Comhairle na nDochtúirí Leighis
Medical Council

Undertakings & Consents

A Medical Council guide for Complaints

1. The Medical Practitioners Act 2007 (as amended) (the "Act") gives the Preliminary Proceedings Committee ("PPC") the power to request one or more undertaking(s) and/or consent(s) from a registered medical practitioner[1] ("Practitioner") who is the subject of a complaint[2].

2. Undertakings and consents provide an effective tool for responding effectively and proportionately to complaints. They also provide a mechanism for the remediation and development of a Practitioner. However, undertakings and consents are not appropriate in all cases and are only suitable where these measures adequately protect the public interest and patients.

3. This guidance document sets out the process for the requesting of undertakings and consents by the PPC to includes the factors to be taken into account when considering undertakings and consents.

Requesting Undertakings and Consents – Considerations and Criteria

4. Where the PPC is of the view that an investigation could be completed by the giving of an undertaking and/or consent by a Practitioner, then the PPC may request the Practitioner the subject of the complaint to do one or more than one of the following:

    a. if appropriate, to undertake not to repeat the conduct the subject of the complaint;

    b. undertake to be referred to a professional competence scheme and to undertake any requirements relating to the improvement of the practitioner's competence and performance which may be imposed;

    c. consent to undergo medical treatment;

    d. consent to being censured by the Medical Council (the "Council").

[1] A registered medical practitioner shall include an intern and adapter as defined in the Act. It shall also be construed as including a reference to a medical practitioner whose name was previously registered in the supervised division but whose name is no longer so registered and who is not registered in any other division of the register whether or not the registration of the medical practitioner ceased before or after the making of a complaint.

[2] Section 59 A of the Act as inserted by section 113 of the Regulated Professions (Health and Social Care)(Amendment) Act 2020. Undertakings and consents can only be requested from medical practitioners where the complaint was received after the commencement of section 113 of the 2020 Act.

PPC Discretion

5. The Act does not specify any test to be applied by the PPC in considering whether to request undertakings or consents. The PPC enjoys a discretion in this regard which discretion should be exercised reasonably.

6. The following considerations are relevant to the parameters of this discretion:

   - Before requesting an undertaking(s) and/or consent(s), the PPC is not required to determine that there is a prima facie case to warrant further action being taken.

   - If PPC has formed the view that there is a prima facie case to warrant further action being taken, it can decide to seek an undertaking and/or consent to complete the investigation, and it is not required to refer the matter to inquiry.

   - Where the PPC is of the view that the complaint clearly does not warrant further action, an undertaking or consent to being censured is not appropriate.

   - Undertakings and consents are only appropriate if they are sufficient to protect the public and maintain public confidence in the profession.

   - Where consents to censure are sought, it is particularly important that the complaint would likely reach the threshold for a referral to Inquiry.

Whether Undertaking/Consent Appropriate

7. The following matters (though not an exhaustive list) may be of relevance in the PPC determining whether undertakings and/or consents are appropriate in a particular case:

   a. the seriousness of the concerns raised in the complaint;

   b. the nature of the allegations, for example communication issues or once-off / human errors may be suited to undertakings if the Practitioner has an otherwise good record;

   c. the timing of the complaint e.g. if the complaint relates to historic issues;

   d. the extent to which the complaint relates to repeated conduct;

   e. the likelihood of the Practitioner complying with the undertakings, including any history of non-compliance;

f. previous findings/sanctions - if a Practitioner has been subject to a previous sanction by the Council, the PPC may have regard to that sanction;

g. the level of insight demonstrated by the Practitioner – a Practitioner who demonstrates an understanding of their failings and the need to limit their practice or undertake retraining or other remedial measures may be more likely to comply with undertakings;

h. whether the Practitioner is practicing or intends to practice in the future;

i. in light of any health issues, any concerns regarding the Practitioner's capacity to consent or to comply with an undertaking(s).

8. The PPC should ensure that any undertakings are workable, proportionate and should address the specific concerns about the doctor.

Where Undertaking/Consent not Appropriate

9. Unless exceptional circumstances apply, undertakings and consents are generally not appropriate where there is a realistic prospect that, if the complaint were to be referred to an inquiry, it would result in the cancellation of the Practitioner's registration and/or a prohibition from applying for a specified period for the restoration of the Practitioner's registration. Conduct or behaviour which may result in such cancellation or prohibition include:

   a. Dishonest/fraudulent behaviour regarding professional practice i.e. falsifying records;

   b. Abuse of patients or abuse of a patient's trust or violation a patient's autonomy or other fundamental rights;

   c. Inappropriate sexual relations;

   d. Certain criminal behaviour;

   e. Reckless and wilfully unskilled practice or reckless disregard of clinical responsibilities;

   f. Breach of conditions or undertakings to the Council.

10. There may, however, be exceptional circumstances where undertakings would still be appropriate in respect of conduct identified in paragraph 9 above, for example in multi-factorial cases where the allegations are closely linked to an underlying health problem and if the undertakings fully address the risk of any

harm to patients and/or to public confidence. Any exceptional circumstances should be fully explained by the PPC.

Process

11. It is important that the PPC carefully documents its reasons for requesting an undertaking and/or consent.

12. Where the PPC decides to request undertaking(s) and/or consent(s) from a Practitioner, it shall write to Practitioner or his / her representatives setting out the terms of the proposed undertaking(s) and/or consent(s).

13. The Practitioner will be given 21 days to confirm their agreement to the undertaking(s) or consent(s) proposed. In exceptional circumstances, this time period may be extended at the discretion of the Executive. The Practitioner will also be informed of the consequences of giving such undertaking(s) and/or consent(s).

14. Where a Practitioner provides the required undertaking(s) and/or consent(s), the investigation of the complaint shall be considered to be completed and the PPC shall not refer the matter to the Fitness to Practise Committee. In such circumstances the PPC shall submit to the Council a report in writing specifying the nature of the complaint that resulted in the investigation and the measures included in the undertaking or consent.

15. If an undertaking consenting to censure is provided to the PPC, the Council shall consider whether to publish that measure in the public interest.

16. Where a Practitioner refuses or fails to give an undertaking and/or consent requested by the PPC, the PPC may proceed as if the request had not been made.

Implications of Giving an Undertaking or Consent

17. The potential consequences of each type of undertaking and consent are set out below. It should be noted that a case may involve more than one undertaking or consent.

18. An undertaking to the PPC not to repeat the conduct the subject of the complaint (on its own):

    a. Will not be notified to the Health Service Executive (“HSE”) or the Practitioner’s employer;

    b. Will not be published by the Council; and

    c. Will not result in an IMI alert being issued.

19. An undertaking (on its own) to be referred to a professional competence scheme and carry out any requirements relating to the improvement of the practitioner's competence and performance:

    a. Will not be notified to the HSE or the Practitioner's employer;

    b. Will not be published by the Council; and

    c. Will not result in an IMI alert being issued.

20. A consent to undergo medical treatment (on its own):

    a. Will not be notified to the HSE or the Practitioner's employer;

    b. Will not be published by the Council; and

    c. Will not result in an IMI alert being issued.

21. A censure (on its own) by the Council:

    a. Will be notified to the HSE and such other persons as the Council sees fit. If the name of the Practitioner's employer is known to the Council, a censure will be notified to the employer;

    b. Will not result in any IMI alert being issued; and

    c. Shall be published if the Council is satisfied it is in the public interest to do so.

22. Failure to comply with an undertaking or to take any action specified in a consent given in response to a request from the PPC is a ground for a separate complaint to the Council.