
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 137

Health and Personal Social Services (Disciplinary Procedures) Regulations (Northern Ireland) 1996

Part II

Provisions relating to investigations, disputes, appeals etc

Establishment of committees

3.—(1) Subject to paragraph (2) each Board shall have—

- (a) a medical discipline committee;
- (b) a dental discipline committee;
- (c) an ophthalmic discipline committee;
- (d) a pharmaceutical discipline committee; and
- (e) a joint discipline committee.

(2) The committees mentioned in paragraph (1) shall be known as discipline committees.

(3) A Board may have a reference committee which shall include one member who is both an officer and a member of that Board and which may exercise the Board's functions under these Regulations with respect to the referral of disciplinary matters.

(4) Schedule 1 shall have effect with respect to the committees mentioned in paragraph (1).

Provisions relating to the start of disciplinary proceedings

4.—(1) Where an appropriate Board receives information which it considers could amount to an allegation that a practitioner has failed to comply with his terms of service, it shall decide either to take no action or to take one or both of the courses of action set out in paragraph (2).

(2) The courses of action referred to in paragraph (1) are—

- (a) to refer the matter to another Board for investigation in accordance with regulation 5(1);
- (b) to refer the information to, as it considers appropriate, the Tribunal, the relevant professional body or the police.

(3) The appropriate Board shall not proceed under paragraph 2(b) in any case where the allegation and information on which it is based is the subject of a complaint which is being investigated.

(4) For the purposes of these regulations an allegation remains the subject of a complaint which is being investigated until—

- (a) the procedure for investigating the complaint is completed by the delivery of a report of the investigation to the Board by a panel appointed in accordance with directions given under Article 17 of the Order; or
- (b) the complaint is withdrawn or abandoned by the person bringing it.

- (5) In these Regulations “appropriate Board” in relation to a practitioner is the Board—
- (a) in whose medical, dental, ophthalmic or pharmaceutical list the name of the practitioner was included; or
 - (b) where the matter relates to the act or omissions of a doctor when acting as a deputy to another doctor, in whose medical list the name of that other doctor was included,

at the relevant time.

- (6) An allegation made against either—
- (a) a doctor in respect of the acts or omissions of a deputy whose name is included in the medical list at the relevant time; or
 - (b) a doctor whose name is included in the medical list at the relevant time, in respect of his act or omissions whilst acting as deputy to a doctor whose name is included in the medical list,

shall be taken as an allegation made against the deputy except where there are reasonable grounds for believing that the doctor for whom the deputy was acting has failed to comply with his obligations under the terms of service in relation to ensuring the provision of services to his patients, in which case the matter shall be treated as concerning allegations made against both doctors and investigated accordingly.

(7) Where a Board considers that a payment has been made to a practitioner which was not due and the practitioner does not admit the overpayment, the Board may refer the overpayment under regulation 5(1).

(8) In this regulation “the relevant time” means the time of the event, treatment, or other matter giving rise to the allegation.

Referral to discipline committee

5.—(1) Where an appropriate Board decides to proceed under regulation 4(2)(a) or (7) it shall, subject to paragraph (2), refer the matter to another Board, for investigation by that Board’s appropriate discipline committee.

- (2) Subject to paragraph (6) the appropriate discipline committee referred to in paragraph (1) is—
- (a) where the matter relates to a doctor, a medical discipline committee;
 - (b) where the matter relates to a dentist, a dental discipline committee;
 - (c) where the matter relates to an ophthalmic medical practitioner or an optician, an ophthalmic discipline committee;
 - (d) where the matter relates to a chemist, a pharmaceutical discipline committee;

(3) A matter which, under paragraph (1), is required to be investigated by two discipline committees, may instead be investigated by a joint discipline committee.

(4) If in the opinion of a discipline committee a matter referred to it includes allegations which are required, by virtue of paragraph (1), to be investigated also by another discipline committee, it shall refer the matter to a joint discipline committee instead of dealing with the matter itself.

Time limits

6.—(1) Where the disciplinary matter concerns an allegation which has been the subject of a complaint the appropriate Board shall refer it under regulation 5(1) within 28 days of the allegation having ceased to be the subject of a complaint which is being investigated.

(2) Where the disciplinary matter does not concern an allegation which has been the subject of a complaint the appropriate Board shall refer it under regulation 5(1) within the time limits specified in paragraph (3).

- (3) The time limits referred to in paragraph (2) are—
- (a) in the case of a doctor, ophthalmic medical practitioner, optician or chemist, 13 weeks after the event or matter which is the subject of the allegation;
 - (b) in the case of a dentist—
 - (i) subject to paragraph (4), where the matter concerns the treatment of a patient, 6 months after the completion of the course of treatment during which that treatment was given;
 - (ii) subject to paragraph (4), where the matter does not concern the treatment of a patient and is reported to the appropriate Board by the Agency, 13 weeks after the date on which the matter came to the notice of the Agency;
 - (iii) where the matter does not concern the treatment of a patient and comes to the notice of the appropriate Board other than by a report from the Agency, 13 weeks after the date on which the matter came to the notice of the Board.
- (4) Where the Agency reports a matter to the appropriate Board in circumstances in which the time limits mentioned in paragraph (3)(b)(i) or (ii) would otherwise expire within 28 days of the date on which the Board received the report, the relevant time limit shall be extended so that it expires on the 28th day after the date on which the Board received the report.
- (5) For the purposes of paragraph (3) “treatment” has the same meaning as in regulation 2 of the Dental Regulations.

