



# Medical Act 1983

## 1983 CHAPTER 54

### PART V

#### PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE

#### **35 General Council's power to advise on conduct or ethics.**

The powers of the General Council shall include the power to provide, in such manner as the Council think fit, advice for members of the medical profession on standards of professional conduct [<sup>F1</sup>or performance] or on medical ethics.

#### **Textual Amendments**

**F1** Words in s. 35 inserted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 4**; S.I. 1996/271, art. 2, **Sch.**

#### **[35A <sup>F2</sup> General Council's power to require disclosure of information**

- (1) For the purpose of assisting the General Council or any of their committees in carrying out functions in respect of professional conduct, professional performance or fitness to practise, a person authorised by the Council may require—
  - (a) a practitioner (except the practitioner in respect of whose professional conduct, professional performance or fitness to practise the information or document is sought); or
  - (b) any other person,  
who in his opinion is able to supply information or produce any document which appears relevant to the discharge of any such function, to supply such information or produce such a document.
- (2) As soon as is reasonably practicable after the relevant date, the General Council shall require, from a practitioner in respect of whom a decision mentioned in subsection (3) has been made, details of any person—
  - (a) by whom the practitioner is employed to provide services in, or in relation to, any area of medicine; or

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- (b) with whom he has an arrangement to do so.
- (3) For the purposes of this section and section 35B the relevant date is—
  - (a) the date of a decision to refer a case in respect of a practitioner to the Preliminary Proceedings Committee in accordance with rules made under paragraph 5(2) of Schedule 4 to this Act;
  - (b) where rules have been made under paragraph 1(1) or 5A(1) of Schedule 4 to this Act which provide for any of the following decisions—
    - (i) to invite a practitioner to agree to an assessment of his professional performance;
    - (ii) to invite a practitioner to agree to an assessment to determine whether his fitness to practise is seriously impaired by reason of his physical or mental condition;
    - (iii) to notify a practitioner that medical reports received by the General Council appear to provide evidence that his fitness to practise may be seriously impaired by reason of his physical or mental condition,
 the date of the decision in question.
- (4) Nothing in this section shall require or permit any disclosure of information which is prohibited by or under any other enactment.
- (5) But where information is held in a form in which the prohibition operates because the information is capable of identifying an individual, the person referred to in subsection (1) may, in exercising his functions under that subsection, require that the information be put into a form which is not capable of identifying that individual.
- (6) Subsection (1) shall not apply in relation to the supplying of information or the production of any document which a person could not be compelled to supply or produce in civil proceedings before the court (within the meaning of section 38).
- (7) For the purposes of subsection (4), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.
- (8) For the purposes of this section and section 35B, a “practitioner” means a fully registered person, a provisionally registered person or a person registered with limited registration.]

**Textual Amendments**

**F2** Ss. 35A, 35B inserted (3.8.2000) by [S.I. 2000/1803](#), [art. 4](#)

**[35B <sup>F3</sup>Notification and disclosure by the General Council**

- (1) As soon as is reasonably practicable after the relevant date, the General Council shall notify the following of the making of a decision mentioned in section 35A(3) in respect of a practitioner—
  - (a) the Secretary of State, the Scottish Ministers and the National Assembly for Wales; and
  - (b) any person in the United Kingdom of whom the General Council are aware—
    - (i) by whom the practitioner concerned is employed to provide services in, or in relation to, any area of medicine, or
    - (ii) with whom he has an arrangement to do so.

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- (2) The General Council may disclose to any person any information relating to a practitioner's professional conduct, professional performance or fitness to practise which they consider it to be in the public interest to disclose.]

#### Textual Amendments

**F3** Ss. 35A, 35B inserted (3.8.2000) by [S.I. 2000/1803](#), [art. 4](#)

### 36 Professional misconduct and criminal offences.

- (1) Where a fully registered person—
- (a) is found by the Professional Conduct Committee to have been convicted in the British Islands of a criminal offence, [<sup>F4</sup>or to have been convicted elsewhere of an offence which, if committed in England and Wales, would constitute a criminal offence,] whether while so registered or not; or
  - (b) is judged by the Professional Conduct Committee to have been guilty of serious professional misconduct, whether while so registered or not;
- the Committee may, if they think fit, direct—
- (i) that his name shall be erased from the register;
  - (ii) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
  - (iii) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests.
- (2) Where a fully registered person whose registration is subject to conditions imposed under subsection (1) above by the Professional Conduct Committee or [<sup>F5</sup>under section 41A by the Interim Orders Committee][<sup>F6</sup>or the Professional Conduct Committee] is judged by the Professional Conduct Committee to have failed to comply with any of the requirements imposed on him as conditions of his registration the Committee may, if they think fit, direct—
- (a) that his name shall be erased from the register; or
  - (b) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction.
- (3) Where the Professional Conduct Committee have given a direction for suspension under subsection (1) or (2) above, the Committee may—
- (a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction;
  - (b) direct that the name of the person whose registration is suspended shall be erased from the register; or
  - (c) direct that the registration of the person whose registration is suspended shall, as from the expiry of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests;

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but the Committee shall not extend any period of suspension under this section for more than twelve months at a time.

