Medical Council Sanctions Guidance

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Comhairle na nDochtúirí Leighis
Medical Council

SANCTIONS GUIDANCE

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1 Introduction[1]

1.1 This document provides guidance to the Medical Council (the **"Council"**) on the approach to imposing sanctions[2] and the factors it should consider when deciding on the appropriate sanctions to impose.

1.2 It will also be of assistance to the Fitness to Practise Committee (the **"FTPC"**), where the FTPC has made findings against a medical practitioner, and is making a recommendation as to the appropriate sanctions in its report to the Council.

1.3 The purpose of this guidance is also to assist medical practitioners and their legal representatives and to inform them about the Council's general approach to sanctioning.

1.4 The Council will have regard to this Guidance when deciding which sanctions to impose, while at the same time using its own judgment and retaining its discretion to impose the sanctions it deems appropriate in a particular case.

1.5 The Council has the power to impose one or more sanctions. Any reference to "sanction" in this guidance can be read to apply to the imposition of more than one sanction, unless the context requires otherwise.

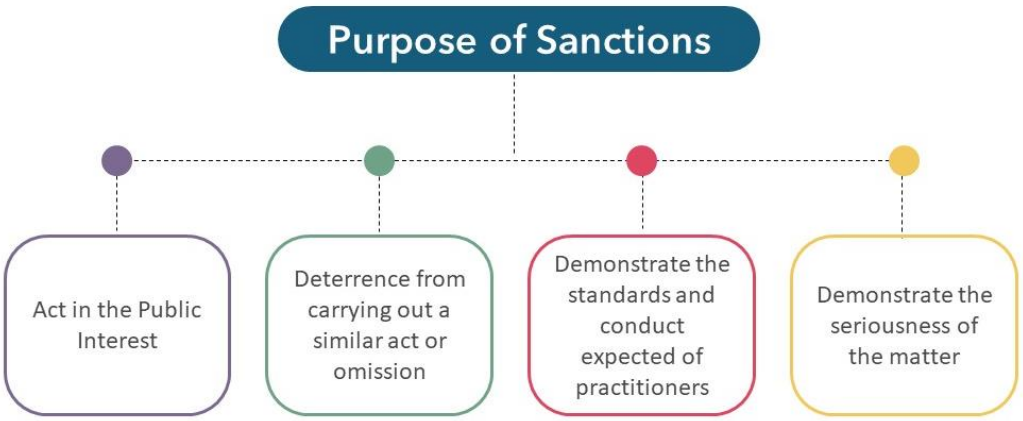

Figure A

[1] This guidance and the lists contained within this document are not exhaustive. The Council will use its own discretion and consider any other factors that are relevant and proportionate when imposing sanction.
[2] The sanctions that may be imposed by the Council are listed in section 71 of the Medical Practitioners Act 2007 (as amended) (the **"Act"**).

2 The purpose of sanctions

2.1 The Council's primary objective in imposing sanctions is to act in the public interest.[3] This includes:

2.1.1 protecting the public;

2.1.2 promoting and maintaining public confidence in the profession and the regulatory process; and

2.1.3 promoting and upholding professional standards and conduct. [4]

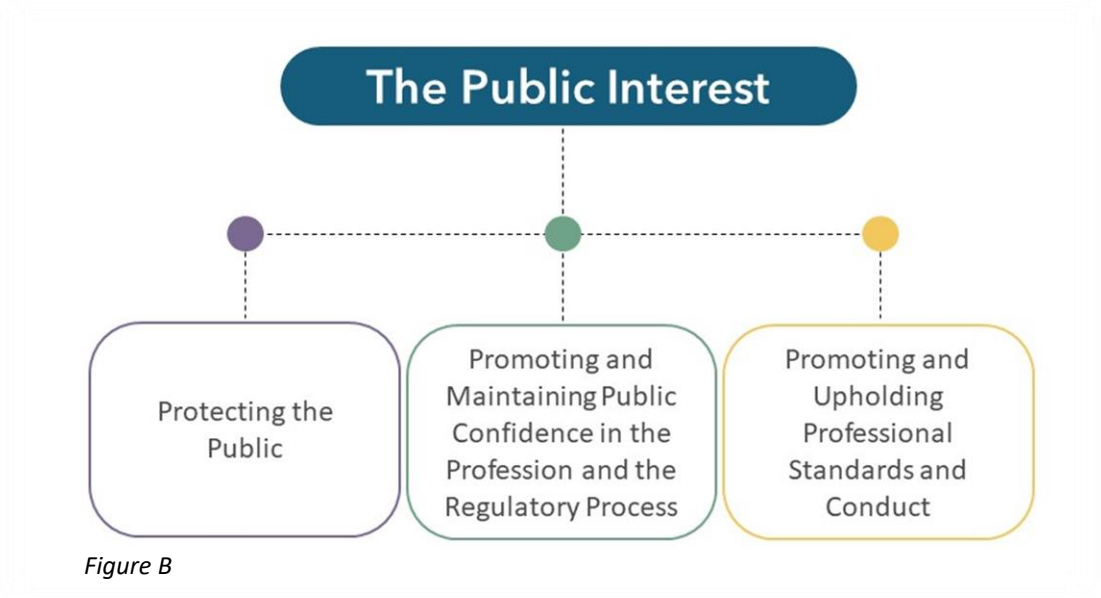

Figure B

2.2 Sanctions may be imposed by the Council to deter a medical practitioner from carrying out a similar act or omission again[5], to demonstrate the professional standards and conduct expected of medical practitioners, and to demonstrate to the medical practitioner and the profession the seriousness of the matter.

