

## **Policy P.3.2**

### **Professional Conduct Committee**

#### **Purpose**

The Act enables the Board to appoint a professional conduct committee (PCC) to investigate a complaint received by the Board alleging that the practice or conduct of a medical laboratory scientist or a medical laboratory technician may pose a risk of harm or serious harm to the public.

#### **Policy**

1. The Board does not have a standing Professional Conduct Committee (PCC). Rather, it will appoint a PCC in relation to a particular case or cases of a particular class.
1. The Board will decide at its own discretion whether or not to refer a complaint referred by the Health and Disability Commissioner to a PCC.
2. The Board will refer all notifications that a medical laboratory scientist or technician has been convicted in a New Zealand Court of an offence punishable by imprisonment for a term of 3 months or longer or any other offence as per section 67 (b) of the Act, to a PCC.
3. The Board will enable the PCC to regulate its own procedures.
4. The PCC will adopt and follow procedures that will ensure the medical laboratory scientist or technician, who is the subject of the reference, the Board, and any complainant, are kept informed of progress of the review.

#### **Procedures**

##### **Notification to the Practitioner and the Complainant**

Reference: Section 74

1. Prior to the appointment of a PCC, the Chief Executive/ Registrar will give the practitioner concerned details of the matter to be referred to the Professional Conduct Committee (PCC), including a copy of the complaint letter.
2. Both the practitioner and, in the case there is a complainant, will be given an opportunity to object to the composition of the PCC.

##### **Appointment of a Professional Conduct Committee (PCC)**

Reference: Sections 71 and 119

1. The Complaints Committee will appoint a PCC consisting of 2 health practitioners who are registered with the Board and 1 layperson.

2. The Complaints Committee will appoint one member of each PCC to preside as Convener of the PCC.
3. The Complaints Committee will consider any request from the practitioner concerned that a change be made to the membership of the PCC.
4. Members of the PCC are excluded from criminal or civil liability for this work as long as they act in good faith and with care.

### **Confidentiality**

1. Members of a PCC will not disclose any information about an identifiable individual obtained from examination of a practitioner's clinical records, other than for the purpose of:
  - 1.1 Reporting to the Board about the practitioner's conduct; or
  - 1.2 Any criminal investigation or proceedings taken against the practitioner; or
  - 1.3 Making information available to the person to whom the information relates
2. PCC members will be required to sign a confidentiality agreement in which they undertake not to reveal or release any personal or health information obtained about the practitioner under review or his/her clients except as required to do so during the course of the professional conduct review. [A Confidentiality Agreement template is provided in Section Five: Forms and Templates: FT.3.1.3.](#)

### **Adherence to the Principle of Natural Justice**

Reference: Section 72 (3)

1. As a decision-making body the PCC is required by the Act to act in good faith and fairly listen to both sides.
2. Natural justice means that:
  - 2.1 The parties will be given adequate time and opportunity to be heard; and
  - 2.2 The PCC will be unbiased and disinterested in the outcome
3. In accord with 2.1 and 2.2, the PCC will:
  - 3.1 Listen to both sides; and
  - 3.2 Act promptly, but still allow each party reasonable time; and
  - 3.3 Exercise its powers fairly and independently but be firm; and
  - 3.4 Avoid bias, or any appearance of bias

### **Layperson Member of the PCC**

1. The layperson is a critical member of the PCC team, providing an independent check and a non-health professional perspective to the work of the PCC. It is of note that the layperson is a representative consumer not a consumer representative.
2. The professional members of the PCC will have opinions about practice issues and are expected to discuss these freely with the layperson.
3. The layperson will be able to present their own or other non-health professional perspective on the matter(s) before the PCC.

### **Convener of the PCC**

1. Maintains communications with the Board through the CEO/Registrar.
2. The PCC Convener is responsible for ensuring the team undertakes its responsibilities of the Act in a fair and efficient manner, and that its work is completed as soon as practicable.
3. The PCC Convener will take responsibility for the following specific activities:
  - 3.1 Convene an initial meeting (either face-to-face or teleconference) of the PCC within 2 weeks of the membership being confirmed by the CEO/Registrar.
  - 3.2 The meeting will be of sufficient duration to enable:
    - 3.2.1 Team building
    - 3.2.2 A thorough review of this policy
    - 3.2.3 Preliminary discussion on the matter before the PCC
    - 3.2.4 Development of an “investigation plan” that provides a framework of how the PCC will approach its task (including proposed tasks and timeframes for each)
    - 3.2.5 Consideration of the required outcome
    - 3.2.6 Consideration of the appointment of the legal advisor and investigator on behalf of the PCC
  - 3.3 Send a copy of the “investigation plan” to the CEO/Registrar and maintain liaison with the latter throughout the duration of the PCC.
4. The PCC Convener will undertake the following responsibilities during the implementation of the Investigation Plan:
  - 4.1 All formal correspondence will be on PCC letterhead. The stationery provided for this will be on Board letterhead, featuring the PCC convener’s return address.