- (4) Where the Professional Conduct Committee have given a direction for conditional registration, the Committee may—
- (a) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
  - (b) revoke the direction or revoke or vary any of the conditions imposed by the direction;

but the Committee shall not extend any period of conditional registration under this section for more than twelve months at a time.

- (5) Subsection (2) above shall apply to a fully registered person whose registration is subject to conditions imposed under subsection (3)(c) above as it applies to a fully registered person whose registration is subject to conditions imposed under subsection (1) above, and subsection (3) above shall apply accordingly.
- (6) Where the Professional Conduct Committee give a direction under this section for erasure, for suspension or for conditional registration or vary the conditions imposed by a direction for conditional registration the Registrar shall forthwith serve on the person to whom the direction applies a notification of the direction or of the variation and of his right to appeal against the decision in accordance with section 40 below.
- (7) In subsection (6) above the references to a direction for suspension and a direction for conditional registration include references to a direction extending a period of suspension or a period of conditional registration.
- (8) While a person's registration in the register is suspended by virtue of this section he shall be treated as not being registered in the register notwithstanding that his name still appears in it.
- (9) This section applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in this Act of the expression "fully registered person".

#### Textual Amendments

**F4** Words in s. 36(1)(a) inserted (3.8.2000) by [S.I. 2000/1803](#), [art. 5\(a\)](#)

**F5** Words in s. 36(2) substituted (3.8.2000) by [S.I. 2000/1803](#), [art. 5\(b\)](#)

**F6** Words in s. 36(2) inserted (1.5.1996) by [1995 c. 51](#), s. 4, [Sch. para. 5](#); [S.I. 1996/271](#), [art. 2](#), [Sch.](#)

#### [<sup>F7</sup>36A Professional performance.

- (1) Where the standard of professional performance of a fully registered person is found by the Committee on Professional Performance to have been seriously deficient, the Committee shall direct—
- (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
  - (b) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with the requirements so specified.

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- (2) Where a fully registered person, whose registration is subject to conditions imposed under any provision of this section by the Committee on Professional Performance [F8 or under section 41A by the Interim Orders Committee or the Committee on Professional Performance, is judged by the Committee on Professional Performance] to have failed to comply with any of the requirements imposed on him as conditions of his registration the Committee may, if they think fit, direct that his registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction.
- (3) Where the Committee on Professional Performance have given a direction for suspension under any provision of this section the Committee may direct—
- (a) that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
  - (b) that the registration of the person whose registration is suspended shall, as from the expiry (or termination under subsection (5)(b) below) of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests;
- but, subject to subsection (4) below, the Committee shall not extend any period of suspension under this section for more than twelve months at a time.
- (4) The Committee on Professional Performance may make a direction extending a period of suspension indefinitely where—
- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (b) the direction is made not more than two months before the date on which the period of suspension would otherwise expire.
- (5) Where the Committee on Professional Performance have made a direction for indefinite suspension, they—
- (a) shall review the suspension when requested to do so by the person whose registration is suspended (but not until two years after the date on which the direction takes effect and not more than once in any period of two years), and
  - (b) having carried out such a review, may direct that the suspension be terminated.
- (6) Where the Committee on Professional Performance have given a direction for conditional registration, the Committee may—
- (a) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction;
  - (b) revoke the direction or revoke or vary any of the conditions imposed by the direction; or
  - (c) direct that the registration shall be suspended during such period not exceeding twelve months as may be specified in the direction;
- but the Committee shall not extend any period of conditional registration under this section for more than three years at a time.
- (7) Where the Committee on Professional Performance give a direction under this section for suspension or for conditional registration, or vary the conditions imposed by a direction for conditional registration, the Registrar shall forthwith serve on the person

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to whom the direction applies a notification of the direction or of the variation and of his right to appeal against the decision in accordance with section 40 below.

- (8) In subsection (7) above the references to a direction for suspension and a direction for conditional registration include references to a direction extending a period of suspension or a period of conditional registration.
- (9) While a person's registration in the register is suspended by virtue of this section he shall be treated as not being registered in the register notwithstanding that his name still appears in it.
- (10) This section applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in this Act of the expression "fully registered person".]

