

SOUTH AUSTRALIA

**MEDICAL PRACTITIONERS ACT 1983**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1994.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# MEDICAL PRACTITIONERS ACT 1983

being

Medical Practitioners Act 1983 No. 25 of 1983  
[Assented to 26 May 1983]<sup>1</sup>

as amended by

Medical Practitioners Act Amendment Act 1986 No. 110 of 1986 [Assented to 18 December 1986]<sup>2</sup>

Medical Practitioners Act Amendment Act 1988 No. 43 of 1988 [Assented to 5 May 1988]

Statutes Amendment (Abolition of Compulsory Retirement) Act 1993 No. 75 of 1993 [Assented to 21 October 1993]<sup>3</sup>

<sup>1</sup> Came into operation (except s. 69) 11 August 1983; *Gaz.* 11 August 1983, p. 326; s. 69 had not been brought into operation at the date of this reprint.

<sup>2</sup> Came into operation 2 April 1987; *Gaz.* 2 April 1987, p. 806.

<sup>3</sup> Came into operation 1 January 1994: s. 2.

**NOTE:**

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

**An Act to provide for the registration of medical practitioners; to regulate the practice of medicine for the purpose of maintaining high standards of competence and conduct by medical practitioners in South Australia; to repeal the Medical Practitioners Act 1919-1976; and for other purposes.**

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Medical Practitioners Act 1983*.

**Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Arrangement of Act**

3. This Act is arranged as follows:

PART 1—PRELIMINARY

PART 2—ADMINISTRATION

    DIVISION 1—THE MEDICAL BOARD

    DIVISION 2—THE MEDICAL PRACTITIONERS PROFESSIONAL CONDUCT  
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PART 3—REGISTRATION OF MEDICAL PRACTITIONERS

    DIVISION 1—RESTRICTIONS RELATING TO THE PRACTICE OF MEDICINE BY  
    UNREGISTERED PERSONS

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    DIVISION 1—PROCEEDINGS BEFORE THE BOARD

    DIVISION 2—PROCEEDINGS BEFORE THE TRIBUNAL

PART 5—APPEALS TO THE SUPREME COURT

PART 6—MISCELLANEOUS

**Repeal and transitional provision**

4. (1) The *Medical Practitioners Act 1919-1976* is repealed.

(2) All property, rights and liabilities vested in or attached to the former board immediately before the commencement of subsection (1) shall, upon the commencement of that subsection, vest in or attach to the board.

(3) A reference in an instrument (whether or not of a statutory nature) to the former Board shall, where the context admits, be construed as a reference to the Board.

(4) A person registered under the repealed Act immediately before the commencement of subsection (1) shall be deemed to have been registered under this Act upon the conditions (if any) to which his registration was subject under the repealed Act.

(5) A person—

- (a) registered under the repealed Act as a specialist immediately before the commencement of subsection (1); or
- (b) in respect of whom a certificate of exemption was in force under section 29C(3) of the repealed Act immediately before the commencement of subsection (1),

shall be deemed to have been registered as a specialist under this Act upon the conditions (if any) to which the registration or certificate of exemption was subject.

(6) A person in relation to whom a certificate of limited registration was in force under the repealed Act immediately before the commencement of subsection (1) shall be deemed to have been registered under this Act and his registration shall—

- (a) be subject to a condition requiring him to comply with the limitations, restrictions and conditions to which his registration under the repealed Act was subject; and
- (b) expire when his registration under the repealed Act would have expired if that Act had not been repealed.

(7) The name of a person deemed to have been registered under this Act by virtue of subsection (4), (5) or (6) shall, without payment of a registration fee, be entered in the appropriate register under this Act.

(8) The registration under this Act of a person who had given an undertaking (that was in force immediately before the commencement of subsection (1)) to the former board pursuant to section 25A(1) or 26(3) of the repealed Act shall be subject to a condition requiring him to comply with that undertaking.

(9) Where a person whose name was removed from a register under the repealed Act for any reason and whose name had not, before the commencement of subsection (1), been reinstated on that register applies for registration under this Act, the Board may deal with the application as though it were an application for reinstatement under this Act.

### Interpretation

5. (1) In this Act, unless the contrary intention appears—

"**the Board**" means the Medical Board established under this Act;

"**books**" includes papers, documents, films and other records;

"**the Chief Magistrate**" means the person holding, or acting in, the office of Chief Magistrate under the *Magistrates Act 1983*;

"**company**" means a company incorporated under the law of this State;

"**director**" of a company includes any person occupying or acting in the position of director of the company whether validly appointed to occupy or duly authorised to act in that position or not, and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act;

"**equipment**" includes appliances, instruments, dressings, specimens or substances used in or for the purpose of medical treatment;

"**the former board**" means The Medical Board of South Australia established under the repealed Act;

"**general practitioner**" means a person whose name is registered on the general register but not on the specialist register;

"**general register**" means the register maintained under this Act of persons qualified in accordance with this Act to practise medicine;

"**medical practitioner**" means a person whose name is registered on the general register (whether or not it is also registered on the specialist register);

"**medical treatment**" includes all medical or surgical advice, attendances, services, procedures and operations;

"**medicine**" includes surgery;

"**member**" when used in Division 1 of Part 2 means a member of the Board and when used in Division 2 of that Part means a member of the Tribunal;

"**prescribed relative**", in relation to a medical practitioner, means a parent, spouse, child or grandchild of the medical practitioner;

"**putative spouse**", in relation to a medical practitioner, means a person who is cohabiting with the medical practitioner as the husband or wife *de facto* of the medical practitioner and—

- (a) who has so cohabited continuously over the last preceding period of five years, or for periods aggregating five years over the last preceding period of six years; or
- (b) who has had sexual relations with the medical practitioner resulting in the birth of a child;

"**Registrar**" means the person holding the office of registrar under this Act;

"**the repealed Act**" means the *Medical Practitioners Act 1919-1976* repealed by this Act;

"**the Senior Judge**" means the person holding, or acting in, the office of Senior Judge under the *Local and District Criminal Courts Act 1926*;

"**specialist**" means a medical practitioner whose name is registered on the specialist register;

"**specialist register**" means the register maintained under this Act of medical practitioners whose qualifications and experience in a prescribed branch of medicine are such as to entitle them to registration as specialists in that branch of medicine;

"**spouse**" includes putative spouse;

"**the Tribunal**" means the Medical Practitioners Professional Conduct Tribunal established under this Act;

"unprofessional conduct" includes—

- (a) improper or unethical conduct in relation to the practice of medicine; and
  - (b) incompetence or negligence in relation to the practice of medicine; and
  - (c) a contravention of or failure to comply with—
    - (i) a provision of this Act; or
    - (ii) a condition imposed by or under this Act in relation to the registration of a medical practitioner under this Act.
- (2) A reference in this Act to unprofessional conduct extends to—
- (a) unprofessional conduct committed before the commencement of this Act; and
  - (b) unprofessional conduct committed within or outside South Australia or the Commonwealth.