2.3 Although the purpose of imposing sanctions is not to punish the medical practitioner, certain sanctions may nonetheless have a punitive effect. However, this does not mean that sanctions should not be imposed, if the imposition of the sanctions is required to act in the public interest.

2.4 When considering the appropriate sanctions to impose, the Council may take into account the wider concern of the reputation of the profession over the interests of the particular medical practitioner.

[3] Sections 6 and 7(1) of the Act

[4]The references throughout this guidance to the Council's objective to act in the public interest should be understood as referring to 2.1.1.-2.1.3. above.

[5] *Medical Council v Murphy* (29 June 1984) HC

3 Types of sanctions[6]

3.1 In most cases[7], the sanctions that the Council can impose are as follows[8]:

3.1.1 An advice or admonishment or censure in writing

3.1.2 A censure in writing and a fine not exceeding €5,000

3.1.3 The attachment of conditions to the practitioner's registration, including restrictions on the practice of medicine that may be engaged in by the practitioner

3.1.4 The transfer of the practitioner's registration to another division of the register of medical practitioners (the **"register"**)

3.1.5 The suspension of the practitioner's registration for a specified period

3.1.6 Cancellation of the medical practitioner's registration

3.1.7 Prohibition from applying for restoration of registration for a period of time.

3.2 The relevant factors to consider with respect to each type of sanction are discussed in detail at section 8 below.

[6] See also *Figure E* at section 8 below.

[7] Differing sanctions apply where a medical practitioner's registered on the Supervised Division. Section 71A of the Act provides that where the medical practitioner was previously registered on the Supervised Division of the register and is not registered in any other division of the register then the following sanctions apply: (a) an advice or admonishment or censure in writing, (b) a censure in writing and a fine not exceeding €5,000, (c) an attachment of conditions which are to apply to the registration of the practitioner where the practitioner applies for registration, including restrictions on the practice of medicine that may be engaged by the practitioner, (d) a prohibition from applying for a specified period for registration on one or more division of the register. Section 72A of the Act sets out the matters the Council must specify when imposing one or more of these sanctions.

[8] Section 71 of the Act

4 Approach to imposing sanctions

4.1 Receive Report | The Council must impose a sanction following the receipt of a report from the FTPC where findings have been made against the medical practitioner on one or more of the grounds of complaint. [9]

4.2 Consider Recommendation | The Council will consider the sanctions, if any, recommended by the FTPC.

4.3 Consider Alternatives | The Council is not bound by the sanctions, if any, recommended by the FTPC, and will consider all the available sanctions listed at paragraph 3.1 above. The Council has the power under the legislation to impose one or more of these sanctions.

4.4 Proportionality | In determining which sanctions to impose, the Council will have regard to the principle of proportionality. Being proportionate means that the Council will balance its objective to act in the public interest (paragraph 2.1) and the rights of the medical practitioner. This means that a severe sanction should not be imposed where the finding made by the FTPC is at the lower end of the scale of seriousness, and a minor sanction should not be imposed where the FTPC has made a serious finding at the top end of the scale.

4.5 Leniency | The Council must also afford the medical practitioner with as much leniency as possible in the circumstances, whilst simultaneously ensuring that it acts in the public interest.

4.6 All the Factors | Taking the above factors into account, together with any mitigating or aggravating factors (see sections 5 - 7 below), the Council will consider which sanction or combination of sanctions is necessary to act in the public interest in light of the findings of the FTPC .

4.7 Step Approach | The Council will begin its consideration with the least severe sanction and will consider whether it is sufficient to address the public interest. If the sanction is not sufficient, it will consider the next serious sanction. The Council will repeat this process until it has determined the appropriate sanction(s) required in the circumstances.

4.8 Imposition | Once the Council has decided on the appropriate sanction(s), it must impose such sanction(s), even if it may lead to hardship for the medical practitioner.

4.9 Reasons | The Council will provide reasons for its decision (see section 10 below).

[9] Section 71 of the Act

Approach to Imposing Sanctions
01
Receive Report
The Council must impose one or more sanctions following the receipt of a report from the FTPC where findings have been made
02
Consider Recommendation
The Council will consider the sanctions, if any, recommended by the FTPC
03
Consider Alternatives
The Council is not bound by the recommendations of the FTPC and will consider all sanctions available under the legislation
04
Proportionality
In determining which sanction(s) to impose, the Council will have regard to the principle of proportionality
05
Leniency
The Council must also afford as much leniency as possible in the circumstances, whilst ensuring that it acts in the public interest
06
All the Factors
Taking all of the foregoing into account, and any mitigating or aggravating factors, the Council will consider which sanction or combination of sanctions is appropriate
07
Step Approach
The Council will begin with the least severe sanction and, if it is not sufficient to address the public interest, will consider the next serious sanction. The Council will repeat this process until it has determined the appropriate sanction(s) required in the circumstances
08
Imposition
Once the Council has decided on the appropriate sanction(s), it must impose such sanction(s), even where the sanction(s) may lead to hardship for the medical practitioner
09
Reasons
The Council must provide clear and cogent reasons for the sanction(s) it decides to impose

Figure C

5 Overview of mitigating factors and aggravating factors

5.1 Mitigating and aggravating factors are factors that the Council will consider when deciding on the sanctions to impose. Mitigating factors may reduce the severity of the sanctions to be imposed, while aggravating factors may increase the severity of the sanctions.

