1958 No. 1805

The General Medical Council Disciplinary Committee (Procedure) Rules Order of Council, 1958

Made - - - -	30*th October*, 1958
Laid before Parliament	5*th November*, 1958
Coming into Operation	6*th November*, 1958

At the Council Chamber, Whitehall, the 30th day of October, 1958

BY THE LORDS OF HER MAJESTY'S MOST HONOURABLE PRIVY COUNCIL

Whereas in pursuance of section thirty-seven of the Medical Act, 1956(a), the Disciplinary Committee of the General Medical Council have made the General Medical Council Disciplinary Committee (Procedure) Rules, 1958:

And whereas by subsection (3) of the said section such Rules shall not come into force until approved by Order of the Privy Council:

Now, therefore, their Lordships having taken the said Rules into consideration, are pleased to approve the same as set out in the Appendix to this Order.

This Order may be cited as the General Medical Council Disciplinary Committee (Procedure) Rules Order of Council, 1958, and shall come into operation on the sixth day of November, 1958.

W. G. Agnew.

APPENDIX

THE GENERAL MEDICAL COUNCIL DISCIPLINARY COMMITTEE (PROCEDURE) RULES, 1958

In pursuance of subsection (1) of section thirty-seven of the Medical Act, 1956, the Disciplinary Committee of the General Medical Council hereby make the following Rules:—

PART I

PRELIMINARY

Citation and Interpretation

1. These Rules may be cited as the General Medical Council Disciplinary Committee (Procedure) Rules, 1958.

2.—(1) In these Rules, unless the context otherwise requires:

"the Act" means the Medical Act, 1956;

"the Committee" means the Disciplinary Committee;

"the Council" means the General Medical Council;

"the President" means the President of the Council;

(a) 4 & 5 Eliz. 2. c. 76.

"the Registrar" means the Registrar of the Council;

"the Legal Assessor" means an Assessor appointed by the Council for the purposes of section 38 of the Act;

"the Solicitor" means one of the Solicitors to the Council;

"the Register" means any of the Registers kept under the Act;

"case relating to conviction" means a case where it is alleged that a practitioner has been convicted by any Court in the United Kingdom or the Republic of Ireland of any felony, misdemeanour, crime or offence;

"case relating to conduct" means a case where a question arises whether conduct of a practitioner constitutes infamous conduct in a professional respect;

"practitioner" means a person registered (in any way) under the Medical Acts, and references to the practitioner, in relation to any complaint, information or proceedings, are references to the practitioner against whom a conviction has been alleged, or whose conduct has been called into question, as the case may be;

"complainant" means a body or person by whom a complaint has been made to the Council in a case relating to conviction or in a case relating to conduct, or in a case where it is alleged that an entry in the Register has been fraudulently or incorrectly made.

(2) The Interpretation Act, 1889(a), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

3. The provisions of the First Schedule shall have effect as to the constitution and meetings of the Penal Cases Committee, and as to meetings of the Disciplinary Committee.

PART II

PROCEEDINGS IN CASES RELATING TO CONVICTION AND CASES RELATING TO CONDUCT: SECTION 33 OF THE ACT

Submission of Complaints or Information: Formulation of Charges

4. The functions of the Disciplinary Committee under section thirty-three of the Act shall be exercised in accordance with the following provisions:—

(*a*) No direction shall be given under subsection (1) of that section except in consequence of an inquiry held in accordance with the provisions of this Part of these Rules into a charge or charges formulated in a Notice of Inquiry sent in accordance with the said provisions to the person against whom the charge or charges is or are made.

(*b*) Before the formulation of any such charge, the matters out of which it arises must have been considered by the Penal Cases Committee and referred by them to the Disciplinary Committee for inquiry.

5.—(1) Where a complaint in writing, or information in writing, is received by the Registrar from any body or person, and it appears to him—

(*a*) that a practitioner has been convicted by any Court in the United Kingdom or the Republic of Ireland of any felony, misdemeanour, crime or offence, and the conviction is not of a description excepted from the operation of this paragraph by or under a direction of the Penal Cases Committee, or

(a) 52 & 53 Vict. c. 63.

(*b*) that a question arises whether conduct of a practitioner constitutes infamous conduct in a professional respect,

the Registrar shall submit the matter to the President:

Provided that in a case relating to conduct, unless the complaint or information has been received from a person acting in a public capacity, the matter shall not proceed further unless and until there has been furnished to the satisfaction of the President one or more statutory declarations in support thereof; and every such statutory declaration shall state the address and description of the declarant and the grounds for his belief in the truth of any fact declared which is not within his personal knowledge.

(2) For the purpose of the last foregoing paragraph the expression "person acting in a public capacity" means an officer of a Government department or local or public authority or of any of the constituent bodies entitled to choose a member of the Council, acting as such, or any person holding judicial office, or any officer attached to a Court, or the Solicitor to the Council.

(3) In a case relating to conduct the President, unless it appears to him that the matter need not proceed further, shall direct the Registrar to write to the practitioner—

(*a*) notifying him of the receipt of the complaint or information, and indicating the matters which appear to raise a question whether the practitioner has committed conduct infamous in a professional respect;

(*b*) forwarding a copy of any statutory declaration furnished under paragraph (1) of the Rule;

(*c*) informing the practitioner of the date of the next meeting of the Penal Cases Committee; and

(*d*) inviting the practitioner to submit to the Council any explanation which he may have to offer.

(4) Subject to the foregoing provisions of this Rule, the President may direct the Registrar to refer the case to the Penal Cases Committee, together with any statutory declaration or explanation furnished under paragraphs (1) and (3) of this Rule.

6.—(1) Where a case relating to conviction or a case relating to conduct has been referred to the Penal Cases Committee, that Committee shall, having regard to any statutory declaration or explanation furnished as aforesaid, consider the case and, subject to the provisions of this Rule, determine either—

(*a*) that no inquiry shall be held in the case by the Disciplinary Committee, or

(*b*) that the matter in question shall, in whole or in part, be referred to the Disciplinary Committee for inquiry either at the next meeting of that Committee or at such future meeting as the Penal Cases Committee or the President may determine.