**PART 2  
ADMINISTRATION**

**DIVISION 1—THE MEDICAL BOARD**

**The Medical Board**

6. (1) There shall be a board entitled the "Medical Board".

(2) The Board—

(a) shall be a body corporate with perpetual succession and a common seal;

(b) shall be capable of suing and being sued.

(3) Where an apparently genuine document purports to bear the common seal of the Board, it shall be presumed in legal proceedings, in the absence of proof to the contrary, that the document has been duly executed by the Board.

**Membership of the Board**

7. (1) The Board shall consist of eight members appointed by the Governor of whom—

(a) five shall be nominated by the Minister; and

(b) one (who shall be a medical practitioner) shall be nominated by the Council of The University of Adelaide; and

(c) one (who shall be a medical practitioner) shall be nominated by the Council of The Flinders University of South Australia; and

(d) one shall be nominated by The South Australian Branch of the Australian Medical Association Incorporated.

(2) Of the members appointed on the nomination of the Minister—

(a) three shall be medical practitioners and of these one shall be an officer of the South Australian Health Commission; and

(b) one shall be a legal practitioner; and

(c) one shall be a person who is neither a medical practitioner nor a legal practitioner.

(3) A member shall be appointed for a term not exceeding three years upon such conditions as the Governor determines and at the expiration of his term of office shall be eligible for re-appointment.

(4) The Governor may appoint a person to be a deputy of a member and the deputy may, in the absence of that member, act as a member of the Board.

(5) The requirement of qualification and nomination made by this section in relation to the appointment of a member extends to the appointment of his deputy.

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**Medical Practitioners Act 1983**

(6) The Governor may remove a member from office for—

- (a) a breach of, or non-compliance with, the conditions of his appointment; or
- (b) mental or physical incapacity to carry out satisfactorily the duties of his office; or
- (c) absence (without leave of the Board) from three consecutive meetings of the Board or any other neglect of duty; or
- (d) dishonourable conduct.

(7) The office of a member becomes vacant if—

- (a) he dies; or
- (b) his term of office expires; or

\* \* \* \* \*

- (d) he resigns by written notice to the Minister; or
- (e) he ceases to satisfy the requirement referred to in this section by virtue of which he was nominated; or
- (f) he is removed from office by the Governor pursuant to subsection (6).

(8) Upon the office of a member becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

(9) A member of the Board who is one of the members constituting the Board for the purposes of proceedings under Division 1 of Part 4 and whose term of office expires before those proceedings have been completed may, for the purpose of continuing and completing those proceedings, continue to act as a member of the Board.

**The President**

8. The Minister shall, after consultation with the Board, appoint one of the members of the Board who is a medical practitioner to be the President of the Board.

**Procedures at meetings of the Board**

9. (1) Five members shall constitute a quorum at a meeting of the Board.

(2) The President shall preside at a meeting of the Board at which he is present and, in the absence of the President from a meeting, the members present shall decide who is to preside at the meeting.

(3) A question arising before the Board shall be determined in accordance with the opinion of a majority of the members present or, where they are equally divided in opinion, in accordance with the opinion of the person presiding at the meeting.

(4) The Board shall cause accurate minutes to be kept of the business conducted at its meetings.

(5) Subject to this Act, the procedure for the calling of meetings of the Board and the conduct of business at meetings of the Board shall be determined by the Board.

**Validity of acts of Board and immunity of members**

**10.** (1) No act or proceeding of the Board shall be invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(2) No liability shall attach to a member or the Registrar for any act or omission by him, or by the Board, in good faith and in the exercise of his or its powers or functions or in the discharge of his or its duties under this Act.

**Personal interest of member**

**11.** A member who has a personal interest or a direct or indirect pecuniary interest in a matter under consideration by the Board is disqualified from participating in the Board's consideration of that matter.

**Remuneration, etc., of members**

**12.** A member shall be entitled to such remuneration, allowances and expenses as are determined by the Governor.

**Functions and powers of the Board**

**13.** (1) The Board shall exercise its functions under this Act with a view to—

- (a) ensuring that the community is adequately provided with medical services of the highest standard; and
- (b) achieving and maintaining the highest professional standards both of competence and conduct in the practice of medicine.

(2) The functions of the Board are as follows:

- (a) to consult with appropriate authorities as to syllabuses and courses to enable persons wishing to apply for registration under this Act to acquire the necessary qualifications, experience and skill;
- (b) to make recommendations to the Governor in relation to regulations prescribing the qualifications, experience and other requirements to be fulfilled by persons applying for registration under this Act;
- (c) to make recommendations to the Governor in relation to the making of other regulations under this Act;
- (d) to establish and maintain registers of persons qualified to practise medicine in accordance with this Act;
- (e) to carry out such other functions as are prescribed by this Act.

(3) For the purpose of carrying out its functions the Board may—

- (a) acquire, hold, deal with and dispose of real and personal property;
- (b) enter into any kind of contract or arrangement;
- (c) acquire or incur any other rights or liabilities;
- (d) exercise such other powers as are vested in it under this Act or are necessary for, or incidental to, the efficient discharge of its functions.

**Committees**

14. (1) The Board may establish committees to advise the Board on any matter related to the administration of this Act or to carry out functions on behalf of the Board.

(2) The Board may appoint a person who is not a member of the Board to be a member of a committee.

**Delegation of functions and powers**

15. (1) The Board may delegate any of its functions or powers except those relating to proceedings under Part 4.

(2) A delegation under this section—

(a) may be made—

(i) to a member, to the Registrar or to an employee of the Board; or

(ii) to a committee established by the Board under this Act; and

(b) may be made subject to such conditions as the Board thinks fit; and

(c) is revocable at will and does not derogate from the power of the Board to act in any matter itself.

(3) A person to whom functions or powers are delegated under this section is disqualified from acting in pursuance of the delegation in relation to any matter in which he has a personal interest or a direct or indirect pecuniary interest.

**Powers of the Board in relation to witnesses, etc.**

16. (1) For the purpose of proceedings before the Board (including an application for registration or reinstatement of registration), the Board may—

(a) by summons signed on behalf of the Board by a member, or the Registrar, require the appearance before the Board of any person or the production to the Board of any relevant books or equipment; or

(b) inspect any books or equipment produced to it, and retain them for such reasonable period as it thinks fit, and make copies of the books, or of any of their contents; or

(c) require a person appearing before the Board to make an oath or affirmation that he will truly answer all questions put to him relating to any matter in issue before the Board (which oath or affirmation may be administered by a member or the Registrar); or

(d) require a person appearing before the Board to answer any relevant questions put to him by a member, or by a party or a person appearing on behalf of a party to a proceeding before the Board.

