

# POLICY ON ASSESSMENT OF FITNESS TO PRACTISE OF OPTOMETRISTS AND DISPENSING OPTICIANS

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## Background

The principal purpose of the Health Practitioners Competence Assurance Act 2003 (the Act) is to protect public health and safety by ensuring health practitioners are competent and fit to practise. The Optometrists and Dispensing Opticians Board (the Board) is charged with ensuring that optometrists and dispensing opticians (practitioners) are competent and fit to practise when they apply for registration and on an ongoing basis.

The Act requires practitioners and specific other persons to notify the Board when they have reason to believe that a practitioner may be unable to perform the functions required for the practice of their profession due to a physical or mental condition.

Conditions that may affect a practitioner's fitness to practise include, but are not limited to:

- physical injury
- short or long term illness
- infectious disease
- anxiety, stress and/or depression, including post-natal depression
- disorders such as bipolar disorder, personality disorders, schizophrenia and psychosis, or any other mental illness
- drug, alcohol or other addiction
- impairment of sensory functions
- declining competence due to loss of motor skills or the early stages of dementia
- other illness and injuries.

Some health problems may manifest themselves through unprofessional behaviour by the practitioner in question. Unprofessional behaviour includes but is not limited to:

- bullying or intimidation
- sexual harassment
- racial, ethnic or sexist slurs
- loud, rude comments
- intimidation, abusive or offensive language
- persistent lateness in responding to work calls
- throwing instruments
- offensive sarcasm
- threats of violence, retribution or vexatious litigation
- demands for special treatment
- passive aggression
- unwillingness to discuss issues with dependent colleagues in a cordial and respectful manner.

Where a colleague's behaviour suddenly changes, practitioners should consider whether this may be due to a health issue warranting notification to the Board.

Criminal behaviour notified to the Board may also be an indicator of an underlying health problem.

## **Purpose**

Although the Board's main purpose is public safety, it aims to assist and support practitioners dealing with health conditions. The Board recognises that with treatment and/or limitations on practice most practitioners should be able to remain in work safely.

This process is designed to encourage practitioners to notify the Board if they have a mental or physical condition that may mean they are unable to perform the functions required to practise their profession, and to separate health issues from those of discipline. The Board's approach is non-judgemental with a focus on rehabilitation. Practitioners are also welcome to contact a support person to assist them throughout the process.

Where a practitioner does not self notify the Board of their condition the process aims to encourage the practitioner's peers to meet their legal obligations by making a notification.

## **Health Committee**

The Board has established a Health Committee to consider notifications about practitioners' health. The Health Committee has delegated authority from the Board to manage health impaired practitioners.

The Health Committee will be convened by a standing lay member. Two professional members of the Board will be co-opted to the committee as appropriate in each individual case. If the fitness of an optometrist were in question, two optometrists would usually be co-opted to consider the matter. If the fitness of a dispensing optician were in question, two dispensing optician members would usually be co-opted.

Upon receipt of a notification/concern the Registrar and Health Committee convenor will discuss the practitioner's situation and agree which Board members to co-opt, based on an assessment of likelihood of conflict of interest, including the practitioner's demographic information.

The Health Committee membership is small in order to protect the individual practitioner's privacy with regard to health issues as much as possible, however the Committee is answerable to the Board and may decide in some circumstances to escalate an individual matter to the full Board. As the Board has overall responsibility for decisions it delegates, this document refers to the Board as the decision-maker, although in almost all cases the Health Committee will manage the process.

## **Notifications**

### **Mandatory notifications**

It is compulsory for certain people to notify the Board if they believe a practitioner (or student of either profession) is unable to perform the functions required for the practice of their profession because of a mental or physical condition (s 45(1), (2), (4) and (5)).

The following people must notify the Board in writing of such concerns:

- a person in charge of an organisation that provides health services (s 45(1)(a))

- a health practitioner (s 45(1)(b))
- an employer of health practitioners (s 45(1)(c))
- a medical officer of health (s 45(1)(d))
- a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training that is a prescribed qualification for an optometry or optical dispensing scope of practice (s 45(4)).

