

A. INTRODUCTION

1. The Minister for Health and Children has requested that an independent review be carried out of the circumstances surrounding the employment of a UK based Consultant Psychiatrist, Dr John Harding-Price, to a locum psychiatrist position with the South Eastern Health Board (SEHB) while he was suspended by the General Medical Council (GMC) in the United Kingdom and consequently the subject of legal proceedings by the Medical Council in Ireland. The Consultant was continuously registered with the Medical Council since 1968.
2. The Terms of Reference of this Review are:
 - (1) To consider all relevant written documentation in relation to the recruitment and employment of Dr John Harding-Price, by the South Eastern Health Board during the periods 17 April 2000 to 31 July 2000 and 14 August 2000 to 5 November 2000.
 - (2) To interview all relevant persons in relation to the recruitment and employment of Dr John Harding-Price for the periods mentioned above.
 - (3) To consider how procedures and/or regulations may need to be improved as a result of this examination.
 - (4) To prepare a report on the matter for the Minister for Health and Children.
3. The process for carrying out this Review has included:
 - Interviews with the Medical Council: Dr Gerard Bury, Chairman; Mr Brian Lea, Registrar; Mr William Kennedy, Administrator and Legal Adviser.
 - Interviews with the South Eastern Health Board: Mr John Cooney, CEO; Mr John Magner, Deputy CEO; South Tipperary Mental Health Services: Mr Michael Boland, Hospital Manager; Ms Katy Quirke, Assistant Hospital Manager; Dr Tess Neville, Acting Chief Psychiatrist, Carlow/Kilkenny Mental Health Services; Ms Mary O'Hanlon, Hospital Manager; Dr Niall Griffin, Chief Psychiatrist (retired).
 - Review of a variety of materials including the Medical Practitioners Act (1978); the SEHB case file with employment documentation; and relevant correspondence.
 - Discussions with the Law Society and Bord Altranais, and review of procedures regarding the operation of their respective professional registers.

I would like to express my appreciation to those interviewed and the involved officials in the Department of Health and Children for their cooperation and facilitation of this Review.

While it appears no report of concerns about Dr Harding-Price which arose in the UK occurred in his two locum periods in Ireland, it is of course a significant concern regarding patient safety and a duty of care, that a Consultant or medical practitioner who was the subject of such complaints in another jurisdiction was employed here.

It is clear to this review that both the South Eastern Health Board and the Medical Council discharged their respective responsibilities in regard to this case in a diligent manner; however, it is also clear that an absence of integration or working arrangements between health boards as employers, and the Medical Council as the body responsible for professional conduct, resulted in a potentially serious gap between important parts of the health services with responsibility for patient care and safety.

This review contains recommendations in Part D which will hopefully close the gap that has existed.

B. FACT FINDING:

The following are the confirmed details of this situation:

1. South Eastern Health Board First Locum Appointment, April-July 2000:

Date	Brief Description
12.03.00	Advert for unanticipated locum vacancy of Consultant Psychiatrist: St Luke's Psychiatric Hospital, Clonmel.
28.03.00	Application form by CV from Dr Harding-Price.
30.03.00	Letter Dr Harding-Price to Dr Neville, Consultant Psychiatrist, Clonmel providing details of <ol style="list-style-type: none">1. Medical Council Registration2. Medical Insurance3. Names of two referees
31.03.00	Letter Dr Harding-Price to Dr Neville, enclosing reference from Dr SS Kapugama, Consultant Psychiatrist, Lincoln District Health Care.
12.04.00	Reference: Bury NHS Trust 98.
13.04.00	Reference: Ealing, Hammersmith and Fulham Trust.
03.04.00	Letter Hospital Manager to Dr Harding-Price requesting references from recent employers.
04.04.00	Letter Dr Neville offering post until June 30 th 2000 – subject to additional references.
04.04.00	Reference from Dr Zafar, Lincoln Health Care Trust.
10.04.00 12.04.00	Response to Hospital Manager's request for written references.
13.04.00	Letter Dr Harding-Price enclosing current annual registration with Irish Medical Council for period 01.07.99-30.06.00 Ref. No. 2175244
13.04.00	Member of Medical Protection Society confirmed.
28.06.00	Formal appointments orders 17.04.2000 to 31.07.2000
19.07.00	Letter Dr Harding-Price to Hospital Manager advising of appointment opportunity in Kilkenny.

