

MAKING A COMPLAINT



Bord Altranais agus
Cnáimhseachais na hÉireann
Nursing and Midwifery Board
of Ireland



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INTRODUCTION

The Nursing and Midwifery Board of Ireland – Who we are

The Nursing and Midwifery Board of Ireland (NMBI) is the independent, statutory organisation which regulates the nursing and midwifery professions in Ireland. For more information about our role and functions, visit www.NMBI.ie/What-We-Do

The Role of NMBI in Protecting the Public

One of the functions of NMBI under the Nurses and Midwives Act 2011 (the “Act”) is to investigate complaints made against registered nurses and registered midwives. ¹ We have outlined below a brief overview of NMBI’s complaints process. Further details are available on www.NMBI.ie/Complaints.

PPC

All complaints received by NMBI in relation to registered nurses and registered midwives are referred to the Preliminary Proceedings Committee (the “PPC”). The PPC is a Committee within NMBI which gives initial consideration to complaints made about a registered nurse or registered midwife. When a complaint is received, the PPC will consider all of the information relating to the complaint and will form an opinion as to whether there is sufficient cause to warrant further action being taken in relation to the complaint. If the PPC is of the view that there is a prima facie case/sufficient cause to warrant further action, it will refer the matter to the Fitness to Practise Committee (“the FTPC”) for a sworn oral Inquiry.

FTPC

A “sworn oral” Inquiry means that the evidence of witnesses is required to be given on oath (e.g. swearing on the Bible or Koran) or by affirming to tell the truth. The role of the FTPC is to consider all of the evidence presented at the Inquiry, to include oral evidence and documentary evidence presented on behalf of both the Chief Executive Officer (the “CEO”) of NMBI and the registered nurse or registered midwife who is the subject of the complaint. Once the FTPC has considered all of the relevant evidence, it will then make a decision in respect of the allegations facing the registered nurse or registered midwife. Once the Inquiry has concluded, the FTP must report to the Board on its findings.

Board of NMBI

If the FTPC makes findings against the registered nurse or registered midwife, the Board will impose a sanction against the registered nurse or registered midwife.

¹ A separate information guide in relation to making a complaint about a registered nurse or registered midwife has been prepared for employers.

About this booklet

This booklet has been prepared with a view to assisting anyone making a complaint against a registered nurse or registered midwife. It aims to guide you through the complaints process, the grounds of complaint against registered nurses and registered midwives and what is likely to occur after you have made a complaint.

Please note that the information in this booklet does not purport to be a legal interpretation of the Nurses and Midwives Act, 2011. You can download the Act from www.irishstatutebook.ie/2011/en/act/pub/0041/.

If you have any questions about making a complaint after reading this booklet, please do not hesitate to contact the PPC Division of the Fitness to Practise Department on 353-1-6398500 or at FTP@NMBI.ie. It is important to note that NMBI must ensure that all complaints are considered in a fair and impartial manner. For that reason, NMBI cannot give legal advice or representation to you. However, there are a number of patient support groups who may be able to assist you with your complaint. Contacts details for these patient support groups can be found on our website www.nmbi.ie.

MAKING A COMPLAINT

Complaints about registered nurses or registered midwives

The Act contains three parts that concern:

- Complaints about registered nurses and registered midwives (Part 7),
- The handling of complaints which have been referred to Inquiry (Part 8), and
- The measures to be taken (sanctions) by the Board of NMBI if findings are made (Part 9).

In this booklet we deal mainly with Part 7 of the Act (Complaints to the Preliminary Proceedings Committee Concerning Registered Nurses and Registered Midwives). This part of the Act gives the PPC the legal authority to conduct an initial or preliminary screening of any complaint made about a registered nurse or registered midwife.

What can I do if I have a concern about a registered nurse or a registered midwife?

If you are concerned about the behaviour, conduct, practise or health of a registered nurse or registered midwife, or if you are aware of an incident(s) involving a registered nurse or registered midwife that may have compromised a patient's safety or the protection of the public, you may wish to make a complaint to NMBI.

Who can make a complaint to the PPC of NMBI?

Any person may make a complaint to the PPC of NMBI concerning a registered nurse or registered midwife. This includes members of the public, patients, relatives of patients, employers and other healthcare staff. The Board of NMBI may also make a complaint about a registered nurse or registered midwife to the PPC.

It is important for you to note that NMBI can only consider complaints against registered nurses or registered midwives. NMBI cannot consider complaints about anyone who is not a registered nurse or registered midwife (e.g. doctors, dentists, pharmacists, hospitals, clinics).