### **Notifications from any other person**

Any other person who believes a practitioner is unable to perform their required functions because of a mental or physical condition may notify the Board of that belief (s 45(3)).

### **Self notification**

The Board expects individual practitioners to self notify any health issues that may affect their own ability to practise. This includes notification through the process of applying for an annual practising certificate (APC) and applying to renew an APC. The Board is then able to work with the practitioner to manage their condition whilst ensuring public safety.

### **Notification by others**

Where a practitioner does not self notify, other people may have a mandatory obligation to do so. In most cases this will be another practitioner, often one who works with the practitioner in question. A fellow practitioner is not only required to make the notification, but is also encouraged to do so for the protection of patient safety, the practitioner in question and the reputation of the profession as a whole.

The Board expects the person making the notification to allow him or herself to be identified to the practitioner in question. In certain rare circumstances the Board may withhold the name of the person making the notification if it could be withheld under the Privacy Act 1993 (s 154(a)).

Any person who makes a notification about a practitioner cannot be the subject of civil or disciplinary proceedings, unless they have acted in bad faith (s 45(6)).

### **Notification from Board appointed committees**

#### *Professional Conduct Committee (PCC)*

If in the course of investigating a matter under sections 72-78 of the Act a PCC believes the practitioner may have a health condition, the PCC may recommend that the practitioner is referred to the Board's Health Committee. However, if at any time in the course of investigating a matter about a health practitioner, a PCC has reason to believe that the practitioner's practice poses a risk of serious harm to the public, the PCC must immediately notify the Board of that belief and the reasons for it (s 79(a)).

#### *Competence Review Committee (PAC)*

If, during a competence review under section 36 of the Act, a CRC has reason to believe that the practitioner's health is affecting their ability to practise, it should make a notification to the Board.

If in the course of assessing information relevant to a practitioner's competence, the Board's PSC forms a belief that the practitioner may have a health condition, it should make a notification to the Health Committee.

### **Grounds for making a notification**

Any person making a notification must have reason to believe that the practitioner (or student of either profession) to whom the notification relates is unable to perform the functions required for optometry or optical dispensing because of a mental or physical condition (s 45(2), (3) and (5)). The person making the notification may seek whatever medical advice he or she considers appropriate to assist in forming that opinion (s 46(1)).

### **Notification requirements**

The notification must be in writing to the Registrar (s 45(2), (3) and (5)). If the person making the notification has a mandatory obligation to make a notification, the notification must also include details of all the circumstances giving rise to the notification (s 45(2) and (5)).

If the person making the notification has sought medical advice to assist them in forming their opinion, the notification must include any medical advice obtained (s 46(2)).

### **Assessment of notification**

On receipt of the notification the Registrar will usually contact the practitioner to advise them of the notification and the grounds for it. The Registrar will provide the practitioner with a copy or summary of the notification.

The Registrar will take all reasonable steps to have the notice considered by the Board as soon as reasonably practicable (s 47). The notification and any comments made by the practitioner in response will then be assessed by the Board and a decision will be made either to take no further action or to further assess the condition. The practitioner will be advised of that decision.

### **Notification of a transmissible major viral infection (TMVI)**

If the Board is notified of a TMVI, it will adopt the HRANZ joint guidelines for registered healthcare workers on transmissible major viral infections. This may include referral to the Medical Council of New Zealand's TMVI panel for consideration of the practitioner's serological status.

## **Interim action pending full assessment of the health condition**

### **Suspected inability to perform required functions**

If, after receiving a health notification, the Board suspects that the practitioner is unable to perform required functions due to a mental or physical condition, it may make one of the following interim orders pending a full assessment of the condition:

- suspending the practitioner's practising certificate (s 48(2)(a))
- altering the practitioner's scope of practice (s 48(2)(b)).

The Board may make interim orders altering the practitioner's scope of practice where it considers that the practitioner can still safely remain in practice but only if subject to certain requirements and limitations on their scope of practice.

The Board may alter the practitioner's scope of practice by either of the following methods:

- changing any health services that the practitioner is permitted to perform (s 48(2)(b)(i))
- including any condition or conditions that it considers appropriate (s 48(2)(b)(ii)).