(2) Upon the receipt of an application for the issue of a summons under this section, a member or the Registrar may, without referring the matter to the Board, issue a summons on behalf of the Board.

(3) If a person—

(a) who has been served with a summons to appear before the Board fails, without reasonable excuse, to appear in obedience to the summons; or

- (b) who has been served with a summons to produce relevant books or equipment fails, without reasonable excuse, to comply with the summons; or
- (c) misbehaves himself before the Board, wilfully insults the Board or any member of the Board, or interrupts the proceedings of the Board; or
- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully any relevant question, when required to do so by the Board,

he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for three months.

(4) A person who appears as a witness before the Board has the same protection as a witness in proceedings before the Supreme Court.

(5) A person may be required to answer a question by the Board notwithstanding that the answer to that question might tend to incriminate him, or to produce any books or equipment notwithstanding that they might tend to incriminate him, but if that person objects to answering any question a note of that objection shall be taken down in the minutes of the proceedings, and the answer shall not be admissible against him in any criminal proceedings (except in proceedings for perjury).

#### **Principles governing hearings**

**17.** (1) The Board is not bound by the rules of evidence and may inform itself upon any matter as it thinks fit.

(2) Subject to this Act, the procedure of the Board upon the hearing of proceedings under this Act shall be as determined by the Board.

(3) Upon the hearing of proceedings, the Board shall act according to equity, good conscience and the substantial merits of the case.

#### **Representation at proceedings before the Board**

**18.** Subject to this Act, a party to proceedings before the Board (including an applicant for registration or reinstatement of registration) shall be entitled to be represented by a legal practitioner at the hearing of those proceedings.

#### **Costs**

**19.** (1) The Board may make such orders for costs against a party to proceedings before it as the Board considers just and reasonable.

(2) Where the Board has ordered payment of costs, a certificate of the costs shall be filed in the Supreme Court.

(3) Where a certificate has been filed under subsection (2), proceedings may be taken for the recovery of the costs as if the certificate were a judgment of the Supreme Court.

(4) If a party is dissatisfied with the amount of the costs fixed by the Board, he may request a master of the Supreme Court to tax the costs and the amount fixed by a master on taxation shall be the amount of the costs for the purposes of this section.

#### **Registrar**

**20.** (1) The Board shall appoint a suitable person, upon such conditions as it determines, to be the Registrar of the Board.

(2) The Board may employ such other persons as, in its opinion, are necessary to assist it in carrying out its functions under this Act.

### Investigations

**20A.** (1) A member of the Board, or a person acting at the direction of a member of the Board, may conduct an investigation of any matter that is the subject or is of a kind that might be the subject of proceedings before the Board or the Tribunal.

(2) A person conducting an investigation under this section may where reasonably necessary for that purpose—

- (a) require a person to answer questions and to be present or attend at a specified place and time for that purpose;
- (b) require a person to produce books or equipment and inspect them when produced and make copies of the books or of any of their contents.

(3) A member of the Board or other person must, in exercising the powers conferred by this section, comply with such general directions as may be given by the Board from time to time with respect to the conduct of investigations under this section.

(4) A person—

- (a) who fails, without reasonable excuse, to comply with a requirement under subsection (2);  
or
- (b) who wilfully delays or obstructs the Registrar or another person in the exercise of powers conferred by subsection (2),

is guilty of an offence and liable to a penalty not exceeding \$5 000 or imprisonment for three months.

(5) A person is not obliged to answer a question put to the person under subsection (2) if the answer would result in or tend towards self-incrimination.

### Accounts and audit

**21.** (1) The Board shall cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Board.

(3) For the purpose of an audit under subsection (2), the Auditor-General may exercise, in relation to the accounts of the Board and the members and employees of the Board, the powers that are vested in the Auditor-General by the *Audit Act 1921-1982* in respect of public accounts and accounting officers.

### Report

**22.** (1) The Board shall, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the administration of this Act during the period of twelve months that ended on the preceding thirtieth day of June.

(2) The report must incorporate the audited statement of accounts for the Board in relation to the relevant period.

(3) The Minister shall cause a copy of the report to be laid before each House of Parliament within three sitting days after it has been delivered to him.

## **DIVISION 2—THE MEDICAL PRACTITIONERS PROFESSIONAL CONDUCT TRIBUNAL**

### **The Medical Practitioners Professional Conduct Tribunal**

**23.** There shall be a tribunal entitled the "Medical Practitioners Professional Conduct Tribunal".

### **Members of the Tribunal**

**24.** (1) The Tribunal will consist of the following members of whom—

- (a) one (the presiding officer) will be the Senior Judge or a nominee of the Senior Judge;
- (b) four (the appointed members) will be appointed by the Governor as follows—
  - (i) three will be appointed on the nomination of the Minister; and
  - (ii) one will be appointed on the nomination of the South Australian Branch of the Australian Medical Association Incorporated.

(2) Of the members appointed on the nomination of the Minister—

- (a) two must be medical practitioners; and
- (b) one must be a person who is neither a medical practitioner nor a legal practitioner.

(3) An appointed member will be appointed for a term not exceeding three years upon such conditions as the Governor determines and, at the expiration of that term, will be eligible for re-appointment.

(4) The Governor may appoint a person to be a deputy of an appointed member and if the member is, for any reason, absent or unable to act, the deputy may act in the member's place.

(5) The requirements of qualification and nomination made by this section in relation to the appointment of a member extend to the appointment of the member's deputy.

### **Removal of appointed member from office, vacancies, etc.**

**24A.** (1) The Governor may remove an appointed member from office for—

- (a) a breach of, or non-compliance with, a condition of appointment; or
- (b) mental or physical incapacity to carry out official duties satisfactorily; or
- (c) neglect of duty; or
- (d) dishonourable conduct.

(2) The office of an appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or

\* \* \* \* \*

- (d) resigns by written notice to the Governor; or
- (e) in the case of a member appointed on the nomination of the Minister—ceases to satisfy the requirement of section 24(2) by virtue of which the member was eligible for appointment; or
- (f) is removed from office by the Governor.

(3) Upon the office of a member becoming vacant a person will be appointed in accordance with this Act to the vacant office.

(4) A member who is one of the members constituting the Tribunal for the purpose of proceedings and whose term of office expires before those proceedings have been completed may continue to act as a member of the Tribunal for the purpose of continuing and completing those proceedings.

#### **Delegation by Senior Judge**

**24B.** (1) The Senior Judge may nominate a District Court Judge or, subject to subsection (2), a magistrate to preside over the Tribunal.

