

Policy

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IQNM assessment process misconduct

Purpose

This policy sets out the Nursing and Midwifery Board of Australia's (NMBA) policy for considering cases of alleged misconduct by participants in the assessment process for internationally qualified nurses and midwives (IQNMs).

The NMBA is committed to the following:

- setting clear expectations of participant behaviour which are consistent with that outlined in the NMBA's *Code of conduct for nurses* and *Code of conduct for midwives*
- identifying cases of alleged misconduct and investigating them promptly and fairly, and
- where necessary and proportionate, taking action in response to cases of misconduct which ensure public safety and maintain confidence in the NMBA's IQNM assessment process.

Scope

This policy applies to all participants in the assessment process for IQNMs, including former and current participants in any of the following stages of the IQNM assessment process:

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

The MCQ examinations for IQNMs seeking registration in Australia as a registered nurse (RN) or midwife are delivered by third-party examination providers:

- The RN MCQ examination is the National Council Licensure Examination for Registered Nurses (NCLEX-RN). The National Council of State Boards of Nursing (NCSBN) develops and administers the NCLEX-RN through Pearson VUE.
- The midwifery MCQ examination is delivered by Aspeq through the Quadrant examination system.

The above MCQ examination providers implement their own policies on candidate misconduct, the respective providers' policies apply.

The Nursing and Midwifery Accreditation Committee (Assessment of overseas qualified nurses and midwives) (NMAC) established by the NMBA is responsible for the oversight of cases of alleged misconduct, in accordance with the processes as set out in this policy relating to all steps of the IQNM assessment process(excluding Orientation Part 2).

The NMBA assesses cases of alleged misconduct relating to Orientation Part 2 as this is a post-registration.

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The NMBA's expectations of participants are clearly articulated in the IQNM assessment process.

Candidates progressing through the outcomes-based assessment (OBA) pathway are also expected to be familiar with the content in the following documents, relevant to the profession and division of the Register in which they intend to apply for registration:

- *Registered nurse MCQ Examination - Candidate Handbook* – including all NCSBN's and Pearson VUE's policies and procedures
- *Enrolled nurse MCQ Examination - Candidate Handbook* – including related policies and procedures
- *Midwives MCQ Examination - Candidate Handbook* – including Aspeq's policies and procedures
- *Registered nurse OSCE Examination - Candidate Handbook*
- *Enrolled nurse OSCE Examination - Candidate Handbook*
- *Midwives OSCE Examination - Candidate Handbook*
- *Multiple-choice question (MCQ) examinations Policy*

Multiple-choice question (MCQ) examination and Objective Structured Clinical Examination (OSCE) delivery Policy

Any behaviour by a participant/candidate which is reasonably considered to be in breach of published assessment and examination policies (including those listed above) or is otherwise inconsistent with the Health Practitioner Regulation National Law Act 2009 (National Law), NMBA Code of conduct for midwives, Code of conduct for nurses, Registration Standards and any written or verbal communication to candidates, may be considered to be misconduct.

Before Registration

Participants are required to make a number of declarations at key stages of the IQNM assessment process. Any false or misleading declarations made during these stages may result in action being taken as alleged misconduct.

A finding of misconduct against a participant/candidate prior to registration may affect their ability to register with the NMBA.

Post Registration

Any finding of misconduct in relation to the IQNM assessment process found subsequent to a person being registered, may result in action under part 8 or any action under the National Law.

Types of misconduct

There are two types of misconduct, general misconduct and examination misconduct. General misconduct relates to unacceptable participant/candidate behaviour at any stage of the IQNM assessment process. Examination misconduct relates to candidate violation of examination centre rules and/or misconduct at any examination in the OBA component of the IQNM assessment process.

General misconduct

Participants/candidates are expected to demonstrate professionalism in all aspects of the IQNM assessment process.

Examples of general misconduct include (but are not limited to) the following:

- submitting fraudulent or falsified documentation including statutory declarations, or making untrue statements
- behaving in a way towards the Australian Health Practitioner Regulation Agency (Ahpra) staff, examiners and other representatives (that can include, but is not limited to other candidates, staff at

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the examination centre, and simulated patients) that can reasonably be considered to be outside the expectations of nurses and midwives registered in Australia, as set out in the NMBA's *Code of conduct for nurses* and *Code of conduct for midwives*.

Participants/candidates are expected to be professional and courteous when interacting in writing or in person with Ahpra staff, examiners and other representatives that can include, but is not limited to other candidates, staff at the examination centre, and simulated patients.

