

## Drafting charges in health cases

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## Health allegations where a nurse, midwife or nursing associate appears responsible for incidents

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In cases where the concern about the nurse, midwife or nursing associate's practice involves their [physical or mental health](#), we draft a charge only if their health condition has presented a risk to patients.

It is important that we are able to provide details and specific examples in the health charge, in order to explain to the nurse, midwife or nursing associate and the panel of the Fitness to Practise committee why we say the health condition is a concern.

For example:

- the nurse, midwife or nursing associate has done things as a result of their health condition,
- there is strong evidence about the incidents themselves, and
- sound medical evidence that the incidents would not have happened if the nurse, midwife or nursing associate did not have the health condition.

In these cases, our concern is about the way in which the health condition manifests itself to cause risks; it is never about blaming the nurse, midwife or nursing associate for their actions.

This means that we should consider the charge in terms of impaired fitness to practise by reason of health.

## Separate concerns in cases involving health

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If a case also involves a separate concern that doesn't have anything to do with the nurse, midwife or nursing associate's health, we could allege that their fitness to practise is impaired for more than one reason.

We would do this if there were separate regulatory concerns about:

- misconduct
- lack of competence
- criminal offending
- not having the necessary knowledge of English
- a regulatory decision by another health or care organisation.

In these circumstances, we could ask the Fitness to Practise Committee to consider these two or more regulatory concerns, based on two or more different factual backgrounds, at the same time, as part of the same charge.

## Exceptional cases: health-related conduct incompatible with continued registration

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In exceptional cases, there may be alleged incidents which are so serious that there would be a real risk to the public's trust in nurses, midwives or nursing associates if there was not an immediate striking-off order. An immediate striking-off order is not a sanction that is available to a panel when they are only considering a health allegation, therefore the allegation should be about misconduct or a conviction even if the incidents would not have happened had the nurse, midwife or nursing associate not had a particular health condition.

This is because in this small number of very serious cases, the immediate removal from the register, through a striking-off order, can only happen if the case is based on misconduct or conviction.

This very unusual situation only arises in the most serious cases where the nurse, midwife or nursing associate could not be allowed to continue practising, for example, in cases where a nurse, midwife or nursing associate has deliberately harmed a patient because of a health condition they had.

## Privacy

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We respect the privacy of nurses, midwives and nursing associates and will not publish details of health conditions on our website. This information would be provided in a private schedule that would not be published.

## Failure to engage with an investigation into health

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A nurse, midwife or nursing associate should co-operate with the NMC if they are under investigation.

If a nurse, midwife or nursing associate has not co-operated with our investigation into their physical or mental health, we can consider adding this failure to co-operate to the allegations we consider. We will give the nurse, midwife or nursing associate every opportunity to engage and also seek to understand why they may be unable to.

Ultimately, if they still do not engage and continue to decline to do so, we may need to consider adding further allegations. If there is a crisis in their health and they wish to engage but are currently unable to, we will consider if we can pause our process to allow them the time to participate in an informed way.

When considering adding a misconduct allegation in relation to a failure to co-operate, we will first consider whether the panel could instead take the failure to cooperate into account when considering impairment by reason of health<sup>1</sup>.

Taking the failure to cooperate into account at the hearing is likely to be more appropriate if the reason for the failure to cooperate is ill health, as this is in line with the NMC's values of being kind and fair. Our guidance on [engaging with your case](#) sets this out.

<sup>1</sup> Rule 31(5)(b).