

WHAT TO DO IF A COMPLAINT IS MADE ABOUT YOU



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



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INTRODUCTION

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.

This booklet has been developed to provide information to registered nurses or registered midwives who find themselves the subject of a complaint to the PPC of NMBI. The booklet aims to explain the complaints process, the grounds of complaint against registered nurses and registered midwives and what is likely to occur after a complaint is made.

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

In the event that you are the subject of a complaint to the Preliminary Procedures Committee (PPC) of NMBI, we strongly recommend that you contact your representative body and/or obtain independent legal advice prior to corresponding with NMBI in relation to a complaint.

We have outlined below a brief overview of NMBI's complaints process as governed by Parts 7, 8 and 9 of the Act.

PPC

All complaints received by NMBI in relation to registered nurses and registered midwives are referred to the PPC. The PPC is a Statutory Committee of NMBI Board 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 (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 completed, the FTPC 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.

THE COMPLAINT

Who can make a complaint to the PPC of NMBI?

Any person, including patients, relatives of patients, employers, other healthcare staff and the Board of NMBI may make a complaint to the PPC of NMBI concerning a registered nurse or registered midwife.

What kind of complaint does the PPC of NMBI consider?

A person may make a complaint to the PPC of NMBI on one or more 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) of the Act,
- A contravention of a provision of this Act (including a provision of any regulations or rules made under 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. ¹

An explanation of each of the grounds of complaint can be found at Appendix 1 of this document. However, please note that this does not purport to be a legal interpretation of the grounds of complaint. ²

What happens after a complaint is made to the PPC of NMBI?

When a complaint is received by the PPC of NMBI, 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 the complainant to acknowledge receipt of the complaint. The Case Officer may request the complainant to provide copies of any documents which are referred to in the complaint, and
- Write to you enclosing a copy of the complaint and any supporting documentation received. You will be invited to respond to the complaint, although you are not obliged to do so.

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.

The complaint form, together with any accompanying documentation and any response received from you 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. The PPC may also direct that a copy of any response received from you be provided to the complainant for comment.

In addition, the PPC may:

- Require the complainant to verify, by Affidavit or otherwise, anything contained in the complaint,
- Require the complainant to give more information relating to the matter raised by the complaint,
- Require you to give such information in relation to the complaint as the PPC specifies,
- Invite you to submit observations or supply any information which you believe should be considered by the PPC.³

You will be provided with a copy of all documentation obtained by the PPC during the course of its investigation.

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

What action will the PPC take?

Once the PPC has considered all documentation received in relation to the complaint, it will make a decision in relation to the complaint. The PPC could 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 FTPC 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 FTPC if the matter is referred to Inquiry.⁴
2. Form the opinion that:
 - i. There is not sufficient cause to warrant further action being taken in relation to the complaint.
 - ii. 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:

- a. Decide that no further action is to be taken in relation to the complaint;
- b. Direct the PPC to refer the complaint to another body or authority;

³ The PPC procedures are available on our website on www.NMBI.ie/What-We-Do/Governance/Board-Committees/Preliminary-Proceedings-Committee

⁴ Further Information about Fitness to Practise inquiries to be held under the Nurses and Midwives Act, 2011 can be found in the booklet entitled "What to do if called to give evidence at a Fitness to Practise Inquiry" which has been prepared for the assistance of witnesses called to give evidence.

- c. Refer information in relation to the complaint in accordance with a co-operation agreement entered into under section 15 of the Act;
- d. 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.

How long does it take to deal with a complaint?

NMBI is aware that this can be a very stressful and worrying time for you.

Under the Act the PPC must make reasonable efforts to ensure the PPC acts expeditiously and that complaints are processed in a timely manner. 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 the complaint against you.

For further information in relation to the consideration of complaints by the PPC, we suggest that you consider the PPC's procedures, which are available on our website.⁵

In the event that the complaint about you is referred to Inquiry, that will obviously give rise to a further period of time before the matter is concluded. An Inquiry will usually take place within 6 - 10 months from the date the decision is made by the PPC to hold the Inquiry but this timeline depends on the complexity of the complaint and how much preparation is involved.

⁵ The procedures are available on www.NMBI.ie/What-We-Do/Governance/Board-Committees/Preliminary-Proceedings-Committee

ATTENDING AN INQUIRY

What happens if the matter is referred to Inquiry?