Investigation by discipline committee

- 7.—(1) A discipline committee shall investigate any matter which is referred to it.
- (2) Schedule 2 shall have effect with respect to the procedure for investigating disciplinary matters under this Part.
- (3) Where the disciplinary matter concerns an alleged overpayment made to a practitioner pursuant to regulation 4(7) the appropriate Board may refer it under regulation 5(1) at any time.

Determination of appropriate Board

- 8.—(1) The appropriate Board, after due consideration of a report presented to it by the discipline committee pursuant to paragraph 7(1) of Schedule 2, shall—
- (a) accept as conclusive the findings of fact made by that committee;
 - (b) accept as conclusive the inferences from those findings of fact which that committee considered could properly be drawn from those findings as to whether the practitioner had failed to comply with any of the terms of service detailed in the appropriate Board’s statement of case;
 - (c) determine, having regard to any recommendation made by the discipline committee pursuant to paragraph 7(1)(e) of Schedule 2 either—
 - (i) that no further action should be taken in relation to the report, or
 - (ii) that action should be taken in relation to the practitioner, in accordance with any one or more of the provisions of paragraphs (3) and (5).
- (2) If the appropriate Board decides either not to adopt the recommendation of the discipline committee or to take any action not recommended by the committee it shall record in writing its reasons for that decision.
- (3) Where, in the case of any doctor to whom a report of a discipline committee relates, the appropriate Board is satisfied, after consultation with the Local Medical Committee, that, because of the number of persons included in his list, the doctor is unable to give adequate treatment to all

those persons, it may impose a special limit on the number of persons for whom the doctor may undertake to provide treatment.

(4) Where, pursuant to paragraph (3), the appropriate Board imposes a special limit on the number of persons for whom a doctor may undertake to provide treatment, paragraphs (3) and (4) of regulation 22 of the General Medical and Pharmaceutical Regulations (limitation of doctors' lists) shall have effect in his case with suitable modifications and, in particular, as if the reference in those paragraphs—

- (a) to “a maximum number” was a reference to the special limit imposed under paragraph (3) of this regulation; and
- (b) to “an excess” was a reference to the extent to which the number of patients on the doctor’s list exceeds that special limit.

(5) Where it has been determined that a practitioner to whom the report of the disciplinary committee relates has failed to comply with any of his terms of service the appropriate Board may—

- (a) determine that an amount shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise;
- (b) where the practitioner is a dentist, determine that the dentist should be required to submit estimates for the prior approval of the Dental Committee—
 - (i) in respect of any treatment of such description, and
 - (ii) during such a period,
 as shall be specified in the determination;

- (c) determine that the practitioner should be warned to comply more closely with his terms of service in future.

(6) In acting under sub-paragraphs (a) to (c) the appropriate Board may take into consideration any previous determination made by any Board, so long as such a determination has not been overturned on appeal and was not made more than 6 years prior to the date of referral under regulation 5(1), that the practitioner had, on some other occasion, failed to comply with his terms of service.

(7) The appropriate Board shall give notice in writing of its determination under paragraph (1) and any determination under paragraph (5), to the practitioner, any person who is treated as a party pursuant to paragraph 2(3) of Schedule 2, the discipline committee and the Department, and shall include with the notice—

- (a) a copy of the report of the discipline committee;
- (b) a statement of any reasons recorded by the appropriate Board under paragraph (2); and
- (c) a statement as to the rights of appeal to the Department under regulation 9.

(8) Subject to paragraph (9), where the appropriate Board determines under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3), (5)(a), (b) or (c) that action shall be taken by the appropriate Board except that where, at the time when such action falls to be taken, the practitioner’s name is no longer included in that Board’s list but is included in the list of some other Board, that action shall be taken by that other Board.

(9) Where, in the case of a dentist, the appropriate Board has determined that action should be taken in accordance with paragraph (5)(a), by recovery of an amount from the dentist and is of the opinion that such recovery should be effected by deduction of the amount from the dentist’s remuneration, the appropriate Board shall notify the Agency, and the Agency shall effect the recovery.

(10) Any amount determined under paragraph (5)(a) as being recoverable shall, to the extent that it is not recovered from the practitioner’s remuneration, be a debt owed by the practitioner to the Board by which it is recoverable.

(11) Where the appropriate Board makes a determination under the provisions of paragraph (5) (a), (b) or (c) no action shall be taken in consequence of that determination—

- (a) if no appeal is brought, before the end of the period specified in regulation 9(2) for bringing an appeal; or
- (b) if an appeal is brought, before it has received notice—
 - (i) that the appeal has been withdrawn, or
 - (ii) of the Department’s determination of the appeal.

Appeal to the Department

9.—(1) An appeal may be made to the Department by a practitioner—

- (a) against a finding of fact, or an inference drawn from a finding of fact which, in either case, is adverse to him pursuant to regulation 8(1)(a) or (b);
- (b) against any determination by a Board under regulation 8(1)(c)(ii) to take action in accordance with any one or more of paragraphs (3), (5)(a), (b) and (c) of that regulation;
- (c) in respect of a determination by a Board that an overpayment has or has not been made in respect of his remuneration;

by giving notice of appeal in accordance with paragraph (2).

