



**MEDICAL SCIENCES COUNCIL  
OF NEW ZEALAND**

TE KAUNIHERA PŪTAIAO HAUORA O AOTEAROA

# POLICY AND GUIDELINES: CRIMINAL HISTORY

MAY 2019

<b>Policy Title</b>	
<b>Reference Number</b>	2019-May-V1-MSC Criminal History
<b>Scope</b>	This policy applies to all practitioners registered with, or seeking registration with, the Medical Sciences Council

<b>Associated Policy Documents</b>	
<b>Document Title</b>	<b>Reference Number</b>
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## Policy Overview

The Medical Sciences Council (the Council) has a responsibility under the Health Practitioners Competence Assurance Act (the Act) to ensure practitioners seeking registration or recertification are fit to practise. Fitness to practise includes consideration of any criminal convictions the practitioner may have incurred.

This policy sets out the factors the Council will consider in deciding whether a practitioner's criminal history is relevant to the practice of their profession under the Act.

## Legislative Context

Section 16 (c) of the Act states that:

*No applicant for registration may be registered as a health practitioner of a health profession if he or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer, and he or she does not satisfy the responsible authority that, having regard to all the circumstances, including the time that has elapsed since the conviction, the offence does not reflect adversely on his or her fitness to practise as a health practitioner of that profession*

Under section 67(a) of the Act:

*A registrar of a court in New Zealand who knows that a person convicted in the court is a health practitioner must send a notice of the conviction to the responsible authority if the conviction is for an offence punishable by imprisonment for a term of 3 months or longer*

Furthermore, under section 68(2):

*When a notice of conviction is given under section 67 to the authority, the authority must, as soon as reasonably practicable after receiving the notice, refer the notice to a professional conduct committee*

## Statutory Declarations

Each year a registered practitioner applies to renew their practising certificate, they are required to make a statutory declaration as to whether they have been convicted of any criminal offences, or are subject to pending criminal charges.

In the case of being notified a registered health practitioner has been convicted of a criminal offence which is punishable by a term of imprisonment of 3-months or longer, the Council will refer the matter to a professional conduct committee (PCC). This applies even if a term of imprisonment was not actually imposed.

In the case of a registered health practitioner declaring that they are subject to a pending criminal charge, the Council will need to consider if that information raises any concerns about the appropriateness of the conduct or the safety of the practice of the practitioner and may refer those concerns to a PCC. The Council may consider ordering an interim suspension of the practitioner's practising certificate pending prosecution or investigation (section 69).

## Criminal History Considerations

While every case will need to be decided on an individual basis, there are a number of factors that provide the basis for the Council's consideration.

### Nature and Gravity of the Offence

The more serious the conviction and the greater its relevance to health practice, the more weight the Council will assign to it.

### Timing of the Offence

The Council will consider the period of time since the health practitioner committed the offence and will generally place more weight on more recent convictions.

### Sentence Imposed

The weight the Council will place on the sentence will generally increase as the significance of the sentence increases, including any custodial period imposed. The Council will also consider any mitigating factors raised in sentencing, where available, including rehabilitation.

### Ages of Health Practitioner and any Victim

The Council may place less weight on offences committed when the applicant was younger, and particularly under the age of 18 years. The Council may place more weight on offences involving victims under 18-years of age or other vulnerable persons.

### Subsequent Decriminalisation

The Council will generally place less or no weight on offences that have been decriminalised since the health practitioner committed the offence.

### Subsequent Behaviour of the Health Practitioner

Indications that the offence was an aberration and evidence of good conduct or rehabilitation since the committing of the offence, will tend to be a mitigating factor. However, indications that the offence is part of a pattern of behaviour will tend to have the opposite effect.

### Likelihood of Future Risk

The Council will place significant weight on the likelihood of future risk to a patient by the health practitioner.

### Information Provided by the Health Practitioner

Any information provided by the health practitioner (e.g. an explanation or mitigating factors) will be reviewed by the Council and taken into account when considering the health practitioner's criminal history.

## Reference

*Australian Health Practitioner Regulation Agency. 2015. Registration Standard: Criminal History*