



# Medical (Professional Performance) Act 1995

## 1995 CHAPTER 51

An Act to amend the Medical Act 1983 to make provision relating to the professional performance of registered medical practitioners and the voluntary removal of names from the register of medical practitioners; to amend section 42 of that Act; and for connected purposes. [8th November 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1 Professional performance

After section 36 of the Medical Act 1983 (professional misconduct and criminal offences) there shall be inserted—

#### “36A Professional performance

- (1) Where the standard of professional performance of a fully registered person is found by the Committee on Professional Performance to have been seriously deficient, the Committee shall direct—
  - (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or
  - (b) that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with the requirements so specified.
- (2) Where a fully registered person, whose registration is subject to conditions imposed under any provision of this section by the Committee on Professional Performance, is judged by the Committee to have failed to comply with any

of the requirements imposed on him as conditions of his registration the Committee may, if they think fit, direct that his registration in the register shall be suspended during such period not exceeding twelve months as may be specified in the direction.

- (3) Where the Committee on Professional Performance have given a direction for suspension under any provision of this section the Committee may direct—
- (a) that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction; or
  - (b) that the registration of the person whose registration is suspended shall, as from the expiry (or termination under subsection (5)(b) below) of the current period of suspension, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests;

but, subject to subsection (4) below, the Committee shall not extend any period of suspension under this section for more than twelve months at a time.

- (4) The Committee on Professional Performance may make a direction extending a period of suspension indefinitely where—
- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (b) the direction is made not more than two months before the date on which the period of suspension would otherwise expire.
- (5) Where the Committee on Professional Performance have made a direction for indefinite suspension, they—
- (a) shall review the suspension when requested to do so by the person whose registration is suspended (but not until two years after the date on which the direction takes effect and not more than once in any period of two years), and
  - (b) having carried out such a review, may direct that the suspension be terminated.
- (6) Where the Committee on Professional Performance have given a direction for conditional registration, the Committee may—
- (a) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction;
  - (b) revoke the direction or revoke or vary any of the conditions imposed by the direction; or
  - (c) direct that the registration shall be suspended during such period not exceeding twelve months as may be specified in the direction;
- but the Committee shall not extend any period of conditional registration under this section for more than three years at a time.

- (7) Where the Committee on Professional Performance give a direction under this section for suspension or for conditional registration, or vary the conditions imposed by a direction for conditional registration, the Registrar shall forthwith serve on the person to whom the direction applies a notification of the direction

or of the variation and of his right to appeal against the decision in accordance with section 40 below.

- (8) In subsection (7) above the references to a direction for suspension and a direction for conditional registration include references to a direction extending a period of suspension or a period of conditional registration.
- (9) While a person's registration in the register is suspended by virtue of this section he shall be treated as not being registered in the register notwithstanding that his name still appears in it.
- (10) This section applies to a provisionally registered person and to a person registered with limited registration whether or not the circumstances are such that he falls within the meaning in this Act of the expression "fully registered person".

## **2 Voluntary removal from the register**

After section 31 of the Medical Act 1983 (power to make regulations with respect to the registers) there shall be inserted—

### **"31A Voluntary removal from the register**

- (1) The General Council may make regulations—
  - (a) providing for the erasure by the Registrar from the register of medical practitioners of the name of any person who applies, in the manner prescribed by the regulations, for his name to be erased from the register;
  - (b) providing for the refusal by the Registrar of applications under paragraph (a) above in such cases and circumstances as may be prescribed by the regulations;
  - (c) making provision (including provision requiring the approval of the General Council or of one of the statutory committees) for the restoration to the register of the name of any person whose name has been erased in accordance with regulations made in pursuance of paragraph (a) above.
- (2) Regulations under this section shall not have effect until approved by order of the Privy Council."

