

Feedback Form:

Draft further rules for the maintenance of professional competence

Proposals to support the establishment of performance procedures



Comhairle na nDochtúirí Leighis  
Medical Council



## Public Consultation on draft further rules for the maintenance of professional competence Proposals to support the establishment of performance procedures

The Medical Council has developed draft rules for new performance procedures which it will use to handle concerns about practitioners' performance.

The draft rules set out the procedures and activities to be followed by the Medical Council and the doctor by way of the proposed performance procedures.

In summary, following a referral, the doctor and a nominee at his or her workplace will be asked to provide information relating to the scope and content of the doctor's practice. This will be used to plan the performance procedure activities. The doctor will also be asked to participate in an occupational health assessment and in a Multi-Source Feedback Survey. The occupational health assessment will determine if there are any health related issues affecting the doctor's performance. The Multi-Source Feedback Survey will collate the views of patients and peers on the doctor's performance in practice.

When these preliminary activities have been completed, an assessment team comprising trained assessors will be appointed. The team will include other doctors to provide peer perspective on the doctor's performance in practice; it will also include a member of the public to provide a patient perspective. The team will then conduct a workplace-based assessment of the doctor's performance in practice using a range of established methods, including clinical record review, direct observation of practice and case-based assessment. The assessors will take into account the concerns that gave rise to the referral as well as the overall scope and content of the doctor's practice and will use these methods to identify areas of the doctor's practice which are satisfactory and any areas which fail to meet standards that can reasonably be expected. In some situations where it is not possible to complete a workplace-based assessment of the doctor's performance in practice, the doctor will be asked to complete a test of competence.

The team will set out findings, conclusions and any recommendations on requirements relating to the improvement of the doctor's competence and performance arising. The doctor will be asked to propose how he or she plans to address these requirements by way of an action plan to be agreed with the Medical Council. Implementation of the action plan will be overseen by the Medical Council to satisfy itself that the doctor is maintaining professional competence. If at any stage during these procedures the doctor fails, ceases or refuses to cooperate, or it is identified that the doctor may pose an immediate risk of harm to the public, or it is found that the doctor has committed a serious breach of the Medical Council's guidance on ethical standards and behaviour, then enforcement action may be pursued by the Medical Council, including the possibility of taking action to affect the doctor's registration.

The Medical Council is inviting you to submit your views on these draft further rules. Following this consultation process and consideration of submissions received, the draft further rules will be reviewed and finalised. Please note that all submissions are subject to the provisions of the Freedom of Information Acts 1997-2003.

Submissions on the draft further rules must reach the Council by close of business on 18th November 2011.

How to make a submission:

Please use this feedback form to make your submission. You can return your comments in a number of ways:

Email: email your completed form to [Part11Consultation@mcirl.ie](mailto:Part11Consultation@mcirl.ie)

Post: Print the form and send it to us at: The Medical Council, Kingram House, Kingram Place, Dublin 2

Fax: Print the form and fax it to us at 01 498 3103

Further information

For further information or if you have any questions, you can talk to the [Consultation Team](#) by calling 01 498 3195

## Draft further Rules for the maintenance of professional competence

### Feedback Form

Name of individual or group:	Irish Medical Organisation
Organisation and Job Title:	Irish Medical Organisation
Contact details:	IMO House, 10 Fitzwilliam Place, Dublin 2
Email address:	vhetherington@imo.ie
Date:	
For group responses, please indicate the number of people responding:	Approx 5,500
If you wish to make comment on specific rules please enter your comment in the appropriate box below. Space has also been provided at the end of this document for general comment.	

Rules		No response	Support	Neutral	Do not support*	Comments * "Do not support" requires comment
(Please tick the appropriate box)						
Rule 1	<p>In circumstances where:</p> <p>a. A complaint is referred to a professional competence scheme per Section 61 of the Act,</p> <p>b. A practitioner undertakes to be referred to a professional competence scheme per Section 67(1)(b) of the Act,</p> <p>c. The Medical Council attaches, per Section 71(c), a condition to the retention of a practitioner's name on the register that he/she be referred to a professional competence scheme,</p> <p>the procedures and activities applicable to that scheme established for the purposes of the Medical Council performing its duty under section 91(1) of the Act shall be those set out in these rules.</p>					<p>Referral to a Professional Competence assessment may have far reaching consequences for individual practitioners in terms of financial cost, damage to their reputation and loss of morale.</p> <p>It is important that the procedure for addressing concerns about Professional Competence is not open to abuse. A situation may arise whereby complaints that are not referred to the Fitness to Practice Committee may automatically be forwarded for this assessment whether there are clear grounds for complaint or not.</p> <p>The exact criteria which would lead to referral by the Preliminary Proceedings Committee to a professional competence assessment must be clarified.</p>

