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alert

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Medical Practitioners Act 2008 (WA)

On 1 December 2008, the *Medical Practitioners Act 2008* ("the Act") came into force in Western Australia. The Act replaces the *Medical Act* 1894 and significantly alters the law governing the practice of medicine in the State.

Two areas of significant change which have been introduced by the new Act are:

- Disciplinary, competence and impairment proceedings.
- Additional notification requirements.

Disciplinary, Competency and Impairment Proceedings

The Act introduces significant changes in how the Board will now assess and characterise the conduct of Medical Practitioners.

The Act has retained the roles of the State Administrative Tribunal (SAT) in determining more significant disciplinary matters, and the Professional Standards Committee (PSC) in dealing with less significant disciplinary matters.

However the Act also introduces the Complaints Assessment Committee[1] whose role is to investigate complaints and make recommendations to the Board. The Board then has a range of options open to it, depending on the circumstances, including:

- Rejecting the complaint[2];
- Making summary orders regarding a Medical Practitioner's practise[3];
- Appointing an Investigator who has broad powers to investigate the matter further[4];
- Referring the matter to:
  - the PSC or the SAT for determination;
  - the Impairment Review Committee (allowing for examination and assessment of the Medical Practitioner in respect of any impairment)[5]; or
  - an Assessor(s) (allowing for examination and assessment to assess the Medical Practitioner's competency)[6].

The Act also allows the Board to more clearly distinguish between the three different types of inquiry, being: disciplinary matters, competency assessments and impairment assessments.

[1] s79 of the Act
[2] s86(1) of the Act
[3] Part 6, division 4 of the Act
[4] s90 of the Act
[5] s102 of the Act
[6] s105 of the Act

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Disciplinary Matters[7]

Disciplinary matters are broadly defined to include:

- contravening a condition which has been applied;
- acting carelessly;
- acting incompetently;
- acting improperly;
- breaching the Act;
- breaching an undertaking to the Board;
- over-servicing;
- conviction of an offence, rendering the Medical Practitioner unfit to practice;
- engaging in conduct falling short of the standard expected by the public or fellow Medical Practitioners; and
- sexual misconduct.

Competency Assessments[8]

Competency matters arise when it is considered that a Medical Practitioner may not have sufficient knowledge and skill to practise medicine generally, or in their area of specialty.

Impairment Assessments[9]

Impairment matters arise where a Medical Practitioner:

- may be affected by the use of or dependence on alcohol or other drug to the extent that it affects their ability to practise medicine; or
- suffers from an impairment generally which adversely affects their ability to practise medicine.

Additional Notification Requirements

The Act also sets out a number of circumstances in which the Medical Practitioner is obliged to provide written notification to the Board:

- ***Change of Address***[10] – A Medical Practitioner must give the registrar written advice of any change to the address that is recorded in the register no later than 30 days after the change to the address.
- ***Loss of Qualification***[11] – A Medical Practitioner must give the registrar written advice within 7 days if a qualification that enabled the person to be registered is withdrawn or cancelled by the body that conferred the qualification.
- ***Insolvency***[12] – A Medical Practitioner must, within 14 days of becoming an insolvent, advise the registrar of the Board.
- ***Civil or Criminal Proceedings***[13] – A Medical Practitioner must give the registrar written advice of any of the following matters within 14 days after the legal process commencing:
  - Any civil proceedings claiming damages or other compensation arising out of the practice of medicine. This is not required until legal proceedings have been *formally served* on the Medical Practitioner.
  - Any criminal proceedings for an offence arising out of the practice of medicine or an offence against the *Health Insurance Act 1973.*
  - A Medical Practitioner must also give the registrar written advice within 14 days of any of the above mentioned matters being settled, withdrawn or determined by a court or tribunal.
- ***Cancellation, Suspension or Conditions imposed on Registration elsewhere***[14] – A Medical Practitioner must advise the Board within 7 days.

This publication is intended to provide a general outline and is not intended to be and is not a complete or definitive statement of the law on the subject matter. Further professional advice should be sought before any action is taken in relation to the matters described in this publication.

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[7] s76 of the Act
[8] s77 of the Act
[9] s78 of the Act
[10] s58 of the Act – penalty for failure = $1000
[11] s59 of the Act – penalty for failure = $1000
[12] s60 of the Act – penalty for failure = $5000
[13] s61 of the Act – penalty for failure = $5000
[14] s63 and 64 of the Act – penalty for failure = $5000