If however, you are concerned that a person is practising as a nurse or midwife but is not registered, you should inform NMBI urgently. It is an offence under the Act for an individual to engage in the practise of nursing or midwifery when they are not registered in the appropriate division of the register.

What kind of complaint does the PPC of NMBI consider?

A complaint may be made to the PPC of NMBI about a registered nurse or registered midwife on one or more of the following grounds:

1. Professional misconduct,
2. Poor professional performance,
3. Non-compliance with a code of professional conduct,
4. A relevant medical disability,
5. A failure to comply with a relevant condition,
6. A failure to comply with an undertaking or to take any action specified in a consent given in a response to a request under section 65(1) of the Act,
7. A contravention of a provision of the Act (including a provision of any regulations or rules made under the Act),
8. An irregularity in relation to the custody, prescription or supply of a controlled drug under the Misuse of Drugs Acts 1977 and 1984 or another drug that is likely to be abused, or
9. 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.¹

More information about these grounds for complaint can be found in the Appendix of this booklet. However, please note that this does not purport to be a legal interpretation of the grounds of complaint.²

How do I make a complaint?

The PPC of NMBI can only deal with written complaints. If you wish to make a complaint about a registered nurse or midwife, you can do so by completing NMBI's complaint form. This form is available on www.NMBI.ie/Complaints/Complaints-Form.

Alternatively, you can also put your complaint in writing addressed to:

PPC Division
 Fitness to Practise Department
 Nursing and Midwifery Board of Ireland
 18-20 Carysfort Avenue
 Blackrock
 Co. Dublin

If you have difficulty in putting your complaint in writing please contact the PPC Division of the Fitness to Practise Department at NMBI for assistance.

What information should I include in my complaint?

It can be helpful to spend some time thinking about and recalling the details of the incident or series of incidents that have prompted you to make a complaint before writing your complaint.

You should include as much of the following information as you can:

- 1 Offences that are triable on indictment are usually serious offences, for example, sexual assault or fraud, and are tried before a judge and jury in court.
- 2 Ultimately, if the PPC decides to refer a complaint to the Fitness to Practise Committee for Inquiry, it is open to the PPC to refer it on a ground or grounds of complaint that differ from those on which the original complaint was based.

- Your name, address, daytime and mobile telephone numbers and e-mail address.
- The name of the registered nurse or registered midwife you are complaining about, their NMBI Personal Identification Number ("PIN"), if known and address, if known. You may be able to obtain the registered nurse's or registered midwife's PIN from the NMBI website www.NMBI.ie and follow the link to "Check the Register". If you are unable to confirm or identify the nurse or midwife's PIN, NMBI can take steps to do so based on the information received.
- Details of your relationship with the registered nurse or registered midwife, e.g., patient, relative of a patient etc.
- If your complaint concerns a patient and you are not the patient, please provide the patient's name, address, date of birth, gender, daytime and mobile telephone numbers and e-mail address. Please confirm if the patient is aware that you are making the complaint.
- Details of the incident(s), including the date, time and location of the incident. There may be more than one date or time.
- Details of any witnesses to the incident that you are complaining about.
- Details of any action that has already been taken by any other organisation in response to your concerns.

Please note that you may also submit documents that are relevant to your complaint, for example, medical records and diary entries. If the patient has not provided consent to the release of their medical records, you should consider obtaining such consent or obtaining advice before sending records to NMBI. Any information provided to NMBI will be maintained in confidence, in accordance with Data Protection legislation.

A copy of your complaint and any supporting documentation will be sent to the registered nurse or registered midwife who is the subject matter of the complaint. The registered nurse or registered midwife will be invited to respond to your complaint.

What happens after I make my complaint?

When a complaint is received it will be assigned to a Case Officer who will assist the PPC to manage the complaint and carry out any investigations that the PPC directs to be undertaken.

The Case Officer will:

- Write to you and confirm that NMBI has received the complaint. The Case Officer may request you to provide copies of any documents which are referred to in the complaint; and
- Send a copy of your complaint to the registered nurse or registered midwife who is the subject of the complaint. The registered nurse or registered midwife will be invited to respond to the complaint, although they are not obliged to do so.

The complaint form, together with any accompanying documentation and any response received from the registered nurse or registered midwife will then be provided to the PPC to consider. Before reaching a decision in relation to whether or not there is a prima facie case such as to warrant further action being taken in relation to the complaint, the PPC may request that further investigations are carried out by the Case Officer, such as documentation being obtained and statements taken from witnesses or you. The PPC may also direct that a copy of any response received from the registered nurse or registered midwife be provided to you for comment.

