

The General Dental Council (Fitness to Practise) Rules Order of Council 2006

:2006 No. 1663 Whole Instrument

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Statutory Instruments

2006 No. 1663

HEALTH CARE AND ASSOCIATED PROFESSIONS

DENTISTS PROFESSIONS COMPLEMENTARY TO DENTISTRY

The General Dental Council (Fitness to Practise) Rules Order of Council 2006

Made

23rd June 2006

Laid before Parliament

29th June 2006

Coming into force

31st July 2006

At the Council Chamber, Whitehall, the 23rd day of June 2006

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

The General Dental Council have made the General Dental Council (Fitness to Practise) Rules 2006 as set out in the Schedule to this Order.

In accordance with section 50C(2) and (3) of the Dentists Act 1984(1) such Rules shall not come into force until approved by Order of the Privy Council.

Having considered the Rules, their Lordships approve them.

.This Order may be cited as the General Dental Council (Fitness to Practise) Rules Order of Council 2006 and shall come into force on 31st July 2006.

A K Galloway

Clerk of the Privy Council

...SCHEDULE

The General Dental Council (Fitness to Practise) Rules 2006

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Explanatory Note.

.The General Dental Council make the following Rules in exercise of their powers conferred under section 50C(5) and (6) of, paragraphs 2, 3 and 7 of Schedule 3 to, paragraphs 2, 3 and 7 of Schedule 4B to, and paragraphs 1, 2 and 3 of Schedule 4C to, the Dentists Act 1984(2).

The General Dental Council have consulted in accordance with section 50D of that Act(3).

## PART 1

Citation, commencement and interpretation

Citation and commencement

1. These Rules may be cited as the General Dental Council (Fitness to Practise) Rules 2006 and shall come into force on 31st July 2006.

Interpretation

2. In these Rules—

“the Act” means the Dentists Act 1984;

“allegation” means an allegation that the fitness to practise of a registered dentist or registered dental care professional is impaired and includes an allegation treated as arising by virtue of section 27(4) or 36N(4) of the Act(4) (allegations);

“interim orders hearing” means a hearing before the Interim Orders Committee or a Practice Committee at which that Committee are to consider whether to make, revoke, confirm or replace an interim order, or to add to, vary or revoke any condition imposed by an interim order, under section 32 or 36V of the Act(5) (interim orders);

“legal adviser” means a person appointed under paragraph 1 of Schedule 4C to the Act(6) (advisers);

“party” to proceedings means the respondent or the Council;

“presenter” means the representative of the Council presenting the case on their behalf;

“relevant register” means, in relation to a dentist or former dentist, the dentists register and, in relation to a member of a profession complementary to dentistry or former member of such a profession, the dental care professionals register;

“respondent” means—

(a) a registered dentist or registered dental care professional (including one whose registration is suspended) who is the subject of an allegation,

(b) a registered dentist or registered dental care professional (including one whose registration is suspended) to whose registration the proceedings relate, or

(c) a former registered dentist or former registered dental care professional who is applying for the restoration of his name to the relevant register;

“restoration hearing” means a hearing before the Professional Conduct Committee at which they are to consider an application for restoration to the relevant register under section 24, 28, 36I or 36R of the Act(7) (restoration following erasure on grounds of fraud or on grounds of impairment of fitness to practise); and

“resumed hearing” means a hearing for the purpose of reviewing directions given, or orders made, by a Practice Committee, at which a Practice Committee are to consider whether to give a direction under section 27C or 36Q of the Act(8) (resumed hearings).

## PART 2

### Investigating Committee

#### Initial consideration by the registrar

3. The registrar shall consider a complaint or other information in relation to a registered dentist or a registered dental care professional, including a dentist or dental care professional whose registration is suspended, and shall determine whether a complaint or information amounts to an allegation.

#### Notification of allegation

4.—(1) Where the registrar determines that a complaint or information amounts to an allegation, he

shall send a notification to the respondent and the maker of the allegation (if any) accordingly.

