STATUTORY INSTRUMENTS

1964 No. 1203

PROFESSIONS SUPPLEMENTARY TO MEDICINE

The Professions Supplementary to Medicine (Disciplinary Committees) (Procedure) Rules Order of Council 1964

Made - - - - *27th July* 1964

At the Council Chamber, Whitehall, the 27th day of July 1964

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

Whereas in pursuance of paragraph 3(1) of Schedule 2 to the Professions Supplementary to Medicine Act 1960(a) the Council for Professions Supplementary to Medicine has made Rules entitled " The Disciplinary Committees (Procedure) Rules 1964 " :

And whereas by paragraph 3(4) of the said Schedule 2 such Rules shall not come into force until confirmed by Order of the Privy Council :

Now, therefore, Their Lordships, having taken the said Rules into consideration, are hereby pleased to confirm the same as set out in the Schedule to this Order.

This Order may be cited as the Professions Supplementary to Medicine (Disciplinary Committees) (Procedure) Rules Order of Council 1964.

W. G. Agnew.

(a) 8 & 9 Eliz. 2. c. 66.

SCHEDULE

THE DISCIPLINARY COMMITTEES (PROCEDURE) RULES 1964

The Council for Professions Supplementary to Medicine, in exercise of its powers under paragraph 3(1) of Schedule 2 to the Professions Supplementary to Medicine Act 1960 and after consultation with the Boards in accordance with paragraph 3(3) of the said Schedule hereby makes the following Rules:—

PART I. PRELIMINARY: CITATION AND INTERPRETATION

1. These Rules may be cited as the Disciplinary Committees (Procedure) Rules 1964.

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

"the Act" means the Professions Supplementary to Medicine Act 1960;

"Board" means a Board constituted in accordance with the provisions of the Act;

"case relating to conduct" means a case which has been referred by an investigating committee to a Committee where it is alleged that the respondent has been guilty of infamous conduct in a professional respect;

"case relating to conviction" means a case which has been referred by an investigating committee to a Committee where it is alleged that the respondent has been convicted by any court in the United Kingdom of a criminal offence;

"case relating to a fraudulent entry" means a case which has been referred by an investigating committee to a Committee where it is alleged that the name of a person has been fraudulently entered on a register maintained by a Board;

"Chairman" has the meaning assigned to it in Rule 3 of these Rules;

"Committee" means a disciplinary committee set up by a Board in pursuance of section 8(1) of the Act;

"complainant" means any person by whom a complaint has been made to the Council for Professions Supplementary to Medicine or to a Board in a case relating to conduct, a case relating to conviction, or a case relating to fraudulent entry;

"Investigating Committee" means the committee set up by a Board in pursuance of section 8(1) of the Act;

"legal assessor" means an assessor appointed by the Council for Professions Supplementary to Medicine, or by a disciplinary committee in pursuance of paragraph 4(2) of Schedule 2 to the Act;

"party" in relation to proceedings before a Committee means—

(*a*) in any case the respondent and the complainant (if any) provided that the complainant shall not be deemed to be a party to any proceeding if he takes part therein only as a witness; and

(*b*) in a case relating to a fraudulent entry, any person who is alleged to have been a party to the alleged fraud;

"register" means a register maintained by a board under section 2 of the Act;

"respondent"

(*a*) in relation to a case relating to conduct or to conviction means the person against whom the allegation is made; and

(*b*) in a case relating to fraudulent entry, means the person whose name it is alleged is fraudulently entered in the register;

"Solicitor" means the Solicitor nominated by a Board to act as its Solicitor for the purposes of these Rules.

(2) For the purposes of these Rules a reference, in relation to a case, to the Committee or the Solicitor shall be construed as a reference to the Committee of the Board by which the respondent in the case is registered or to the Solicitor nominated by the Board.

(3) 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. *Chairman*

At any meeting of the Committee the Chairman of the Committee shall be the Chairman of the Board or, in his absence, such member of the Committee as the Committee may choose.

PART II. CASES RELATING TO CONDUCT AND CASES RELATING TO CONVICTION

Application of Rules

The provisions of this Part and Part V of these Rules shall have effect where a case relating to conduct or a case relating to conviction is referred to the Committee.