In addition, the PPC may:

- Require you to verify, by Affidavit or otherwise, anything contained in the complaint,
- Require you to give more information relating to the matter raised by the complaint,
- Require the registered nurse or registered midwife to give such information in relation to the complaint as the PPC specifies,
- Invite the registered nurse or registered midwife to submit observations or supply any information which the registered nurse or registered midwife believes should be considered by the PPC.

Given that the PPC may direct that further investigations be conducted before it makes a decision in relation to your complaint, it may take a period of time before the PPC is in a position to make a decision in relation to your complaint. The timeline will ultimately depend on the complexity of the complaint at issue.

What action will the PPC take?

Once the PPC is satisfied that it has sufficient information in relation to the complaint and has considered all documentation received, it will make a decision in relation to the complaint. The PPC can do one or more of the following:

1. Where the PPC is of the opinion that there is a prima facie case in relation to the complaint, refer the matter to the FTFC for a sworn oral inquiry. In making this decision, the PPC does not decide on the facts of the complaint nor does it decide if the complaint is proven. That is ultimately a matter for the FTFC if the matter is referred to Inquiry.³
2. Form the opinion that:
 - a. There is not sufficient cause to warrant further action being taken in relation to the complaint.
 - b. The complaint should be referred to another body or authority.

If the PPC forms an opinion referred to at point 2 above, it must inform the Board of NMBI of that opinion. The Board may, after considering an opinion referred to it by the PPC do one or more of the following:

- Decide that no further action is to be taken in relation to the complaint;
- Direct the PPC to refer the complaint to another body or authority;
- Refer information in relation to the complaint in accordance with a co-operation agreement entered into under section 15 of the Act;
- If it considers it necessary to do so, direct that further action be taken by referring the matter to the Fitness to Practise Committee for Inquiry pursuant to section 61 of the Act.

The Case Officer will keep you updated in relation to any decision made by the PPC/Board regarding whether or not the complaint warrants further action.

Can I withdraw my complaint?

- 3 (Information about Fitness to Practise Inquiries to be held under the Nurses and Midwives Act, 2011 is outlined in the booklet entitled "What to do if called to give evidence at a Fitness to Practise Inquiry").

You are entitled to withdraw your complaint at any stage of the complaint process. If you wish to do so, you should notify NMBI that you wish to withdraw your complaint.

Please note that the withdrawal of complaints is governed by section 57(11) of the Act. Section 57(11) of the Act provides that the PPC may, with the agreement of the Board of NMBI:

- Decide that no further action is to be taken in relation to the matter that is the subject of the complaint, or
- Proceed as if the complaint had not been withdrawn.

Therefore, even though you may withdraw your complaint, the PPC may proceed to consider the complaint as if it had not been withdrawn, if the Board is in agreement with this approach. In the event that the PPC were to refer the complaint to Inquiry, you could still be called to give evidence.

Is there a time limit on making a complaint?

The Act does not specify any time limits on making a complaint about a registered nurse or registered midwife. However, the more time that passes between an incident or incidents occurring, the more difficult it is to obtain accurate information about the incident or incidents.

Therefore, it is important that if you wish to make a complaint about a registered nurse or registered midwife, you should do so as soon as possible.

How long does it take to deal with a complaint?

Under the Act the PPC must make reasonable efforts to ensure that it acts expeditiously, that complaints are processed in a timely manner and that you are informed of all decisions made in relation to the complaint. However, the amount of time it takes to process a complaint can vary, depending on how complex the complaint is.

Please note that investigations initiated by other bodies or authorities, e.g. An Garda Síochána, may have to be completed before the PPC can begin its own investigation. As a result, that could also impact on the timeline for the PPC's consideration of your complaint.

In the event that your complaint is referred to Inquiry, that will obviously give rise to a further period of time before the matter is concluded. Once a complaint has been referred to the FTPC for Inquiry, the solicitors for the CEO of NMBI must gather evidence in support of the complaint to prove that the alleged events occurred. This evidence may include reports, medical records, correspondence (such as letters and e-mails) and written witness statements.

The solicitors for the CEO may need to take a statement from you about the evidence you are in a position to give to the FTPC at the Inquiry. Once the investigations have concluded, an Inquiry date will be fixed. An Inquiry will usually take place within 6 - 10 months from the date the decision is made to hold the Inquiry but this depends on the complexity of the complaint and how much preparation is involved. You may then be called to give oral evidence at the Inquiry in relation to the matters referred to in your statement.

ATTENDING AN INQUIRY

If the matter is referred to Inquiry, will the Inquiry be held in public or private?