#### Textual Amendments

- F7** S. 36(A) inserted (1.7.1997) by 1995 c. 51, s. 1; S.I. 1997/1315, art. 2  
**F8** Words in s. 36A(2) substituted (3.8.2000) by S.I. 2000/1803, art. 6

#### Modifications etc. (not altering text)

- C1** S. 36(A) extended (1.7.1997) by S.I. 1997/1529, Sch. Pt. VI rule. 29(1)

### 37 Unfitness to practise through illness, etc.

- (1) Where the fitness to practise of a fully registered person is judged by the Health Committee to be seriously impaired by reason of his physical or mental condition the Committee may, if they think fit, direct—
  - (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
  - (b) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests.
- (2) Where a fully registered person whose registration is subject to conditions imposed under subsection (1) above by the Health Committee or <sup>F9</sup>under section 41A by the Interim Orders Committee~~][under section 41A by the Interim Orders Committee]~~<sup>F10</sup>or the Health Committee] is judged by the Health Committee to have failed to comply with any of the requirements imposed on him as conditions of his registration the Committee may, if they think fit, direct that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction.
- (3) Where the Health Committee have given a direction for suspension under subsection (1) or (2) above, the Committee may—
  - (a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
  - (b) direct that the registration of the person whose registration is suspended shall, as from the expiry <sup>F11</sup>(or termination under subsection (3B)(b) below)]of the current period of suspension, be conditional on his compliance, during such

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period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests [<sup>F12</sup>;

[<sup>F12</sup>but, subject to subsection (3A) below, the Committee shall not] extend any period of suspension under this section for more than twelve months at a time.

[<sup>F13</sup>(3A) The Health Committee may give a direction extending a period of suspension indefinitely where—

- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
- (b) the direction is given not more than two months before the date on which the period of suspension would otherwise expire.

(3B) Where the Health Committee have given a direction for indefinite suspension, they—

- (a) shall review the suspension when requested to do so by the person whose registration is suspended (but not until two years after the date on which the direction takes effect and not more than once in any period of two years), and
- (b) having carried out such a review, may direct that the suspension be terminated.]

(4) Where the Health Committee have given a direction for conditional registration, the Committee may—

- (a) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
- (b) revoke the direction or revoke or vary any of the conditions imposed by the direction;

but the Committee shall not extend any period of conditional registration under this section for more than twelve months at a time.

(5) Subsection (2) above shall apply to a fully registered person whose registration is subject to conditions imposed under subsection (3)(b) above as it applies to a fully registered person whose registration is subject to conditions imposed under subsection (1) above, and subsection (3) above shall apply accordingly.

(6) Where the Health Committee give a direction under this section for suspension or for conditional registration or vary the conditions imposed by a direction for conditional registration the Registrar shall forthwith serve on the person to whom the direction applies a notification of the direction or of the variation and of his right to appeal against the decision in accordance with section 40 below.

(7) In subsection (6) above the references to a direction for suspension and a direction for conditional registration include references to a direction extending a period of suspension or a period of conditional registration.

(8) While a person's registration in the register is suspended by virtue of this section he shall be treated as not being registered in the register notwithstanding that his name still appears in it.

(9) This section applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in this Act of the expression "fully registered person".

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#### Textual Amendments

- F9** Words in s. 37(2) substituted (3.8.2000) by S.I. 2000/1803, **art. 7**
- F10** Words in s. 37(2) inserted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 6(2)(b)**; S.I. 1996/271, art. 2, **Sch.**
- F11** Words in s. 37(3)(b) inserted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 6(3)(a)**; S.I. 1996/271, art. 2, **Sch.**
- F12** Words in s. 37 substituted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 6(3)(b)**; S.I. 1996/271, art. 2, **Sch.**
- F13** S. 37(3A)(3B) inserted (1.5.1996) by 1995 c. 51, s. 4, **Sch. para. 6(4)**; S.I. 1996/271, art. 2, **Sch.**

