



Comhairle na nDochtúirí Leighis
Medical Council

IMMEDIATE SUSPENSION ORDERS

GUIDANCE FOR THE MEDICAL COUNCIL

1. Introduction

- 1.1. This guidance is for the Medical Council (the “Council”).
- 1.2. It will also be of assistance to doctors whose cases are being considered by the Council and solicitors and barristers representing doctors.
- 1.3. The aim of this guidance is promote transparency and consistency in decision making.
- 1.4. This guidance is not legally binding on the Council, its members, its committees or staff. It is a “living” document that may be amended from time to time. Any departure from this guidance shall not render any proceedings or steps void unless the Council so directs.

2. Role of the Council

- 2.1. Where the Council has received information in relation to a doctor and the Council is of the opinion that it is necessary to protect the public, the Council can take immediate action.
- 2.2. The Council does this by applying to the High Court for an order to suspend the doctor’s registration. The effect of the order is to suspend the doctor from practising in Ireland.
- 2.3. Where the Council applies to the Court for an order it will normally seek the suspension until the conclusion of the disciplinary process or for such period as is necessary to protect the public.
- 2.4. In the case of a doctor whose name was registered in the Supervised Division of the register and whose name is not registered in any other divisions of the register, the Council can

make an application for an order prohibiting the doctor from applying for registration in any of the division of the register.

2.5. The function of the High Court is to determine the application by the Council for an immediate suspension order.

2.6. The relevant provision is section 60 of the Medical Practitioners Act 2007 (as amended) (the “Act”). Section 60, as amended by the Medical Practitioners (Amendment) Act 2011, is contained in Appendix 1 to this guidance.

3. Referral to Council

3.1. Where the CEO is of the opinion that it is necessary to protect the public, the CEO may refer a case to the Council at any stage to consider whether to make an application to the High Court for an immediate suspension order to suspend the registration of a doctor.

3.2. The Preliminary Proceedings Committee, the Fitness to Practise Committee, the Health Committee, the Monitoring Committee or any other committee may request the CEO to refer a case to the Council for its consideration.

4. The Council Meeting

4.1. Due to the necessity to protect the public and for the Council to move promptly, the Council meeting to consider whether to make an application to the High Court for an immediate suspension order may be convened at very short notice.

4.2. It has been confirmed in case law that there is no obligation on a statutory body such as the Medical Council to put a doctor on notice of the Council meeting.¹ This is in circumstances where the provision has been enacted with a view to preventing immediate danger to the public.

4.3. However, the Council will generally put the doctor on notice of the meeting, invite the doctor to attend and provide the doctor and or their legal advisors with the opportunity to make written and or oral submissions to the Council.

4.4. The Council will be provided with the relevant papers in advance of the meeting. These papers will often be sent at very short notice and additional papers may be tabled on the day of the Council meeting.

4.5. The Council meeting will be held in private.

4.6. The CEO and the doctor or their representatives may make oral submissions to the Council. They may also provide written submissions and documentation to the Council. These

¹ An Bord Altranais v AOC [2011] IESC 51

submissions are confined to the issue of whether the Council should make an application to the High Court for an order to suspend the doctor's registration.

- 4.7. A legal assessor will attend the meeting to give advice to the Council on section 60 of the Act and any legal issues arising during the course of the hearing.

5. The Test applied by the Council

- 5.1. The Council must decide in accordance with section 60 of the Act, whether, in order to protect the public, it is necessary to make an application to the High Court for an immediate suspension order.
- 5.2. The Council may make this application whether or not the doctor is the subject of a complaint.²
- 5.3. The paramount consideration for the Council is the prevention of immediate danger to the public.³
- 5.4. The matters to be considered by the Council when making its decision are:
- a. the nature of the complaint upon which the application for an inquiry is based;
 - b. the apparent strength of the case against the doctor, if proven to be true and
 - c. whether in the event of an adverse finding the appropriate sanction would be to strike off the practitioner either permanently or for a definite period.⁴
- 5.5. In relation to the second factor, the role of the Council at this stage is not to make findings of fact or resolve conflicts of evidence.
- 5.6. In relation to the third factor, the likely sanction does not necessarily have to be cancellation of registration before the Court will make an immediate suspension order.⁵

6. Reasons for the decision

- 6.1. The Council will give reasons for its decision, including a decision not to apply to the High Court for an immediate suspension order.

² The Council may at the same time as deciding whether to apply to the High Court pursuant to section 60, decide whether to make a complaint to the Preliminary Proceedings Committee pursuant to section 57(1) of the Act.

³ O'Ceallaigh v An Bord Altranais [2000 4 I.R. 54], per Justice Geoghegan

⁴ These factors were set out in the judgment of O'Ceallaigh v An Bord Altranais [2000] 4 I.R. 54. This is a decision which concerned a similar provision in the Nurses Act 1985.

⁵ Medical Council v FCM [2018] IEHC 616

7. Types of concerns which may give rise to consideration for immediate suspension

- 7.1. In this section are examples of the types of concerns that can give rise to consideration for immediate suspension. It is not an exhaustive list and there may be cases that come before the Council which are not dealt with in this section.

