



# Medical Act 1983

## 1983 CHAPTER 54

### PART V

#### PROFESSIONAL CONDUCT AND FITNESS TO PRACTISE

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

The powers of the General Council shall include the power to provide, in such manner as the Council think fit, advice for members of the medical profession on standards of professional conduct or on medical ethics.

#### **36 Professional misconduct and criminal offences**

(1) Where a fully registered person—

- (a) is found by the Professional Conduct Committee to have been convicted in the British Islands of a criminal offence, whether while so registered or not; or
- (b) is judged by the Professional Conduct Committee to have been guilty of serious professional misconduct, whether while so registered or not;

the Committee may, if they think fit, direct—

- (i) that his name shall be erased from the register;
- (ii) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
- (iii) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests.

(2) Where a fully registered person whose registration is subject to conditions imposed under subsection (1) above by the Professional Conduct Committee or under section 42(3)(c) below by the Preliminary Proceedings Committee is judged by the Professional Conduct Committee to have failed to comply with any of the

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requirements imposed on him as conditions of his registration the Committee may, if they think fit, direct—

- (a) that his name shall be erased from the register; or
- (b) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction.

(3) Where the Professional Conduct Committee have given a direction for suspension under subsection (1) or (2) above, the Committee may—

- (a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction;
- (b) direct that the name of the person whose registration is suspended shall be erased from the register; or
- (c) direct that the registration of the person whose registration is suspended shall, as from the expiry of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests;

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

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

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

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

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

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

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

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

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

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

- (1) Where the fitness to practise of a fully registered person is judged by the Health Committee to be seriously impaired by reason of his physical or mental condition the Committee may, if they think fit, direct—
- (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
  - (b) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests.
- (2) Where a fully registered person whose registration is subject to conditions imposed under subsection (1) above by the Health Committee or under section 42(3)(c) below by the Preliminary Proceedings Committee is judged by the Health Committee to have failed to comply with any of the requirements imposed on him as conditions of his registration the Committee may, if they think fit, direct that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction.
- (3) Where the Health Committee have given a direction for suspension under subsection (1) or (2) above, the Committee may—
- (a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
  - (b) direct that the registration of the person whose registration is suspended shall, as from the expiry of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests;
- but the Committee shall not extend any period of suspension under this section for more than twelve months at a time.
- (4) Where the Health Committee have given a direction for conditional registration, the Committee may—
- (a) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction ; or
  - (b) revoke the direction or revoke or vary any of the conditions imposed by the direction;
- but the Committee shall not extend any period of conditional registration under this section for more than twelve months at a time.
- (5) Subsection (2) above shall apply to a fully registered person whose registration is subject to conditions imposed under subsection (3)(b) above as it applies to a fully registered person whose registration is subject to conditions imposed under subsection (1) above, and subsection (3) above shall apply accordingly.

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

**38 Power to order immediate suspension after finding of professional misconduct or unfitness to practise**

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

- (7) In this section " the court "—
- (a) in the case of a person whose address in the register is in Scotland, means the Court of Session;
  - (b) in the case of a person whose address in the register is in Northern Ireland, means the High Court of Justice in Northern Ireland ; and
  - (c) in the case of any other person, means the High Court of Justice in England and Wales.

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

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

### **40 Appeals**

- (1) The following decisions are appealable decisions for the purposes of this section, that is to say—
  - (a) a decision of the Professional Conduct Committee under section 36 above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;
  - (b) a decision of the Health Committee under section 37 above giving a direction for suspension or for conditional registration or varying the conditions imposed by a. direction for conditional registration; or
  - (c) a decision of the General Council under section 39 above giving a direction for erasure.
- (2) In subsection (1) above the references to a direction for suspension and a direction for conditional registration include references to a direction extending a period of suspension or a period of conditional registration.
- (3) Any person in respect of whom an appealable decision has been taken may, within twenty-eight days of the service of the notification of the decision under section 36(6), 37(6) or 39(2) above appeal against the decision in accordance with this section.
- (4) In the case of an appealable decision—
  - (a) of the Professional Conduct Committee under section 36 above;
  - (b) of the Health Committee under section 37 above; or
  - (c) of the General Council under section 39 above directing that an entry be erased because it has been fraudulently procured,an appeal under this section shall be to Her Majesty in Council subject, however, to subsection (5) below and to such rules as Her Majesty in Council may by Order provide for the purpose of regulating appeals under this section.
- (5) No appeal under this section shall lie from a decision of the Health Committee except on a question of law.