### 38 Power to order immediate suspension after a finding of professional misconduct or unfitness to practise.

- (1) On giving a direction for erasure or a direction for suspension under section 36(1) or (2) [<sup>F14</sup>, 36A] or 37(1) or (2) above [<sup>F14</sup>, or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act,] in respect of any person the Professional Conduct Committee [<sup>F14</sup>, the Committee on Professional Performance] or the Health Committee, if satisfied that to do so is necessary for the protection of members of the public or would be in the best interests of that person, may order that his registration in the register shall be suspended forthwith in accordance with this section; and in this subsection the reference to section 36(2) includes a reference to that provision as applied by section 36(5) and the reference to section 37(2) includes a reference to that provision as applied by section 37(5).
- (2) Where, on the giving of a direction an order under subsection (1) above is made in respect of a person, his registration in the register shall, subject to subsection (4) below, be suspended (that is to say, shall not have effect) from the time when the order is made until the time when the direction takes effect in accordance with paragraph 10 of Schedule 4 to this Act [<sup>F15</sup> or in accordance with rules made by virtue of paragraph 5A(3) of that Schedule] or an appeal against it under section 40 below [<sup>F15</sup> or paragraph 5A(4) of that Schedule] is (otherwise than by the dismissal of the appeal) determined.
- (3) Where the Professional Conduct Committee [<sup>F16</sup>, the Committee on Professional Performance] or the Health Committee make an order under subsection (1) above the Registrar shall forthwith serve a notification of the order on the person to whom it applies.
- (4) If, when an order under subsection (1) above is made, the person to whom it applies is neither present nor represented at the proceedings, subsection (2) above shall have effect as if, for the reference to the time when the order is made, there were substituted a reference to the time of service of a notification of the order as determined for the purposes of paragraph 8 of Schedule 4 to this Act.
- (5) While a person's registration in the register is suspended by virtue of subsection (1) above he shall be treated as not being registered in the register notwithstanding that his name still appears in it.
- (6) The court may terminate any suspension of a person's registration in the register imposed under subsection (1) above, and the decision of the court on any application under this subsection shall be final.
- (7) In this section "the court"—
  - (a) in the case of a person whose address in the register is in Scotland, means the Court of Session;



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- (b) in the case of a person whose address in the register is in Northern Ireland, means the High Court of Justice in Northern Ireland; and
- (c) in the case of any other person, means the High Court of Justice in England and Wales.

#### Textual Amendments

**F14** Words in s. 38(1) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 7(2)(a)-(c)**; S.I. 1997/1315, **art. 2**

**F15** Words in s. 38(2) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 7(3)(a)(b)**; S.I. 1997/1315, **art. 2**

**F16** Words in s. 38(3) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 7(4)**; S.I. 1997/1315, **art. 2**

### 39 Fraud or error in relation to registration.

- (1) If the General Council are satisfied that any entry in the register has been fraudulently procured or incorrectly made they may direct that the entry shall be erased from the register.
- (2) Where the General Council give a direction for the erasure of a person's name under this section the Registrar shall forthwith serve on that person a notification of the direction and of his right to appeal against the decision in accordance with section 40 below.

### 40 Appeals.

- (1) The following decisions are appealable decisions for the purposes of this section, that is to say—
  - (a) a decision of the Professional Conduct Committee under section 36 above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;
  - [<sup>F17</sup>(aa) a decision of the Committee on Professional Performance under section 36A above giving a direction for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration; or]
  - (b) a decision of the Health Committee under section 37 above giving a direction for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration; or
  - (c) a decision of the General Council under section 39 above giving a direction for erasure [<sup>F18</sup>; or]
  - [<sup>F18</sup>(d) a decision of the Professional Conduct Committee under section 41(6) giving a direction that the right to make further applications under that section shall be suspended indefinitely; or
  - <sup>F18</sup>(e) a decision of the General Council under section 45(6) giving a direction that the right to make further applications under that section shall be suspended indefinitely.]
- (2) In subsection (1) above the references to a direction for suspension and a direction for conditional registration include references to a direction extending a period of suspension or a period of conditional registration.
- (3) Any person in respect of whom an appealable decision has been taken may, within twenty-eight days of the service of the notification of the decision under section 36(6)

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[<sup>F19</sup>, 36A(7)], 37(6) [<sup>F20</sup>, 39(2), 41(7) or 45(7)] above appeal against the decision in accordance with this section.