## **3 Preliminary proceedings: interim orders**

- (1) Section 42 of the Medical Act 1983 (preliminary proceedings as to professional misconduct and unfitness to practise) shall be amended as follows.
- (2) In subsection (3), in paragraph (c) for the word "two" there shall be substituted the word "six".
- (3) In subsection (4), for the words "No order for interim suspension or for interim conditional registration shall be made by the Preliminary Proceedings Committee" there shall be substituted the words "No order under subsection (3)(b) or (c) above or (6A)(b) to (d) below shall be made by any Committee".

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(4) In subsection (5), for the words “If the Committee decide” there shall be substituted the words “If the Preliminary Proceedings Committee decide”.

(5) In subsection (6), for the word “two” there shall be substituted the word “six”.

(6) After subsection (6) there shall be inserted—

“(6A) Where an order for interim suspension or for interim conditional registration has been made in relation to any person under any provision of this section (including this subsection) the Preliminary Proceedings Committee, the Professional Conduct Committee or the Health Committee may, subject to subsection (4) above—

- (a) revoke the order or revoke any condition imposed by the order;
- (b) vary any condition imposed by the order;
- (c) if satisfied that to do so is necessary for the protection of members of the public, make an order for interim suspension; or
- (d) if satisfied that to do so is necessary for the protection of members of the public or is in the interests of the person concerned, make an order that his registration shall be conditional on his compliance, during such period as is specified in the order, with such requirements so specified as the Committee think fit to impose for the protection of members of the public or in his interests.

(6B) An order under subsection (6A)(c) or (d) above—

- (a) shall take effect as from a date not later than the date on which the interim suspension or interim conditional registration would otherwise come to an end; and
- (b) shall specify a period not exceeding three months.

(6C) If an order is made under subsection (6A)(a) to (d) above the Registrar shall forthwith serve a notification of the order on the person to whose registration it relates.

(6D) Where an order has been made under any provision of this section, the court (within the meaning of section 38 above) may—

- (a) in the case of an order for interim suspension, terminate the suspension,
- (b) in the case of an order for conditional registration, revoke or vary any condition imposed by the order,
- (c) in either case, substitute for the period specified in the order some other period which could have been specified in the order when it was made;

and the decision of the court on any application under this subsection shall be final.”.

(7) Subsection (7) shall cease to have effect.

#### **4 Supplementary and consequential amendments**

The Schedule to this Act (which makes amendments supplementary to and consequential on sections 1 to 3) shall have effect.

## **5 Expenses**

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided by virtue of any other enactment.

## **6 Commencement**

This Act shall come into force on such day as Her Majesty may appoint by Order in Council; and different days may be appointed for different purposes.

## **7 Short title and extent**

- (1) This Act may be cited as the Medical (Professional Performance) Act 1995.
- (2) This Act extends to Northern Ireland.

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SCHEDULE

Section 4.

SUPPLEMENTARY AND CONSEQUENTIAL AMENDMENTS

*Medical Act 1983*

- 1 The Medical Act 1983 shall be amended as follows.
- 2 In section 1(3) (committees of the General Medical Council)—
- (a) for the words “shall continue to be four” there shall be substituted the words “shall be six”;
  - (b) after the words “the Professional Conduct Committee” there shall be inserted the words “, the Assessment Referral Committee, the Committee on Professional Performance”;
  - (c) after the words “assigned to them by” there shall be inserted the words “or under”.
- 3 In section 32 (registration fees), subsection (2)(b) and the word “or” immediately before it shall cease to have effect.
- 4 In section 35 (General Medical Council’s power to advise on conduct or ethics), after the word “conduct” there shall be inserted the words “or performance”.
- 5 In section 36(2) (professional misconduct and criminal offences)—
- (a) for the word “42(3)(c)” there shall be substituted the word “42”; and
  - (b) after the words “the Preliminary Proceedings Committee” there shall be inserted the words “or the Professional Conduct Committee”.
- 6 (1) Section 37 (unfitness to practise through illness, etc.) shall be amended as follows.
- (2) In subsection (2)—
- (a) for the word “42(3)(c)” there shall be substituted the word “42”; and
  - (b) after the words “the Preliminary Proceedings Committee” there shall be inserted the words “or the Health Committee”.
- (3) In subsection (3)—
- (a) in paragraph (b), after the word “expiry” there shall be inserted the words “(or termination under subsection (3B)(b) below)”;
  - (b) for the words “; but the Committee shall not” there shall be substituted the words “; but, subject to subsection (3A) below, the Committee shall not”.
- (4) After subsection (3) there shall be inserted—
- “(3A) The Health Committee may give a direction extending a period of suspension indefinitely where—
- (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years, and
  - (b) the direction is given not more than two months before the date on which the period of suspension would otherwise expire.
- (3B) Where the Health Committee have given a direction for indefinite suspension, they—
- (a) shall review the suspension when requested to do so by the person whose registration is suspended (but not until two years after the