(2) Where the Penal Cases Committee determine that no inquiry shall be held in a case relating to conduct, the Registrar shall inform the complainant (if any) and the practitioner of the decision of the Committee in such terms respectively as the Committee may direct.

(3) Before coming to a determination the Committee may if they think fit cause to be made such further investigations, or obtain such advice or assistance from the Solicitor or Counsel instructed by him, as they may consider requisite.

(4) Where the Penal Cases Committee are of opinion that such further investigations as aforesaid are desirable, or where at the time when the Committee are considering a case relating to conduct no explanation has yet been received

from the practitioner, the Committee may if they think fit make a provisional determination that the matter in question shall in whole or in part be referred to the Disciplinary Committee as mentioned in sub-paragraph (*b*) of paragraph (1) of this Rule, and where they make such a determination—

(*a*) the President may, after causing those members of the Penal Cases Committee who made such determination to be informed of the result of the further investigations or to be supplied with copies of any explanation subsequently furnished by the practitioner, and after consultation with such members of that Committee, and in accordance with the opinion of those members or of the majority of them, direct either that no inquiry shall be held or that the matter shall be referred as aforesaid;

(*b*) if the President directs that no inquiry shall be held, the Registrar shall notify the members of the Penal Cases Committee, and in a case relating to conduct shall inform the complainant (if any) and the practitioner in such terms respectively as the President may direct.

7. Notwithstanding anything in the foregoing provisions of these Rules, where in a case relating to conviction the President or the Penal Cases Committee has or have determined that no inquiry shall be held, and the Council subsequently receive information or a complaint as to another conviction or as to the conduct of the same practitioner, the President may direct that the former information or complaint shall be dealt with under the foregoing provisions of this Part of these Rules together with the subsequent information or complaint as if no such determination had been made in respect thereof.

Notice of Inquiry

8.—(1) As soon as may be after a case has been referred to the Disciplinary Committee under the foregoing Rules for inquiry, the Solicitor shall send to the practitioner a " Notice of Inquiry " which shall—

(*a*) specify, in the form of a charge or charges, the matters into which the inquiry is to be held, and

(*b*) state the day, time and place at which the inquiry is proposed to be held.

(2) Except with the agreement of the practitioner, the inquiry shall not be fixed for any date earlier than twenty-eight days after the date of the Notice of Inquiry.

(3) A Notice of Inquiry shall be in the form set out in the Second Schedule to these Rules, with such variations as circumstances may require.

(4) A Notice of Inquiry shall be delivered to the practitioner or sent to him by post in a registered letter addressed to him at his address on the General Register, and/or any other address, if it appears to the Solicitor that a letter so addressed is more likely to reach him.

(5) There shall be sent with any Notice of Inquiry a copy of these Rules.

(6) In any case where there is a complainant, a copy of the Notice of Inquiry shall be sent to him.

Access to Documents

9. Without prejudice to the provisions of paragraph (3) of Rule 5 of these Rules, the Solicitor shall on the request of any party to an inquiry and on the payment of the proper charges therefor send to him copies of any statutory declaration, explanation, answer, admission or other statement or communication sent to the Council by a party to the inquiry:

Provided that nothing in this Rule shall compel the Solicitor to produce copies of any written advice sent by himself to the Council which would be privileged from discovery in any legal proceedings to which the Council were a party.

10. Any party to any inquiry may at any time give to any other party notice to produce any document alleged to be in the possession of that party.

Postponement or Cancellation of Inquiry

11.—(1) The President may if he thinks fit postpone the holding of an inquiry to such later date or such later meeting of the Committee as he may determine.

(2) Where the holding of an inquiry is postponed—

(*a*) the Solicitor shall as soon as may be give notice of the postponement to every other party;

(*b*) where the postponement is to a later meeting of the Committee, then on the determination of the date on which the inquiry is to be held the Solicitor shall give notice of that date to every other party.

12.—(1) Where, after a complaint or information has been referred to the Disciplinary Committee for inquiry, it appears to the President that the inquiry should not be held, he may, if he thinks fit, after consultation with the members of the Penal Cases Committee and in accordance with the opinion of those members or of the majority of them, direct that the inquiry shall not be held; and where the President so directs and at the time of the direction no Notice of Inquiry has been sent Rule 8 of these Rules shall not have effect:

Provided that in any case where there is a complainant the President shall not direct that an inquiry shall not be held except after communicating or endeavouring to communicate with the complainant.

(2) As soon as may be after the giving of any such direction the Solicitor shall give notice thereof to the complainant (if any) and to the practitioner.

Amendment of Notice of Inquiry or Charge

13.—(1) Where before the hearing it appears to the President, or at any stage of the hearing it appears to the Disciplinary Committee, that a Notice of Inquiry or charge is defective, the President or Committee, as the case may be, shall give such directions for the amendment of the Notice or charge as he or they may think necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) Where in the opinion of the President or the Disciplinary Committee it is expedient, in consequence of the exercise by him or them of the powers conferred by the last foregoing paragraph, that the inquiry should be postponed or adjourned, the President or Committee shall give such directions in that behalf as appear necessary.

(3) The Solicitor shall as soon as may be give notice in writing to the complainant (if any) and to the practitioner of any exercise by the President of his powers under either of the two last foregoing paragraphs.

Opening of Inquiry.

14. Where the practitioner does not appear the Chairman shall call upon the Solicitor to satisfy the Committee that the Notice of Inquiry has been received by the practitioner. If it does not appear to have been so received, the Committee may nevertheless proceed with the inquiry, if they think fit, on being satisfied that all reasonable efforts have been made to serve the Notice of Inquiry on the practitioner.

15.—(1) If the practitioner appears or, in a case where he does not appear, the Disciplinary Committee proceed with the inquiry, the charge or charges shall first be read to the Committee.

(2) After the reading of the charge or charges the practitioner may, if he so desires, object to the charge, or to any part of it, in point of law, and upon any such objection any other party may reply thereto.

(3) If any such objection is upheld, no further proceedings shall be taken by the Committee in relation to the charge, or that part of the charge, to which the objection relates.