(2) The Senior Judge must not nominate a magistrate without the approval of the Chief Magistrate.

(3) A nomination may be made in relation to a particular complaint or application and two or more nominations may operate simultaneously in relation to different matters.

(4) A nomination may be revoked by the Senior Judge at any time.

#### **Constitution of the Tribunal**

**25.** (1) Subject to the rules of the Tribunal, the Tribunal shall be constituted, for the purpose of hearing and determining proceedings, of the presiding officer and not less than two other members of whom at least two are medical practitioners.

(2) The jurisdiction of the Tribunal may be exercised by the presiding officer for the purpose of adjourning any proceedings.

#### **How decisions of the Tribunal to be arrived at**

**26.** A question arising before the Tribunal shall be determined in accordance with the opinion of a majority of the members constituting the Tribunal or, where they are equally divided in opinion, in accordance with the opinion of the presiding officer.

#### **Validity of acts of Tribunal and immunity of members**

**27.** (1) No act or proceeding of the Tribunal shall be invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.

(2) No liability shall attach to a member for any act or omission by him, or by the Tribunal, in good faith and in the exercise of his or its powers or functions or in the discharge of his or its duties under this Act.

#### **Personal interest of member**

**28.** A member who has a personal interest or a direct or indirect pecuniary interest in a proceeding before the Tribunal is disqualified from sitting at the hearing.

**Remuneration, etc., of members**

**29.** A member shall be entitled to such remuneration, allowances and expenses as are determined by the Governor.

**PART 3  
REGISTRATION OF MEDICAL PRACTITIONERS**

**DIVISION 1—RESTRICTIONS RELATING TO THE PRACTICE OF MEDICINE  
BY UNREGISTERED PERSONS**

**Illegal holding out**

**30.** (1) No person shall hold himself out or permit another person to hold him out as a general practitioner or a specialist unless he is registered on the appropriate register or registers.

Penalty: Five thousand dollars or imprisonment for six months.

(2) No person shall hold out another person as a general practitioner or a specialist unless that other person is registered on the appropriate register or registers.

Penalty: Five thousand dollars or imprisonment for six months.

**Restriction in relation to providing medical treatment**

**31.** (1) No person may—

- (a) provide—
  - (i) medical treatment of a prescribed kind; or
  - (ii) medical treatment of any kind in relation to a prescribed illness or disease; or
- (b) recover a fee or other charge for medical treatment provided by him,

unless he was, at the time at which he provided the treatment, a qualified person.

(2) Subsection (1) does not apply to—

- (a) medical treatment provided through the instrumentality of qualified persons at a hospital, nursing home or rest home by the person carrying on the business of the hospital, nursing home or rest home; or
- (b) medical treatment provided through the instrumentality of a qualified person in prescribed circumstances.

(3) For the purposes of this section—

"qualified person", in relation to medical treatment, means—

- (a) a medical practitioner; or
- (b) a person authorised by an Act to provide that treatment; or
- (c) a person registered under an Act as a person qualified to provide that treatment.

**DIVISION 2—REGISTRATION**

**Registration on the general register**

**32.** (1) A natural person who satisfies the Board that he—

- (a) (i) has prescribed qualifications and experience; and

(ii) fulfils all other prescribed requirements; and

(b) is a fit and proper person to be registered on the general register,

shall, subject to this Act, be registered on that register.

**Registration on the specialist register**

**33.** (1) A natural person who is registered on the general register and who satisfies the Board that he—

(a) (i) has prescribed qualifications and experience; and

(ii) fulfils all other prescribed requirements; and

(b) is a fit and proper person to be registered on the specialist register,

shall, subject to this Act, be registered on that register.

(2) The Governor may, on the recommendation of the Board, prescribe the branches of medicine in relation to which a medical practitioner may be registered as a specialist under this section.

**Reinstatement of person on register**

**34.** (1) A person whose name has been removed from the general or specialist register—

(a) at his request; or

(b) on his failure to pay the annual practice fee,

may apply to the Board at any time for the reinstatement of his name on the appropriate register.

(2) A person whose registration on the general or specialist register has been suspended may apply to the Board for the reinstatement of his name on the appropriate register after the period of his suspension has expired.

(3) A person whose registration on the general or specialist register has been cancelled for unprofessional conduct may not apply to the Board for reinstatement of his name on the register before the expiration of two years after the cancellation.

(4) The Board shall, subject to subsection (5), reinstate the name of a person who applies under this section if it is satisfied that—

(a) he has sufficient knowledge and experience of and is able to exercise the necessary degree of skill required for the practice of medicine; and

(b) he is a fit and proper person to be registered under this Act.

(5) Before granting an application under this section the Board may require the applicant to obtain qualifications and experience specified by the Board and for that purpose may require the applicant to undertake a specified course of instruction and training in medicine.

(6) Where a person's registration has been suspended by reason of his failure to reside in the Commonwealth, the Board may make his registration, after reinstatement, subject to such conditions relating to residence as it thinks fit.

**DIVISION 3—LIMITED REGISTRATION**

**Limited registration for the purpose of gaining experience or teaching, etc.**

35. (1) Where a person who applies for registration under this Act does not have the necessary qualifications or experience or does not fulfil the other requirements prescribed by or under this Act, the Board may register that person in pursuance of this section—

- (a) in order to enable him—
  - (i) to acquire the experience and skill required for full registration under this Act; or
  - (ii) to teach or to undertake research or study in South Australia; or
- (b) if, in its opinion, his registration is in the public interest.

(2) Where a person applies for registration or reinstatement of registration under this Act but has not satisfied the Board that he is a fit and proper person to be registered unconditionally, but otherwise fulfils the requirements prescribed by or under this Act for registration, the Board may register that person in pursuance of this section.

(3) When granting an application referred to in subsection (1) or (2) the Board may—

- (a) restrict the places and times at which the applicant may practise medicine; or
- (b) limit the branches of medicine in which he may practise; or
- (c) limit the period during which the registration will have effect; or
- (d) impose such other conditions as the Board thinks fit.

**DIVISION 4—PROVISIONAL REGISTRATION**

**Provisional registration**

36. (1) Where a person has applied for registration under this Act, the Registrar may, if in his opinion the Board is likely to grant the application, provisionally register the applicant.

(2) The registration of a person registered pursuant to subsection (1) shall remain in force until the Board determines the application.

(3) The registration by the Board under this Act of a person who was provisionally registered under this section shall have effect from the commencement of the provisional registration.

