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STATUTORY INSTRUMENTS

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**1997 No. 1529**

**MEDICAL PROFESSION**

**The General Medical Council (Professional Performance) Rules Order of Council 1997**

<i>Made</i>	- - - -	<i>17th June 1997</i>
<i>Laid before Parliament</i>		<i>17th June 1997</i>
<i>Coming into force</i>	- -	<i>1st July 1997</i>

At the Council Chamber, Whitehall, The 17th day of June 1997  
By the Lords of Her Majesty's Most Honourable Privy Council

WHEREAS in pursuance of paragraphs 1(1), (2A) and (2B) and 5A(1), (2) and (3) of Schedule 4 to the Medical Act 1983<sup>(1)</sup> the General Medical Council, having consulted with such bodies of persons representing medical practitioners as appeared to the said Council to be requisite, have made the General Medical Council (Professional Performance) Rules 1997 as set out in the Schedule 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 hereby pleased to approve the same.

This Order may be cited as the General Medical Council (Professional Performance) Rules Order of Council 1997, and shall come into force on 1st July 1997.

*N. H. Nicholls*  
Clerk of the Privy Council

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<sup>(1)</sup> 1983 c. 54. The Act was amended by the Medical (Professional Performance) Act 1995 (c. 51).

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### THE GENERAL MEDICAL COUNCIL (PROFESSIONAL PERFORMANCE) RULES 1997

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## SCHEDULES

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The General Medical Council, in exercise of their powers under paragraph 1(1), (2A) and (2B) and 5A (1), (2) and (3) of Schedule 4 to the Medical Act 1983<sup>(2)</sup>, after consulting with such bodies of persons representing medical practitioners as appear to the Council to be requisite to be consulted, and of all other powers enabling the Council in that behalf, hereby makes the following Rules:

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(2) 1983 c. 54 This Act was amended by the Medical (Professional Performance) Act 1995 (c. 51).

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## PART I INTRODUCTION

### Citation and commencement

1. These Rules may be cited as the General Medical Council (Professional Performance) Rules 1997 and shall come into force on 1st July 1997.

### Interpretation

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

“the Act” means the Medical Act 1983;

“assessment” means an assessment of the standard of a practitioner’s professional performance;

“case co-ordinator” means the person appointed under rule 7;

“complaint” and “information” means a complaint or information which suggests that the standard of a doctor’s professional performance may have been seriously deficient;

“complainant” means a person by whom a complaint has been made to the General Council and includes the complainant in an earlier case taken into account under rule 4;

“Conduct Rules” means The General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order in Council 1988(3);

“the Council” means the General Medical Council or a Committee of the Council acting under delegated power;

“doctor” means a registered medical practitioner;

“Health Rules” means The General Medical Council Health Committee (Procedure) Rules Order of Council 1987(4);

“the Health Service Acts” means the National Health Service Act 1977(5), the National Health Service (Scotland) Act 1978(6), the National Health Service and Community Care Act 1990(7), the Health and Personal Social Services Northern Ireland Order 1972(8) and the National Health Service (Primary Care) Act 1997(9), and a reference to those Acts is to be construed as a reference to them as they have effect on the making of these Rules and as amended subsequently;

“lay adviser” means a lay person who is a member of the Council and appointed by the Council for the purposes of rule 17(6), (7), (8) and (9) and rule 26(2);

“lay person” means a person who is not and never has been a doctor;

“lay screener” means a lay person who is a member of the Council and appointed by the Council for the purposes of rule 5(6), (7) and (8) and rule 6(8) and (9);

“lead assessor” means the person appointed under rule 8(1)(a);

“legal assessor” means an assessor appointed by the General Council under paragraph 7 of Schedule 4 to the Act;

(3) S.I.1988/2255 amended by S.I. 1989/656, 1990/1587, 1994/2022 and 1996/2125.

(4) S.I. 1987/2174 amended by S.I. 1996/1219.

(5) 1977 c. 49. This Act was amended by the Health Authorities Act 1995 c. 17.

(6) 1978 c. 29.

(7) 1990 c. 19.

(8) S.I. 1972/1265 (N.I.14).

(9) 1997 c. 46.

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“medical screener” means a person appointed under rule 3(1);

“person acting in a public capacity” means an officer of any body established by or under the Health Service Acts, a Hospital Medical Staff Committee or body exercising similar functions, a local authority, a body granting primary United Kingdom qualifications, a medical Royal College, a Government Department or Agency or any other public body or authority, a person holding judicial office, or any officer attached to a Court, or the Solicitor, where the person concerned is acting in that official capacity;

“practitioner” means a doctor whose standard of professional performance is alleged to be seriously deficient and includes a person whose registration is currently suspended;

“the Solicitor” means any solicitor appointed by the Council and includes counsel representing the Solicitor;

“specialist adviser” means a person appointed under paragraph 8 of Schedule 1;

“statement of requirements” means the statement drawn up under rule 17(10) and “second statement of requirements” means the statement drawn up under rule 22.

(2) In these Rules, any reference to the Registrar acting in any matter includes a reference to a deputy or assistant registrar or any other person authorised by the Registrar to act in the matter.

(3) In these Rules, any reference—

- (a) to notifying a person of any matter is a reference to notifying that person of the matter in writing; and
- (b) to a person agreeing any matter is a reference to that person agreeing that matter in writing.

(4) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1978<sup>(10)</sup> shall apply to the interpretation of these Rules as they apply to the interpretation of an Act of Parliament.

(5) Unless the context otherwise requires, a reference—

- (a) in these Rules—
  - (i) to a numbered rule is a reference to the rule bearing that number in these Rules, and
  - (ii) to a numbered Schedule is a reference to the Schedule bearing that number in these Rules;
- (b) in a rule in, or in a Schedule to, these Rules to a numbered paragraph is a reference to the paragraph bearing that number in that rule or Schedule;
- (c) in a paragraph in a Schedule to these Rules, to a numbered subparagraph is a reference to the subparagraph bearing that number in that paragraph.

## PART II

### SCREENING

#### Appointment of screeners

**3.—**(1) Before any case is considered by the Assessment Referral Committee it shall have been considered by a member of the Council appointed for the purpose by the Council (“the medical screener”) and referred by that person to the Committee.

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(10) 1978 c. 30.

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- (2) The member appointed under paragraph (1) shall be a doctor.
- (3) The Council shall keep—
  - (a) a list of members of the Council who are doctors and who are appointed for the purposes of paragraph (1); and
  - (b) a list of members of the Council who are lay persons (“lay screeners”) and who are appointed by the Council for the purposes of rule 5(6), (7) and (8).

#### **Earlier cases taken into account**

4.—(1) Subject to paragraph (2), where the medical screener has decided under these Rules to take no further action in connection with a complaint or information (“the earlier case”) the earlier case may nonetheless be taken into account by the medical screener in connection with the consideration of a subsequent complaint or information with a view to determining whether together they indicate a pattern of professional performance which is seriously deficient.

(2) An earlier case may only be taken into account in accordance with paragraph (1) if, when the practitioner is notified that no further action is to be taken in connection with that earlier case, the notification contains a statement that the case may be taken into account in the consideration of any subsequent complaint or information.

#### **The screening process**

5.—(1) The medical screener shall take no action under rule 6 in connection with a case unless the complaint or information received by the Council—

- (a) is in writing;
- (b) except where it has been made by a person acting in a public capacity, is accompanied by a statutory declaration or affidavit in support which states the address and description of the deponent and the grounds for his belief in the truth of any fact asserted which is not within his personal knowledge; and
- (c) suggests to the medical screener that—
  - (i) the standard of the practitioner’s professional performance may have been seriously affected; and
  - (ii) it may be appropriate to take action under rule 6.

(2) For the purposes of considering a case, the medical screener may seek information about or observations on the case from any person who, in the opinion of the medical screener, might assist him in deciding whether there may be reason to believe that the standard of the practitioner’s professional performance has been seriously deficient.

(3) Where the conditions in paragraph (1) are satisfied, the Registrar shall notify the practitioner—

- (a) of the complaint or information; and
  - (b) where rule 4 applies, that the medical screener intends to take into account a complaint or information previously received by the Council.
- (4) A notice under paragraph (3) shall include—
- (a) copies of the complaint or information under consideration, any statutory declaration or affidavit and any case which the medical screener intends to take into account under rule 4;
  - (b) a copy of these Rules; and
  - (c) a statement that—

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- (i) the medical screener is considering inviting the practitioner under rule 6(2)(b) to agree that an assessment be carried out, and
- (ii) the practitioner may submit observations on the case to the medical screener in writing within the period 28 days of being sent the notice.

(5) After the practitioner's observations have been received or after the expiry of the period referred to in paragraph (4)(b)(ii) whichever is the earlier, the medical screener shall decide whether to take further action in connection with the case.

(6) The medical screener shall not decide that no further action needs to be taken in connection with a case unless he has consulted a lay screener and the lay screener agrees that no further action needs to be taken.

(7) If both the medical screener and the lay screener decide that no further action needs to be taken in connection with the case under these Rules then—

- (a) the practitioner and the complainant shall be informed of the decision, the reasons for it and that a lay screener has agreed with the medical screener's decision; and
- (b) where a statement under rule 4(2) is sent to the practitioner a copy of the statement shall also be sent to the complainant.

(8) If the lay screener considers that further action needs to be taken in connection with the case, the case shall be dealt with under the following provisions of these Rules.

#### **Assessment at screening stage**

**6.—**(1) An assessment may be carried out otherwise than in accordance with a direction at this stage in the consideration of a case for the purposes of paragraph 5A(1)(b) of Schedule 4 to the Act where—

- (a) either—
  - (i) the medical screener is of the opinion that an assessment needs to be carried out, or
  - (ii) the case is one to which rule 5(8) applies; and
- (b) the practitioner has agreed that an assessment be carried out.

(2) Where the circumstances specified in paragraph (1) apply, the medical screener shall prepare a statement of the reasons why an assessment needs to be carried out and the Registrar shall—

- (a) send to the practitioner—
  - (i) a copy of the statement, and
  - (ii) copies of any information about or observations on the case which he has received in response to enquiries made under rule 5(2) and which he has taken into account when considering the case; and
- (b) invite the practitioner within the period of 14 days of the statement being sent to agree that an assessment shall be carried out.

(3) The complainant shall not be sent any of the documents referred to in paragraph (2).

(4) If the practitioner agrees within the period referred to in paragraph (2)(b) that an assessment shall be carried out, a Panel shall be constituted under Part III of these Rules to carry out the assessment and the Registrar shall inform the complainant that an assessment is to be carried out.

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(5) Where the practitioner does not agree within the period referred to in paragraph (2) (b) that an assessment should be carried out, the medical screener may refer the case to the Assessment Referral Committee together with the statement prepared under paragraph (2).

(6) Where a case is referred to the Assessment Referral Committee under paragraph (5), the Registrar shall inform the practitioner and the complainant of the reference.

(7) A reference to the Assessment Referral Committee under paragraph (5) shall have no effect where, after the referral—

(a) the practitioner agrees that an assessment be carried out; or

(b) subject to paragraph (8), the medical screener receives information which causes him to decide that no further action needs to be taken in connection with the case

and in either case the medical screener has notified the Assessment Referral Committee accordingly.

(8) The medical screener shall not decide under paragraph (7)(b) that no further action be taken in connection with the case unless he has consulted a lay screener and the lay screener agrees that no further action needs to be taken.

(9) Where the medical screener has notified the Assessment Referral Committee under paragraph (7), he shall continue the consideration of the case as though no reference had been made to the Committee.

(10) Where a referral to the Assessment Referral Committee has no effect by virtue of paragraph (7), the Registrar shall notify the practitioner and the complainant accordingly and the notice shall state whether subparagraph (a) or subparagraph (b) of paragraph (7) applies.

### PART III

### ASSESSMENT

#### **Case co-ordinator**

7. Where an Assessment Panel is to be constituted pursuant to directions given by either the Assessment Referral Committee or the Committee on Professional Performance or in circumstances specified in rule 6, a member of the Council who is a doctor (“the case co-ordinator”) appointed by the Council for the purposes of this rule shall—

(a) appoint the members of the Assessment Panel from the lists referred to in rule 8(4); and

(b) perform the functions conferred on the case co-ordinator under these Rules.

#### **Constitution of Assessment Panels**

8.—(1) An Assessment Panel shall include—

(a) a lead assessor who shall be a doctor;

(b) at least one other doctor; and

(c) one lay person

none of whom shall be a member of the Council.

(2) A person shall not be appointed as a member of an Assessment Panel in any case where he has previously been appointed as a specialist adviser for a hearing in the case.



(3) Subject to paragraph (6), when appointing members of an Assessment Panel from the list of doctors referred to in paragraph (4), the case co-ordinator shall have regard to the specialty in which the practitioner regularly practises.

(4) For the purpose of providing persons to be members of Assessment Panels, the Council shall keep two lists of persons who are not members of the Council, the first shall be a list of doctors and the other shall be a list of lay persons.

(5) Subject to paragraph (6), where the list of doctors referred to in paragraph (4)—

- (a) does not include a doctor who practises or has practised in the same specialty in which the practitioner regularly practises; or
- (b) does include such a doctor but he is not available for appointment

the case co-ordinator may appoint a doctor whose name is not included in the list but who practises or has practised in the same specialty in which the practitioner regularly practises.

(6) Where the case concerns a complaint or information relating to a specialty in which the practitioner does not regularly practise, paragraphs (3) and (5) shall apply as though references to the specialty in which the practitioner regularly practises were references to the specialty to which the complaint relates.

#### **Death, resignation or incapacity of Panel member**

9. Where a person appointed to an Assessment Panel resigns from a Panel, or dies, or for some other reason the case co-ordinator considers that the person is no longer able to act in that capacity, the case co-ordinator may appoint another person to take his place in accordance with rule 8.

#### **Assessment Panels to receive papers**

10. When the case co-ordinator has appointed an Assessment Panel, the Registrar shall send to each member of the Panel and the practitioner—

- (a) all the documents which the practitioner has submitted to the medical screener, the case co-ordinator and, where the case has been referred to the Assessment Referral Committee, that Committee; and
- (b) all the other documents in the case which, in the opinion of the case co-ordinator, will assist the Panel in carrying out the assessment.

#### **Procedure of Panels**

11.—(1) In carrying out an assessment, an Assessment Panel shall, subject to any guidance given by the Council in relation to the carrying out of an assessment, adopt such procedures as appear to them to be necessary, having regard to the nature of the practitioner's work, to assess the standard of his professional performance, and the Assessment Panel shall in particular—

- (a) ask the doctor for a description in writing of his practice;
- (b) at the beginning of the assessment consider the papers in the case and decide the way the assessment is to proceed;
- (c) interview the practitioner;
- (d) interview the complainant if he agrees to be interviewed;
- (e) meet together during the course of the assessment to review the progress of the assessment;
- (f) send to or show the practitioner any written information or opinion received by the Assessment Panel which in the opinion of the Panel may influence

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their assessment of the standard of his professional performance and afford him reasonable opportunity of commenting on it;

- (g) visit the practitioner at least once at his place of work if he has a place of work and give him reasonable notice of such visits;
- (h) subject to paragraph 5A(7) of Schedule 4 to the Act, inspect a sample of the practitioner's practice records;
- (i) meet together to consider the conclusions to be reached on the assessment and the content of the Report of the Assessment Panel.

(2) An Assessment Panel may seek advice or information from any person who might, in the opinion of the Panel, assist them in carrying out the assessment.