Rules		No response	Support	Neutral	Do not support*	Comments * "Do not support" requires comment
(Please tick the appropriate box)						
Rule 2	<p>An assessment of the practitioner's knowledge and skill or application of knowledge and skill or both will be conducted by the Medical Council's Professional Competence Committee or by persons appointed by the Medical Council using activities specified by the Professional Competence Committee. Categories or ranges of activities which fall within the professional competence scheme may include some or all of the following:</p> <ul style="list-style-type: none"> <li>• Review of information provided by the practitioner and/or a nominee at the practitioner's workplace(s) acceptable to the Professional Competence Committee in forms specified by the Professional Competence Committee;</li> <li>• Occupational health assessment of the practitioner;</li> <li>• Survey of multisource feedback about the practitioner in a form specified by the Professional Competence Committee;</li> <li>• Interview of the practitioner including answering questions about his or her knowledge and skill or application of knowledge and skill or both;</li> <li>• Interview of any relevant third parties as specified by the Professional Competence Committee or by persons appointed by the Medical Council;</li> <li>• Inspection of the workplace(s) where the practitioner practises medicine;</li> </ul>					<p>Some specialties interact as much with other doctors as with members of the public, (for example, pathology, radiology etc). If the nature of the complaint relates to a failing in interaction with other doctors (for example, written reports, which are clinically unhelpful) it might be more relevant that the assessment panel consist of peers from the doctor's specialty and a medic that refers to that specialty. Although the patient will be ultimately affected, as there is no direct patient contact, the patient role may be less relevant.</p>

<p>Rule 2 (cont.)</p>	<ul style="list-style-type: none"> <li>• Review of the practitioner's clinical records, a sample of which will be specified by the Professional Competence Committee or by persons appointed by the Medical Council for the purpose of this activity;</li> <li>• Direct observation of the practitioner practising medicine;</li> <li>• An assessment by interview based on cases arising from clinical record review and direct observation, a sample of which will be specified by the Professional Competence Committee or by persons appointed by the Medical Council for the purpose of this activity;</li> <li>• An examination of knowledge and skill as specified by the Professional Competence Committee or by persons appointed by the Medical Council which may include, but not be limited to, the Pre-Registration Examination System.</li> </ul>					<p>Patients are entitled to the confidentiality of their medical records and reasonable efforts should be made to ensure that there is patient consent for the release of patient identifiable information to a third party for the purposes of such an investigation. In particular, there should not be a dual obligation on the doctor to release the records without clarifying the situation in respect of Data Protection issues and the Medical Councils own Ethical Guide for Practitioners.</p> <p>The issue of consent also arises in respect of direct observation of practice.</p> <p>The PRES examination is a very broad examination and, while it may be suitable for entry onto the training or General register, it may not be an appropriate test for other doctors depending on their scope of practice, it is less likely to be appropriate for those on the specialists register and/or in specialist practice. The assessment must reflect the scope of practice of the doctor concerned.</p>
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(Please tick the appropriate box)						
Rule 3	Where the medical records of a patient of the practitioner are required to be produced for the purpose of the activities conducted under Rule 2, the practitioner or any other person who has power over or control of the records shall make the records available. Any such records made available and other confidential information provided to the Professional Competence Committee or persons appointed by the Medical Council in the context of the procedures and activities applicable to this scheme shall attract the confidentiality referred to in section 95 of the Act.					Again there must be no conflict between Section 95 of the Act and a doctor's legal and ethical obligation to maintain patient confidentiality under Data Protection law and the Medical Councils own Ethical Guide for Practitioners.
Rule 4	A report based on activities conducted under Rule 2 shall be provided to the practitioner for comment. Based on the report, the practitioner will propose, in a form specified by the Professional Competence Committee, an action plan to be implemented by him or her so as to improve his or her knowledge and skill or application of knowledge or skill or both.		ü			Rule 4 as stated implies an onus on the Professional Competence Committee to ensure that an action plan is achievable for the individual.



Rules		No response	Support	Neutral	Do not support*	Comments *if you tick this box "Do not support" you must provide a comment
(Please tick the appropriate box)						
Rule 5	The Professional Competence Committee will consider the report and any written submissions made by the practitioner. Based on this consideration, the Professional Competence Committee will confirm and/or amend the action plan to be implemented by him or her so as to improve his or her knowledge and skill or application of knowledge or skill or both. The Professional Competence Committee will monitor the implementation of the action plan by the practitioner, which may include repeating some or all of the activities specified in Rule 2.		ü			
Rule 6	Practitioners undergoing the procedures and activities under these rules shall discharge such fees and expenses as may be determined by the Medical Council, from time to time.				ü	<p>Rule 6 places a responsibility on the practitioner to potentially meet all the costs which may be substantial. It is unclear if such costs would be covered by the Professional Indemnity Bodies.</p> <p>Costs incurred by the Medical Council in this process including administrative costs and per diem rates, travel and accommodation expenses for a team of assessors are likely to be substantial. If passed on the individual practitioner the Medical Council will have no</p>