If the Board considers that allowing the practitioner to remain in any sort of practice pending a full assessment would place the health and safety of the public at risk, it will interim suspend the practitioner's practising certificate.

In deciding whether interim alteration of the practitioner's scope of practice or interim suspension of their registration is required due to the mental or physical condition the Board will consider the individual facts of the case, including all of the information available to it.

The Board does not have to give the practitioner notice that it intends to interim suspend their practising certificate or alter their scope of practice (s 48(4)).

### **Interim orders**

The practitioner will be advised in writing (s 48(5)(a)) of the order and the reasons for it (s 48(5)(b)). The order must be signed by the Registrar (s 48(5)(c)) who will promptly give the practitioner a copy of the order (s 48(6)).

In all cases the practitioner will be required to return his or her practising certificate to the Board within 14 days of receiving the letter advising of the order. Where the Board has changed any health services that the practitioner is permitted to perform or included any condition or conditions that it considers appropriate, a new practising certificate will then be issued with the conditions listed.

The order remains in place for up to 20 working days from the date that the practitioner receives the order (s 48(2)).

The Board may extend the order for up to a further 20 working days if it is necessary for any medical examination or testing (s 48(3)).

## **Assessment of health condition**

### **Medical examination**

If the Board decides that some sort of medical examination or testing is necessary, the Registrar will contact the practitioner to discuss the medical practitioner who is to provide the report and the date of assessment (s 49(3)). The practitioner is given the opportunity to suggest a medical practitioner, and a date for the medical assessment.

Generally the Board requires an examination from a practitioner who specialises in a particular area relevant to the suspected health condition and will not accept a report from the practitioner's general practitioner. The examination or testing must be carried out by a medical practitioner who

is registered with the Medical Council of New Zealand within a relevant vocational scope of practice.

The medical practitioner may consult with any other health practitioner that they consider would be able to assist in the completion of the assessment, for example, cognitive testing by a psychologist.

The Board will meet the cost of obtaining the medical report (s 49(1)).

Once the medical practitioner has been agreed to or decided on, the practitioner is advised in writing of the:

- mental or physical condition that may make them unable to perform the functions required for the practice of their profession (s 49(2)(a)(i))
- name and address of the medical practitioner who is to carry out the assessment (s 49(2)(a)(ii))
- date by which they must see the medical practitioner (s 49(2)(a)(iii)).

The notice must be signed by the Registrar (s 49(2)(b)) and the practitioner must be given at least five days from receiving the letter to submit themselves to the medical examination. The practitioner is responsible for making the appointment with the agreed medical practitioner. If the practitioner is unable to attend the assessment in the timeframe given he or she must notify the Registrar and another date will be agreed. This arrangement will be confirmed in writing.

The practitioner may take a support person to their medical assessment as an observer (s 49(4)).

### **Medical report**

The medical practitioner completing the assessment will be asked to provide a comprehensive report to the Board and comment on the following questions:

- whether the practitioner has the condition named, and if so, to detail the practitioner's condition including any current treatment plan
- whether the practitioner has any other physical or mental condition
- whether the health condition(s) mean that the practitioner is unable to perform the functions required for the practice of their profession
- whether the health condition means the practitioner would be able to perform the required functions for the practice of their profession but only if conditions were placed on their scope of practice
- if so, an indication of what conditions they would consider necessary to enable the practitioner to practise safely.

The medical report must be provided to the Registrar as soon as reasonably practicable after the examination or test (s 49(6)).

### **Consideration of medical report**

Upon receipt of the medical report the Registrar will promptly provide the practitioner with a copy of it (s 49(7)). The practitioner will be advised that they have a reasonable opportunity to make written submissions and be heard on the matter, either personally or by their representative (s 50(1)(b)). The practitioner will also be advised that they may provide any other information they would like the Board to consider in making its decision.

Upon receipt of any submissions, or if no submissions have been received within the timeframe given, the Registrar will forward a copy of the medical report to the Board along with any written submissions. The Board will consider the report and all the relevant circumstances of the case.

If the practitioner would like to be heard on the matter, the Registrar will arrange a meeting or teleconference with the Board. The practitioner may be accompanied by a support person or legal representative who would also be given the opportunity to provide information to the Board.

### **Reasonable opportunity**

A reasonable opportunity in this situation is likely to be a maximum of 10 working days given that there is a health condition in question, which may impact adversely on the health and safety of the public.

### **Non-attendance at medical examination**

If the practitioner does not attend an examination by the agreed date, and has not contacted the Registrar to arrange another date, the Board is still able to consider the notification and make orders under section 50.

### **Board decision following medical examination**

The Board will consider the practitioner's fitness to practise as soon as practicable, and has the following options available to it:

- take no further action
- defer a decision pending further information
- ask the practitioner to enter into a voluntary undertaking which would require the practitioner to conform to requirements and limitations on their scope of practice relevant to their health condition
- allow the practitioner to practise with conditions included in their scope of practice (s 50(4))
- suspend the practitioner's registration (s 50(3)).

### **Requirements for orders made under section 50(3) and (4)**

The practitioner will be advised in writing (s 50(5)(a)) of any order made under section 50(3) or (4), and the reasons for it (s 50(5)(b)). Any order must be signed by the chairperson of the Board or any other person authorised by the chairperson (s 50(5)(c)). The chairperson has authorised the convenor of the Health Committee to sign such orders.

### **No further action**

The Board may decide to take no further action if it is satisfied the practitioner does not have a mental or physical condition that means they are unable to perform the functions required for the practice of their profession.

### **Defer decision**

The Board may decide to defer a decision until further information has been provided.

## **Suspension**

The Board may decide to suspend the practitioner's registration if it is satisfied that the practitioner is unable to perform the functions required for the practice of their profession (s 50(3)(a)), or if they have failed to attend a medical assessment (s 50(3)(b)). The Board will however first consider whether the practitioner can practise subject to conditions.

If the practitioner is suspended, they will be advised of the circumstances that would give rise to a review of the suspension.

The suspension takes effect from the date the practitioner receives the letter advising of the suspension (s 50(7)). The letter must be sent to the practitioner within five working days after the decision is made by the Board (s 50(6)(a)). The practitioner is required to return their practising certificate to the Board within 14 days of receiving the letter advising of the suspension (s 33(2) and s 50(6)(b)).

## **Review of suspension**

The suspension will be reviewed by the Board when the practitioner's situation changes, or when he/she meets requirements.

The Board will work with the practitioner and their medical practitioner to obtain information relevant to the suspension. If required, the Board may order a further examination under section 49.

If the Board is satisfied that the practitioner is again able to practise their profession satisfactorily it will make an order revoking the suspension (s 51(1)).

If, having reviewed the practitioner's situation, the Board decides that the practitioner is able to return to practice, but only if subject to certain requirements and/or limitations on their scope of practice, the Board will make a proposal to revoke the suspension and substitute a voluntary undertaking/conditions. The practitioner will be given a reasonable opportunity to make written submissions and be heard on the matter (s 50(1)(b)), before the Board again considers the original medical report and all the other relevant circumstances of the case (s 50(2)). The suspension will be revoked when a voluntary undertaking and/or conditions are put in place.

## **Revocation of suspension**

As the order to revoke the suspension takes effect immediately (s 51(7)), the Registrar will contact the practitioner to advise of the order. A copy of the order will be sent to the practitioner within five working days after the order is made by the Board (s 51(6)(a)).

## **Voluntary undertakings or conditions in scope of practice**

The Board may ask the practitioner to enter into a voluntary undertaking or it may include conditions in the practitioner's scope of practice, if it is satisfied that they are able to perform the functions required for the practice of their profession, but only if the terms of the agreement are observed/ those conditions are observed (s 50(4)).

These options allow for the practitioner to remain in practice while ensuring public health and safety is protected. The Board may decide to use either option, or a combination of both. The

Board's use of voluntary undertakings will depend on the practitioner's willingness to engage in the process and the level of ownership they have taken with regard to their health condition.

