



MEDICAL SCIENCES COUNCIL
OF NEW ZEALAND

TE KAUNIHERA PŪTAIAO HAUORA O AOTEAROA

POLICY AND GUIDELINES: NOTIFICATIONS

JUNE 2020

| Policy Title | Notifications |
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| Reference Number | 2020-Jun-V2-MSC Notifications |
| Scope | This policy applies to any notification received by the Medical Sciences Council in respect of a registered medical laboratory science practitioner or anaesthetic technology practitioner. |

Associated Policy Documents

| Revision Schedule | | | |
|-------------------|--------------|--------------------------|-------------|
| Version Number | Version Date | Approved By | Next Review |
| One | October 2018 | Medical Sciences Council | 2020 |
| Two | June 2020 | Medical Sciences Council | 2020 |
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Policy Overview

The Medical Sciences Council's (the Council) functions, powers and responsibilities as regulators are specified in the Health Practitioners Competence Assurance Act 2003 (the Act).

Public safety is the absolute priority in all cases. The Council decides whether an issue of competence, health or conduct exists and takes appropriate action, including determining whether the practitioner poses a risk of serious harm to the public. The Council have the power to restrict a practitioner's scope of practice or suspend their registration on an interim basis, during an investigation.

This document sets out the policy and guidelines for the investigation process for complaints or concerns relating to competence, health and conduct made under the Act.

Reference Material

This policy includes an overview of the relevant sections of the Act. For completeness and accuracy, the policy must read alongside the relevant sections of the Act for specific detail.

Concerns and Complaints Categories

A notification comes in different forms:

- Self-declaration
- Written complaint from another health practitioner, employer, or a member of the public
- Notification from the Health and Disability Commissioner

Concerns and complaints fall into one of three categories:

| Category | Definition | Responsibilities |
|-------------------|---|---|
| Competence | Is the practitioner competent to practise | The Registrar makes the initial investigation and refers to the Professional Standards Committee who makes recommendations to the Council. |
| Health | Is the practitioner with a physical or mental health issue, fit to practise | The Registrar makes the initial investigation and refers to the Professional Standards Committee who makes recommendations to the Council. |
| Conduct | Is the practitioner's conduct appropriate | The Registrar makes the initial investigation, the Professional Standards Committee refers the case to the Council for investigation by a Professional Conduct Committee (PCC). The Council takes no further part of the investigations, while it is with the PSC. |

Receipt of Complaint

The Council's Professional Standards Committee (the Committee) has delegated authority to oversee the processes for all notifications. All notifications and subsequent reviews must be managed according to the relevant sections of the Act.

Complaints are to be made in writing to the Registrar and should contain enough information to enable the Registrar to decide what action, if any, should be taken about the complaint. If the complaint does not include sufficient details, the person making the complaint may be asked to provide further information.

Anonymous Complaints

Anonymous complaints will not be investigated unless further inquiry provides information that raises questions about a practitioner's conduct or safety to practise. The Act and the principles of natural justice require that the complainant participates in the process.

The Committee may refer a matter to a PCC for investigation without a complaint having been made if it has in its possession information that raises questions about the appropriateness of the practitioners conduct or safety to practise.

Initial Assessment

All notifications are submitted to the Committee for review, the Registrar will make an initial assessment and advises the Committee whether the matter is a health, conduct or competence issue.

An assessment of the notification and any other relevant information is undertaken, and the Committee decides what, if any, action to take. There are a number of options available including:

- review the practitioner's competence
- review the practitioner's fitness to practise due to any health condition
- refer the complaint for investigation by a PCC
- take no further action on the complaint.

Professional Standards Communications

The Registrar contacts the practitioner notifying them of the complaint, informs them of the process involved and continues to keep them up to date at all stages of the process.

All professional standards communications between the Registrar and Committee/Council members are managed through SharePoint.



