To the Executive Boards of the universities
to which a University Medical Centre (UMC) is affiliated

Re. Introduction of the Iudicium Abeundi Protocol
Date 1 November 2010
Our ref. NFU-10.3702/MC/GvE

Dear colleagues,

The statutory regulation concerning iudicium abeundi came into effect on 1 September 2010. It offers the Executive Board the option to terminate a student's registration on the grounds of behaviour of, and/or comments made by, a student which render him/her unsuitable for exercising the profession for which the programme is training him/her, or for the practical preparation for the profession in question.

In cooperation with the Faculties or Dentistry and Veterinary Medicine, the UMCs drew up the Iudicium Abeundi Protocol on the instructions of the Netherlands Federation of University Medical Centres ('Nederlandse federatie van universitair medical centra', NFU). The protocol serves as a (procedural) resource when advising on and preparing the decision-making by the Executive Board with regard to the termination of, or the refusal of an application for, registration as a student or as an external student for Bachelor's or Master's programmes in the Faculties of Medicine, Dentistry and Veterinary Medicine.

The protocol has the approval of the medical deans (united in the NFU Education & Research management committee) and the NFU board. In order to implement the protocol, a decision needs to be taken by each Executive Board individually. In connection with this we have asked the deans of the UMCs to submit the document to you with a request to introduce the protocol. We hereby confirm that request. For your information and for that of your employees affected by the above, we are sending you five copies of the definitive version of the protocol which will soon be posted on the NFU website (www.nfu.nl).

We hope that the protocol is a useful reference document in cases of iudicium abeundi and kindly request that you coordinate the details via the Association of Universities in the Netherlands (VSNU), in particular with regard to the national Disputes Advisory Committee. We and the authors of the protocol would be only too pleased to contribute to a national consultation or provide additional information.

Yours sincerely,

Prof. E.C. Klasen, chair of the O&O/NFU management committee
on behalf of the above,

M.H.J. Coppens-Wijn LLM, secretary of the O&O/NFU management committee
Iudicium Abeundi Protocol

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September 2010

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Foreword
The Higher Education and Research Act (Wet op het hoger onderwijs en wetenschappelijk onderzoek (WIW)) was amended as of 1 September 2010. This amendment is referred to as the Improved Governance (Higher Education) Act (Wet Versterking Besturing (Wet VB); Bulletin of Acts, Orders and Decrees 2010/119).

A new aspect of this Act is that, on the basis of a ‘iudicium abeundi’ (hereinafter referred to as: IA) and a request by the dean or the examining board, the registration of a student at a university institution can be terminated (prematurely) by the Executive Board on the grounds of conduct and/or comments by a student that render him/her unsuitable for the execution of the profession for which they are being trained or for the practical preparation for the profession in question.

The Iudicium Abeundi Protocol serves as a (procedural) resource when advising or preparing the decision-making by the Executive Board with regard to the termination, or refusal, of an application to register as a student, or as an external student, for Bachelor’s or Master’s programmes at the Faculties of Medicine, Dentistry and Veterinary Medicine.

The protocol is in line with the current new legislation which relates primarily to situations in which others are exposed to direct or indirect risk of harm due to conduct and/or comments by a student. As far as many of the lecturers involved in day-to-day practice are concerned, this is a significant step forwards. However, in practice there are frequent reports of examples of unprofessional conduct relating to the later profession with regard to which it is unclear whether there was any direct or indirect risk of harm. The current law particularly excludes students who perform at a level which is chronically lower than the desired level and whose cumulative results potentially lead to him/her having to discontinue their studies. That is the reason why we advocate a broadening of the Act in relation to this group of students in our recommendations for the future. The above implies a task for deans and examining boards.

The current protocol is not intended to be a guideline for persons and bodies who, on the grounds of conduct of, and/or comments made by, prospective or former students on or outside of the programme(s), want to initiate civil or criminal legal proceedings against a student. These parties should use the ‘normal’ legal system in addition to this protocol. In addition, the current protocol does not contain guidelines for procedures at institutions with regard to instances of serious fraud and nuisance, whereby the Executive Board may also decide, in exceptional cases, to terminate the registration of a student or external student. Given that these terms were also included in the ‘old’ legislative text, each institution has already developed its own procedures to deal with such cases which can also be applied under the new Improved Governance (Higher Education) Act.

We are hugely indebted to the many people who helped draw up this protocol. We would particularly like to mention the national lawyers’ consultation group and its special working group, especially E.P.J. Jaspar LLM (EUR).

Similarly, the contributions from the professional conduct working group (‘werkgroep Professioneel Gedrag’) of the Netherlands Association for Medical Education (Nederlandse Vereniging voor Medisch Onderwijs) and the National Consultation Group of Chairs of Medical Faculty Examining Boards (Landelijk Overleg Voorzitters Examencommissies Faculteiten Geneeskunde, LOVEC) were of huge value to us. Nevertheless, the value of this protocol will have to be assessed in daily practice. We are confident of a positive outcome.

Dr B. Bonke,
Dr S.J. van Luijk
Introduction

The amendment to the Higher Education and Research Act, referred to as the Improved Governance (Higher Education) Act (see Art. 7.42a of the Higher Education and Research Act) which creates the possibility, subject to certain conditions, to terminate the registration of students (prematurely), or to refuse a registration request (prematurely) has created a new situation in the Netherlands. The iudicium abeundi (IA) - the opinion (decision) that a person should leave a programme - created by this amendment demands transparent, clear regulations and an extremely careful description of procedures. This Iudicium Abeundi Protocol was drawn up in order to serve as a guideline for the (examining boards and deans) of the Faculties of Medicine, Veterinary Medicine and Dentistry and the Executive Boards of the universities concerned with regard to issuing an IA due to conduct or comments which indicate that the student(s) concerned is/are unsuitable for the future execution of the profession or the practical preparation for the professional question.

Whenever the possibility of an IA is discussed, this is more than likely to involve (the assessment of) conduct. On that basis, a large portion of this document relates to that area. Over the past 10 years, there has been an increasing focus on the conduct and comments of students by (the managers and lecturers or examining boards and examiners on) the medical programmes. There are two reasons for this. Firstly, there are increasing problems relating to medical students who prove not to be able to function properly during their work (e.g. work placements) in relation to patient care despite being qualified on the grounds of their study progress. Secondly, a number of incidents have been reported in the media and scientific literature concerning seriously dysfunctional doctors and other care providers (see references). The importance of aspects of conduct which are relevant in the care sector is generally accepted and, consequently, these aspects are taught and assessed to an increasing degree and at an ever earlier stage of the programme. Examples of the aspects in question are those relating to dealing with tasks and work, interaction with others and self discipline. Despite increasing focus on these aspects, the problem of students sometimes displaying reprehensible conduct continues to exist, such as the performance of unnecessary and undesirable activities when examining patients or test subjects, a far-reaching lack of respect towards patients, colleagues, or others, or disrespectful treatment of people who require medical assistance or their family members. This has meant that vulnerable patients are still being exposed to these dysfunctional students within the framework of the programme. When challenged, some of these students learned and changed their behaviour. Some, however, persisted with unacceptable behaviour. Although such behaviour could have resulted in some students being banned from the programme, they had to be offered regular opportunities to redo their work placements on the grounds of the Higher Education and Research Act because they had a right to education. From the point of view of the patients and their safety, this was a highly undesirable situation which those responsible for programmes repeatedly brought to the attention of the Minister who was urged to amend the law. The Improved Governance (Higher Education) Act, including the iudicium abeundi, is now applicable, making it possible, with due regard for all the rights and obligations of the educational institutions and the due care and attention requirements in relation to the student, to terminate, in exceptional cases, the registration of a student or refuse (new) registration if there are good reasons for doing so.

It is important, from the moment that this Act came into force, that the Faculties of Medicine, Dentistry and Veterinary Medicine adopt the same policy when it comes to interpreting and executing the article referred to in the Higher Education and Research Act (amended on the grounds of the Improved Governance (Higher Education) Act). The agreement between the faculties referred to is that they all provide a programme in which invasive patient activities play a role. This increases the importance of responsible conduct and comments within the context of these programmes.

