

# STATES OF JERSEY



## **DRAFT HEALTH INSURANCE (PERFORMERS LIST FOR GENERAL MEDICAL PRACTITIONERS) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 3rd June 2014  
by the Minister for Health and Social Services**

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**STATES GREFFE**





Jersey

# DRAFT HEALTH INSURANCE (PERFORMERS LIST FOR GENERAL MEDICAL PRACTITIONERS) (JERSEY) REGULATIONS 201-

## REPORT

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### CONTENTS

	<i>Page</i>
<b>Introduction.....</b>	3
<b>The need for a Performers List in Jersey.....</b>	4
<b>The required legal reforms.....</b>	4
<b>The Performers List.....</b>	5
The process to date.....	5
The Regulations.....	5
Governance .....	7
<b>Results of the Consultation.....</b>	7
<b>Conclusions.....</b>	7
<b>Financial and manpower implications .....</b>	7

### Introduction

All General Practitioners (G.P.s) must hold a licence to practise with the General Medical Council (G.M.C.). From 2014, each G.P. must participate in an ongoing process of revalidation by which they evidence their ‘fitness to practise’. A revalidation recommendation is made periodically by a responsible officer (R.O.), who is approved by the G.M.C.

In 2008, the G.M.C. noted that the local systems in Jersey would not be fit for purpose to enable the G.M.C. to accept revalidation recommendations, predominantly because the local environment was, at that time, unregulated. There was –

- no appraisal system
- no equivalent law in place to create statutorily accountable responsible officers

- no local system of clinical governance for G.P.s (achieved in UK jurisdictions by a ‘Performers List’).

Since 2008, work has been ongoing to put in place all the necessary steps, with the States’ approval secured as necessary for amendments to the Health Insurance law –

- [P.36/2010](#) increased the medical benefit to enable G.P.s to invest in practice infrastructure to prepare for G.M.C. revalidation
- [P.136/2011](#) enabled creation of a ‘Performers’ List’ by Regulations.

The Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- is the final step required in order for the G.M.C. to accept the Jersey regulatory system for G.P.s.

As at 31st December 2013, there were 15 G.P. practices in Jersey, with a number of satellite surgeries, and 103 practising G.P.s.

### **The need for a Performers List in Jersey**

The need to strengthen medical regulation was identified in 2008 following a meeting and discussions with the General Medical Council (G.M.C.) about the future revalidation of Jersey doctors. The GMC’s view was that, at that time, no medical practitioner working in Jersey would be eligible to be considered for revalidation of their GMC Licence to Practise. This was because –

- no doctors in Jersey were undergoing regular appraisals
- there were no local legal powers to create an equivalent statutory responsible officer function
- there were inadequate powers to ensure that all doctors working in Jersey were subject to any conditions on their practice imposed by the G.M.C.
- doctors working in primary care were operating in an unregulated environment without any clinical governance framework underpinning practice.

To enable Jersey doctors to be considered for revalidation, the GMC advised Jersey to bring about and implement changes in our legislation that, as far as possible, would be recognised by the G.M.C. as equivalent to the situation in UK jurisdictions.

On the basis of regular meetings and progress to date, the GMC has confirmed that it will accept that Jersey’s system and laws are UK equivalent and that it will accept revalidation recommendations from Jersey R.O.s, and has agreed an interim arrangement pending their introduction.

Without these Regulations, Jersey G.P.s will be unable to revalidate with the G.M.C. and therefore will be unable to practise.

### **The required legal reforms**

Two separate and quite distinctive statutory functions are required. These have been enacted through amendments to –

#### **1. The Medical Practitioners Registration (Amendment No. 4) (Jersey) Law 2011 ([L.23/2011](#))**

The amendment to the Medical Practitioners Registration (Jersey) Law 1960, [P.106/2011](#), was unanimously adopted by the States Assembly in 2011. This amendment is already approved by Privy Council.

The amendment enabled the Minister for Health and Social Services to draft Orders ensuring that the register of all medical practitioners is 'live', that only doctors with a licence to practise with the G.M.C. are included on the Jersey register, and that any conditions applied to a doctor's G.M.C. registration are automatically applied to the Jersey registration, with appropriate sanctions in place for non-compliance.

The amendment to the Medical Practitioners Registration (Jersey) Law 1960 also empowered the Minister to draft Orders replicating the UK Responsible Officer functions in order to satisfy the G.M.C.'s expectation of UK equivalence, in order for it to accept Jersey R.O. recommendations.

## **2. The Health Insurance (Amendment No. 14) (Jersey) Law 2012 ([L.9/2012](#))**

A separate framework was required to satisfy the G.M.C. that General Practitioners in Primary Care work within a regulated environment, with appropriate clinical governance processes in place, essentially reflecting the equivalent functions and duties of a designated body in the UK.

The Health Insurance (Amendment No. 14) (Jersey) Law 2012, [P.136/2011](#), was approved by the States Assembly on 2nd November 2011. Amendment No. 14 laid out the need for a Performers List for G.P.s for the purpose of strengthening local governance, enabling the management of poor performance in individual doctors, and providing assurance regarding the quality and safety of G.P.s in Jersey. This was in line with the expectations of the G.M.C.

## **3. Draft Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201-**

The Draft Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- present the detailed arrangements for the establishment of the Performers List.

### **The Performers List**

#### *The process to date*

The initial amendment to the Health Insurance Law, [P.36/2010](#), allowed an increase of Medical Benefit for a temporary period in recognition of new costs that G.P.s would face in preparing for revalidation. This recognised the need for G.P.s to engage in annual appraisal and begin to collect supporting information to comply with the expectations of the G.M.C.

The Primary Care Governance Team (PCGT) was established in 2012. The Medical Director for Primary Care, who will become the approved responsible officer, leads the team. The team are responsible for the governance systems and processes for G.P.s, including appraisal and revalidation.

#### *The Regulations*

Any General Medical Practitioner, under the Medical Practitioners (Registration) (Jersey) Law 1960, must hold a licence to practise issued by the G.M.C. The G.M.C. lays out the professional standards required of doctors and requires a doctor to revalidate, normally every 5 years. To revalidate, and thereby retain the licence to practise, the practitioner must participate in annual appraisal, produce supporting information which demonstrates that they practise to the standards laid down by the G.M.C., and participate in clinical and corporate governance processes. Hospital doctors are already subject to such processes as part of their employment, and do not need additional regulation.

The Performers List will allow the G.M.C. to recognise that individual G.P.s included in the list are subject to a recognisable governance infrastructure and, in turn, that the responsible officer in Jersey is in an informed and suitable position to make the revalidation recommendation for individual doctors.

Inclusion on the Performers List will also be a condition of approval by the Minister for Social Security under the Health Insurance (Jersey) Law 1967, and claiming medical benefit on behalf of patients, and for patients to be eligible for prescriptions subsidised by Pharmaceutical Benefit.

The Regulations are in 5 Parts.

#### *Part 1*

This deals with the establishment of the Performers List and describes the grounds for inclusion in that list. The criteria for inclusion in the Performers List replicate those in the UK. This is important to allow recruitment of, and security for, doctors practising in Jersey, and ensures that doctors are not able to practise in Jersey if they are not appropriately qualified or if serious concerns or issues have arisen locally or in other jurisdictions.

The list is maintained by the Primary Care Governance Team (PCGT) through the Medical Director for Primary Care and one or more determining officers. The Regulations lay out the conditions under which an application can be refused or deferred, and allow for temporary inclusion on the list when a doctor plans to work in Jersey as a locum.

Regulation 40 in Part 5 ensures that doctors currently practising in Jersey who are not on the G.M.C. G.P. register, entrance to which is now closed for those doctors, are not in any way disadvantaged by the introduction of the Performers List.

#### *Part 2*

This establishes a process for addressing concerns that are expressed about a G.P. Currently there is no formal process to address concerns when they arise. The P.C.G.T. can encourage doctors to agree to address concerns or complaints, but if the doctor refuses, the next stage is to refer him or her to the G.M.C., a process that can take a long time, and during which time a doctor may still practise. The G.M.C. requires Jersey to have processes in place to address concerns locally.

The Medical Director is able to carry out a preliminary assessment and determine what, if any, action should be taken. This may include referral to an inspector, who may carry out an investigation of all the relevant facts.

#### *Part 3*

This lays out the circumstances under which a G.P. can be suspended from the Performers List. The grounds under which a suspension can take place are limited to those where serious concerns exist, primarily relating to patient safety. These powers are similar to those in other jurisdictions, and are part of the governance requirements required by the G.M.C.

#### *Part 4*

The mechanism to allow appeals against and reviews of decisions made in these Regulations are laid out in Part 4 and describe a Performers List Appeals Panel which is appointed by the Minister, with a further right of appeal to the Royal Court.

#### *Part 5*

The final part of the Regulations lays out how decisions should be communicated, and transitional arrangements for inclusion on the Performers List for G.P.s already

practising in Jersey. These arrangements effectively ensure that all G.P.s currently in Jersey will be admitted to the list.

#### *Governance*

The Primary Care Governance Team will work alongside the Registration and Inspection team to ensure G.P.s practising in Jersey are both registered and on the Performers List. The Team will have responsibility for the day-to-day management of the Performers List and will address any issues or concerns in accordance with the Regulations.

Revalidation will be carried out within a 5 year cycle. The G.M.C. (Licence to Practise and Revalidation) Regulations 2012 allow the G.M.C. to accept recommendations from a responsible officer (R.O.) or a Suitable Person (S.P.) as to whether a doctor is considered to be fit to practise. The R.O./S.P. will oversee systems for governance and appraisal which will inform the decision on recommendation.

#### **Results of the Consultation**

A consultation on the draft Regulations took place between 6th January and 17th February 2014.

Thirteen written responses were received, which incorporated –

- Inclusion and exclusion from the List – both permanent and temporary
- Timescales for Debate and consistency with Guernsey
- Role of the Medical Director and Minister
- Financial implications of suspension.

Many of the responses sought clarification, and the concerns raised have subsequently been resolved, through working with the Primary Care Body.

#### **Conclusions**

The Regulations outline the detail of the Performers List, the need for which was acknowledged by the States' approval of the Draft Health Insurance (Amendment No. 14) (Jersey) Law 201- in 2011.

The Regulations are broadly consistent with UK Regulations, applied to Jersey.

The draft Regulations were consulted upon, and amendments to the Regulations have been included, following joint work between the Health and Social Services Department, Social Security Department and Primary Care Body.

The Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- are required in order for General Medical Practitioners in Jersey to be licensed to practise by the General Medical Council, and to therefore continue to provide general medical services in Jersey.

#### **Financial and manpower implications**

##### *Financial implications*

There are no recurrent financial implications. The Primary Care Governance Team are funded by the Social Security Department, at c.£300k per year. These costs are not expected to increase as a result of these Regulations.

Based on history and UK experience, it is anticipated that one G.P. might be suspended every 7–10 years. Their Practice will be recompensed for the entire period of the suspension, in order to ensure continuity of patient care. This will be funded from the States Insurance Fund.

*Manpower implications*

There are no manpower implications: the existing Primary Care Governance Team will undertake the appraisals, revalidations, investigations and making of recommendations to the G.M.C., along with gathering the required supporting evidence and undertaking the administration of the Performers List.



## Explanatory Note

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These Regulations establish a performers list for general medical practitioners. They are part of the arrangements for implementation of –

- (a) the Health Insurance (Amendment No. 14) (Jersey) Law 2012 (P.136/2011, adopted by the States on 2nd November 2011);
- (b) the Medical Practitioners (Registration) (Amendment No. 4) (Jersey) Law 2011 (P.106/2011, adopted by the States on 20th July 2011).

Under Article 26(1A) of the Health Insurance (Jersey) Law 1967 (the “1967 Law”), as prospectively amended by the Health Insurance (Amendment No. 14) (Jersey) Law 2012, a medical practitioner must be included in the performers list, and not suspended from that list, in order to be approved by the Minister for Social Security as an approved medical practitioner for the purposes of the 1967 Law. Medical benefit is only paid for the services of an approved medical practitioner and pharmaceutical benefit is only paid for a prescription written by such a practitioner.