Competence Notifications

If concerns are raised that a practitioner's practice may be below the required standard of competence, the Council must make enquiries into, and may review, the competence of the practitioner. There are several sections contained within the Act that must be referred to when considering and/or undertaking a competence review:

S.34: Notifications from other health professionals and mandatory notifications

| Purpose: | Procedural Guidelines: |
|--|---|
| Certain persons are to notify the Council if they have reason to believe that a practitioner may pose a risk of harm to the public by practising below the required standard of competence | <p>Any health professional must notify the Council if they believe a practitioner poses a risk of harm to the public by practising below the required standard of competence.</p> <p>The Health and Disability Commissioner (HDC) or the Director of Proceedings must notify the Council if they believe a practitioner poses a risk of harm to the public by practising below the required standard of competence.</p> <p>Employers must notify the Council when a practitioner has resigned or been dismissed for reasons relating to competence.</p> |

S.35: Notifying certain persons of risk of harm to the public

| Purpose: | Procedural Guidelines: |
|--|---|
| The Council must notify certain persons if it has reason to believe the practise of a practitioner may pose a risk of harm to the public | <p>If the Council believes the practitioner under review may pose a risk of harm to the public, they must notify the following people:</p> <ul style="list-style-type: none">• The Accident Compensation Corporation• The Director-General of Health• The Health and Disability Commissioner• The employer of the health practitioner <p>Notifications under section 35 are significant and should only be made after a preliminary investigation has been undertaken.</p> |

S.36: Review of a practitioner's competence

Purpose:

The circumstances within which the Council must make enquiries into and may review the competence of a practitioner

Procedural Guidelines:

The Council must make inquiries into and may review a practitioner's competence if it receives a notice from:

- A PCC recommendation so far as that relates to competence;
- Another health practitioner that a practitioner may pose a risk of harm to the public;
- The Health and Disability Commissioner or the Director of Proceedings that a practitioner may pose a risk of harm to the public;
- An employer relating to the dismissal or resignation of a practitioner for reasons relating to competence.

When the notification is made by another health practitioner or the Health and Disability Commissioner or the Director of Proceedings, the Council must inform the person from whom the notice was received whether it has decided to undertake a review of the practitioner's competence.

Competence Review Process

Competence reviews are designed to assist practitioners with improving their practice. They are based on a collegial and educative approach. Competence reviews are to be fair, constructive, supportive, and educative. Reviews may be general, focused or mixed depending on the terms of reference. The methods adopted will depend on the nature of the review to be undertaken.

S.37: Competence review

Purpose:

Matters to be observed by the Council in reviewing competence

Procedural Guidelines:

The Council is required to make inquiries into the competence of the practitioner before deciding whether their competence should be reviewed. A copy of the notification is sent to the practitioner to give them the opportunity to make a submission and submit any documentation they would like the Committee to consider to assist in making a decision as to whether the practitioner's competence should be reviewed.

Information may be sought from the person or organisation who made the notification, or other sources. It could include previous competence assessments, appraisals, professional development that has been completed and further detailed information about the competence issues identified in the notification.

The Committee will decide whether a competence review is required once the relevant information has been assessed.

Upon deciding a competence review is required, the Committee appoints a Competence Review Panel (the Panel) made up of a minimum of two members and a maximum of three.

S.38 & s.39: Orders concerning competence and Interim suspension

Purpose:

What the Council must do if a review reveals that a practitioner has failed to meet the required standard of competence

Procedural Guidelines:

After conducting a review, and the Council have reason to believe the practitioner fails to meet the required standard of competency, they must make one or more of the following orders:

- a. The practitioner undertakes a competence programme;
- b. A condition/conditions is included on their scope of practice;
- c. The practitioner completes an examination or assessment;
- d. The practitioner is counselled or assisted by one or more nominated persons.

If the health practitioner's competence has, or is to be reviewed and there are reasonable grounds for believing that the health practitioner poses a risk of serious harm to the public, the Council may order that:

- a. The practising certificate of the practitioner be suspended; or
- b. The health practitioner's scope of practice be altered—
 - i. By changing any health services that the practitioner is permitted to perform; or
 - ii. By including any condition or conditions that the Council considers appropriate.