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- date on which the direction takes effect and not more than once in any period of two years), and
- (b) having carried out such a review, may direct that the suspension be terminated.”.
- 7 (1) Section 38 (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) shall be amended as follows.
- (2) In subsection (1)—
- (a) after the words “36(1) or (2)” there shall be inserted the word “, 36A”;
- (b) after the words “37(1) or (2) above” there shall be inserted the words “, or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act,”; and
- (c) after the words “the Professional Conduct Committee” there shall be inserted the words “, the Committee on Professional Performance”.
- (3) In subsection (2)—
- (a) after the words “Schedule 4 to this Act” there shall be inserted the words “or in accordance with rules made by virtue of paragraph 5A(3) of that Schedule”; and
- (b) after the words “section 40 below” there shall be inserted the words “or paragraph 5A(4) of that Schedule”.
- (4) In subsection (3), after the words “the Professional Conduct Committee” there shall be inserted the words “, the Committee on Professional Performance”.
- 8 (1) Section 40 (appeals) shall be amended as follows.
- (2) In subsection (1), after paragraph (a) there shall be inserted—
- “(aa) a decision of the Committee on Professional Performance under section 36A above giving a direction for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration; or”.
- (3) In subsection (3), after the word “36(6)” there shall be inserted the word “, 36A(7)”.
- (4) In subsection (4), after paragraph (a) there shall be inserted—
- “(aa) of the Committee on Professional Performance under section 36A above;”.
- (5) In subsection (5), after the words “decision of the” there shall be inserted the words “Committee on Professional Performance or the”.
- (6) In subsection (6), after the words “the Professional Conduct Committee,” there shall be inserted the words “the Committee on Professional Performance,”.
- (7) In subsection (7)—
- (a) after the words “the Professional Conduct Committee”, in each place, there shall be inserted the words “, the Committee on Professional Performance”; and
- (b) in paragraph (d), after the word “36” there shall be inserted the word “, 36A”.
- (8) In subsection (11), after the words “the Professional Conduct Committee” there shall be inserted the words “, the Committee on Professional Performance”.

