

Joint Surgical Colleges Fellowship Examinations

SUSPECTED MALPRACTICE POLICY

Introduction

This document:

- is accompanied by document OP31 Table of offences and range of penalties
- defines malpractice in the context of Specialty Fellowship Examinations delivered by the Joint Committee on Intercollegiate Examinations (JCIE) – the Intercollegiate Specialty Examinations and the Joint Surgical Colleges Fellowship Examinations.
- describes the procedures to be followed in cases where there is reason to suspect that the regulations have been broken
- prescribes the sanctions to be applied to different types of malpractice

The JCIE reserves the right to withhold the issuing of results while investigations are ongoing. Depending on the outcome of the investigation, results may be released or permanently withheld / annulled. This applies to the results of one or more individuals or to the entire cohort of candidates.

1. Definitions

1.1 Regulations

The regulations referred to in this document are those applicable to all and any examination diets conducted by the JCIE.

1.2 Malpractice

Malpractice is deemed to be those actions and practices which threaten the integrity of the examination, and/or damage the authority of those responsible for conducting them.

1.3 Candidate malpractice

The following are examples of malpractice by candidates. The list is not exhaustive and other instances of malpractice may be considered by the JCIE, at its discretion.

- introduction of unauthorised material into the examination room. For example: notes, textbooks or study guides; personal organisers; calculators; dictionaries; recording devices; mobile phones; smart watches or other similar electronic devices
- obtaining, receiving, exchanging or passing on information which could be examination related (or the attempt to) by means of talking, written papers / notes, telephone, internet, social media posts or any other device
- attempting to solicit information about the examination from examiners, staff, volunteers, actors etc, or from candidates from an earlier examination diet
- copying from another candidate
- collusion
- disruptive behaviour in the examination room (including the use of offensive language)
- failing to abide by the conditions of supervision designed to maintain the security and integrity of the examinations
- failing to abide by the instructions of an examiner, assessor, invigilator, supervisor, or the JCIE Secretariat in relation to the examination rules and regulations. This includes instructions relating to examination timings.

- impersonation: pretending to be someone else, arranging for a third party to take the candidate's place in an examination
- the inclusion of inappropriate, offensive or obscene material in answers
- misuse of examination material, e.g. by passing or attempting to pass such material to a third party after the examination. This includes posting information about the content of examination on the internet, social media or similar channels.
- physical or verbal abuse or intimidation of examination candidates, officials, examiners, staff or volunteers
- bribing or attempting to bribe an examination official, clinical or simulated patient
- behaving in such a way as to undermine the integrity of the examination
- contravention of the instructions on the conduct of the examination and the candidates' responsibilities, contained in documents that have been sent to the candidates; or that are published on the JCIE or JSCFE website; or that have been conveyed to them by the JCIE Secretariat.

2. Allegations of malpractice

- 2.1 Allegations of malpractice may be reported to the JCIE by assessors, examiners, invigilators, candidates, JCIE Secretariat, volunteers or actors, or examination venue staff. When dealing with alleged malpractice, the JCIE will engage with the invigilator or supervising examiner and the candidate or the candidate's representative.
- 2.2 The JCIE will seek to establish the full facts and circumstances of any alleged malpractice by any candidate by seeking full accounts from and, where appropriate, interviewing, all parties involved. The JCIE will seek to investigate all allegations of malpractice but reserve the right to reject allegations which lack substance or appear, upon investigation, to be malicious.
- 2.3 If malpractice is discovered during or immediately after the examination by someone at the centre, a full report must be submitted, immediately after the event, to the JCIE by the invigilator, examiner or assessor. In most circumstances, the candidate will be permitted to complete the examination. Exceptions to this principle would include cases where the candidate's behaviour was dangerous, offensive or disturbing other candidates or participants, or was jeopardising the security or conduct of the examination.
- 2.4 If malpractice is alleged after the examination or is discovered by the JCIE, full details of the alleged malpractice will be reported to the JCIE Head of Operations, senior team, and Board Chair. A full report including all evidence of the alleged malpractice will be sent to the candidate and they will be asked to comment in writing on the report within 10 working days from the date of the full report, before further action is taken.
- 2.5 In cases where a candidate is accused of malpractice, the candidate must be sent full details of the allegations and evidence against them and be given the opportunity to respond in writing to allegations made. The candidate will be given 10 working days from the date of the full report outlining the alleged malpractice to reply to the allegations.
- 2.6 Anonymous reports of malpractice will be acted upon only if there is supporting evidence, or if the nature of the report warrants it. In these cases the Board Chair will be informed and asked to comment.
- 2.7 It is at the discretion of the JCIE as to the means by which evidence is presented to the individuals involved. The JCIE will ensure that individuals subject to an irregularity investigation have access to all evidence against them. They will be directed, as necessary, to facilities including advice from the Principal Referee and Training Programme Director.

