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1976, No. 10

An Act to establish a Medical and Dental Council to maintain registers of practitioners and regulate private practice

(18 November 1976)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

Price 40c

1. Short Title - This Act may be cited as the Medical and Dental Practices Act 1976.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Council" means the Medical and Dental Council of the Cook Islands established under this Act;

"Dentistry" includes all the specialities of dentistry;

"Department of Health" means the Health Division of the Ministry of Social Services Act 1973-74;

"Medicine" includes all the specialities of medicine, including surgery and obstetrics;

"Minister" means the Minister in charge of health;

"Private dental practice" means the practice of dentistry by any person other than as an officer or employee of the Department of Health;

"Private medical practice" means the practice of medicine by any person other than as an officer or employee of the Department of Health;

"Secretary for Health" means the person appointed to the office of the Director of Health Division of the Ministry of Social Services.

PART I - MEDICAL AND DENTAL COUNCIL

3. Medical and Dental Council established - (1) There shall hereby be established a Council to be known as the Medical and Dental Council of the Cook Islands.

The Council shall be a body corporate with perpetual succession and a common seal and may hold property and sue and be sued and do and suffer all acts and things bodies corporate may do and suffer.

(2) The Council shall be responsible to the Minister in charge of health.

4. Membership of the Council - (1) The Council shall consist of:

- (a) The Secretary for Health;
- (b) Three persons appointed annually by the Minister on the advice of the Cook Islands Medical and Dental Association Incorporated who shall be registered Medical and Dental Practitioners and of whom at least one shall be a registered Dental practitioner;
- (c) One person who shall be a member of the General Public appointed annually by the Minister.

(2) The Council at its first meeting and each year thereafter shall appoint from its members who are medical or dental practitioners a Chairman and a Deputy Chairman.

(3) The Chairman shall preside at all meetings of the Council at which he is present. If at any meeting of the Council the Chairman for the time being is not present the Deputy Chairman shall preside at the meeting.

(4) The Council shall appoint a Secretary to the Medical and Dental Council of the Cook Islands and such other officers, servants and agents as it thinks fit, and may pay them such remuneration as it considers appropriate.

(5) In the event of any person nominated as a member pursuant to paragraph (b) of subsection (1) hereof ceasing to reside in Rarotonga such person shall be deemed to have completed his term of office.

5. Meetings of Council - Meetings of the Council shall be held at such times and places as the Chairman may from time to time appoint but no less frequently than every six months.

(2) Every question before the Council shall be determined by a majority of votes of the members present at the meeting of the Council and voting thereon.

(3) The Chairman shall have a deliberative vote and, in the case of equality of votes, shall have also a casting vote.

(4) Except as expressly provided in this Act or in regulations made under this Act, the Council may regulate its procedures in such manner as it thinks fit.

6. Functions of Council - (1) The functions of the Council shall be to control professional and ethical standards of medical and dental practice. Particularly -

- (a) To establish and maintain registers of persons who by reason of their qualifications are entitled to practice medicine or dentistry;
- (b) To regulate private medical and dental practices;
- (c) To maintain discipline within the Medical and Dental professions;
- (d) To advise and make recommendations to the Minister in respect of any matter affecting medical or dental practices in the Cook Islands.

(2) The Council shall make such decisions, determinations, give such directions and consents and do such other acts and things as are provided for in this Act and as may be necessary for the effective administration of this Act.

7. Council documents to be authenticated - Each document executed or issued by or on behalf of the Council shall be authenticated by being signed by the Chairman and one other member of the Council.

8. Finance - (1) The Secretary to the Council shall take and receive such fees as are prescribed by this Act or any regulations made under this Act.

(2) Until the appropriate fee has been paid the Secretary to the Council may decline to do any act in respect of which that fee is payable.

(3) The Secretary to the Council shall be responsible for the records and accounts to be kept by the Council. The accounts of the Council shall be audited annually by the Audit Office of New Zealand.

