



**THE ACCIDENT REHABILITATION AND COMPENSATION  
INSURANCE (MEDICAL MISADVENTURE) REGULATIONS  
1992**

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CATHERINE A. TIZARD, Governor-General

**ORDER IN COUNCIL**

At Wellington this 15th day of June 1992

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 167 of the Accident Rehabilitation and Compensation Insurance Act 1992, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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**REGULATIONS**

**1. Title and commencement**—(1) These regulations may be cited as the Accident Rehabilitation and Compensation Insurance (Medical Misadventure) Regulations 1992.

(2) These regulations shall come into force on the 1st day of July 1992.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“The Act” means the Accident Rehabilitation and Compensation Insurance Act 1992:

“Claimant” means a person who has claimed to have suffered medical misadventure, or whose claim for cover under the Act raises an issue as to whether or not medical misadventure has occurred:

“Committee” means a Medical Misadventure Advisory Committee constituted under these regulations:

“Member” means a member of a committee:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

(b) A day in the period commencing on the 20th day of December in any year and ending with the 15th day of January in the following year:

Expressions defined in or for the purposes of the Act have the meanings so defined.

**3. Medical Misadventure Advisory Committees**—There shall be one or more Medical Misadventure Advisory Committees each with the function of providing independent advice to the Corporation to assist the Corporation to make decisions under section 5 of the Act as to whether, in any particular case, medical misadventure has occurred.

**4. Corporation to refer matter to committee for independent advice**—(1) In any case where the Corporation is required to decide under section 5 of the Act whether medical misadventure has occurred, it shall refer the matter to a committee for independent advice in respect thereof.

(2) The Corporation shall make available to the committee all documents and other items it holds relating to the matter that are relevant to the committee’s function.

(3) Where a committee advises the Corporation that it considers that medical misadventure has occurred it shall advise the Corporation whether or not it considers the medical misadventure may be attributable to negligence or an inappropriate action on the part of a registered health professional.

(4) The advice of a committee to the Corporation under these regulations should be the consensus opinion of the committee but, if in exceptional circumstances consensus cannot be reached, the advice shall record the differing opinions of the members of the committee.

(5) All advice from a committee to the Corporation shall be in writing.

**5. Constitution of Medical Misadventure Advisory Committees**—

(1) Each committee shall consist of—

(a) A person who is not, has never been, and is not eligible to be, a barrister, solicitor, or registered health professional; and

(b) A barrister or solicitor of the High Court of New Zealand in active practice; and

(c) A relevant registered health professional in active practice appointed by the Chairperson in respect of a specified matter to be considered by the committee, being a relevant health professional appointed from a panel of persons specified by the Minister under subclause (7) of this regulation as persons suitable for such appointment; and

(d) One other person, if any, appointed under subclause (2) of this regulation.

(2) Each committee may, by consensus, appoint to be a member of the committee a person whom it considers will assist it to fulfil its function.

(3) Each person appointed under paragraph (a) or paragraph (b) of subclause (1) of this regulation shall be appointed by the Minister who, in the case of an appointment under the said paragraph (b), shall appoint a person from among nominations received from the New Zealand Law Society in respect of that position.

(4) The Minister shall appoint one of the persons appointed under paragraph (a) or paragraph (b) of subclause (1) of this regulation to be Chairperson of the committee.

(5) Except as otherwise specified in these regulations, every person appointed to a committee under subclause (1) (c) or subclause (2) of this regulation shall, in respect of the specified matter, be a member of the committee on the same conditions as those members appointed under subclause (3) of this regulation.

(6) Any person may be appointed as a member of more than one committee.

(7) For the purpose of appointments to the committee under subclause (1) (c) of this regulation the Minister shall appoint, from nominations received from relevant professional groups of registered health professionals, panels of persons the Minister considers suitable for appointment to a committee under that subclause.

(8) There may be appointed by the Minister, on the same conditions as other members are appointed, persons suitably qualified to be members under paragraphs (a) to (c) of subclause (1) of this regulation who may act in the stead of a member similarly qualified who is unavailable for any reason or whose office is for the time being vacant. Except where the office of a member is vacant, any such person may act only where the remaining members of the committee are satisfied that the member concerned is unavailable to perform the duties of a member.

**6. Term of appointment**—(1) Every member appointed under paragraph (a) or paragraph (b) of regulation 5 (1) of these regulations shall be appointed for a specified term of not more than 3 years, and may from time to time be reappointed.

(2) Every person appointed under regulation 5 (7) of these regulations shall be appointed to the panel for a specified term of not more than 3 years, and may from time to time be reappointed.

