

SCHEDULE 2

Regulation 7(2)

Procedure for investigation by discipline committee

Board's Statement of Case

1.—(1) Where a disciplinary matter is referred to the appropriate discipline committee in accordance with regulation 5(1) the appropriate Board shall—

- (a) send notice of the referral to the practitioner who is the subject of matter within 2 working days of the referral;
- (b) subject to sub-paragraph (3) send a statement of case to the discipline committee and the practitioner within 28 days of the referral;
- (c) where paragraph 2(1) applies send any notice under that sub-paragraph within 2 working days of the referral.

(2) The statement of case shall include—

- (a) details of each provision of the practitioner's terms of service with which it is alleged he has failed to comply specifying for each of those provisions the details of the alleged failure to comply;
- (b) subject to sub-paragraph (3) copies of all relevant documentary evidence;
- (c) the name and address of any witness the appropriate Board intends shall give evidence at a hearing before the discipline committee and a copy of any statement made by any such witness.

(3) The appropriate Board shall not in its statement of case include or refer to copies of documents which were created for the purposes of a complaint unless such documents concern evidence brought into issue by the practitioner.

(4) Where the Board requests an extension of the 28 day period mentioned in sub-paragraph (1) (b) before it expires, the chairman of the discipline committee may grant an extension of that period for a further 28 days from the day on which the period would otherwise expire.

Disciplinary matters in relation to deputies

2.—(1) Where a disciplinary matter which is investigated in relation to—

- (a) a doctor, concerns the conduct of a deputy whose name is not included in the medical list;
- (b) a dentist, concerns the conduct of a deputy whose name is not included in the dental list, or an assistant;
- (c) a chemist, concerns the conduct of a pharmacist employed by him,

the appropriate Board shall send a notice in writing in accordance with sub-paragraph (2) to the deputy, assistant or employed pharmacist.

(2) A notice sent under sub-paragraph (1) shall—

- (a) invite the recipient of the notice to send to the appropriate Board, within 28 days of that notice being sent to him, if he wishes to be treated as a party to the investigation, notwithstanding that no action may be taken in relation to him under regulation 8—
 - (i) written notification of his wish, and
 - (ii) his written comments on the disciplinary matter;
- (b) include details of each provision of the terms of service identified pursuant to paragraph 1(2)(a) and—
 - (i) a copy of the appropriate Board's statement of case, or

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- (ii) notification of the date by which the statement of case is due under paragraph 1(1) (b) or where, an extension has been granted, under paragraph 1(4);
- (c) inform the recipient of the notice that copies of any comments or other documents he may submit in connection with the investigation will be sent to the practitioner and may be produced at any hearing.

(3) Where the recipient of a notice given under sub-paragraph (1) informs the appropriate Board that he wishes to be treated as a party to the investigation under sub-paragraph (2)(a)(i), and submits comments as in accordance with sub-paragraph (2)(a)(ii), he shall be treated for the purposes of this Schedule as if he were a practitioner in relation to whom the allegation, the subject of the disciplinary matter, is made, though no action may be taken in relation to him under regulation 8, and the following paragraphs of this Schedule (except paragraph 3(1)) shall apply to him accordingly.

(4) A disciplinary matter of the type mentioned in regulation 4(6)(a) or (b) shall be brought as soon as practicable before the disciplinary committee.

Response of practitioner

3.—(1) Where the practitioner wishes to respond to the statement of case he shall send to the appropriate Board and the discipline committee his response to the statement of case within 28 days of the date on which the statement of case was sent to him.

(2) Where the practitioner requests an extension of the 28 day period mentioned in sub-paragraph (1) before it expires, the chairman of the discipline committee may grant an extension of that period for a further 28 days from the day on which the period would otherwise expire.

Preparation for the hearing

4.—(1) The Board which has appointed the discipline committee shall in writing—

- (a) inform the parties—
 - (i) that there will be a hearing,
 - (ii) of the names of the members and deputy members of the discipline committee;
- (b) send to the parties copies of any further correspondence relevant to the disciplinary matter, and
- (c) request in writing each party to forward to the discipline committee, within 14 days from the date of the request, copies of any documentary evidence, and of the names of any witnesses, which that party proposes to produce or call at the hearing.