(3) A practitioner may nominate not more than five persons whom he wishes to be interviewed in the course of the assessment and where persons are nominated in accordance with this paragraph the Assessment Panel shall make reasonable efforts to ensure that each person so nominated shall be interviewed by at least one member of the Panel.

(4) Paragraph (3) shall not require a member of the Assessment Panel to interview a person outside the United Kingdom.

(5) In carrying out the assessment members of the Panel may act alone or together with one or more of the other members of the Panel, but—

- (a) all the members of the Panel shall interview the practitioner together on at least one occasion; and
- (b) subject to paragraph (6), the practitioner may on any such occasion be accompanied by a person of his choice who may, to such extent as the lead assessor may allow, take part in the interview.

(6) Paragraph 5(b) shall not apply on any occasion where particular cases or named patients are being discussed.

(7) In this rule—

“meet together” means the members of the Assessment Panel meeting together without the practitioner or the complainant;

an interview for the purposes of paragraph (3) includes an interview over the telephone.

### **Failure to comply with requirements for assessment**

12.—(1) Where either—

- (a) the practitioner has agreed under rule 6(4) that an assessment should be carried out; or
- (b) the Assessment Referral Committee or the Committee on Professional Performance have directed that an assessment be carried out

but the Assessment Panel appointed to carry out the assessment report to the case co-ordinator that, because the practitioner has failed to comply with the reasonable requirements imposed by the Panel for the purposes of carrying out the assessment, they are unable to carry it out, the case co-ordinator shall refer the case to the Committee on Professional Performance together with a statement setting out the requirements of the Panel with which the practitioner has failed to comply.

(2) Where a case is referred to the Committee on Professional Performance under paragraph (1), the Registrar shall inform the practitioner and the complainant of the reference and send them a copy of the statement referred to in paragraph (1).

### **Report of Assessment Panel**

- 13.**—(1) The Assessment Panel shall prepare a Report of the assessment and send it —
- (a) where the assessment has been carried out under rule 6(1) or in accordance with a direction given by the Assessment Referral Committee, to the case co-ordinator;
  - (b) where the assessment has been carried out in accordance with a direction given by the Committee on Professional Performance, to that Committee.
- (2) The Report of the Assessment Panel shall include their opinion on such of the following matters as appear to them to be relevant in any case, that is to say whether—
- (a) the standard of the practitioner’s professional performance has been seriously deficient;
  - (b) the standard of the practitioner’s professional performance is likely to be improved by remedial action;
  - (c) the practitioner should limit his professional practice, or cease professional practice;
  - (d) no further action needs to be taken on the Report
- and in each case the Panel’s reasons for their opinion.
- (3) Where the members of the Assessment Panel disagree on any matter relating to the assessment, the Report shall include a statement of any dissenting opinion and the reasons for it.

## **PART IV**

### **ASSESSMENT REFERRAL COMMITTEE**

#### **Directions for assessment**

- 14.** The Assessment Referral Committee are authorised to give directions requiring an assessment to be carried out.

#### **Functions of Assessment Referral Committee**

- 15.**—(1) The Assessment Referral Committee shall have the functions conferred on them by this rule.
- (2) It shall be the duty of the Assessment Referral Committee to decide whether, in relation to any case referred to them by the medical screener under rule 6(5), an assessment needs to be carried out.
- (3) Where the Assessment Referral Committee are of the opinion that the standard of a practitioner’s professional performance may have been seriously deficient, they may direct that an Assessment Panel be appointed under Part III of these Rules to carry out an assessment of the standard of his professional performance.

#### **Meetings and procedure of Assessment Referral Committee**

- 16.** Schedules 1 and 2 shall have effect with respect to the meetings of the Assessment Referral Committee and to the procedure of that Committee.

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## PART V

### PROCEDURE FOLLOWING ASSESSMENT

#### **Case co-ordinator's consideration of Assessment Panel's Report**

17.—(1) In a case to which rule 13(1)(a) applies the Registrar shall send a copy of the Report of the Assessment Panel to the practitioner and shall invite him to submit observations on it in writing to the case co-ordinator within the period of 21 days of being sent the copy of the Report.

(2) The complainant shall not be sent a copy of the Report of the Assessment Panel.

(3) At the end of the period referred to in paragraph (1), the case co-ordinator shall consider the Report together with any observations submitted by the practitioner.

(4) If the Report of the Assessment Panel contains an opinion that, for any reason, causes the case co-ordinator to believe that the case should be referred to the Committee on Professional Performance the case co-ordinator shall refer the case forthwith to that Committee together with a statement of his reasons for the referral.

(5) Where the case co-ordinator refers a case to the Committee on Professional Performance under paragraph (4), the Registrar shall notify the practitioner and the complainant of the reference and shall send a copy of the case co-ordinator's statement to the practitioner.

(6) If the opinion of the case co-ordinator is that no further action be taken in the case, he shall consult a lay adviser and no further action shall be taken in the case only if the lay adviser agrees with the opinion of the case co-ordinator.

(7) Where no further action is to be taken in connection with a case, the Registrar shall—

- (a) notify the practitioner and the complainant of the case co-ordinator's decision to take no further action and the reasons for his decision; and
- (b) inform both the practitioner and the complainant that a lay adviser has agreed with the decision.

(8) Where the lay adviser does not agree that no further action be taken in connection with the case, the case co-ordinator shall refer the case to the Committee on Professional Performance together with a copy of the Report of the Assessment Panel and a statement of his opinion and that of the lay adviser.

(9) Where the case co-ordinator refers a case to the Committee on Professional Performance under paragraph (8), the Registrar shall notify the practitioner and the complainant of the reference and send the practitioner a copy of the statements of the case co-ordinator and the lay adviser.

(10) If none of paragraphs (4), (6) or (8) applies, the case co-ordinator shall draw up a statement of requirements in writing in accordance with rule 18 and send it to the practitioner.

#### **Statement of requirements**

18.—(1) In drawing up the statement of requirements the case co-ordinator shall have regard to the findings and opinions in the Report of the Assessment Panel and the statement may include such of the following matters as are appropriate in any case—

- (a) the aspects of the practitioner's professional performance which he is required to improve;
- (b) the standard of professional performance which the practitioner is required to achieve;

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- (c) the aspects of the arrangements for the running of his professional practice which the practitioner is required to improve;
- (d) the limitations which the practitioner is required to impose on his professional practice.

(2) The statement of requirements shall state the date on which the practitioner is to have fulfilled the requirements set out in the statement of requirements and the period during which the statement of requirements shall have effect and shall include a provision that further assessment is to be carried out after the date on which the practitioner is to have fulfilled those requirements.

(3) The date referred to in paragraph (2) shall be no longer than one year from the date on which the practitioner agrees, under paragraph (4), to comply with the statement of requirements.

(4) Where the practitioner agrees to comply with the statement of requirements he shall in writing, within the period of 14 days from the date on which he is sent the statement—

- (a) notify the case co-ordinator of his acceptance;
- (b) undertake to—
  - (i) comply with the statement of requirements, and
  - (ii) be assessed for a second time after the date on which he is to have fulfilled the requirements set out in the statement of requirements; and
- (c) consent to the Registrar—
  - (i) notifying his employer or professional partner or any organisation or person with whom he has a professional relationship that he has agreed to comply with a statement of requirements under this rule and the nature of those requirements, and
  - (ii) disclosing to any person who requests the Council to provide information about the practitioner's registration that he has agreed to comply with a statement of requirements under this rule and the nature of those requirements.

(5) The practitioner shall not be taken to have agreed to comply with the statement of requirements unless he has complied with paragraph (4).

(6) Where the practitioner does not agree in writing to comply with the statement of requirements within the period referred to in paragraph (4), the case co-ordinator shall refer the case to the Committee on Professional Performance and the Registrar shall notify the practitioner and the complainant of the reference.

