

THE REGISTRATION COUNCIL FOR CLINICAL PHYSIOLOGISTS

DISCIPLINARY PROCEDURAL RULES

Introduction

1. These rules may be cited as The Registration Council for Clinical Physiologists Disciplinary Procedural Rules which will come into force on the 2 January 2015 having been approved by the Council of The Registration Council for Clinical Physiologists ("RCCP") on 15 December 2014 .

2.
 - i. RCCP shall investigate all cases referred to RCCP where it is alleged that a Registrant has breached the Code of Conduct and/or Standards of Proficiency.

 - ii. RCCP shall investigate all cases where it appears to RCCP that a Registrant has breached the Code of Conduct and/or Standards of Proficiency.

 - iii. RCCP shall investigate all cases where it appears to RCCP that a Registrant has committed a relevant criminal offence or been cautioned for a relevant criminal offence. A relevant criminal offence is one which has a material relevance to the Registrant being on the RCCP register.

 - iv. RCCP shall be entitled to commence an investigation against a registrant even if the registrant is no longer registered with the RCCP providing the registrant was registered with RCCP at the time of the alleged breach of the code of conduct or a breach of the standards of

proficiency or committed a criminal offence. The Registrant shall remain a Registrant of RCCP until such time as the allegation is finally disposed of by the Professional Conduct Committee or Appeal Committee. Any fee payable by the Registrant shall continue to be payable by the Registrant.

3. The Registrar shall (taking such advice as may be appropriate) determine whether:

(a)

- i. The complaint is made against a person who is not a Registrant ; or
- ii. The complaint is made against a person who has not made application to register as a Registrant ; or
- iii. In the Registrar's opinion, the alleged facts, if proved, would not amount to a breach of the Code of Conduct or Standards of Proficiency or relevant criminal offence.

then the Registrar shall inform the complainant in writing that RCCP will not investigate the complaint.

(b) The Registrar may, exercising due discretion, write a letter of advice to any Registrant of RCCP. Such letter may be considered by a Professional Conduct Committee if at a later date it considers an allegation of Breach of the Code of Conduct or Standards of Proficiency or a relevant criminal offence by that Registrant.

4. If the Registrar determines that the complaint is made against a Registrant, or

a person who has made application to be a Registrant, and is of the opinion that the alleged facts, if proved, may be a breach of the Code of Conduct or Standards of Proficiency or a relevant criminal offence, then the Registrar shall make appropriate arrangements for the complaint to be investigated. The Registrar may employ appropriate persons to carry out any necessary investigations.

5. Where, following the completion of an investigation, the Registrar determines that there is a case to answer, then the Registrar shall refer the matter to the Professional Conduct Committee in accordance with these Rules.

Professional Conduct Committee

6.
 - i. A Professional Conduct Committee shall be constituted by persons who are Registrants of RCCP and lay Members for the duration of a case referred to it by the Registrar. The Registrar shall arrange for Panel Committee Members to be appointed on such terms and for such length of time as shall be determined by Council.
 - ii. A Committee shall consist of a minimum of three persons and maximum of five persons.
 - iii. A Committee shall consist of a majority of Members who are RCCP Registrants and at least one person who shall be a lay Member.
7. The Registrar shall appoint a panel of Legal Advisors who may be asked to advise the Professional Conduct Committee or Appeal Committee. The Chair

of the Professional Conduct Committee or Appeal Committee shall decide prior to the commencement of a hearing of the case or an appeal whether a Legal Advisor is required for a particular case. The duties of the Legal Advisor shall be :

- i. Be present at all hearings unless the Chair of the Professional Conduct Committee or Appeal Committee determines otherwise;
- ii. Advise the Committee on any matters of law, evidence or procedure which are referred to him or her by the Committee;
- iii. Advise the Committee on an issue of law and process where it appears to him or her that, without his or her intervention, there is a possibility of a mistake of law or process being made.

Notice of Proceedings

8.

