
STATUTORY RULES OF NORTHERN IRELAND

1997 No. 380

General Medical Services Regulations (Northern Ireland) 1997

Part VI

Miscellaneous

Determination of question of whether a substance is a drug, and recovery of cost

40.—(1) Any question as to whether a substance supplied or ordered by a doctor for provision by a chemist is a drug, the provision of which formed part of pharmaceutical services provided under the Order, shall be determined under the provisions of this regulation.

(2) Where it appears to a Board, having been notified by the Agency, that a question arises under paragraph (1), the Board shall—

- (a) notify in writing the doctor who supplied or ordered the substance of the nature of the question arising; and
- (b) invite him to state in writing, within 30 days from the date on which the notice was sent to him, whether he wishes the question to be referred to the Local Medical Committee for its opinion.

(3) The Board—

- (a) shall, where the doctor states that he wishes the question to be referred to the Local Medical Committee for its opinion, refer the question accordingly;
- (b) in any other case, may refer the question to the Local Medical Committee for its opinion; and
- (c) may, in any event, seek such medical or pharmaceutical advice as it thinks fit, otherwise than from the Local Medical Committee.

(4) Where the question is referred to the Local Medical Committee under the provisions of paragraph (3), that Committee shall—

- (a) furnish the doctor concerned with a statement indicating the nature of the question referred to it by the Board; and
- (b) give the doctor concerned a reasonable opportunity to—
 - (i) submit to the Local Medical Committee any statement in writing; and
 - (ii) appear before it and be heard by it, in connection with the question so referred.

(5) The Local Medical Committee shall—

- (a) in forming its opinion under this regulation, have regard to any information or evidence provided by the Board or the Agency in connection with the question referred to it; and
- (b) inform the doctor and the Board, in writing, of its opinion, its findings of fact and its reasons for its opinion.

(6) The Board shall—

- (a) send notice of the question, in writing, to—
 - (i) the doctor who supplied or ordered the substance;
 - (ii) the person to whom the order was given; and
 - (iii) any other person who, in the opinion of the Board, has an interest in the determination of the question; and
 - (b) invite any such person to submit to the Board his comments, in writing, on that question within 30 days or within such further period as the Board may, for reasonable cause, allow.
- (7) The Board shall, in determining the question, have regard to any opinion obtained by it under any of the provisions of paragraphs (3) to (5), and shall—
- (a) send notice of its decision, in writing, to—
 - (i) the doctor concerned;
 - (ii) the Local Medical Committee; and
 - (iii) any person who submitted comments under paragraph (6); and
 - (b) where it determines that the substance in question is not a drug the provision of which forms part of pharmaceutical services, inform the doctor of his right of appeal under paragraph (8).
- (8) Where the Board has determined that the substance in question is not a drug the provision of which forms part of pharmaceutical services, the doctor may appeal to the Department by giving notice of appeal within 30 days from the date on which the notice of the decision was sent to him or within such longer period as the Department may, for reasonable cause, allow.
- (9) Any notice of appeal given under this regulation shall be given in writing and shall contain a concise statement of the grounds of appeal.
- (10) The Department shall send a copy of the notice of appeal to the Board and to any person who submitted comments to the Board under paragraph (6).
- (11) Any person to whom a copy of the notice of appeal is sent pursuant to paragraph (10), may, within 30 days from the date on which the notice was sent to him, make representations in writing to the Department on the appeal.
- (12) The Department shall require an oral hearing of the appeal and shall nominate up to 3 persons to hear the appeal, of whom—
- (a) at least one is a medical practitioner; and
 - (b) none are officers of the Department.
- (13) An oral hearing shall take place at such time and place as the Department may direct, and notice of the hearing shall be sent, not less than 14 days before the date fixed for the hearing, to the doctor and to any person who received a copy of the notice of appeal under paragraph (10).
- (14) The doctor and any person mentioned in paragraph (10) may attend and be heard in person or by counsel, solicitor or other representative and the Board may be represented at the hearing by any duly authorised officer or member, or by counsel or solicitor.
- (15) The persons nominated by the Department under paragraph (12) shall determine the procedure at the oral hearing as they see fit and, on determining the appeal, shall either—
- (a) allow the appeal; or
 - (b) confirm the decision of the Board,
- and shall inform the Department of their findings of fact.
- (16) The Department shall, as soon as practicable, send to the doctor and to any person mentioned in paragraph (10) notice in writing of its decision on the appeal and shall include in the notice a statement of its reasons for the decision and of its findings of fact.

(17) Where the Board or, on appeal, the Department has determined that a substance is not a drug the provision of which forms part of pharmaceutical services provided under the Order, the Board shall recover from the doctor who, or whose deputy or assistant, supplied or ordered the substance, by deduction from his remuneration or otherwise, an amount calculated in accordance with paragraph (19).

(18) Any amount determined as being recoverable under this regulation shall be a debt owing by the doctor to the Board.

(19) For the purposes of paragraph (18), the amount to be recovered in respect of the supply of any substance shall be the cost of that substance to the Board, including the dispensing fee payable in respect of the preparation in accordance with the Drug Tariff published under regulation 9 of the Pharmaceutical Regulations, and where the substance was an ingredient in a preparation of which other ingredients were drugs, the amount to be recovered shall be the cost of that substance to the Board together with one-half of the amount of the dispensing fee payable in respect of the supply of the preparation.

Publication of particulars

41.—(1) Each Board shall publish the local directory and shall make available for inspection at its principal office copies of—

- (a) the local directory;
- (b) a compendium of practice leaflets provided to it by doctors whose names are included in the medical list;
- (c) the terms of service; and
- (d) the Statement published under regulation 37,

and shall keep them up to date.

(2) The Agency shall publish the medical list and the obstetric list and shall make copies of them available for inspection at its office together with a copy of the Statement published under regulation 37 and shall keep them up to date.

(3) The Board and the Agency shall make the documents mentioned in paragraphs (1) and (2) available for inspection at such other places as appear to them convenient for informing all persons interested or may publish at such places a notice of the places and times at which copies of such documents may be seen.

(4) The Agency shall—

- (a) send a copy of the medical list and the obstetric list to the Department, each Board, the Medical Committee, the Obstetric Committee, the Local Pharmaceutical Committee, each Local Medical Committee and the General Medical Services Committee of the British Medical Association; and
- (b) at intervals of not more than 3 months notify each of the bodies mentioned in sub-paragraph (a) of any alterations in the lists mentioned in that sub-paragraph.

(5) Notwithstanding paragraph (4), if the Agency considers that only parts of the medical list or the obstetric list, or that only some of the alterations, are likely to concern the bodies mentioned in that paragraph, it may send to those bodies a copy of only those parts or alterations.

Appointment of medical adviser

42. A Board shall appoint a doctor to assist it in the exercise of its functions pursuant to paragraph 55 of the terms of service for doctors (inquiries about prescriptions and referrals).

Guidance to doctors

43.—(1) A Board may issue guidance to doctors whose names are included in the medical list to assist them in assessing, in accordance with paragraph 35 of the terms of service, the qualifications, experience and competence of any employee or prospective employee.

(2) Any guidance issued for the purposes of paragraph (1) in connection with the employment of members of any profession or other occupational group shall have regard to any statement as to minimum professional standards of conduct published by any body responsible for the regulation of that profession or occupational group.

Revocations

44.—(1) Regulation 3 of the Central Services Agency Committees (Amendment) Regulations (Northern Ireland) 1989⁽¹⁾ is hereby revoked

(2) The Regulations specified in Schedule 15 are hereby revoked.