

**2006 No. 330**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Discipline Committees) (Scotland)  
Regulations 2006**

<i>Made</i> - - - -	<i>7th June 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>8th June 2006</i>
<i>Coming into force</i> - -	<i>1st July 2006</i>

**ARRANGEMENT OF REGULATIONS**

**PART I  
GENERAL**

1. Citation, commencement and extent
2. Interpretation

**PART II  
INVESTIGATION OF DISCIPLINARY MATTERS**

3. Establishment of committees
4. Provisions relating to the start of disciplinary proceedings
5. Referral to discipline committee
6. Time limits
7. Investigations by discipline committees
8. Determination of appropriate Health Board
9. Appeal to Scottish Ministers
10. Procedure on appeal to Scottish Ministers
11. Recovery of amounts from practitioners following appeal
12. Death of practitioner
13. Investigation of excessive undertaking of eye examinations, excessive issuing of optical vouchers or excessive prescribing of supplements

**PART III  
MISCELLANEOUS**

14. Service of notices, etc
15. Power to dispense with requirements as to notices
16. Attendance by member of Council on Tribunals

PART IV  
TRANSITIONAL PROVISIONS AND REVOCATIONS

- 17. Transitional provisions
- 18. Revocations

- 
- SCHEDULE 1 — CONSTITUTION OF DISCIPLINE COMMITTEES
  - SCHEDULE 2 — PROCEDURE FOR INVESTIGATION BY DISCIPLINE COMMITTEES
  - SCHEDULE 3 — PROVISIONS AS TO APPEAL HEARINGS
  - SCHEDULE 4 — ADVISORY COMMITTEES
    - PART I — SPECIFIED FAILURES TO COMPLY WITH TERMS OF SERVICE
    - PART II — THE MEDICAL ADVISORY COMMITTEE
    - PART III — THE DENTAL ADVISORY COMMITTEE
  - SCHEDULE 5 — REVOCATIONS

The Scottish Ministers, in exercise of the powers conferred by sections 17P, 25(2), 26(2), 27(2), 29(1), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and section 17 of the Health and Medicines Act 1988(b) and of all other powers enabling them in that behalf and after consulting the Council on Tribunals and its Scottish Committee in accordance with section 8(1) and (3) of the Tribunals and Inquiries Act 1992(c), hereby make the following Regulations:

PART I  
GENERAL

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the National Health Service (Discipline Committees) (Scotland) Regulations 2006 and shall come into force on 1st July 2006.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the National Health Service (Scotland) Act 1978(d);

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(a) 1978 c.29; section 17P was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1) (“the 2004 Act”), section 5(2); section 25(2) was amended by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 40(2) and Schedule 9, paragraph 19, the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 2, paragraph 43 and Schedule 3, and the Health Act 1999 (c.8) (“the 1999 Act”), section 56; section 26(2) was substituted by the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), (“the 2005 Act”), section 19, section 27(2) was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3, and amended by the 1990 Act, Schedule 9, paragraph 19; section 105(7) which contains provisions relevant to the making of Regulations, was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24 and the 1999 Act, Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1988 (c.49) (“the 1988 Act”); section 17 was amended by S.I. 2004/167.

(c) 1992 c.53.

(d) 1978 c.29.

“the Agency” means the Common Services Agency for the Scottish Health Service constituted under section 10 of the Act(a);

“appropriate Health Board” means;

(a) in relation to a doctor–

- (i) a Health Board in whose primary medical services performers’ list the name of the doctor was included at the relevant time; or
- (ii) where the doctor was at the relevant time on more than 1 such list, the Health Board which was, under section 2C(1) of the Act(b) under a duty to provide or secure the provision of the primary medical services giving rise to the allegation;

(b) in relation to any other practitioner–

- (i) the Health Board in whose dental, ophthalmic or pharmaceutical list the name of the practitioner was included at the relevant time; or
- (ii) where the practitioner was at the relevant time on more than one such list, one of the Health Boards by arrangement with which the Part II services giving rise to the allegation were provided.

“area dental committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act(c);

“area medical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area optical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area pharmaceutical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area professional committee” means an area dental committee, area medical committee, area optical committee or area pharmaceutical committee, as appropriate;

“chairperson” includes a deputy chairperson acting in his or her place;

“Chief Executive” means the Chief Executive of a Health Board, or some other officer of the Health Board duly authorised to act on behalf of the Chief Executive;

“complaint” means a complaint made in accordance with procedures established and operated under directions given under section 2(5) of the Act(d) for dealing with complaints against practitioners providing or performing services under Part I of the Act or providing Part II services or in accordance with the provisions specified in paragraph (2);

“dental discipline committee” means a committee referred to in regulation 3(1)(b);

“dentist” means a registered dental practitioner;

“dentists’ panel” means the panel of dentists who are, or who have been, engaged in the provision of general dental services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Scottish Ministers’ opinion, representative of the dental profession;

“disciplinary matter” means a matter referred under regulation 5(1);

“discipline committee” has the meaning given in regulation 3(2);

“doctor” means a registered medical practitioner excluding an ophthalmic medical practitioner unless performing primary medical services;

“doctors’ panel” means the panel of doctors who are, or who have been, engaged in the performance of primary medical services and who have been nominated to the panel for the

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(a) Section 10 was amended by the 1990 Act, section 66(2) and Schedule 10; the 1999 Act section 65(1) and Schedule 4, paragraph 44(a); S.S.I. 1999/90, Article 2(a)(b) and Schedule 1, and the 2005 Act, Schedule 2, paragraph 2(a).

(b) Section 2C was inserted by the 2004 Act, section 1(2).

(c) Section 9 was amended by the 1990 Act, section 29, the 1999 Act, section 65 and Schedule 4, paragraph 43, and the 2004 Act, Schedule 2.

(d) Section 2(5) was amended by the 1990 Act, Schedule 9, paragraph 19(1).

purposes of these Regulations by a body which is, in the Scottish Ministers' opinion, representative of doctors engaged in the performance of primary medical services;

“General Dental Services Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1996(a);

“General Ophthalmic Services Regulations” means in respect of the period prior to 1st April 2006 the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(b) and in respect of the period from 1st April 2006 the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(c);

“Health Board” means a Health Board constituted under section 2 of the Act(d);

“in writing” does not include transmission by electronic means;

“joint discipline committee” means a committee constituted in accordance with paragraph 2 of Schedule 1;

“medical discipline committee” means a committee referred to in regulation 3(1)(a);

“ophthalmic discipline committee” means a committee referred to in regulation 3(1)(c);

“ophthalmic medical practitioner” means a doctor having the qualifications prescribed by regulation 3 of the General Ophthalmic Services Regulations;

“ophthalmic officer” means an ophthalmic medical practitioner, ophthalmic optician or ophthalmologist in the service of the Agency;

“optician” means an ophthalmic optician;

“Part II Services” means services provided under Part II of the Act;

