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STATUTORY INSTRUMENTS

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**2005 No. 401**

**HEALTH CARE AND  
ASSOCIATED PROFESSIONS  
DOCTORS**

The General Medical Council (Fraud or Error in  
relation to Registration) Rules Order of Council 2005

<i>Made</i>	- - - -	<i>2nd February 2005</i>
<i>Laid before Parliament</i>		<i>1st March 2005</i>
<i>Coming into force</i>	- -	<i>1st April 2005</i>

Whereas, in exercise of their powers under paragraph 6(1) of Schedule 4 to the Medical Act 1983<sup>(1)</sup> and of all other powers enabling it in that behalf, the General Medical Council has made the General Medical Council (Fraud or Error in relation to Registration) Rules 2005 as set out in the Schedule to this Order:

And whereas by paragraph 6(3) of that Schedule, such rules shall not come into force until approved by Order of the Privy Council:

Now, therefore, Their Lordships, having taken these rules into consideration, are pleased to, and do hereby approve them.

**Citation and commencement**

1. This Order may be cited as the General Medical Council (Fraud or Error in relation to Registration) Rules Order of Council 2005, and shall come into force on 1st April 2005.

**Revocation**

2. The General Medical Council (Fraud or Error in relation to Registration) Rules Order of Council 1980<sup>(2)</sup> is revoked.

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(1) 1983 c. 54. Paragraph 6 was substituted by article 14 of S.I.2002/3135.  
(2) S.I. 1980/860.

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*A. K. Galloway*  
Clerk of the Privy Council

## SCHEDULE

### THE GENERAL MEDICAL COUNCIL (FRAUD OR ERROR IN RELATION TO REGISTRATION) RULES 2005

The General Medical Council, in exercise of its powers under paragraph 6 of Schedule 4 to the Medical Act 1983<sup>(3)</sup>, and having consulted such bodies of persons representing medical practitioners, or medical practitioners of any description, as appeared to the General Medical Council requisite to be consulted pursuant to paragraph 1(6) of Schedule 4 to that Act, hereby makes the following Rules:

#### **Arrangement of Rules**

1. Citation and commencement
2. Interpretation
3. Delegation of Council's functions in relation to fraud and error in registration
4. Incorrectly made entries in the register
5. Fraudulently procured entries in the register
6. Referral of fraud allegation to the Panel
7. Notice of hearing
8. Documents considered by the Panel
9. Public and private hearings
10. Representation
11. Provision of legal advice for Panel
12. Procedure of Panel at a hearing
13. Evidence
14. Voting
15. Notice of decision
16. Service
17. Proof of service
18. Transitional provisions
19. Revocation

#### **Citation and commencement**

1. These Rules may be cited as the General Medical Council (Fraud or Error in Relation to Registration) Rules 2005 and shall come into force on 1st April 2005.

#### **Interpretation**

2. In these Rules—  
“the Act” means the Medical Act 1983;

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(3) Schedule 4 was substituted by S.I. [2002/3135](#), article 14.

“Chairman” means Chairman of the Panel;

“error allegation” means an allegation that a practitioner’s entry on the register has been incorrectly made;

“fraud allegation” means an allegation that a practitioner’s entry on the register has been fraudulently procured;

“Legal Assessor” means a person falling within paragraph 7(1)(i), (ii) or (iii) of Schedule 4 to the Act who is appointed to advise the Panel on questions of law arising in proceedings before them;

“the Panel” means a Registration Decisions Panel constituted under rules made under paragraph 19B of Schedule 1 to the Act<sup>(4)</sup>;

“parties” means each respondent (or his representative) and the Presenting Officer at a hearing before the Panel;

“practitioner” means a person whose registration with the General Council has been called into question on the grounds of fraud or error;

“the Presenting Officer” means the representative of the General Council instructed by the Registrar to present the case on behalf of the General Council at any hearing before a Panel, and may include solicitor or counsel;

“registration” means full registration, limited registration, temporary full registration or provisional registration;

“regulatory body” shall be construed in accordance with section 35C(9) of the Act; and

“respondent” means a practitioner or any other person whom the President determines shall be a party to proceedings under these Rules in accordance with rule 5(3).

### **Delegation of Council’s functions in relation to fraud and error in registration**

3. The Panel shall discharge the functions of the Council under section 39 of the Act in accordance with the provisions of these Rules.

### **Incorrectly made entries in the register**

4.—(1) Where it appears to the Registrar that a practitioner’s entry in the Register may have been incorrectly made but not fraudulently procured, or where the President has decided under rule 5(2) (b) that the matter be dealt with as an error allegation, the Registrar shall write to the practitioner—

- (a) notifying him of the grounds on which it appears the entry was made in error;
- (b) providing him with copies of any documents received relating to the alleged error;
- (c) informing him that the error allegation will be referred to the Panel and of the date of the meeting of the Panel; and
- (d) inviting him to forward any written representations and documents he may wish to submit within the period of 28 days from the date of the notice.