2. South Eastern Health Board Second Locum Appointment, August-November 2000:

Date	Brief Description
11.06.00	Advert for locum post, St Canice's Psychiatric Hospital, Kilkenny.
03.08.00	Order confirming appointment as locum in St Canice's Hospital – 14.08.00-03.09.00.
25.09.00	Order confirming Dr Harding-Price's appointment from 25.09.00-05.11.00.
25.09.00	Membership of Medical Protection Society confirmed. 14.08.00-24.09.00 25.09.00-05.11.00
27.10.00	Letter Hospital Manager advising that employment will cease on 05.11.00.
14.08.00	Telephone call from SEHB to Irish Medical Council date 14.08.00 to confirm that Dr Harding-Price registered with Irish Medical Council.
10.00	Telephone call from SEHB October 2000 to Irish Medical Council confirming that Dr Harding-Price registered with Irish Medical Council.
Irish Medical Council Cert dated 13.04.00	Certificate of Medical Council registration of Dr Harding-Price received.
12.00	SEHB Medical Secretary reads in newspaper of complaints against Dr Harding-Price with GMC in United Kingdom. SEHB telephone Irish Medical Council to again confirm registration status of Dr Harding-Price.
08.01.01	SEHB letter to Irish Medical Council requesting confirmation of registration – not answered.
28.02.01	Letter from Irish Medical Council advising of order of High Court.

3. Involvement of the Medical Council

In outlining the sequence of steps undertaken by the Medical Council, it is important to emphasise the quasi-judicial status of the Council's procedures governed by the Medical Practitioners Act (1978), and which require the permission of the High Court to confirm disciplinary decisions made by the Council.

- **March 2000**: Dr Harding-Price suspended by the General Medical Council (GMC) in the United Kingdom.
- **April 2000**: The Medical Council was notified by the GMC further to protocol between the bodies, of Dr Harding-Price's suspension on foot of complaints pending a formal inquiry.
- **28 July 2000**: Based on the information from the GMC, the Medical Council applied to the High Court under Section 51 of the Medical Practitioners Act (1978) which is an exceptional measure of suspension, in the public interest, in advance of a full disciplinary inquiry carried out by the Fitness to Practise Committee:

“51.-(1) Whenever the Council is satisfied that it is in the public interest so to do, the Council may apply to the High Court for an order in relation to any person registered in any register maintained under this Act that, during the period specified in the order, registration of that person's name in that register shall not have effect.

(2) An application under this section may be made a summary manner and shall be heard otherwise than in public.

(3) The High Court may make, in any application under this section, such interim or interlocutory order (if any) as it considers appropriate.”

- **16 August 2000**: The High Court dismissed the Medical Council's petition under Section 51 on the basis that the application was based on complaints made to the GMC in the United Kingdom, and not the outcome of a full inquiry; the High Court deemed this as hearsay information and insufficient to bar a person from employment.

The Medical Council then applied to the Supreme Court; this action was abandoned in January 2001 when the GMC advised that their inquiry resulted in Dr Harding-Price being struck off the UK medical register.

- **22 January 2001**: The Medical Council applied again to the High Court under Section 51 presenting the transcript of the UK inquiry as evidence.
- **29 January 2001**: The High Court granted the Section 51 Order.

- **27 February 2001:** The High Court granted leave to the Medical Council under Section 54 of the Medical Practitioners Act (1978), to advise the Minister of the suspension.

The Medical Council then proceeded to carry out a Fitness to Practise Inquiry. However the patient complainants in the UK would not attend in Ireland or participate in the taking of depositions in the UK. The Medical Council had given an undertaking to the High Court that the inquiry would be held by mid 2001.

- **10 August 2001:** The Medical Council returned to the High Court to request an extension of time to conduct the inquiry. However this was refused and Dr Harding-Price was reinstated to the Register at the direction of the Court.
- **October 2001:** The UK Privy Council rejected the doctor's appeal.
- **December 2001:** The Medical Council returned to the High Court on the basis of the Privy Council's transcript as evidence, rather than the patient complaints as witnesses. Section 51 was then reinstated by the Court and Dr Harding-Price suspended again from the Register which is his current status.
- **January 2002:** The Fitness to Practise Committee of the Medical Council is currently conducting a hearing to determine if Dr Harding-Price should be struck off the Register of Medical Practitioners in Ireland.

4. **Relevant Sections of the *Medical Practitioners Act, 1978:***

- **Purpose of Act:**

The *Medical Practitioner Act, 1978* is: (bold text is the writer's for emphasis)

An Act to provide for the setting up of a Council to be known as.....the Medical Council which shall provide for the registration and control of persons engaged in the practice of medicine and to provide for other matters relating to the practice of medicine and the persons engaged in such practice.....

- **Fitness to Practise Procedure:**

Part V Fitness to Practise

“45.-(1) The Council or any person may apply to the Fitness to Practise Committee for an inquiry into the conduct of a registered medical practitioner on the grounds of:

- (a) his alleged professional misconduct, or,*
- (b) his fitness to engage in the practice of medicine by reason of physical or mental disability,*

and the application shall, subject to the provisions of this Act, be considered by the Fitness to Practise Committee.

