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STATUTORY INSTRUMENTS

1999 No. 1847

OSTEOPATHS

The General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999

Made - - - - 30th June 1999

Coming into force - - 5th July 1999

At the Council Chamber, Whitehall, the 30th day of June 1999

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

Whereas in pursuance of sections 20(4) and (10) and 28(3) of, and paragraph 21 of the Schedule to, the Osteopaths Act 1993^{F1} the General Osteopathic Council have made the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules 1999 as set out in the Schedule to this Order:

And whereas by sections 35(1) and 36 of that Act such rules shall not come into force until approved by order of the Privy Council:

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

F1 1993 c. 21.

This Order may be cited as the General Osteopathic Council (Investigation of Complaints) (Procedure) Rules Order of Council 1999 and shall come into force on 5th July 1999.

A. K. Galloway
Clerk of the Privy Council

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THE GENERAL OSTEOPATHIC COUNCIL

INVESTIGATION OF COMPLAINTS (PROCEDURE) RULES 1999

PART I

Preliminary

The General Osteopathic Council in exercise of its powers under sections 20(4) and (10) and 28(3) of, and paragraph 21 of the Schedule to, the Osteopaths Act 1993 hereby make the following Rules:

Citation and commencement

1. These Rules may be cited as the General Osteopathic Council Investigation of Complaints (Procedure) Rules 1999, and shall come into force on 5th July 1999.

Interpretation

2. In these Rules, unless the context otherwise requires:

“the Act” means the Osteopaths Act 1993;

“case relating to conduct or incompetence” means a case where a question arises as to whether the osteopath may have been guilty of unacceptable professional conduct or professional incompetence under section 20 of the Act;

“case relating to conviction” means a case where it is alleged that an osteopath has been convicted in the United Kingdom, whether while registered or not, of a criminal offence;

“case relating to health” means a case where a question arises as to whether the ability to practise of the osteopath is seriously impaired because of his physical or mental condition;

“the Chairman” means the Chairman of the Investigating Committee;

“the Committee” means the Investigating Committee established by section 1(5)(b) of the Act;

“acomplaint” means any allegation of any kind mentioned in section 20(1) of the Act;

“complainant” means a person by whom a complaint has been made to the Council;

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

“the Health Committee” means the Committee established by section 1(5)(d) of the Act;

“legal assessor” means an assessor appointed by the Council pursuant to section 27 of the Act;

“medical assessor” means an assessor appointed by the General Council pursuant to section 28 of the Act;

“osteopath” means a registered osteopath against whom a complaint has been made and includes a person whose registration is currently suspended;

“the Professional Conduct Committee” means the Committee established by section 1(5)(c) of the Act;

“the Screener” means a person appointed pursuant to rule 3(1) of these Rules to give preliminary consideration to complaints;

“the Solicitor” means any Solicitor appointed by the Council and includes Counsel representing the Solicitor.

PART II

Initial consideration of cases

Appointment and role of Screeners

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

(2) The member appointed under paragraph (1) shall be a fully registered osteopath.

(3) the member appointed under paragraph (1) shall not—

- (a) be the Registrar or a member of either the Professional Conduct Committee or the Health Committee; and
- (b) shall not sit as a member of the Investigating Committee on any case previously considered by him in his capacity as Screener.

4.—(1) Subject to paragraph (2), where the Screener has decided on an earlier occasion that there is no power under the Act to deal with a complaint against an osteopath (“an earlier case”), that earlier case may nevertheless be taken into account by the Screener in connection with the consideration of a subsequent complaint against the same osteopath with a view to determining whether together they may indicate a case relating to conduct or incompetence or a case relating to health.

(2) An earlier case may only be taken into account in accordance with paragraph (1) if, when the osteopath is notified under section 20(13) that no further action is to be taken in connection with the earlier case, the notification contains a statement that the case may be taken into account in the consideration of any subsequent complaint.