(2) The date notified under paragraph (1)(c) shall be no earlier than 28 days from the date of the notice sent under paragraph (1).

(3) Once the Registrar has notified the practitioner of the matters specified in paragraph (1), he shall refer the matter to the Panel.

(4) The Registrar shall before the meeting of the Panel provide to each panel member—

- (a) a copy of the notice and any documents sent under paragraph (1); and

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(4) Paragraph 19B was inserted by article 5 of the Medical Act 1983 (Amendment) Order 2002.

- (b) copies of any written representations and documents received from the practitioner.
- (5) The Panel shall consider the documents received from the Registrar under paragraph (4).
- (6) Before reaching a decision on the matter, the Panel may if they think fit cause further investigations to be made or request further information from the Registrar or from the practitioner.
- (7) The Panel shall notify the Registrar of its decision.

### **Fraudulently procured entries in the register**

5.—(1) Where it appears to the Registrar that a practitioner's entry in the Register may have been fraudulently procured he shall, after making such inquiries as he thinks fit, refer the matter to the President.

- (2) The President shall decide whether—
  - (a) the matter should be investigated as a fraud allegation;
  - (b) the matter should be dealt with as an error allegation under rule 4;
  - (c) the matter need not proceed further.
- (3) Where the President decides that the matter should be investigated in accordance with paragraph (2)(a) he shall also indicate whether any other person should be given the opportunity to make written representations about the matter and be made a respondent to proceedings under these Rules.
- (4) The President shall then direct the Registrar to—
  - (a) notify each respondent of the grounds on which it appears the entry was fraudulently procured;
  - (b) provide each respondent with copies of any documents received by the Registrar relating to the alleged fraud; and
  - (c) invite each respondent to forward any written representations and documents he may wish to submit within the period of 28 days or such further period as the President may allow from the date of the notice.

### **Referral of fraud allegation to the Panel**

6. Once the Registrar has notified each respondent of the matters specified in rule 5(4), and after considering any representations received from the respondents, the President may direct the Registrar to refer the fraud allegation to the Panel.

### **Notice of hearing**

7.—(1) Where the Registrar has referred a fraud allegation under rule 6, the Registrar shall not less than 28 days before the date on which the fraud allegation is to be considered by the Panel send each respondent a notice of hearing.

- (2) The notice of hearing shall—
  - (a) state the date, venue and time of the hearing;
  - (b) inform each respondent of his right to attend and to be represented at the hearing before the Panel;
  - (c) inform each respondent of his right to be heard by the Panel in accordance with rule 10 and to adduce oral and other evidence to the Panel;
  - (d) require each respondent to state whether he intends to appear or be represented at the hearing and whether he wishes the hearing to be in public; and

- (e) particularise the fraud allegation to be considered by the Panel and the facts on which it is based.

#### **Documents considered by the Panel**

**8.**—(1) No less than 7 days before the date on which the fraud allegation is to be considered by the Panel, a respondent may send to the Registrar any further written representations and copies of any documents on which he wishes to rely.

(2) The Registrar shall, before the date on which the fraud allegation is to be considered by the Panel, send to each Panel member—

- (a) a copy of the notice of hearing;
- (b) copies of any documents sent to each respondent under rule 5(4)(b); and
- (c) copies of any written representations and documents received from each respondent under rule 5(4)(c) or paragraph (1).

#### **Public and private hearings**

**9.**—(1) The Panel shall meet in private, unless a respondent requests it to meet in public.

(2) The Panel shall deliberate in the absence of the parties.

(3) Where a Panel sits in public it may, of its own volition or upon the application of a witness or any of the parties, exclude the public for any part of the proceedings provided that—

- (a) it is satisfied that a decision to exclude the public causes no prejudice to any respondent; and
- (b) the decision is made after hearing representations from the parties.

(4) The Panel may exclude from the whole or part of any hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.

#### **Representation and entitlement to be heard at a hearing**

**10.**—(1) The Presenting Officer and each respondent shall be entitled to be heard by the Panel.

(2) Each respondent may be heard in person or be represented by solicitor or counsel.

(3) The Panel may permit the applicant to be represented by a person other than as described in paragraph (2).

(4) A person who represents the applicant shall not be entitled to give evidence to the Panel.

#### **Provision of legal advice for Panel**

**11.** The Registrar shall arrange for the presence of a Legal Assessor at any hearing by the Panel under these Rules.

#### **Procedure of Panel at a hearing**

**12.**—(1) Where a hearing is to be held, but a respondent is not present or represented at it, the Panel may, on being satisfied that all reasonable efforts were made to serve the notice of hearing on the respondent consider the matter in his absence.

