

**2008 No. 434**

**HEALTH AND PERSONAL SOCIAL SERVICES**

**The Health and Personal Social Services (Primary Medical Services Performers Lists) (Amendment) Regulations (Northern Ireland) 2008**

*Made* - - - - *6th November 2008*

*Coming into operation* - *8th December 2008*

The Department of Health, Social Services and Public Safety(a), makes the following Regulations in exercise of the powers conferred on it by Articles 57G, 106(b) and 107(6) of, and paragraph 1 (8)(a) of Schedule 11 to, the Health and Personal Social Services (Northern Ireland) Order 1972(b) and in conjunction with the Department of Finance and Personnel.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Primary Medical Services Performers Lists) (Amendment) Regulations (Northern Ireland) 2008 and shall come into operation on 8<sup>th</sup> December 2008.

(2) In these Regulations “the principal Regulations” means the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004(c).

**Amendment of regulation 2 of the principal Regulations**

2. In regulation 2 (Interpretation)—

- (a) insert after the definition of “conditional disqualification”—
- (b) ““conditional inclusion” shall be construed in accordance with regulation 8A;  
“contingent removal” shall be construed in accordance with regulation 10A;”;  
“corresponding decision” has the same meaning as in paragraph 12 of Schedule 11 to the Order;”;
- (c) in the definition of “disqualification” omit “local or general” in each place where they occur;

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(a) See S.I.1999/283 (N.I. 1) Article 3 (6)

(b) S.I. 1972/1265 (N.I. 14) Article 57G was inserted by the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)) and amended by Article 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 c.2 (N.I.). Schedule 11 was substituted by Schedule 2 to the Health and Personal Social Services Act (Northern Ireland) 2001 c.3 (N.I.) and amended by Article 8 (3) of S.I. 2004/311 (N.I.2) and Schedule 1 to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 c.2 (N.I.).

(c) S.R. 2004 No. 149

- (d) insert after the definition of “medical practitioner”—  
     ““NPSA” means the National Patient Safety Agency (a)”;
- (e) omit the definition of “local or general disqualification”;
- (f) in the definition of “suspended” after “Schedule 11 to the Order” insert “or suspended by a Board under regulation 12A of these Regulations”;
- (g) insert after the definition of “suspended”—  
     ““third condition for disqualification” has the meaning indicated in paragraph 1(7A) of Schedule 11 to the Order;”.

**Amendment of regulation 3 of the principal Regulations**

- 3. In regulation 3 (Primary Medical Services Performers)—
  - (a) at the end of paragraph (1), for “maintained by that Board” substitute “maintained by a Board”;
  - (b) in line 4 of paragraph (3) for, “which that Board” substitute “which a Board”.

**Amendment of regulation 4 of the principal Regulations**

- 4. In regulation 4 (Primary Medical Services Performers Lists) in paragraph (1) delete from “for which that Board is” to end of paragraph.

**Amendment of regulation 5 of the principal Regulations**

- 5. In regulation 5 (Publication of primary medical services performers lists)—
  - (a) in paragraph (1), delete “within the Board’s area”;
  - (b) in sub-paragraph (2)(d), delete “in the Board’s area”.

**Amendment of regulation 7 of the principal Regulations**

- 6. In regulation 7 (Decisions and grounds for refusal and deferral)—
  - (a) in paragraph 4, second line, for “the second” substitute “a”;
  - (b) in sub-paragraph 4(a), “for the first condition of disqualification (if the applicant were included in the list),or the second” substitute “a”;
  - (c) in sub-paragraphs 4(b) and (c), for “the first condition for disqualification (if the applicant were included in the list) or second” substitute “a”.