- i. Where a case has been referred to the Committee by the Registrar then the Registrar shall send to the Registrant a Notice of Proceedings in accordance with Paragraph 8(ii) by First Class Post, or by Recorded Delivery to the Registrant's registered address recorded on RCCP's record or such other latest address known to RCCP giving the Registrant at least six weeks' notice of the hearing of the case.
- ii. The Notice of Proceedings shall:
 - a. Specify the place and address where the Committee hearing is to take place.

- b. Specify the time and date of hearing which shall not be less than six weeks after the date the Notice of Proceedings was sent to the Registrant.
- c. Specify the allegations and the particulars of the allegations against the Registrant.
- d. Specify the witnesses, if any, RCCP proposes to call to give evidence at the hearing, and enclose any witness statements which may be available at that stage.

Response to the Notice of Proceedings

9. The Registrant shall within 14 days of the date of the letter accompanying the Notice of Proceedings, provide the Registrar with written responses to the following enquiries, namely whether the Registrant:

- i. Intends to be present at the hearing;
- ii. Intends to appear in person or to be represented at the hearing, and if so, the name and address of his or her representative;
- iii. Admits or denies the alleged facts;
- iv. Admits or denies the allegation of breach of the Code of Conduct or Standards of Proficiency or a relevant criminal offence;
- v. Intends to call witnesses, and if so, provide their names and addresses;
- vi. Intends to make any application(s) to the Committee and if so provide

details on the ground upon which said application(s) is to be made.

Representatives

10.

- i. RCCP shall appoint a Presenting Officer to present the case before the Committee and such person shall be a Registrant or officer of RCCP, or a Solicitor, or Barrister at Law.
- ii. The Registrant against whom the allegation is made may appear in person or be represented by any person of their choice, including a legal representative.

Standard and Burden of Proof

11.

- i. The Standard of Proof shall be the civil standard of proof, namely the balance of probabilities.
- ii. The Burden of Proof as to proving the facts of the case shall at all times remain with RCCP.

Rules of Evidence

12.

- i. The Committee may admit any evidence it considers fair and relevant

to the case before it, whether or not such evidence would be admissible in a court of law.

- ii. A certificate of conviction, issued by a court in the United Kingdom, shall be conclusive proof of the conviction set out in the certificate of conviction.
- iii. A written record as to the findings of fact by a professional body shall be conclusive evidence as to those matters set out in the written record unless the Committee, upon the application of either party, or its own motion, determines that to do so would be contrary to the interests of justice.

Service and Inspection of Documents

13. The Presenting Officer and the Registrant shall wherever possible, agree a bundle of relevant documents for the hearing and a copy of the bundle shall be provided to the Registrar by the Presenting Officer at least 14 days prior to the date of hearing. Where such a bundle is agreed then the Registrar shall arrange for a copy to be sent to the Members of the Committee 7 days prior to the hearing. In the absence of any engagement on the part of the Registrant as to the preparation of the hearing bundle then the Presenting Officer shall send to the Registrar a bundle of relevant papers 7 days prior to the hearing.

Absence of the Registrant at the Hearing

14.

- i. Where a Registrant, against whom the allegation is made, does not

attend the hearing and is not represented at the Committee hearing, the Committee shall:

- a. Request evidence that the Notice of Proceedings has been sent to the Registrant in accordance with Rule 8; and
 - b. Enquire whether any reasons for the Registrant's absence have been communicated to the Registrar or to the Presenting Officer.
- ii. Where the Committee is not satisfied that Rule 8 has been complied with, the Committee shall adjourn the hearing to a new date
 - iii. Where the Committee is satisfied that Rule 8 has been complied with, and having exercised its discretion with utmost care and attention, the Committee may:
 - a. Proceed with the hearing in the absence of the Registrant ;
or
 - b. Adjourn the hearing

Pre-hearing Directions

15. At the request of the Presenting Officer or Registrant, the Chair of the Committee constituted to hear the allegation(s) at any time after the issue of the Notice of Proceedings, may give such directions for the management of the case as the Chair of the Committee sees fit. Such directions may at the discretion of the Chair be conducted by a telephone conference.