- (4) In the case of an appealable decision—
- (a) of the Professional Conduct Committee under section 36 above;
  - [<sup>F21</sup>(aa) of the Committee on Professional Performance under section 36A above;]
  - (b) of the Health Committee under section 37 above; <sup>F22</sup> . . .
  - (c) of the General Council under section 39 above directing that an entry be erased because it has been fraudulently procured,
  - [<sup>F23</sup><sup>F23</sup>(d) of the Professional Conduct Committee under section 41(6); or
  - <sup>F23</sup>(e) of the General Council under section 45(6),]
- an appeal under this section shall lie to Her Majesty in Council subject, however, to subsection (5) below and to such rules as Her Majesty in Council may by Order provide for the purpose of regulating appeals under this section.
- (5) No appeal under this section shall lie from a decision of the [<sup>F24</sup>Committee on Professional Performance or the]Health Committee except on a question of law.
- (6) The <sup>M1</sup>Judicial Committee Act 1833 shall apply in relation to the Professional Conduct Committee, [<sup>F25</sup>the Committee on Professional Performance,]the Health Committee and the General Council as it applies in relation to any court from which an appeal lies to Her Majesty in Council.
- (7) Without prejudice to the application of that Act, on an appeal under this section to Her Majesty in Council from the Professional Conduct Committee [<sup>F26</sup>, the Committee on Professional Performance] or the Health Committee the Judicial Committee may, in their report, recommend to Her Majesty in Council—
- (a) that the appeal be dismissed;
  - (b) that the appeal be allowed and the direction or variation questioned by the appeal quashed;
  - (c) that such other direction or variation as the Professional Conduct Committee [<sup>F26</sup>, the Committee on Professional Performance]or, as the case may be, the Health Committee could have given or made be substituted for the direction or variation questioned by the appeal; or
  - (d) that the case be remitted to the Professional Conduct Committee [<sup>F26</sup>, the Committee on Professional Performance] or, as the case may be, the Health Committee for that Committee to dispose of the case under section 36 [<sup>F27</sup>, 36A] or 37 above in accordance with the directions of the Judicial Committee.
- (8) On an appeal under this section to Her Majesty in Council from the General Council the Judicial Committee may, in their report, recommend—
- (a) that the appeal be dismissed;
  - (b) that the appeal be allowed and the direction questioned by the appeal quashed; or
  - (c) that the case be remitted to the General Council for that Council to dispose of the case under section 39 above in accordance with the directions of the Judicial Committee.
- (9) In the case of an appealable decision of the General Council under section 39 above other than a decision falling within subsection (4)(c) above an appeal under this section shall lie to the Privy Council.
- (10) On an appeal under this section to the Privy Council the Privy Council may—

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- (a) dismiss the appeal; or
  - (b) allow the appeal and quash the direction questioned by the appeal.
- (11) On an appeal under this section from the Professional Conduct Committee [F28, the Committee on Professional Performance] or the Health Committee the General Council may appear as respondent; and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not.

#### Textual Amendments

- F17 S. 40(1)(aa) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(2)**; S.I. 1997/1315, **art. 2**
- F18 S. 40(1)(d)(e) and word “or” immediately preceding added (3.8.2000) by S.I. 2000/1803, **art. 8(a)**
- F19 Words in s. 40(3) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(3)**; S.I. 1997/1315, **art. 2**
- F20 Words in s. 40(3) substituted (3.8.2000) by S.I. 2000/1803, **art. 8(b)**
- F21 S. 40(4)(aa) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(4)**; S.I. 1997/1315, **art. 2**
- F22 Word in s. 40(4)(b) omitted (3.8.2000) by virtue of S.I. 2000/1803, **art. 8(c)**
- F23 S. 40(4)(d)(e) added (3.8.2000) by S.I. 2000/1803, **art. 8(c)**
- F24 Words in s. 40(5) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(5)**; S.I. 1997/1315, **art. 2**
- F25 Words in s. 40(6) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(6)**; S.I. 1997/1315, **art. 2**
- F26 Words in s. 40(7) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(7)(a)**; S.I. 1997/1315, **art. 2**
- F27 Word in s. 40(7)(d) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(7)(b)**; S.I. 1997/1315, **art. 2**
- F28 Words in s. 40(11) inserted (1.7.1997) by 1995 c. 51, s. 4, **Sch. para. 8(8)**; S.I. 1997/1315, **art. 2**

#### Marginal Citations

- M1 1833 c. 41.

## 41 Restoration of names to the register.

- (1) Subject to [F29 subsections (2) and (5)] below, where the name of a person has been erased from the register under section 36 above the Professional Conduct Committee may, if they think fit, direct his name to be restored to the register.
- (2) No application for the restoration of a name to the register under this section shall be made to the Professional Conduct Committee—
  - (a) before the expiration of [F30 five years] from the date of erasure; or
  - (b) in any period of [F31 twelve months] in which an application for the restoration of his name has already been made by or on behalf of the person whose name has been erased.
- (3) In the case of a person who was provisionally registered under section 15 [F32, 15A] or 21 above before his name was erased a direction under subsection (1) above shall be a direction that his name be restored by way of provisional registration under section 15 [F32, 15A] or 21 above, as the case requires.
- (4) The requirements of Part II or Part III of this Act as to the experience required for registration as a fully registered medical practitioner shall not apply to registration in pursuance of a direction under subsection (1) above.
- [F33](5) Before determining whether to give a direction under subsection (1), the Professional Conduct Committee shall require an applicant for restoration to provide such evidence as they direct as to one or more of his good character, professional competence and health; and they shall not give such a direction if that evidence does not satisfy them.