Cases relating to Conviction : Proof of Conviction

16.—(1) In cases relating to conviction, the following order of proceedings shall be observed as respects proof of convictions alleged in the charge or charges:—

(*a*) The complainant, or, if no complainant appears, the Solicitor shall adduce evidence of the convictions or such of them as he is prepared to prove.

(*b*) If as respects any conviction no evidence is so adduced, the Chairman of the Committee shall thereupon announce that that conviction has not been proved.

(*c*) If the practitioner appears, then as respects each conviction of which evidence is so adduced the Chairman shall ask the practitioner whether he admits the conviction; and if he admits it the Chairman shall thereupon announce that the conviction has been proved.

(*d*) If, where the practitioner appears, he does not admit all the convictions, he may then adduce evidence, as respects any conviction which he has not admitted, on the question whether he was convicted as alleged, and may address the Committee on that question:

Provided that only one address may be made under this sub-paragraph and, where the practitioner adduces evidence, that address shall be made either before that evidence is begun or after it is concluded.

(*e*) Where evidence is adduced under the last foregoing sub-paragraph, the complainant, or, where no complainant appears, the Solicitor may adduce evidence to rebut such evidence, and if he does so the practitioner may again address the Committee.

(2) On the conclusion of the proceedings under the last foregoing paragraph, the Committee shall consider every conviction alleged in the charge or charges, other than any conviction which has been admitted by the practitioner or as to which it has been announced that the conviction has not been proved, and shall determine whether it has been proved; and the Chairman of the Committee shall announce their determination in such terms as they may approve.

Further Proceedings on Proof of Conviction

17. Where the Committee have found that a conviction has been proved, the following shall be the procedure:—

(*a*) The Chairman shall invite the complainant or the Solicitor, as the case may be, to address the Committee, and to adduce evidence, as to the circumstances leading up to the conviction and as to the character and antecedents of the practitioner.

(*b*) The Chairman shall then invite the practitioner, if he appears, to address the Committee by way of mitigation and to adduce evidence as aforesaid.

(*c*) The Committee shall next consider and determine whether they should postpone judgment.

(*d*) If the Committee determine to postpone judgment, the judgment of the Committee shall stand postponed until such future meeting of the Committee as they may determine; and the Chairman of the Committee shall announce their determination in such terms as the Committee may approve.

(*e*) If the Committee determine not to postpone judgment, they shall further consider and determine whether, by reason of the conviction or convictions proved against the practitioner, they should direct his name to be erased

from the Register; and the Chairman of the Committee shall announce their determination in such terms as the Committee may approve.

Cases Relating to Conduct: Proof of Charges

18. In cases relating to conduct where the practitioner appears the following order of proceedings shall be observed as respects proof of the charge or charges:—

(*a*) If a complainant appears, he shall open the case against the practitioner. Subject to any directions given by the President or the Committee, if no complainant appears the Solicitor shall present the facts on which the complaint or information is based.

(*b*) Subject to the provisions of the foregoing paragraphs, the complainant or the Solicitor, as the case may be, shall adduce evidence of the facts alleged in the charge or charges, or of such of those facts as he is prepared to prove.

(*c*) If as respects any charge no evidence is so adduced, the Committee shall record and the Chairman shall announce a finding that the practitioner is not guilty of infamous conduct in a professional respect in relation to the matter to which that charge relates.

(*d*) At the close of the case against him the practitioner may, if he so desires, make either or both of the following submissions as respects any charge as to which evidence has been adduced, namely—

(i) that no sufficient evidence has been adduced upon which the Committee could find that the facts alleged in the charge have been proved;

(ii) that the facts alleged in the charge are not such as to constitute infamous conduct in a professional respect;

and where such a submission is made, any other party may reply thereto.

(*e*) If a submission is made under the last foregoing paragraph, the Committee shall consider and determine whether the submission should be upheld; and if the Committee determine to uphold such a submission as respects any charge, they shall record, and the Chairman shall announce, a finding that the practitioner is not guilty of infamous conduct in a professional respect in relation to the matters to which that charge relates.

(*f*) As respects any charge as to which evidence has been adduced, the practitioner may adduce evidence in answer to the charge and, whether he adduces evidence or not, may address the Committee. Only one address may be made under this paragraph, and, where the practitioner adduces evidence, shall be made either before that evidence is begun or after it is concluded.

(*g*) At the close of the case for the practitioner, the complainant or the Solicitor, as the case may be, may, with the leave of the Committee, adduce evidence to rebut any evidence adduced by the practitioner; and if he does so, the practitioner may again address the Committee.

(*h*) The complainant or the Solicitor, as the case may be, may address the Committee by way of reply to the practitioner's case—

(i) if oral evidence (not being evidence as to character) other than that of the practitioner himself has been given on the practitioner's behalf; or

(ii) with the leave of the Committee, where no such evidence has been given.

(*i*) Without prejudice to the last foregoing paragraph, if the practitioner has made a submission to the Committee on a point of law any other party shall have a right of reply limited to that submission.

19. Where in a case relating to conduct the practitioner does not appear, but the Committee have decided to proceed with the inquiry, paragraphs (*a*) to (*c*) of the last foregoing Rule shall apply but the rest of that Rule shall not apply.

20.—(1) On the conclusion of the proceedings under either of the two last foregoing Rules, the Committee shall consider and determine as respects each charge which remains outstanding which, if any, of the facts alleged in the charge have been proved to their satisfaction.

(2) If under paragraph (1) of this Rule the Committee determine, as respects any charge, either that none of the facts alleged in the charge has been proved to their satisfaction, or that such facts as have been so proved would be insufficient to support a finding of infamous conduct in any professional respect, the Committee shall record a finding that the practitioner is not guilty of such conduct in respect of the matters to which that charge relates, and the Chairman shall announce the finding of the Committee.

Cases relating to Conduct: Further Proceedings on Proof of Charge

21. If under the last foregoing Rule the Committee have determined, as respects any charge, that the facts, or some of the facts, alleged in the charge have been proved to their satisfaction, and the Committee have not on those facts recorded a finding of not guilty, the Chairman of the Committee shall invite the complainant or the Solicitor, as the case may be, to address the Committee and to adduce evidence as to the circumstances leading up to the facts in question, and as to the character and antecedents of the practitioner.