Inquiries are held in public except in certain circumstances. If you are to be called as a witness at an Inquiry, you may wish to apply to the FTPC for the Inquiry to be held otherwise than in public, e.g. in private or for your identity to be anonymised. If you wish to make an application to hold the Inquiry or part of it otherwise than in public, you must set out your reasons in writing to the FTPC. They will consider your application and decide whether the application shows 'reasonable and sufficient cause'.

If the Inquiry is held in public, any member of the public may attend. The media will know about the Inquiry and will have the right to cover it.

Attending the Inquiry

The Inquiry will be similar to a hearing before a court or tribunal.

The FTPC will hear the evidence presented at the Inquiry. The FTPC usually sits in panels of five members, which is comprised of three people who are not nurses or midwives, one nurse and one midwife. One member of the FTPC panel will act as Chairperson. There will also be a Legal Assessor who will sit with and advise FTPC on the law and procedure.

The legal representatives of the Chief Executive Officer (the "CEO") of NMBI will open the Inquiry, present the evidence and call witnesses to give evidence in support of the complaint. The registered nurse or registered midwife or their representative may question these witnesses about their evidence. The Committee may also ask the witnesses questions about their evidence.

Once the legal representative for the CEO has completed presenting their case, the registered nurse or registered midwife, or their legal representative may make submissions to the FTPC and/or call witnesses to give evidence. The CEO may cross-examine any witnesses called on behalf of the registered nurse or registered midwife. The FTPC may also ask these witnesses questions.

When all the evidence has been heard, the FTPC will draw up its Report. The Report will state whether the allegation(s) against the registered nurse or registered midwife has been proven. If the FTPC finds one or more allegations against the registered nurse or registered midwife proven, the Report may also include a recommendation as to sanction which the Board of NMBI will then consider. The Report may be drawn up on the day of the Inquiry or at a later date.

Role of the Board following the Inquiry

The Board of NMBI will consider the Report of the FTPC. In the event that the FTPC finds that no allegation against the registered nurse or registered midwife the subject of the complaint is proved, the Board will dismiss the complaint.

If the FTPC finds that any allegation against the registered nurse or registered midwife is proved, the Board of NMBI will determine the sanction to be imposed on the registered nurse or registered midwife. The Board of NMBI must impose one or more of these sanctions on the registered nurse or registered midwife:

- An advice or admonishment, or a censure, in writing;
- A censure in writing and a fine not exceeding €2,000;
- The attachment of conditions to the nurse's or midwife's registration, including restrictions on the practice of nursing or midwifery that may be engaged in by the nurse or midwife;
- The transfer of the nurse's or midwife's registration to another division;
- The suspension of the nurse's or midwife's registration for a specified period;
- The cancellation of the nurse's or midwife's registration from the register of nurses and midwives or a division of that register;
- A prohibition from applying for a specified period for the restoration of the nurse's or midwife's registration on the register of nurses and midwives or a division.

If the Board determines that a sanction, other than an advice, admonishment or a censure should be imposed, the Board must apply to the High Court for confirmation of the decision. The registered nurse or registered midwife has 21 days to appeal this decision to the High Court. Appeals to the High Court are held in public. In the event of an appeal, the case may be re-heard in full and you may be called as a witness to give evidence at the appeal.

What NMBI cannot do

As outlined above, in the event that the FTPC makes findings against a registered nurse or registered midwife, the Board of NMBI will impose a sanction. However, it is important to note that the Board is confined to those sanctions outlined in the Act. The Act does not allow for the Board to:

- Pay you compensation or help you make a claim for compensation.
- Make a nurse or midwife apologise to you.
- Order a nurse or midwife to do something for you such as, provide a treatment.
- Give you a detailed explanation of what happened to you. This can only come from the nurse or midwife.

Further queries

If you require any further information in relation to the complaints process, please do not hesitate to contact our Fitness to Practise Department on 01 – 6398 500 or by email ftp@nmbi.ie

Alternatively you can write to us at:
 PPC Division
 Fitness to Practise Department
 Nursing and Midwifery Board of Ireland
 18-20 Carysfort Avenue
 Blackrock
 Co. Dublin

APPENDIX

Further information regarding the grounds of complaint

A complaint may be made against a registered nurse or registered midwife to the PPC of NMBI on any of the following grounds:

- Professional misconduct,
- Poor professional performance,
- Non-compliance with a code of professional conduct,
- A relevant medical disability,
- A failure to comply with a relevant condition,
- A failure to comply with an undertaking or to take any action specified in a consent given in a response to a request under section 65(1),
- A contravention of a provision of the Act,
- An irregularity in relation to the custody, prescription or supply of a controlled drug under the Misuse of Drugs Acts 1977 and 1984 or another drug that is likely to be abused, or
- 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.