PART II

REGISTRATION

9. Qualification for conditional registration - Subject to section 18 of this Act every person shall be entitled to be conditionally registered as a medical or dental practitioner under this Act who satisfies the Council that he is:

- (a) The holder of a medical or dental degree, diploma or equivalent qualification from -
- (i) Australia, Fiji, New Zealand, the Republic of Ireland or the United Kingdom; or
 - (ii) Any other country provided that the Council is satisfied that the standard of such qualification is comparable to that of the other countries listed in the preceding sub-paragraph.
- (b) Of good fame and character:

Provided that any person who is not a Cook Islander shall not be entitled as of right to registration in the Cook Islands and the Council shall have the power to refuse registration to such person if it is of the opinion that adequate numbers of practitioners are available in the Cook Islands.

10. Effect of conditional registration - Any person conditionally registered under this Act shall be deemed for all purposes to be registered as a medical or dental practitioner while he is practising medicine or dentistry as the case may be as an officer of the Department of Health but not otherwise.

11. Cancellation of conditional registration - (1) The Council may cancel the conditional registration of any person where it considers that he is not a fit person to be conditionally registered by reason of the fact that -

- (a) Since his registration he has been convicted of any offence punishable by imprisonment for a term of 2 years or more;
- (b) He is not otherwise of good fame or character;
- (c) He lacks professional competence.

(2) The Council shall cancel the conditional registration of any person upon the registration of that person as a medical or dental practitioner as hereinafter provided.

12. Qualification for registration as medical or dental practitioner - Subject to section 18 of this Act, every person shall be entitled to be registered as a medical or dental practitioner under this Act who satisfies the Council that, for not less than two years -

- (a) He has been conditionally registered as a medical or dental practitioner under this Act; and
- (b) He has practised as a medical or dental practitioner as an officer of the Department of Health to the satisfaction of the Council.

13. Temporary registration - Where any person with medical or dental qualification is visiting the Cook Islands with the concurrence of or at the request of the Department of Health the Council may on being satisfied with such qualifications issue him with a certificate of temporary registration this period to be not more than six months and to be stated on the certificate. Any certificate so issued shall specify the professional function to be undertaken during the visit.

For the purpose of this section, the Council shall be satisfied regarding qualifications if the person is:

- (a) A member of the staff of any recognised public hospital in New Zealand, any medical school, any national health institution or any international organisation;
- (b) An intern or resident medical officer of any teaching hospital.

14. Effect of temporary registration - During the period specified in any certificate or any extension thereof issued under section 13 of this Act the holder of the certificate shall be deemed for all purposes to be registered as a medical or dental practitioner while he is practising medicine or dentistry in the Department of Health in the function specified in the certificate but not otherwise.

15. Cancellation of temporary registration - The Council may cancel the temporary registration of any person where it considers that he is not a fit person to be temporarily registered or at the written request of the Secretary for Health.

16. Application for registration - (1) Every person who is entitled to be conditionally registered or registered as a medical or dental practitioner under this Act may on the payment of the fee prescribed in Part I of the Schedule to this Act make application to the Secretary to the Council to be registered accordingly and shall at the same time provide evidence of his professional qualifications and of his personal character as may be required by the Council.

(2) The Secretary for Health shall make application on behalf of persons to be temporarily registered.

(3) Applications shall be considered by the Council at the first meeting following the submission of applications or as soon hereafter as practicable and the Council shall give such directions to be the Secretary of the Council in respect thereof as it thinks fit and as are hereinafter authorised.

(4) Before giving such directions, the Council may, if it thinks fit, take all necessary steps including the examination of persons under oath and the taking of a statutory declaration in respect of an application or in the event of objection to an application.

17. Directions of the Council to be observed - (1) If the Council is of the opinion that the applicant is entitled to be registered in the manner specified in the application, it shall so direct and the Secretary shall thereupon register that person and shall notify him accordingly.

(2) If the Council is of the opinion that the applicant is not entitled to be registered in the manner specified in the application, it shall direct accordingly and the Secretary shall thereupon refuse to enter that person in that manner and shall notify him accordingly.