4. *Notice of Inquiry*

(1) The Solicitor shall, as soon as may be after a case has been referred to the Committee by the Investigating Committee, serve upon the respondent a notice of inquiry as nearly as may be in the form set out in the Appendix to these Rules specifying the matters alleged against the respondent in the form of a charge or charges, and stating the day, time and place at which the Committee will hold an inquiry into these matters, together with a copy of these Rules, by post in a registered letter addressed to the respondent in accordance with the provisions of subsection (2) of section 13 of the Act.

(2) If there is a complainant, the Solicitor shall send him a copy of the notice of inquiry and a copy of these Rules.

(3) The Committee shall not hold an inquiry unless a notice of inquiry has been served upon the respondent in accordance with the foregoing provisions of this Rule, provided always that 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 are satisfied that all practical steps have been taken to serve the notice and that the substance of the matters alleged therein against the respondent and the likelihood of an inquiry resulting therefrom are well known to him.

(4) Except with the agreement of the respondent, the inquiry shall not be held on any day earlier than twenty-eight days after the date of posting the notice of inquiry.

5. *Postponement or Cancellation of Inquiry.*

(1) The Chairman, of his own motion or upon the application of any party thereto, may postpone the hearing of an inquiry, or may refer the matter to the Investigating Committee for further consideration as to whether an inquiry should be held.

(2) Where before the inquiry opens it appears to the Chairman, or at any stage of the proceedings it appears to the Committee, that a notice of inquiry is defective, he or they shall cause the notice to be amended, unless it appears to him or them that the required amendment cannot be made without injustice, or, if he or they consider that the circumstances in which an amendment is made require it, may direct that the amended notice shall be served on the respondent, and that the inquiry shall be postponed.

(3) The Solicitor shall, as soon as may be, give to all parties to whom a notice of inquiry has been sent notification of any decision to postpone or not to hold an inquiry, informing them of the date fixed for the hearing of a postponed inquiry.

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

6. *Access to Documents.*

Upon application by any party to the inquiry the Solicitor shall send to that party a copy of any statutory declaration, complaint, answer, admission, explanation or other similar document sent to the Board by any party to the inquiry.

7. *The Reading of the Charge.*

(1) The charge shall be read in the presence of the respondent, and of the complainant if one appears: Provided that if the respondent does not appear but the Committee nevertheless decide that the inquiry shall proceed the charge shall be read in his absence.

(2) As soon as the charge has been read the respondent may, if he so desires, object to the charge, or to any part of it, in point of law, and the complainant or if no complainant appears the Solicitor may reply to any such objection; and, if any such objection is upheld, no further proceedings shall be taken on that charge or on that part of the charge to which the objection relates.

8. *Proof of the facts alleged in cases relating to conviction.*

(1) In cases relating to conviction, the following order of proceedings shall be observed concerning proof of facts alleged in the charge or charges:—

(*a*) If the respondent appears, the Chairman shall ask him as to every conviction alleged in the charge or charges, whether he admits it.

(*b*) The complainant, or if no complainant appears the Solicitor

(i) if the respondent has not appeared, or has not admitted every conviction alleged, shall adduce evidence of any conviction not admitted, and

(ii) shall, whether the conviction alleged is admitted or not, address the Committee, and may adduce evidence, with regard to the nature and circumstances of the offence, to show that if the convictions alleged are proved or admitted the respondent is unfit by reason thereof to have his name on the register.

(*c*) If no evidence is adduced concerning any particular conviction which has not been admitted by the respondent, the Chairman shall thereupon announce that the charge in relation to that conviction has not been proved.

(2) (*a*) Where the respondent appears, he may then adduce evidence concerning any conviction which he has not admitted, on the question whether he was convicted as alleged, and may address the Committee on that question.

(*b*) The respondent may also address the Committee, and adduce evidence with regard to the nature and circumstances of the offence, to show that he is not unfit by reason thereof to have his name on the register.

(*c*) Except with the leave of the Committee, only one address may be made under this paragraph, and where the respondent adduces evidence that address shall be made either before that evidence is begun, or after it is concluded.

(*d*) Where evidence is adduced under this paragraph, the complainant, or if no complainant appears the Solicitor, may adduce evidence to rebut such evidence.

(3) On the conclusion of proceedings under the foregoing paragraphs of this Rule the Committee shall consider whether the facts alleged in the charge or charges have been proved, and shall determine whether the respondent has been convicted of an offence to which paragraph (*a*) of subsection (1) of section 9 of the Act applies. The Committee shall then record, and the Chairman shall announce, their findings.

