GENERAL MEDICAL COUNCIL

FUNCTIONS,

PROCEDURE, AND DISCIPLINARY

JURISDICTION

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CONTENTS

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INTRODUCTION

This guide to the Council's functions, procedure, and disciplinary jurisdiction is intended primarily for the information of doctors who have recently qualified in the British Isles, or have obtained full or provisional registration on the basis of qualifications obtained abroad. It supersedes the former *Notice Issued by the Disciplinary Committee for the Guidance of Medical Practitioners.*

The general duty of the Council is to protect the public, in particular by supervising and improving medical education, by keeping and publishing a Register of duly qualified doctors, by taking disciplinary action when required in cases of criminal convictions or serious professional misconduct, and finally by publishing the British Pharmacopoeia, which contains standards for medicines and articles used in medical and surgical practice. The Council does not receive any grant from public funds, but derives its income from the fees paid by doctors when obtaining registration. There is no annual retention fee. The Council is not an association or union for protecting professional interests, and has no connection with any such body.

MEDICAL EDUCATION

The supervision of medical education is the primary task assigned by Parliament to the Council. Its duty is to ensure the maintenance of a standard of proficiency "such as sufficiently to guarantee the possession of the knowledge and skill requisite for the efficient practice of Medicine, Surgery and Midwifery". For this purpose, the Council is empowered to

ask Examining Bodies and Medical Schools for particulars of their courses of study and examinations (this is done annually) and to appoint Visitors of Medical Schools and Inspectors or Visitors of Examinations. The Council also issues Recommendations as to the Medical Curriculum which are revised from time to time in the light of changing conditions, including advances in knowledge.*

The principal object of the Recommendations is to state the *minimum* standards of training and examinations which ought to be required of men and women obtaining primary medical qualifications. The curriculum is flexible, and Bodies and Schools are encouraged to experiment freely with courses and methods of teaching. Schools are visited and examinations inspected at intervals of about ten years.

THE MEDICAL REGISTER

(a) The Value of Registration

The Medical Register was instituted by the Medical Act of 1858 (which established the Council) in order "that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners". By Act of Parliament, no person who is unregistered is a "legally qualified" or "duly qualified" medical practitioner; and only a registered practitioner may, for example, hold appointments in most hospitals or in the public services, practise under the National Health Service Acts, give valid certificates of death and other statutory certificates, or prescribe dangerous drugs. *Provisional* registration enables a newly qualified doctor to be employed as a House Officer in approved hospitals, and to apply in due course for *full* registration, covering all forms of medical work. Both *provisionally* and *fully* registered doctors are subject to the Council's disciplinary jurisdiction.

The Medical Register is published annually, and shows the names, qualifications, registration-dates and addresses of all persons registered on January 1. It does not include the names of *temporarily* registered doctors from overseas, who may work only for limited periods in certain hospitals.

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* An account of the educational work of the Council is given in the Introduction to the current Recommendations published by the Council (price 1*s.* 6*d.*).

(b) The Registered Addresses of Doctors

Because it is important in the public interest that the Register should be reliable and correct, and in particular that it should not contain the names of persons who have died, the Council causes letters to be sent, at intervals of about six years, to every doctor at his, or her, registered address; and the names of those who do not reply may lawfully be removed from the Register. While this procedure is entirely distinct from the Council's disciplinary procedure, it is nevertheless of the utmost importance to each registered doctor that his name should not be removed from the Register through his failing to receive, or to answer, official communications dispatched by the Council to his registered address under section 41 of the Medical Act, 1956. **Every doctor should therefore in his own interest provide the Council at all times with an address which will afford a regular and trustworthy means of communication with him.**

The Medical Register is distinct from any directory or other unofficial publication, and the Council's statutory letters, as described above, have therefore to be distinguished from other communications.

