

UK Parliament SIs 2000-Present/2007/401-450/Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007 (SI 2007/442)

2007 No 442

HEALTH CARE AND ASSOCIATED PROFESSIONS

PHARMACISTS

Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007

Made 26th February 2007

Laid before Parliament 2nd March 2007

Coming into force 30th March 2007

At Council Chamber, Whitehall, the 26th day of February 2007
By the Lords of Her Majesty's Most Honourable Privy Council

The Council of the Royal Pharmaceutical Society of Great Britain has made the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc) Rules 2007, which are set out in the Schedule to this Order, in exercise of the powers conferred by articles 7(2)(d) and (4)(d), 49(1), 51(1), 52(1), 55(3), 59(1), 61(4), 62(7) and 66(1) of the Pharmacists and Pharmacy Technicians Order 2007.

In accordance with article 66(3) of that Order, the Council of the Royal Pharmaceutical Society of Great Britain has consulted, in relation to rules under article 59(1) of that Order, Primary Care Trusts in England, Local Health Boards in Wales and Health Boards in Scotland.

By virtue of article 66(4) of that Order, such Rules shall not come into force until approved by Order of the Privy Council.

Their Lordships, having taken these Rules into consideration, are pleased to and do approve them.

This Order may be cited as the Royal Pharmaceutical Society (Fitness to Practise and Disqualification etc Rules) Order of Council 2007 and shall come into force on 30th March 2007.

UK Parliament SIs 2000-Present/2007/401-450/Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007 (SI 2007/442)/Signature(s)

Christine Cook

Deputy Clerk of the Privy Council

UK Parliament SIs 2000-Present/2007/401-450/Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007 (SI 2007/442)/SCHEDULE The Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc) Rules 2007

SCHEDULE

THE ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN (FITNESS TO PRACTISE AND DISQUALIFICATION ETC) RULES 2007

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The Council of the Royal Pharmaceutical Society of Great Britain makes these Rules in exercise of the powers conferred by articles 7(2)(d) and (4)(d), 49(1), 51(1), 52(1), 55(3), 59(1), 61(4), 62(7) and 66(1) of the Pharmacists and Pharmacy Technicians Order 2007.

In accordance with article 66(3) of that Order, the Council of the Royal Pharmaceutical Society of Great Britain has consulted, in relation to rules under article 59(1) of that Order, Primary Care Trusts in England, Local Health Boards in Wales and Health Boards in Scotland.

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

Part 1

Preliminary Matters

Citation and commencement

1

These Rules may be cited as the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc) Rules 2007 and shall come into force on 30th March 2007.

Interpretation

2

(1) In these Rules--

"the Act" means the Medicines Act 1968;

"allegation", unless the context otherwise requires, means a criminal conduct allegation, a disqualification allegation or a fitness to practise allegation;

"applicant concerned" means an applicant for registration whose application has been referred to the Health or Disciplinary Committee for advice (or, where appropriate their representatives);

"criminal conduct allegation" means a complaint to, or concern of, the Society which gives rise or may give rise to criminal proceedings under any enactment;

"disqualification allegation" means a complaint to, or concern of, the Society which gives rise or may give rise to an inquiry under Part 4 of the Act;

"fitness to practise allegation" means an allegation which is an allegation for the purposes of article 49(1), 50(1), 51(1) or 52(1) of the Order, as appropriate;

"interim order" means an interim order under article 54 of the Order;

"interim order hearing" means a hearing solely for the purposes of considering whether to make, confirm, vary, replace or revoke an interim order;

"the Order" means the Pharmacists and Pharmacy Technicians Order 2007;

"parties" means the Society and the applicant or registrant concerned (or, where appropriate, their representatives);

"prescribed fee" means a fee prescribed in rules under article 40(1) of the Order;

"the presenter" means the representative of the Society presenting the case at a hearing (and includes employees of the Society);

"principal hearing" means--

(a) in fitness to practise proceedings, a hearing of the Health or Disciplinary Committee held in connection with making a determination under article 51(2) or (3) or 52(2) or (3) of the Order (as opposed to any further hearing to consider varying or revoking any direction given as a consequence of a finding of impairment); and

(b) in disqualification proceedings, a hearing of the Disciplinary Committee held in connection with making a direction under section 80 of the Act;

"register of premises" means the register kept under section 75(1) of the Act;

"registrant", in relation to the register of premises, means the person whose premises (that is, the premises at which he carries on a retail pharmacy business) are entered in the register of premises;

"registrant concerned" in the context of fitness to practise or disqualification proceedings or proceedings under Part 4 of the Registration Rules, means the registrant who is the subject of the allegation or investigation to which those proceedings relate (or, where appropriate, their representatives);

"Registration Rules" means the Royal Pharmaceutical Society of Great Britain (Registration Rules) 2007;

"restoration hearing" means a hearing in fitness to practise proceedings to consider an application for restoration to the register;

"review hearing" means a hearing for the purpose of--

- (a) reviewing directions issued by the Disciplinary Committee or the Health Committee under article 51 or 52 of the Order; or
- (b) revoking a direction by virtue of section 83(1) of the Act;

"the standards" means the standards of conduct, practice and performance (including the Society's Code of Ethics and the related guidance) published by the Council under article 45(1) of the Order.

(2) For the purposes of these Rules--

(a) a meeting or hearing of the Health or Disciplinary Committee, other than when it is deliberating in private, is considered to be "in private" if it is held in the presence of--

- (i) the parties and any person representing a party (where present),
- (ii) the person acting as secretary to the Committee,
- (iii) any witness giving evidence,
- (iv) any legal, clinical or specialist adviser,
- (v) any person responsible for the recording of the proceedings, or
- (vi) any other person whose presence is deemed necessary by the chair of the Committee,

but otherwise excluding everyone else; and

(b) a meeting of the Investigating Committee and the private deliberations of the Health or Disciplinary Committee are considered to be "in private" if they are held in the presence of--

- (i) the person acting as secretary to the Committee,
- (ii) any legal, clinical or specialist adviser, or
- (iii) any person responsible for the recording of the proceedings,

but otherwise excluding everyone else.

(3) *Pending the coming into force of article 21 of the Order, these Rules shall apply as if references to--*

- (a) the register were only to the Register of Pharmacists and the register of premises; and*
- (b) registrants were only to persons registered in the Register of Pharmacists or persons whose premises are entered in the register of premises.*

Service of documents

- (1) Any notice or document required to be served by the Society under these Rules shall be in writing and shall be served by sending it by a postal service or another delivery service (including by electronic mail) or by leaving it at--
- (a) in the case of a registrant, subject to paragraph (2), the address of the registrant that appears in the register or any electronic mail address of the registrant that the registrant has notified to the Society as an address for communications; or
 - (b) in the case of an applicant who is not a registrant, his last known home address or any electronic mail address of the applicant that the applicant has notified to the Society as an address for communications.
- (2) If the registrant or applicant so requests, notices or documents may be sent to or left at--
- (a) where the registrant or applicant is represented by a solicitor, the solicitor's practising or electronic mail address; or
 - (b) where the registrant or applicant is represented by a defence organisation or trade union, the business or electronic mail address of that defence organisation or trade union.
- (3) Where any notice or document is sent by post, it shall be treated (unless sent by second class post) as having been served on the day after it was posted, or where a notice or document has been sent by electronic mail or left at an address, it shall be treated as having been served on the day at which it was sent to, or left at, that address.

Venue of proceedings

4

- (1) The procedures as regards proceedings set out in these Rules shall apply to all proceedings of fitness to practise committees irrespective of where in Great Britain the proceedings take place.

Duty to notify the Registrar of changes in information

5

A registrant shall notify the Registrar in writing within 7 days of its occurrence, if he--

- (a) is convicted of any criminal offence;
- (b) accepts a police caution;
- (c) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal);
- (e) has agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as an alternative to prosecution);
- (f) is notified by a regulatory body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession of a determination to the effect that his fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect;
- (g) becomes subject to an investigation into his fitness to practise by another regulatory body (apart from the Society);
- (h) becomes the subject of any fraud investigation by a body responsible for investigating fraud in relation to the health service (for example, the Counter Fraud and Security Management Service Division

of the NHS Business Services Authority or NHSScotland Counter Fraud Services, which is part of the Common Services Agency); and

(i) he is removed, contingently removed or suspended from, refused admission to or conditionally included in any list held by a health service body of performers or providers of pharmaceutical services on fitness to practise grounds.

Additional functions of the Investigating Committee

6

The Investigating Committee shall have the following additional functions--

(a) providing an annual report to the Council in respect of each calendar year, by a date specified by the Council, which shall include--

(i) trends, patterns and learning points observed from cases considered by the Investigating Committee,

(ii) recommendations to the Council as regards the published threshold criteria referred to in rule 9(1)(d),

(iii) details of the numbers of fitness to practise and disqualification allegations which were disposed of by means of warnings and undertakings during that year, and

(iv) the reasons why such cases were not referred to the Health or Disciplinary Committee;

(b) preparation, publication and amendment from time to time of its referral criteria;

(c) determining whether or not disqualification allegations that have been referred to it should be referred to the Disciplinary Committee;

(d) considering criminal conduct allegations referred to it by the Registrar;

(e) determining whether the Society should exercise its powers to bring criminal proceedings in relation to criminal conduct allegations; and

(f) determining whether the Society should exercise its powers to bring criminal proceedings in cases that have been referred to it as disqualification allegations.

Additional functions of the Health Committee

7

The Health Committee shall have the following additional functions--

(a) providing advice requested by the Registrar under rule 6(7) or 8(3) of the Registration Rules; and

(b) preparation, publication and amendment from time to time of its approach to decision making in the form of Indicative Sanctions Guidance.