22. The Chairman shall then invite the practitioner, if he appears, to address the Committee by way of mitigation and to adduce evidence as aforesaid.

23.—(1) The Committee shall then consider and determine whether to postpone their finding upon the facts proved as aforesaid, and if they determine to do so their finding shall stand postponed to such further meeting of the Committee as they shall decide; and the Chairman shall announce their determination in such terms as they may approve.

(2) If the Committee determine not to postpone their finding, they shall consider and determine whether in relation to the facts proved as aforesaid they find the practitioner to have been guilty of infamous conduct in a professional respect; and if they determine that he has not been so guilty, they shall record a finding to such effect, and the Chairman shall announce the finding in such terms as they may approve.

(3) If the Committee determine that the practitioner has been guilty of infamous conduct in a professional respect, they shall further consider and determine whether to direct the practitioner's name to be erased from the Register, and the Chairman shall announce their determination in such terms as they may approve.

(4) Notwithstanding anything in the provisions of the foregoing paragraphs (1), (2) and (3) of this Rule, if the Committee think fit in any case the following provisions shall have effect in place of the provisions set out in those paragraphs:—

(*a*) The Committee shall first consider and determine whether in relation to the facts proved as aforesaid they find the practitioner to have been guilty of infamous conduct in a professional respect.

(*b*) If they determine that he has not been guilty of such conduct, they shall record a finding to such effect, and the Chairman shall announce the finding in such terms as they may approve.

(*c*) If the Committee determine that he has been guilty of such conduct in relation to the facts proved as aforesaid, they shall next consider and determine whether to postpone their judgment, and if they determine to do so their judgment shall stand postponed to such further meeting of the Committee as they shall decide, and the Chairman shall announce their determination in such terms as they may approve.

(*d*) If the Committee determine not to postpone their judgment, they shall forthwith consider and determine whether to direct the practitioner's name to be erased from the Register, and the Chairman shall announce their determination in such terms as they may approve.

Cases relating both to Conviction and to Conduct

24. Where, in the case of any inquiry, it is alleged against the practitioner both that he has been convicted and that he has been guilty of infamous conduct in a professional respect, the following shall be the procedure:—

(*a*) The Committee shall first proceed with every charge that the practitioner has been convicted until they have completed the proceedings required by Rule 16 of these Rules.

(*b*) The Committee shall then proceed with every charge that the practitioner has been guilty of such conduct as aforesaid until they have completed the proceedings required by Rules 18 to 20 of these Rules.

(*c*) The Committee shall then take any proceedings required by Rule 17 or by Rules 21 to 23 of these Rules, as the case may be, or, if in the circumstances of the case proceedings are required by all those Rules, the Committee shall take the proceedings under both sets concurrently.

Procedure after Postponement of Judgment or Finding

25.—(1) Where under any of the foregoing provisions of these Rules the judgment or finding of the Committee in any case stands postponed, the following shall be the procedure:—

(*a*) The Solicitor shall, not later than six weeks before the day fixed for the resumption of the proceedings, send to the practitioner a notice, which shall

(i) specify the day, time and place at which the proceedings are to be resumed and invite him to appear thereat;

(ii) unless the Committee have otherwise directed or the President otherwise directs, invite the practitioner to furnish the Registrar with the names and addresses of professional colleagues and other persons of standing to whom the Council will be able to apply for information as to their knowledge of his character or habits and his conduct since the time of the original inquiry; and

(iii) invite the practitioner to send to the Solicitor any statement or statutory declaration, whether made by the practitioner or not, relating to his conduct since the hearing of his case or setting out any material facts which have arisen since that hearing.

(*b*) The said notice shall be sent to the practitioner by post in a registered letter addressed to him at his address on the General Register or at his last known address, if that address differs from his address on the General Register and it appears to the Solicitor that such service will be more effective.

(*c*) A copy of the notice and of any statement or statutory declaration sent in accordance with the provisions of sub-paragraph (1) (*a*) (iii) of this Rule shall be sent to the complainant, if any, if he is a party to the proceedings before the Committee, and he may in turn, if he so desires, send to the Solicitor a statement or statutory declaration, whether made by himself or not, concerning any matter raised by the practitioner.

(2) Subject to the provisions of the next following paragraph, at the meeting at which the proceedings are resumed the Chairman of the Committee shall first invite the Solicitor to recall, for the information of the Committee, the position in which the case stands, and the Committee may—

(*a*) hear any other party to the proceedings,

(*b*) receive such further oral or documentary evidence in relation to the case, or to the conduct of the practitioner since the hearing,

as they think fit; and nothing herein contained shall be construed as preventing the receipt by the Committee of evidence as to any conviction, not being a conviction which is the subject of a charge before the Committee.

(3) If, since the original hearing, a new charge against the practitioner has been duly referred to the Committee, the Committee shall first proceed with that charge so far as is provided by Rule 16 or Rules 18 to 20, as the case may be.

(4) In a case relating to conviction, the Committee shall next consider and determine whether they should further postpone their judgment; and thereafter the provisions of paragraph (*c*), (*d*) and (*e*) of Rule 17 shall apply.

(5) In a case relating to conduct, the Committee shall next consider and determine whether they should further postpone their finding or judgment which stands postponed; and thereafter the relevant provisions of Rule 23 shall apply.

(6) In a case relating both to conviction and to conduct, the Committee shall take concurrently the proceedings required under the foregoing paragraphs (4) and (5).

(7) In a case where new charges are before the Committee, the Committee shall take concurrently the proceedings required under Rule 17 or Rules 21 to 23, as the case may be, and the proceedings required under one or more of the foregoing paragraphs (4)-(6) of this Rule.

26. The provisions of the foregoing Rule 25 shall apply to the proceedings in any case in which judgment or finding of the Committee stands further postponed.

27. Subject to the provisions of the Medical Act, 1956, and of paragraph 7 of the First Schedule to these Rules, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at the former meeting were not present at the resumed meeting, or that members present at the resumed meeting were not present at the former meeting.

