

Legislative Council.

39^o VICTORIE, 1876.

A BILL

**For the amendment of the Laws respecting the Medical Profession
and for the establishment of a Medical Council.**

[SIR ALFRED STEPHEN ;—16 *February*, 1876.]

WHEREAS by the Act passed by the Imperial Parliament in the Preamble.
twenty-second year of Her Majesty for regulating the qualifi-
cations of Practitioners in Medicine and Surgery in the United 21 and 22 Vic. c. 90.
Kingdom a general Council of medical education and registration was
5 established and sundry provisions were enacted for preventing persons
other than such as should be registered under that statute from Ibid. Sections 32 36
recovering any charge for medical or surgical advice attendance or and 40.
medicine and from falsely using any medical or surgical name or title
as also from holding certain public appointments but persons so
10 registered were authorized to practise medicine or surgery in any part
of Her Majesty's dominions And whereas by the Imperial Act 31 Vic. c. 29.
passed in the thirty-first year of Her Majesty it was enacted that every
Colonial Legislature should have power to make laws for enforcing the
registration within its jurisdiction of all persons so registered who were
15 nevertheless to be entitled to Colonial registration on payment only of

- the fees which should be demandable in that behalf And whereas it is expedient to enable persons requiring medical or surgical advice or aid to distinguish qualified from unqualified practitioners and for that purpose as well as to protect educated and qualified persons in the practice of medicine and surgery that the law of this Colony should 5 in those respects be assimilated as far as reasonably may be to that of the United Kingdom Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:— 10
- Establishment and duties of Medical Council.**
1. A Council to be styled the Medical Council of New South Wales shall be established consisting of thirteen practitioners as hereinafter defined and who are or shall be registered under the Act of the second year of Her Majesty number twenty-two or under this Act or entitled to be so registered of whom *five* shall be appointed by the 15 Governor and *two* by the Senate of the University of Sydney and *six* members (subject to the provision in the next section) shall be elected from among the medical practitioners of the Colony being registered or entitled as aforesaid in the manner hereinafter provided which Council shall have the powers hereinafter in that behalf specified and shall 20 cause all persons to be registered as legally qualified medical practitioners who shall as hereinafter mentioned shew to the satisfaction of the Council that they are entitled to such registration.
- As to members of the present Medical Board.**
2. The existing eight members of the Medical Board appointed in pursuance of the aforesaid Act of the second year of Her Majesty 25 shall be members of the first Medical Council and until that number shall by death or resignation have been reduced to seven *three* practitioners only shall be elected Provided that on each successive reduction of the number by death or resignation one more member shall be elected until no more than five of the said eight members 30 remain after which but not till then the number of elected members shall be six and of members appointed by the Governor shall be five as provided by the said first section.
- Privileges of registered practitioners.**
3. Every person registered as aforesaid shall be entitled according to his qualification or qualifications to practise medicine or 35 surgery (or medicine and surgery as the case may be) and to recover in any Court reasonable charges for professional aid advice and visits and the cost of any medicine or medical or surgical appliances all of which matters may be described in the plaint or other legal pleading by the term medical services and after the present year no person 40 shall be entitled to recover any charge for medical or surgical advice attendance or for the performance of any operation or for medicine which he shall have both prescribed and supplied unless he shall have been so registered.
- Engl. Act, ss. 31 and 32.**
4. After the present year the words "legally qualified medical 45 practitioner" or "duly qualified medical practitioner" or any words importing a person recognized by law as a medical practitioner when used in any Act shall be construed to mean a person registered as aforesaid and whose name remains on the register And every person so registered shall be exempt if he so desire from serving on juries 50 and inquests and from filling any corporate office and from serving in the militia should a militia be established.
- Term legally qualified medical practitioner, &c.**
- Ibid: ss. 34 and 35.**
5. After the present year no person shall hold any appointment as a physician surgeon or medical officer in the Military or Naval Service or in any emigrant or other vessel or in any Hospital Infirmary 55 Dispensary or Lying-in Hospital not supported by voluntary contributions or in any public Lunatic Asylum Gaol Penitentiary House of Correction or Industry or other Public Establishment Institution or as a medical officer of health unless so registered And no certificate which
- Unregistered persons not to hold certain appointments.**
- Ibid: ss. 36 and 37.**

which by any Act now in force or hereafter passed is or may be required from a medical practitioner shall be valid unless the person signing the same be so registered or be a Medical Commissioned Officer in Her Majesty's service.

5 6. If any person shall wilfully and falsely pretend to be or shall take or use the name or title of a physician doctor of medicine licentiate in medicine and surgery bachelor of medicine surgeon general practitioner or apothecary or any name title addition designation or description implying that he is registered as such or is
10 recognized by law as a physician surgeon licentiate in medicine and surgery practitioner in medicine or apothecary he shall upon conviction for any such offence pay a sum not exceeding *twenty* pounds.