Under the Medical Practitioners (Registration) (Jersey) Law 1960, as prospectively amended by the Medical Practitioners (Registration) (Amendment No. 4) (Jersey) Law 2011, a medical practitioner who wishes to be registered, and therefore able to practise, in Jersey must hold a licence to practise issued by the General Medical Council. To retain his or her licence to practise, the practitioner must periodically undergo a review, through a process known as revalidation. Each practitioner will have a responsible officer for this purpose, appointed under the 1960 Law. The responsible officer must make a recommendation to the General Medical Council regarding a practitioner’s revalidation. The responsible officer also has a duty to investigate and, as required, report where an issue arises regarding a practitioner’s fitness to practise. The performers list created by these Regulations is the structure through which, for the most part, the responsible officer for general medical practitioners in Jersey will discharge his or her duties.

### **PART 1 – INTERPRETATION**

*Regulation 1* contains definitions. In particular –

A “determining officer” is a member of the Primary Care Governance Team appointed by the Minister for Health and Social Services to assist the Medical Director in the discharge of his or her functions.

An “equivalent list” is a performers list for general medical practitioners in the United Kingdom.

The “General Council” means the General Medical Council which has the function, in the United Kingdom, of registering medical practitioners.

The “Medical Act 1983” is the Act, in the United Kingdom, under which that function is discharged. Registration as a medical practitioner in Jersey depends upon the practitioner being registered under the Act. When the Medical Practitioners (Registration) (Amendment No. 4) (Jersey) Law 2011 comes into force, a practitioner will also be required to hold a licence to practise issued under that Act in order to be registered in Jersey.

The “Medical Director” is the person responsible for maintaining the performers list, with the assistance of the determining officers in the

Primary Care Governance Team. The Medical Director is the person appointed by the Minister for Health and Social Services under the Medical Practitioners (Registration) (Jersey) Law 1960 as the responsible officer for general medical practitioners included the performers list.

A “performer” is a medical practitioner who is included in the performers list.

## **PART 2 – ESTABLISHMENT OF AND INCLUSION IN PERFORMERS LIST**

*Regulation 2* specifies who is the Medical Director and provides for the appointment of the determining officers within the Primary Care Governance Team.

*Regulation 3* establishes the performers list and specifies the information to be included in it in respect of a performer. The performers list must be made public.

*Regulation 4* summarises the conditions for inclusion in the performers list. A person - must be registered as a medical practitioner in Jersey; must be included in the register of general practitioners maintained by the General Council (unless exempted from this requirement by transitional arrangements in Regulation 45); must not be disqualified from inclusion in an equivalent list; and must either be in general practice in Jersey or intending to be in general practice in Jersey within the next 12 months.

*Regulation 5* provides for applications for inclusion in the performers list. An application is determined by a determining officer, but Regulation 7 requires the officer to seek the concurrence of the Medical Director before refusing an application on certain grounds and Regulation 37 confers a right to have a determining officer’s decision reviewed by the Medical Director. Schedule 1 sets out the information to be provided by an applicant for inclusion in the performers list.

*Regulation 6* sets out the circumstances in which an application for inclusion in the performers list must be refused. An application must be refused if the applicant does not satisfy the requirements of Regulation 4; if the applicant has been convicted, in the British Islands, of murder; if the applicant has not updated his or her application following a deferral under Regulation 8 or if it is proposed to impose additional conditions on the applicant’s inclusion in the list, but the applicant has not indicated that he or she wishes to be included in the performers list subject to those conditions.

*Regulation 7* sets out the circumstances in which there is a discretion to refuse an application for inclusion in the performers list. In such a case, the determining officer must seek the concurrence of the Medical Director before refusing the application.

The discretionary grounds for refusal in paragraph (1) are concerned with the applicant’s suitability. An applicant’s suitability is not considered by reference to his or her professional competency alone. Personal and professional conduct is equally relevant.

The discretionary grounds for refusal in paragraph (2) are that either it does not appear that the applicant will be practising as a general practitioner in Jersey within the next 12 months or that the determining officer is not satisfied that the applicant has sufficient command of the English language to practise as a general practitioner in Jersey.

The discretionary grounds for refusal in paragraph (3) arise where the applicant’s registration in the United Kingdom is subject to conditions imposed under the authority of the General Council. The conditions may have been imposed – on a temporary basis, to protect the public or the practitioner personally or in the public interest; for up to 3 years, following a finding that the practitioner’s fitness to practise is impaired; or where the practitioner has

not complied with an assessment of the standard of his or her professional performance that is required for the purposes of proceedings conducted by a committee or panel acting on behalf of the General Council.

Paragraph (4) sets out the matters which must be taken into account when considering a refusal under paragraph (1).

*Regulation 8* allows a determining officer to defer making a decision on an application pending the outcome of proceedings or investigations outside Jersey concerning the applicant, where an adverse outcome in the proceedings or investigation would be grounds for removal of the applicant from the performers list, if he or she were already included in it. An application may also be deferred if the applicant is suspended from an equivalent list, or is appealing against a decision to refuse to include him or her in an equivalent list, to impose conditions on his or her inclusion in an equivalent list or to remove him or her from an equivalent list. Once the proceedings are, or the investigation, suspension or appeal is, concluded the applicant must be given 28 days to indicate whether he or she wishes to proceed with his or her application for inclusion in the performers list, and to provide any additional information required by the determining officer.

*Regulation 9* gives effect to Schedule 2, which contains general conditions that apply to all performers.

*Regulation 10* empowers the Medical Director to impose additional conditions on a performer's inclusion in the performers list, either when the performer is first included or subsequently. The grounds for imposing additional conditions are specified in paragraph (2). Conditions may be imposed indefinitely or until such time as any remedial action is completed, such as training.

*Regulation 11* is concerned with a practitioner who is included in the performers list on a temporary basis. Such a practitioner does not have to provide all the information required for permanent inclusion (see paragraph 6 of Schedule 1). Temporary inclusion allows practitioners to be brought in to provide cover or additional resource at short notice. Inclusion is for 4 weeks. However, if the practitioner makes a full application for inclusion within the 4 week period, temporary inclusion then continues until such time as the application has been determined.

### **PART 3 – CONCERNS**

This Part establishes procedures for investigating and acting upon concerns regarding a performer.

*Regulation 12* describes a concern. A concern may be raised by any person, and so may come from a patient or another health professional. A member of the Primary Care Governance Team may also raise a concern. This might happen if the Team receives information regarding a performer from separate sources that, taken separately, would not give rise to a concern but, when reviewed as a whole, raises a concern.

*Regulation 13* requires the Medical Director to assess whether a concern raises a substantive issue. An issue is substantive if it concerns the performer's eligibility or suitability for inclusion in the performers list or compliance with the conditions of inclusion in the performers list, if the performer's conduct may have been prejudicial to the efficient administration of the Health Insurance (Jersey) Law 1967 or have created an unreasonable charge on the Health Insurance Fund or if the issues concerns the performer's fitness to practise.

*Regulation 14* deals with a concern that the Medical Director has decided does not raise a substantive issue. The Medical Director must tell the person who raised the concern of his or her decision but is not required to tell the performer. For example, the Medical Director might decide not to tell the performer if the concern is trivial, unconnected with the performer's practise or vexatious.

*Regulation 15* allows the Medical Director, with the agreement of a person who has raised a concern that isn't substantive and of the performer, to seek to resolve the concern on an informal basis.

*Regulation 16* is the first step in the procedure to be followed if the Medical Director decides that a concern raises, or may raise, a substantive issue. The Medical Director must notify the performer of the assessment that the concern is substantive, within 7 days of that assessment being made.

*Regulation 17* then requires the Medical Director to refer the concern to an inspector, for the inspector to investigate the concern and report his or her findings to the Medical Director. The Medical Director must notify the performer that the matter has been referred to an inspector. The Minister for Health and Social Services authorizes persons as inspectors for these purposes. The inspector may call for documents that contain personal data, including sensitive personal data, provided that the conditions for processing such data are satisfied. The conditions are contained in the Data Protection (Jersey) Law 2005 and Regulations made under it.

*Regulation 18* provides that, having received the inspector's report, the Medical Director then decides whether the concern has raised a substantive issue. If it has not, the Medical Director notifies the performer and takes no further action, unless he or she provides an informal resolution service under Regulation 15.

If the concern has raised a substantive issue, the Medical Director must also assess the seriousness of the case. If there are grounds for removal of the performer from the performers list on one of the discretionary grounds in Regulation 7, but there is no risk that the performer's fitness to practise is impaired, the Medical Director may serve a resolution notice on the performer under Regulation 20. In all other cases, the formal processes under Part 4 of these Regulations must be followed.

*Regulation 19* requires the Medical Director to refer a concern to other persons in certain circumstances.

The Medical Director must refer a concern to the Minister for Social Security at any time when it appears to the Medical Director that the concern raises an issue that falls within Article 27 of the Health Insurance (Jersey) Law 1967. Article 27 requires the Minister for Social Security to initiate disciplinary proceedings where the conduct of a practitioner approved under that Law has been prejudicial to the efficient administration of the Law or has created an unreasonable charge on the Health Insurance Fund.

The Medical Director must refer a concern to the General Council if the concern raises an issue regarding a performer's fitness to practise and the Medical Director considers it appropriate to refer it.

*Regulation 20* describes the contents of, and procedures for serving, a resolution notice. A resolution notice sets out actions that the performer must take. It may also provide for actions that the Medical Director may take, such as arranging for an assessment of the performer's clinical practice. The notice is served on the performer, who must accept or reject it. If the performer accepts the notice and completes the actions required by it, the concern underlying the serving of the notice is treated as resolved. If the performer accepts the notice, but does not complete the required

actions, or if the performer rejects the notice, the concern isn't resolved, and the formal processes under Part 4 of these Regulations must be followed.

#### **PART 4 – FAILURE TO COMPLY WITH CONDITIONS, SUSPENSION AND REMOVAL FROM PERFORMERS LIST**

*Regulation 21* specifies the actions that the Medical Director may take if a performer does not comply with the general conditions applicable to all performers, imposed by Regulation 9 and Schedule 2, or any additional conditions applicable in his or her case, imposed under Regulation 10. The Medical Director may, in any case, impose additional conditions on the performer or remove the performer from the performers list. If the performer has not complied with additional conditions, the Medical Director has a further option of varying those conditions.

*Regulation 22* provides that a performer is automatically suspended from the performers list at any time when his or her registration under the Medical Practitioners (Registration) (Jersey) Law 1960 is suspended. The suspension also ends automatically – when the suspension under the 1960 Law ends. It should be noted that, under Article 10 of the 1960 Law, a medical practitioner's registration under that Law must itself be suspended when the practitioner's registration and licence to practise are suspended under the Medical Act 1983. There are also discretionary grounds for suspension under the 1960 Law.

*Regulation 23* confers a discretion on the Medical Director to suspend a performer. In this case, suspension is a temporary act, considered necessary by the Medical Director to protect members of the public or otherwise in the public interest whilst a decision or the outcome of proceedings is awaited. Specifically, the practitioner may be suspended whilst the Medical Director decides whether to remove the practitioner from the performers list, pending the outcome of any criminal investigation or investigation by a regulator, pending the outcome of proceedings of a court or a regulatory body, pending a decision of the Medical Director to remove the performer from the performers list taking effect or pending an appeal under these Regulations.

*Regulation 24* sets out the process to be followed when a performer is to be suspended under Regulation 23. The Medical Director must notify the performer that suspension is under consideration and give the performer an opportunity to put his or her case, in writing, to the Medical Director. If the performer chooses not to put his or her case to the Medical Director, the Medical Director may suspend the performer with immediate effect. If the performer puts his or her case to the Medical Director, the Medical Director must take the performer's representations into account when reaching a decision. The Medical Director may then suspend the performer or impose additional conditions.

*Regulation 25* sets out an alternative process for suspension. A performer may be suspended immediately, without being given the prior notice required by Regulation 24, if the Medical Director considers it necessary to protect patients or members of the public. However, such immediate suspension must be reviewed within 2 working days. If the Medical Director fails to review the suspension within 2 working days, the suspension is lifted at the end of that period. The performer must be given an opportunity to put his or her case to the Medical Director. If the performer chooses not to do so, the Medical Director may confirm or revoke the suspension. If the performer puts his or her case to the Medical Director, the Director must take the performer's representations into account when reaching a decision. The Medical Director may then suspend the performer or impose additional conditions.

