



## Professional Capability and Fitness to Practise Regulations

### Introduction

1. These regulations are made by Senate under the authority of Ordinance A15 (n) and Ordinance C4.

### General Definitions

2. In these Regulations:
  - a. Unless the contrary appears from the context, words implying the singular include the plural and vice versa.
  - b. Unless the contrary appears from the context, reference to a specific office-holder means that where such an office-holder is unable to act, their deputy, the person acting in the office or the office holder's nominee will act in their place.
  - c. Students refers to those defined as such in Ordinance C1.
  - d. Foundation Year One (F1) Doctor refers to a member of NHS staff who is undertaking Foundation Year One and is a member of the Foundation School.
  - e. Primary medical or dental qualification refers to awards that lead to a licence to practise medicine or dentistry: MB,BS and DBS.
  - f. Professional dental care programme refers to programmes that lead to a licence to practise professionally in dental care: Diploma in Dental Hygiene and Dental Therapy.
  - g. Professional Capability refers, in the broadest sense, to a student's health and behaviour being compatible with the expectations of the General Medical Council and General Dental Council. These are laid out in 'Achieving good medical practise: guidance for medical students' & 'Professional behaviour and fitness to practise: guidance for medical schools and their students' and 'Student professionalism and fitness to practise: Standards for the dental team Guidance for students' & 'Student professionalism and fitness to practise: Standards for the dental team Guidance for providers'. A student's Professional Capability is called into question when their behaviour and/or health raises concerns at any level about their ability to meet the requirements of their programme. Persistent concerns may give rise to a concern about the student's fitness to practise.
  - h. Fitness to practise refers to a student's health and behaviour being compatible with the requirements for professional practise as a doctor or dentist. A student's fitness to practise is called into question when their behaviour and/or health raises a serious or persistent cause for

concern about their ability to continue on a programme leading to registration as a doctor or dentist and their ability to practise after graduation. This includes, but is not limited to, the possibility that they could put patients or the public at risk.

## Scope

3. The Professional Capability and Fitness to Practise Regulations apply to any person defined as a student of Queen Mary University of London in accordance with Ordinance C1 who is registered for a primary medical or dental qualification or professional dental care programme. This includes students who have interrupted their study and/or are out of attendance, and students are undertaking an intercalated programme whether or not their registration for a primary medical or dental qualification or professional dental care programme is with QMUL; where the registration is with another institution, the outcome of QMUL's process will be reported to that institution.
4. For the purpose of fitness to practise, these regulations also apply to Foundation Year One doctors.
5. These regulations apply to any action whether it takes place on or off QMUL's premises. These Regulations also apply to actions that are electronic and occur in a virtual environment or through other communication technology methods such as mobile phones.
6. These regulations apply to all matters where a student's health may give rise to a concern about their professional capability or fitness to practise.

## Responsibility and authority

7. The General Medical Council and the General Dental Council require that graduates from primary medical and dental qualifications and professional dental care programmes be fit to practise. QMUL is required to certify its confirmation that a graduate from a primary medical or dental qualification or professional dental care programme has demonstrated that they are fit to practise upon graduation.

Relationship to the Code of Student Discipline, other Codes of Practise, Policies and Procedures

## **Code of Student Discipline**

8. Misconduct that is proven under the Code of Student Discipline involving students studying for a primary medical or dental qualification or professional dental care programme is reported to the Professional Capability Committee for action as appropriate. Where the misconduct has been proven through the Student Disciplinary Regulations, the Professional Capability Committee and/or Fitness to Practise Committee does not rehear the case but considers capability and fitness to practise issues in the light of the misconduct and outcome of the disciplinary procedures.

## **Codes of Practise, Policies and Procedures of the School of Medicine and Dentistry**

9. The School of Medicine and Dentistry has in place a number of codes of practise, policies and procedures that apply to students undertaking a primary medical or dental qualification or professional dental care programme and F1 doctors. These codes of practise, policies and procedures may include requirements of health care trusts where students undertake a part of their programme. Any breach of other codes of practise, policies and procedures may give rise to professional capability and fitness to practise concerns. These will be reported to the Professional Capability Committee for action as appropriate.

