

2009 No. 000

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

**The General Medical Council (Fitness to Practise) (Amendment)
Rules Order of Council 2009**

Made - - - -

Laid before Parliament

Coming into force - -

At the Council Chamber, Whitehall, the [] day of [] 2009

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

The General Medical Council has made the General Medical Council (Fitness to Practise) (Amendment) Rules 2009 as set out in the Schedule to this Order, in exercise of the powers conferred under section 35CC(1) of, and paragraphs 1 of Schedule 4 to, the Medical Act 1983(a), after consulting with such bodies or persons representing medical practitioners, or medical practitioners of any description, as appeared to them requisite to be consulted.

By virtue of paragraph 1(7) of Schedule 4 to that Act, 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 General Medical Council (Fitness to Practise) (Amendment) Rules Order of Council 2009 and comes into force on 1 August 2009.

Judith Simpson
Clerk of the Privy Council

SCHEDULE

THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE) (AMENDMENT) RULES 2009

The General Medical Council makes the following Rules in exercise of the powers conferred by section 35CC(1) of, and paragraphs 1 of Schedule 4 to, the Medical Act 1983, after consulting with such bodies or persons representing medical practitioners, or medical practitioners of any description, as appeared to them requisite to be consulted.

Citation, commencement and purpose

1.—(1) These Rules may be cited as the General Medical Council (Fitness to Practise) (Amendment) Rules 2009 and come into force on 1 August 2009.

(2) The General Medical Council (Fitness to Practise) Rules 2004(a) are amended as follows.

Amendment of rule 2

2. In rule 2—

- (a) In the definition of “Case Examiner”, for “under rule 4(2) or 5(2)” substitute “under rule 4(2), 5(2), 12(6)(b) or 28(3)(c);
- (b) for the definition of “lay” substitute the following definition—

““lay”, in relation to any person, means a person who is not and never has been provisionally registered or fully registered, was at no time registered with limited registration and does not hold qualifications which would entitle them to apply for provisional or full registration under the Act”;
- (c) in the definition of “practitioner”, for “person holding full, provisional or limited registration” substitute “person holding provisional or full registration”; and
- (d) omit the definition of “President”.

Amendment of rule 4

3. In rule 4—

- (a) in paragraph (3), omit the “or” at the end of sub-paragraph (a), insert “; or” at the end of sub-paragraph (b) and after sub-paragraph (b) insert—

“(c) the Registrar considers that an allegation should not proceed on grounds that it is vexatious.”; and
- (b) in paragraph (4), omit the “or” at the end of sub-paragraph (a), insert “; and” at the end of sub-paragraph (b) and after sub-paragraph (b) insert—

“(c) the matters outlined within paragraph (5) below.”.

Amendment of rule 8

4. In rule 8(1), for “under rule 4(2) or 5(2)” substitute “under rule 4(2), 5(2), 12(6)(b) or 28(3)(c)” .

(a) Scheduled to S.I. 2004/2608

Amendment of rule 11

5. In rule 11(9), for “as practicable” substitute “as reasonably practicable”.

Substitution of rule 12

6. For rule 12, substitute the following rule—

“Review of decisions

12.—(1) Subject to paragraph (2), the following decisions may be reviewed by the Registrar—

- (a) a decision not to refer an allegation to a medical and a lay Case Examiner or, for any other reason, that an allegation should not proceed beyond rule 4;
- (b) a decision not to refer an allegation to the Committee or a FTP Panel;
- (c) a decision to issue a warning in accordance with rule 11(2), 11(4) or 11(6); or
- (d) a decision to cease consideration of an allegation upon receipt of undertakings from the practitioner in accordance with rule 10(4).

(2) The Registrar may review all or part of a decision specified in paragraph (1) on his own initiative or on the application of the practitioner, the maker of the allegation (if any) or any other person who, in the opinion of the Registrar, has an interest in the decision when the Registrar has reason to believe that—

- (a) the decision may be materially flawed (for any reason) wholly or partly; or
- (b) there is new information which may have led, wholly or partly, to a different decision,

but only if one or more of the grounds specified in paragraph (3) are also satisfied.

(3) Those grounds are that, in the opinion of the Registrar, a review is—

- (a) necessary for the protection of the public;
- (b) necessary for the prevention of injustice to the practitioner; or
- (c) otherwise necessary in the public interest.

(4) The Registrar shall not, save in exceptional circumstances, commence a review of all or part of a decision specified in paragraph (1) more than two years after it was made.

(5) Where the Registrar decides to review all or part of a decision specified in paragraph (1), he shall in writing—

- (a) notify the practitioner, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the decision of the decision to review and give reasons for that decision;
- (b) notify the practitioner, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the decision of any new information and, where appropriate, provide them with that information; and
- (c) seek representations from the practitioner, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the decision regarding the review of the decision,

and shall carry out any investigations which, in the opinion of the Registrar, are appropriate to facilitate the making of the decision under paragraph (6).