A candidate suspected of malpractice should normally be allowed to complete the examination (provided that no disturbance is being caused to other candidates, in which case they should be removed and their examination terminated). The candidate should then be informed of the nature of the alleged malpractice by a senior examiner in front of a witness (usually a senior member of the JCIE Secretariat). A report should be submitted, including an account of the candidate's response to the allegations presented at the centre on the examination day. The candidate should be advised that the matter will be subject to an investigation and that a full report of the alleged malpractice will be sent to them from the JCIE. Any written statement that they wish to make should be received by the JCIE Head of Operations within 10 working days from the date of the full report of the alleged malpractice received by the candidate from the JCIE. Any material illegally introduced into the examination room should be temporarily confiscated (including electronic equipment) and a receipt given. If the candidate refuses to permit the material or equipment to be confiscated, this fact will be recorded.

2.8 It is the responsibility of the senior examiner / Board Chair or deputy, acting on behalf of the JCIE, to carry out an investigation, to submit a full written report of the case and to provide supporting evidence, including the actual material or equipment confiscated where appropriate and if it is available. Reports should include:

- a statement of the facts
- a detailed account of the circumstances and details of any investigations carried out by the centre
- written statement(s) from the invigilators or other staff concerned
- written statement(s) from the candidate(s) concerned
- any mitigating factors
- layout of examination rooms / seating plans
- unauthorised material found in the examination room
- any work of the candidate and any associated material or equipment which is relevant to the investigation

3. Consideration of the allegation

3.1 In following up the receipt of a formal report of allegation of misconduct the JCIE Head of Operations should write to the candidate with full details of the allegation and evidence against them and inform them of the possible consequences should malpractice be proven and of the avenues for appealing should a judgement be made against them. The candidate should also be reminded that they have 10 working days from the date of the full report in which to submit a written statement.

3.2 Once the candidate's response to the allegation contained in the report has been received, or 10 working days from the date of the full report, whichever is first, the JCIE Head of Operations and senior team at the JCIE will consider the case and decide upon a course of action. The course of action followed will be determined by the perceived degree of malpractice and may range from:

- If the nature of the allegation is non-contentious or merits a penalty 1 (see below) warning, it may be investigated and decided by the JCIE Head of Operations and senior team. Should a warning be appropriate, this will be issued by the JCIE Head of Operations.
- If the potential penalty is more serious, the allegation must be referred to the JCIE Chair and senior team. The JCIE Chair may consider the allegation and take appropriate actions, or may initiate a panel to consider the allegation:
 - Convening a panel to consider the case using paper procedures
 - Convening a panel to consider the case using hearing procedures

3.3 Full details of the panel procedure should be sent to candidates whose case is to be put before a panel.

3.4 In most cases the events will be considered on the basis of documentary evidence alone and candidates will respond to allegations in writing. However, in the instance of a convened panel, candidates have the right to appear to put their case and in such cases they will be offered the opportunity to be accompanied or represented by a legal adviser or other representative or supporter.

4. The panel

4.1 For allegations for which the appointment of a panel is required, as set out above, the panel will comprise three experienced examiners from the JCIE who were not involved in the diet in question (who may or may not be from the candidate's surgical specialty) and, if required, an educational adviser and / or a legal adviser. The panel chair will be a senior examiner. The panel meeting will have adequate support from the JCIE Secretariat and will be minuted.

4.2 The panel will determine its own procedures in order to meet the required functionality of 4.5 below. The panel will aim to deal fairly and reasonably with candidates and with those making allegations against them, but it is not a court of law and so the normal rules of evidence will not apply.

4.3 Members of the panel should not normally have had any prior involvement with the candidate's examination performance or any close working relationship with the candidate. Panel members must disclose this and if it is the case, the panel member may be replaced to avoid a conflict of interest. Members of the panel should not have had any involvement in the investigation of the candidate's alleged misconduct.

4.4 The panel and the candidate against whom an allegation has been made must have access to the same documentation. The documentation will consist of the allegation, the JCIE report, the candidate's response, and any witness statements of evidence to be relied upon by both sides.

4.5 The panel will function as follows:

- the panel will establish whether correct procedures have been followed in the investigation of the case, and that the candidate accused of misconduct has been given the opportunity to respond properly to the allegations and, if requested, to make a personal statement.
- the panel will consider the allegations and the report upon them, including any evidence or mitigation offered in response by the candidate.
- the panel will reach a decision on the balance of probabilities. If the case is potentially criminal, a decision should be made as to whether the matter should be referred to the police and is outwith the remit of this policy regarding further investigation. If this is the case (in rare circumstances), examination results for the candidate may be withheld until any police investigation is complete.
- the panel will set out its decision in writing with reasons, including the evidence taken into account, how the evidence was weighed and why it arrived at its decision. This will be passed to the JCIE Head of Operations, who will then take action to inform the candidate of the outcome.
- the panel should conduct its business as a matter of priority in order that the candidate is informed of the outcome in a timely manner.