The Medical Director, when reviewing a suspension within 2 working days or when considering a performer's representations, must consult with a panel. The Minister for

Health and Social Services is required to either establish a panel or make arrangements for the use of a panel constituted elsewhere. The panel members must be persons with the qualifications, experience and knowledge to advise on the suspension of performers.

*Regulation 26* provides for the duration and revocation of suspension under Regulation 23.

If the suspension is imposed pending a decision by the Medical Director whether or not to remove the performer from the performers list or pending any criminal or regulatory investigation or decision of a court or regulatory body, the Medical Director must specify an initial period of suspension that is not more than 3 months.

If the suspension is imposed pending a criminal or regulatory investigation, the Medical Director may extend the period of suspension, provided that the total period of suspension is not more than 6 months.

If the suspension is imposed pending a decision of a court or regulatory body the Medical Director may extend the period of suspension for up to 3 months following the decision, provided that the total period of suspension is not more than 6 months.

A period of suspension may be extended more than once, provided that the total period of suspension imposed by the Medical Director is not more than 6 months.

If the Medical Director is of the opinion that a period of suspension should be extended beyond 6 months, he or she must apply to the Performers List Appeals Panel, constituted under Regulation 39. In extending a period of suspension, that Panel must specify when the suspension ends, by reference to a date or the occurrence of an event.

If the Medical Director has suspended a performer whilst he or she decides whether to remove the performer from the performers list, and the Medical Director then makes that decision to remove the performer, the suspension continues until the removal takes effect.

If the Medical Director has suspended a performer pending the outcome of an appeal, the suspension remains in force until the appeal is concluded.

The Medical Director may revoke a suspension at any time if he or she has evidence that doing so will not compromise the protection of patients or members of the public, or the public interest.

*Regulation 27* explains the effect of suspension. Whilst a performer is suspended, he or she is treated as not included in the performers list. The consequence is that he or she is not treated as a practitioner approved under the Health Insurance (Jersey) Law 1960, and so a patient will not receive medical benefit for his or her services or pharmaceutical benefit for a prescription written by him or her.

*Regulation 28* allows a performer to apply to the Primary Care Governance Team to be removed from the list. However, a determining officer may refuse the application if the performer is subject to any investigation, proceedings or suspension under these Regulations.

*Regulation 29* sets out circumstances in which the Medical Director is required to remove a performer from the performers list. The circumstances are that –

- the performer is no longer registered as a medical practitioner in Jersey
- the performer is no longer included in the General Practitioner Register maintained by the General Council (but see the transitional arrangements in Regulation 45)
- the performer is disqualified for inclusion in an equivalent list

- the performer has been convicted of murder anywhere in the British Islands
- the performer has died
- the Medical Director has been directed by a sub-panel of the Performers List Appeals Panel or by the Royal Court to remove the performer.

*Regulation 30* sets out the circumstances in which the Medical Director has a discretion to remove a performer from the performers list. They are that –

- the performer has been convicted of an offence (other than murder) in the British Islands and sentenced to a term of imprisonment (which may be suspended) of more than 6 months
- the performer has not complied with a general condition or an additional condition applicable in his or her case
- the performer, having accepted a resolution notice, has not complied with it
- continued inclusion of the performer in the list would be prejudicial to the efficiency of medical services in Jersey for which medical benefit is paid (an “efficiency case”)
- the performer has caused or risked causing detriment to the health insurance scheme by securing, or attempting to secure, benefit for himself or herself or for any other person to which he or she or that person was not entitled (a “fraud case”)
- the performer is unsuitable to be included in the performers list (an “unsuitability case”)
- the performer cannot demonstrate that he or she has practised as a general medical practitioner in Jersey during the preceding 12 months or, if the performer has been included in the performers list for less than 12 months, since he or she was so included
- if 3 months have elapsed since the performers application for removal was accepted under Regulation 28.

*Regulation 31* specifies information and matters that the Medical Director must take into consideration when considering removing a performer from the performers list in an efficiency case.

*Regulation 32* specifies information and matters that the Medical Director must take into consideration when considering removing a performer from the performers list in a fraud case.

*Regulation 33* specifies information and matters that the Medical Director must take into consideration when considering removing a performer from the performers list in an unsuitability case.

*Regulation 34* sets out the procedure to be followed in every case where the Medical Director is considering removing a performer from the performers list under Regulation 30. The Medical Director must notify the performer of the action that the Medical Director is considering, and why. The performer then has 28 days in which to make written representations. The Medical Director must take account of any representations when reaching his or her decision.

A decision to remove a performer from the performers list takes effect 28 days after the decision or, if the decision is appealed against, when the appeal is concluded. As noted above, the performer may be suspended under Regulation 23 until the removal takes effect or the appeal is concluded.

*Regulation 35* is concerned with a case where a performer is removed from the performers list solely on the ground that the performer has been convicted of an offence. If the offence is overturned on appeal, the Medical Director may agree to readmit the performer to the performers list without requiring the performer to submit a fresh application. In the event that the performer is re-admitted to the performers list, but his or her conviction is reinstated on appeal, the decision to remove him or her from the performers list is also reinstated.

## **PART 5 – REVIEWS, DETERMINATIONS AND APPEALS**

*Regulation 36* provides for a review by the Medical Director of his or her decision to impose or vary additional conditions or to suspend a performer in certain circumstances. The Medical Director may decide to review his or her decision at any time. The Medical Director must review the decision at the request of the performer. A performer cannot request a review until at least 3 months after the original decision. A performer cannot request a further review until at least 6 months after the decision on the last review.

Whether the Medical Director reviews a decision on his or her own accord or at the request of the performer, he or she must notify the performer of the review. The performer has 28 days to make written representations to the Medical Director. The Medical Director must take the representations into account when deciding the review.

If the Medical Director is reviewing a decision to impose additional conditions on a performer, the Medical Director may vary or remove the conditions, impose different additional conditions or remove the performer from the performer list.

If the Medical Director is reviewing a decision to suspend a performer, the Medical Director may end, maintain or vary the suspension, impose additional conditions or remove the performer from the performers list.

There is no power to review – a decision to suspend pending removal from the list, a decision to suspend pending an appeal, or a decision to impose additional conditions, if the performer hasn't agreed to be made subject to them.

*Regulation 37* confers a right for a person to have a decision by a determining officer redetermined. The person must apply for the redetermination within 28 days of the original decision, although the Medical Director has a right to accept an application made after that time. The applicant has the right to make written representations to the Medical Director, which the Medical Director must take into account in making the redetermination. The Medical Director may either uphold the original decision or substitute his or her own decision.

*Regulation 38* confers a right of appeal against a decision by the Medical Director. An appeal must be made within 28 days of the decision. The appeal must be submitted to the chairman of the Performers List Appeals Panel.

*Regulation 39* provides for the constitution of the Performers List Appeals Panel. The Minister for Health and Social Services appoints the Panel members. The Jersey Appointments Commission must oversee the selection of candidates for appointment. The Panel must have –

- at least one member with experience of or training in the conduct of appeal proceedings – this person or, as the case requires, one of these persons, is also the chairman of the Panel



- at least one member who is authorised to practise general medical practice in a place outside Jersey and who has never practised in general medical practice in Jersey
- at least one lay member who is a Jersey resident who is neither experienced or trained in the conduct of appeal proceedings and who has never practised medicine.

When the Medical Director applies to extend a suspension beyond 6 months or an appeal is made under Regulation 38, the chairman of the Panel convenes a sub-panel to hear the application or appeal. The sub-panel comprises one member from each of the 3 categories described above. The chairman must not select a member to sit on a sub-panel if the member has worked with the suspended practitioner or appellant, or is or has been a patient of the suspended practitioner or appellant, or is conflicted in any other way.

*Regulation 40* gives effect to Schedule 3, which specifies procedures for a hearing before a sub-panel. It also describes the decisions that a sub-panel can make on an appeal – which are either to uphold the Medical Director’s decision, or to substitute its own decision. When deciding an appeal, the sub-panel may also make a statement if it considers that a review of the decision in one year’s time would be unsuccessful. This right to make such a statement is associated with the right of review in the following Regulation.

*Regulation 41* empowers a sub-panel of the Performers List Appeals Panel to review its decision, either on its own initiative or on the request of the appellant. The appellant cannot request a review until one year has elapsed since the decision – or 3 years, in a case where, at the time of its decision, the Panel indicated that a review after one year would be unsuccessful.

*Regulation 42* confers a right of appeal to the Royal Court against any decision of a sub-panel of the Panel. The appeal must be made within 28 days of the decision in question.

## **PART 6 – GENERAL AND CLOSING**

*Regulation 43* imposes a general requirement for a determining officer and the Medical Director to give notice of any decision regarding an applicant for inclusion in the performers list or a performer. The notice must be in writing, give reasons for the decision and explain the rights to have the decision reviewed or redetermined or to appeal against the decision. Notice of a decision to suspend a performer with immediate effect must be given as soon as possible. Other notices must be given within 7 days of the decision.

*Regulation 44* empowers the Medical Director to share information with other authorities. Information may be shared with the Minister for Social Security for purposes connected with that Minister’s approval of practitioners under the Health Insurance (Jersey) Law 1967, with the Minister for Health and Social Services, for purposes connected with the Minister’s rôle as registrar of medical practitioners under the Medical Practitioners (Registration) (Jersey) Law 1960, and with any responsible officer appointed under that Law, for the purposes of his or her functions as such. It is also made clear that the Medical Director may use information received in his or her capacity as such for the purposes of the discharge of his or her functions as the responsible officer for performers. The Medical Director must otherwise keep information secure and, when it is no longer needed, either destroy it or return it to the person who provided it.

*Regulation 45* creates transitional arrangements for the commencement of these Regulations. At commencement, every general medical practitioner who is currently approved by the Minister for Social Security under the Health Insurance (Jersey) Law 1967 will be included in the performers list.

These existing approved practitioners then have 12 months in which to provide the information, documents and declaration that would be required from an applicant for inclusion in the list. A failure to comply with this requirement, without reasonable excuse, is treated as a failure to comply with an additional condition. It may, under Regulation 21, result in the Medical Director varying the condition, imposing additional conditions or removing the performer from the list.

In addition, any practitioner who has been approved before commencement is not required to be on the General Practitioner Register. Instead, the practitioner must satisfy any condition for approval under the Health Insurance (Jersey) Law 1967 that was in force at the time he or she applied for such approval. In the case of a practitioner who first applied for approval on or before 1st November 1993 there is no condition regarding the practitioner's qualification or training as a general practitioner. In the case of a practitioner who applied for approval after that date, the condition for approval that has been imposed from that date by the Health Insurance (Conditions for Approval of Medical Practitioners) (Jersey) Regulations 1993 shall continue to apply.

*Regulation 46* provides for the citation and commencement of these Regulations.

*Schedule 1* sets out the detailed requirements for an application for inclusion in the performers list. Much of this information will also be required when a practitioner registers under the Medical Practitioners (Registration) (Jersey) Law 1960. It is envisaged that there will be a single form for an application to register under that Law and an application to be included in the performers list, so that the information is in fact provided only once.

*Schedule 2* contains the general conditions that apply to all performers.

Broadly, a practitioner must notify the Primary Care Governance Team, within 7 days, of any change in the information provided when the performer applied for inclusion in the list and, generally, of any information that might raise an issue whether the performer should be made subject to additional conditions or removed from the list. In addition to this requirement, a performer must confirm each year that the information held by the Primary Care Governance Team in respect of him or her is correct. It is envisaged that a summary of the information held will be sent to the performer by the Primary Care Governance Team for this purpose. The Medical Director or a determining officer may ask for further information regarding any change in the practitioner's circumstances or any event.

A performer is required to follow the General Medical Council's guidance regarding good medical practice.

A performer must provide a recent enhanced criminal record certificate if requested by the Medical Director or a determining officer. The Director or officer must have a reasonable cause for asking for the certificate.

Performers are required to participate in appraisals, conducted to certain standards, and submitted to the Medical Director. This is necessary in order for the Medical Director, at such intervals as the General Medical Council requires, to make a recommendation to the Council about a performer's revalidation.

The Medical Director may ask a performer to undergo an assessment of his or her command of English or of his or her clinical skills and performance. The Medical Director must have reasonable cause for making such a request.