“pharmaceutical discipline committee” means a committee referred to in regulation 3(1)(d);

“Pharmaceutical Services Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(e);

“pharmacist” means a person registered with the Royal Pharmaceutical Society of Great Britain in the register of pharmaceutical chemists;

“pharmacist contractor” means a contractor who provides pharmaceutical services, or a person lawfully conducting a retail pharmacy business in accordance with section 69 (general provisions) of the Medicines Act 1968(f);

“Practice Board” means the Scottish Dental Practice Board constituted under section 4 of the Act(g);

“practitioner” means, except in Schedules 1 and 2, a doctor, a dentist, an ophthalmic medical practitioner, an optician, a pharmacist or a pharmacist contractor, as the case may be;

“primary medical services performers' list” means the list maintained by a Health Board under the Primary Medical Services Performers' Lists Regulations;

“Primary Medical Services Performers' Lists Regulations” means the National Health Service (Primary Medical Services Performers' Lists) (Scotland) Regulations 2004(h);

“section 17C agreement” means an agreement under section 17C of the Act(i);

“statement of case” means a statement sent by the appropriate Health Board to a practitioner and the discipline committee in accordance with paragraph 1 of Schedule 2;

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- (a) S.I. 1996/177 amended by S.I. 1996 and 2060, 1998/1663, 2224 and 2259, 1999/724, S.S.I. 1999/51, 2000/188, 352 and 394, 2001/57 and 368, 2002/991, 192 and 268, 2003/131 and 422, 2004/37, 2005/95 and 2006/137.
- (b) S.I. 1986/965 amended by S.I. 1988/543, 1989/387 and 1177, 1990/1048, 1995/704 and 843, 1996/2353, 1999/725, S.S.I. 1999/55, 2001/62, 2003/201 and 432, 2004/36, 169 and 212, 2005/128, 2006/42.
- (c) S.S.I. 2006/135.
- (d) Section 2 was amended by the National Health Service Reform (Scotland) Act 2004 (asp 7), Schedule 1, paragraph 1(2).
- (e) S.I. 1995/414 amended by S.I. 1996/840 and 1504, 1997/696, 1998/2224 and 3031, S.S.I. 1999/157, 2001/70, 2002/111 and 1531, 2003/296, 2004/139 and 212, S.I. 2004/1771, 2005/327 and 618, 2006/143 and 2006/245.
- (f) Section 69 was amended by S.I. 1976/1213, and repealed in part by the Statute Law (Repeals) Act 1993 (c.50), Schedule, Part XII.
- (g) Section 4 was amended by the 1988 Act, section 12(3) and Schedule 3.
- (h) S.S.I. 2004/114.
- (i) Section 17C was inserted by the 1997 Act, section 21(2), and amended by the 2004 Act, section 2(2).

“Statement of Dental Remuneration” means the statement published under regulation 22 (statement of dental remuneration) of the General Dental Services Regulations(a);

“supplements” means prisms, tints, photochromic lenses, small glasses and complex appliances;

“terms of service” means–

- (a) the requirements with which a doctor included in the primary medical services performers’ list must comply under or by virtue of regulation 8 of the Primary Medical Services Performers’ Lists Regulations;
- (b) the terms of service for dentists contained in Schedule 1 to the General Dental Services Regulations;
- (c) the terms of service for ophthalmic medical practitioners and opticians contained in Schedule 1 to the General Ophthalmic Services Regulations;
- (d) the terms of service for pharmacists contained in Schedule 1 to the Pharmaceutical Services Regulations; or
- (e) the terms under which additional pharmaceutical services are provided under arrangements made in accordance with directions under section 27A of the Act(b),

as the case may be;

“treatment” in relation to general dental services, except in relation to regulation 6(7)(c), means–

- (i) where at the material time the dentist is providing occasional treatment under the General Dental Services Regulations, treatment within the meaning of those Regulations;
- (ii) in any other case, care and treatment within the meaning of those Regulations;

“the Tribunal” means the Tribunal constituted under section 29 of and Schedule 8 to, the Act(c).

(2) The provisions referred to in the definition of “complaint” in paragraph (1) are–

- (a) paragraphs 31A and 31B of Schedule 1 to the General Dental Services Regulations(d);
- (b) the terms of a general medical services contract which give effect to Part 6 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(e) or the terms of a section 17C agreement which give effect to Part 6 of Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(f);
- (c) paragraphs 9A and 9B of Schedule 1 to the Pharmaceutical Services Regulations(g);
- (d) paragraphs 8A and 8C of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) 1986 Regulations(h) and paragraph 11 of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006(i);
- (e) the terms of any arrangements made in relation to the provision of additional pharmaceutical services in accordance with directions made under section 27A of the Act.

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(a) Regulation 22 was amended by S.S.I. 2000/352, 2001/368, 2002/99 and 268, 2003/131 and 422 and 2005/95.

(b) Section 27A was inserted by the 1997 Act, section 27(2).

(c) Section 29 was substituted by the 1999 Act, section 58, amended by the 2004 Act, section 5(3) and the 2005 Act, section 26; Schedule 8 was amended by the 1995 Act, section 12, S.I. 1995/3214; the 1997 Act, section 41(10), and Schedule 2, Part II, paragraph 58; S.I. 1998/631; the 1999 Act, section 653 and Schedule 4, paragraph 64, and by the 2005 Act, Schedule 2, paragraph 2.

(d) S.I. 1996/177; relevant amending instrument is S.I. 1996/841.

(e) S.S.I. 2004/115.

(f) S.S.I. 2004/116.

(g) S.I. 1995/414; relevant amending instrument is S.I. 1996/840.

(h) S.I. 1986/965; relevant amending instrument is S.I. 1996/843.

(i) S.S.I. 2006/135.

(3) In these Regulations any reference to a numbered regulation or a numbered Schedule is, unless otherwise expressly provided, a reference to a regulation or a Schedule bearing that number in these Regulations.

## PART II

### INVESTIGATION OF DISCIPLINARY MATTERS

#### **Establishment of committees**

**3.—**(1) Subject to paragraph (3), every Health 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,

and may, where it sees fit, have 2 or more of any of those committees.

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

(3) Three or more Health Boards may appoint discipline committees jointly and in these Regulations a reference to a discipline committee of a Health Board includes a reference to a discipline committee jointly appointed by 3 or more Health Boards.

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

(5) Schedule 1 shall have effect with respect to the constitution of discipline committees.

#### **Provisions relating to the start of disciplinary proceedings**

**4.—**(1) Where an appropriate Health Board receives information which it considers could amount to an allegation that a practitioner has failed to comply with his or her 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 Health 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) Without prejudice to any other rights or remedies which it may have, where an appropriate Health Board considers that a payment has been made to a practitioner which was not due and the practitioner does not admit that overpayment, the appropriate Health Board may refer the overpayment under regulation 5(1).

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

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

- (a) the complainant, the person who is the subject of the complaint and the Health Board have been notified in writing of the results of the conciliation process by the conciliator appointed in accordance with directions given under section 2(5) of the Act;
- (b) the complaint is withdrawn or abandoned by the person bringing it; or

- (c) the appropriate Health Board has requested the complainant in writing to confirm whether or not he or she wishes to pursue the complaint, and the complainant has not confirmed to the appropriate Health Board that he or she wishes to do so within 28 days of that request being sent.
- (6) In this regulation—
- (a) “relevant professional body” means—
    - (i) in relation to a doctor or an ophthalmic medical practitioner, the General Medical Council(a);
    - (ii) in relation to a dentist, the General Dental Council(b);
    - (iii) in relation to an optician, the General Optical Council(c); or
    - (iv) in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain;
  - (b) “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 Health Board decides to proceed under regulation 4(2)(a) or (3) it shall, subject to paragraph (2), refer the matter to another Health Board for investigation by that Health Board’s appropriate discipline committee.

(2) The appropriate Health Board shall not refer the matter to another Health Board which has appointed any discipline committee jointly with the appropriate Health Board.

(3) 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 optician, an ophthalmic discipline committee;
- (d) where the matter relates to a pharmacist, a pharmaceutical discipline committee.

(4) A matter which, under paragraph (1), is required to be investigated by 2 discipline committees, may instead be referred for investigation by a joint discipline committee.

(5) 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 by another discipline committee, it shall refer the matter to the joint discipline committee instead of dealing with the matter itself.

(6) Where a matter is referred for investigation by a joint discipline committee under paragraph (4) or paragraph (5), that committee shall be the appropriate discipline committee instead of any other committee.

**Time limits**

6.—(1) Where the disciplinary matter concerns an allegation which has been the subject of a complaint, the appropriate Health 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 concerns an allegation which has been the subject of an investigation by the Agency, or of an investigation by any other person or body, the appropriate Health Board shall refer it under regulation 5(1) within 28 days of the Health Board having received the final report on the matter under investigation from the Agency or such other person or body.

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(a) See the Medical Act 1983 (c.54), section 1.  
 (b) See the Dentists Act 1984 (c.24), section 1.  
 (c) See the Opticians Act 1989 (c.44), section 1.

(3) Where the disciplinary matter relates to a matter which is the subject of an inquiry in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976(a) the appropriate Health Board shall refer it under regulation 5 (1) within 28 days of the conclusion of that inquiry.

(4) Where the disciplinary matter relates to a matter which is the subject of any other proceedings before a court or tribunal, (including any appeal procedures) the appropriate Health Board shall refer it under regulation 5(1) within 28 days of the final conclusion of those proceedings

(5) Where none of paragraph (1), (2), (3 or (4) applies, the appropriate Health Board shall refer the disciplinary matter under regulation 5(1) within the time limits specified in paragraph (7).

(6) Where the disciplinary matter concerns an alleged overpayment made to a practitioner pursuant to regulation 4(3), the appropriate Health Board may refer it under regulation 5(1) at any time.

(7) The time limits referred to in paragraph (5) are–

- (a) in the case of a doctor, pharmacist or pharmacist contractor, 13 weeks after the event or matter which is the subject of the allegation occurred, or 13 weeks after the latest in a series of events or matters which are the subject of the allegation occurred;
- (b) in the case of an ophthalmic medical practitioner or optician, 13 weeks after the event or matter which is the subject of the allegation occurred, or 13 weeks after the latest in a series of events or matters which are the subject matter of the allegation occurred;
- (c) in the case of a dentist–
  - (i) subject to paragraph (8), where the matter concerns the treatment of a patient, either 6 months after the last date of submission by the dentist of the claim forms for that course of treatment to the Practice Board or the Agency on behalf of the Practice Board, or, where the allegation relates to a series of courses of treatment, 6 months after the last date of submission by the dentist of claim forms for the latest course of treatment in that series;
  - (ii) subject to paragraph (8), where the matter does not concern the treatment of a patient and is reported to the appropriate Health Board by the Practice Board, 13 weeks after the date on which the matter, or after the latest in a series of matters, came to the notice of the Practice Board;
  - (iii) where the matter does not concern the treatment of a patient and comes to the notice of the appropriate Health Board other than by a report from the Practice Board, 13 weeks after the date on which the matter or after the latest in a series of matters came to the notice of the Health Board.

(8) Where the Practice Board reports a matter to the appropriate Health Board in circumstances in which the time limits mentioned in paragraph (7)(c)(i) or (ii) would otherwise expire within 28 days of the date on which the Health 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 Health Board received the report.

(9) For the purposes of paragraph (7)(c), “treatment” has the same meaning as in regulation 2(1) of the General Dental Services Regulations.

### **Investigations by discipline committees**

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.

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(a) 1976 c.14.

## **Determination of appropriate Health Board**

8.—(1) The appropriate Health 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 has failed to comply with any of the terms of service detailed in the appropriate Health Board's statement of case; and
- (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 paragraph (3).

(2) If the appropriate Health Board determines either not to adopt the recommendation of the discipline committee or to take any action not recommended by that committee, it shall record in writing its reasons for that determination.

(3) Where it has been determined that a practitioner to whom the report of the discipline committee relates has failed to comply with any of his or her terms of service, the appropriate Health Board may—

- (a) without prejudice to sub-paragraph (b), determine that there should be recovered from him or her, whether by way of deduction from his or her remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the discipline committee) which, by reason of such failure, have been reasonably and necessarily incurred or, where the report relates to a dentist, are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recoverable shall be paid to that person;
- (b) determine that an amount shall be recovered from the practitioner, whether by way of deduction from his or her remuneration or otherwise;
- (c) where the practitioner is a dentist, determine that that dentist should be required to submit estimates for the prior approval of the Practice Board in respect of any treatment of such description and during such a period as shall be specified in the determination;
- (d) determine that the practitioner should be warned to comply more closely with his or her terms of service in future;
- (e) refer the matter to, as it considers appropriate, the Tribunal, the relevant professional body or the police.

(4) In acting under paragraph (3) the appropriate Health Board may take into consideration any determination that the practitioner had, on some other occasion, failed to comply with the practitioner's terms of service, so long as such a determination, finding or inference has not been overturned on appeal and was not made more than six years prior to the date of referral under regulation 5(1).

(5) No later than 13 weeks after receipt of the report from the discipline committee, the appropriate Health Board shall give notice in writing of its determination under paragraph (1) and any determination under paragraph (3) to the practitioner, any person who is treated as a party pursuant to paragraph 2(3) of Schedule 2, the discipline committee, and the Scottish Ministers, and shall include with the notice—

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

(6) Subject to paragraph (8), where an appropriate Health Board determines under this regulation that action should be taken in accordance with paragraph 3(a), (b), (c), (d) or (e), that action shall be taken by the appropriate Health Board.