5.2 Although not specifically listed in the mitigating factors or aggravating factors below, patient outcome may be taken into account by the Council, where appropriate, in determining sanctions. For example, if a patient has suffered harm, then the degree of harm can be considered by the Council as a factor when determining sanctions, as long as the harm is considered together with the particular circumstances of the case. However, if a patient has not suffered harm, the Council might not give as much, if any, weight to this fact and should focus on the risk posed by the practice, performance or behaviour of the medical practitioner. In any event, the nature of the outcome should not distract from the fact that the essential question is the seriousness of the conduct or performance: a serious outcome will not, on its own, turn a minor failing into a major failing.

5.3 The mitigating and aggravating factors listed below are not intended to be exhaustive. In addition, where something is listed as a mitigating factor, the absence of it may be viewed as an aggravating factor. For example, insight on the part of a medical practitioner may be viewed as a mitigating factor. In the same way, a marked lack of insight and / or contrition, may, on the contrary, be an aggravating factor.

5.4 The Council will consider the relevance of each mitigating or aggravating factor based on the circumstances of each case, and will balance any mitigating or aggravating factors against the findings of the FTPC, the rights of the practitioner, and the Council's objective to act in the public interest (paragraph 2.1 above).

5.5 The Council will decide what weight, if any, to give to any mitigating or aggravating factors. The Council will give reasons for the weight it has given to the mitigating or aggravating factors, including where the Council does not consider the factor presented to be relevant or mitigating/aggravating. [10]

[10] Dowling v An Bord Altranais [2017] IEHC 62

6 List of mitigating factors

6.1 Insight

6.1.1 A medical practitioner may demonstrate insight by providing evidence of their understanding of the problem, and any steps taken to address or remediate it. This could include an admission of the facts and / or grounds of complaint, accepting that they should have behaved differently, an apology to anyone affected at an early stage, timely steps to remediate, and / or timely development of insight during the investigation and hearing.

6.1.2 The Council will bear in mind that there are factors that may affect how an individual medical practitioner expresses insight, including cultural differences and other circumstances, such as the medical practitioner's health.

6.2 Remediation

6.2.1 A medical practitioner may present evidence to the Council about how they have addressed issues or concerns about their conduct, behaviour, knowledge or skills, including steps taken to prevent a similar incident from happening again and to correct deficiencies in their practice. This may include training to address specific concerns, mentoring or coaching.

6.3 Co-Operation

6.3.1 This includes evidence that the medical practitioner has actively engaged and co-operated with the Council and its Committees from the outset of the regulatory investigation process.

6.4 Adherence to the principles of good practice

6.4.1 This may include evidence that the medical practitioner is maintaining their professional competence, adhering to the Council's Code of Professional Conduct and Ethics[11] and / or evidence that the medical practitioner's practice is of a high standard, save for the findings made by the FTPC.

6.5 Circumstances surrounding the event

6.5.1 This may include factors such as the inexperience or early stage of career of the medical practitioner or whether the findings relate to an isolated incident, or a lack of supervision or resources at work. However, the inexperience or early stage of career of the medical practitioner will be given less weight as a mitigating factor in circumstances where the conduct, behaviour or performance is at the more serious end of the scale (e.g., section 9 below).

[11] Guide to Professional Conduct and Ethics (9th Edition)

6.6 No previous history

6.6.1 This includes evidence that the medical practitioner has not previously had findings made against them by the FTPC or previously provided undertakings or consents to the FTPC.[12]

6.7 Personal and professional issues

6.7.1 A medical practitioner may present evidence of personal or professional issues as mitigation, including for example, work-related stress. The Council in considering these matters should seek information as to whether the issues have been resolved, and the extent to which the professional or personal matters are connected with the findings made by the FTPC. Personal circumstances which are completely unconnected with the findings of the FTPC should not substantially go to mitigation.[13]

6.8 References and testimonials

6.8.1 A practitioner may present references and / or testimonials relevant to their case or to their practice which may, for example, highlight their good standing in the profession or observations about their clinical skills. When reviewing such information, the Council should consider:

6.8.1.1 how the author knows the medical practitioner;

6.8.1.2 whether the author is aware of the events leading to the findings made by the FTPC, including the extent of the author's knowledge about the findings and the source of their knowledge;

6.8.1.3 how recently the author has worked with, or has been in contact with, the medical practitioner;

6.8.1.4 the date on which the reference or testimonial was provided or made;

6.8.1.5 whether it specifies the author's contact details, including, as relevant, the author's role / work position and place of employment;

6.8.1.6 whether the reference or testimonial has been independently verified; and

6.8.1.7 whether there is any conflict of interest.

