

MEDICAL PRACTITIONERS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Medical Practitioners Act 1950, mainly with a view to curing defects in section 44 which makes the Medical Council both prosecutor and judge in certain disciplinary matters, and places the onus on an accused to prove innocence. In future every serious complaint against a medical practitioner is to be made in the first instance to a Crown Solicitor; and is to receive preliminary investigation by an Investigation Committee set up to consider the complaint, and consisting of a Crown Solicitor and two medical practitioners. The Committee will report its finding to the Solicitor-General, who is required to take any action recommended by the Committee or to arrange for it to be taken.

Clause 1 relates to the Short Title to the Bill.

Clause 2 defines the terms "Convener of Investigation Committees", "Investigation Committee", and "Investigation Committee member".

Clause 3: The proviso to section 8 of the principal Act declares that the Council shall not delegate to a subcommittee its power to *inquire into* a charge of grave impropriety or infamous conduct in a professional respect. The clause substitutes the word "hear" for the words "inquire into".

Clause 4 provides that the Chairman of the Disciplinary Committee and of every Divisional Disciplinary Committee shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

Clause 5 amends the proviso to section 32 (1) of the principal Act so as to recognise that, where charges of grave impropriety or infamous conduct in a professional respect are brought before the Disciplinary Committee, that Committee will no longer refer them direct to the Medical Council, but will refer them for investigation by an Investigation Committee.

Clause 6 inserts five new sections following section 43.

The new section 43A provides for the appointment from time to time of four medical practitioners as Investigation Committee members. The members are to hold office for three years at a time, and one of them is to be appointed as Convener of Investigation Committees.

The new section 43B provides that, except as otherwise provided by rules made by the Disciplinary Committee, or in any case where the Solicitor-General otherwise directs, every person who seeks to complain that any person who is a registered medical practitioner or who is conditionally registered has been guilty of grave impropriety or infamous conduct in a professional respect, or has conducted himself in such a manner as to render the exercise of the powers of the Medical Council expedient in the interest of the public, shall make the complaint to a Crown Solicitor in the Supreme Court district in which the incident involved in the complaint arose. Every complaint (other than one by a Court) must be in writing and must be supported by such statutory declarations as the Crown Solicitor requires. The Crown Solicitor is required to make such preliminary investigations as may be necessary to satisfy himself that the complaint is of such a nature and is supported by such evidence as to warrant investigation by an Investigation Committee. Upon being so satisfied the Crown Solicitor is required to notify the Convener of Investigation Committees of the complaint.

The new section 43C provides that, upon being notified by a Crown Solicitor of any such complaint, the Convener of Investigation Committees is to set up an Investigation Committee to investigate the complaint and report its findings to the Solicitor-General. The Investigation Committee to investigate any complaint is to consist of a Crown Solicitor who shall be Chairman, and two of the Investigation Committee members appointed by the Convener. The clause requires the Solicitor-General to take any action recommended by the Committee or arrange for it to be taken.

The new section 43D authorises the Medical Council to make rules for regulating the procedure of Investigation Committees, and prescribing classes of cases which need not be referred to any such Committee before they are considered by the Council. Subject to the Act and any such rules, every Investigation Committee may regulate its own procedure.

The new section 43E provides for the payment out of money appropriated by Parliament of remuneration of members of Investigation Committees, and the expenses of witnesses appearing before those Committees.

Clause 7 substantially rewrites section 44 of the principal Act and incorporates the provisions now contained in section 46. The *new subsections (1), (5), and (6)* are adapted from section 33 of the Medical Act 1956 of the United Kingdom. Express provision for censure and for orders to pay costs are included for the first time. The *new subsections (10) and (11)* bring the procedure on appeals to the Supreme Court under section 44 into line with appeals to that Court under section 45.

Clause 8 rewrites subsection (3) of section 45 of the principal Act, and provides that appeals to the Court under both sections 44 and 45 are to be by way of rehearing. On any such rehearing, unless the Court otherwise directs, it shall not be permissible to recall witnesses who gave evidence before the Council or to call other witnesses.