(6) Where the Registrar, taking account of all relevant material including that obtained under paragraph (5), concludes that all or part of a decision specified in paragraph (1) was materially flawed (for any reason) or that there is new information which would probably have led, wholly or partly, to a different decision and that a fresh decision is necessary on one or more of the grounds specified in paragraph (3), he may decide—

- (a) to substitute for all or part of the original decision any decision which he could have made under Part 2 of these Rules; or
- (b) that an allegation should be referred for reconsideration by the Case Examiners under rule 8, 10 or 11.

Otherwise, he must decide that the original decision should stand.

(7) Where the Registrar has reviewed all or part of a decision specified in paragraph (1), he shall notify—

- (a) the practitioner;
- (b) the maker of the allegation (if any); and
- (c) any other person who, in the opinion of the Registrar, has an interest in receiving the notification,

in writing, as soon as reasonably practicable, of the decision under paragraph (6) and the reasons for that decision.”.

Amendment of rule 13

7. In rule 13(a), for “rule 4(4)” substitute “rule 4(4)(a), rule 4(4)(b)”.

New rule 13A

8. In Part 3, before rule 14 insert the following rule—

“Investigation following referral

13A. After an allegation has been referred to a FTP Panel, the Registrar may carry out such investigations as the Registrar considers appropriate including directing that an assessment of the practitioner’s performance or health be carried out in accordance with Schedule 1 or 2.”.

Amendments relating to new terminology for reference numbers

9. In rules 17(2)(b)(i) and (ii), 22(b)(i) and (ii), 24(2)(b)(i) and (ii) and 27(4)(b)(i) and (ii), for “registration number” substitute “GMC Reference Number”.

Further amendment of rule 17

10. In rule 17(2), for sub-paragraph (o), substitute the following sub-paragraph—

- “(o) the FTP Panel shall receive any further evidence and hear any further submissions from the parties as to whether an order for immediate suspension or immediate conditions should be imposed on the practitioner’s registration, before considering and announcing whether it shall impose such an order and its reasons for that decision; and”.

New rule 21A

11. After rule 21, insert the following rule—

“Procedure following referral of a new allegation

21A.—(1) If, since the previous hearing, a new allegation against the practitioner has been referred to the FTP Panel, it shall first proceed with that allegation in accordance with rule 17(2)(a) to (i).

(2) The FTP Panel shall thereafter proceed in accordance with rule 22 except that, when determining whether the fitness to practise of the practitioner is impaired and what direction (if any) to impose under section 35D(5), (6), (8) or (12) of the Act, it shall additionally have regard to its findings in relation to the new allegation.”.

Substitution of rule 28

12. For rule 28 substitute the following rule—

“Cancellation of a hearing

28.—(1) Where, after an allegation has been referred to the Committee and before the opening of the hearing before the Committee—

- (a) the practitioner withdraws their request for an oral hearing; or
- (b) it appears to the Registrar for some other reason that the hearing should not be held,

the Registrar may refer the matter to a member of the Committee for a decision as to whether or not the hearing should be cancelled.

(2) Where, after an allegation has been referred to a Panel and before the opening of the hearing before the Panel—

- (a) evidence becomes available to the Registrar that suggests that the practitioner’s fitness to practise is not impaired;
- (b) in the case of proceedings under Part 7, evidence becomes available to the Registrar that suggests that the Interim Orders Panel need not consider whether to make or review an interim order; or
- (c) it appears to the Registrar for some other reason that the hearing before the Panel should not be held,

the Registrar may refer the matter to a member of the Committee for a decision as to whether or not the hearing should be cancelled.

(3) When considering whether to cancel a hearing under paragraph (1) or (2), the person making the decision may—

- (a) decide that the hearing should proceed on the basis of some or all of the particulars alleged;
- (b) decide to cancel the hearing; or
- (c) decide that the allegation should be referred for consideration by the Case Examiners in accordance with rule 10 or 11.

(4) Where a decision is taken under paragraph (3) of this rule, the Registrar shall, as soon as is reasonably practicable, serve notice of the decision in writing upon the practitioner and the maker of the allegation (if any), and shall give the reasons for the decision in the notice.”.

Amendment of rule 29

13. In rule 29, for paragraph (1) substitute the following paragraph—

“(1) Before the opening of any hearing of which notice has been served on the practitioner in accordance with these Rules, a member of the Committee may, of their own motion or upon the application of a party to the proceedings, postpone the hearing until such time and date as they think fit”.

Substitution of rule 40

14. For rule 40 substitute the following—

“Service of notices and documents

40.—(1) Any notice of hearing required to be served upon the practitioner under these Rules shall be served in accordance with paragraph 8 of Schedule 4 to the Act.

