Comhairle na nDochtúirí Leighis
Medical Council

Guidance for the Triage & Investigation of Complaints

A Medical Council guide to Complaints

1. Background

1.1. The Medical Council is the statutory body for the regulation of registered medical practitioners ("**doctors**") in Ireland.

1.2. The Medical Council has published a Guide to Professional Conduct and Ethics[1] for doctors. This guide sets out the principles of professional practice that all doctors registered with the Council are expected to follow.

1.3. Most doctors adhere to the standards expected. As with every job or profession, no matter how skilled, knowledgeable or careful, doctors can make mistakes at work. It is not the role of the Medical Council to punish them. A mistake does not necessarily mean that a doctor should be restricted from practising their profession.

1.4. However, where a doctor falls seriously short of the standards that are expected, the Medical Council can take action through its fitness to practise process by investigating complaints relating to professional misconduct, poor professional performance, a doctor's health or criminal convictions.

1.5. The Medical Council considers complaints in relation to a doctor's professional practice and also complaints about doctors outside of their professional practice where the complaints give rise to concerns about protecting the public or maintaining confidence in the profession.

2. Purpose

2.1 The purpose of this document is to provide guidance in relation to the initial assessment and investigation of complaints. Its aim is to ensure consistency, proportionality and transparency in the decision-making process.

2.2 The guidance is designed to assist the CEO and the Authorised Officers to identify and investigate cases that give rise to fitness to practise concerns. This in turn ensures that the Medical Council is using its resources effectively and is acting in the public interest.

2.3 While this guidance document is designed to assist with the decision-making process, each complaint will be considered on a case-by-case basis[2].

[1] *The Guide can be found on the Medical Council's website at www.medicalcouncil.ie.*

[2] This document is not intended to be legally binding on the CEO or the Authorised Officers. Therefore, any deviation from these guidelines does not render any steps in the investigation of a complaint and or the resulting decision void.

3. What is Fitness to Practise?

3.1 Fitness to practise means that a doctor has the skills, knowledge, character and health to practise safely and competently.

3.2 In order for a doctor to remain on the register of medical practitioners he or she must be fit to practise.

3.3 For doctors to be fit to practise they are required to keep their skills and knowledge up to date on a continuous basis.

3.4 Doctors are also required to practise in accordance with the Medical Council's Guide to Professional Conduct and Ethics, act with honesty and integrity and treat patients with dignity and respect.

3.5 One of the ways the Medical Council ensures that doctors are fit to practise is through its complaint and inquiry function. The purpose of the complaint process is to give initial consideration to complaints in order to identify those cases where it is necessary to take further action.

3.6 The Medical Council considers complaints in relation to a doctor's professional practice. However, it also considers complaints about doctors outside of their professional practice where the complaints give rise to concerns about protecting the public or maintaining confidence in the profession.

3.7 Where there are serious concerns in relation to a doctor's ability to practise, a fitness to practise hearing, known as an inquiry, can be held by the Medical Council.

3.8 The fitness to practise process is not intended to act as a general process for the resolution of complaints, nor is it a process to resolve disputes of a civil nature or to award compensation to a patient.

3.9 Where complaints are minor in nature, these may be more suitable to be raised with the doctor directly, the doctor's employer, hospitals or other medical clinics or facilities or the HSE.

3.10 Further information on the Medical Council's complaint process can be found on the Medical Council's website[3].

4. Grounds of Complaint

4.1 A complaint can only be made to the Medical Council in relation to a registered medical practitioner.

[3] https://www.medicalcouncil.ie/complaints/

4.2 The Medial Council considers complaints on one or more of the following grounds:

- professional misconduct
- poor professional performance (only considered for events that took place on or after 3 July 2008)
- relevant medical disability
- failure to comply with one or more conditions attached to the doctor's registration
- failure to comply with an undertaking or failure to take any action specified in a consent, given in a previous inquiry or investigation
- the imposition on the practitioner of;
  - (i) a prohibition against him or her providing one or more than one kind of health or social care in the State or another jurisdiction, or
  - (ii) a restriction on his or her ability to provide one or more than one kind of health or social care in the State or another jurisdiction[4]
- contravention (infringement) of the Act
- conviction of an offence triable on indictment in Ireland (or, if convicted outside Ireland, an offence that would be triable on indictment in Irish courts)
- A failure to comply with regulations made under section 13(2) of the Health (pricing and Supply of Medical Goods) Act 2013.

4.3 If a complaint received by the Medical Council does not relate to a registered medical practitioner, then the complaint cannot be considered by the Medical Council. Where the Council has received incomplete details, it will liaise with the complainant and/or carry out further inquiries to determine if the medical practitioner is registered with the Medical Council.

5. Role of the CEO pursuant to the Regulated Professions (Health and Social Care)(Amendment) Act 2020

5.1. All complaints made to the Medical Council are received and assessed by the Chief Executive Officer (the "CEO").

5.2. Following receipt of a complaint, the CEO shall assess whether the complaint is:

- frivolous; or
- vexatious; or
- not made in good faith

5.3. "**Frivolous**" complaints are understood to be complaints which are trivial. The Supreme Court has defined "trivial" complaints as those which are misconceived or bound in law to fail. A similar definition applies in respect of "vexatious" complaints.

[4] While the grounds listed at (i) and (ii) are set out in section 109 of the Regulated Professions (Health and Social Care) (Amendment) Act 2020, they have not yet been commenced.