(7) Any amount determined under paragraph (3)(a) or (b) 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 Health Board by which it is recoverable.

(8) Where the appropriate Health Board makes a determination under paragraph (3)(a), (b), (c), (d) or (e) 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 the Health Board has received notice—
  - (i) that the appeal has been withdrawn, or
  - (ii) of the Scottish Ministers' determination of the appeal.

(9) For the purpose of paragraph (3) "estimate" has the same meaning as in regulation 2(1) of the General Dental Services Regulations.

### **Appeal to Scottish Ministers**

**9.—**(1) A practitioner may appeal to the Scottish Ministers—

- (a) against a finding of fact, or an inference drawn from a finding of fact pursuant to regulation 8(1)(a) or (b), which (in either case) is adverse to the practitioner;
- (b) against any determination by a Health Board under regulation 8(1)(c)(ii);
- (c) in respect of a determination by a Health Board that an overpayment has or has not been made in respect of the practitioner's remuneration;

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

(2) A notice of an appeal under this regulation shall—

- (a) be in writing;
- (b) be sent to the Scottish Ministers within 30 days beginning on the date on which notice of the appropriate Health Board's determination was given to the practitioner under regulation 8(5); and
- (c) contain a concise statement of the grounds of appeal upon which the practitioner intends to rely in respect of each ground of appeal.

(3) Subject to paragraph (6), on an appeal to which paragraph (1)(a) or (c) applies, the Scottish Ministers shall consider the appeal on the basis of the evidence available to the discipline committee and of any further evidence adduced on the appeal, and shall—

- (a) make such findings of fact as they see fit;
- (b) draw such inferences from those findings as they see fit;
- (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 Health Board's statement of case; and
  - (ii) determine in accordance with any one or more of the provisions of regulation 8(3)(a), (b), (c), (d) or (e) (as modified in accordance with paragraph (5) of this regulation) or regulation 11, whether any, and if so what, action should be taken in relation to that practitioner; and
- (d) in the case of an appeal to which paragraph (1)(c) applies, determine whether there has been an overpayment and, if so, of what amount.

- (4) On an appeal to which paragraph (1)(b) applies, the Scottish Ministers shall—
- (a) accept as conclusive—
    - (i) those findings of fact made by the discipline committee which were necessary for the purpose of the Health Board’s determination under regulation 8(1)(c)(ii); and
    - (ii) the inferences specified in the discipline committee’s report pursuant to paragraph 7(1)(c) of Schedule 2; and
  - (b) determine in accordance with any one or more of the provisions of regulation 8(3)(a), (b), (c) and (d) (as modified in accordance with paragraph (5) of this regulation) or regulation 11, 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, regulation 8(3) and (4) shall have effect as if for any reference to “the appropriate Health Board” there were substituted a reference to “the Scottish Ministers”.
- (6) The practitioner may withdraw his or her appeal at any time before it is determined—
- (a) by giving notice in writing to the Scottish Ministers of his or her intention to do so; and
  - (b) with the consent of the Scottish Ministers.

### **Procedure on appeal to Scottish Ministers**

**10.**—(1) Without prejudice to paragraph (5), if the Scottish Ministers, after considering a notice of appeal and any further particulars furnished by the practitioner, are of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, they may determine the appeal by dismissing it immediately.

(2) The Scottish Ministers shall, unless they dismiss 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 Health 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 Scottish Ministers shall send a copy of those observations to the practitioner and shall invite the practitioner to submit comments on the observations within 21 days of being sent that copy.

(4) The Scottish Ministers 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), the appeal may be dismissed without an oral hearing if the practitioner has stated in writing that he or she does not want such a hearing.

(6) Where there is to be an oral hearing the Scottish Ministers shall appoint 3 persons to hear the appeal, of whom—

- (a) one shall be an advocate or a solicitor, and shall act as chairperson; 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, 2 doctors;
- (b) where the practitioner is a dentist, 2 dentists;
- (c) where the practitioner is an ophthalmic medical practitioner, 2 ophthalmic medical practitioners;
- (d) where the practitioner is an optician, 2 opticians; and
- (e) where the practitioner is a pharmacist contractor, 2 pharmacists.

(8) In a case to which—

- (a) paragraph (7)(a) applies, one of the doctors shall be selected from the doctors’ panel;
- (b) paragraph (7)(b) applies, one of the dentists shall be selected from the dentists’ panel.

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

(10) Subject to the provisions of regulation 16 (attendance by member of Council on Tribunals) no person shall be admitted to a hearing, without the consent of the practitioner and the persons appointed to hear the appeal, unless that person is—

- (a) the practitioner;
- (b) a representative of the appropriate Health Board who is an officer or a member of it;
- (c) a person (who may be an advocate, 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 at the hearing; or
- (d) a person whose attendance is required for the purpose of giving evidence at the hearing.

(11) The practitioner and the appropriate Health Board shall not rely on any facts or contentions which do not appear to the Scottish Ministers 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 7 days before the hearing, notice in writing was given to the Scottish Ministers of such facts or contentions; and
- (b) the Scottish Ministers or the persons hearing the appeal give their consent.

(12) The persons hearing the appeal shall prepare a report and present it to the Scottish Ministers who shall take it into consideration and determine the appeal.

(13) Where a Health Board has made representations to the Tribunal following its consideration of a report of a discipline committee, the Scottish Ministers 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 Scottish Ministers shall give notice in writing to the practitioner and the Health Board of their determination under paragraphs (1) or (12) of the matters mentioned in regulation 9(3)(c) or (d) or (4)(b) and shall include with the notice a statement of their reasons for the determination.

(15) The provisions of Schedule 3 shall have effect with regard to the hearing of an appeal.

### **Recovery of amounts from practitioners following appeal**

**11.—**(1) Where—

- (a) in the case of an appeal under regulation 9(1)(a), the Scottish Ministers determine that a practitioner has failed to comply with one or more of his or her terms of service; or
- (b) an appeal is made under regulation 9(1)(b) or (c),

the Scottish Ministers 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 or her remuneration or otherwise.

(2) The Scottish Ministers shall not consider the question of the recovery of an amount from a doctor or dentist whose failure to comply with his or her terms of service (as determined under these Regulations) is a failure specified in relation to him or her in Part I of Schedule 4 unless they have referred the question of recovery to the appropriate advisory committee and have received the advice of that committee.

(3) Where the case is not one to which paragraph (2) applies, the Scottish Ministers, before considering the question of recovery of—

- (a) any amount from a doctor or dentist, may consult the appropriate advisory committee;
- (b) any amount in excess of £1000, shall consult the appropriate advisory committee.

(4) For the purposes of this regulation “the appropriate advisory committee” means—

- (a) where the practitioner is a doctor, the Medical Advisory Committee constituted in accordance with Part II of Schedule 4; and

(b) where the practitioner is a dentist, the Dental Advisory Committee constituted in accordance with Part III of that Schedule.

