

Laws of Her Majesty's Province of Upper Canada, passed in the year 1839. Toronto: Robert Stanton, 1839.

2 Victoria – Chapter 38

An Act to Incorporate certain persons under the style and title of the College of Physicians and Surgeons of Upper Canada. Passed 11th May, 1839.

Whereas Christopher Widmer, President of the Medical Board of this Province; William W. Baldwin, M. D. Member of the Medical Board; John Short, M. D.; R. C. Horne, Member of the Medical Board; William C. Gwynne, M. B. Member of the Medical Board; John King, M. D. Member of the Medical Board; Robert Hornby, M. D. Member of the Medical Board; Walter Telfer, Surgeon, Member of the Medical Board; Alexander Burnside, Licentiate; Lucius O'Brien, M. D. Member of the Medical Board; H. Boys; Duncan Campbell, M.D.; Thomas Duggan, Licentiate; John Mackelcan, Member of the Royal College of Surgeons; John Barnhart, Junior; James Cothain, Member of the Royal College of Surgeons, London; Edward Morton, Member of the Royal College of Surgeons, London; Francis Clarke Mewburn, Licentiate; Thomas Rolph, Member of the Royal College of Surgeons, London; William Bulmer Nicol, Licentiate; William Craigie, (Surgeon) Licentiate; C. W. Covernton, M. D. Member of the Royal College of Surgeons; B. Cotter, M. D. and Surgeon; George Sonthwick, Licentiate; John Stewart, Member of the Royal College of Surgeons, Edinburgh; John Crumlin, M. D.; R. McLean, Surgeon; R. Stewart, Surgeon; Samuel John Stratford, Member of the Royal College of Surgeons, London; William Tullidge, Surgeon; William Rees; Thomas T. Ranken, M. D. Member of the Royal College of Surgeons, London; Patrick McMullin; Joseph Anderson; James Coleman; R. McDonald, M. D.; William Allison, Surgeon; G. Herrick, M. D. A. B.; J. Wilson, Surgeon; George H. Low, Member of the Royal College of Surgeons, London; William Clarke, L. R. C. J.; John Turquand, Licentiate; William Gunn, M. D.; James McIlmurray, Member of the Royal College of Surgeons, London; W. H. Burritt; William Durie, Assistant Inspector of Ordnance Hospitals; David J. Bowman, Licentiate; Elijah E. Duncombe, Licentiate; and Thomas A. Williams, have by their petition amongst other things represented, that the Laws now in force in this Province, regulating the practice of the Medical profession, and for the prevention of persons practising without License, have been found very inadequate, and have prayed that such alterations and amendments may be made in the existing Laws, as may be most conducive to the interests of the Medical profession and the public at large: And whereas it is highly desirable that the profession of Medicine in this Province should be placed upon a more respectable and efficient footing, and that a more summary mode should be provided for the conviction and punishment of persons practising without a License: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'*" and by the authority of the

same, That an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, entitled, "*An Act to repeal an Act passed in the fifty-fifth year of His Majesty's reign, entitled, 'An Act to license Practitioners in Physic and Surgery throughout this Province, and to make further provision for licensing such Practitioners'*"; and also an Act passed in the eighth year of the reign of His late Majesty King George the Fourth, entitled, "An Act to amend the Laws regulating the practice of Physic, Surgery and Midwifery, in this Province," be and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That the Members of the Medical Board appointed under and by virtue of the said first above recited Act, namely, Christopher Widmer, Member of the Royal College of Surgeons of London, and Staff Surgeon on half pay of Her Majesty's Forces; William Warren Baldwin, Doctor of Medicine, of the University of Edinburgh Robert C. Horne, Member of the Royal College of Surgeons, London, and late Assistant Surgeon of the Glengary Regiment of Light Infantry; James Sampson, late Assistant Surgeon, on half pay of Her Majesty's Forces; Peter Deihl, Member of the Royal College of Surgeons, London; John King, Doctor of Medicine, of the University of Edinburgh, and Licentiate of the Royal College of Surgeons George Neville Ridley, Member of the Royal College of Surgeons, London; Samuel John Stratford, Member of the Royal College of Surgeons, London; Robert Hornby, Doctor of Medicine, of the University of Edinburgh; Lucius O'Brien, Doctor of Medicine, of the University of Edinburgh, and Member of the Royal College of Surgeons of London William Durie, Assistant Inspector of the Ordnance Medical Department, on half pay; Joseph Hamilton, Doctor of Medicine, of the University of Edinburgh; Walter Telfer, Licentiate, of the Royal College of Surgeons in Edinburgh; James Hamilton, Doctor of Medicine, of the University of Edinburgh; William C. Gwynne, Bachelor, of Medicine, of the University of Dublin; and Robert Douglas Hamilton, late Surgeon of the Royal Navy, and their successors to be nominated and appointed as hereinafter provided, shall be, and they are hereby declared to be, one Body Corporate and Politic in deed and in Law, by the name of "The College of Physicians and Surgeons of Upper Canada"; and shall have perpetual succession, and a Common Seal, with power to change, alter, break, or make new the same; and they and their successors, by the name aforesaid, may sue and be sued, implead and be impleaded, answer and be answered unto, in all or any Court or Courts of record and places of Jurisdiction within this Province; and that they and their successors by the name aforesaid, shall be able and capable in Law to have, hold, receive, enjoy, possess and retain, for the end and purposes of this Act, and in trust and for the benefit of the said College, all such sums of money as have been paid and given, or shall at any time hereafter be paid, given, devised or bequeathed, by any person to and for the use of the said College; and that they and their successors, by the name aforesaid, shall and may at any time hereafter, without any license or mortmain, purchase, take, receive, have, hold, possess and enjoy, any lands, tenements or hereditaments, or any estate or interest derived or arising out of any lands, tenements or hereditaments, for the purposes of the said College, and for no other purposes whatsoever; and may also in the same manner sell, grant, lease, demise, alien, or dispose of the same, and do of execute all and singular the matters and things that to them shall or may appertain to do: Provided always, the said real estate shall at no time exceed in value the sum of Ten Thousand Pounds of lawful money of this Province.