### **Modification of statement of requirements**

**19.—**(1) The case co-ordinator may, with the agreement of the practitioner, modify the statement of requirements.

(2) Where the case co-ordinator modifies the statement of requirements, he shall send the modified statement to the practitioner and rule 18(2), (3), (4) and (5) shall apply to the modified statement.

(3) Where the practitioner does not agree that the statement of requirements should be modified the case co-ordinator may either refer the case to the Committee on Professional Performance or notify the practitioner that the original statement of requirements and his agreement to it continue to have effect.

(4) Where the case co-ordinator refers a case to the Committee on Professional Performance under paragraph (3), the Registrar shall notify the practitioner and the complainant of the reference.

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## **Second assessment**

**20.**—(1) An assessment (“the second assessment”) may be carried out otherwise than in accordance with a direction at this stage in the consideration of a case for the purposes of paragraph 5A(1)(b) of Schedule 4 to the Act when—

- (a) the date on which the practitioner is to have fulfilled the requirements set out in the statement of requirements has passed; and
- (b) the case co-ordinator has decided not to refer the case to the Committee on Professional Performance.

(2) When the circumstances referred to in paragraph (1) apply, an Assessment Panel shall be constituted (“the second Assessment Panel”) to carry out a further assessment and the case co-ordinator shall appoint the members of the second Assessment Panel in accordance with rule 8 and rule 9 shall apply in the event of the resignation or death of a member of the second Assessment Panel.

(3) Where the second Assessment Panel report to the case co-ordinator that, because the practitioner has failed to comply with the reasonable requirements imposed by the second Panel for the purposes of carrying out the second assessment, they are unable to carry it out, the case co-ordinator shall refer the case to the Committee on Professional Performance together with a statement setting out the requirements of the second Panel with which the practitioner has failed to comply.

(4) Where a case is referred to the Committee on Professional Performance under paragraph (3), the Registrar shall inform the practitioner and the complainant of the reference and send them a copy of the statement referred to in paragraph (3).

(5) In carrying out a second assessment, the second Assessment Panel shall, subject to any guidance given by the Council in relation to the carrying out of an assessment, adopt such procedures as appear to them to be necessary to assess whether the practitioner has satisfactorily fulfilled the requirements of the statement of requirements and whether, as a result, the standard of his professional performance has improved sufficiently to enable the second Assessment Panel to suggest that no further action needs to be taken and the second Assessment Panel shall in particular—

- (a) interview the practitioner; and
- (b) consider any information about or observations on the case received from any person who has assisted the practitioner with any advice, education or training in connection with any remedial action taken by the practitioner during the period beginning with the date on which he accepted the statement of requirements and ending with the date referred to in rule 18(2).

(6) Rule 11(1)(b), (e), (f) and (i), (2), (5), (6) and (7) shall apply to the procedure of the second Assessment Panel.

(7) The second Assessment Panel shall prepare a Report and send it to the case co-ordinator.

(8) Rule 13(2) and (3) shall apply to the Report of the second Assessment Panel.

## **Case co-ordinator’s consideration of the Report of the second Assessment Panel**

**21.** Rule 17 shall apply to the case co-ordinator’s consideration of the Report of the second Assessment Panel as though references—

- (a) to the Report of the Assessment Panel were references to the Report of the second Assessment Panel; and
- (b) to the statement of requirements were references to the second statement of requirements.

### **Second statement of requirements**

**22.** Where a second statement of requirements is to be drawn up, rules 18 and 19 shall apply to the second statement as though references to—

- (a) the statement of requirements were references to the second statement of requirements; and
- (b) the Report of the Assessment Panel were references to the Report of the second Assessment Panel.

### **Third assessment**

**23.—**(1) An assessment (“the third assessment”) may be carried out otherwise than in accordance with a direction at this stage in the consideration of a case for the purposes of paragraph 5A(1)(b) of Schedule 4 to the Act when the date on which the practitioner is to have fulfilled the requirements set out in the second statement of requirements has passed.

(2) Where the circumstances referred to in paragraph (1) apply, an Assessment Panel shall be constituted (“the third Assessment Panel”) and the case co-ordinator shall appoint the members of the third Assessment Panel in accordance with rule 8 and rule 9 shall apply in the event of the resignation or death of a member of the third Assessment Panel.

(3) Rule 20(3), (4), (5), (6), (7) and (8) shall apply to the third Assessment Panel as though references to—

- (a) the second Assessment Panel were references to the third Assessment Panel;
- (b) the second Panel were references to the third Panel;
- (c) the second assessment were references to the third assessment;
- (d) the Report of the second Assessment Panel were references to the Report of the third Assessment Panel; and
- (e) the statement of requirements were references to the second statement of requirements.

### **Case co-ordinator’s consideration of the Report of the third Assessment Panel**

**24.** Rule 17(1), (2), (3), (4), (5), (6), (7), (8) and (9) shall apply to the case co-ordinator’s consideration of the Report of the third Assessment Panel as though references to the Report of the Assessment Panel were references to the Report of the third Assessment Panel.

### **Referral to Committee on Professional Performance**

**25.—**(1) Where, at any stage in the consideration of a case after an assessment has been carried out, the case co-ordinator is of the opinion that—

- (a) it is necessary for the protection of members of the public or would be in the best interests of the practitioner for a direction for suspension or for conditional registration to be made; or
- (b) the practitioner is—
  - (i) failing to comply with the requirements set out in the statement of requirements, or
  - (ii) failing to benefit from and is unlikely to benefit from any education or training which he is undertaking in accordance with a statement of requirements; or
- (c) the practitioner’s fitness to practise may be seriously impaired by reason of his physical or mental condition

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he shall refer the case to the Committee on Professional Performance together with a statement of his opinion and his reasons for it.

(2) Where a case is referred to the Committee on Professional Performance under paragraph (1), the Registrar shall notify the practitioner and the complainant of the reference and send to the practitioner a copy of the statement of the case co-ordinator's opinion and his reason for it.

#### **Withdrawal of reference to the Committee on Professional Performance**

**26.**—(1) A reference to the Committee on Professional Performance by the case co-ordinator under any provision of these Rules shall, subject to paragraph (2), have no effect where, after the reference has been made—

- (a) the practitioner, having previously refused to undergo an assessment, agrees that an assessment be carried out; or
- (b) the case co-ordinator receives information which causes him to believe that it is no longer necessary for the Committee to hold a hearing of the case at this stage

and in either case the co-ordinator has notified the Committee on Professional Performance accordingly.

(2) The case co-ordinator shall not decide under paragraph (1) that a reference to the Committee on Professional Performance shall have no effect unless he has consulted a lay adviser and the lay adviser agrees that this shall be the case.

(3) Where the case co-ordinator has notified the Committee on Professional Performance under paragraph (1), he shall continue the consideration of the case as though no reference had been made to the Committee.

(4) Where a referral to the Committee on Professional Performance has no effect by virtue of paragraph (1), the Registrar shall notify the practitioner and the complainant accordingly and the notice shall state whether subparagraph (a) or subparagraph (b) of paragraph (1) applies.

(5) Where, having carried out further consideration of the case in accordance with paragraph (3), the case co-ordinator considers that the Committee on Professional Performance should proceed to hold a hearing of the case he shall request it to do so and the Registrar shall notify the practitioner and the complainant accordingly in accordance with paragraphs 3 and 4 of Schedule 1 to these Rules.

## **PART VI**

### **COMMITTEE ON PROFESSIONAL PERFORMANCE**

#### **Directions for assessment**

**27.** The Committee on Professional Performance is authorised to give directions requiring an assessment to be carried out.

#### **Self-referral to Committee on Professional Performance after assessment**

**28.** Where—

- (a) proceedings relating to a person's registration have been held before the Assessment Referral Committee; and
- (b) an assessment has been carried out in accordance with a direction of that Committee



the standard of that person's professional performance shall, if he so requests, be considered by the Committee on Professional Performance.

