

1973

c 129 The Medical Amendment Act, 1973

Ontario

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Bibliographic Citation

The Medical Amendment Act, 1973, SO 1973, c 129

Repository Citation

Ontario (1973) "c 129 The Medical Amendment Act, 1973," *Ontario: Annual Statutes*: Vol. 1973, Article 131.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1973/iss1/131

CHAPTER 129

An Act to amend The Medical Act

*Assented to November 29th, 1973
Session Prorogued March 5th, 1974*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.—(1) Subsection 1 of section 3 of *The Medical Act*, being ^{s. 3 (1),} chapter 268 of the Revised Statutes of Ontario, 1970, ^{amended} is amended by adding thereto the following paragraph:
 4. Three persons who are not members of the College or trained in the practice of medicine or registered under any Act governing a health discipline to be appointed by the Lieutenant Governor in Council.
- (2) Subsection 3 of the said section 3 is repealed and the ^{s. 3 (3),} following substituted therefor: ^{re-enacted}
 - (3) Every member of the Council chosen under paragraph 2 of subsection 1 need not be a legally qualified medical ^{Members} practitioner resident in Ontario. ^{representing} ^{universities,} ^{etc., need} ^{not be} ^{practitioners}
2. Subsection 1 of section 4 of the said Act is amended by ^{s. 4 (1),} inserting after "Health" in the second line "and the members ^{amended} of the Council appointed by the Lieutenant Governor in Council".
3. The said Act is amended by adding thereto the following ^{s. 12a,} section: ^{enacted}
 - 12a.—(1) The Council shall establish and appoint a fitness ^{Establish-} to practise committee and may establish such other com- ^{ment of} mittees as the Council from time to time considers necessary. ^{fitness to} ^{practise and} ^{other} ^{committees}
 - (2) The Council may give the Medical Review Committee ^{Medical} established under *The Health Insurance Act, 1972* such ^{Review} other duties as the Council considers appropriate and that ^{Committee} are not inconsistent with its duties under that Act. ^{1972, c. 91}
4. The said Act is further amended by adding thereto the ^{s. 21a,} following section: ^{enacted}

Compilation
of statistical
information

21a. The Council may by by-law,

- (a) provide for the collection and compilation of statistics as to the supply, distribution and professional activities of members of the College in Ontario; and
- (b) require the members of the College to provide the information necessary to compile the statistics mentioned in clause a.

ss. 35, 36,
re-enacted

5. Sections 35 and 36 of the said Act are repealed and the following substituted therefor:

Discipline
committee

35.—(1) The Council shall establish and appoint a discipline committee.

Composition
of
committee

(2) The discipline committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

Chairman

(3) The Council shall appoint one of the members of the discipline committee to be chairman.

Composition
of panels

(4) The chairman of the discipline committee may assign a panel of five members of the committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum
and votes

(5) Three members, one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum of a panel assigned under subsection 4 for a hearing and all disciplinary decisions require the vote of a majority of members presiding at the hearing.

Interpre-
tation

36.—(1) In this section,

- (a) "board of inquiry" means a board of inquiry appointed by the executive committee under subsection 2;
- (b) "incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he no longer be permitted to practise or that his practice be restricted.

Reference
to board
of inquiry

(2) Where the registrar receives information leading him to believe that a member may be an incapacitated member, he shall make such inquiry as he considers appropriate

and report to the executive committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed by the Lieutenant Governor in Council who shall inquire into the matter.

(3) The board of inquiry may require the member to submit to physical or mental examination by the board or by such qualified person as the board designates and if the member refuses or fails to submit to such examination the board may order that his registration be suspended until he complies. Examination

(4) The board of inquiry shall report its findings to the executive committee and deliver a copy thereof and a copy of any medical report obtained under subsection 3 to the member about whom the report is made and if, in the opinion of the executive committee, the evidence so warrants, the executive committee shall refer the matter to the fitness to practise committee to hold a hearing and may suspend the member's registration under this Act until the determination of the question of his capacity becomes final. Hearing by
fitness to
practise
committee

(5) The College, the person whose capacity is being investigated and any other person specified by the fitness to practise committee are parties to the hearing. Parties

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by him and served upon the other parties to the proceedings. Medical
evidence

(a) where the evidence is required by the College, at least five days before the hearing commences; and

(b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

Powers of
fitness to
practise
committee

(7) The fitness to practise committee shall, after the hearing,

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order direct the registrar to,
 - (i) erase the name of the member,
 - (ii) suspend his registration for such period as the committee considers appropriate, or
 - (iii) transfer the member's registration to the Special Register with such restrictions and conditions as the committee may designate, and direct that the member discontinue the use of any specialty designation.

Procedures

(8) The provisions of sections 38, 39 and 43 applying to proceedings of the discipline committee on hearings and appeals therefrom apply *mutatis mutandis* to proceedings of the fitness to practise committee under this section except that, the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

s. 37,
amended

6. Section 37 of the said Act is amended by adding thereto the following subsection:

In camera
1971, c. 47

(4) Notwithstanding anything in *The Statutory Powers Procedure Act, 1971*, hearings of the discipline committee shall be held *in camera*, but, if the person whose conduct is being investigated requests otherwise by a notice delivered to the registrar before the day fixed for the hearing, the committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

ss. 37a, 37b,
enacted

7. The said Act is further amended by adding thereto the following sections:

Investigation
of members

37a.—(1) Where the registrar believes on reasonable and probable grounds that a member has committed an act

of professional misconduct or incompetence, the registrar may, with the approval of the executive committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of his investigation to the registrar.

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commissioner under Part II of *The Public Inquiries Act, 1971*,^{1971, c. 49} which Part applies to such inquiry as if it were an inquiry under that Act.

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

(4) Where a provincial judge is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the provincial judge may, whether or not an inspection has been made or attempted under subsection 2, issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the provincial judge, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection 2 or 4 relating to the member whose practice is being investigated and to the subject-matter of the investigation

for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Admissi-
bility of
copies

(6) Any copy made as provided in subsection 5 and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Report of
registrar

(7) The registrar shall report the results of the investigation to the Council or the executive committee or to such other committee as he considers appropriate.

Matters
confidential

37b.—(1) Every person employed in the administration of this Act, including any person making an inquiry or investigation under section 37a and any member of the Council or a committee, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 37a and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations and by-laws or any proceedings under this Act;

1972, c. 91

(b) as may be required for the enforcement of *The Health Insurance Act, 1972*;

(c) to his counsel; or

(d) with the consent of the person to whom the information relates.

Testimony
in civil suit

(2) No person to whom subsection 1 applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Act.

Commence-
ment

8. This Act comes into force on a day to be named by the Lieutenant Governor by his proclamation.

Short title

9. This Act may be cited as *The Medical Amendment Act, 1973*.