Clause 9 makes it clear that a legal assessor appointed by the Medical Council, the Disciplinary Committee, or any Divisional Disciplinary Committee may advise the Council or Committee before and after any inquiry or appeal as well as at the hearing.

Clause 10 extends to an Investigation Committee the provisions of section 48 of the principal Act under which the Medical Council and Disciplinary Committees may require evidence to be given.

Clause 11 extends the provisions of section 49 of the principal Act, which relates to the immunity of witnesses and counsel, to cases where they appear before Investigation Committees.

Clause 12 gives Investigation Committees substantial protection from civil and criminal liability.

Clause 13 provides that while any person is an Investigation Committee member, or a member of the Medical Council or of the Disciplinary Committee or of any Divisional Disciplinary Committee, that person shall not be appointed to any other such office.



Hon. Mr Hanan

MEDICAL PRACTITIONERS AMENDMENT

ANALYSIS

Title	
1. Short Title	43c. Investigation Committees
2. Interpretation	43d. Procedure of Investigation Committees
3. Subcommittees of Council	43e. Remuneration of members of Investigation Committees and expenses of witnesses
4. Chairman of Committees to have casting vote	7. Disciplinary powers of Council
5. Functions of Disciplinary Committee	8. Appeals to Supreme Court
6. New sections inserted	9. Legal assessors
<i>Complaints of Grave Impropriety or Infamous Conduct</i>	10. Investigation Committees may require evidence to be given
43A. Appointment of Investigation Committee members	11. Immunity of witnesses and counsel
43B. Complaints of grave impropriety or infamous conduct	12. Protection of Investigation Committees
	13. Restriction on appointments to Council and Committees

A BILL INTITULED

An Act to amend the Medical Practitioners Act 1950

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Medical Practitioners Amendment Act 1957, and shall be read together with and deemed part of the Medical Practitioners Act 1950 (hereinafter referred to as the principal Act).

2. Interpretation—Section two of the principal Act is hereby amended by inserting in their appropriate alphabetical order the following definitions:

“‘**Convener of Investigation Committees**’ or ‘**Convener**’ means the person who is for the time being Convener of Investigation Committees in accordance with subsection one of section forty-three A of this Act: 5

“‘**Investigation Committee**’ means an Investigation Committee set up under section forty-three C of this Act:

“‘**Investigation Committee member**’ means a person who is for the time being an Investigation Committee member in accordance with section forty-three A of this Act: 10

3. Subcommittees of Council—Section eight of the principal Act is hereby amended by omitting from the proviso the words “inquire into”, and substituting the word “hear”. 15

4. Chairman of Committees to have casting vote—The principal Act is hereby amended by inserting, after section thirty-one, the following section:

“31A. The Chairman of the Disciplinary Committee, and of every Divisional Disciplinary Committee, shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.” 20

5. Functions of Disciplinary Committee—Section thirty-two of the principal Act is hereby amended by omitting from the proviso to subsection one the words “to the Medical Council”, and substituting the words “for investigation by an Investigation Committee”. 25

6. New sections inserted—(1) The principal Act is hereby amended by inserting, after section forty-three, the following heading and sections: 30

“Complaints of Grave Impropriety or Infamous Conduct

“43A. **Appointment of Investigation Committee members**—
(1) Four registered medical practitioners shall from time to time, on the recommendation of the Medical Council, be appointed in accordance with this section to be Investigation Committee members, and one of those members shall be so appointed as Convener of Investigation Committees. 35

“(2) The Investigation Committee members shall be appointed by the Governor-General, and shall hold office for a period of three years, save that any member may from time to time be reappointed, or may be at any time removed
5 from office by the Governor-General for such cause as he thinks sufficient, or may at any time resign his office by writing addressed to the Secretary to the Council.

“(3) If any Investigation Committee member dies or resigns or is removed from office, the vacancy so created shall
10 be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

“(4) Notwithstanding anything to the contrary in this
15 section, every Investigation Committee member, unless he sooner dies or vacates office as aforesaid, shall continue to hold office until his successor comes into office.