III. And be it further enacted by the authority aforesaid, That the said persons composing the Medical Board, as hereinbefore mentioned, and their successors, shall from and after the passing of this Act be called, "Fellows of the College of Physicians and Surgeons of Upper Canada."

IV. And be it further enacted by the authority aforesaid, That the Fellows of the said College, and their successors, shall and may have power to elect in such manner, and from time to time, from and out of the Members of the said College, such and so many persons, who shall also be Fellows thereof, as in their discretion they shall think fit.

V. And be it further enacted by the authority aforesaid, That the Fellows for the time being of the said College be, and they are hereby declared to be, Governors of the said College, and that any four of them, with the President, or in his absence the Vice President, be a quorum; and shall have full power and authority to frame and make statutes, rules and ordinances, for the government of the said College and of the Members thereof; and also from time to time by any new statutes, rules or ordinances, to revoke, renew, augment or alter, all, every or any, of the said statutes, rules and ordinances, as to them shall seem meet and expedient: Provided always, that the said statutes, rules and ordinances, or any of them, shall not be repugnant to the Laws and Statutes of this Province: Provided always, that as well for the election of a President and Vice President, as for the confirmation of statutes, rules, and ordinances as aforesaid, the Fellows not resident in the City of Toronto may vote by proxy.

VI. And be it further enacted by the authority aforesaid, That all persons now authorised by law, or who may hereafter be authorised by law, to practice Physic, Surgery, and Midwifery within this Province, and who shall comply with the provisions of this Act, shall be, and they are hereby declared to be, Members of the said College of Physicians and Surgeons of Upper Canada; and shall be subject to such rules, regulations and by-laws, as may be adopted by the Fellows of the said College from time to time.

VII. And be it further enacted by the authority aforesaid, That the Fellows of the said College shall annually, on the first Monday in January in each and every year, except the first election, which shall take place on the second Monday in May in the year of our Lord, one thousand eight hundred and thirty-nine, elect from among themselves a President, and one Vice President, who shall preside in the absence of the President; and no Statute, Rule, or Ordinance shall have any effect or be binding upon the Fellows of the said College or the Members thereof until the same shall have been published thirty days in the Upper Canada Gazette.

VIII. And be it further enacted by the authority aforesaid, That the Fellows of the said College shall have power, from time to time, to appoint such and so many Officers in the said College as they may think proper, and at their pleasure to remove the same.

IX. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, it shall not be lawful for any person, not being a Fellow or Member of the said College of Physicians and Surgeons of Upper Canada, and not having been licensed by the Lieutenant Governor of this Province; or not having been heretofore licensed by any Medical Board, or not been actually employed as a Physic Surgeon in Her Majesty's Naval or Military service, to practice Physic, Surgery or Midwifery, in this Province for hire, gain, or hope of reward; and any person who shall practice Physic, Surgery or Midwifery for hire, gain or hope of reward, not licensed as aforesaid, or not being actually employed as a Physician or Surgeon in Her Majesty's Naval or Military Service, shall upon conviction thereof, before one Justice of the Peace, upon the oath of one credible Witness, forfeit and pay the sum of Five Pounds: Provided that nothing in this Act contained shall be construed to preventer prohibit any Female from practising Midwifery in this Province, or to require such Female to take out such license as aforesaid.

