L.N. 31 of 1985

MEDICAL AND KINDRED PROFESSIONS ORDINANCE (CAP. 51)

Board for the Professions Supplementary to Medicine (Erasure of Names Procedure) Rules, 1985

IN exercise of the powers conferred by section 87I of the Medical and Kindred Professions Ordinance, the Board for the Professions Supplementary to Medicine, with the approval of the Minister of Health and Environment, has made the following rules:

1. These rules may be cited as the Board for the Professions Supplementary to Medicine (Erasure of Names Procedure) Rules, 1985. Citation.

2. In these rules— Interpretation.

"appropriate register" means the appropriate register for the purposes of the Ordinance;

"Board" means the Board for the Professions Supplementary to Medicine established by the Department of Health (Constitution) Ordinance; Cap. 148

"Chairman" means the Chairman of the Board for the Professions Supplementary to Medicine and includes, in the case of absence of the Chairman from a meeting of the Board, the member acting as chairman for that meeting;

"charge" means a charge specified in a notice of inquiry;

"notice of inquiry" has the meaning assigned to it in rule 5(1) of these rules;

"Ordinance" means the Medical and Kindred Professions Ordinance;

"practitioner" means a physiotherapist, a medical laboratory technician, an occupational therapist, a radiographer, a speech therapist, a health inspector or a member of any other recognised profession supplementary to medicine as the Minister of Health may declare in terms of section 73D of the Ordinance, registered under the Ordinance, 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 Board;

"Registrar" means the Registrar of the Board for the Professions Supplementary to Medicine appointed in accordance with the provisions of subsection (4) of section 28G of the Department of Health (Constitution) Ordinance.

3. No direction shall be given under sections 87B and 87D of the Ordinance except in consequence of an inquiry held in accordance with the provisions of these rules, into the charge or charges formulated in a notice of inquiry served in accordance with the provisions of these rules on the person against whom the charge or charges is or are made. Directions under sections 87B and 87D of the Ordinance.

Complaint and information.

4. (1) Where —

(a) a complaint in writing that a practitioner has been convicted by any Court in these Islands of any crime punishable with imprisonment for any term exceeding one year or of any of the crimes mentioned in sections 212 to 219 or in sections 221 to 223 of the Criminal Code is sent to the Board by any body or person, or information in writing that a practitioner has been so convicted is sent to the Board by a person acting in a public capacity, or

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(b) a complaint in writing on the conduct of a practitioner has been sent to the Board by any body or person, or information in writing as to the conduct of a practitioner has been sent to the Board 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 Board 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 Board by a person acting in a public capacity,

the Registrar shall submit the complaint or information to the Chairman.

(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, 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 the last foregoing paragraph, the Chairman shall direct the Registrar to notify the practitoner 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 the last foregoing paragraph, and to invite the practitioner to submit to the Board, within such date as the Chairman 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 Chairman:

Provided that in so far as a complaint or information relates to conduct, if it does not appear to the Chairman 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 Board 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 paragraph.

(4) Subject to the foregoing provisions of this rule, the Chair-

man shall direct the Registrar to refer for inquiry a complaint or information to the Board together with any explanation then furnished by the practitioner and any declarations on oath furnished under paragraph (2) of this rule.

(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 Board under the foregoing provisions and unless the Board is fully satisfied with the written explanation of the practitioner, the Registrar shall serve on the practitioner notice (in these rules referred to as "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 to be held.

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

(3) The Registrar shall cause such service to be effected either personally on the practitioner, or by the delivery of such notice at his place of residence.

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

(5) There shall be sent with any notice of inquiry a copy of these rules.

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

Day and time of inquiry.

6. The Chairman shall appoint the day and time for the holding of an inquiry under sections 87B and 87D of the Ordinance.

Defective notice.

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

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

Public proceedings.

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

Abstention or challenge.

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9. (1) Any member of the Board 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 may be challenged in accordance with the provisions of section 735 of the Code of Organisation and Civil Procedure.