**Insertion of regulation 7A to the principal Regulations**

- 7. After regulation 7 (Decisions and grounds for refusal and deferral) insert—

**“Effect to be given to corresponding decisions in England, Wales and Scotland**

7A.—(1) A Board shall not include the name of any person in the primary medical services performers list, and shall remove the name of any person from the primary medical services list, if any decision has been made in England, Wales or Scotland to deal with that person in any way which corresponds (whether or not exactly) with the way in which a person may be dealt with under a provision of Schedule 11 to the Order, for so long as that decision is in force.

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(a) S.I.2005 No.504 amended the National Patient Safety Agency (Establishment and Constitution )Order 2001 to confer on the Agency functions previously carried out by the National Clinical Assessment Authority which was abolished by S.I.2005/502

(2) Where any corresponding decision is made in England, Wales or Scotland by an equivalent body that—

- (a) a person is to be included in an equivalent list subject to conditions; or
- (b) a person is to be removed from an equivalent list contingent on conditions; or
- (c) any conditions so imposed are varied,

a Board shall impose those conditions in relation to the performance, by that person of primary medical services.

(3) The Board may make such modifications of the conditions referred to in paragraph (2) as it considers necessary for them to have the like effect in relation to Northern Ireland as they do in England, Wales or Scotland, but only if the Board has previously given the person concerned written notice of the proposed modifications and an opportunity to make representations about them.”.

#### **Amendment of regulation 8 of the principal Regulations**

8. In regulation 8 (Requirements with which a medical practitioner included in a primary medical services performers list must comply) after paragraph (2) insert—

“(3) A performer who is included in a primary medical services performers list, shall supply the Board with an enhanced criminal record certificate issued under section 113B of the Police Act 1997 (a) in relation to himself if at any time, for reasonable cause, the Board requests him to provide such a certificate.”.

#### **Insertion of regulation 8A to the principle Regulations**

9. After regulation 8 (Requirements with which a medical practitioner included in a primary medical services performers list must comply) insert—

##### **“Conditional Inclusion in the primary medical services performers list**

8A.—(1) A Board may determine that, if a performer is to be included in the primary medical services performers list, he is to be subject, while he remains on the list, to the imposition of conditions, having regard to the requirements of article 57G(3B) of the Order (preventing fraud or prejudice to the efficiency of the service).

(2) If a performer fails to comply with a condition under paragraph (1), which has been imposed by a Board, it may remove him from the primary medical services performers list.

(3) Where a Board is considering the removal of a performer from the primary medical services performers list for breach of a condition, it shall give the performer—

- (a) notice of any allegations against him;
- (b) notice of the grounds for the action it is considering;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case before it at an oral hearing, if the performer requests such a hearing within the 28 day period mentioned in sub-paragraph (c).

(4) If there are no representations within the period specified in paragraph (3)(c), the Board shall decide the matter and, within 7 days of making its decision, notify the performer of—

- (a) that decision and the reason for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (Appeal to the Department).

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(a) S.I. 2008 No. 542

(5) If there are representations the Board must take them into account before reaching its decision and shall then, within 7 days of making it, notify the performer of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (Appeal to the Department).

(6) If the performer requests an oral hearing, this must take place before the Board reaches its decision, and it must then, within 7 days of making that decision, notify the performer of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (Appeal to the Department).

(7) When the Board notifies the performer of any decision, it shall inform him that, if an appeal is to be made under regulation 13, it must be made within the period of 28 days beginning with the date on which the Board gave him the notice informing him of its decision and shall explain how to exercise any such right.

(8) The Board shall also notify the performer of his right to have the decision reviewed in accordance with regulation 12B.

(9) Where the Board determines that a performer—

- (a) may be included in the primary medical services performers list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while he remains included in the primary medical services performers list,

the performer's name may be included, or continue to be included, in that list during the period under which an appeal may be brought before the Department pursuant to regulation 13, or if an appeal is brought, until such time as that appeal has been decided, provided the performer agrees in writing to be bound by the conditions imposed until the time for the appeal has expired, or the appeal is decided.”