“43B. **Complaints of grave impropriety or infamous conduct**—(1) Except as otherwise provided by rules made under
20 section forty-three D of this Act, or in any case where the Solicitor-General otherwise directs, every person who seeks to make a formal complaint that any person who is registered as a medical practitioner, or who is conditionally registered,
25 has been guilty of grave impropriety or infamous conduct in a professional respect, or has conducted himself in such a manner as to render the exercise of the powers of the Medical Council expedient in the interests of the public, shall make the complaint to a Crown Solicitor in the Supreme Court district in which the incident involved in the complaint arose:

30 “Provided that, if for the time being there is no available Crown Solicitor in the district, the complaint may be made to the Solicitor-General who shall refer it to such Crown Solicitor as he thinks fit.

“(2) Every such complaint (other than a complaint made
35 by a Court) shall be in writing and shall, if the Crown Solicitor to whom it is made or referred so requires, be supported by such statutory declarations as that Crown Solicitor may require.

“(3) Where any Crown Solicitor has received any written
40 complaint under this section and such statutory declarations as he may require under subsection two of this section, he

shall make such preliminary investigations as may be necessary to satisfy himself that the complaint is of such a nature and is supported by such evidence as to warrant investigation by an Investigation Committee, and upon being so satisfied he shall notify the Convener of Investigation Committees of the complaint. 5

“43c. **Investigation Committees**—(1) Upon being notified by a Crown Solicitor of any such complaint, the Convener of Investigation Committees shall, in accordance with this section, set up an Investigation Committee; and that Committee shall investigate the complaint and report its findings to the Solicitor-General. 10

“(2) The Investigation Committee to investigate and report on any complaint shall consist of—

“(a) The Chairman of the Committee, who shall be the Crown Solicitor who advised the Convener of the complaint, or such other Crown Solicitor as the Solicitor-General may at any time appoint to be Chairman of the Committee: 15

“(b) Two other members (being persons who at the time of their appointments are Investigation Committee members) appointed for the purposes of the investigation by the Convener: 20

“Provided that, if any such member dies or is for any reason unable or unwilling to act as a member, another person qualified for appointment may be so appointed in his place. 25

“(3) Before an Investigation Committee reports its findings in respect of a complaint to the Solicitor-General or makes any final decision in respect of its findings,— 30

“(a) The Chairman of the Committee shall post or deliver to the person concerned—

“(i) Copies of the written complaint (if any) and of all statutory declarations that have been made in support of the complaint; and 35

“(ii) A notice setting out any further particulars that may be necessary to disclose the substance of the complaint, and inviting the person concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to 40

the Chairman of the Committee any written explanation he may wish to offer and to advise the said Chairman if he wishes to be heard by the Committee:

- 5 “(b) The Investigation Committee shall allow the time specified in the notice to elapse, and shall give the person concerned reasonable opportunity to be heard if he wishes to do so, and shall give due consideration to any explanation he may make.
- 10 “(4) The report to the Solicitor-General of the findings of the Investigation Committee shall be made by the Chairman of the Committee, and shall set out—
- “ (a) The facts as ascertained by a majority of the members of the Committee; and
- 15 “(b) An outline of the reasons for any member of the Committee not being in accord with the majority.
- “ (5) The report shall be accompanied by copies of all statutory declarations and statements relating to the complaint that have been received by the Investigation Committee.
- 20 “(6) Where the report shows that the majority of the members of the Investigation Committee recommend the taking of any further action in respect of the complaint, it shall be the duty of the Solicitor-General to take that action or arrange for it to be taken.
- 25 “**43D. Procedure of Investigation Committees**—(1) Subject to the provisions of this Act, the Council may from time to time make rules for regulating the procedure of Investigation Committees, and prescribing classes of cases which need not be referred to any such Committee before they are considered
- 30 by the Council.
- “ (2) Subject to the provisions of this Act, in the absence of any such rules, or so far as the rules do not extend, every Investigation Committee may regulate its procedure as it thinks fit.
- 35 “**43E. Remuneration of members of Investigation Committees and expenses of witnesses**—(1) There shall be paid out of money appropriated by Parliament for the purpose,—
- “ (a) To any Crown Solicitor who is not a member of the Public Service, his reasonable costs for investigating any complaint that is made or referred to him
- 40 under this Act and for acting as Chairman of an Investigation Committee:

