

# HEALTH ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part I - the National Health Service

##### *Section 40: Disqualification etc. of Part II practitioners*

266. This section substitutes new sections 46, 46A, 46B, 46C and 47 in place of sections 46 and 47 of the 1977 Act as amended by the National Health Service (Amendment) Act 1995. It gives new powers to the NHS Tribunal to disqualify practitioners in the family health services who have caused or risked causing detriment to any health scheme by securing financial or other benefits which they knew they were not entitled to. (In addition to the NHS, a “health scheme” can include other publicly funded schemes such as the prison medical service and the defence medical service where these have been prescribed by virtue of the power in new section 46(9).)
267. The NHS Tribunal is an independent statutory body with strictly defined duties and powers. Schedule 9 to the 1977 Act sets out the constitution of the Tribunal. Detailed provisions concerning the procedure for Tribunal inquiries are set out in the [National Health Service \(Service Committees and Tribunal\) Regulations 1992 \(S.I. 1992/664\)](#) (as amended).
268. The Tribunal’s present purpose (described as “efficiency cases” in the new section 46(11)) is to protect NHS family health services by removing, where necessary, practitioners who prejudice their efficiency. The Tribunal receives representations, usually from Health Authorities, that independent practitioners providing general medical services, general dental services, general ophthalmic services, or pharmaceutical services should be removed from the appropriate Health Authority list. These independent practitioners have to be on a Health Authority list to provide such services in that area.
269. The Report of an Efficiency Scrutiny on Prescription Fraud, published in June 1997, recommended that Health Authorities should have discretion to refuse to enter into arrangements with practitioners found to be guilty of serious financial irregularity. This section enables Health Authorities to make representations about fraudulent practitioners to the NHS Tribunal and extends the Tribunal’s powers to deal with such cases.
270. *New section 46* gives the NHS Tribunal new powers to inquire into cases (described as “fraud cases” in the new section 46(11)) where it is alleged that a practitioner has acted in a way detrimental to any health scheme by securing, or attempting to secure, benefits which he knew he was not entitled to. This includes securing, or attempting to secure, benefits for another who the practitioner knows is not entitled to them. Detriment includes detriment not only to any patient, but also to another person working in that scheme.
271. In fraud cases, representations may be made to the Tribunal in respect of a practitioner who is seeking to be added to a Health Authority’s list, as well as a practitioner already on such a list (new section 46(2)(b)).

272. *New section 46A* allows the Tribunal to disqualify bodies corporate from providing general ophthalmic or pharmaceutical services where any director or, in the case of a pharmacy business, any person controlling the body corporate has acted fraudulently (as defined by new section 46) whether or not he was a director or person controlling the company at the time. It also provides for practitioners to be disqualified where they have failed to take reasonable steps to prevent fraud by an employee or deputy.
273. *New section 46B* sets out for both efficiency and fraud cases the sanctions the Tribunal currently has in efficiency cases:
- to disqualify him/her from the list or lists in respect of which the representations have been made;
  - to disqualify him/her from the corresponding lists of other Health Authorities in England and Wales;
  - to make a declaration that the disqualified practitioner should not be engaged in any capacity connected with the provision of general medical services, general dental services, general ophthalmic services or pharmaceutical services.
274. *New section 46C* contains a new power enabling the Tribunal to make a conditional disqualification in efficiency cases or fraud cases. It can make an order for disqualification which does not come into effect unless the practitioner breaches conditions which are also specified by the Tribunal. Where necessary the Tribunal may vary the terms of service of the practitioner and confer functions on the Health Authority to give effect to the conditions.
275. *New section 47* provides that the Tribunal may review where it considers appropriate any declaration or disqualification, including the conditions attached to a conditional disqualification. It may also review them at the request of the disqualified practitioner or review conditions attached to a conditional disqualification at the request of a Health Authority. It can then remove a disqualification, make it conditional, or in the case of a conditional disqualification, vary the conditions (e.g., where circumstances have changed) or make it unconditional (e.g., where the conditions have been breached). In fraud cases only, the Tribunal may also impose for the first time on review a disqualification from the list of other Health Authorities, or a declaration of unfitness.
276. [Section 40](#) relates to the NHS Tribunal in England and Wales. Determinations by the NHS Tribunal in Scotland or Northern Ireland for national disqualification already apply in England and Wales under section 48 of the 1977 Act. Paragraph 18 of Schedule 4 to the Act provides for a decision for total disqualification (a declaration of unfitness to practice) by the Tribunals for Scotland and Northern Ireland to be recognised similarly. It also provides for the conditions specified in a conditional disqualification made by the Tribunal in Scotland or Northern Ireland to be translated for equivalent effect in England and Wales. Paragraph 19 of Schedule 4 contains provisions for dealing with overlapping cases and paragraph 20 extends the Tribunal's interim suspension powers to fraud cases.