

BERMUDA STATUTORY INSTRUMENT

SR&O 1/1976

MISUSE OF DRUGS TRIBUNAL RULES 1975

*[made under paragraph 4 of Schedule 3 to the Misuse of Drugs Act 1972
[title 11 item 4] and brought into operation on 3 January 1976]*

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APPENDIX

MISUSE OF DRUGS TRIBUNAL RULES 1975

Interpretation

- 1 (1) In these Rules, unless the context otherwise requires—
- "the Act" means the Misuse of Drugs Act 1972 [*title 11 item 4*];
- "the chairman" means the person appointed by the Minister to be the chairman of the tribunal;
- "hearing" means the hearing by the tribunal of a case referred to it under section 18 of the Act;
- "the Minister" means the Minister of Health and Social Services;
- "the respondent" has the same meaning as in section 18(2) of the Act;
- "the secretary" means, in relation to any proceedings, the person whose services are made available by the Minister to act as secretary to the tribunal either generally or in relation to those proceedings;
- "the tribunal" means a tribunal constituted under Schedule 3 to the Act.
- (2) In these Rules a form referred to by number means the form so numbered in the Appendix to these Rules, or a form substantially to the like effect, with such variations as the circumstances of the particular case require.

Terms of reference and parties

- 2 (1) As soon as the Minister has referred a case to the tribunal under section 18(1) of the Act, he shall serve on the Attorney-General and on the respondent a notice in writing specifying the terms of the reference, and the names and addresses of the secretary and of the Attorney-General.
- (2) The Attorney-General shall thereafter be responsible for the preparation and presentation before the tribunal of the case against the respondent and shall be a party to the proceedings on the reference.
- (3) No person other than the Attorney-General and the respondent shall be a party to the proceedings on the reference.

Notice of proceedings

- 3 (1) Within twenty-eight days after service on him of the notice of the terms of reference the Attorney-General shall serve on the respondent a notice of proceedings in Form 1, together with a copy of the Act and of these Rules and shall send a copy of the notice of proceedings to the tribunal.
- (2) The notice of proceedings may be amended—

- (a) before the hearing, with the leave of the chairman on an ex parte application (which may be disposed of if the chairman thinks fit without a hearing of the application); or
- (b) at any time during the hearing with the leave of the tribunal,

and where the notice of proceedings is amended before the hearing, the Attorney-General shall forthwith serve notice in writing of the amendment on the respondent and send a copy of the notice to the tribunal.

Notice of hearing

4 The chairman shall fix a date, time and place at which the proceedings are to be held, and, not less than twenty-eight days before the date so fixed, the secretary shall serve a notice in Form 2 on the Attorney-General and on the respondent.

Inspection of documents

5 (1) The Attorney-General shall within fourteen days after the issue of the notice of proceedings and the respondent may at any time serve on the other party a list of the documents on which he proposes to rely, and the Attorney-General and the respondent shall send to the tribunal a copy of any list served under this paragraph.

(2) A list under paragraph (1) shall specify a reasonable period (commencing not earlier than seven days and ending not later than fourteen days after the date of the list) during which, and a reasonable place at which, the other party may inspect and take copies of the documents contained in the list.

(3) A party shall be entitled to inspect and take copies of any document set out in the list of documents served by the other party during the period and at the place specified by such other party in his list of documents or during such period and at such place as the tribunal may direct.

(4) Unless the tribunal otherwise directs, a party shall produce any document set out in his list of documents at the hearing of the case when called upon to do so by the other party.

Interlocutory applications

6 (1) An application for directions of an interlocutory nature in connection with the proceedings may be made by the Attorney-General or the respondent to the chairman.

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(2) The application shall be in writing and shall state the matters on which directions are sought and the grounds upon which the application is made.

(3) Notice of the application shall be served on the respondent or on the Attorney-General, as the case may be, who may send to the chairman and serve on the other party written notice of objection.

(4) Where written notice of objection is sent the chairman shall, before giving any direction on the application, consider such objection and, if he considers it necessary for the proper determination of the application, shall give the parties an opportunity of appearing before him.

(5) The chairman shall serve notice in writing of his decision on the Attorney-General and on the respondent.

(6) If at any stage the chairman decides that an application involves a question which ought to be decided by the tribunal, he shall fix a date, time and place for a hearing of the application by the tribunal and the secretary shall serve notice thereof on the Attorney-General and on the respondent not less than fourteen days before the date fixed.

Right of audience

7 At the hearing and at the hearing of an application under rule 6 the parties shall be entitled to appear and be heard either in person or by counsel.

Default of appearance

8 (1) Where, on the date fixed for the hearing, the Attorney-General does not appear, then, whether or not the respondent appears, the tribunal shall adjourn the proceedings on such terms (if any) as it thinks fit.

(2) Where, on the date fixed for the hearing, the respondent does not appear, it shall be the duty of the Attorney-General to satisfy the tribunal that the notice of proceedings and the notice of hearing have been served on the respondent in accordance with rule 15 and, if so satisfied the tribunal may proceed, if it thinks fit, in the absence of the respondent.

(3) Where, on the date fixed for the hearing of an application under 6, the Attorney-General or the respondent does, or both of them do, not appear, the tribunal may make such order as it thinks fit.

Procedure at hearing

9 (1) Where the respondent appears at the hearing the following order of proceedings, shall, unless the tribunal otherwise directs, be observed, —

- (a) the Attorney-General shall read out the allegations in the notice of proceedings;
- (b) the chairman shall ask the respondent whether he admits each such allegation, and if the respondent admits any allegation there shall be recorded a finding that there has been such a contravention or such conduct as is alleged therein;
- (c) in respect of any allegation which is not admitted the chairman may ask the respondent whether he is willing to admit any of the facts stated in the allegation;
- (d) the Attorney-General may, in relation to any allegation which is not admitted, address the tribunal and adduce evidence in respect of any fact which has not been admitted;
- (e) the respondent may address the tribunal and adduce evidence in relation to any allegation still undisposed of;
- (f) on the application of either party the tribunal may then allow evidence in reply or rebuttal if it considers it to be in the interests of the fair disposal of any such allegation to do so;
- (g) the Attorney-General may then address the tribunal;
- (h) the respondent may then address the tribunal.

(2) Where the respondent does not appear at the hearing and the tribunal proceeds in his absence, the Attorney-General may address the tribunal both before and after he has adduced evidence.

Evidence

10 (1) Any witness called by a party to the proceedings shall be liable to cross-examination by the other party and, if cross-examined, to re-examination by the party calling him.

(2) The tribunal may accept without proof any matter admitted by a party to the proceedings.

(3) Where any document is put in evidence at the hearing it shall not be necessary to prove its authenticity unless the tribunal otherwise directs.

(4) The tribunal shall not be bound to reject evidence on the ground only that it would be inadmissible in a court of law.

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Findings of tribunal

11 In respect of each allegation, other than one in respect of which a finding has been recorded under rule 9 (1) (b), the tribunal shall make and record a finding either—

- (a) that there has been such a contravention or such conduct as is alleged; or
- (b) that there has been no such contravention or conduct.

Submissions and evidence with reference to recommendation

12 Where there has been recorded any such findings as is mentioned in rule 9(1) (b) or 11(a) the Attorney-General and, if he appears, the respondent may address the tribunal and adduce evidence with reference to the recommendation to be made in respect of the respondent.

Majority decision, etc

13 In the event of disagreement between the members of the tribunal any decision of the tribunal may be taken by a majority thereof and, if the members are equally divided, the chairman shall have a second and casting vote.

Report of tribunal

14 (1) At the conclusion of the hearing the tribunal may adjourn in order to consider its report to the Minister.

(2) The report shall contain a statement—

- (a) of the findings of the tribunal;
- (b) of the reasons for the findings;
- (c) (in the event of a finding under rule 9(1)(b) or 11(a))—
 - (i) of the recommendation of the tribunal or, as the case may be, of the fact that the tribunal considers that a direction should not be given; and
 - (ii) of the reason for the recommendation, or, as the case may be, for so considering; and
- (d) (in the event of a disagreement between the members of the tribunal) of the names of the majority and of the minority, and of the latter's reasons, so far as at variance with those of the majority, on—
 - (i) the findings, or as the case may be;
 - (ii) the question whether a recommendation should be made; or

(iii) the terms of any recommendation.

(3) The chairman shall sign the report on behalf of the tribunal and the secretary shall serve a copy of the report on the Attorney-General and on the respondent.

(4) Where the hearing has taken place in private the tribunal shall ensure that the report does not disclose the identity of any person, other than the respondent, about whom an adverse finding of fact has been made, or of any person referred to in the report as being addicted to or having taken controlled drugs of any description.

Service of notice

15 (1) Any notice or document required to be served on the respondent under these Rules shall be deemed to have been duly served if it is sent or given to an attorney acting on behalf of the respondent or is delivered to the respondent personally or left at his address or sent to him there—

(a) in the case of notices under rules 2, 3 and 4, by registered post; or

(b) in any other case, by post.

(2) Any notice or document required to be served on the attorney may be sent to the address for service specified in the notice of the terms of reference.

(3) Any notice or document to be sent to the tribunal or to the chairman may be sent to the address of the secretary specified in the notice of the terms of reference.

Extension of time

16 The time appointed by or under these Rules for doing any act or taking any step in connection with any proceedings may be extended by the chairman, whether or not the period has expired, on such terms and conditions, if any, as appear to him just.

Failure to comply with rules

17 Any failure on the part of any person to comply with these Rules shall not render the proceedings, or anything done in pursuance thereof, invalid unless the chairman or the tribunal so directs, but the chairman or the tribunal may give such directions for the purpose of mitigating the consequences of the irregularity as the justice of the case may require.

Power to regulate procedure

18 Subject to the Act and these Rules the tribunal shall have power to regulate its own procedure, and may adjourn or postpone the proceedings as it thinks fit.

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APPENDIX Rule 4

Form 1

MISUSE OF DRUGS TRIBUNAL

In the matter of [blank] [a physician] [(a practitioner)]

NOTICE OF PROCEEDINGS

To [blank]
of [address]

WHEREAS the Minister considers that there are grounds for giving a direction under section 17 [(1)] [(2)] of the Misuse of Drugs Act 1972 (hereinafter called "the Act" on account of [an alleged contravention by a physician] [alleged conduct by a practitioner] as is there mentioned.

AND WHEREAS he has referred the case to a tribunal constituted in accordance with the Act and has given notice in writing of the terms of reference to you as the respondent [physician] [practitioner] and to me.

NOW I [blank] Attorney-General of The Attorney-General's Chambers, Hamilton do hereby give notice that the tribunal is to consider the case on a date to be notified in due course by the tribunal and will inquire in particular into the following [allegations] against you:—

(1) [If the allegation relates to contravention]. That you did on the [blank] day of [blank] contravene [the provisions of regulation [blank] of the [blank] Regulations 19 [blank] [the terms of a licence issued to you [or as appropriate] on [blank] in that you [here specify the contravention alleged].

OR

(2) [If the allegation relates to conduct]. That you are/have been prescribing/administering/supplying/authorizing the administration of/authorizing the supply of/ controlled drugs in an irresponsible manner in that you (here specify the conduct alleged) [blank]

[Where there is more than one allegation, the allegations should be numbered consecutively but each allegation may contain more than one alleged act if appropriate].

A copy of the Act and of the Misuse of Drugs Tribunal Rules 1975 are enclosed for your information.

Dated this [blank] day of [blank] 19 [blank]

Signed
Attorney-General

(Delete any not relied on.)

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NOTICE OF HEARING

In the matter of [blank] [(a physician)] [(a practitioner)]

To: The Attorney-General

and to

..... (the respondent)

of

TAKE NOTICE that the tribunal will consider the case referred to it concerning the respondent on [blank] the [blank] day of [blank] at [blank] a.m./p.m. at [Address].

Signed
Secretary

Delete whichever is inapplicable.