## **Regulations Governing the Conduct of Assessment and Assessment Offences**

10. If a complaint of misconduct is solely concerned with alleged examination or assessment irregularities, the matter is normally dealt with under the Assessment Offences Regulations [see Academic Regulations]. Repeated and very serious breaches of these regulations may also be dealt with under the Code of Student Discipline.
11. Outcomes from Conduct of Assessment and Assessment Offences Regulations for students studying for a primary medical or dental qualification or professional dental care programme are reported to the Professional Capability Committee for action as appropriate.

## **Other QMUL Regulations**

12. Allegations of breaches of other QMUL regulations, for example Halls of Residence Regulations, Library Regulations and Computing Regulations, are normally dealt with in accordance with those regulations. Repeated or more serious misconduct or breaches of these regulations may also be dealt with under the Code of Student Discipline and reported to the Professional Capability Committee for action as appropriate.

## **Students' Union Disciplinary Procedures**

13. Complaints of misconduct in relation to Students' Union affairs that fall within the remit of the Students' Union Disciplinary Procedures and are dealt with by the Students' Union. The Students' Union includes the Barts and The London Students' Association. The Students' Union will report the outcomes of the operation of its disciplinary procedures to the Professional Capability Committee for action as appropriate.

## **Student Support and Pastoral Care Processes**

14. Where information comes to light through any student support or pastoral care process provided by QMUL, whether through a central service or within the School of Medicine and Dentistry, that may give rise to a concern about a student's professional capability or fitness to practise, that information is reported to the Professional Capability Committee for action as appropriate.

## Appeals

15. A student wishing to appeal against a decision of the Professional Capability Committee or Fitness to Practise Committee may do so using the Appeal Regulations.

### Burden and Standard of Proof

16. It is the responsibility of QMUL to establish that there is a professional capability or fitness to practise concern. The standard of proof required is the balance of probability: it should be more likely than not that the alleged event occurred and/or the student's professional capacity is impaired.

### Professional Capability warnings and actions, and Fitness to Practise actions, undertakings and conditions

17. When determining warnings and actions, undertakings and/or conditions, consideration will be given to:
  - a. The seriousness of the implications for the student's professional capability and/or fitness to practise.
  - b. The student's previous conduct; repeated warnings, actions and conditions whether for the same or different issues may result in more serious action being taken by the Professional Capability Committee, including referral to the Fitness to Practise Committee.
  - c. The conduct of the student since the incident(s) being considered.
  - d. Whether the conduct has been acknowledged by the student or admitted in the case of misconduct.
  - e. Any mitigating factors or implications for the student's fitness to practise.
  - f. The sufficiency of the warning, action, condition and/or undertaking as a safeguard to protect the public and others.

### Suspension, Exclusion and Instruction Restricting Activity Pending Hearing

18. The Professional Capability Committee may suspend, exclude or instruct restriction of activity pending hearing for any student within its jurisdiction where there is a concern for the safety or wellbeing of patients or others. The Professional Capability Committee may suspend, exclude or instruct a restriction of activity pending hearing where the matter is being considered initially under the Code of Student Discipline and one of these actions has not occurred under the Code.
19. Suspension means the total prohibition on attendance at, or access to, QMUL and on any participation in QMUL activities, but at QMUL's absolute discretion it may be qualified for example to permit a student to attend an examination. This includes teaching and learning in a clinical setting.

20. Exclusion means selective restriction on attendance at or access to QMUL or prohibition on exercising the functions or duties of any office or committee membership in QMUL or the Students' Union. The precise nature of an exclusion order will be made to the student in writing.
21. Instruction restricting activity means a requirement that a student refrain from contact with a specified individual or undertaking a specific form of action. The precise nature of the instruction restricting activity will be made to the student in writing.
22. Suspension is only to be used where exclusion from specified activities or facilities would be inappropriate. Exclusion is only to be used where an instruction restricting activity would be inappropriate.
23. Suspension, exclusion or instruction restricting activity pending hearing are not penalties, and are not to be used as such. Their purpose is to enable QMUL to exercise its duty of care to patients and others while an investigation takes place. The reasons for any decision to suspend or exclude a student is recorded and made available to the student along with details about the length of the suspension/exclusion/restriction of activity.
24. A student who has been suspended, excluded or received an instruction restricting activity pending hearing may make representations against the decision to the nominated Vice Principal who will respond in writing.
25. Where immediate suspension, exclusion or instruction restricting activity is necessary to preserve good order or to protect staff or students from harm, it may be imposed with immediate effect. In such cases, the student may make representations against the decision within five days of its notification.
26. A student may request a review of a suspension, exclusion or instruction restricting activity should new information come to light. In such circumstances, the student makes the request to the Vice Principal who will respond in writing.