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- (6) The Judicial Committee Act 1833 shall apply in relation to the Professional Conduct Committee, the Health Committee and the General Council as it applies in relation to any court from which an appeal lies to Her Majesty in Council.
- (7) Without prejudice to the application of that Act, on an appeal under this section to Her Majesty in Council from the Professional Conduct Committee or the Health Committee the Judicial Committee may, in their report, recommend to Her Majesty in Council—
- (a) that the appeal be dismissed;
  - (b) that the appeal be allowed and the direction or variation questioned by the appeal quashed ;
  - (c) that such other direction or variation as the Professional Conduct Committee or, as the case may be, the Health Committee could have given or made be substituted for the direction or variation questioned by the appeal; or
  - (d) that the case be remitted to the Professional Conduct Committee or, as the case may be, the Health Committee for that Committee to dispose of the case under section 36 or 37 above in accordance with the directions of the Judicial Committee.
- (8) On an appeal under this section to Her Majesty in Council from the General Council the Judicial Committee may, in their report, recommend—
- (a) that the appeal be dismissed;
  - (b) that the appeal be allowed and the direction questioned by the appeal quashed; or
  - (c) that the case be remitted to the General Council for that Council to dispose of the case under section 39 above in accordance with the directions of the Judicial Committee.
- (9) In the case of an appealable decision of the General Council under section 39 above other than a decision falling within subsection (4)(c) above an appeal under this section shall lie to the Privy Council.
- (10) On an appeal under this section to the Privy Council the Privy Council may—
- (a) dismiss the appeal; or
  - (b) allow the appeal and quash the direction questioned by the appeal.
- (11) On an appeal under this section from the Professional Conduct Committee or the Health Committee the General Council may appear as respondent; and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not.

#### **41 Restoration of names to the register**

- (1) Subject to subsection (2) below, where the name of a person has been erased from the register under section 36 above the Professional Conduct Committee may, if they think fit, direct his name to be restored to the register.
- (2) No application for the restoration of a name to the register under this section shall be made to the Professional Conduct Committee—
- (a) before the expiration of ten months from the date of erasure; or

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- (b) in any period of ten months in which an application for the restoration of his name has already been made by or on behalf of the person whose name has been erased.
- (3) In the case of a person who was provisionally registered under section 15 or 21 above before his name was erased a direction under subsection (1) above shall be a direction that his name be restored by way of provisional registration under section 15 or 21 above, as the case requires.
- (4) The requirements of Part II or Part III of this Act as to the experience required for registration as a fully registered medical practitioner shall not apply to registration in pursuance of a direction under subsection (1) above.

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

- (1) The Preliminary Proceedings Committee shall have the functions assigned to them by this section.
- (2) It shall be the duty of the Committee to decide whether any case referred to them for consideration in which a practitioner is alleged to be liable to have his name erased under section 36 above or his registration suspended or made subject to conditions under section 36 or 37 above ought to be referred for inquiry by the Professional Conduct Committee or the Health Committee.
- (3) If the Committee decide that a case ought to be referred for inquiry by the Professional Conduct Committee or the Health Committee—
  - (a) they shall give a direction designating the Committee which is to inquire into the case ; and
  - (b) they may, subject to subsection (4) below, if satisfied that to do so is necessary for the protection of members of the public, make an order for interim suspension in respect of the person whose case they have decided to refer for inquiry; or
  - (c) they may, subject to subsection (4) below, if satisfied that to do so is necessary for the protection of members of the public or is in his interests, make an order for interim conditional registration in respect of that person, that is to say, an order that his registration shall be conditional on his compliance, during such period not exceeding two months as is specified in the order, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests.
- (4) No order for interim suspension or for interim conditional registration shall be made by the Preliminary Proceedings Committee in respect of any person unless he has been afforded an opportunity of appearing before the Committee and being heard on the question whether such an order should be made in his case; and for the purposes of this subsection a person may be represented before the Committee by counsel or a solicitor, or (if rules under paragraph 5 of Schedule 4 to this Act so provide and he so elects) by a person of such other description as may be specified in the rules.
- (5) If the Committee decide that a case ought to be referred for inquiry by the Professional Conduct Committee or the Health Committee the Registrar shall serve a notification of the decision on the person whose case has been so referred and if the Committee also make an order for interim suspension or for interim conditional registration the Registrar shall include in the notification of the decision a notification of the order and shall serve the notification forthwith.