					<p>incentive to keep costs to a minimum.</p> <p>Individual doctors will already have to pay their own costs in the regard (including incurred in the preparation of a detailed profile of the practice, loss of earnings and locum costs during the assessment process. If doctors are required to pay the full costs of the review this may affect how the review is conducted as well as the plans for remediation.</p> <p>In the interests of protecting the public and encouraging doctors to volunteer if they have concerns of their own, the costs should not be applied to individual practitioners.</p> <p>Practitioners may also be responsible for charges where the review process finds the doctor does not have a retraining need or where responsibility for the situation may lie elsewhere - for example with an employer who has failed to ensure sufficient case volume to allow the practitioner to remain skilled; who has suspended the clinical practice of</p>
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						<p>a practitioner for a long period.</p> <p>The costs of the medical council review process should be carried by the medical council while in some cases retraining or remediation costs should be borne by the employer. There is a responsibility on the HSE specifically to support the Practitioner in meeting the requirements of the Act in relation to Maintaining Professional Competence.</p> <p>Self employed doctors e.g. general practitioners should not be additionally and disproportionately penalised through costs when complying with procedures and activities under these rules. Equally the HSE should be responsible for costs for GPs with a GMS contract.</p>
Rule 7	The Medical Council may at any stage make a complaint to the Preliminary Proceedings Committee about the practitioner if it considers that any of the events referred to in Section 91(6) or 91(7) has occurred.					

General Comments

General 1	Do you understand the Rules?	<p>The IMO understands that the draft rules set out new procedures, as an alternative course of action to a Fitness to Practice hearing, to be followed where the Medical Council has concerns about the professional competence of a doctor. While referred to in the Medical Practitioners Act as a "Professional Competence Scheme", these procedures are not Professional Competence Schemes as run under agreement by the Post-Graduate Training bodies. The procedures include an assessment of the practitioner's professional competence followed by an action plan for remediation where performance is found to be unsatisfactory.</p>
General 2	Are there any Rules where a principle is not clearly explained?	<p>As per the comments in relation to Rule 1 above the precise criteria for referral to a professional competence scheme by the Preliminary Proceedings Committee must be forthcoming in order to prevent abuse of procedures for addressing concerns about professional competence and avoid automatic referral whether there are clear grounds for concern or not.</p> <p>For the purposes of transparency and fairness it is essential that the rules should provide clarity as to what standard of practice will apply to the assessments, procedures, activities and conclusions pertaining to the rules i.e. it should be clarified that the standard of practice which is normal among peers will apply.</p>
General 3	Are there any issues which you feel ought to but have not been addressed by these Rules?	<p>Also where a complaint is referred to a professional competence scheme by the Preliminary Proceedings Committee as per section 61 of the Act and where the assessment of the practitioner's knowledge and skill is deemed to be satisfactory the rules should clarify that the assessment replaces the need for referral to the Fitness to Practice Committee.</p> <p>The IMO is calling on the Minister for Health and the Medical Council to review Section 94 Subsection (1) of the Medical practitioners Act with a view to agreeing a process whereby retired doctors can be permitted to remain on the Medical Register with specific requirements for Professional Competence which are achievable for those who are not fully engaged in clinical practice.</p>
General 4	If you wish to make comment generally on the Rules, please use the space opposite:	<p>In addition to concerns about the costs of these proceedings (see comments to Rule 6) the IMO is also concerned about the length of time these procedures will take which may be longer for some specialties than for others. The process must be confidential and Doctors should be kept in good standing throughout. A timeline should be given for completion of the process.</p> <p>The IMO is concerned in general about the financial impact of the Medical Council rules relating to</p>

		<p>Professional Competence. The cost of partaking in Professional Competence schemes impacts on doctors disproportionately for example:</p> <ul style="list-style-type: none"><li>• Tax treatment of Professional Competence is different for those who are wholly salaried and those who are self-employed.</li><li>• Fees charged for individual CPD activities in addition to an annual levy charged by the post graduate training body for enrollment in a Professional Competence Scheme.</li><li>• Costs related to distance from the post graduate training bodies and CPD events.</li><li>• Cost of CPD activities for certain NCHDs with a contract of indefinite duration.</li></ul> <p>Doctors in private practice (either GPs or specialists) and recently qualified doctors are likely to be further disproportionately affected by these procedures.</p> <p>The Rules should be constructed and enacted so as to be equally and fairly applicable to EU and international graduates registered in Ireland.</p> <p>The IMO would welcome engagement with the Medical Council on these and other issues at their earliest convenience and before the draft rules are finalised.</p>
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The Medical Council would like to thank you for taking the time to participate in the Consultation Process on our draft further rules for the maintenance of professional competence and completing this feedback form. Your opinions and comments are greatly appreciated.

The Medical Council