Prior to making an order, the Council must advise the practitioner of the reasons why they are considering making the order and provide the practitioner with a reasonable opportunity to make a submission.

If an order is made following a review conducted on receipt of a notification made by another health practitioner or the Health and Disability Commissioner or the Director of Proceedings, the Council must inform the person from whom the notice was received of the order made.

S.40: Competence programmes

Purpose:

Practitioner required to undertake a competence programme

Procedural Guidelines:

In the event of the Council determining the practitioner under review must complete a competence programme, this will require the practitioner to do one or more of the following within a specified timeframe:

- a. Pass an examination or assessment, or both;
- b. Complete a period of practical training;
- c. Complete a period of practical experience;
- d. Undertake a course of instruction;
- e. Permit another health practitioner, as specified by the Council, to examine their clinical records;
- f. Undertake a period of supervised practice.

Competence Review Panel

Appointment of the Panel

Panel members are appointed by the Council under Schedule 3, Section 16 of the Act through the Committee. The power to carry out the review is delegated under Schedule 3, Section 17.

Criteria for Appointment

The criteria for selecting members of a Panel, includes:

- New Zealand registration and a current practising certificate in the relevant scope of practice
- five or more years of post-qualification experience in the relevant scope of practice
- a good reputation in the profession, with good interpersonal skills
- the ability to maintain confidentiality of information in the course of carrying out the review
- experience in evaluation of clinical practice and audit processes
- excellent verbal and written communication skills.

Information to be provided to the Panel

Once the Panel membership has been accepted by the practitioner, Panel members must be provided with:

- Written terms of reference
- A confidentiality agreement
- Copy of all information relating to the review
- A copy of the competency document for the relevant scope of practice
- A copy of the current relevant manual
- The daily/hourly fees rate paid to Panel members
- MSC Claim Form
- Teleconference details
- A tax form (the Council deducts withholding tax from all fee payments)
- The Act's provisions for exclusion of liability.

Exclusion of Liability s.119(3)

Panel members are subject to the Act throughout the duration of the competence review, and the Act provides exclusion from civil liability in respect of:

- Any act done or omitted in the course of carrying out the competence review
- Any words spoken or written in the course of carrying out the competence review
- Anything contained in any notice given under the Act.

Confidentiality s.44(1)

Panel members are 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 their patients except as required to do so during the course of the review.

The Panel is to be advised of the following confidentiality requirements:

- Where specific patients are referred to in the Panel's report to the Council, or discussed with the Council, the information is to be presented without identifying information.
- All records pertaining to the review are to be returned to the Council, including original and copies of records, notes and other documentation generated in the course of the review.
- Panel members are prohibited from disclosing any information about an identifiable individual obtained from examination of practitioner's clinical records, other than for one or more of the following purposes:
 - Making a report to the Council in relation to the practitioner's competence
 - Any criminal investigation or proceedings taken against the practitioner
 - Making the information available to the person to whom the information relates in any case where the Council directs the information be made available, or the person requests access to the information.

Role of the Panel Convener

The Convenor takes overall responsibility for:

- Ensuring the review is conducted in accordance with policy
- Liaising with the practitioner being reviewed and the Registrar
- Coordinating the writing of the report and ensuring the views expressed in the report represent the consensus of the Panel
- Signing the Panel's final report to the Council.

Health Notifications

If concerns are raised about a practitioner's ability to perform their professional activities because of a mental or physical condition the Council is compelled to make enquiries into that practitioner's ability to work. There are a number of sections contained within the Act that must be referred to when considering and/or undertaking a health review:

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| s.45: Notification of inability to perform required functions due to mental or physical condition | |
| Purpose: Making a notification of an inability to perform required functions due to a mental or physical condition | Procedural Guidelines: If a practitioner, employer or any other person believes they or another practitioner has a health issue (mental or physical condition) that impacts on their or the practitioner's ability to practise competently, these issues may be raised with the Council. The Committee may decide a medical assessment is required. |
| s.46: Power to seek medical advice | |
| Purpose: Council's power to seek medical advice relating to the health practitioner | Procedural Guidelines: The Registrar may seek appropriate medical advice to assist the formation of an opinion. |
| S.47: Duty of the Registrar | |
| Purpose: Duty of the Registrar to take all reasonable steps to have the notice considered by the authority as soon as possible | Procedural Guidelines: The Registrar must take all reasonable steps to complete the initial investigation and put the notice on SharePoint for consideration by the Committee as soon as reasonably practicable. |
| S.48: Interim suspension | |
| Purpose: Ability to suspend or include conditions in cases of suspected inability to perform the required functions due to a medical or physical condition | Procedural Guidelines: The Council may suspend the practitioner's practising certificate or include conditions in their scope of practice. If the Council decides to take any action, it will advise the practitioner in writing, including the reasons for its decision. An order can be imposed for no more than 20 working days from the date of receipt by the practitioner. The Council may extend the order by not more than a further 20 working days if an extension is necessary for any required examination or testing to be undertaken. An order ceases to have effect once the practitioner has completed the review or attained a pass in an examination or assessment. The Council is not required to notify the practitioner that they intend to make an order under this section. If the notification was received from a third party, the Registrar is required to notify the person from whom the notification was received of the order that has been made. |

S.49: Power to order a medical examination

| Purpose: The Council has power to order a medical examination to assess the practitioner | Procedural Guidelines: The Council may order the practitioner to undergo an examination or test by a medical practitioner at the expense of the Council. The Council must endeavour to consult with the practitioner about the assessor who is to conduct the examination or test. Following the examination, the medical practitioner is required to provide the Council with a report stating their professional opinion as to the existence of the alleged condition, the results of all tests carried out as part of the examination, and the extent to which they believe any condition found to exist affects the practitioner's ability to practise the functions of their profession safely and competently, and any recommendations for ongoing monitoring that may be required. Upon receipt, the Registrar must promptly send a copy of the report to the practitioner. |
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S.50: Restrictions may be imposed in case of inability to perform required functions

| Purpose: Requirements where imposing of restrictions in case of inability to perform required functions | Procedural Guidelines: The Council must consider the report (if any) and all the relevant circumstances of the case. The Council may order the practitioner's registration to be suspended or impose a condition upon their practice. All orders must be in writing, stating the reasons for those orders, and take effect from the day the order is given to the practitioner, or a later date as specified in the letter. If the notification was received from a third party, the Registrar is required to notify the person from whom the notification was received of the order that has been made. |
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S.51: Revocation of suspension or conditions

| Purpose: Requirements for revoking suspension or conditions | Procedural Guidelines: The Council can make an order revoking any suspension or condition imposed under sections 39, 48, 50, 67A or 69A if it is satisfied the practitioner is able to practise satisfactorily. The Council can vary a condition imposed under sections 39, 48, 50, 67A or 69A. The Council must inform the practitioner of the reasons why it may vary the condition and give the practitioner a reasonable opportunity to make a submission. The practitioner can request to have the condition or suspension lifted. All orders take effect immediately. |
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Conduct Notifications

If concerns are raised about a practitioner's conduct, the Council is compelled to review the allegation and undertake a risk assessment to determine if there is any risk of serious harm to the public. There are several sections contained within the Act that must be referred to when considering the notification and if to refer a practitioner to a PCC:

| s.64: Complaints about practitioners | |
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| Purpose: The Council must notify the HDC when a complaint alleges the practice or conduct of a practitioner has affected a health consumer. | Procedural Guidelines: The Registrar will act promptly to gather all relevant information and will forward the complaint to the HDC. |
| s.65: Response to complaints referred by Health and Disability Commissioner | |
| Purpose: The power to investigate complaints referred to the Council by the HDC | Procedural Guidelines: The Council will act promptly to decide what action should be taken. The Commissioner may refer complaints to the Council when the competence of a health practitioner, their fitness to practise or the appropriateness of their conduct may be in doubt. |
| s.66: Health and Disability Commissioner must notify authority of pending complaint | |
| Purpose: The HDC must notify the Council of any investigation concerning a registered practitioner | Procedural Guidelines: The Council cannot initiate an investigation until the HDC has completed their investigation. |