“(b) To the other members of every Investigation Committee, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly: 5

“(c) To every witness giving evidence or intending to give evidence at the hearing of any inquiry by any Investigation Committee, such sum as he may be allowed under subsection one of section fifty of this Act.” 10

(2) Section fifty of the principal Act is hereby amended—

(a) By inserting in subsection one, after the words “Medical Council or”, the words “Investigation Committee or”: 15

(b) By inserting in subsection two, after the words “witnesses’ expenses”, the words “except expenses of a witness giving evidence or intending to give evidence before an Investigation Committee”.

7. Disciplinary powers of Council—(1) The principal Act is hereby amended by repealing section forty-four, and substituting the following section: 20

“44. (1) If any person who is registered as a medical practitioner, or who is conditionally registered,—

“(a) Is convicted by any Court in New Zealand of any offence for which the maximum punishment is not less than two years’ imprisonment; or 25

“(b) After due inquiry, made on the application or with the consent of the Solicitor-General, is judged by the Council to have been guilty of grave impropriety or infamous conduct in a professional respect, or to have conducted himself in such a manner as to render the exercise of the powers of the Council expedient in the interests of the public— 30

“the Council may, if it thinks fit, exercise in respect of that person all or any of the disciplinary powers conferred on it by subsection two of this section. 35

“(2) The disciplinary powers which the Council may so exercise in respect of any such person, if it thinks fit, shall be as follows: 40

“(a) The Council may, by writing under the hand of the Chairman, impose a penalty upon the person not exceeding one hundred pounds:

“Provided that no such penalty may be imposed under this paragraph in any case where the Council is proceeding under paragraph (a) of subsection one of this section, or where the Council is inquiring into any act or omission which constitutes an offence for which the person has been convicted by any Court and which is punishable by imprisonment or fine:

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10 “(b) The Council may, by writing under the hand of the Chairman, censure the person:

“ (c) With the consent in writing of the Attorney-General and subject to subsection four of this section, the Council may, by writing under the hand of the Chairman, suspend the person from practice as a medical practitioner for a period not exceeding twelve months:

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20 “(d) With the consent in writing of the Attorney-General and subject to subsection four of this section, the Council may apply to the Supreme Court for an order for the removal of the name of that person from the register, and the Court may make such order in the matter as it thinks fit:

“ (e) The Council may, by writing under the hand of the Chairman, order that person to pay any costs and expenses of and incidental to the inquiry by the Council and any preliminary investigations made by any Crown Solicitor or Investigation Committee.

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30 “(3) In giving or withholding consent under paragraph (c) of subsection two of this section, the Attorney-General shall consider only the gravity and nature of the impropriety or conduct charged, and not the question whether the person has in fact been guilty of the impropriety or conduct.

“ (4) No person shall be suspended from practice as a medical practitioner, and the name of no person shall be removed from the register, under paragraph (a) of subsection one of this section by reason of any offence committed before the date of his registration if at that date the Council was aware of his conviction in respect of that offence.

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40 “(5) In any inquiry under paragraph (b) of subsection one of this section, any finding of fact which is shown to have been made in any proceedings under the Divorce and Matri-

monial Causes Act 1928, being proceedings in the Supreme Court of New Zealand or on appeal from a decision in any such proceedings, shall be conclusive evidence of the fact found.

“(6) If any University or institution, having granted to any person a degree or diploma or other qualification registrable under this Act, exercise any power conferred by law of striking off the name of that person and notify to the Council the fact of the striking off,— 5

“(a) The Secretary to the Council shall make a note of the fact in the register: 10

“(b) If the said University or institution notify to the Council the findings of fact on which the decision to strike off the name was based, the findings may (if the Council thinks fit) be treated, for the purposes of any inquiry under this section, as conclusive evidence of the facts found. 15

“(7) No person shall be deemed guilty of grave impropriety or of infamous conduct in a professional respect, or to have conducted himself in such a manner as to render the exercise of the powers of the Council expedient in the interests of the public, by reason only of his having adopted and practised any theory of medicine or surgery, if in so doing he has acted honestly and in good faith. 20