Purpose of the Protocol

As already indicated in the Parliamentary documents, the purpose of the Iudicium Abeundi Protocol is to achieve uniform procedural agreements regarding the preparation and decision-making relating to the IA on the grounds of conduct of, and/or comments made by, students of which the extent and/or seriousness renders them unsuitable for the profession for which the programme is training them or the practical preparation for the profession in question.1

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1 Wherever this protocol refers to (un)suitability for the profession, etc. this should always be taken to mean: ...'and/or for the practical preparation for the profession in question'. The above applies in connection with the legislative text, but also in connection with the possibility that students in the Bachelor's phase of a medical course, who may be the subject of an IA, can always claim that they do not intend to finish the complete course including the medical exams and that they will, consequently, not engage in a later profession for which the (complete, i.e. Bachelor's and
The Protocol is a resource to support the recommendations made by the dean or the examining board and the decision-making by the Executive Board in relation to the IA.

**Structure of the Protocol**
The Iudicium Abeundi Protocol comprises a more or less compact summary and two annexes. The summary contains all the information that is immediately relevant for users.

(Annexes 1 and 2 contain information that is needed to account for the Protocol)

1. Desirable professional conduct
The standards and principles of professional conduct as a (prospective) doctor must be taught and assessed during the medical programmes. This means that they have to be part of the curriculum. The conduct of the student during his or her programme as future professional in the care sector must be in accordance with, or at least not contrary to, the usual standards and values within the professional group to which the student in question will gain access after completing the programme. This concerns conduct and comments which are key, among other things, to the basic confidence that a patient has to be able to have in a professional in that sector. In this context the relevant terms are integrity, respect, openness, and transparency, meticulousness, decency, politeness, but also, for example, impartiality and compassion. These standards and values - in this case the conduct that is expected of the student as a future professional - must be clear and described in easily accessible documents. Examples of the aspects in question are those relating to tasks and work, interaction with others and self discipline. Nowadays, discussing and assessing proper professional conduct is part of almost every phase of the programme at most institutions, as well as of the system of assessment, as performed by a variety of assessors at regular junctures during the programme. It is not the case that possibilities exist to take measures in all cases in which a student does not display proper professional conduct (such as expelling students). This is possible in only a limited number of cases.
### 2. Reprehensible conduct

There are four types of conduct by students which can result in measures being taken:

- **a.** conduct which demonstrates unsuitability for the execution of the profession of vet, doctor, or dentist
- **b.** serious fraud in relation to examinations
- **c.** conduct at the university that causes serious nuisance
- **d.** criminal behaviour at the university and elsewhere.

#### As a diagram:

<table>
<thead>
<tr>
<th>Type of conduct</th>
<th>Legal basis</th>
<th>Description</th>
<th>The responsible parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Conduct or comments which demonstrate unsuitability for the execution of the profession of vet, doctor, or dentist.</td>
<td>Article 7.42a of the Higher Education and Research Act</td>
<td>For operationalisation, one can use the definition of reprehensible conduct contained in Article 47 of the Individual Healthcare Professions Act (Wet Beroepen individual Gezondheidszorg), which defines the instances in which reprehensible conduct on the part of doctors can result in disciplinary measures.</td>
<td>The Executive Board following recommendations by the examining board/dean</td>
</tr>
<tr>
<td>B. Serious fraud in relation to examinations</td>
<td>Article 7.12b, paragraph 2 of the Higher Education and Research Act</td>
<td>Conduct (actions or omissions) by a student which makes it completely or partly impossible to properly assess his/her knowledge, understanding and/or skills.</td>
<td>The examining board as regards withdrawing the right to sit examinations; the Executive Board (based on proposal by the examining board) as regards terminating registration</td>
</tr>
<tr>
<td>C. Conduct at the university that causes serious nuisance</td>
<td>Article 7.57h, paragraph 3 of the Higher Education and Research Act</td>
<td>Conduct inside the (buildings and on the sites of the) university or towards members of staff or students that results in serious nuisance.</td>
<td>The Executive Board</td>
</tr>
<tr>
<td>D. Criminal conduct at the university or elsewhere</td>
<td>Criminal code and special laws</td>
<td>All criminal acts/conduct which do not fall into category A. This does not mean conduct in the capacity of student, but conduct which is not tolerated in society (criminal behaviour).</td>
<td></td>
</tr>
</tbody>
</table>

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2 This conduct will usually take place in an educational setting but may, in exceptional situations, occur in non-educational settings. This may be the case, for example, in a situation in which a medical student harasses a patient in the context of a part-time nursing job (that is, in a non-educational setting).
3. Conduct by a student which renders him/her unsuitable as a future professional.

This document does not define reprehensible conduct that falls into categories B, C and D (see table) in any more detail. It does define conduct and/or comments in category A. The Higher Education and Research Act contains the following formulations:

Art 7.42a Conduct or comments by a student in relation to the future profession
1. In exceptional cases, and following advice by the examining board, the dean or a body comparable to the dean at the institution, and after careful consideration of the interests of the involved parties, the institution board can terminate, or refuse, the registration of a student for a particular programme if that student's conduct or comments show that s/he is unsuitable for the execution of one or more professions for which the programme s/he is following is training him/her for, or for the practical preparation for the profession;
2. The institution board or the institution board of another institution which offers the same or a related programme can decide not to allow the student to register again or not for the programme in question.
3. If the student, as referred to in the first paragraph, is registered for a different programme and, within that framework, is following a specialisation which corresponds to or, in view of the practical preparation for the profession, is related to the programme for which the registration was terminated subject to the first paragraph, the institution board can, following advice from the examining board, the dean or a body at the institution comparable to the dean, and after careful consideration of the interests concerned, decide that the student is not allowed to do the specialisation or attend other parts of the programme in question.
4. Article 7.42, paragraphs four and five apply mutatis mutandis.

The question is, how should we interpret the term conduct (and/or comments) which indicate unsuitability for the execution of the profession? As already mentioned, it is not possible in all instances of a student exhibiting unprofessional conduct, to proceed to an IA. The legislator has explicitly stipulated that a student whose professional conduct is assessed as being insufficient cannot be rendered subject to an IA purely on that fact alone. In this context it should be pointed out that, in such cases, examining boards and teachers are advised to check whether they can make it clear to a student, other than by means of an IA procedure, that, in their opinion, the student is strongly advised not to continue into the chosen profession or that a continuation of the programme may cause problems for the student himself/herself or his/her patients. Some students will, in such instances, do the honourable thing and choose a different programme, or continue their programme but then follow a specialisation which does not ultimately give them access to the profession (e.g. in the case of medicine a 'free curriculum' in the Bachelor's in medicine whereby, for these students, the Master's programme which trains students to take the final examinations in medicine is not designated as the subsequent Master's programme).

The IA is reserved for very exceptional circumstances, such as a 'situation involving the risk of harm', for example a direct or indirect serious threat to patient safety. The IA is based on the definition of reprehensible conduct under Article 47 of the Individual Healthcare Professions Act that can result in disciplinary sanctions.

The disciplinary measures can range from a warning to the removal of the authority to engage in the profession and the deletion of the registration in the BIG register. This occurs in the event of extremely reprehensible actions.

Article 47 of the Wet BIG provides the following definition of reprehensible conduct:

a. any action or omission which is contrary to the care which a person, in the capacity of doctor (or dentist, etc) should observe with regard to:
   1. the party to whom, in connection with that party's state of health, s/he is providing assistance or has been engaged to provide assistance;
   2. the party that is in an emergency situation and requires assistance with regard to its state of health;
   3. the next of kin of the persons referred to under points 1 and 2;

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3 The legislative text refers to 'the dean or a body comparable to the dean' because the law also applies to higher professional education institutions which do not have a dean within the meaning of the Higher Education and Research Act.
4 These students will, on the basis of their Bachelor's certificate, be able to join a different Master's without any additional requirements being imposed.
b. any action or omission in that capacity, other than those referred to under a, which is contrary to the interests of the proper provision of individual health care.

