitling the person to registration under the Act in question;

nor does subsection (4A) apply to the advertising or exhibiting by a person of a degree or diploma in a branch of medicine of a university in the Commonwealth at any time when an Act of this State does not provide for the registration of persons practising that branch of medicine.

(4B) Any person who uses the title ‘doctor’ or any abbreviation of that title (whether alone or in conjunction with any title, word or letter) where such title or abbreviation may be construed to be used to confer upon such

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person the status of a medical practitioner shall be deemed to hold himself or herself out as being a medical practitioner.

(4C) Any person who in the course of, or for a purpose of or connected with the practice or attempted practice of medicine or any branch of medicine displays, exhibits, uses or purports to use a sphygmomanometer, stethoscope, a hypodermic syringe or an X-ray apparatus shall be deemed to hold himself or herself out as being a medical practitioner unless he or she is a person who, in the case of display or exhibit only of such an instrument or apparatus, does so only for the purpose of acting or, in any other case, is acting solely under the supervision and instruction or upon the request (whether made directly to the person or otherwise) of a medical practitioner or, in the case of an X-ray apparatus, he or she is a person who, under the *Radioactive Substances Act 1958*, is lawfully entitled to use the same or he or she is a person authorised by the by-laws to use the thing in question.

(5) Every person who by himself, herself or by an assistant, servant, agent, or manager, and every person who as assistant, servant, agent, or manager on behalf of another, does or permits any act, matter, or thing contrary to any provision of subsection (1), (2) or (3) shall be guilty of an offence and liable to a penalty of not less than 1 penalty unit nor more than 30 penalty units, or to imprisonment for a period not exceeding 6 months.

(6) Every person who exhibits or publishes, or causes, permits, or suffers to be exhibited or published, any letter, circular, placard, handbill, card, or advertisement of any kind whereby any person other than himself or herself advertises or holds out or is advertised or held out contrary to any provision of subsection (1), (2) or (3), or attempts so to do, shall be guilty of an offence and liable to a penalty of not less than 1 penalty unit nor more than 30 penalty units.

(7) Where in any proceedings for an offence against this section it appears from any document or paper that any person is advertised or held out contrary to any provision of this section, the defendant shall be convicted unless the defendant proves to the satisfaction of the adjudicating court that the defendant did not authorise and was not responsible for such advertising or holding out.

(8) This section shall not apply to any newspaper proprietor or publisher publishing such advertisement before written notice from the registrar that such advertisement is contrary to this section.

Unauthorised advertising prohibited

Unauthorised advertising prohibited

47A. A person shall not—

- (a) advertise in Queensland; or
- (b) in Queensland, do any act or take any step to cause to be advertised outside Queensland;

the availability in Queensland of a medical service from another person who is a medical practitioner, specialist or medical company otherwise than in accordance with an authorisation obtained from the other person and, if there is an approved form for the authorisation, under an authorisation in the approved form.

Maximum penalty—30 penalty units.

PART 7—MEDICAL FEES

Power of medical practitioner to recover his or her fees etc.

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

(2) No action or suit for the recovery of fees or remuneration for professional services of any kind as a medical practitioner shall be commenced until the expiration of 6 months after an account setting out the amount claimed has been served personally or by post upon the party to be charged with the same.

(3) The party chargeable may within 6 months after service upon the party of an account apply in the prescribed manner to the board to review the same upon the ground that the amount thereof is excessive or unreasonable, and, in the event of the party so doing, shall serve notice of the party's application upon the medical practitioner concerned either

personally or by post.

(4) Upon application duly made pursuant to subsection (3), the board shall review the account the subject of that application.

(4A) If in respect of the professional services to which the account relates the board finds upon such review that the amount charged in the account—

- (a) is not an excessive fee or remuneration, the board shall certify that finding; or
- (b) is an excessive fee or remuneration the board shall certify that finding and also the lesser amount found by the board to be a reasonable fee or remuneration.

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

(5A) If any person neglects or fails to furnish any evidence so required within the time so fixed, the board may proceed to review the account without such evidence.

(5B) If the board is not satisfied with the evidence respecting any medical account referred to it for review, it may request any stipendiary magistrate or clerk of Magistrates Courts to determine the facts of the matter, and for that purpose such stipendiary magistrate or clerk of Magistrates Courts shall have the powers, authorities, protection, and jurisdiction of a commission under the *Commissions of Inquiry Act 1950* and the board or, upon appeal, the tribunal may give such effect as it thinks fit to his or her findings upon the facts so determined.

(6) In the review of any account the board shall have regard to the following matters—

- (a) the time occupied in and the nature of the medical or surgical advice, service, attendance, treatment, or operation rendered or performed;
- (b) the distance between the consulting room or residence of the medical practitioner and the place at which the medical practitioner rendered or performed the advice, service, attendance, treatment, or operation;
- (c) the hours of the day or night at which such advice, service,

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- attendance, treatment, or operation was rendered or performed;
- (d) the degree of skill, knowledge, or experience required or given in the rendering or performance of such advice, service, attendance, treatment, or operation;
 - (e) whether the medical practitioner rendered or performed such advice, service, attendance, treatment, or operation in the capacity of specialist or general practitioner;
 - (f) any other matter which to the board appears relevant.

(7) The medical practitioner whose account has been reviewed by the board or the person to be charged with such account may, if dissatisfied with the review, appeal therefrom to the tribunal.

(7A) Such appeal shall be instituted within such time after such review as a regulation prescribes, or, if no time is so prescribed, within the time allowed by the Supreme Court for the presentation of bills of costs for taxation.

(7B) If the tribunal dismisses such appeal on the ground that it is frivolous or vexatious it may award such sum by way of costs against the appellant as it shall think fit.

(8) The party chargeable with a medical account and the medical practitioner concerned shall each be entitled to appear before and to be heard by the board upon the review of such account or before and by the tribunal upon any appeal from such review, but no person shall appear or be heard by his or her counsel, solicitor or agent upon any such review or appeal.

(9) In this section—

“**medical practitioner**” includes a specialist.

Contracting-out prohibited

49. Any covenant, agreement, or condition whereby any person agrees to waive or surrender the person’s right to have the account of a medical practitioner or specialist reviewed by the board, or whereby any person agrees to pay to a medical practitioner or specialist any sum in excess of the amount found upon a review by the board to be a fair and reasonable charge or remuneration, shall be absolutely void and of none effect whatsoever.

Certificate of review of account as evidence

50. The certificate of the board or, as the case may be, the tribunal shall be admissible as evidence in any proceedings for the recovery of the charge or remuneration to which the account referred to in the certificate relates and shall be conclusive evidence that the amount certified to and no more is legally payable for the professional services as a medical practitioner or specialist to which the account certified to relates.

PART 8—MISCELLANEOUS PROVISIONS**Maker of medical certificate to be identifiable**

51.(1) A medical practitioner shall not issue a certificate in relation to any person as to the person's state of health, the extent of the person's injuries, the person's capacity to perform any act, or otherwise touching upon the diagnosis or prognosis of the person's condition unless the certificate bears in legible characters the name and address of the medical practitioner.

(2) The fact that such a certificate issued by a medical practitioner is not in accordance with this section shall not affect the validity of the certificate.

Operations when patient incapable of consenting

52. When a person who is in a hospital or institution is considered by the medical practitioner attending the person to require the performance of a surgical procedure to save or prolong the person's life and—

- (a) in the opinion of that medical practitioner, the person is not capable of consenting to the surgical procedure by reason of a mental disability; and
- (b) a relation of the person is not reasonably available to consent to the surgical procedure;

the medical superintendent of the hospital or institution in which the person is or, if there is no such medical superintendent, the medical practitioner who is charged with the responsibility for medical care of persons in that hospital or institution may consent to the performance of the surgical

procedure save where he or she is in either case the medical practitioner attending the person in question and the consent so given shall be sufficient authority for the performance of the surgical procedure.

“Medical practitioner” to include specialist

53. In this part—

“medical practitioner” includes a specialist.

PART 9—MEDICAL CALL SERVICES

Medical call services to be approved

54. No person shall without a certificate of approval establish or conduct a medical call service.

Certificates of approval

55.(1) A certificate of approval shall not be issued or renewed unless the medical call service in question has a medical director.

