

SUBSIDIARY LEGISLATION 458.08

**MEDICAL COUNCIL (ERASURE OF NAMES
PROCEDURE) RULES**

24th December, 1959

LEGAL NOTICE 92 of 1959, as amended by: Legal Notice 2 of 1969 and Act XLIX of 1981.

- 1.** The title of these Rules is the Medical Council (Erasure of Names Procedure) Rules. Title.
- 2.** In these Rules -
- "the Act" means the Health Care Professions Act; Interpretation.
Amended by:
L.N. 2 of 1969.
Cap. 464.
- "charge" means a charge specified in a notice of inquiry;
- "notice of inquiry" has the meaning assigned to it by rule 5(1);
- "practitioner" means a medical practitioner, dental surgeon, dentist or veterinary surgeon registered under the Act, and references to the practitioner, in relation to any complaint or information or to any proceedings, are references to the practitioner against whom a complaint or information is sent to the Medical Council;
- "Council" means the Medical Council established by the Department of Health (Constitution) Ordinance; Cap. 94.
- "President" means the President of the Medical Council and includes, in the case of absence of the President from a meeting at the Council, the chairman of that meeting;
- "registrar" means the registrar of the Medical Council appointed in accordance with the provisions of article 21 of the Department of Health (Constitution) Ordinance; Cap. 94.
- "appropriate register" means the appropriate register, for the purposes of the Act.
- 3.** No direction shall be given under the Act except in consequence of an inquiry held in accordance with the provisions of these Rules into the charge formulated in a notice of inquiry served in accordance with the provisions of these rules on the person against whom the charge is made. Directions under the Act.
- 4.** (1) Where - Complaints and information.
Amended by:
XLIX. 1981.4.
- (a) a complaint in writing that a practitioner has been convicted by any court in these Islands of any crime punishable by imprisonment for any term exceeding one year or of any of the crimes mentioned in articles 198 to 209 of the Criminal Code is sent to the Council by any body or person, or information in writing that a practitioner has been so convicted is sent to the Council by a person acting in a public capacity; or Cap. 9.
- (b) a complaint in writing of the conduct of a practitioner has been sent to the Council by any body or person, or

information in writing as to the conduct of a practitioner has been sent to the Council by a person acting in a public capacity; or

- (c) a complaint in writing that a practitioner is unfit to continue to practise his profession on grounds of mental or physical infirmity is sent to the Council by any body or person, or information in writing as to the unfitness of a practitioner to continue to practise his profession on the grounds aforesaid is sent to the Council by a person acting in a public capacity,

the registrar shall submit the complaint or information to the President.

(2) In so far as a complaint relates to conduct or unfitness on grounds of infirmity it shall not proceed further unless and until it has been confirmed by means of a declaration on oath; and every such declaration -

- (a) shall state the address and description of the declarant, and
- (b) if any fact declared is not within the personal knowledge of the declarant, it shall state the source of the declarant's information and the grounds for his belief in the truth of the fact.

(3) Subject to the provisions of sub-rule (2), the President shall direct the registrar to notify the practitioner of the receipt of the complaint or information, stating the substance thereof and sending to the practitioner a copy of any declaration on oath furnished under sub-rule (2) and to invite the practitioner to submit to the Council, within such date as the President shall determine, any explanation which the practitioner may have to offer; and every such explanation must be in writing and must reach the registrar within the time fixed by the President:

Provided, however, that in so far as a complaint or information relates to conduct, if it does not appear to the President that a question arises whether the said conduct constitutes infamous conduct in a professional respect, he shall direct the registrar to refer such complaint or information to the Council either to decide that the complaint or information need not proceed further or to direct the registrar to notify the practitioner in accordance with the provisions of this sub-rule.

(4) Subject to the foregoing provisions of this rule, the President shall direct the registrar to refer for inquiry a complaint or information to the Council together with any explanation then furnished by the practitioner and any declarations on oath furnished under sub-rule (2).

(5) In this rule the expression "person acting in a public capacity" means an officer of a government department or public authority acting as such, or any person holding judicial office or any officer attached to a court.

Notice of inquiry.

5. (1) As soon as may be after a complaint or information has

been referred to the Council under the foregoing provisions and unless the Council is fully satisfied with the written explanation of the practitioner, the registrar shall serve on the practitioner a notice of inquiry which shall -

- (a) specify, in the form of a charge, the matters into which the inquiry is to be held; and
- (b) state the day, time and place at which the inquiry is to be held.

(2) The inquiry shall not be fixed for any date earlier than eight days after the date of the notice of inquiry.

(3) A notice of inquiry shall be in the form set out in Form A contained in the Schedule, with such variations as circumstances may require.

(4) There shall be sent with any notice of inquiry a copy of these Rules.

(5) A copy of the notice of inquiry shall be served on the complainant or the informer.

6. The President shall appoint the day and time for the holding of an inquiry under the Act.

Day and time of inquiry.

7. (1) Where, before the hearing of an inquiry, it appears to the President, or at any stage of the hearing it appears to the Council, that a notice of inquiry is defective, the President or the Council, as the case may be, shall give directions for the amendment of the notice as he or it may think necessary unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

Defective notice.

