



Public Consultation

Draft Section 11 Rules for the Fitness to Practise Committee and Subcommittees of the Fitness to Practise Committee

12th June 2020



**Comhairle na nDochtúirí Leighis
Medical Council**

Publication Consultation Document

Introduction

In accordance with the Medical Practitioners Act 2007 (the Act), the Medical Council from time to time, and as required, can create or amend rules for the purposes of the better operation of any provision of the Act.

Section 11 of the Act outlines how these rules are to be created and part of that process includes a public consultation.

On the 11th June 2020, the Medical Council reviewed and approved the draft Section 11 rules to be published for public consultation.

These rules take the Medical Council's Fitness to Practice procedures and transposes them into rules in accordance with the Act.

Consultation Process

The Medical Council is inviting our stakeholders and members of the public to participate in a public consultation on these Rules.

Participants are requested to use the consultation form available on www.medicalcouncil.ie and to submit their responses by email to john.sidebottom@mcirl.ie by noon on Wednesday 1st July 2020.

Following the consultation, the Rule may be amended by the Council and approved and published. The Rules shall then be laid before each House of the Oireachtas.

Data Protection and Freedom of Information

While the data may be identifiable, you have several rights under data protection legislation, including the right to access the data you have provided; the right to rectification the data you provide; the right to be erased from the dataset; the right to restrict or object to the processing of the data you have provided and to obtain and reuse your personal data (data portability).

If you would like further information on your rights as a data subject, please contact our Data Protection Officer at dp@mcirl.ie. You also have the right to object to the processing of your personal data. If you have any further questions regarding this or other data held by the Medical Council, please contact dp@mcirl.ie.

Participation in this consultation is entirely voluntary.

Please note that submissions may be subject to Freedom of Information requests in accordance with the Freedom of Information Act 2014.

Medical Council - Rules for the Fitness to Practise Committee and Subcommittees of the Fitness to Practise Committee

Rules made by the Medical Council on 10th June, 2020 under section 11 of the Medical Practitioners Act 2007, as amended (the "Act").

1. The Fitness to Practise Committee ("the Committee") is established in accordance with the requirements of section 20 of the Medical Practitioners Act 2007.
2. The Committee usually sits in Subcommittees ("Subcommittee") of 3 members for the purposes of call overs and Inquiries under Part 8 of the Act. In each Subcommittee, at least one member must be a Council member. The Subcommittee must be composed of one medical practitioner, two persons who are not medical practitioners and the chairperson of the Subcommittee shall be a member of the Medical Council. The Chairperson of the Committee, or such other member or members of the Committee as may be designated by the Chairperson, may establish Subcommittees of the Committee.
3. All references to the "Committee" in these Rules shall be taken to include any "Subcommittee" established under the Rules, unless otherwise stated.
4. Other words and phrases in these Rules shall have the meaning assigned to them in the Act. These Rules shall at all times be applied in a manner that is consistent with the Act.

A. Committee secretariat

5. 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.

B. Call over

6. The Committee shall convene for call overs at regular intervals to case manage matters referred to it pursuant to Part 7 of the Act. All registered medical practitioners or their legal representatives who have matters pending Inquiry before the Committee are invited to attend such call overs.

a. In advance of a call over

- i. A letter of invitation to the call over, usually issued by the CEO's solicitors, will inform the registered medical practitioner or his/her legal representatives of the date and time of the call over. The letter will request the registered 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.

- ii. Registered medical practitioners or their legal representatives may, subject to any direction by the Committee, attend in person, by phone link or by video link. Alternatively, registered 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.
- iii. 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.
- iv. Each case is usually considered in private before Committee at the call over.
- v. As soon as is practicable following the conclusion of the call over, the secretariat will furnish the registered 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

- i. 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:

c. Applications for adjournments.

- i. 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 registered 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.

d. Other interlocutory applications e.g. Production Summons / Directions / Witness Summons.

- i. The CEO or the registered 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 registered 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.

e. Privacy Applications.

- i. The Committee will consider applications from witnesses or registered 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 registered medical practitioner or CEO as the case may be, in advance of the call over.

C. Applications other than at call overs

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- 7. 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 registered 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.
- 8. 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.

D. Subcommittee composition at Inquiries

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- 9. Subcommittees may be established in accordance with the Rules and shall be composed of three persons. In a three person Subcommittee, at least one member must be a Council member. The Subcommittee must be composed of one medical practitioner, two persons who are not medical practitioners and the chairperson of the Subcommittee shall be a member of the Medical Council. In the event that there is more than one member of Council on a Subcommittee, the Subcommittee 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.

E. Core Books

10. The Committee requests that, where possible, Core Books are agreed between the CEO and the registered medical practitioners/his/her representatives in advance of a matter coming before the Committee. The Committee requests that, agreed Core Books 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.

F. Inquiry Hearings

11. Participants to Inquiries should observe the Committee's timetable and attend punctually.
12. The chairperson of the Subcommittee will open the proceedings with an opening statement.
13. 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.
14. The CEO, in his opening submissions, usually provides a summary of the evidence to be led by him in support of the allegations. The registered 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 registered medical practitioner. Members of the Committee may also question witnesses. The CEO may re-examine his own witnesses.
15. At the conclusion of the CEO's case, the registered medical practitioner is entitled to call fact and/or expert evidence on his own behalf. The registered 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 registered medical practitioner may be re-examined by or on behalf of the registered medical practitioner.
16. 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.

G. Inquiries held in Private

17. In circumstances where an Inquiry is held in private, the chairperson of the Committee 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.

18. 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.
19. 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. The Committee will request submissions from the registered medical practitioner and the CEO in relation to any such application.

H. Rules of Evidence

20. 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 such evidence. 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 registered medical practitioner's entitlement to fair procedures and natural justice.

I. Role of Legal Assessor

21. 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.
22. 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.
23. 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.
24. 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.

J. Section 67

25. Section 67 of the Medical Practitioners Act 2007 empowers the Committee, at any time after

a complaint is referred to it, to request the registered 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.

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

K. Closing Submissions

27. At the conclusion of an Inquiry, each party will be invited by the chairperson of the Committee to make closing oral submissions.

28. 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.

29. 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 registered medical practitioner's representatives by a specified deadline. The registered 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 registered medical practitioner's representatives.

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

L. Report

31. 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.
- 32. The Committee, with the assistance of the Legal Assessor, should complete the report and carefully outline the reasons for their decision in respect of each of the allegations.
- 33. 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.
- 34. The report will be furnished to the registered medical practitioner and the CEO for consideration in advance of the meeting of the Medical Council.

M. Recommendations as to sanction

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

N. The media

- 36. 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:
 - a. Name of registered medical practitioner;
 - b. Names of legal representatives for the CEO and the registered medical practitioner.

O. Video link Evidence

- 37. 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.

38. 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.
39. Video link evidence on behalf of the registered medical practitioners shall be at his/her own expense.

P. Interpreters

40. 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.

Q. Fixing further dates when Inquiry part-heard

41. In circumstances where an Inquiry is partly concluded and further dates are to be fixed, the Committee requests that the registered 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.

R. Publication of transcripts of Inquiry

42. 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.
43. 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.

S. Application of these Rules

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- 44. The Chairperson of the Committee or the chairperson of the Subcommittee, as the case may be, may depart or deviate from any provision of these rules where it is considered necessary or appropriate to do so in the interests of efficiency and/or fair procedures.



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