## Professional Capability and Fitness to Practise Procedure

### Raising a concern about Professional Capability and/or Fitness to Practise

27. A concern about a student's professional capability or fitness to practise may arise from one or more of a number of routes. These routes include tutorial systems, pastoral support, teaching and learning activities, the operation of the Code of Student Discipline, the outcome of examination results, the professionalism points scheme and external routes. External routes may include reports from members of the public, public authorities and students. In the first instance, concerns are sent to the Chair or Secretary of the Professional Capability Committee.

### Investigation

28. The Chair of the Professional Capability Committee conducts those investigations that they consider necessary. This may include the appointment of an investigating officer. In such cases, the student is notified name of the investigator.

29. At any point during the course of an investigation into a professional capability concern, the Chair of the Professional Capability Committee may refer the matter for action under the Code of Student Discipline.
30. The investigation normally involves the following stages:
- a. Notification to the student of the professional capability or fitness to practise concern.
  - b. Request for written statements from those involved in the case and collection of any other factual evidence.
  - c. Interviews with the relevant individuals and witnesses.
  - d. Interview with the student concerned to provide them with an opportunity to present their case. Where an interview is not possible in person, a written statement may be requested.
  - e. A written report of the investigation and the details of evidence gathered.
31. In all cases, witnesses' evidence and/or statements are made available to the student unless there is a concern for the safety of the witness.
32. The Chair of the Professional Capability Committee or appointed Investigating Officer keeps notes of meetings held with witnesses and the student. These notes may be made available to the student unless there is a concern for the safety of a witness.
33. If a student withdraws from their programme of study before the formal Professional Capability or Fitness to Practise procedures are complete, the relevant process will continue in the student's absence. Students will be advised of the outcome which will also be communicated to the relevant professional body
34. When the investigation is complete or the Chair of the Professional Capability Committee considers that sufficient evidence has been gathered, they may:
- a. **Dismiss the professional capability concern**, in which case the matter is closed and no further action taken except for the submission of a file note to the Professional Capability Committee.
  - b. **Take Chair's action to issue a professional capability warning** (see paragraph 39 below)
  - c. **Refer the matter for action by the Professional Capability Committee.**
  - d. **Decide that the matter should be dealt with under the Code of Student Discipline.**
  - e. **Refer the matter to the Fitness to Practise Committee** for consideration with a report to the Professional Capability Committee.

## The Professional Capability Committee

### Terms of Reference

35. The Terms of Reference of the Professional Capability Committee are:

- a. To keep under review the professional capability of students registered for a primary medical or dental qualification or professional dental care programme.
- b. To consider reports from the Dean for Education and other bodies within QMUL on students registered for a primary medical or dental qualification or professional dental care programme and agree actions where a report may give rise to a concern about a student's professional capability and/or fitness to practise. Where the Professional Capability Committee considers a report of a decision of another body, it does not rehear the case.
- c. To interview students about their professional capability.
- d. To consider other reports of professional capability and fitness to practise concerns.
- e. To issue warnings and takes other professional capability actions where the Committee decides that there is a proven concern about a student's professional capability and gives reasons for the action or warning.
- f. To receive reports of Chair's action taken under delegated authority from the Committee [see paragraph 39 below].
- g. To refer student cases to QMUL disciplinary process for consideration where applicable.
- h. To refer student cases to the Fitness to Practise Committee for consideration where applicable.

### Constitution

36. Members of the Professional Capability Committee are agreed by Senate on the nomination of the Vice Principal (Health) & Executive Dean and serve on the committee for a period of up to three years after which their membership may be renewed for further periods. A greater number of nominations are made to enable some flexibility in the membership in order to respond to the different professional areas of medicine and dentistry and to avoid conflicts of interest but at the same time ensure a consistent pool of individuals to serve on the Committee.