#### **Failure to comply with reasonable requirements**

**29.**—(1) The Committee on Professional Performance may make directions of a kind which may be made under section 36A of the Act for the suspension of or attachment of conditions to a practitioner's registration where the practitioner fails to comply with reasonable requirements imposed by an Assessment Panel for the purposes of carrying out an assessment in accordance with a direction of the Committee.

(2) Where—

- (a) the Committee on Professional Performance have made a direction under paragraph (1) for the suspension of or the attachment of conditions to a practitioner's registration;
- (b) following the making of the direction, the practitioner has complied with the requirements of the Assessment Panel and an assessment has been carried out

the Registrar shall refer the case to the Committee on Professional Performance and notify the practitioner and the complainant of the reference.

#### **Meetings and procedure of the Committee on Professional Performance**

**30.** Schedules 1 and 3 to these Rules shall have effect with respect to the meetings of the Committee on Professional Performance and to the procedure of that Committee.

## **PART VII**

### **GENERAL**

#### **Service of documents**

**31.**—(1) Any notice or other document required by any provision of these Rules to be given or sent to any person may be given or sent—

- (a) by delivering it or sending it to him by registered post or by the recorded delivery service at his usual or last-known address, which in the case of a doctor shall be his address in the Register or, if his last-known address differs from the address in the Register, his last-known address;
- (b) in the case of a person represented by—
  - (i) a solicitor, by delivering it or sending it by registered post or by the recorded delivery service to that solicitor at his professional address;
  - (ii) any other person, by delivering it or sending it by registered post or by the recorded delivery service to that other person at his usual or last-known address.

(2) In any other circumstances, documents sent for the purposes of these Rules may be sent by post.

#### **Power to extend time limits**

**32.** The time specified in—

- (a) rules 5(4)(b)(ii) and 17(1) for making observations;

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- (b) rule 6(2)(b) for agreeing to an assessment;
- (c) rule 18(4) for accepting the statement of requirements; and
- (d) paragraphs 8(1)(b), 12(3)(b) and 14(3)(b) of Schedule 3 for notifying the Registrar

may be extended, in the case of rules 5(4)(b)(ii) and 6(2)(b) by the medical screener, in the case of rules 17(1) and 18(4) by the case co-ordinator and in the case of paragraphs 8(1)(b), 12(3)(b) and 14(3)(b) of Schedule 3 by the Registrar in each case where that person is satisfied that in all the circumstances it is reasonable to do so.

### **Amendment of Health Rules**

**33.**—(1) The Health Rules shall be amended in accordance with the following provisions of this rule.

(2) In rule 2(1)—

- (a) after the definition of “defence society”, there shall be inserted the following definition:

““the Health Service Acts” means the National Health Service Act 1977(**11**), the National Health Service (Scotland) Act 1978(**12**), the National Health Service and Community Care Act 1990(**13**), the Health and Personal Social Services (Northern Ireland) Order 1972(**14**) and the National Health Service (Primary Care) Act 1997(**15**), and a reference to those Acts is to be construed as a reference to them as they have effect on the making of these Rules and as amended subsequently;”

- (b) for the definition of “person acting in a public capacity” there shall be substituted the following definition:

““person acting in a public capacity” means an officer of any body established by or under the Health Service Acts, a Hospital Medical Staff Committee or body exercising similar functions, a local authority, a body granting primary United Kingdom qualifications, a medical Royal College, a Government Department or Agency or any other public body or authority, a person holding judicial office, or any officer attached to a Court, or the Solicitor, where the person concerned is acting in that official capacity.”

(3) In rule 5(1)(c), after the word “Committee” there shall be inserted the words “the Assessment Referral Committee or the Committee on Professional Performance”.

(4) For rule 29, there shall be substituted the following rule—

#### **“Cases referred by the Professional Conduct Committee, the Assessment Referral Committee or the Committee on Professional Performance**

In any case referred by the Professional Conduct Committee, the Assessment Referral Committee or the Committee on Professional Performance, the Committee shall, following their determination under rule 24(1) as to whether or not the fitness to practise of the practitioner is seriously impaired by reason of his physical or mental condition, certify their opinion on this matter to the Professional Conduct Committee the Assessment Referral Committee or the Committee on Professional Performance as the case may be in accordance with paragraph 4 of Schedule 4 to the Act and shall notify the practitioner.”

(11) 1977 c. 49. This Act was amended by the Health Authorities Act 1995 c. 17.

(12) 1978 c. 29.

(13) 1990 c. 19.

(14) S.I. 1972/1265 (N.I.14).

(15) 1997 c. 46.

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## **Amendment of Conduct Rules**

### **34. In rule 2(1) of the Conduct Rules—**

- (a) after the definition of “the Health Committee (Procedure) Rules”, there shall be inserted the following definition:

““the Health Service Acts” means the National Health Service Act 1977, the National Health Service (Scotland) Act 1978, the National Health Service and Community Care Act 1990, the Health and Personal Social Services (Northern Ireland) Order 1972 and the National Health Service (Primary Care) Act 1997, and a reference to those Acts is to be construed as a reference to them as they have effect on the making of these Rules and as amended subsequently;”

- (b) for the definition of “person acting in a public capacity” there shall be substituted the following definition:

““person acting in a public capacity” means an officer of any body established by or under the Health Service Acts, a Hospital Medical Staff Committee or body exercising similar functions, a local authority, a body granting primary United Kingdom qualifications, a medical Royal College, a Government Department or Agency or any other public body or authority, a person holding judicial office, or any officer attached to a Court, or the Solicitor, where the person concerned is acting in that official capacity.”

## **SCHEDULE 1**

### **GENERAL PROVISIONS ON MEETINGS AND PROCEDURE OF COMMITTEES**

#### **Application and interpretation**

**1.—(1)** This Schedule shall apply to the meetings and procedures of the Assessment Referral Committee and the Committee on Professional Performance.

- (2) In this Schedule, unless the context otherwise requires—

“the Committee” means the Assessment Referral Committee or the Committee on Professional Performance as appropriate;

“the President” means the President of the Council and, if at any time the President is unable to act or is absent from the United Kingdom, a person authorised by the President or, if he is unable to give that authority, the Council to perform the functions of the President;

“resumed hearing” has the same meaning as in Schedule 3.

#### **Meetings of the Committee**

**2.—(1)** The Committee shall meet on such days as the Chairman of the Committee, the Committee or the Council may decide and at such times as the Chairman of the Committee shall decide.

(2) Meetings of the Committee shall be held at the offices of the Council unless the Council or the President otherwise directs.

- (3) Members of the Committee shall be notified in writing of meetings of the Committee.

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### **Notice of referral**

3.—(1) As soon as practicable after a case has been referred to the Committee, the Registrar shall send the practitioner a notice (“the notice of referral”) which shall—

- (a) state the day on which and the time and place at which the Committee are to hold a hearing of the case;
- (b) invite the practitioner to state whether he proposes to attend the hearing; and
- (c) inform the practitioner that he may be represented or accompanied at the hearing in accordance with paragraph 7.

(2) The hearing shall not be fixed for any date earlier than 28 days after the posting of the notice of referral except with the agreement of the practitioner or where the hearing is a resumed hearing.

(3) A resumed hearing shall not be fixed for any date earlier than 6 weeks after the posting of the notice of referral.

(4) The Registrar shall send with the notice of referral—

- (a) a copy of these Rules; and
- (b) copies of reports, written statements and other documents which are sent to the Committee under paragraph 9(1).

### **Notice to complainant**

4.—(1) The Registrar shall send to the complainant notice of the day on which and the time and place at which the hearing is to be held and inform him that he may attend the hearing and be represented or accompanied at the hearing in accordance with paragraph 7.

(2) The Registrar shall send a copy of these Rules with the notice referred to in subparagraph (1).

### **Postponement or adjournment of hearing**

5.—(1) The Chairman of the Committee, either of his own motion or at the request in writing of the practitioner or the complainant, may postpone a hearing of the Committee at any time before the beginning of the hearing.