Additional functions of the Disciplinary Committee

8

The Disciplinary Committee shall have the following additional functions--

(a) providing advice requested by the Registrar under rule 6(5), 8(3) or 17(2) of the Registration Rules;

- (b) providing advice to the Investigating Committee about the types of cases that should not be referred from that Committee to it; and
- (c) preparation, publication and amendment from time to time of its approach to decision making in the form of Indicative Sanctions Guidance.

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

Amendment

Rule 2: para (3) revoked by SI 2009/1182, art 4(1), Sch 4, Pt 3, para 31.

Date in force: this revocation shall come into force on the date on which the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 21 comes into force: see SI 2009/1182, art 1(5)(b).

Part 2

Initial Consideration by the Registrar

Consideration of allegations by the Registrar

9

- (1) Where the Registrar is on notice of a fitness to practise allegation, after consideration of it, he shall not refer it to a fitness to practise committee if--
- (a) more than five years have elapsed since the circumstances giving rise to the allegation, unless the Registrar considers that it is necessary for the protection of the public, or otherwise in the public interest, for that allegation to be referred;
 - (b) the complainant is anonymous, unless the Registrar has been able to establish a case that has a real prospect of a referral by the Investigating Committee under article 50(3)(a) of the Order;
 - (c) the identity of the registrant against whom the allegation is made is not known;
 - (d) the allegation is of a type that the Council has stated in its published threshold criteria (as amended from time to time) should not be referred to the Investigating Committee.
- (2) Where the Registrar is on notice of any other allegation, in considering whether or not to refer the matter to the Investigating Committee, he shall take into account--
- (a) whether more than five years have elapsed since the circumstances giving rise to the allegation (in which case he shall not refer the allegation, unless he considers that it is necessary for the protection of the public, or otherwise in the public interest, for that allegation to be referred);
 - (b) whether the complainant is anonymous (if it is, the Registrar shall not refer the allegation, unless he has been able to establish a case that has a real prospect of a referral by the Investigating Committee without the assistance of the complainant);
 - (c) the published threshold criteria referred to in paragraph (1)(d); and
 - (d) the published referral criteria of the Investigating Committee.

- (3) The Registrar's consideration of an allegation under paragraph (1) or (2) may include the carrying out of any investigations which, in his opinion, are appropriate to the consideration of it.
- (4) Investigations referred to in paragraph (3) may include--
- (a) requesting the Society's employees to undertake further inquiries;
 - (b) requesting the maker of the allegation to provide a written statement or statutory declaration;
 - (c) instructing solicitors and inquiry agents; or
 - (d) in the case of a fitness to practise allegation, requiring the registrant to agree to be medically examined by a registered medical practitioner nominated by the Society.
- (5) A fitness to practise allegation is to be referred to the Health or Disciplinary Committee, instead of to the Investigating Committee, if the Registrar considers that--
- (a) the Committee should consider making an interim order, and if he does, he shall notify the Committee accordingly; or
 - (b) the public interest is best served by urgent consideration of the case,

and in these circumstances, in the case of an allegation that could go to either committee, the Registrar shall send it to the Disciplinary Committee if he considers that there is a likelihood of that Committee deciding to give a direction that the registrant be removed from the register.

- (6) A fitness to practise allegation is to be referred to the Disciplinary Committee instead of the Investigating Committee if it relates to a conviction for a criminal offence that led to the imposition of a custodial or suspended custodial sentence.

Notices of referral and documents to be supplied to registrants

10

- (1) Once the Registrar has taken a decision to refer a fitness to practise or disqualification allegation against a registrant to the Investigating Committee, he shall--
- (a) send to the registrant concerned a notice of referral to the Investigating Committee;
 - (b) provide the registrant concerned with copies of all documentation, including summaries of relevant information, to be placed by the Registrar before the Investigating Committee; and
 - (c) provide the registrant concerned with a copy of the published referral criteria of the Investigating Committee.
- (2) The notice of referral to the Investigating Committee shall in terms--
- (a) particularise the allegation;
 - (b) set out any recommendations for disposal of the case made by the Registrar;
 - (c) specify a date for the meeting of the Investigating Committee which will consider the allegation, which shall be no less than 28 days after the date of service of the notice of referral;
 - (d) inform the registrant of the Investigating Committee's powers--
 - (i) to dismiss the case,
 - (ii) to issue warnings,
 - (iii) to agree undertakings,

- (iv) to refer the matter to the Disciplinary Committee or, in fitness to practise proceedings, the Health Committee, and
 - (v) in respect of the initiation of criminal proceedings;
- (e) invite the registrant to indicate, no later than 21 days after service of the notice, whether--
- (i) the particulars of the allegation set out in the notice are admitted or denied,
 - (ii) he would prefer the case to be fast tracked;
- (f) invite the registrant concerned to provide written representations on the allegation, and on any recommendations for disposal of the case made by the Registrar;
- (g) state that any written representations must be submitted to the Investigating Committee no later than 21 days after service of the notice;
- (h) inform the registrant concerned that any representations, or extracts of any representations, received from him may be shown to the person making the allegation, if any, for comment;
- (i) inform the registrant concerned that the Investigating Committee may seek further information from any source for the purposes of carrying out its functions in investigating the allegation, including from the registrant's employer, if any; and
- (j) in fitness to practise proceedings--
- (i) require from the registrant concerned the details mentioned in article 49(3)(a) of the Order, and
 - (ii) inform him of the matters set out in article 49(4) of the Order.
- (3) Once the Registrar has taken a decision to refer a fitness to practise allegation against a registrant to the Health or Disciplinary Committee, the Registrar shall send to the registrant concerned a notice informing him of that decision, which shall in terms--
- (a) require from the registrant the details mentioned in article 49(3)(a) of the Order; and
 - (b) inform him of the matters set out in article 49(4) of the Order.
- (4) A person who is the subject of a criminal conduct allegation shall not be notified where that allegation is referred to the Investigating Committee, unless that person is a registrant and the allegation is being referred together with a fitness to practise or disqualification allegation.

Applications for restoration

11

- (1) Subject to the following provisions of this rule, any person seeking restoration to the register under article 55 of the Order shall apply using the relevant application form, which shall be in such form as the Council shall determine from time to time.
- (2) The application form shall (amongst other matters)--
- (a) require the applicant--
 - (i) to provide his full home address and contact details (including a telephone number and electronic mail address, where possible),
 - (ii) to give his reasons for saying that his fitness to practise is no longer impaired,
 - (iii) to provide any necessary supporting documentation, as mentioned in paragraph (3),
 - (iv) to sign and date the application;

- (b) include a demand that the applicant pay any relevant prescribed fee; and
 - (c) request the applicant to provide information relating to the applicant's gender, ethnicity and any disability, for monitoring purposes.
- (3) A person applying for restoration to the register under article 55 of the Order shall provide to the Registrar, together with his application form--
- (a) at least two certificates attesting to the applicant's identity and good character, one of which must be given by a registrant in good standing with the Society;
 - (b) sufficient evidence to demonstrate the applicant's fitness to return to practice, which may include--
 - (i) evidence of activities designed to address or learn from the original allegation,
 - (ii) evidence of learning activities designed to keep up to date with skills and knowledge, and with developments in practice, and
 - (iii) evidence demonstrating insight into the gravity of the allegation which resulted in his removal from the register; and
 - (c) any necessary supporting documentation, information or evidence as mentioned in the application form, and such additional documents, information or evidence as the Registrar may reasonably require for the purposes of verifying the information in, or determining, the application.
- (4) The Registrar shall not accept a certificate of the type referred to in paragraph (3)(a) as a valid part of the application unless there is an indication on the face of the certificate that the person signing it--
- (a) knows why the applicant was removed from the register; and
 - (b) has seen a copy of the reasons given by the committee which gave the direction that the applicant be removed from the register.
- (5) The application shall be refused if the applicant does not pay the relevant prescribed fee.
- (6) Once the Registrar has referred the application to the Disciplinary Committee, the Society shall request case management directions.

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

Part 3

Consideration by the Investigating Committee

Procedures of the Investigating Committee

12

- (1) The Investigating Committee shall meet in private.

- (2) The Investigating Committee shall not hear oral evidence.
- (3) Before disposing of an allegation before it, the Investigating Committee--
 - (a) shall in all cases--
 - (i) consider all documents and recommendations placed before it by the Registrar, and
 - (ii) have regard to its own published referral criteria;
 - (b) may in all cases--
 - (i) direct that further investigations should be undertaken, and
 - (ii) obtain advice from a legal, clinical or other specialist adviser;
 - (c) may adjourn its consideration of an allegation until such time as any further information has been obtained, any comments from the maker of the allegation are received, or where the registrant has undertaken a medical examination, a report on him has been prepared; and
 - (d) in fitness to practise or disqualification proceedings (whether or not a criminal conduct allegation is also being considered in relation to the registrant)--
 - (i) shall in all cases--
 - (aa) consider any written representations received from the registrant, and
 - (bb) have regard to any relevant practice directions issued by the chair of the Health or Disciplinary Committee, and
 - (ii) may send any written representations received from the registrant concerned to the person making the allegation, if any, for comment; and
 - (e) may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of adverse physical or mental health--
 - (i) require him to agree to be medically examined by a registered medical practitioner nominated by the Society, and
 - (ii) where it receives information that a registrant has refused to co-operate fully with a medical examination, refer that matter to the Health or Disciplinary Committee as a separate allegation.
- (4) Where the Investigating Committee decides to refer an allegation to the Health or Disciplinary Committee, and is of the view that--
 - (a) as regards an allegation being referred to the Disciplinary Committee, the case should be fast tracked; or
 - (b) case management directions should be issued,

it shall notify the committee accordingly.