(2) A responsible person may apply for a certificate of approval by lodging an application therefor with the board in the approved form accompanied by the prescribed fee.

(3) A certificate of approval shall remain in force for a period of 12 months from the date of granting thereof unless it is sooner cancelled or suspended by the board or surrendered by the holder thereof.

(4) A responsible person may apply for the renewal of a certificate of approval by lodging an application therefor with the board in the approved form accompanied by the prescribed fee not later than 1 month prior to the date of expiry of the certificate of approval.

Record to be kept

56. The board shall from the particulars disclosed by a responsible

person on an application for a certificate of approval or renewal thereof make and keep a proper record of all medical call services approved in the State.

Changes to be notified

57. Where any change occurs in the particulars—

- (a) contained in an application for a certificate of approval or renewal thereof;
- (b) that have otherwise been supplied to the board in respect of the medical call service in question;

the holder for the time being of the certificate of approval shall within 14 days of those changes occurring notify the board thereof.

Cancellation and suspension of certificates of approval

58.(1) A certificate of approval may be cancelled or suspended—

- (a) if its holder, the medical director or any person engaged in the conduct of the medical call service in respect of which the certificate was issued—
 - (i) is an undischarged bankrupt or takes advantage of the laws in force for the time being relating to bankruptcy or insolvent debtors;
 - (ii) has been convicted in Queensland of an indictable offence or elsewhere than in Queensland in respect of an act or omission that if done or made by him or her in Queensland would have constituted an indictable offence;
 - (iii) has been convicted of an offence against this Act;
 - (iv) is found guilty of misconduct in a professional respect; or
- (b) if in the opinion of the board such cancellation or suspension is necessary for the more effective and efficient operation of medical call services in Queensland; or
- (c) in such other circumstances as are prescribed by by-laws.

(2) Where the board suspends a certificate of approval—

- (a) the certificate shall not have any force or effect; and
- (b) the medical call service in respect of which the certificate was issued shall not be operated;

during the period of the suspension.

Delivery of certificate of approval to board

59. Where a certificate of approval is cancelled or suspended the responsible person in whose name it was issued or renewed shall, upon request by a notice in writing served upon the responsible person, deliver that cancelled or suspended certificate to the board forthwith.

PART 9A—SUSPENSION PENDING PROSECUTION

Application to judge

60. Where a medical practitioner—

- (a) has been charged in Queensland with, and is awaiting the completion of proceedings with respect to, an indictable offence, or has been charged elsewhere with, and is awaiting the completion of proceedings with respect to, an offence which if committed in Queensland, would be an indictable offence; and
- (b) is the subject of an investigation, or a charge made, by the board pursuant to section 36 or 37 in relation to matters that include the act or omission in respect of which the medical practitioner has been charged in the proceedings referred to in paragraph (a);

the board may by originating summons pursuant to the rules of the Supreme Court make an application to a judge of the Supreme Court for an order that the medical practitioner's registration under this Act be suspended.

Procedure

61. In a proceeding with respect to an application—

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- (a) the judge may, subject to paragraph (b), make such investigations on oath or otherwise of and concerning the medical practitioner as the judge thinks fit;
- (b) the medical practitioner shall not be examined or cross-examined by the judge or any other person as to the offence referred to in section 60(a) and no inquiry shall be made of the medical practitioner as to that offence;
- (c) the board may submit, in addition to other relevant evidence, evidence by affidavit or otherwise—
 - (i) to prove that the medical practitioner—
 - (A) is the subject of the proceedings referred to in section 60(a) and (b);
 - (B) has been previously convicted in Queensland of an indictable offence or elsewhere of an offence which, if committed in Queensland, would be an indictable offence;
 - (C) has been dealt with in Queensland for misconduct in a professional respect by the board or tribunal, or has been dealt with elsewhere for misconduct in a professional respect by a body that, in that respect, has a jurisdiction corresponding to the jurisdiction of the board or tribunal under this Act;
 - (ii) to show the circumstances of the offence referred to in section 60(a) particularly as they relate to the probability of the erasure of the name of the medical practitioner from the register of medical practitioners, or the suspension of his or her registration, under this Act, subsequently to the completion of the proceedings referred to in that paragraph;
- (d) the judge may take into consideration such relevant matters as are agreed upon by the medical board and the medical practitioner;
- (e) the judge may receive and take into account evidence of any kind that the judge considers credible or trustworthy in the circumstances.

Grant of application

62. A judge shall grant the application of the board if the judge is satisfied that there is an unacceptable risk that the medical practitioner, if his or her name is not suspended under this part from the register of medical practitioners, would endanger the safety or welfare of members of the public, or if the judge is satisfied that it is otherwise necessary in the public interest that the medical practitioner's name be suspended from the register of medical practitioners under this part.

Order

63.(1) Where a judge grants the application, the judge shall make an order that the registration of the medical practitioner be suspended.

(2) When the registration of a medical practitioner who is also a specialist is suspended under subsection (1), the order shall also be deemed to order the suspension of the medical practitioner's registration as a specialist.

(3) A suspension ordered under this section shall be deemed to commence forthwith upon the order being made, and subject to subsections (4) to (5A), shall continue until the expiration of 28 days after the completion of the proceedings referred to in section 60(a), whereupon it shall be removed.

(4) A judge of the Supreme Court may at any time during the continuance of a suspension provided for by subsection (3), upon the application of the board or the person suspended, revoke the order of suspension if the judge is satisfied that it is no longer necessary in the public interest that the order should continue, whereupon the suspension shall be removed.

(5) Where at the expiration of 28 days after the completion of the proceedings referred to in section 60(a), the suspension has not been previously removed and the medical practitioner has been charged pursuant to section 37 before the tribunal, the suspension shall continue until the tribunal (which is hereby authorised to do so) orders that it be removed or makes an order pursuant to section 41(1)(a) or (b).

(5A) Without limiting the power of the tribunal under subsection (5) to order the removal of the suspension, the tribunal shall order its removal if it dismisses the charge before it or the charge before it is discontinued or if

upon finding the medical practitioner guilty of the charge, it makes an order under section 41(1)(c).

(6) During the period of suspension, the name of the medical practitioner shall be deemed to be erased from the register of medical practitioners, and also, if the medical practitioner is a specialist, from the register of specialists and the medical practitioner during the period of suspension shall be deemed to be not registered under this Act.

(7) The board shall give to the registrar all directions necessary to ensure that the suspensions of registration and removals thereof provided for by this section are carried out forthwith.

Restriction on publication

64.(1) The judge, during the hearing of an application, may make an order directing that the evidence taken, the information furnished, the representations made by or on behalf of either party, or the reasons given by the judge for granting or refusing to grant the application or any part thereof or any of them, shall not be published by any means until the proceedings referred to in section 60(a) are completed.

(2) A person who fails without lawful excuse, the proof of which lies upon the person, to comply with an order made under subsection (1) commits an offence against this Act.

Interpretation

65. For the purposes of this part—

- (a) proceedings in respect of a charge for an offence shall be deemed to be completed when the charge is withdrawn, dismissed or otherwise discontinued or when the person charged is acquitted or convicted of the charge (whether or not the person takes steps to appeal against the conviction);
- (b) a person shall be deemed to be convicted of an offence if a court determines that the person is guilty of the offence (whether or not the person is dealt with for committing the offence by means of a sentence or order that is a conviction for any other purpose) or if

the person is found not guilty of the offence by reason of unsoundness of mind.

Bail applications

66. The provisions of this part shall not be taken as a limitation upon the power of a court or police officer to impose special conditions for a grant of bail pursuant to the *Bail Act 1980*, section 11.

PART 9B—MEDICAL RECORDS

Safeguarding of abandoned medical records

67.(1) Where the board receives information that a medical practitioner or any other person has abandoned medical records, the board may investigate the matter and, where it is satisfied that the medical records have been abandoned and that such an order is necessary to safeguard them, it may order that the records be taken into the possession of the board.

(2) Where medical records in the possession of a person form part of the person's estate upon his or her death, the board may, with the written consent of the person entitled to possession of the medical records for the time being, make an order that the records be taken into the possession of the board.

(3) Upon an order being made under this section, the board shall be entitled to immediate possession of the medical records and may take them into its possession.