5. For the purposes of considering a case, the Screener may seek information about or observations on the case from any person who, in the opinion of the Screener, might assist him in his consideration.

6.—(1) Where the Screener decides that the Investigating Committee has no power to deal with a complaint then he shall inform the complainant of his decision in writing and give reasons.

(2) In such circumstances neither the complainant, nor the osteopath, shall have the right of access to any document relating to the case.

PART III

Procedures of the Investigating Committee

The Investigating Committee

7. The Committee shall meet in private to undertake the following:

- (1) consider all new cases of complaint
- (2) review all ongoing cases
- (3) review the reports of Screeners
- (4) receive reports from sub-committees
- (5) take note of the outcome of cases referred to the Professional Conduct Committee or to the Health Committee.

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8. The Committee shall meet not less than three times a year and on such days as it shall determine.

9. The Committee shall accept for consideration written statements made by the complainant, the osteopath, and by others submitting additional information and any other material collected by the Screener.

New cases relating to Convictions, Conduct or Incompetence

10. Where the Committee is required to carry out an investigation of a complaint under sections 20(1)(a), (b) or (c) of the Act, it shall in the event that it concludes that there is no case to answer record its reasons for so concluding and supply those reasons in writing both to the osteopath and the complainant;

New Cases Relating to health

11. In any investigation of a complaint under section 20(1)(d) of the Act the Committee shall follow the procedures set out in rules 12 to 17 below.

12. The Committee may request permission from the osteopath to obtain reports from his medical advisers.

13. At any stage of its investigations the Committee may cause such enquiries to be made in relation to the matter as it thinks fit and it may, if it considers it necessary to assist the Committee in arriving at a decision—

(1) obtain advice from a medical assessor on the information and evidence which has been received;

(2) send a notice to the osteopath—

- (a) inviting the osteopath to agree within a period of fourteen days beginning with the day on which the notice is sent to him to submit to examination by a medical assessor appointed pursuant to rule 15 and to agree that such assessor shall furnish to the Committee reports on his fitness to practise;
- (b) informing the osteopath that it is also open to him to nominate other medical practitioners to examine him at his expense and report to the Committee on his fitness to practise; and
- (c) inviting the osteopath to submit any further observations or other evidence which he may wish to offer as to his fitness to practise.

Medical Examination

14. If the osteopath agrees to submit to medical examination in response to an invitation, the Committee shall make arrangements for such examination by one or more medical assessors of the appropriate specialty.

Action following reports of medical examination

15. Subject to the provisions of rule 17, the Committee shall send copies of any report received from the medical assessor to the osteopath and invite him to submit any observations that he has on the reports within a period of 28 days beginning with the day on which the reports are sent to him.

16.—(1) If in the opinion of the Committee a report contains any material which—

- (a) is not relevant to the present fitness to practise of the osteopath; and
- (b) it would not be in the best interests of the osteopath to see

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then the Committee may direct the medical assessor to exclude such material from his report.

(2) No material so excluded shall subsequently be presented to the Health Committee.

17. Following consideration of the information and reports it has been able to obtain, and any observations which have been supplied by the osteopath, the Committee shall determine whether there is a case to answer and inform the osteopath and the complainant in writing of its conclusion.

Notification to the osteopath in all new cases

18.—(1) Where the Committee considers that it has insufficient evidence fully to understand the nature of the complaint, the Committee may delay notifying the osteopath of the complaint until sufficient evidence has been obtained.

(2) The Committee shall enclose with any notice a summary of information received by the Council.

(3) Notices sent to the osteopath requesting further information which is necessary to the proper investigation of the complaint, or asking him to agree to submit to a medical examination, shall contain a statement to the effect that, if the osteopath fails, without good reason, to respond to the notice within twenty eight days of the date of it being sent to him, then the Committee will conclude that there is a case to answer and refer it forthwith to the Professional Conduct Committee or the Health Committee as appropriate.