For the imposition of an IA, 'the capacity of doctor' can be interpreted as 'the capacity of medical student'. This means that, in general, the reprehensible conduct will have taken place in an educational situation by someone in the capacity of medical student. As regards reprehensible conduct that has taken place outside the educational situation, the IA procedure can only be implemented in exceptional circumstances (see also note 2 on p. 6). The following also has to apply:
- Conduct in relation to the patient or the patient's next of kin, or
- Conduct that is contrary to the interest of the proper provision of individual health.

The latter definition is the least clearly delineated. A clearer definition can be found in disciplinary law jurisprudence.

4. Step-by-step structure of the decision to terminate or refuse registration (IA)

4a Notification of unacceptable conduct and/or comments
Seriously reprehensible conduct or comments by a student during his/her programme may be observed by a teacher, lecturer, examiner, the examining board and/or the dean. In addition to this, such conduct or comments may, of course, also be observed by fellow students and/or third parties. However, in principle, such observations must be reported via a teacher, lecturer or examiner to the examining board and/or the dean. This can, for example, apply in the event of seriously dysfunctional behaviour, such as harassment (including sexual harassment) or physical aggression. However, the examining board or the dean will always have to form an opinion themselves regarding reports of conduct or comments by students.

A notification of conduct and/or comments made within the framework of the programme must be made to the examining board. A notification of conduct and/or comments outside the educational setting must be made to the dean. Examples are excessive conduct and/or comments which jeopardise the safety or health of others (patients, lecturers, fellow students).

The Executive Board cannot simply decide to terminate registration (IA) either. Instead - prior to its decision - it has to assess the proposal from the examining board or the dean and weigh up all the interests involved - including those of the student concerned - with all the arguments being heard in relation to the intended decision.

After the decision has been taken in principle, the student in question will have the opportunity to send an objection to the Executive Board and submit an appeal to the administrative court (in this case the Appeals Tribunal for Higher Education ("College van Beroep voor het Hoger Onderwijs", CBHO).

4b Due care and attention requirements
Within the framework of the decision-making relating to the IA, strict due care and attention requirements must be observed.

4b.1 Due care and attention at faculty level
The examining board or the dean will have to make a case - supported by reasons - that, when preparing the proposal to terminate the registration (IA) for the Executive Board, the following steps have been taken:
- The principle of hearing both sides of the argument from all the parties involved (the student in question, the lecturer who reported, possible witnesses, etc.) has been applied;
- The curriculum or other documentation from (for example) the Royal Dutch Medical Association (Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst, KNMG) contains information which is easily accessible for students on what is and is not permissible with regard to conduct and/or comments in their role as future professional;
- The faculty has reasonably done all it can, within the bounds of possibility, to supervise the student in his/her professional development;
- Substantiation has been provided which shows that the seriousness of the incident (or incidents) justifies this step being taken.

4b.2 Due care and attention at institution level - Executive Board
- The proposal by the examining board and/or the dean to terminate a student's registration (IA)
is to be issued to the Executive Board that takes a substantiated decision with regard to this proposal;
- During this phase, the student in question is given an opportunity to respond to an intended decision to terminate - or refuse admission to - the programme;
- The party concerned can submit an objection to the Executive Board against a decision taken to terminate the registration (IA). The Executive Board requests advice from a (national) Iudicium Abeundi Disputes Advisory Committee.

4c The national Iudicium Abeundi Disputes Advisory Committee
After having received an objection from the student in question, the Executive Board will forward the objections dossier to the national Disputes Advisory Committee. The Iudicium Abeundi Disputes Advisory Committee will apply the principle of hearing both sides of the argument and will assess, with due regard for the provisions in Chapter 7 of the General Administrative Law Act (Algemene Wet Bestuursrecht) whether it considers the objection to the IA decision by the Executive Board to be founded or otherwise. The Iudicium Abeundi Disputes Advisory Committee issues advice to the Executive Board. The Executive Board takes a decision on the objection and issues it along with the advice from the Iudicium Abeundi Disputes Advisory Committee and the report of the hearings by the Iudicium Abeundi Disputes Advisory Committee.

The decision has been taken to set up a national Disputes Advisory Committee to deal with objections against an IA decision taken by the Executive Board because the number of times that an IA decision is taken annually per institution is expected to be very small. An independent assessment of an IA decision complies with the usual due care and attention requirements, which also stipulate that there must be no bias. A national Disputes Advisory Committee is also preferable to a similar, local committee for the accumulation of expertise and jurisprudence. (See also Annex 1).
Organisation of the nationally operating Iudicium Abeundi Disputes Advisory Committee

The following is advised with regard to the organisation of the Disputes Advisory Committee:

- that the internal regulations of each institution refer to the existence of the exceptional Disputes Advisory Committee;
- that the universities make mutual agreements regarding the additional organisation of, and support for, the exceptional Disputes Advisory Committee and coordinates this via the VSNU.

Profile of chairperson and members

The Disputes Advisory Committee must, in any case, fulfil the requirements in Article 7.63a of the Higher Education and Research Act and Article 7:13 of the General Administrative Law Act. This means that the advisory committee must have a chairperson and at least two members. The chairperson must be an external chairperson, meaning that s/he may not be part of, or employed under the responsibility of, one of the institutions. The members of the Disputes Advisory Committee must be functionally independent under the law. This means that they are not accountable, as regards the performance of their activities, to the boards of the institutions concerned.

The independent nature of the committee means that the following cannot be members:

- members of one of the Executive Boards;
- deans, programme directors or members of examining boards that have been involved in preparing the decision to which the current dispute relates.

The chairperson and the deputy chairperson

The chairperson and the deputy chairperson must meet the requirements for appointment as a court judge of the court and may not be employed by the participating institutions.

Members and deputy members

It has been proposed that, when appointing members and deputy members, attention should be paid to specific expertise in the field of disciplinary law of one of the professions concerned or expertise in the field of assessing professional conduct within the programmes that train students for the professions in question. The appointment of a number of deputy members from various professional groups creates an opportunity to put together, on each occasion, a Disputes Advisory Committee attuned to the case in question.

4d Duration of the IA

Given that students are generally young and can still change the way they live their lives, it is reasonable to offer the opportunity, after a certain period of time, to reassess whether there are still sufficient legal grounds to perpetuate their exclusion from the programme. This means that an IA has, in principle, an unlimited period of validity, but that a student can ask the Executive Board to retract the IA at a later date, in the event of new facts or circumstances. The party involved will have to make a case for him/her no longer being unsuitable as a future professional.

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5 One example is if a student assaults a patient when in a psychotic state but, after treatment and adequate medication, has been psychosis-free for many years.
4e Role of the examining board and the dean

The role of the examining board and the dean as regards initiating a procedure which may result in an IA is defined by the context in which the unacceptable conduct takes place. In situations whereby behaviour involving the risk of harm occurs in an educational setting, action is taken by the examining board. The examining board can impose additional requirements on the student, such as psychotherapeutic treatment, or a course in anger management, a communication course or a course in medical-technical skills. If the behaviour involving the risk of harm continues to occur in an educational setting and remedial treatment has no effect, the examining board can, at a certain point in time, decide to initiate the IA procedure. This intention of the examining board is, in principle, discussed with the dean.

In the event the behaviour involving the risk of harm occurs outside the educational setting, the dean is only authorised to initiate the IA procedure in exceptional situations.6

To summarise, therefore, an IA can be initiated in two ways: via the examining board and via the dean. Ultimately, the Executive Board will take a decision.

In order to ensure smooth implementation of the IA, it is recommended that regular consultations take place at national level between the deans and the examining boards from similar programmes in order to achieve mutual ordination regarding the execution of Article 7.42a of the Improved Governance (Higher Education) Act. Clearly this will require the contribution of lawyers, given the interests at stake for all parties as regards the introduction of this Act.

Enforcement of the Iudicium Abeundi Protocol will also have to be monitored at the level of the national dean consultation group, national consultation structures of (chairs of) examining boards, such as the LOVEC as far as medicine is concerned, and the boards of the institutions.