(3) Where an application for an inquiry is made under this section and the Fitness to Practise Committee, after a consideration of the application is either of opinion that **there is a prima facie case for holding the inquiry or has been given a direction by the Council....**to hold the inquiry, the following shall have effect:

- (a) the committee shall proceed to hold the inquiry.
- (b) the Registrar, or any other person with the leave of the Fitness to Practise Committee, shall present to the Committee the evidence of alleged professional misconduct or unfitness to practise by reason of physical or mental disability, as the case may be.
- (c) on completion of the inquiry, the Committee shall embody its finding in a report to the Council specifying therein the nature of the application and the evidence laid before it and any other matters in relation to the registered medical practitioner which it may think fit to report including its opinion, having regard to the contents of the report, as to:
 - (i) the alleged professional misconduct of the registered medical practitioner or
 - (ii) the fitness or otherwise of that practitioner to engage in the practice of medicine by reason of his alleged physical or mental disability as the case may be.

- **Requirement for Non-Disclosure:**

(5) The findings of the Fitness to Practise Committee on any matter referred to it and the decision of the Council on any report made to it by the Fitness to Practise Committee shall not be made public without the consent of the person who has been the subject of the inquiry before the Fitness to Practise Committee unless such person has been found, as a result of such inquiry, to be:

- (a) guilty of professional misconduct, or
 - (b) unfit to engage in the practice of medicine because of physical or mental disability
- as the case may be.

(6) The Fitness to Practise Committee shall for the purpose of an inquiry held under subsection (3) of this section have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of-

- (a) the enforcement of the attendance of witnesses and their examination on oath or otherwise, and
- (b) the compelling of the production of documents.

- **Procedure when Misconduct is Found:**

46.-(1) Where a registered medical practitioner-

- (a) has been found by the Fitness to Practise Committee, on the basis of an inquiry and report pursuant to section 45 of this Act, to be guilty of professional misconduct or to be unfit to

engage in the practice of medicine because of physical or mental disability, the Council may decide that the name of such person should be erased from the register or from the Register of Medical Specialists as the case may be or that during a period of specified duration registration of his name in the register concerned should not have effect.

*(3) A person to whom a decision under this section relates may, within the period of 21 days, beginning on the date of the decision, **apply to the High Court for cancellation of the decision** and if he so applies-*
(a) the High Court, on hearing of the application, may either-
(i) cancel the decision, or,
(ii) declare that it was proper for the Council to make a decision under this section in relation to such person and either (as the Court may consider proper) direct the Council to erase his name from the register concerned or direct that during a specified period (beginning not earlier than 7 days after the decision of the Court) registration of his name in that register shall not have effect,

48.-(1) The Council following an inquiry and report by the Fitness to Practise Committee pursuant to section 45 of this Act into the conduct of a person whose name is entered in any register maintained under this Act may, on receipt of the report of the Committee, if it so thinks fit, advise, admonish or censure such person in relation to his professional conduct.

- **Persons Convicted of Triable Offences in Ireland or Abroad:**

*49.-(1) Where a registered medical practitioner is **convicted in the State of an offence triable by indictment or is convicted outside the State of an offence...**which would constitute an offence triable on indictment if done or made in the State. The Council may decide that the name of such person should be erased from the register.*

- **Procedure for Summary Suspension, Pending Inquiry, in the Public Interest:**

*51.-(1) Whenever the Council is satisfied that it is **in the public interest so to do, the Council may apply to the High Court for an order in relation to any person registered in any register maintained under this Act that, during the period specified in the order, registration of that person's name in that register shall not have effect.***

*(2) An application under this section may be made a summary manner and **shall be heard otherwise than in public.***

(3) The High Court may make, in any application under this section, such interim or interlocutory order (if any) as it considers appropriate.

- **Notification to the Minister:**

54.-The Council shall notify the Minister, on the occasion of

(a) the erasure of the name of a person from a register maintained under this Act,

- (b) the restoration of the name of a person to a register maintained under this Act,*
- (c) the suspension of the name of a person from a register maintained under this Act, or*
- (d) the termination of a period of suspensions from a register maintained under this Act, or*
- (e) the attachment of conditions to the retention of the name of a person on a register maintained under this Act.*

5. Other Facts:

(a) South Eastern Health Board (SEHB):

- (i) Were the locum position Dr Harding-Price applied for a permanent consultant post, the Local Appointments Commission would handle recruitment including a thorough validation of past employments and professional status in Ireland and abroad, and would directly interview candidates.

Were the position a temporary consultant post, the SEHB's procedures call for completion of an application, direct interviews of candidates, validation of prior employments, declarations the candidate is not the subject of any disciplinary or professional misconduct complaints, and confirmation of registration with the Medical Council.