37. The members of the Professional Capability committee are:

- a. A chair, drawn from a pool of three potential chairs, nominated by the Vice Principal (Health) & Executive Dean and approved by Senate.

- b. Two other members from the School of Medicine and Dentistry, one of whom is a registered doctor or dentist drawn from a pool appointed by Senate of six potential other members.
- c. The President of BLSA, or nominee.
- d. The Secretary to the Professional Capability Committee is a member of administrative staff of the School.

38. Where the Professional Capability Committee considers a report of a decision of another body, it does not rehear the details of the case leading to the decision being considered.

#### Action by the Chair of the Professional Capability Committee to issue Professional capability warnings

39. The Chair has authority to decide, by chair's action, to issue a professional capability warning where there is a proven concern about a student's professional capacity but where the student's fitness to practise is not impaired and there is not a requirement for further actions that can only be imposed by a Professional Capability Committee or Fitness to Practise Committee. Chair's actions are reported to the Professional Capability Committee.

#### Professional Capability Committee Procedure

- 40. A student whose case has been notified to the Professional Capability Committee is normally informed of this within 5 working days.
- 41. Where the Chair of the Professional Capability Committee considers that they are unable to take action themselves then a full meeting of the Professional Capability Committee will be convened.
- 42. The student is normally given 10 working days' notice prior to the meeting of the Committee of the requirement to attend. On occasion it may not be possible to notify the student within this timescale where a matter requires consideration more urgently.
- 43. The student is normally sent a copy of these regulations, together with copies of all relevant documents to be presented at the hearing 10 working days before the date set for the hearing.
- 44. The student may be represented or accompanied by any person of their choosing. Normally, a maximum of two individuals are permitted to accompany a student at the meeting or hearing.
- 45. Where the student has been invited to attend the meeting, but is unable to do so, the case is heard in their absence.
- 46. The student may submit a written statement to the Committee which must be received at least three working days prior to the meeting.
- 47. At any time during its proceedings, the Professional Capability Committee may decide to refer the matter to a Student Disciplinary Committee or Fitness to Practise Committee.



48. The Professional Capability Committee decides one or more of the following:
- a. That there is no professional capability concern, in which case the matter is closed and no further action is taken.
  - b. That a professional capability concern exists and imposes an action available to it in the form of a warning, a requirement or an undertaking.
  - c. To refer the matter for consideration under the Code of Student Discipline.
  - d. To refer the matter to the Fitness to Practise Committee
49. The Professional Capability Committee records the reasons for its decision.
50. The student is notified of the outcome and decision, normally, within three days of the date of the hearing or final meeting with the student. This decision will be put in writing within 7 working days. The letter records the decision, the reasons for it, and the student's right of appeal.

#### Professional Capability Actions

51. Where the Professional Capability Committee considers that the concern is proven it may impose one or more of the following actions:
- a. A first written warning;
  - b. A final written warning;
  - c. Undertakings which may relate to health and conduct matters where the student acknowledges the professional capability concern and the Committee considers the concern can be resolved through the undertaking. Undertakings are accompanied by objectives and timeframes and criteria for determining whether or not they have been met;
  - d. Conditions which may relate to health or conduct matters where the Committee considers that the professional capability concern can be resolved through the conditions. Conditions are accompanied by objectives and timeframes and criteria for determining whether or not they have been met;
  - e. Actions in the form of suspension from the programme and QMUL for a period up to three months;
  - f. Actions in the form of exclusion from part of the programme or QMUL facilities for a period up to three months.

## The Fitness to Practise Committee

### Terms of Reference

52. The Fitness to Practise Committee shall meet to consider cases referred to it by the Professional Capability Committee or its Chair.

