

## PHARMACY AND POISONS (CONDUCT OF INQUIRIES) RULES, 1985

[L.N. 52/1985.]

1. These Rules may be cited as the Pharmacy and Poisons (Conduct of Inquiries) Rules, 1985.

2. In these Rules, unless the context otherwise requires—

“**chairman**” means the chairman of the Board;

“**charge**” means a charge or charges specified in a notice of inquiry;

“**complainant**” means a person or body of persons who makes a complaint to the Board;

“**inquiry**” means an inquiry held by the Board under these Rules.

3. An inquiry into the conduct of a registered pharmacist may be instituted by the Board on its own initiative or upon a complaint addressed to the Board by or on behalf of any person alleging professional misconduct on the part of the registered pharmacist.

4. A person who lodges a complaint of professional misconduct against a registered pharmacist shall furnish an affidavit detailing the specific acts complained of to the registrar and the complainant must be prepared to give evidence before the Board in the event of an inquiry being held.

(1) The registrar shall, in accordance with the circumstances and if necessary in consultation with the chairman, on receipt of a complaint under these Rules—

- (a) seek further information from the complainant; or
- (b) advise the registered pharmacist of the nature of the complaint against him and ask him for an explanation warning him that the explanation may be used in evidence if an inquiry into his conduct is held in accordance with these Rules; or
- (c) place the matter before the Board with the relevant documents.

(2) The Board may, after giving the matter due consideration—

- (a) cause further investigation of the complaint to be made; or
- (b) seek legal advice or such other assistance as it may deem necessary; or
- (c) if it is of the opinion that the complaint, even if substantiated, would not be held to constitute professional misconduct or if, for any other reason it considers that an inquiry should not be held, take such action as it deems fit; or
- (d) if it is the opinion that the evidence furnished in support of the complaint discloses *prima facie* evidence of professional misconduct, hold an inquiry in accordance with these Rules.

(1) The registrar shall, if an inquiry is to be held—

- (a) submit to the Board all documents and other material having bearing on the inquiry; and
- (b) send to the registered pharmacist against whom the complaint relates a notice of inquiry which shall—
  - (i) state the nature of the charge preferred against him giving full particulars of such a charge, including copies of any relevant documents;
  - (ii) specify the date, time and venue of the inquiry;

- (iii) inform the registered pharmacist that he may submit further statements to the Board prior to the inquiry, which statements may be used as evidence; and that he shall be afforded the opportunity, by himself or through his legal representative, of answering the charge or being heard in his defence.

(2) The notice of inquiry sent to a registered pharmacist under paragraph (1) shall be in the form set out in the Schedule and shall be sent by registered post to his last known address as notified to the registrar or by other means approved by the Board.

(1) The Board may make such order as to costs as it deems fit; and such costs shall be recoverable as a civil debt.

(2) In cases where a complainant or the registered pharmacist against whom the complaint is made requests that witnesses be summoned to give evidence, the Board may require the complainant or the registered pharmacist to deposit a sum of money sufficient to cover the costs of bringing the witness to the place where the inquiry is being held.

**8.** A person who fails when summoned by the Board to attend as a witness or to produce any books or documents which he is required to produce shall be guilty of an offence and liable to a fine not exceeding two thousand shillings or in default, to imprisonment for not more than three months.

**9.** In a case where the registered pharmacist against whom a complaint has been made appears personally or is represented by an advocate, the following procedure shall be followed—

- (a) the registrar shall read the notice of the inquiry addressed to the registered pharmacist;
- (b) the complainant shall be invited to adduce evidence in support of the complaint;
- (c) the registered pharmacist shall then be asked to state his case, either personally or through his legal representative and to produce evidence in support of his case, or in the event of deciding to produce a written statement in his defence, that statement shall be read;
- (d) at the conclusion of the case of the accused person, the Board shall, if he has adduced evidence, hear the complainant or his legal representative on the case generally but the Board shall not at this stage hear further evidence unless there are, in the opinion of the Board, special reasons for hearing such further evidence;
- (e) if the registered pharmacist does not adduce any evidence, the complainant shall not be heard in reply;
- (f) when a witness appears before the Board he shall be examined by the person at whose request he was summoned, then cross-examined by the person against whom the complaint is made or his representative and finally re-examined by the person who requested that he should be summoned to give evidence at the inquiry.

**10.** In a case where the registered pharmacist is not present, the following procedure shall be followed—

- (a) the registrar shall read the notice of inquiry addressed to the registered pharmacist under rule 5;
- (b) the complainant shall then be asked to state his case and to produce his evidence in support of it.

11. In a case in which neither the complainant nor the registered pharmacist appears, the Board shall consider and decide what further action, if any, may be taken.

(1) Members of the Board may, with the permission of the chairman, put such questions to witnesses as they deem necessary.

(2) All oral evidence shall be taken on oath and the Board may decline to admit the evidence of any witness or deponent to a document who is not present for, or declines to submit to, cross-examination.

(3) Upon the conclusion of the case, the Board shall deliberate upon the evidence *in camera*, and the judgment and verdict shall be communicated in open meeting or at a later date, in writing, as the Board may direct.

13. Any decision of the Board in regard to any point arising in connection with, or in the course of, an inquiry may be arrived at *in camera* but shall be communicated to the persons concerned in open meeting.

14. The Board may, upon a finding of guilty as charged, administer one or other of the following penalties—

- (a) a reprimand or a caution or reprimand and a caution; or
- (b) the penalties specified in section 12 of the Act.

15. The Board may at any stage during an inquiry under these Rules adjourn its proceedings as it thinks fit.

16. Any party to the proceedings shall, on application, be furnished with a transcript of the shorthand notes or a certified copy of the proceedings or determination or finding of the Board on the payment of a fee of five shillings for every page of the shorthand notes or certified proceedings or determination or finding of the Board.

17. Meeting of the Board for purposes of an inquiry under these Rules, except so far as the chairman may otherwise direct, shall be held at the offices of the Board and may be held as regularly as circumstances require.

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## SCHEDULE

[Rule 6(2).]

### FORM OF SUMMONS TO ATTEND AN INQUIRY UNDER THE PHARMACY AND POISONS (CONDUCT OF INQUIRIES) RULES

Dear Sir/Madam,

#### Disciplinary Inquiry

I have been directed to inform you that the following charge which has been preferred against you will be considered at a meeting of the Pharmacy and Poisons Board, to be held at .....

....., on ..... at .....

That you, being a registered pharmacist .....

.....

and that in relation to the facts alleged you have been guilty of professional misconduct.

You are requested to appear before the Board to establish any defence which you may wish to offer, but if you should decide not to do so, the Board may consider and deal with the charge in your absence.

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