If the PPC or Board of NMBI directs the referral of a complaint to the FTPC for a sworn oral inquiry, the Case Officer will contact you to inform you of the decision. The CEO's solicitors will send you copies of the following:

- Notice of the allegations made against you;
- Evidence in support of the allegations;
- Date proposed to hold the Inquiry together with details of the venue for the Inquiry;
- Notification that you and/or your representative, are entitled to be present and defend yourself at the hearing; and
- Notification that you can apply to have the Inquiry held otherwise than in public.

Any documents obtained during the course of the investigation, including witness statements, will be disclosed to you, as a matter of procedural fairness. This evidence, both oral and documentary, will be presented to the FTPC at the Inquiry.

As outlined above, 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.

If the complaint is referred to Inquiry, will the Inquiry be in public or private

Inquiries are held in public except in certain circumstances. As the registered nurse or registered midwife who is the subject of the complaint, 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 entire Inquiry or part of the Inquiry otherwise than in public, you will be asked to give your reasons in writing. The FTPC 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 report on the matter. Photographers and television cameras may be present outside the Inquiry venue.

Attending at the Inquiry

The Inquiry is 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 Committee will act as

Chairperson. There will also be a Legal Assessor who will sit with and advise the FTPC on the law and procedure.

The legal representatives acting on behalf of the CEO of NMBI will open the Inquiry, present the evidence and call witnesses to give evidence in support of the complaint. You or your representative may question these witnesses about their evidence. The FTPC may also ask the witnesses questions about their evidence.

Once the legal representative for the CEO has completed presenting their case, you, or your representative may make submissions to the FTPC and/or call witnesses to give evidence. The CEO may cross-examine any witnesses called on your behalf. 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 you has been proven. If the FTPC finds one or more of the allegations against you 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.

Sanctions that may be imposed

The Board of NMBI will consider the Report prepared by the FTPC. In the event that the FTPC finds that no allegation against you is proved, the Board will dismiss the complaint.

If the FTPC finds that any allegation against you is proved, the Board of NMBI will determine the sanction to be imposed against you. If findings are made, the Board of NMBI must impose one or more of these sanctions:

- 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 your registration, including restrictions on the practice of nursing or midwifery that may be engaged in by you;
- The transfer of your registration to another division;
- The suspension of your registration for a specified period;
- The cancellation of your 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 your registration in 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. You will have 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 witnesses will be called to give evidence at the appeal.

Notification to the Minister, the HSE and employer

The Board of NMBI is required to give notice in writing to the Minister for Health and the Health Service Executive (HSE) as soon as practicable after any of the following sanctions or measures takes effect:

- a. The cancellation of your registration;
- b. The restoration of your registration;
- c. The removal of your registration;
- d. The suspension of your registration;
- e. The termination of the period during which your registration is suspended;
- f. The transfer of your registration to another division of the register of nurses and midwives;
- g. The attachment of conditions to your registration;
- h. The removal of conditions attached under Part 9 of the Act to your registration;
- i. The prohibiting of you from applying for a specified period for the restoration of your registration;
- j. The censuring and fining of you;
- k. The censuring of you.

The Board shall also give notice to an employer (other than the HSE) where one or more of the above measures has been taken against you and the employer's name is known to the Board.

In addition, where it comes to the Board's attention that any sanction referred to above has been taken in relation to you and the Board has reason to believe that you are registered in another jurisdiction and those measures may not have come to the attention of the relevant body in that jurisdiction, the Board shall give notice in writing to that body of those measures.

Publication

When considering the Report of the FTPC, the Board of NMBI shall consider if it is in the public interest for the notice of sanction and/or all or part of the transcript of the Inquiry to be published. A copy of NMBI's publication policy is available on our website in the What we Do/Policies section

Further Queries

As outlined above, in the event that you are the subject of a complaint to the PPC of NMBI, we recommend that you contact your representative body and/or obtain independent legal advice prior to corresponding with NMBI in relation to a complaint.

If you wish to make contact the PPC Division Fitness to Practise Department you can do so on 353-1-6398500 or contact us by email at to 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 1

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.

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. 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

APPENDIX 2

Decision Tree – Publication of Sanctions