A voluntary undertaking is a private agreement between the Board and the practitioner that the practitioner will comply with certain requirements. This agreement is underpinned by the acknowledgement that a breach may result in the Board exercising its powers under the legislation to ensure the practitioner is practising safely, by including conditions in the practitioner's scope of practice, or suspending their registration.

Conditions on a practitioner's scope of practice will be noted on their practising certificate. This information is publicly available and can be found on the Board's online Register.

### **Examples of voluntary undertakings/conditions**

The types of voluntary undertakings that the practitioner may be asked to enter into, or the conditions that may be included in the practitioners scope of practice may include but are not limited to any one or more of the following:

#### Employment:

- requiring the practitioner to be employed by a Board approved employer
- requiring the practitioner's employer to provide progress reports
- requiring the practitioner to inform colleagues about the relevant health issues
- requiring the practitioner's practice to be supervised
- appointing a senior practitioner as mentor.

#### Medical:

- requiring the practitioner's own general practitioner to provide progress reports
- requiring the practitioner to continue with his or her current treatment plan
- requiring the practitioner to undergo therapy or counselling
- requiring the practitioner's therapist or counsellor to provide progress reports.

#### Scope of practice:

- limiting the practitioner's practice to certain procedures and/or locations
- imposing prescribing restrictions (prescribing optometrists only).

#### Drug and alcohol specific:

- requiring the practitioner to remain abstinent from alcohol and/or drugs
- requiring the practitioner to undergo urine and/or hair and/or blood testing to check for the presence of alcohol or drugs
- requiring the practitioner to attend peer support groups such as Alcoholics Anonymous or Narcotics Anonymous.

Where the practitioner is asked to conform to requirements and limitations on their scope of practice relevant to their health condition, a combination of the above voluntary undertakings/conditions will usually be used to ensure compliance. For example, if the practitioner's scope of practice has been limited (i.e. they are not allowed to perform certain functions) there will also be an agreement or condition that ensures either an employer or colleague has knowledge of the relevant health issue and the restriction. Another example would be where a practitioner has an alcohol or drug addiction. Not only would they be required to

abstain, but there would also be some form of monitoring agreement or condition in place to ensure compliance (i.e. urine, hair or blood testing).

Any conditions take effect from the date the practitioner receives the letter advising of the conditions (s 50(7)). The letter must be sent to the practitioner within five working days after the decision is made by the Committee (s 50(6)(a)). If conditions have been placed on the practitioner's scope of practice, they are required to return their practising certificate to the Board within 14 days of receiving the letter advising of the conditions (s 33(2) and s 50(6)(c)). A new practising certificate will then be issued with the conditions listed.

### **Voluntary undertakings**

If a voluntary undertaking is to be used the terms of the agreement will be discussed with the practitioner. The undertaking will be sent to the practitioner to sign. The practitioner must sign and date the undertaking and return it to the Board. The voluntary undertaking takes effect from the date the practitioner signs it. The Registrar will provide the practitioner with a copy of the signed undertaking.

### **Breach of voluntary undertaking**

A voluntary undertaking enables the practitioner to remain in practice whilst protecting public health and safety.

A voluntary undertaking does not prevent the Board from exercising its powers under section 50 and either suspending the practitioner's registration (s 50(3)) or placing conditions in his or scope of practice s 50(4)).

In the event that the practitioner breaches any of the terms of their voluntary undertaking the Board will advise the practitioner of its intention to reconsider the matter and will provide the practitioner with a reasonable opportunity to make written submissions and be heard (s 50(1)(b)). It will then consider the initial medical report (if any) and all of the other circumstances (s 50(2)). In certain circumstances the Board may consider interim suspension under section 48 of the Act, while it reconsiders the matter.

### **Breach of conditions**

Conditions which require the practitioner to conform to certain requirements and limitations on their scope of practice relevant to their health condition are used to enable the practitioner to remain in practice while protecting public health and safety. If those conditions are breached the practitioner may be deemed to be unable to perform the functions required for the practice of their profession.

In the event that the practitioner breaches any of their conditions the Board has the following options available to it:

- suspend the practitioner's registration under section 50 (s 50(3))
- interim suspend the practitioner's practising certificate under section 48
- vary the conditions in the practitioners scope of practice
- revoke any conditions.

