STATUTORY RULES OF NORTHERN IRELAND

2016 No. 104

HEALTH AND SOCIAL CARE

The Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2016

Made - - - -	*3rd March 2016*
Coming into operation	*1st April 2016*

The Department of Health, Social Services and Public Safety(**1**), makes the following Regulations in exercise of the powers conferred on it by Articles 61, 62, 63 and 106 of the Health and Personal Social Services (Northern Ireland) Order 1972(**2**)and Article 10 of the Health and Medicines (Northern Ireland) Order 1988(**3**).

In accordance with Articles 61(4), 62(3) and 63(3) of the 1972 Order, the Department has consulted with such organisations as appear to it to be representative of the dental, ophthalmic and pharmaceutical professions.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2016 and shall come into operation on 1st April 2016.

(2) In these Regulations—

"chemist" has the same meaning as in the Pharmaceutical Services Regulations;

"complaint" means a complaint made in accordance with directions, concerning the establishment and operation of procedures for dealing with complaints against practitioners, given under section 8(1)(b) of the 2009 Act or in accordance with the provisions of the regulations specified in paragraph (3);

"Dental Committee" means the Dental Committee constituted by the RBSO under regulation 30 of the Dental Services Regulations;

"dental list" means the list prepared by the RBSO under regulation 4 of the Dental Services Regulations;

"Dental Services Regulations" means the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993(**4**);

(**1**) S.I. 1999/283 (N.I. 1), Article 3(6)
(**2**) S.I 1972/1265 (N.I. 14)
(**3**) S.I. 1988/2249 (N.I. 24)
(**4**) S.R. 1993 No. 326 relevant amending instrument is S.R. 1996 No. 114

"dentist" means a dental practitioner;

"drug" includes medicine; Services

"estimate" has the same meaning as in the Dental Services Regulations;

"ophthalmic list" has the same meaning as in regulation 8 of the Ophthalmic Services Regulations;

"ophthalmic medical practitioner" has the same meaning as in the Ophthalmic Services Regulations;

"Ophthalmic Services Regulations" means the General Ophthalmic Services Regulations (Northern Ireland) 2007(**5**);

"optician" means ophthalmic optician;

"Pharmaceutical Services Regulations" means the Pharmaceutical Services Regulations (Northern Ireland) 1997(**6**);

"practitioner" means a dentist, ophthalmic medical practitioner, optician or chemist against whom a complaint has been made;

"prior approval requirement" has the meaning given to it in regulation 8;

"RBSO" means the Regional Business Services Organisation established under section 14 of the 2009 Act;

"the Regional Board" means the Regional Health and Social Care Board established under section 7 of the 2009 Act;

"relevant professional body" has the meaning it bears in regulation 13(3);

"Statement of Dental Remuneration" has the same meaning as in the Dental Services Regulations;

"the 1972 Order" means the Health and Personal Social Services (Northern Ireland) Order 1972;

"the 2009 Act" means the Health and Social Care (Reform) Act (Northern Ireland) 2009(**7**);

"terms of service" means the terms of service for chemists contained in Schedule 2 to the Pharmaceutical Services Regulations, the terms of service for dental practitioners contained in Schedule 2 to the Dental Services Regulations or the terms of service for ophthalmic medical practitioners and ophthalmic opticians contained in Schedule 1 to the Ophthalmic Services Regulations, as the case may be;

"treatment" in relation to general dental services, means—

(a) except in the context mentioned in sub-paragraph (b) of this definition—

  (i) where at the material time the dentist is providing occasional treatment under the Dental Services Regulations, treatment within the meaning of those Regulations,

  (ii) in any other case, care and treatment within the meaning of those Regulations;

(b) in the context of the description of treatment to be specified under regulation 4(2)(b) or 8(2)(a), treatment within the meaning of the Dental Services Regulations other than—

  (i) one examination in the course of any single consultation,

  (ii) treatment in an emergency within the meaning of those Regulations,

  (iii) two radiographs, each of a size not exceeding 16 square centimetres, in the course of any single consultation, and

(**5**) S.R. 2007 No. 436
(**6**) S.R. 1997 No. 381
(**7**) 2009 c.1 (N.I.)

(iv) treatment for which a dentist is remunerated in accordance with Section X (treatment under capitation) of Determination I of the Statement of Dental Remuneration and for which the dentist receives no remuneration other than a capitation payment;

"the Tribunal" mean the Tribunal mentioned in Schedule 11to the 1972 Order;

(3) The provisions referred to in the definition of "complaint" in paragraph (2) are—

(a) paragraphs 31A and 31B of Schedule 2 to the Dental Services Regulations;(**8**)

(b) paragraph 11 of Schedule 2 to the Pharmaceutical Services Regulations;

(c) paragraphs 10 and 11 of Schedule 1 to the Ophthalmic Services Regulations.

Provisions relating to the start of disciplinary proceedings

2.—(1) Where the Regional Board receives information which it considers could amount to an allegation that a practitioner has failed to comply with their terms of service, hereinafter referred to as the "disciplinary matter", it shall decide either to take no action or 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 investigate the disciplinary matter;

(b) to refer the information to, as it considers appropriate, the Tribunal, the relevant professional body or the police.

(3) The Regional 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.

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

(a) the procedure for investigating the complaint is completed; or

(b) the complaint is withdrawn or abandoned by the person bringing it.

(5) Where the Regional Board considers that a payment has been made to a practitioner which was not due and the practitioner does not admit the overpayment, the Regional Board may investigate the matter at any time.