Further investigations

19.—(1) The Committee may in any case consider that it has insufficient evidence on which to reach a decision and may require further investigations to be carried out.

(2) Such investigations may include seeking further information from the complainant or the osteopath or statements or reports from other osteopaths, authorities or persons having knowledge of matters to do with the complaint and may also include a request to the osteopath for members of the Committee to visit the practice at a pre-arranged date and time.

Legal Advice

20. The Committee may in any case seek legal advice from a legal assessor on any question of law arising in connection with the case and may ask the Solicitor to assist in any enquiries and investigations, and in the collection of evidence, and in the formulation of the allegation or allegations in the event that they are to be referred to the Professional Conduct Committee or to the Health Committee.

Power to Adjourn

21. Where the Committee wishes in any case to make further enquiries or further investigations, to obtain further evidence or to seek legal advice it may adjourn further consideration of the case until its next meeting.

Interim Suspension

22.—(1) If the Committee considers that the nature of the complaint received is such that in order to protect members of the public it may be necessary to order the Registrar to suspend the osteopath's registration (an "Interim Suspension Order"), it shall—

- (a) notify the osteopath of his opportunity to appear before it at a hearing to argue why an Interim Suspension Order should not be made and of his right to be legally represented at any hearing;

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- (b) proceed as provided in the following paragraphs of this rule.
- (2) Any hearing under this Rule shall not be fixed within a period of five days beginning with the day on which the notice under paragraph (1)(a) hereof is sent to the osteopath.
- (3) A legal assessor appointed by the Council shall be present at any such hearing.
- (4) Where the osteopath is neither present nor represented at the hearing, the Committee may, nevertheless, proceed with the hearing if it is satisfied that all reasonable efforts have been made in accordance with rule 22(1)(a) to serve notification of the hearing on the osteopath.
- (5) When considering whether to make an Order under this rule the Committee may invite the Solicitor to address it as to the circumstances of the case.
- (6) The Committee shall—
 - (a) ensure that its decision is recorded in writing; and
 - (b) direct the Registrar as soon as practicable, after the hearing to send a copy of the Order to the osteopath.
- (7) Subject to the above, the Committee's procedure in dealing with Interim Suspension Orders shall be as it shall determine.

Ongoing cases and Review of the decisions of Screeners

23. At each meeting the Committee shall review all cases not yet concluded or referred to the Professional Conduct Committee or to the Health Committee.

General

24. Where, in relation to any complaint which is the subject of a report made to it, the Committee dismisses that complaint (the "dismissed complaint") on the grounds that there is no case to answer, and the Screener then makes a further report to the Committee in connection with a subsequent complaint, that report may, if the Screener thinks fit, contain details of the dismissed complaint so that the Committee may determine whether together the complaints indicate a case to answer.

25. No member of the Committee who is a member of the Health Committee or the Professional Conduct Committee shall take part in dealing with the same allegation in his capacity as a member of those other Committees.

26. Where the Committee has concluded that there is no case to answer, neither the complainant nor the osteopath shall have any right of access to any documents relating to the case submitted to the Council.

Service of Notices

27. Any notice or communication required by these rules to be served on an osteopath shall be served by recorded delivery to the osteopath at his address on the Registrar or to his last known or any other address if it appears to the Registrar that a notice so addressed is more likely to reach him.

Provision of rules to the Osteopath

28. The Registrar shall provide a copy of these rules to the osteopath when taking any action under rules 13(2) and 22.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Osteopaths Act 1993 ("the Act"), approves rules made by the General Osteopathic Council ("GOsC")—

requiring allegations made or referred to the Investigating Committee of the GOsC relating to a registered osteopath's fitness to practise to be referred for preliminary consideration to a member of the Investigating Committee appointed for that purpose by the GOsC ("the Screener"); and making provision as to the procedure to be followed by the Investigating Committee when investigating allegations referred by the Screener to the Committee (including the procedure for interim suspension of an osteopath under section 21 of the Act).

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