#### **Amendment of regulation 9 of the principal regulations**

**10.** In regulation 9 (Removal from primary medical services performers lists) after subparagraph (2)(b) insert—

- “(c) remove a performer from a primary medical services performers list under regulations 8A or 10A of these Regulations.”

#### **Insertion of regulation 10A to the principal Regulations**

**11.** After regulation 10 (Removal from the primary medical services performers list of medical practitioners not performing primary medical services) insert—

##### **“Contingent removal from the primary medical services performers list**

**10A.—(1)** In an efficiency or a fraud case, a Board may decide to contingently remove a performer from its primary medical services performers list.

(2) If a Board decides to contingently remove the performer in accordance with paragraph (1), it must impose such conditions as it may decide, having regard to the requirements of Article 57G(3B) of the Order (preventing fraud or prejudice to the efficiency of the service).

(3) If the Board determines that the performer has failed to comply with a condition imposed by the Board under paragraph (2) it may decide to—

- (a) vary the conditions imposed;
- (b) impose new conditions; or
- (c) remove the performer from the primary medical services performers list.

(4) Where a Board is considering the removal of a performer from the primary medical services performers list for breach of a condition, it shall give the performer—

- (a) notice of any allegation against the performer;
- (b) notice of the grounds for the action it is considering;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity for an oral hearing before it, if the performer requests one within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations within the period specified in paragraph 4(c), the Board shall decide the matter and, within 7 days of making that decision, notify the performer of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (Appeal to the Department).

(6) If there are representations the Board must take them into account before reaching its decision and shall then, within 7 days of making it, notify the performer of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (Appeal to the Department).

(7) If the performer requests an oral hearing, this must take place before the Board reaches its decision, and it must then, within 7 days of making that decision, notify the performer of—

- (a) that decision and the reason for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (Appeal to the Department).

(8) When the Board notifies the performer of any decision, it shall inform the performer that, if an appeal is to be made under regulation 13, it must be made within the period of 28 days beginning with the date on which it gave the performer notice of its decision and shall explain how to exercise any such right.

(9) The Board shall also notify the performer of his right to have the decision reviewed in accordance with regulation 12B.

(10) Where the Board determines that a performer—

- (a) may be included in the primary medical services performers list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while remaining included in the primary medical service performers list,

the performer's name may be included, or continue to be included, in that list during the period under which an appeal may be brought to the Department pursuant to regulation 13, or if an appeal is brought, until such times as that appeal has been decided, provided the performer agrees in writing to be bound by the conditions imposed until the time for the appeal has expired or the appeal is decided.”.

### **Amendment of regulation 12 of the principal Regulations**

**12.** In regulation 12 (Amendment or withdrawal from primary medical services performers lists)—

(a) after paragraph (2) insert—

“(2A) If a performer is accepted onto the primary medical services performers list of another Board, that performer shall, unless it is impracticable to do so, notify the Board on whose primary medical services performers list he is included, that he intends to withdraw from that list.”;

(b) after sub-paragraph (3) (b) insert—

“(c) pursuant to paragraph (2A), remove the performer’s name from its primary medical services performers list as soon as it confirms that the performer has been accepted on that other list.”;

(c) after paragraph (4) insert—

“(4A) Any notice given pursuant to paragraph (2A) may not be withdrawn once the performer has been accepted on that other list.”;

(d) after paragraph (5) insert—

“(6) Where a Board has suspended a performer under regulation 12A that performer shall not, except with the consent of the Department and subject to such conditions as it may impose, be entitled to withdraw from the primary medical services performers list until the matter has been finally determined by the Board.”.