- (5) The Investigating Committee shall not refer any--
 - (a) fitness to practise allegation to the Health or Disciplinary Committee unless it is satisfied that there is a real prospect that the Health or Disciplinary Committee will make a finding that the registrant's fitness to practise is impaired;

(b) fitness to practise allegation to the Health Committee if it considers that, if the case is referred instead to the Disciplinary Committee, there is a likelihood of that Committee deciding to give a direction that the registrant be removed from the register; or

(c) disqualification allegation to the Disciplinary Committee unless it is satisfied that there is a real prospect that the Disciplinary Committee will make a direction for disqualification.

(6) The Investigating Committee shall not exercise its functions under rule 6(e) or (f) or article 50(4) of the Order unless it is satisfied that--

(a) there is a real prospect of securing a criminal conviction; and

(b) it is in the public interest to bring the prosecution.

Warnings and undertakings

13

(1) The Investigating Committee may dispose of disqualification proceedings by issuing a warning to the registrant concerned instead of referring the allegation to the Disciplinary Committee, but only in the circumstances set out in paragraph (3).

(2) The Investigating Committee shall only dispose of fitness to practise proceedings by issuing a warning, instead of referring the allegation to the Health or Disciplinary Committee, in the circumstances set out in paragraph (3).

(3) Cases shall only be disposed of by issuing a warning where--

(a) the registrant concerned does not dispute the particulars of the allegation set out in the notice of referral; and

(b) the registrant concerned has confirmed, within the period specified by the Committee, that he agrees to disposal of the matter by means of a warning, and in the terms notified to him when the period is specified.

(4) The Investigating Committee may dispose of fitness to practise proceedings by agreeing undertakings with the registrant concerned (that is, that he will comply with such undertakings as the Committee considers appropriate) instead of referring the allegation to the Health or Disciplinary Committee where--

(a) the allegation concerns deficient professional performance or adverse physical or mental health; and

(b) the registrant concerned admits that his fitness to practise is impaired.

(5) Where the Investigating Committee has disposed of a case by agreeing undertakings with a registrant, and it subsequently receives information that those undertakings have not been complied with, it--

(a) shall refer the original allegation to the Health or Disciplinary Committee; and

(b) may treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the Disciplinary Committee.

Notices of decision

14

- (1) The information to be provided under article 50(2)(b) and (3)(c) of the Order shall be in a notice of decision which shall be sent to the registrant concerned and the person making the allegation, if any, no later than 10 days after the relevant decision was made.
- (2) In disqualification proceedings, the secretary to the Investigating Committee shall inform the registrant concerned of the decision of the Investigating Committee to refer, or not to refer, the allegation to the Disciplinary Committee, and shall do so in a notice of decision which shall be sent to the registrant no later than 10 days after the decision was made.
- (3) The notice of decision under paragraph (1) or (2) shall include the reasons for the decision and shall be accompanied by any legal advice considered by the Committee.
- (4) Where the Investigating Committee has decided not to refer the allegation to the Health or Disciplinary Committee, the notice of decision under paragraph (1) or (2) shall inform the registrant concerned that the Investigating Committee may nevertheless reconsider the allegation in the circumstances set out in rule 15.
- (5) Where the Investigating Committee has decided to dispose of the allegation by agreeing undertakings or issuing a warning, the notice of decision under paragraph (1) shall be accompanied by a statement setting out the undertakings or the warning, and if the statement relates to agreed undertakings, it shall also state, in terms, that if the Investigating Committee subsequently receives information that those undertakings have not been complied with, it--
 - (a) shall refer the original allegation to the Health or Disciplinary Committee; and
 - (b) may treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the Disciplinary Committee.
- (6) The statement referred to in paragraph (5) shall not be sent to the person making the allegation if it includes undertakings relating to the health of a registrant.
- (7) Where the Investigating Committee has decided to refer the matter to the Disciplinary Committee or Health Committee, the notice of decision under paragraph (1) or (2)--
 - (a) shall particularise the matters to be referred; and
 - (b) where the Investigating Committee is of the view that the Health or Disciplinary Committee should consider making an interim order, state the reasons for its view.

Reconsideration of allegations

15

- (1) Where--
 - (a) the Investigating Committee has considered a fitness to practise or disqualification allegation and decided not to refer it to the Health or Disciplinary Committee; and
 - (b) within five years from service of the notice of decision under rule 14, the Society receives a new allegation about the registrant concerned,

the Investigating Committee may take the action specified in paragraph (2).

- (2) The Investigating Committee may--
 - (a) when considering whether or not to refer the new allegation to the Health or Disciplinary Committee, have regard to the original allegation; and
 - (b) may refer both the original allegation and the new allegation to the Health or Disciplinary Committee.

(3) Where the Investigating Committee has disposed of a fitness to practise or disqualification allegation, and within five years of that decision receives new evidence or information which makes the reconsideration of that decision--

- (a) necessary for the protection of the public;
- (b) necessary for the prevention of injustice to the registrant;
- (c) otherwise necessary in the public interest,

it may reconsider the allegation.

(4) The Investigating Committee may reconsider an allegation where it receives information that the Society has erred in its administrative handling of the case and it is satisfied that it is necessary in the public interest to do so.

(5) Where the Investigating Committee has decided to reconsider a fitness to practise or disqualification allegation, the secretary to the Investigating Committee shall--

- (a) inform the registrant concerned and the person making the allegation, if any, of the decision to reconsider the allegation;
- (b) inform the registrant concerned and, where appropriate, the person making the allegation, if any, of any new evidence or information;
- (c) provide the registrant concerned and, where appropriate, the person making the allegation, if any, with copies of any new evidence and summaries of any new information received;
- (d) seek written representations from the registrant concerned and the maker of the allegation, if any, on--
 - (i) the decision to reconsider the allegation, and
 - (ii) any new evidence or information received (unless, in the case of the person making the allegation, if any, this has not been sent to him).

(6) Following reconsideration of the original allegation, the original referral to the Health or Disciplinary Committee may be rescinded in appropriate circumstances.

(7) Following reconsideration of the allegation, a new notice of decision shall be sent, as provided for in rule 14.

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

Part 4

Consideration by the Health and Disciplinary Committees: Initial Stages

Action upon referral of an allegation

- (1) After referral of an allegation by the Registrar or the Investigating Committee to the Health or Disciplinary Committee--
 - (a) if the case has been referred to the Health Committee, the chair of the Health Committee may require the registrant concerned to agree to be medically examined by a registered medical practitioner nominated by the Society;
 - (b) the Registrar shall take such steps as, in his opinion, are desirable or necessary to assist the Society in the preparation of the case for hearing; and
 - (c) the secretary to the Committee to which the case has been referred shall serve on both of the parties a listing questionnaire, which shall be in the format determined by the secretary responsible for serving it.
- (2) The parties shall be jointly responsible for the completion of the listing questionnaire.
- (3) No later than 28 days from the date on which the listing questionnaire has been served on the parties, the parties shall inform the secretary to the relevant committee of their agreed provisional time estimate for the duration of the hearing (if the parties are unable to agree it, they shall request case management directions).
- (4) In a case where the Registrar has referred an allegation to the Health or Disciplinary Committee instead of to the Investigating Committee, the Society shall request case management directions.

Disclosure provisions: standard Disciplinary Committee cases

17

- (1) Paragraphs (4) to (7) shall apply in cases where the Investigating Committee--
 - (a) has referred a fitness to practise or disqualification allegation to the Disciplinary Committee; and
 - (b) has not notified the Disciplinary Committee that--
 - (i) the case should be fast tracked, or
 - (ii) it should consider making an interim order,

but where the case has been the subject of case management directions, those paragraphs shall apply as modified (where appropriate) by those directions.

- (2) Where--
 - (a) the Registrar has referred a fitness to practise or disqualification allegation to the Disciplinary Committee (whether or not he has asked the Committee to consider making an interim order); and
 - (b) has not recommended that the case be fast tracked,

paragraphs (4) to (7) shall apply as modified (where appropriate) by any case management directions.

- (3) Where the Investigating Committee has referred a fitness to practise allegation to the Disciplinary Committee and has notified it that it should consider making an interim order but has not notified it that the case should be fast tracked--
 - (a) the Society shall request case management directions; and
 - (b) paragraphs (4) to (7) shall apply as modified (where appropriate) by any case management directions.

- (4) No later than 14 days from the date on which the registrant is served with the notice under rule 10(3) or notice of decision under rule 14 ("the referral date"), the Society shall serve on the registrant concerned a copy of its copy of the listing questionnaire, duly completed by the Society.
- (5) No later than 7 months from the referral date, the Society shall serve on the registrant concerned--
- (a) finalised particulars of the allegation, sufficiently particularised to enable the registrant concerned to understand the allegation;
 - (b) any statements of evidence, expert reports or other documents relied upon by the Society in support of its case, not previously served upon the registrant;
 - (c) any evidence or documents that the Society has in its possession (other than documents for which privilege is claimed) which, whilst not relied on by the Society, may assist the registrant in the preparation of his defence;
 - (d) a list of witnesses whose evidence is (or whose oral evidence will be) relied on by the Society in support of its case; and
 - (e) any revised time estimate for the duration of the Society's case.
- (6) No later than 28 days from the date of service of the material set out in paragraph (5), the registrant concerned shall serve on the secretary to the Disciplinary Committee--
- (a) an agreed time estimate for the duration of the hearing (if the parties are unable to agree it, they shall request case management directions), and
 - (b) a copy of its copy of the listing questionnaire, duly completed by the registrant concerned.
- (7) No later than 7 days after the expiry of the period specified in paragraphs (5) and (6), the party concerned shall notify the secretary to the Health or Disciplinary Committee of any changes to the agreed time estimate for the hearing or to the information provided by the parties in the listing questionnaire.
- (8) No later than 6 months from the date of service of the material set out in paragraph (5), the registrant concerned shall serve on the Society--
- (a) any statements of evidence (including witness statements), expert reports or other documents relied upon by him in support of his case; and
 - (b) a list of witnesses whose evidence is (or oral evidence will be) relied upon by him in support of his case.