“(8) Every monetary penalty imposed, and all costs and expenses payable, under this section shall be recoverable as a debt due to the Crown, and shall be paid into the Public Account and form part of the Consolidated Fund. 25

“(9) While any order of suspension from practice as a medical practitioner under this section remains in force, the person shall be deemed not to be a registered medical practitioner or conditionally registered, as the case may be, but forthwith on the expiry of the order his rights and privileges as a registered medical practitioner or person conditionally registered shall be revived as from the date of the expiry. 30 35

“(10) There shall be a right of appeal to the Supreme Court in accordance with subsection three of section forty-five of this Act from an order of suspension or censure or the imposition of a penalty or of a liability to pay costs and expenses under this section. 40

“(11) An order of suspension or censure shall not take effect, and no penalty or costs or expenses shall be payable, in any case until the expiration of twenty-eight days after the notification by the Council to the person affected of the making of the order. If within the said period of twenty-eight days the person gives due notice of appeal to the Supreme Court, the order shall not take effect, and no penalty or costs or expenses shall be payable, unless and until it is confirmed by the Supreme Court or the appeal is for any reason dismissed by that Court:

“Provided that, unless the Supreme Court otherwise orders, the period of suspension specified in the order shall commence, and the penalty or costs or expenses specified in the order shall be payable, on the day when the order commences to have effect.

“(12) In any order under this section for the removal from the register of the name of any such person the Court may fix a time after which the person whose name is so removed as aforesaid may apply for re-registration under this Act. At the expiration of that time the person whose name has been so removed may apply for re-registration, and all the provisions of this Act as to registration shall so far as applicable apply to re-registration under this section.

“(13) If the Court does not fix any such time, the Council may refuse to consider any such application for such time as it thinks fit:

“Provided that any person aggrieved by the refusal of the Council to consider that application may apply to the Court for an order directing the Council to consider that application, or directing the Secretary to the Council to enter in the register the name of that person, and thereupon the Court may make such order in the matter as it thinks fit.”

(2) Section forty-six of the principal Act is hereby consequentially repealed.

8. Appeals to Supreme Court—Section forty-five of the principal Act is hereby amended by repealing subsection three, and substituting the following subsection:

“(3) Every appeal to the Supreme Court under this section, or under subsection ten of section forty-four of this Act, shall be by way of rehearing; and, unless the Court otherwise directs, on any such rehearing it shall not be permissible to

recall witnesses who gave evidence before the Council or to call other witnesses. On any appeal to which this subsection applies, the Court may make such order or recommendation as it thinks proper, having regard to the merits of the case and to the public welfare.”

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9. Legal assessors—The principal Act is hereby amended by repealing section forty-seven, and substituting the following section:

“47. The Medical Council, the Disciplinary Committee, and any Divisional Disciplinary Committee may appoint a legal assessor, who may be present at any inquiry or appeal, and may then or at any time previously or subsequently advise the Council or Committee on matters of law, procedure, and evidence relating thereto.”

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10. Investigation Committees may require evidence to be given—Section forty-eight of the principal Act is hereby amended by inserting, after the words “Medical Council” in each place where they appear, the words “any Investigation Committee”:

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11. Immunity of witnesses and counsel—Section forty-nine of the principal Act is hereby amended by inserting, after the words “Medical Council”, the words “any Investigation Committee”:

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12. Protection of Investigation Committees—Section fifty-two of the principal Act is hereby amended by inserting, after the words “Divisional Disciplinary Committee”, the words “nor Investigation Committee”:

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13. Restriction on appointments to Council and Committees—(1) The principal Act is hereby amended by inserting, after section fifty-four, the following section:

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“54A. While any person is an Investigation Committee member, or a member of the Council or of the Disciplinary Committee or of any Divisional Disciplinary Committee, that person shall not be appointed to any other such office.”

(2) Section thirty of the principal Act is hereby consequentially amended by omitting from paragraph (b) of subsection two the words “not being a member of the Medical Council”:

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