Inquiries into Charges against two or more Practitioners

28. Nothing in this Part of these Rules shall be construed as preventing one inquiry being held into charges against two or more practitioners; and where such an inquiry is held the foregoing Rules shall apply with the necessary adaptations and subject to any directions given by the Committee as to the order in which proceedings shall be taken under any of those Rules by or in relation to the several practitioners.

Part III

Proceedings Under Section 35 (1) of the Act Relating to Fraudulent and Incorrect Entries in the Register

Submission of Complaints or Information: Notice of Inquiry

29. The power of the Disciplinary Committee under section thirty-five of the Act to order the erasure of an entry proved to have been fraudulently or incorrectly made shall be exercised in accordance with the following provisions:—

(*a*) No such order shall be made under that section except in consequence of an inquiry held in accordance with the provisions of this Part of these Rules into matters specified in a Notice of Inquiry sent in accordance with the said provisions to the respondent.

(*b*) Before such a Notice is sent, the matters out of which it arises must have been considered by the Penal Cases Committee and referred by them to the Disciplinary Committee for inquiry.

30. The matters which may be considered by the Penal Cases Committee for the purposes of paragraph (*b*) of the last foregoing Rule shall be matters referred to the Committee in accordance with the following provisions:—

(*a*) Where it appears to the Registrar (whether in consequence of a complaint in writing sent to the Council by any body or person, or in consequence of any other information coming to the notice of the Registrar) that a question arises whether an entry in the Register has been fraudulently or incorrectly made, the Registrar shall submit the matter to the President.

(*b*) Where such a matter is submitted to the President, he shall, unless it appears to him that the matter need not proceed further, determine what persons (if any) apart from the person to whom the entry purports to relate, ought to be afforded an opportunity of furnishing observations on the matter and of taking part in any subsequent inquiry. The person (if any) to whom the entry relates, and any other person or persons determined by the President as aforesaid, shall then be deemed to be a respondent for the purpose of proceedings under this Part of these Rules.

(*c*) The President shall then direct the Registrar to write to the respondent

(i) notifying him of the receipt of the complaint or information, and indicating the matters which appear to raise a question whether an entry in the Register has been fraudulently or incorrectly made;

(ii) informing him of the date of the next meeting of the Penal Cases Committee; and

(iii) inviting him to submit to the Council any observations which he may wish to offer.

(*d*) Subject to the provisions of the last foregoing paragraph the President may direct the Registrar to refer the case to the Penal Cases Committee, together with any observations then furnished by the respondent.

31.—(1) Where under the last foregoing Rule a case has been referred to the Penal Cases Committee, that Committee shall, having regard to any such observations furnished as aforesaid, determine, subject to the provisions of this Rule, either—

(*a*) that no inquiry shall be held in the case by the Disciplinary Committee, or

(*b*) that the case shall be referred to the Disciplinary Committee for inquiry either at the next meeting of that Committee or at such future meeting as the Penal Cases Committee or the President may determine.

(2) Where the Penal Cases Committee determine that no inquiry shall be held, the Registrar shall inform the complainant (if any) and the respondent of the decision of the Committee in such terms respectively as the Committee may direct.

(3) The provisions of paragraphs (3) and (4) of Rule 6 of these Rules shall apply to proceedings under this Rule.

32.—(1) As soon as may be after a case has been referred to the Disciplinary Committee under the foregoing provisions of this Part of these Rules for inquiry, the Solicitor shall send to the respondent a Notice (in this Part of these Rules referred to as a "Notice of Inquiry") which shall—

(*a*) specify the matters into which the inquiry is to be held;

(*b*) state the day, time and place at which the inquiry is proposed to be held; and

(*c*) request the respondent to state whether he intends to appear at the inquiry.

(2) Except with the agreement of the respondent, the inquiry shall not be fixed for any date earlier than twenty-eight days after the date of the Notice of Inquiry.

(3) A Notice of Inquiry shall be in such form as the President may determine to be appropriate to the circumstances of the case.

(4) A Notice of Inquiry shall be sent by post—

(*a*) to the person to whom the entry purports to relate, in a registered letter addressed to him at his address on the General Register, and/or any other

address, if it appears to the Solicitor that a letter so addressed is more likely to reach him;

(*b*) to any other person who is the subject of a determination under paragraph (*b*) of Rule 30 of these Rules, in a registered letter addressed as aforesaid if that person's name is registered in the General Register, and otherwise addressed to him at his last known address.

(5) A copy of these Rules shall be sent with any Notice of Inquiry.

(6) In any case where there is a complainant, a copy of the Notice of Inquiry shall be sent to him.

33.—(1) Rules 11 and 12 of these Rules shall apply for the purposes of this Part of these Rules, with the substitution, for the reference in the said Rule 12 to Rule 8 of these Rules, of a reference to the last foregoing Rule.

(2) Where there is a complainant, the Solicitor shall, on his request and on payment of the proper charges therefor, send to him copies of any observations or other communication sent to the Council by the respondent.

Proceedings at Inquiry

34. Where the respondent does not appear the Chairman shall call upon the Solicitor to satisfy the Committee that the Notice of Inquiry has been received by the respondent. If it does not appear to have been so received, the Committee may nevertheless proceed with the inquiry, if they think fit, on being satisfied that all reasonable efforts have been made to serve the Notice of Inquiry on the respondent.

35. Where the respondent appears, or where under the last foregoing Rule the Committee have decided to proceed with the inquiry, the following order of proceedings shall be observed:—

(*a*) The complainant, or, if no complainant appears, the Solicitor shall present the facts of the case and adduce evidence.

(*b*) The respondent, if he appears, may then adduce evidence and, whether he adduces evidence or not, may address the Committee. Only one address may be made under this paragraph and, where the respondent adduces evidence, shall be made either before that evidence is begun or after it is concluded.

(c) The complainant or the Solicitor, as the case may be, may address the Committee by way of reply to the respondent's case—

(i) if oral evidence (not being evidence as to character) other than that of the respondent himself has been given on the respondent's behalf; or

(ii) with the leave of the Committee, where no such evidence has been given.

36.—(1) On the conclusion of the proceedings under the last foregoing Rule (or under that Rule as modified by Rule 37 of these Rules) the Committee shall consider and determine whether the entry has been proved to their satisfaction to have been made incorrectly; and if they determine that it was so made, they shall further consider and determine whether the entry was made incorrectly but not fraudulently, or whether it has been proved to their satisfaction to have been made fraudulently.

