

COMPLAINTS AND DISCIPLINARY PROCEDURES RELATING TO THE GMS SCHEME

Title: Complaints and Disciplinary Procedures Relating to the GMS Scheme

Date: August 2000

Document Type: Circular

Link: Circular 13/72, Circular 13/75, GMS Contract 1989

From: Department of Health and Children, Ireland

To: Each Primary Care Unit Manager

Re: Complaints and Disciplinary Procedures Relating to the GMS Scheme

1. There are complaints and disciplinary procedures set out in the present GMS Scheme contract (paragraphs 30 to 33). These procedures were intended to replace the then complaints and disciplinary procedures established under Regulation 8 of the Health Services Regulations 1972.

2. Legal advice obtained by the Department indicates that it is not valid to represent contractual terms as superseding the extant statutory rules on discipline. The position is that the procedures provided for in the 1972 Regulations form the law and that as long as Regulation 8 is extant any terms in the contract purporting to deal with matters covered by Regulation 8 must be consistent with the Regulation or otherwise be void.

3. The Irish Medical Organisation are familiar with the relevant advice. Indeed, the matter has been the subject of discussions with that Organisation and agreement has been reached on an interim solution to the matter. That interim arrangement is set out in the Appendix to this Circular and has immediate effect.

4. The issue of a more comprehensive complaints and disciplinary procedure, which accepted by both the Department and the Irish Medical Organisation to be a most serious one, will be addressed by both parties in the near future.

5. Until that time, this Circular, which provides clarity, transparency and fairness of procedures, is intended to clarify the disciplinary arrangements to be used in all appropriate cases.

6. Any questions on the above should be addressed to the undersigned.

Peter Lennon
GMS Division
August 2000

APPENDIX

Interim arrangements for dealing with disciplinary matters under the General Medical Services Scheme

The paragraphs below replace paragraphs 30 to 33 of the doctors' capitation contract (1989).

30. Complaints

Where the Chief Executive Officer of the Health Board has reason to believe that the medical practitioner has failed to comply with any terms of the agreement, the Chief Executive Officer shall notify the medical practitioner of the reasons for such belief by registered post and inform him or her that he or she (the CEO) will consider any representations in regard to the matter which may be received from the medical practitioner within one month of the issue of the notification.

The Chief Executive Officer shall not consider a complaint relating to an individual living patient except where: -

(a) it is made by the patient, by a member of his family or by another person with the written consent of the patient or, where the patient is a child, by his parent or guardian, and is in writing and signed by the person making it (or acting on his or her behalf); and

(b) it is made within six weeks of the event or alleged event in relation to which the complaint is made or, where the Chief Executive Officer, having consulted with the Chairman of the Board (or in his or her absence, the Vice Chairman) and another designated member of the Board (one of these two being a registered medical practitioner) considers it appropriate, within such longer period as he or she may determine.

The Chief Executive Officer may, after full consideration of all aspects of the case, including any representations which the medical practitioner may make in regard to the matter, where he or she considers it appropriate, follow one of the courses of action set out at paragraphs (1) to (3) below:

(1) Decide that no further action is required to be taken in the matter;

(2) Decide that the medical practitioner has not complied with the terms of the agreement and issue a warning or such like communication;

(3) Decide that the medical practitioner has not complied with the terms of the agreement and pursue the matter in accordance with the terms of Article 8 of the Health Services Regulations, 1972 (S.I. No. 88 of 1972).

The Chief Executive Officer must advise the medical practitioner, in writing, of his decision as regards the options set out above.

Any breach of the agreement, the terms of which were specified by the Minister for Health in Circular 13/72, between the doctor and the Health Board, other than a breach which would have been investigated under paragraph 23 of the said agreement, shall be deemed to be a breach of this agreement and may be dealt with in accordance with the procedures specified in Circular 13/72 and 13/75

31. Suspension of Agreement

Where the Chief Executive Officer is satisfied that the care of patients is placed in jeopardy, he or she may, in accordance with this paragraph, suspend the operation of a medical practitioner's agreement pending investigation of the matter by a Committee under Article 8 of the Health Services Regulations 1972 (S.I. No. 88 of 1972). If it appears to the Chief Executive that such suspension is desirable, he or she shall consult the Chairman (or in his or her absence the Vice Chairman) and another designated member of the Health Board (one of these two being a registered medical practitioner). If both concur in the proposed suspension, the Chief Executive Officer shall proceed accordingly with it. If both dissent from the proposal, the Chief Executive Officer may not carry out the suspension. If one concurs and the other dissents, the Chief

Executive Officer may or may not, at his or her discretion, proceed with the suspension, after such further consultation with the Chairman (or Vice Chairman) and the other designated member of the Board as he or she considers desirable.

Consultation between the Chief Executive Officer and the Chairman and other member of the Health Board, under this paragraph, shall be joint consultation unless there is a compelling reason to the contrary.

Where the Chief Executive Officer decides, in accordance with the terms of this paragraph, to proceed with a suspension, he or she shall immediately request the Minister for Health to establish a Committee under Article 8 of the Health Service Regulations 1972 (S.I. No 88 of 1972) to examine the matter in accordance with the terms of the said Article.

When the operation of an agreement with a general practitioner has been suspended, the Committee referred to above shall meet to consider the complaint not later than three weeks from the date of the suspension. Where a suspension has been made by a Chief Executive Officer in accordance with this paragraph, the Chief Executive Officer of any other Health Board, with which the medical practitioner has an agreement may, if he or she so thinks fit, suspend that agreement pending the investigation of the complaint by the Committee. On termination of a suspension under this paragraph, the medical practitioner's list of patients shall be restored to him or her.

32. Appeal by the medical practitioner.

Where a Committee, established under the terms of Article 8 of the Health Services Regulations 1972 (S.I. No 88 of 1972) having complied with the terms of the said Article, recommends termination of the agreement, the Chief Executive Officer may terminate the agreement subject to appeal, by the medical practitioner, to the Minister for Health under Article 8 (17) of the said Regulations.

Where an agreement has been terminated under this paragraph and the medical practitioner requests a review of that decision, the Chief Executive Officer of the Health Board shall carry out such a review and may, if he or she so thinks fit, declare that the medical practitioner is considered suitable to enter into a new contract for the provision of services under Section 58 of the Health Act, 1970.

33 Request to the Minister to establish a Committee under Article 8 of the Health Services Regulations, 1972.

Where a Chief Executive Officer requests the Minister for Health to establish a Committee under Article 8 of the Health Services Regulation, 1972, in accordance with the preceding paragraphs, the request should indicate the general nature of the complaint and whether or not the doctor's contract has been suspended.