(2) A notice of an appeal under this regulation shall be in writing and sent to the Department within 30 days beginning on the date on which notice of the appropriate Board’s decision was given to the practitioner under regulation 8(7), and shall contain a concise statement of the grounds of appeal upon which the practitioner intends to rely.

(3) Subject to paragraph (6), on an appeal to which paragraph (1)(a) or (c) applies, the Department shall consider the appeal on the basis of such evidence as was available to the discipline committee and of such further evidence as shall have been adduced on the appeal, and shall—

- (a) make such findings of fact as it sees fit; and
- (b) draw such inferences from those findings as it sees fit; and
- (c) in the case of an appeal to which paragraph (1)(a) applies—
 - (i) determine whether or not the practitioner has failed to comply with any one or more of the terms of service detailed in the appropriate Board’s statement of case, and
 - (ii) determine in accordance with any one or more of the following provisions, that is paragraphs (3), (5)(a), (b) and (c) (as modified in accordance with paragraph (5) of this regulation) of regulation 8 or regulations 11 and 12 whether any, and if so what, action should be taken in relation to that practitioner; or
- (d) in the case of an appeal to which paragraph (1)(c) applies, determine whether there has been an an overpayment and, if so, of what amount.

(4) On an appeal to which paragraph (1)(b) alone applies, the Department shall—

- (a) accept as conclusive—
 - (i) those findings of fact made by the discipline committee which were necessary for the purpose of the appropriate Board’s determination under regulation 8(1)(c), and
 - (ii) the inferences specified in the discipline committee’s report pursuant to paragraph 7(1)(c) of Schedule 2;
- (b) determine in accordance with any one or more of the following provisions, that is, paragraphs (3), (5)(a), (b) and (c) (as modified in accordance with paragraph (5) of this regulation) of regulation 8, or regulations 11 and 12, whether any, and if so what, action should be taken in relation to the practitioner.

(5) For the purposes of paragraphs (3)(c)(ii) and (4)(b) of this regulation, paragraphs (3), (5)(a), (b) and (c), and (6) of regulation 8 shall have effect as if for any reference to “the appropriate Board” there were substituted a reference to “the Department”.

(6) The practitioner may withdraw his appeal at any time before it is determined—

- (a) by giving written notice to the Department of his intention to do so; and
- (b) with the consent of the Department.

Procedure on Appeal

10.—(1) Subject to paragraph (5), if the Department, after considering a notice of appeal and any further particulars furnished by the practitioner, is of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, it may determine the appeal by dismissing it forthwith.

(2) The Department shall, unless it dismisses the appeal under paragraph (1), send a copy of the notice of appeal and of any further particulars furnished by the practitioner to the appropriate Board, and shall invite that Board to submit its observations on the appeal within 28 days of being sent the copy of the notice of appeal.

(3) Where observations are made under paragraph (2), the Department shall send a copy of those observations to the practitioner and shall invite him to submit his comments on the observations within 21 days of his being sent that copy.

(4) The Department shall hold an oral hearing to determine the appeal except in the circumstances described in paragraph (5).

(5) Where a practitioner who is not appealing under regulation 9(1)(a), appeals under regulation 9(1)(b) against a decision in which the appropriate Board has determined to take action under paragraphs (3) or (5)(a), (b) or (c) of regulation 8, his appeal may be dismissed without an oral hearing if the practitioner has stated in writing that he does not want such a hearing.

(6) Where there is to be an oral hearing the Department shall appoint three persons to hear the appeal, of whom—

- (a) one shall be a barrister or solicitor, and shall act as chairman; and
- (b) two shall be selected in accordance with paragraphs (7) and (8).

(7) The persons appointed under paragraph (6)(b) shall be—

- (a) where the practitioner is a doctor, two doctors;
- (b) where the practitioner is a dentist, two dentists;
- (c) where the practitioner is an ophthalmic medical practitioner, two ophthalmic medical practitioners;
- (d) where the practitioner is an optician, two opticians;
- (e) where the practitioner is a chemist, two registered pharmacists.

(8) In a case to which—

- (a) paragraph 7(a) applies, one of the doctors shall be selected after consultation with such organisations as may be recognised by the Department as representative of the medical profession;
- (b) paragraph 7(b) applies, one of the dentists shall be selected after consultation with such organisations as may be recognised by the Department as representative of the dental profession.

(9) The Department shall appoint a day for the hearing and shall give the practitioner and the appropriate Board not less than 21 days notice in writing of the day, time and place of the hearing.

(10) No person shall, without the consent of the practitioner and the persons appointed under paragraph (6), be admitted to a hearing before those persons unless he is—

- (a) the practitioner;
- (b) a representative of the appropriate Board who is an officer or a member of that Board;
- (c) a person (who may be a barrister, a solicitor or any other person) engaged by a person or body mentioned in sub-paragraph (a) or (b) of this paragraph to represent them before the persons appointed under paragraph (6); or
- (d) a person whose attendance is required for the purpose of giving evidence to the persons so appointed.