Falsely assuming medical designations &c.

Ibid: s. 40.

15 7. Every person whose name and qualification or qualifications shall at the time of the passing of this Act appear on the Register of the Medical Board shall be deemed to be registered under this Act and every person holding a qualification from any of the qualifying bodies enumerated in the second Schedule to this Act or being otherwise qualified as therein mentioned or being registered or entitled to registration as mentioned in that Schedule or being a licentiate in medicine
20 or surgery under the next following section shall on application to the Council and proof of his qualification or title and on payment of the fees or fee due in that behalf be entitled to be so registered.

Persons registered or entitled to registration.

25 8. In addition to the practitioners so registered or entitled as aforesaid the Council may grant licenses to persons to practise medicine or surgery or both whom after due examination as to their knowledge and capacity the Council shall find to be qualified so to practise Provided that every such person shall have passed through a course of medical study of not less than four years duration and have attended hospital practice for not less than three years of that time or shall
30 before the passing of this Act have habitually practised medicine or surgery or both as the case may be in this Colony for a period of not less than seven years Every person so licensed shall pay for such examination and for his license respectively such reasonable fees as the Governor shall from time to time direct and shall thereafter on applica-
35 tion and payment as aforesaid be entitled to registration under this Act.

Certain persons may be licensed by the Council.

40 9. No person shall be disqualified or deemed ineligible for registration or for a license as a medical practitioner or for appointment or election to the Council or to any office by reason of his adopting or having adopted any particular theory of medicine or surgery or system of medical or surgical treatment.

Persons adopting particular medical theories.

10. The Council shall from time to time cause the names addresses and qualifications of all persons entitled as in this Act mentioned to be entered in the Medical Register a copy of which shall in the month of January in each year be published by the Council
45 in the *Gazette* including all names registered up to the end of the previous December but notifying any change since the last publication in the address of any practitioner or which may have occurred by any intervening death or removal And a copy of any such published register signed by the President shall be *prima facie* evidence for all
50 purposes that the persons therein described and no others were registered up to the time specified in such publication.

Entries in and publication of Register.

11. In all prosecutions under the sixth section of this Act proof that the defendant's name or the title addition designation or description taken or used by him was not registered at the time of the alleged
55 offence shall be *prima facie* evidence that he was not then entitled to registration or not so entitled in respect of the title addition designation or description in question and it shall then lie on the defendant to show that he was so entitled.

Proof of non-qualification.

Application of
moneys and recovery
of fines.

12. All moneys received by the Council under this Act arising from fees paid on registration or otherwise shall be paid into a fund to the credit of the Council. And all fines incurred under this Act may be recovered in a summary way before any two Justices according to the provisions of the Act fourteenth Victoria number forty-three and the Act therein adopted or any other law hereafter passed for regulating summary proceedings before Justices. 5

Appeal allowed.

13. Provided that in every case where the fine shall exceed forty shillings the defendant shall be entitled to appeal from the conviction in the manner provided by the Act of the fifth year of King William the Fourth number twenty-two passed to regulate summary proceedings before Justices. And provided also that no person shall be liable to any fee or fine under this Act unless proceedings in respect thereof be commenced within six months after such fee or the liability to such fine has accrued. 15

Limitation of
prosecutions.

Removal of names
from register.

14. The Council may refuse to register any person whose name shall have been removed from the register or list of members of any recognized licensing body and if the Council shall at any time ascertain that the name of a practitioner has in consequence of misconduct been erased from the list of members of any such body from which he obtained his qualification the Council may remove such practitioner's name from the register either permanently or for a limited time only. And the like where any practitioner shall have been convicted of any felony or serious misdemeanor or shall after due inquiry and opportunity afforded him of defence be adjudged by the Council to have been guilty of disgraceful conduct in any professional respect or or to be an habitual drunkard or while intoxicated to have attended professionally any sick person. 25

Fees on registration.

15. The fee for registration under this Act shall be and a fee of shall be paid for any qualification subsequently registered. 30

Council to inquire
into qualification.

16. The Council may question any applicant attending and any witness produced by him and may take a solemn declaration from any applicant or witness touching the qualification of such applicant and if any person shall wilfully make any false statement upon his examination or in such declaration or shall utter or put off as true before the Council any forged document or shall procure or attempt to procure himself to be registered by making or producing or causing to be made or produced any false representation or declaration either verbally or in writing the person so offending and every person assisting him therein shall be deemed guilty of a misdemeanor. 40

Penalty for false
statement &c.

Forging certificate.