(5) The Scottish Ministers shall give the practitioner and the appropriate Health Board notice in writing of their determination under paragraph (1), and shall include with the notice a statement of the reasons for their determination.

(6) Where the Scottish Ministers have determined under paragraph (1) that an amount shall be recovered from a practitioner, they shall direct the appropriate Health Board to recover that amount either by deduction from the practitioner's remuneration or otherwise and, subject to regulation 8(6) (as modified by paragraph (7) of this regulation), that Health Board shall comply with that direction.

(7) For the purposes of paragraph (6), regulation 8(6) shall have effect as if for the words "an appropriate Health Board determines under this regulation that action should be taken in accordance with paragraph (3)(a), (b), (c), (d) or (e) that action shall be taken" there were substituted the words "the Scottish Ministers determine under regulation 11(1) that an amount should be recovered, that amount shall be recovered".

(8) Any amount which falls to be recovered by a Health Board by virtue of paragraph (6) 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 Health Board.

### **Death of practitioner**

**12.** Where, at any time after a disciplinary matter has been referred under regulation 5(1) but before the appropriate Health 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.

### **Investigation of excessive undertaking of eye examinations, excessive issuing of optical vouchers or excessive prescribing of supplements**

**13.—(1)** An ophthalmic officer shall from time to time examine the eye examination and optical voucher forms which have been completed by an ophthalmic medical practitioner or an ophthalmic optician in respect of persons who may have an eye examination after 1st April 2006 under general ophthalmic services in accordance with the General Ophthalmic Services Regulations.

(2) Where it appears to the ophthalmic officer that the undertaking of eye examinations, issuing of optical vouchers or prescribing of supplements in excess of what was reasonably necessary has taken place, the ophthalmic officer shall prepare a report for submission to the Health Board stating—

- (a) the full facts of the case; and
- (b) that he or she is of the opinion that the undertaking of eye examinations, issuing of optical vouchers or prescribing of supplements was in excess of what was clinically necessary and on what grounds.

(3) On receipt of the report, the Health Board shall consider it in terms of regulation 4(1).

## **PART III MISCELLANEOUS**

### **Service of notices, etc**

**14.—(1)** Any notice or document which is required or authorised by these Regulations to be sent to or served on any person or body may be sent or served as follows:—

- (a) in the case of the Scottish Ministers, by delivering it to them or sending it by special delivery or first class recorded delivery service addressed to them at St Andrew’s House, Edinburgh;
- (b) in the case of a Health Board by delivering it to the Chief Executive or by sending it by special delivery or first class recorded delivery service addressed to the Chief Executive at the Health Board’s principal office;
- (c) in the case of a practitioner by delivering it to the practitioner or by sending it by special delivery or first class recorded delivery service addressed to the practitioner at the practitioner’s usual or last known practice or private address;
- (d) in the case of any other person, by delivering it to that person or by sending it by special delivery or first class recorded delivery service addressed to that person at that person’s usual or last known address.

(2) Where a party to any investigation, appeal or inquiry is represented by a solicitor this regulation is complied with if the notice or document is sent by special delivery or first class recorded delivery service addressed to the solicitor at the solicitor’s professional address.

(3) Unless the contrary is proved, any notice or document sent in accordance with this regulation shall be deemed to be received at the time at which a letter would be delivered in the ordinary course of post.

**Power to dispense with requirements as to notices**

15. The Scottish Ministers may dispense with any requirements of these Regulations applicable to notices, applications, documents or otherwise in any case where it appears to the Scottish Ministers appropriate to do so.

**Attendance by member of Council on Tribunals**

16. Nothing in these Regulations shall prevent a member of the Council on Tribunals or of its Scottish Committee in that capacity from attending any hearing before–

- (a) a discipline committee;
- (b) a Health Board when the Health Board is considering a report of a discipline committee;
- (c) persons appointed under regulation 10(6) when hearing an appeal.

**PART IV**

**TRANSITIONAL PROVISIONS AND REVOCATIONS**

**Transitional provisions**

17.—(1) Where, before the date on which these Regulations come into force a Health Board has referred a matter to another Health Board for investigation by that Health Board’s appropriate discipline committee under regulation 4 of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(a) (“the 1992 Regulations”), the provisions of those Regulations shall, notwithstanding regulation 18 (revocations) continue to apply on or after that date, as respects any investigation, hearing, direction or report which by virtue of any provision of the 1992 Regulations falls to be investigated, held or made in relation to any such matter or in relation to an appeal to the Scottish Ministers.

(2) Notwithstanding regulation 18 (revocations), a Health Board shall be entitled to consider in terms of regulation 4(1) any report prepared by an ophthalmic officer in terms of regulation 20 of the 1992 Regulations (investigation of excessive testing of sight and/or excessive issuing of

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(a) S.I. 1992/434, amended by S.I. 1994/3038, 1995/3201, 1996/938, 1998/1424, S.S.I. 1999/53, S.I. 2000/3135, S.S.I. 2004/38, 2005/118,122 and 334 and 2006/139.

vouchers)(a) irrespective of whether such a report was received by the Health Board prior to, or after, the date on which these Regulations come into force.

### **Revocations**

**18.** The Regulations specified in column (1) of Schedule 5 are revoked to the extent specified in column (3) of that Schedule.

St Andrew's House,  
Edinburgh  
7th June 2006

*ANDREW P KERR*  
A member of the Scottish Executive

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(a) Regulation 20 was inserted by S.S.I. 1999/53 and amended by S.S.I. 2005/118.

## SCHEDULE 1

Regulation 3(5)

### CONSTITUTION OF DISCIPLINE COMMITTEES

- 1.** A discipline committee other than a joint discipline committee shall consist of—
  - (a) a chairperson appointed in accordance with paragraph 4;
  - (b) one lay person appointed by the Health Board; and
  - (c) one practitioner appointed by the Health Board from a list of nominees provided by the area professional committee for the Health Board's area.
  
- 2.—(1)** A joint discipline committee shall consist of—
  - (a) a chairperson appointed in accordance with paragraph 4; and
  - (b) five other members of whom—
    - (i) one shall be a lay person appointed by the Health Board;
    - (ii) one shall be a doctor appointed in accordance with sub-paragraph (2) by the medical discipline committee;
    - (iii) one shall be a dentist appointed in accordance with sub-paragraph (2) by the dental discipline committee;
    - (iv) one shall be a pharmacist appointed in accordance with sub-paragraph (2) by the pharmaceutical discipline committee;
    - (v) one shall be an ophthalmic medical practitioner or optician appointed in accordance with sub-paragraph (2) by the ophthalmic discipline committee.

(2) A member of a joint discipline committee appointed by a discipline committee under sub-paragraph (1)(b)(ii) to (v) shall already be a member of the discipline committee which appoints him or her, or a deputy for such a member.

(3) A member of the joint discipline committee appointed by a discipline committee shall not take part in an investigation by the joint discipline committee unless the matter to be investigated involves a question relating to a relevant practitioner.