Procedure at Hearings

16. The procedure at the hearing shall be determined at the discretion of the Committee.

17. The Chair of the Committee shall introduce the Members of the Committee present and confirm the identity of the Registrant against whom the allegation is made.

18. The Chair of the Committee shall ask the Registrant or their representative and the Presenting Officer whether there are any preliminary applications that the Registrant or Presenting Officer wish to make to the Committee. The Committee shall then determine the procedure for considering the applications.

19. The Chair of the Committee shall read the allegation(s) and particulars against the Registrant. The Chair shall enquire of the Registrant :

- i. whether the facts of the allegation(s) are admitted; and if so,
- ii. whether the Registrant admits a breach of the Code of Conduct or Standards of Proficiency or relevant criminal offence in relation to those facts as the case may be.

20. Where the Registrant indicates that they admit the facts of the allegation(s) the Chair of the Committee shall then ask the parties whether they have agreed a Statement of Facts for the Committee to consider and if so:

- i. the Presenting Officer shall be invited to read out the agreed Statement of Facts; and

- ii. the Presenting Officer and Registrant shall be permitted to make representations to the Committee and may adduce evidence on the question of whether the facts that have been admitted amount to a breach of the Code of Conduct or Standards of Proficiency or relevant criminal offence as the case may be; and
- iii. the Committee shall, having taken advice from the Legal Adviser (if present), proceed to determine whether it is satisfied that the facts that have been agreed by the parties amount to a breach of the Code of Conduct or Standards of Proficiency or relevant criminal offence, regardless of whether admission to that effect has been made by the Registrant .

21. Where the facts are not admitted or where some material facts remain disputed then the following procedure shall take place:

- i. The Presenting Officer shall be permitted to make an opening statement about the allegation(s) and the Registrant shall have the opportunity to reply either in person or through their representative.
- ii. The Presenting Officer and the Registrant may call witnesses as to the facts of the allegation(s). The Presenting Officer, unless the Committee determines otherwise, shall call witnesses first and the Registrant shall call witnesses when the Presenting Officer has called all their witnesses. The Presenting Officer, the Registrant or their representative and Members of the Committee may ask questions of any witness.

- iii. The Committee will allow the Presenting Officer and the Registrant or their representative an opportunity to sum up as to the facts of the allegation(s). The Presenting Officer, unless the Committee determines otherwise, will sum up first, followed by the Registrant or their representative.
- iv. The Legal Adviser (if present) will give any legal advice to the Committee and both the Presenting Officer and the Registrant or their representative shall be given an opportunity of making representations upon the legal advice offered to the Committee.

22. In a case where the Committee finds there has been a breach of the Code of Conduct or the Standards of Proficiency or a relevant criminal offence then the Presenting Officer and the Registrant may present evidence relating to the Registrant's history and character and any mitigating circumstances. The Legal Adviser (if present) shall then advise the Committee as to sanction and the Presenting Officer and Registrant or their representative may make representations as to the advice tendered to the Committee by the Legal Adviser (if present) and as to sanction. The Committee shall then determine whether to impose a sanction.

23. The Committee may adjourn the proceedings at any stage.

24. The Committee may discontinue the proceedings at any stage.

25. The Committee may determine, at any time, to proceed either in public or in private subject to considerations of fairness and having heard representation from all parties and advice from the Legal Advisor (if present).

26. Subject to the requirements of a fair hearing, and in the interests of justice, the Committee may amend an allegation or the particulars of an allegation, at any time prior to making its findings of fact.

27. Before amending an allegation or the particulars of an allegation in accordance with paragraph 26 the Committee shall first consider any representations by the Presenting Officer and by or on behalf of the Registrant and take advice from the Legal Adviser (if present).

28. The Committee, in making its decision shall:

- i. Deliberate in private unless it otherwise decides;
- ii. Determine whether the facts of the case, all or in part, are proved;
- iii. If it determines that the facts are proved, determine as a matter of its own judgement whether the facts amount to a breach of the Code of Conduct or the Standards of Proficiency or a relevant criminal offence.