s.67 & s.67A: Notification of Convictions and action to be taken

| Purpose: | Procedural Guidelines: |
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| Notification of a conviction recorded against a registered practitioner and action to be taken by the Council on receipt | <p>The Registrar will gather all relevant information and notify the Committee.</p> <p>If the conviction is for an offence punishable by imprisonment or a fine of or exceeding \$1,000 or is an offence that the Council considers raises concerns about the appropriateness of the conduct or about the safety of the practice of the health practitioner, the Council must either:</p> <ol style="list-style-type: none">a. refer the notice of conviction to a PCC; orb. order the health practitioner to—<ol style="list-style-type: none">(i) undergo any specified medical examination and treatment; or(ii) undergo any specified psychological or psychiatric examination, counselling, or therapy; or(iii) attend any specified course of treatment or therapy for alcohol or drug abuse. <p>The Council may not make an order for the practitioner to undergo any form of examination, treatment, counselling, or therapy without the health practitioner's consent.</p> <p>Any order made by the Council must specify the date by which the examination, treatment, counselling, or therapy is to be conducted and the date by which the person who has examined, treated, counselled, or provided therapy to the health practitioner must report their findings to the Council.</p> <p>The Council must promptly arrange for a copy of the report to be sent to the practitioner.</p> <p>After considering a report, the Council may—</p> <ol style="list-style-type: none">a. take no further action in respect of the notice of conviction; orb. order that conditions be included in the health practitioner's scope of practice if the authority is satisfied that the practitioner is able to perform the functions required for the practice of his or her profession, but only if those conditions are observed; orc. refer the notice of conviction to a PCC. |

s.68: Referral of complaints and notices of conviction to professional conduct committees

| Purpose: | Procedural Guidelines: |
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| Complaints about a practitioner's practice or conduct not affecting a health consumer may be referred directly to a PCC. | <p>If the conviction is for an offence punishable by imprisonment or a fine of or exceeding \$1,000, the practitioner must be referred to a PCC as soon as practicable after receiving the notification.</p> <p>If the Council considers that information in its possession raises one or more questions about the appropriateness of the conduct or the safety of the practice of a health practitioner, it may refer the information and any or all of those questions to a PCC.</p> <p>If during the PCC's investigation, the Council thinks that a further matter concerning that practitioner should form part of the PCC's consideration, the Council may refer the further matter to the PCC.</p> |

s.69 & s.69A: Inclusion of conditions or interim suspension of practising certificate pending prosecution or investigation

Purpose:

Ability to suspend a practitioner undergoing an investigation if appropriateness of practitioner's conduct is in doubt or if there is risk of harm to the public

Procedural Guidelines:

If during its initial investigation, the Council has reason to believe that the practitioner's practice raises questions in regard to the appropriateness of the practitioners conduct or believe the practitioner poses a risk of serious harm to the public, the Council must take appropriate action.

This may include an interim suspension of the practitioners practising certificate or placing conditions on the practitioner's scope of practice pending prosecution or investigation.

The Council must provide the practitioner with a reasonable opportunity to make a submission on any order.

The Council must order the revocation of an order as soon as practicable after they are satisfied that:

- a. the appropriateness of the practitioner's professional conduct is no longer in doubt; or
- b. the health practitioners conduct does not pose a risk of serious harm to the public; or
- c. the criminal conviction on which the practitioner's suspension is based is disposed of otherwise than by his or her conviction; or
- d. if the criminal proceeding on which the practitioner's suspension is based results in his or her conviction, the Council is satisfied this does not require any disciplinary action; or
- e. the investigation on which the practitioner's suspension is based has been completed and the Council is satisfied that the practitioner will not be charged as a result of the investigation.

