



# Health Act 1999

## 1999 CHAPTER 8

### PART II

#### THE NATIONAL HEALTH SERVICE: SCOTLAND

##### *Fraud*

#### **58 Disqualification etc. of Part II practitioners.**

- (1) For section 29 of the 1978 Act (disqualification of persons providing services) there is substituted—

**“29 The NHS tribunal.**

- (1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health Board representations that—
- (a) a person who is included in any list meets either of the conditions for disqualification, or
  - (b) a person who has applied to be included in any list meets the second condition for disqualification,
- the Tribunal shall inquire into the case.
- (3) If the Tribunal receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section shall be made—
- (a) in the prescribed manner; and
  - (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.

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- (5) Subsections (6) to (11) apply for the purposes of this group of sections.
- (6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.
- (7) The second condition for disqualification is that the person concerned—
- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit.
- (8) A “list” means—
- (a) a list of medical practitioners undertaking to provide general medical services;
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services;
  - (c) a list of dental practitioners undertaking to provide general dental services;
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services; or
  - (e) a list of persons undertaking to provide pharmaceutical services, prepared (in each case) under this Part.
- (9) “Health scheme” means—
- (a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and
  - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.
- (12) In this section and sections 29A to 29C—
- (a) “this group of sections” means this and those sections and Schedule 8; and
  - (b) the NHS Tribunal is referred to as the Tribunal.

### **29A The NHS Tribunal: supplementary.**

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second

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condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).
- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 29(8) on the practitioner’s behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision of those services on his behalf.
- (4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.
- (5) In a fraud case, regulations may make provision (including provision modifying the effect of this Part) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.
- (6) For the purposes of this group of sections, in a fraud or efficiency case proceedings are finally concluded—
  - (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
  - (b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
  - (c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

#### **29B Powers of NHS Tribunal.**

- (1) Subsection (2) applies where the Tribunal are of the opinion—
  - (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
  - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
  - (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and

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- (b) may also make a national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 29(8) as that list.
- (3) If the Tribunal make a national disqualification they may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
- (5) A disqualification under this section shall have effect when the case is finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.

### **29C Conditional disqualification etc.**

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
  - (2) Conditions may be imposed by virtue of subsection (1) with a view to—
    - (a) removing any prejudice to the efficiency of the services in question; or
    - (b) preventing any acts or omissions within section 29(7)(a),
(as the case may be).
  - (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
  - (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.
  - (5) The Tribunal may by directions—
    - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
    - (b) confer functions on any Health Board,
for the purpose of or in connection with the imposition of any conditions by virtue of this section.
  - (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.”
- (2) For section 30 of the 1978 Act (removal of disqualification) there is substituted—

### **“30 Review etc. of disqualification.**

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—

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- (a) if the disqualified or conditionally disqualified person requests a review; or
  - (b) in any other circumstances in which they consider it appropriate.
- (2) On a review under subsection (1), the Tribunal may—
  - (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
  - (b) make a disqualification conditional;
  - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (3) If any Health Board request a review of a conditional disqualification on the ground that—
  - (a) there has been a change in the circumstances by reference to which the conditions were imposed;
  - (b) the person concerned has failed to comply with the conditions; or
  - (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,the Tribunal shall review the conditional disqualification.
- (4) In the case of a person who is providing services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes any corresponding authority under the provisions in force in England and Wales or Northern Ireland corresponding to this Part.
- (5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional and, on a review of a fraud case, may make any further disqualification or conditional disqualification which they consider appropriate.
- (6) If, on a review under this section of a fraud case—
  - (a) there is a national disqualification which the Tribunal do not remove or make conditional;
  - (b) there is a national disqualification which is conditional and which the Tribunal make unconditional; or
  - (c) the Tribunal make a national disqualification,they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
  - (a) in the case of a conditional disqualification, make it unconditional or vary the conditions; or
  - (b) make any further disqualification or conditional disqualification;
  - (c) make a declaration of unfitness,if they are of the opinion that it would be unjust to do so.
- (8) A determination by the Tribunal under this section shall have effect—
  - (a) if no appeal is brought against it, at the end of the period for bringing an appeal;

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- (b) if an appeal is brought against it, when the appeal process is exhausted.
- (9) The Tribunal may hold an inquiry for the purposes of any review under this section.”

**Commencement Information**

- II** [S. 58](#) wholly in force at 4.3.2004: s. 58 not in force at Royal Assent see [s. 67](#); [s. 58](#) in force at 31.1.2004 for certain purposes and wholly in force at 4.3.2004 by [S.S.I. 2004/32](#), [art. 2](#)

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