4f Dossier structure, management and access

The introduction of the possibility of an IA generates the necessity to document carefully any notification of seriously reprehensible conduct and/or comments by an individual student. The personal student dossier is managed by, or on behalf of, the examining board. The student him/herself is entitled to inspect the personal dossier at any time. In the event that the student in question objects to an IA decision by the Executive Board, the dossier will be submitted to the Iudicium Abeundi Disputes Advisory Committee. In the event of any doubt about the right to inspect the student dossier, the dean will decide.

With due regard for the existing legislation and regulations relating to the protection of personal data (see the Personal Data Protection Act (Wet bescherming persoonsgegevens, Wbp), access to the personal student dossier will be regulated separately by the dean. After the Executive Board has received the recommendations from the Iudicium Abeundi Disputes Advisory Committee, the underlying documents will still be saved for a certain period of time, with due regard for the statutory retention period. A student's personal dossier will be closed as soon as the student has fulfilled all the requirements of the basic programme. Retention of the dossier is subject to statutory requirements (Public Records Act ('Archiefwet', WBP)).

4g Proposed Teaching and Examination Regulations and the Rules and Regulations

Assuming that the Teaching and Examination Regulations and the Rules and Regulations to the Teaching and Examination Regulations sufficiently provide for regular assessment of the skills required by the student, one ought to add that separate regulations (this Iudicium Abeundi Protocol) exist in relation to termination of the registration - in exceptional cases - by the Executive Board, which regulations were adopted by the Executive Board.

These regulations should contain, at least, the following elements:

1. In the event of seriously reprehensible conduct and/or comments by a student, the Executive Board can terminate a student's registration in exceptional cases and following advice from the examining board or the dean.

2. The Executive Board only takes a decision as referred to in the first paragraph after the student in question has been heard regarding the intended decision, after a careful weighing up of all the interests of the student and of the institution, and after it has been demonstrated that the student has shown, by his/her conduct and/or comments, that s/he is unsuitable for the execution of one or more professions for which the programme s/he is on is training

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6 An example is the case of a medical student stealing prescription forms during a work placement at a GP's practice and then writing out prescriptions for friends and acquaintances which are then handed in at pharmacies in the city. Another example, which has already been mentioned above, is that of a medical student who misbehaves while working temporarily as a nurse in a hospital.
him/her for, or for the practical preparation for the profession in question.

5. **Action points for institutions**

On the grounds of the above, the following matters must, in any event, be provided for in relation to the IA procedure:

**At faculty level:**

- Mention of the IA in the institution regulations (Students' Charter/Teaching and Examination Regulations/Registration Decision) for the Bachelor's and Master's programmes;
- Right to inspect the dossier;
- Clear information with regard to the standards and values (code of conduct) of the professional group which will be used for assessment at the institution.

**At Executive Board level:**

- Adoption of the Iudicium Abeundi Protocol (after consultation with deans and examining board chairs);
- Establishment of Iudicium Abeundi Disputes Advisory Committee and provisions governing relations with the Executive Board and Iudicium Abeundi Disputes Advisory Committee.

*PM additional regulations relating to fraud and nuisance (not included in this protocol).*
6. Flowchart showing decisions relating to the Iudicium Abeundi

Possible reprehensible conduct or comments by the student

Lecturer or teacher can notify

Assessment of conduct or comments by examining board and/or dean

Occurrence within the framework of the programme?

No

To be dealt with by the dean

Yes

To be dealt with by the examining board

Admissible? No Case closed, archive

series 1/3 Bonke & Van Luijk, March 2010
Dean route
Dean decides possible measure in accordance with law

No measure
Case closed, archive

Measure
Proposal for IA?

yes
no

Suitable measure in accordance with law

EB route
Examining board decides on possible measure in accordance with law, Teaching and Examination Regulations, and Rules and Regulations

No measure
Case closed, archive

Measure
Proposal for IA?

yes
no

Suitable measure in accordance with law, Teaching and Examination Regulations and Rules and Regulations (examining board)
Nomination to Executive Board
Decision by Executive Board
Decision: No IA
Case back to examining board or dean
Decision: IA
Student agrees with decision
Student objects to decision: decision submitted to Iudicium Abeundi Disputes Advisory Committee
Advice by Iudicium Abeundi Disputes Advisory Committee
Objection unfounded
Executive Board upholds decision
Appeal possible to Appeals Tribunal for Higher Education
Executive Board upholds decision
Executive Board reconsiders decision
Objection founded.
Advice: reconsider IA decision
Executive Board revokes decision
Case back to examining board or dean
7. **Recommendations**

- In the short term the Executive Board must take a decision regarding the establishment of a national Disputes Advisory Committee, as described in the protocol, consisting of lawyers and experts in the field of assessing the professional conduct of the various institutions.

- In the event of a new change in the law, attention should also be paid to the forms of conduct which are examples, from a behavioural point of view, of a student behaving in a chronically unacceptable manner whereby a cumulative assessment could result in him/her having to leave the programme;

- The Judicium Abeundi Protocol should be evaluated under the responsibility of the boards of the institutions;

- Although the higher education institution does not have any formal obligations with regard to after-care in the case of a student following the issuance of an IA, this does not mean that it cannot provide some form of after-care, for example in the form of career advice. As regards the programme-related consequences of an IA, steps will have to be taken to prevent students who have been issued with an IA still being able to access, by a back door, the professional group with regard to which they had received an IA. Currently, it would appear to be the case, for example, that students with an IA for medicine are able to register for a medicine programme in a different EU country, after which they are still able to obtain their BIG registration in the Netherlands on the basis of their foreign medical qualification. It is important to ensure that this loophole is closed.
8. References

Amendment of the Higher Education and Research Act and a number of other laws, for example in connection with improving the way higher education institutions are managed, the tuition fee system and the legal position of students (strengthening governance); Report on the legislation consultation relating to the strengthening of governance; http://parlando.sdu.nl/cgi/login/anonymous

Bonke B. Unprofessional or problematic behaviour or medical students outside the learning environment. Medical Teacher, 2006; 28(5): 440-442.


9. Parties involved

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and other experts.
Annex 1 Background information to the Protocol

Purpose
The purpose of this annex is to provide a clarification of key substantive elements referred to in the summary of the protocol.

Discussion of key points in the Act and the explanatory memorandum to the Act

Moral unsuitability
In the explanatory memorandum to the Act on the Improved Governance (Higher Education) Act reference is made to the term 'moral unsuitability' (Explanatory Memorandum, Art. 4.3, 2nd paragraph, last sentence). With a view to creating some clarity on this issue, this paragraph is dedicated to this term.

Moral unsuitability within a medical setting has two aspects: moral unsuitability as regards those who are put in the person's care (for example (pretend) patients) and moral unsuitability in relation to others who have dealings with the person within the educational setting (for example teachers, fellow-students, etc.). Examples of moral unsuitability are threatening and intimidating behaviour towards fellow students or lecturers which directly or indirectly jeopardises patient safety.

Moral unsuitability has a number of different gradations, depending on the seriousness of the incident and the frequency of incidents related to the person. Moral unsuitability in relation to patients will be related to the degree to which the personal integrity of the patient is or could be directly or indirectly harmed. This can be expressed in word or deed (for example an unnecessary patient examination): situations in which patient safety is at risk. The lecturer or examiner has to determine whether the 'mistakes' made by the student in question are part of the learning process towards 'becoming a (medical) professional' or whether they clearly deviate in nature and/or frequency when compared to other students or when compared to what can reasonably be expected in that phase of the programme. A majority of cases will entail a number of observations of inappropriate conduct in a variety of contacts by a range of assessors (professionals) who have also reported and recorded their observations. This will generate a dossier which, in extreme cases before the court, can serve as a basis for making a plausible case that the student in question is obviously unsuitable as regards continuing his/her studies with a view to later involvement in the profession. Of course, such advice is only given after all due care and attention requirements with regard to the student in question have been fulfilled. This includes providing adequate feedback on the conduct, specific learning objectives and focus on the workplace and other possibilities for supervision depending on the case in hand.