(2) The Committee may adjourn any of their proceedings or meetings from time to time as they think fit and in particular may adjourn in order to obtain further information on the standard of the practitioner’s professional performance.

(3) Where a hearing has been postponed or adjourned for more than 28 days the Registrar shall send the practitioner and the complainant notice of the date on which and the time and place at which the Committee are to hold the postponed hearing or resume the hearing that has been adjourned.

### **Absence of practitioner at the hearing**

6. Where the practitioner is neither present nor represented at the hearing, the Committee may nevertheless proceed with the hearing if they are satisfied that all reasonable efforts have been made in accordance with rule 31 and paragraph 3 to serve the notice of referral.

### **Entitlement to be heard, representation and presence at the hearing**

7.—(1) A party to the proceedings shall be entitled to be heard by the Committee.

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(2) The practitioner and the complainant may be represented by counsel or by a solicitor and, subject to subparagraph (3)—

- (a) a complainant may be represented or accompanied by a member of his family or a friend, by an officer of a community health council or health council or health and social services council or, if the complainant is a body corporate or an unincorporated body of persons, by their clerk or other officer appointed for the purpose;
- (b) a practitioner may be represented or accompanied by an officer of any professional organisation of which he is a member, by a member of his family and additionally may be accompanied by no more than one medical adviser;
- (c) the Solicitor may be represented by counsel.

(3) A person who represents or accompanies the practitioner or the complainant shall not be entitled to give oral evidence at the hearing.

(4) Except where a hearing is held in public under paragraph 3(2) of Schedule 3, neither the complainant nor a person representing or accompanying him shall be present at the hearing except—

- (a) for the purpose of addressing and giving evidence to the Committee; and
- (b) during the announcement of the Committee's decision.

(5) For the purpose of arriving at any decision relating to the proceedings, the Committee may exclude the practitioner, the complainant, their representatives and any person accompanying them and, where the hearing is in public, members of the public.

(6) The complainant shall not receive any medical reports or other confidential information sent to the Committee under paragraph 9(1).

### **Specialist advisers**

**8.—**(1) For the purpose of advising the Committee on medical questions arising at a hearing of the Committee there shall be present at the hearing at least one person (“the specialist adviser”) who shall be appointed by the Chairman of the Committee from a list of specialist advisers kept by the Council for the purposes of this paragraph.

(2) Members of the Council shall not be included in the list referred to in paragraph (1).

(3) A person shall not be appointed as a specialist adviser in any case where he has previously been a member of an Assessment Panel which has carried out an assessment of the professional performance of the practitioner to whom the case relates.

(4) Subject to subparagraph (5), at least one of the specialist advisers appointed under paragraph (1) shall be a person who is practising or has practised in the same specialty in which the practitioner regularly practises.

(5) Where a case concerns a complaint or information relating to a specialty in which the practitioner does not regularly practise, paragraph (4) shall apply as though the reference to a specialty in which the practitioner regularly practises was a reference to the specialty to which the complaint or information relates.

(6) The specialist adviser shall advise the Committee on the medical issues before the Committee and shall do so—

- (a) on any question referred to him by the Committee; and
- (b) of their own motion if it appears to him that, but for such advice, there is a possibility of a mistake being made—
  - (i) in judging the medical significance of any information before the Committee,
  - or

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(ii) because of an absence of information before the Committee.

(7) The advice of the specialist adviser shall be given in the presence of the practitioner and his representative if they appear at the hearing or, if the advice is given after the Committee have begun to deliberate as to their findings, the practitioner shall be informed what advice the specialist adviser has given to the Committee.

(8) In this paragraph the reference to “Assessment Panel” includes a reference to the second and third Assessment Panel.

### **Evidence**

**9.**—(1) Before any meeting of the Committee (other than a meeting that has been adjourned) the Registrar shall send to members of the Committee and to the specialist adviser appointed to advise the Committee under paragraph 8, copies of the notice of referral, the documents sent to the practitioner under rules 5(4) and 6(2)(a)(ii) and any observations in writing submitted by or on behalf of the practitioner in connection with his case.

(2) The Committee may receive oral, documentary or other evidence of any fact or matter which appears to them relevant to the inquiry into the case before them but may consider the standard of the practitioner’s professional performance on the basis of the reports, written statements and other documents sent to members of the Committee under paragraph (1).

(3) The Committee may of their own motion obtain any information in writing or call any person to give oral evidence in either case which they consider might be able to assist them in carrying out their functions.

### **Reference to Health Committee**

**10.** Where a case is referred to the Health Committee under paragraph 4 of Schedule 4 to the Act, the Committee may direct the Registrar to invite the practitioner—

- (a) to submit to examination by—
  - (i) one or more doctors chosen by the President from the persons nominated under Schedule 2 to the Health Rules, and
  - (ii) if the practitioner wishes, one doctor of his own choice;
- (b) to agree that the persons examining him under subparagraph (a) of this rule, should provide the Health Committee with reports on his fitness to practise and recommendations for the future management of his case.

### **Decision of the Committee**

**11.**—(1) The Chairman of the Committee shall give the decision of the Committee orally at the end of the hearing.

- (2) The Registrar shall—
  - (a) record in writing the decision of the Committee;
  - (b) as soon as is practicable after the hearing, send a copy of the decision to the practitioner and the complainant; and
  - (c) where the decision of the Committee is an appealable decision within the meaning of section 40 of the Act, notify the practitioner of his right to appeal against the decision in accordance with that section.

### **Notes and transcript of proceedings**

12.—(1) A shorthand writer shall be appointed by the Registrar to take a shorthand note of the proceedings of the Committee.

(2) Any party shall, on application to the Solicitor and on payment of a reasonable charge, be sent by the Solicitor a transcript of the shorthand note of any part of the proceedings at which the party was entitled to be present.

## SCHEDULE 2

### PROCEDURE OF ASSESSMENT REFERRAL COMMITTEE

#### **Interpretation**

1. In this Schedule “the Committee” means the Assessment Referral Committee.

#### **Application**

2. The provisions of this Schedule shall apply to the Assessment Referral Committee and shall be in addition to the provisions of Schedule 1 and, in the event of any conflict between the two, the provisions of this Schedule shall apply.

#### **Procedure**

3.—(1) The procedure of the Committee shall be as follows—

- (a) the complainant may give evidence to the Committee and the complainant or his representative may address the Committee;
- (b) the complainant may be questioned by—
  - (i) the Solicitor,
  - (ii) the practitioner or his representative, and
  - (iii) members of the Committee, the specialist adviser and the legal assessor;
- (c) the Solicitor shall present the case to the Committee and may call and question any person called by the Committee under paragraph 9(3) of Schedule 1;
- (d) any person called by the Committee under paragraph 9(3) of Schedule 1 may be questioned by—
  - (i) the practitioner or his representative, and
  - (ii) members of the Committee, the specialist adviser and the legal assessor, and
  - (iii) the Solicitor for a second time;
- (e) the practitioner may give evidence to the Committee relating to whether or not an assessment should be carried out;
- (f) the practitioner may be questioned by—
  - (i) the Solicitor, and
  - (ii) members of the Committee, the specialist adviser and the legal assessor;
- (g) the practitioner or his representative may address the Committee on the matter specified in paragraph (e) of this subparagraph;

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- (h) the Committee shall decide whether to direct that an assessment of the standard of the practitioner’s professional performance be carried out.
- (2) Where it appears to the Committee necessary or expedient either—
  - (a) for the proper or expeditious running of the hearing; or
  - (b) for the convenience of a party or a witness at the hearing

that the procedures set out in paragraph (1) be changed, the Committee may decide to change the procedure and in particular the Committee may decide that the order of the calling of witnesses be different from that set out in paragraph (1) and that a witness may be recalled to give further evidence.