*Status: Point in time view as at 02/07/2001.*

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- (6) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, the Professional Conduct Committee may direct that his right to make any further such applications shall be suspended indefinitely.
- (7) Where the Professional Conduct Committee give a direction under subsection (6), the Registrar shall without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it in accordance with section 40.
- <sup>F33</sup>(8) Any person in respect of whom a direction has been given under subsection (6) may, after the expiration of three years from the date on which the direction was given, apply to the Professional Conduct Committee for that direction to be reviewed by the Committee and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision.]

#### Textual Amendments

- F29** Words in s. 41(1) substituted (3.8.2000) by [S.I. 2000/1803, art. 9\(a\)](#)
- F30** Words in s. 41(2)(a) substituted (3.8.2000) by [S.I. 2000/1803, art. 9\(b\)](#)
- F31** Words in s. 41(2)(b) substituted (3.8.2000) by [S.I. 2000/1803, art. 9\(c\)](#)
- F32** Words in s. 41(3) inserted (4.12.2000) by [S.I. 2000/3041, reg. 4\(5\)](#)
- F33** S. 41(5)-(8) added (3.8.2000) by [S.I. 2000/1803, art. 9\(d\)](#)

#### [41A] <sup>F34</sup>Interim Orders

- (1) Where the Interim Orders Committee are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, the Committee may make an order—
- (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding eighteen months as may be specified in the order (an “interim suspension order”); or
  - (b) that his registration shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Committee think fit to impose (an “order for interim conditional registration”).
- (2) Subject to subsection (9), where the Interim Orders Committee have made an order under subsection (1), the Committee—
- (a) shall review it within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it before the end of the period of three months beginning on the date of the decision of the immediately preceding review; and
  - (b) may review it where new evidence relevant to the order has become available after the making of the order.
- (3) Where an interim suspension order or an order for interim conditional registration has been made in relation to any person under any provision of this section (including this subsection), the Interim Orders Committee, the Professional Conduct Committee,

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the Health Committee or the Committee on Professional Performance may, subject to subsection (4)—

- (a) revoke the order or revoke any condition imposed by the order;
  - (b) vary any condition imposed by the order;
  - (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former;
  - (d) if satisfied that the public interest, including the protection of members of the public, or the interests of the person concerned would be adequately served by an order for interim conditional registration, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.
- (4) No order under subsection (1) or (3)(b) to (d) shall be made by any Committee in respect of any person unless he has been afforded an opportunity of appearing before the Committee and being heard on the question whether such an order should be made in his case; and for the purposes of this subsection a person may be represented before the Committee by counsel or a solicitor, or (if rules made under paragraph 1 of Schedule 4 to this Act so provide and he so elects) by a person of such other description as may be specified in the rules.
- (5) If an order is made under any provision of this section the Registrar shall without delay serve a notification of the order on the person to whose registration it relates.
- (6) The General Council may apply to the court for an order made by the Interim Orders Committee under subsection (1) or (3) to be extended, and may apply again for further extensions.
- (7) On such an application the court may extend (or further extend) for up to 12 months the period for which the order has effect.
- (8) In this section, references to an interim suspension order and an order for interim conditional registration include such an order as so extended.
- (9) For the purposes of subsection (2) the first review after the court's extension of an order made by the Interim Orders Committee or after a replacement order made by the Interim Orders Committee under subsection (3)(c) or (d) shall take place—
- (a) if the order (or the order which has been replaced) had not been reviewed at all under subsection (2), within the period of six months beginning on the date on which the court ordered the extension or on which a replacement order under subsection (3)(c) or (d) was made; and
  - (b) if it had been reviewed under the provision, within the period of three months beginning on that date.
- (10) Where an order has effect under any provision of this section, the court may—
- (a) in the case of an interim suspension order, terminate the suspension;
  - (b) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order;
  - (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it),
- and the decision of the court under any application under this subsection shall be final.

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- (11) While a person’s registration in the register is suspended by virtue of an interim suspension order under this section he shall be treated as not being registered in the register notwithstanding that his name still appears in the register.
- (12) This section applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in this Act of the expression “fully registered person”.
- (13) In this section “the court” has the same meaning as in section 38.]