17. If any person shall fraudulently or by any false representation obtain a certificate or cause himself to be registered as a practitioner under this Act or shall forge any such certificate or fraudulently alter any certificate issued by the Council or shall utter or use any such forged or altered certificate knowing the same to have been forged or altered or shall falsely advertise himself or cause himself to be advertised as having obtained a certificate from or been registered by the Council as a practitioner he shall be deemed guilty of a misdemeanor. 50

Preliminary steps
for election of
Members.

18. The names of the members of the Medical Board now existing and the names of the persons appointed by the Senate to be members of the Council shall with all convenient speed after the publication of this Act be published in the *Gazette* and immediately after such publication the Medical Board shall cause a notice to be published in the *Gazette* and in such public newspapers as they may determine that the election of the remaining members will be held at a place and time mentioned such time being not less than sixty days from the first publication of such notice. 19. 60

19. Every person desirous of becoming a candidate shall be nominated by two practitioners which nomination shall be signed by them as well as the candidate and be sent or delivered to the President at least thirty days before the time fixed for election and upon the receipt of such names the President shall cause a list thereof and of the persons nominating each candidate to be published in such public newspapers as the Board shall determine.

Mode of nomination.

20. If no more persons be nominated than the number of practitioners to be elected they shall be declared duly elected members of the Council and their names be forwarded to the Colonial Secretary for publication in the *Gazette*. But if more than such number be nominated the President shall cause their names to be printed on papers hereinafter called voting-papers and shall cause one of such papers signed by him on the back thereof as soon as practicable to be delivered or posted to every practitioner resident in the Colony whose address may be known.

Contested or uncontested elections.

21. Every practitioner desirous of voting shall erase from his voting-paper the names of the persons for whom he does not vote and shall legibly sign such voting-paper in the presence of a Magistrate or Commissioner for taking affidavits and shall two days at the least before the day of election forward such voting-paper to the President with the words "Election of Medical Council" written on the envelope.

Voting-papers to be signed.

22. On the day appointed for the first election a special meeting of the Medical Board shall be held at which two scrutineers not being candidates shall be appointed and the papers shall be opened in the presence of the President and scrutineers who shall count the votes for each candidate and shall then declare the persons who have obtained the greatest number of votes to be duly elected members of the Council and the President shall as soon afterwards as may be practicable cause their names to be published in the *Gazette* and in such newspapers as the Board shall determine.

Proceedings at elections.

23. In the event of two or more candidates being found to have obtained an equal number of votes the President shall have a casting vote and shall state which of such candidates are or is elected.

Casting vote.

24. All duties which by the preceding sections are imposed on the Medical Board or its President in regard to the first election of members of the Council shall in regard to all future elections be discharged by the Medical Council at the time in existence and by the President thereof respectively.

Conduct of future elections.

25. All appointed members of the Council including the members now remaining on the Medical Board shall hold office for such time as the Governor shall declare (or in respect of members appointed by the Senate as the Senate shall declare) not exceeding four years but may be reappointed and all elected members shall hold office for four years but every retiring member may be re-elected and any member of the Council may at any time resign his office by letter addressed to the President.

Duration of office.

26. If at the time fixed for any election there be no candidate named or a less number of candidates be nominated than there are members to be elected the Governor may appoint any practitioner or practitioners to supply the vacancy or vacancies who shall hold office for such time as the Governor shall determine.

Deficiency of candidates.

27. As soon as may be reasonably practicable after the expiration of the term of office or the death or resignation of any appointed member of the Council a new appointment shall be made by the Governor or the Senate as the case may require and shall be published in the *Gazette*. And sixty days at the least before the expiration of the term of office of any of the elected councillors the Council and the President thereof shall take respectively all such steps

As to future appointments and elections.

steps and such things shall be done thereafter in relation to the election of practitioners in the place of the retiring councillors as this Act directs to be taken and done in respect of the first election of the Council or as shall be requisite having regard to the number of persons to be elected. 5

Commencement of term of office of elected members.

28. The term of office of each elected member shall be taken to have commenced with respect to the first elected members on the first day of meeting of the Council and with respect to all members thereafter elected to have commenced on the anniversary of that day. And every election after the first shall take place on such anniversary or on the earliest practicable day thereafter to be fixed in each case by the Council. On the occurrence of any extraordinary vacancy in the office of an elected councillor the Council shall appoint a practitioner to fill such vacancy who shall hold office until the expiration of his predecessor's term of office. All such appointments shall be notified in the *Gazette*. 10 15

Extraordinary vacancies.

Appointment of President.

29. The Council shall hold their first meeting at such time and place as the Governor may appoint by notification in the *Gazette* at which meeting the first business transacted shall be the election by the members present of one of the Council as President thereof. Upon any vacancy in that office a special meeting of the Council shall be called by the Registrar at which or at some adjournment thereof a President shall be elected from among themselves by the members present. Every President shall hold office so long as he shall remain a councillor. 20 25

Council may make by-laws.