(4) A person given notice by the board of an order made by it pursuant to this section who fails to deliver to the board in accordance with requirements set forth in the notice (which requirements the board is hereby authorised to make) medical records in the person's possession that are the subject of the order commits an offence against this Act.

(5) An inspector appointed under the *Medical Act and Other Acts (Administration) Act 1966* may, with such assistants as the inspector considers necessary enter any place and seize and take into the possession

of the board any medical records that the board has ordered to be taken into its possession under this section.

(6) Before an inspector enters a dwelling house for the purpose of exercising the powers conferred upon the inspector by subsection (5), save where the inspector has the permission of the occupier to enter, the inspector shall obtain from a justice a warrant to enter.

(6A) A justice who is satisfied on the complaint of an inspector that there is reasonable cause to suspect that the medical records are in the dwelling house may issue a warrant directed to an inspector to enter the place specified in the warrant to exercise the powers conferred upon the inspector pursuant to subsection (5).

(6B) The warrant shall be, for a period of 28 days from the date of its issue, sufficient authority for the inspector and all persons assisting the inspector to enter the place specified in the warrant and for the inspector to exercise therein the powers conferred upon the inspector by subsection (5).

(6C) In subsections (6) and (6A)—

“**dwelling house**” includes a part of any place which part is used exclusively as a dwelling and does not include the curtilage of a dwelling house.

(7) The board may exercise its powers of investigation for the purpose of taking possession of and safeguarding medical records in respect of which it has made an order under this section.

(8) The board shall give such directions as are necessary to safeguard the medical records whilst they are in its possession.

(9) A person who contravenes or fails to comply with a direction made by the board under subsection (8) commits an offence against this Act.

Direction to hold medical records

68.(1) Instead of taking medical records into its actual possession following an order made under section 67 in respect of them, the board may, by notice in writing given to him or her, order a person who has actual possession of the medical records to hold them on its behalf subject to such conditions as the board thinks fit, which shall include conditions necessary to safeguard the records and a condition that the person shall deliver them as

and when required to the board or to a person nominated by the board.

(1A) The board may from time to time, by notice in writing given to the person holding the medical records, add to or vary the conditions of an order made under subsection (1).

(2) Where the board makes an order under this section it shall be deemed to be in possession of the medical records concerned pursuant to this part.

(3) A person who fails to comply with an order made under this section commits an offence against this Act.

Transfer of medical records

69.(1) The board may, in respect of medical records in its possession pursuant to this part, from time to time, make an order that they be delivered to a medical practitioner or other person named therein subject to such conditions binding upon the person to whom they are delivered as the board thinks fit, which shall include conditions necessary to safeguard the medical records and a condition that the medical practitioner or other person shall deliver them as and when required to the board, or to another person nominated by the board.

(1A) The board may from time to time, by notice in writing given to the person holding the medical records, add to or vary the conditions of an order made under subsection (1).

(2) Medical records delivered to a person pursuant to an order made under this section shall be deemed to be in the possession of the board pursuant to this part.

(3) A person to whom medical records are delivered pursuant to an order made under this section who fails to comply with a condition of the order commits an offence against this Act.

Destruction of medical records

70.(1) Where the board is satisfied that it is no longer necessary to preserve medical records that are in its possession pursuant to this part because the information thereon has been recorded by other means or because of the time that has elapsed since the information thereon was recorded it may authorise the destruction of the medical records.

(2) No action shall lie against the board or any person in respect of the destruction of medical records pursuant to an authorisation under this section.

Rights to medical records preserved

71.(1) The board may, on application by a claimant of the medical records in its possession pursuant to this part, cancel any order that it has made in respect thereof and order them to be delivered to the claimant if it is satisfied that the claimant is the owner of or otherwise entitled to the records, whereupon the medical records shall be delivered to the claimant.

(2) Subject to this subsection, an order made by the board in relation to medical records under this part shall not affect the rights of the owner thereof or any person otherwise entitled to the medical records, which owner or person may lawfully refuse to deliver the medical records to the board or an inspector.

(3) Upon the board making an order under section 67 that medical records be taken into its possession, all rights had therein by any person by reason only that the medical records were abandoned property that the person had found or by reason only that the medical records were abandoned property in the person's actual possession shall forthwith terminate.

Definitions

71A. In this part—

“medical records” means records recording the medical history, condition and treatment of patients of a medical practitioner made in the course of his or her practice and it does not include financial records relating to a medical practice.

“safeguard” includes ensuring the confidentiality of the medical records concerned.

PART 10—LEGAL PROCEEDINGS

Board may sue

Board may sue

72.(1) The board may in its own name, by its registrar or any person thereunto authorised in writing under the hand of the president, institute, carry on, prosecute, and defend any action, complaint, information, or proceeding whatsoever.

(2) Every court, judge, justice, or person acting judicially shall take judicial notice of the signature of the president to any such authorisation.

Evidence

Evidence

73.(1) In any proceeding by or on behalf of the board under this Act it shall not be necessary to prove the appointment of the members, president, or registrar of the board.

(2) A writing certified by the registrar to be a true copy of or a true extract from any register, book, certificate, notice, list, declaration, statement, document, or writing of any nature whatsoever in the custody of the board or of any officer of the board, shall for all purposes be prima facie evidence of the original of which it purports to be a copy or extract, and shall be receivable in evidence to the same extent as the original.

(2A) Every court, judge, justice, or person acting judicially shall take judicial notice of the signature of the registrar so certifying any such writing.

(3) Any requisition, order, notice or other document under this Act required or authorised to be given or served to or upon any person for which no manner of service is specifically provided by this Act, may be served—

- (a) by delivering it or a copy to that person; or
- (b) by leaving it or a copy at the person's usual or last known place

of residence or business; or

- (c) by forwarding it or a copy by post addressed to that person at the person's usual or last known place of residence or business.

Registers as evidence

74.(1) The register of medical practitioners, Queensland, and the register of specialists, Queensland, shall each be and be deemed to be a book of such a public nature as to be admissible in evidence on its mere production from the proper custody, and the registrar shall be the person having the proper custody thereof.

Certificate by registrar as evidence

(2) Upon its production in any proceeding whatever—

- (a) a document purporting to be a certificate by the registrar that a person named therein is or was at any time material to such proceeding registered as a medical practitioner or as a specialist or possesses or possessed at any time material to such proceeding the qualifications therein specified shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of its contents and, in the case of such a certificate wherein qualifications are specified, that the person named therein has or, as the case may be, had at the material time no other qualifications;
- (b) a document purporting to be a certificate by the registrar that a person named therein is not or was not at any time material to such proceeding registered as a medical practitioner or as a specialist or does not or did not at any time material to such proceeding possess the qualifications therein specified shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of its contents;

and, until the contrary is proved, the person named therein shall be taken to be identical with the person of the same name in respect of whom such document is produced.

General offence and penalty

75. A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act and is liable, unless a specific penalty is otherwise provided, to a penalty not exceeding 30 penalty units.

Recovery of penalties

Recovery of penalties

76.(1) Except as otherwise provided in this Act, all penalties and fees imposed or payable under or pursuant to this Act may be recovered in a summary way by complaint under the *Justices Act 1886*.

(2) Notwithstanding anything in any Act to the contrary, where any person is convicted of any offence against this Act the penalty to be imposed in respect of such offence shall not be reduced below any prescribed minimum amount of penalty.

(3) Except as otherwise provided in this Act, proceedings for an offence against this Act may be instituted at any time within 12 months after the commission thereof or within 12 months after the discovery by the complainant of the commission thereof, whichever is the later period.

Person not to be dealt with twice

76A. Where an act or omission by a person constitutes contempt as defined in the *Commissions of Inquiry Act 1950*, section 9, and is also an offence as defined in section 13B of this Act, or is also misconduct in a professional respect as defined in section 37B of this Act, or each of these, proceedings may be taken against the person under the *Commissions of Inquiry Act 1950*, section 10, or under section 13B, or under section 37 or 37A, but so that nothing in this Act renders a person liable to be dealt with twice under those provisions in respect of the same act or omission.

Penalties etc. to be paid into board's funds

77. All penalties and fees recovered or paid under this Act shall be paid to the board and become part of its funds.

Unqualified person prohibited from recovering medical fees

78.(1) Subject to section 85, a person other than a medical practitioner is not entitled to demand, claim, accept, receive or retain, or sue for, counterclaim for, set off, or recover by any means (judicial or non-judicial) any remuneration in respect of any medical or surgical advice, service, attendance, treatment, or operation rendered or performed by the person or for any medicine or drug that the person has both prescribed and supplied.

