Comhairle na nDochtúirí Leighis
Medical Council

GUIDANCE FOR THE TRIAGE AND INVESTIGATION OF 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. 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. Function of the Preliminary Proceedings Committee Versus Function of the Fitness to Practise Committee

2.1 The **Preliminary Proceedings Committee ("PPC")** is the committee established by the Medical Council to investigate complaints.

2.2 The function of the PPC is to give initial consideration to complaints against registered medical practitioners in order to identify those cases which raise serious concerns and where it is necessary to take further action. Its role is to conduct a preliminary assessment of the complaint in order to determine whether there is sufficient cause to warrant further action being taken.

2.3 The PPC considers complaints received from any person, including the Medical Council, on any of the grounds of complaint set out in paragraph 4 below.

2.4 A complaint can only be considered by the PPC for the purpose of assessing the fitness to practise of a registered doctor.

2.5 Once the PPC has sufficient information it will consider whether there is sufficient cause to warrant further action being taken in relation to the complaint. If the PPC decides that a complaint warrants further action, it may refer the complaint to the Fitness to Practise Committee.

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

2.6 If a complaint is referred to the **Fitness to Practise Committee** ("FTPC"), a sworn oral hearing referred to as an Inquiry will usually take place. An Inquiry is similar to that of a court hearing, in that sworn oral evidence is given and allegations are presented to the FTPC by the CEO. The role of the FTPC is to decide whether the allegations have been proven. If so, it will give a recommendation to the Council as to what sanction should be imposed. In order for a doctor to remain on the register of medical practitioners they must be fit to practise.

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

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

2.9 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.

2.10 The fitness to practise process is not intended to act as a general process for the resolution of complaints.

2.11 The fitness to practise process is not a process to resolve disputes of a civil nature or to award compensation to a patient.

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

2.13 This document should be read together with the Medical Council's procedures and guidance on the complaints and investigation process which can be found on the Medical Council's website .

3. Purpose of this Document

3.1 The PPC on its initial consideration of a complaint must first consider whether the complaint is trivial or vexatious or without substance or made in bad faith. The purpose of this document is to provide guidance in relation to the initial assessment of complaints by the PPC, to ensure consistency, proportionality and transparency in the decision-making process.

3.2 This guidance document is designed to assist the PPC to identify and investigate cases that give rise to fitness to practise concerns and to categorise them appropriately. This in turn ensures that the Medical Council is using its resources effectively and is acting in the public interest.

3.3 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]

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

4. Grounds of Complaint

4.1 The Medical Council considers complaints on one or more of the following grounds:

4.1.1 Professional misconduct[3]

4.1.2 Poor professional performance

4.1.3 Relevant medical disability[4]

4.1.4 Failure to comply with a relevant condition

4.1.5 Failure to comply with an undertaking or to take any action specified in a consent given to the FTPC.

4.1.6 A contravention of a provision of the Medical Practitioners Act 2007 ("the Act") (including a provision of any regulations or rules made under the Act).

4.1.7 A conviction in the State for an offence triable on indictment or a conviction outside the State for an offence consisting of acts or omissions that, if done or made in the State, would constitute an offence triable on indictment.

5. Triaging of Complaints

5.1 All complaints are made to the PPC. The PPC's role is to give an initial consideration to complaints to identify those complaints where there is a *prima facie* case to warrant further action being taken. As outlined above, the PPC must first consider whether the complaint is trivial or vexatious or without substance or made in bad faith.

5.2 Following receipt of a complaint, the PPC will at its first meeting consider the information supplied concerning the complaint and whether the complaint is:

- trivial;
- vexatious;
- without substance; and/or
- made in bad faith

5.3 The definition of "trivial" as it relates to complaints has been considered by the courts[5] and the Supreme Court has determined that "trivial" complaints are those which are misconceived or bound in law to fail. A similar definition applies in respect of "vexatious".

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[3] This is conduct which doctors of experience, competence and good repute consider disgraceful or dishonourable; and / or conduct that seriously falls short by omission or commission of the standards of conduct expected of doctors.

[4] A relevant medical disability is a physical or mental disability (including an addiction to alcohol or drugs) that may impair the doctor's ability to practise medicine or a particular aspect of medicine.

[5] Nowak v Data Protection Commissioner [2016] IESC 18

5.4 Repeated complaints which are an abuse of the complaints process are considered to be complaints that are made in bad faith and/or are vexatious.

5.5 Where a complaint does not come within one of the grounds of complaint listed in paragraph 4.1 it will not be progressed beyond the initial triage stage.

5.6 Examples of other types of complaints which may not be progressed beyond the initial triage stage by the PPC include:

- complaints relating to level of fees;
- complaints relating to waiting times in a doctor's surgery and or appointment times or availability of appointments in non-urgent cases;
- 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 provision of medico-legal reports for civil proceedings.

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

5.7 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. 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. Determining whether a complaint warrants further action

6.1 Once the triage step referenced at paragraph 5 above has been taken and if the PPC decides to proceed with an investigation, and once its investigation is complete, the PPC can then make any of the following decisions:

- there is not sufficient cause to warrant further action being taken in relation to a complaint;
- the complaint should be directed to another body or authority;
- the doctor, 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; or
- that there is a prima facie case, and the complaint should be referred to the FTPC.

6.2 The threshold test applied by the PPC when considering whether there is a *prima facie* case to warrant further action, is:

- whether the complaint has any real prospect of being established at an inquiry[6] before the FTPC on one or more grounds of the complaint set out at paragraph 4.1;
- if the PPC has any doubt about whether the complaint should be referred to an inquiry, that doubt must be resolved in favour of an inquiry being held; and
- the PPC must be satisfied that the complaint is serious.

6.3 Information is provided in the following section in relation to the types of complaints which may give rise to a referral to the Fitness to Practise Committee for an inquiry.

7. Referrals to the FTPC

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

7.2 However, there are certain cases, where if the PPC considers that the complaint is serious and that there is a real prospect of the complaint being found proven on one or more of the grounds of complaint (professional misconduct etc.) at an inquiry, that a referral to a FTPC is likely to be warranted.

7.3 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.

7.4 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:[7]

- A series of concerns that represent a pattern of misconduct or poor performance.
- A single, serious, one-off concern that requires investigation & intervention and/or has not been appropriately dealt with by the doctor.
- Dishonesty or deliberately misleading behaviour.

[6] *The PPC in making this decision will take into account the standard of proof at an inquiry, being the criminal standard of proof.*
[7] *This list is not exhaustive.*

- Criminal convictions of a serious nature including convictions involving violence or sexual misconduct or a criminal conviction resulting in a custodial sentence.
- Serious inappropriate or improper behaviour towards patients, the public, practice staff, other colleagues or trainees.
- Lack of insight into seriousness of conduct or consequences.
- 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.
- 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.

7.5 Please note that further information in relation to the complaints that may give rise to a referral to the FTPC can be found here: Referrals to FTP