18. Restrictions on registration - No person shall be entitled as of right to be conditionally registered, temporarily registered, or registered as a medical or dental practitioner under this Act if he is not a fit person to be so registered by reason of the fact that -

- (a) He has been at any time convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (b) He is otherwise not of good fame or character.

19. Mode of registration - (1) Conditional registration and registration as a medical or dental practitioner shall be effected by the entry in the registers kept for the purpose by the Secretary to the Council of the following particulars:

- (a) The nature of registration:
- (b) The name of the person registered:
- (c) Particulars of the qualification by virtue whereof he is registered:
- (d) His address:
- (e) The date of registration:
- (f) Such other particulars as may be prescribed:

(2) The Secretary to the Council shall, on application in that behalf and on payment of the prescribed fee, issue to that person a certificate of registration.

20. Offences as to registration - Every person who wilfully procures or attempts to procure himself to be registered under this Act by making or producing or causing to be made or produced, any false or fraudulent representation or declaration either orally or in writing, and any person who assists or attempts to assist him wherein commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 years.

21. Registers to be open to inspection and to be published - (1) The registers kept by the Secretary under this Act shall at all reasonable times be open to inspection by the public.

(2) A copy of the registers as at 30th June each year shall be published publicly as soon as practicable after that date.

22. Council to be informed of changes - (1) Each registered medical or dental practitioner shall inform the Council of any change in address or name within six months of such change. Any person who does not report such change shall be guilty of an offence and liable on conviction to a fine not exceeding \$20.

(2) Any registered medical or dental practitioner may notify the Council of additional qualifications obtained and these shall then be entered in the register.

23. Removal of names from the registers - The Council shall remove from its registers the name of any person entered therein if:

- (a) That person dies; or
- (b) The person requests in writing removal of his name; or
- (c) The Council orders removal as the result of action taken pursuant to section 28 of this Act;
- (d) The Council is satisfied that any person by reason of unsoundness of mind is not a fit person to be registered.

24. Offence to practise without registration - Except in the cases of dressers, orderlies, nurses, hygienists, medical assistants and other persons employed in the Department of Health and authorised to do so by the Secretary of Health, every person commits an offence and shall be liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding \$200 or both who -

- (a) Practises medicine at any time when he is not registered as a medical practitioner pursuant to this Part of this Act; or
- (b) Practises dentistry at any time when he is not registered as a dental practitioner pursuant to this Part of this Act.

25. General appeal - Any person aggrieved by any decision or determination of the Council under this Part of this Act may appeal to the High Court, such appeal to be lodged not later than 28 days after notice of the decision or determination from the Council. On the hearing of any appeal the High Court may affirm, vary or annul any decision or determination of the Council and give such directions to the Council to carry out the decision of the High Court as the Court thinks fit.

PART III - PRIVATE PRACTICE

26. Private medical and dental practices to be licensed
 - (1) Any registered medical or dental practitioner intending to establish a private medical or dental practice shall apply to the Council for a licence to operate that practice. Such application shall include a statement of the type of practice to be undertaken details of the location of premises, nature of equipment provided, the method of maintaining patient records and any other matter it may require from time to time to satisfy itself that the interests of patients are safeguarded.

(2) On being satisfied in these matters the Council shall approve the application with any conditions necessary and on payment of the fee prescribed in Part II of the Schedule to this Act by the practitioner the Council shall issue a licence accordingly.

(3) Should the Council fail to be satisfied in these matters the Council may reject the application and so inform the applicant together with the reasons for the rejection.

(4) The licence to undertake private medical or dental practice shall be valid for 1 year from the date of issue. The Council shall renew the licence each year on application and payment of the fee prescribed in Part II of the Schedule to this Act by the practitioner provided the Council is satisfied that any conditions of the licence have been met and may when renewing such a licence add to or vary the conditions of such licence.

(5) Any person who undertakes provides or carries out private medical or dental practice without a licence from the Council pursuant to this section or not in accordance with the conditions of such a licence commits an offence and shall be liable on conviction to a fine not exceeding \$1,000 plus \$10 for each day that the offence continues.