**DIVISION 5—PROVISIONS RELATING TO THE PRACTICE OF MEDICINE  
BY COMPANIES**

**Registration of companies**

37. (1) A company may, subject to this Act, be registered on the general register if it satisfies the Board—

- (a) that the memorandum and articles of association of the company contain stipulations to the following effect:
  - (i) the sole object of the company must be to practise the profession of medicine; and

- (ii) the directors of the company must be natural persons who are medical practitioners (but where there are only two directors one may be a medical practitioner and the other may be a prescribed relative of that medical practitioner); and
  - (iii) no share issued by the company, and no right to participate in the distribution of the profits of the company, is to be owned beneficially otherwise than by a medical practitioner who is a director or employee of the company, or a prescribed relative of that medical practitioner; and
  - (iv) the total voting rights exercisable at a meeting of the members of the company must be held by medical practitioners who are directors or employees of the company; and
  - (v) no director of the company may, without the approval of the Board, be a director of any other company that is registered under this section; and
  - (vi) where the right of a medical practitioner and of his prescribed relatives to hold shares in the company ceases by virtue of the medical practitioner ceasing to be a director or employee of the company, his shares and those of his prescribed relatives shall be redeemed by the company, distributed amongst the remaining members of the company, or transferred to a medical practitioner who is to become a director or employee of the company, in accordance with the memorandum and articles of association of the company; and
  - (vii) the shares of a person who is a shareholder by virtue of being the spouse of a medical practitioner shall—
    - (A) upon dissolution or annulment of his marriage with the medical practitioner; or
    - (B) in the case of a putative spouse, upon cessation of cohabitation with the medical practitioner,  
  
be redeemed by the company, or distributed amongst the remaining members of the company, in accordance with the memorandum and articles of association of the company; and
- (b) that the memorandum and articles of association are otherwise appropriate to a company formed for the purpose of practising the profession of medicine.

(2) Where one or more of the stipulations required by this Act to be included in the memorandum and articles of association of a company registered under this Act are not complied with, the company shall, within fourteen days, report the non-compliance to the Board.

Penalty: One thousand dollars.

(3) After receiving a report under subsection (2), the Board may give such directions as are necessary to secure compliance with those stipulations.

(4) The registration of a company that has received a direction from the Board under subsection (3) shall, if the company has not satisfied the Board that it has complied with the direction, be suspended from the expiration of the time allowed by the Board for compliance with the direction and shall remain suspended until the company satisfies the Board that it has complied with the direction.

**Returns by companies**

**38.** (1) Every company that is a medical practitioner shall—

- (a) within one month after any person becomes or ceases to be a director or member of the company lodge with the Board a notice stating the full name and usual residential address of that person and the fact that he has become or ceased to be such a director or member; and
- (b) in the month of July in each year lodge with the Board a return that is in the prescribed form and that complies with the requirements of subsection (2).

Penalty: Two thousand dollars.

(2) The annual return shall state—

- (a) the full name and usual residential address of every person who on the thirtieth day of June preceding the lodging of the return was—
  - (i) a director or a member of the company; or
  - (ii) had a right to participate in the distribution of the profits of the company;
- (b) the number of shares in the company held by each such person and the number of votes that he is entitled to cast at a meeting of members of the company; and
- (c) in relation to each member, the qualification by virtue of which he is entitled to be a member of the company; and
- (d) all other prescribed information.

**Companies not to practise in partnership**

**39.** A company that is a medical practitioner shall not practise as a medical practitioner in partnership with any other person unless it has been authorised to do so by the Board.

Penalty: One thousand dollars.

**Employment of medical practitioners by company**

**40.** (1) A company that is a medical practitioner shall not, for the purpose of its medical practice, employ a number of medical practitioners greater than twice the number of directors of the company.

Penalty: One thousand dollars.

(2) In determining the number of medical practitioners in the employment of a company for the purposes of subsection (1), any medical practitioners who are both employees and directors of the company shall be disregarded.

**Criminal liability of directors**

**41.** Where a company that is a medical practitioner commits an offence against this Act, or against another Act or against a regulation made under another Act, each person who was a director of the company at the time of the commission of the offence by the company shall be guilty of an offence and liable to the same penalty as that prescribed for the principal offence, unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the company.

**Joint and several liability**

42. Any civil liability incurred by a company that is a medical practitioner shall be enforceable jointly and severally against the company and persons who were directors of the company at the time the liability was incurred.

**Alteration to memorandum or articles of association**

43. No alteration to the memorandum or articles of association of a company that is a medical practitioner shall be made unless the proposed alteration has been submitted to, and approved by, the Board.

Penalty: One thousand dollars.

**DIVISION 6—GENERAL**

**The registers**

44. (1) The general and specialist registers shall be kept at the office of the Registrar and shall, during office hours, be available for inspection by any person on payment of the prescribed fee.

(2) A medical practitioner shall within three months after changing his name or his address inform the Registrar in writing of the change.

Penalty: One hundred dollars.

(3) Proceedings for an offence against subsection (2) shall be disposed of summarily.

(4) The Registrar shall, in January of each year, cause a copy of the general and the specialist registers to be published in the *Gazette*.

(5) A certificate stating that a person is registered under this Act on the general or specialist register and purporting to be signed by the Registrar shall, in legal proceedings in the absence of proof to the contrary, be accepted as proof of the registration of that person on the register concerned.

**Fees**

45. (1) Subject to this Act, a person shall not be registered or reinstated on the general register until he has paid the prescribed registration or reinstatement fee and the prescribed annual practice fee.

(2) A medical practitioner shall not be registered or reinstated on the specialist register until he has paid the prescribed fee for registration or reinstatement on that register.

(3) Every medical practitioner shall, in each calendar year, before the date fixed for that purpose by the Board, pay to the Board the prescribed annual practice fee and the Board may remove from the general register the name of a practitioner who fails to do so.

(4) The Governor may, by regulation, exempt a person or a class of persons from the obligation to pay a fee under this section.

**Removal from register on request**

46. The Registrar shall, at the request of a medical practitioner, remove his name from the general or specialist register.

**Removal of name from specialist register**

47. A name that is removed from the general register shall, if it is on the specialist register, be removed from that register also.

**Removal of name from register on suspension**

48. Upon the suspension of the registration of a person under this Act, his name shall be removed by the Registrar from the register.

**Information to be provided by medical practitioner**

49. (1) The Board may, at any time, require a medical practitioner to supply it with prescribed information relating to his employment and practice as a medical practitioner.

(2) Information provided under this section may be included in the general register.

(3) A medical practitioner who fails to comply with a requirement under this section is guilty of an offence.

Penalty: One thousand dollars.