Allegations of poor professional performance or serious failing(s) in relation to clinical care

- 7.2. These cases may include allegations of a series of failings, or one very serious failing on the part of a doctor. The Council in these cases is required to consider whether the information provided indicates that a doctor's lack of skill or knowledge is such that there is a risk to the public in the doctor continuing to practise and which necessitates action being taken by the Council to protect the public.

Health

- 7.3. In a case concerning the ill-health of a doctor, the Council will likely have concerns in relation to the welfare, treatment and rehabilitation of the doctor. However, the Council must bear in mind that its role is to ensure the protection of the public and to take the necessary steps to protect the public. This is particularly the case where a doctor, due to their illness, may lack insight into their condition and or is failing or refusing to engage with treatment or with the Health Committee of the Medical Council.

Breach of conditions/undertakings

- 7.4. Where the Council is in receipt of information that a doctor has breached conditions attached to their registration, it must first consider whether a breach has occurred. The Council must then consider the nature of the breach and the risk posed to the public by a doctor practising in breach of their conditions. The Council may take into account factors such as:
- a. whether the breach occurred once or on more than one occasion;
 - b. the doctor's engagement with the Council as regards the monitoring of conditions;
 - c. whether the doctor has wilfully disregarded the conditions imposed by the Council; and
 - d. whether there is a risk to patient safety.

- 7.5. The same considerations apply where a practitioner has breached undertakings given to the Council or the Fitness to Practise Committee.

Sexual misconduct

- 7.6. Cases relating to sexual misconduct may arise for example, where there are
- a. Allegations concerning inappropriate sexual behaviour towards a patient, for example, the carrying out of inappropriate examinations.

- b. A criminal investigation against a doctor for a sexual criminal offence e.g., rape, sexual assault, sexual abuse of children or offences relating to child pornography.
- c. Allegations that a doctor has pursued or established an inappropriate relationship with a patient.
- d. Allegations of a pattern of inappropriate sexual behaviour towards patients.

7.7. The Council must consider the particular facts of each case that comes before it.

Criminal Charges/Investigations

7.8. Where allegations relate to criminal charges or investigations, the Council in considering the necessity to protect the public will need to consider the nature and seriousness of the criminal investigation/charge(s). In doing so the Council must consider the particular facts of each case and the criminal investigation/charge(s).

8. The Role of the High Court

- 8.1. If the Council decides that it is necessary to protect the public, then it shall make an application to the High Court for an immediate suspension order.
- 8.2. The application may be made by the Council *ex parte*; this means without notice to the doctor. However, the Council, depending on the circumstances of the case, will generally put the doctor on notice of the application.
- 8.3. The Council will also seek leave from the Court to notify certain bodies and or authorities of the immediate suspension order. This may include, but is not limited to, the Minister for Health, the Health Services Executive, private hospitals, locum agencies or any other relevant party who should be notified of the immediate suspension order to protect the public.
- 8.4. The application to the High Court is grounded on an affidavit of a professional member of the Council.
- 8.5. The hearing before the High Court will be held in private unless the Court considers it appropriate to hear the application in public.
- 8.6. Following consideration of the application, the Court can:
 - a. make an order to suspend the registration of the doctor or in the case of a doctor who was registered in the Supervised Division and not registered in any other division, prohibit the doctor from applying for registration;
 - b. make any order it considers appropriate. For example, it can impose restrictions or accept undertakings prohibiting or restricting the doctor's practice;
 - c. give the Council any direction that Court considers appropriate;
 - d. refuse the application.

- 8.7. The High Court in coming to its decision will weigh the necessity to protect the public against the constitutional rights of the practitioner. If the High Court decides to make an immediate suspension order, it must be satisfied that the necessity to protect the public outweighs the constitutional right of the doctor to carry on their practice and earn their livelihood as a doctor.⁶

9. Notification through the Internal Market Information System

- 9.1. In addition to any notifications that the Council may be ordered to make by the High Court, the Council, as the competent authority in Ireland for doctors, has an obligation under European Law to notify the other competent authorities in Europe where a doctor's right to practise has been prohibited or restricted, even temporarily, in Ireland. This is done through the Internal Market Information System (the "IMI").
- 9.2. The IMI is an online, secure, multi-lingual, messaging system developed by the European Commission, which allows competent authorities across the EU to share information.
- 9.3. The relevant provision is Article 56a of Directive 2005/36 EC on the recognition of professional qualifications. Article 56a applies to doctors and provides that *"The competent authorities of a Member State shall inform the competent authorities of all other Member States about a professional whose pursuit on the territory of that Member State of the following professional activities in their entirety or parts thereof has been restricted or prohibited, even temporarily, by national authorities or courts...."*⁷
- 9.4. The Medical Council will issue an IMI Alert to the other competent authorities in Europe where a doctor has been restricted or prohibited from practising pursuant to section 60 of the Act. This includes where:
- a. The High Court has made an order suspending the doctor or restricting their practice;
 - b. The High Court has accepted an undertaking(s) from a doctor agreeing to the prohibition of or restriction of their practice; or
 - c. The Council has accepted an undertaking(s) from a doctor agreeing to the prohibition of or restriction of their practice.
- 9.5. The Medical Council is required to send the alert via IMI at the latest within three days from the date of adoption of the decision restricting or prohibiting the doctor's practice.
- 9.6. The Medical Council will also notify the doctor of the alert and inform the doctor of their right to appeal the alert to the High Court.