A doctor unable for the time being to give an ordinary permanent address may be well advised to give the address of relatives, bankers or solicitors, with whom he can arrange that all letters will be forwarded to him or attended to on his behalf without delay. Experience shows that it is often undesirable to give the address of a hospital or lodgings where the doctor may not long reside.

While the Council makes further inquiries from various sources before removing any name from the Register, these inquiries are not always successful, and it then becomes necessary to remove the name.

(c) Additional Qualifications

The Council is empowered by the Medical Act to register certain higher or additional qualifications when held by fully registered practitioners. A form of application will be sent on request.

The qualifications include University degrees such as M.B., Ch.B., M.D., and M.S.; Memberships and Fellowships of Royal Colleges of Physicians or Surgeons; and Diplomas in Public Health.

DISCIPLINARY JURISDICTION AND PROCEDURE

(a) General

The Council fully realises and appreciates the high standard of professional conduct of the vast majority of doctors in this country who will never find themselves directly concerned with the Council's disciplinary jurisdiction. Yet circumstances may arise in which a doctor, perhaps through no fault of his own, may be confronted with one of the problems mentioned below, or with some difficult question bordering on such a problem—for example, in relation to the giving of certificates, or "advertising". This part of the pamphlet, therefore, provides a brief explanation of the Council's disciplinary work, together with such *general* guidance as may be given in regard to certain problems of medical ethics and conduct. *Specific* guidance in a particular set of circumstances can rarely be given by the Council, owing to its judicial functions under the Medical Act.

The Medical Act provides that if any fully or provisionally registered practitioner (1) has been convicted* of any offence by any Court in the United Kingdom or the Republic of Ireland, or (2) after due inquiry has been judged by the Disciplinary Committee of the Council to have been guilty of infamous conduct in any professional respect, the Committee may if they think fit direct that his name be erased from the Register.

Convictions *overseas* may, if the facts warrant, give rise to a charge of infamous conduct in a professional respect.

The term "conviction" as used in this pamphlet does not include a finding or decision of an Executive Council or of the Minister of Health under the machinery of the National Health Service.

The Council's Approach to "Infamous Conduct"; its Duty to Protect the Public

The formidable phrase "infamous conduct in a professional respect", which was first used in the Medical Act of 1858 and was retained in the Act of 1956, was defined in 1894 by Lord Justice Lopes as follows:

> "If a medical man in the pursuit of his profession has done something with regard to it which will be reasonably regarded

* Such convictions are reported to the Council in the normal course (compare pages 14 and 15).

> as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to the General Medical Council, if that be shown, to say that he has been guilty of infamous conduct in a professional respect."

Lord Esher added to this definition as follows: "The question is not merely whether what the medical man has done would be an infamous thing for anyone else but a medical man to do. He might do an infamous thing which would be infamous in anyone else, but if it is not done in a professional respect it does not come within the section." Another eminent Judge has stated that the phrase means "no more than serious misconduct judged according to the rules, written or unwritten, governing the profession". In other words, it means a serious breach of medical ethics.

Under the Act the Disciplinary Committee are not called upon to punish, in any retributive sense. Their primary duty is to protect the public. "Is it in the public interest to leave this doctor on the Register?" must be the first question in their minds in difficult cases. Subject however to their overriding duty to the public, members of the Committee may and do constantly ask themselves, "What is in the best interests of the doctor himself?" Largely for this reason, as further explained below, the Council has evolved a system of placing certain offenders (especially in relation to drink and drugs) on probation for a limited period; if all goes well, the case will be discharged at the end of the period.

The Council is as concerned as the doctors themselves to avert wherever possible any need for a formal disciplinary inquiry into a doctor's conduct. Hence, it is the practice of the President and of the Penal Cases Committee (a preliminary Committee who sit in private—see pages 10 and 14) to send letters of warning to those doctors who have been convicted for the first time for, say, driving a motor-car while under the influence of drink. Similar letters may be sent in regard to such matters as a serious failure to visit or treat a patient, or the issue of misleading professional certificates.

