



## Comhairle na nDochtúirí Leighis Medical Council

### **Procedures in respect of Part 8 of the Medical Practitioners Act 2007 (as amended) (“the Act”)**

The Fitness to Practise Committee (“the Committee”) is established in accordance with the requirements of section 20 of the Medical Practitioners Act 2007. The purpose of this document is to set out the procedures adopted by the Committee in respect of matters which are referred to it. The document is not legally binding on the Committee and serves as a guide only to the manner in which the Committee will usually approach matters referred to it.

The Committee usually sits in panels (“panel”) of 3 members. In each panel, at least one member must be a Council member. The panel must be composed of one medical practitioner, two persons who are not medical practitioners and the Chairperson of the panel shall be a member of the Medical Council.

All references to the term “Committee” in this document shall include the term “panel”, unless otherwise stated.

#### **1. Committee secretariat**

The Committee shall be supported by a secretariat, composed of one or more Council staff, that shall be responsible for administrative matters to support the functioning of the Committee. That secretariat shall operate independently of the office of the Chief Executive Officer (the “CEO”) who is responsible for the presentation of cases before the Committee.

## **2. Call over**

The Committee sits for call overs at regular intervals to case manage matters referred to it pursuant to Part 7 of the Act. All medical practitioners or their legal representatives who have matters listed before the Committee are invited to attend such call overs. Call overs are held at the offices of the Medical Council at Kingram House unless otherwise stated.

### *a) In advance of a call over*

A letter of invitation to the call over, usually issued by the CEO's solicitors, will inform the medical practitioner or his/her legal representatives of the date and time of the call over. The letter will request the medical practitioner or his/her legal representatives to inform the CEO's solicitors of any applications that he/she wishes to make to the Committee at a call over by a specified date.

Medical practitioners or their legal representatives may attend in person, by phone link or by video link. Alternatively, medical practitioners or their legal representatives may set out in writing in advance of the call over any applications they wish to make. Such written applications should be furnished to the CEO's solicitors pursuant to the time line set out in correspondence from the CEO. The CEO will then ensure that any applications are considered by the Committee at the call over.

The CEO will arrange to furnish a brief to the Committee in advance of the call over containing relevant correspondence and documentation to be considered by the Committee. This allows the Committee to brief themselves on any applications in advance of the call over.

Each case is usually considered in private before Committee at the call over.

On conclusion of the call over, the secretariat will furnish the medical practitioner or his/her representatives with a transcript of the call over in so far as his/her case is concerned.

*b) Call over applications*

Call overs facilitate effective and efficient case management of the cases referred to the Committee. The Committee may direct that specific timelines be complied with in order to ensure that a case is ready for hearing.

In particular, the following matters can be considered by the Committee:

Prior to callover:

Usually the Committee requests that the CEO furnishes to the medical practitioner notice of the allegations and the particulars of the evidence at least 4 weeks in advance of the hearing date(s).

*i) Fixing of dates*

The CEO generally applies to the Committee to fix hearing dates for Inquiries at the call over. The Committee requests that, where possible, hearing dates suitable to both sides are identified in advance of the call over.

*ii) Applications for adjournments.*

If an application for an adjournment is to be made at a call over, it should be brought to the attention of the CEO's solicitors at the earliest opportunity. The Committee will hear submissions from the medical practitioner or his/her legal representatives and the CEO in relation to such applications. Without prejudice to any decision by the Committee, the Committee requests that both sides endeavour to identify alternative suitable hearing dates in advance of any such application.

*iii) Other interlocutory applications e.g. Production Summons / Directions / Witness Summons.*

The CEO or the medical practitioner/his/her legal representatives may bring to the attention of the Committee an application for a Production Summons, a Direction for medical records or a Witness Summons. The CEO or the medical practitioner/his/her legal representatives may invite relevant parties to attend the call over to make submissions to the Committee in relation to such applications. In the event that there is failure to comply with a Summons or a Direction issued by the Committee, then such a breach should be brought to the attention of the Committee at the earliest possible opportunity.

*iv) Privacy Applications.*

The Committee will consider applications from witnesses or medical practitioners who apply for some or all of an Inquiry to be held otherwise than in public. The Committee will consider, pursuant to the Act, whether it is satisfied that it would be appropriate in the circumstances to hold the hearing or part of the hearing otherwise than in public, as provided in the Act. Such applications will be notified to the medical practitioner or CEO as the case may be, in advance of the call over.

### **3. Applications other than at call overs**

In circumstances where an application is required to be made to the Committee in advance of a call over, the applicant is requested to notify the other party (be it the CEO or the medical practitioner) to the Inquiry. The Committee's secretariat will identify a suitable date and time (generally on a date fixed in respect of another Inquiry) for such an application to be considered by the Committee. The Committee should be notified in advance by the secretariat of the date and time on which such application will be made.