6.8.2 The Council should be aware that in some cases it may be more difficult for some medical practitioners to provide references or testimonials to the Council; for example, medical practitioners who did not qualify in Ireland or have only recently started working in Ireland. In such scenarios, a lack of references or testimonials should not be used against a medical practitioner when considering the appropriate sanction to impose by the Council.

[12] See section 67 of the Act

[13] Veterinary Council of Ireland v Brennan [2020] IEHC 655

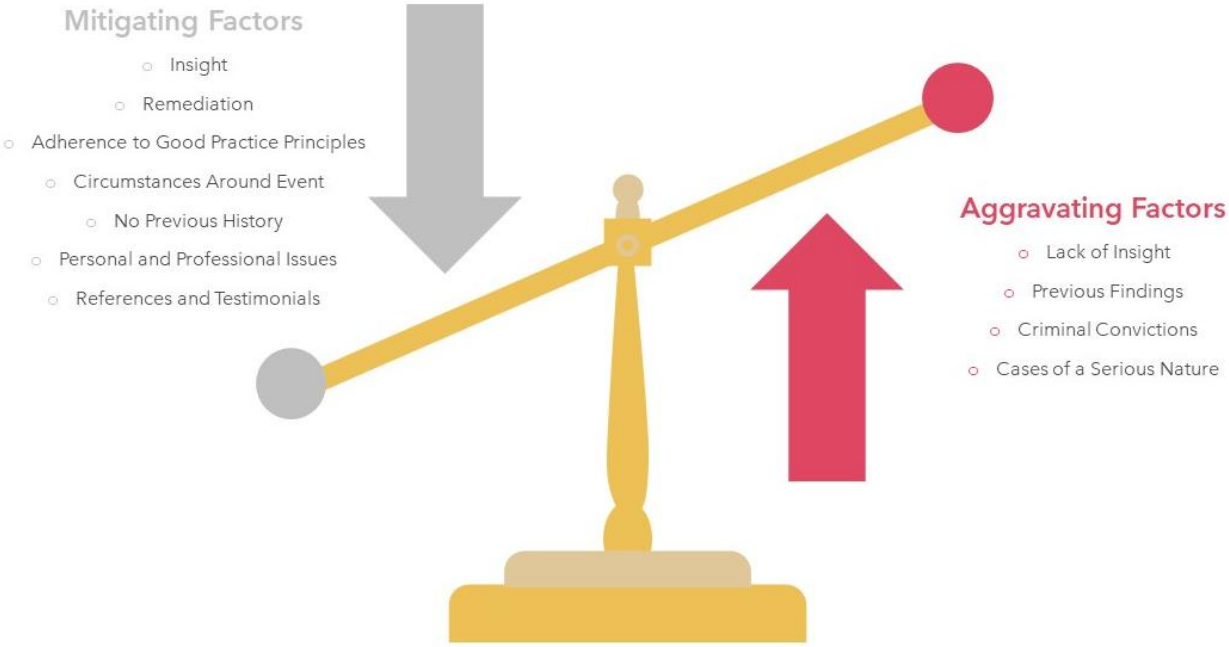
Mitigating Factors
Insight
Remediation
Adherence to Good Practice Principles
Circumstances Around Event
No Previous History
Personal and Professional Issues
References and Testimonials
Aggravating Factors
Lack of Insight
Previous Findings
Criminal Convictions
Cases of a Serious Nature

Figure D

7 List of aggravating factors

7.1 Lack of insight

7.1.1 A medical practitioner is likely to lack insight where the practitioner refuses to accept their mistakes or apologise, does not provide any evidence of attempts to remediate or only does so immediately before or during the hearing, does not adequately or appropriately engage with the investigation or inquiry process, or does not show the timely development of insight.

7.1.2 The Council will bear in mind that there are factors that may affect how an individual medical practitioner expresses insight, including cultural differences and other circumstances, such as the medical practitioner's health.

7.2 Previous findings

7.2.1 The medical practitioner may have had previous findings against them by the Council or another regulator -- in Ireland or another jurisdiction. Where the Council is aware of such findings, it can consider those as an aggravating factor.

7.3 Criminal convictions

7.3.1 The Council may consider the conviction of the medical practitioner for an offence as an aggravating factor. However, the extent to which it is an aggravating factor will depend on the nature and seriousness of the offence, as well as the relevance of the offence to the grounds of the FTPC complaint.

7.3.2 The Council will bear in mind that the purpose of fitness to practise proceedings is to be distinguished from the purpose of the criminal courts. The Council will not view sanctions as a means for punishing the medical practitioner, but will instead be concerned with the conduct of the medical practitioner and whether it is in the public interest and in the interest of patient safety to place restrictions on the practitioner's practice or their registration as a consequence.

7.3.3 The purpose of sanctions is not to punish the medical practitioner for a second time, but to protect the public, maintain public confidence and uphold the standards of the profession[14]. Therefore, the Council should bear in mind that the sentence imposed by a criminal court should not be viewed as a reflection of the seriousness of the conduct at issue before the Council, and the considerations that the criminal court takes into account when deciding on the sentence to impose are often distinct from those applicable to the decision by the Council to impose sanctions.