Types of "Infamous Conduct"; Convictions raising Disciplinary Questions

It is not possible, and since circumstances change it never will be possible, to compile a complete list of the matters which may lead to disciplinary action on the part of the

Council. The question whether any particular action or course of conduct amounts to "infamous conduct in a professional respect" is one which falls to be determined by the Disciplinary Committee after considering all the circumstances of each individual case, including any mitigating circumstances. The gravity of any conviction, or of a sequence of convictions, has similarly to be determined in each particular case. However, in the light of the Council's experience over the last hundred years it is possible to indicate, with examples, a number of types of offence or misconduct which raise disciplinary issues*:

* The instances given in each category have been selected in order to illustrate the issues concerned. *Neither the categories nor the instances given in these pages are exhaustive*; nor are the Disciplinary Committee prepared to accept it as a good defence that a doctor has done something against which he had received no formal warning. The doctor whose name (in the last century) was erased for keeping and exhibiting "an anatomical museum containing waxworks of a disgusting character", and the doctors who have been charged with convictions for murder, or for blackmailing a patient, could hardly expect to have received a specific warning in advance from the Council against such conduct.

(b) Notes on certain Professional Offences

Some, though not all, of the matters described below have already been mentioned in the preceding section (**a**).

(i) *Procuring or attempting to procure an abortion or miscarriage*

The Disciplinary Committee have always regarded induced non-therapeutic abortion as so grave an offence as to lead almost invariably to erasure of the doctor's name from the Register. A criminal conviction in the British Isles for such an offence in itself affords ground for a charge before the Disciplinary Committee. A doctor who improperly procures or attempts to procure abortion or miscarriage overseas is liable to be charged with infamous conduct in a professional respect.

(ii) *Adultery or other improper conduct or association with a patient or member of a patient's family*

Any doctor who commits adultery or other improper conduct or who maintains an improper association with a person

with whom he stands in professional relationship at the material time is liable to disciplinary proceedings. In upholding a decision of the Disciplinary Committee, the Judicial Committee of the Privy Council recently made the following comments on circumstances in which an abuse of professional relationship may arise:

> "A doctor gains entry to the home in the trust that he will take care of the physical and mental health of the family. He must not abuse his professional position so as, by act or word, to impair in the least the confidence and security which should subsist between husband and wife. His association with the wife becomes improper when by look, touch, or gesture he shows undue affection for her, when he seeks opportunities of meeting her alone, or does anything else to show that he thinks more of her than he should. Even if she sets her cap at him, he must in no way respond or encourage her. If she seeks opportunities of meeting him, which are not necessary for professional reasons, he must be on his guard. He must shun any association with her altogether, rather than let it become improper. He must be above suspicion.
>
> It was suggested that a doctor, who started as the family doctor, might be in a different position when he became a family friend. His conduct on social occasions was to be regarded differently from his conduct on professional occasions. There must, it was said, be cogent evidence to show that he abused his professional position. It was not enough to show that he abused his social friendship. This looks very like a suggestion that he might do in the drawing-room that which he might not do in the surgery. No such distinction can be permitted. A medical man who gains the entry into the family confidence by virtue of his professional position must maintain the same high standard when he becomes the family friend."

If a doctor becomes involved in divorce proceedings, and any question of professional relationship arises for the Disciplinary Committee, any finding of fact which has been made in matrimonial proceedings in British or Irish courts must, in accordance with the Medical Act, be accepted by the Committee as conclusive evidence of the fact found.

(iii) *Disregard of personal responsibilities to patients*; *gross neglect*

In pursuance of its primary duty to protect the public, the Council may feel bound to take cognisance of a case (whether or not it has been investigated under the National

Health Service machinery) in which a doctor may appear to have seriously disregarded his personal responsibilities to his patients, or to have been guilty of gross neglect of his professional duties.