It is more difficult to define moral unsuitability in respect of people other than patients or pretend patients (see above). Moral unsuitability relates primarily to conduct. The key issue is that the conduct ultimately has to be assessed with a view to functioning in practice as a prospective doctor (or dentist or vet). This means that, for example, stalking another student or lecturer does not justify an IA. However, intimidating and threatening actions towards fellow students or lecturers, or the complete refusal to cooperate in a setting in which patient safety is directly or indirectly jeopardised, does justify an IA. An IA on the basis of comments appears, in (medical) practice, only to be necessary in the event of threats and harassment. Such may cause direct or indirect harm to patients, lecturers, fellow students and others and may render the person in question unsuitable for the execution of the profession for which the programme is training him/her. Criteria which are used in disciplinary law can also be applied in this context. In the event of any doubt about the reprehensibility of someone’s conduct or comments, Article 47, paragraph 1 of the Individual Health Care Professions Act can serve as a guideline:  

According to Article 7.42a of the Higher Education and Research Act, a student must, due to conduct or comments, have demonstrated unsuitability for the execution of one or more professions for which the programme s/he is following this training him/her for. As regards the healthcare professions, Article 47 of the Wet BIG provides a clear definition of conduct that can result in disciplinary sanctions, namely:

\[ ... \]
a. any action or omission which is contrary to the care which a person, in the capacity of doctor (or dentist, etc) should observe with regard to:
   1. the party to whom, in connection with his/her state of health, s/he is providing assistance or has been called in to provide assistance;
   2. the party that is in an emergency situation and requires assistance with regard to its state of health;

[7](http://www.st-ab.nl/wetten/0645_Wet_op_de_beroepen_in_de_individuele_gezondheidszorg_Wet_BIG.htm)
3. the next of kin of the parties referred to under points 1 and 2;
b. any action or omission in that capacity, other than those referred to under a, which is contrary to the interests of the proper provision of individual health care…'

Conduct and comments
The difference between conduct and comments is not clearly defined. Is, for example, 'harassment or threat' conduct or a comment? This is why both aspects should be included in the legislative text. In order to warrant an IA, spoken or written comments would have to relate directly or indirectly to relevant aspects of the programme and/or the later execution of the profession which form a risk of harm for those who are entrusted with the care of the student in question (future doctor, dentist, vet) or for teachers, lecturers or fellow students.

Points of departure with regard to assessing conduct
In order to give students as much guidance as possible on what is expected of them in general as regards professional conduct, the educational institutions must provide clear information on the matter and ensure, one way or other, that students are aware of this information. An illustration of this is shown below in what is referred to as the Erasmus MC Bachelor's Declaration which all first-year students of medicine at Erasmus MC Rotterdam have to endorse by attending a ceremony:

'… As a medical student I realise that attending medical school is bound by certain rights and obligations. These translate into mutual expectations - between me as a prospective doctor and Erasmus MC as an educational institution. These expectations are the following:
- I can be confident that Erasmus MC will offer me a professional medical programme pursuant to the applicable requirements imposed by society.
- For my part I shall behave in a way that is expected of a good student. This means that I shall adopt an open and helpful attitude, shall focus on cooperation and be honest, respectful and pay due care and attention. I shall take account of the backgrounds and feelings of everyone with whom I maintain a professional relationship within the programme.

I shall observe these principles and I believe that students and lecturers ought to be able to call each other to account in this respect. I believe I should be able to expect the same from all parties involved in medical training at Erasmus MC…'
What conduct is covered by an IA?
In order to determine what conduct the legislator specifically means, the following are a number of sentences taken from the various (partially overlapping) related sources (see also Annex 2):

The law
According to the law the IA covers the following conduct and comments: ‘…conduct or comments (by a student as a result of which s/he) reveals that s/he is unsuitable for the execution of one or more professions for which the programme s/he is attending is training him/her, or for the practical preparation for the profession.’

The explanatory memorandum to the Act
According to the explanatory memorandum to the Act the IA is supposed to cover the following types of students:
‘…students who, due to their conduct or comments, constitute a risk of harm to other parties involved…’ or for example ‘…medical students against whom disciplinary sanctions would be imposed if disciplinary law had been applicable to them.’
The Explanatory Memorandum also reflects the fact that the law focuses on ‘…instances in which, due to their conduct and/or comments, people constitute a threat to others, such as fellow students,lecturers and other people who participate in education in a different way. Such situations will primarily occur during practical phases of the programme (work placements, practicals or internships) which prepare the student for the profession. Problem behaviour can be expressed in harassment (including sexual harassment), aggression, violence or general dysfunctioning as a consequence of a serious personality disorder. The student can then be said to be physically, and also morally [read: ‘psychologically’, ed.] unsuitable for the profession.’ In relation to the difference between conduct and comments: ‘…The suggestion is that the term ‘conduct’ also implies the term ‘comments’. With a view to unequivocal clarity, the term ‘comments’ has been explicitly included in the criterion. It is important that this protocol relates to conduct and/or comments which are unacceptable in the context of the profession or professional practice.’

In reply to questions regarding what the IA covers, the Minister answered as follows.
‘…In my opinion (the Minister, ed.) a person constitutes a threat to others, as a result of his/her conduct, if the conduct in question is such that it is safe to assume that the people who the person he/she is going to treat, or deal with when engaging in a future profession, or in the context of professional practice (work placement), will suffer substantial (physical or emotional) harm. The people in question will generally be those who have been observed exhibiting such behaviour. These may also be people who indicate (beforehand) that they are going to behave in a way which results in such a risk of harm.’
‘…The conduct and comments must lead to the conclusion that the student in question is unsuitable for the profession for which the programme is training him/her or the related professional practice.’

What conduct is not covered by an IA?
What, according to the explanatory memorandum to the Act, is NOT covered by the IA?
The following passages from the explanatory memorandum to the Act are relevant:
‘…Unsatisfactory functioning in a certain area, or with regard to a certain activity, for example when dealing with colleagues or professional conduct, is, in itself, insufficient for the imposition of an IA…’
‘…In addition, the IA cannot be used to deregister students with unsatisfactory study results or application…’
...In the same way, a certain vision held by a student, for example anti-democratic ideas, is insufficient grounds to refuse entry to a programme, even if such ideas are not commensurate with the object of the programme...'

**What, according to the Minister, does the IA not cover?** Relevant passages taken from the Minister's response: '...It has been explicitly indicated and mentioned in a positive sense by the Council of State that the IA may not result in a violation of academic freedom. It may not violate the principle of freedom of expression either. The IA is a last-resort remedy and should be organised accordingly.' '...I (the Minister, ed.) would explicitly like to point out that the IA is a drastic measure that can only be used in extremely exceptional circumstances. The institution cannot and may not use it to remove underperforming students (Lower House, session 2008–2009, 31 821, no. 7 46). The same applies in relation to a student who uses the principle of freedom of expression in a manner which displeases the Executive Board...'

'...The fact that a student subscribes to fundamentalist ideas does not necessarily make him unsuitable for a profession. This does not justify application of the IA. If, in relation to this student, the conclusion ought to be drawn that h/she may not attend a certain programme because h/she would otherwise be a risk to the security of the state, different grounds should be involved to remove him/her or refuse his/her registration. For example, a person who does not possess Dutch nationality on the grounds of the Aliens Act ('Vreemdelingenwet') can be declared undesirable and be deported or – as is more usually the case – denied access to the Netherlands. Prior to this, the interests are weighed up and public order and national security are also taken into account...’

The jurisprudence will have to show whether an IA can be imposed on a student who, despite having sufficient social skills, is still regarded as evidently unsuitable for the future profession. In addition, it is not entirely clear whether the law covers a (non-physical) threat to a patient in the meaning of patient safety. It will, in any event, be difficult to supply proof of risk of harm for a patient because there usually has to be something wrong before proof of harm for a patient, and with that a link to patient safety and future execution of the profession, can be determined.

