

A step by step approach to a Medical Council complaint

Seeking professional advice and assistance immediately upon notification of a complaint to the Medical Council will ensure a doctor's interests are looked after, writes **Dee Duffy**

RECEIVING NOTIFICATION OF a Medical Council complaint can be an extremely distressing time for a doctor, regardless of the stage of their career, their level of experience or the perceived seriousness or otherwise of the complaint. It is important for doctors to be familiar with the steps involved in a Medical Council complaint as this can help manage expectations and reduce the emotional toll.

The benefit of a good support network cannot be underestimated and Medisec would always encourage doctors to confide in family, friends and colleagues for emotional support while they go through the process.

It is reassuring that the vast majority of complaints are dealt with at the initial investigation stage – the Preliminary Proceedings Committee (PPC) stage – and are not referred to a Fitness to Practise Committee (FTPC). In 2022, over two-thirds of complaints (179 out of a total of 266) were deemed not to have a *prima facie* case.¹

Medical Council complaints

Complaints to the Medical Council are made under Part 7 of the Medical Practitioners Act 2007² (the 'Act') and can be made on the grounds of professional misconduct, poor professional performance, a relevant medical disability, a failure to comply with a relevant condition or failure to comply with an undertaking.

Anybody, including the HSE, Gardaí or the Medical Council itself, can make a complaint about a doctor, although most complaints are made by patients or family members of patients.

Letter from the Medical Council

The first letter from the Medical Council case officer to a doctor notifying them of a complaint usually contains a copy of the complaint and invites the doctor to voluntarily respond to the complaint within a certain timeframe.

Following receipt of a complaint, the first course of action for any doctor should be to contact their medical indemnifier. Any comments that are submitted form part of the formal investigation and may be sent to the complainant. Ideally, notification to a doctor's indemnifier should be done as early as possible before making any contact with the Medical Council. It is important to be aware that the Clinical Indemnity Scheme covers clinical negligence claims arising from public sector work but it does not cover Medical Council complaints so doctors should seek supplementary cover to provide support and assistance for Medical Council complaints.

Preliminary Proceedings Committee (PPC) stage

The Medical Council complaint process can be said to be a two-stage one, with the first stage being the PPC investigation (which is paper-based) and the second stage, the FTPC investigation and inquiry.

All Medical Council complaints made are reviewed by the PPC, which acts as a screening committee and decides, following investigation, whether further action is warranted in respect of a complaint. If the PPC is of the opinion that no further action is warranted, this is considered by the Medical Council, which makes a final decision.

The Regulated Professions (Health and Social Care) (Amendment) Act 2020³ introduced some welcome changes to the initial stages of the Medical Council complaint process. However, these changes have not yet commenced. The 2020 Act provides that the CEO of the Medical Council will take up a new role in receiving complaints and will, with the assistance of an authorised officer, carry out investigations before sending the complaint to the PPC. The CEO will be able to decide if a complaint is frivolous or vexatious.

The PPC meets approximately every four to six weeks and usually instructs the case officer to carry out certain investigations. This may include obtaining records, taking witness statements and briefing experts to provide a report. The length of time a complaint takes to get to a position where the PPC makes a decision varies widely, depending on the nature of the complaint and the investigations directed.

The PPC can then make one of the following decisions:

- If the PPC believes that there is a *prima facie* case, it will refer the complaint to the FTPC for an inquiry; or
- If the PPC decides not to refer the complaint to the FTPC it will give an opinion to the Medical Council that:
 - it should take no further action; or
 - the complaint should be referred to another body or authority or to the Medical Council's professional competence scheme; or
 - the complaint could be resolved by mediation or other informal methods (with the agreement of the complainant and the doctor).

The PPC then reports its opinion to the Medical Council which may agree with the PPC's decision or it may decide on another course of action as outlined above.

Fitness to Practise investigation

If the PPC and the Medical Council believe that the

complaint should be referred to the FTPC, the CEO of the Medical Council, usually via a solicitor, further investigates the complaint and prepares for an inquiry. The FTPC has statutory powers to obtain certain information and can also compel witnesses to give evidence at inquiry. The investigations can take many months and sometimes years to be completed.

When doctors are assisted by their medical indemnifiers, they will likely have a solicitor assisting them at this stage in the process. In advance of the inquiry, the doctor's solicitor is served with a Notice of Inquiry, setting out the allegations of professional misconduct, poor professional performance and/or relevant medical disability. Doctors and their solicitors are also entitled to see the evidence gathered during the course of the investigation.

Undertakings

The Act provides that at any time after a complaint is referred to the FTPC, the FTPC may request the doctor to make certain undertakings, including not to repeat the conduct that is the subject of the complaint. If such an undertaking is accepted, the matter is concluded.²

A welcome change brought about by the Regulated Professions (Health and Social Care) (Amendment) Act 2020 was the introduction of the PPC also being able to request undertakings in order to deal with a complaint. However, the relevant sections of this Act have not yet been commenced.³

Inquiry

The default position is that FTP Inquiries are heard in public, meaning that the media can attend and report on the proceedings. However, the Act provides that the doctor or any of the witnesses can apply to have the inquiry heard "otherwise than in public".² This may include requests for a fully private hearing or anonymisation of certain parties etc. It is a matter for the FTPC to decide whether to hold the inquiry in public or in private. The FTPC can also make decisions regarding whether the inquiry should take place in person or online.

The inquiry hearing is an adversarial one and legal representatives for the parties usually question and cross-examine witnesses. Three members of the FTPC sit to hear the inquiry (one medic and two non-medics) and they

are joined by a legal assessor who assists them with any legal issues that arise.

Once the evidence is heard, they must decide whether the allegations are proven as to fact and if they are, whether they amount to professional misconduct, poor professional performance and/or relevant medical disability, as alleged. In order to make a finding, the FTPC must be satisfied beyond a reasonable doubt that the allegations are proven.

Findings and sanctions

Following the conclusion of the inquiry, the FTPC prepares a report for the Medical Council, detailing its findings (if any) and any recommendations as to sanction if appropriate.

The recommended sanctions can include:

- Advice, admonishment or censure
- A censure and fine up to €5,000
- Conditions attached to a doctor's registration
- Transfer of registration to another division
- Suspension from the register for a specified period
- Cancellation from the register.

The Medical Council then holds a sanction hearing where it meets to consider the FTPC report. Submissions can be made by a doctor at that point as regards sanction.

The more serious sanctions (conditions, suspension and cancellation) require confirmation by the High Court. A recent change to the legislation means that appeals can now be made in respect of all sanctions, not only those more serious ones, which had previously been the case.

Conclusion

Navigating a Medical Council complaint can be an overwhelmingly stressful experience for doctors. The potential implications and fear of reputational damage can weigh heavily during the process.

Seeking professional advice and assistance early on can help with the burden and ensure a doctor's interests are looked after.

References

1. Medical Council Annual Report and Financial Statements 2022
2. Medical Practitioners Act 2007. www.irishstatutebook.ie/eli/2007/act/25
3. www.irishstatutebook.ie/eli/2020/act/16/enacted/en/html

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