(2) The notification sent under paragraph (1) shall—

(a) contain a summary of the allegation;

(b) subject to rule 7(3), be accompanied by a copy of the documents in the registrar's possession which relate to the allegation;

(c) invite the respondent to respond to the allegation with written representations addressed to the Investigating Committee within a period which the registrar shall specify in the notification; and.

(d) where the allegation has been made by a person, inform the respondent that representations received from him may be disclosed to that person for comment..

(3) Rule 65 shall apply in relation to the notification to be sent under this rule.

#### Meeting to consider allegation

5. The Investigating Committee shall hold a meeting, in the presence of the registrar but in the absence of the parties, to consider an allegation which has been referred to them.

#### Evidence

6. The Investigating Committee may, subject only to the requirements of relevance and fairness, admit any documentary evidence, whether or not that evidence would be admissible in any proceedings in a court.

#### Determination

7.—(1) Subject to paragraph (2), upon consideration of an allegation the Investigating Committee may determine—

(a) to adjourn consideration of the allegation and direct the registrar to carry out such enquiries as the Investigating Committee shall specify;

(b) that the allegation ought not to be considered by a Practice Committee but no warning or advice ought to be given under sub-paragraph (c) or (d);.

(c) that the allegation ought not to be considered by a Practice Committee and that the matter

should be closed by the communication to the respondent or to any other person involved in the investigation of such advice as the Investigating Committee may issue in accordance with section 27A(2) or 36O(2) of the Act(9) (the Investigating Committee);

(d)that the allegation ought not to be considered by a Practice Committee and that the matter should be closed by the communication to the respondent of such warning as the Investigating Committee may issue in accordance with section 27A(2)(a) or 36O(2)(a) of the Act; or.

(e)that the allegation ought to be considered by a Practice Committee..

(2) The Investigating Committee shall not make a determination under paragraph (1)(b), (c), (d) or (e) unless they are satisfied that the respondent and the maker of the allegation (if any) have been provided with a reasonable opportunity to submit written representations commenting on the allegation and, subject to paragraph (3), the evidence relating to the allegation.

(3) The registrar shall not disclose to the maker of the allegation any evidence relating to the health or private and family life of the respondent or a third party which has been provided by the respondent or a third party.

#### Enquiries following adjournment

8. The enquiries which the Investigating Committee may direct the registrar to carry out under rule 7(1)(a) may include—

(a)specific factual enquiries;.

(b)the commissioning of medical or other expert reports;.

(c)the commissioning of an assessment of the respondent's professional performance..

#### Resumed consideration of allegation

9. When they resume consideration of an allegation after an adjournment under rule 7(1)(a) the Investigating Committee shall deal with the matter in accordance with rule 7.

#### Review of previous determination

10. Where the Investigating Committee receive an application for review of a previous determination in accordance with section 27A(8)(b) or 36O(8)(b) of the Act, the Investigating Committee shall consider the applicant's written representations in support of the application, after satisfying themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

## PART 3

### Consideration of allegations by a Practice Committee

#### Application of Part 3

11. This Part shall apply to proceedings under Part 3 (the dental profession) or Part 3A (professions complementary to dentistry) of the Act(10) in which a Practice Committee are to consider an allegation against a respondent, other than at a resumed hearing.

#### Consideration at a hearing

12. Where the Investigating Committee have referred an allegation to a Practice Committee, the Practice Committee to which the allegation has been referred shall hold a hearing to consider the allegation.

#### Notification of hearing

13.—(1) The registrar shall send to the respondent a notification of hearing, and that notification shall—

(a) inform the respondent of the date, time and venue of the hearing;.

(b) inform the respondent of his right to attend and to be represented at the hearing;.

(c) inform the respondent of a Practice Committee's power to proceed with the hearing in his absence;.

(d) inform the respondent of his right to adduce evidence;.

(e) contain a charge setting out the grounds by reason of which it is alleged that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, and particularising the facts alleged against the respondent in support of the allegation;.

(f) be accompanied by a copy of these Rules where they have not previously been sent to the respondent; and.