(11) The practitioner and the appropriate Board shall not rely on any facts or contentions which do not appear to the Department or the persons hearing the appeal to have been raised in the course of the proceedings before the discipline committee unless—

- (a) not less than seven days before the hearing, notice in writing was given to the Department of such facts or contentions; or
- (b) the Department or the persons hearing the appeal give their consent.

(12) The persons hearing the appeal shall draw up a report and present it to the Department who shall take it into consideration and determine the appeal.

(13) Where a Board has made recommendations to the Tribunal following its consideration of a report of a discipline committee, the Department may, for the purpose of any appeal under regulation 9(1)(a), treat as conclusive any relevant findings of fact of the Tribunal.

(14) The Department shall give notice in writing to the practitioner and the appropriate Board of its determination under paragraph (1) or (12) of the matters mentioned in paragraphs (3)(c), (3)(d) or 4(b) of regulation 9 and shall include with the notice a statement of its reasons for the determination.

(15) The provisions as to enquiries contained in Schedule 8 to the Order shall apply to an appeal held under this regulation as if in paragraph 3 of that Schedule for the words “person appointed to hold the inquiry” there were substituted the words “persons hearing the appeal”.

Recovery of amounts from practitioners following appeal

11.—(1) Where—

- (a) in the case of an appeal under regulation 9(1)(a), the Department determines that a practitioner has failed to comply with one or more of his terms of service as specified in Schedule 3; or
- (b) an appeal is made under regulation 9(1)(b) or (c),

the Department shall, subject to the following provisions of this regulation, determine whether any, and if so what, amount shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise.

(2) The Department shall give notice in writing of its determination under paragraph (1) to the practitioner and the Board, and shall include with the notice a statement of the reasons for its determination.

(3) Where the Department has determined under paragraph (1) that an amount shall be recovered from a practitioner, it shall direct the appropriate Board to recover that amount either by deduction from the practitioner’s remuneration or otherwise and, subject to regulation 8(8) (as modified by paragraph (4) of this regulation), that Board shall comply with that direction.

(4) For the purposes of paragraph (3), regulation 8(8) shall have effect as if for the words “the appropriate Board determines under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3), or (5)(a), (b) or (c) that action shall be taken” there were

substituted the words “the Department determines under regulation 11(1) that an amount should be recovered, that amount shall be recovered”.

(5) Where the appropriate Board determines that any amount which it has been directed to recover under paragraph (3) is to be recovered by deduction from the practitioner’s remuneration, it shall notify the Agency of the amount in question and the Agency shall deduct that amount from the practitioner’s remuneration.

(6) Any sum which falls by virtue of paragraph (3) to be recovered by the Board shall, to the extent that it is not recovered by deduction from the practitioner’s remuneration, be a debt owed by the practitioner to that Board.

Prior approval in dental cases

12.—(1) Where—

- (a) in the case of an appeal under regulation 9(1)(a), the Department determines that a dentist has failed to comply with one or more of his terms of service; or
- (b) an appeal is made by a dentist under regulation 9(1)(b),

the Department shall, subject to the following provisions of this regulation, determine whether a prior approval requirement should be imposed in relation to the dentist, that is to say that the dentist should, in respect of all or any specific description of treatment, be required to submit estimates for the prior approval of the Dental Committee.

(2) Where the Department determines under paragraph (1) that a prior approval requirement should be imposed, it shall also determine—

- (a) whether that requirement shall apply in the case of all treatment to be provided by the dentist, or only in relation to such treatment as the Department shall specify;
- (b) the period (to be specified as a number of months) for which the dentist is to be subject to the requirement; and
- (c) the date on which that period is to begin, being a date falling no earlier than 28 days after the date on which notice of the requirement is given to the dentist under paragraph (4).

(3) The Department shall give notice in writing of its determination under paragraph (1) to the dentist and the appropriate Board and shall include with the notice a statement of its reasons for the determination.

(4) A dentist who is subject to a prior approval requirement under this regulation may at any time after the expiry of a period of 6 months from the date on which notice of the requirement was given under paragraph (3) apply to the Department in accordance with paragraph (5) for a direction that the requirement cease to have effect before the period specified therein has elapsed.

(5) An application under paragraph (4) shall be made in writing and shall state the grounds on which the dentist contends that the requirement should cease to have effect.

(6) The Department shall, before it determines an application under paragraph (4)—

- (a) send a copy of it to the appropriate Board inviting it to submit its comments in writing within 21 days of the copy being sent to it; and
- (b) where such comments are made by the appropriate Board within the time allowed under sub-paragraph (a), send a copy of them to the dentist inviting him to submit his observations in writing within 21 days of the copy being sent to him,

and shall not determine the application until the time allowed under sub-paragraph (a), or, where sub-paragraph (b) applies, that sub-paragraph, has expired.

(7) The Department shall determine the application under paragraph (4) by—

- (a) directing that the prior approval requirement shall terminate on a specified date falling before the end of the period specified under paragraph (2)(b); or
- (b) dismissing the application,

and shall give notice in writing to the dentist, the appropriate Board and the Dental Committee of the determination and of the reasons for it.

(8) Where, on the date specified under paragraph (2)(c), the name of the dentist in respect of whom the relevant determination is made under paragraph (1) is not included in the dental list, the period specified under paragraph (2)(b) shall not begin until the next day on which his name is again included in the dental list.

