

Policy: IQNM misconduct during assessment process

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Purpose

This document sets out the Nursing and Midwifery Board of Australia's (the Board) policy for managing misconduct by internationally qualified nurses and midwives (IQNM) participating in the pre-registration assessment process (IQNM assessment process).

Scope

This policy applies to all IQNM who participate in any of the following stages of the IQNM assessment process:

- Self-Check
- Orientation Part 1
- Portfolio
- Multiple-choice question (MCQ) examination
- Objective Structured Clinical Examination (OSCE).

This document contains information on:

- the professional behaviour and conduct expectations for all IQNMs participating in the IQNM assessment process
- the types of misconduct covered by this policy
- how allegations of IQNM misconduct can be reported
- how reports of alleged misconduct by IQNMs participating in the IQNM assessment process are managed, and
- how affected IQNMs can seek review of any outcomes of alleged misconduct.

Policy

Expectations of behaviour during the IQNM assessment process

The Board expects IQNM participating in any stage of the IQNM assessment process to behave in an honest, professional and ethical manner, consistent with the relevant profession's code of conduct:

- [Code of conduct for midwives](#)
- [Code of conduct for nurses](#)

The Board expects IQNM undertaking an MCQ examination or OSCE as part of the outcomes-based assessment (OBA) pathway to meet all expectations of IQNMs described in:

- the Candidate Rules, contained within the relevant candidate examination handbook and signed by the IQNM before undertaking an exam
- the Terms and Conditions, signed by the IQNM before undertaking the exam
- any examination policies published on the Board's website, and
- any written or verbal communication provided by Ahpra.

Misconduct means, '*professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers.*' A more extensive definition is available under section 5 of the National Law.

Types of misconduct

This policy covers two types of IQNM misconduct, general misconduct and examination misconduct.

General misconduct

General misconduct relates to unacceptable behaviour by an IQNM at any stage of the assessment process.

Examples of general misconduct include, but are not limited to:

- an IQNM (or their agent/delegate) submitting any non-genuine, misleading or falsified documents, including qualifications and statutory declarations, or making any untrue statements, and/or

- an IQNM behaving in a way that can reasonably be considered to be outside of the expectations of nurses and midwives registered in Australia described in the Board's *Code of conduct for nurses* and *Code of conduct for midwives*, including their interactions with:
 - staff employed or contracted by the Australian Health Practitioner Regulation Agency (Ahpra)
 - examiners
 - staff employed by an examination centre
 - simulated patients
 - other IQNMs, or
 - any other individual involved with delivery of the IQNM assessment process.

Examination misconduct

Examination misconduct relates to unacceptable behaviour and/or misbehaviour by an IQNM during an MCQ examination or OSCE undertaken as part of the OBA pathway.

Examples of examination misconduct include, but are not limited to:

- an IQNM behaving in a way that can reasonably be considered inconsistent with the Board's expectations of IQNM described in this policy
- breach of NCLEX® examination candidate rules
- breach of Aspeq's Code of conduct
- breach of any examination centre rules
- allowing, or attempting to allow, another person to complete an examination on behalf of an IQNM
- communicating with, or copying from, another IQNM during an examination
- bringing unauthorised materials into, or accessing unauthorised materials before and/or during an examination
- removing materials from an examination and/or response (in any format) from the examination rooms
- accessing unauthorised copies of examination questions and/or scenarios at any time
- selling, or attempting to sell, any information related to the examination at any time
- entering or attempting to enter an examination venue on a day when the IQNM's examination is not scheduled, without authorisation
- acting in a way which may interfere with the ability of others to complete their examination
- failing to follow instructions or directions provided by Ahpra or examination centre staff, including any warning to discontinue inappropriate behaviour

Reporting alleged misconduct

Any person can write to Ahpra by email or use Ahpra's web enquiry form to report an allegation of misconduct by an individual participating in any stage of the IQNM assessment process (alleged IQNM misconduct).