(3) Except as provided in paragraph 9(3) of Schedule 1 and subparagraph (4), no new evidence in writing shall be given to the Committee before or at the hearing of the Committee and no person shall give oral evidence at the hearing other than the practitioner or the complainant or, for the purposes referred to in subparagraph (5)(b), the Registrar.

(4) Notwithstanding subparagraph (3), the practitioner may submit new evidence in writing to the Committee on the condition that the evidence is received by the Committee at least 14 days before the date on which the Committee are to hold the hearing of the case.

- (5) In this paragraph, “new evidence” means any evidence other than evidence—
  - (a) contained in the documents sent to the members of the Committee and the specialist adviser under paragraph 9(1) of Schedule 1; or
  - (b) relating to—
    - (i) the service of notices or the sending of documents under these Rules, or
    - (ii) the attendance of the practitioner at the hearing.

**Committee to meet in private**

- 4. Proceedings before the Committee shall be held in private.

**Voting**

5. The decision of the majority of the members of the Committee who are present shall be the decision of the Committee but, if the votes are equal, the Chairman shall have an additional casting vote.

SCHEDULE 3

PROCEDURE OF COMMITTEE ON PROFESSIONAL PERFORMANCE

PART I  
GENERAL

**Interpretation**

- 1. In this Part of this Schedule—



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“assessment hearing” means any hearing of the Committee in circumstances where the standard of the practitioner’s professional performance has not been assessed, that is to say, a hearing following either—

- (a) a reference by the case co-ordinator under rule 12(1); or
- (b) the making of a direction under rule 29(1);

“the Committee” means the Committee on Professional Performance;

“notice of referral” means the notice sent under paragraph 3 of Schedule 1;

“performance hearing” means a hearing of the Committee (other than a resumed or review hearing) in circumstances where the standard of the practitioner’s professional performance has been assessed and a Report of the assessment has been prepared by an Assessment Panel, that is to say, a hearing following—

- (a) a request by the practitioner under rule 28; or
- (b) a referral by the case co-ordinator under rule 17(4) or (8), rule 18(6), rule 19(3), rule 24(2), rule 25 or rule 29(2);

“resumed hearing” means a hearing following a direction of the Committee (other than a direction under rule 29) that either—

- (a) a practitioner’s registration shall be suspended (other than a direction for indefinite suspension); or
- (b) a practitioner’s registration shall be conditional on his compliance with requirements specified in the direction;

“review hearing” means a hearing following a request by a practitioner whose registration has been suspended indefinitely that the suspension be reviewed.

## **Application**

2. The provisions of this Schedule shall apply to the Committee on Professional Performance and shall be in addition to the provisions of Schedule 1 and, in the event of any conflict between the two, the provisions of this Schedule shall apply.

## **Public and private hearings**

3.—(1) Except as provided in subparagraph (2), the proceedings of the Committee shall be held in private.

(2) The proceedings of the Committee shall be held in public whenever the practitioner so requests.

(3) Notwithstanding the practitioner’s request that the proceedings of the Committee be held in public, the Committee may direct that, while any information relating to the medical history or condition of any person is being given to the Committee, all persons who are not concerned with the hearing shall withdraw from the hearing.

(4) In this paragraph, a person is not concerned with the hearing if he is not—

- (a) a member of the Committee, the legal assessor or the specialist adviser;
- (b) the practitioner or solicitor or person representing him;
- (c) an officer or member of the Council;
- (d) a person giving oral evidence to the Committee;
- (e) a person with leave of the Chairman of the Committee to remain at the hearing.

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## **Procedure**

4. Where it appears to the Committee necessary or expedient either—
  - (a) for the proper or expeditious running of the hearing; or
  - (b) for the convenience of a party or a witness at the hearing

that the procedures set out in paragraphs 6, 10, 13 or 15 as the case may be should be changed, the Committee may, after consulting the legal assessor, and giving the Solicitor and the practitioner the opportunity to be heard on the matter, decide to change the procedure and in particular the Committee may decide that the order of the calling of witnesses be different from that set out in these paragraphs and that a witness may be recalled to give further evidence.

## **Voting**

5. The decision of the majority of the members of the Committee who are present shall be the decision of the Committee but, if the votes are equal, the question before the Committee shall be decided in favour of the practitioner.

# **PART II**

## **ASSESSMENT HEARINGS**

### **Procedure at assessment hearings**

6. The procedure of the Committee at an assessment hearing shall be the same as the procedure of the Assessment Referral Committee specified in paragraph 3 of Schedule 2 except that—

- (a) paragraphs (a) and (b) of subparagraph (1) shall be omitted where the Committee have directed at a previous hearing that an assessment be carried out;
- (b) for paragraph (e) of subparagraph (1) there shall be substituted the following paragraph—

“(e) the practitioner or his representative may address the Committee—

- (i) where the Committee have not directed at a previous hearing that an assessment be carried out, as to whether or not an assessment should be carried out,
- (ii) where the Committee have directed at a previous hearing that an assessment be carried out, as to why he has not complied with the requirements of the Assessment Panel; and”

- (c) for paragraph (h) of subparagraph (1) there shall be substituted the following paragraph—

“(h) the Committee shall decide—

- (i) where the Committee have not made a direction at a previous hearing that an assessment be carried out, whether to make a direction that an assessment be carried out,
- (ii) where the Committee have made a direction at a previous hearing that an assessment be carried out, whether to make a direction under rule 29(1).”

## PART III

### PERFORMANCE HEARINGS

#### **Practitioner requests hearing**

7. Where a practitioner makes a request under rule 28, the request shall be treated as a referral to the Committee and paragraphs 3 and 4 of Schedule 1 shall apply accordingly.

#### **Notice of referral for performance hearings**

8.—(1) Where the Committee are to hold a performance hearing, the notice of referral shall, in addition to the matters specified in paragraph 3 of Schedule 1—

- (a) inform the practitioner if the Solicitor proposes to call the author of a report, written statement or other document referred to in paragraph 3(4)(b) of Schedule 1 to give oral evidence at the hearing;
- (b) invite the practitioner to notify the Registrar, within the period of 14 days of being sent the notice of referral, whether he wishes the author of any such report, written statement or other document to give oral evidence at the hearing;
- (c) inform the practitioner under which provision of these Rules the reference has been made.

(2) Where the practitioner has stated that he wishes the author of any report, written statement or other document referred to in paragraph 3(4)(b) of Schedule 1 to give oral evidence at the hearing, the Registrar shall arrange for the author to attend the hearing.

(3) In relation to the Report of an Assessment Panel, the lead assessor shall be treated as the author of the Report but where the lead assessor is not available to give oral evidence at the hearing, the case co-ordinator shall decide which of the other members of the Panel shall be called to give evidence in his place.

#### **Witnesses and evidence at performance hearings**

9.—(1) In any proceedings before the Committee, the Solicitor and the practitioner may call witnesses and may put questions to any person called as a witness.

(2) Members of the Committee, the legal assessor and the specialist adviser may put questions to any person called as a witness and to the practitioner and the complainant.

(3) Where the practitioner has stated that he wishes the author of any report, statement or other document to give oral evidence at the hearing, that report, statement or other document shall only be presented to the Committee if its author is called as a witness.

(4) If the practitioner indicates at the hearing that he wishes the author of any document presented to the Committee by the Solicitor to be called to give oral evidence then, notwithstanding that he has not stated that he wishes the author to be present at the hearing under paragraph 8(1)(b), the Committee shall consult the legal assessor as to whether, in the interests of justice, they should adjourn the hearing in order to permit the evidence to be given or whether they should proceed with the hearing on the basis of the documents before them.

(5) The Committee may, at any stage in their proceedings—

- (a) with the consent of the practitioner; or
- (b) where, after consultation with the legal assessor, they are satisfied that its reception is desirable to enable them to perform their duty

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allow the Solicitor to produce at the hearing any written evidence, notwithstanding that a copy has not been given to the practitioner before the hearing or that its author is not being called as a witness.

