

SCHEDULE

THE POSTGRADUATE MEDICAL EDUCATION AND TRAINING BOARD (MEMBERS – REMOVAL FROM OFFICE) RULES 2004

The Postgraduate Medical Education and Training Board, in exercise of the powers conferred on it by paragraph 2(3) of Schedule 2 to the General and Specialist Medical Practice (Education Training and Qualifications) Order 2003(1), and of all other powers enabling it in that behalf, hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Postgraduate Medical Education and Training Board (Members – Removal from Office) Rules 2004 and they shall come into force on 1st February 2005.

Interpretation

2. In these Rules—

“Appointing Authority” means the Secretary of State for Health, the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland or the National Assembly for Wales;

“Appropriate Appointing Authority” means, in relation to a determination to remove a member, the Appointing Authority that appointed that Member;

“Chair” means the chair of the Board and, except for the purposes of rules 4(4) and 5(4)(a), includes the First Chair;

“Code of Conduct” means such code of conduct as the Board may from time to time adopt, providing direction or guidance as to conduct in office of a Member;

“Deputy Chair” means a Member who has been authorised by the Board to carry out such duties as are normally undertaken by the Chair when the Chair is unavailable to carry out those duties;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the National Health Service Act 1977(2) (the Family Health Services Appeal Authority);

“First Chair” means the first chair of the Board appointed under paragraph 3(3) or (6) of Schedule 2 to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (which relates to the Board and its statutory committees);

“Member” means a member of the Board and includes the Chair except for the First Chair;

“National Disqualification” means—

(a) a decision made by the FHSAA under section 49N of the National Health Service Act 1977(3) (national disqualification); or

(b) a decision made under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the National Health Service Act 1977;

“NHS Body” means—

(a) any Foundation Trust within the meaning of section 1 of the Health and Social Care (Community Health and Standards) Act 2003(4) (NHS Foundation Trusts); and

(1) S.I. 2003/1250, as amended by S.I. 2004/865, 1947, 2261, 3038 and S.R. 2004/156.

(2) Section 49S was inserted into the National Health Service Act 1977 (c. 49) (“the 1977 Act”) by section 27(1) of the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”).

(3) Section 49N was inserted into the 1977 Act by section 25 of the 2001 Act.

(4) 2003 c. 43.

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(b) any health service body referred to in section 4(2) of the National Health Service and Community Care Act 1990⁽⁵⁾ (NHS contracts);

“Primary Care List” means any list referred to in section 49N(1)(c) of the National Health Service Act 1977 or a list corresponding to any of those lists in Scotland or Northern Ireland;

“Relevant Licensing Body” means any body whose functions include the accreditation, registration, licensing or regulation of persons engaged—

(a) in medical practice or dentistry; or

(b) in activities which, in the reasonable opinion of the Board, are otherwise relevant to the duties of a Member;

“Registrable Medical Qualification” means any qualification that is registrable under the Medical Act; and

“Unexpired Term” means the period beginning with the date on which the Member ceases to be a Member and ending with the date on which his full term of office as a Member would ordinarily have expired.

Removal: specific categories of unsuitability to be a Member

3. The Board shall, as soon as is reasonably practicable, make a determination that a Member is unsuitable to continue his membership of the Board once the Board is satisfied that that Member, during his tenure of office as a Member—

(a) is disqualified or suspended (other than by an interim suspension order or direction pending investigation) from practising by any Relevant Licensing Body anywhere in the world;

(b) is the subject of a National Disqualification;

(c) has been removed from, or refused admission to, a Primary Care List by reason of inefficiency, fraud or unsuitability (within the meaning of sections 49F(2), (3) and (4) of the National Health Service Act 1977⁽⁶⁾ (disqualification of practitioners) respectively) and, at the date the Board is making its determination, has not subsequently been included in such a list;

(d) is suspended from a Primary Care List (other than by an interim suspension order or direction pending investigation) for a period of three or more months;

(e) has been finally convicted—

(i) of a criminal offence in the United Kingdom, the Channel Islands or the Isle of Man and has been sentenced to a term of imprisonment of over three months, including a suspended sentence without the possibility of a fine, or

(ii) elsewhere of an offence which would if committed in England and Wales constitute a criminal offence and has been sentenced to a term of imprisonment of over three months;

(f) is adjudged bankrupt or has had sequestration of his estate awarded unless, in either case, he has been discharged or the bankruptcy order has been annulled by the date on which the Board is making its determination;

(5) 1990 c. 19. Section 4(2) was amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 68, the Health Act 1999 (c. 8), Schedule 4, paragraph 76(a) and Schedule 5, the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), Schedule 1, paragraph 40 and Schedule 5, paragraph 31.