[14] Ziderman v General Medical Council [1976] 2 All ER 334, at 336

7.4 Cases requiring more serious action

7.4.1 There are certain cases which, by their nature, are considered more serious when balanced against the public interest, and therefore may lead the Council to impose a more severe level of sanctions.

7.4.2 Cases requiring more serious action may contain one or more of the following aggravating factors and are considered in more detail in section 9 below.

7.4.2.1 Dishonesty

7.4.2.2 Abuse of professional position

7.4.2.3 Sexual misconduct

7.4.2.4 Drug or alcohol abuse / disorder

7.4.2.5 Prior breaches of conditions or undertakings

8 Relevant factors for each type of sanction

The sanctions that the Council can impose are listed at paragraph 3.1 above. The relevant factors to consider with respect to each type of sanction are discussed below.

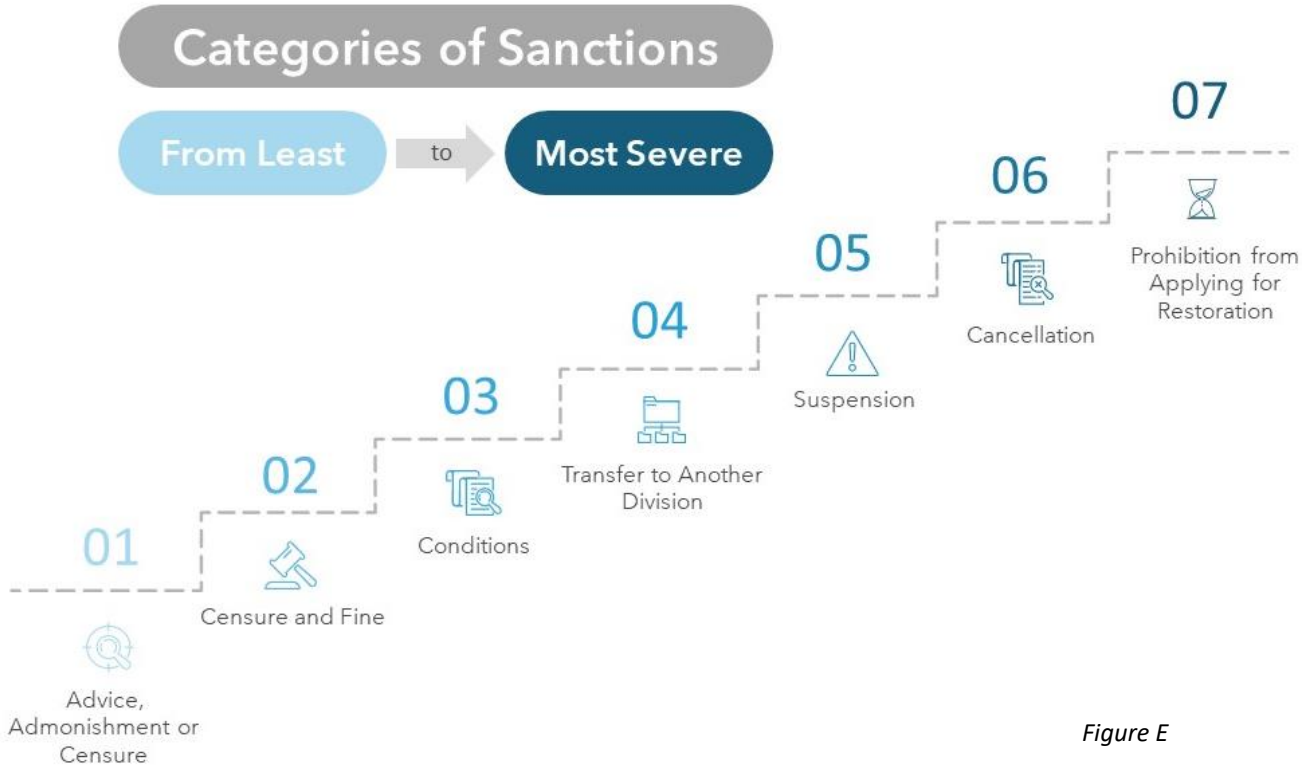

Figure E

8.1 Advice, admonishment and censure

8.1.1 An advice, admonishment or censure is the least severe of the sanctions that can be imposed, as these sanctions do not restrict the medical practitioner's practice or impact their registration. The terms 'an advice', 'an admonishment' or ' a censure' are note defined in law but are generally held to be in ascending order of severity.

8.1.2 When the Council imposes one of these sanctions it is indicating to the medical practitioner that their conduct, practice or behaviour does not meet the standards expected of members of the profession. The imposition of these sanctions is typically appropriate where the findings by the FTPC are at the less serious end of the scale or at the lower end of the spectrum.

8.1.3 They do not restrict the medical practitioner's ability to practise. Consequently, the Council must carefully consider whether there is an ongoing or future risk to the public, and if the Council is if the view there is such a risk, it must consider imposing a more severe sanction sufficient to protect the public.

8.1.4 These sanctions are generally not appropriate where findings have been made by the FTPC in relation to a medical practitioner's health.

