

SCHEDULE 2

Regulation 7(2)

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 [^{F1}5] 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.

Textual Amendments

F1 Word in sch. 2 para. 1(1)(a) substituted (30.9.2009) by [The National Health Service \(Discipline Committees\) \(Scotland\) Amendment Regulations 2009 \(S.S.I. 2009/308\)](#), regs. 1, **2(b)** (with reg. 3)

Commencement Information

II Sch. 2 para. 1 in force at 1.7.2006, see [reg. 1\(1\)](#)

Disciplinary matters in relation to deputies

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

^{F2}(a)

(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 ^{F3}... 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;

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- (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.

Textual Amendments

- F2** Sch. 2 para. 2(1)(a) omitted (2.7.2010) by virtue of [The National Health Service \(Discipline Committees\) \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/226\)](#), regs. 1(1), **2(11)(a)**
- F3** Words in sch. 2 para. 2(1) omitted (2.7.2010) by virtue of [The National Health Service \(Discipline Committees\) \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/226\)](#), regs. 1(1), **2(11)(b)**

Commencement Information

- I2** Sch. 2 para. 2 in force at 1.7.2006, see [reg. 1\(1\)](#)

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.

Commencement Information

- I3** Sch. 2 para. 3 in force at 1.7.2006, see [reg. 1\(1\)](#)

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).

Commencement Information

I4 Sch. 2 para. 4 in force at 1.7.2006, see [reg. 1\(1\)](#)

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 [^{F4}or, where the practitioner is a dental body corporate, a person who exercises some control over that dental body corporate];
- (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;

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- (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.

[^{F5}(6) For the purposes of paragraph 5(2)(a) a person who exercises some control over a body corporate is, in the case of a—

- (a) company, a director,
- (b) limited liability partnership, a member,
- (c) partnership, a partner.]

Textual Amendments

- F4** Words in sch. 2 para. 5(2)(a) inserted (2.7.2010) by The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010 (S.S.I. 2010/226), regs. 1(1), **2(11)(c)(i)**
- F5** Sch. 2 para. 5(6) inserted (2.7.2010) by The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010 (S.S.I. 2010/226), regs. 1(1), **2(11)(c)(ii)**

Commencement Information

- I5** Sch. 2 para. 5 in force at 1.7.2006, see **reg. 1(1)**

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 [^{F6}consideration as part of the hearing];
- (b) is not pertinent to the disciplinary matter, the issue shall be excluded from [^{F6}consideration as part of the hearing].

(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.

Textual Amendments

- F6** Words in [sch. 2 para. 6\(5\)](#) substituted (1.4.2012) by [The Patient Rights \(Complaints Procedure and Consequential Provisions\) \(Scotland\) Regulations 2012 \(S.S.I. 2012/36\)](#), [reg. 1\(1\)](#), [sch. para. 4\(5\)](#)

Commencement Information

- I6** Sch. 2 para. 6 in force at 1.7.2006, see [reg. 1\(1\)](#)

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.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Discipline Committees) (Scotland) Regulations 2006, SCHEDULE 2. (See end of Document for details)

(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

Commencement Information

I7 Sch. 2 para. 7 in force at 1.7.2006, see [reg. 1\(1\)](#)

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.

Commencement Information

I8 Sch. 2 para. 8 in force at 1.7.2006, see [reg. 1\(1\)](#)

Interpretation

9. In this Schedule—

[^{F7}(a) “lay member” has the same meaning given to it 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 [^{F8}or a dental body corporate];

(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).

Textual Amendments

F7 Sch. 2 para. 9(a) substituted (2.7.2010) by The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010 (S.S.I. 2010/226), regs. 1(1), **2(11)(d)(i)**

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Discipline Committees) (Scotland) Regulations 2006, SCHEDULE 2. (See end of Document for details)

F8 Words in sch. 2 para. 9(b)(ii) inserted (2.7.2010) by The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010 (S.S.I. 2010/226), regs. 1(1), **2(11)(d)(ii)**

Commencement Information

I9 Sch. 2 para. 9 in force at 1.7.2006, see **reg. 1(1)**

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Discipline Committees) (Scotland) Regulations 2006, SCHEDULE 2.