(g) require the respondent to inform the registrar whether he intends to attend the hearing and to be represented at the hearing;.

(2) The notification of hearing shall be sent to the respondent no later than 28 days before the date fixed for the hearing, unless the respondent has agreed in writing to an earlier hearing date.

(3) The registrar may, if he considers that it is appropriate to do so and the hearing is to be before the Professional Conduct Committee or the Professional Performance Committee, send the same notification to more than one respondent, in which case rule 25(1) shall apply.

(4) The registrar may send notification of the proceedings to any person who in his opinion has an interest in those proceedings, and provide any person so notified with an opportunity to submit written representations.

#### Order of proceedings

14. A Practice Committee shall conduct a hearing in the following four stages—

(a) the preliminary stage;

(b) the factual inquiry;

(c) submissions by the parties; and

(d) the determination of the case..

#### Interim orders hearing before a Practice Committee

15.—(1) At any stage in proceedings to which this Part applies, a Practice Committee may, either of their own motion or on the application of a party, hold an interim orders hearing in relation to the respondent who is a party to those proceedings.

(2) A Practice Committee shall not make, confirm or replace an interim order, or make an order adding to or varying any condition imposed by an interim order, under section 32 or 36V of the Act, unless they are satisfied that the respondent has been provided with an opportunity of appearing before the Practice Committee and being heard on the question of whether such an order should be made in his case.

#### Order of proceedings at an interim orders hearing before a Practice Committee

16. Unless a Practice Committee determine otherwise, the order of proceedings at an interim orders hearing before them shall be as follows—

(a) the presenter shall make submissions, and present any relevant evidence, as to why, in relation to the respondent, it may be necessary to make, revoke, confirm or replace an interim order, or to add

to, vary or revoke any condition imposed by an interim order;

(b) the respondent or the respondent's representative may make submissions, and present any relevant evidence, in response to the submissions made under paragraph (a);

(c) the Practice Committee shall withdraw to deliberate in private, and shall determine whether to make an interim order under section 32 or 36V of the Act; and.

(d) the parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence..

The preliminary stage

17.—(1) The parties shall be asked by the Chairman of a Practice Committee if they desire the notification of hearing that was sent to the respondent to be read out.

(2) Where both parties state that they do not desire the notification of hearing to be read out, it shall not be read out, but shall form part of the public record relating to the hearing.

(3) Where one of the parties states (or both parties state) that the party desires the notification of hearing to be read out, it shall be read out by the Secretary appointed for the hearing.

(4) A Practice Committee shall in the first instance deal with any preliminary applications, admissions or preliminary matters of law, and make determinations in respect of them before the commencement of the factual inquiry.

(5) The Chairman of a Practice Committee shall inform the parties of the determinations made under paragraph (4).

Amendment of the charge

18.—(1) At any stage before making their findings of fact in accordance with rule 19, a Practice Committee may amend the charge set out in the notification of hearing unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), a Practice Committee shall consider any representations from the parties.

## The factual inquiry

19.—(1) The factual inquiry shall commence with the presenter opening the case and presenting evidence.

(2) The respondent or the respondent's representative may cross-examine any witness called by the presenter.

(3) When the presenter has completed presenting evidence, the respondent or the respondent's representative may open the case for the defence, which may include a submission that there is no case to answer.

(4) Where the respondent or the respondent's representative makes a submission that there is no case to answer, a Practice Committee shall adjourn the hearing and deliberate in private for the purpose of determining whether to accept the submission.

(5) The Chairman of a Practice Committee shall announce whether the submission that there is no case to answer has been accepted.

(6) Where a Practice Committee have accepted the submission, they may make such orders as to costs and other matters as they consider necessary.

(7) Where there has been no submission that there is no case to answer, or there has been such a submission but it has been unsuccessful, the respondent or the respondent's representative shall present evidence.

(8) The presenter may cross-examine any witness called by the respondent or the respondent's representative.

(9) The respondent or the respondent's representative shall, after all of the evidence has been presented, set out or, as the case may be, conclude the case for the defence.