8.2 A censure in writing and a fine not exceeding €5,000

8.2.1 A censure in writing and a fine not exceeding €5,000, indicates to a medical practitioner that their conduct, practice or behaviour does not meet the standards expected of members of the profession.

8.2.2 The imposition of a fine by the Council is not for the purpose of compensating a complainant or an injured party.

8.2.3 The imposition of this sanction should be considered as a deterrent and as demonstrating the profession Council's disapproval of certain conduct, behaviour or practice. The imposition of this sanctions is typically appropriate where the findings by the FTPC are at the less serious end of the scale or at the lower end of the spectrum, but not so low as to merit the least severe sanction of an advice, admonishment or censure.

8.2.4 The Council can impose a fine which does not exceed €5,000. When considering the fine to be imposed, the Council can take into account various factors, including the nature and seriousness of the findings made by the FTPC, the financial means of the practitioner and any other relevant factors.

8.2.5 This sanction does not include the imposition by the Council of any restrictions or requirements on the medical practitioner or their practice of medicine. Consequently, the Council must carefully consider whether there is any ongoing or future risk to the public. If the Council is of the view there is such a risk, it must consider imposing a more severe sanction sufficient to protect the public.

8.2.6 This sanction is generally not appropriate where findings have been made by the FTPC in relation to a medical practitioner's health.

8.3 Conditions

8.3.1 The Council can attach conditions to a medical practitioner's registration. This includes imposing restrictions on the practice of medicine that the practitioner can carry out.

8.3.2 The purpose of conditions is to protect the public, to address the concerns that led to the findings by the FTPC and to allow the medical practitioner to continue to work, where appropriate, with restrictions. However, in certain cases the medical practitioner may not be able to immediately return to practice, e.g., in circumstances where there is a requirement for other conditions to be complied with by the medical practitioner first.

8.3.3 Conditions may include requirements relating to the medical practitioner's health, working under supervision, prescribing or carrying out certain procedures, additional training or engaging with the Council's performance assessment scheme.

8.3.4 The key considerations for the Council are whether conditions can be put in place that will:

8.3.4.1 be sufficient to protect the public;

8.3.4.2 address any concerns about public confidence in the profession; and

8.3.4.3 address any concerns proper professional standards and conduct.

8.3.5 Conditions imposed should be appropriate, proportionate, workable, measurable and capable of being monitored.

8.3.6 Conditions may be appropriate in cases concerning:

8.3.6.1 a medical practitioner's health;

8.3.6.2 deficits in specific areas of a medical practitioner's practice; or

8.3.6.3 findings in relation to the medical practitioner's performance.

8.3.7 Conditions are likely to be workable where:

8.3.7.1 the medical practitioner has insight, and there is no evidence of deep-seated personality or attitudinal problems;

8.3.7.2 appropriate conditions can be formulated and are capable of being complied with by the medical practitioner;

8.3.7.3 the Council is satisfied the medical practitioner will comply with the conditions and / or there has been no previous failings to comply with conditions or undertakings or consents;

8.3.7.4 the medical practitioner has the potential and willingness to respond positively to retraining, remediation or supervision;

8.3.7.5 in health cases, the medical practitioner has insight into their health condition and is willing to comply with conditions in relation to their medical condition, treatment and supervision; and

8.3.7.6 the public will be protected during the period that the conditions are in place.

8.3.8 Conditions should be proportionate and the Council must balance the interests of the medical practitioner and the protection of the public. Conditions imposed should not have the effect of amounting to a complete restriction on the medical practitioner's ability to practise medicine.

8.3.9 Conditions must be realistic, measurable and capable of being monitored. The Council should refer to its Conditions Bank when formulating conditions and should also consider the following factors:

8.3.9.1 the conditions are clear, workable, unambiguous and objective;

8.3.9.2 the conditions include the date on which the conditions take effect and the time period for compliance;

8.3.9.3 the setting in which the medical practitioner practises medicine, to include any other factors which may relate to the effectiveness of the conditions;

8.3.9.4 that the number and type of conditions imposed are the conditions that are necessary to protect the public;

8.3.9.5 where appropriate, that the conditions provide for a review period;

8.3.9.6 that the obligation to comply with the conditions is placed on the medical practitioner and not on a third party such as an employer or a treating practitioner;

8.3.9.7 if there is a breach of a condition, that this can be identified by the Council quickly;

8.3.9.8 that the Council can monitor compliance with the conditions and assess whether the medical practitioner has complied with the conditions imposed; and

8.3.9.9 how the medical practitioner will demonstrate compliance with the conditions and provide such evidence to the Council.

8.3.10 Where the FTPC has made findings in relation to abuse of patients, dishonesty, or serious persistent failings, then the imposition of conditions is unlikely to be appropriate. Further, in cases where there has been a breach of trust, abuse or dishonesty, the Council must consider whether the medical practitioner could be trusted to comply with any conditions imposed.

8.3.11 Where there are costs associated with carrying out the requirements of any conditions, the medical practitioner will be responsible for meeting such costs.

8.4 The transfer of the practitioner's registration to another division of the register

8.4.1 The Council may impose this sanction where it is of the opinion that, arising from the findings of the FTPC, the medical practitioner should not be registered on the specialist division of the register and should be transferred to the general division of the register.

