

Guidance for Practice Committees on the use of chemical testing

Use of chemical testing by the Investigating Committee

- 1 The full role of the Investigating Committee (IC) is set out in article 26 of the Nursing and Midwifery Order 2001¹ (the Order) and rules 3 to 7 of the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004² (the rules).
- 2 In summary, when a panel of the IC is considering a fitness to practise allegation, it shall take such steps as are reasonably practicable to obtain as much information as possible about the case³.
- 3 The IC's role is to decide whether there should be mediation of an allegation concerning impairment of fitness to practise, or whether it should refer the case to the Health Committee (HC) or to the Conduct and Competence Committee (CCC). The approach to be taken by the IC is set out in the "*Guidance for Investigating Committee panels on deciding whether there is a case to answer*".

Health allegations

- 4 If the IC is considering an allegation related to the registrant's health, with or without allegations of misconduct, it will have to consider whether the information before it is sufficient to give rise to a case to answer in respect of impairment by reason of physical or mental health.
- 5 Before deciding whether or not there is a case to answer in respect of an allegation that the registrant's fitness to practise is impaired by reason of her physical or mental health the IC may invite her to submit to medical examination by experts appointed by the Council.⁴ The IC may adjourn its consideration of such an allegation until such time as the report of any medical examination has been prepared.
- 6 Such a medical examination may include chemical testing of blood or hair for alcohol and/or drugs and this policy sets out the approach the IC should take in deciding which, if any, tests should be requested.

¹ SI 2002/253

² SI 2004/1761

³ Article 26 (2)(c) of the Order

⁴ Rule 4(2)(c) of the Rules

Cases involving alcohol or drugs

- 7 When an allegation being considered by the IC involves a caution or conviction relating to the use of alcohol or drugs, the IC must follow Council's policy⁵ on handling drugs and alcohol cases and the related guidance⁶.
- 8 Serious convictions, even if alcohol- or drug-related, may be appropriate for referral to the CCC in any event without the need to seek further evidence of impairment by reason of ill-health. More minor alcohol- or drug-related convictions or cautions may warrant further investigation to check whether the registrant has underlying health problems that may affect their ability to practise safely. In some instances, where the medical evidence received is not conclusive or raises issues of possible drug or alcohol misuse, these investigations may include chemical testing.

Chemical testing

- 9 The NMC has a contract for the provision of alcohol and drug screening, under which a number of different tests can be carried out on an announced basis.
- 10 Samples should only be taken in accordance with this policy. Samples will all be taken in full view of the registrant and immediately be transferred into a container which must be sealed in view of the registrant. Containers and seals should be from testing kits and conform to minimum standards to ensure adequate chain of custody requirements.
- 11 The NMC has considered the cost/benefits of these tests and has based this guidance on that analysis.

Alcohol cases

- 12 Possible alcohol misuse or abuse should normally be tested by means of a blood test comprising tests for a combination of gamma glutamyl transpeptidase and other tests of liver function (LFT) and Carbohydrate Deficient Transferrin (CDT).
- 13 Mean Cell Volume (MCV) tests should not normally be requested unless this test is specifically requested by the independent medical examiner instructed by the NMC to examine the registrant. In such a case the reasons for the request must be recorded.
- 14 Hair tests for alcohol are expensive and should not be used except in exceptional circumstances where the IC has received medical evidence indicating that the use of a blood test is not possible in a particular case (for example by reason of a severe needle phobia). In such a case an alcohol hair test may be requested but the reasons for the request must be recorded.

Drug cases

⁵ "Handling Drugs and Alcohol Cases" – adopted by Council on 31 March 2011

⁶ "Guidance to Practice Committee panels handling cases of alcohol and drug related offences" and "Guidance for the Investigating Committee in dealing with alcohol or drug-related caution and conviction cases"

- 15 In any case where substance misuse is suspected, a request for a hair test for drug use should be considered. Using a small sample of hair cut from the scalp, hair analysis evaluates the number of drug metabolites embedded in the hair shaft. The length of hair tested determines the period over which any past drug use can be detected. For example, a 1.5 inch length of hair provides a three month history of the donor's drug use. If insufficient head hair is available, body hair can be used.
- 16 The IC should specify the period of detection for which the hair test should be done (as each section of hair tested incurs a separate cost) up to a maximum of 12 months, and should specify the drugs being tested for, such as cannabis, cocaine, amphetamines etc. This direction should be based upon the evidence available to the IC about the likely drugs involved and the period of concern. A hair test providing a three-month history should be the starting point at this stage.

Other tests

- 17 The NMC may also agree to arrange or pay for any further chemical or other medical tests specifically requested by any independent medical examiner instructed by the IC to provide an independent medical report on the same registrant. In such a case the reasons for the request must be recorded.

Refusal to comply

- 18 If, following a request from the IC, the registrant refuses to provide a sample for analysis the IC may take the view that this refusal constitutes evidence of alcohol or drug misuse. In such circumstances the IC may decide to refer the registrant for consideration by an interim orders panel and/or to the CCC or HC.

Reasons

- 19 Clear and adequate reasons must be given by the IC for every decision: procedural and substantive. This includes decisions to adjourn, to invite a registrant to undergo a medical examination, to find a case to answer or no case to answer and to refer for consideration of an interim order.

Disclosure of results to medical examiner

- 20 The results of any chemical tests should be sent to any medical examiner instructed by the NMC to provide an independent medical report on the same registrant.

Multi-factorial cases

- 21 Once a case is referred by the IC to the CCC, the rules do not make provision for the registrant to be invited to submit to a medical examination or chemical testing. It follows that where the IC is considering a multi-factorial case that may eventually warrant referral to the CCC but also has concerns about the registrant's health, the IC should consider carefully whether any medical evidence and/or chemical testing is needed before the case is referred to CCC.

Use of chemical testing by the Health Committee

Notice of Referral Meetings

- 22 Once a case is referred by the IC to the HC it will be listed for a Notice of Referral (NOR) meeting at which, inter alia, directions will be made for any further medical evidence and chemical testing that is needed.
- 23 Any chemical testing requested at the NOR hearing shall be based upon the guidance set in paragraphs 12-16 above and the reason for requesting any medical examination or chemical tests should be documented.
- 24 A refusal to consent may give rise to an additional allegation of refusing to submit to a medical examination under rule 31(5)(a).

Interim and final sanctions

- 25 Routine chemical testing regimes may be ordered as part of an interim or final conditions of practice order. Such testing should also follow the guidance set out above for blood alcohol testing and hair drug testing and should normally be ordered on a three-monthly basis.
- 26 Unexplained or repeated failures to comply with routine chemical testing should be regarded as a breach of the conditions of practice order and should result in consideration being given to the case being listed for an early review hearing.

Costs

- 27 The costs of taking samples and analysing them will be borne by the NMC. Any costs associated with the registrant arranging for an independent test will not be borne by the NMC.

Disclosure of test results

- 28 The results of any chemical tests should remain confidential and should only be disclosed to:
 - 28.1 The registrant and any representative
 - 28.2 The panel members of the committee hearing the case
 - 28.3 Any medical examiner instructed by a Practice Committee to provide an independent medical report on the same registrant.