- (ii) Locum positions occur when planned short-term leave is taken by consultants e.g. holiday leave and when unplanned leave is taken e.g. sickness. The latter was the situation that pertained in regard to the first locum vacancy in the SEHB for which Dr Harding-Price was the sole applicant. The SEHB has experienced consistent difficulty with such unplanned locum positions because the pool of locum psychiatric candidates available in the area is minimal. The SEHB is considering applying to Comhairle na nOspideal for a 'floating' locum psychiatric post that would cover both planned and unplanned absences.
- (iii) The SEHB recruitment procedure for locums provided for a Curriculum Vitae, written references from professional colleagues and employers, and confirmation of Medical Council registration. However, while a candidate residing in Ireland would have been interviewed, this did not occur in the case of locums from abroad. The procedures did provide for seeking a verbal reference also but as Dr Harding-Price was retired and doing a variety of locum and temporary posts in the UK, this was not pursued. It is unclear if such a query would have provided an indication of any difficulty given that the written employer references of April 2000 were positive even though the GMC suspension pending inquiry occurred in March 2000.
- (iv) The second locum post held by Dr Harding-Price from August-November 2000 was advertised in June and again he was the only

candidate. The hiring Hospital Manager sought a reference from the Chief Psychiatrist in Clonmel, which on feedback obtained from colleagues and nursing officers was positive. Following its procedure, the Board phoned the Medical Council in August 2000 to confirm Dr Harding-Price's registration, and subsequently due to a printer fault at the Council, until phone confirmation was obtained.

- (v) In late December 2000, just subsequent to the conclusion of Dr Harding-Price's second locum period, a medical secretary in the SEHB saw an article in the News of the World concerning Dr Harding-Price's case in the UK with the GMC. She then phoned the Medical Council to clarify the doctor's status in Ireland; she was asked to put the request in writing, which she did on 8 January 2001. This was responded to on 28 February 2001, immediately after the High Court granted the Section 51 suspension and leave to notify the Minister under Section 54.
- (vi) Following the December 2000 news article, the SEHB confirmed Dr Harding-Price was no longer working with the Board and presented no further employment contract to him. There were no reported complaints to the SEHB concerning Dr Harding-Price during his locum periods nor did relevant professionals suspect him of any irregular practice or behaviour. The Board set up a free phone line following the media disclosure. This received four complaints, three of which were from patients treated by Dr Harding-Price. The complaints were not to do with irregularity on the part of the doctor but rather concern at the situation that had emerged.
- (vii) A particular point of difference emerged over status of a certificate of registration dated 13 April 2000 for Dr Harding-Price and received by the SEHB during his second locum appointment.

It emerges that the certificate with Dr Harding-Price's name was in fact not an "official" certificate with the Council's seal and authorised signature, but a "dummy" look-a-like certificate submitted by the Medical Council in the High Court Hearing of August 2000 as a sample of a certificate of registration. It was in all likelihood submitted to the SEHB by Dr Harding-Price as part of the Book of Evidence pertaining to the High Court case.

In fact, the certificate is irrelevant to what developed: Dr Harding-Price was duly registered while the subject of disciplinary proceedings before the High Court including a period of suspension. The Medical Council considers it is prohibited by its Act to refuse to issue a certificate, to amend a certificate, or to notify the employer (the Minister via Section 54) of disciplinary proceedings.

The Medical Council's operation of its procedures and a 1999 High Court determination is that the Council is precluded from taking any action in regard to a doctor's status on the Register, without the leave of the High Court (Section 46 and 51), and that Section 45.5 **precludes**

any disclosure whatsoever until the full Fitness to Practise Inquiry process is complete and confirmed by the High Court.

- (viii) The net result is the Medical Council cannot advise or inform the Minister and employer of proceedings against a doctor which are underway, even suspension in the public interest under Section 51. Thus, the situation that pertained is that the SEHB as part of employment procedures, sought and relied on confirmation of the consultant's Medical Council registration as validation a doctor is in "good standing".
- (ix) It would appear that the Health Boards, as employers, and the Medical Council as the agency with responsibility for registration and professional conduct, have not had working relationships except for validation of registration and forwarding of complaints. Meetings do not occur between these agencies, and there has not been discussion of mutual issues. Most significantly, it appears that no guidance has ever been provided by the Medical Council or Health Boards, the former on the constraints of its Act, the latter on the needs of employers, or jointly what, given these constraints, employers might do to alternatively determine a doctor's "good standing," particularly doctors on the register who have worked abroad.