5.4. Repeat complaints which are an abuse of the complaints process are considered to be "**vexatious"**. Repeat complaints which are a deliberate or strategic manipulation of the complaints process are considered to be complaints that are not made in good faith and/or are vexatious.

5.5. Complaints which are considered to be frivolous, vexatious or not made in good faith will not progress beyond the initial assessment by the CEO.

5.6. Examples of the types of complaints which may not progress beyond the initial assessment by the CEO include:

- Where it is clear that a complaint does not come within one of the grounds of complaint in the Act;
- complaints relating to level of fees;
- complaints relating to waiting times in a doctor's surgery;
- complaints relating to appointment times not being met;
- complaint relating to unavailability of short notice appointments for non-urgent matters.
- complaints relating to the general medical scheme (GMS) (e.g. costs/fees outside of the GMS scheme; notification of the change of GMS doctor and/or access to medical cards);
- complaints arising from an historic incident (i.e. an incident that occurred in the past and where an investigation would not be practicable or possible due the passage of time);
- complaints in relation to matters that the complainant has no direct knowledge of.
- repeated complaints about the same doctor, same practice, or the same issue(s).
- complaints made as a result of a misunderstanding or misinterpretation (i.e. a minor communication issue).
- anonymous complaints which are not serious and/or which cannot be investigated.
- where the complaint relates to a doctor's role as an adviser to the Government and/or contributor to Government policy
- complaints where the complainant disagrees with the doctor's clinical opinion in respect of reports prepared for an employer, insurer etc.
- complaints relating to medico-legal reports prepared in the context of civil proceedings
- complaints relating to reports prepared for the purposes of family law proceedings
- complaints which are entirely unclear, unspecific, and/or indecipherable.

This list is not definitive. Each case will be assessed in respect of its particular facts. The CEO may cause an investigation in respect of one or more of the categories listed at paragraphs 5.6 where the CEO is of the opinion that such matters require investigation.

5.7. If the CEO is of the view that a complaint is not made in good faith, is frivolous or vexatious then the CEO shall give notice in writing to the complainant of his or her decision and provide reasons for the decision. The CEO may also write to the registered medical practitioner to inform him/her of the decision. The complaint will then be closed.

5.8. In all other cases, the CEO shall cause an investigation of the complaint by an Authorised Officer.

6. The Role of the Preliminary Proceedings Committee

6.1. The role of the PPC is to consider complaints which have been investigated by an Authorised Officer and to identify those complaints where there is a *prima facie* case to warrant further action being taken.

6.2. Where the Authorised Officer has investigated a complaint and an Investigation Report has been prepared, the complaint must be considered by the PPC.

6.3. Before the PPC forms an opinion on whether there is sufficient case to warrant further action being taken in relation to a complaint, the PPC shall consider whether the complaint is trivial, vexatious, without substance or made in bad faith.

6.4. If the PPC is of the view that a complaint is trivial or vexatious or without substance or made in bad faith then it will form an opinion that there is not sufficient cause to warrant further action being taken in relation to a complaint and inform the Council, the complainant and the doctor of that opinion.

6.5. The PPC will endeavour to make this decision at the earliest opportunity and can do so on its first consideration of a complaint or at a later stage in the process depending on the nature of the complaint and the information before it.

6.6. The PPC can make the following decisions:

- there is not sufficient cause to warrant further action being taken in relation to a complaint;
- the complaint should be referred to another body or authority;
- the medical practitioner, the subject of the complaint, should be referred to a professional competence scheme;
- the complaint should be referred for resolution by mediation or other informal means;
- that undertakings or consents should be sought from the doctor; or
- that there is a *prima facie* case, and the complaint should be referred to the Fitness to Practise committee.

7. Types of complaints that may give rise to referral to the Fitness to Practise Committee

7.1. Each complaint will be considered by the PPC on its merits, and the PPC is not bound to dispose of complaints in a particular way.

7.2. Where there are serious concerns in relation to a doctor's ability to practise, a fitness to practise hearing, known as an Inquiry, can be held by the Medical Council. The type of concerns that could call a doctor's fitness to practise into question includes the following:

i. A series of concerns that represent a pattern of misconduct or poor performance.
ii. A single, serious, one-off concern that requires investigation & intervention and/or has not been appropriately dealt with by the doctor.
iii. Dishonesty or deliberately misleading behaviour.
iv. Criminal convictions of a serious nature including convictions involving violence or sexual misconduct or a criminal conviction resulting in a custodial sentence.
v. Serious inappropriate or improper behaviour towards patients, the public, practice staff, other colleagues or trainees.
vi. Lack of insight into seriousness of conduct or consequences.
vii. A physical or mental disability of the person (including an addiction to alcohol or drugs) which may impair the person's ability to practise medicine or a part of medicine.
viii. Breaches of Medical Council requirements including failing to maintain adequate indemnity insurance, failing to participate in continuing professional development or a breach of undertakings or consents.

7.3. If the PPC considers that the complaint is serious and that there is a real prospect of the complaint being proven at inquiry, a referral to the Fitness to Practise Committee is likely to be warranted.

7.4. This is particularly likely to be the case where there is a risk to the public, or where there is a need to uphold proper professional standards and/or maintain confidence in the profession.

7.5. Please note that further information in relation to the complaints that may give rise to a referral to the FTPC can be found on the Medical Council's website.