Disclosure provisions: fast track and Health Committee cases

18

- (1) Paragraphs (4) to (7) of this rule shall apply in cases where the Investigating Committee--
- (a) has referred a fitness to practise allegation--
 - (i) to the Health Committee but has not notified the Committee that it should consider making an interim order, or
 - (ii) to the Disciplinary Committee and has notified the Committee that the case should be fast tracked but has not notified the Committee that it should consider making an interim order; or
 - (b) has referred a disqualification allegation to the Disciplinary Committee and has notified the Committee that the case should be fast tracked,

but where the case has been subject to case management directions, those paragraphs shall apply as modified (where appropriate) by those directions.

(2) Where--

- (a) the Registrar has referred a fitness to practise allegation to the Health or Disciplinary Committee; and
- (b) in the case of a referral to the Disciplinary Committee, the Registrar has recommended that the case be fast tracked,

paragraphs (4) to (7) shall apply as modified (as appropriate) by any case management directions.

(3) Where the Investigating Committee has referred a case--

- (a) to the Health Committee and has notified that Committee that it should consider making an interim order; or
- (b) to the Disciplinary Committee and has notified the Committee that--
 - (i) the case be fast tracked, and
 - (ii) it should consider making an interim order,

the Society shall request case management directions and paragraphs (4) to (7) shall apply as modified (where appropriate) by any case management directions.

(4) No later than 14 days from the date on which the registrant concerned is served with the notice under rule 10(3) or the notice of decision under rule 14 ("the referral date"), the Society shall serve on the registrant concerned a copy of its copy of the listing questionnaire, duly completed by the Society.

(5) No later than 4 months from the referral date, the Society shall serve on the registrant concerned--

- (a) finalised particulars of the allegation, sufficiently particularised to enable the registrant concerned to understand the allegation;
- (b) any statement of evidence, expert reports or other documents relied upon by the Society, not previously served upon the registrant;
- (c) any evidence or documents that the Society has in its possession (other than documents for which privilege is claimed) which, whilst not relied on by the Society in support of its case, may assist the registrant concerned in the preparation of his defence;
- (d) a list of witnesses whose evidence is (or oral evidence will be) relied upon by the Society in support of its case; and
- (e) any revised time estimate for the duration of the Society's case.

(6) No later than 28 days from the date of service of the material referred to in paragraph (5), the registrant concerned shall serve on the secretary to the relevant committee--

- (a) an agreed time estimate for the duration of the hearing (if the parties are unable to agree, they shall request case management directions), and
- (b) a copy of the listing questionnaire, duly completed by the registrant concerned.

(7) No later than 7 days after the expiry of the period specified in paragraph (5) or (6), the party concerned shall notify the secretary to the Health or Disciplinary Committee of any changes to the agreed time estimate for the hearing or to the information provided by the parties in the listing questionnaire.

- (8) No later than 4 months from the date of service of the material referred to paragraph (5), the registrant concerned shall serve on the Society--
- (a) any statements of evidence (including witness statements), expert reports or other documents relied upon by him in support of his case; and
 - (b) a list of witnesses whose evidence is (or oral evidence will be) relied upon by him in support of his case.

Inspection of documents

19

- (1) At any time after the service of a document by a party under this Part, up until the commencement of the relevant hearing, the party being served with the document may serve notification on the other party in possession of the original version of the document that he wishes to inspect and examine it.
- (2) The party in possession of the original version of the document shall provide facilities for its inspection and examination within 10 days from the notification of the request.

Notices of hearing other than in interim order proceedings

20

- (1) Where the Health or Disciplinary Committee is to hold a hearing, other than an interim order hearing, the secretary to that Committee shall serve a Notice of Hearing on the parties no less than 28 days before the date fixed for the hearing.
- (2) The Notice of Hearing shall--
- (a) state the date, time and venue of the hearing;
 - (b) in the case--
 - (i) of a principal hearing, contain the finalised particulars of the allegation;
 - (ii) where the Registrar is seeking the advice of--
 - (aa) the Disciplinary Committee under rule 6(5) of the Registration Rules, contain a statement from the Registrar of his grounds for believing that the applicant's fitness to practise may be impaired for reasons other than adverse physical or mental health,
 - (bb) the Health Committee under rule 6(7) of the Registration Rules, contain a statement from the Registrar of his grounds for believing that the applicant's fitness to practise may be impaired because of adverse physical or mental health,
 - (cc) the Health or Disciplinary Committee under rule 8(3), contain a statement from the Registrar of his grounds for believing that the fitness to practise of the registrant is in question, and
 - (dd) the Disciplinary Committee under rule 17(2)(a) of the Registration Rules for the purposes of making findings of fact, contain a statement from the Registrar of the matters on which findings of fact are sought;
- (c) where the Health or Disciplinary Committee is to review directions previously given (including applications for restoration and applications under section 83 of the Act), contain a copy of the directions under review and the Committee's reasons for making the directions;
- (d) inform the party other than the Society of his right to attend, and to be represented or accompanied at the hearing in accordance with rule 43;

- (e) inform the party other than the Society that the Health or Disciplinary Committee may proceed with the hearing in his absence;
- (f) inform the party other than the Society of--
 - (i) the relevant provisions of rules 35 to 38 relating to the procedure at the hearing,
 - (ii) the provisions relating to evidence set out in rule 30, and
 - (iii) the provisions relating to witness evidence set out in rules 46 and 47;
- (g) require the party other than the Society to inform the secretary, within 14 days of service of the Notice of Hearing, whether he intends to--
 - (i) attend the hearing,
 - (ii) be represented at the hearing, and if so, by whom,
 - (iii) seek to call any witnesses at the hearing, and if so whom,
 - (iv) in the case of a principal hearing, make any admissions in respect of the allegation, and
 - (v) where a case has been referred to the Disciplinary Committee under rule 17(2)(a) of the Registration Rules for the purposes of making findings of fact, make any admissions;
- (h) if the party other than the Society is a registered pharmacist, inform the registrant of the powers of the Health or Disciplinary Committee to make an interim order;
- (i) in the case of a principal hearing, inform the registrant of the sanctions that may be imposed against him;
- (j) in the case of a review hearing in fitness to practise proceedings, inform the registrant of the committee's powers to vary or revoke any sanctions that have been imposed; and
- (k) in the case of a restoration hearing, inform the applicant of the Disciplinary Committee's powers to impose conditions if the applicant is restored to the register.

Interim Order Notices and court referrals

21

- (1) Where the Health or Disciplinary Committee is to hold an interim order hearing, the secretary to that Committee shall serve on the registrant an Interim Order Notice.
- (2) The Interim Order Notice to be served on the registrant in accordance with paragraph (1) shall--
 - (a) state the date, time and venue of the hearing;
 - (b) inform the registrant of his right to attend and to be represented or accompanied at the hearing in accordance with rule 43;
 - (c) inform the registrant that the Committee may proceed with the hearing in his absence;
 - (d) require the registrant to inform the secretary, by a specified date, whether he intends to--
 - (i) attend the hearing,
 - (ii) oppose the making of an interim order, and
 - (iii) be represented at the hearing, and if so, by whom;
 - (e) invite the registrant, if he does not wish to attend the hearing, to submit written representations to the Committee before the date of the hearing;

- (f) if there is no interim order in force in relation to the registrant, to state the reasons why the Society is seeking an interim order; and
 - (g) where the hearing is to review an interim order, include the terms of the order under review.
- (3) The Interim Order Notice shall be served on the registrant on a date which, in the opinion of the secretary to the relevant Committee, provides the registrant with reasonable notice of the hearing in the particular circumstances of the case.
- (4) Where it appears to the secretary of the Health or Disciplinary Committee that an application should be made to the relevant court under article 54(5) of the Order to extend, or further extend, the period of an interim order, he shall advise his Committee accordingly, and the Committee may direct the Society to make the application.

Hearing bundles

22

- (1) Before any hearing, no later than 14 days before the Monday of the week in which the hearing is to take place before the Health or Disciplinary Committee, the parties shall serve on each other copies of the bundles on which they intend to rely at the hearing.
- (2) No later than 7 days before the Monday of the week in which the hearing is to take place, the parties shall serve on the secretary to the relevant Committee, 10 paginated copies of--
- (a) where the bundle for the hearing has been agreed between the parties, the agreed bundle; or
 - (b) where the bundle for the hearing has not been agreed--
 - (i) a statement by each party setting out why the bundle for the hearing has not been agreed,
 - (ii) a statement from the party seeking to rely on any disputed material why he or it seeks to include it in the bundle, and
 - (iii) the bundles on which each party intends to rely at the hearing;
 - (c) a statement of each party's case; and
 - (d) each party's skeleton argument.
- (3) No later than 7 days before the Monday of the week in which the hearing is to take place, the parties shall serve on the secretary to the relevant Committee a list (which they shall endeavour to agree but which they shall otherwise serve separately) indicating--
- (a) any witness whose evidence has been agreed and who therefore does not need to be called; and
 - (b) any witness who is to be called to give oral evidence before the Committee.
- (4) Any document which has not been served on the secretary by the period specified in paragraph (2) shall, except in exceptional circumstances, not be admitted into the evidence at the hearing.

Requests for case management directions

23

- (1) A party to proceedings before the Health or Disciplinary Committee may at any time serve on the secretary to the Committee and the other party a written request for case management directions (in addition to the occasions on which they must, by virtue of these Rules, make such a request).
- (2) The request shall--

- (a) state the reasons why the party is seeking case management directions;
 - (b) if the party is seeking an extension of time limits set out in these Rules, set out the reasons for the party's inability to comply with the time limits set out;
 - (c) state what directions are sought for the management of the case (and the party may enclose draft directions where appropriate);
 - (d) state whether the person making the request seeks the participation of the parties at a case management meeting (and if so, the preferred format for that meeting) or whether the issues can be dealt with by way of directions from the chair without oral representations from the parties.
- (3) The secretary to the relevant Committee shall send a copy of the request, together with any other material he considers relevant, to the chair of his Committee.
- (4) The chair shall agree to the request for case management directions unless he determines that the directions are unnecessary or the request is an abuse of process.