29. If the facts amount to a breach of the Code of Conduct or Standards of Proficiency or relevant criminal offence, then the Committee shall consider the previous history and character of the Registrant and any mitigating circumstances if presented by the Registrant or their representative.

30. The Committee shall determine and inform the parties whether it intends to deal with the determination of facts, the determination of a breach of the Code or Standards of Proficiency or relevant criminal offence, and sanction in one or more stages of the hearing.

31. The Committee shall give written reasons as to its:

- i. Findings of facts;
- ii. Findings as to breach of Code of Conduct or Standards of Proficiency or relevant criminal offence; and
- iii. Sanction.

Sanction

32. The Committee shall determine whether to make a Disciplinary Order(s) against the Registrant and, if applicable, specify the terms of an Disciplinary Order. The Order will take one of the following forms:

- i. A Reprimand, which shall remain on the RCCP register for a period of two years unless the Committee determines a lesser period;
- ii. A Conditional Membership Order. This should specify all of the conditions relevant to his or her membership as a Registrant, and which the Registrant is required to comply with and, in relation to each condition, either the period for which it has effect, or that it has effect without limited time, as the case may be;
- iii. A Suspension Order. This shall specify the period (not exceeding two years) at the end of which the Registrant shall again be eligible for membership as a Registrant, any conditions to be complied with by the Registrant before they can become eligible again for membership;
- iv. An Expulsion Order. This shall specify the period (which shall not be less than two years) beginning with the date on which the Order takes effect (before the end of which no application will be made for a

determination that the applicant is eligible for registration).

Appeal

33.

- i. An Appeal Committee shall be constituted by persons who are Registrants of RCCP and Lay Members. The Registrar shall be entitled to appoint those persons who sit on the Professional Conduct Committee to membership of the Appeal Committee save that no person shall sit on both committees in relation to the same case.
- ii. An Appeal Committee shall consist of a minimum of three persons and a maximum of five persons.
- iii. An Appeal Committee shall consist of a majority of Members who are RCCP Registrants and at least one person who shall be a Lay Member.

Notice of Appeal

34.A Registrant who wishes to appeal an order of the Professional Conduct Committee must send to the Registrar a written Notice of Appeal within 21 days of the date of the decision of the Professional Conduct Committee.

35. The Notice of Appeal shall:

- i. Specify the grounds of appeal.
- ii. Specify any applications the Registrant intends to make.

36. The proceedings of the Appeal Committee shall be at the discretion of the

Committee but, subject to fairness and relevance, the Committee may apply the following Rules in addition to those listed in the remainder of those Rules:

- i. Rule 7 – Legal Advisor
- ii. Rule 10 – Representatives
- iii. Rule 12 – Rules of Evidence
- iv. Rule 14 – Absence of Registrant
- v. Rule 23 – Adjournment
- vi. Rule 24 – Discontinue
- vii. Rule 25 – Public or Private

37. Unless the Appeal Committee decides otherwise, the Committee shall not receive:

- i. Oral evidence.
- ii. Evidence not before the Professional Conduct Committee.

38. The test which the Appeal Committee shall apply in its determination is whether or not the decision of the Professional Conduct Committee was a decision which no reasonable committee could properly have reached.

39. The Appeal Committee may determine that the case be referred back to a differently constituted Professional Conduct Committee for a rehearing.

40. The Appeal Committee shall provide written reasons for its decision.

Publication

41. RCCP may publish information concerning its determination as to a Disciplinary Order;

- i. On a website which it maintains on the internet for a period of six months, starting on the date on which the Order is posted; or
- ii. In such manner as it thinks fit.

Miscellaneous

42. The Registrar, exercising due discretion, shall provide a copy of the Notice of Proceedings, Professional Conduct Committee reasons, Appeal Notice and Appeal Committee reasons to the Registrant's employer.

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