(b) **Medical Council:**

- (i) If a doctor was seeking registration for the first time, if he had lapsed his registration or not paid the yearly fee for renewal of registration, he would have to complete a detailed application including a declaration the doctor has never been the subject of disciplinary proceedings; registration from any foreign jurisdiction would also be required. The Medical Council would not have been constrained by the Act, could advise employers of a doctor's status in another jurisdiction, and would not need to seek the High Court's involvement in the process. **The complicating factor in this case is that Dr Harding-Price was continuously registered in Ireland and paid his annual renewal fee since 1968.**
- (ii) The Medical Council is of the view that the SEHB as employer, should have directly contacted the professional register in the UK.
- (iii) While the Medical Council has cooperative reciprocal arrangements on advising of findings with some jurisdictions such as the UK, Canada, Australia, these are not on a statutory basis and **findings in other jurisdictions, including a doctor being struck off a foreign register, are not recognised in Ireland.** As in the case with Dr Harding-Price in which the GMC advised the Medical Council of his suspension and later striking off, the Council can only use that information to initiate new proceedings in Ireland. It is the view of the Council that any actual recognition of findings from another jurisdiction would require specific change to the 1978 Act.

There is no existing formal system of reciprocity in the EU concerning notification of complaints, suspensions and striking off of medical practitioners.

- (iv) A relevant factor is where a Section 51 suspension is not pursued or granted, the period of time involved in carrying out a Fitness to Practise Inquiry can be lengthy. The cases referred have doubled in the last five years to 200-250 per year now.

When a complaint is referred, the Medical Council notifies the involved doctor who has six weeks to respond to the Council. The Council then determines whether to direct the Fitness to Practise Committee, comprising ten members of the Council, to hold a full hearing. This process from complaint to decision to hold an Inquiry takes 3-4 months. The Inquiries then vary greatly in duration depending on legal complexity, number of witness, extent of evidence, etc. There are presently 35 cases on the Committee hearing list. The Committee meets every six weeks for about 60 days per year.

The following is an outline provided by the Medical Council to this review on its proposals to facilitate increased throughput of inquiries:

“In 1996, 173 complaints were received and 8 inquiries were held. In 1999, 222 were received and 30 inquiries were held over a period of 60 days. This trend has continued in 2000 and 2001.

You asked me to outline to you the present composition of the Fitness to Practise Committee (“the Committee”) and how, in practical terms, this was causing difficulties for the expeditious hearing of the present number of inquiries due to be heard. Presently, there are 32 inquiries waiting to be heard with estimates varying between one day up to thirty days.

Section 13 of the Medical Practitioners Act, 1978 (“the Act”), provides that the Committee shall be composed of a majority of elected members to the Council and that there shall be at least one lay member. The Medical Council has twenty-five members, three of whom are appointed, with three lay members. This restricts the maximum number of members to the Committee to nineteen, which includes all three lay members.

To date, for the purposes of Part V of the Act (which is devoted to disciplinary procedures), the Committee has heard inquiries normally with five members which reflects the composition of the Committee, i.e. three elected members, one appointed medical member and one appointed lay member. This combination effectively means that there are six appointed medical members of the Committee who cannot be used for the purposes of hearing the inquiries. With the increase in volume and complexity of complaints to the Council and the number of inquiries pending, it has become logistically difficult to arrange the attendance of the combination of elected and appointed members.

It is not accepted by the Council that it is necessary to hear inquiries with a combination of elected and appointed members reflecting the overall composition of the Committee and in order to expedite matters the Chairman of the Committee has recently written to the lawyers acting for the practitioners informing them that inquiries, in future, may be heard by inquiry panels not necessarily composed of a majority of elected members.

At present, therefore, the Committee has set aside one week per month to hear inquiries. As many inquiries have an estimate in excess of one day, the particular Committee hearing that inquiry will fix further dates to hear evidence in order to complete the inquiry.”

6. Other Professional Registers:

- (a) **General Medical Council, United Kingdom:** The GMC follows a complaints process similar to the Irish Medical Council, with the significant difference that all hearings are heard in open court, not in camera. This appears to be possible in that jurisdiction because it does not have a written constitution, whereas the Irish Constitution guarantees a person’s right to their good name.

The GMC can suspend a doctor immediately upon deeming there is a prima facie case in the public interest, and then proceed to a full hearing. In Ireland, Section 51 of the Act required the Medical Council, in those circumstances, to seek the Court’s permission.

- (b) **The Disciplinary Tribunal for Solicitors:** The Tribunal is an independent, semi-judicial body independent of the Law Society of Ireland.

Between the 22 May 2000 and the 21 May 2001 the Disciplinary Tribunal met on 27 occasions. During the year 48 new applications, alleging misconduct against solicitors, were received of which 20 were direct applications to the Tribunal from members of the public. The remainder emanated from the Law Society of Ireland.

The Disciplinary Tribunal is an independent Statutory Tribunal appointed by the President of the High Court to investigate allegations of misconduct made against solicitors. Its procedures are regulated by the Solicitors Act 1954 to 1994. The Tribunal consists of 10 solicitor members and 5 lay members, the latter being nominated by the Minister for Justice to represent the interests of the general public. For the purpose of hearing and determining any application the Tribunal sits in divisions, which are comprised of 3 members of whom one is a lay member and two are solicitor members.

