

## Giving Evidence at Nursing and Midwifery Board of Ireland (NMBI) Fitness to Practise Inquiries

From time to time, doctors may be asked to provide medical records and / or give evidence at inquiries concerning nurses and / or midwives.

If you receive any correspondence from solicitors for the CEO of the NMBI, please feel free to contact Medisec so we can explain the process in detail and assist you.

An Inquiry before the Fitness to Practise Committee of the NMBI is similar to a hearing before a court or tribunal.

The following are some issues that arise if you receive correspondence from the solicitors for the CEO of the NMBI requesting you to:

- Produce copy medical records; and / or
- Provide a witness statement; and / or
- Attend an Inquiry to give evidence.

### Patient confidentiality

It is understandable that you may have concerns regarding patient confidentiality. An individual's right to privacy is balanced against other needs of civil society, including the regulation of professions.

You must disclose information where it is required by law. For example,

*“when ordered by a judge in a court of law, or by a tribunal or body established by an Act of the Oireachtas” (as set out in paragraph 31.2 of the Medical Council Guide to Professional Conduct and Ethics, available on the Medical Council website)*

The Data Protection Acts also permit disclosure of personal information if *“required by or under any enactment or by a rule of law or order of a court”*.

The NMBI is a body established by an Act of the Oireachtas and therefore falls under the above provisions.

### Production Summons

Under the provisions of the relevant legislation, the Fitness to Practise Committee of the NMBI has the same powers as a court in relation to compelling the production of records or documents and does this by issuing a Production Summons. A doctor must comply with the Summons, within the time limited, as if it were a High Court Order.

If it is not feasible to comply with the Summons within the timeframe provided, you should contact the solicitor for the NMBI and ask for an extension of time, setting out the reasons for the request.

When a Production Summons is issued, patient consent is not required to release the records or documents specified in the document.

However, clause 31 of the Medical Council Guide to Professional Conduct and Ethics states:

*“When you disclose information as required by law or in the public interest, you should inform patients of the disclosure, unless this would cause them serious harm, or would undermine the purpose of the disclosure.”*

Therefore, even if you know / believe that the patient is aware of the investigation, you should consider writing to the patient to let him / her know that the Production Summons has been received and the documents disclosed, unless you believe this would cause the patient serious harm.

It is important to note that in the usual course of events, copies of any documents you send to the solicitors for the NMBI will be disclosed to the nurse / midwife who is the subject of the complaint and / or their legal representatives.

In circumstances where your patient is the nurse or midwife who is the subject of the complaint and you believe sight of the records may cause them serious harm, you should inform the solicitor for the NMBI of this concern.

Obviously, you should never amend or alter any contemporaneous notes or records prior to sending them to the solicitors for the NMBI. If you notice an error or inaccuracy in the notes, you can make a correction but the original note should remain legible. For paper records, correction fluid should not be used. Any such correction must clearly show it is a retrospective alteration and must include the date the amendment was made and the name of the person who made it. The reason for the retrospective amendment should also be recorded. Please note that prescriptions cannot be retrospectively altered.

## **Witness statement**

In the event you are asked to provide a witness statement to the solicitors for the NMBI, you might note:

- The usual process is that solicitors for the NMBI arrange a meeting or a telephone call with you in order to ask you a number of specific questions. It would be useful to review the patient’s medical records in advance and have a copy to hand during the meeting / call.
- The solicitors for the NMBI will take a note of your answers and prepare a draft witness statement which will be sent to you thereafter. Sometimes there can be discrepancies or misunderstandings and it is preferable where possible, to send a witness statement in a format agreeable to solicitors for the NMBI.
- If this is not possible, it is important that you carefully review the draft statement sent to you and make any changes you deem necessary in order to accurately reflect your evidence. Your statement should be limited to the factual narrative of the incident.
- A copy of the draft and signed statement will usually be sent to the nurse / midwife the subject of the inquiry and / or their representatives.
- It is possible you will be called to give evidence at the Inquiry as a factual witness in relation to your witness statement. Sometimes, facts or statements can be agreed in advance and admitted into evidence without the necessity for you to attend and give evidence.
- You are not obliged to give a witness statement but you can be compelled to attend the Inquiry to give evidence as a factual witness. This is done by issuing and serving a witness summons. Even

if you are agreeable to attending voluntarily, you may ask for a copy of a witness summons to provide to your employer if necessary.

## **Attending a Fitness to Practise Inquiry to give evidence**

If you are required to give evidence at an Inquiry, it is likely that you will have received an information booklet from the solicitors for the NMBI and this contains useful information in relation to what to expect at the Inquiry.

The Fitness to Practise inquiries are usually held at the NMBI offices, 18/30 Carysfort Avenue, Blackrock, County Dublin. The solicitors for the NMBI should inform you of the day on which you will be required to give evidence. They may ask you to attend the NMBI at a certain time in order to meet with the solicitor and / or barrister for the CEO of the NMBI. You should be prepared for some waiting time until your evidence is called. It can also happen that your evidence is not reached on the day anticipated and you may be required to attend another day.

All necessary expenses including travel and food should be reimbursed by the NMBI after the Inquiry and you should keep all receipts in order to submit a claim. In circumstances where it is necessary for you to arrange for a locum to attend your practice, you should inform the solicitor for the NMBI in advance and ask in writing if the fees for your locum will be reimbursed.

If it is very difficult for you to attend the Inquiry, you could ask the solicitor for the NMBI if it would be possible for you to give evidence by way of video link or phone. This is sometimes possible, depending on the Fitness to Practise Committee and the evidence you will be giving.

NMBI Fitness to Practise Inquiries are usually held in public meaning members of the media can report on the proceedings, including any evidence you may give. As a witness, you can apply to the Fitness to Practise Committee in advance to have your evidence or the Inquiry heard "otherwise than in public". This includes applying for your name to be anonymised. In order for such an application to be granted, the Fitness to Practise Committee must be satisfied that there is "reasonable and sufficient cause" to depart from the default position.

If you receive any correspondence in relation to the above and have any concerns, please contact the Medisec Medico-Legal Advisory Team for advice.

"The contents of this publication are indicative of current developments and contain guidance on general medico legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice".