

Executive Summary

An oral report will be given of the present position and discussion can be held as needed.

The previously presented criteria for grandparenting are recirculated and members asked to note them again.

Standards of Proficiency and the Renewal of Registration

Jonathan Bracken

Introduction

This note is by way of clarification of the comment in my report of January 2003 on safe and effective practice that "all registrants must continue to be able to meet the standards of proficiency required of a newly qualified practitioner in order to remain on the register."

Renewal requirements

Article 10(2) of the Health Professions Order 2001 (the Order) requires every health professional, when renewing their registration, to:

- meets the conditions set out in Articles 9(2)(b) and (c) of the Order;
- meets any CPD requirements set under the Order; and
- if they have not practised since they were last registered, to complete any "top up" training specified under Article 19(3) of the Order.

Articles 9(2)(c) is simply the requirement to pay the prescribed renewal fee and therefore it is compliance with Article 9(2)(b) with which we are concerned here. That Article requires a person to satisfy the Education & Training Committee (ETC), which is responsible for the registration process, that:

"in accordance with the Council's requirements mentioned in Article 5(2) that he is capable of safe and effective practice under the part of the register concerned".

Article 5(2) in turn requires the Council to set:

"the standards of proficiency necessary to be admitted to the different parts of the register being the standards it considers necessary for safe and effective practice..."

and to prescribe:

"the good health and good character requirements" which establish that an applicant "is capable of safe and effective practice".

Applying these requirements

The Order makes no provision for re-validation of health professionals when they renew their registration and thus a "lighter touch" regime is envisaged. In practice, the process is likely be self-policing to a large extent, requiring the applicant to sign a declaration to the effect that either:

- he or she is still currently in practice, has met any CPD requirements and meets the proficiency and health and character requirements, or
- he or she has not been in practice but meets all those requirements and has completed any "top up" training requirements.

As noted in previous reports, whether a person is practising as a health professional is a question of fact and those in education, management or research may be regarded as being in practice for this purpose.

In the same way that a person who on being first registered is assumed to meet the standards of proficiency by holding an approved qualification which attests to those standards, so a health professional's declaration at renewal should be accepted as accurate unless there are good grounds to doubt it. The declaration should be made on a form which contains a warning that fraudulently procuring the renewal of a register entry is a criminal offence.

Obviously, the Council will wish to put some form of audit mechanism in place to verify that the renewal system is sufficiently robust, but the need to be "satisfied" that an existing practitioner continues to meet the standards of proficiency should not be an unduly onerous requirement. Once the CPD scheme is in existence, although it is not a measure of continuing competence, it will assist those who are in practice but perhaps not involved in the day to day treatment of patients to show that they meet the continuing competence requirement.

If there reasonable grounds to believe that a person has made an inaccurate declaration then further enquiries may be made and if that person cannot satisfy the ETC that they meet the standards of proficiency, then ultimately disciplinary proceedings or a criminal prosecution may follow.

March 2002/3

Safe and effective practice

Jonathan Bracken

Introduction

In recent months some confusion has arisen about the meaning of the term "safe and effective practice" and, in particular, whether differing or lower standards will be applied to those who enter the register other than by means of an approved UK qualification, for example, under the transitional arrangements ('grandparenting') or as international applicants.

A person's capacity for safe and effective practice is established by meeting two criteria:

- the standards of proficiency; and
- the good health and good character requirements.

So far as the standards of proficiency are concerned, the Health Professions Order 2001 ('the 2001 Order') requires common standards of proficiency for safe and effective practice to be set for each part of the register. Therefore, regardless of how a person comes to the HPC seeking registration he or she must be able to meet the minimum standard for safe and effective practice of that profession, or establish that they have practised safely and effectively, before being admitted to the register.

Every applicant - whether a UK graduate, grandparenting, EU or international applicant - must also meet the good health and good character requirements.

The 2001 Order is unambiguous on this issue (although not always easy to read), as I hope the analysis below will help to show.

Analysis

Article 9(2)(b) of the 2001 Order requires that every person seeking admission to the register must satisfy the Education and Training Committee that he or she "*is capable of safe and effective practice*" in accordance with the requirements in Article 5(2).

Article 5(2)(a) in turn requires the Council to set "*the standards of proficiency necessary to be admitted to the different parts of the register being the standards it considers necessary for safe and effective practice...*" and Article 5(2)(b) requires the Council to prescribe the "*good health and good character requirements*" which establish that an applicant "*is capable of safe and effective practice*".

A person may be admitted to the register by virtue of holding an "*approved qualification*" or, during the two year transitional period, under the grandparenting arrangements.

Article 12 of the 2001 Order provides that a person will only be regarded as holding an approved qualification if they hold:

- a UK qualification which the Council has approved "*as attesting to the standard of proficiency it requires for admission to the [relevant] part of the register*";
- in the case of an EEA national, an equivalent qualification recognised as such under the EC regime for mutual recognition of professional qualifications; or
- in the case of an international applicant, either a qualification which "*attests to a standard of proficiency comparable to that*" of an approved UK qualification or, if not has undergone additional training or experience to meet the "*requisite standard of proficiency for admission to... the register*".

It should be noted that, although in practice courses for approved qualifications will deliver outcomes which exceed the standards of proficiency for safe and effective practice, the HPC's legal powers are limited to ensuring that such courses meet those standards and no more. Article 15(1) provides for the Education & Training Committees to "*establish the standards of education and training necessary to achieve the standards of proficiency it has established under Article 5(2)*" and the Committee's power to approve courses, and to refuse or withdraw such approval relates to the standards established under Article 15(1).

The transitional ("grandparenting") arrangements are set out in Article 13 of the 2001 Order and grandparenting applicants must also be able to show that they meet the requirements for safe and effective practice. Grandparenting applicants will fall into two categories:

- those candidates who meet the "3 out of 5 year" rule, that is who have been wholly or mainly practising a relevant profession for three out of the five years ending when the register opens, who are required by Article 13(2)(a) to show that they have been engaged in "*lawful, safe and effective practice*".
- those who do not meet the "3 out of 5 year" rule but may also be eligible for registration subject to undertaking additional training and experience to satisfy the Council that they have "*the requisite standard of proficiency*" for admission.

The requirement to be capable of safe and effective practice is an ongoing one and when renewing registration, a health professional is required by Article 10(2) to "meet the conditions set out in Article 9(2)(b)...", that is satisfy the Education and Training Committee that he or she "is capable of safe and effective practice" in accordance with the requirements in Article 5(2).

On a connected point, whether a person is practising as a health professional is a question of fact and those in education, management or research may be regarded as being in practice for this purpose. However, as the safe and effective practice requirement is an admission standard which relates to clinical competence, all registrants must continue to be able to meet the standards of proficiency required of a newly qualified practitioner in order to remain on the register.

January 2003

REGISTRATION COMMITTEE

Grandparenting Criteria

Article 13(3) of the Health Professions Order 2001 provides that the Council must establish the criteria which the Education & Training Committee are to have regard to in determining grandparenting applications. This papers sets out a preliminary draft of the criteria for consideration by the Registration Committee. As a first draft the document may not cover all of the elements which Council would wish to include in the criteria.

HEALTH PROFESSIONS COUNCIL

Applications for Registration during the Transitional Period

("Grandparenting" Applications)

Introduction

1. Article 13 of the Health Professions Order 2001 provides that, during a transitional period of two years beginning with the date on which the HPC register opens, a person who does not hold an approved qualification and who was never registered under the Professions Supplementary to Medicine Act 1960 may, in certain circumstances, be treated as if he or she satisfies the requirement to hold an approved qualification for registration.

2. Those circumstances are set out in Article 13(2) of the Order and require the applicant to satisfy the Council's Education and Training Committee ("the Committee") that:

- a. he or she has been wholly or mainly engaged in the lawful, safe and effective practice of the profession in respect of which he or she is seeking registration ("the relevant profession") for three out of the five years prior to the opening of the register (or its part time equivalent); or
- b. where the applicant cannot meet the "three out of five years" test, that he or she has undergone additional training or experience to satisfy the requisite standard of proficiency for the relevant profession.

3. In either case the Committee may require the applicant to take a test of competence.

4. This document sets out the criteria that the Council has established and to which the Committee must have regard in determining whether an applicant meets the requirements of Article 13(2).

Form of application

5. An application for admission to the register under the grandparenting arrangements must be made during the transitional period using the form specified in [Rules] and accompanied by the fee prescribed in [provision] of those Rules.

Lawful practice and its duration

6. In determining whether an applicant has spent any part of his or her working time in the lawful, safe and effective practice of a relevant profession, the Committee shall have regard to, among other matters, the period during which the applicant:

- a. has been included in the register of any regulatory body (if any) for the relevant profession;
- b. has maintained professional indemnity insurance in respect of the practise of that profession;
- c. is stated, in a professional status reference, to have been practising that profession.
- d. has, in other circumstances, practised that profession,

and to the nature and extent of his or her practice during any such period.

7. For this purpose a "professional status reference" is a reference as to the number of years a person has been practising a relevant profession which is given in a ~~statutory declaration~~ by a medical practitioner, bank manager, accountant or solicitor who is not related to the applicant by birth or marriage (or any relationship akin to marriage).

8. If an applicant has practised a relevant profession in a place outside the United Kingdom, and the practice of that profession there was prohibited unless legal requirements relating to it were complied with, the applicant must satisfy the Committee that he or she has complied with those requirements in order to be treated as having spent that period in the lawful practice of that profession. -

Safe practice

9. In determining whether an applicant has practised a relevant profession safely, the Committee shall, among other matters, have regard to any:

- a. complaint made to any regulatory body (if any) for the relevant profession by whom the applicant is or has been registered;
- b. claim made under a contract of insurance providing professional indemnity to the applicant; and
- c. proceedings (whether criminal or civil) brought against the applicant in connection with the practise of that profession.

Effective practice

10. For the purpose of satisfying the Committee that he or she has practised a relevant profession effectively, the applicant shall complete [the questionnaire which forms part of the application form for applications under the transitional arrangements in accordance with [provision] of the [Rules]].

11. In determining whether an applicant has practised the relevant profession effectively the Committee shall, among other matters, have regard to:

- a. the completed questionnaire; and
- b. the required standard of proficiency for that profession.

Test of competence

12. The Committee may require the applicant to pass the test of competence for the relevant profession (or any part of that test) as it considers appropriate.

13. A test of competence shall comprise a test covering the following heads for the purposes of determining whether the applicant meets the required standard of proficiency in relation to:

- a. knowledge and understanding of the nature and ethical basis of the practice of the relevant profession;
- b. scientific and medical knowledge relevant to the practice of that profession;
- c. clinical assessment, including physical examination before and during treatment, interview and case history;
- d. diagnosis or clinical impression;
- e. the selection of appropriate treatment;
- f. the delivery of treatment and evaluation of the response to treatment;

- g. the giving of advice concerning treatment, treatment dependence, minimizing of recurrence or the need for further treatment, and related matters;
- h. the obtaining of consent to treatment;
- i. communication with other health professionals, general medical practitioners and other care providers, including assessment of the need for second opinions or for referrals;
- j. record keeping.

14. A test of competence may be conducted as an oral or written test (or both) and may include a test requiring a practical demonstration by the applicant.

15. Tests of competence will be conducted by assessors appointed by the Council, who shall be persons who are registered practitioners of the relevant profession with not less than [five] years' professional experience.

Additional training and experience

16. In considering whether it is necessary for an applicant under Article 13(2)(b) to undertake additional training or to acquire additional experience, the Committee may have regard to any matter which appears to the Committee to be relevant.

Obtaining further information

17. Article 13 requires applicants to satisfy the Committee that they meet the tests of having been wholly or mainly engaged in the lawful, safe and effective practice of a relevant profession or having undergone additional training or experience to meet the required standards of proficiency for that profession. Consequently, where on the basis of the information available to it, the Committee is not satisfied on any of those points the Committee may:

- a. require the applicant to provide information in addition to that provided with the application for registration;
- b. require the applicant to be interviewed by the Committee or by a person nominated by it or to be visited at any place where he or she practises the relevant profession by a person so nominated; and
- c. obtain information additional to that provided with the application for registration from any other person or source as it considers appropriate.