Case management meetings

24

- (1) Where a chair agrees to a request for a case management meeting, the secretary to the Committee shall convene the meeting.
- (2) Where a case management meeting is to be convened, the secretary to the relevant Committee shall give the parties such notice of the meeting as is reasonable in the particular circumstances of the case.
- (3) Case management meetings may be conducted by video link, teleconference or such other method as is agreed by the parties or, where the parties fail to agree, as decided by the chair (or in the case of the Health Committee, the legal adviser or the chair).
- (4) Case management meetings shall be held in private.

Case management directions

25

- (1) Case management directions may be issued--
 - (a) at a case management meeting;
 - (b) by the chair, upon the request of a party (in circumstances where the chair has decided not to hold a case management meeting); or
 - (c) by the chair, of his own volition.
- (2) The chair (or the legal adviser to the Health Committee) may issue such case management directions as he considers necessary for the just and expeditious management of the case, which may include, but are not limited to--
 - (a) where this is duly justified, modifying the application of rules 17 to 20(1) and 22 to the particular circumstances of the case;
 - (b) requiring one of the parties to obtain, and to disclose within a specified period, evidence and expert reports;
 - (c) requiring each party to provide an estimate of the length of the hearing and any dates on which they or any witnesses would not be able to attend the hearing;

- (d) where facts are not in dispute or the allegation is admitted, requiring the parties to produce a statement of agreed facts;
 - (e) in fitness to practise proceedings before the Disciplinary Committee--
 - (i) requiring the parties to state whether or not the health of the practitioner will be raised as an issue in the proceedings, and if so, whether, in their view, medical reports should be obtained, and
 - (ii) subject to rule 27, referring the case to the Health Committee, in which case, that Committee shall treat that referral, for the purposes of rules 17 and 18, as a referral of the Investigating Committee;
 - (f) in fitness to practise proceedings before the Health Committee, subject to rule 28, referring the case to the Disciplinary Committee, in which case that Committee shall treat that referral, for the purposes of rules 17 and 18, as a referral of the Investigating Committee;
 - (g) requiring a party to call the author of any expert report at the hearing;
 - (h) where agreed between the parties, directing that the witness statement of a witness shall stand as the evidence-in-chief of that witness;
 - (i) directing that special measures be put in place at the hearing for a vulnerable witness, including measures aimed at protecting his identity;
 - (j) requiring chronologies and additional skeleton arguments to be produced by the parties;
 - (k) directing that a further case management meeting should be held; and
 - (l) rulings (or, in the case of the legal adviser, opinions) for the purpose of resolving questions of law or admissibility of evidence.
- (3) Any rulings, as mentioned in paragraph (2)(l), given by the chair of the Disciplinary Committee shall be binding on the Disciplinary Committee hearing the allegation.
- (4) Any opinions, as mentioned in paragraph (2)(l), given by the legal adviser to the Health Committee shall be taken into account by the Health Committee hearing the allegation, but decisions on questions of law or admissibility of evidence shall be taken by that Committee.
- (5) The secretary to the Health or Disciplinary Committee shall keep a record of any case management directions given and shall send written confirmation of such directions to the parties promptly.

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

Part 5

Matters Arising Both Before and During Hearings

Practice directions

26

The chair of the Health or Disciplinary Committee may issue practice directions of general application to the proceedings of that Committee.

Referral of allegations from the Disciplinary Committee to the Health Committee

27

- (1) Subject to paragraph (2), at a principal hearing in fitness to practise proceedings, the Disciplinary Committee, if it appears that the case before it would be more appropriately dealt with by the Health Committee, may refer the case to that Committee and shall suspend its own consideration of the case.
- (2) In the case of a fitness to practise allegation that could go to either the Health or the Disciplinary Committee, neither the Disciplinary Committee nor its chair (by way of case management directions) shall send it to the Health Committee if it or he considers that there would be a likelihood, if the Disciplinary Committee considered the case, of it deciding to give a direction that the registrant be removed from the register.
- (3) Where a case is referred to the Health Committee under paragraph (1), that Committee shall treat that referral, for the purposes of rules 17 and 18, as a referral of the Investigating Committee.
- (4) The Disciplinary Committee shall only resume its consideration of the case (whether it was referred under paragraph (1) or by way of case management directions) if it is referred back to it by the Health Committee, the Health Committee having determined that the registrant's fitness to practise is not impaired by reason of adverse physical or mental health.

Referral of allegations from the Health Committee to the Disciplinary Committee

28

- (1) At a principal hearing in fitness to practise proceedings, the Health Committee, if it appears that the case before it would be more appropriately dealt with by the Disciplinary Committee, may refer the case to that Committee and shall suspend its own consideration of the case.
- (2) Where a case is referred to the Disciplinary Committee under paragraph (1), that Committee shall treat that referral, for the purposes of rules 17 and 18, as a referral of the Investigating Committee.
- (3) The Health Committee shall only resume its consideration of the case (whether it was referred under paragraph (1) or by way of case management directions) if it is referred back to it by the Disciplinary Committee (whether or not it has determined that the registrant's fitness to practise is impaired).

Clinical and other specialist advice

29

A fitness to practise committee may, at any time in the course of proceedings before it (including at a hearing), seek advice from--

- (a) a clinical adviser, appointed under article 62(1)(a) of the Order, on a health related issue; or
- (b) another specialist adviser, appointed under article 62(1)(b) of the Order, on issues falling within their speciality or related to it.

Evidence

30

- (1) All questions of admissibility of evidence and law before--
 - (a) the Investigating or Health Committee shall be decided by the Committee (after having obtained the advice of the legal adviser, where appropriate); or
 - (b) the Disciplinary Committee shall be decided by the chair.

(2) Subject only to the requirements of relevance and fairness, and with the permission of the chair, a fitness to practise committee may (in the case of the Investigating or Health Committee, after having obtained the advice of the legal adviser, where appropriate) receive--

- (a) subject to paragraph (3), any documentary evidence; and
- (b) where a hearing is held, any oral evidence,

whether or not such evidence would be admissible in any subsequent civil proceedings if the decision of the committee were appealed to the relevant court.

(3) Where a party wishes to adduce a witness statement, the Committee shall only receive such evidence if the statement--

- (a) contains an attestation, in a format acceptable to the Committee, that the statement is true; and
- (b) is signed by the person making it.

(4) Where an applicant or registrant concerned has been convicted of a criminal offence in the British Islands (and has not successfully appealed against the conviction), a copy of the certificate of conviction certified by a competent officer of the court (or in Scotland, an extract conviction) shall be admissible as conclusive proof of that conviction and the findings of fact on which it was based.

(5) The only evidence which may be adduced by the applicant or registrant concerned in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that he is not the person referred to in the certificate or extract.

[(5A) Where it is alleged that an applicant or registrant has been included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007) by the Independent Barring Board--

(a) information provided by the Secretary of State under the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 that attests to that inclusion shall be conclusive proof of that inclusion, unless the applicant or registrant concerned can prove that they are not the person referred to in the information provided; and

(b) a document from the Board, authenticated in whatever way the Society may approve, that provides a statement of the findings of fact made by the Board that led to that inclusion shall be conclusive proof of the facts found proved by the Board.

(5B) Where it is alleged that the Scottish Ministers have included an applicant or registrant in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007)--

(a) information provided by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 that attests to that inclusion shall be conclusive proof of that inclusion, unless the applicant or registrant concerned can prove that they are not the person referred to in the information provided; and

(b) a document from the Scottish Ministers, authenticated in whatever way the Society may approve, that provides a statement of the findings of fact made by the Scottish Ministers that led to that inclusion shall be conclusive proof of the facts found proved by the Scottish Ministers.]

(6) A formal notification of a determination about an appellant's fitness to practise made by a body responsible under any enactment for the regulation of a health or social care profession (in the United Kingdom or elsewhere), and signed by an officer authorised by that body to sign such a notification, shall be sufficient evidence, unless the contrary is proved, of any facts found proved by that regulatory body.

(7) The Health Committee or the chair of the Disciplinary Committee shall only allow a party to adduce written evidence at a hearing which has not been served in accordance with these Rules (or these Rules as modified by case management directions) in exceptional circumstances.

(8) In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, or when giving advice to the Registrar in relation to an applicant's physical or mental health, the Health Committee may take into account, amongst other matters--

- (a) a refusal by the applicant or registrant concerned to submit to medical examination;
- (b) the current physical or mental condition of the applicant or registrant concerned;
- (c) any continuing or episodic condition suffered by the applicant or registrant concerned; and
- (d) any underlying condition suffered by the applicant or registrant concerned which, although in remission, is capable of causing impairment of fitness to practise if it recurs.

(9) Where the Disciplinary Committee or Health Committee finds that a registrant concerned has failed to comply with the standards, that failure--

- (a) may be taken into account by the Committee in determining whether or not the registrant concerned's fitness to practise is impaired; and
- (b) shall not, of itself, be taken to establish that the registrant's fitness to practise is impaired.

Joinder of allegations for a joint hearing

31

(1) Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the Disciplinary Committee may consider and determine a fitness to practise or disqualification allegation against two or more registrants at the same hearing where--

- (a) the allegation against each registrant arises out of the same circumstances; or
- (b) in the view of the Disciplinary Committee, a joint hearing is necessary or desirable.