It is also clear that an IA cannot be imposed on students simply because they are regularly deemed to exhibit unsatisfactory professional conduct on the grounds of the regular assessments included in the curriculum. However if, for example, students persist with unnecessary invasive activities, despite repeated warnings, this will result in them being deemed to exhibit unsatisfactory professional conduct within the context of regular assessments. Assumimg that this is an obligatory element of the curriculum, it will mean that the student in question will not be able to graduate. However, in order to avoid repeated direct or indirect risk of harm for patients in such situations, an IA may, in exceptional circumstances, be the only means of avoiding such risk of harm. Clearly, a repeated chronic lack of knowledge is not reason to impose an IA. The legislator refers in this context to the possibility of issuing a binding study recommendation and also to the fact that this possibility is only available during the first year of study.

**Distinction between younger and older students**

Before such a drastic measure as an IA is taken, a content-related assessment will have been made of the seriousness of the conduct or comments, the frequency thereof, the chance of the conduct or comments being repeated and the degree to which the party involved is willing and able to renounce the unacceptable conduct, or provide evidence in that respect that s/he is willing and able to improve. Similarly, it will be necessary to take account of the nature of the programme when assessing misconduct or reprehensible comments, and also the degree to which the student has progressed as regards his/her studies. After all, a student who has just started a programme may be able to count on more clemency should s/he seriously misbehave, among other things because s/he is still relatively young, than another student who has made a serious mistake after a long period of study.

**Assessment scope**

**Proactive versus reactive**

The question is to what extent a programme, or the examining board, can also act proactively if no problems have yet occurred, yet the chance of problems occurring is regarded as very high. Examples are students who are attending a medical programme (or a different programme within the framework of which vulnerable third parties are entrusted to their care) and who are suffering from a serious personality disorder, for example in relation to autism, or a psychiatric disorder such as schizophrenia. In these cases, the competent authority at the educational institution should adopt a leading role as soon as such facts are known about one of the students attending the programme. In
such an instance, staff at the educational institution should proactively investigate to what extent the seriousness of the personal problems form an obstacle for the student as regards continuing a programme that has already been started.

If an educational institution becomes aware of undesirable (criminal) activity on the part of a student which is not compatible with the later profession, an iudicium abeundi is not necessarily the most suitable approach. Reporting the matter to the police (column 4 in the conduct diagram) is the right course of action. However, in the case of a suspended sentence due to such criminal activity, the implementation of the IA procedure would be the most obvious way to proceed. Prior screening for any undesirable character or personality traits, if at all possible, is regarded as socially undesirable.

Having said that, prospective students with certain personality disorders (e.g. serious forms of Asperger syndrome) will, in this context, have to be properly informed about the programmes for which requirements will be imposed on them which, given their personality problems, they will not typically be able to fulfil. Incidentally, the same applies to prospective students with a sensory handicap. For example, a blind student will not be able to fulfil the requirements imposed on students attending the dentistry programme. Young people who want to attend a programme, but who are doomed to fail, deserve to receive optimum information about their choice of study in order to protect their long-term investment in a programme which they cannot reasonably pass. In this context it would seem desirable for information at secondary schools - as well as, for example, at open days at the educational institution itself and in brochures and other documentation for prospective students - to explain to students who are interested in attending certain programmes what personality traits and handicaps are not considered to be compatible with the later profession to which the programme leads. Examples would be a student who wants to study medicine but who suffers from an untreatable form of paranoid schizophrenia. Providing information prior to the start of a programme in this way will help to avoid young people investing time and energy in a programme on which they are doomed to fail, or during which, in the course of time, it is highly likely that problems will occur which will make it necessary to terminate the course of study. Of course, one can argue that those involved in the profession also have behavioural or personality traits which are not properly compatible with the work they do. Examples would be a dentist who trades in hard drugs, a vet who takes bribes from racing gamblers, a primary school teacher who downloads child pornography to his computer and a gynaecologist who sexually abuses his patients. In these cases, the Inspectorate (e.g. of education or healthcare) or a Disciplinary Tribunal will usually have to take action or implement measures. However, the simple fact that such professionals may work in the Netherlands does not mean that students who exhibit comparable reprehensible behaviour or make unacceptable comments should automatically be allowed to complete their programme and then continue into professional practice. In this context it is undesirable for people to cause harm to third parties while studying (e.g. during work placements) or later during their profession which could have been prevented if action had been taken on time.

**Inside or outside the educational setting**

Following on from the above, it is important to re-emphasise the difference between reprehensible conduct (misconduct, immoral conduct, harassment) that takes place inside or outside the educational setting, or in or out of sight of those involved in the programme. For the sake of convenience in this protocol the term 'inside' means: in a setting in which the student participates in, or attends, part of the education (including work placements, assessments, etc.) as offered by his or her programme. The phrase 'outside the educational setting' refers to all other situations.

Clearly, a student who misbehaves in the educational setting, but also in the corridors of the educational institution, as referred to above, or repeatedly displays inappropriate conduct, will have to give account to the programme authorities. Usually, the examining board and/or the dean will be involved in such instances in order to evaluate the conduct and assess whether a measure must be imposed, and if so, which.

However, if a student's misconduct or comments are of such a nature that they should be regarded as extremely serious in relation to later involvement in the profession (or the practical preparations for the profession) or, perhaps are less serious, but still occur repeatedly, it should not matter where this misconduct took place, that is either in the educational setting or elsewhere. However, in the case of conduct which occurs outside the educational setting, the possibilities for the examining board or dean to implement a measure are extremely limited and only possible in exceptional situations, as indicated above.
Notifications

Seriousness of the notification
It is difficult to estimate the seriousness which should be attributed to a reported incident. It is then extremely important to explore the context of the case. In concrete terms this means evaluating the opinion of the assessor/informant, finding out about the student's opinion and the opinion of any other parties involved and witnesses and weighing up these opinions against previously formulated policy relating to taking measures. It goes without saying that account has to be taken of the statutory rules. In general, when weighing up the seriousness of an incident, two factors have to be taken into account, namely whether, in the first instance, any previous notifications have been made of incidents relating to the conduct or comments of the person in question and secondly what the seriousness is of the incident reported. The likelihood of an IA being imposed increases the more reprehensibly a student misbehaves, or if the frequency of reprehensible conduct or comments by this student increase.

Who should notify whom?
Notification means informing the competent body at an educational institution of an incident in which a student from said educational institution has exhibited such reprehensible conduct, or a form of dysfunctional behaviour, or has made such reprehensible comments that, in the opinion of the notifying party, these should be designated as an acceptable, or incompatible with, the execution of the profession for which the institution is providing training or the practical preparation for this profession.

Procedure after notification
During the notification process, the person who is the subject of the notification must be informed and be given the opportunity to respond as soon as possible. A notification will, in principle, have to be submitted by a lecturer or examiner, or someone in a comparable position. Even if others want to submit notification of an incident or comment by a student, this will generally only be possible via a lecturer or examiner who can then submit a formal notification. A notifying party will have to make sure that the unacceptable conduct or unacceptable comments took place as s/he claims. Usually the notifying party will therefore have carried out his or her an investigation into the events before actually submitting the notification.

Flow diagram
The flow diagram that is part of this protocol (see pp. 13-14) systematically indicates which steps have to be taken before any IA can be issued. These steps are explained in more detail below. The point of departure is reprehensible conduct of, or reprehensible comments made by, a student. Notifications concerning possible reprehensible conduct or reprehensible comments are submitted or forwarded to the dean or examining board. The latter takes cognizance of the facts and clarifications submitted and uses these as a basis to determine whether or not the notification relates to an educational setting. If the notification relates to an educational setting, the case will be passed on to the examining board (and the dean will be informed), and in all other cases to the dean (and the examining board will be informed). The examining board or the dean will then decide whether the notification needs to be processed. The body (examining board or dean) that has to pronounce judgement will at least have to check on the basis of the unacceptable conduct or comments which institution regulations are most suitable for the case in hand. In the event of a possible IA, the rest of the procedure will be completed by the examining board or the dean. Depending on which route is followed, the examining board or the dean will be given all the relevant facts and documents and will hear all the parties involved. In the case of both routes, a decision will have to be taken, after careful consideration, regarding possible measures and preparations for an IA. If a student's case is estimated not to be of such a nature that an IA seems justified, the examining board or the dean will determine, within the framework of existing legislation and regulations, whether a different measure is to be imposed and, if so, which. If the decision-making process leads to the conclusion that the student is subject to an IA, the examining board or the dean will advise the Executive Board to take the decision to proceed with an IA. The Executive Board will then assume responsibility for the case and, on those grounds, will take a decision against which the student can submit an objection. If the student submits an objection, the Executive Board will ask a national Iudicium Abeundi Disputes Advisory Committee to advise on the matter. The Committee will be issued with all the relevant documents and will interview all the parties involved. It will then advise on whether the student's objection is deemed founded or unfounded. The Executive Board will take a decision on the objection and will send both the ruling and the decision and the recommendation of
the Iudicium Abeundi Disputes Advisory Committee to the student.