#### **Procedure at performance hearings**

- 10.** The procedure of the Committee at a performance hearing shall be as follows—
- (a) the complainant may give evidence to the Committee and the complainant or his representative may address the Committee;
  - (b) the complainant may be questioned by—
    - (i) the Solicitor,
    - (ii) the practitioner or his representative,
    - (iii) members of the Committee, the legal assessor and the specialist adviser;
  - (c) the Solicitor shall present the case to the Committee and may call and question his witnesses including persons called by the Committee under paragraph 9(3) of Schedule 1;
  - (d) the Solicitor’s witnesses may be questioned by—
    - (i) the practitioner or his representative,
    - (ii) members of the Committee, the legal assessor and the specialist adviser,
    - (iii) the Solicitor for a second time;
  - (e) the practitioner may give evidence to the Committee—
    - (i) on any matter relating to the provision of these Rules under which the referral was made to the Committee, and
    - (ii) as to whether the standard of his professional performance is seriously deficient and may call and question his witnesses;
  - (f) the practitioner and his witnesses may be questioned by—
    - (i) the Solicitor,
    - (ii) members of the Committee, the specialist adviser and the legal assessor,
    - (iii) in the case of his witnesses, the practitioner for a second time;
  - (g) the practitioner or his representative may address the Committee as to the matters referred to in subparagraph (e) of this paragraph;
  - (h) the Committee shall decide—
    - (i) whether the standard of the practitioner’s professional performance is seriously deficient; and
    - (ii) if so, whether to make a direction under paragraph (a) or (b) of section 36A(1) of the Act.

#### **Indication of future requirements**

**11.** Except where the Committee have made a direction for indefinite suspension, when the Committee have imposed conditions on or suspended the registration of a practitioner for a period, the Chairman of the Committee shall indicate, when giving the decision of the Committee in accordance with paragraph 11 of Schedule 1—

- (a) that the Committee will resume consideration of the case at a resumed hearing before the end of that period;

- (b) what information they will require at the resumed hearing; and
- (c) whether an assessment should be carried out before the resumed hearing

and the Registrar shall include in the record referred to in paragraph 11(2) of Schedule 1 a statement of these matters.

## PART IV RESUMED HEARINGS

### Resumed hearings

**12.**—(1) The Committee shall hold a resumed hearing before the end of the period during which the practitioner’s registration is suspended or subject to conditions.

(2) Where the Committee have imposed conditions on a practitioner’s registration and, from information subsequently received, it appears to the case co-ordinator that either—

- (a) the practitioner is not complying with the conditions, or
- (b) for some other reason the registration of the practitioner should be suspended

the Committee may hold a resumed hearing at an earlier date than the date on which the Committee might otherwise have held a resumed hearing.

(3) Where the Committee are to hold a resumed hearing, the Registrar shall—

- (a) send—
  - (i) to members of the Committee all the documents which the practitioner has submitted for the purpose of the resumed hearing, and
  - (ii) to the practitioner and members of the Committee all other reports, written statements or other documents which have been received since the last hearing in the case and have not previously been considered by the Committee and which, in the opinion of the case co-ordinator, will assist the Committee in reaching a decision on the matters before them; and
- (b) invite the practitioner to notify the Registrar, within the period of 14 days of being sent the document referred to in subparagraph (a)(ii), whether he wishes the author of any such report, written statement or other document to give oral evidence at the hearing.

(4) Where the practitioner has stated that he wishes the author of any report, written statement or other documents referred to in subparagraph (3)(a)(ii) to give oral evidence at the hearing, the Registrar shall arrange for the author to attend the hearing.

(5) In relation to the Report of an Assessment Panel, paragraph 8(3) shall apply to paragraph (4).

### Procedure at a resumed hearing

**13.** The procedure of the Committee at a resumed hearing shall be the same as the procedure of the Committee at a performance hearing specified in paragraphs 9 and 10 except that—

- (a) subparagraphs (a) and (b) of paragraph 10 shall be omitted;
- (b) for subparagraph (e) of paragraph 10 there shall be substituted the following subparagraph—

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- “(e) the practitioner or his representative may give evidence to the Committee as to why his registration should no longer be suspended or conditional as the case may be and may call and question his witnesses; and”
- (c) for subparagraph (h) of paragraph 10 there shall be substituted the following subparagraph—
  - “(h) the Committee shall decide whether to make a direction under section 36A(2), (3), (4) or (6) of the Act.”

## PART V

### REVIEW HEARINGS

#### **Review hearings**

**14.—**(1) Where a direction for indefinite suspension has been made under section 36A(4) of the Act and the practitioner whose registration is suspended requests the Committee to review the suspension, the Committee shall, subject to subparagraph (2), hold a review hearing.

- (2) The Committee shall not hold a review hearing until either—
  - (a) two years after the date on which the direction for indefinite suspension takes effect, or
  - (b) two years after the date on which they last reviewed the suspension.
- (3) Where the Committee are to hold a review hearing, the Registrar shall—
  - (a) send—
    - (i) to the practitioner who has made the request under subparagraph (1) notice of the day on which and the time and place at which the Committee are to hold the hearing,
    - (ii) to members of the Committee all the documents which the practitioner has submitted for the purpose of the review hearing; and
    - (iii) to the practitioner and members of the Committee all other reports, written statements or other documents which have been received since the last hearing in the case and have not previously been considered by the Committee and which, in the opinion of the case co-ordinator, will assist the Committee in reaching a decision on the matters before them;
  - (b) invite the practitioner to notify the Registrar, within the period of 14 days of being sent the documents referred to in subparagraph (a)(iii), whether he wishes the author of any such report, written statement or other document to give oral evidence at the hearing;
  - (c) inform the practitioner he may be represented or accompanied at the hearing in accordance with paragraph 7 of Schedule 1.
- (4) Where the practitioner has stated that he wishes the author of any report, written statement or other document referred to in subparagraph (3)(a)(iii) to give oral evidence at the hearing, the Registrar shall arrange for the author to attend the hearing.
- (5) In relation to the Report of an Assessment Panel, paragraph 8(3) shall apply to paragraph (4).

### **Procedure at a review hearing**

15. The procedure at a review hearing shall be as follows—
- (a) the practitioner or his representative may address the Committee as to why his registration should no longer be suspended indefinitely and may call and question his witnesses;
  - (b) the practitioner and his witnesses may be questioned by—
    - (i) the Solicitor,
    - (ii) the members of the Committee, the legal assessor and the specialist adviser,
    - (iii) in the case of his witnesses, the practitioner for a second time;
  - (c) the Solicitor may address the Committee and call and question witnesses including any person called by the Committee under paragraph 9(3) of Schedule 1;
  - (d) the Solicitor’s witnesses may be questioned by—
    - (i) the practitioner or his representative,
    - (ii) members of the Committee, the legal assessor and the specialist adviser,
    - (iii) the Solicitor for a second time;
  - (e) the complainant or his representative may address the Committee;
  - (f) the practitioner or his representative may address the Committee for a second time as to the matters referred to in paragraph (a) of this subparagraph;
  - (g) the Committee shall decide whether the suspension should be terminated.”

Given under the official seal of the General Medical Council this 21st day of May nineteen hundred and ninety seven.

*Sir Donald Irvine*  
President

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### **EXPLANATORY NOTE**

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

The rules approved by this Order give effect to the provisions brought into force by the Medical (Professional Performance) Act 1995 (Commencement No. 3) Order 1997 relating to the powers of the General Medical Council (GMC), through its appropriate Committees, to investigate cases where there is evidence that a practitioner’s general standard of professional performance has been seriously deficient. The rules set out the procedures to be followed relating to the assessment of practitioners’ performance, in particular the procedures of the two new committees established under the Act, the Assessment Referral Committee and the Committee on Professional Performance. The procedures are to be implemented on 1st July 1997.

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