### **Insertion of regulation 12A to the principal Regulations**

**13.** After regulation 12 (Amendment or withdrawal from primary medical services performers lists) insert—

#### **“Suspension**

**12A.—**(1) If a Board is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a performer from its primary medical services performers list, in accordance with the provisions of this regulation—

- (a) while it determines whether to remove the performer from its primary medical services performers list under regulation 9 or 10 or contingently remove him under regulation 10A;
- (b) while it awaits the decision of—
  - (i) a court anywhere in the world; or
  - (ii) a licensing or regulatory body,

which affects the performer;

- (c) while it considers whether to refer the performer to the Tribunal or to the General Medical Council<sup>(a)</sup>;
- (d) while it awaits a finding by the Tribunal or the General Medical Council;
- (e) where it has decided to remove the performer but before that decision takes effect; or
- (f) pending appeal under these regulations.

(2) Subject to paragraph (7) in a case falling within paragraph (1)(a) or (c), the Board must specify a period, not exceeding six months, as the period of suspension.

(3) Subject to paragraph (7) in a case falling within paragraph (1)(b), the Board may specify that the performer remains suspended after the decision referred to in that paragraph has been made for an additional period, not exceeding 6 months.

(4) In a case falling within paragraph (1)(d), the term of suspension may exceed six months.

(5) If the Board suspends a performer in a case falling within paragraph (1)(e) the suspension has effect from the date the Board informed that person of the suspension.

(6) If the Board suspends a performer in a case falling within paragraph (1)(f) the suspension has effect from the date the Board informed that person of the suspension until the expiry of the appeal period or until the Department has disposed of the appeal.

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(a) see section 1 of the Medical Act 1983 (c.54)

(7) The Board may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate period of suspension does not exceed six months.

(8) Except as provided in paragraph (9) the effect of a suspension is that while a performer is suspended under these Regulations, that person is to be treated as not being included in the primary medical services performers list even though that person's name appears on it.

(9) For the purpose of an application by a performer who is suspended under these Regulations to be included in another primary medical services performers list, he shall be treated as still included in the list from which he is suspended notwithstanding that suspension.

(10) The Board may at any time revoke the suspension and notify the performer of its decision.

(11) Where a Board is considering suspending a performer or varying the period of suspension under this regulation, it shall give that person—

- (a) notice of any allegation against that person;
- (b) notice of what action it is considering and on what grounds; and
- (c) the opportunity to put his case at an oral hearing before the Board on a specified day.

(12) The Board may suspend the performer with immediate effect.

(13) If an oral hearing does take place, the Board shall take into account any representations made at the hearing in relation to its decision to suspend.

(14) The Board shall notify the performer of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.

(15) The Board shall notify the performer of any right of review under regulation 12B.

(16) During a period of suspension, payments shall be made to the performer in accordance with regulation 15.

(17) If a performer is dissatisfied with a decision of the Board (“the original decision”)—

- (a) to refuse to make a payment to or in respect of him pursuant to a determination under regulation 15;
- (b) to make a payment to or in respect of him pursuant to a determination under regulation 15, but at a lower level than the level at which the suspended performer considers to be correct; or
- (c) in respect of recovery of what the Board considers to be an overpayment,

the performer may ask the Board to review the original decision and if that person makes such a request, the Board shall reconsider the original decision and once it has done so, it must notify the performer in writing of the outcome of that reconsideration (“the reconsidered decision”) and give that person notice of the reasons for the reconsidered decision.”.

#### **Insertion of regulation 12B to the principal Regulations**

**14.** After regulation 12A (Suspension) insert—

##### **“Reviews**

**12B.**—(1) A Board may, and if requested in writing to do so by the performer, shall review its decision to—

- (a) impose or vary conditions imposed under regulation 8A;
- (b) impose or vary conditions imposed under regulation 10A; or