**PART 4  
PROCEEDINGS BEFORE THE BOARD AND THE TRIBUNAL**

**DIVISION 1—PROCEEDINGS BEFORE THE BOARD**

**Inquiries by the Board as to competence**

**50.** (1) A complaint alleging that within a period of twelve months immediately preceding the laying of the complaint a medical practitioner has practised in a branch of medicine without having or exercising adequate or sufficient knowledge, experience or skill may be laid before the Board by—

- (a) the Registrar; or
- (b) the Minister; or
- (c) The South Australian Branch of the Australian Medical Association Incorporated; or
- (d) a medical practitioner.

(2) Where a complaint has been laid under this section, the Board shall inquire into the subject matter of the complaint unless the Board considers that the complaint is frivolous or vexatious.

(3) If, after conducting an inquiry under this section, the Board is satisfied that the matters alleged in the complaint have been established, it may, by order, impose conditions restricting the right of the medical practitioner to practise medicine.

**Incapacity of practitioners**

**51.** Where, on the application of—

- (a) the Registrar; or
- (b) the Minister; or
- (c) The South Australian Branch of the Australian Medical Association Incorporated; or
- (d) a medical practitioner,

the Board is satisfied that the ability of a medical practitioner to practise medicine is impaired by mental or physical incapacity to such an extent that it is desirable, in the public interest, that an order be made under this section, the Board may, by order, do one or both of the following—

- (e) suspend his registration until he has recovered from the incapacity or for such lesser period as the Board determines; or
- (f) impose conditions restricting his right to practise medicine.

**Obligation to report unfitness**

**52.** (1) Where a medical practitioner is treating a patient who is a medical practitioner in relation to an illness that, in the opinion of the first mentioned medical practitioner, has resulted in or is likely to result in mental or physical incapacity that seriously impairs or may seriously impair his patient's ability to practise medicine, he shall submit a written report to the Board stating—

- (a) his reasons for that opinion; and

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- (b) the views of any other medical practitioner in relation to the matter that are known to him; and
- (c) all other prescribed information.

Penalty: One thousand dollars.

- (2) The Board shall investigate a report made pursuant to subsection (1).

**Power to require practitioner to submit to examination**

**53.** (1) For the purpose of inquiring into the mental or physical capacity of a medical practitioner under this Division the Board may (without derogation from its other powers under this Act) order the practitioner to submit to an examination by a medical practitioner appointed by the Board.

(2) The Board may suspend the registration of a medical practitioner who fails to submit to an examination ordered by the Board under subsection (1) and that suspension shall remain in force until he submits to the examination.

**Inquiries by the Board in relation to unprofessional conduct**

**54.** (1) A complaint alleging unprofessional conduct on the part of a medical practitioner may be laid before the Board by—

- (a) the Registrar; or
- (b) the Minister; or
- (c) The South Australian Branch of the Australian Medical Association Incorporated; or
- (d) a person who is aggrieved by conduct of the medical practitioner or, where that person is a child or is suffering from a mental or physical incapacity, by a person acting on his behalf.

(2) Where a complaint has been laid before the Board under this section, the Board must inquire into the subject matter of the complaint unless the Board—

- (a) considers that the complaint is frivolous or vexatious; or
- (b) lays a complaint before the Tribunal relating to matters the subject of, or arising out of, the complaint laid before the Board.

(3) Where a complaint has been laid under this section by or on behalf of an aggrieved person and the Board is satisfied that the complaint was laid by reason of a misapprehension on the part of the complainant or of a misunderstanding between the parties, it may, before proceeding further with the hearing of the complaint, require the parties to attend before the Registrar in order to clarify the misapprehension or misunderstanding.

(4) Where, in the course of conducting an inquiry under this section, the Board considers that the allegations or evidence against the medical practitioner are sufficiently serious, it may terminate the proceedings under this section and itself lay a complaint against the medical practitioner before the Tribunal in relation to those allegations or that evidence.

(5) If, after conducting an inquiry under this section, the Board is satisfied that the matters alleged in the complaint have been established, it may reprimand the medical practitioner.

**Variation, etc., of conditions imposed by Board**

**55.** (1) The Board may, at any time, on application by a medical practitioner, vary or revoke a condition imposed by the Board under this Part or under Part 3 or imposed by this Act in relation to his registration under this Act.

(2) The Registrar, the Minister and The South Australian Branch of the Australian Medical Association Incorporated shall be entitled to object to an application under this section.

**Suspension of registration of non-residents**

**56.** The Board may, on the application of the Registrar, suspend the registration of a medical practitioner if the Board is satisfied that the practitioner has not resided in the Commonwealth for a period of twelve months immediately preceding the application and the suspension shall remain in force until the practitioner once again resides in the Commonwealth.

**Provisions as to inquiries**

**57.** (1) The Board shall give to all of the parties to proceedings under this Division not less than fourteen days' written notice of the time and place at which it intends to conduct the proceedings, and shall afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Board.

(2) If a party to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Board may proceed to hear and determine the complaint or application in the absence of that party.

(3) In the course of proceedings the Board may—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or Territory of the Commonwealth or of another country, and draw any conclusions of fact from the evidence that it considers proper;
- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

**DIVISION 2—PROCEEDINGS BEFORE THE TRIBUNAL**

**Inquiries by Tribunal as to unprofessional conduct**

**58.** (1) A complaint alleging unprofessional conduct—

- (a) on the part of a medical practitioner; or
- (b) on the part of a person who was at the relevant time a medical practitioner,

may be laid before the Tribunal by the Board.

(2) Where a complaint has been laid under this section, the Tribunal shall inquire into the subject matter of the complaint.

(3) If, after conducting an inquiry under this section, the Tribunal is satisfied—

- (a) in the case of a medical practitioner, that he has been guilty of unprofessional conduct, it may, by order, do one or more of the following:
  - (i) reprimand the medical practitioner;

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- (ii) order the medical practitioner to pay a fine not exceeding five thousand dollars;
  - (iii) impose conditions restricting his right to practise medicine;
  - (iv) suspend the registration of the medical practitioner by removing his name from the general register or the specialist register for a period not exceeding one year;
  - (v) cancel the registration of the medical practitioner on the general register or on the specialist register; or
- (b) in the case of a former medical practitioner, that when he was a medical practitioner he was guilty of unprofessional conduct, it may order him to pay a fine not exceeding five thousand dollars.

**Variation of conditions imposed by Tribunal**

**59.** (1) The Tribunal may, at any time, on application by a medical practitioner, vary or revoke a condition imposed by the Tribunal in relation to his registration under this Act.

- (2) The Board shall be entitled to object to an application under this section.

**Suspension of registration pending determination of complaint**

**60.** Where—

- (a) a complaint against a medical practitioner who was registered in another State or Territory of the Commonwealth or in another country has been laid before the Tribunal; and
- (b) the registration of that practitioner in that other State, Territory or country was suspended or cancelled by reason of conduct that is the subject matter of the complaint before the Tribunal,

the Board may suspend the registration of the medical practitioner under this Act pending the determination of the complaint by the Tribunal.

