

Number 36

Regulatory powers of the NMC

As a result of several high profile cases relating to “rogue” healthcare professionals (eg Shipman), the regulatory functions of the bodies responsible for professional competence of doctors and nurses and other healthcare professionals have taken on greater significance and publicity.

Care home operators may have seen an increase in the number of complaints made about their nursing staff to the NMC. This is disruptive and may on occasion be used as a tactical approach to complaints about poor care. This briefing therefore outlines the procedural steps that are involved in such matters.

The Nursing and Midwifery Council (NMC) is the regulatory body for nurses, midwives and specialist community public health nurses. The stated aim of the NMC is to protect the public by setting the standards of education, training, conduct and performance.

The NMC deals with matters of professional regulation by way of its “fitness to practice” procedure. One of the main roles of the NMC is to consider complaints about nurses and to determine whether they are suitable to be on the register of practitioners without restrictions. The Nursing and Midwifery Order 2001 has provided for a new allegation of unfitness to practice, namely lack of competence. This is a completely distinct category of allegation for misconduct and is addressed at dealing with intractable cases of lack of competence after all other avenues have been exhausted by managers and employers

at a local level. This new category came into effect in August 2004.

Complaints

Anyone has the right to make a complaint to the NMC about a registered nurse; complaints can be made by colleagues in other healthcare professions, patients/residents and their families, employers, managers and the Police. There is no time limit within which such a complaint has to be referred to the NMC, although significant lapses of time inevitably make the task of investigation more difficult.

There are three NMC committees that handle allegations of unfitness to practice; these are:

- The Investigating Committee (IC)
- The Conduct and Competence Committee (CCC)
- The Health Committee (HC)

When the NMC receives a complaint that constitutes an allegation of unfitness to practice, the matter first goes before a panel of the IC.

If the nurse who is subject to the complaint is also subject to a criminal investigation in relation to the relevant allegations then no investigation is undertaken by the NMC until the criminal investigation reaches completion. At that stage, the NMC will forward the details of any caution or conviction to the IC.

Investigation Committees

The IC provides a screening process to ascertain whether there is sufficient evidence to mount an allegation of unfitness to practice. IC proceedings are held in private without the nurse in attendance.

Once the IC has considered the evidence before it, the IC panel can:

- Close the case and take no further action;
- Refer the case to a panel of the CCC; or
- In cases about alleged impairment of fitness to practice for reasons of ill health, refer the case to a panel of the HC.

The usual principle is that nurses continue to work up to the point where a judgment is made by the CCC or the HC, given that they are “innocent until proven guilty”. However, in cases where there is a perceived risk that patients or the public might be exposed to a clear and unacceptably high level of risk if the nurse continues to practice unrestricted, the IC, CCC and HC all have power to take immediate interim action. In such situations, conditions can be imposed with which the nurse must comply. Alternatively, an interim order may be imposed for a maximum period of 18 months (during which period it must be reviewed).

Conduct and Competence Committee

CCC hearings are generally held in public reflecting the NMC’s public role in regulating the profession.

The CCC panel will only consider evidence relating to the formal charges made against the nurse. In considering an allegation, the panel must decide if it is well founded. The facts of the case must be proved “beyond reasonable doubt”, i.e. in accordance with the criminal standard of proof, not the civil.

The CCC panel has a range of powers which include removing the person from the register, suspending the

nurse’s registration for a specified period not exceeding one year, imposing conditions of practice for a specified period not to exceed three years, issuing a caution or reaching a conclusion that the case is not well founded and therefore no further action is required.

Health Committee

The HC panel decides whether or not a nurse’s fitness to practice is impaired by physical and mental ill health and, if so, whether or not they represent a danger to the public.

In view of the confidential nature of the evidence to be considered, HC proceedings are usually held in private.

The HC panel can exercise a range of powers, including removing the person from the register, suspending registration for a specified period not exceeding one year, imposing conditions of practice for a specified period not exceeding three years, issuing a caution or reaching the conclusion that the case is not well founded and therefore no further action should be taken.

What circumstances might impair a nurse’s fitness to practice?

Examples of actions or omissions by the managers of care homes and/or staff nurses that may give rise to allegations that are likely to result in a complaint being considered by a panel of the NMC are as follows:

- Failure to maintain an adequate standard of nursing records;
- Breaching patient confidentiality;
- Failing to ensure a proper pre-admission assessment procedure was undertaken prior to a patient being admitted to a care home;
- Failing to ensure appropriate standards of cleanliness are maintained in a care home;
- Sexual relations or sexual abuse of a patient or failing to have proper regard for the safety of a patient.

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February 2006