(2) The discipline committee shall give to the parties and the Secretary of the relevant Local Representative Committee, not less than 21 days' notice in writing of the date, time and place of the hearing and shall include with the notice to each party—

- (a) a copy of any documents supplied by the other party pursuant to a request under sub-paragraph (1)(c);
- (b) a request to that party to notify the discipline committee in writing whether or not he intends to attend the hearing.

(3) The chairman of the discipline committee may, upon the application of any party, postpone the hearing if he is satisfied that the attendance of the party or any witness on the date fixed for the hearing is not reasonably practicable, or for any other reason he thinks fit, in which case the provisions of sub-paragraph (2) shall apply as respects the postponed hearing.

(4) The Board which has appointed the discipline committee shall, not less than 7 days before the date fixed for the hearing, supply—

- (a) to each member of the discipline committee; and

(b) to the relevant Local Representative Committee,
copies of the appropriate Board's statement of case, of any response of the practitioner, of any comments made under paragraph 2(2)(a)(ii) and of any further observations or correspondence between the parties.

Attendance at hearing

5.—(1) The hearing before the discipline committee shall be in private, and no person shall be admitted to it unless he is a person specified in sub-paragraph (2).

(2) The persons specified for the purposes of sub-paragraph (1) are—

- (a) subject to sub-paragraph (3), no more than one member or officer of the appropriate Board and the practitioner;
- (b) any person permitted under sub-paragraph (3) to accompany a party;
- (c) not more than one person who is a member or officer of the relevant Local Representative Committee and who is authorised by that Committee to attend the hearing on its behalf as an observer only;
- (d) subject to sub-paragraph (5), any person whose attendance is required for the purpose of giving evidence to the discipline committee;
- (e) not more than two persons who have been authorised by the Board which has appointed the discipline committee to attend for the purpose of assisting the discipline committee in the discharge of its functions;
- (f) where the parties all consent, and the discipline committee considers it appropriate, any other person.

(3) Subject to sub-paragraph (4), a party may be accompanied at the hearing by one other person who may assist him in the presentation of his case, but, if that other person is a barrister or solicitor, he shall not address the committee or put questions to witnesses.

(4) No officer or member of a Board or of any of its committees referred to in regulation 3(1) shall be permitted to accompany the practitioner.

(5) Any person permitted to attend the hearing under sub-paragraph (2)(d) for the purpose of giving evidence shall, unless the discipline committee otherwise directs, be excluded from the hearing except while he is actually giving evidence.

Procedure at the hearing

6.—(1) At the hearing, any person mentioned in sub-paragraph (2)(a) or (b) of paragraph 5 may, subject to sub-paragraph (3) of that paragraph—

- (a) address the committee; and
- (b) put questions to witnesses, either directly or, where the chairman of the committee so directs, through him.

(2) Without prejudice to sub-paragraph (3), if a party fails to appear at the hearing, and the discipline committee is satisfied that his absence is due to illness or other reasonable cause, or if for any other reason the committee thinks fit, it may, after considering the observations of any party who is present, adjourn the hearing, in which case the provisions of paragraph 4(2) shall apply as respects the resumed hearing.

(3) Where any person to whom notice of the hearing has been given under paragraph 4(2) fails to attend the hearing, either in person or by a representative, the discipline committee may, having regard to the circumstances of which it is aware, proceed with the hearing notwithstanding that person's absence.

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(4) Prior to the commencement of a hearing, the chairman shall ask the other members of the committee whether any of them is interested in a question referred to them, either directly or through association with a party, and if, in the opinion of the chairman, any member is so interested, that member shall take no part in the hearing, but a deputy appointed in the like manner may act in his place.

(5) Where, in the course of a hearing, any issue arises in relation to an event or matter which, in the opinion of the chairman—

(a) is pertinent to the disciplinary matter but was not sufficiently disclosed to the practitioner prior to the hearing, the chairman may direct that the issue is to be excluded from the investigation;

(b) is not pertinent to the disciplinary matter, the issue shall be excluded from the investigation.