(iv) *Offences arising out of abuse of alcohol*

More doctors appear before the Disciplinary Committee owing to convictions arising out of an abuse of alcohol (especially when in charge of motor vehicles) than for any other single reason. At some sessions, such cases have exceeded in number all other cases put together. The large majority of cases of this nature, however, are heard by the Disciplinary Committee only after more than one conviction has been recorded against a doctor. It is customary after a first conviction for drunkenness to send to the doctor, on the instructions of the Penal Cases Committee, a warning letter in order that he may reconsider his habits and conduct. It is repeated convictions, indicating habits that may bring disrepute on the doctor and on the profession, which may lead to an inquiry before the Disciplinary Committee. At this inquiry all the convictions are liable to form the basis of the charge against the doctor.

The treatment of a patient by a doctor under the influence of drink has led to a disciplinary charge.

(v) *Abuse of Dangerous or Scheduled Drugs*

Disciplinary proceedings may become necessary as a result of a breach of the Dangerous Drugs Regulations or some other offence committed in order to gratify a doctor's own addiction; or a doctor may have been convicted for driving or being in charge of a motor vehicle when under the influence of a drug. Charges have also been based on the treatment of a patient by a doctor alleged to be under the influence of drugs.

In addition to such cases arising out of a doctor's own addiction to drugs, the Council has occasionally been notified of cases in which a doctor is alleged to have purveyed drugs to persons otherwise than in the course of bona fide treatment.

(vi) *Untrue or misleading certificates and other professional documents*

Doctors engaged in general practice are especially familiar with the problems that may arise in regard to the issue of certificates, reports, and other documents signed in a pro-

fessional capacity. Such certificates are repeatedly required of doctors, for example in the National Health Service, or in relation to birth, illness, death or cremation, or for the purpose of excusing attendance in the courts or in public or private employment.

Doctors are expected by the Council to exercise the most scrupulous care in issuing such documents, especially in relation to any statement that a patient has been examined on a particular date. Any doctor who gives in his professional capacity any certificate or kindred document containing statements which he knows, or ought to know, to be untrue, misleading, or otherwise improper, brings himself within the scope of the Council's disciplinary jurisdiction.

(vii) "*Covering*", *i.e. assisting unregistered persons to practise Medicine*
Relations with persons performing functions relevant to Medicine, Surgery, and Midwifery

Any doctor who knowingly enables or assists a person, not duly qualified and registered as a medical practitioner, to practise Medicine or to treat patients in respect of matters requiring medical or surgical discretion or skill, becomes liable to disciplinary proceedings.

The foregoing statement is not to be regarded as affecting or restricting in any way (a) the proper training of medical and other bona fide students, or (b) the proper employment of nurses, midwives, and other persons trained to perform specialised functions relevant or supplementary to Medicine, Surgery, and Midwifery, provided that the doctor concerned exercises effective supervision over any person so employed and retains personal responsibility for the treatment of the patient.

It will be understood that no doctor should enable any uncertified person to attend a woman in childbirth, save in urgent necessity or under the personal supervision of a doctor.

(viii) *Canvassing and related offences*

Canvassing for the purpose of obtaining patients, whether done directly or through an agent, and association with or employment by persons or organisations which canvass, may lead to disciplinary proceedings.

Disciplinary proceedings may also result from improper arrangements for the transfer of patients to a doctor's National

Health Service List, without the knowledge and consent of the patients, or in a manner contrary to the National Health Service Regulations.

(ix) *Advertising; depreciation of other doctors*

(1) The professional offence of advertising may be deemed to arise from the publication of matter commending or directing attention to the professional skill, knowledge, services, or qualifications of one or more doctors, when the doctor or doctors concerned have procured or sanctioned such publication primarily or to a substantial extent for the purpose of obtaining patients or promoting their own professional advantage.

(2) Advertising in the foregoing sense may be deemed to have occurred not only when a doctor himself procures or sanctions such publication, but also when he knowingly acquiesces in such publication by others, or is associated with or employed by persons or organisations which procure such publication.