If a division upon hearing a complaint considers there is a prime facie case, a full hearing is held. Attendees at the Tribunal are at the discretion of the Tribunal, that is, while not closed to the public, attendance is at the Tribunal’s discretion and there is no method of notifying the public of a hearing.

The Tribunal can impose a penalty of up to £5,000; any other measure requires a hearing in the High Court. All findings of the Tribunal must be reported to the President of the High Court.

The Solicitors Amendment Bill is presently in the Dail; it will increase the range of professionals in its jurisdiction to include apprentices. Further, the Tribunal will need to provide for a new requirement under the UN Convention on Human Rights that all tribunals are held in public.

(c) **Nurses Act 1985**

This Act, applying to An Bord Altranais, is very similar to the Medical Practitioners Act, 1978, in its quasi-judicial status: the non-disclosure of cases before it prior to determination; its requirements to have all Fitness to Practise decisions referred to the High Court for confirmation; and its provision for advising the Minister of decisions confirmed by the High Court.

Upon initial application to the register, the Board contacts every country the applicant has worked in as a nurse. When a nurse is on the register, there is no formal system of notification of complaints from another jurisdiction; and, such information can only be processed through formal Fitness to Practise proceedings in Ireland.

C. Assessment

1. The SEHB has handled this matter diligently and constructively in the interest of patient care. The Medical Council has operated its procedures diligently under its Act with the objective of protecting the public.

However, while the SEHB relied on its employment procedures, including references on work performance, it relied and assumed it could, on the Medical Council confirmation of registration as evidence of good professional conduct.

2. The employment procedures for the SEHB which were reasonably comprehensive, have on the Board's review of the situation, been revised and strengthened. Locum recruitment will now be treated with the same procedures as temporary consultant recruitment requiring application form, verbal as well as written references, declaration as to any disciplinary proceedings, and direct contact by the Board with registers in foreign jurisdictions.
3. (a) A particular point of difference emerged over the status of a certificate of registration dated 13 April 2000 for Dr Harding-Price and received by the SEHB during his second locum appointment.

As described in Part B the certificate is irrelevant to what developed: Dr Harding-Price was duly registered and while the subject of disciplinary proceedings before the High Court including a period of suspension, the Medical Council considers it is prohibited by its Act to refuse to issue a certificate, to amend a certificate, or to notify the employer (the Minister via Section 54) of disciplinary proceedings.

The Medical Council's operation of its procedures and a 1999 High Court determination is that the Council is precluded from taking any action in regard to a doctor's status on the Register, without the leave of the High Court (Section 46 and 51), and that Section 45.5 precludes any disclosure until the full Fitness to Practise inquiry process is complete and confirmed by the High Court, that is, Section 54 on notification to the Minister does not arise in relation to Section 51 under which Dr Harding-Price was suspended.

- (b) **The net result is the Medical Council cannot advise or inform the Minister and employer of proceedings against a doctor which are underway, even suspension in the public interest under Section 51, yet the employer relies on such validation that a doctor is in good professional standing.**

4. Section 45.5 of the Act governing the Medical Council, and restated in a 1999 High Court decision, precludes the Council from advising the Minister of disciplinary action prior to the High Court confirming the concluded outcome of a negative finding. This includes not advising the Minister even of Section 51 confirmations which suspend a doctor pending a full inquiry. This seriously exposes health service employers, and most especially patients. **Given this, it is necessary, indeed imperative, that measures be put in place to improve protection of patients in these infrequent, but real, situations.**

Although the Medical Council could not advise an employer while proceedings were underway, in the case of Dr Harding-Price or a doctor coming to Ireland or returning to Ireland from another jurisdiction, it would seem routine advice to the Health Board to contact the foreign register could have been provided.

5. It would appear that the Health Boards, as employers, and the Medical Council as the agency with responsibility for registration and professional conduct, have not had working relationships, except for validation of registration and forwarding of complaints. Meetings do not occur between these agencies, and there has not been discussion of mutual issues. Most significantly, **it appears that no guidance has ever been provided by the Medical Council or Health Boards, the former on the constraints of its Act, the latter on the needs of employers, or jointly on what, given these constraints, employers might do to alternatively determine a doctor's "good standing," particularly doctors on the register who have worked abroad.**

The Solicitors Disciplinary Tribunal publishes a booklet on its role and procedures and this type of measure would be most helpful regarding the Medical Council.

6. Given both the public interest and natural justice, the length of time required for inquiries requires review, such as is underway, of measures to increase the Medical Council's throughput and timeframes for Fitness to Practise Inquiries.
7. The absence of a formal system within the EU for reciprocity on findings of suspension or misconduct requires attention for patient safety.
8. **In Summary:**

(a) While it appears no report of concerns about Dr Harding-Price which arose in the UK occurred in his two locum periods in Ireland, it is of course a significant concern regarding patient safety and a duty of care, that a Consultant or medical practitioner who was the subject of such complaints in another jurisdiction was employed here.