**Privacy and security**
The entire process from notification to a decision on an IA must, of course, fulfil the usual requirements with regard to privacy and security. All the people and bodies involved in the process are bound by an obligation to observe secrecy as regards the identity of the student in question. Hearings and rulings by the national Iudicium Abeundi Disputes Advisory Committee are not public. In order to ensure minimum harm to the interests of the party involved, it is recommended that a record is kept of who can access the details of the IA process, as described in this protocol, at what times and for what reasons.
TEXT OF THE BILL, published on 19 December 2008

Article 7.42. Termination of registration
1. At the request of the party registered for a programme, the institution board will terminate said person's registration as from the following month.
2. If the party who is registered for a programme has not paid his (statutory) tuition fees, institution tuition fees, OU tuition fees or examination fees, despite a reminder to do so, the institution board can terminate the registration as from the second month following the reminder.
3. If a registration is terminated in a case as referred to in Article 7.8b, paragraph 5, Article 7.12b, Article 7.37, paragraphs 5 or 6, Article 7.42a or Article 7.57h, paragraphs 1 or 2, the institution board will terminate the registration as from the following month.
4. The institution board will establish rules of a procedural nature relating to the application of this Article.
5. The institution board will inform the party involved and the Information Management Group ('Informatie Beheer Groep') regarding the termination of the registration.

After Article 7.42, a new article is to be added, which reads as follows:

Article 7.42a. Student conduct in relation to future profession
1. In exceptional cases, and following advice by the examining board, the dean or a body comparable to the dean at the institution, and after careful consideration of the interests involved, the institution board can terminate, or refuse, the registration of a student for a particular programme if that student's conduct or comments show that s/he is unsuitable for the execution of one or more professions for which the programme s/he is following is training him/her for, or for the practical preparation for the profession.
2. The institution board or the institution board of another institution which offers the same or a related programme can decide not to allow the student to register again or not for the programme in question.
3. If the student, as referred to in the first paragraph, is registered for a different programme and, within that framework, takes a specialisation which corresponds to or, in view of the practical preparation for the profession, is related to the programme for which the registration was terminated subject to the first paragraph, the institution board can, following advice by the examining board, the dean or a body at the institution comparable to the dean and after careful consideration of the interests concerned, decide that the student should not be allowed to take the specialisation or other parts of the programme in question.
4. Article 7.42, paragraphs four and five apply mutatis mutandis.

EXPLANATORY MEMORANDUM TO THE ACT

4.3 Iudicium abeundi
In order for an institution to function properly, it is crucially important that students, lecturers and other parties involved in the education can participate in, or contribute to, the educational process on the basis of mutual trust. In occasional, serious cases, there may be a need to completely deregister students who, due to their conduct or comments, constitute a risk of harm to other parties involved (in the education or profession), or to refuse these students for the programme in question. In the past few years, for example, situations have arisen by which it transpired, during the programme, that a student was extremely unsuitable for the profession for which the programme was training him/her, or was unsuitable for the practical environment or practical (-oriented) elements of the programme. Examples would be a medical student on whom disciplinary sanctions would have been imposed if the disciplinary law had applied to him/her and a paedophile student participating in a teacher training programme.

Exceptional institutions have a formal, legal option of refusing the registration of students or terminating their registration, if there is a well-founded fear that the party in question will abuse the registration and the related rights, or has abused them, by seriously violating the individual nature of the institution. The argument is that both exceptional and public institutions can deregister such students or that registration can be refused without any legal grounds being required. The court recently issued a judgement on the matter (Appeals Tribunal for Higher Education ('College van
beroep voor het hoger onderwijs'); CBHO no. 2008/008, 20 June 2008) and decreed that a student can be refused in exceptional circumstances if there are urgent reasons to do so. Because the Higher Education and Research Act regulates student admission rights (provided the legal requirements are met) and because the IA is a drastic measure, it is important that there are clear regulations governing the authority of institutions to deregister a student or refuse his/her registration. The proposed provision focuses on cases in which people's conduct constitutes a threat to others, such as fellow students, lecturers, but also on those who participate in education in some other way. Such situations will primarily occur during practical phases of the programme (work placements, practicals or internships) which prepare the student for the profession. Problem behaviour can be expressed in harassment (including sexual harassment), aggression, violence or general dysfunctioning as a consequence of a serious personality disorder. The student can then be said to be physically, and also morally, unsuitable for the profession.

Not only conduct, but also comments, can provide a basis to terminate or refuse the registration on the grounds of paragraph 1 of the proposed Article 7.42a. The suggestion is that the term 'conduct' also implies the term 'comments' because making comments can also be regarded as morally unacceptable conduct. With a view to unequivocal clarity, the term 'comments' has been explicitly included in the criterion. It is key that this term relates to conduct and comments which are unacceptable in the context of the profession or professional practice. Unsatisfactory functioning in a certain area or with regard to a certain activity, for example when dealing with colleagues or professional conduct, is, in itself, insufficient for imposing an IA. Within the framework of the regular curriculum, this will (have to) be dealt with and assessed in that context. If such is assessed in a certain part of the course, the student will not pass that part of the course and - if that part of the course is obligatory - the student will not be able to complete the programme. In addition, the IA cannot be used to deregister students with unsatisfactory study results or application. If expulsion is necessary due to unsatisfactory study results - with insufficient application to the programme also being expressed as unsatisfactory study results – the option of a binding negative study advice can be used.

Because the expulsion or refusal of a student is a drastic measure that can be taken by an institution, it is stressed that it can only be used after a careful weighing up of the interests. The measure must be proportional. As refusing registration or expulsion from a programme is a drastic measure, the decision to proceed with this measure should not be taken lightly. In the same way, a certain vision held by a student, for example anti-democratic ideas, is insufficient grounds to refuse entry to a programme, even if such ideas are not commensurate with the object of the programme. The basic principle in this regard is the constitutional freedoms, such as the freedom of expression. In addition, academic freedom, as laid down in the law, applies to students as well.

When weighing up the process, the interests such as academic freedom and the right to education on the one hand and the interests of the institution, other students and other parties involved in education on the other, both play a role.

Besides the possibility of refusing or deregistering a student on the grounds referred to, the institution that has terminated this student's registration for the programme in question also has the opportunity to refuse this student if s/he wants to (re)register for the same programme. Other institutions will have the same option if the student in question wants to register for the same programme elsewhere. If the student registers for a different programme, but opts for a specialisation in which the same problem will probably occur, the educational institution can deny this student access to that specialisation or other parts of the programme in question. Such students are, of course, protected by a robust legal protection procedure, as described in paragraph 4.1.