(2) Where a joint hearing is held--

- (a) these Rules shall have effect in relation to the hearing with the necessary modifications directed by the chair; and
- (b) each registrant shall be able to exercise any of the rights granted to him or it under these Rules whether or not any other registrant wishes to exercise that right.

Consideration of allegations that relate to more than one category of impairment

32

(1) As regards any fitness to practise allegation before the Disciplinary Committee, if--

- (a) the particulars of the allegation in the Notice of Hearing relate to more than one category of impairment of fitness to practise; and
- (b) those particulars include a conviction or caution,

the chair shall ensure (by adapting the procedure for the hearing, where necessary) that at the principal hearing, the Committee shall make its findings of facts in relation to the allegations that do not relate to the conviction or caution before it hears and makes its findings of fact in relation to the conviction or caution.

(2) In the circumstances set out in paragraph (1), the chair shall also ensure (by adapting the procedure for the hearing, where necessary), that the Committee only makes its decision as regards impairment of fitness to practise once it has made its finding of fact in relation to all the allegations set out in the Notice of Hearing.

Consideration of additional allegations

33

Where, before a principal hearing, the Society becomes aware of a new allegation which is of a similar kind or is founded on the same facts as the allegation already referred to the Health or Disciplinary Committee--

- (a) the Society may request case management directions; and
- (b) the chair of the relevant Committee may direct that the new allegation be considered at the same hearing as the allegation that has already been referred, and that these Rules shall apply as modified to take into account the particular circumstances of the case.

Additional evidence for review hearings

34

Where, before a review hearing, the Society becomes aware of new evidence which it wishes to bring to the attention of the relevant Committee (for example, evidence of a failure to comply with conditions)--

- (a) the Society may request case management directions; and
- (b) the chair of the relevant Committee may direct that the new evidence be considered at the review hearing, and that these Rules shall apply as modified to take into account the particular circumstances of the case.

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

Amendment

Rule 30: paras (5A), (5B) inserted by SI 2009/1182, art 4(1), Sch 4, Pt 2, para 27.

Date in force: this amendment shall come into force on the date on which the Safeguarding Vulnerable Groups Act 2006, s 44(1) comes into force: see SI 2009/1182, art 1(6)(d).

Part 6

Meetings, Hearings etc

Order of proceedings at principal hearings before the Disciplinary Committee

35

(1) Subject to the following provisions of this rule, a principal hearing before the Disciplinary Committee shall be conducted in the following three stages--

- (a) findings of fact;
- (b) findings on the question of--
 - (i) in fitness to practise proceedings, impairment of fitness to practise, or
 - (ii) in disqualification proceedings, whether the offence or misconduct is such that, in the opinion of the Committee, it renders the registrant concerned, or would if he or it were a pharmacist render him, unfit to be a pharmacist; and
- (c) consideration of sanction, where appropriate.

(2) Unless the Committee determines otherwise, the order of proceedings at the principal hearing shall be as follows--

- (a) the chair shall declare the hearing open;
- (b) where the registrant concerned is not present or represented at the hearing, the chair--
 - (i) shall require the secretary to adduce evidence that all reasonable efforts have been made to serve the Notice of Hearing on the registrant concerned, and
 - (ii) having consulted the committee, may--
 - (aa) if he is satisfied that the Notice of Hearing has been duly served, proceed with the hearing in the absence of the registrant concerned, or
 - (bb) adjourn the hearing and issue appropriate directions;
- (c) the chair shall cause the particulars of the allegation to be read out;
- (d) the chair shall--
 - (i) inquire whether the registrant concerned wishes to make any objections to the particulars of the allegation on a point of law, and
 - (ii) inquire whether the registrant concerned wishes to make any admissions;
- (e) where facts are admitted by the registrant concerned, the chair shall announce that such facts have been found proved;
- (f) where the registrant concerned admits that his fitness to practise is impaired--
 - (i) the chair shall announce that the registrant concerned's fitness to practise is impaired,
 - (ii) the committee may receive into evidence any agreed statement of facts,
 - (iii) the chair shall require the presenter to make an opening statement and to bring to the Committee's attention all relevant facts admitted by the registrant concerned, and any aggravating features of the case or public interest concerns,
 - (iv) notwithstanding any admission of facts by the registrant concerned, the Committee may hear evidence from any witness where it considers it desirable to do so,
 - (v) where facts remain in dispute, the Committee may receive documentary and oral evidence from the parties before retiring to make findings on the disputed facts and announcing its findings in public, and
 - (vi) the procedure in sub-paragraphs (g) to (m) shall not apply;
- (g) where impairment of fitness to practise is not admitted, the presenter may make an opening statement and may--

- (i) adduce evidence in support of the Society's case, and
 - (ii) call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (5));
- (h) upon the close of the Society's case, if--
- (i) the registrant concerned asks to make an application that the case should not proceed further, or
 - (ii) the Committee decides it ought to consider in any event whether the case should proceed further,

after hearing submissions from the parties (where present) on this issue, the Committee may determine that the case should not proceed further;

- (i) except where the Committee has determined that the case should not proceed further under subparagraph (h), the registrant may--
 - (i) adduce evidence in support of his case, and
 - (ii) call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (5)), and may make a closing statement;
- (j) the Committee shall deliberate in private in order to make its findings on the facts and shall then announce the findings it has made in the presence of the parties (where present);
- (k) where it considers it to be necessary to do so, the Committee may give reasons for its findings of fact;
- (l) the Committee shall invite representations from the parties as to whether, on the basis of any facts found proved--
 - (i) in fitness to practise proceedings, the registrant's fitness to practise is impaired, or
 - (ii) in disqualification proceedings, the offence or misconduct is such that, in the opinion of the Committee, it renders the registrant concerned, or would if he or it were a pharmacist render him, unfit to be a pharmacist;
- (m) the Committee shall deliberate in private, and then in the presence of the parties (if present), shall announce its decision on whether--
 - (i) the registrant's fitness to practise is impaired, or
 - (ii) in disqualification proceedings, the offence or misconduct is such that, in the opinion of the Committee, it renders the registrant concerned, or would if he or it were a pharmacist render him, unfit to be a pharmacist;

and shall give reasons for its decision;

- (n) in all cases the Committee, before deciding to impose a sanction--
 - (i) may invite any person who, in its opinion, has a direct interest in the proceedings to submit written representations on the issue within such time as the Committee may direct,
 - (ii) shall invite representations from the Society as to the appropriate sanction (if any) that should be imposed, and shall inquire of it whether it is aware of any relevant matters in the previous history of the registrant concerned, and

- (iii) shall invite representations from the registrant concerned as to any mitigating circumstances which may affect the Committee's decision on the sanction, if any, to be imposed;
- (o) the Committee shall deliberate in private and shall then in the presence of the parties (where present) announce its decision on sanction and give reasons for its decision; and
- (p) as regards interim measures, the Committee shall--
 - (i) invite representations from the parties (where present), on whether or not an order for immediate suspension or imposition of conditions should be made,
 - (ii) take any representations received into account before deciding whether or not to make an order for immediate suspension or imposition of conditions,
 - (iii) deliberate in private,
 - (iv) announce its decision in the presence of the parties (where present), and
 - (v) give reasons for its decision.
- (3) Where the Committee is considering an allegation in disqualification proceedings, it may, instead of issuing a direction under section 80(1) of the Act--
 - (a) agree with the registrant that he or it will comply with such undertakings as the Committee considers appropriate, which may include undertakings with regard to providing the Society with evidence of his or its continued compliance with the undertakings (where undertakings have been agreed, the proceedings shall be stayed); or
 - (b) dispose of the case by way of a reprimand or a warning.
- (4) Where the Society becomes aware that a registrant has failed to comply with any undertakings imposed by the Committee under paragraph (3)(b)--
 - (a) the Committee shall resume its consideration of the matter (the procedure at the hearing being for the Committee to determine); and
 - (b) the Committee shall reconsider the sanction imposed, and may instead issue a direction under section 80(1) of the Act.
- (5) The chair may refuse to allow a witness to give oral evidence, or to give evidence on a particular matter, if he is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.
- (6) Notwithstanding the procedure set out in paragraph (2), the Committee may allow the parties to make additional submissions at any time.

Order of proceedings at principal hearings before the Health Committee

36

- (1) Unless the Health Committee determines otherwise, the order of proceedings at the principal hearing before the Committee shall be as follows--
 - (a) the chair shall declare the hearing open;
 - (b) where the registrant concerned is not present or represented at the hearing, the chair--
 - (i) shall require the secretary to adduce evidence that all reasonable efforts have been made to serve the Notice of Hearing on the registrant concerned, and

- (ii) having consulted the Committee, may--
 - (aa) if he is satisfied that the Notice of Hearing has been duly served, proceed with the hearing in the absence of the registrant concerned, or
 - (bb) adjourn the hearing and issue appropriate directions;
- (c) the chair shall cause the particulars of the allegation to be read out;
- (d) the chair shall--
 - (i) inquire whether the registrant concerned wishes to make any objections to the particulars of the allegation on a point of law, and
 - (ii) inquire whether the registrant concerned wishes to make any admissions;
- (e) where facts are admitted by the registrant concerned, the chair shall announce that such facts have been found proved;
- (f) where the registrant concerned admits that his fitness to practise is impaired--
 - (i) the chair shall announce that the registrant concerned's fitness to practise is impaired,
 - (ii) the chair shall require the presenter to make an opening statement and to bring to the Committee's attention all relevant matters, including any aggravating features of the case or public interest concerns, and
 - (iii) the procedure in sub-paragraphs (g) to (j) shall not apply;
- (g) where impairment of fitness to practise is not admitted, the presenter shall make an opening statement, and may--
 - (i) adduce evidence in support of the Society's case, and
 - (ii) call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (2));
- (h) the registrant concerned may adduce evidence, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (2)), and may make a closing statement;
- (i) where essential facts are in dispute (whether or not impairment of fitness to practise is admitted), a party may request the Health Committee to make a finding on those facts, and in these circumstances, the Committee--
 - (i) shall deliberate in private, and
 - (ii) shall announce its findings in the presence of the parties;
- (j) where impairment of fitness to practise is not admitted, the Health Committee shall deliberate in private, and shall announce its decision on whether the registrant's fitness to practise is impaired, together with the reasons for such decision, in the presence of the parties (where present);
- (k) where the Health Committee finds that the registrant's fitness to practise is impaired, it shall--
 - (i) inquire whether any previous matters have been recorded against the registrant; and
 - (ii) invite representations from the parties as to which sanction, if any, should be imposed;
- (l) in all cases the Committee, before deciding to impose a sanction--

