



# Medical Act 1983

## 1983 CHAPTER 54

### [<sup>F1</sup>PART V

#### FITNESS TO PRACTISE AND MEDICAL ETHICS

#### [<sup>F1</sup> <sup>F2</sup>40B. **Appeal under section 40A: role of Professional Standards Authority for Health and Social Care**

- (1) If the General Council bring an appeal under section 40A—
  - (a) the Registrar must without delay give notice of the appeal to the Professional Standards Authority for Health and Social Care (“the Authority”); and
  - (b) the Authority may not refer the case to which the appeal relates under section 29 of the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”).
- (2) The Authority may, in spite of subsection (1)(b), become a party to the appeal by giving notice to that effect to the relevant court, the General Council and the person to whom the relevant decision relates; and—
  - (a) the Authority does not require the permission of the relevant court to become a party to the appeal; and
  - (b) accordingly, any provision of rules of court requiring an application for such permission does not apply to the Authority.
- (3) Having become a party to an appeal under section 40A by virtue of subsection (2) of this section, the Authority may make representations or file evidence in the appeal at any time before the end of the hearing of the appeal; but where it does so at a time which would, but for this subsection, have been in breach of a time limit imposed by rules of court, the relevant court may impose such conditions as it thinks fit.
- (4) The matters which the Authority may raise on an appeal under section 40A include any matter which it could have raised on a reference of the case under section 29 of the 2002 Act.
- (5) Where the Authority raises matters on an appeal under section 40A, the General Council and the person to whom the relevant decision relates have the same

*Status: Point in time view as at 18/11/2016.*

*Changes to legislation: Medical Act 1983, Section 40B is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- opportunity to respond as they would have if the Authority had raised the matters on a reference of the case under section 29 of the 2002 Act (and the General Council and person concerned had accordingly been respondents by virtue of subsection (7) of that section).
- (6) If the General Council wish to withdraw an appeal under section 40A or, having agreed the terms of a settlement of the appeal with the person concerned, wish the appeal to be disposed of on those terms, they must give notice of their wish to the Authority (whether or not the Authority is a party to the appeal).
  - (7) The Authority, having received a notice under subsection (6), must by notice inform the relevant court, the General Council and the person concerned whether it wishes the proceedings on the appeal to continue.
  - (8) Where the Authority gives notice under subsection (7) that it wishes the proceedings to continue, they are to continue but are, from the time when the Authority gives its notice to the relevant court under subsection (7), to be treated as proceedings on a reference made by the Authority to the court under section 29 of the 2002 Act.
  - (9) In a case within subsection (8), the Authority must give notice to the relevant court, the General Council and the person concerned specifying the grounds of its case; and the General Council and the person concerned (as respondents to the appeal by virtue of section 29(7) of the 2002 Act) have the opportunity to respond accordingly.
  - (10) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.]]

#### **Textual Amendments**

- F1** Pt. V substituted (1.7.2003 for the substitution of s. 41A(2)(a) and Pt. V heading for specified purposes as notified in the London Gazette dated 1.7.2003, 7.7.2004 for the substitution of s. 35CC(1) as notified in the London Gazette dated 2.7.2004, 1.11.2004 in so far as not already in force except for the substitution of ss. 41(7)(8), 41C, 44(4), 44A(3) as notified in the London Gazette dated 8.10.2004, 16.11.2009 for the insertion of s. 41C as notified in the London Gazette dated 21.8.2009) by [The Medical Act 1983 \(Amendment\) Order 2002 \(S.I. 2002/3135\)](#), art. 1(2)(3), **13** (with Sch. 2)
- F2** Ss. 40A, 40B inserted (31.12.2015) by [The General Medical Council \(Fitness to Practise and Over-arching Objective\) and the Professional Standards Authority for Health and Social Care \(References to Court\) Order 2015 \(S.I. 2015/794\)](#), arts. 1(3), **17(1)**; S.I. 2015/1952, art. 2(1) (with Sch. para. 2)

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