9. *Proof of the facts alleged in cases relating to conduct.*

(1) In cases relating to conduct the following order of proceedings shall be observed concerning proof of the facts alleged in the charge or charges:—

(*a*) If the respondent appears, the Chairman shall ask him concerning each fact alleged in the charge or charges, whether he admits it.

(*b*) The complainant, or if no complainant appears the Solicitor,

(i) if the respondent does not appear, or has not admitted all the facts alleged in the charge or charges, shall adduce evidence of the facts not admitted, and

(ii) whether the facts alleged are admitted or not, shall address the Committee to show that if such facts are proved the respondent is by reason thereof unfit to have his name on the register.

(*c*) If no evidence is adduced concerning any particular charge on which there has been no admission of fact by the respondent, the Committee shall record a finding on this charge in favour of the respondent, and the Chairman shall announce their findings in the appropriate terms.

(2) (*a*) At the close of the case against him, the respondent may, if he so desires, make either or both of the following submissions to any charge concerning which evidence has been adduced, namely

(i) that no sufficient evidence has been adduced upon which the Committee could find that all or any of 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.

Where any such submission is made, the complainant, or if no complainant appears the Solicitor, may reply thereto.

(*b*) If a submission is made under the last foregoing sub-paragraph in respect of any charge, the Committee shall consider and determine whether it should be upheld, and shall record, and the Chairman shall announce, their finding in the appropriate terms.

(*c*) the respondent may adduce evidence in answer to any charge concerning which evidence has been adduced and, whether he adduces evidence or not, may address the Committee.

(*d*) At the close of the case for the respondent the complainant, or if no complainant appears the Solicitor, may with the leave of the Committee adduce evidence to rebut any evidence adduced by the respondent; and if he does so, the respondent may make a further address limited to the rebutting evidence.

(*e*) The complainant, or if no complainant appears the Solicitor, may address the Committee by way of reply to the respondent's case either:

(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.

(*f*) At the conclusion of the complainant's or the solicitor's address the respondent may address the Committee by way of final reply.

(*g*) Without prejudice to the last foregoing sub-paragraph, if the respondent has made a submission to the Committee on a point of law the complainant, or if no complainant appears the Solicitor, shall have the right of reply limited to that submission.

(3) On the conclusion of proceedings as aforesaid the Committee shall consider and determine as respects each charge which remains outstanding whether the facts alleged therein have been proved to their satisfaction and shall record, and the Chairman shall announce, their findings in the appropriate terms.

(4) If the Committee record, and the Chairman announces, a finding under this Rule in favour of the respondent, the appropriate terms thereof shall be, that in respect of the matters to which the charge relates the respondent is not guilty of infamous conduct in a professional respect.

(5) If the Committee record, and the Chairman announces, a finding under this Rule against the respondent, the appropriate terms thereof shall be:—

That in respect of the matters to which the charge relates the respondent is guilty of infamous conduct in a professional respect.

10. *Procedure upon proof of the facts alleged*

(1) Where the Committee have found in a case relating to conviction that the facts alleged in a charge have been proved, the Chairman shall invite the complainant, or if no complainant appears the Solicitor, to address the Committee and to adduce evidence as to the circumstances leading up to the conviction and as to the character and previous history of the respondent. The Chairman shall then invite the respondent to address the Committee by way of mitigation and to adduce evidence as aforesaid.

(2) Where in a case relating to conduct the Committee have recorded a finding against the respondent, the Chairman shall invite the complainant, or if no complainant appears the Solicitor, to address the Committee and to adduce evidence as to circumstances leading up to the facts found proved and as to the character and previous history of the respondent. The Chairman shall then invite the respondent to address the Committee by way of mitigation and to adduce evidence as aforesaid.

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

(4) If the Committee determine to postpone judgment, the judgment of the Committee shall stand postponed for a period not exceeding 2 years; and the Chairman shall announce their determination in such terms as the Committee may approve.

(5) If the Committee determine not to postpone judgment, they shall determine whether by reason of their finding against the respondent the Registrar shall be directed to remove the name of the respondent from the register, and the Chairman shall announce their determination in such terms as they may approve.

11. *Procedure in cases falling under both Rule* 8 *and Rule* 9

Where the charges against the respondent fall within the provisions both of Rule 8 and of Rule 9, the Committee shall proceed upon the charge or charges of each kind separately under Rule 8 of these Rules where the charge relates to a conviction or under Rule 9 of these Rules where the charge relates to conduct and shall then proceed under so much of Rule 10 of these Rules as may be applicable either upon the charge or charges of each kind separately or upon the charges of all kinds concurrently, as the circumstances of the case may require.