**Provisions as to inquiries**

**61.** (1) The Tribunal shall give to the parties to proceedings under this Division not less than fourteen days' written notice of the time and place at which it intends to conduct the proceedings, and shall afford to the parties a reasonable opportunity to call and give evidence, to examine or cross-examine witnesses, and to make submissions to the Tribunal.

(2) If a party to whom notice has been given pursuant to subsection (1) does not attend at the time and place fixed by the notice, the Tribunal may proceed to hear and determine the complaint in the absence of that party.

(3) The parties to proceedings under this Division shall be entitled to be represented at the proceedings by a legal practitioner.

**Principles governing hearings**

**62.** (1) The Tribunal is not bound by the rules of evidence and may inform itself upon any matter as it thinks fit.

(2) Subject to this Act, the procedure of the Tribunal upon the hearing of proceedings under this Act shall be as determined by the Tribunal.

(3) Upon the hearing of proceedings, the Tribunal shall act according to equity, good conscience and the substantial merits of the case.

**Powers of Tribunal**

**63.** (1) For the purposes of proceedings under this Division, the Tribunal may—

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal, or by the Registrar, require the appearance before the Tribunal of any person or the production to the Tribunal of any relevant books or equipment; or
- (b) inspect any books or equipment produced to it, and retain them for such reasonable period as it thinks fit, and make copies of the books, or of any of their contents; or
- (c) require a person appearing before the Tribunal to make an oath or affirmation that he will truly answer all questions put to him relating to any matter in issue before the Tribunal (which oath or affirmation may be administered by a member of the Tribunal or the Registrar); or
- (d) require a person appearing before the Tribunal to answer any relevant question put to him by any member of the Tribunal or by a party or person appearing on behalf of a party to a proceeding before the Tribunal.

(2) Upon the receipt of an application for the issue of a summons under this section, a member of the Tribunal or the Registrar may, without referring the matter to the Tribunal, issue a summons on behalf of the Tribunal.

(3) If a person—

- (a) who has been served with a summons to appear before the Tribunal fails, without reasonable excuse, to appear in obedience to the summons; or
- (b) who has been served with a summons to produce relevant books or equipment fails, without reasonable excuse, to comply with the summons; or
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member of the Tribunal, or interrupts the proceedings of the Tribunal; or
- (d) refuses to be sworn or to affirm, or refuses or fails to answer truthfully any relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding five thousand dollars or imprisonment for three months.

(4) A person who appears as a witness before the Tribunal has the same protection as a witness in proceedings before the Supreme Court.

(5) If a person summoned as mentioned in subsection (1) fails to produce any books or equipment or to appear before the Tribunal as required by the summons, or having appeared refuses to be sworn or to affirm, or to answer a relevant question when required to do so by the Tribunal, a certificate of the failure or refusal, signed by a member of the Tribunal or by the Registrar, may be filed in the Supreme Court.

(6) Where a certificate has been filed under subsection (5), a party requiring the production of books or equipment or the appearance of a person before the Tribunal may apply (either *ex parte* or on notice) to the Supreme Court for an order directing the production of the books or equipment or that that person attend, or be sworn or affirm, or answer questions (as the case may require) and on that application the court may make such orders as it thinks fit (including orders for costs).

(7) A person may be required to answer a question by the Tribunal notwithstanding that the answer to that question might tend to incriminate him, or to produce any books or equipment notwithstanding that they might tend to incriminate him, but if that person objects to answering any question a note of that objection shall be taken down, and the answer shall not be admissible against him in any criminal proceedings (except in proceedings for perjury).

(8) In the course of an inquiry, the Tribunal may—

- (a) receive in evidence a transcript of evidence taken in proceedings before a court, tribunal or other body constituted under the law of South Australia or of any other State or Territory of the Commonwealth or of another country, and draw any conclusions of fact from the evidence that it considers proper;
- (b) adopt, as in its discretion it considers proper, any findings, decision, judgment, or reasons for judgment, of any such court, tribunal or body that may be relevant to the proceedings.

#### Costs

**64.** (1) The Tribunal may make such orders as to costs against a party to proceedings before it as the Tribunal considers just and reasonable.

(2) Where the Tribunal has ordered payment of a fine or costs, a certificate of the fine or costs shall be filed in the Supreme Court.

(3) Where a certificate has been filed under subsection (2), proceedings may be taken for the recovery of the fine or costs as if the certificate were a judgment of the Supreme Court.

(4) If a party is dissatisfied with the amount of the costs fixed by the Tribunal, he may request a master of the Supreme Court to tax the costs and the amount fixed by a master on taxation shall be the amount of the costs for the purposes of this section.

#### Rules of the Tribunal

**65.** The Tribunal may make rules for any of the following purposes:

- (a) regulating the practice and procedure of the Tribunal;
- (b) making any other provision that is necessary or expedient for carrying into effect the provisions of this Division relating to the Tribunal.

**PART 5**  
**APPEALS TO THE SUPREME COURT**

**Appeal to Supreme Court**

**66.** (1) Subject to subsection (2), a right of appeal to the Supreme Court shall lie against—

- (a) a refusal by the Board to register or to reinstate the registration of a person under this Act or the imposition by the Board of conditions in respect of his registration; and
- (b) a reprimand or order administered or made by the Board or the Tribunal in proceedings under Part 4.

(2) An appeal must be instituted within sixty days of the date of the decision appealed against, but the Supreme Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the appeal should be instituted within that time.

(3) The Supreme Court may, on the hearing of an appeal, exercise any one or more of the following powers, as the case requires:

- (a) affirm or vary the decision by the Board to refuse an application for registration or reinstatement or to impose conditions on the appellant's registration or quash the Board's decision and, in a case where the Board has refused an application, direct the Board to grant the application upon such conditions (if any) as the Court determines and, in a case where the Board has imposed conditions on the appellant's registration, impose such conditions on his registration as the Court thinks fit;
- (b) affirm, vary or quash the reprimand or order appealed against, or substitute, or make any finding, reprimand or order that should have been made in the first instance;
- (c) remit the subject matter of the appeal to the Board or the Tribunal (as the case may be) for further hearing or consideration or for rehearing;
- (d) make any order as to costs or as to any other matter that the case requires.

(4) When ordering the remission of the subject matter of an appeal to the Board or the Tribunal for rehearing, the Court may disqualify a member from rehearing the matter and, in that case, the deputy of that member may, if he is not also disqualified, take the place of that member for the purpose of the hearing.

**Operation of order may be suspended**

**67.** (1) Where an order has been made by the Board or the Tribunal, and the Board or the Tribunal (as the case may be) or the Supreme Court is satisfied that an appeal against the order has been instituted, or is intended, it may suspend the operation of the order until the determination of the appeal.