PART IV - DISCIPLINE

27. Ethical standards to be observed - Registered medical and dental practitioners shall not abuse the privileges granted to them by the public and they shall conduct themselves in accordance with currently accepted ethical standards of professional behaviour.

28. Disciplinary powers - (1) Where the Council has any reason to believe that a person whose name is entered in its registers may have been guilty of professional misconduct or infamous conduct it shall investigate the information and shall decide whether or not the conduct, if proved, would

constitute professional misconduct or infamous conduct. In the event of any such investigation, the person against whom the charge is made shall be informed of the charge and shall be entitled to be heard by the Council.

(2) Where the Council is of the opinion that the conduct if proved would not constitute professional misconduct or infamous conduct or was of such a minor character that it would be inappropriate to exercise the powers conferred on it by subsection (5) of this section it shall so record the opinion and inform both the complainant and the person complained against.

(3) In all cases other than that in subsection (2) of this section the Council shall hold a formal inquiry to ascertain the facts and to decide whether or not there has been professional misconduct or infamous conduct. Any such enquiry shall be held in private. The complainant, if any, and the person against whom the charge of professional misconduct or infamous conduct as the case may be made, and counsel representing any party shall be entitled to be present throughout the enquiry and to adduce evidence, including examining and cross-examining witnesses and to address the Council with regard thereto.

(4) Where as the result of a formal inquiry under subsection (3) of this section the Council decides that the person against whom the charge has been made has not been guilty of professional misconduct or infamous conduct it shall so inform that person and any complainant.

(5) Where as the result of a formal inquiry held under subsection (3) of this section the Council decides on reasonable grounds that the person against whom the charge was made has been guilty of professional misconduct or infamous conduct it may—

- (a) reprimand him; and/or
- (b) order him to pay a penalty not exceeding \$1,000; and/or
- (c) remove his name from the register for such duration as the Council considers appropriate.

(6) Where the name of any person is removed from the register of the Council pursuant to subsection (5) of this section that person's name shall not be entered again in the register within a period of less than 6 months.

(7) Any person against whom an order has been made pursuant to any part of subsection (5) of this section may appeal to the High Court against the order. Such appeal shall be lodged within 28 days of notification of the order of the Council. On the hearing of the appeal the High Court may affirm, vary or annul the order of the Council. The decision of the High Court on the appeal shall be final and, for the purposes of this Act, other than this subsection, any order by the High Court shall be deemed to be an order of the Council.

(8) Where any person whose name appears in the registers of the Council is convicted of an offence punishable by imprisonment for a term of 2 years or more, the Registrar of the Court shall notify the Council. Such conviction shall be accepted as proof of infamous conduct by the Council.

29. Transitional provision - (1) Notwithstanding any other provision of this Act any medical or dental practitioner in active practice in the Cook Islands or employed in the Department of Health at the commencement of this Act shall be entitled to be registered as a medical or dental practitioner as the case may be provided he makes application for the same within 3 months from the commencement of this Act.

(2) Notwithstanding any other provision of this Act any person in active private medical or dental practice at the commencement of this Act shall be entitled to be licensed to undertake private medical or dental practice as the case may be provided he makes application for the same within 3 months from the commencement of this Act.

(3) Notwithstanding any other provision of this Act until such time as the Council is established in accordance with section 4 of this Act the function of the Council shall be performed by the Secretary for Health.

30. Regulations - The High Commissioner may from time to time, by Order in Executive Council, make all such regulations as may, in his opinion, be deemed necessary or expedient from giving full effect to the provisions of this Act and for the due administration hereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within 20 days after the date of the making thereof if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within 28 days after the date of the commencement of the next ensuing session.

31. Repeals - (1) Section 23 of the Cook Islands Amendment Act 1957 is hereby repealed.

(2) Sections 5 and 6 of the Dental Act 1970-71 are hereby repealed.

SCHEDULE

FEES PAYABLE BY PRACTITIONERS

Part I	Application for conditional registration	\$5.00
	Application for registration	\$5.00
Part II	Application for licence for private practice	\$15.00
	Application for renewal of licence for private practice	\$10.00

This Act is administered in the Department of Health.