(2) If under the last foregoing paragraph the Committee determine that the entry has not been proved to their satisfaction to have been made incorrectly, the Chairman of the Committee shall announce their determination in such terms as the Committee may approve.

(3) If under paragraph (1) of this Rule the Committee determine that the entry has been proved to their satisfaction to have been made incorrectly but not fraudulently, or to have been made fraudulently, they shall then further consider and determine whether they should order the entry to be erased from

the Register; and if they so order they shall thereupon make an order in writing, under the hand of the Chairman of the Committee, that the entry, having been proved to the satisfaction of the Committee to have been made—

(*a*) incorrectly but not fraudulently, or (as the case may be),

(*b*) fraudulently,

shall be erased from the Register; and the Chairman shall announce the determination in such terms as the Committee may approve.

(4) If it is proved to the satisfaction of the Committee that the entry was made incorrectly, but it is not so proved that the entry was made fraudulently, the Committee may determine accordingly notwithstanding that in the Notice of Inquiry the entry was alleged to have been made fraudulently; but the Committee shall not determine that an entry was made fraudulently if it was not alleged to have been so made in the Notice of Inquiry.

(5) Where an inquiry relates to two or more entries, the Committee may proceed under the foregoing provisions of this Rule in respect of those entries either separately or taken together, as the Committee may think fit, and where an inquiry relates to an entry specifying two or more particulars, the Committee may, if they think fit, proceed thereunder in respect of so much of the entry as specifies each of those particulars as if it were a separate entry.

37. In a case where the expression "the respondent" relates to more than one person:—

(*a*) Paragraph (*c*) of Rule 30, Rule 32 and Rule 34 of these Rules shall all apply separately to each such person.

(*b*) Rule 35 of these Rules shall apply only if all those persons appear or the Committee have decided under the said Rule 34 to proceed with the inquiry.

(*c*) Paragraphs (*b*) and (*c*) of the said Rule 35 shall apply in relation to each of those persons as if he alone were the respondent; and where more than one of those persons appears and wishes to adduce evidence or address the Committee, the Committee shall determine the order in which they shall proceed under the said paragraph (*b*).

PART IV

APPEALS UNDER SECTION 42 (5) OF THE ACT FROM REFUSAL TO REGISTER QUALIFICATIONS

38. As respects appeals, under subsection (5) of section 42 of the Medical Act, 1956, from a decision of the Registrar or of a Registrar of a Branch Council refusing to register a qualification, the following provisions shall have effect:—

(*a*) The applicant for the registration of the qualification shall give notice to the Council of his appeal from the decision of the Registrar in question, stating the decision and the grounds on which he appeals therefrom.

(*b*) Where any such notice of appeal has been given the Registrar in question shall, within such time as the President may direct, prepare a statement, in such form and containing such particulars as the President may direct, of the reasons for his decision, and the Registrar of the Council shall send a copy of the statement to the appellant, together with a notification of the date, time and place at which the Disciplinary Committee will determine the appeal.

(*c*) Within fourteen days of the service on him of the notification required by the last foregoing paragraph an appellant may give notice to the Council that he wishes to be heard in support of his appeal.

(*d*) The Disciplinary Committee, in determining any such appeal as aforesaid, shall if notice has been given under the last foregoing paragraph permit the appellant to appear before them, and may if they think fit permit the Registrar from whose decision the appeal is brought, or the Registrar of the Council, or the Solicitor, to support the decision of the Registrar in question.

(*e*) Subject to the foregoing provisions of this Rule, the procedure of the Disciplinary Committee in connection with the appeal shall be such as they may determine.

PART V

APPLICATIONS FOR RESTORATION: SECTIONS 34 AND 35 (2) OF THE ACT

39. Where under section thirty-four of the Act a person applies for the restoration of his name to the Register the following provisions shall have effect—

(*a*) Subject to any directions given by the President in special circumstances, the application shall not be considered by the Committee unless and until it has been supported by a statutory declaration made by the applicant as nearly as possible in the Form No. 1, and by a Certificate of Identity and Good Character given by a fully registered practitioner as nearly as possible in the Form No. 2, set out in the Third Schedule to these Rules. The applicant may also submit certificates and other documentary evidence as to his conduct since his name was erased from the Register.

(*b*) At the hearing of the application, the Chairman shall first invite the Solicitor to recall the circumstances in which the applicant's name was erased from the Register, and, if he so desires, to address the Committee and to adduce evidence as to the conduct of the practitioner since that time.

(*c*) The Chairman shall next invite the applicant to address the Committee, and, if he so desires, to adduce evidence as to his conduct since his name was erased from the Register.

(*d*) The Committee may, if they think fit, receive observations on the application from the University or Body or Bodies which granted the qualifications by virtue of which the applicant was originally registered.

(*e*) The Committee may, if they think fit, afford an opportunity of being heard on the application to any Body or person on whose complaint the applicant's name was erased from the Register.

(*f*) Subject to the foregoing provisions of this Rule, the procedure of the Committee in connection with such applications shall be such as they may determine.

40. In connection with applications made under subsection (2) of section thirty-five of the Act, the procedure of the Committee shall be such as they may determine.

PART VI

GENERAL

Procedure

41. The Penal Cases Committee and the Disciplinary Committee may adjourn any of their proceedings or meetings from time to time as they think fit.

42.—(1) Subject to the provisions of subsection (2) of section thirty-eight of the Act, and of any Rules made thereunder, the Committee may deliberate in camera (with or without the Legal Assessor) at any time and for any purpose during or after the hearing of any proceedings.

(2) Save as aforesaid all proceedings before the Committee shall take place in the presence of all parties thereto who appear therein and shall be held in public except as provided by the following paragraph hereof.

(3) Where in the interests of justice or for any other special reason it appears to the Committee that the public should be excluded from any proceedings or part thereof, the Committee may direct that the public shall be so excluded; but a direction under this paragraph shall not apply to the announcement in pursuance of any of these Rules of a determination of the Committee.

