

1989 No. 1837

**MEDICAL PROFESSION**

**The General Medical Council Professional Conduct  
Committee (EC Practitioners) (Procedure) Rules Order  
of Council 1989**

*Made* - - - - - *4th October 1989*

*Laid before Parliament* *10th October 1989*

*Coming into force* - *1st November 1989*

At the Council Chamber, Whitehall, the 4th day of October 1989

By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in pursuance of paragraph 1 of Schedule 4 to the Medical Act 1983(a) the General Medical Council have made the General Medical Council Professional Conduct Committee (EC Practitioners) (Procedure) Rules 1989 as set out in the Appendix to this Order:

And whereas by sub-paragraph (5) of the said paragraph 1 such Rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken the said Rules into consideration, are pleased to approve the same.

This Order may be cited as the General Medical Council Professional Conduct Committee (EC Practitioners) (Procedure) Rules Order of Council 1989, and shall come into force on 1st November 1989.

*G. I. de Deney*  
Clerk of the Privy Council

## APPENDIX

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##### *SCHEDULE—Form of notice of an inquiry*

The General Medical Council in exercise of their powers under paragraph 1 of Schedule 4 to the Medical Act 1983, and after consulting with such bodies of persons representing medical practitioners as appeared to the Council to be requisite, hereby make the following Rules:—

#### PART I

##### PRELIMINARY

##### **Citation and commencement**

1. These rules may be cited as the General Medical Council Professional Conduct Committee (EC Practitioners) (Procedure) Rules 1989 and shall come into operation on 1989.

##### **Interpretation**

- 2.—(1) In these rules, unless the context otherwise requires,

“the principal rules” means the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988(a);

“the Act”, “the Council”, “the President”, “the Registrar”, “the legal assessor”, “the Solicitor”, “complainant”, “party” and “person acting in a public capacity” have the meanings assigned to them in rule 2 of the principal rules, and those meanings shall also apply for the purpose of those of the principal rules which are applied by rules 6 and 14;

“practitioner” means a registered EC practitioner or a visiting EC practitioner who is the subject of an inquiry under these rules;

“case relating to disqualification” means a case where it is alleged that an EC practitioner has been registered as a fully registered medical practitioner when a disqualifying decision was in force in respect of him;

“case relating to conviction or conduct” means a case where it is alleged that a visiting EC practitioner has been convicted of a criminal offence in any member State of the Communities where he was practising medicine or has been guilty of serious professional misconduct;

“disqualifying decision” has the meaning assigned to it by section 44(2) of the Act;

“registered EC practitioner” means a person who has been registered as a fully registered medical practitioner by virtue of section 3(b) of the Act;

“visiting EC practitioner” means a national of a member State of the Communities who holds medical qualifications entitling him to registration under section 3(b) of the Act but is not so registered and who renders medical services while visiting the United Kingdom by virtue of section 18(1) of the Act.

- (2) In these rules, unless the context otherwise requires,
- (a) a reference to a numbered rule shall be to the rule bearing that number in these rules; and
  - (b) a reference to a numbered or lettered paragraph shall be to the paragraph bearing that number or letter in that rule.

## PART II

### INITIAL CONSIDERATION OF CASES

#### Cases relating to disqualification

3. Where information in writing from a person acting in a public capacity or a complaint supported by a statutory declaration or affidavit is received by the Registrar, from which it appears to him that a disqualifying decision was in force in respect of a registered EC practitioner at the time when he was registered by virtue of section 3(b) of the Act, and that that practitioner has been so registered for a period of not less than one month throughout which period the said decision has had effect but is no longer in force, the Registrar shall write to the practitioner,

- (i) informing him of the particulars of the information or complaint received;
- (ii) inviting him to submit within 28 days of the date of despatch of the letter any observations which he may wish to offer;
- (iii) enclosing copies of these rules and of the principal rules and, where a complaint has been received, of the statutory declaration or affidavit furnished in support thereof; and
- (iv) advising him that an inquiry may be held into the matter by the Professional Conduct Committee.

#### Cases relating to conviction or conduct

4. Where information in writing from a person acting in a public capacity or a complaint supported by one or more statutory declarations or affidavits is received by the Registrar, from which it appears to him that a visiting EC practitioner has been

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(a) Approved by S.I. 1988/2255.

convicted of a criminal offence in any member State where he was practising medicine or may have been guilty of serious professional misconduct, the Registrar shall write to the practitioner,

- (i) informing him of the particulars of the information or complaint received;
- (ii) inviting him to submit within 28 days of the date of despatch of the letter any observations which he may wish to offer;
- (iii) enclosing copies of these rules and of the principal rules and, where a complaint has been received, of the statutory declarations or affidavit furnished in support thereof; and
- (iv) advising him that an inquiry may be held into the matter by the Professional Conduct Committee.