(10) The evidence that may be presented under paragraph (1) or (7) shall not include any evidence as to mitigation, but shall be restricted to evidence relating to the facts alleged in the notification of hearing.

(11) A Practice Committee shall, on the conclusion of the case for the defence, adjourn the hearing to deliberate in private as to their findings of fact.

(12) A Practice Committee shall announce their findings of fact, by reference to the matters mentioned in the notification of hearing, in the presence of the parties.

(13) Where a Practice Committee determine that none of the facts alleged in the notification of hearing have been proved against the respondent, they shall make the determination that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is not impaired.

#### Submissions

20.—(1) Where a Practice Committee determine that some or all of the facts alleged in the notification of hearing have been proved against the respondent, the presenter shall—

(a) address the Practice Committee on the respondent's history;

(b) make submissions on the question of whether, in the light of the facts found, the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and

(c) where the submission is that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, make submissions as to what action should be taken..

(2) The presenter may, in making submissions under paragraph (1)(b) or (c), refer to relevant guidance issued by the Council.

(3) When the presenter has completed his submissions, the respondent or the respondent's representative shall—

(a) address the Practice Committee on the respondent's history;

(b) make submissions on the question of whether, in the light of the facts found, the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and.

(c) where the presenter has submitted that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, make submissions as to what action, if the Practice Committee accept that submission, should be taken..

(4) The respondent or the respondent's representative may, on concluding his address and submissions under paragraph (3), make a plea in mitigation by reference to the personal circumstances of the respondent.

#### Determination

21.—(1) A Practice Committee shall, on conclusion of the address and submissions by the respondent or the respondent's representative, withdraw to deliberate in private, and shall determine—

(a) whether the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and.

(b) if the Practice Committee determine that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, whether to give any direction under section 27B(6) or 36P(7) of the Act(11) (the Practice Committees)..

(2) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

(3) Any interim order relating to the respondent shall be revoked in accordance with section 27B(9) or 36P(10) of the Act at the same time as the announcement is made under paragraph (2).

#### Orders for immediate suspension and immediate conditional registration

22.—(1) Before making any order for immediate suspension or immediate conditional registration under section 30(1) or (2) or 36U(1) or (2) of the Act(12) (orders for immediate suspension and immediate conditional registration), a Practice Committee shall invite the presenter and the respondent or the respondent's representative to make submissions as to whether such an order should be made and, if so, on what terms the order should be made.

(2) After hearing the submissions a Practice Committee shall withdraw to deliberate in private

and determine whether to make an order for immediate suspension or immediate conditional registration.

(3) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

#### Notification of decisions

23. The registrar shall send notification of any determination or order made by a Practice Committee under rule 16(c), 21(1) or 22(2), and the reasons for that determination or order, to—

(a) the person (if any) making the allegation; and.

(b) any other person who in the registrar's opinion has an interest in the proceedings..

#### Publication of information

24.—(1) The registrar shall publish—

(a) the charge contained in the notification of hearing sent to the respondent under rule 13;

(b) any amendments to the charge made in accordance with rule 18(1); and.

(c) with the exception of any confidential details relating to the physical or mental health of the respondent, details of any determination or order made by a Practice Committee under rule 16(c), 21(1) or 22(2)..

(2) Where all or part of a hearing has been held in private in accordance with rule 53, publication under paragraph (1) shall not identify any party or witness who took part in the private hearing (or that part of the hearing that was in private), other than the respondent.

(3) Publication under paragraph (1) may be made in electronic form on the website of the Council(13).

#### Joinder

25.—(1) Unless they are of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal adviser, the Professional Conduct Committee or the Professional Performance Committee may consider allegations against two or more respondents at the same hearing where—

(a) the allegation against each respondent arises out of the same circumstances; or.

(b) in the view of the Professional Conduct Committee or the Professional Performance Committee, it would be just to do so..

(2) Where—

(a) an allegation against a respondent has been referred to a Practice Committee,.

(b) that allegation has not yet been heard, and.