Examination misconduct

Candidates are expected to meet the expectations set out in relevant examination policies and any written or verbal communication provided to candidates. Examination misconduct in relation to the RN and midwifery MCQ examinations is handled in accordance with the respective examination provider's misconduct policies and procedures.

RN MCQ examination

NCLEX-RN candidates must read the *NCLEX® Examination Candidate Rules* before being seated for the examination.

NCSBN implements its own policies and procedures relating to candidate misbehaviour and/or misconduct. If a candidate violates test centre regulations or rules, or engages in misbehaviour or misconduct, NCSBN will proceed with the process of cancelling the candidate's result (after conferring with Ahpra) and then follow an appeals process (if applicable). The *NCLEX® Examination Candidate Rules* and full process is detailed in the *NCLEX Member Board Manual – Chapter 4: Exam day (Administration of NCLEX)*.

EN MCQ examination

Ahpra require all candidates to read and accept the EN MCQ Examination Terms of Agreement, including the EN MCQ Examination Candidate Rules before they start the examination.

Where a candidate is reported to have breached the EN MCQ Examination Terms of Agreement, the EN MCQ Examination Candidate Rules or this policy, Ahpra will undertake an Initial Assessment as per the policy.

If the claim is substantiated in the Initial Assessment, an Expert review panel will be convened to determine the outcome for the candidate.

Midwifery MCQ examination

Aspeq require all candidates to read and accept the examination rules set out in Aspeq's *Code of conduct* before they start their examination.

Where a candidate is reported to have breached Aspeq's *Code of conduct*, Aspeq will investigate the report as per their policy.

Should Aspeq's investigation uphold the allegations, the consequence for the candidate will be determined, as necessary, in conjunction with an Expert review panel.

RN, EN and midwifery OSCEs

Any cases of alleged OSCE candidate misconduct (general or examination misconduct) will be assessed in accordance with this policy and processes.

Examples of OSCE examination misconduct include (but are not limited to) the following:

- allowing another person to complete an examination on behalf of a candidate
- communicating with, or copying from, another candidate during an examination
- reproducing and/ or sharing either verbally or written any examination questions, including to organisations that provide preparatory OSCE programs or similar
- selling or attempting to sell any examination questions, including to organisations that provide preparatory OSCE programs or similar

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- bringing unauthorised materials into, or accessing unauthorised materials before and/or during an examination
- removing materials from an examination
- accessing unauthorised copies of examination questions and/or scenarios in advance
- unauthorised access to an examination venue
- taking actions which may impact on the ability of others to complete their examination tasks
- failing to follow the reasonable instruction of Ahpra staff, facility staff, examiners or delegates during an examination.

Assessing participant/candidate misconduct

The following sets out the process of assessment and outcomes of participant/candidate misconduct in relation to the EN MCQ and OSCE examination and generally throughout the IQNM assessment process.

Reporting alleged misconduct

Any person may report an allegation of misconduct in writing to Ahpra. All reports will be recorded. Where misconduct is suspected, Ahpra staff will collate evidence of the misconduct.

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 so, the matter will progress to an Expert review panel. If it is concluded that further consideration is not required, the matter will be closed. The outcome will be communicated to the participant/candidate.

Expert review panel

If further consideration is required, Ahpra will initiate a review by an Expert review panel and gather any further information. Ahpra will notify the participant/candidate that a report of alleged misconduct has been made about them. The participant/candidate will be provided with written information about the alleged misconduct and invited to provide a response in writing. They will be given at least 14 calendar days in which to respond.

If a participant/candidate does not respond to the allegations in writing, the Expert review panel will proceed in absence of a response.

The review will be undertaken by an Expert review panel comprising three members from the relevant List of examiners. If the alleged misconduct is related to an OSCE the examiners must not have been in attendance at the scheduled OSCE where the alleged misconduct took place.

The Expert review panel will be entitled to speak to the person who made the allegation and any other person who it considers might help it reach a decision. The participant/candidate has the right to appear before the Expert review panel.

The Expert review panel will consider the available information and apply the balance of probabilities test in determining whether misconduct has taken place, and will:

- i. apply an open, impartial and unprejudiced mind to their duties
- ii. base findings and recommendations solely on relevant considerations
- iii. maintain confidentiality about all matters before them
- iv. not be involved in a case or have any involvement in the finding and recommendation of a case before them if they have a personal relationship with the participant/candidate or direct or indirect financial or personal interest in that case, or other conflict of interest pertaining to the case, even if they do not believe that their interest would affect their duties.