#### **Reference to Professional Conduct Committee**

5. Subject to the foregoing rules the President shall, on the expiry of the period specified in rule 3(ii) or 4(ii), unless it appears to him in the light of any observations submitted by the practitioner or for any other reason that the matter need proceed no further, direct the Registrar to refer the case (whether it be a case relating to disqualification or a case relating to conviction or conduct) to the Professional Conduct Committee for inquiry.

## **PART III**

### **PROCEDURE OF PROFESSIONAL CONDUCT COMMITTEE**

#### **Intermediate procedure**

6. Where a case has been referred under these rules to the Professional Conduct Committee, rules 17, 18, 19, 20, 21, 22 and 24 of the principal rules shall apply as if:-

- (1) the word "practitioner" in those rules had the meaning assigned to it in rule 2;
- (2) in rule 17(4) of the principal rules a reference to the Schedule to these rules were substituted for reference to Schedule 2 to the principal rules;
- (3) in rule 19 of the principal rules the reference to the Preliminary Proceedings Committee were omitted and a reference to rule 7 were substituted for the reference to rule 17 of the principal rules;
- (4) in rule 20 of the principal rules the words "without prejudice to rule 16" were omitted, and
- (5) in rule 22(1) of the principal rules the words "including such amendment as contemplated under the proviso to rule 11(2)" were omitted.

#### **Conduct of hearing**

7. When the charge, or charges, have been read, subject to rule 8:-

- (1) in respect of any charge, or charges, to which no objection has been upheld:
  - (a) the Solicitor, or the complainant, if any, may address the Committee and shall adduce evidence of the facts on which the charge or charges are based;
  - (b) the practitioner may then address the Committee and adduce evidence in respect of any facts which he does not admit;
  - (c) at the close of the evidence for the practitioner, the Solicitor, or the complainant, if any, may, with the leave of the Committee, adduce evidence to rebut any evidence adduced by the practitioner;
  - (d) the Solicitor, or the complainant, if any, may then address the Committee;
  - (e) the practitioner may then address the Committee.

(2) On the conclusion of the proceedings under paragraph (1) the Committee shall consider the facts alleged in the charge or charges, other than any facts which have been admitted by the practitioner, and shall find whether the facts or any of the facts have been proved.

(3) Where the facts admitted by the practitioner or found proved by the Committee

comprise those on which any charge or part of any charge is based the Chairman shall announce that the charge or part of the charge has been proved: Provided that this paragraph shall not apply to any charge alleging that the practitioner has been guilty of serious professional misconduct.

(4) If in any case relating to conviction or conduct any charge alleges that the practitioner has been guilty of serious professional misconduct and the Committee find that the facts or some of the facts in the charge or part thereof have not been proved, the Committee shall record a finding that the practitioner is not guilty of serious professional misconduct in respect of the facts which have not been proved and the Chairman shall announce that finding.

#### **Procedure where the practitioner does not appear**

8. Where the practitioner does not appear and is not represented, but the Committee have decided to proceed with the inquiry, paragraphs (1)(b), (c), (d) and (e) of rule 7 shall not apply.

#### **Circumstances, character, history and pleas in mitigation**

9.—(1) Where the Committee have found that some or all of the facts alleged in the charge or charges have been proved, the Chairman shall invite the Solicitor to address the Committee, and to adduce evidence as to the circumstances leading up to the facts found proved, as to the character and previous history of the practitioner and, if the charge against the practitioner is one of serious professional misconduct, as to the extent to which those facts are indicative of serious professional misconduct on the part of the practitioner.

(2) The Chairman shall then invite the practitioner to address the Committee by way of mitigation and to adduce evidence as aforesaid.

#### **Finding of serious professional misconduct**

10. If, in any case relating to conviction or conduct, any charge alleges that the practitioner has been guilty of serious professional misconduct and the facts or some of the facts on which that charge is based have been proved, whether by admission or otherwise, the Committee shall consider whether the facts proved support a finding of such misconduct and shall find whether or not such charge is proved, and the Chairman shall announce the Committee's finding.

#### **Determination whether to make a direction**

11.—(1) Where any charge brought against a practitioner under these rules has been found proved, the Committee may, if they think fit, postpone their determination whether to make a direction until such future date or meeting of the Committee as they may specify, in order to obtain and consider further evidence of the conduct of the practitioner. If they so decide, the Chairman shall announce that decision.