### Constitution

53. The Fitness to Practise Committee constitutes members selected from a small pool approved by the Senate for that purpose, a nominee of the Vice Principal (Health) & Executive Dean, an external member and a student member.
  - a. The Chair of the Fitness to Practise Committee shall normally be a senior member of staff from the School of Medicine and Dentistry, appointed by Senate.
  - b. One member of the academic staff from the School of Medicine and Dentistry, drawn from a list of those staff appointed for a term of three academic years by Senate.
  - c. One member of the academic staff of the School of Medicine and Dentistry, nominated by the Vice Principal (Health) & Executive Dean, who is either a registered doctor or dentist depending on whether the student being considered is from a medical or dental programme.
  - d. An external member who is a registered doctor or dentist and is normally a senior member of staff of a university or college other than Queen Mary University of London.
  - e. The BLSA or QMSU President, or nominee.
54. A member with relevant specialist medical knowledge may be appointed to consider cases relating to health matters.
55. The secretary to the Fitness to Practise Committee is the Academic Registrar, or nominee.
56. No person who has any close personal connections with the student due to appear before the Committee, or with the alleged event(s), is eligible for appointment to the Committee.
57. Should the pool of academic staff from the School of Medicine and Dentistry and those nominated by the Vice Principal (Health) & Executive Dean all have close personal connections with the student due to appear before the Committee, or with the alleged event(s), their role will be replaced by additional external members as described in d. above .
58. The absence of one member of the Committee does not prevent the hearing taking place, or invalidate its outcome. The Chair of the Committee may, at any time between the initial appointments and the date of the hearing, appoint a replacement member, should any of the initial members be unable to attend the hearing.

## Fitness to Practise Committee Procedure

59. The Committee meets as soon as reasonably practical to consider a concern referred to it. This meeting will be called a hearing. The hearing will normally be held within eight weeks of the referral to the Fitness to Practise Committee.
60. If it is deemed appropriate, the Chair of the Committee may refer a case back to the Professional Capability Committee for conditions and undertakings to be applied in the first instance. Failure to comply with the conditions and undertakings set will result in referral to Fitness to Practise Committee.
61. At least ten working days before the date set for the hearing, the secretary to the Committee sends the student a copy of these regulations, together with copies of all relevant documents to be presented at the hearing.
62. The student or F1 Doctor is required to inform the secretary of any documents that they intend to present or refer to at the hearing and to provide copies of them at least three working days before the date of the hearing. The Chair of the Committee may, at their discretion, allow the student additional time in which to produce documents for a hearing; there is no appeal against any refusal to allow such additional time.
63. Normally, the hearing is held in private, however, it may be held in public where the student or F1 Doctor specifically requests it.
64. The Chair of the Committee is responsible for the conduct of the hearing and does so in accordance with the process set out below and the provisions of these regulations. The Chair's rulings on matters of procedure are final. The Chair of the Committee may take whatever action they feel is appropriate in order to ensure the availability of all relevant facts and to facilitate a fair and just outcome. Any matter relating to the hearing which is not covered by this Code will be decided by the Committee, whose decision shall be final.
65. Where the student has been invited to attend the meeting, but is unable to do so, the case is heard in their absence.
66. The process for the hearing is as follows:
  - a. The student or F1 Doctor may be assisted or represented by any person. Normally, no more than two people may accompany the student.
  - b. The concern is presented to the Committee by the Chair. The Committee may ask questions.
  - c. The student or F1 Doctor or their representative is invited to present their case. The Committee may ask questions.
  - d. The Committee may call witnesses. The Committee and the student or F1 Doctor, or their representative, may question these witnesses but, if they do so, the Committee may ask further questions.

- e. The student or their representative may call witnesses. The Committee may question these witnesses but, if they do so, the student or F1 Doctor or his/her representative may ask further questions.
  - f. If a person is asked to appear as a witness, but is unwilling or unable for good reason, to attend a hearing, a written statement may be provided. Copies of any such statements are provided to the student.
  - g. In circumstances where a witness is likely to be in distress, the Committee may permit the witness to be accompanied by any person, who will not participate in the proceedings in any way.
  - h. The Committee may question the student or F1 Doctor.
  - i. The student or their representative may address the Committee or F1 Doctor.
  - j. Any member of the Committee may question the Academic Registrar, or nominee and the student or F1 Doctor. The student, or their representative, may question the Academic Registrar, or nominee.
67. Only the individuals party to the case and the Committee attend the hearing. The Committee, sitting alone, determines the outcome.
68. The Committee's decision is notified in writing within seven days of the hearing. The letter gives the decision, the reasons for the decision and the student's or F1 Doctor's right of appeal.
69. The Committee may either:
- a. **Dismiss the fitness to practise concern**, in which case the matter is closed.
  - b. **Rule that the fitness to practise concern should not be subject to further action** under the Professional Capability and Fitness to Practise Regulations and, where considered appropriate, take informal action by way of caution or otherwise.
  - c. **Decide that the fitness to practise concern is proven and impose one or more actions** from those available.