Evidence

43.—(1) Where any practitioner or applicant has supplied to the Committee or to the Registrar on their behalf the name of any person to whom reference may be made confidentially as to his character or conduct, the Committee may consider any information received from such person in consequence of such reference without disclosing the same to the practitioner or applicant.

(2) The Committee may receive as evidence any such oral, documentary or other matter as, after consultation with the Legal Assessor, they may think fit;

Provided that, where any matter is tendered as evidence which would not be admissible as such if the proceedings were criminal proceedings in England, they shall not receive it unless, after consultation with the Legal Assessor, they are satisfied that their duty of making due inquiry into the case before them makes its reception desirable.

(3) The Committee may cause any person to be called as a witness in any proceedings before them whether or not the parties consent thereto. Questions may be put to any witness by the Committee through the Chairman or by the Legal Assessor with the leave of the Chairman.

Voting

44. The following provisions shall have effect as to the taking of the votes of the Disciplinary Committee on any question to be determined by them:—

(1) The Chairman of the Committee shall call upon the members present to signify their votes by raising their hands, and shall declare that the question appears to him to have been determined in the affirmative or, as the case may be, in the negative.

(2) Where the result so declared by the Chairman is challenged by any member, the Chairman shall—

(*a*) call upon each member severally to declare his vote,

(*b*) announce his own vote, and

(*c*) announce the number of members of the Committee who have voted each way and the result of the vote.

(3) Where the votes are equal, the question shall be deemed to have been resolved in favour of the practitioner, respondent, appellant or applicant, as the case may be.

For the purposes of this paragraph a decision to postpone judgment or postpone a finding shall be taken to be in favour of a person unless he has indicated to the Committee that he is opposed to postponement.

Supplementary

45.—(1) Any party being a body corporate or an unincorporated body of persons may appear by their clerk or other officer duly appointed for the purpose or by Counsel or Solicitor.

(2) Any party being an individual may appear either in person or by Counsel or Solicitor, or by any officer or member of any organisation of which he is a member, or by any member of his family.

46. Without prejudice to any requirement of these Rules as to the service of documents by registered post, any notice authorised or required by these Rules may be sent by post.

47.—(1) A shorthand-writer shall be appointed by the Committee to take shorthand notes of their proceedings.

(2) Any party to proceedings of the Committee shall, on application to the Solicitor and on payment of the proper charges, be furnished by the Solicitor with a transcript of the shorthand notes of any part of the proceedings at which the parties were entitled to be present.

48. Subject to the provisions of paragraph 7 of the First Schedule to these Rules, anything authorised or required by these Rules to be done by the President may, if the President is absent or unable to act, be done by any other member or members of the Council authorised in that behalf by the President or (if the President be unable to give authority) by the Committee concerned.

49. The Medical Disciplinary Committee (Procedure) Rules, 1951(a), are hereby revoked without prejudice to anything done under the said Rules, or any of them, before the coming into force of these Rules.

Dated the 4th day of June, 1958.

FIRST SCHEDULE

Provisions as to Constitution and Meetings of Penal Cases Committee, and as to Meetings of Disciplinary Committee

Constitution and Meetings of Penal Cases Committee

1.—(1) For the purpose of performing the functions specified in these Rules, there shall continue to be a Committee of the Council, known as the Penal Cases Committee.

(2) The Penal Cases Committee shall consist of the person who for the time being is President and of five other members (hereinafter referred to as "the elected members") elected as hereinafter provided.

(3) Of the elected members one shall be a person who is neither fully registered nor the holder of any qualification registrable under the Act, and the others shall be fully registered persons of whom two shall be members of the Branch Council for England and Wales, one shall be a member of the Branch Council for Scotland and one shall be a member of the Branch Council for Ireland.

(4) At any meeting of the Penal Cases Committee the President, or in his absence such member of the Committee as the Committee may choose, shall be Chairman.

(5) The validity of any proceeding of the Penal Cases Committee shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

2.—(1) Subject to the provisions of this Schedule, the elected members of the Penal Cases Committee shall be elected by the Council.

(2) Subject as aforesaid, elections to the Penal Cases Committee shall take place at the first session of the Council in every year held after the first day of May, and elected members of the Penal Cases Committee shall hold office until the next election of such members and shall be eligible for re-election.

(3) If any of the elected members of the Penal Cases Committee vacates office otherwise than by the expiry of his term of office, the vacancy shall be filled by co-option by the other members of the Committee from among the members of the Council, and the person co-opted shall hold office until the end of the term of office of the person in whose place he was co-opted.

(4) Notwithstanding anything in this Schedule, an elected member of the Penal Cases Committee shall, upon vacating office as a member of the Council, also cease to be a member of the Committee:

Provided that for the purposes of this paragraph a member of the Council shall not be deemed to have vacated office as a member of the Council if he has again been nominated, appointed or elected to be a member thereof not later than the day of his vacating office.

3.—(1) Elections for membership of the Penal Cases Committee shall be by ballot.

(2) Every member of the Council may vote in the election of members of the Penal Cases Committee from each of the Branch Councils, and shall have one vote for each vacancy to be filled.

(a) S.I. 1951/665 (1951 I, p. 1278).

(3) A member of the Council shall not give more than one vote for any one candidate at an election, or vote for more than two candidates being fully registered persons standing as members of the Branch Council for England and Wales or for more than one candidate being a registered medical practitioner standing as a member of each of the other Branch Councils.

4. The quorum of the Penal Cases Committee shall be three.

5. The Penal Cases Committee shall meet at such interval before each meeting of the Disciplinary Committee as the President may determine, and at such time and place as he may determine.

Meetings of Disciplinary Committee

6.—(1) Except in so far as the Committee or the President may otherwise direct, the Disciplinary Committee shall meet twice in every year, at such times as the President shall determine.

(2) Without prejudice to the last foregoing paragraph, a meeting of the Disciplinary Committee may be summoned at any time by direction of the President.

(3) Meetings of the Disciplinary Committee shall, except in so far as the President may otherwise direct, be held at the offices of the Council.