12. *Procedure upon postponement of judgment*

(1) Where under the foregoing provisions of these Rules the judgment 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 respondent 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 Chairman otherwise directs, invite the respondent to furnish the Registrar with the names and addresses of persons to whom reference may be made confidentially or otherwise concerning his character and conduct, and

(iii) invite the respondent to send to the Solicitor, not less than three weeks before the day fixed for the resumption of proceedings, a copy of any statement or statutory declaration, whether made by the respondent or not, relating to his conduct or other matters since the hearing of his case or setting out any material facts which have arisen since that hearing.

(*b*) A copy of the notice and of any statement or statutory declaration sent in accordance with the provisions of the last foregoing sub-paragraph shall be sent to the complainant, if any, if he is a party to the proceedings, 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 respondent.

(*c*) At the meeting at which the proceedings are resumed the Chairman shall first invite the Solicitor to recall, for the information of the Committee, the postition in which the case stands and the Committee may then receive further oral or documentary evidence in relation to the case, or to the conduct of the respondent since the hearing, and shall hear any party to the proceedings who desires to be heard.

(*d*) The Committee shall then consider and determine whether they should further postpone their judgment on the charges on which their judgment was previously postponed; and if the Committee determine further to postpone judgment, the judgment of the Committee shall stand postponed for a period not exceeding 2 years; and the Chairman shall announce their determination in such terms as they may approve. The provisions of this Rule shall apply to any case in which judgment is further postponed.

(*e*) If the Committee determine that judgment shall not be further postponed paragraph (5) of Rule 10 of these Rules shall apply.

(2) At any resumed proceedings any new charge alleged against the respondent in accordance with these Rules shall first be dealt with in accordance with such of Rules 8 to 9, and so much of Rule 10, as may be applicable and if the Committee determine not to postpone judgment in respect of any such new charge, the Committee may apply paragraph (5) of Rule 10 simultaneously to the new charge and the charge in respect of which they had postponed judgment.

(3) Nothing in the last foregoing paragraph shall prevent the Committee from receiving evidence at any resumed proceedings of any conviction recorded against the respondent which has not been made the subject of a charge under these Rules.

(4) Subject to the provisions of the Act, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at any former meeting were not present at the resumed meeting.

PART III

CASES RELATING TO FRAUDULENT ENTRIES IN REGISTER

Application of Rules

The provisions of this Part and Part V of these Rules shall apply where a case of fraudulent entry is referred to the Committee.

13. *Procedure*

(1) Where any question whether a name has been fraudulently entered in the register has been referred to the Committee the Solicitor shall send to the respondent a notice of inquiry specifying the nature of the fraud alleged, stating the day, time and place at which the Committee will hold an inquiry into the question, inviting his attendance at such inquiry, and containing such further information as the nature of the case may require. The provisions of Rule 4 shall apply as though such notice were a notice of inquiry such as is mentioned in that Rule.

(2) A copy of the notice shall be sent to each party in the case and to such other persons (if any) as the Chairman may direct.

(3) The inquiry shall proceed as though the question were a charge contained in a notice of inquiry in a case relating to conduct and the provisions of Rule 9 shall accordingly apply thereto so far as may be.

(4) If the Committee determine that the entry has been proved to their satisfaction to have been fraudulently made, they shall make an order in writing, under the hand of the Chairman, that the entry having been proved to the satisfaction of the Committee to have been fraudulently made shall be removed from the register.

PART IV

RESTORATION OF NAMES AFTER REMOVAL

14. *Procedure*

Where an application is made by a person whose name has been removed from a register in pursuance of a direction made under the provisions of section 9 of the Act, the following provisions shall have effect:—

(i) The Committee shall afford to the applicant an opportunity of being heard by the Committee and of adducing evidence.

(ii) The Committee may require such evidence as they think necessary concerning the identity or character of the applicant, or his conduct since his name was removed from the register, and for this purpose may receive written or oral evidence.

Subject to the foregoing provisions of this Rule, and to Part V of these Rules, the procedure of the Committee in connection with the application shall be such as they may determine.

PART V

GENERAL

15. *Hearing and Adjournment*

(1) Subject to the provisions of paragraph 4 of Part II of Schedule 2 to 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 next following paragraph of this Rule.

