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NHS Circular 1990 (PCS) 32
Amendment to NHS Circular 1990(PCS)8

General Managers of Health Boards
General Manager, Common Services Agency

Your ref

Our ref PIE/9/4

Date **20** August 1990

Dear Sir

**DISCIPLINARY PROCEDURES FOR HOSPITAL MEDICAL AND DENTAL
STAFF, COMMUNITY MEDICINE STAFF AND DOCTORS IN PUBLIC
HEALTH MEDICINE**

1. Health Boards are asked to note the following amendments to NHS Circular 1990(PCS)8 issued on 19 March 1990:-

Annex C - Paragraph 2

Heading - Delete "and Summary Dismissal". This does not affect Health Boards' right to dismiss summarily in cases of a very serious nature, but since paragraph 2 deals with the initial examination of a case by the CAMO, it is felt that reference to summary dismissal at that stage is inappropriate. The power to implement summary dismissal rests with the Health Board and cannot be delegated.

Annex C - Paragraph 19

Line 1 - after "Chairman" insert "and members".
delete "his" and substitute "their".

It has been agreed that members as well as Chairmen of panels should receive a fee, at the rates specified, for any preparatory work, etc carried out.

Annexes D and E

Please replace Annexes D and E of the circular with the revised Annexes D and E attached to this circular.

2. Annex B, paragraph 9 - delete "Health Board" and insert "CAMO".
3. Replacement pages for the terms and conditions handbooks will be issued in due course.

Yours faithfully

A J MATHESON

REVISED VERSION OF PARAGRAPH 190 OF THE TERMS AND CONDITIONS OF SERVICE FOR HOSPITAL MEDICAL AND DENTAL STAFF (SCOTLAND)

190. - a. Subject to sub-paragraph (c), a Consultant, Senior Hospital Medical Officer, Senior Hospital Dental Officer, Associate Specialist or Hospital Practitioner who considers that his appointment is being unfairly terminated may appeal to the Secretary of State against the termination by sending to him a notice of appeal at any time during the period of notice of termination of his appointment.

b. A practitioner appealing under sub-paragraph (a) shall also send a full statement of the facts of his case to the Secretary of State within -

i. the period of 4 months beginning with the date on which he received notice of termination of his contract, or

ii. where the Secretary of State is satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as the Secretary of State may permit.

If he fails to do so, the appeal shall be treated as having been determined by a decision confirming the termination of his appointment.

c. There is no right of appeal under sub-paragraph (a) where -

i. the practitioner is ordinarily required to work in the hospital and community health service (HCHS) for no more than 5 NHDs and he has income from other NHS medical or dental work equal to or greater than the income from the appointment being terminated,¹ or

ii. subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct.¹

"Personal Misconduct": for the purposes of this paragraph shall mean "performance or behaviour of practitioners due to factors other than those associated with the exercise or medical or dental skills".

¹Section 40 of the General Whitley Council Terms and Conditions provides a mechanism for appeal where a practitioner is excluded by this provision from an appeal under paragraph 190. Where such an appeal is made, the panel set up by the employing authority should include one professional member appointed from outside the authority at the same grade and in the same (or related) specialty as the practitioner concerned.

d. A practitioner who considers that his appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of 1 month beginning with the date on which he received notice of termination of his employment, require the Secretary of State to refer to a panel the question whether his appointment is being terminated on the sole ground of personal misconduct.

e. The panel shall comprise the Chief Medical Officer or Chief Dental Officer of the Scottish Home and Health Department (as appropriate), the Chairman of the Scottish Joint Consultants Committee, or their deputies, and an advocate or solicitor not in the employment of the government legal service or any Health Board. The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the practitioner and the Health Board terminating the appointment ("the Board") accordingly. If the panel decides that the termination is not on the sole ground of personal misconduct, the practitioner may (if he has not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to him of the panel's decision and the time allowed for the purposes of sub-paragraph (b) shall be 2 months from the date of such notification.

f. On receipt of a notice of appeal from a practitioner entitled under sub-paragraphs (a) and (c) to appeal the Secretary of State shall -

i. request the Health Board to give its written views on the case:

ii. refer the case for advice to a professional committee consisting of representatives of the Secretary of State and representatives of the practitioner's profession and chaired by the Chief Medical Officer or Chief Dental Officer of the Scottish Home and Health Department or their deputies.

g. The Health Board shall send to the Secretary of State its written views ("the Board's views") within the period of 2 months following the date of the request made in accordance with sub-paragraph (f)(i) ("the request date"). If the Health Board fails to do so and unless the Secretary of State extends the period for such further period as he thinks reasonable in a case where he is satisfied that it was not reasonably practicable for the Health Board's views to be presented within 2 months from the request date, the appeal shall be treated as having been determined by a decision to direct that the practitioner's appointment be continued.

h. The professional committee -

i. shall be assisted by an advocate or solicitor;

- ii. may, if it thinks fit, interview the practitioner and representatives of the Health Board;
 - iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than 3 months, after receipt by the Secretary of State of the Health Board's views;
 - iv. shall give its advice to the Secretary of State.
- i. Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall:
- i. ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the Health Board, and
 - ii. include in any advice given to the Secretary of State to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Health Board.
- j. In the light of the professional committee's advice, the Secretary of State shall, as far as it reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
- i. confirm the termination of the practitioner's appointment;
 - ii. direct that the practitioner's appointment continue; or
 - iii. arrange some other solution agreeable to the practitioner and the Health Board.
- k. The termination of the practitioner's appointment shall not have effect while an appeal duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Health Board until the decision is given (and, in the case of a referral under sub-paragraph (d), until any time allowed by sub-paragraph (e) for appealing has expired). If the Secretary of State so directs, the period of notice shall be further extended as he may direct in a case where he gives a decision to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his appointment continue.