Where an application is required to be ruled upon in advance of an Inquiry and there is no opportunity to make the application to a sitting Committee in advance of the date of the Inquiry, the secretariat will circulate the application in writing, together with any supporting documents and/or a response from the other party, to the Committee for consideration. The Committee may make a decision in respect of the application or direct how it should be managed without convening to hear oral submissions. The Committee's ruling will be notified to the parties via the secretariat.

#### **4. FTPC composition at Inquiries**

The FTPC's secretariat coordinates the composition of the Committee's panels for Inquiries and call overs. Such composition is based on the availability of the Committee members and in accordance with the requirements of the Medical Practitioners Act 2007. As indicated above, panels are usually composed of three persons. In a three person panel, at least one member must be a Council member. The panel must be composed of one medical practitioner, two persons who are not medical practitioners and the chairperson of the panel shall be a member of the Medical Council. In the event that there is more than one member of Council on a hearing panel, the panel shall in advance of the commencement of the Inquiry appoint the Chairperson by agreement or in the event of disagreement, the selection shall be decided by the drawing of lots.

#### **5. Core Books**

The Committee requests that Core Books are agreed between the CEO and the medical practitioners/his/her representatives in advance of a matter coming before the Committee. The Committee requests that, where possible, agreed Core Books shall be furnished by the CEO to the Committee's secretariat at least 2 working days in advance of the Inquiry. In such circumstances, the secretariat will circulate the Core Books to the Committee and the Legal Assessor.

## **6. Inquiry Hearings**

Participants to Inquiries should observe the Committee's timetable and attend punctually.

The Chairperson of the hearing panel opens the proceedings with an opening statement- sample attached.

It may be necessary, on occasion, for one or more preliminary applications to be made to the Committee in advance of the Chairperson opening the proceedings. It shall be at the Committee's discretion whether any such applications are heard in public or in private.

The CEO, in her opening submissions, usually provides a summary of the evidence to be led by her in support of the allegations. The medical practitioner or his/her representatives may make replying submissions. Both parties may make any preliminary applications to the Committee. The CEO may call factual and expert witnesses and such witnesses may be cross examined by or on behalf of the medical practitioner. Members of the Committee may also question witnesses being careful not to display or infer their views on the case . The CEO may re-examine her own witnesses.

At the conclusion of the CEO's case, the medical practitioner is entitled to call fact and/or expert evidence on his own behalf. The medical practitioner is also entitled, but not obliged, to give evidence. Any witnesses called to give evidence by the medical practitioner may be cross examined by the CEO and/or questioned by the Committee. Witnesses called by or on behalf of the medical practitioner may be re-examined by or on behalf of the medical practitioner.

The Committee will be aware that giving evidence is a stressful experience for witnesses, particularly in the context of public hearings and will take appropriate steps throughout the course of a hearing to support witnesses.

## **7. Inquiries held in Private**

In circumstances where an Inquiry is held in private, the Chairperson of the hearing panel will request all persons who are not a party to the Inquiry to leave the Inquiry room. The Chairperson shall request all witnesses who gave evidence in private not to discuss the inquiry with any other persons.

In circumstances where expert evidence is to be provided to the Committee it is often appropriate for such experts to be present for all evidence given to the Committee. If either party wishes for their expert to be present for evidence given in private, an application should be made to the Committee. The Committee will hear submissions from the other party to the Inquiry in relation to such an application.

The Committee will consider applications at any time from a witness to be present for the balance of a private Inquiry after they have given evidence. This may arise for example, where a complainant has successfully applied for the Inquiry to be held in private due to the sensitive nature of the facts but the complainant wishes to hear the remaining evidence given to the Committee. The Committee will request submissions from the medical practitioner and the CEO in relation to any such application.

## **8. Rules of Evidence**

The Committee is not bound by the strict rules of evidence that may apply in the Courts and when departing from same shall attach the appropriate weight to evidence that breaches such a rule. When deciding whether to admit evidence that is not in accordance with the strict rules of evidence, the Committee will take into account the extent to which the admission of that evidence may represent a fundamental breach of the medical practitioner's entitlement to fair procedures and natural justice.

## **9. Role of Legal Assessor**

The Legal Assessor sits with the Committee and provides legal advice to the Committee when requested to do so by the Committee. If the Legal Assessor is of the opinion that a matter has arisen upon which the Committee should be advised, the Legal Assessor will offer his/her advice to the Committee via the Chairperson.

At the conclusion of the evidence and before the Committee retires to consider its determinations, the Legal Assessor will usually remind the Committee of its task. He/she does not present a summary of the evidence. His/her advice simply serves to remind the Committee of its obligations and to advise in respect of any legal issues that have arisen during the course of the Inquiry.

The Legal Assessor may be present at the Committee's private deliberations. The Committee may request advice while in private session, and any legal advice to the Committee must first be shared with the parties and an opportunity provided to the parties to make submissions in respect of that advice. The Committee may then decide to accept or reject the advice received from the Legal Assessor.