- 4.2 All correspondence is to be marked "Private and Confidential" and sent using tracked courier mail.
  - 4.3 It is recommended that all correspondence is checked by the legal advisor.
  - 4.4 Maintain a dairy/log (dated) of all activities related to the PCC work. For example, minutes of PCC meetings, notes of telephone conversations, and copies of letters sent.
  - 4.5 All queries are to be addressed to the CEO/Registrar or legal advisor.
  - 4.6 The PCC deliberations will adhere to the principles of natural justice, including keeping to fair and reasonable timeframes.
  - 4.7 It is desirable that the initial report be completed within 3 months.
  - 4.8 Regular liaison with the CEO/Registrar on the progress of the investigation of the complaint. Email or phone calls are recommended.
  - 4.9 Prepare a written monthly progress report and send to the CEO/Registrar.
  - 4.10 Draft the PCC report and send the draft to the other PCC members for comment and approval.
  - 4.11 Send the draft report to the legal advisor.
  - 4.12 No final report will be signed off until the legal advisor has had an opportunity to comment and provide any final advice to the completion of the final report. This process may involve more than one draft being provided to the legal advisor.
  - 4.13 If necessary arrange for a final de-briefing meeting of the PCC to discuss any feedback that the Convener should provide to the CEO/Registrar to improve this policy.
5. Should the PCC determine that a charge be brought against the practitioner the PCC Convener will provide the lawyer prosecuting the charge with a complete set of all the PCC's documentation. One set is to be retained by the PCC Convener for reference.
  6. In the case of all other determinations by the PCC, all PCC documentation is to be returned to the CEO/Registrar.
  7. It is preferable that all documentation is assembled in chronological order.
  8. Should the PCC be unable to continue its investigation for reasons such as competing workloads of the members, family problems, or the ill health of a member, the CEO/Registrar is to be advised. It is possible to discharge, alter, or reconstitute a PCC.

## **The CEO/Registrar**

1. Notifies the practitioner of the matter to be referred to a PCC.
2. Provides the PCC Convener with all necessary information and administrative materials including:
  - 2.1 Details of the complaint; and
  - 2.2 A copy of the Board's Code of Competencies and Standards; and
  - 2.3 A copy of the Privacy Act; and
  - 2.4 A copy of the Code of Health and Disability Services Consumers Rights
  - 2.5 Supply of stationery, courier bags, and pre-paid envelopes
3. Provide each PCC member with a supply of claim forms and IR 330 tax forms for payment of fees and expenses incurred during the proceedings of the investigation
4. Maintains communication with the PCC through the PCC Convener.
5. Keeps the Complaints Committee and the Board fully informed of the progress of the PCC and alerts them to any emerging issues of concern.
6. Informs the practitioner concerned and any complainant about the progress being made.
7. Sends a copy of each progress report received from the PCC to the Complaints Committee.
8. Notifies any investigator engaged by the PCC in writing of the requirements of the PCC.
9. Assists the PCC to set up any meeting for the hearing of oral evidence.
10. Consults with the PCC Convener and arranges for the appointment of a Mediator if required, and agrees the fees for such an appointment with the Mediator concerned.
11. Manages the receipt and payment of all costs associated with the PCC.

## **Legal Advisor to the PCC**

Reference: Section 73 (1)

1. The PCC will appoint a legal advisor approved by the Board to advise the PCC on matters of law, procedures, and evidence.
2. Any issues a PCC may have regarding the performance of the legal advisor are to be referred to the CEO/Registrar.

## **Appointment of an Investigator**

Reference: Section 73 (2)

1. The PCC may engage the services of an investigator to collect information and to investigate complaints. Appointing an investigator may be the most efficient way for a matter to be dealt with.
2. The PCC must have a sound rationale for wanting to appoint an investigator and must in the first instance raise this matter with the CEO/Registrar as there will be a number of associated issues to be considered (such as fees, timeframe, terms of reference, and letter of appointment).
3. The CEO/Registrar will write to the investigator setting out the requirements of the PCC.
4. Any person appointed as an investigator must not be present during the deliberations of the PCC.