**Textual Amendments**

**F34** Ss. 41A, 41B inserted (3.8.2000) by [S.I. 2000/1803](#), [art. 10](#)

**[<sup>F35</sup> 41B Interim orders made by committees other than the Interim Orders Committee**

- (1) This section applies where the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee have made an order under section 41A(3)(c) or (d).
- (2) Subject to subsections (3) and (4), any Committee referred to in subsection (1) may—
  - (a) do any of the things referred to in section 41A(3)(a) to (d) in relation to the order; and
  - (b) before the expiry of the order, extend it or further extend it.
- (3) Subsection (2)(b) applies equally to a replacement order made by one of those Committees by virtue of section 41A(3)(c) or (d) as applied by subsection (2)(a).
- (4) An order may not be extended under this section for more than three months at a time.
- (5) Subsections (5) and (10) to (13) of section 41A apply for the purposes of this section as they apply for the purposes of that section.
- (6) For the purposes of rules made under paragraph 1 of Schedule 4 for the Committees referred to in subsection (1), “proceedings” in that paragraph includes proceedings under this section.]

**Textual Amendments**

**F35** Ss. 41A, 41B inserted (3.8.2000) by [S.I. 2000/1803](#), [art. 10](#)

**42 Preliminary proceedings as to professional misconduct and unfitness to practise.**

- (1) The Preliminary Proceedings Committee shall have the functions assigned to them by this section.
- (2) It shall be the duty of the Committee to decide whether any case referred to them for consideration in which a practitioner is alleged to be liable to have his name erased under section 36 above or his registration suspended or made subject to conditions under section 36 or 37 above ought to be referred for inquiry by the Professional Conduct Committee or the Health Committee.

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- [<sup>F36</sup>(3) If the Committee decide that a case ought to be referred for inquiry by the Professional Conduct Committee or the Health Committee—
- (a) they shall give a direction designating the Committee which is to inquire into the case; and
  - (b) the Registrar shall serve a notification of the decision of the Preliminary Proceedings Committee on the person whose case has been so referred.]

#### Textual Amendments

**F36** S. 42(3) substituted (3.8.2000) for s. 42(3)-(8) by [S.I. 2000/1803](#), [art. 11](#)

### 43 Proceedings before Professional Conduct, Health and Preliminary Proceedings Committees.

Schedule 4 to this Act (which contains supplementary provisions about proceedings before [<sup>F37</sup>the Interim Orders Committee,] the Professional Conduct Committee, [<sup>F38</sup>the Assessment Referral Committee, the Committee on Professional Performance,] the Health Committee and the Preliminary Proceedings Committee) shall have effect.

#### Textual Amendments

**F37** Words in s. 43 inserted (3.8.2000) by [S.I. 2000/1803](#), [art. 12](#)

**F38** Words in s. 43 inserted (1.7.1997) by [1995 c. 51](#), s.4, [Sch. para. 9](#); [S.I. 1997/1315](#), [art. 2](#)

### 44 Effect of disqualification in another member State on registration in the United Kingdom.

- (1) A person who is subject to a disqualifying decision in [<sup>F39</sup>an EEA State] in which he is or has been established in medical practice shall not be entitled to be registered by virtue of section 3(b) above for so long as the decision remains in force in relation to him.
- (2) A disqualifying decision in respect of a person is a decision, made by responsible authorities of [<sup>F40</sup>the EEA State] in which he was established in medical practice or in which he acquired a primary United Kingdom or primary European qualification, and—
  - (a) expressed to be made on the grounds that he has committed a criminal offence or on grounds related to his professional conduct, and
  - (b) having in that State the effect either that he is no longer registered or otherwise officially recognised as a medical practitioner, or that he is prohibited from practising medicine there.
- (3) If a person has been registered by virtue of section 3(b) above and it is subsequently shown to the satisfaction of the Registrar that he was subject to a disqualifying decision in force at the time of registration, and that the decision remains in force, the Registrar shall remove the person's name from the register.
- (4) If registration is refused or a person's name is removed from the register in accordance with subsection (3) above—