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- 9 In section 43 (proceedings before committees), after the words “the Professional Conduct Committee,” there shall be inserted the words “the Assessment Referral Committee, the Committee on Professional Performance,”.
- 10 In section 47(3) (appointments not to be held except by fully registered practitioners: effect of suspension)—
- (a) after the words “registered person by” there shall be inserted the words “a direction of the Committee on Professional Performance under section 36A above or under rules made by virtue of paragraph 5A(3) of Schedule 4 to this Act,”;
  - (b) for the words “that Committee” there shall be substituted the words “either of those Committees”; and
  - (c) for the words “of the Preliminary Proceedings Committee under section 42(3)(b)” there shall be substituted the words “under section 42”.
- 11 In section 53(2) (proof of certain instruments), after the words “the Professional Conduct Committee” there shall be inserted the words “, the Committee on Professional Performance”.
- 12 In Part III of Schedule 1 (Committees of the General Medical Council), after paragraph 21 there shall be inserted the following paragraphs—
- “The Assessment Referral Committee*
- 21A The Assessment Referral Committee shall be constituted as provided by the General Council by rules under this paragraph.
- The Committee on Professional Performance*
- 21B The Committee on Professional Performance shall be constituted as provided by the General Council by rules under this paragraph.”
- 13 In that Part of that Schedule, for paragraph 23 there shall be substituted the following paragraph—
- “Supplementary*
- 23 Rules under paragraphs 21, 21B, and 22 above shall secure that a person who sits as a member of the Preliminary Proceedings Committee or the Assessment Referral Committee in proceedings on any case shall not sit as a member of the Professional Conduct Committee, the Committee on Professional Performance or the Health Committee in any subsequent proceedings on that case.”.
- 14 In that Part of that Schedule, in paragraph 24, after the word “21” there shall be inserted the words “, 21A, 21B”.
- 15 In paragraph 1(1) of Schedule 4 (procedure of committees) after the words “the Professional Conduct Committee” there shall be inserted the words “, for the Assessment Referral Committee, for the Committee on Professional Performance”.
- 16 After paragraph 1(2) of that Schedule there shall be inserted—
- “(2A) Rules made under this paragraph for the Assessment Referral Committee shall include provision—



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- (a) conferring on the Committee such functions as may be specified in the rules in relation to the handling of complaints about standards of professional performance;
- (b) securing that before any case is considered by the Committee it shall have been considered by a member of the General Council appointed for the purpose by the Council and referred by that person to the Committee;
- (c) securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate;
- (d) securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
- (e) enabling any party to the proceedings to be represented by counsel or a solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
- (f) requiring proceedings before the Committee to be held in private;
- (g) for service on the person concerned of notice of any decision taken in relation to him by the Committee.

(2B) Rules made under this paragraph for the Committee on Professional Performance shall include provision—

- (a) securing that where—
  - (i) proceedings relating to a person’s registration have been held before the Assessment Referral Committee, and
  - (ii) an assessment has been carried out in accordance with a direction of that Committee,the standard of that person’s professional performance shall, if he so requests, be considered by the Committee on Professional Performance;
- (b) securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the person to whose registration the proceedings relate;
- (c) securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
- (d) enabling any party to the proceedings to be represented by counsel or a solicitor, or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
- (e) determining when proceedings before the Committee are to be held in public and when in private (including provision securing that proceedings are held in public if the person to whose registration they relate so requests).”

17 In paragraph 2 of that Schedule (administration of oaths), after the words “the Professional Conduct Committee”, in each place, there shall be inserted the words “, the Assessment Referral Committee, the Committee on Professional Performance”.

18 In paragraph 3 of that Schedule (validity of proceedings)—

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- (a) after the words “of the Professional Conduct Committee,” there shall be inserted the words “of the Assessment Referral Committee, of the Committee on Professional Performance,”; and
  - (b) after the words “before the Professional Conduct Committee,” there shall be inserted the words “the Assessment Referral Committee, the Committee on Professional Performance,”.
- 19 In paragraph 4 of that Schedule (transfer of cases to Health Committee)—
- (a) in sub-paragraph (1), after the words “the Professional Conduct Committee” there shall be inserted the words “, the Assessment Referral Committee or the Committee on Professional Performance”;
  - (b) in paragraphs (2) and (3), in each place, after the words “the Professional Conduct Committee” there shall be inserted the words “, the Assessment Referral Committee or, as the case may be, the Committee on Professional Performance”.
- 20 After paragraph 5 of that Schedule there shall be inserted—