- (i) shall invite representations from the Society as to the appropriate sanction (if any) that should be imposed, and shall inquire of it whether it is aware of any relevant matters in the previous history of the registrant concerned;
 - (ii) shall invite representations from the registrant concerned as to any mitigating circumstances which may affect the Committee's decision on the sanction, if any, to be imposed;
- (m) the Committee shall deliberate in private and shall then in the presence of the parties (where present) announce its decision on sanction and give reasons for its decision; and
- (n) as regards interim measures, the Committee shall--
- (i) invite representations from the parties (where present), on whether or not an order for immediate suspension or imposition of conditions should be made,
 - (ii) take any representations received into account before deciding whether or not to make an order for immediate suspension or imposition of conditions,
 - (iii) deliberate in private,
 - (iv) announce its decision in the presence of the parties (where present), and
 - (v) give reasons for its decision.
- (2) The chair may refuse to allow a witness to give oral evidence, or to give evidence on a particular matter, if he is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.
- (3) Notwithstanding the procedure set out in paragraph (1), the Committee may allow the parties to make additional submissions at any time.

Order of proceedings in relation to registration cases before the Health or Disciplinary Committee

37

- (1) This Rule shall apply where the Registrar is seeking the advice of the Health or Disciplinary Committee--
- (a) under rule 6(5) of the Registration Rules (which relates to whether an applicant for registration's fitness to practise may be impaired for reasons other than adverse physical or mental health);
 - (b) under rule 6(7) of the Registration Rules (which relates to whether an applicant for registration's fitness to practise may be impaired for reasons of adverse physical or mental health);
 - (c) under rule 8(3) of the Registration Rules (which relates to applications to move between different parts of the register);
 - (d) under rule 17(2)(a) of the Registration Rules (which relates to proceedings in respect of fraud or error or fitness to practise matters prior to registration).
- (2) The procedure of the Health or Disciplinary Committee at the hearings into these matters shall be as follows--
- (a) the chair shall declare the hearing open;
 - (b) where the applicant or registrant concerned is not present or represented at the hearing, the chair--
 - (i) shall require the secretary to adduce evidence that all reasonable efforts have been made to serve the Notice of Hearing on the applicant or registrant concerned, and

- (ii) having consulted the committee, may--
 - (aa) if he is satisfied that the Notice of Hearing has been duly served, proceed with the hearing in the absence of the applicant or registrant concerned, or
 - (bb) adjourn the hearing and issue appropriate directions;
 - (c) where the applicant or registrant concerned is present, the chair shall inquire whether he wishes to make any admissions of fact;
 - (d) where the applicant or registrant concerned makes any admissions of fact, the chair shall announce that such facts have been found proved;
 - (e) the presenter shall make an opening statement, outlining what he considers to be the relevant circumstances of the case and the advice sought from the Committee;
 - (f) the applicant or registrant concerned may adduce evidence, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (3));
 - (g) the presenter may adduce evidence in rebuttal of the position of the applicant or registrant concerned and in support of the position of the Society, including by calling witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (3));
 - (h) the applicant or registrant concerned may make a closing statement;
 - (i) the Committee shall deliberate in private and shall then announce its advice; and
 - (j) the Committee shall give reasons for its advice, where appropriate.
- (3) The chair may refuse to allow a witness to give oral evidence, or to give evidence on a particular matter, if he is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.
- (4) Notwithstanding the procedure set out in paragraph (2), the Committee may allow the parties to make additional submissions at any time.

Order of proceedings at a review or restoration hearing

38

- (1) Unless the relevant Committee determines otherwise, the order of proceedings at a review hearing before the Health or Disciplinary Committee, or a restoration hearing before the Disciplinary Committee, shall be as follows--
- (a) the chair shall declare the hearing open;
 - (b) where the applicant or registrant concerned is not present or represented at the hearing, the chair--
 - (i) shall require the secretary to adduce evidence that all reasonable efforts have been made to serve the Notice of Hearing on the applicant or registrant concerned, and
 - (ii) having consulted the committee, may--
 - (aa) if he is satisfied that the Notice of Hearing has been duly served, proceed with the hearing in the absence of the applicant or registrant concerned, or
 - (bb) adjourn the hearing and issue appropriate directions;

- (c) the presenter--
 - (i) shall inform the Committee of the background to the case, and the directions previously issued in respect of the applicant or registrant concerned,
 - (ii) shall draw the attention of the Committee to any relevant evidence including transcripts of previous hearings, and
 - (iii) may adduce further evidence, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (3));
- (d) the applicant or registrant concerned may adduce evidence, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (3));
- (e) the presenter may adduce evidence in rebuttal of the position of the applicant or registrant concerned and in support of the position of the Society, including by calling witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (3));
- (f) the applicant or registrant concerned may make a closing statement;
- (g) the Committee shall deliberate in private and shall announce its decision in the presence of the parties (where present);
- (h) the Committee shall give reasons for its decision.

(2) Where the Disciplinary Committee decides that a person should be restored to the register, the secretary shall notify the Registrar accordingly.

(3) The chair may refuse to allow a witness to give oral evidence, or to give evidence on a particular matter, if he is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.

(4) Notwithstanding the procedure set out in paragraph (1), the Committee may allow the parties to make additional submissions at any time.

Order of proceedings at an interim order hearing

39

(1) Unless the relevant Committee determines otherwise, the order of proceedings at an interim order hearing before the Health or Disciplinary Committee shall be as follows--

- (a) the chair shall declare the hearing open;
- (b) where the registrant concerned is not present or represented at the hearing, the chair--
 - (i) shall require the secretary to adduce evidence that all reasonable efforts have been made to serve the Interim Order Notice on the registrant concerned, and
 - (ii) having consulted the committee, may--
 - (aa) if he is satisfied that the Interim Order Notice has been duly served, proceed with the hearing in the absence of the registrant concerned, or
 - (bb) adjourn the hearing and issue appropriate directions;
- (c) the presenter shall inform the Committee of the reasons why it may be necessary to make an interim order, or to revoke, confirm, vary or replace any order previously made, and may adduce evi-

dence and call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony);

(d) the registrant concerned may make representations as to why an interim order should not be made, or should be revoked or not confirmed, varied or replaced, and he may adduce evidence and call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony);

(e) the Committee shall deliberate in private and shall then announce its decision, together with the reasons for its decision, in the presence of the parties (where present).

(2) Where the terms of the order to be made or continued, or the terms of the variation to the order, or its revocation, are agreed between the parties, the Committee may take the agreed steps without the need for a hearing.

Postponements and adjournments

40

(1) The chair of a fitness to practise committee may, of his own motion or upon the application of a party, postpone any meeting or hearing of which notice has been given under these Rules before the hearing begins.

(2) A fitness to practise committee may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that--

- (a) no injustice is caused to the parties; and
- (b) the decision to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant a request for postponement or adjournment, the chair or committee shall, amongst other matters, have regard to--

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party;
- (c) the conduct of the party seeking the postponement or adjournment; and
- (d) fairness to the parties.

(4) Where a party other than the Society applies for a postponement or adjournment on grounds of ill health--

- (a) he shall be required to adduce appropriate medical certification in support of that application; and
- (b) the chair or committee may, if not satisfied by the medical certification produced, require the person to submit to be examined by a registered medical practitioner approved by the Society.

(5) Where the proceedings have been postponed or adjourned, the secretary shall, as soon as practicable, notify the parties of the date, time and venue of the postponed or resumed hearing.

Disposal of allegations without hearings

41

(1) Where--

- (a) an allegation has been referred to the Health or Disciplinary Committee;

- (b) a principal hearing has not yet taken place in the proceedings; and
- (c) the presenter for either the principal hearing or an interim order hearing that relates to the allegation considers that, on the evidence available, the hearing should not be held,

he shall inform the Investigating Committee of his opinion, forthwith, and of the reasons for his opinion.

(2) Upon receipt of the presenter's opinion, the Investigating Committee shall consider the matter and may give a direction that the referral to the Health or Disciplinary Committee (either for a principal or an interim order hearing, or both) is rescinded.

(3) The Investigating Committee shall not rescind a referral for a principal hearing without first giving the maker of the relevant allegation (if any) a reasonable opportunity to comment on the proposed rescission.

Attendance of the public at hearings

42

(1) Except as provided for in this rule, hearings of the Health and Disciplinary Committee shall be held in public.

(2) Any hearing before the Health Committee, or an interim order hearing before the Disciplinary Committee, shall be held in private, unless the Committee--

- (a) having given the parties (where present), and any third party from whom the committee considers it appropriate to hear, an opportunity to make representations; and
- (b) in the case of the Health Committee, having obtained the advice of the legal and clinical advisers,

is satisfied that the public interest in holding the hearing in public outweighs the interest of the registrant concerned or the third party in maintaining their privacy.

(3) A hearing before the Disciplinary Committee other than an interim order hearing may be held wholly or partly in private if the Committee--

- (a) has given the parties (where present), and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) is satisfied that the interest of the registrant concerned or the third party in maintaining their privacy outweighs the public interest in holding the hearing, or the part of the hearing, in public.