- (c) suspend the performer under regulation 12A(1)(a) to (d) except where a suspension is continuing by order of the Tribunal.
- (2) A performer may not request a review of a Board's decision until the expiry of a three month period beginning with the date of that decision or, in the case of a conditional inclusion under regulation 8A, beginning with the date it includes the performer's name in the primary medical services performers list.
- (3) After a review has taken place, the performer cannot request a further review before the expiry of 6 months from the date of the decision on the last review.
- (4) If a Board decides to review its decision under this regulation to conditionally include, contingently remove or suspend a performer, it shall give him—
  - (a) notice of any allegation against him;
  - (b) notice of what action it is considering and on what grounds;
  - (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
  - (d) the opportunity to put his case before it at an oral hearing, if the performer so requests within the 28 day period mentioned in sub-paragraph (c)
- (5) If there are no representation within the period specified in paragraph (4)(c), the Board shall notify the performer of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 13.
- (6) If there are representations, the Board must take them into account before reaching its decision.
- (7) The Board, shall, within 7 days of making its decision, notify the performer of—
  - (a) that decision;
  - (b) the reasons for it (including any facts relied upon);
  - (c) any right of appeal under regulation 13; and
  - (d) the right to a further review under this regulation.
- (8) When the Board notifies the performer under paragraph (7)(c) , it shall—
  - (a) notify him that if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision; and
  - (b) tell him how to exercise any such right.
- (9) If a Board decides to review its decision to impose conditions under regulations 8A or 10A, it may—
  - (a) vary the conditions;
  - (b) impose different conditions; or
  - (c) remove the conditions.
- (10) If a Board decides to review its decision to suspend a performer under regulation 12A(1)(a) to (d), it may decide to impose conditions.
- (11) A Board may not review its decision to suspend a performer under regulation 12A (1)(e) or (f).".

**Amendment of regulation 13 of the principal Regulations**

**15.—**(1) In regulation 13 (Appeal to the Department) for paragraph (1) substitute—

“**13.—**(1) A person may appeal for a re-determination by the Department where the person's application for inclusion in a primary medical services performers list is refused under regulation 7.”.

(2) after paragraph (1) insert the following—



“(1A) A person may appeal for a re-determination by the Department of a determination of a Board—

- (a) to remove the person from the primary medical services performers list pursuant to regulations 8A(2), 10(1) or 10A(3)(c);
- (b) to impose a particular condition under regulation 8A, or to vary any condition or impose a different condition under that regulation;
- (c) on a review, under regulation 12B of a conditional inclusion under regulation 8A;
- (d) to impose a particular condition under regulation 10A, or to vary any condition, or to impose a different condition under that regulation; or
- (e) on a review under regulation 12B, of a contingent removal under regulation 10A.”

(3) after paragraph (11) insert—

“(12) Where the decision of the Department on appeal is that the performer’s inclusion or continued inclusion in the primary medical services performers list is to be subject to conditions, whether or not those conditions are identical to the conditions imposed by the Board, the Board shall ask the performer to notify it within 28 days of the decision (or such longer period as the Board may agree) whether he wishes to be included in the primary medical services performers list subject to those conditions.

(13) If the performer notifies the Board that he does wish to be included in its performers list subject to the conditions, it shall so include him.”.

#### **Amendment of regulation 14 of the principal Regulations**

16. In regulation 14 (Disclosure of information)—

- (a) in sub-paragraph (1)(b) for “regulation 9 or 10” substitute “regulations 8A, 9, 10 or 10A”;
- (b) after sub-paragraph (1)(b) insert sub-paragraphs (c) and (d)—
  - “(c) impose conditions on a performers inclusion or continued inclusion in that list under regulations 8A or 10A; or
  - (d) suspend a performer from that list under regulation 12A;”;
- (c) after sub-paragraph (2)(f) insert sub-paragraph (g)—
  - “(g) the NPSA.”; and
- (d) after sub-paragraph (8)(i) insert sub-paragraph (j)—
  - “(j) the NPSA.”.

#### **Amendment of Schedule 1 of the principal Regulations**

17.—(1) In paragraph 2 of Schedule 1 (information, declarations and undertakings to be included in an application for inclusion in a primary medical services performers list), for sub-paragraph (b) substitute—

“(b) is a GP Registrar working towards the acquisition of a CCT;”.