(2) The order of proceedings shall be as follows—

- (a) the Chairman shall read out the particulars of the fraud allegation in the notice of hearing;
- (b) the Chairman shall ask each respondent whether he wishes to admit all or any part of the fraud allegation set out in the notice of hearing;

- (c) the Presenting Officer shall address the Panel and may adduce evidence and call witnesses to prove any facts which are not admitted or which are relevant to the issues being considered by the Panel;
  - (d) each respondent may address the Panel and may adduce evidence and call witnesses;
  - (e) witnesses shall be questioned first by the person calling them, and may be questioned by the other party and by the Panel;
  - (f) the Panel may allow the parties an opportunity to make closing submissions;
  - (g) before retiring to deliberate, the Panel may obtain the advice of the Legal Assessor;
  - (h) where alleged facts have not been admitted, the Panel shall announce its findings on the facts;
  - (i) the Panel may make a finding that the entry, although not fraudulently procured, was nevertheless incorrectly made; and
  - (j) at the conclusion of the proceedings, the Panel shall state its decision on whether the practitioner's name should be erased from the register, and the reasons for that decision.
- (3) The Panel may, after considering any representations from the parties, adjourn the proceedings at any time.

### **Evidence**

**13.**—(1) The Panel may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.

(2) Where evidence would not be admissible in criminal proceedings in England, the Panel shall not admit such evidence unless, on the advice of the Legal Assessor, they are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.

(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.

(4) Production of a certificate signed by an officer of a regulatory body that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.

(5) The only evidence which may be adduced by the respondent in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.

(6) The respondent may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved.

(7) A copy of a document of which the original is admissible may be received by the Panel without strict proof.

### **Voting**

**14.**—(1) Decisions of the Panel shall be taken by simple majority.

(2) The Chairman of the Panel shall not have a casting vote.

(3) No member of the Panel may abstain from voting.

(4) Where the votes are equal, the Panel shall decide the issue in favour of the practitioner.

### **Notice of decision**

**15.**—(1) The notice of decision to be sent under section 39(2) of the Act shall—

- (a) set out any findings of fact made by the Panel;
- (b) set out the Panel's decision on whether the practitioner's name should be erased from the register;
- (c) set out the reasons for the Panel's decision; and
- (d) inform the practitioner of his right of appeal under section 40 of the Act.

(2) A notice of decision sent under section 39(2) of the Act in respect of a fraud allegation shall be sent to all other respondents, in addition to the practitioner who was the subject of that allegation.

### **Service**

**16.** Any notice required to be given to a practitioner or respondent in these Rules may be given by—

- (a) delivering it to him;
- (b) sending it by a registered postal service or a postal service which provides for the delivery by post to be recorded to—
  - (i) this address as it appears on the register, or
  - (ii) if different his last known address.

### **Proof of service**

**17.** The service of any notice under these Rules may be proved by—

- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or
- (b) a signed statement from any person serving the notice by hand.

### **Transitional provisions**

**18.—(1)** In this rule, “the 1980 Rules” means the General Medical Council (Fraud or Error in relation to Registration) Rules 1980(5).

(2) Where, before the date on which these Rules come into force, it appeared to the Registrar that—

- (a) an entry in the Register had been incorrectly made or fraudulently procured; but
- (b) the Registrar had not—
  - (i) in relation to an allegation that an entry had been incorrectly made, written to the practitioner in accordance with rule 5(1) of the 1980 Rules (procedure where an entry appears to have been incorrectly made but not fraudulently procured), or
  - (ii) in relation to an allegation that an entry has been fraudulently procured, submitted the matter to the President under rule 7 of the 1980 Rules (procedure where an entry is alleged to have been fraudulently procured),

the matter shall be dealt with as a fraud allegation or an error allegation as appropriate under these Rules.

(3) Where, before the date on which these Rules come into force—

- (a) it appeared to the Registrar that an entry in the Register had been incorrectly made or fraudulently procured; and
- (b) the Registrar had—

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(5) S.I. 1980/860.

- (i) in relation to an allegation that an entry had been incorrectly made, written to the practitioner in accordance with rule 5(1) of the 1980 Rules (procedure where an entry appears to have been incorrectly made but not fraudulently procured), or
  - (ii) in relation to an allegation that an entry has been fraudulently procured, submitted the matter to the President under rule 7 of the 1980 Rules (procedure where an entry is alleged to have been fraudulently procured),
- the matter shall continue to be dealt with in accordance with the 1980 Rules, as if they remained in force.

### **Revocation**

**19.** The General Medical Council (Fraud or Error in relation to Registration) Rules 1980 are hereby revoked.

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### **EXPLANATORY NOTE**

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

The Rules approved by this Order provide for the procedure to be followed where it appears that an entry in the registers of medical practitioners maintained by the General Medical Council (“the Council”) may have been made in error (rule 4) or obtained fraudulently (rules 5 to 14). In particular, the Rules provide for the consideration of such matters to be referred to a Registration Decisions Panel to consider at a meeting (in respect of an error allegation) or at a hearing (in respect of a fraud allegation). Provision is also made for the content of the notice of decisions, the service of notices under the Rules and how such service is to be proved (rules 15 to 17).

The Rules revoke the General Medical Council (Fraud or Error in relation to Registration) Rules 1980 (rule 19): transitional provision is therefore made for fraud or error allegations that came to the attention of the Council prior to the coming into force of the Rules approved by this Order (rule 18).