(4) The Health or Disciplinary Committee may exclude from the whole or part of any hearing any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.

Representation

43

(1) The presenter shall be a person who is--

- (a) a barrister, advocate or solicitor who satisfies the requirements of article 59(2)(c)(i) or (ii) of the Order; or
- (b) an employee of the Society,

or both.

(2) The party other than the Society may be represented by a person who is--

- (a) a barrister, advocate or solicitor who satisfies the requirements of article 59(2)(c)(i) or (ii) of the Order; or
- (b) a representative from his or its defence organisation or his trade union,

or both.

(3) Where the party other than the Society is not represented, he or it may be accompanied and advised by a supporter, but the supporter--

- (a) shall not be--
 - (i) a member of the Council of the Society or of one of its statutory committees,
 - (ii) an employee of the Society, or
 - (iii) a witness at the hearing; and
- (b) shall only be entitled to address the committee with the permission of the chair.

Amendment of the particulars of the allegation at principal hearings

44

- (1) At a principal hearing, at any stage before making its findings of fact, the Health or Disciplinary Committee may of its own motion or following an application of one of the parties, amend the particulars of the allegation set out in the Notice of Hearing, unless it is of the view that the required amendment would prejudice the fairness of the proceedings.
- (2) Before making any amendment under paragraph (1), the Committee shall consider--
 - (a) any representations from the parties (where present); and
 - (b) in the case of the Health Committee, the advice of the legal adviser.

Burden and standard of proof

45

- (1) Where facts at a principal hearing are in dispute, the burden of proving the facts shall rest on the Society.
- (2) At a restoration hearing, the Disciplinary Committee shall only grant the application if the applicant has proved that he is entitled to be registered.
- (3) Where facts are in dispute, the Health or Disciplinary Committee shall consider whether they have been established in accordance with the civil standard of proof.

Witness evidence

46

- (1) Persons giving oral evidence at a hearing (referred to in these Rules as "witnesses", and which includes an applicant or registrant concerned giving oral evidence) shall be required to take an oath, or to affirm, before giving their oral evidence.
- (2) The Society may not compel the applicant or registrant concerned to be a witness.

- (3) A party may not call a person to be a witness unless that party has provided to the other party a written statement of evidence provided by the witness (which meets the requirements of rule 30) at least 7 days before the hearing, unless the chair determines otherwise.
- (4) The Committee may, upon the application of the party calling the witness, direct that any details which may identify that witness shall not be revealed in public.
- (5) Witnesses--
 - (a) shall first be examined by the party calling them;
 - (b) may be cross examined;
 - (c) may then be re-examined by the party calling them;
 - (d) may then be questioned by the Committee through the chair, and with the leave of the chair, by a clinical or specialist adviser.
- (6) The parties may then question the witnesses on matters arising out of the Committee's questions, with the party calling the witness being given the last opportunity to do so (as between the parties).
- (7) Any further questioning of witnesses shall be at the discretion of the chair.
- (8) Except for expert witnesses and the applicant or registrant concerned, witnesses shall not be allowed to attend the proceedings until after they have completed giving their evidence and been formally released by the chair.

Vulnerable witnesses at hearings

47

- (1) In proceedings before the Health or Disciplinary Committee, the following may, if the quality of their evidence is otherwise likely to be adversely affected, be treated as vulnerable witnesses--
 - (a) any witness under the age of 18;
 - (b) any witness with a mental disorder (that is, mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind);
 - (c) any witness who is significantly impaired in relation to intelligence or social functioning;
 - (d) any witness with physical disabilities who requires assistance to give evidence;
 - (e) any witness, where an allegation against an applicant or registrant concerned is of a sexual nature and the witness was the alleged victim; or
 - (f) any witness who complains of intimidation.
- (2) Upon--
 - (a) hearing representations from the parties; and
 - (b) in the case of the Health Committee, after seeking the advice of the legal adviser,

the Health or Disciplinary Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.

- (3) Measures adopted by the Health or Disciplinary Committee may include, but shall not be limited to--
 - (a) use of video links; and
 - (b) subject to paragraph (4), use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that the witness is available at the hearing for cross-examination and questioning;

(c) use of interpreters (including signers and translators).

(4) Where--

(a) there is an allegation against an applicant or registrant concerned of a sexual nature;

(b) a witness is the alleged victim; and

(c) the applicant or registrant concerned is not represented,

he shall not be allowed to cross-examine the witness directly in person.

(5) In the circumstances set out in paragraph (4), any questioning of the witness shall be undertaken by such person as the Health or Disciplinary Committee considers appropriate.

Costs of the hearing

48

(1) Where a principal, review or restoration hearing is to be held, the parties shall serve on each other, and on the secretary to the relevant Committee, a schedule of costs or expenses relating to the hearing no less than 24 hours before the date of the hearing.

(2) After announcing the Committee's decision, the chair may invite representations as to whether costs or expenses should be assessed against either party.

(3) After hearing any representations from the parties, the relevant Committee may, if it thinks fit and having regard to the party's ability to pay, order that a party pay by a specified date all or part of the costs or expenses relating to the hearing incurred by the other party.

(4) Where the relevant Committee orders a party to pay costs or expenses, the chair may--

(a) summarily assess the costs or expenses to be paid; or

(b) require the parties either to agree the figure for the costs or expenses to be awarded or to submit to taxation before a person appointed by the secretary.

(5) Where a person is appointed by the secretary in accordance with paragraph (4)(b), if one of the parties has provided an estimate of costs or expenses that is above the final figure arrived at by the person appointed, that party shall pay the costs of the taxation.

Notes and transcripts of hearings

49

(1) Subject to paragraph (3), the Society shall arrange for all hearings to be recorded in writing or electronic form.

(2) Any party to the proceedings shall, on application to the Society and on payment of any fee determined by the Society under article 63(1) of the Order, be furnished with a transcript of the record of any part of the hearing at which he was entitled to be present.

(3) The private deliberations of the Committee shall not be recorded.

Given under the official seal of the Royal Pharmaceutical Society of Great Britain this 15th day of February 2007

Hemant Patel

President

Ann Lewis

Secretary

NOTES

Initial Commencement

Specified date

Specified date: 30 March 2007: see Preamble.

UK Parliament SIs 2000-Present/2007/401-450/Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Disqualification etc Rules) Order of Council 2007 (SI 2007/442)/EXPLANATORY NOTE

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves Rules of the Royal Pharmaceutical Society of Great Britain ("the Society") that set out various matters relating to the procedures to be followed by the Society when considering three types of allegations: allegations that the fitness to practise of its registrant pharmacists (or its registrant pharmacy technicians, once article 21 of the Pharmacists and Pharmacy Technicians Order 2007 comes into force) is impaired; allegations that a person should be disqualified from inclusion in the register of pharmacy retail business premises kept by the Society; and allegations of criminal conduct that the Society is under a duty to investigate.

Part 1 contains preliminary matters, including provisions relating to the service of documents. Part 2 deals with the initial consideration of allegations by the Registrar of the Society. The Registrar screens all allegations and determines whether it is appropriate to refer the allegation to one of the Society's fitness to practise committees: the Investigating Committee, the Health Committee or the Disciplinary Committee. He is also given powers in respect of the initial screening of applications for restoration to one of the Society's registers. If an allegation is to be referred to one of the Society's fitness to practise committees, unless it is exclusively a criminal conduct allegation, the registrant concerned will be sent a notice of the referral. If that referral is to the Investigating Committee, the notice of referral is to be accompanied by the evidence that the Investigating Committee is to consider, and the applicant will be invited to make written representations on the allegation, and on any recommendations for disposal of the case made by the Registrar.

Part 3 deals with consideration of allegations by the Investigating Committee. It does not hear oral evidence, but considers on the papers allegations referred to it and decides whether or not to refer cases on to the Health or Disciplinary Committee, and whether or not the Society should bring criminal proceedings. Instead of making a referral to the Health or Disciplinary Committee, the Investigating Committee may decide to dispose of the case by issuing a warning to the registrant concerned, or by accepting undertakings from him as to their future conduct. If the Investigating Committee decides to refer the case on to the Health or Disciplinary Committee, it issues a notice of decision, particularising the matters to be referred. There is also provision allowing the Committee to reconsider its decisions in appropriate circumstances.

Part 4 deals with the initial consideration of the case by the Health and Disciplinary Committee. There are disclosure provisions relating to the exchange of each party's case, which vary depending on whether or not the case is to be fast tracked. The parties are also given powers to inspect the original versions of documents disclosed to them. Once the exchange of each party's case has taken place, a notice of hearing is sent, and there are provisions relating to bundles for hearings. There are arrangements for case management directions, that may modify the standard procedures, and special arrangements relating to interim orders hearings in fitness to practise proceedings, where suspension or conditional registration pending the full hearing are considered.

Part 5 deals with additional matters that may arise both before and during hearings, including provision for issuing practice directions and relating to the admissibility of evidence. It also sets out particular arrangements for dealing with specified cases where the standard arrangements will need to be adapted: cases where the Health or Disciplinary Committee considers that the case should instead be dealt with by the other Committee; cases where joinder is appropriate; and cases where additional allegations or additional evidence comes to light at a late stage in proceedings.

Part 6 sets out the detailed provisions relating to meetings and hearings. These include the arrangements for the order of proceedings at different classes of hearings, provisions relating to postponements and adjournments, and provisions relating to cases where the presenter for the Society decides before a hearing that, on the evidence available, the Society should not proceed with its case. The standard of proof to be applied is the civil standard. Generally, hearings have to be held in public, although some exceptions are made, and there are provisions relating to representation and in relation to the calling of witnesses. There are also provisions relating to the award of costs or expenses, and in relation to recording hearings and producing transcripts of them.