(2) Any such challenge shall be made before the reading out by the Registrar of the charge or charges to the practitioner, unless the cause of the challenge arose or came to the knowledge of the party later.

(3) The Board shall decide the objection previously to the reading of the said charge or charges, or later in appropriate cases, and its decision shall be final.

Legal and other assistance.

10. (1) Any party to the proceedings before the Board may be assisted by an Advocate or Legal Procurator. The practitioner may also be assisted by a member of his profession whose name is also entered in the appropriate register.

(2) The Chairman shall bring the provisions of these rules to the notice of any party to the proceedings appearing before the Board 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 or charges. Thereupon the Chairman shall put to the practitioner the question whether he admits or refutes the charge or charges.

Admission or refutation.

12. (1) If the practitioner admits the charge or charges the Board 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 or charges the Board shall proceed with the inquiry.

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

Provided that if the practitioner is unable to attend for a just cause, he may, if he so prefers, request that the inquiry be proceeded with and appoint one of the persons mentioned in paragraph (1) of rule 10 to represent him in the proceedings.

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 Board and cross-examined by the practitioner; thereafter any member of the Board may 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 that his evidence shall be given before that of any witness to be produced by

him. Witnesses shall be examined by the practitioner or by the person by whom he is assisted or represented and cross-examined by any other party to the proceedings; thereupon any member of the Board may put questions as he may deem necessary.

(c) When the whole of the evidence has been concluded, the practitioner may, personally or through the person by whom he is assisted or represented address the Board and make his defence.

(d) The Board shall then give its decision on that day or on any other day appointed for the purpose.

(e) The Board shall not be debarred at any stage of the proceedings until the decision is given from re-examining any witness or requesting the production of any documents.

Charge not proved.

14. In all cases where the Board is satisfied that the charge or charges have or have not been proved, the Board shall decide accordingly and it shall record a finding that the charge or charges have or have not been proved and that the practitioner is or is not guilty in respect of the matters to which the charge or charges relate.

Decisions public and in writing.

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

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

Validity of proceedings.

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 Board who were present at the former meeting were not present at the later meeting or that members of the Board who were present at the later meeting were not present at the former meeting.

Copy of decision.

17. The Registrar shall serve without delay on the practitioner a copy of the decision of the Board.

Form of summons to give evidence.

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

Signature and service of summons.

19. Every notice referred to in these rules shall be signed by the Chairman and saving the provisions of paragraph (3) of rule 5 of these rules, shall be served in accordance with the provisions of subsection (2) of section 87H of the Ordinance:

Provided that any notice issued under rule 18 shall be served in accordance with the provisions of subsection (2) of section 87J of the Ordinance.

Power of Board.

20. It shall be within the authority of the Board during the proceedings —

(a) to maintain good order, and

(b) to regulate the discussion.

Confidential discussions.

21. The members of the Board and the Registrar shall not divulge anything discussed by the Board in the course of an inquiry.

Other proceedings.

22. Subject as otherwise expressly provided, the Board shall regulate its own procedure.

SCHEDULE

Rules 5(3), 18

Form A

Board for the Professions Supplementary to Medicine

Notice of Inquiry

To ..... (date)
.....

I hereby give you notice that the Board for the Professions Supplementary to Medicine has ordered an Inquiry to consider and judge the charge/charges imputed to you, namely .....
.....

You are hereby informed that the first sitting of the said Inquiry will be held on ..... the ..... 19..... at ..... at .....

A copy of the Board for the Professions Supplementary to Medicine (Erasure of Names Procedure) Rules, 1985, 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 Board for the Professions Supplementary to Medicine from proceeding with the inquiry in your absence.

Chairman
Board for the Professions
Supplementary to Medicine

Form B

BOARD FOR THE PROFESSIONS SUPPLEMENTARY TO MEDICINE

Notice to a Person to give Evidence and/or to produce documents, etc.

To ..... (date)
.....

You are hereby required to attend before the Board for the Professions Supplementary to Medicine on ..... the ..... 19 ..... 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.

Chairman
Board for the Professions
Supplementary to Medicine

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