## **10. Section 67**

Section 67 of the Medical Practitioners Act 2007 empowers the Committee, at any time after a complaint is referred to it, to request the medical practitioner the subject of the complaint to do one or more of the following:

- a) if appropriate, undertake not to repeat the conduct the subject of the complaint;
- b) undertake to be referred to a professional competence scheme and to undertake any requirements relating to the improvement of the medical practitioner's competence and performance which may be imposed;
- c) consent to undergo medical treatment;



d) consent to being censured by the Council

The Committee will not usually request the medical practitioner to do one or more of the above unless the CEO has completed her evidence or the Committee has a clear understanding of the extent of the evidence to be adduced on behalf of the CEO. Section 67 is binding on the Council. The panel sitting at a call over will not usually request undertakings or consents pursuant to Section 67 on the basis that a hearing panel may be better equipped to determine the appropriateness of such a request with the full facts before it.

#### **11. Closing Submissions**

At the conclusion of an Inquiry, each party will be invited by the Chairperson of the hearing panel to make closing oral submissions.

The Committee will then retire to consider its determination and report. The standard of proof applied by the Committee is the criminal standard i.e. beyond reasonable doubt.

If the Committee believes that it would be of assistance or appropriate, they may request the parties to prepare written submissions. The written submissions should be prepared by the CEO's representative first and furnished to the medical practitioner's representatives by a specified deadline. The medical practitioner's representatives should then prepare a response, also by a specified deadline. If required, the Committee should specify a date by which they will consider the written submissions or any oral submissions, in the presence of the CEO's representatives and the medical practitioner's representatives.

The secretariat will arrange to furnish the Committee with copies of both sets of the written submissions.

#### **12. Report**

The Committee can either:

- a) Inform the parties that the Committee will make a decision and advise them of their findings on the day of the Inquiry or
- b) Inform the parties that the Committee will take further time to make its decision and that it will inform the relevant parties of its decision at a later date. If the Inquiry has been held in public or partly in public, the Committee should set a date for the Committee to reconvene to give its report in public or partly in public, as appropriate. If the Inquiry has been held in private, the Committee should inform the parties that they will be furnished with the Committee's report in writing in due course.

The Committee, with the assistance of the Legal Assessor, should complete the report using the template appearing in Appendix One hereto, and carefully outline the reasons for their decision in respect of each of the allegations.

The report shall include the Committee's reasons in respect of the following:

- a. each of the Committee's findings of fact, if any;
- b. each of the Committee's findings of professional misconduct, poor professional performance and/or any other ground of complaint, if any;  
and
- c. recommended sanction, if any.

The report will be furnished to the medical practitioner and the CEO for consideration in advance of the meeting of the Medical Council.

### **13. Recommendations as to sanction**

The Committee will not announce its recommendation as to sanction in public but will embody any recommendation in its report to Council.

#### **14. Publication**

The Committee will usually publish on the website, as soon as is practicable, its findings (but not reasons) in respect of each of the allegations but may decide not to do so in respect of hearings held in private. The Committee will, in advance, announce its findings to the medical practitioner and the CEO in accordance with procedures set out above.

#### **15. The media**

The media are directed to liaise with the Communications Manager of the Medical Council in relation to any queries. Information sheets shall be made available on the day of any public hearing setting out the details pertaining to that hearing to include:

- Name of medical practitioner.
- Names of legal representatives for the CEO and the medical practitioner.

#### **16. Video link Evidence**

In circumstances where video link evidence is to be heard at an Inquiry, the Communications Unit of the Medical Council will coordinate the arrangements in this regard. The Communications Unit requests that as much notice as possible is provided in advance of a hearing date where a video link is to be used.

The Committee requests that, save where the Committee rules otherwise, a witness giving evidence by video link should be the only person in the room where he/she is giving evidence.

Video link evidence on behalf of the medical practitioners shall be at his/her own expense.

#### **17. Interpreters**

It may be necessary on occasion for the Committee to engage an appropriately qualified interpreter to interpret one or more witnesses' evidence. On such

occasions, the Committee's secretariat will identify a suitable interpreter who will attend the Inquiry. Before the interpreter provides assistance to the Committee, the interpreter will take an oath swearing that he/she will interpret truthfully and accurately.

#### **18. Fixing further dates when Inquiry part-heard**

In circumstances where an Inquiry is partly concluded and further dates are to be fixed, the Committee requests that the medical practitioner or his/her representatives and the CEO identify how many additional dates will be required and identify a number of suitable hearing dates. The Committee requests that where possible, additional dates should be fixed as proximate as possible to the original Inquiry dates.

#### **19. Publication of transcripts of Inquiry**

The Medical Council shall, if it is satisfied that it is in the public interest to do so, after consultation with the Committee, publish a transcript of all or any part of the proceedings of the Committee at an inquiry, whether with or without any information which would enable all or any one or more than one of the parties to the proceedings to be identified.

The Committee requests that, where possible, any applications/submissions as regards the publication of transcripts be made to the Committee in advance of the conclusion of the Inquiry. Where possible, the Committee will consider such applications/submissions prior to the conclusion of an Inquiry.

DR DANNY O'HARE  
CHAIRMAN  
FITNESS TO PRACTISE COMMITTEE

Date: FEBRUARY 2012