*“Professional performance: assessments*

- 5A (1) The General Council may make rules—
- (a) authorising the giving of directions by any of—
    - (i) the Assessment Referral Committee,
    - (ii) the Committee on Professional Performance,
    - (iii) such other persons as may be specified in the rules,
 requiring an assessment of the standard of a registered person’s professional performance to be carried out;
  - (b) specifying circumstances in which such an assessment may be carried out otherwise than in accordance with a direction.
- (2) An assessment carried out by virtue of this paragraph shall be carried out by an Assessment Panel in accordance with rules under this paragraph; and the rules shall, in particular, provide—
- (a) for the constitution and proceedings of Assessment Panels;
  - (b) for the procedures to be followed by such panels in carrying out assessments;
  - (c) for the procedures to be followed following the making of a report by an Assessment Panel.
- (3) Rules under this paragraph may authorise the Committee on Professional Performance to make directions of a kind which may be made under section 36A of this Act, for the suspension of or the attachment of conditions to a person’s registration, where the person fails to comply with reasonable requirements imposed by an Assessment Panel for the purposes of carrying out an assessment of the standard of his professional performance in accordance with a direction of the Committee.
- (4) An appeal shall lie to the court (within the meaning of section 38 of this Act) from any direction of the Committee on Professional Performance given by virtue of sub-paragraph (3) above, and on an appeal under this sub-paragraph the court may—

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- (a) quash the direction,
    - (b) substitute for the direction any other direction which the Committee could have made, or
    - (c) remit a case to the Committee to be disposed of in accordance with the court's directions;and the decision of the court on any appeal under this sub-paragraph shall be final.
  - (5) An Assessment Panel, for the purposes of carrying out an assessment of the standard of a person's professional performance—
    - (a) may require the production of, inspect and take copies of any records (in whatever form they are held) arising out of or relating to the person's professional practice;
    - (b) where such records are kept otherwise than in legible form, may require a copy of them to be given to the panel in legible form.
  - (6) A person who, without reasonable excuse, obstructs an Assessment Panel in the execution of their powers under sub-paragraph (5) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (7) Nothing in this paragraph shall require or permit any disclosure of information which is prohibited by or under any other enactment; but where information is held in a form in which the prohibition operates by reason of the fact that the information is capable of identifying an individual, an Assessment Panel may, in exercising their powers under sub-paragraph (5) above, require that the information be put into a form in which it is not capable of identifying an individual.
  - (8) Sub-paragraphs (4) and (5) of paragraph 1 above shall apply in relation to rules made under this paragraph as they apply in relation to rules under that paragraph.
- 5B
- (1) A justice of the peace (including, in Scotland, a sheriff) may issue a warrant under this paragraph if satisfied by the evidence on oath of at least two members of an Assessment Panel that there are reasonable grounds for suspecting that the panel will require a warrant for the purposes of carrying out an assessment required by virtue of rules made under paragraph 5A above.
  - (2) A warrant under this paragraph shall authorise one or more members of the Assessment Panel (who must, if so required, produce documents identifying themselves) together with any constables—
    - (a) to enter any building specified in the warrant, but not a dwelling-house, using such force as is reasonably necessary for the purpose, and
    - (b) to search the premises for the purposes of the exercise of the powers under paragraph 5A(5) above.
  - (3) A warrant under this paragraph shall continue in force until the end of the period of 21 days beginning with the day on which it is issued.
  - (4) A person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this paragraph shall be guilty of an offence