(2) Where in the opinion of the President or of the Council it is expedient, in consequence of the exercise by him or it of the powers conferred by sub-rule (1), that the inquiry should be postponed or adjourned, the President or the Council, as the case may be, shall give such directions in that behalf as appear necessary.

8. Proceedings before the Council shall be held in public; the Council may, however, when it considers it expedient, order that the proceedings be held in private.

Public proceedings.

9. (1) Any member of the Council and the registrar shall abstain from taking part in any inquiry or may be challenged in any of the circumstances in which a judge would abstain or can be challenged in accordance with the provisions of article 734 of the Code of Organization and Civil Procedure.

Abstention or challenge.

Cap. 12.

(2) Any such challenge shall not be admissible unless made before the reading out by the registrar of the charge to the practitioner.

(3) The Council shall decide the objection previously to the reading out of the said charge and its decision shall be final.

10. (1) Any party to the proceedings before the Council may be assisted by an advocate or legal procurator. The practitioner may

Legal and other assistance.

also be assisted by a member of his profession, whose name appears in the appropriate register.

(2) The President shall bring the provisions of this rule to the notice of any party to the proceedings appearing before the Council without any such assistance.

Reading of charge.

11. The proceedings on the inquiry shall commence with the reading out by the registrar of the charge. Thereupon the President shall put to the practitioner the question whether he admits or refutes the charge.

Admission or refutation.

12. (1) If the practitioner admits the charge the Council may, in its discretion, dispense with the production of witnesses and proceed to give its decision on that day or on any other day appointed for the purpose.

(2) If the practitioner refutes the charge the Council shall proceed with the inquiry.

(3) If the practitioner fails to attend without just cause and the Council is satisfied that a notice of inquiry was sent as required by these rules, the Council may, if it thinks fit, proceed with the inquiry even in his absence.

Proceedings.

13. The proceedings on an inquiry shall be as follows:

- (a) Witnesses in support of the charge shall be produced and examined by the party producing them or in his absence by the Council and cross-examined by the practitioner; thereafter any member of the Council shall be at liberty to put questions as he may deem necessary.
- (b) Witnesses in defence shall be heard and in case the practitioner wishes to give his evidence, he may do so provided his evidence be given before that of any witness to be produced by him. Witnesses shall be examined by the practitioner and cross-examined by any other party to the proceedings; thereafter any member of the Council shall be at liberty to put questions as he may deem necessary.
- (c) When the whole of the evidence has been concluded, the practitioner shall, personally or through the person by whom he is assisted, address the Council and make his defence.
- (d) The Council shall then give its decision on that day or on any other day appointed for the purpose.
- (e) The Council shall not be debarred at any stage of the proceedings until the decision is given from rehearing any witness or requesting the production of any documents.

Charge not proved.

14. In all cases where the Council is satisfied that the charge has not been proved, the Council shall decide accordingly and it shall record a finding that the charge has not been proved and that

the practitioner is not guilty in respect of the matters to which the charge relates.

15. (1) The decisions of the Council shall be given in public and in writing; they shall be signed by the President. Decisions public and in writing.

(2) The original shall be kept with the registrar, together with the complete record of the inquiry.

16. Where under any of the foregoing provisions of these Rules the inquiry stands postponed to a future meeting, the validity of the proceedings at that meeting shall not be called into question by reason only that members of the Council who were present at the former meeting were not present at the later meeting or that members of the Council who were present at the later meeting were not present at the former meeting. Validity of proceedings.

17. The registrar shall serve without delay on the practitioner a copy of the decision of the Council. Copy of decision.

18. Notice to any person to appear before the Council to give evidence and/or to produce documents shall be in the form set out in Form B contained in the Schedule. Form of summons to give evidence.

19. Every notice referred to in these rules shall be signed by the President and served in accordance with the provisions of article 36 of the Act: Signature and serving of notices.

Provided that any notice issued under rule 18 shall be served in accordance with the provisions of article 37 of the Act.

20. It shall be within the authority of the Council during the proceedings - Powers of Council.

(a) to maintain good order, and

(b) to regulate the discussion.

21. The members of the Council and the registrar shall not divulge anything discussed by the Council in the course of an inquiry. Confidential discussions.

22. Subject as otherwise expressly provided, the Council shall regulate its own procedure. Other proceedings.

SCHEDULE

Rules 5(3), 18

FORM A

Rule 5(3)

MEDICAL COUNCIL

Notice of Inquiry

To (date)
.....

I hereby give you notice that the Medical Council has ordered an inquiry to consider and judge the charge imputed to you, namely

You are hereby informed that the first sitting of the said inquiry will be held on the19 at ... at

A copy of the Medical Council (Erasure of Names Procedure) Rules is enclosed for your guidance.

You are warned that failure on your part to appear without giving a reasonable explanation for your absence would not debar the Medical Council from proceeding with the inquiry even in your absence.

President,
Medical Council

FORM B

Rule 18

MEDICAL COUNCIL

Notice to a person to give evidence and/or to produce Documents, etc.

To (date)

You are hereby required to attend before the Medical Council on the19 at at and so on any other day to which the hearing may be put off, to give evidence and/or to produce the following documents in the matter of an inquiry held against

You are warned that failure to attend as hereby required will expose you to sanctions prescribed by law.

President,
Medical Council