## **Evidence**

Reference: Section 76

1. The PCC may receive as evidence any statement, document, information, or matter that, in its opinion, may assist it deal effectively with the subject of its investigation whether or not such evidence would be admissible in a court of law.
2. The cornerstone for the PCC will always be relevance.
3. Evidence may be direct or hearsay. Hearsay evidence will not be weighted as much as direct evidence and if possible should be in writing and the source obtained.
4. While evidence may be given “in confidence” the PCC will consider a way to inform the practitioner concerned.
5. The PCC may receive written statements and submissions and hear oral evidence from any or all of the following persons:
  - 5.1 The practitioner who is the subject of the PCC investigation
  - 5.2 Any employer of the practitioner
  - 5.3 Any person in association with whom the practitioner practices
  - 5.4 The complainant, if the matter referred to the PCC is a complaint
  - 5.5 Any clinical or technical expert
6. The PCC must give the practitioner who is the subject of its investigation a reasonable opportunity to present evidence on each matter, including any further matter that is referred to the PCC under section 68 of the Act and forms part of the investigation.

7. The practitioner will be informed of his/her right to have a support person present at all hearings with the PCC.
8. The complainant will be informed of their right to a support person and the PCC will exercise discretion as to whether the support person will be allowed to be heard.
9. The PCC may require that any evidence it receives is supported by a statutory declaration in the manner provided for by Section 9 of the oaths and declarations Act 1957. Refer to Section 76 (5 and 6) of the Act.
10. A decision to hear oral evidence will be discussed with the legal advisor and the CEO/Registrar. The latter will assist in setting up such a hearing. Oral evidence should be taped.

### **Notification to Receive Information and Documentation**

Reference: Section 77

1. The PCC may notify any person in writing of a requirement to provide the PCC with papers, documents, records, or objects.
2. The PCC must agree that such evidence is necessary on reasonable grounds so as to carry out its investigation. This includes verifying or refuting information obtained from another source.
3. Such notifications will be at no cost to the PCC.
4. Compliance with such notifications will be required within 10 working days of it being received.
5. Notification cannot be applied to any document that would be privileged in a court of law or if there would be a breach of an obligation to secrecy or non-disclosure (other than the Official Information Act 1982 or the Privacy Act 1993).

### **Recommendation to Suspend Practitioner's Annual Practising Certificate**

Reference: Section 79

1. If at any time during the course of its investigation the PCC has reason to believe that the practitioner's practice poses a **serious risk of harm to the public** the PCC must notify the Board (through the CEO/Registrar), including reasons for that belief and may recommend that suspension of the person's annual practising certificate.

### **Recommendations and Determinations of the PCC**

Reference: Section 80

1. Within 14 days after completing its investigation the PCC will make:
  - 1.1 One or more recommendations; or
  - 1.2 One of the determinations as specified below; or

- 1.3 Both of the above
2. Any of the following recommendations may be followed up by the Board at its own discretion:
  - 2.1 The Board reviews the competence of the practitioner to practice the profession of medical laboratory science;
  - 2.2 The Board reviews the fitness of the practitioner to practice the profession of medical laboratory science;
  - 2.3 The Board reviews the practitioner's scope of practice;
  - 2.4 The Board refers the subject matter of the investigation to the police;
  - 2.5 The Board counsels the practitioner.
3. Any of the following determinations made by the PCC must be followed up by the Board:
  - 3.1 No further steps are taken under the Act in relation to the subject matter of the investigation;
  - 3.2 A charge is brought against the practitioner before the Health Practitioners Disciplinary Tribunal;
  - 3.3 In the case of a complaint, the complaint be submitted to conciliation
4. Before making any such recommendations/determinations to the Board, the PCC will have given both the practitioner concerned and any complainant, reasonable opportunity to make written submissions and be heard on the matter under investigation, whether personally or by a representative.
  - 4.1 The PCC will notify the practitioner and complainant in writing of the latest date by which the PCC will receive written submissions; and
  - 4.2 The date on which the PCC will hear persons who are entitled to be heard and wish to be heard.
5. The PCC will give written notice of any recommendations or determination in respect of the practitioner and the reason for it to:
  - 5.1 The CEO/Registrar; and
  - 5.2 The practitioner; and
  - 5.3 The complainant (when relevant)