(2) Subsection (1) shall not be construed to prejudice or affect the right of a person registered as a pharmaceutical chemist from recovering the price of any medicine or drug compounded, dispensed, or supplied by the person in the ordinary course of his or her business as a pharmaceutical chemist.

Savings**Saving of other rights and remedies against medical practitioners etc.**

79.(1) Nothing in this Act contained shall prejudice, diminish, or affect the jurisdiction, powers, and authorities which are exercisable by any court of competent jurisdiction with respect to medical practitioners.

(2) Any person who but for this Act would have been entitled to apply to the court to require a medical practitioner to answer allegations contained in an affidavit or to bring any action against any such medical practitioner, whether the matter complained of has been made the subject matter of an inquiry before the tribunal or the board or not, shall be entitled so to apply to the court or to bring such action.

(2A) However, upon any such application or action it shall be lawful for the court to transmit to the board for reference to the tribunal in the manner provided by this Act any charges or allegations against the medical practitioner concerned.

(3) The board, a member or officer thereof, a medical practitioner, or any other person shall not be legally liable in respect of anything done by it, him or her in good faith for a purpose of complying with any provision of this Act.

PART 11—MEDICAL COMPANIES

Application of pt 7 to medical companies

80. The provisions of sections 48 to 50, with any necessary adaptations, apply in relation to a medical company as if the expression ‘medical company’ appeared therein in lieu of the expression ‘medical practitioner’ except in section 48(6)(b) and (e) where the expression ‘medical practitioner’ shall be construed as a reference to the medical practitioner who renders or performs the medical or surgical advice, service, attendance, treatment, or operation on behalf of the medical company.

Application of pt 8 to medical companies

81. In the case of a medical practitioner issuing a certificate referred to in section 51 on behalf of a medical company it shall be sufficient compliance with that section if the certificate bears in legible characters the name of the medical company, the address of a place where its business is carried on, and is signed by the issuing medical practitioner.

Power to regulate advertising etc. by medical companies

82. The power of the board, conferred by section 16, to make by-laws includes power to make by-laws of a description referred to in section 16(1C)(m) in relation to medical companies and for that purpose the paragraph shall be construed as if the expression ‘medical company’ appeared therein in lieu of the expression ‘medical practitioner’.

Regulation of company names

83.(1) The board may, by notice in writing, require a medical company to take all steps necessary to alter its name to an approved name according to law.

(2) The board may, by notice in writing, require a medical company or a medical practitioner who proposes to establish or join in establishing a medical company to submit to the board a list of names, in a number specified by the board, for the medical company or proposed medical company.

(2A) From a list of names submitted in respect of a medical company or proposed medical company the board may select 1 or more names acceptable to it as an approved name, and, upon doing so, shall inform the medical company or, as the case may be, the medical practitioner of its selection.

(3) In this section—

“**approved name**” means a name that—

- (a) is approved by the board; and
- (b) is approved by any other person or authority that under a law other than this Act is required to approve the name of a medical company.

Presumed contracts with medical practitioners acting for medical companies

84. Where by reason of an agreement between a person and a medical company a medical practitioner, acting on behalf of the medical company, renders or performs medical or surgical advice, service, attendance, treatment, or operation to or in relation to any person (whether a party to the agreement or not) it shall be deemed—

- (a) that an agreement exists between such first mentioned person and such medical practitioner for the rendering or performance of the medical or surgical advice, service, attendance, treatment, or operation agreed by the medical company to be rendered or performed; or
- (b) where more than 1 medical practitioner so acts on behalf of the medical company—that an agreement exists between such first mentioned person and each such medical practitioner for the rendering or performance of that part of the medical or surgical advice, service, attendance, treatment, or operation agreed by the medical company to be rendered or performed that is rendered or performed by that medical practitioner.

Medical company may recover medical fees

85. Notwithstanding the provisions of section 78, a medical company is

entitled to demand, claim, accept, receive or retain, or sue for, counterclaim for, set off, or recover by any lawful means (judicial or non-judicial) remuneration in respect of any medical or surgical advice, service, attendance, treatment, or operation rendered or performed by a medical practitioner on its behalf or for any medicine or drug that a medical practitioner, acting on its behalf, has both prescribed and supplied.

PART 12—MISCELLANEOUS

Regulations

86.(1) The Governor in Council may make regulations under this Act.

(2) The Governor in Council may, with the agreement of the judge constituting the tribunal, make regulations for or about any matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Act in relation to the tribunal, including, for example, the fees and allowances payable to an assessor.

PART 13—SAVINGS, TRANSITIONALS AND VALIDATIONS

Power of board to make by-laws about fees

87. For the removal of doubt, it is declared that the board has always had power to make by-laws in respect of the matters specified in section 16(1C)(g).

Registration as medical practitioner

88.(1) A person who was registered as a medical practitioner immediately before the commencement of this section is taken to be registered under this Act.

(2) The person's registration under this Act is taken to be subject to the same limitations (as to time or otherwise) and conditions (if any) to which it was subject to immediately before the commencement of this section.

(3) In this section—

“medical practitioner” includes a specialist.

Registration of certain medical practitioners and specialists

88A.(1) *In this section—*

“day of registration” means the day the board purported to register a person as a specialist under a registration provision.

“registration provision” means—

- (a) *section 19(2), as in force from time to time, before its repeal by the Medical Act Amendment Act 1980; or*
- (b) *section 19(3), as in force from time to time, before its repeal by the Health Legislation Amendment Act 1992.*

(2) *This section applies if—*

- (a) *a person applied to be registered as both a medical practitioner and a specialist; and*
- (b) *the person's entitlement to registration as a medical practitioner depended on the person satisfying a registration provision; and*
- (c) *the board purported, under the registration provision, to register the person as a specialist.*

(3) *The person is taken to have been validly registered as a specialist from the day of registration, subject to the limitations and conditions imposed on the person's registration.*

(4) *The person is also taken to have been registered as a medical practitioner from the day of registration, subject to the same limitations and conditions imposed on the person's registration as a specialist.*

(5) *However, if, under subsection (3) or (4), the person's registration is subject to a limitation about time, the limitation ends on the commencement of this section.*

(6) *As soon as practicable after the commencement, the board must*

register the person as a medical practitioner.

(7) However, particulars of a limitation about time imposed on a person's registration need not be recorded in the register.

(8) This section expires on the day it commences.³

Meaning of "foreign medical practitioner"

89. In this part—

"foreign medical practitioner" means a medical practitioner who is not a graduate of a medical school accredited by the Australian Medical Council and who has not successfully completed examinations held by the council for the purposes of registration as a medical practitioner.

Grounds for deregistration

90.(1) For the purposes of this part, a foreign medical practitioner is liable to deregistration unless the practitioner was—

- (a) unconditionally registered, domiciled and practising medicine in Australia on 31 January 1992; or
- (b) unconditionally registered and had practised medicine in Australia for 3 out of the last 6 years before 31 January 1992; or
- (c) unconditionally registered and had practised medicine in Australia for a total of 6 years before 31 January 1992.

(2) A medical practitioner is considered to have been unconditionally registered in Australia at a particular time if the medical practitioner is or was registered at the time under this Act, or licensed or registered as a medical practitioner under the law in force in another State or a Territory, without condition or limitation on the entitlement to practise medicine.

Board's duty to deregister practitioners liable to deregistration

91.(1) If the board is of the opinion that a foreign medical practitioner is

³ This provision has expired and is included in this reprint for informational purposes only. It will be omitted in the next reprint.

or may be liable to deregistration under this part, the board must, by written notice to the practitioner, require the practitioner to establish, to the satisfaction of the board, that the practitioner is not liable to deregistration.

(2) The board must remove the name of the practitioner from the register if the practitioner fails to satisfy the board that the practitioner is not liable to deregistration.

(3) Subsection (2) does not apply if the board is of the opinion that there is good reason why the practitioner's name should not be removed.

(4) The board is to give a foreign medical practitioner who is liable to deregistration an opportunity to make submissions to the board on the question of whether the practitioner's name should be removed from the register and the board is to consider any such submissions.

