
WELSH STATUTORY INSTRUMENTS

2002 No. 1896

**The National Health Service (General Medical Services)
(Amendment) (Wales) (No. 2) Regulations 2002**

Insertion of new regulations

5. After regulation 7 (removal from the medical list) insert the following new regulations—

“Supplementary matters relating to removal

7A. In addition to the services covered by the definition of “health scheme” in section 49F(8), the following shall also be health schemes for the purposes of sub-section (3) of that section—

- (a) health services, including medical and surgical treatment, provided by Her Majesty’s Forces;
- (b) Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984⁽¹⁾;
- (c) health services provided to a prisoner in the care of the medical officer or such other officer of a prison appointed for the purposes of section 7 of the Prison Act 1952⁽²⁾;
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

Criteria for decisions on removal

7B.—(1) Where a Health Authority is considering whether to remove a doctor under section 49F(4) of the Act (unsuitability case), it shall consider the information supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (2).

- (2) The criteria referred to in paragraph (1) are—
- (a) the nature of any criminal offence or investigation or incident;
 - (b) the length of time since any such offence or incident, conviction or investigation;
 - (c) whether there are other criminal offences to be considered;
 - (d) the penalty imposed on any criminal conviction or the outcome of any investigation;
 - (e) the relevance of any criminal offence or investigation into professional conduct to the provision by the doctor of general medical services and the likely risk to patients;

(1) 1984 c. 22.
(2) 1952 c. 52.

- (f) whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997(3) applies;
 - (g) whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and
 - (h) whether the doctor is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which was refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action,
 - (i) whether the doctor is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.
- (3) Where a Health Authority is considering removal of a doctor under section 49F(3) of the Act (fraud case), it shall consider the information from the doctor supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (4).
- (4) The criteria referred to in paragraph (3) are—
- (a) the nature of any fraud case;
 - (b) the length of time since the last incident of fraud (if any) occurred, and since any investigation into that incident of fraud was concluded;
 - (c) whether there are other fraud cases or other criminal offences to be considered;
 - (d) any action taken by licensing, regulatory body or other body as a result of any such incident;
 - (e) the relevance of any investigation into the incident of fraud to the provision by the doctor of general medical services and the likely risk to patients or to public finances;
 - (f) whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such actions; and
 - (g) whether the doctor is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for the action; and
 - (h) whether the doctor is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the

suspension and the reasons given by the Health Authority or equivalent body for the suspension.

(5) Where a Health Authority is considering removal of a doctor under section 49F(2) of the Act (an efficiency case), it shall consider the information from the doctor supplied under paragraph 36A(1),(2),(4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (6).

(6) The criteria referred to in paragraph (5) are—

- (a) whether the doctor's continued inclusion in the list would be prejudicial to the efficiency of the general medical services provided by the doctor;
- (b) the length of time since any incident occurred, and since the investigation of the incident was concluded;
- (c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
- (d) the nature of the incident and whether there is a likely risk to patients;
- (e) whether the doctor has previously failed to make a declaration or comply with an undertaking required by these Regulations;
- (f) whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or suspended from other Health Authority lists or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action;
- (h) whether the doctor is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included in, removed or contingently removed or suspended from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, the facts relating to the matter which led to such action and the reason given by the Health Authority or equivalent body for the actions; and
- (i) whether the doctor is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.

(7) In making any decision under section 49F, the Health Authority shall take into account the effect of all relevant incidents and offences relating to the doctor of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in section 49F, the Health Authority shall state in its decision on which condition (or conditions) in section 49F of the Act it relies.

Cases where the Health Authority must remove a doctor

7C.—(1) The Health Authority must remove the doctor from the medical list where it becomes aware that the doctor—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom since 30th July 2002 of a criminal offence and has been sentenced to a term of imprisonment of over six months.

(2) The Health Authority shall notify the doctor immediately that the doctor has been removed from the list.

Notifications by Health Authorities

7D.—(1) Where a Health Authority—

- (a) refuses to approve or nominate a doctor under section 49F of the Act;
- (b) removes a practitioner under section 49F of the Act;
- (c) contingently removes a practitioner under section 49G of the Act; or
- (d) suspends a practitioner under section 49I or 49J,

it shall notify the persons listed in paragraph (2), and shall additionally notify those specified in paragraph (3) if so requested by those persons or bodies in writing (including electronically) of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Health Authority shall notify—

- (a) the National Assembly for Wales;
- (b) any Health Authority in Wales that has the doctor, or a body corporate of which the doctor is director, on any of its lists, or is considering an application for inclusion in any of its lists by such a doctor or body corporate;
- (c) the Scottish Executive;
- (d) the Secretary of State;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council or other professional regulatory body;
- (g) the local medical committee for its area;
- (h) any other organisation that, to the knowledge of the Health Authority, employs or uses the services of the doctor in a professional capacity;
- (i) where it is a fraud case, the National Health Service Counter Fraud Service.

(3) The persons or bodies additionally referred to in paragraph (1) are persons or bodies that can establish that they are considering employing the doctor in a professional capacity.

(4) The matters referred to in paragraph (1) are—

- (a) identifying details of the doctor;
- (b) professional registration number;
- (c) date and copy of the decision of the Health Authority;
- (d) contact name of a person in the Health Authority for further enquiries.

(5) The Health Authority shall send the doctor concerned a copy of any information about the doctor provided to the persons or bodies specified in paragraph (2) or (3) and any correspondence with those persons or bodies relating to that information.

(6) Where the Health Authority has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may in addition, if so requested by that person or body, notify that person or body of any evidence that was considered, including representations made by the doctor.

(7) Where a Health Authority is notified by the FHSAA that it has imposed a national disqualification on a doctor whom the Health Authority had removed from its list, the Health Authority shall notify the persons or bodies listed in paragraph (2)(b), (g), (h) and (i) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Health Authority shall notify any body that was notified of the original decision of the later decision.

Procedure on removal

7E.—(1) Where a Health Authority is considering—

- (a) removing or contingently removing a doctor under section 49F of the Act (other than in cases specified in regulation 7C);
- (b) contingently removing a doctor under section 49G of the Act;
- (c) removing a doctor for a breach of a condition imposed under regulation 49G of the Act; or
- (d) removing a doctor for breach of a condition imposed under regulation 18M,

it shall follow the procedures set out in paragraphs (3) to (8) below.

(2) Where a Health Authority is notified by the FHSAA that it has considered—

- (a) an appeal by a doctor against a contingent removal by the Health Authority and has decided to remove the doctor instead; or
- (b) an appeal by a doctor against a conditional inclusion, where the doctor has been conditionally included in the list until the appeal has been decided, and has decided not to include the doctor,

the Health Authority shall remove the doctor and shall notify the doctor immediately that it has done so.

(3) Before reaching a decision of the kind mentioned in paragraph (1) the Health Authority shall—

- (a) give the doctor notice in writing of any allegation against him;
- (b) give the doctor notice of what action the Health Authority is considering and on what grounds;
- (c) give the doctor the opportunity to make written representations to the Health Authority within 28 days of the date of the notification under sub-paragraph (b);
- (d) give the doctor the opportunity to put his or her case at an oral hearing before the Health Authority, if the doctor so requests within the 28 days period mentioned in sub-paragraph (c).

(4) If there are representations, the Health Authority must take them into account before reaching its decision, and notifying the doctor of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(5) If there are no representations within the period specified in paragraph (3)(c), the Health Authority shall inform the doctor of its decision, the reasons for it (including any facts relied upon) and of any right of appeal.

(6) If the doctor requests an oral hearing, this must take place before the Health Authority reaches its decision, and the Health Authority must then notify the doctor of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(7) When the Health Authority notifies the doctor of any decision, it shall inform the doctor that if the doctor wishes to exercise a right of appeal, the doctor has 28 days from the date of the decision to do so, and tell the doctor how to do so.

(8) The Health Authority shall also notify the doctor of his right to have the decision reviewed in accordance with section 49L of the Act.

Procedure on suspension

7F.—(1) Before reaching a decision to suspend a doctor under section 49I or 49J of the Act, it shall—

- (a) notify the doctor in writing of any allegation against the doctor;
- (b) give the doctor notice of what action the Health Authority is considering and on what grounds;
- (c) give the doctor the opportunity to put his or her case at an oral hearing before the Health Authority on a specified day, provided that at least 24 hours' notice of the hearing is given;
- (d) give the doctor notice of the doctor's right of review under section 49L of the Act.

(2) If the doctor does not wish to have an oral hearing or does not attend the oral hearing, the Health Authority shall inform the doctor of its decision and the reasons for it (including any facts relied upon).

(3) If an oral hearing takes place, the Health Authority shall take into account any representations made before it reaches its decision.

(4) The Health Authority may suspend the doctor with immediate effect following the hearing.

(5) The Health Authority shall notify the doctor of its decision and the reasons for it (including any facts relied upon).

Procedure on review of Health Authority decision

7G.—(1) If a Health Authority decides to review its decision to conditionally include, contingently remove or suspend a doctor under section 49I of the Act, it shall—

- (a) notify the doctor in writing that it intends to review its decision;
- (b) notify the doctor of what action it has in mind and reasons for it;
- (c) to give the doctor the opportunity to make written representations to the Health Authority within 28 days from the date of the notification under subparagraph (b);
- (d) give the doctor the opportunity to put his or her case at an oral hearing if the doctor requests one within the 28 day period mentioned above.

(2) If there are representations, the Health Authority must take them into account before reaching its decision.

(3) If the doctor requests an oral hearing, this must take place before the Health Authority reaches its decision.

(4) The Health Authority shall notify the doctor of its decision and reasons for it (including any facts relied upon).

(5) When the Health Authority notifies the doctor of any decision, it shall inform the doctor of any right of appeal, that the doctor has 28 days from the date of the decision to exercise that right if the doctor wishes do so, and tell the doctor how to do so.

(6) The Health Authority shall also notify the doctor of the doctor's right to have the decision further reviewed in accordance with section 49L of the Act.

National Disqualification

7H.—(1) if on making a decision to impose a national disqualification, the FSHAA states that it is of the opinion that the criminal or professional conduct of the doctor is such that there is no realistic prospect of a further review being successful if held within the period specified in section 49N(8)(a) of the Act, the reference to “two years” in that provision shall be a reference to five years;

(2) if on the last review by the FHSAA of a national disqualification the doctor was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, the reference to “one year” in section 49N(8) of the Act shall be a reference to three years;

(3) if the FHSAA states that it is of the opinion that because a criminal conviction considered by the FHSAA in reaching its decision has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the reference to “two years” in section 49N(8) of the Act shall be a reference to the period already elapsed;

(4) if the FHSAA is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the reference to “two years” or “one year” in section 49N(8) of the Act shall be a reference to the period that has already elapsed.”.