*Schedule 3* establishes basic procedures when a sub-panel of the Performers List Appeals Panel hears an appeal. Appeals are held in private and the Medical Director and the appellant may be represented, if they so wish. If both the Medical Director and the appellant agree, the appeal can be determined by the sub-panel without a hearing.





Jersey

## **DRAFT HEALTH INSURANCE (PERFORMERS LIST FOR GENERAL MEDICAL PRACTITIONERS) (JERSEY) REGULATIONS 201-**

### **Arrangement**

#### **Regulation**

<b>PART 1</b>	<b>25</b>
INTERPRETATION	25
1 Interpretation .....	25
<b>PART 2</b>	<b>27</b>
ESTABLISHMENT OF AND INCLUSION IN PERFORMERS LIST	27
2 Primary Care Governance Team .....	27
3 Performers list .....	27
4 Eligibility for inclusion in performers list .....	27
5 Application for inclusion in performers list .....	28
6 Mandatory grounds for refusal of application .....	28
7 Discretionary grounds for refusal of application .....	28
8 Deferral of decision whether to include applicant in performers list .....	30
9 General conditions applicable to all performers .....	31
10 Additional conditions applicable to performer .....	31
11 Duration of temporary inclusion in performers list .....	31
<b>PART 3</b>	<b>32</b>
CONCERNS	32
12 Concerns .....	32
13 Preliminary assessment of concern by Medical Director .....	32
14 Decision that concern does not raise a substantive issue .....	32
15 Informal resolution of concern that does not raise a substantive issue .....	32
16 Notification of concern that raises, or may raise, a substantive issue .....	32
17 Investigation of concern .....	33
18 Decision by Medical Director in respect of concern .....	33
19 Referral of concern to Minister for Social Security or General Council .....	33
20 Resolution notices .....	34

**PART 4** **34**

**FAILURE TO COMPLY WITH CONDITIONS, SUSPENSION AND  
REMOVAL FROM PERFORMERS LIST** 34

21 Failure to comply with conditions ..... 34

22 Mandatory suspension from performers list ..... 35

23 Discretionary suspension from performers list ..... 35

24 Process for suspension under Regulation 23..... 35

25 Immediate suspension under Regulation 23 ..... 36

26 Duration and revocation of suspension under Regulation 23 ..... 37

27 Effect of suspension from performers list..... 38

28 Application by performer to be removed from performers list..... 38

29 Mandatory grounds for removal from performers list ..... 38

30 Discretionary grounds for removal from performers list ..... 39

31 Criteria for removal from performers list under Regulation 30(2) –  
efficiency case..... 40

32 Criteria for removal from performers list under Regulation 30(3) –  
fraud case ..... 41

33 Criteria for removal from performers list under Regulation 30(4) –  
unsuitability case..... 42

34 Procedure for removal under Regulation 30 ..... 43

35 Readmission where conviction overturned ..... 43

**PART 5** **44**

**REVIEWS, REDETERMINATIONS AND APPEALS** 44

36 Review by Medical Director of additional conditions or suspension ..... 44

37 Redetermination of decision of determining officer ..... 45

38 Appeal against decision of Medical Director..... 45

39 Performers List Appeals Panel..... 46

40 Procedures and decisions of sub-panel of the Performers List Appeals ..... 46

41 Review of appeal by sub-panel of the Performers List Appeals Panel ..... 47

42 Appeal against decision of sub-panel of the Performers List Appeals  
Panel..... 47

**PART 6** **48**

**GENERAL AND CLOSING** 48

43 Notification of decisions ..... 48

44 Information sharing..... 48

45 Transitional arrangements..... 49

46 Citation and commencement..... 49

**SCHEDULE 1** **50**

**REQUIREMENTS FOR APPLICATION** 50

1 Information to be provided ..... 50

2 Basic information..... 50

3 Basic documents ..... 52

4 Further information..... 52

5	Further documents.....	53
6	Application for temporary inclusion in the performers list.....	53
7	Form of application.....	53

**SCHEDULE 2** **54**

---

GENERAL CONDITIONS APPLICABLE TO ALL PERFORMERS		54
1	Changes in circumstances .....	54
2	Conduct .....	55
3	Appraisals.....	55
4	Assessments .....	55

**SCHEDULE 3** **56**

---

HEARING OF APPEAL		56
1	Interpretation of Schedule 3 .....	56
2	Hearing to be in private.....	56
3	Notice of hearing.....	56
4	Procedure.....	56
5	Evidence.....	56
6	Determination of appeal without hearing.....	57
7	Decision of Panel .....	57
8	General provision as to procedure.....	57







Jersey

## **DRAFT HEALTH INSURANCE (PERFORMERS LIST FOR GENERAL MEDICAL PRACTITIONERS) (JERSEY) REGULATIONS 201-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Article 27A of the Health Insurance (Jersey) Law 1967<sup>1</sup>, and following consultation by the Minister for Health and Social Services in accordance with paragraph (13) of that Article, have made the following Regulations –

### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

(1) In these Regulations –

“1960 Law” means the Medical Practitioners (Registration) (Jersey) Law 1960<sup>2</sup>;

“1967 Law” means the Health Insurance (Jersey) Law 1967<sup>3</sup>;

“additional conditions”, in relation to a performer, means conditions, other than the general conditions, imposed under these Regulations on the performer’s inclusion or continued inclusion in the performers list;

“applicant” means an applicant for inclusion in the performers list;

“concern” has the meaning given in Regulation 12;

“determining officer” shall be construed in accordance with Regulation 2;

“enhanced criminal record certificate” means such a certificate issued under section 113B of the Police Act 1997 of the United Kingdom as extended to Jersey, with modifications, by The Police Act 1997 (Criminal Records) (Jersey) Order 2010<sup>4</sup>;

“equivalent list” means a list of medical practitioners maintained pursuant to regulations made under –

- (a) section 91 of the National Health Service Act 2006 of the United Kingdom;
- (b) section 17P of the National Health Service (Scotland) Act 1978;
- (c) section 49 of the National Health Service (Wales) Act 2006; or
- (d) article 57G of the Health and Personal Social Services (Northern Ireland) Order 1972;

“general conditions” means the conditions in Schedule 2;

“General Council” means the General Medical Council continued, as a body corporate, by section 1 of the Medical Act 1983;

“General Practitioner Register” means the register of that name kept under section 34C of the Medical Act 1983;

“inspector” means an inspector authorized by the Minister for Health and Social Services under Article 30(5)(a)(i) of the 1967 Law;

“licence to practise” means a licence granted to a medical practitioner under and in accordance with Part IIIA of the Medical Act 1983;

“Medical Act 1983” means that Act of the United Kingdom;

“Medical Director” shall be construed in accordance with Regulation 2;

“national disqualification” means national disqualification imposed pursuant to section 159 of the National Health Service Act 2006 of the United Kingdom;

“performer” means a person included in the performers list;

“performers list” shall be construed in accordance with Regulation 3;

“Performers List Appeals Panel” shall be construed in accordance with Regulation 39;

“Primary Care Governance Team” shall be construed in accordance with Regulation 2;

“professional conduct” includes matters relating to both professional conduct and professional performance;

“registered medical practitioner” means a person registered under the 1960 Law;

“substantive issue” shall be construed in accordance with Regulation 13(2);

“UK practitioners register” means the register of medical practitioners kept under section 2 of the Medical Act 1983.

- (2) In these Regulations, a reference to temporary inclusion in the performers list means inclusion in the performers list on the terms specified in Regulation 11.
- (3) In these Regulations, a reference to a person’s fitness to practise shall be construed in accordance with section 35C(2) of the Medical Act 1983.

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## PART 2

### ESTABLISHMENT OF AND INCLUSION IN PERFORMERS LIST

#### 2 Primary Care Governance Team

- (1) The Primary Care Governance Team comprises –
  - (a) the Medical Director; and
  - (b) one or more determining officers.
- (2) The responsible officer appointed in relation to performers pursuant to an Order made under Article 10C(3)(b) of the 1960 Law shall also be the Medical Director.
- (3) The Minister for Health and Social Services shall appoint a sufficient number of persons having the appropriate qualifications and experience as determining officers –
  - (a) to discharge, under the direction of the Medical Director, the functions of determining officers under these Regulations; and
  - (b) generally to assist the Medical Director in the discharge of his or her functions under these Regulations and, as a responsible officer, under any Order made under Article 10C of the 1960 Law.

#### 3 Performers list

- (1) There shall be a performers list.
- (2) The performers list shall be maintained and governed by the Medical Director.
- (3) The performers list shall contain the following information in respect of each performer included in it –
  - (a) the performer's full name;
  - (b) the registration number assigned to the performer in respect of his or her registration in the UK practitioners register;
  - (c) the date of the performer's registration as a registered medical practitioner under the 1960 Law; and
  - (d) the performer's medical qualifications.
- (4) The Medical Director shall –
  - (a) make the performers list available for inspection by the public; and
  - (b) publish the performers list.

#### 4 Eligibility for inclusion in performers list

In order to be eligible to be included in the performers list a person –

- (a) must be a registered medical practitioner;
- (b) must be included in the General Practitioner Register;

- (c) must not be subject to a national disqualification for inclusion in an equivalent list; and
- (d) must be providing medical services in Jersey or intending to do so within the next 12 months.

## **5 Application for inclusion in performers list**

- (1) An application for inclusion in the performers list shall be made to the Primary Care Governance Team.
- (2) An application shall be made in writing, using the form and containing the declaration required by Schedule 1.
- (3) An application shall contain the information and be accompanied by the documents required by Schedule 1.
- (4) An application shall be determined by a determining officer.
- (5) A determining officer may, for the purposes of determining an application, request an applicant to provide such information or documents that the officer reasonably requires, in addition to the material provided as required by Schedule 1.
- (6) An application need not be determined before the material required by Schedule 1 and any additional information or documents required under paragraph (5) have been provided by the applicant.

## **6 Mandatory grounds for refusal of application**

A determining officer shall refuse an application for inclusion in the performers list if –

- (a) the applicant is not a registered medical practitioner;
- (b) the applicant is not included in the General Practitioner Register;
- (c) the applicant is subject to a national disqualification for inclusion in an equivalent list;
- (d) the applicant has been convicted, in the British Islands, of murder;
- (e) in a case where the applicant's application was deferred under Regulation 8, the applicant has not updated his or her application; or
- (f) in a case where additional conditions are to be imposed upon the applicant's inclusion in the performers list, the applicant has not given notice that he or she wishes to be included in the list subject to those conditions.

## **7 Discretionary grounds for refusal of application**

- (1) A determining officer may, with the concurrence of the Medical Director, refuse an application for inclusion in the performers list if –
  - (a) the determining officer considers the applicant is unsuitable for inclusion in the list, having considered the information and

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- documentation provided by the applicant, as required by Schedule 1;
- (b) having obtained references from the referees named by the applicant in his or her application, the determining officer is not satisfied with those references;
  - (c) having checked with the Minister for Social Security and with any other relevant authority in the British Islands for any facts that the determining officer considers relevant relating to any past or current fraud investigation involving or relating to the applicant, and having considered these and any other facts in his or her possession relating to the applicant, the determining officer considers that the applicant is unsuitable to be included in the performers list; or
  - (d) the determining officer considers that there are reasonable grounds for concluding that the inclusion of the applicant in the performers list would be prejudicial to the efficiency of medical services for which medical benefit is payable.
- (2) A determining officer may, with the concurrence of the Medical Director, refuse an application for inclusion in the performers list if –
- (a) the applicant has not provided satisfactory evidence that he or she will be performing medical services in Jersey, within the next 12 months; or
  - (b) the determining officer is not satisfied that the applicant has sufficient knowledge of the English language necessary to perform medical services in Jersey.
- (3) A determining officer may, with the concurrence of the Medical Director, refuse an application for inclusion in the performers list if –
- (a) the applicant's registration in the UK practitioners register is subject to conditions imposed by an interim order made under section 41A of the Medical Act 1983;
  - (b) the applicant's registration in the UK practitioners register is subject to conditions by virtue of a direction given under section 35D of the Medical Act 1983; or
  - (c) the applicant's registration in the UK practitioners register is subject to conditions by virtue of a direction given pursuant to rules made under paragraph 5A(3) of Schedule 4 to the Medical Act 1983.
- (4) Where a determining officer and the Medical Director are considering a refusal of an application on a ground in paragraph (1) they must, in particular, take into consideration –
- (a) the nature of any matter in question;
  - (b) the length of time since that matter and the events giving rise to it occurred;
  - (c) any action or penalty imposed by any regulatory or other body as a result of the matter;

- (d) the relevance of that matter to the applicant's performance of medical services for which medical benefit is payable and any likely risk to the applicant's patients or to the Health Insurance Fund or public finances;
- (e) whether any offence was a sexual offence to which the Sex Offenders (Jersey) Law 2010<sup>5</sup> applies by virtue of Article 2 of that Law or, if it had been committed in Jersey, would have been such an offence; and
- (f) whether, in respect of the performers list or any equivalent list, the applicant –
  - (i) has been refused inclusion in the list,
  - (ii) has been included in the list subject to, in the case of the performers list, additional conditions or, in the case of an equivalent list, any conditions,
  - (iii) has been removed from the list, or
  - (iv) is currently suspended from the list,and, if so, the facts relating to the matter which led to such action, together with the reasons given for the action by the holder of the list.