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- (6) Where an order for interim suspension is made in respect of a person, his registration in the register shall be suspended (that is to say, shall not have effect) from the time of service of a notification of the order as determined for the purposes of paragraph 8 of Schedule 4 to this Act until the expiration of such period, not exceeding two months, as is specified in the order.
- (7) The Professional Conduct Committee or the Health Committee may revoke any order for interim suspension or for interim conditional registration made by the Preliminary Proceedings Committee under this section.
- (8) While a person's registration in the register is suspended by virtue of an order for interim suspension under this section he shall be treated as not being registered in the register notwithstanding that his name still appears in the register.

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

Schedule 4 to this Act (which contains supplementary provisions about proceedings before the Professional Conduct Committee, the Health Committee and the Preliminary Proceedings Committee) shall have effect.

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

- (1) A person who is subject to a disqualifying decision in a member State of the Communities in which he is or has been established in medical practice shall not be entitled to be registered by virtue of section 3(b) above for so long as the decision remains in force in relation to him.
- (2) A disqualifying decision in respect of a person is a decision, made by responsible authorities of the member State of the Communities in which he was established in medical practice or in which he acquired a primary United Kingdom or primary European qualification, and—
  - (a) expressed to be made on the grounds that he has committed a criminal offence or on grounds related to his professional conduct, and
  - (b) having in that State the effect either that he is no longer registered or otherwise officially recognised as a medical practitioner, or that he is prohibited from practising medicine there.
- (3) If a person has been registered by virtue of section 3(b) above and it is subsequently shown to the satisfaction of the Registrar that he was subject to a disqualifying decision in force at the time of registration, and that the decision remains in force, the Registrar shall remove the person's name from the register.
- (4) If registration is refused or a person's name is removed from the register in accordance with subsection (3) above—
  - (a) the Registrar shall, on request, state in writing the reasons for the refusal, or the removal, as the case may be;
  - (b) the person may appeal by giving notice in writing to the General Council; and
  - (c) any such appeal shall be determined by the General Council or, if the Council have delegated their functions under this subsection to a committee, by that committee.



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

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

- (1) if a national of a member State of the Communities who has medical qualifications entitling him to registration under section 3 above but is not so registered and who renders medical services while visiting the United Kingdom (whether or not registered as a visiting EEC practitioner)—
- (a) is found by the Professional Conduct Committee to have been convicted of a criminal offence in any member State where he was practising medicine; or
  - (b) is judged by the Professional Conduct Committee to have been guilty of serious professional misconduct, the Committee may, if they think fit, impose on him a prohibition in respect of the rendering of medical services in the United Kingdom in the future.
- (2) A prohibition imposed under this section shall either relate to a period specified by the Professional Conduct Committee or be expressed to continue for an indefinite period.
- (3) A person may apply to the General Council for termination of a prohibition imposed on him under this section and the Council may, on any such application, terminate the prohibition or reduce the period of it; but no application may be made under this subsection—
- (a) earlier than ten months from the date on which the prohibition was imposed ;  
or
  - (b) in the period of ten months following a decision made on an earlier application.
- (4) Section 18(1) above does not apply to a person and that person shall not be registered as a visiting EEC practitioner at a time when he is subject to a prohibition imposed by the Professional Conduct Committee under this section.