8.5 The suspension of the practitioner's registration for a specified period

8.5.1 This Council has the power to suspend the medical practitioner's registration for a defined period. This is considered a more severe sanction because it temporarily prevents a medical practitioner from practicing medicine.

8.5.2 Suspension may be appropriate in cases where the findings made against the medical practitioner are so serious that it is necessary to protect the public, and the less severe sanctions are not sufficient. Suspension may also be appropriate in cases where it is necessary to uphold public confidence in the profession, even where it is unlikely that there is an ongoing or future risk to the public.

8.5.3 Suspension has a deterrent effect and may be used to indicate to the medical practitioner, the profession and the public that certain conduct, behaviour or practice is not acceptable or is wholly inappropriate.

8.5.4 Suspension may be an appropriate sanction where:

8.5.4.1 the findings made by the FTPC concerning the medical practitioner's conduct, behaviour or practice are not fundamentally incompatible with the medical practitioner continuing to be registered, but the findings are so serious that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in the profession. However, in cases where the findings are so serious that the Council forms the view that the medical practitioner should no longer be registered, then cancellation is the appropriate sanction.

8.5.4.2 the findings made by the FTPC are sufficiently serious to require a severe sanction, but the Council is satisfied that the behaviour, conduct or practice is unlikely to be repeated.

8.5.4.3 the findings made by the FTPC are sufficiently serious to require a severe sanction, but the medical practitioner has demonstrated insight and there is no evidence of deep-seated personality or attitudinal problems.

8.5.4.4 the findings relate to the medical practitioner's performance, and a period of suspension is necessary to protect the public while the medical practitioner, in accordance with conditions imposed by the Council, completes a period of remediation or retraining.

8.5.4.5 the findings relate to the medical practitioner's health and it is necessary to suspend the medical practitioner's registration to protect the public, pending compliance with conditions imposed by the Council.

8.5.5 The Council must specify the period of time of the suspension and it must be proportionate, taking into account the seriousness of the findings made by the FTPC, while balancing the interests of the medical practitioner and the public interest. The Council must also consider whether, in addition to a suspension, conditions may also be required to address any deficiencies in the doctor's practice and / or risk to the public.

8.5.6 The Council must give reasons for the decision to impose a suspension.

8.6 <u>The cancellation of the medical practitioner's registration</u>

8.6.1 Cancellation of a medical practitioner's registration is the most serious sanction that can be imposed. The imposition of this sanction means that the medical practitioner's name will be removed from the register and will not be allowed to work as a medical practitioner in Ireland.

8.6.2 The sanction of cancellation is likely to be imposed where the Council is of the opinion that the conduct, behaviour or practice of the medical practitioner is fundamentally incompatible with being a registered medical practitioner. This may include one or more of the following:

8.6.2.1 Persistent lack of insight into the seriousness of their actions or the consequences;

8.6.2.2 Dishonest or fraudulent behaviour, particularly where it has been covered up or is persistent;

8.6.2.3 Caused serious harm to patients, either deliberately, recklessly, or due to incompetence or a medical condition, particularly where there is a continuing risk to patients;

8.6.2.4 An abuse of trust, including, but not limited to physical, sexual, verbal, emotional or financial abuse;

8.6.2.5 Offences of a sexual nature;

8.6.2.6 Offences of a violent nature;

8.6.2.7 A serious or persistent breach of conditions or undertakings or consents.

8.6.3 The Council will provide reasons for the decision to impose the sanction of cancellation.

8.7 Prohibition from applying for restoration of registration for a period of time

8.7.1 If a medical practitioner has been removed from the register, either as a result of sanction or otherwise, the Council may determine that the practitioner should be prohibited from applying for the restoration of their registration for a specified period of time. That period will be determined based on the nature and seriousness of the findings and the circumstances of the case.

8.7.2 The Council should provide reasons for the prohibition from applying for restoration and the period of prohibition chosen.

9 Cases where a more serious sanction may be required

9.1 Dishonesty

9.1.1 Patients must be confident that their medical practitioners are honest and truthful, and that they will carry out their work in the best interests of their patients and in line with professional values. Trust between medical practitioners and their patients, colleagues, their profession and society is fundamental to good professional practice, and is rooted in the integrity and honesty of medical practitioners.

9.1.2 Where a medical practitioner fails to act with honesty and integrity, there is a risk that the public confidence in the profession as a whole will be damaged, and in certain cases it will present a risk to patients or result in patient harm. Therefore, a finding of dishonesty by the FTPC is serious, but the level of seriousness will depend on the conduct concerned and the Council must carefully consider the type of dishonest conduct in each case in line with its overriding objective to act in the public interest.

9.1.3 Examples of dishonesty which may warrant a more serious sanction include:

- 9.1.3.1 Providing false or misleading information and / or failing to provide relevant information to the Council, including at initial registration, renewal of registration, or at any other time;[15]
- 9.1.3.2 Making fraudulent claims to the Health Services Executive or any insurer or service provider;
- 9.1.3.3 Falsifying patient records;
- 9.1.3.4 Covering up or deliberately failing to provide honest, open and prompt communication to a patient about adverse events that may have caused them harm;
- 9.1.3.5 Defrauding or misleading an employer;
- 9.1.3.6 Defrauding a patient;
- 9.1.3.7 Providing false information in a CV or submitting false references;
- 9.1.3.8 Providing false or misleading information in research or clinical data;
- 9.1.3.9 Fraudulent behaviour outside of professional practice.