When revoking a suspension order made under section 69A, the Council may order that one or more conditions be included in the health practitioner's scope of practice.

s.70: No action to be taken while the matter under investigation by the Health and Disability Commissioner

Purpose:

The matter is to be investigated by the HDC

Procedural Guidelines:

The Council cannot take action while the Commissioner is considering it, however, if the complaint raises an issue of competence, a competence investigation can be commenced while the Commissioner is considering the matter of conduct.

s.71: Professional Conduct Committees

Purpose:

The Council must appoint the PCC.

Procedural Guidelines:

A PCC must consist of:

- Two health practitioners who are registered with the Council; and
- One layperson

The Council is to ensure no PCC member has declared a conflict of interest.

A PCC member must not act or continue to act if there is a conflict or risk of conflict between the interests of the member and the interests of the practitioner. PCC members must ensure the existence of a personal relationship with a third party does not compromise the discharge of duties as a PCC member.

Professional Conduct Committees

PCC's undertake a substantive investigation into a practitioner's alleged professional misconduct.

Following its investigation, a PCC can order that the practitioner appears before the Health Practitioners Disciplinary Tribunal (HPDT).

The Council is responsible for determining whether a notification is to be investigated by a PCC and the appointment of a PCC must be made by the Council (it cannot be delegated).

The Council's input into the PCC process ceases upon appointment of the PCC. The PCC takes full responsibility for the management of the investigation process and any subsequent referral to the HPDT.

There are a number of sections contained within the Act that must be referred to by the PCC while conducting its investigation.

s.72 to s.83

PCC relevant sections pertaining to the process of an investigation into a practitioner's conduct.

While there is a PCC investigation in progress, the Council will not be involved until it is required.

Suspension, Recommendations and Determinations

Suspension of Practitioner's Practising Certificate s.79

If the PCC at any time in the course of its investigation has reason to believe that the practitioner's practice poses a risk of serious harm to the public, the PCC Convener must immediately notify the Council of that belief and the reasons for it.

The PCC may recommend the Council takes appropriate action if the PCC considers suspension of the practitioner's APC is justified.

The Registrar will request an urgent meeting of the Council to make a resolution concerning the recommendations of the PCC to suspend the practitioner.

Recommendations and Determinations s.80

The PCC has 14 working days from completing its investigation to make a recommendation or determination.

Upon the receipt of the PCC report, the Registrar will provide the Committee with a copy. The PCC report will be included in the following scheduled Council meeting.

| Recommendations | |
|--|--|
| <ul style="list-style-type: none">• The Council reviews the competence of the practitioner to practise his or her profession• The Council reviews the fitness of the practitioner to practise his or her profession• The Council reviews the practitioner's scope of practice• The Council refers the subject matter of the investigation to the police• The Council counsels the practitioner | PCC recommendations are to be reported for Council deliberation and the Council may sanction those recommendations. |
| Determinations | |
| <ul style="list-style-type: none">• No further action• A charge be brought before the HPDT• Complaint be submitted to conciliation | The Council has no jurisdiction to overturn any determinations by the PCC. |

Appeals

Appeal Against the Decision of a PCC

The decision of a PCC is not subject to appeal by the Council. The Council is obliged to accept the decision of the PCC.

Judicial Review

A decision of a PCC may be subject to a review by the High Court. A judicial review considers the process the PCC used to arrive at the decision to ensure the decision itself is within the confines of the Act and is not a clearly unreasonable decision. The focus of a judicial review is whether a fair and reasonable process resulted in a fair and reasonable outcome.

A judicial review may review allegations that the PCC has:

- Acted outside the scope of its power
- Been motivated by an improper purpose
- Taken account of irrelevant matters
- Failed to take account of relevant matter
- Been influenced by wrong facts
- Used a pre-determined policy
- Acted under direction of a third party
- Not adhered to the principles of natural justice
- Not acted fairly
- Been biased
- Acted unreasonably

A PCC can avoid the risk of judicial review by ensuring it provides clear and robust reasons for any recommendations or determination.