30. The Council may make by-laws for regulating their proceedings and the duties of their officers and servants and preserving order at Council meetings and also as to the time and place of the meetings of the Council and the mode of summoning the members and as to all other matters for carrying this Act into effect not herein provided for. 30

By-laws to be approved by Governor.

31. All such by-laws being consistent with the provisions of this Act and not repugnant to any other Act shall come into operation when confirmed by the Governor and published in the *Gazette* but not sooner. And the production of a *Gazette* containing the names of any members therein mentioned to have been appointed by the Government or Senate or elected as the case may be or purporting to contain any such by-law as aforesaid shall in any suit or proceeding be sufficient evidence that such persons were nominated or elected respectively and that such by-laws were duly made confirmed and published as herein required. 35 40

Summoning meetings and proceedings thereat.

32. In the absence of any by-law as to summoning meetings of the Council the President may summon a meeting at such time and place as to him shall seem expedient by letter addressed to each member and at every meeting in the absence of the President some member chosen from those present shall act as President. All acts of the Council at any meeting thereof shall be decided by the votes of the majority of members present—the whole number present (the President included) not being less than seven. And at every meeting the President or in his absence the member so chosen shall in addition to his vote as a member have a casting vote in case of an equality of votes. 45 50

Registrar to be appointed.

33. The Council may appoint a Registrar who shall also act as Secretary to the Council and shall be paid such salary as the Council may determine. It shall be his duty to keep a book called the Medical Register in which he shall enter the names addresses and qualifications of all practitioners directed by the Council to be registered and he shall from time to time as directed by the Council erase from such Register the names of all practitioners who shall have died or become disqualified. He shall also keep minutes of the proceedings of the Council and such books of account as may be required. 55 60

34. The Registrar General in Sydney and elsewhere every deputy registrar of births deaths and marriages on entering the death of any medical practitioner or person styled or reputed to be such a practitioner shall forthwith transmit notice of such death to the Registrar of the Council. Registrar General &c. to give notice of deaths.
35. The Acts specified in the first schedule hereto shall except as to all proceedings for the first election of members to the Medical Council be repealed. Provided that nothing in this Act except in regard to practitioners whose names may have been removed from the register under the provisions herein contained shall affect anything lawfully done or any right or privilege acquired under the said Act or any of them. Repeal of existing Acts.
36. The following terms in italics shall unless inconsistent with the context have the meanings hereby assigned to them— Definitions of terms.
- 15 *The Governor*—The Governor with the advice of the Executive Council.
- Council* or *Medical Council*—The Medical Council appointed under this Act.
- 20 *Medical Board*—The Board appointed under the Act second Victoria number twenty-two.
- Practitioner* or *Medical Practitioner*—Any medical practitioner registered as such under this or the last-mentioned Act.
- Register*—The Medical Register of New South Wales.
- 25 *President*—The President of the Medical Council—but until its first meeting the President of the Medical Board.
- Registrar*—The Registrar and Secretary appointed by the Council.
- University* or *College*—These shall severally be taken to include every recognized Associated Body granting medical qualifications.
- 30 37. Whenever anything is by this Act directed to be done or to take place on a certain day which shall happen to be Sunday Christmas Day or Good Friday or a public holiday such thing may take place or be performed on the next day which shall not be Sunday Christmas Day Good Friday or a public holiday and all changes of 35 time rendered necessary by any such alteration may lawfully be made. Matters falling on Sunday &c.

SCHEDULES.

SCHEDULE I.

No. of Act.	Title or object of Act.	
2 Vict. No. 22 ...	An Act to define the Qualifications of Medical Witnesses at Coroners' Inquests, &c.	5
8 Vict. No. 8... 9 Vict. No. 12	} Acts amending the said Act.	
19 Vict. No. 17 ...		An Act to provide for the Registration of Legally Qualified Medical Practitioners.

SCHEDULE II.

10

(a.) Fellow Member Licentiate or extra Licentiate of the Royal College of Physicians London or Edinburgh of the King's and Queen's College of Physicians of Ireland the Royal College of Surgeons of England in Ireland or of Edinburgh the Faculty of Physicians and Surgeons of Glasgow the Society of Apothecaries London or the Apothecaries Hall Dublin. 15

(b.) Doctor Bachelor or Licentiate of Medicine or Licentiate or Master in Surgery of some University or College in the United Kingdom or in some British Colony incorporated by Royal Charter or established by Act passed therein.

(c.) Every person registered as a Medical Practitioner or entitled to be so registered under any Act in force in the United Kingdom and every Medical Commissioned Officer of Her Majesty's sea or land forces or of the late East India Company's service. 20

(d.) Any person who shall have obtained after examination from some University or College a diploma or degree entitling him to practise medicine or surgery in the country to which such University or College belongs Provided that by its rules every person receiving any such diploma or degree is required to have passed through a course of medical study of not less than four years. 25