An explanation of each of the grounds of complaint is provided below.

a. Professional misconduct

Professional misconduct is not defined in the Act. It has been defined in case law. As matters stand, the definition is that originally set down in a case of *O’Laoire v Medical Council* which involved a medical practitioner. That definition was applied by the High Court to nursing in the case of *Perez v An Bord Altranais* [2005]. Misconduct can be defined as follows:

- Conduct which is infamous or disgraceful in a professional respect is professional misconduct. In this regard, conduct that would not be infamous or disgraceful in any other person, if done by a nurse or midwife in relation to his/her profession, may be considered professional misconduct.
- Infamous or disgraceful conduct is conduct involving some degree of moral turpitude, fraud or dishonesty.

This is commonly referred to as the “moral turpitude test”.

- Conduct which could not be properly described as infamous or disgraceful and which does not involve any degree of moral turpitude, fraud or dishonesty may still constitute professional misconduct if it is conduct connected with his/her profession in which the registered nurse or registered midwife has seriously fallen short, by omission or commission, of the standards of conduct expected amongst nurses or midwives.

This is commonly referred to as ‘the expected standards test’.

In the *Perez v An Bord Altranais* case, the judge went on to say that “it is irrelevant that such misconduct is attributable to honest mistake” and that “there is a duty to protect the public against the genially incompetent as well as the deliberate wrongdoers”.

The full judgment in the *Perez* case can be found on www.courts.ie under ‘Judgments’.

b. Poor professional performance

This term is defined in section 2 of the Act. It is a new ground of complaint and did not exist under the Nurses Act 1985.

“poor professional performance”, in relation to a nurse or midwife, means a failure by the nurse or midwife to meet the standards of competence (whether in knowledge and skill or the application of knowledge and skill or both) that can reasonably be expected of a registered nurse or registered midwife, as the case may be, carrying out similar work.

c. Non-compliance with a code of professional conduct

Non-compliance with a Code of Professional Conduct will relate to the code which was applicable at the time of the alleged events. If a new code is published after the date of the alleged non-compliance, it will not be relevant in the case and the old code will apply.

d. A relevant medical disability

This term is defined in section 2 of the Act:

“relevant medical disability”, in relation to a nurse or midwife, means a physical or mental disability of the nurse or midwife (including addiction to alcohol or drugs) which may impair his or her ability to practise nursing or midwifery or particular aspect thereof.

e. A failure to comply with a relevant condition

A relevant condition is a condition attached to the registration of the nurse or midwife under the provisions of the Act, or its predecessor the Nurses Act 1985. Details of when a relevant condition can be attached to the registration of a nurse or midwife can be found in a number of sections of the Act, including 51, 52(4), 69, 74, 79(3) and 81(3) of the Act. In summary, conditions may be attached at the time of entry to the register, following a fitness to practise inquiry or following restoration to the register. Depending on the circumstances, the conditions may be attached by the Board or by the High Court.

f. A failure to comply with an undertaking or to take any action specified in a consent given in response to a request under section 65 (1)

This relates to agreements reached during the course of a fitness to practise inquiry held under the Act. Such agreements require approval by the Board. Full details are set out in section 65(1) of the Act.

g. A contravention of this Act (including a provision of any regulations or rules made under the Act)

Regulations and rules, as they are made under the Act, will be published on the NMBI website and monthly eZine. New regulations and rules will be published on the NMBI website, www.NMBI.ie.

h. An irregularity in relation to the custody, prescription or supply of a controlled drug under the Misuse of Drugs Acts 1977 and 1984 or another drug that is likely to be abused

Guidance with regard to controlled drugs has been provided by the Board of NMBI over many years in various medication management guidance documents. The current edition is Guidance to Nurses and Midwives on Medication Management (July 2007). Future editions will be publicised via the website, newsletter and e-zine.

The Misuse of Drugs Acts 1977 and 1984 and regulations made under these Acts can be accessed at www.irishstatutebook.ie

i. 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

Under Irish law, there are two ways in which criminal offences may be tried:

1. In a District Court before a judge. There is no jury in such a case.
2. In the higher courts before a judge and jury.

A summary offence is one which is dealt with by a judge sitting without a jury. An offence 'triable on indictment' is one which may be or must be tried before a judge and jury. A clear explanation of the difference can be found on the Citizens Information website at:

http://www.citizensinformation.ie/en/justice/criminal_law/criminal_offences/classification_of_crimes_in_criminal_cases.html