4.6 The Panel – Paper Proceedings

In addition to the general proceedings above, the following will apply to a panel considering its actions by paper/email. The panel's Chair will be responsible for:

- the circulation of all material to the panel members
- any decision to upgrade the paper panel to a hearing should the evidence determine that a hearing was appropriate

4.7 The Panel – Hearing Proceedings

The candidate will be given at least eight weeks' notice of the holding of a hearing of the panel. The documentation to be considered by the panel will be in an agreed form and finalised not less than five days before the date fixed for any hearing. Only in exceptional circumstances will the panel entertain the introduction of any additional evidence at the hearing itself.

If required, the panel will hear evidence from the candidate or their representative and may call for witnesses in order to illuminate the case. The panel will have the right to question the candidate or their representative or any witnesses.

5. Sanctions and penalties applied against candidates

5.1 The JCIE may, at its discretion, impose the following sanctions and penalties against candidates found guilty of malpractice:

Penalty 1 The candidate is issued with a formal warning about their conduct and the likely penalties if that conduct is repeated. The examination diet is counted as an attempt.

Penalty 2 The candidate's result for a whole examination part or component is withheld or invalidated. The examination diet is counted as an attempt.

Penalty 3 The candidate's results from all parts or components of the examination taken to date are withheld or invalidated. The examination diet is counted as an attempt.

Penalty 4 The candidate is barred from entering part of the examination for a set period. The examination diet is counted as an attempt.
(This penalty can be combined with any of the above.)

Penalty 5 The candidate is barred from entering any part of the examination again. The examination diet is counted as an attempt.
(This penalty would be combined with Penalty 3, above).

5.2 In any case where penalty 4 or 5 is applied, the JCIE will inform as appropriate, any or all of the four Surgical Royal Colleges, the Academy of Medical Royal Colleges (AoMRC) and the General Medical Council (GMC)/Irish Medical Council (IMC). In certain circumstances it may be appropriate to inform the police, or, if appropriate, a medical regulator in another country responsible for the candidate's medical registration.

6. Principles for applying sanctions and penalties

6.1 Sanctions and penalties are not to be applied to offences according to a fixed scale, but are to be chosen from a defined range, in order to reflect the particular circumstances of each case and any mitigating factors. The agreed level of sanction or penalty for a particular offence is set out in the Table of Offences and Range of Penalties (document OP33 which accompanies this Policy).

6.2 The JCIE reserves the right to apply penalties flexibly, outside of the defined ranges, if particular mitigating or aggravating circumstances are found to exist.

6.3 As no assumptions can be made on intended actions, penalties will be based only on the evidence presented.

6.4 All penalties must be justifiable and reasonable in their scale and consistent in their application.

6.5 Penalties may apply either to all parts or components of the examination in which the offence has been committed or may apply additionally to possible future examinations, depending upon the severity of the offence. (If evidence comes to light some considerable time after the offence, a penalty may still be applied to the examination in which the offence was committed and to later examinations.)

6.6 For reasons of consistency of approach in the application of penalties, the JCIE will not (subject to any mitigating factors or extenuating circumstances) consider the consequential effects of any particular penalty that might arise from the circumstances of the individual.

6.7 Penalties applied will remain on record until the candidate either passes the examination or becomes time-expired, subject to the prevailing UK legislation.

7. Communicating decisions

7.1 The candidate will be informed of any decision in writing as soon as possible after decisions are made and in all cases within 10 working days of the holding of a panel. It is the responsibility of the JCIE Head of Operations to communicate the decision to the individuals concerned, and to give warnings in cases where this is indicated.

8. Appeals

- 8.1 If a candidate wishes to appeal against a misconduct ruling against them, they should contact the JCIE Head of Operations within 10 working days on receipt of notification of the sanction against them. The candidate may provide additional evidence at this stage. The JCIE Head of Operations will pass on the details of the appeal to the JCIE Chair, who will determine whether sufficient evidence exists for further consideration by a JCIE Misconduct Appeal Panel.
- 8.2 If the JCIE Chair considers that sufficient evidence does not exist for consideration by a JCIE Misconduct Appeal Panel, the JCIE Head of Operations will notify the candidate of this with reasons and confirm that the appeal procedure is at an end. The decision made by the JCIE Chair will be final.
- 8.3 If the JCIE Chair refers the appeal to a JCIE Misconduct Appeal Panel, the appeal will be considered by a panel appointed by the JCIE Chair that may be composed as set out below. The panel members will be experienced in examinations and will not include anyone who has previously been involved with the case.
- Panel Chair – JCIE Chair or JCIE Internal Quality Assurance Committee Chair if the JCIE Chair has previously been involved in the case
 - Two examiners from the JCIE not previously involved with the subject of the appeal
 - Educational adviser (optional)
 - Legal adviser (optional)
 - Appeals Panel Secretary (normally JCIE Manager) to minute the meeting but not to participate in the decision.
- 8.4 The decision from the Appeal process is final and further Appeals will not be accepted for investigation.
- 8.5 If the appeal is upheld by the Panel, the penalty is annulled and the examination result is released.

9. Costs

- 9.1 The JCIE will not meet any costs incurred by the candidate in attending either a panel meeting or an appeal meeting, nor for costs of any accompanying advisors.