(2) Where the Board or the Tribunal has suspended the operation of an order under subsection (1), the Board or the Tribunal (as the case may be) may terminate the suspension, and where the Supreme Court has done so, the Supreme Court may terminate the suspension.

**Variation of conditions imposed by the Court**

**68.** (1) The Supreme Court may, at any time, on application by a medical practitioner, vary or revoke a condition imposed by the Court in relation to his registration under this Act.

(2) The Board, the Minister and The South Australian Branch of the Australian Medical Association Incorporated shall be entitled to object to an application under this section.

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**PART 6**  
**MISCELLANEOUS*****Practitioners to be indemnified against loss***<sup>1</sup>

**69.** (1) *A medical practitioner shall not practise medicine unless—*

- (a) *an agreement subsists between him and a person approved of by the Board; and*
- (b) *the Board is satisfied that, by virtue of that agreement, the medical practitioner will be compensated to the extent required by the Board in the event that he suffers loss by reason of civil liability incurred by him in his practice of medicine.*

*Penalty: Five thousand dollars.*

(2) *The Board may, upon such conditions as it thinks fit, exempt a medical practitioner or a class of medical practitioners from the requirements of this section and may, whenever it thinks fit, revoke an exemption or vary the conditions under which an exemption operates.*

**Penalty for breach of condition**

**70.** A medical practitioner who contravenes or fails to comply with a condition imposed by or under this Act in relation to his registration under this Act is guilty of an offence.

Penalty: Five thousand dollars.

**Declaration of interest in hospitals**

**71.** (1) A person who is a medical practitioner or a prescribed relative of a medical practitioner and who has an interest in a hospital shall—

- (a) where—
  - (i) the interest was acquired before the commencement of this Act—within thirty days after the commencement of this Act; and
  - (ii) in any other case—within thirty days after the interest is acquired; and
- (b) within thirty days after there is a change in the nature or extent of the interest,

give to the Board prescribed information relating to the interest and the manner in which it arises.

(2) A medical practitioner who has an interest in a hospital or who has a prescribed relative who has an interest in a hospital shall not refer a patient to that hospital for medical treatment unless he has—

- (a) provided the Board—
  - (i) where he has an interest in the hospital, with information that he is required to provide under subsection (1); and
  - (ii) where his prescribed relative has an interest in the hospital, with prescribed information relating to that person's interest in the hospital; and

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<sup>1</sup> S. 69 had not been brought into operation at the date of this reprint.

(b) informed the patient, in writing, of his interest or the interest of his relative in that hospital.

(3) Subject to subsection (4), a person has an interest in a hospital for the purposes of this section if he is likely to derive a financial benefit, whether directly or indirectly, from the profitable conduct of the business of that hospital.

(4) A financial benefit is not derived by a medical practitioner for the purposes of subsection (3) if the benefit consists solely of reasonable fees payable to the medical practitioner for treatment by him of patients at the hospital.

(5) A person who fails to comply with a provision of this section is guilty of an offence.

Penalty: Five thousand dollars.

(6) It is a defence to proceedings for an offence against subsection (2) and to a charge of unprofessional conduct for failure to comply with that subsection for the defendant to prove that he did not know and could not reasonably have been expected to know that a prescribed relative had an interest in the hospital to which the referral that is the subject of the proceedings relates.

(7) In this section—

"**hospital**" means a hospital, nursing home or other institution the purpose of which is to care for sick or elderly patients.

#### **Information relating to claim against a medical practitioner to be provided**

**72.** Where a person has claimed damages or other compensation from a medical practitioner for alleged negligence committed in the course of medical practice, the practitioner concerned shall within thirty days after—

- (a) he is ordered by a court to pay damages or other compensation in respect of that claim; or
- (b) he agrees to pay a sum of money in settlement of that claim (whether with or without a denial of liability),

provide the board with prescribed information relating to the claim.

Penalty: Five thousand dollars.

#### **Service**

**73.** A notice or other document that is required by this Act to be given or served on a medical practitioner shall be properly given or served if it is sent by certified mail to the medical practitioner at his address appearing in the general register.

#### **Procurement of registration by fraud**

**74.** A person who by fraud or any other dishonest means procures his registration or the registration of another person as a medical practitioner or specialist (whether that registration is procured on initial application or on application for reinstatement of registration) shall be guilty of an offence.

Penalty: Five thousand dollars.

**Punishment of conduct that constitutes an offence**

75. Where conduct constitutes an offence and is also a ground for disciplinary action under this Act, the taking of disciplinary action under this Act is not a bar to conviction and punishment for the offence, nor is conviction and punishment for the offence a bar to disciplinary action under this Act.

**Offences**

76. Except as otherwise provided in this Act, offences against this Act shall be minor indictable offences.

**Regulations**

77. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of the foregoing those regulations may—

- (a) prescribe qualifications, experience and other requirements for the purpose of the registration of any person or class of persons on the general or specialist register; and
- (b) prescribe and provide for the recovery of any fee for the purposes of this Act; and
- (c) prescribe information that shall be included in a register maintained under this Act; and
- (d) prescribe any form for the purposes of this Act; and
- (e) regulate, restrict or prohibit the publication of advertisements by or on behalf of medical practitioners; and
- (f) prescribe requirements to be observed by companies registered under this Act; and
- (g) prescribe penalties, not exceeding five thousand dollars, for breach of, or non-compliance with, a regulation.

(3) This section is in addition to, and does not derogate from, any other provision of this Act providing for the making of regulations.

**APPENDIX****LEGISLATIVE HISTORY**

*(entries in bold type indicate amendments incorporated since the last reprint)*

Section 5(1):	definition of "the Chief Magistrate" inserted by 110, 1986, s. 3(a)
<b>Section 7(5a):</b>	definition of "the Senior Judge" inserted by 110, 1986, s. 3(b)
Section 7(7)(c):	inserted by 43, 1988, s. 2(a); <b>repealed by 75, 1993, s. 16</b>
Section 7(9):	repealed by 43, 1988, s. 2(b)
Section 20A:	amended by 43, 1988, s. 2(c)
Section 24:	inserted by 43, 1988, s. 3
Section 24:	substituted by 110, 1986, s. 4
Sections 24A and 24B:	inserted by 110, 1986, s. 4
<b>Section 24A(2):</b>	<b>repealed by 75, 1993, s. 17(a)</b>
<b>Section 24A(4):</b>	<b>amended by 75, 1993, s. 17(b)</b>
Section 25:	amended by 110, 1986, s. 5
Section 26:	amended by 110, 1986, s. 6
Section 54(2):	substituted by 43, 1988, s. 4