Managing alleged misconduct

Ahpra will maintain a record of all reported allegations of IQNM misconduct.

The Nursing and Midwifery Accreditation Committee (Assessment of overseas qualified nurses and midwives) (NMAC), established by the Board, oversees the process for managing all reported allegations of IQNM misconduct. The NMAC will ensure reports of alleged misconduct are investigated promptly and fairly, and that outcomes ensure public safety and maintain confidence in the Board's IQNM assessment process. The NMAC will make recommendations and/or give advice to the Board on this policy and associated matters.

Process for managing alleged IQNM misconduct

The process for managing reported allegations of IQNM misconduct may involve up to three stages:

1. initial assessment
2. examination committee review, and
3. external (expert panel) review.

Initial assessment

Ahpra will conduct an initial assessment of the report to determine whether there is sufficient information to support the allegation of misconduct.

If the allegation relates to IQNM behaviour during an MCQ examination, Ahpra may discuss the matter or subject of the allegation with the chair of the relevant Examination Committee and any other person involved in the matters or subject of the allegation.

If the allegation relates to IQNM behaviour during an OSCE, Ahpra may:

- discuss the matter or subject of the allegation with the chair of the relevant Examination Committee, the OSCE Chief Examiner, OSCE Examiner(s) and any other person involved in the matters or subject of the allegation, and
- access any vision or sound recording of the IQNM's performance in any OSCE station that is the matter or subject of the allegation.

If Ahpra considers there is insufficient information to suggest the IQNM has behaved in a way that is inconsistent with the Board's expectations and/or has engaged in activities that fall within the types of misconduct described in this document they will:

- close the matter
- notify the individual who reported the alleged misconduct the matter has been closed because there is insufficient information to support an allegation that the IQNM has behaved in a way that is inconsistent with the Board's expectations and/or has engaged in activities that fall within the types of misconduct described in this document
- notify the IQNM that a report of alleged misconduct was received and the matter has been closed because there is insufficient information to support the allegation.

If Ahpra considers there is sufficient information to suggest the IQNM has behaved in a way that is inconsistent with the Board's expectations and/or has engaged in activities that fall within the types of misconduct described in this document they will:

- notify the IQNM that a report of alleged misconduct has been received and is progressing to the examination committee review stage
- notify the NMAC chair about the matter
- progress the matter to the examination committee review stage
- block any access by the IQNM to their exam bookings and results pending outcomes of the examination committee review stage
- initiate any other actions against the IQNM that are reasonably required to protect other individuals or property, including copyright in examination materials

Examination committee review

Conduct of the review

When a matter progresses to this stage, Ahpra will invite the chair of the relevant examination committee to select three committee members to conduct the review.

Ahpra will provide the IQNM with written information about the alleged misconduct and invite them to submit a written response to the allegation within a timeframe specified by Ahpra of at least 14 calendar days. The IQNM may, in their response, request to speak the members conducting the examination committee review at a scheduled review meeting.

The members will consider the report of alleged misconduct, any written response from the IQNM and all information gathered by Ahpra during the initial assessment. If the IQNM does not respond to the allegations in writing within the specified timeframe, the examination committee review will progress without a response.

The members may ask Ahpra to make arrangement for them to speak to the person who made the allegation and to any other person who they consider might help them reach a decision.

The members will consider the available information and apply the balance of probabilities test in determining whether the IQNM has behaved in a way that is inconsistent with the Board's expectations and/or has engaged in activities that fall within the types of misconduct described in this document.

If the members conclude that the IQNM has not behaved in a way that is inconsistent with the Board's expectations and/or has not engaged in activities that fall within the types of misconduct described in this document, Ahpra will close the matter.

If the members conclude that the IQNM has behaved in a way that is inconsistent with the Board's expectations and/or has engaged in activities that fall within the types of misconduct described in this document, they will determine the consequences of the misconduct.