#### Fitness to Practise Actions

70. Where the Fitness to Practise Committee considers that the concern is proven it may impose one or more of the following actions:
- a. A first written warning;
  - b. A final written warning;
  - c. Undertakings which may relate to health and conduct matters where the student acknowledges the professional capability concern and the Committee considers the concern can be resolved through the undertaking. Undertakings are accompanied by objectives and

timeframes and criteria for determining whether or not they have been met;

- d. Conditions which may relate to health or conduct matters where the Committee considers that the professional capability concern can be resolved through the conditions. Conditions are accompanied by objectives and timeframes and criteria for determining whether or not they have been met;
- e. Actions in the form of suspension from the programme and QMUL for a period up to one year;
- f. Actions in the form of exclusion from part of the programme or QMUL facilities for a period up to one year;
- g. Terminate the student's registration on the programme leading to a primary medical or dental qualification or professional dental care programme but permit the student to register for or be considered for an alternative programme and award with QMUL.;
- h. Recommendation to the Principal that the student's registration on the programme be terminated and the student excluded from QMUL;
- i. In the case of a F1 Doctor, the Fitness to Practise Committee may impose one or more of the actions listed above with the exception of [e], [f], [g], or [h]. The Fitness to Practise Committee may also impose one of the actions listed below;
- j. A recommendation that Foundation Year One period be extended;
- k. A recommendation that certification be refused;

#### Exclusion from QMUL

- 71. Where a Fitness to Practise Committee recommends to the Principal that the student's registration be terminated and the student be excluded from QMUL, the Principal considers the recommendation.

#### Further reporting

- 72. All suspensions, warnings or sanctions will be reported to the relevant professional body at the time of application for provisional registration. Students are also expected to report relevant outcomes to the relevant professional body.
- 73. Students who have been deregistered from their programme following Fitness to Practise proceedings will have their deregistration reported to Medical or Dental Schools Council.

#### Appeal Process

- 74. A student may appeal a decision arising from the Professional Capability and Fitness to Practise Regulations using the process set out in the Appeal Regulations.

75. Where all stages of QMUL's appeal regulations have been exhausted, the student is issued with a completion of procedures letter and may request a review by the Office of the Independent Adjudicator for Higher Education.

Approved:

Academic Board: 4 December 2008,

Senate: updated November 2011, further updated January 2012, June 2015 & June 2017

[Previous version approved by Council: July 2003 for implementation from September 2003]

## Equality Impact Assessment

*Is there any aspect of the policy, procedure or practise that is likely to have an adverse affect on any students from the protected equality groups (age, race/ethnicity, gender/sex, disability, sexual orientation or religion and belief)?* No the regulations are intended to ensure that the college fulfils its obligations to the GMC, GDC and the public in the education doctors and dentists.

*What mechanisms are in place to monitor the application of this policy across students from all protected equality groups?* An annual report is produced of the procedures which provides summary statistics on demographic information about students (gender, age, ethnicity) subject to action under these regulations. This will enable QMUL to identify any trends in the application of the regulations and rectify any shortcomings.

*Can the above differences be justified?* Not applicable as there are no differences.

*How does the policy support the student experience and QMUL's management of its academic standards?* Professional standards, capability and fitness to practise are integral to the education of future doctors and dentists. These regulations provide QMUL with mechanisms for managing concerns that may arise about students registered for medical and dental qualifications, professional dental care programme and F1 Doctors.

*How is this policy helping to:*

*Raise achievement levels and promote equality of opportunity?*

*Promote dignity, courtesy and respect within study?*

*Promote dignity, courtesy and respect within study?*

*Prevent or deal with discrimination?*

*(if not applicable, please explain why)*