Time limits

3.—(1) Where the disciplinary matter concerns an allegation which has been the subject of a complaint the Regional Board shall decide whether to act under regulation 2(2)(a) or (b) within 28 days of the allegation having ceased to be the subject of a complaint which is being investigated.

(2) Where the disciplinary matter does not concern an allegation which has been the subject of a complaint the Regional Board shall decide whether to act under regulation 2(2)(a) or (b) within the time limits specified in paragraph (3).

(3) The time limits referred to in paragraph (2) are—

(a) in the case of an ophthalmic medical practitioner, optician or chemist, 26 weeks after the event or matter which is the subject of the allegation;

(b) in the case of a dentist—

(i) where the matter concerns the treatment of a patient, 26 weeks after the date on which the matter came to the notice of the Regional Board;

(**8**) Paragraphs 31A and 31B are inserted by regulation 2 of S.R. 1996 No. 114

(ii) subject to paragraph (4), where the matter does not concern the treatment of a patient and is reported to the Regional Board by the RBSO, 26 weeks after the date on which the matter came to the notice of the RBSO;

(iii) where the matter does not concern the treatment of a patient and comes to the notice of the Regional Board other than by a report from the RBSO, 26 weeks after the date on which the matter came to the notice of the Regional Board.

(4) Where the RBSO reports a matter to the Regional Board in circumstances in which the time limits mentioned in paragraph (3)(b)(ii) would otherwise expire within 28 days of the date on which the Regional 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 Regional Board received the report.

(5) For the purposes of paragraph (3) "treatment" has the same meaning as in regulation 2 of the Dental Services Regulations.

Determination of the Regional Board

4.—(1) The Regional Board, after investigating the disciplinary matter and considering the evidence available to it shall—

(a) make such findings of fact as it sees fit;

(b) draw such inferences from those findings as it sees fit as to whether the practitioner has failed to comply with any one or more of their terms of service;

(c) determine either—

(i) no further action should be taken in relation to the matter; or

(ii) that action should be taken in relation to the practitioner, in accordance with any one or more of the following provisions.

(2) Where the Regional Board determines that a practitioner whom it has investigated has failed to comply with any of their terms of service it may—

(a) determine that an amount shall be recovered from the practitioner, whether by way of deduction from their remuneration or otherwise;

(b) where the practitioner is a dentist, determine that the dentist should be required to submit estimates for the prior approval of the Dental Committee—

(i) in respect of any treatment of such description; and

(ii) during such a period,

as shall be specified in the determination;

(c) determine that the practitioner should be warned to comply more closely with their terms of service in future.

(3) In acting under sub-paragraphs (a) to (c) of paragraph (2) the Regional Board may take into consideration any previous determination made by the Regional Board, so long as such a determination has not been overturned on appeal and was not made more than 6 years prior to the date of investigation under regulation 2(2), that the practitioner had, on some other occasion, failed to comply with their terms of service.

(4) The Regional Board shall give notice in writing of its determination under paragraph (1) and any determination under paragraph (2) to the practitioner and the Department and shall include with the notice—

(a) a statement of its findings of fact and the inferences drawn from those findings; and

(b) a statement as to the rights of appeal to the Department under regulation 5.

(5) Where, in the case of a dentist, the Regional Board has determined that action should be taken in accordance with paragraph (2)(a), by recovery of an amount from the dentist and is of the opinion that such recovery should be effected by deduction of the amount from the dentist's remuneration, the Regional Board shall notify the RBSO, and the RBSO shall effect the recovery.

(6) Any amount determined under paragraph (2)(a) 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 Regional Board.

(7) A determination made by the Regional Board under the provisions of paragraph (2)(a), (b) or (c) shall not take effect until the expiration of 45 days from and including the date on which notice thereof is served on the practitioner, or, in a case where an appeal has been brought under regulation 5, until the appeal is determined or withdrawn.

Appeal to the Department

5.—(1) An appeal may be made to the Department by a practitioner—

(a) against a finding of fact, or an inference drawn from a finding of fact which, in either case, is adverse to the practitioner pursuant to regulation 4 (1)(a) or (b);

(b) against any determination by the Regional Board under regulation 4(1)(c)(ii) to take action in accordance with regulation 4(2)(a), (b) or (c);

(c) in respect of a determination by the Regional Board that an overpayment has or has not been made in respect of the practitioner's remuneration;

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

(2) A notice of an appeal shall be in writing and sent to the Department within 45 days beginning on and including the date on which notice of the Regional Board's decision was given to the practitioner under regulation 4(4), and shall contain a concise statement of the grounds of appeal upon which the practitioner intends to rely.

(3) On an appeal to which paragraph (1)(a) or (c) applies, the Department shall consider the appeal on the basis of such evidence as was available to the Regional Board and of such further evidence as shall have been adduced on the appeal, and shall—

(a) make such findings of fact as it sees fit;

(b) draw such inferences from those findings as it sees 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 their terms of service; and

(ii) determine in accordance with any one or more of the following provisions, that is regulation 4(2)(a), (b) and (c) (as modified in accordance with paragraph (4)) or regulations 7 and 8 whether any, and if so what, action should be taken in relation to that practitioner;

(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;

(e) in the case of an appeal to which paragraph (1)(b) applies—

(i) accept as conclusive—

(aa) those findings of fact made by the Regional Board; and

(bb) the inferences drawn from those findings;

(ii) determine in accordance with any one or more of the following provisions, that is, regulation 4(2)(a), (b) and (c) (as modified in accordance with paragraph (4)) or