(5) The board must give the practitioner concerned written notice of action taken by the board under this part and the action does not take effect until the notice is given.

(6) A person whose name has been removed from the register under this section may appeal to the tribunal against the removal.

Special provision for practitioners removed for non-payment of fees

92.(1) This section applies to a foreign medical practitioner whose name has been removed from the register for failure to pay the annual registration fee.

(2) A practitioner to whom subsection (1) applies has the entitlement to be re-registered that would otherwise be conferred by payment of the unpaid fees (together with any restoration fee that is payable) only if the practitioner satisfies the board that—

- (a) the practitioner is not liable to deregistration under this part; or
- (b) there is good reason why the practitioner should not lose the entitlement to re-registration.

Registration with conditions

93. The board may register a foreign medical practitioner as a medical practitioner with conditions if, immediately before the commencement of

this section, the person—

- (a) was domiciled in Australia; and
- (b) was, and still is, practising medicine in Australia; and
- (c) held provisional registration that was granted by the board after 31 January 1992.

Consideration in respect of certain criteria

94. The board may register a foreign medical practitioner as a medical practitioner if the person—

- (a) was eligible for general registration immediately before the commencement of this section; and
- (b) is a permanent resident within the meaning of the *Australian Citizenship Act 1948* (Cwlth); and
- (c) holds provisional registration granted by the board; and
- (d) had sought advice from the board in respect of registration as a medical practitioner and emigrated to Australia on the basis of the advice given by the board.

Regulations in force under previous s 5

95. A regulation in force under section 5 immediately before the commencement of this section continues to have effect after the commencement as if it had been made under section 86.

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 9 May 1997. Future amendments of the Medical Act 1939 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 15 of 1994	7 September 1994
2	to Act No. 58 of 1995	6 December 1995

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	1
Changed citations and remade laws	1
Obsolete and redundant provisions	1, 2
Corrected minor errors	1
Renumbered provisions	1

6 List of legislation

Medical Act 1939 3 Geo 6 No. 10

date of assent 9 November 1939

commenced on date of assent

as amended by—

Medical Act Amendment Act 1940 4 Geo 6 No. 21

date of assent 21 November 1940

commenced on date of assent

Medical Acts Amendment Act 1946 10 Geo 6 No. 27

date of assent 30 April 1946

commenced on date of assent

Medical Acts Amendment Act 1948 12 Geo 6 No. 52

date of assent 9 December 1948

commenced on date of assent

Medical Acts Amendment Act 1955 4 Eliz 2 No. 27

date of assent 7 November 1955

commenced on date of assent

Coroners Act 1958 7 Eliz 2 No. 32 s 3(1), (3) sch 1, sch 2

date of assent 30 October 1958

commenced 23 March 1959 (proc pubd gaz 14 March 1959 p 1581)

Medical Acts Amendment Act 1963 No. 9

date of assent 4 November 1963

commenced on date of assent

Medical Acts Amendment Act 1966 No. 23

date of assent 15 December 1966

s 7 commenced 1 October 1972 (proc pubd gaz 23 September 1972 p 383)

remaining provisions commenced on date of assent

Medical Acts Amendment Act 1968 No. 53

date of assent 23 December 1968

commenced on date of assent

Medical Act Amendment Act 1969 No. 3

date of assent 19 September 1969

commenced on date of assent

Medical Act Amendment Act 1971 No. 70

date of assent 20 December 1971

commenced on date of assent

Medical Act Amendment Act 1973 No. 30

date of assent 19 April 1973

commenced on date of assent

Medical Act Amendment Act 1976 No. 4

date of assent 2 April 1976
commenced on date of assent

Medical Act Amendment Act 1978 No. 85

date of assent 15 December 1978
commenced on date of assent

Medical Act Amendment Act 1979 No. 34

date of assent 20 June 1979
commenced on date of assent

Transplantation and Anatomy Act 1979 No. 74 s 54(2), (3)

date of assent 21 December 1979
commenced 12 April 1980 (proc pubd gaz 12 April 1980 p 1344)

Medical Act Amendment Act 1980 No. 7

date of assent 10 April 1980
commenced on date of assent

Medical Act Amendment Act 1981 No. 37

date of assent 20 May 1981
ss 1–2 commenced on date of assent
remaining provisions commenced 5 December 1981 (proc pubd gaz
5 December 1981 p 1446)

Medical Act and Other Acts Amendment Act 1981 No. 76 pt 2

date of assent 22 October 1981
commenced 17 April 1982 (proc pubd gaz 17 April 1982 p 1729)

Medical Act Amendment Act 1984 No. 20

date of assent 22 March 1984
commenced on date of assent

Nursing Studies Act and Other Acts Amendment Act 1984 No. 74 pt 7

date of assent 18 October 1984
commenced on date of assent

**Medical and Paramedical (Amendment of Inspectorial and Audit Provisions)
Act 1987 No. 10 pt 6**

date of assent 15 April 1987
commenced on date of assent

Medical Act Amendment Act 1987 No. 24

date of assent 23 April 1987
ss 1–2 commenced on date of assent
remaining provisions commenced 13 July 1987 (proc pubd gaz 11 July 1987
p 2677)

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1

date of assent 1 December 1988
commenced 15 December 1988 (see s 2(2) and order pubd gaz 10 December
1988 p 1675)

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch

date of assent 6 December 1990
commenced on date of assent

Health Services Act 1991 No. 24 s 7.3 sch 3

date of assent 5 June 1991
commenced 1 July 1991 (proc pubd gaz 22 June 1991 p 974)

Health Legislation Amendment Act 1992 No. 66 pts 1, 17 (as amd 1995 No. 57 ss 1–2, 5(1) sch 3 (as from 29 November 1995 (see s 2(2) as amd 1995 No. 58 ss 1–2, 4 sch 1 (as from 28 November 1995 (see s 2(1))))))

date of assent 7 December 1992
ss 1–2 commenced on date of assent
ss 108–109, 110(1), 110(2) in a certain respect, 112–113, 117, 119 in a certain respect and 120 commenced 18 December 1992 (1992 SL No. 450)
ss 114–116 commenced 1 February 1993 (1992 SL No. 450)
ss 110(2), 111, 118 (except so far as it inserts new section 17B), 119 commenced 1 March 1993 (1993 SL No. 45)
s 118 (in so far as it inserts new s 17B) never proclaimed into force and on 1995 No. 58 s 4 sch 1

Health Legislation Amendment Act 1993 No. 79 pts 1, 9

date of assent 17 December 1993
ss 1–2 commenced on date of assent
remaining provisions commenced 14 March 1994 (1994 SL No. 84)

Statute Law (Miscellaneous Provisions) Act 1994 No. 15 s 3 sch 1

date of assent 10 May 1994
commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995
commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996
ss 1–2 commenced on date of assent
remaining provisions not yet proclaimed into force

Health Legislation Amendment Act 1996 No. 60 pts 1, 5

date of assent 9 December 1996
ss 25, 32 commenced 1 March 1993 (see s 2(1))
remaining provisions commenced on date of assent

Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch

date of assent 9 December 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 20 December 1996 (see SL No. 402)

7 List of annotations

Parts of Act

s 2 amd 1976 No. 4 s 2; 1979 No. 74 s 54(2)(a); 1981 No. 37 s 3; 1984 No. 20 s 3; 1987 No. 24 s 3
om 1990 No. 88 s 3 sch