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- (a) the Registrar shall, on request, state in writing the reasons for the refusal, or the removal, as the case may be;
  - (b) the person may appeal by giving notice in writing to the General Council; and
  - (c) any such appeal shall be determined by the General Council or, if the Council have delegated their functions under this subsection to a committee, by that committee.
- (5) If a person has been registered as a fully registered medical practitioner by virtue of section 3(b) above at a time when a disqualifying decision was in force in respect of him, and he has been so registered for a period of not less than one month throughout which the decision had effect—
- (a) the Professional Conduct Committee may direct that his registration be suspended for such period, not exceeding the length of the first-mentioned period, as the Committee think fit, and the period of suspension shall begin on a date to be specified in the Committee’s direction; and
  - (b) sections 36(6) and 40 of and paragraphs 1, 2, 8, 9, 10 and 13 of Schedule 4 to this Act shall have effect, with any necessary modifications, in relation to suspension under this subsection.
- (6) Where on or after the date on which a person was registered by virtue of section 3(b) above a disqualifying decision relating to him comes into force, this Part of this Act shall apply, with any necessary modifications, as if it had been found that he had been convicted of the criminal offence referred to in the disqualifying decision, or that his professional conduct had been such as is imputed to him by that decision, as the case may be.
- (7) Subsection (1) of section 18 above shall not apply to a person and that person shall not be registered as a visiting [<sup>F41</sup>EEA practitioner] at any time when he is subject to a disqualifying decision imposed by a member State or its competent authority (within the meaning of that section).

#### Textual Amendments

- F39** Words in s. 44(1) substituted (10.7.1996) by [S.I. 1996/1591](#), reg. 7, [Sch. 2 para. 9\(a\)](#)
- F40** Words in s. 44(2) substituted (10.7.1996) by [S.I. 1996/1591](#), reg. 7, [Sch. 2 para. 9\(b\)](#)
- F41** Words in s. 44(7) substituted (10.7.1996) by [S.I. 1996/1591](#), reg. 7, [Sch. 2 para. 9\(c\)](#)

#### 45 Disciplinary provisions affecting practitioners who render services while visiting the United Kingdom.

- (1) If a national of [<sup>F42</sup>an EEA State] who has medical qualifications entitling him to registration under section 3 above but is not so registered and who renders medical services while visiting the United Kingdom (whether or not registered as a visiting [<sup>F43</sup>EEA practitioner])—
- (a) is found by the Professional Conduct Committee to have been convicted of a criminal offence in [<sup>F42</sup>any EEA State] where he was practising medicine; or
  - (b) is judged by the Professional Conduct Committee to have been guilty of serious professional misconduct,
- the Committee may, if they think fit, impose on him a prohibition in respect of the rendering of medical services in the United Kingdom in the future.



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- (2) A prohibition imposed under this section shall either relate to a period specified by the Professional Conduct Committee or be expressed to continue for an indefinite period.
- (3) A person may apply to the General Council for termination of a prohibition imposed on him under this section and the Council may, on any such application, terminate the prohibition or reduce the period of it; but no application may be made under this subsection—
- (a) earlier than [<sup>F44</sup>five years] from the date on which the prohibition was imposed; or
  - (b) in the period of [<sup>F45</sup>twelve months] following a decision made on an earlier application.
- (4) Section 18(1) above does not apply to a person and that person shall not be registered as a visiting [<sup>F43</sup>EEA practitioner] at a time when he is subject to a prohibition imposed by the Professional Conduct Committee under this section.
- [<sup>F46</sup>(5) Before determining whether to terminate a prohibition under subsection (3), the General Council shall require the person applying for its termination to provide such evidence as they direct as to one or more of his good character, professional competence and health; and they shall not terminate the prohibition if that evidence does not satisfy them.
- <sup>F46</sup>(6) Where, during the same period of prohibition, a second or subsequent application for termination of the prohibition, made by or on behalf of a person on whom the prohibition has been imposed, is unsuccessful, the General Council may direct that his right to make any further such applications shall be suspended indefinitely.
- <sup>F46</sup>(7) Where the General Council give a direction under subsection (6), the Registrar shall without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it in accordance with section 40.
- <sup>F46</sup>(8) Any person in respect of whom a direction has been given under subsection (6) may, after the expiration of three years from the date on which the direction was made, apply to the General Council for that direction to be reviewed by the General Council and, thereafter, may make further applications for review; but no such application may be made before the expiration of three years from the date of the most recent review decision.]

#### Textual Amendments

- F42** Words in s. 45(1) substituted (10.7.1996) by S.I. 1996/1591, reg. 7, Sch. 2 para. 10(a)
- F43** Words in s. 45(1)(4) substituted (10.7.1996) by S.I. 1996/1591, reg. 7, Sch. 2 para. 10(b)
- F44** Words in s. 45(3)(a) substituted (3.8.2000) by S.I. 2000/1803, art. 13(a)
- F45** Words in s. 45(3)(b) substituted (3.8.2000) by S.I. 2000/1803, art. 13(b)
- F46** S. 45(5)-(8) inserted (3.8.2000) by S.I. 2000/1803, art. 13(c)

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