

Performance Assessment Committee

Fitness to Practice Committee

Malaysian Medical Council

Preamble

The Fitness to Practice (FTP) Committee of the Malaysian Medical Council (MMC) is responsible for the establishment of the ad-hoc Performance Assessment Committee (PAC) whose function is to assess the performance of a registered medical practitioner (RMP)'s clinical practice. The whole process must be full proof, just and transparent.

These are carried out where there are concerns that a RMP may be under-performing or have caused accidental harm to a number of patients as a result of unrecognised diminishing competence.

Poor professional performance means a failure by the RMP to meet the standards of competence (whether in knowledge and skills or the application of knowledge and skills or both) that can be reasonably be expected of medical practitioners practicing medicine of the kind practiced by the RMP.

A performance assessment is an assessment of the standard of RMP's professional performance. It provides us with an independent opinion regarding the RMP's fitness to practice. Performance assessments focus on the overall performance of the RMP, not the specific complaint itself.

Complaint's history is a significant indicator for proceeding to a performance assessment. When a triggering complaint is very serious, it alone can be the stimulus for a performance assessment. The purpose of the assessment is not to investigate whether any allegations made against RMPs are true or to investigate any specific allegations.

Certain experts and individuals may be invited to comment or report on the doctor's practice and such evidence may then be incorporated into the Performance Assessment Report.

RMP's assessment will be completed by a team of independent clinical assessors. They will provide the FTP Committee and MMC with a report which will describe the RMP's professional performance and give the team's opinion on RMP's fitness to practice. The PAC may also make recommendations on the management of the RMP's clinical cases.

An RMP who has been found to be under-performing by MMC will need to undertake remedial training if the RMP choose to practice at the designated clinical expertise, so as to demonstrate that their current fitness to practice is not impaired by reason of their seriously deficient performance.

An RMP who declines to undergo a Performance Assessment will risk being suspended. At the PAC's Preliminary Investigative Meeting (PIM) stage, an RMP might be invited to undergo a Performance Assessment because of the nature of the complaint.

An RMP who refuses will be referred to the PIC of MMC, and RMPs may be suspended where they continue to refuse to undergo the Performance Assessment. Moreover, where the FTP Committee of MMC has been scrutinising an RMP's practice over a period of time and the RMP has entered into undertakings that they will agree to a Performance Assessment, or reassessment, and the RMP later declines to be assessed, in breach of the undertaking, an RMP may be suspended by MMC at the recommendation of the Fitness to Practice Committee. A refusal to undergo a performance Assessment has been found to constitute professional misconduct, which will be sufficient to make a finding that the doctor's fitness to practice is impaired: (*See Depner v General Medical Council (GMC) [2012] EWHC*).

An RMP who continually refuses to undergo Performance Assessments may be legitimately struck off by MMC at the recommendation of the Fitness to Practice Committee.

Members of the PAC

The FTP Committee will form the PAC consisting of the following members:

1. Two Co-Chair(s)
 - a. Senior consultant in the same general specialty as the RMP with no prior personal or professional association with the RMP or the institution(s) that employ the RMP within 5 years.
 - b. A member of the current FTP committee in turns.
2. Two senior consultants in the same general specialty as the RMP with no prior personal or professional association with the RMP or the institution(s) that employ the RMP within 5 years
3. Legal counsel representing MMC
4. A senior psychiatrist if there is a psychological element contributing to the competency or performance issues, when needed depending on the case.
5. The membership of the PAC should involve different sectors inclusive of public and private sectors as well as from the Universities.

PAC will conduct TWO hearing or meetings

1. Preliminary Investigative Meeting (PIM)
2. Performance Assessment Meeting (PAM)

1. Preliminary Investigative Meeting (PIM)

Prior to the Preliminary Investigative Meeting, a discussion between the members of the PAC will be carried out to determine the individuals, witnesses and documents that are required for the purpose of completing the investigation.

During the Preliminary Investigative Meeting, PAC will hear, inspect, discuss and analyse the following:

- Substance for the arraignment
- Complainant(s) & relevant witness
- Written evidences and reports

Following the PIM, the PAC must make a decision if there are substantial grounds to invite the RMP to attend a Performance Assessment Meeting (PAM).

2. Performance Assessment Meeting (PAM)

The RMP is encouraged to have a legal counsel present during the PAM. He may choose to bring professional expert witness or supporters who can vouch for his professional competence and performance. The presence of any legal counsel or expert witness during the PAM proceedings should be notified beforehand by the RMP to the PAC.

The RMP may choose to submit a statement or statutory declaration on why he or she should be permitted to practice medicine at the current level prior or during the PAM hearing.

During the PAM, the PAC will hear, inspect, discuss and analyse the following:

- Statutory declaration or statements from the RMP
- Statutory declaration or statements from the expert witnesses or supporters

At the end of the proceedings, the PAC will come to a decision and determine if the RMP has met the required standard of competence.

Options available to the PAC in this scenario are:

- to take no further action
- to make a recommendation for the RMP to undertake further education based on what the PAC has reported.

If the PAC has determined that the RMP has failed to meet the required standard of competence, the PAC must make one or more of the following decisions:

- that the doctor undertakes an educational programmed, which is typically 6-12 months

- one or more conditions are included in the RMP's scope of practice
- the RMP sits an examination or undertakes an assessment
- the RMP is counseled or assisted by one or more nominated persons

The remedial programmed will focuses on the areas identified in PAC report as requiring development. To help the RMPs meet the requirements, they are given an educational supervisor who specializes in their area of medicine. The supervisor's role includes providing the PAC with six-monthly regular reports or within the period decided by the PAC, on the RMP's progress. All the reports provided will be reviewed by the PAC who will then make recommendations to the FTP and then Council.

The educational supervisors appointed by FTP and the Council will generally have held teaching roles in the past, will be in good standing with MMC and will hold a current specialist registration and credentialing.

However, if the PAC has serious concerns about the doctor's competence following an assessment, interim / temporary / permanent suspension of their annual practising certificate or specialist practicing certificate will be forwarded to the FTP and then the Council.

The above decision contained in the Performance Assessment Report prepared by the PAC will be presented to the FTP Committee for rectification, before presented to the Council. Once rectified, MMC will notify the various committees such as the Specialty Sub-committees (SSCs) and the National Specialist Registry (NSR) for further actions.

Evaluation process

Performance Assessment will provide valuable insight into many areas that could affect a RMP's performance and will enable:

- Evaluation of medical practitioners in the context of their practice
- Evaluation of clinical capability in the context of broader performance issues
- Evaluation of environmental issues such as personal or family concerns
- Evaluation of organisational issues such as excessive workload

PAC may look at a number of areas of the doctor's practice, such as:

- Medical reports
- Patient consultations
- Prescribing practices
- Surgical Skills
- Clinical Knowledge
- Communication Skills

- System within practice

Potential tools during evaluation process

There are many tools, already in use internationally for assessing the knowledge, clinical and consultation skills of a RMP. Potential tools that the PAC could use during a performance assessment are set out below: -

- Interview with the practitioner
- Direct Observation of Clinical Practice
- Record Review
- Practice Inspection
- Case Based Assessment

In addition, there are supplemental tools such as Occupational Health Assessment, feedback from colleagues and patients and Behavioural Assessment that may be appropriate, however this would be decided on a case-by-case basis.

ENDORSED IN MMC 395 MEETING ON 21st JANUARY 2020