(2) Subject to paragraph (1), any notice or document required to be served upon the practitioner under these Rules may be served—

- (a) by ordinary post; or
- (b) by electronic mail to an electronic mail address that the practitioner has notified to the Registrar as an address for communications.

(3) If the practitioner is represented by—

- (a) a solicitor, the notice or document may also be—
 - (i) sent or delivered to the solicitor’s practising address, or
 - (ii) sent by electronic mail to an electronic mail address of the solicitor; or
- (b) a trade union or defence organisation, the notice or document may also be—
 - (i) sent or delivered to the trade union or defence organisation’s business address; or
 - (ii) sent by electronic mail to an electronic mail address of the trade union or defence organisation,

where the address has been notified to the Registrar as an address for communications.

(4) The service of any notice or document under these Rules may be proved by—

- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;
- (b) a confirmation of receipt of the notice or document sent by electronic mail; or
- (c) a signed statement from any person serving the notice or document confirming that the notice or document was delivered to, sent to or left at—
 - (i) the practitioner’s proper address,
 - (ii) the practising address or electronic mail address of the practitioner’s solicitor, or
 - (iii) the business address or electronic mail address of the practitioner’s trade union or defence organisation.”.

Amendments in relation to Panel undertakings

15.—

(1) In rules 17(2)(m) and 22(h), for “the FTP Panel may take into account any written undertakings (including limitations on his practice) entered into by the practitioner” substitute “the FTP Panel may agree as an alternative to imposing any sanction any written undertakings (including any limitations on his practice) offered by the practitioner”.

(2) After rule 42, insert the following rule—

“Panel undertakings

42A.—

(1) Where undertakings have been agreed under rule 17(2)(m) or rule 22(h), the Registrar may carry out any investigations, which may include (but are not limited to) requesting the provision of reports or directing an assessment be carried out in accordance with Schedule 1 or 2, that are, in the Registrar’s opinion, appropriate to the consideration of—

- (a) whether the practitioner has complied with any undertakings in place; or

(b) the practitioner's fitness to practise.

(2) Where, as a result of information received by the General Council, it appears to the Case Examiners that any undertakings agreed under rule 17(2)(m) or rule 22(h) should be varied or cease to apply, they shall inform the Registrar accordingly and the Registrar shall—

(a) invite the practitioner to comply with such varied undertakings as appear to the Case Examiners to be appropriate; or

(b) direct that the undertakings should no longer apply.

(3) Where the Registrar receives information that—

(a) the practitioner has failed to observe an undertaking agreed under rule 17(2)(m) or rule 22(h) or which, having been agreed under rule 17(2)(m) or rule 22(h), has been varied following an invitation to comply with it under paragraph (2)(a); or

(b) the practitioner's health or performance has deteriorated, or otherwise gives rise to further concern regarding their fitness to practise,

the Registrar may refer the matter to a FTP Panel for a review hearing.”.

Given under the official seal of the General Medical Council this 8th day of July 2009



Peter Rubin
Chair

Finlay Scott
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

The Rules approved by this Order make amendments to the General Medical Council (Fitness to Practise) Rules 2004.

There is a minor change to rule 2, namely updating terminology in line with the provisions of the Medical Act 1983 (as amended) by the Medical Act (Amendment) and Miscellaneous Amendments Order 2006(a) and the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008(b).

Rule 4 is amended to make provision for the Registrar to close down allegations that are vexatious. In addition, express provision is made to permit investigations to take place into the reasons why an allegation has been made late.

Rules 8 and 28 are amended so that where an FTP hearing is cancelled, the matter may be referred back to Case Examiners who may invite the practitioner to accept a warning or give undertakings.

(a) SI 2006 No 1914
(b) SI 2008 No 1774

Rule 12 is amended to make provision for the Registrar to review decisions and to expand both the range of decisions to which the rule applies and the grounds on which review may be made. Rules 8 and 12 are amended so that the matter may be referred back to Case Examiners or to the Registrar for a fresh decision.

A new rule 13A is inserted to make express the power for the Registrar to investigate and require a practitioner to undergo a health or performance assessment following referral to an FTP Panel.

A new rule 21A is added to make provision for one FTP Panel to sit to consider both a review and new allegations against a practitioner when deciding whether his fitness to practise is impaired.

Rule 28 is amended to clarify the circumstances in which a hearing may be cancelled and to expand the powers available to the decision-maker when considering cancellation.

Rule 40 is amended to make alternative arrangements for service where a practitioner has instructed a solicitor or is represented by a trade union or defence organisation. It also makes provision for service by electronic mail.

A new rule 42A is added to provide the Registrar with power to monitor, and to lift or vary, undertakings agreed with a FTP Panel in the same way as undertakings agreed at the investigation stage. Power is also provided for him to refer the matter to a review hearing where the practitioner is not complying with undertakings or another issue has arisen.