(3) Every member appointed to a committee under regulation 5 (1) (c) of these regulations or regulation 5 (2) of these regulations shall be appointed in respect of a specified matter only.

(4) Every member appointed under paragraph (a) or paragraph (b) or paragraph (c) of regulation 5 (1) of these regulations shall, unless removed from office under regulation 7 of these regulations, continue in office until his or her successor comes into office, notwithstanding that the term of office may have expired.

(5) A member whose term of office has expired or who has resigned shall continue as a member for the purpose of advising in respect of any matter which was referred to the committee of which he or she is a member before that event.

**7. Removal from office**—Any member of a committee (including a member appointed by the committee) and any person appointed to a panel under regulation 5 (7) of these regulations may be removed from

office by the Minister for neglect of duty or misconduct proved to the satisfaction of the Minister.

**8. Resignation from office**—(1) Any member appointed by the Minister may at any time resign from a committee or a panel by written notice to the Minister.

(2) Any member appointed by a committee under regulation 5 (2) of these regulations may at any time resign from the committee by written notice to the committee.

**9. Vacancies in membership**—(1) If any member dies or resigns or is removed from a committee, the vacancy shall, as soon as practicable, be filled by the appointment of another member.

(2) The power of a committee to perform its functions shall not be affected by any vacancy in its membership so long as an appropriate person appointed under regulation 5 (8) of these regulations is acting as a member of the committee.

**10. Remuneration and expenses of committee members**—There shall be paid to each member such remuneration by way of fees and allowances, and such travelling allowances and expenses as are from time to time agreed between the member and the Minister.

**11. Liability for actions of committee members**—The Corporation shall be liable for the actions of any member of the committee as if that member were an employee of the Corporation; but nothing in this regulation shall—

- (a) Be construed so as to make the member an employee of the Corporation for any other purpose; or
- (b) Make the Corporation liable for any act or omission of any member that is done or not done in bad faith or knowingly outside the functions of the committee.

**12. Secretary and other staff**—The Corporation shall from time to time appoint a Secretary to each committee and such other staff as are necessary to adequately service the committee, and may pay them such remuneration as it considers appropriate. Any such office may be held in conjunction with employment with the Corporation or any other employment and in respect of one or more committees.

**13. Meetings**—Meetings of each committee shall be held at such times and places as the Chairperson of the committee appoints.

**14. Chairperson to preside at meetings**—(1) If present at a meeting of a committee the Chairperson shall preside.

(2) If the Chairperson is not present at a meeting the meeting shall be chaired by a member present who is eligible to be appointed chairperson agreed upon by the members present.

**15. Procedure**—(1) In respect of each matter referred to it under these regulations the committee shall give the claimant and any registered health professional concerned a copy of the documents and other items provided to it by the Corporation, together with any observations of the committee,

and any requests for further information made to that person or any other person, and allow them a specified period of not less than 15 working days after dispatch of the material to comment on the matter together with advice that if they do not comment as invited to do, the committee may nevertheless proceed to discharge its function in respect of the matter.

(2) No person shall be entitled to appear before a committee unless the committee is satisfied that it is unable to discharge its function in respect of the matter without that person appearing before it.

(3) Subject to these regulations, each committee may regulate its procedure in such manner as it thinks fit and may undertake such investigations and gather and consider such information (whether or not admissible in a court) as it considers will assist it to properly perform its functions.

(4) Before giving any advice to the Corporation, each committee shall give a copy of the proposed advice and the evidence relied on by the committee to the claimant and any registered health professional concerned, and allow them a specified period of not less than 15 working days after dispatch of the material to comment on the matter.

(5) Any person receiving material under subclause (1) or subclause (4) of this regulation may request that the committee grant an extension of time within which to comment on the matter and give the reason for the request. Upon receipt of such a request the committee may grant an extension but in doing so shall have regard to the need to deal with the matter expeditiously. No such request received outside the period allowed for comment shall be considered unless there are exceptional circumstances.

(6) The Corporation shall, at the time it notifies the claimant and any registered health professional concerned of its decision in respect of a claim for medical misadventure, include with that notification a copy of the advice it received in respect of the matter from the committee together with such explanation and comment in respect of that advice and its decision as it may wish to make.

BOB MacFARLANE,  
Acting for Clerk of the Executive Council.

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EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations provide for the establishment of Medical Misadventure Advisory Committees to advise the Accident Rehabilitation and Compensation Insurance Corporation where the Corporation is required to decide, under section 5 of the Accident Rehabilitation and Compensation Insurance Act 1992, whether medical misadventure has occurred.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 18 June 1992.  
These regulations are administered in the Accident Compensation Corporation.