(3) Advertising may arise directly from notices or announcements displayed, circulated, or made public by a doctor in connection with his own practice, if such notices or announcements materially exceed the limits customary in the profession. The question of advertising may also arise indirectly in a number of other contexts, such as books, articles or letters or other items in newspapers or magazines, talks or appearances on broadcasting or television, and reports or notices or notepaper issued by companies or organisations with which a doctor is associated or by which he is employed.

(4) In upholding a decision of the Disciplinary Committee, the Judicial Committee of the Privy Council recently stated some principles which, though enunciated in relation to books and articles, may be regarded as of general application:

> "The Disciplinary Committee were entitled to have regard to the content of the written material, the form in which it was written, and the selected media for its publication in forming conclusions as to what were the purposes which animated the writer. The Committee were entitled to consider whether a desire to give information about a subject and to direct attention to such subject could have been achieved without directing

attention to the personal and unique performances and abilities of the writer."

"It must be recognised that professional medical men may be amply justified in publishing books and articles and in publishing them in their own names. By their writings they may be making invaluable contributions to medical science and to learning. They may be disseminating useful knowledge. They may be helping their fellow practitioners. They may be advantaging a wider public. It must however be recognised that by their writing they may inevitably and indeed justifiably attract notice. This may redound to their professional and to their pecuniary advantage. It may well be that in some cases a hope that some legitimate meed of personal advancement will result may find its place amongst the motives in writing and may be the spur to command the industry that the task may require. But after this has been said it can definitely be said that within the profession the line between the kind of publication that is unobjectionable and the kind that is objectionable should present no difficulties of recognition for any reasonable practitioner."

"Examples may be given. On the one side of the line there might be a book or an article which is an exposition of a particular subject either written as a text-book for medical students or practitioners or written impersonally in order to give information to the general public. No exception could be taken to such publication. As an example on the other side of the line there might be a book or an article an essential theme of which is the praise and commendation of the skill and abilities of the writer himself with an express or implied suggestion that his successes in dealing with cases show that potential patients would do well to have recourse to him. That would be 'advertising'."

(5) Disciplinary proceedings have on occasion arisen out of the depreciation of the professional skill, knowledge, services or qualifications of another doctor or doctors.

(x) *Improper Financial Transactions*

(1) Questions of infamous conduct have arisen in regard to allegations that a doctor has improperly demanded or accepted fees from a patient under the National Health Service, contrary to the Regulations of the Service.

(2) Disciplinary proceedings may also result when a doctor knowingly and improperly obtains from an Executive Council or Hospital authority any payment to which he was not entitled.

(3) The Council has also viewed with concern, or regarded as a ground for erasure, (a) the commercialisation of a secret remedy, (b) improperly prescribing drugs or appliances in which a doctor has a financial interest, and (c) arrangements for fee-splitting, under which one doctor would receive part of the fee paid by a patient to another doctor.

(c) Committee Procedure

The Earlier Stages of the Proceedings

Convictions of doctors are reported to the Council by the Police authorities, apart from minor motoring offences and other trivial matters. In cases of *conduct* as distinct from convictions, any information or complaint must be supported by one or more statutory declarations (that is, sworn statements) unless it is made on behalf of a Government Department, Executive Council or Medical Council of some country overseas, or by some other body or person "acting in a public capacity".* Convictions are referred in due course to the Penal Cases Committee, who usually meet in April and October. In cases of conduct, unless it appears to the President that the matter need not proceed further, the doctor concerned is invited to submit an explanation, which is also placed before the Committee.

In cases both of conviction and of conduct, it is for the Penal Cases Committee to decide whether an inquiry need be held by the Disciplinary Committee, who normally meet in May and in November. If the Penal Cases Committee decide against the holding of an inquiry, it is open to them to send a warning letter to the doctor, as mentioned on pages 6 and 10.