## **8 Deferral of decision whether to include applicant in performers list**

- (1) A determining officer may defer a decision on an application where –
  - (a) there are in respect of the applicant –
    - (i) criminal proceedings in the British islands, or
    - (ii) proceedings elsewhere in the world in respect of acts or omissions which, if they had occurred in Jersey, would constitute a criminal offence,and which, if such proceedings resulted in a conviction, or the equivalent of a conviction would, if the applicant were at that time included in the performers list, lead, or be likely, to lead to his or her removal from the list;
  - (b) there is any investigation, anywhere in the world, by any regulatory or other body relating to the applicant which, if the outcome of the investigation was adverse to the applicant, would, if the applicant were at that time included in the performers list lead, or be likely to lead, to his or her removal from the list;
  - (c) the applicant is suspended from an equivalent list;
  - (d) the applicant has appealed against a decision –
    - (i) to refuse to include the applicant in an equivalent list,
    - (ii) to include the applicant in an equivalent list subject to conditions, or
    - (iii) to remove the applicant from an equivalent list,and, if the appeal against the decision was unsuccessful, the decision, if the applicant were at that time included in the

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performers list, would, or would be likely, to lead to his or her removal from the list.

- (2) A decision may only be deferred under paragraph (1) until whichever is the later of the outcome of the matter in question or, if there is more than one, the last of them, is known.
- (3) Once the outcome of the matter in question or, if there is more than one, the last of them, is known, the determining officer must notify the applicant that the applicant must, within 28 days of the notification –
  - (a) confirm, in writing, whether the applicant wishes to proceed with the application; and
  - (b) if the applicant wishes to proceed, provide any additional information required by the determining officer.
- (4) If an applicant, in accordance with paragraph (3), confirms his or her wish to proceed and provides the additional information required, the application must be determined in accordance with Regulations 6, 7 and 10.

## **9 General conditions applicable to all performers**

Every performer must comply with the conditions in Schedule 2.

## **10 Additional conditions applicable to performer**

- (1) The Medical Director may specify that a person's inclusion, or continued inclusion, in the performers list is subject to conditions in addition to those imposed by Regulation 9.
- (2) Conditions may be imposed –
  - (a) for the purpose of protecting patients;
  - (b) for the purpose of preserving the Health Insurance Fund or public finances;
  - (c) for the purpose of preventing any prejudice to the efficiency of the provision of medical services pursuant to a contract under Part 3A of the 1967 Law or for which medical benefit is payable; or
  - (d) for the purpose of preventing fraud.
- (3) Conditions may be expressed to apply indefinitely or until any action required by the condition, such as training, retraining, rehabilitation or experience in practice, is completed.
- (4) A performer must comply with any additional conditions imposed in his or her case.

## **11 Duration of temporary inclusion in performers list**

Where a person applies for and is given temporary inclusion in the performers list, the person's inclusion shall expire –

- (a) at the end of the period of 4 weeks; or

- (b) if, within that period, the person has applied for full inclusion in the list but, notwithstanding that the person has supplied all the information, and all the documents, required by Schedule 1, the person's application has not been determined before the end of that period – upon the person's application for full inclusion in the list being refused.

### **PART 3**

#### **CONCERNS**

#### **12 Concerns**

A concern is any concern, allegation or complaint regarding a performer –

- (a) that has been raised by any person; and
- (b) if it has not been raised by a determining officer or the Medical Director, has been notified to the Primary Care Governance Team.

#### **13 Preliminary assessment of concern by Medical Director**

- (1) A concern shall be referred to the Medical Director.
- (2) The Medical Director shall assess whether the concern raises, or may raise, a substantive issue, being an issue –
  - (a) regarding the performer's eligibility or suitability for inclusion in the performers list;
  - (b) regarding the performer's compliance with the general conditions and any additional conditions;
  - (c) that must be referred to the Minister for Social Security in accordance with Regulation 19(1); or
  - (d) regarding the performer's fitness to practise.

#### **14 Decision that concern does not raise a substantive issue**

If the Medical Director decides that a concern does not raise a substantive issue, the Medical Director shall inform the person who raised the concern of his or her decision, and may inform the performer of his or her decision.

#### **15 Informal resolution of concern that does not raise a substantive issue**

The Medical Director may, with the agreement of the person who raised the concern and the performer, seek to resolve informally a concern that the Medical Director has decided does not raise a substantive issue.

#### **16 Notification of concern that raises, or may raise, a substantive issue**

The Medical Director shall notify the performer, within 7 days, of his or her assessment that a concern raises, or may raise, a substantive issue in relation to the performer.



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**17 Investigation of concern**

- (1) In the case of a concern that raises, or may raise, a substantive issue, the Medical Director shall, subject to Regulation 19 –
  - (a) refer the concern to an inspector; and
  - (b) notify the performer within 7 days of such referral being made.
- (2) The inspector shall –
  - (a) investigate the facts to which the concern relates; and
  - (b) report his or her findings, and pass any documents or copies obtained under paragraph (3), to the Medical Director.
- (3) An inspector may, for the purposes of an investigation, require the production or the provision of copies of documents that include personal data, including sensitive personal data, where the conditions under the Data Protection (Jersey) Law 2005<sup>6</sup> for processing of the data are satisfied.

**18 Decision by Medical Director in respect of concern**

- (1) The Medical Director, upon receiving an inspector's report regarding a concern, shall decide whether the concern has raised a substantive issue.
- (2) If the Medical Director finds that the concern has not raised a substantive issue he or she –
  - (a) shall inform the performer within 7 days of his or her decision; and
  - (b) may either take no further action in respect of the concern or seek to resolve it informally, under Regulation 15.
- (3) If the Medical Director finds that any of the discretionary grounds for removal from the performers list apply, but that the case is not so serious that there is any risk that the performer's fitness to practise is impaired, the Medical Director may serve a resolution notice on the performer, in accordance with Regulation 20.
- (4) Otherwise, if the Medical Director finds that any of the grounds for removal from the performers list apply or for the imposition or variation of additional conditions, the Medical Director shall make any decision in respect of the concern in accordance with Part 4.

**19 Referral of concern to Minister for Social Security or General Council**

- (1) If, at any time, it appears to the Medical Director that a concern raises, or may raise, an issue that should be presented to the Minister for Social Security for the purposes of Article 27(1) of the 1967 Law, the Medical Director shall refer the issue to the Minister for Social Security.
- (2) If, at any time, it appears to the Medical Director that a concern raises an issue regarding a performer's fitness to practise that it is appropriate to refer to the General Council the Medical Director shall, as the performer's responsible officer, refer the issue to the General Council.

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- (3) The Medical Director shall notify the performer of a referral under this Regulation within 7 days of the referral being made.

## **20 Resolution notices**

- (1) A resolution notice served by the Medical Director on a performer in the circumstances described in Regulation 18(3) must set out actions, changes and any other steps to be undertaken by the performer, and the time or times by which they must be undertaken.
- (2) The resolution notice may also set out actions and steps initiated by the Medical Director, for example, the arrangement by the Medical Director for the performer's clinical practice to be assessed by a person or body competent to undertake such assessments.
- (3) The actions, changes and other steps are those required to address the issues raised by the concern and any other issues identified in the course of the investigation conducted under Regulation 17.
- (4) The performer must notify the Medical Director of the performer's acceptance or rejection of the resolution notice no later than 14 days after it is served.
- (5) A performer who does not give notice in accordance with paragraph (4) shall be taken to have rejected the resolution notice.
- (6) If the performer accepts the resolution notice and completes the actions, changes and other steps set out in that notice within the time specified, the concern shall be taken to have been resolved.
- (7) If –
- (a) the performer accepts the resolution notice but does not complete the actions, changes and other steps to be undertaken by him or her within the time specified; or
  - (b) the performer rejects the resolution notice,
- the concern shall not be taken to have been resolved and the Medical Director shall make any decision in respect of the concern in accordance with Part 4.

## **PART 4**

### **FAILURE TO COMPLY WITH CONDITIONS, SUSPENSION AND REMOVAL FROM PERFORMERS LIST**

#### **21 Failure to comply with conditions**

If the Medical Director determines that a performer has failed to comply with the general conditions or with additional conditions, the Medical Director may decide –

- (a) in a case of non-compliance with additional conditions, to vary all or any of those conditions;
- (b) in any case –

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- (i) to impose additional conditions, or
  - (ii) in accordance with the following provisions of this Part, to remove the performer from the performers list.

## **22 Mandatory suspension from performers list**

- (1) A performer's inclusion in the performers list is suspended at any time when his or her registration as a registered medical practitioner is suspended.
- (2) A determining officer must, as soon as possible, notify the performer, in writing, of his or her suspension under paragraph (1) and of the effect of paragraph (3).
- (3) A suspension under paragraph (1) ends when the performer's registration as a registered medical practitioner ceases to be suspended.

## **23 Discretionary suspension from performers list**

If the Medical Director is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, he or she may decide to suspend a performer from the performers list –

- (a) whilst the Medical Director decides whether or not to exercise his or her powers under this Part to remove the performer from the performers list;
- (b) whilst the Medical Director awaits –
  - (i) the outcome of any criminal or regulatory investigation affecting the performer, or
  - (ii) a decision of a court or regulatory body, anywhere in the world, affecting the performer;
- (c) where the Medical Director has decided to remove the performer from the performers list, but before that decision takes effect; or
- (d) pending an appeal under these Regulations.

## **24 Process for suspension under Regulation 23**

- (1) Where the Medical Director is considering suspending a performer under Regulation 23, the Medical Director must give the performer –
  - (a) notice of any concern regarding the performer that the Medical Director is taking into consideration;
  - (b) notice of what action the Medical Director is considering, and on what grounds; and
  - (c) the opportunity for the performer to put his or her case in writing to the Medical Director, by a specified time on a specified day.
- (2) The day specified for the purposes of paragraph (1)(c) must be at least 2 working days after the day on which the notice is given.

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- (3) If the performer does not wish to put his or her case in writing to the Medical Director, or does not do so by the time specified, the Medical Director may suspend the performer with immediate effect.
  - (4) If the performer puts his or her case in writing to the Medical Director, the Medical Director –
    - (a) must, when making a decision, take into account the performer’s representations; and
    - (b) may decide –
      - (i) to suspend the performer with immediate effect, or
      - (ii) to allow the performer to resume as a performer, subject to additional conditions.