**ADVICE FROM THE COUNCIL OF STATE DATED 3 October 2008**

_Iudicium abeundi_

Pursuant to the new Article 7.42.a, paragraph 1 of the Higher Education and Research Act, the Executive Board of an institution can terminate a student's registration if the student's conduct or comments demonstrate unsuitability for exercising one or more professions which the programme is training him/her for, or for the practical preparation for the practising of said profession. Pursuant to the second paragraph of this provision, a (renewed) registration for this programme, or for the same or a related programme at another institution, may be refused. Pursuant to the third paragraph, it will...
also be possible to refuse such a student admission to a specialisation or part of a programme which is related to the programme with regard to which the registration has been terminated. In accordance with paragraph 4.3 of the explanatory memorandum to the Act, this means students who have demonstrated that they are unsuitable for the profession for which the programme is training them. This means, in the first instance, students of medical programmes on whom a disciplinary sanction would have been imposed, if disciplinary law would have applied to them. It also means students who constitute a threat to others, for example due to aggression towards, or sexual harassment of, fellow students, lecturers or patients. The explanatory memorandum rightly emphasises, by referring to academic freedom, that the idea is not for this provision to be used to refuse students on the grounds of certain views, such as undemocratic beliefs. The Council acknowledges the desirability of being able to remove students, who have seriously misbehaved, from a programme definitively. In view of the interests of the student in question and the concept of academic freedom, the Council believes that this possibility should be used only as a last resort. In this context, the term 'comments' does not appear to add anything because, in the opinion of the Council, conduct can also relate to unacceptable comments, such as threats, insults and sexual intimidation. The term comments may erroneously give the impression that the expression of socially debatable ideas is also covered by the scope of Article 7.42a. The Council recommends the addition of a clarification of the term ‘comments’. The Council also points out that medical schools also want to use the IA for students whose professional conduct is systematically assessed as being unsatisfactory, for example in their dealings with patients and colleagues, as a result of which they are also unsuitable for the profession for which the programme is preparing them, without any direct evidence of morally reprehensible conduct. The explanatory memorandum does not address this option. In addition, it does not examine the question of whether, supplementary to the third paragraph of Article 7.8b of the Higher Education and Research Act, the IA can be used to deregister students whose application and study results are unsatisfactory. The Council recommends that Article 7.42a and the corresponding explanatory memorandum are adapted.
RESPONSE FROM THE MINISTER OF EDUCATION, CULTURE AND SCIENCE TO THE
RECOMMENDATION BY THE COUNCIL OF STATE, AS DETAILED IN THE ADDITIONAL
REPORT RELATING TO THE PROPOSAL TO AMEND THE HIGHER EDUCATION AND
RESEARCH ACT AND VARIOUS OTHER ACTS ('IMPROVED GOVERNANCE (HIGHER
EDUCATION) ACT.') DATED 15 December 2008

Iudicium abeundi
Not only conduct, but also comments, can provide a basis to terminate the registration on the grounds
of paragraph 1 of the proposed Article 7.42a. A deliberate decision was taken to add the term
'comments' in order to provide an unequivocal definition of the scope of this new provision. I believe it
is important to restrict the grounds for termination of the registration wherever possible. One key
restriction is that the conduct and comments must be unacceptable in the context of the profession or
the professional practice in question.
Failing a certain activity or not having sufficient skills (for example social skills) is, in itself, insufficient
grounds for an iudicium abeundi. The iudicium abeundi cannot be not used to deregister students with
unsatisfactory study results or application either. In such cases a binding negative study advice can
be used. I do not believe there is any reason to amend the legislative proposal in this respect.
However the above has been included in the explanatory memorandum to the Act.

PARLIAMENTARY DOCUMENT 2008-2009, 31821, no. 6, Lower House From: States-General (SG)
Date of adoption: 13-03-2009

Response by the Minister to questions from the Lower House regarding the iudicium abeundi

Does the iudicium abeundi also fall under the treatment of disputes relating to an assessment
of the student's quality?
Yes, legal protection is also possible in the event that the iudicium abeundi is imposed. In the event of
a dispute on the matter, the Disputes Advisory Committee will issue recommendations to the
institution board that will then decide on the grounds of a review.

How can the government prevent institutions using the iudicium abeundi to refuse or remove
troublesome students?
The iudicium abeundi can only be used for conduct and comments which lead to the conclusion that
the student in question is unsuitable for the profession for which the programme is training him/her, or
the related professional practice.

The iudicium abeundi is also subject to legal protection and an internal and external procedure.

For the sake of completeness I would like to point out that the legislative proposal does include the
option of definitively removing students from the institution who cause serious nuisance.

At the moment it is insufficiently clear what the government means by morally
unsuitable for a profession as a basis for the iudicium abeundi. The members would like to
know how the criteria for moral unsuitability are to be determined and which parties are to be
involved.
The criteria are to be determined by the institution board. After all it is a decision for the institutions.
This does not prejudice the fact that the institution can, and presumably will, be guided by criteria
drawn up by professional groups. For example, those within the medical discipline are currently
considering possible criteria which, in their opinion, could be applied to the medicine programme. As
yet they have not been able to be very specific because each case is unique and requires a case-by-
case weighing up of why specific conduct and comments by a student make him/her unsuitable for a
certain profession or professional practice.

For that reason it is not obligatory to lay down criteria. However they do provide a guideline and may
promote due care and attention and legal certainty vis-à-vis students.

These members also want to know when, in the Minister's opinion, people constitute a threat
to others as a result of their conduct. In the explanatory memorandum to the Act the
government focuses only on sexual abuse and paedophilia. As a result, the question is
avoided as to whether the iudicium abeundi can, for example, be used to refuse access to programmes to people with fundamentalist views.
In my opinion a person's conduct constitutes a threat to others if said conduct is such that it is safe to assume that the people which said person is going to treat, or deal with, within the framework of the future profession or practice (work placement), will suffer substantial (physical or emotional) harm. The people in question will generally be those who have been observed exhibiting such behaviour. These may be people who indicate (beforehand) that they are going to behave in a way which results in such a risk of harm.

These members are particularly concerned about the fact that the proposed amendment to the Act means that, in addition to conduct, comments can also lead to registration termination or refusal. The members of this parliamentary party believe that this jeopardises the freedom of expression and that a judgement on the basis of comments is extremely difficult to prove and refute. For that reason the members request clarification as to the detailing of criteria (how) relating to comments which are unacceptable for which professions and programmes (what).

The iudicium abeundi can only be used to remove a student on the grounds of comments made in the events of comments whereby the people with whom s/he is going to work in the future are at risk of harm (paedophilia case).

Which criteria does the government use to differentiate between conduct and comments?
In principle, conduct is an action by a student and a comment is a statement by a student. This does not mean a random comment, but rather a comment with regard to which it can be assumed may lead to an action that renders the person unsuitable for the profession or the professional practice. Although a 'comment' could also be designated 'conduct', I believe it is a good idea to clarify that, in addition to conduct, comments can also play a role in unequivocally clarifying the scope of the provision.

Does the government consider the proposed text to be sufficiently clear for a drastic sanction such as the iudicium abeundi?
I believe that the proposed text is sufficiently clear for the introduction of a drastic sanction such as the iudicium abeundi. It has been sufficiently indicated that the iudicium abeundi is a last resort, that various internal parties have to be involved, that all interests have to be weighed up, that there has to be a direct relation with a profession and that it has to relate to conduct or comments. In my opinion this covers all of the relevant aspects.
**When should the iudicium abeundi not be used?**

It has been explicitly indicated, and the Council of State mentioned this in a positive sense, that the iudicium abeundi may not result in any violation of the academic freedom. It may not violate the principle of freedom of expression either. The iudicium abeundi is a last-resort remedy and must be organised accordingly.

I would like to point out explicitly that the iudicium abeundi is a drastic measure that can only be used in exceptional cases. The institution cannot and may not use it to remove underperforming students (Lower House, session 2008–2009, 31 821, no. 7 46). The same applies in relation to a student who uses the principle of freedom of expression in a manner which displeases the Executive Board.

The fact that a student subscribes to fundamentalist ideas does not necessarily make him/her unsuitable for a profession. This does not justify application of the IA. If, in relation to this student, the conclusion ought to be drawn that h/she may not attend a certain programme because h/she would otherwise be a risk to the security of the state, different grounds should be involved to remove him/her or refuse his/her registration. For example, a person who does not possess Dutch nationality on the grounds of the Aliens Act ('Vreemdelingenwet') can be declared undesirable and be deported or – as is more usually the case – denied access to the Netherlands. Prior to this, the interests are weighed up and public order and national security are also taken into account.