(6) Subject to sub-paragraph (7), where no direction is made under sub-paragraph (5)(a) in relation to an issue to which that provision applies, the hearing shall be adjourned unless the practitioner and the chairman agree that the hearing may proceed.

(7) Any issue to which sub-paragraph (5) applies which concerns an allegation of a failure to comply with a term of service other than the terms of service detailed in the appropriate Board's statement of case shall be excluded from the investigation to the extent that it concerns such an allegation.

(8) Before being invited to give his agreement for the purposes of sub-paragraph (6), a practitioner who is not accompanied by a person mentioned in sub-paragraph (2)(b) of paragraph 5 shall be afforded an opportunity to consult any person who may be present at the hearing pursuant to sub-paragraph (2)(c) of that paragraph.

(9) No evidence relating to an alleged breach of the practitioner's terms of service which was not specified in the Board's statement of case in accordance with paragraph 1(2)(a) may be produced at the hearing.

(10) No documentary evidence which was prepared for the purpose of a complaint may be produced by the appropriate Board unless it concerns evidence brought into issue by the practitioner.

(11) Subject to the other provisions of this Schedule, the procedure at the hearing shall be such as the investigating discipline committee may determine.

The committee's report

7.—(1) The discipline committee shall present to the appropriate Board a report in writing which shall contain—

(a) details of the material evidence given to it;

(b) its findings on all relevant questions of fact;

(c) the inferences which, in the view of the discipline committee, may properly be drawn from such findings of fact as to whether or not the practitioner has failed to comply with his terms of service;

(d) its reasons for drawing such inferences; and

(e) its recommendations as to the action which should be taken by the appropriate Board.

(2) In making recommendations in accordance with sub-paragraph (1)(e) the discipline committee shall not take into account any findings of another discipline committee that the practitioner has failed to comply with his terms of service on other occasions.

(3) For the purposes of sub-paragraph (2) "another discipline committee" shall be construed as including a services committee which investigated a complaint under the provisions of the Health and Personal Social Services (Services Committee) Regulations (Northern Ireland) 1973.

Provision as to quorum, composition and voting

8.—(1) At any hearing of a discipline committee other than a joint discipline committee the quorum shall consist of a chairman, two lay members and two members who are professional persons.

(2) At any hearing of a joint discipline committee the quorum shall consist of the chairman, two lay members and two other members—

- (a) who are professional persons; and
- (b) in relation to—
 - (i) one of whom, one of the practitioners is a relevant practitioner, and
 - (ii) the other of whom, the other of the practitioners is a relevant practitioner.

(3) The proceedings at any meeting of a discipline committee shall be suspended if, and for so long as—

- (a) the number of members present falls below the quorum specified in sub-paragraph (1) or (2); or
- (b) the number of lay members who are present exceeds, or is exceeded by, the number of other members (apart from the chairman) who are present.

(4) Where after the commencement of a hearing before a discipline committee, the hearing is adjourned for the purposes of hearing further evidence or for preparing or considering the report, no member of the committee who was not present at the earlier sitting of the hearing shall be present at the proceedings of the resumed hearing.

(5) Where there is an equality of votes among members of a discipline committee, the chairman shall have a casting vote, but shall not otherwise be entitled to vote.

Interpretation

9. In this Schedule, unless the context otherwise requires—

- (a) “lay member” and “professional person” have the meanings given to them in paragraph 8 of Schedule 1;
- (b) “parties” means the practitioner, the appropriate Board and any person treated as a party pursuant to paragraph 2(3);
- (c) “relevant practitioner” means where the practitioner is—
 - (i) a doctor, a doctor,
 - (ii) a dentist, a dentist,
 - (iii) an optician or ophthalmic medical practitioner, an optician or ophthalmic medical practitioner,
 - (iv) a pharmacist, a pharmacist;
- (d) “terms of service” means, in relation to a doctor acting as a deputy, the terms of service of the doctor for whom he was acting as a deputy.