7. Without prejudice to the provisions of sub-paragraph (2) of paragraph 3 of the Fourth Schedule to the Medical Act, 1956 (which provides for arrangements for securing that except in certain circumstances not more than nine members of the Disciplinary Committee shall attend for the hearing of any case) a person, other than the President, shall not, if he has acted as a member of the Penal Cases Committee when that Committee has in accordance with any of the foregoing provisions of these Rules referred any matters to the Disciplinary Committee, act as a member of the Disciplinary Committee in relation to those matters.

8. Members of the Disciplinary Committee shall be summoned to meetings of the Committee by the sending of notice thereof by the Registrar or a person authorised by the President to act in place of the Registrar.

SECOND SCHEDULE

NOTICE OF THE PROPOSED HOLDING OF AN INQUIRY

(Date)

SIR/MADAM,

On behalf of the General Medical Council notice is hereby given to you that in consequence of [a complaint made against you to the Council] *or* [information received by the Council] an inquiry is to be held into the following charge [charges] against you:—

(*If the charge relates to conviction*) That you were on the day of at (*specify court recording the conviction*) convicted of (*set out particulars of the conviction in sufficient detail to identify the case*).

Or

(*If the charge relates to conduct*) That, being registered under the Medical Acts, you (*set out briefly the facts alleged*): and that in relation to the facts alleged you have been guilty of infamous conduct in a professional respect.

(*Where there is more than one charge, the charges are to be numbered consecutively, charges relating to conviction being set out before charges relating to conduct.*)

Notice is further given to you that on [*day of the week,*] the day of , 19 , a meeting of the Disciplinary Committee will be held at , at p.m., to consider the above-mentioned charge [charges] against you, and to determine whether or not they should direct the Registrar to erase your name from the Register, pursuant to section 33 of the Medical Act, 1956.

You are hereby invited to answer in writing the above-mentioned charge [charges] and also to appear before the Committee at the place and time specified above, for the purpose of answering it [them]. You may appear in person or by Counsel or Solicitor, or by any officer or member of any organisation of which you are a member, or by any member of your family. The Committee have power, if you do not appear, to hear and decide upon the said charge [charges] in your absence.

Any answer, admission, or other statement or communication, which you may desire to make with respect to the said charge [charges], should be addressed to the Solicitors to the Council.

If you desire to make any application that the inquiry should be postponed, you should send the application to the Solicitors to the Council as soon as may be, stating the grounds on which you desire a postponement. Any such application will be considered by the President of the General Medical Council in accordance with Rule 11 of the Disciplinary Committee (Procedure) Rules, 1958.

A copy of the Disciplinary Committee (Procedure) Rules, 1958, is sent herewith for your information.

(Signed)
Solicitors to the General Medical Council.

THIRD SCHEDULE

STATUTORY DECLARATION AND CERTIFICATE REQUIRED UNDER RULE 39(a)

Form No. 1

STATUTORY DECLARATION BY APPLICANT

(*N.B. This declaration must be made before a Commissioner for Oaths or before a Justice of the Peace.*)

I, the undersigned, ...
now holding the qualification(s) of .....
do solemnly and sincerely declare as follows:—

1. I am the person formerly registered as a medical practitioner with the name ..... and with the qualification(s) of .....
and I hereby apply for the restoration of my name to the Register.

2. At an inquiry held on the ..... day of .....
nineteen hundred and ..... the Disciplinary Committee directed my name to be erased from the Register, and the offence for which the Committee directed the erasure of my name was .....
.....

3. Since the erasure of my name from the Register I have been residing at .....
and my occupation has been .....
.....

4. It is my intention if my name is restored to the Register to
.....
.....
.....

5. The grounds of my application are .....
.....
.....

Signed.....

Declared at .....
on .....
before me, ...
A Commissioner for Oaths

Form No. 2

CERTIFICATE OF IDENTITY AND GOOD CHARACTER

(*N.B. This Certificate must be signed by a fully registered practitioner.*)

I, ...
of .....
certify as follows:—

1. I have read the statutory declaration made on the .....
day of ....., nineteen hundred and .....
by .....

2. The said .....
is the same person as .....
who was formerly registered as a medical practitioner with the following address and qualification(s):.....
.....
.....

3. I have been and am well acquainted with the said
.....
both before and since his name was erased from the Register, and I believe him to be now a person of good character, and the statements in the said declaration are, to the best of my knowledge, information and belief, true.

Signed .....
Registered Address .....
.....
Registered Qualification(s) .....
.....
Date .....

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

The rules approved by this Order revoke and replace with certain amendments the Medical Disciplinary Committee (Procedure) Rules, 1951, which have hitherto regulated procedure in connection with erasure of names from the register of medical practitioners for conviction of crime or for infamous conduct, or on grounds of fraud or error, and, in certain circumstances, the restoration of names to the register.

The principal amendments are as follows:—

(*a*) the rule relating to the reception of evidence by the Committee has been widened and clarified (r. 43).

(*b*) amendments in pursuance to the Medical Act, 1956, have been made throughout the rules;

(*c*) the opportunity has been taken of making a number of other amendments, and in particular—

(i) provisions in Parts II and III relating to the issue of notices of inquiry have been clarified;

(ii) the Committee are now empowered to find a practitioner guilty of infamous conduct before they determine whether to postpone judgment (r. 23); and

(iii) the procedure for making application for restoration has been prescribed more fully (r. 39).

MERCHANDISE MARKS

1958 No. 2183

The Merchandise Marks (Imported Goods) No. 4 Order, 1930, Amendment Order, 1958

Laid before Parliament in draft
Made - - - - 19*th December,* 1958
Coming into Operation 20*th December,* 1958

At the Court at Buckingham Palace, the 19th day of December, 1958

Present,

The Queen's Most Excellent Majesty in Council

Whereas the question whether the Merchandise Marks (Imported Goods) No. 4 Order, 1930(a), as amended(b) (hereinafter referred to as "the principal Order"), should be further amended in the manner hereinafter appearing was referred to the appropriate standing committee appointed under the Merchandise Marks Act, 1926(c);

(a) S.R. & O. 1930/527 (Rev. XIII, p. 502: 1930, p. 1027).
(b) S.R. & O. 1937/720 (Rev. XIII, p. 502: 1937, p. 1684).
(c) 16 & 17 Geo. 5. c. 53.