Repeal of “The Medical Acts, 1925 to 1935”

s 3 amd 1976 No. 4 s 3; 1987 No. 24 s 4
om 1992 No. 66 s 109

Definitions

prov hdg sub 1996 No. 60 s 26(1)

s 4 amd 1996 No. 60 s 26(5)
def “**approved form**” ins 1995 No. 58 s 4 sch 1
def “**Australian Medical Council**” ins 1987 No. 24 s 5(a)
def “**By-laws**” om 1992 No. 66 s 110(1)
def “**certificate of approval**” ins 1984 No. 20 s 4(a)
def “**company**” ins 1996 No. 60 s 26(4)
def “**competent to practise medicine**” ins 1992 No. 66 s 110(2)
def “**complaints investigation committee**” ins 1987 No. 24 s 5(b)
def “**fee**” ins 1992 No. 66 s 110(2)
def “**general registration**” ins 1992 No. 66 s 110(2)
def “**impairment**” ins 1992 No. 66 s 110(2)
def “**medical call service**” ins 1976 No. 4 s 4(a)
amd 1979 No. 34 s 2
def “**medical company**” ins 1981 No. 37 s 4
amd 1996 No. 60 s 26(2)
def “**medical director**” ins 1984 No. 20 s 4(b)
def “**mentally ill**” ins 1976 No. 4 s 4(b)
def “**Mentally sick**” om 1976 No. 4 s 4(b)
def “**Minister**” amd 1987 No. 24 s 5(c)
om 1992 No. 66 s 110(1)
def “**Prescribed**” om 1992 No. 66 s 110(1)
def “**primary**” ins 1963 No. 9 s 2
def “**qualification**” ins 1955 4 Eliz 2 No. 27 s 2(a)
def “**register**” ins 1992 No. 66 s 110(2)
sub 1996 No. 60 s 26(3)–(4)
def “**registrar**” amd 1955 4 Eliz 2 No. 27 s 2(b)
def “**responsible person**” ins 1984 No. 20 s 4(c)
def “**This Act**” om 1992 No. 66 s 110(1)

Meaning of “competent to practise medicine”

s 4A ins 1992 No. 66 s 111

Meaning of “impairment”

s 4B ins 1992 No. 66 s 111

References to legally qualified medical practitioners

s 4C ins 1996 No. 60 s 27

Regulations, Proclamations, etc.**hdg (prec s 5)** om 1992 No. 66 s 112**Regulations****s 5** amd 1984 No. 20 s 5
om 1992 No. 66 s 113**Rules respecting Tribunal****hdg prec s 7** om 1995 No. 58 s 4 sch 1**Power to make rules with respect to the Tribunal****s 7** om 1995 No. 58 s 4 sch 1**Constitution of board****prov hdg** sub 1996 No. 60 s 28(1)**s 8** amd 1946 10 Geo 6 No. 27 s 2; 1976 No. 4 s 5; 1992 No. 66 s 114; 1993
No. 79 s 72; 1995 No. 58 s 4 sch 1; 1996 No. 60 s 28(2)–(10)**Increase in number of members****s 8A** ins 1992 No. 66 s 115**Disqualifications from membership of board****s 9** amd 1976 No. 4 s 6; 1993 No. 79 s 73; 1996 No. 60 s 29**Committees****s 9A** ins 1976 No. 4 s 7
sub 1978 No. 85 s 2**Entitlements of members of board or committees****s 9B** ins 1978 No. 85 s 2
sub 1984 No. 74 s 15**President to be executive officer of board****s 11** amd 1976 No. 4 s 8; 1987 No. 24 s 6; 1992 No. 66 s 116; R1 (see RA
s 38)**POWERS OF INQUIRY****hdg (prec s 12)** ins 1987 No. 24 s 7**Board a commission of inquiry****s 13** amd 1946 10 Geo 6 No. 27 s 3; 1976 No. 4 s 9
sub 1987 No. 24 s 8**Stipendiary magistrate may take evidence on behalf of board****s 13A** ins 1987 No. 24 s 8**Offences in respect of inquiry****s 13B** ins 1987 No. 24 s 8**Allowances to witness****s 13C** ins 1987 No. 24 s 8**Funds of board****s 14** amd 1976 No. 4 s 10; 1984 No. 20 s 6; 1987 No. 10 s 19

Board to publish statement of receipts and disbursements

s 15 prev s 15 amd 1971 No. 70 s 2
om 1976 No. 4 s 11
pres s 15 ins 1996 No. 54 s 9 sch

Power to make by-laws

s 16 amd 1955 4 Eliz 2 No. 27 s 3; 1966 No. 23 s 3; 1976 No. 4 s 12; 1979
No. 34 s 3; 1980 No. 7 s 2; 1981 No. 37 s 5; 1984 No. 20 s 7; 1987
No. 24 s 9; 1992 No. 66 s 117; 1995 No. 58 s 4 sch 1

Approval of forms

s 16A ins 1995 No. 58 s 4 sch 1

PART 4—REGISTRATION

pt hdg sub 1992 No. 66 s 118

Division 1—Qualifications for registration

div hdg ins 1992 No. 66 s 118

Entitlement to general registration based on qualifications and training

s 17 amd 1976 No. 4 s 13
sub 1992 No. 66 s 118

Entitlement to conditional registration for interns

s 17A ins 1992 No. 66 s 118

Entitlement to general or conditional registration based on registration elsewhere in Australia

s 17B ins 1992 No. 66 s 118 (never proclaimed into force and om 1995 No. 58
s 4 sch 1)

Conditional registration at the discretion of the board

s 17C ins 1992 No. 66 s 118

Interim registration available in certain cases

s 17D ins 1992 No. 66 s 118

Non-practising registration

s 17E ins 1992 No. 66 s 118

Conditions may be imposed in cases of impairment

s 17F ins 1992 No. 66 s 118

Entitlement to registration does not prevent conditions being imposed

s 17G ins 1992 No. 66 s 118

Division 2—Specialists

div hdg ins 1992 No. 66 s 118

Specialists

s 18 sub 1992 No. 66 s 118
amd 1993 No. 79 s 74

Division 3—Grounds for refusing registration

div hdg ins 1992 No. 66 s 118

Registration may be refused despite entitlement or eligibility

- s 19** amd 1940 4 Geo 6 No. 21 s 2
 sub 1955 4 Eliz 2 No. 27 s 4
 amd 1963 No. 9 s 3; 1966 No. 23 s 4; 1968 No. 53 s 2; 1971 No. 70 s 3;
 1973 No. 30 s 2
 sub 1976 No. 4 s 14
 amd 1979 No. 34 s 4
 sub 1980 No. 7 s 3
 amd 1981 No. 76 s 5; 1984 No. 20 s 8; 1987 No. 24 s 10; 1991 No. 24 s 7.3
 sch 3
 sub 1992 No. 66 s 118

Applicants must be competent and of good character

- s 19A** ins 1948 12 Geo 6 No. 52 s 2
 amd 1955 4 Eliz 2 No. 27 s 5; 1966 No. 23 s 5
 sub 1992 No. 66 s 118

Restrictions on registration of deregistered persons

- s 19B** ins 1992 No. 66 s 118

Registration may be refused if applicant convicted of offence

- s 19C** ins 1992 No. 66 s 118

Registration may be refused if applicant deregistered on disciplinary grounds in another jurisdiction

- s 19D** ins 1992 No. 66 s 118

Division 4—Suspension of registration for the protection of the public

- div hdg** ins 1992 No. 66 s 118

Suspension or imposition of conditions to protect life

- s 20** amd 1955 4 Eliz 2 No. 27 s 6; 1966 No. 23 s 6; 1976 No. 4 s 15; 1979
 No. 34 s 5; 1981 No. 76 s 6; 1987 No. 24 s 11
 sub 1992 No. 66 s 118

Extension of suspension

- s 20A** ins 1963 No. 9 s 4
 amd 1976 No. 4 s 16
 sub 1992 No. 66 s 118

Expiration of suspension

- s 20B** ins 1992 No. 66 s 118

Effect of conditions imposed

- s 20C** ins 1992 No. 66 s 118

Division 5—Appeals

- div hdg** ins 1992 No. 66 s 118

Right of appeal

- s 21** sub 1976 No. 4 s 17; 1981 No. 76 s 7; 1992 No. 66 s 118

Appeal to be lodged with registrar

- s 21A** ins 1992 No. 66 s 118

Appeal from inquiry decision to be by way of rehearing

s 21B ins 1992 No. 66 s 118

Pending appeal does not affect board's determination

s 21C ins 1992 No. 66 s 118

Determination of appeal

s 21D ins 1992 No. 66 s 118

Division 6—Notification to medical registration authorities

div hdg ins 1992 No. 66 s 118

Notification of certain matters to other States

s 22 amd 1948 12 Geo 6 No. 52 s 3
 sub 1955 4 Eliz 2 No. 27 s 7; 1963 No. 9 s 5
 amd 1966 No. 23 s 7; 1976 No. 4 s 18; 1981 No. 76 s 8
 sub 1992 No. 66 s 118