(9) For the purpose of computing the date on which a period specified under paragraph (2)(b) is to end, no account shall be taken of any day on which the name of the dentist in respect of whom the relevant determination is made is not included in the dental list.

(10) Where a dentist is subject to a prior approval requirement under regulation 8(5)(b), paragraphs (2), (4), (5), (7), (8) and (9) shall have effect as if—

- (a) in paragraph (2)—
 - (i) for the words “Department determines under paragraph (1)” there were substituted the words “appropriate Board determines under regulation 8(5)(b)”,
 - (ii) for the word “Department” in sub-paragraph (a), there were substituted the words “appropriate Board”, and
 - (iii) for the words “paragraph (4)” in sub-paragraph (c), there were substituted the words “regulation 8(7)”;
- (b) in paragraph (4)—
 - (i) for the words “this regulation” there were substituted the words “regulation 8(5)(b)”,
 - (ii) for the words “paragraph (3)” there were substituted the words “regulation 8(7)”, and
 - (iii) for the word “Department” there were substituted the words “appropriate Board”;
- (c) in paragraph (7)—
 - (i) for the word “Department” there were substituted the words “appropriate Board”, and
 - (ii) the words “appropriate Board”, as they appear in that paragraph without the modifications mentioned in this paragraph, were omitted.

Death of practitioner

13. Where, at any time after a disciplinary matter has been referred under regulation 5(1) but before the appropriate Board makes a determination under regulation 8 in relation to that matter, the practitioner to whom the matter relates dies, no further action shall be taken under these Regulations in relation to that practitioner.

Excessive prescribing by doctors

14.—(1) Where it appears to the Board that a question arises whether the cost of any drug or appliance ordered by a doctor on a prescription form in relation to any patient is, by reason of the character of the drug or appliance in question or the quantity in which it was so ordered, in excess of that which was reasonably necessary for the proper treatment of that patient, it may refer that question for investigation and determination by a committee (in these Regulations known as “the professional committee”) which shall be appointed in accordance with paragraph (3).

(2) No question shall be referred to a professional committee under paragraph (1) after the expiry of a period of 2 years beginning with the date on which the drug or appliance in question was ordered by the doctor.

(3) The professional committee shall be appointed by the Board and shall consist of three doctors—

- (a) one of whom shall have substantial experience of clinical pharmacology; and
- (b) the other two of whom are engaged in the provision of general medical services, and have been nominated by the Local Medical Committee; and
- (c) in a case relating to the provision of maternity medical services one of the doctors so appointed shall be a doctor whose name is included in the obstetric list.

(4) The three doctors appointed under paragraph (3) shall, by agreement, select a chairman of the professional committee from among their number.

(5) The Board shall give notice in writing to the doctor of any question referred by it under paragraph (1) and shall include with the notice an invitation to the doctor to send to the Board within 30 days of the notice being sent to him, his observations on that question.

(6) Where the doctor submits observations under paragraph (5), the Board shall, if it does not withdraw the question under paragraph (7), forward a copy of the observations to the professional committee.

(7) The Board may, by giving notice in writing to the doctor and the professional committee at any time before the hearing begins, withdraw any question referred under paragraph (1), in which case no further action shall be taken under this regulation in relation to that question.

(8) Before determining any question referred under paragraph (1), the professional committee shall hold a hearing and where more than one question has been referred to the professional committee on the same occasion in respect of the same doctor, a single hearing shall be held in relation to all such questions.

(9) The Board shall, after consultation with the professional committee, appoint a day for the hearing and shall, not less than 21 days before that day, give notice in writing to the doctor of the date, time and place of the hearing.

(10) The professional committee may, whether or not on an application by the doctor, or the Board, postpone the date of the hearing, in which case—

- (a) it shall inform the Board, and
- (b) the Board shall give notice in writing to the doctor of the postponement,

and the provisions of paragraph (9) shall apply as respects the postponed hearing.

(11) The only persons who may be admitted to a hearing before the professional committee are—

- (a) the doctor;
- (b) not more than two persons who are members or officers of the Board;
- (c) any person accompanying the doctor for the purpose of assisting him with the presentation of his case before the professional committee;
- (d) any person whose attendance is required for the purpose of giving evidence to the professional committee; and
- (e) not more than one person who is a member or officer of the Local Medical Committee and who is authorised by that committee to attend the hearing as an observer only.

(12) Any person mentioned in paragraph (11)(a) or (b), and any person mentioned in paragraph (11)(c) who is not a barrister or a solicitor, may address the professional committee, but a person mentioned in paragraph (11)(a) or (b) shall not put questions directly to any other such person.

(13) Subject to the provisions of paragraphs (11) and (12), the procedure at any hearing shall be such as the professional committee may determine.

(14) The professional committee shall determine whether any question which has been referred to it under paragraph (1) is to be answered in the affirmative or in the negative.

(15) Where the professional committee determines that any question under paragraph (1) is to be answered in the affirmative, it may also determine that a single amount, calculated in accordance with paragraph (16), shall be recovered from the doctor in respect of such questions.