(2) In paragraph (3) of Schedule 1 for sub-paragraph (a) substitute—

“(a) that the performer will—

- (i) participate in appropriate and relevant appraisal procedures;
- (ii) co-operate with the NPSA, when requested to do so by the Board;
- (iii) provide the Board with an enhanced criminal record certificate issued under section 113B of the Police Act 1997; and
- (iv) notify the Board if he is included or applies to be included, in any other primary medical services performers list held by a Board or equivalent body;”

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on  
6<sup>th</sup> November 2008



*Christine Jendoubi*

A senior officer of the Department of Health, Social Services and Public Safety

Sealed with the Official Seal of the Department of Finance and Personnel on 6<sup>th</sup> November 2008



*M McIvor*

A senior officer of the Department of Finance and Personnel

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations make amendments to the Health and Personal Social services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004 (“principal Regulations”), which provide for lists (“primary medical services performers lists”) of medical practitioners who may perform primary medical services for which Boards are under a duty to provide or secure the provision of.

Regulations 3, 4 and 5 amend regulations 3, 4 and 5 of the principal Regulations to allow a medical practitioner who is admitted to a Board’s list to perform primary medical services in other Board areas.

Regulation 6 makes amendments which are consequential on amendments made by Schedule 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 which relate to disqualifications from inclusion in a list by the Tribunal.

Regulation 7 inserts a new regulation 7A into the principal Regulations regarding the effect to be given in Northern Ireland to decisions in England, Wales and Scotland corresponding to decisions to be made by the Tribunal in Northern Ireland.

Regulation 8 inserts new paragraph (3) into regulation 8 to make provision for a Board to request a performer, who is already on a list, to provide it with an enhanced criminal record certificate issued under section 113B of the Police Act 1997.

Regulation 9 inserts new regulation 8A into the principal Regulations to make provision for a Board to conditionally include a performer in the list subject to the imposition of conditions by the Board having regard to the requirements of Article 57G(3B) of the Order (preventing fraud or prejudice to the efficiency of the service).

Regulation 10 amends regulation 9 of the principal Regulations to take account of a Board’s duty to remove a performer from the list if the performer has failed to comply with conditions imposed by the Board under conditional inclusion or contingent removal.

Regulation 11 inserts new regulation 10A into the principal Regulations to make provision for a Board to contingently remove a performer from the list subject to such conditions as the Board may decide having regard to Article 57G(3B) of the Order.

Regulation 12 amends regulation 12 of the principal Regulations by providing that a performer must withdraw from one Board’s list if he is accepted on another Board list. The insertion of a new paragraph 6 provides that if a Board suspends a performer, that performer cannot withdraw from the list, except with the consent of the Department.

Regulation 13 inserts new regulation 12A into the principal Regulations to provide for a Board to suspend a performer from its list, if certain conditions are met, and for the procedures to be then followed. It also makes provision for payments to be made to suspended performers.

Regulation 14 inserts new regulation 12B into the principal Regulations to provide for review and the procedures to be followed by a Board where it decides to conditionally include, contingently remove or suspend a performer from its list.

Regulation 15 makes provision for appeals to the Department against a determination of a Board to impose particular conditions on a performer or of a Board decision to remove a performer from the list for failure to comply with conditions it has imposed.

Regulation 16 extends the list of specified persons a Board shall notify of specified information to include the National Patient Safety Agency. It also extends the specified information to include where a Board decides to, remove a performer from the list for not complying with conditions, impose conditions on a performer’s inclusion or continued inclusion on the list or suspends a performer from the list.

Regulation 17 amends paragraph 2(b) of Schedule 1 to the principal Regulations to cover doctors in training working towards the acquisition of a Certificate of Completion of Training. It also amends paragraph 3(a) to extend the undertakings in an application for inclusion in a list to include, co-operation with the National Patient Safety Agency when requested to do so by the Board, to provide the Board with an enhanced criminal record certificate and to notify the Board if the applicant is included or applies to be included in any other list.

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