## **25 Immediate suspension under Regulation 23**

- (1) Notwithstanding Regulation 24, where the Medical Director considers it necessary to do so for the protection of patients or members of the public, or that it is otherwise in the public interest, the Medical Director may decide that a suspension under Regulation 23 is to have immediate effect without undertaking the steps described in Regulation 24.
- (2) If the Medical Director, pursuant to paragraph (1), decides to suspend a performer with immediate effect, the Medical Director must –
  - (a) review the decision, in accordance with paragraph (7), within the period of 2 working days commencing with the day the suspension commenced; and
  - (b) as soon as is reasonably practicable, give the performer –
    - (i) notice of what further action the Medical Director is considering and on what grounds, and
    - (ii) the opportunity to put the performer’s case in writing to the Medical Director by a specified time on a specified day.
- (3) The day specified for the purposes of paragraph (2)(b)(ii) must be at least 2 working days after the day the performer is given notice of the suspension.
- (4) If the Medical Director fails to review the decision as required by paragraph (2)(a), the suspension shall end upon the expiry of the period mentioned in that sub-paragraph.
- (5) If a performer does not wish to put his or her case in writing to the Medical Director, as described in paragraph (2)(b)(ii), or does not do so by the time specified, the Medical Director may confirm or revoke the suspension.
- (6) If the performer puts his or her case in writing to the Medical Director, the Medical Director must –
  - (a) take into account the representations made by the performer, in accordance with paragraph (7), when making a decision; and
  - (b) may decide –
    - (i) to confirm or revoke the suspension, and

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- (ii) if he or she decides to revoke the decision, to impose additional conditions in respect of the performer.
  - (7) The Medical Director must, in the course of reviewing a decision under paragraph (2)(a) or taking into account a performer's representations under paragraph (6)(a), consult with a panel referred to in paragraph (8).
  - (8) The Minister for Health and Social Services shall, for the purposes of paragraph (7), appoint a panel, or arrange for the provision of the services of a panel, the members of which have the qualifications, experience and knowledge to advise on the suspension of performers.

## **26 Duration and revocation of suspension under Regulation 23**

- (1) In the case of suspension on the ground in Regulation 23(a) or (b), (including any such suspension that is confirmed under Regulation 25(6)(b)(i)), the Medical Director must specify an initial period of suspension of not more than 3 months.
- (2) In the case of a suspension whilst the Medical Director awaits the outcome of any criminal or regulatory investigation affecting the performer, the Medical Director may decide that the performer shall remain suspended for an additional period, provided that the aggregate of the initial period of suspension and the additional period of suspension is not more than 6 months.
- (3) In the case of a suspension whilst the Medical Director awaits a decision of a court or regulatory body anywhere in the world affecting the performer, after that decision is made, the Medical Director may decide that the performer shall remain suspended for an additional period, provided that the aggregate of the initial period of suspension and the additional period is not more than 6 months.
- (4) The Medical Director may decide to extend an initial period of suspension or an additional period of suspension, provided that the aggregate period of suspension decided by the Medical Director does not exceed 6 months.
- (5) The Medical Director may apply to the Performers List Appeals Panel for an extension of a period of suspension.
- (6) An application under paragraph (5) must be made before the expiry of the period of suspension.
- (7) A sub-panel of the Performers List Appeals Panel convened to hear an application made under paragraph (5) may –
  - (a) order that a period of suspension is extended so that the aggregate period of suspension of a performer is more than 6 months; and
  - (b) make a further order at any time while a period of suspension continues pursuant to an earlier order of the Panel.
- (8) An order of a sub-panel under paragraph (7) must specify –
  - (a) a date on which the period of suspension is to end;
  - (b) an event beyond which the period of suspension is not to continue; or

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- (c) that the period of suspension is to end on whichever is the earlier of a specified date or event.
  - (9) If an application under paragraph (5) is made in accordance with paragraph (6), but the sub-panel has not made its decision by the time that the period of suspension would, apart from this paragraph, expire, the period of suspension shall continue until the sub-panel makes its decision.
  - (10) A suspension under Regulation 23(a) continues in force after the Medical Director has decided to remove the performer from the performers list until the decision takes effect.
  - (11) A suspension under Regulation 23(d) continues in force until the appeal is concluded.
  - (12) The Medical Director may, at any time, revoke a suspension, if the Medical Director is in possession of evidence that revoking the suspension will not compromise the protection of patients or members of the public, or the public interest.

## **27 Effect of suspension from performers list**

A performer who is suspended from the performers list shall be treated as not included in that list, even though his or her name appears in it.

## **28 Application by performer to be removed from performers list**

- (1) A performer may apply to be removed from the performers list.
- (2) The application must be made in writing to the Primary Care Governance Team.
- (3) A determining officer shall refuse to accept the application if, at the time it is made, the performer is subject to any investigation or procedure under Part 3 or this Part or by the General Council, or is suspended from the performers list or any equivalent list.
- (4) If the application is accepted by a determining officer, the performer may be removed from the performers list in accordance with Regulation 30(7).

## **29 Mandatory grounds for removal from performers list**

- (1) The Medical Director must decide to remove a performer from the performers list if –
  - (a) the performer ceases to be a registered medical practitioner;
  - (b) the performer ceases to be included in the General Practitioner Register;
  - (c) the performer is subject to a national disqualification from any equivalent list;
  - (d) the performer is convicted, in the British Islands, of murder; or
  - (e) the performer has died.
- (2) The Medical Director must decide to remove a performer from the performers list when directed to do so by a sub-panel of the Performers

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List Appeals Panel under Regulation 40 or 41 or the Royal Court under Regulation 42.

### **30 Discretionary grounds for removal from performers list**

- (1) The Medical Director may decide to remove a performer from the performers list if –
  - (a) the performer has been convicted, in the British Islands, of an offence (other than murder), and has been sentenced to a term of imprisonment, whether suspended or not, of more than 6 months;
  - (b) the performer does not comply with a general condition;
  - (c) the performer does not comply with any additional conditional applicable in his or her case; or
  - (d) the performer does not, within the time specified, complete the actions, changes and other steps specified in a resolution notice that the performer has accepted.
- (2) The Medical Director may remove a performer from the performers list if the continued inclusion of the performer in the list would be prejudicial to the efficiency of the provision of medical services pursuant to a contract made under Part 3A of the 1967 Law or for which medical benefit is paid (an “efficiency case”).
- (3) The Medical Director may remove a performer from the performers list if the performer –
  - (a) has, whether alone or together with another person, by act or omission, caused or risked causing detriment to the scheme of health insurance under the Health Insurance (Jersey) Law 1967<sup>7</sup> or to any other publicly funded health scheme elsewhere by securing or attempting to secure for the performer or another person any financial or other benefit; and
  - (b) knew that the performer or the other person (if any) was not entitled to the benefit (a “fraud case”).
- (4) The Medical Director may remove a performer from the performers list if the performer is unsuitable to be included in the list (an “unsuitability case”).
- (5) The Medical Director may remove a performer from the performers list if the performer cannot demonstrate that he or she has provided medical services in Jersey –
  - (a) during the preceding 12 months; or
  - (b) if the performer has been included in the performers list for less than 12 months, during the period commencing with his or her inclusion in the list.
- (6) In calculating the period referred to in paragraph (5)(a) or (b) there shall be disregarded –
  - (a) any period during which the performer was suspended under these Regulations;

- (b) any period during which the performer's registration as a registered medical practitioner was suspended; or
  - (c) any period which the Medical Director, with good cause, decides.
- (7) The Medical Director may remove a performer from the performers list 3 months after the performer's application for removal has been accepted under Regulation 28.

**31 Criteria for removal from performers list under Regulation 30(2) – efficiency case**

- (1) Where the Medical Director is considering whether to remove a performer from the performers list under Regulation 30(2), the Medical Director must consider –
- (a) any information relating to the performer notified by the performer in compliance with the general conditions and any additional conditions applicable in the performer's case;
  - (b) any information provided by the National Health Service Litigation Authority established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom about past or current investigations or proceedings involving or relating to that performer; and
  - (c) the matters referred to in paragraph (2).
- (2) The matters are –
- (a) the nature of any incident which was prejudicial to the efficiency of the provision of medical services pursuant to a contract made under Part 3A of the 1967 Law or for which medical benefit is payable;
  - (b) the length of time since the last incident occurred and since any investigation into it was concluded;
  - (c) any action taken by the Minister for Health and Social Services under the 1960 Law or by any regulatory or other body, including the police or courts, as a result of any such incident;
  - (d) the relevance of the incident to the performer's performance of medical services pursuant to a contract made under Part 3A of the 1967 Law or for which medical benefit is payable, and the likely risk to patients or to public finances;
  - (e) whether the performer has ever failed to comply with a request to undertake an assessment by –
    - (i) the National Clinical Assessment Authority established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom on or before 31st March 2005,
    - (ii) the National Patient Safety Agency established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom on or before 31st March 2005, between 1st April 2005 and 31st March 2012 inclusive,



- (iii) the National Institute for Health and Clinical Excellence established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom between 1st April 2012 and 31st March 2013 inclusive, or
- (iv) the National Health Service Litigation Authority mentioned in paragraph (1)(b), on or after 1st April 2013;
- (f) whether the performer has previously failed to supply information, make a declaration required or comply with general or additional conditions imposed on his or her inclusion in the performers list or an equivalent list; and
- (g) whether, in respect of the performers list or an equivalent list, the performer –
  - (i) was refused inclusion in it,
  - (ii) was included in it subject to conditions,
  - (iii) was removed from it, or
  - (iv) is currently suspended from it,and, if so, the facts relating to the incident which led to such action and the reasons given for such action by the holder of the list.

**32 Criteria for removal from performers list under Regulation 30(3) – fraud case**

- (1) Where the Medical Director is considering whether to remove a performer from the performers list under Regulation 30(3), the Medical Director must consider –
  - (a) any information relating to the performer notified by the performer in compliance with the general conditions and any additional conditions applicable in the performer’s case;
  - (b) any information provided by the National Health Service Litigation Authority established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom about past or current investigations or proceedings involving or relating to that performer;
  - (c) any information provided by the NHS Business Services Authority established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom about past or current investigations or proceedings involving or relating to the performer; and
  - (d) the matters set out in paragraph (2).
- (2) The matters are –
  - (a) the nature of any incident of fraud;
  - (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
  - (c) any action taken by the Minister for Social Security under the 1967 Law, by the Minister for Health and Social Services under the

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1960 Law or by any regulatory or other body, including the police or the courts, as a result of the incident;

- (d) the relevance of any investigation into any incident of fraud to the performer's performance of medical services pursuant to a contract made under Part 3A of the 1967 Law or for which medical benefit is payable, and the likely risk to patients or to the Health Insurance Fund or public finances; and
- (e) whether, in respect of the performers list or an equivalent list, the performer –
  - (i) was refused inclusion in it,
  - (ii) was included in it subject to conditions,
  - (iii) was removed from it, or
  - (iv) is currently suspended from it,and, if so, the facts relating to the incident which led to such action and the reasons given for such action by the holder of the list.

### **33 Criteria for removal from performers list under Regulation 30(4) – unsuitability case**

- (1) Where the Medical Director is considering whether to remove a performer from the performers list under Regulation 30(4), the Medical Director must consider –
  - (a) any information relating to the performer notified by the performer in compliance with the general conditions and any additional conditions applicable in the performer's case;
  - (b) any information provided by the National Health Service Litigation Authority established as a Special Health Authority under section 28 of the National Health Service Act 2006 of the United Kingdom about past or current investigations or proceedings involving or relating to that performer; and
  - (c) the matters set out in paragraph (2).
- (2) The matters are –
  - (a) the nature of any event which gives rise to a question as to the suitability of the performer to be included in the performers list;
  - (b) the length of time since the event and the facts which gave rise to it occurred;
  - (c) any action taken or penalty imposed by the Minister for Health and Social Services under the 1960 Law or by any regulatory or other body, including the police or the courts, as a result of the event;
  - (d) the relevance of the event to the performer's performance of medical services pursuant to a contract made under Part 3A of the 1967 Law or for which medical benefit is payable and any likely risk to any patients or to the Health Insurance Fund or public finances;
  - (e) whether any offence was an offence to which the Sex Offenders (Jersey) Law 2010<sup>8</sup> applies by virtue of Article 2 of that Law or, if it had been committed in Jersey, would have been such an offence;

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- (f) whether, in respect of the performers list or any equivalent list, the performer –
    - (i) was refused inclusion in it,
    - (ii) was included in it subject to conditions,
    - (iii) was removed from it, or
    - (iv) is currently suspended from it,and, if so, the facts relating to the incident which led to such action and the reasons given for such action by the holder of the list.

### **34 Procedure for removal under Regulation 30**

- (1) Where the Medical Director is considering removing a performer from the performers list on a ground in Regulation 30, the Medical Director shall give the performer –
  - (a) notice of any concern that the Medical Director is taking into consideration; and
  - (b) notice of what action the Medical Director is considering, and on what grounds.
- (2) The performer shall have the right, within 28 days of notice being given under paragraph (1)(b), to make written representations to the Medical Director.
- (3) If the performer makes written representations within the time required by paragraph (2), the Medical Director must take them into account before reaching his or her decision.
- (4) Where the Medical Director decides to remove a performer from the performers list on a ground in Regulation 30, the performer shall not be removed from the performers list until whichever is the later of –
  - (a) the expiry of the period of 28 days beginning with the date of the decision;
  - (b) the date on which any appeal against the decision is concluded.