The participant/candidate will be notified of the outcome within 30 calendar days of the Expert review panel, with reasons given for the decision.

Outcomes

If the Expert review panel concludes that a breach of this policy or any other relevant policy has occurred, the outcome for the participant/candidate may take into account the severity of the breach and any extenuating circumstances submitted on behalf of the participant/candidate.

Outcomes relating to OSCE/MCQ examination misconduct may include:

- i. automatic failure of the OSCE/MCQ,
- ii. the candidate may be required to re-sit the OSCE/MCQ at the candidate's expense, or
- iii. suspension of candidate and barring from future OSCE/MCQ assessment for a period of time determined by the Expert review panel.

Outcomes relating to general misconduct may include:

- i. suspension of the participant/candidate and barring from the IQNM assessment process for a period of time determined by the Expert panel.

If the participant/candidate is dissatisfied with the outcome of the expert review panel, the participant/candidate may apply for a further review by an External review panel.

Review by External review panel

If a participant/candidate wants to apply for a review by an External review panel, they must apply for a review in writing within 14 calendar days of being notified of the outcome of the Expert review panel. The application for review from the participant/candidate must address the reasons (aligned with the below) for seeking the review. The appropriate fee must be paid at the time of requesting the review.

The external review will be conducted by an External review panel appointed by the Nursing and Midwifery Accreditation Committee (Assessment of overseas qualified nurses and midwives) (NMAC) Chair (or delegate) and comprising three members external to NMAC and the relevant List of Examiners. Members will include:

- 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.

There are two reasons for seeking a review by an External review panel:

- The manner in which the participant/candidate misconduct policy has been followed has been procedurally unfair, and/or
- The decision reached on misconduct and/or the outcome is unjustified or unreasonable on the basis of the available evidence.

All records relating to the participant/candidate misconduct will be made available including information supplied by the participant/candidate. The participant/candidate has the right to appear before the External review panel.

The findings of the review by the External review panel may be:

- The original decision is upheld.
- The original decision is not upheld.
 - The matter is remitted back with directions to Ahpra and the Expert review panel for reconsideration under this policy. (For example, a direction that further investigation is required before reconsideration of the case by a reconvened Expert review panel.)
 - The outcome of the case is substituted for any decision that could have been made under this policy.

Where the original decision is not upheld in full or in part, the fee for the review by the External review panel may be refunded in full or in part.

The participant/candidate will be notified of the outcome, with reasons given for the decision.

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Definitions and abbreviations

Candidate is an internationally qualified nurse and/or midwife (IQNM) who is participating in the MCQ or OSCE components of the outcomes-based assessment (OBA) pathway.

IQNM assessment process is the NMBA's process for assessing internationally qualified nurses and/or midwives (IQNMs). IQNMs who are assessed as holding a qualification that is substantially equivalent or based on similar competencies to an Australian approved qualification (and who meet the mandatory registration standards), will be eligible to apply for registration. These IQNMs will need to complete the Self-check and Orientation (Part 1) before they can apply for registration

IQNMs who are assessed as holding a qualification that is relevant but not substantially equivalent or based on similar competencies to an Australian approved qualification (and who meet the mandatory registration standards), will be required to successfully complete an outcomes-based assessment (OBA) prior to being eligible to apply for registration. These IQNMs will need to complete the Self-check, Orientation (Part 1), Establish portfolio, MCQ examination and the OSCE before they can apply for registration.

Participant is Any person participating in any stage of the following stages of the IQNM assessment process:

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

Associated documents

Aspeq's Code of Conduct

NCLEX® Examination Candidate Rules

MCQ examination candidate handbooks:

- *Registered nurse MCQ Examination - Candidate Handbook*
- *Enrolled nurse MCQ Examination - Candidate Handbook*
- *Midwives MCQ Examination - Candidate Handbook*

OSCE candidate handbooks:

- *Registered nurse OSCE Examination - Candidate Handbook*
- *Enrolled nurse OSCE Examination - Candidate Handbook*
- *Midwives OSCE Examination - Candidate Handbook*

Multiple-choice question (MCQ) examinations Policy

Multiple-choice question (MCQ) examination and Objective Structured Clinical Examination (OSCE) delivery Policy

References

Australian Dental Council, *Candidate misconduct policy (2019)*

Australian Physiotherapy Council, *Misconduct Policy (Ref. AX_002) (2017)*

NCLEX Member Board Manual – Chapter 4: Exam day (Administration of NCLEX)

Document Control

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