(16) When determining the level of an amount to be specified under paragraph (15), the professional committee—

- (a) shall estimate in relation to each question the amount of the excess cost referred to in paragraph (1);
- (b) shall have regard to the aggregate of amounts estimated under sub-paragraph (a) of this paragraph; and
- (c) subject to paragraph (17), may, if it sees fit, have regard to—
 - (i) the particular character or quality of any drug or appliance to which any such question relates, and
 - (ii) the circumstances which gave rise to any affirmative determinations by a professional committee or an appeal body under this regulation in respect of that doctor.

(17) The professional committee shall not, for the purposes of paragraph (16)(c)(ii), have regard to—

- (a) any determination of a professional committee—
 - (i) made less than 30 days before the date of its hearing, or
 - (ii) in respect of which an appeal under paragraph (19) is pending; or
- (b) any determination made more than 6 years before the date of its hearing.

(18) The professional committee shall—

- (a) give to the Board and to the doctor notice in writing of its determination (which shall specify any amount which it has determined shall be recovered from the doctor); and
- (b) include with the notice—
 - (i) a statement of the reasons for its determination, and
 - (ii) where it determines that a question is to be answered in the affirmative, a statement of the doctor's right of appeal under paragraph (19).

(19) A doctor in respect of whom a professional committee has, under paragraph (14), determined any question in the affirmative may appeal to the Department—

- (a) against that determination and against any further determination made in respect of him under paragraph (15); or
- (b) only against any determination made in respect of him under paragraph (15),

by giving notice of appeal in accordance with paragraph (20) no later than 30 days after notice of the determination was sent to him under paragraph (18).

(20) A notice of appeal shall be given in writing, shall include a concise statement of the grounds for the appeal, and shall be sent to the Department.

(21) On receipt of a notice of appeal the Department shall—

- (a) send to the Board a copy of the notice, inviting it to submit observations in writing on the appeal within 30 days of the copy being sent to it;

- (b) where observations are received from the Board within the time allowed under sub-paragraph (a), send to the doctor a copy of those observations, inviting him to submit his comments in writing on those observations within 30 days of the copy being sent to him; and
 - (c) after the expiry of the period mentioned in sub-paragraph (a) or, where sub-paragraph (b) applies, in that sub-paragraph, refer the notice of appeal, and observations or comments submitted under sub-paragraph (a) or (b), for consideration and determination by an appeal body appointed in accordance with paragraph (22).
- (22) An appeal body shall be appointed by the Department and shall, subject to paragraph (23), consist of three doctors of whom—
- (a) one shall be nominated by the Department; and
 - (b) the other two shall be engaged in the provision of general medical services, of whom one shall be nominated by the body mentioned in paragraph (3)(b), and the other shall be nominated by the Department.
- (23) No person who was a member of a professional committee which has made a determination under paragraph (14) or (15) in respect of any doctor shall be a member of an appeal body appointed in relation to any appeal against that determination.
- (24) The three doctors appointed under paragraph (22) shall, by agreement, select a chairman of the appeal body from among their number.
- (25) A doctor may withdraw his appeal by giving notice in writing to the Department at any time before the date of the hearing, in which case—
- (a) the Department shall so inform the Board and the appeal body in writing; and
 - (b) no further action shall be taken under this regulation in relation to the appeal.
- (26) Before determining any appeal, the appeal body shall hold a hearing, and where more than one appeal has been brought by the same doctor in respect of the determination by the professional committee of several questions referred to it under paragraph (1) on the same occasion, a single hearing shall be held of all those appeals.
- (27) The provisions of paragraphs (9) to (13) shall apply to the hearing before the appeal body as they apply to a hearing before the professional committee, save that—
- (a) for any reference in those paragraphs to “the professional committee” there shall be substituted a reference to “the appeal body”;
 - (b) for any reference in paragraph (9), and in sub-paragraph (a) and (b) of paragraph (10), to “the Board” there shall be substituted a reference to “the Department”;
 - (c) the words “who is not a barrister or a solicitor” in paragraph (12) shall not apply.
- (28) The appeal body shall—
- (a) where the appeal is made under paragraph (19)(a) determine—
 - (i) whether any question referred to the professional committee under paragraph (1), and to which the appeal relates, is to be answered in the affirmative or the negative, and
 - (ii) in relation to any such question which it has answered in the affirmative, whether any single amount, and if so what amount, is to be recovered from the doctor in respect of all such questions;
 - (b) where the appeal is made under paragraph (19)(b), determine, in relation to any question which the professional committee has answered in the affirmative, whether any single amount, and if so what amount, is to be recovered from the doctor in respect of such questions,

and shall determine the appeal accordingly by allowing it or dismissing it.

(29) When determining the level of any amount to be specified under paragraph (28)(a)(ii) or (b), the appeal body—

- (a) shall estimate in respect of each question the amount of the excess cost referred to in paragraph (1);
- (b) shall have regard to the amount which represents the aggregate of the amounts estimated under sub-paragraph (a); and
- (c) subject to paragraph (30), may, if it thinks fit, have regard to—
 - (i) the particular character or quality of any drug or appliance to which any such question relates, and
 - (ii) the circumstances which gave rise to any affirmative determinations by a professional committee or an appeal body under this regulation in respect of that doctor.

(30) The appeal body shall not, for the purposes of paragraph (29)(c)(ii) have regard to—

- (a) any determination of a professional committee—
 - (i) made less than 30 days before the date of the appeal body's hearing, or
 - (ii) in respect of which an appeal under paragraph (19) is pending; or
- (b) any determination made more than 6 years before the date of the appeal body's hearing.