### **35 Readmission where conviction overturned**

- (1) Where a practitioner has been removed from the performers list solely on the ground that the performer has been convicted of a criminal offence and that conviction is overturned on appeal, the Medical Director may agree to include the practitioner in the performers list without the need for the practitioner to provide an application that complies with all, or any particular provision of Schedule 1 if the Medical Director is satisfied that there are no other matters that need to be considered in respect of the practitioner's inclusion in the performers list.
- (2) If the conviction is reinstated on appeal, the previous decision to remove the practitioner from the performers list is, once again, to have effect.

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**PART 5****REVIEWS, REDETERMINATIONS AND APPEALS****36 Review by Medical Director of additional conditions or suspension**

- (1) The Medical Director may at any time review –
  - (a) his or her decision to impose or vary additional conditions applicable in a performer's case; or
  - (b) his or her decision to suspend a performer on the ground in Regulation 23(a) or (b) (unless the period of suspension has been extended by decision of a sub-panel of the Performers List Appeals Panel).
- (2) The Medical Director must review a decision described in paragraph (1) when requested by the performer in accordance with paragraph (3) and (4).
- (3) A request under paragraph (2) may not be made until 3 months have expired following the date the decision to be reviewed was made.
- (4) After a review of a decision described in paragraph (1) has taken place, the performer cannot request a further review of the decision until 6 months have expired following the date of the decision on the last review.
- (5) Before reviewing a decision described in paragraph (1), the Medical Director must give the performer –
  - (a) notice of any concern regarding the performer that the Medical Director proposes to take into consideration when conducting the review;
  - (b) notice of the action that the Medical Director is considering and on what grounds; and
  - (c) the opportunity to make written representations to the Medical Director within 28 days of the notice described in sub-paragraph (b).
- (6) If the performer makes written representations, the Medical Director must take them into account before reaching his or her decision.
- (7) The Medical Director may, on a review of a decision to impose additional conditions at the time of a performer's inclusion in the performers list, decide to –
  - (a) vary the conditions;
  - (b) impose different conditions;
  - (c) remove the conditions; or
  - (d) remove the performer from the performers list.
- (8) The Medical Director may, on a review of a decision to suspend the performer, decide –
  - (a) subject to Regulation 26(4), to end, maintain or vary the period of suspension;

- (b) to impose additional conditions; or
  - (c) to remove the performer from the performers list.
- (9) The Medical Director may not review, and the performer may not request a review of –
- (a) a decision to suspend a performer under Regulation 23(c) or (d);
  - (b) a decision to impose additional conditions, where the performer has not notified his or her agreement to be included in the performers list subject to those conditions.

**37 Redetermination of decision of determining officer**

- (1) Subject to paragraph (2), a person shall have a right to a redetermination of a decision made by a determining officer in the person's case.
- (2) An application for a redetermination must be made, in writing, to the Medical Director no later than 28 days after the person is notified of the decision, in accordance with Regulation 43.
- (3) The Medical Director may, if he or she considers appropriate, accept an application made after the expiry of the period described in paragraph (2).
- (4) The Medical Director shall give the person the opportunity to put his or her case in writing to the Medical Director, by a time and on a day specified by the Medical Director.
- (5) The Medical Director shall take into account the appellant's written representations before reaching his or her decision.
- (6) The Medical Director may decide to uphold the decision of the determining officer or substitute his or her own decision.

**38 Appeal against decision of Medical Director**

- (1) An applicant for inclusion in the performers list, or a performer (the "appellant"), has a right of appeal against any decision of the Medical Director made in the applicant's or performer's case under these Regulations.
- (2) In the case of an appeal against removal from the performers list on a ground in Regulation 29, a person shall only have a right of appeal on the ground that, in making the decision, the Medical Director erred on a matter of fact.
- (3) An appeal against a decision shall be made, in writing, to the chairman of the Performers List Appeals Panel no later than 28 days after the appellant is notified, in accordance with these Regulations, of the decision.
- (4) The chairman of the Performers List Appeals Panel may, if he or she considers appropriate, accept an appeal made after the expiry of the period described in paragraph (3).

**39 Performers List Appeals Panel**

- (1) The Minister for Health and Social Services shall appoint a Performers List Appeals Panel.
- (2) The Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>9</sup> shall oversee the selection of persons for appointment under paragraph (1).
- (3) The members of the Performers List Appeals Panel shall be –
  - (a) at least one legal member, being a person with experience of or training in the conduct of appeal proceedings;
  - (b) at least one practitioner member, being a person who –
    - (i) is authorized to practise general medical practice in a country or territory outside Jersey, and
    - (ii) has never practised general medical practice in Jersey; and
  - (c) at least one lay member, being a person resident in Jersey who is not a person described in sub-paragraph (a) and has never practised medicine in any place.
- (4) The member described in paragraph (3)(a) shall be the chairman of the Panel or, if there is more than one such member, the Minister for Health and Social Services shall appoint one of them as the chairman of the Panel.
- (5) Upon an application being made under Regulation 26(5) or an appeal being made under Regulation 38, the chairman of the Panel shall convene a sub-panel of its members to hear the matter.
- (6) A sub-panel shall comprise –
  - (a) one legal member, described in paragraph (3)(a);
  - (b) one practitioner member, described in paragraph (3)(b); and
  - (c) one lay member, described in paragraph (3)(c).
- (7) When convening a sub-panel, the chairman shall not select any member who has worked with, or is or was a patient of, the suspended practitioner, in the case of an application under Regulation 26(5), or the appellant, in the case of an appeal under Regulation 38, or is otherwise conflicted in the matter.

**40 Procedures and decisions of sub-panel of the Performers List Appeals**

- (1) Schedule 3 has effect to specify procedures for a hearing before a sub-panel convened under Regulation 39.
- (2) On hearing an appeal made under Regulation 38, the sub-panel shall redetermine the matter and may –
  - (a) uphold the decision of the Medical Director; or
  - (b) substitute its own decision and direct the Medical Director to take the necessary action to implement the decision.

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- (3) A sub-panel may, when making a decision on an appeal, state that it is of the opinion that there is no realistic prospect of a further review being successful if held one year after its decision.

#### **41 Review of appeal by sub-panel of the Performers List Appeals Panel**

- (1) A sub-panel of the Performers List Appeals Panel that has decided an appeal under Regulation 40(2) –
  - (a) must review its decision following a request from the appellant; or
  - (b) may review its decision on its own initiative.
- (2) A request under paragraph (1)(a) may not be made until one year has expired following the date of the earlier decision or, if the sub-panel made a statement under Regulation 40(3), the 3 years have expired following that date.
- (3) On reviewing its decision, the sub-panel may vary the decision or make a fresh decision, and direct the Medical Director to take the necessary action to implement the variation or fresh decision.
- (4) The chairman of the Performers List Appeal Panel may, for the purposes of a review by a sub-panel –
  - (a) select a further member to sit on the sub-panel, to replace a person who is no longer a member of the Performers List Appeals Panel; or
  - (b) remove a member from the sub-panel, if it appears to the chairman that any circumstances have arisen which, under Regulation 39(7), would have prevented the member's selection to sit on the sub-panel, and select a further member to sit on the sub-panel in his or her place.

#### **42 Appeal against decision of sub-panel of the Performers List Appeals Panel**

- (1) An applicant for inclusion in the performers list, or a performer (the "appellant"), has a right of appeal to the Royal Court against any decision of a sub-panel of the Performers List Appeals Panel made in the applicant's or performer's case under these Regulations.
- (2) An appeal against a decision shall be made no later than 28 days after the appellant is notified, in accordance with these Regulations, of the decision.
- (3) On hearing an appeal made under this Regulation, the Royal Court may –
  - (a) uphold the decision of the sub-panel; or
  - (b) substitute its own decision and direct the Medical Director to take the necessary action to implement the decision.

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**PART 6****GENERAL AND CLOSING****43 Notification of decisions**

- (1) A determining officer or the Medical Director who makes a decision under these Regulations in respect of an applicant for inclusion in the performers list or a performer must notify that applicant or performer of the decision, in writing.
- (2) Where the decision is adverse to the applicant or performer, the notice given must also –
  - (a) give the reasons for the decision (including any facts relied upon); and
  - (b) explain the applicant's or performer's rights to a review, redetermination or appeal under Part 5, the time within which such rights must be exercised and how they may be exercised.
- (3) If the notice is of a decision to suspend a performer with immediate effect, the notice must be given as soon as is practicable.
- (4) Otherwise, the notice must be given no later than 7 days after the decision.

**44 Information sharing**

- (1) The Medical Director may share information obtained or received under or for the purposes of these Regulations with –
  - (a) the Minister for Social Security, for purposes connected with the Minister's approval of practitioners under the 1967 Law;
  - (b) the Minister for Health and Social Services, for purposes connected with the Minister's functions under the 1960 Law;
  - (c) a responsible officer appointed under Article 10C of the 1960 Law, for purposes connected with the discharge of that officer's functions under that Law.
- (2) The Medical Director may use information obtained or received under or for the purposes of these Regulations for purposes connected with the discharge of his or her functions as the responsible officer, appointed under Article 10C of the 1960 Law, for performers.
- (3) A person who receives information from the Medical Director pursuant to paragraph (1) may only use it for the purposes specified in the person's case in that paragraph.
- (4) The Medical Director shall keep secure information obtained or received under or for the purposes of these Regulations.
- (5) When the Medical Director no longer needs to keep information obtained or received under or for the purposes of these Regulations, the Medical Director shall either cause the information to be destroyed in a secure manner or return it to the person who provided it.



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#### **45 Transitional arrangements**

- (1) Upon commencement, an existing approved medical practitioner shall be included in the performers list.
- (2) An existing approved medical practitioner shall, within the period of 12 months following commencement, supply to the Primary Care Governance Team the information and documents, described in paragraphs 2 and 3 of Schedule 1, that would be required of an applicant for inclusion in the performers list, and the declaration, described in paragraph 7 of Schedule 1, that would be required from such an applicant.
- (3) Part 4 shall apply as if a failure, without reasonable excuse, to comply with paragraph (2) was a failure by a performer who is an existing approved medical practitioner to comply with an additional condition applicable in his or her case.
- (4) These Regulations shall apply to a medical practitioner who was first approved pursuant to an application for approval made on or before 1st November 1993 with the omission of Regulations 4(b), 6(b) and 29(1)(b) and paragraph 3(b) of Schedule 1.
- (5) These Regulations shall apply to a medical practitioner who was first approved pursuant to an application for approval made after 1st November 1993 but before commencement with the following modifications –
  - (a) the references in Regulations 4(b), 6(b) and 29(1)(b) to inclusion in the General Practitioner Register shall be construed as references to compliance with the condition in the Health Insurance (Conditions for Approval of Medical Practitioners) (Jersey) Regulations 1993;
  - (b) the requirement imposed by paragraph (2) of this Regulation and paragraph 3 of Schedule 1 to supply a certificate that the practitioner is registered in the General Practitioner Register shall be construed as a requirement to supply a certificate or other evidence that the practitioner complies with the condition mentioned in sub-paragraph (a).
- (6) In this Regulation –

“commencement” means commencement of these Regulations;

“existing approved medical practitioner” means a medical practitioner who, immediately before commencement, is an approved medical practitioner, and whose approval has not been withdrawn for a definite or indefinite period under Article 27(2) of the 1967 Law.

#### **46 Citation and commencement**

These Regulations may be cited as the Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 201- and shall come into force on 1st October 2014.

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**SCHEDULE 1**

(Regulation 5)

**REQUIREMENTS FOR APPLICATION****1 Information to be provided**

An application for inclusion in the performers list shall contain the information required by paragraphs 2 and 4.