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- and liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.
- 21 In paragraph 7 of that Schedule (legal assessors)—
- (a) in sub-paragraph (1), after the words “the Professional Conduct Committee,” there shall be inserted the words “the Assessment Referral Committee, the Committee on Professional Performance,”; and
  - (b) in sub-paragraph (4), after the words “the Professional Conduct Committee” there shall be inserted the words “, the Assessment Referral Committee, the Committee on Professional Performance”.
- 22 In paragraph 8(1) of that Schedule (service of notifications of decisions)—
- (a) after the word “36(6),” there shall be inserted the word “36A(7),”;
  - (b) after the word “42(5)” there shall be inserted the words “or (6C)”.
- 23 In paragraph 9 of that Schedule (extension of time for appealing), after the word “36(6),” there shall be inserted the word “36A(7),”.
- 24 In paragraph 10(1) of that Schedule (taking effect of directions for erasure, suspension or conditional registration and of variations of conditions of registration)—
- (a) after the words “section 36 of this Act,” there shall be inserted the words “a direction for suspension or for conditional registration given by the Committee on Professional Performance under section 36A of this Act,”;
  - (b) for the words “either Committee” there shall be substituted the words “any of those Committees”; and
  - (c) for the words “or 37” there shall be substituted the words “, 36A or 37”.
- 25 In paragraph 11 of that Schedule (continuation of suspensions and conditions where supplementary direction given)—
- (a) in sub-paragraph (1), after the word “36” there shall be inserted the word “, 36A”; and
  - (b) in sub-paragraph (3)—
    - (i) after the word “36” there shall be inserted the word “, 36A”; and
    - (ii) for the words “that section,” there shall be substituted the words “section 36 or 37 or subsection (2) or (6) of section 36A,”.
- 26 In paragraph 12 of that Schedule (recording of directions for suspension or conditional registration), after the word “36” there shall be inserted the word “, 36A”.
- 27 In paragraph 13 of that Schedule (meaning of “party”), after the words “the Professional Conduct Committee” there shall be inserted the words “, the Assessment Referral Committee, the Committee on Professional Performance”.

*National Health Service Act 1977*

- 28 In section 29 of the National Health Service Act 1977 (arrangements and regulations for general medical services)—
- (a) in subsection (8)(c), for the words “of the Preliminary Proceedings Committee of the Council under section 42(3)(b)” there shall be substituted the words “under section 42”; and
  - (b) after subsection (8) there shall be added—

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“(9) Where the registration of a medical practitioner in the register of medical practitioners is suspended by a direction of the Committee on Professional Performance of the General Medical Council—

- (a) under section 36A of the Medical Act 1983 (professional performance),
- (b) under section 38(1) of that Act (order for immediate suspension), or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to that Act (procedure of committees),

the suspension shall not, except in so far as is provided by or determined in accordance with regulations under subsection (2) above, terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during the suspension.”.

*National Health Service (Scotland) Act 1978*

29 In section 19 of the National Health Service (Scotland) Act 1978 (arrangements and regulations for general medical services)—

- (a) in subsection (7)(c), for the words “of the Preliminary Proceedings Committee of the Council under section 42(3)(b)” there shall be substituted the words “under section 42”; and
- (b) after subsection (7) there shall be added—

“(7A) Where the registration of a medical practitioner in the register of medical practitioners is suspended by a direction of the Committee on Professional Performance of the General Medical Council—

- (a) under section 36A of the Medical Act 1983 (professional performance),
- (b) under section 38(1) of that Act (order for immediate suspension), or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to that Act (procedure of committees),

the suspension shall not, except in so far as is provided by or determined in accordance with regulations under subsection (2) above, terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during the suspension.”.

*Health and Personal Social Services (Northern Ireland) Order 1972*

30 In Article 56 of the Health and Personal Social Services (Northern Ireland) Order 1972 (arrangements and regulations for general medical services)—

- (a) in paragraph (4C)(c), for the words “of the Preliminary Proceedings Committee of the Council under section 42(3)(b)” there shall be substituted the words “under section 42”; and
- (b) after paragraph (4C) there shall be added—

“(4D) Where the registration of a medical practitioner in the register of medical practitioners is suspended by a direction of the Committee on Professional Performance of the General Medical Council—

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- (a) under section 36A of the Medical Act 1983 (professional performance),
- (b) under section 38(1) of that Act (order for immediate suspension), or
- (c) under rules made by virtue of paragraph 5A(3) of Schedule 4 to that Act (procedure of committees),

the suspension shall not, except in so far as is provided by or determined in accordance with regulations under subsection (2) above, terminate any arrangements made with him for the provision of general medical services; but he shall not provide such services in person during the suspension.”.