(2) If the Committee decide that no such postponement is necessary, they shall consider and determine whether it shall be sufficient, subject to the provisions of rule 7(4), to make no direction or to impose no prohibition in this respect.

#### **Determinations of the Committee**

12. If the Committee decide that it will not be sufficient to make no direction or impose no prohibition then,

- (a) if the case is one relating to disqualification, the Committee shall direct that the practitioner's registration shall be suspended for a period not exceeding the period first mentioned in section 44(5) of the Act in relation to the facts found proved;
- (b) if the case is one relating to conviction or conduct, the Committee shall prohibit him for rendering medical services in the United Kingdom in the future either:
  - (i) for such period as the Committee may specify; or
  - (ii) indefinitely.

### Announcement of finding or determination

13. The Chairman shall announce the finding or findings or determination of the Committee under these rules in such terms as the Committee may approve and, when the finding is one that the charge or charges have been proved but the Committee do not propose to make any further direction or impose any prohibition, may, without prejudice to the terms in which other findings may be announced, include any expression of the Committee's admonition in respect of the practitioner's behaviour giving rise to the charge or charges.

## PART IV

### GENERAL

14. Rules 36, 47, 48, 50, 52, 53, 54 and 55 of the principal rules shall apply to proceedings under these rules as if any references in any of those rules to "practitioner" had the meaning assigned to that word in rule 2 and as if the references to the Preliminary Proceedings Committee in rules 47 and 52 of the principal rules had been omitted.

Given under the official seal of the General Medical Council, this twenty-fifth day of May nineteen hundred and eighty-nine.



*Robert Kilpatrick*  
President

## SCHEDULE

(Rule 6)

### FORM OF NOTICE OF AN INQUIRY

(Date)

Dear Sir/Madam,

On behalf of the General Medical Council notice is hereby given to you that in consequence of [a complaint made against you to the Council] *or* [information received by the Council] an inquiry is to be held into the following charge[s] against you:-

[If the charge relates to disqualification] That you were registered on the ..... day of ..... 19.... under the Medical Act 1983 by virtue of the facts that, being a national of ..... [a member State of the Communities] ..... you held the qualification of ..... [a qualification within the meaning of section 17(1) of the Medical Act 1983] ..... and that on that date a disqualifying decision made by the responsible authorities of ..... was in force against you and continued in force until the ..... day of ..... 19....

[if the charge relates to conviction or conduct] That, being a national of ..... [a member State of the Communities] ..... holding the qualification of ..... [a qualification within the meaning of section 17(1) of the Medical Act 1983] ..... and rendering medical services while visiting the United Kingdom,

*either*

[if the charge relates to conviction] you were on the ..... day of ..... 19.... at [specify court at which convicted] in [a member State of the Communities] where you were practising medicine convicted of [set out particulars of the conviction in sufficient detail to identify the case].

*or*

[if the charge relates to conduct] you [set out briefly the facts alleged]; and that in relation to the facts alleged you have been guilty of serious professional misconduct.

Notice is further given to you that on [day of the week] the ..... day of ..... 19...., a meeting of the Professional Conduct Committee will be held at ..... at ..... a.m./p.m. to consider the charge[s] against you and to determine whether or not they should [direct the Registrar to suspend your registration in the Register pursuant to section 44(5) of the Medical Act 1983] *or* [prohibit you from rendering medical services in the United Kingdom in future, either indefinitely or for such period as they may specify, pursuant to section 45 of the Medical Act 1983].

You are invited to appear before the Committee at the place and time specified above, for the purpose of answering the charge[s]. You may appear in person or by Counsel or Solicitor, or by any officer or member of any professional organisation of which you are a member, or by any member of your family. The Committee have power, if you do not appear, to hear and decide upon the charge[s] in your absence.

Any answer, admission, or other statement or communication, which you may wish to make with respect to the charge[s], should be addressed to the Solicitor to the Council.

If you wish to make any application that the inquiry should be postponed, you should send the application to the Registrar of the Council as soon as possible, stating the grounds on which you seek a postponement. Any such application will be considered by the President of the General Medical Council in accordance with rule 18 of the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules 1988 and rule 6 of the General Medical Council Professional Conduct Committee (EC Practitioners) (Procedure) Rules 1989.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Rules approved by this Order set out the procedures for the investigation of certain complaints in respect of EC practitioners registered under the terms of the Medical Act 1983 and EC practitioners providing medical services on a temporary basis whilst visiting the United Kingdom.

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