It is clear to this review that both the South Eastern Health Board and the Medical Council discharged their respective responsibilities in regard to this case in a diligent manner; however, it is also clear that an absence of integration or working arrangements between health boards as employers, and the Medical Council, as the body responsible for professional conduct, resulted in a potentially serious gap between important parts of the health services with responsibility for patient care and safety.

In the Dr Harding-Price case, the Medical Council had information on UK complaints in April 2000, and no information passed to the employer during the April-November 2000 periods of his employment.

- (b) The current position where a suspension of a doctor under Section 51, cannot be advised to the Minister compromises patient safety. By definition, a petition for suspension under Section 51 in advance of a Fitness to Practise Inquiry, is due to the serious nature of a complaint and the immediate protection of the public. Where a doctor is suspended under Section 51, any query by an employer as to the status of medical registration, cannot be addressed except to confirm the doctor is on the register. This is patently unsatisfactory.**

Given this, it is necessary, indeed imperative, that alternate measures be put in place to improve patient safety in these infrequent, but real situations.

D. RECOMMENDATIONS:

1. **Representatives of the Medical Council and employing authorities (Health Boards, Voluntary Hospitals, etc) should meet urgently and periodically thereafter to review the findings of this report, and:** clarify respective roles and concerns; discuss approaches to any relevant general (not doctor-specific) matters that could impede protection of patient care and safety because of issues of professional conduct.
2. The South Eastern Health Board has augmented its procedures for both the hiring of locum doctors and hiring doctors from abroad. These procedures provide for interviews in all circumstances, verbal as well as written employer references, more detailed reference forms, contact with any foreign register regarding a doctor's status, and written declaration from the applicant that he is not the subject of any investigation by a Medical Council or police in another jurisdiction.

These procedures seem rigorous and thorough, and should be similarly applied by all employing authorities of medical practitioners in Ireland.

3. **The Medical Council should produce an explanatory leaflet** for lay people and employers describing what its purpose and procedures are, and importantly, what it does and what it cannot do. It should also make available to employing authorities, the **contact details for all foreign medical registration authorities it deals with.**
4. Where an employing authority requests confirmation of a doctor's registration who is seeking employment from another jurisdiction, the Council should advise of the doctor's registration status in Ireland **AND advise the employer to confirm the doctor's status in other jurisdictions directly with the foreign register.**

If this advice is given whether or not the doctor is the subject of disciplinary proceedings in Ireland, it would not be precluded by the Act and would reinforce the employer's responsibility to directly contact foreign registration authorities.

5. The Medical Council should proceed to institute its proposed new arrangements to increase the number of inquiry panels and setting aside one week per month to hear inquiries. Further, **the Council should regularly review its operations in order to ensure the most timely processing of complaints and inquiry hearings.**
6. **A legal review should occur as part of the updating of the Medical Practitioner Act, 1978,** to determine if Section 51 (where a doctor is suspended in the public interest), pending a full Fitness to Practise Inquiry, can

be subject to Section 54 enabling the Minister to be advised of such suspensions when specific criteria are met.

The legal review should also consider that where **a doctor resides abroad but is on the Irish register**, that status should be deactivated after a specific period of time, requiring clearance from the foreign registration authorities, prior to full reactivation in Ireland. That is, active status on the register in Ireland should not be routinely maintained based solely on the basis of paying an annual fee, if the doctor works abroad for a protracted period of time.

7. Discussions should occur with the relevant bodies at EU level on an **EU system for information and/or reciprocity** when a doctor is suspended or struck off any EU register.
8. The SEHB should proceed with its plans to seek approval **to augment locum capacity for psychiatric consultants.**

NURSES ACT, 1985

PART V

FITNESS TO PRACTISE

38.(1) The Board or any person may apply to the Fitness to Practise Committee for an inquiry into the fitness of a nurse to practise nursing on the grounds of-

- (a) alleged professional misconduct, or*
- (b) alleged unfitness to engage in such practice by reason of physical or mental disability,*

and the application shall, subject to the provisions of this Act, be considered by the Fitness to Practise Committee.

(3) Where an application for an inquiry is made under this section and the Fitness to Practise Committee, after consideration of the application, is either of the opinion that there is a prima facie case for holding the inquiry or has been given a direction by the Board pursuant to subsection (2) of this section to hold the inquiry -

- (a) the Committee shall proceed to hold the inquiry,*

(5) The findings of the Fitness to Practise Committee on any matter referred to it and the decision of the Board on any report made to it by the Fitness to Practise Committee shall not be made public without the consent of the person who has been the subject of the inquiry before the Fitness to Practise Committee unless such person has been found, as a result of such inquiry, to be-

- (a) guilty of professional misconduct, or*
- (b) unfit to engage in the practice of nursing because of physical or mental disability,*

as the case may be.