(4) For the purposes of sub-paragraph (3) a relevant practitioner is—
  - (a) in relation to a member appointed by the medical discipline committee, a doctor;
  - (b) in relation to a member appointed by the dental discipline committee, a dentist;
  - (c) in relation to a member appointed by the ophthalmic discipline committee, an ophthalmic medical practitioner or an optician;
  - (d) in relation to a member appointed by the pharmaceutical discipline committee, a pharmacist.
  
- 3.—(1)** As respects each discipline committee not fewer than one lay person and not fewer than one practitioner shall be appointed as deputies, according to the same provisions as apply to the appointment of members of that committee other than the chairperson.

(2) Where a member of a discipline committee, other than the chairperson, is absent, a deputy appointed according to the same provisions as that member may act in his or her place.
  
- 4.—(1)** The chairperson of a discipline committee shall be a solicitor or advocate appointed by the Health Board.

(2) The Health Board shall, within 14 days of making an appointment under sub-paragraph (1), give notice in writing of the appointment to the other members of the discipline committee.

(3) Where, within 14 days of notice being sent under sub-paragraph (2), a statement duly signed in accordance with sub-paragraph (4) is sent to the Health Board asserting that the chairperson appointed by the Health Board is not acceptable to the signatories of the statement, the Health

Board shall within 30 days of receipt of that statement refer the matter of the appointment to the Scottish Ministers.

(4) For the purposes of sub-paragraph (3) a statement must be signed—

- (a) in the case of a discipline committee other than a joint discipline committee, by all the members, other than the chairperson;
- (b) in the case of a joint discipline committee, by all the members other than the chairperson.

(5) Where the matter of the appointment is referred to the Scottish Ministers under sub-paragraph (3), they may, after consultation with the Health Board and the relevant area professional committee, appoint another person to be chairperson of the discipline committee; and the chairperson appointed by the Health Board shall cease immediately to hold office as chairperson and member of that committee.

(6) A person appointed as chairperson of a discipline committee who is already a member of that discipline committee shall, on appointment as chairperson, cease to be a member otherwise than in his or her capacity as chairperson and a new member shall be appointed to take his or her place.

**5.—**(1) A person shall be appointed to act as deputy for the chairperson of any discipline committee and the provisions of paragraph 4 shall apply to that appointment as they apply to the appointment of the chairperson.

(2) The deputy chairperson may, in the absence of the chairperson, act in his or her place and may, if already a member of the committee when appointed, continue as a member but when acting as chairperson shall act only in that capacity.

**6.—**(1) Subject to the other provisions of this Schedule, a Health Board may make standing orders with respect to the term of office of any members and deputy members of any discipline committee.

(2) Subject to any re-appointment, the term of office of any member or deputy member of such a committee shall not exceed one year.

(3) A chairperson of a discipline committee may attend and take part in any proceedings of the appropriate Health Board at which a report of that committee is being considered, but may not vote.

**7.** A person who is a member of a discipline committee constituted under this Schedule shall cease to hold office—

- (a) where he or she is the chairperson or a lay member, on ceasing to be the chairperson or a lay person, as the case may be;
- (b) where he or she is a member not mentioned in sub-paragraph (a), on ceasing to be a practitioner.

**8.** In this Schedule—

- (a) “lay member” in relation to a discipline committee or joint discipline committee, means any member (other than the chairperson) who is a lay person;
- (b) “lay person” means a person who is not and never has been—
  - (i) a practitioner, a pharmacist or an optician;
  - (ii) a registered dispensing optician within the meaning of the Opticians Act 1989;
  - (iii) a registered nurse, a registered midwife or a registered health visitor; or
  - (iv) an officer of, or otherwise employed by, any Health Board;
- (c) “practitioner” means—
  - (i) in the case of the medical discipline committee, a doctor;
  - (ii) in the case of the dental discipline committee, a dentist;
  - (iii) in the case of the pharmaceutical discipline committee, a pharmacist;
  - (iv) in the case of the ophthalmic discipline committee, an ophthalmic medical practitioner or optician;

- (v) in the case of the joint discipline committee, a member appointed by a discipline committee;
- (d) references to a “Health Board” include references to a Health Board which has jointly appointed a discipline committee in accordance with regulation 3(3);

## PROCEDURE FOR INVESTIGATION BY DISCIPLINE COMMITTEES

### Health 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 Health Board shall—

- (a) within 2 working days of the date the matter is referred to the appropriate discipline committee send a notice to the practitioner who is the subject of the referral advising that practitioner that the matter has been so referred;
- (b) subject to sub-paragraph (4), send a statement of its case to the discipline committee and the practitioner within 28 working days of the date the matter is referred to the appropriate discipline committee.

(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 or she 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 Health Board intends shall give evidence at a hearing before the discipline committee and a copy of any statement made by any such witness.

(3) Where the appropriate Health Board requests an extension of the 28 day period mentioned in sub-paragraph (1)(b) before it expires, the chairperson 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 dentist concerns the conduct of a deputy whose name is not included in a dental list, or an assistant;
- (b) a pharmacist contractor concerns the conduct of a pharmacist employed by him or her,

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

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

- (a) invite the recipient of the notice to send to the appropriate Health Board, within 28 days of that notice being sent, if the recipient wishes to be treated as a party to the investigation notwithstanding that no action may be taken in relation to him or her under regulation 8—
  - (i) notification in writing of his or her wish;
  - (ii) his or her comments in writing 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 Health Board's statement of case; or
  - (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(3);

- (c) inform the recipient of the notice that copies of any comments or other documents he or she 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) gives notification to the appropriate Health Board as mentioned in sub-paragraph (2)(a)(i), and submits comments as mentioned in sub-paragraph (2)(a)(ii), that person shall be treated for the purposes of this Schedule as if he or she were a practitioner in relation to whom the allegation, the subject of the disciplinary matter, is made, although no action may be taken in relation to him or her under regulation 8, and the following paragraphs of this Schedule (except paragraph (3)(1)) shall apply to that person accordingly.

### **Response of practitioner**

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

(2) Where the practitioner requests an extension of the 28 day period mentioned in sub-paragraph (1) before it expires, the chairperson of the appropriate 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 Health Board which has appointed the discipline committee shall—

- (a) inform the parties in writing—
  - (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, a copy of any documentary evidence, and the names of any witnesses, which that party proposes to produce or call at the hearing.

(2) The Health Board which has appointed the discipline committee shall give to the parties and the Secretary of the relevant area professional committee of the appropriate Health Board 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 in response to the request under sub-paragraph (1)(c);
- (b) a request to that party to notify the discipline committee in writing whether or not he or she intends to attend the hearing.

(3) The chairperson of the discipline committee may, on the application of any party, postpone the hearing if 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 or she thinks fit, in which case the provisions of sub-paragraph (2) shall apply as respects the postponed hearing.