**2 Basic information**

- (1) An application shall contain –
  - (a) the full name with which the applicant is registered under the Medical Act 1983;
  - (b) the applicant's gender and date of birth;
  - (c) the residential address with which the applicant is registered under the Medical Act 1983;
  - (d) the applicant's telephone number and email address.
- (2) An application shall contain the following information regarding the applicant's qualifications and past practice –
  - (a) a full description of the applicant's medical qualifications including the institution which awarded them;
  - (b) in respect of the applicant's registration in the United Kingdom –
    - (i) the registration number assigned to the applicant in respect of his or her registration in the UK practitioners register,
    - (ii) the date the applicant was first registered in the UK practitioners register,
    - (iii) the date by which the applicant is next due, in accordance with Regulations made under section 32(1)(c) of the Medical Act 1983, to pay a retention fee in respect of the retention of the applicant's name in the UK practitioners register;
    - (iv) the applicant's next submission date, notified in accordance with regulation 6 of the General Medical Council (Licence to Practise and Revalidation) Regulations Order of Council 2012.
- (3) An application shall provide details of any conditions imposed by the General Council upon, or undertakings given by the applicant in connection with, the applicant's registration under the Medical Act 1983 or his or her licence to practise.
- (4) An application shall state whether, pursuant to Regulations made under section 45A of the Medical Act 1983, when the applicant commences practise in Jersey, the applicant will have, and continue to have, a responsible officer in the United Kingdom and, if the applicant will have

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such an officer, the name and address of the applicant's responsible officer in the United Kingdom.

- (5) An application shall contain –
- (a) the name, address and email address of each employer for whom and each company, partnership or other entity as a director, partner or other officer of which, the applicant intends to provide medical services in Jersey;
  - (b) whether the applicant intends to provide medical services in Jersey on a self-employed basis;
  - (c) the addresses at which the applicant intends to provide medical services in Jersey;
  - (d) the date from which the applicant intends to provide medical services in Jersey; and
  - (e) whether the services are intended to be provided indefinitely or, if not, the period for which the services are intended to be provided.
- (6) An application shall –
- (a) provide details of any findings against the applicant regarding any matter relating to fraud, where the outcome was adverse;
  - (b) provide details of any investigation into the applicant's professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
  - (c) provide details of any investigation by an employer into the applicant's professional conduct, where the outcome was adverse;
  - (d) provide details of any offence of which the applicant has been convicted –
    - (i) in Jersey, or
    - (ii) elsewhere, if the offence, if committed in Jersey, would be an offence in Jersey.
- (7) An application shall state whether, to the applicant's knowledge, the applicant is currently subject to any investigation or proceedings of the following description –
- (a) an investigation into, or proceedings regarding, the applicant's professional conduct by any licensing, regulatory or other body, including any investigation into, or proceedings regarding, any matter relating to fraud;
  - (b) an investigation into, or disciplinary proceedings regarding, the applicant's professional conduct by an employer; or
  - (c) an investigation or proceedings that might lead to the applicant's conviction for an offence in Jersey or to a conviction elsewhere if the act, if committed in Jersey, would be an offence in Jersey,
- and, if the applicant is subject to any such investigation or proceedings, provide details.

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**3 Basic documents**

The application must be accompanied by a certificate issued by the registrar of the General Council under section 34A of the Medical Act 1983 –

- (a) that the applicant is registered in the register kept under section 2 of the Medical Act 1983 and holds a licence to practise; and
- (b) that the applicant is registered in the General Practitioner Register.

**4 Further information**

- (1) An application shall contain a chronology of the applicant's professional experience in –
  - (a) general practice;
  - (b) hospital appointments; and
  - (c) any other professional experience.
- (2) The chronology must include –
  - (a) the start and end date for each post;
  - (b) the reasons for leaving each post including, if the applicant was dismissed, the reasons for dismissal;
  - (c) the reasons for any gap between the end of one post and the start of the next; and
  - (d) evidence of each post.
- (3) An application shall state whether, to the applicant's knowledge, the applicant is currently subject to an investigation or proceedings which may lead to the applicant's disqualification, removal or suspension from an equivalent list and, if the applicant is subject to any such investigation or proceedings, provide details.
- (4) An application shall –
  - (a) state whether or not the applicant has any outstanding application, including a deferred application, to be included in an equivalent list and, if so, particulars of the application;
  - (b) provide details of any equivalent list –
    - (i) from which the applicant has been removed,
    - (ii) in which the applicant has been refused inclusion,
    - (iii) in which the applicant has been included subject to conditions, or
    - (iv) from which the applicant is currently suspended, together with an explanation why; and
  - (c) state whether the applicant is or has ever been subject to a national disqualification;
- (5) An application shall contain the name and addresses of 2 referees who are willing to provide clinical references relating to 2 recent posts held by the applicant as a medical practitioner (which may include a current post), each of which lasted at least 3 months without a significant break.

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- (6) If the applicant is unable to provide the names and addresses of 2 referees as required by sub-paragraph (5), the applicant must provide the name and address of one or, as the case requires, 2 alternative referees and explain why sub-paragraph (5) cannot be complied with.

**5 Further documents**

- (1) An application for inclusion in the performers list shall be accompanied by evidence that the applicant has, or will have, an appropriate indemnity arrangement which provides, or will provide, the applicant with cover in respect of liabilities that may be incurred in carrying out the applicant's practice.
- (2) An application for inclusion in the performers list shall be accompanied by an enhanced criminal record certificate issued not more than 6 months before the application is made.

**6 Application for temporary inclusion in the performers list**

- (1) Notwithstanding paragraph 1, an application for temporary inclusion in the performers list shall provide only –
- (a) the information specified in paragraph 2(1), (2) and (3); and
  - (b) details of any equivalent list in which the applicant is included.
- (2) Notwithstanding paragraph 1, an application for temporary inclusion in the performers list is not required to provide any documents.

**7 Form of application**

An application shall be made using a form provided by the Minister for Health and Social Services for the purpose and shall contain a declaration by the applicant –

- (a) that, to the best of the applicant's knowledge, information and belief, the information provided by him or her is true and complete;
- (b) that the applicant shall, as soon as is reasonably practicable, inform the Primary Care Governance Team, in writing, of any change in or addition to the information required by paragraph 2 that occurs after the applicant's application is made and before the application is determined; and
- (c) consenting to a determining officer requesting from –
  - (i) any employer or former employer of the applicant,
  - (ii) any partnership in which the applicant is or was a partner or any company or other entity of which the applicant is or was a director or other officer, or
  - (ii) from any body that licenses or regulates the practice of medicine, information relating to a current investigation into the applicant or to a past investigation into the applicant, where the outcome was adverse.

**SCHEDULE 2**

(Regulation 9)

**GENERAL CONDITIONS APPLICABLE TO ALL PERFORMERS****1 Changes in circumstances**

- (1) A performer must notify the Primary Care Governance Team, within 7 days, in writing, of any material change in the information provided by the performer in his or her application, made as required by Schedule 1.
- (2) Without prejudice to the generality of the requirement in subparagraph (1), a performer must notify the Primary Care Governance Team, in writing, within 7 days of the performer –
  - (a) being convicted in the British Islands of a criminal offence;
  - (b) being convicted elsewhere in the world of a criminal offence that, if committed in Jersey, would be an offence in Jersey;
  - (c) being charged with a criminal offence in the British Islands;
  - (d) being charged with a criminal offence elsewhere in the world which, if committed in Jersey, would be an offence in Jersey;
  - (e) becoming the subject of any investigation by any regulatory or other body;
  - (f) becoming the subject of any investigation in respect of any current or previous employment;
  - (g) being informed of the outcome of any investigation in respect of any current or previous employment which includes a finding adverse to the performer;
  - (h) becoming the subject of any investigation by the NHS Business Services Authority established as a Special Health Authority under section 28 of the National Health Service Act 2006;
  - (i) being informed of the outcome of an investigation by the Authority mentioned in clause (h) which includes a finding adverse to the performer;
  - (j) becoming the subject of any investigation by the holder of any equivalent list that could lead to the performer's removal from the list;
  - (k) being removed or suspended from, refused inclusion in, or included subject to conditions in, any list; or
  - (l) becoming subject to a national disqualification.
- (3) A performer must, each year, when requested by the Medical Director or a determining officer –
  - (a) confirm, in writing that the information held by the Primary Care Governance Team in respect of the performer is correct; or
  - (b) notify the Primary Care Governance Team, in writing, of any change in that information.

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- (4) The Medical Director or a determining officer may request further information regarding any change or event mentioned in sub-paragraph (1), (2) or (3) from –
    - (a) the performer's current or a former employer;
    - (b) the holder of an equivalent list;
    - (c) any regulatory or other body.
  - (5) Where a request is made under sub-paragraph (3), the performer must consent to the provision of information in response to the request.
  - (6) A performer must notify the Primary Care Governance Team, in writing, within 7 days, of the performer's application to be admitted, or the performer's admission, to an equivalent list.

## **2 Conduct**

- (1) A performer must follow guidance published by the General Council regarding good medical practice.
- (2) A performer must, if requested by the Medical Director or a determining officer, provide an enhanced criminal record certificate issued within such period as is specified in the request.
- (3) The Medical Director or a determining officer must have reasonable cause for making a request under sub-paragraph (2).

## **3 Appraisals**

- (1) A performer must participate in appropriate and relevant appraisal procedures.
- (2) The appraisals required by sub-paragraph (1) must involve obtaining and taking account of all available information relating to the performer's fitness to practise in the work carried out by the performer as a provider of medical services and any other clinical practice carried out by the performer during the appraisal period.
- (3) An appraisal of a performer and any information or documents taken into account in the conduct of the appraisal, must be submitted to the Medical Director.

## **4 Assessments**

- (1) A performer must, if requested by the Medical Director or a determining officer, take part in an assessment of the performer's knowledge of English.
- (2) A performer must, if requested by the Medical Director or a determining officer, co-operate with an assessment by the a body or organization having the appropriate qualifications and experience to assess the performer's clinical skills and performance.
- (3) The Medical Director or a determining officer must have reasonable cause for making a request under sub-paragraph (2) or (3).

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**SCHEDULE 3**

(Regulation 40(1))

**HEARING OF APPEAL****1 Interpretation of Schedule 3**

In this Schedule –

“chairman” means the chairman of the Panel;

“hearing” means the hearing of an appeal by a Panel;

“Panel” means a sub-panel of the Performers List Appeals Panel convened under Regulation 39(5) to hear an appeal;

“working day” means a day other than a Sunday, Good Friday, Christmas Day or a day that, pursuant to an Act made under Article 2 of the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>10</sup>, is to be observed as a public holiday.

**2 Hearing to be in private**

A hearing shall be held in private.

**3 Notice of hearing**

- (1) The Panel shall fix a date and place for the hearing and shall give the appellant and the Medical Director not less than 10 working days’ notice of the date and place fixed.
- (2) The notice required by sub-paragraph (1) shall also inform the appellant and the Medical Director of their rights under paragraph 4.

**4 Procedure**

- (1) The appellant and the Medical Director shall be entitled to appear and to be heard at the hearing.
- (2) The appellant and the Medical Director may each be represented by any person and that person shall be entitled to appear and to be heard at the hearing.
- (3) The Panel may proceed with the hearing in the absence of the appellant or the Medical Director, whether represented or not, if it appears to be just and proper to do so.
- (4) The Panel may adjourn the hearing from time to time, as may appear necessary for the due hearing of the appeal.

**5 Evidence**

The appellant and the Medical Director may each call witnesses.



**6 Determination of appeal without hearing**

Notwithstanding the foregoing provisions of this Schedule, the Panel may, with the agreement of the appellant and Medical Director, determine the appeal without a hearing.

**7 Decision of Panel**

- (1) The Panel's decision shall be in writing, signed by the chairman, and include a statement of the reasons for the decision.
- (2) The Panel's decision shall be sent to the appellant, the Medical Director and the Minister for Health and Social Services.

**8 General provision as to procedure**

Except as provided by this Schedule, the procedure at a hearing shall be determined by the Panel.

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- <sup>1</sup> *chapter 26.500*
  - <sup>2</sup> *chapter 20.600*
  - <sup>3</sup> *chapter 26.500*
  - <sup>4</sup> *chapter 23.320*
  - <sup>5</sup> *chapter 23.815*
  - <sup>6</sup> *chapter 15.240*
  - <sup>7</sup> *chapter 26.500*
  - <sup>8</sup> *chapter 23.815*
  - <sup>9</sup> *chapter 16.325*
  - <sup>10</sup> *chapter 15.560*