(31) The appeal body shall give notice in writing to the Board and to the doctor of its determination as to any question mentioned in paragraph (28)(a)(i), and as to the recovery of any amount under paragraph (28)(a)(ii) or (b), and shall include with the notice a statement of its reasons for its determination.

(32) Subject to paragraph (34), where under this regulation a professional committee or an appeal body determines that an amount is to be recovered from a doctor, that amount may be recovered by the Agency either by deduction from that doctor's remuneration or otherwise.

(33) Any amount determined under this regulation as being recoverable from a doctor shall, to the extent that it is not recovered from his remuneration, be a debt owed by the doctor to the Board.

(34) No amount shall be recovered by the Agency under paragraph (32) by virtue of a determination of a professional committee unless—

- (a) the time allowed under paragraph (19) for an appeal against that determination has expired, and no such appeal has been made; or
- (b) an appeal has been made and has been withdrawn or dismissed.

Investigation of certification

15.—(1) Where it appears to the Department after an investigation of the medical certificates issued under and for the purposes of the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976(1) by a doctor to persons for whose treatment he is responsible under his terms of service, that the doctor has failed to exercise reasonable care in the issue of such certificates, the Department may refer the matter to the Local Medical Committee.

(2) Any reference made under paragraph (1) shall be accompanied by a statement indicating the matters on which it appears to the Department that an explanation is required.

(3) The Local Medical Committee shall furnish the doctor concerned with a copy of the statement submitted under paragraph (2), and shall afford him reasonable opportunity of submitting to it a statement in writing and of appearing before, and being heard by it.

(4) A copy of any statement by the doctor under paragraph (3) shall be forwarded to the Department by the Local Medical Committee for its observations, and a representative of the Department shall be entitled, in the event of a hearing, to attend and be heard by the Local Medical Committee.

(5) After considering the case, the Local Medical Committee shall draw up a report of its findings on the question whether there has been a failure on the part of the doctor to exercise reasonable care in certification and, if so, what is the extent and gravity of the failure, together with a recommendation as to the action, if any, which should be taken by the Department.

(6) The Local Medical Committee shall—

- (a) forward the report to the Department;
- (b) furnish the doctor with a copy of the report; and
- (c) notify the doctor in writing of his right of appeal to the Department.

(7) The doctor may appeal against any finding of the Local Medical Committee contained in the report, by sending to the Department notice of appeal within 30 days from the date on which a copy of the report was sent to him.

(8) On its receipt of an appeal made under paragraph (7), the Department shall appoint as a referee a doctor who is not a medical officer, or as referees persons who—

- (a) shall not exceed three in number; and
- (b) shall include a doctor who is not a medical officer,

and shall refer the appeal to the referee for hearing and determination.

(9) Where three referees are appointed under paragraph (8), the determination of the referees may be that reached by the majority of them.

(10) If the Department is dissatisfied with any findings of the Local Medical Committee it may refer the matter for hearing and determination by a referee.

(11) Paragraphs (8) and (9) shall apply in the case of a matter referred under paragraph (10) as they apply in the case of an appeal under paragraph (7).

(12) After consideration of the findings and recommendation—

- (a) of the Local Medical Committee; or
- (b) if—
 - (i) an appeal has been made under paragraph (7), or
 - (ii) the matter has been referred for hearing and determination under paragraph (10),of the person or persons determining the appeal or matter,

the Department may, if it is satisfied that there has been a failure on the part of the doctor to exercise reasonable care in certification, consider, subject to paragraph (13), whether an amount should be recovered from the doctor, by deduction from his remuneration or otherwise.

(13) The provisions of paragraph (5) of regulation 11, shall apply to the determination of the question of recovery arising under paragraph (12) of this regulation as if—

- (a) that question had arisen in any of the circumstances mentioned in paragraph (1) of that regulation; and
- (b) the references to “the Board” in paragraph (5) of that regulation were references to “the Local Medical Committee”.

Investigation of record keeping

16.—(1) Where it appears to the Board, after an examination by a medical officer of any record cards held by a doctor, that the doctor has failed to carry out his obligations under paragraph 12 of his terms of service in so far as such obligations involve the recording of clinical data regarding his patients, the Board may refer the matter for consideration by the Local Medical Committee.

(2) Where it appears to the Board, after an examination by a dental officer of any record cards held by a dentist other than a salaried dentist, that the dentist has failed to carry out his obligations under paragraph 25 of his terms of service, the Board may refer the matter for consideration by the Local Dental Committee.

(3) In this regulation—

(a) “the relevant practitioner” means a doctor in respect of whom a reference is made under paragraph (1) or, as the case may be, a dentist in respect of whom a reference is made under paragraph (2);

(b) “record cards” means—

(i) in the case of a doctor, the cards on which he is required, under paragraph 12 of his terms of service, to keep records of the illnesses of his patients and of his treatment of them,

(ii) in the case of a dentist, the records which he is required, under paragraph 25 of his terms of service, to keep as to the treatment provided by him for any person for whom he is providing general dental services.

(4) Any reference of a matter to the relevant Local Representative Committee under paragraph (1) or (2) shall be accompanied by a statement of the Board’s grounds for considering that the obligations mentioned in that paragraph have not been fulfilled.