PART 4A—REGISTRATION PROCEDURES

pt hdg ins 1992 No. 66 s 118

Division 1—Applying for registration

div hdg ins 1992 No. 66 s 118

Form etc. of application

s 23 amd 1955 4 Eliz 2 No. 27 s 8
 sub 1992 No. 66 s 118
 amd 1995 No. 58 s 4 sch 1

Application fee

s 23A ins 1992 No. 66 s 118

Evidence to accompany application

s 23B ins 1992 No. 66 s 118

Time within which application to be determined

s 23C ins 1992 No. 66 s 118

Division 2—Dealing with applications

div hdg ins 1992 No. 66 s 118

Applications to be considered and determined

s 24 sub 1992 No. 66 s 118

Notice to applicant of decision on application

s 24A ins 1992 No. 66 s 118
 amd 1995 No. 58 s 4 sch 1

How a person is registered

s 24B ins 1992 No. 66 s 118

Conditions on registration

s 24C ins 1992 No. 66 s 118

Division 3—Inquiries

div hdg ins 1992 No. 66 s 118

Board may hold inquiry into eligibility

s 25 amd 1976 No. 4 s 19
 sub 1992 No. 66 s 118

Board must hold inquiry in certain cases

s 25A ins 1992 No. 66 s 118

Constitution of board for inquiry

s 25B ins 1992 No. 66 s 118

Applicant to be notified of inquiry

s 25C ins 1992 No. 66 s 118
 amd 1996 No. 61 s 15 sch

Practitioner entitled to attend

s 25D ins 1992 No. 66 s 118

Preliminary medical examinations of applicants for registration

s 25E ins 1992 No. 66 s 118

Decision of the committee of assessors in an inquiry

s 25F ins 1992 No. 66 s 118

Details of decision to be supplied to applicant

s 25G ins 1992 No. 66 s 118

Division 4—Keeping and alteration of the register

div hdg ins 1992 No. 66 s 118

Board is to keep the register

s 26 amd 1987 No. 24 s 12
 sub 1992 No. 66 s 118

Additional information may be recorded in the register

s 26A ins 1992 No. 66 s 118

Method of removal from the register

s 26B ins 1992 No. 66 s 118

Surrender of certificates

s 26C ins 1992 No. 66 s 118

Making a recording in the register—extended meaning

s 26D ins 1992 No. 66 s 118

Division 5—Annual registration fees

div hdg ins 1992 No. 66 s 118

Annual registration fee payable

s 27 amd 1976 No. 4 s 20
 sub 1992 No. 66 s 118

Practitioner's name may be removed from register for non-payment

s 27A ins 1992 No. 66 s 118

Entitlement to restoration if fee paid

s 27B ins 1992 No. 66 s 118

Board may waive registration fee

s 27C ins 1992 No. 66 s 118

How registration ceases

s 27D ins 1992 No. 66 s 118

Division 6—The practice of medicine

div hdg ins 1992 No. 66 s 118

Right to practise medicines 28 amd 1976 No. 4 s 21; 1979 No. 34 s 6; 1987 No. 24 s 13; 1990 No. 88 s 3
sch
sub 1992 No. 66 s 118**Medical certificates**s 29 amd 1948 12 Geo 6 No. 52 s 4; 1966 No. 23 s 8; 1976 No. 4 s 22
sub 1992 No. 66 s 118**PART 4B—REMOVAL FROM AND ALTERATION OF THE REGISTER**

pt hdg ins 1992 No. 66 s 118

Division 1—General powers to remove from or alter the register

div hdg ins 1992 No. 66 s 118

Removal of person wrongfully registered

s 30 sub 1992 No. 66 s 118

Amendment of incorrect particulars concerning qualifications

s 30A ins 1992 No. 66 s 118

Removal on death or at own request

s 30B ins 1992 No. 66 s 118

Removal or amendment under disciplinary order

s 30C ins 1992 No. 66 s 118

Board may hold inquiry into eligibility

s 30D ins 1992 No. 66 s 118

Constitution of board for inquiry

s 30E ins 1992 No. 66 s 118

Medical practitioner to be notified of inquirys 30F ins 1992 No. 66 s 118
amd 1996 No. 61 s 15 sch**Medical practitioner entitled to attend**

s 30G ins 1992 No. 66 s 118

Preliminary medical examination of medical practitioner

s 30H ins 1992 No. 66 s 118

Decision of the committee of assessors in an inquiry

s 30I ins 1992 No. 66 s 118

Details of decision to be supplied to medical practitioner

s 30J ins 1992 No. 66 s 118

Removal or imposition of conditions relating to competence to practise

s 30K ins 1992 No. 66 s 118

Medical practitioner to be notified of action

s 30L ins 1992 No. 66 s 118

Appeal

s 30M ins 1992 No. 66 s 118

Division 2—Powers resulting from action under foreign law

div hdg ins 1992 No. 66 s 118

Meaning of “foreign law”s 31 amd 1976 No. 4 s 23
sub 1992 No. 66 s 118**Deregistration on basis of disciplinary action under foreign law**

s 31A ins 1992 No. 66 s 118

Imposition of conditions imposed under foreign law

s 31B ins 1992 No. 66 s 118

Medical practitioner to be notified of action

s 31C ins 1992 No. 66 s 118

Appeal

s 31D ins 1992 No. 66 s 118

Division 3—Review of suspension, deregistration or conditions

div hdg ins 1992 No. 66 s 118

Right of reviews 32 amd 1966 No. 23 s 9; 1976 No. 4 s 24; 1988 No. 88 s 3 sch 1
sub 1992 No. 66 s 118**The appropriate review body**

s 32A ins 1992 No. 66 s 118

Powers on review

s 32B ins 1992 No. 66 s 118

Medical Assessment Tribunal constituted

s 33 amd 1946 10 Geo 6 No. 27 s 4; 1976 No. 4 s 25; 1994 No. 15 s 3 sch 1

Jurisdiction of the tribunal

s 34 amd 1976 No. 4 s 26

Extension of meaning of term “misconduct in a professional respect”s 35 amd 1946 10 Geo 6 No. 27 s 5; 1955 4 Eliz 2 No. 27 s 9; 1966 No. 23
s 10; 1979 No. 34 s 7; 1987 No. 24 s 14; 1996 No. 60 s 30**Rules of practice**s 35A ins 1979 No. 34 s 8
amd 1995 No. 58 s 4 sch 1**Board to refer matters to tribunal**

s 37 amd 1987 No. 24 s 15; 1990 No. 88 s 3 sch

When board may impose disciplinary punishment

s 37A ins 1955 4 Eliz 2 No. 27 s 10
 amd 1966 No. 23 s 11; 1976 No. 4 s 27; 1979 No. 34 s 9; 1984 No. 20 s 9;
 1987 No. 24 s 16

Misconduct in respect of inquiry

hdg (prec s 37B) ins 1987 No. 24 s 17

Certain contempts deemed misconduct in a professional respect

s 37B ins 1987 No. 24 s 17

Requisitions

hdg (prec s 37C) ins 1987 No. 24 s 17

Power to obtain written information

s 37C ins 1987 No. 24 s 17
 amd 1990 No. 88 s 3 sch

When matter deemed to contain a medical element

s 38 amd 1995 No. 58 s 4 sch 1

Evidence in proceedings before tribunal

s 40 sub 1987 No. 24 s 18

Disciplinary punishment

s 41 amd 1966 No. 23 s 12; 1976 No. 4 s 28; 1987 No. 24 s 19

Extended definition of medical practitioner

hdg (prec s 41A) ins 1987 No. 24 s 20

Extended definition of medical practitioner

s 41A ins 1987 No. 24 s 20
 amd 1995 No. 57 s 4 sch 2

Prohibited practices

s 47 amd 1955 4 Eliz 2 No. 27 s 11; 1966 No. 23 s 13; 1969 No. 3 s 2; 1976
 No. 4 s 29; 1987 No. 24 s 21

Unauthorised advertising prohibited

hdg (prec s 47A) ins 1987 No. 24 s 22

Unauthorised advertising prohibited

s 47A ins 1987 No. 24 s 22
 amd 1995 No. 58 s 4 sch 1

Power of medical practitioner to recover his or her fees etc.