⁶ PC v Medical Council [2003] IR 600

⁷ Article 56a has been transposed into Irish law by Regulation 87(3) of SI. No.8/2017, European Union (Recognition of Professional Qualifications) Regulations 2017.

10. Undertakings

- 10.1. The Council may in the course of a meeting be offered undertakings by a doctor not to practise medicine or to practise in a restricted manner.
- 10.2. The primary issue to be considered by the Council is the necessity to protect the public, which is paramount.
- 10.3. Therefore, where there is a necessity to protect the public, the decision of whether to suspend or restrict a practitioner should be determined by the High Court in accordance with section 60 of the Act. It should be noted that this does not preclude the doctor from offering undertakings to the High Court, which can be accepted or rejected by the High Court.
- 10.4. The reason for this approach is that undertakings before the High Court are enforceable should there be a breach of any undertaking by a doctor. A breach of an undertaking of the High Court is a very serious matter and the High Court can take immediate steps to enforce the order and make any necessary further orders to protect the public.
- 10.5. On the other hand, a breach of an undertaking to the Council cannot be enforced by the Council. Therefore, if the breach of the undertaking poses a risk to the public, the Council cannot immediately suspend the doctor. The Council would be required to convene a further meeting to consider section 60 and decide whether to make an application to the High Court.
- 10.6. However, in saying the above there may be certain cases where the Council is of the opinion that an immediate suspension order is not necessary to protect the public and the public can be protected by undertakings given to the Council by a doctor.
- 10.7. In such cases the Council must be satisfied that an order of the High Court is not necessary. Further, the Council should consider the likelihood of any reoccurrence of the issue that gave rise to consideration of immediate suspension and whether the doctor has the insight and capacity to offer undertakings to the Council.
- 10.8. Further, the Council must ensure that any undertakings given by a doctor, whether in the form of (i) a prohibition or restrictions on practice or (ii) assurances to the Council, are clear, workable and capable of being monitored by the Council.
- 10.9. Finally, it is important to note that other than IMI Alerts, only the High Court can direct notification of an order to suspend a practitioner's registration to relevant bodies or authorities without the doctor's agreement. The Council cannot direct notification of undertakings given to the Council to any relevant bodies or authorities, other than to the other competent authorities in Europe, without the doctor's agreement.

10.10. Therefore, the Council should seek agreement from the doctor to notify any relevant bodies or authorities as part of any undertakings provided to the Council. This does not apply to IMI Alerts as described in section 9 above as such alerts are mandatory under EU law.

Appendix 1-Section 60 of the Act, as amended

If immediate suspension of registration is necessary to protect public.

- 60.— (1)** The Council may make an *ex parte* application to the Court for an order to suspend the registration of a registered medical practitioner, whether or not the practitioner is the subject of a complaint, if the Council considers that the suspension is necessary to protect the public until steps or further steps are taken under this Part and, if applicable, *Parts 8 and 9*.
- (1A)** In the case of a medical practitioner whose name was previously registered in the Supervised Division and that practitioner's name is not registered in any other division of the register, the Council may make an *ex parte* application to the Court for an order prohibiting that practitioner from applying for registration in any of the divisions of the register.
- (1B)** The Council shall not make an application under *subsection (1A)* unless it considers that the prohibition sought is necessary to protect the public until steps or further steps are taken under this Part and, if applicable, *Parts 8 and 9*.
- (1C)** An application under *subsection (1A)* may be made whether or not the practitioner is the subject of a complaint.⁸
- (2)** An application under *subsection (1) or (1A)*⁹ shall be heard otherwise than in public unless the Court considers it appropriate to hear the application in public.
- (3)** The Court may determine an application under *subsection (1)* by—
- (a)** making any order it considers appropriate, including an order directing the Council to suspend the registration of the registered medical practitioner the subject of the application for the period specified in the order, and
 - (b)** giving to the Council any direction that the Court considers appropriate.
- (3A)** The Court may determine an application under *subsection (1A)* by —
- (a)** making any order it considers appropriate, including an order prohibiting the medical practitioner the subject of the application from applying for registration in any division of the register for the period specified in the order, and
 - (b)** giving to the Council any direction that the Court considers appropriate.¹⁰

⁸ Sections (1A) to (1C) were inserted by section 11 of the Medical Practitioners (Amendment) Act 2011 (12/2011)

⁹ Substituted by section 11 of the Medical Practitioners (Amendment) Act 2011 (12/2011)

¹⁰ Inserted by section 11 of the Medical Practitioners (Amendment) Act 2011 (12/2011)

- (4) The Council shall, on complying with a direction of the Court given under *subsection (3) or (3A)* , as the case may be,¹¹ give notice in writing to the medical practitioner concerned of the Council's compliance with the direction.

¹¹ Substituted by section 11 of the Medical Practitioners (Amendment) Act 2011 (12/2011)