Consequences

The examination committee members will consider the following factors when they decide the consequences of the misconduct:

- the nature and extend of the misconduct, including intent
- any previous occasions of misconduct
- the impact of the misconduct in relation to other IQNMs and the integrity of the examination
- mitigating factors, and
- any extenuating circumstances submitted on behalf of the IQNM.

Consequences of general misconduct may include directing Ahpra to exclude the IQNM from participating in the assessment process for a period of time determined by the examination committee members conducting the review.

Consequences of examination misconduct may include directing Ahpra to:

- record the IQNM's examination result as a 'fail'
- require the IQNM to re-sit the examination and pay all required examination fees
- exclude the IQNM from participating in the examination stages for a period of time determined by the members conducting the examination committee review

Notifying IQNM and NMAC of outcome

Ahpra will notify the IQNM in writing of the outcome of the examination committee review of the allegation and any consequences within 30 calendar days of the members' decision and provide reasons for that decision.

If the IQNM does not agree with the outcome and/or any consequences, they may request an external (expert panel) review.

Ahpra will report on the outcome of the examination committee review of the allegation and any consequences in an agenda paper at the next NMAC meeting after the members' decision.

External (expert panel) review

Requesting an external review

If an IQNM wants an external review of the outcome of the examination committee review of the allegation and/or any consequences, they must submit a request to Ahpra in writing within 14 calendar days of receiving written notice of the outcome of the examination committee review. The IQNM must pay the external review fee and their request to Ahpra must address the reasons why they want an external review. The request must include all material that the IQNM wants the external panel to consider. This may include further written submissions.

Reasons for requesting an external review

There are two reasons for requesting an external review:

1. the IQNM believes that the manner in which this policy was followed in the examination committee review was procedurally unfair, and/or
2. the IQNM believes that the outcome of the allegation and/or any consequences are unjustified or unreasonable on the basis of the available evidence.

Conduct of the external review

The Nursing and Midwifery Accreditation Committee (Assessment of overseas qualified nurses and midwives) (NMAC) chair (or delegate) will appoint an expert panel to conduct the external review. The expert panel must comprise three members who are external to NMAC, the relevant examination committee and the relevant List of Examiners:

- a chair - a senior clinical academic or director of clinical training at a teaching hospital,
- a member experienced in registration or education of nurses and/or midwives in Australia, and
- a member with experience in independent review bodies or tribunals, or with experience as an ombudsman or senior ombudsman officer.

The expert panel will have access to all records relating to the alleged IQNM misconduct (held by Ahpra) including information supplied by the IQNM. The expert panel may conduct the review in a manner it considers appropriate and may call for further material or information from the IQNM, the original examiner(s) or other people.

An IQNM has the right to appear and address the expert panel and may be accompanied by another person but is not entitled to bring an advocate, spokesperson or legal representation, unless the expert panel has given its prior consent.

After considering all information, the expert panel may decide that:

- the original examination committee review decision is upheld in full.
- the original examination committee review decision is not upheld in full and the matter is remitted back with directions to Ahpra and the members who conducted the examination committee review for reconsideration under this policy. For example, a direction that further investigation is required before reconsideration of the case by a fresh examination committee review panel.
- the original examination committee review decision is not upheld and the expert panel substitutes the original outcome of the allegation and/or any consequences with any decision that could have been made under this policy.

The expert panel may also direct that Ahpra refund the external review fee to the IQNM.

Ahpra will notify the IQNM in writing of the outcome of the external review as soon as practicable following the expert panel decision and provide reasons for that decision.

Ahpra will report on the outcome of the external review in an agenda paper at the next NMAC meeting after the expert panel decision.

Definitions and abbreviations

Nil

Associated documents

[NCLEX-RN MCQ Examination - Candidate Handbook](#)

[RN OSCE Examination - Candidate Handbook](#)

[Midwives MCQ Examination - Candidate Handbook](#)

[Midwives OSCE Examination - Candidate Handbook](#)

[Enrolled nurse MCQ Examination - Candidate Handbook](#)

[Enrolled nurse OSCE Examination - Candidate Handbook](#)

Document Control

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