(5) The relevant Local Representative Committee shall—

(a) furnish the relevant practitioner with a copy of the statement made under paragraph (4); and

(b) afford him a reasonable opportunity of—

(i) submitting to it a statement in writing, and

(ii) appearing before, and being heard by, it.

(6) A copy of any statement submitted by the practitioner under paragraph (5)(b) shall be forwarded by the relevant Local Representative Committee to the Board for its observations, and a representative of the Board shall, in the event of a hearing, be entitled to attend and be heard by the relevant Local Representative Committee.

(7) If so required by notice in writing signed by the chairman of the relevant Local Representative Committee, the relevant practitioner shall—

(a) produce at the hearing all record cards held by him or such of those record cards as may be specified in the notice;

(b) afford—

(i) in the case of a doctor, to any such member of the Local Medical Committee as may be specified in the notice, or

(ii) in the case of a dentist, to any such member of the Local Dental Committee as may be specified in the notice,

access at all reasonable times to the surgery or other place where the record cards are kept, for the purpose of enabling the inspection of such record cards; and

- (c) furnish such persons as may have been specified under sub-paragraph (b) with any such record cards and with such other necessary information with regard to those record cards as they may reasonably require.
- (8) After considering the matter referred to them, the relevant Local Representative Committee shall—
- (a) report to the Board whether there has been a failure on the part of the practitioner to carry out his obligations, and, if so, as to the extent or gravity of any such failure; and
 - (b) make a recommendation as to the action, if any, which should be taken by the Board in relation to any such failure.
- (9) The relevant Local Representative Committee shall—
- (a) forward to the relevant practitioner a copy of any report made under paragraph (8); and
 - (b) notify that practitioner in writing of his right of appeal to the Department under paragraph (10).
- (10) The relevant practitioner may appeal against any findings contained in the report of the relevant Local Representative Committee by sending to the Department notice of appeal within 30 days from the date on which a copy of the report was sent to him.
- (11) The provisions of regulation 15(8) and (9) shall apply in the case of an appeal by a relevant practitioner under paragraph (10) of this regulation as they apply in the case of an appeal under paragraph (7) of that regulation, and where the relevant practitioner is a dentist, those provisions shall have effect as if for references to “a doctor” and “a medical officer” there were substituted references to “a dentist” and “a dental officer” respectively.
- (12) If the Department is dissatisfied with the findings of the relevant Local Representative Committee it may refer the matter for hearing and determination by a referee.
- (13) Paragraphs (8) and (9) of regulation 15 shall apply in the case of a matter referred under paragraph (12) of this regulation as they apply in the case of an appeal under paragraph (10).
- (14) After consideration of the findings and recommendation—
- (a) of the relevant Local Representative Committee; or
 - (b) if—
 - (i) an appeal has been made under paragraph (10), or
 - (ii) the matter has been referred for hearing and determination under paragraph (12),
 of the person or persons determining the appeal or matter,
- the Department may, if it is satisfied that there has been a failure on the part of the relevant practitioner to comply with his obligations as mentioned in paragraph (1) or, as the case may be, paragraph (2), consider, subject to paragraph (15), whether an amount should be recovered from the relevant practitioner, by deduction from his remuneration or otherwise.
- (15) The provisions of paragraphs (5) of regulation 11 shall apply to the determination of any question of recovery arising under paragraph (14) of this regulation as if—
- (a) that question had arisen in any of the circumstances mentioned in paragraph (1) of that regulation; and
 - (b) the references to “the Board” in paragraph (5) of that regulation, were references to “the relevant Local Representative Committee”.

Decision as to treatment for which fees may be charged by doctors

17.—(1) If any question arises, either in the course of an investigation by a medical discipline committee or otherwise, as to whether any treatment given by a medical practitioner to a patient

is treatment for which he may demand or accept a fee from that patient (unless it arises in relation to sub-paragraph (1)(a), (e) or (f) of paragraph (17) of the terms of service) the question shall be referred to and determined by the Local Medical Committee.

(2) Where the Board is dissatisfied with the determination of the Local Medical Committee, it shall notify the Department in writing of its dissatisfaction and the matter shall be submitted to referees appointed under paragraph (3) for decision.

(3) For the purpose of giving effect to this regulation, the Department shall, on being notified under paragraph (2) of a Board's dissatisfaction, appoint as referees—

- (a) two doctors in actual practice; and
- (b) a medical officer of the Department.

(4) The referees shall determine any matter submitted to them under paragraph (2) and their determination—

- (a) shall be given after hearing such parties and taking such evidence as they think proper; and
- (b) may be by a majority.

(5) Subject to the provisions of this regulation and of Schedule 4, the procedure to be followed by referees shall be such as they may determine.

(6) Where the Board is satisfied with a determination of the Local Medical Committee under paragraph (1), it shall report the matter to the Department which may, if it thinks fit, refer the question for decision to referees appointed in accordance with paragraph (3).

(7) The foregoing provisions of this regulation shall apply in the case of a question referred under paragraph (6) as they apply to a matter submitted under paragraph (2).

(8) Schedule 4 shall have effect with respect to the procedure for the determination of questions referred and matters submitted under this regulation.