(c) a new allegation against the respondent which is of a similar kind or is founded on the same alleged facts is received by the Council,.

the Practice Committee may consider the new allegation at the same time as the original allegation, notwithstanding that the new allegation has not been included in the notification of hearing.

(3) Where it is proposed that a new allegation should be heard by a Practice Committee under paragraph (2), they shall—

(a) inform the respondent of the new allegation, and the alleged facts on which it is based; and.

(b) provide the respondent with an opportunity to make written representations on the new allegation and require any such representations to be received within the period of 28 days beginning with the date on which notification of the new allegation was sent to the respondent, or within such period as is otherwise agreed by the parties..

Reference of cases to another Practice Committee etc.

26.—(1) At any stage in proceedings to which this Part applies, a Practice Committee may—

(a) refer to another Practice Committee any matter arising which they consider should be dealt with by that other Practice Committee;

(b) take advice, as they consider necessary and appropriate, from another Practice Committee; and.

(c) refer to the Interim Orders Committee any allegation which they consider should be dealt with by the Interim Orders Committee..

(2) Where a Practice Committee refer a case to another Practice Committee under paragraph (1)(a), section 27B or 36P of the Act shall apply as if the case had originally been referred by the Investigating Committee to that other Practice Committee.

## PART 4

### Resumed hearings

#### Application of Part 4

27. This Part shall apply to a resumed hearing before a Practice Committee.

#### Notification of resumed hearing

28.—(1) The registrar shall send to the respondent a notification of resumed hearing, and that notification shall—

(a) inform the respondent of the date, time and venue of the resumed hearing;

(b) inform the respondent of his right to attend and to be represented at the resumed hearing;

(c) inform the respondent of a Practice Committee's power to proceed with the resumed hearing in his absence;

(d) inform the respondent of his right to adduce evidence;

(e) inform the respondent of the grounds for holding the resumed hearing and specify the matters which a Practice Committee are to consider at that hearing and the directions which they could give in the respondent's case;

(f) be accompanied by a copy of these Rules where they have not previously been sent to the respondent; and

(g) require the respondent to inform the registrar whether he intends to attend the resumed hearing and to be represented at that hearing..

(2) The notification of resumed hearing shall be sent to the respondent no later than 28 days before the date fixed for the resumed hearing, unless the respondent has agreed in writing to an earlier resumed hearing date.

(3) The registrar may, if he considers that it is appropriate to do so and the resumed hearing is to be before the Professional Conduct Committee or the Professional Performance Committee, send the same notification to more than one respondent, in which case rule 25(1) shall apply.

(4) The registrar may send notification of the proceedings to any person who in his opinion has an interest in those proceedings, and provide any person so notified with an opportunity to submit

written representations.

#### Order of proceedings

29. Unless a Practice Committee determine otherwise, the order of proceedings at a resumed hearing shall be as follows—

(a) the presenter shall—

(i) inform the Practice Committee of the background to the case and the sanctions previously imposed on the respondent,.

(ii) direct the attention of the Practice Committee to any relevant evidence previously considered by the Practice Committee including transcripts of previous hearings,.

(iii) present any relevant evidence not previously considered by the Practice Committee, and.

(iv) make submissions as to the matters being considered by the Practice Committee; and.

(b) the respondent or the respondent's representative may—

(i) present any relevant evidence on which the respondent intends to rely, and.

(ii) make submissions as to the matters being considered by the Practice Committee..

#### Decision

30.—(1) A Practice Committee shall, on conclusion of the address and submissions by the respondent or the respondent's representative, withdraw to deliberate in private, and shall decide whether to give a direction under section 27C or 36Q of the Act.

(2) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the decision of the Practice Committee and the reasons for it in their presence.

(3) Rule 22 shall apply in relation to the making of any order for immediate suspension or immediate conditional registration at a resumed hearing.

#### Notification of decision

31. The registrar shall send notification of any decision or order made by a Practice Committee at a resumed hearing under rule 22(2) or 30(1), and the reasons for that decision or order, to—

(a)the person (if any) who made the allegation; and.

(b)any other person who in the registrar’s opinion has an intere