X. And he it further enacted, by the authority aforesaid, That no person now authorised to practice Physic, Surgery, and Midwifery within this Province, shall be entitled to the privilege of becoming a Fellow or Member of the said College, unless he shall first pay the sum of Five Pounds, to such person, and in such manner as the Fellows of the said College shall from time to time direct,; nor until he shall conform to the rules and regulations which the Fellows of the said; College may from time to time make respecting the mode of becoming Members of the said College.

XI. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, no person shall be admitted to practice Physic, Surgery and Midwifery, or either, within this Province, until he shall first obtain a license so to do under the Seal of the said College of Physicians, and Surgeons of Upper Canada, except he be a Fellow or Member of the said College of Physicians and Surgeons of Upper Canada, or except he has before the passing, of this Act, been licensed by the Lieutenant Governor of this Province, or except he be actually employed as a Physician or Surgeon in Her Majesty's, Naval or Military Service.

XII. And be it further enacted by the authority aforesaid, That upon the application of any person exhibiting a diploma or license from any University in Her Majesty's dominions, or from any College or, Faculty of Physicians or of Surgeons in, the United Kingdom, as Physician or Surgeon, or a Commission or Warrant as Physician or Surgeon in Her Majesty's Naval or Military regular Services, and upon satisfying the said Fellows of the said College that he is the person named in such Diploma, License, Commission or Warrant, it shall and maybe lawful for the Fellows of the said College to grant such applicant a license under the Seal of the said College to practice Physic, Surgery and Midwifery, or either, as the case may be, in this Province.

XIII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for any person while employed on actual service in Her Majesty's Naval or Military Service, as Physician or Surgeon, to practice Physic, Surgery or Midwifery, in this Province without a licence whilst he is so employed.

XIV. And be it further enacted by the authority aforesaid, That the Fellows of the said College shall, from time to time, determine and direct by some Statute, Rule or Ordinance, the amount of fees to be paid by persons applying for a license to practice Physic, Surgery and Midwifery, or either, within this Province: Provided always, that the amount to be paid shall in no case exceed the sum of Five Pounds.

XV. And be it further enacted by the authority aforesaid, That when any person shall be charged on the oath of one or more credible Witness or Witnesses, before any Justice of the Peace, with having practised Physic, Surgery, or Midwifery, for hire, gain, or hope of reward, without a licence, except in the case of a Female practising Midwifery, the said Justice may Summon the person charged to appear at a time and place to be named in such Summons, and if he shall not appear accordingly, then (upon proof of the due service of the Summons upon such person by delivering the same to him personally) the Justice may either proceed to hear and determine the case *ex parte*, or issue his Warrant for apprehending such person and bringing him before himself or some other Justice of the Peace; or the Justice before whom the charge shall be made may, if he shall so think fit, without any previous Summons, issue such Warrant, and the Justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case.

XVI. And be it further enacted by the authority aforesaid, That in default of payment of any fine imposed under the authority of this Act, together with the costs attending the same within the period specified for the payment thereof at the time of conviction by the Justice of the Peace before whom such conviction may have taken place, it shall and may be lawful for such Justice of the Peace to issue his Warrant, directed to any Constable, to levy the amount of such fine and costs within a certain time to be in the said Warrant expressed; and in case no distress sufficient to satisfy the amount shall be found, it shall and may be lawful for him to commit the offender to the common Gaol of the District wherein the offence was committed, for any time not exceeding one month, unless the fine and costs shall be sooner paid.

XVII. And be it further enacted by the authority aforesaid, That no conviction under this Act shall be quashed for want of form, and no Warrant of Commitment shall be held void by reason of any defect therein, provided it be alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

XVIII. And whereas, for the protection of the public, it is necessary that some supervision and control should be had over persons vending Medicines and Drugs, or otherwise acting as Apothecaries within any City or Town Corporate: Be it therefore enacted by the authority aforesaid, That the Fellows of the said College shall and may from time to time, make such rules and regulations for the government and proper management of persons acting as Apothecaries, within any City or Town Corporate within this Province, as they may think proper, and may impose such penalty for the breach or non-observance of the same as in their discretion they may deem expedient, not exceeding the sum of Two Pounds for any

one offence, which said penalty may be enforced and collected before any Justice of the Peace, in the same manner as is hereinbefore provided for the conviction and punishment of persons practising Physic, Surgery, or Midwifery without a license; which said rules and regulations, before they shall be binding or effectual for the purposes of this Act, shall be published at least thirty days in the Upper Canada Gazette.

XIX. And be it further enacted by the authority aforesaid, That all fines and penalties, levied and collected under and by virtue of this Act, shall be paid into the hands of the proper Officer appointed by the said Fellows from time to time, to and for the use and benefit of the said College.

XX. Provided always nevertheless, and be it further enacted by the authority aforesaid, That nothing herein contained shall extend or be construed to extend, to restrain the power of the Legislature at any time to repeal, alter, or modify this Act in any of its provisions.