(4) The Health Board which has appointed the discipline committee shall, not less than 7 days before the date fixed for the hearing, supply to each member of the discipline committee and to the area professional committee of the appropriate Health Board copies of—

- (a) the appropriate Health Board's statement of case;
- (b) any response of the practitioner;
- (c) any further observations or correspondence between the parties;
- (d) any documentary evidence submitted under paragraph (1)(c); and
- (e) any comments made under paragraph 2(2)(a)(ii).

### **Attendance at hearing**

5.—(1) Subject to the provisions of regulation 16 (attendance by member of Council on Tribunals), the hearing before the discipline committee shall be in private, and no person shall be admitted to it unless he or she 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 Health Board and the practitioner;
- (b) any person permitted under sub-paragraph (3) to accompany a party;
- (c) subject to sub-paragraph (5), any person whose attendance is required for the purpose of giving evidence to the discipline committee;
- (d) not more than 2 officers of the Health Board which has appointed the discipline committee, who have been authorised by that Health Board to attend for the purpose of assisting the discipline committee in the discharge of its functions;
- (e) not more than one person who is a member or officer of the relevant area professional committee of the appropriate Health Board and who is authorised by that committee to attend the hearing on its behalf as an observer only;
- (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 in the presentation of his or her case.

(4) No officer or member of any Health Board or of any of its discipline 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)(c) for the purpose of giving evidence shall, unless the discipline committee otherwise directs, be excluded from the hearing except while giving evidence.

### **Procedure at the hearing**

6.—(1) At the hearing, any person mentioned in paragraph 5(2)(a) or (b) may—

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

(2) Without prejudice to sub-paragraph (3), if a party fails to appear at the hearing and the discipline committee is satisfied that his or her absence is due to illness or other reasonable cause, or 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.

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

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

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

(6) Subject to sub-paragraph (7), where the chairperson makes no direction under sub-paragraph (5)(a) the hearing shall be adjourned unless the practitioner and the chairperson agree that the hearing may proceed.

(7) Any issue to which sub-paragraph (5) applies which concerns an allegation of failure to comply with any of the terms of service other than the terms of service detailed in the appropriate Health 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)(e) of that paragraph.

(9) Any evidence relating to an alleged breach of the practitioner's terms of service which was not specified in the appropriate Health Board's statement of case in accordance with paragraph 1(2)(a) shall not be produced at the hearing.

(10) Subject to the other provisions of this Schedule, the procedure at the hearing shall be determined by the discipline committee.

### **Discipline committee's report**

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

- (a) details of the material evidence given to the discipline committee;
- (b) the discipline committee's finding on all relevant questions of fact;
- (c) the inferences which, in the discipline committee's view, may properly be drawn from such findings of fact as to whether or not the practitioner has failed to comply with his or her terms of service;
- (d) the discipline committee's reasons for drawing such inferences; and
- (e) the discipline committee's recommendations as to the action which should be taken by the appropriate Health Board.

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

(3) For the purposes of sub-paragraph (2) "any discipline committee" includes any discipline committee which investigated a complaint under the provisions of Part II of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 as they were in force before 1st July 2006

### **Provisions as to quorum, composition and voting**

8.—(1) All hearings of a discipline committee shall require all members of the committee to be present.

(2) At any hearing of a joint discipline committee, the quorum shall consist of the chairperson, 1 lay member and 2 other members who are relevant practitioners.

(3) The proceedings at any hearing of a discipline committee or joint discipline committee shall be suspended if, and for so long as the number of members present falls below the quorum specified in sub-paragraph (1) or (2).

(4) Where, after the commencement of a hearing before a discipline committee, the hearing is adjourned for the purposes of hearing further evidence or of preparing or considering the report, only members of the committee who were present at the earlier sitting of the hearing shall be present at the resumed hearing.

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

### **Interpretation**

**9. In this Schedule—**

- (a) “lay member” and “practitioner” have the meanings given to them in paragraph 8 of Schedule 1;
- (b) “relevant practitioner” means—
  - (i) a doctor, where the practitioner is a doctor;
  - (ii) a dentist, where the practitioner is a dentist;
  - (iii) an optician or ophthalmic medical practitioner, where the practitioner is an optician or an ophthalmic medical practitioner;
  - (iv) a pharmacist, where the practitioner is a pharmacist;
- (c) “party” means the practitioner, the appropriate Health Board, and any person who is to be treated as a party to the investigation pursuant to paragraph 2(3).

PROVISIONS AS TO APPEAL HEARINGS

1. Subject to the provisions of these Regulations the procedure at an appeal hearing shall be within the discretion of the persons hearing the appeal.

2. The chairperson may by notice require any person—

- (a) to attend at the time and place specified in the notice, to give evidence or to produce any books or documents in that person's custody or under that person's control which relate to any matter in question at the hearing; or
- (b) to provide within such reasonable period as is specified in the notice such information relating to any matter in question at the hearing as the chairperson who presides over the hearing may think fit, and as the person so required is able to provide; but—
  - (i) no person shall be required to attend at any place which is more than 10 miles from the place where that person resides unless the necessary expenses are paid or tendered to that person; and
  - (ii) nothing in this paragraph shall empower the chairperson to require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the hearing were a court of law.

3. The chairperson may administer oaths and examine witnesses on oath, and may accept in lieu of evidence on oath by a person, a statement in writing by that person.

4. Any person who refuses or wilfully neglects to attend a hearing in response to a notice under paragraph 2(a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding 3 months.

5. Subject to the provisions of these Regulations, the hearing may adjourn from time to time as the chairperson thinks fit and hold adjourned sittings at such time and place as may appear the chairperson to be suitable.

6. The Scottish Ministers may make orders as to the expenses incurred by the parties appearing at any such hearing and as to the parties by whom such expenses shall be paid.

7. Any order by the Scottish Ministers under paragraph 6 may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## ADVISORY COMMITTEES

## PART I

## SPECIFIED FAILURES TO COMPLY WITH TERMS OF SERVICE

1. A failure to exercise a reasonable standard of professional or clinical judgement, behaviour, skill, knowledge or care towards patients who receive primary medical services from the doctor, or in the prescribing or dispensing of any drugs, medicines or appliances to patients, is specified for the purposes of regulation 11(2) in relation to a doctor.
2. A failure to exercise a proper degree of skill and attention in the treatment of a patient is specified for the purposes of regulation 11(2) in relation to a dentist.

## PART II

## THE MEDICAL ADVISORY COMMITTEE

3. The committee (in these Regulations referred to as the Medical Advisory Committee) which is to advise the Scottish Ministers on questions referred to it under regulation 11(2) or (3) in relation to doctors shall be constituted in accordance with paragraph 4.
4. The Medical Advisory Committee shall consist of 2 medical practitioners of whom—
  - (a) one shall be in the service of the Scottish Ministers and who shall act as chairperson; and
  - (b) one shall be selected by the Scottish Ministers from a panel of doctors nominated by a body which is in their opinion representative of doctors.