(6) The Fitness to Practise Committee shall for the purpose of any inquiry held under subsection (3) of this section have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of-

39.-(1) Where a nurse-

- (a) has been found, by the Fitness to Practise Committee, on the basis of an inquiry and report pursuant to section 38 of this Act, to be guilty of professional misconduct or to be unfit to engage in the practice of nursing because of physical or mental disability, or*

the Board may decide that the name of such a person should be erased from the register or that, during a period of specified duration, registration of the person's name in the register should not have effect,

(3) A person to whom a decision under this section relates may, within the period of 21 days, beginning on the date of the decision, apply to the High Court for cancellation of the decision and if such person so applies-

44.-(1) Whenever the Board is satisfied that it is in the public interest so to do, the Board may apply to the High Court for an order in relation to any person registered in the register that, during the period specified in the order, registration of that person's name in the register shall not have effect.

(2) An application under this section may be made in a summary manner and shall be heard otherwise than in public.

(3) The High Court may make, in any application under this section, such interim or interlocutory order (if any) as it considers appropriate.

46.-The Board shall notify the Minister, and, in the case of a person the name of whose employer is known to the Board, such employer, on the occasion of-

- (a) the erasure of the name of a person from the register,*
- (b) the restoration of the name of a person to the register,*
- (c) the suspension of the name of a person from the register,*
- (d) the termination of a period of suspension from the register, or*
- (e) the attachment of conditions to the retention of the name of a person on the register,*

of the erasure, restoration, suspension, termination of suspension or attachment of conditions, as the case may be.

SOLICITORS ACT (1954-1999)

“An application by a person or by The Law Society for an inquiry into the conduct of a solicitor on the grounds of alleged misconduct shall, subject to the provisions of the Solicitors Acts, be made to and heard by the Tribunal in accordance with its rules.

Under Section 3 of the Solicitors (Amendment) Act 1960 misconduct includes:-

- (a) The commission of treason or a felony or a misdemeanour.*
- (b) The commission outside the State of a crime or an offence, which would be a felony or a misdemeanour if, committed in the State.*
- (c) The contravention of a provision of the Solicitors Acts 1954 to 1994 or any Order or Regulation made thereunder.*
- (d) Conduct tending to bring the profession into disrepute.*

To commence an enquiry into the alleged misconduct of a solicitor it is necessary to complete a form of application against a solicitor and a form of affidavit by the applicant.

The Tribunal, on receipt from the applicant of forms DT1, DT3 and accompany documentation, will send copies thereof within 14 working days to the respondent solicitor. The respondent solicitor may, within 21 working days of the date of the transmission of this documentation swear and furnish to the Tribunal an affidavit giving a full account of his/her response to the complaint or complaints against him/her.

Within 14 working days of the receipt by the Tribunal of the affidavit (if any) sworn by the respondent solicitor the Tribunal will provide copies of the affidavit and all documents exhibited therewith to the applicant. Within 21 working days of the date of transmission of the said documents to the applicant, the applicant may furnish the Tribunal a further affidavit which will be confined to dealing with matters raised by the respondent solicitor in this replying affidavit.

Where the Tribunal is of the opinion that there is prima facie case for inquiry it shall proceed to hold an inquiry.

Both the applicant and the respondent solicitor should be in attendance at the inquiry and both may conduct their own case or be represented by a solicitor and/or counsel.

The Tribunal has the power to regulate the procedure at an inquiry.

The Tribunal shall, for the purposes of an inquiry held by it, have the powers rights and privileges vested in the High Court or a Judge thereof on the hearing of an action.

A witness before the Tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

Where on completion of an inquiry the Tribunal find that there has been misconduct on the part of the respondent solicitor, they shall have power, by order to do none or more of the following things, namely:

- (a) To advise and admonish or censure the respondent solicitor;*
- (b) To direct payment of a sum, not exceeding £5,000, to be paid by the Respondent Solicitor to the Compensation Fund;*
- (c) To direct that the respondent solicitor shall pay a sum, not exceeding £5,000 as restitution or part restitution to an aggrieved party, without prejudice to any legal right of such party;*
- (d) To direct that the whole or part of the costs of the Society or of any person appearing before it, as taxed by a Taxing Master of the High Court, in default of agreement, shall be paid by the respondent solicitor.*

Further where the Tribunal find that there has been misconduct on the part of the respondent solicitor and it has not made and does not intend to make an Order under Section 7(9) of the 1960 Act as substituted by Section 17 of the 1994 Act it shall make a report to the High Court.

The High Court after consideration of the Tribunal's Report may make an order to do one or more other things specified in Section 8(1) of the 1960 Act as amended by Section 18 of the 1994 Act which include inter alia orders striking the name of the solicitor off the Role of Solicitors, or suspending the solicitor from practice."