The Disciplinary Committee

The full membership of the Committee is nineteen, including two laymen, but the majority of cases are heard by nine members only. The Committee normally sit in public, and their procedure is closely akin to that of Courts of Law. Witnesses may be subpoenaed, and evidence is given on oath. Doctors who appear before the Committee in answer to charges, whether based on convictions or allegations of

* This expression includes officers of Government Departments, local authorities and public authorities, Judges and officers attached to Courts, and the Solicitor to the Council.

infamous conduct, may be, and usually are, legally represented. **The Committee are bound by law to accept a conviction as conclusive evidence that the doctor was in fact guilty of the offence; it is not open to a doctor to contend at this stage that he was in fact innocent of the offence of which he was convicted, or that he was convicted only because he had pleaded guilty in order to avoid publicity or for some other reason.** The circumstances of a criminal offence need not involve professional misconduct, but the conviction in itself gives the Committee full jurisdiction.

In cases of conduct, evidence as to the facts may be adduced by both parties. If the facts are found by the Committee to have been proved to their satisfaction, they must subsequently determine whether, in relation to those facts, the doctor has been guilty of infamous conduct in a professional respect.

Alike in cases of conviction and of conduct in which the facts have been found proved, the Disciplinary Committee have to decide on the merits of the case between several possible courses of action. Before taking a final decision, they invite the doctor or his legal representative to call attention to any mitigating circumstances, and to produce testimonials or other evidence as to character. The Committee may decide to conclude the case without erasing the name of the doctor (this does not prevent them from expressing concern at the facts which have been disclosed), or they may place the doctor on probation by postponing judgment for a specified period, or they may direct erasure. In the last event, the name will be erased after twenty-eight days unless in the interim the doctor appeals to the Judicial Committee of the Privy Council against the decision of the Disciplinary Committee.

Of the 316 doctors whose names were erased in 1900–1963 on disciplinary grounds, 83 were erased for adultery or improper conduct with a patient, 57 for procuring illegal abortion or miscarriage, 52 for offences connected with drink or drugs, 29 for advertising or canvassing, 28 for fraud, false pretences or analogous matters, and 67 on other grounds.

(d) Restoration to Register after Disciplinary Erasure

Applications for restoration may legally be made at any time after eleven months from the date of erasure, and thereafter at annual intervals. The names of many doctors which have

been erased have subsequently been restored to the Register, after an interval. An applicant may, and normally does, appear in person before the Disciplinary Committee, and may be legally represented. The Committee determine every application on its merits, having regard among other considerations to the nature and gravity of the original offence, the length of time since erasure, and the conduct of the applicant in the interval.

CONSTITUTION OF THE COUNCIL

The Council comprises forty-seven members. Eight, including three laymen, are nominated by Her Majesty, with the advice of Her Privy Council or the Governor of Northern Ireland. Eleven medical members of the Council are elected by the postal votes of the profession in the three constituencies of England and Wales, Scotland, and Ireland (both Northern Ireland and the Republic). The remaining twenty-eight members represent each of the Universities which grant medical degrees, the various Royal Colleges (including the Royal College of Obstetricians and Gynaecologists) in London, Edinburgh, Glasgow and Dublin, the Society of Apothecaries of London, and the Apothecaries' Hall of Dublin.

The Disciplinary and Penal Cases Committees, like other Committees of the Council, are elected by the members of the Council from among their own number at the May Session in each year. The other standing Committees are the Executive Committee (the principal Committee of the Council for general purposes), the Pharmacopoeia Committee (who exercise the Council's functions in relation to the British Pharmacopoeia), the Finance Committee, and the Commonwealth and Foreign Registration Committee. The President of the Council is *ex officio* a member of all Committees.

There are Branch Offices of the Council in Edinburgh and in Dublin.

Since Parliament established the Council as a novel statutory experiment in 1858, a number of medical bodies, comparable in constitution and in functions, have been established in Commonwealth countries; and parallel bodies have also been established for other professions on the model of the General Medical Council.