9.1.4 Where the FTPC has made findings of dishonesty, the Council must consider whether conditions are appropriate in the context of the findings made against the medical practitioner and whether the medical practitioner could be trusted to comply with any conditions imposed, or whether a more severe sanction should be imposed.

[15] Paragraphs 60.3 and 60.5 of the Guide to Professional Conduct and Ethics (9th Edition)

9.2 Abuse of professional position

9.2.1 Trust is the foundation of the doctor-patient relationship and patients should be able to trust that medical practitioners will behave professionally towards them. Every patient should be treated with dignity and respect by their medical practitioner at all times. Medical practitioners must maintain professional boundaries with their patients and must not use their position for personal advantage or to form or pursue a sexual or improper relationship with a patient or with someone close to them. [16]

9.2.2 When considering sanctions, the Council will be required to assess the level of seriousness of the findings of the FTPC. Where the conduct involves a vulnerable patient or the medical practitioner has engaged in predatory behaviour to attempt to form a relationship, or has been convicted of a criminal offence related to the conduct, these aggravating factors are likely to increase the severity of the sanction to be imposed.

9.2.3 Examples of predatory behaviour include attempting to contact a patient outside of the doctor-patient relationship through the inappropriate use of social networking sites, using personal contact details obtained for the purposes of medical treatment, or going to a patient's home without an appointment or valid medical reason.

9.3 Sexual misconduct

9.3.1 Sexual misconduct encompasses a broad range of conduct and may include sexual assault, sexual abuse of children, accessing or possessing child pornography, or pursuing or forming a sexual or inappropriate relationship with a patient or with someone close to them. Sexual assault also includes unnecessary or non-consensual physical examination of patients.

9.3.2 Sexual misconduct often results in serious and unacceptable harm to a patient or others, and in all circumstances seriously undermines the public's confidence in the profession. It is particularly serious where a medical practitioner has abused their position, particularly where the findings relate to children or vulnerable adults, or where the medical practitioner has been convicted of an offence. Where such factors are present this is more likely to indicate that the medical practitioner's registration should be cancelled, unless there are significant mitigating circumstances which result in a reduction in the severity of the sanction.

[16] Paragraph 47 of the Guide to Professional Conduct and Ethics (9th Edition)

9.4 Drug or alcohol use / disorder

9.4.1 Self-care is an important part of good professional practice, and where a medical practitioner has a condition which could be a risk to patients or impair the medical practitioner's judgment, the medical practitioner must seek professional help and follow their advice and inform the Council if the medical practitioner poses a risk to themselves or others.[17]

9.4.2 Therefore, findings made by the FTPC in relation to drug or alcohol use which is persistent and / or is linked to professional misconduct or criminal convictions, will likely increase the severity of the sanction to be imposed by the Council. The factors which are more likely to lead to the Council imposing a more severe sanction include:

9.4.2.1 a drug or alcohol misuse disorder which led to a criminal conviction;

9.4.2.2 the medical practitioner being on duty or attending the workplace under the influence of alcohol or drugs;

9.4.2.3 a drug or alcohol misuse disorder resulting in violence or sexual misconduct;

9.4.2.4 a drug or alcohol misuse disorder which has compromised the medical practitioner's performance resulting in a serious risk to public safety or resulting in serious harm to patients.

9.5 Previous breaches of conditions or undertakings

9.5.1 Where a medical practitioner has previously provided undertakings or conditions, or the Council has imposed conditions, and the practitioner fails to comply, this may increase the severity of the sanction to be imposed by the Council. The factors which are more likely to lead to the Council imposing a more severe sanction include the nature and extent of the breach, whether the breach was deliberate and /or persistent, the risk to the public and the consequences, if any, of the breach.

[17] Paragraph 12 of the Guide to Professional Conduct & Ethics (9th Edition)

10 The decision of the Council and reasons

10.1 The Council will provide clear and cogent reasons for the sanctions it decides to impose, to include the weight it has given to any mitigating and aggravating factors it has taken into account, including where the Council does not consider the factors to be relevant or mitigating or aggravating.

10.2 The Council's decision should also provide reasons for (a) the amount of any fine imposed, (b) the conditions imposed, (c) the period of suspension, and (d) any period of prohibition from applying for restoration.

10.3 The Council will notify the medical practitioner of its decision including the sanctions that the Council has decided to impose, the date of the Council's decision and the reasons for the imposition of the sanctions. [18]

[18] Section 73 of the Act

11 Role of the High Court

11.1 The medical practitioner may appeal the decision of the Council not later than 21 days after receipt of the written notice of the Council's decision.

11.2 The Court, on hearing the appeal, can confirm the Council's decision, or cancel the decision and replace it with such other decision that the Court considers appropriate, which may be a decision to impose a different sanction or to impose no sanction on the medical practitioner.

11.3 Where the medical practitioner does not appeal the decision, then all sanctions, except for the sanctions of advice, admonishment, and censure, must be confirmed by the High Court.

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