## PART III

## THE DENTAL ADVISORY COMMITTEE

5. The committee (in these Regulations referred to as the Dental Advisory Committee) which is to advise the Scottish Ministers on questions referred to it under regulation 11(2) or (3) in relation to dentists shall be constituted in accordance with paragraph 6.
6. The Dental Advisory Committee shall consist of 2 dental practitioners of whom—
  - (a) one shall be in the service of the Scottish Ministers and who shall act as chairperson; and
  - (b) one shall be selected by the Scottish Ministers from a panel of dentists nominated by a body which is in their opinion representative of dentists.

## SCHEDULE 5

Regulation 18

### REVOCATIONS

<i>Column (1)</i> <i>Regulations revoked</i>	<i>Column (2)</i> <i>References</i>	<i>Column (3)</i> <i>Extent of revocation</i>
The National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992	S.I. 1992/434; partially revoked by S.S.I. 2004/38	Remaining provisions insofar as not already revoked
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1994	S.I. 1994/3038	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1996	S.I. 1996/938	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment (No. 2) Regulations 1998	S.I. 1998/1424	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1999	S.S.I. 1999/53	The whole Regulations
The Medical Act 1983 (Amendment) Order 2002	S.I. 2002/3135	Schedule 1, para 29
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2005	S.S.I. 2005/118	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment (No. 2) Regulations 2005	S.S.I. 2005/334	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2006	S.S.I. 2006/139	The whole Regulations

## **EXPLANATORY NOTE**

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

These Regulations consolidate, with amendments, those provisions of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (S.I. 1992/434) (“the 1992 Regulations”) relating to the NHS discipline committees.

They make provision for the investigation of matters relating to services provided by dentists, pharmacists, ophthalmic medical practitioners and opticians under arrangements with Health Boards in terms of sections 25, 26 and 27 of the National Health Service (Scotland) Act 1978 (c.29) (“the Act”), and by doctors on the Health Board Lists of performers of primary medical services maintained under section 17P of the Act.

Regulation 3 provides that each Health Board must have separate medical, dental, ophthalmic and pharmaceutical discipline committees. Provision is also made for a joint discipline committee. Schedule 1 contains the provisions regarding the constitution of discipline committees.

Regulations 4 and 5 provide for the action which a Health Board has to take if it receives information which it considers could amount to allegation that a practitioner has failed to comply with his or her terms of service. In terms of regulation 4(2)(a) one such course of action is to refer the matter to another Health Board for investigation.

Regulation 5 provides for the referral of such a matter to another Health Board for investigation by Health Board’s appropriate discipline committee.

Regulation 6 prescribes the time limits which apply to any such referral.

Regulation 7 and Schedule 2 prescribe the procedure for investigation by the discipline committee.

Regulation 8 prescribes the action which is to be taken by the referring Health Board once the discipline committee has presented its report.

Regulation 9 provides the circumstances in which a practitioner may appeal to the Scottish Ministers against a determination by Health Board in terms of regulation 8.

Regulation 10 and Schedule 3 prescribe the procedure applying to any such appeal.

Regulation 11 makes provision for the recovery of amounts from practitioners following such an appeal.

Regulation 12 provides that where a practitioner dies after a disciplinary matter has been referred under regulation 5(1) but before the appropriate Health Board has made a determination under regulation 8, no further action shall be taken under these regulations in relation to that practitioner.

Regulation 13 provides for the preparation by an ophthalmic officer of reports into alleged excessive undertaking of eye examinations, issuing of optical vouchers or prescribing of supplements by ophthalmic medical practitioners or ophthalmic opticians.

Regulation 14 contains provisions regarding the services of notices.

Regulation 15 provides that the Scottish Ministers may dispense with the requirements of the Regulations applicable to notices, applications, documents and otherwise in any case where it appears to them, just and proper to do so.

Regulation 16 makes provision for the attendance of a member of the Council of Tribunals or its Scottish Committee at proceedings under the Regulations.

Regulation 17(1) made transitional provisions to the effect that any matter which had been referred by a Health Board for investigation by another Health Board's Discipline Committee under regulation 4 of the 1992 Regulations shall, notwithstanding the provisions of regulation 18 (revocations) continue to be dealt with under the 1992 Regulations.

Regulation 17(2) contains transitional provisions regarding investigations by ophthalmic officers under regulation 20 of the 1992 Regulations.

Regulation 18 and Schedule 5 revoke the previous regulations.

The material amendments which are made by these regulations are as follows:–

In regulation 2(1) an additional sub-paragraph (e) is inserted into the definition of “terms of service” to include in the definition the terms on which additional pharmaceutical services are provided under arrangements made in accordance with directions under section 27A of the Act.

Regulation 4(5)(c) introduces an additional criterion for determining whether an allegation which is the subject of a complaint is being investigated.

Regulation 6(2), (3) and (4) contain new provisions regarding the time limits which apply where there are other investigations or proceedings relating to the disciplinary matter.

Regulation 6(7) contains new provisions regarding the time limits which apply where there are a series of events or matters which are the subject of the allegation against the practitioner.

Regulation 8(3)(a) makes a new provision allowing the Health Board to make a determination for recovery from the practitioner of the cost of any remedial treatment which is required, and that any sums so recovered are to be paid to the person who received the treatment.

Regulation 8(4) enables a discipline committee to take into consideration any other determination made in the six years prior to the referral under regulation 5(1) that the practitioner had failed to comply with terms of service.

Regulation 8(5) includes a new requirement that the Health Board must give written notice of its determination no later than 13 weeks after receipt of the discipline committee's report.

Regulation 11(3)(b) raises the figure above which the Scottish Ministers must consult the appropriate advisory committee before considering the question of recovery of any amount from the practitioner following an appeal from £500 to £1,000.

Regulation 13 replaces the provisions in the 1992 Regulations relating to investigation of excessive testing of sight and/or excessive issuing of vouchers, with provisions relating to the investigation of excessive undertaking of eye examinations, excessive issuing of optical vouchers or excessive prescribing of supplements under general ophthalmic services in accordance with the General Ophthalmic Services Regulations, after 1st April 2006.

Schedule 1, paragraphs 1 and 2, amends the provisions regarding the constitution of discipline committees. Paragraph 1 reduces the membership of a discipline committee, other than a joint discipline committee, to 3, namely the chairperson, one lay person and one practitioner. Paragraph 2 amends the constitution of a joint discipline committee to 6, namely the chairperson and 5 other members, one of whom shall be a lay person, one a doctor, one a dentist, one a pharmacist and one ophthalmic medical practitioner or optician.

In Schedule 2, paragraphs 1 and 6, the provisions in the 1992 Regulations which precluded the Health Board relying on evidence which was prepared for the purpose of the complaint (unless it concerned evidence brought into issue by the practitioner) have been removed.