

2007 No. 893

HEALTH CARE AND ASSOCIATED PROFESSIONS

NURSES AND MIDWIVES

**The Nursing and Midwifery Council (Fitness to Practise)
(Amendment) Rules Order of Council 2007**

Made - - - - 15th March 2007

Laid before Parliament 22nd March 2007

Coming into force - - 5th May 2007

At the Council Chamber, Whitehall, the 15th day of March 2007

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

The Nursing and Midwifery Council has made the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007 as set out in the Schedule to this Order.

In accordance with articles 47(1) and 48 of the Nursing and Midwifery Order 2001^(a) such Rules shall not come into force until approved by Order of the Privy Council.

Having considered the Rules, their Lordships approve them.

This Order may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules Order of Council 2007 and shall come into force on 5th May 2007.

Christine Cook
Deputy Clerk of the Privy Council

^(a) S.I. 2002/253; to which there are amendments not relevant to this Order.

SCHEDULE

THE NURSING AND MIDWIFERY COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES 2007

The Nursing and Midwifery Council makes the following Rules in exercise of its powers conferred under articles 22(4), 26(2), 26(3), 26(4), 30(9), 32, 33(4) and 47(2) of the Nursing and Midwifery Order 2001(a).

The Nursing and Midwifery Council has consulted in accordance with article 47(3) of that Order.

Citation and commencement

1. These Rules may be cited as the Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007 and shall come into force on 5th May 2007.

Interpretation

2. In these Rules, “the principal Rules” means the Nursing and Midwifery Council (Fitness to Practise) Rules 2004(b).

Amendments to the principal Rules

3.—(1) In rule 2 of the principal Rules (interpretation), after the definition of “restoration hearing” insert the following definition—

““sanction” means either an order made by the Investigating Committee under article 26(7) of the Order or an order made by the Health or Conduct and Competence Committee under article 29(5) of the Order”.

(2) For rule 24 of the principal Rules (order of proceedings at initial hearing), substitute—

“Order of proceedings at initial hearing

24.—(1) Unless the Committee determines otherwise, the initial hearing of an allegation shall be conducted in the following stages—

- (a) the preliminary stage (paragraphs (2)-(5));
- (b) the factual stage (paragraphs (6)-(11));
- (c) where the allegation is of a kind referred to in article 22(1)(a) of the Order, the impairment stage (paragraph (12));
- (d) the sanction stage (paragraphs (13) and (14)).

(2) The Chair shall—

- (a) ask the registrant (if present) to confirm her name and personal identification number;
- (b) ask for the charge to be read out; and
- (c) ask whether the registrant wishes to make an objection to the charge on a point of law.

(3) Where the registrant makes an objection to the charge the Committee—

(a) S.I. 2002/253: to which there are amendments not relevant to these Rules.
(b) Scheduled to S.I. 2004/1761.

- (a) may hear representations from the parties (if present);
- (b) shall deliberate in private and announce its decision to those parties present as to whether it will uphold the objection; and
- (c) shall give reasons for its decision.

(4) Once any objections to the charge have been considered, the Chair shall enquire whether the registrant wishes to make any admissions—

- (a) as to the alleged facts; and
- (b) where the allegation is of a kind referred to in article 22(1)(a) of the Order, as to whether her fitness to practise is impaired.

(5) Where facts have been admitted by the registrant, the Chair shall announce that such facts have been found proved.

(6) The presenter shall open the Council's case and may present evidence in support of any alleged facts in the allegation, including those admitted by the registrant.

(7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and—

- (i) either upon the application of the registrant, or
- (ii) of its own volition,

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

(8) Where an allegation is of a kind referred to in article 22(1)(a) of the Order, the Committee may decide,—

- (i) either upon the application of the registrant, or
- (ii) of its own volition,

to hear submissions from the parties as to whether sufficient evidence has been presented to support a finding of impairment, and shall make a determination as to whether the registrant has a case to answer as to her alleged impairment.

(9) Unless the Committee has determined that there is no case to answer under paragraphs (7) or (8), the registrant may present her case to the Committee and present evidence in support of her case.

(10) The Committee may hear final argument from the parties.

(11) The Committee shall deliberate in private in order to make its findings on the facts and then shall announce to those parties present the findings it has made.

(12) Where the allegation is of a kind referred to in article 22(1)(a) of the Order, notwithstanding any admissions made for the purposes of paragraph (4)(b), the Committee shall—

- (a) invite representations and may hear evidence from the parties as to whether the registrant's fitness to practise is impaired;
- (b) deliberate in private; and
- (c) then announce its decision to those parties present as to whether the registrant's fitness to practise is impaired and give reasons for its decision.

(13) When making its decision on sanction the Committee—

- (a) may invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct;
- (b) shall invite representations from the parties as to any relevant factors which may affect the Committee's decision on the sanction, if any, to be imposed;
- (c) where the allegation is of a kind referred to in article 22(1)(a) of the Order, may hear evidence from the parties as to any previous history or mitigating

circumstances or other relevant factors which may affect the Committee's decision on the sanction, if any, to be imposed;

- (d) shall deliberate in private; and
- (e) then announce its decision on sanction to those parties present and give reasons for its decision.

(14) Where the Committee considers that it may be appropriate to make an interim order pending the outcome of any appeal following its decision on sanction, it shall—

- (a) invite representation from the parties on whether or not an interim order should be made;
- (b) take any representations received into account before deciding whether or not to make an interim order;
- (c) deliberate in private; and
- (d) then announce its decision to those parties present and give reasons for its decision.”.

(3) In rule 26(1) of the principal Rules (order of proceedings at an interim orders hearing), for “rule 24(1)(o)” substitute “rule 24(14) ”.

(4) After rule 27 of the principal Rules (notes and transcript of proceedings), insert the following rule—

“Initial hearings commenced before but not concluded by 5th May 2007

27A. Where, prior to 5th May 2007—

- (a) the initial hearing of an allegation has commenced; and
- (b) the charge has been read out,

then rule 24 shall continue to apply as in force immediately before 5th May 2007 for the purposes of that initial hearing. ”.

(5) In rule 28(1) of the principal Rules (amendment of the charge), for “rule 24(1)(d) or (i)” substitute “rule 24(5) or (11)”.

Given under the official seal of the Nursing and Midwifery Council on 1st March 2007.



Sandra Arthur
President

Sarah Thewlis
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under the Nursing and Midwifery Order 2001, approves Rules made by the Nursing and Midwifery Council which amend the Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (“the Fitness to Practise Rules”).

Rule 3(1) adds a new definition to the Fitness to Practise Rules.

Rule 3(2) substitutes a new rule 24 to the Fitness to Practise Rules, setting out the procedure at the initial hearing of the charge.

Rules 3(3) and 3(5) make consequential amendments to the Fitness to Practise Rules.

Rule 3(4) adds a new rule 27A to the Fitness to Practise Rules, dealing with the process for those initial hearings commenced before but not concluded by 5th May 2007.

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The Nursing and Midwifery Council (Fitness to Practise)
(Amendment) Rules Order of Council 2007

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