## **Laying a Charge Against the Practitioner**

Reference: Sections 81, 91

1. Should the PCC decide to lay a charge before the Health Practitioners Disciplinary Tribunal (the Tribunal), it will formulate an appropriate Notice of Charge.
2. The CEO/Registrar will advise the PCC on lawyers available to assist the PCC with this.
3. The appointed lawyer will draft the charges that will then be considered by the PCC.
4. The final copy of the Notice of Charge must be approved by the appointed lawyer before it is sent out.
5. The CEO/Registrar will contact the Tribunal to confirm a date for the hearing.
6. Every charge laid will include a statement to the effect that the PCC has reason to believe that a ground exists entitling the Tribunal to exercise its powers.
7. A copy of the Notice of Charge will be given to:
  - 7.1 The practitioner; and
  - 7.2 The Board; and
  - 7.3 The complainant (if relevant)
  - 7.4 The Chair of the Tribunal
8. The Notice of Charge will notify the practitioner that:
  - 8.1 Grounds exist for a Tribunal hearing of a charge;
  - 8.2 The substance of the grounds of the charge;
  - 8.3 The particulars of the charge;
  - 8.4 The date on which the Tribunal intends to hear the matter.
9. The lawyer appointed to formulate the Notice of Charge for the PCC will prosecute the charge before the tribunal.

## **Appeal Against a Finding or Decision of the Tribunal**

Reference: Section 106 (3)

1. A PCC who has laid a charge against a practitioner may appeal to the High Court against the finding or decision or order of the Tribunal that relates to the charge.
2. The PCC will consider the public interest factor in any decision to appeal.

3. Consultation with the Board and the prosecuting lawyer will occur prior to any such decision being made.

### **Settlement of Complaint by Conciliation**

Reference: Sections 82; 87

1. When a decision is made to submit a complaint to conciliation the PCC will appoint a Mediator who will assist the practitioner and the complainant concerned to resolve the complaint by agreement.
2. The CEO/Registrar will assist the PCC to organise the appointment of a Mediator.
3. The Mediator will be a member of the Arbitrators and Mediators Institute of New Zealand and will be one of a number of mediators who specialise in health mediation.
4. Fees for the services of the Mediator will be discussed between the CEO/Registrar and the Mediator concerned.
5. The Mediator's role will be to listen to both sides of the complaint and use the conciliation process to help resolve the issues of concern to both parties.
6. The Mediator will contact the PCC Convener to discuss:
  - 6.1 The background to the complaint (brief outline);
  - 6.2 What the PCC expects to be achieved through conciliation;
  - 6.3 What the parties agree on (if anything);
  - 6.4 What needs to be achieved to resolve the matter by conciliation;
  - 6.5 Timeframes;
  - 6.6 What the Mediator needs to report back to the PCC
7. If the PCC agrees the complaint has been successfully resolved it will, within 14 working days of the agreement being reached, inform the Board in writing.
8. If the PCC agrees that the complaint has not been successfully resolved it will promptly decide whether to:
  - 8.1 Lay a charge against the practitioner; or
  - 8.2 Make one or recommendations as per Recommendations and Determinations of the PCC 2.1 to 2.5; or
  - 8.3 Take no further steps in relation to the complaint

9. A decision to lay a charge against the practitioner as per 8.1 will only be made after the PCC has sought and considered legal advice.

### **Costs**

1. While there is no pre-set budget for the work of a PCC, each PCC is expected to be economical in its handling of the matter before it.
2. The PCC is responsible for the expenditure incurred while investigating a complaint.
3. The Board will pay the reasonable fee and expense claims of PCC members.
4. The following fees will be paid to PCC members:
  - a) PCC Convener will be paid at a rate of \$xxx per hour
  - b) PCC members will be paid at a rate of \$xxx per hour
  - c) Withholding tax at a rate of xxx% will be deducted from fee claims before payment
  - d) Alternatively, fees and expenses may be claimed by the PCC member submitting a GST invoice.
  - e) Claims for expenses related to any PCC work must be accompanied by original receipts for each particular expense
5. Claims for fees and expenses will be completed on the official Medical Sciences Secretariat claim form and will be accompanied by a completed IR 330 for the current tax year, and a bank deposit slip (to allow the Board to direct-credit each payment into the PCC member's bank account).
6. A PCC that has finished their work in the first quarter of the year (i.e. January-March) will need to ensure that all fees and expenses claims are lodged with the Board by no later than 28<sup>th</sup> March. This is due to the Board's financial year ending on 31<sup>st</sup> March.
7. Payment of fees and expenses claims will be made on the 20<sup>th</sup> of the month following receipt of the claim form.