(6) Section 49F was inserted into the 1977 Act by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraph 21 and the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedule 14, Part 2.

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- (g) is made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(7) (bankruptcy restrictions order and undertaking), unless that order has ceased to have effect or has been annulled by the date on which the Board is making its determination;
- (h) has made a composition or arrangement with, or granted a trust deed for, his creditors unless he has been discharged in respect of it by the date on which the Board is making its determination;
- (i) is dismissed or early-retired by any NHS Body for reasons relating to a failure to perform his duties to a standard which in the opinion of the NHS Body ensures the continued operational effectiveness of that NHS Body;
- (j) is subject to a disqualification order under the Company Directors Disqualification Act 1986(8), the Companies (Northern Ireland) Order 1986(9) or to an order made under section 429(2)(b) of the Insolvency Act 1986(10)(failure to pay under county court administration order);
- (k) is removed—
 - (i) from the position of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or
 - (ii) under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(11) (powers of the Court of Session to deal with management of charities) from being concerned in the management or control of any body;
- (l) does not reside or work wholly or mainly within the United Kingdom;
- (m) where that Member is a medical member, ceases to be included in the register of medical practitioners maintained by the General Medical Council under section 2 of the Medical Act(12) (registration of medical practitioners); or
- (n) where that Member is a lay member, has obtained a Registrable Medical Qualification.

Removal: failure to attend meetings, breaches of the Code of Conduct and undermining confidence in the work of the Board

4.—(1) Subject to paragraph (2), the Board may make a determination that a Member is unsuitable to continue his membership of the Board if the Board is satisfied—

- (a) that that Member has failed to attend three consecutive meetings of the Board;
- (b) that that Member has committed a serious breach of the Code of Conduct; or
- (c) in its reasonable opinion, that the continued membership of that Member presents a real risk that confidence in the work of the Board may be undermined.

(2) Subject to paragraph (4), the Board shall not make a determination pursuant to paragraph (1) unless the Chair has given the Member a reasonable opportunity to make written representations to the Chair.

(3) The Chair shall, having provided the Member with such an opportunity, bring the matter to the attention of the Board at the next Board meeting, at which time the Board shall, taking any written

(7) 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40).

(8) 1986 c. 46 as amended by the Insolvency Act 2000 (c. 39).

(9) S.I. 1986/1032 (N.I. 6).

(10) 1986 c. 45.

(11) 1990 c. 40.

(12) 1983 c. 54. Section 2 was amended by S.I. 2002/3135.

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representations received into account, determine whether the Member is unsuitable to continue his membership of the Board.

(4) For the purposes of paragraphs (2) and (3), where the Member falling within paragraph (1) is the Chair, paragraphs (2) and (3) shall be read as if references to “the Chair” were to “the Deputy Chair”.

Procedure where the Board has determined that a Member should be removed

5.—(1) Subject to paragraph (4), following a determination by the Board under rule 3 or 4 that a Member is unsuitable to continue his membership, the Chair of the Board shall give notice in writing of that determination, together with the reason for it, to—

- (a) the Appropriate Appointing Authority; and
- (b) the Member in respect of whom the determination is made,

and that notice shall inform them that, as a consequence, that Member is by that notice removed from office as a Member, and the notice to the Appropriate Appointing Authority shall inform it that it is requested to appoint a person to replace that Member for the Unexpired Term.

(2) The written notice referred to in paragraph (1)(b) shall be served on the Member by—

- (a) delivering it to him;
- (b) leaving it at his proper address; or
- (c) sending it by post to his proper address,

and for the purposes of this paragraph, the proper address of a Member shall be the address he has given to the Board for the purpose of serving any notice, or otherwise shall be his last known address.

(3) Where written notice has been given pursuant to paragraphs (1)(b) and (2), that Member’s membership of the Board shall cease with immediate effect when the notice has been served on him.

(4) For the purpose of paragraph (1)—

- (a) where a determination is made that the Chair is unsuitable to continue his membership, the Deputy Chair shall write to the Appropriate Appointing Authority and to the Chair in the required terms; and
- (b) the Chair or Deputy Chair shall not be obliged to request that the Appropriate Appointing Authority seeks a replacement for the remainder of the Member’s Unexpired Term if the Unexpired Term is a period of less than 12 months and the removal of the Member would not result in the number of lay members of the Board being equal to or exceeding the number of medical members of the Board.