s 48 amd 1955 4 Eliz 2 No. 27 s 12; 1976 No. 4 s 30; 1981 No. 37 s 6; 1995
 No. 58 s 4 sch 1

PART 8—MISCELLANEOUS PROVISIONS

pt hdg om 1958 7 Eliz 2 No. 32 s 3(1) sch 1
 ins 1969 No. 3 s 3
 amd 1979 No. 74 s 54(2)(b); 1984 No. 20 s 10

Maker of medical certificate to be identifiable

- s 51** om 1958 7 Eliz 2 No. 32 s 3(1) sch 1
ins 1969 No. 3 s 3

Operations when patient incapable of consenting

- s 52** om 1958 7 Eliz 2 No. 32 s 3(1) sch 1
pres s 52 (prev s 70B) ins 1976 No. 4 s 37
renum 1984 No. 20 s 11

“Medical practitioner” to include specialist

- s 53** om 1958 7 Eliz 2 No. 32 s 3(1) sch 1
pres s 53 (prev s 71) renum 1984 No. 20 s 11

PART 9—MEDICAL CALL SERVICES

- pt hdg** om 1979 No. 74 s 54(2)(c)
ins 1984 No. 20 s 12

Medical call services to be approved

- s 54** amd 1969 No. 3 s 4; 1976 No. 4 s 31
om 1979 No. 74 s 54(2)(d)
ins 1984 No. 20 s 12

Certificates of approval

- s 55** amd 1969 No. 3 s 5
prev om 1979 No. 74 s 54(2)(d)
pres ins 1984 No. 20 s 12
amd 1995 No. 58 s 4 sch 1

Record to be kept

- s 56** sub 1969 No. 3 s 6
om 1979 No. 74 s 54(2)(d)
ins 1984 No. 20 s 12

Changes to be notified

- s 57** amd 1969 No. 3 s 7
om 1979 No. 74 s 54(2)(d)
ins 1984 No. 20 s 12

Cancellation and suspension of certificates of approval

- s 58** sub 1969 No. 3 s 8
om 1979 No. 74 s 54(2)(d)
ins 1984 No. 20 s 12

Delivery of certificate of approval to board

- s 59** sub 1969 No. 3 s 9
om 1979 No. 74 s 54(2)(d)
ins 1984 No. 20 s 12

Conditions of performance of post-mortem or anatomical examination

- s 59A** ins 1969 No. 3 s 10
amd 1976 No. 4 s 32
om 1979 No. 74 s 54(2)(d)

PART 9A—SUSPENSION PENDING PROSECUTION

pt hdg ins 1987 No. 24 s 23

Application to judge

s 60 sub 1969 No. 3 s 11
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Procedure

s 61 sub 1969 No. 3 s 12
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Grant of application

s 62 sub 1969 No. 3 s 13
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Order

s 63 sub 1969 No. 3 s 14
amd 1976 No. 4 s 33
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Restriction on publication

s 64 sub 1969 No. 3 s 15
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Interpretation

s 65 sub 1969 No. 3 s 16
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Bail applications

s 66 amd 1966 No. 23 s 14; 1976 No. 4 s 34
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

PART 9B—MEDICAL RECORDS

pt hdg ins 1987 No. 24 s 23

Safeguarding of abandoned medical records

s 67 sub 1969 No. 3 s 17
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Direction to hold medical records

s 68 om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Transfer of medical records

s 69 amd 1966 No. 23 s 15; 1976 No. 4 s 35
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Destruction of medical records

s 70 amd 1966 No. 23 s 16; 1976 No. 4 s 36
om 1979 No. 74 s 54(2)(d)
ins 1987 No. 24 s 23

Transplantations

hdg (prec s 70A) ins 1966 No. 23 s 17
om 1979 No. 74 s 54(2)(d)

Removal of organs of deceased persons

s 70A ins 1955 4 Eliz 2 No. 27 s 13
sub 1966 No. 23 s 17; 1969 No. 3 s 18
om 1979 No. 74 s 54(2)(d)

Operations when patient incapable of consenting

s 70B s 70B renum as s 52 1984 No. 20 s 11

Rights to medical records preserved

s 71 prev s 71 renum as s 53 1984 No. 20 s 11
pres s 71 ins 1987 No. 24 s 23

Definitions

s 71A ins 1987 No. 24 s 23

Evidence

s 73 amd 1987 No. 24 s 24

Registers as evidence

s 74 amd 1966 No. 23 s 18

General offence and penalty

s 75 amd 1966 No. 23 s 19; 1979 No. 34 s 10; 1981 No. 37 s 7
sub 1987 No. 24 s 25

Recovery of penalties

s 76 amd 1966 No. 23 s 20; 1987 No. 24 s 26

Person not to be dealt with twice

s 76A ins 1987 No. 24 s 27

Unqualified person prohibited from recovering medical fees

s 78 sub 1981 No. 37 s 8

Saving of other rights and remedies against medical practitioners etc.

s 79 amd 1955 4 Eliz 2 No. 27 s 14

PART 11—MEDICAL COMPANIES

pt hdg ins 1981 No. 37 s 9

Application of pt 7 to medical companies

s 80 ins 1981 No. 37 s 9

Application of pt 8 to medical companies

s 81 ins 1981 No. 37 s 9

Power to regulate advertising etc. by medical companies

s 82 ins 1981 No. 37 s 9

Regulation of company names

s 83 ins 1981 No. 37 s 9

Presumed contracts with medical practitioners acting for medical companies

s 84 ins 1981 No. 37 s 9

Medical company may recover medical fees

s 85 ins 1981 No. 37 s 9

PART 12—MISCELLANEOUS

Pt hdg ins 1992 No. 66 s 119

Regulationss 86 ins 1992 No. 66 s 119
amd 1995 No. 58 s 4 sch 1**PART 13—SAVINGS, TRANSITIONALS AND VALIDATIONS**pt hdg ins 1992 No. 66 s 119
sub 1996 No. 60 s 31**Power of board to make by-laws about fees**

s 87 ins 1992 No. 66 s 119

Registration as medical practitioners 88 ins 1992 No. 66 s 119
amd 1996 No. 60 s 32**Registration of certain medical practitioners and specialists**s 88A ins 1996 No. 60 s 33
exp 9 December 1996 (see s 88A(8))**Meaning of “foreign medical practitioner”**

s 89 ins 1992 No. 66 s 119

Grounds for deregistration

s 90 ins 1992 No. 66 s 119

Board’s duty to deregister practitioners liable to deregistration

s 91 ins 1992 No. 66 s 119

Special provision for practitioners removed for non-payment of fees

s 92 ins 1992 No. 66 s 119

Registration with conditions

s 93 ins 1992 No. 66 s 119

Consideration in respect of certain criteria

s 94 ins 1992 No. 66 s 119

Regulations in force under previous s 5

s 95 ins 1992 No. 66 s 119

Rules in force under previous s 35A

s 96 ins 1995 No. 58 s 4 sch 1
exp 28 November 1995

Transitional provision about forms

s 97 ins 1995 No. 58 s 4 sch 1
exp 28 May 1996 (see s 97(3))

FIRST SCHEDULE

hdg amd 1976 No. 4 s 38
om 1992 No. 66 s 120

SECOND SCHEDULE—QUALIFICATIONS FOR REGISTRATION AS A MEDICAL PRACTITIONER

ins 1976 No. 4 s 39
om 1981 No. 76 s 9

THIRD SCHEDULE—QUALIFICATIONS FOR REGISTRATION AS A SPECIALIST

ins 1976 No. 4 s 39
om 1981 No. 76 s 9

8 List of forms

Form M 02 Version April 1996—Application for Registration as a Medical Practitioner in Queensland

pubd gaz 24 May 1996 p 699

Form M 02m Version April 1996—Application for Registration under Mutual Recognition as a Medical Practitioner in Queensland

pubd gaz 24 May 1996 p 699

Form M 02R Version April 1996—Application for Restoration as a Medical Practitioner in Queensland

pubd gaz 24 May 1996 p 699

9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 s 9 sch reads as follows—

MEDICAL ACT 1939

1. Part 3, heading ‘Funds’, after section 14—

insert—

‘Board is statutory body

‘15.(1) Under the *Statutory Bodies Financial Arrangements Act 1982*, the board is a statutory body.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the board’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.’.