ANNEX E (REVISED)

REVISED VERSION OF PARAGRAPH 190 OF THE TERMS AND CONDITIONS OF SERVICE FOR DOCTORS IN PUBLIC HEALTH MEDICINE AND THE COMMUNITY HEALTH SERVICE (SCOTLAND)

190. - a. Subject to sub-paragraph (c), a Chief Administrative Medical Officer/Director of Public Health, a consultant in Public Health Medicine, an officer holding an appointment under paragraph 17, a Senior Clinical Medical Officer, Senior Medical Officer (Community Medicine) or a Clinical Medical Officer on or above the 6th point of the salary scale who considers that his appointment is being unfairly terminated may appeal to the Secretary of State against the termination by sending to him a notice of appeal at any time during the period of notice of termination of his appointment.

b. A practitioner appealing under sub-paragraph (a) shall also send a full statement of the facts of his case to the Secretary of State within -

i. the period of 4 months beginning with the date on which he received notice of termination of his contract, or

ii. where the Secretary of State is satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as the Secretary of State may permit.

If he fails to do so, the appeal shall be treated as having been determined by a decision confirming the termination of his appointment.

c. There is no right to appeal under sub-paragraph (a) where -

i. the practitioner is ordinarily required to work in the hospital and community health service (HCHS) for no more than 17 1/2 hours per week and he has income from other NHS medical or dental work equal to or greater than the income from the appointment being terminated,¹ or

ii. subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct.¹

"Personal Misconduct": for the purposes of this paragraph shall mean "performance or behaviour of practitioners due to

¹Section 40 of the General Whitley Council Terms and Conditions provides a mechanism for appeal where a practitioner is excluded by this provision from an appeal under paragraph 190. Where such an appeal is made, the panel set up by the employing authority should include one professional member appointed from outside the authority at the same grade and in the same (or related) specialty as the practitioner concerned.

factors other than those associated with the exercise of medical or dental skills".

d. A practitioner who considers that his appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of 1 month beginning with the date on which he received notice of termination of his employment, require the Secretary of State to refer to a panel the question whether his appointment is being terminated on the sole ground of personal misconduct.

e. The panel shall comprise the Chief Medical Officer or Chief Dental Officer of the Scottish Home and Health Department (as appropriate), the Chairman of the Scottish Joint Consultants Committee or their deputies, and an advocate or solicitor not in the employment of the Government legal service or any Health Board. The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the practitioner and the Health Board terminating the appointment ("the Board") accordingly. If the panel decides that the termination is not on the sole ground of personal misconduct, the practitioner may (if he has not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to him of the panel's decision and the time allowed for the purposes of sub-paragraph (b) shall be 2 months from the date of such notification.

f. On receipt of a notice of appeal from a practitioner entitled under sub-paragraphs (a) and (c) to appeal the Secretary of State shall -

i. request the Health Board to give its written views on the case;

ii. refer the case for advice to a professional committee consisting of representatives of the Secretary of State and representatives of the practitioner's profession and chaired by the Chief Medical Officer or Chief Dental Officer of the Scottish Home and Health Department or their deputies.

g. The Health Board shall send to the Secretary of State its written views ("the Board's views") within the period of 2 months following the date of the request made in accordance with sub-paragraph (f)(i) ("the request date"). If the Health Board fails to do so and unless the Secretary of State extends the period for such further period as he thinks reasonable in a case where he is satisfied that it was not reasonably practicable for the Health Board's views to be presented within 2 months from the request date, the appeal shall be treated as having been determined by a decision to direct that the practitioner's appointment be continued.

h. The professional committee -

- i. shall be assisted by an advocate or solicitor;
 - ii. may, if it thinks fit, interview the practitioner and representatives of the Health Board;
 - iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than 3 months, after receipt by the Secretary of State of the Health Board's views;
 - iv. shall give its advice to the Secretary of State.
- i. Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall:
- i. ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the Health Board, and
 - ii. include in any advice given to the Secretary of State to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Health Board.
- j. In the light of the professional committee's advice, the Secretary of State shall, as far as is reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
- i. confirm the termination of the practitioner's appointment;
 - ii. direct that the practitioner's appointment continue; or
 - iii. arrange some other solution agreeable to the practitioner and the Health Board.
- k. The termination of the practitioner's appointment shall not have effect while an appeal duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Health Board until the decision is given (and, in the case of a referral under sub-paragraph (d), until any time allowed by sub-paragraph (e) for appealing has expired). If the Secretary of State so directs, the period of notice shall be further extended as he may direct in a case where he gives a decision to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his appointment continue.