(3) Where in the interests of justice 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.

(4) The Committee may adjourn their proceedings from time to time as they think fit.

16. *Evidence*

(1) Where any respondent or applicant under Rule 14 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 respondent or applicant.

(2) The Committee may receive oral, documentary, or other evidence of any fact which appears to them relevant to the inquiry into the case before them: Provided that, where a fact which it is sought to prove or the form in which any evidence is tendered, is such that it would not be admissible in criminal proceedings in an English court, or, in a case in which the Committee is sitting in Scotland or Northern Ireland, which would not be admissible in a Scottish or Northern Irish Court as the case may be, the Committee shall not receive evidence of that fact or in that form, unless after consultation with the Legal Assessor they are satisfied that it is desirable in the interests of justice

to receive it having regard to the difficulty and expense of obtaining evidence which would be so admissible.

(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.

17. *Voting*

(1) All acts of the Committee shall be decided by a majority of the members present.

(2) Any question put to the vote shall be put in the form of a motion. The Chairman shall call upon the members present to vote for or against the motion by raising their hands and shall declare that the motion appears to him to have been carried or not carried as the case may be.

(3) Where on any of the questions the votes are equal, the question shall be deemed to have been resolved in favour of the respondent or of the applicant under Rule 14, as the case may be, and for the purposes of this paragraph a decision to postpone judgment shall be taken to be in favour of the respondent or applicant unless he has indicated to the Committee that he is opposed to postponement.

18. *Procedure where there is more than one respondent*

Nothing in this part of the Rules shall prevent one inquiry being held into charges against two or more respondents; 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 these Rules by or in relation to the several respondents, so however that any of the rights ensured to a respondent under these Rules shall be exercised separately by each of the respondents who desires to invoke that right.

19. *Supplementary*

(1) Any party being an individual may appear either in person or by counsel or solicitor, or if the party so elects by any officer or member of any organisation of which he is a member, or by any member of his family provided always that no member or alternate member of any Board shall be entitled to represent any party.

(2) Any party being a body corporate or an unincorporated body of persons may appear by their secretary or other officer duly appointed for the purpose or by counsel or solicitor.

20. A shorthand-writer shall be appointed by the Committee to take shorthand notes of their proceedings (except that the Committee may dispense with a shorthand-writer in proceedings under Part IV of these Rules) and 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.

The Common Seal of the Council for Professions Supplementary to Medicine was hereunto affixed this 2nd day of July 1964 in the presence of:— L.S.

CHRISTIAN J. TUDHOPE,
A Member of the Council

J. S. TAPSFIELD,
Registrar

APPENDIX

FORM OF NOTICE OF PROCEEDINGS FOR THE PURPOSES OF SECTION 8 OF THE PROFESSIONS SUPPLEMENTARY TO MEDICINE ACT 1960

(Date)

Sir/Madam,

On behalf of the Board notice is hereby given to you that in consequence of (a complaint made against you to the Board) (or) (information received by the Board) an inquiry is to be held into the following charge against you:

(Here set out particulars of the charge or charges. Where there is more than one charge the charges are to be numbered consecutively.)

Notice is further given to you that on (day of the week), the ..... day of ..... 19....., a meeting of the Disciplinary Committee of the Board will be held at ..... at ..... to consider the above-mentioned charge (charges) against you and to determine whether or not they should direct the Registrar to remove your name from the register pursuant to section 9 of the Professions Supplementary to Medicine Act 1960, or give any other direction provided for in that section.

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). 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 Solicitor to the Board, and may be used in evidence at the inquiry.

If you desire to make any application that the inquiry should be postponed you should send the application to the Solicitor to the Board as soon as may be, stating the grounds upon which you desire a postponement. Any such application will be considered by the Chairman of the Disciplinary Committee of the Board in accordance with the Disciplinary Committees (Procedure) Rules 1964, a copy of which is sent herewith for your information.

Your attention is drawn to the provisions of Rule 19 of these Rules with regard to your right to be represented by counsel, solicitor or other persons.

I am, Sir/Madam,

Your obedient servant,

Solicitor to the Board.

EXPLANATORY NOTE

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

The Rules confirmed by this Order prescribe the procedure to be followed and the rules of evidence to be observed in proceedings before Disciplinary Committees set up by the Boards established under the Professions Supplementary to Medicine Act 1960.