If a breach of a condition occurs some time after the initial medical assessment, the practitioner's health status may have changed. The Board may require the practitioner to undergo a further

medical assessment under section 49 to ensure its decision relates to the practitioner's current health condition. The process and requirements for a medical examination are set out at pages 7-8.

If the Board decides that suspension of the practitioner's registration is required, it will advise the practitioner of its intention to suspend their registration, and the reasons for doing so. The practitioner will be given a reasonable opportunity to make written submissions and be heard on the matter (s 50(1)(b)). The Board will consider any medical reports and all the relevant circumstances (s 50(2)), including the practitioner's failure to comply with the conditions and the reasons why (if given).

If there has been a serious breach of conditions which may impact on public health and safety the Board may decide to interim suspend the practitioner's practising certificate under section 48 while it decides how to proceed. The process and requirements for interim suspension are set out at pages 6-7.

### **Varying a condition**

The Board may vary a condition if it is satisfied that the variation should have been part of the original order or is required by a change in circumstances (s 51(3)). If a practitioner breaches any of their conditions, the Board may view this as a change in circumstances sufficient to warrant a review and possible variation of the conditions.

The Board will write to the practitioner advising the practitioner of the reasons it proposes to vary the condition (s 51(4)(a)). The practitioner will be given a reasonable opportunity to make written submissions on the proposed variation and be heard on the matter (s 51(4)(b)).

The Board is not required to follow this process for varying a condition if an application for variation has been made by the practitioner and the proposed variation is accepted by the Board.

As the order to vary a condition takes effect immediately (s 51(7)), the Registrar will contact the practitioner to advise of the order. A copy of the order will be sent to the practitioner within five working days after the order is made by the Board (s 51(6)(a)).

### **Review of voluntary undertakings/conditions**

The voluntary undertaking/condition in the practitioner's scope of practice will be reviewed by the Board when the practitioner's situation changes, or when they meet the requirements of the voluntary undertaking or conditions.

The Board will work with the practitioner and their medical practitioner to obtain information relevant to their condition. If required, the Board may order a further examination under section 49.

If the Board is satisfied that the practitioner is again able to practise their profession satisfactorily it will make an order revoking the conditions (s 51(2)).

If, having reviewed the practitioner's voluntary undertakings/conditions, the Board decides that the practitioner is able to practise subject to certain requirements and/or limitations on their scope of practice, the Board may propose to vary the voluntary undertaking/condition. The practitioner will be given a reasonable opportunity to make written submissions and be heard on the matter (s

50(1)(b)), before the Board again considers the original medical report and all the other relevant circumstances of the case (s 50(2)). The Board may decide to revoke, vary or add voluntary undertakings/ conditions.

If the terms of a voluntary undertaking are varied, the variations will not take effect until the practitioner has signed a new voluntary undertaking and returned it to the Board. Until then, the practitioner is required to comply with the terms of the original voluntary undertaking.

### **Revocation of conditions**

As the order to revoke conditions takes effect immediately (s 51(7)), if an order is made to revoke any of the conditions that no longer apply, the Registrar will contact the practitioner to advise of the order. A copy of the order will be sent to the practitioner within five working days after the order is made by the Board (s 51(6)(a)).

## **Review and Appeal rights**

A practitioner may ask for a review of the Health Committee's decision by the full Board. The practitioner must make this request in writing within 20 working days of receiving the decision. A review will be conducted on the information provided to the Health Committee and any written submissions the practitioner may wish the Board to consider.

Alternatively, the practitioner may appeal the Board's decision to the District Court. The practitioner may appeal the Board's decision to include a condition in their scope of practice (s 106(f)), or suspend their practising certificate or registration (s 106(d)). An appeal must be brought to the appropriate court by way of notice of appeal in accordance with rules of court and must be lodged within 20 working days after notice of the decision is communicated to the practitioner, or within a further time a District Court Judge allows on application being made before or after the period expires.

A decision or order against which the practitioner has lodged an appeal continues in force unless the District Court orders otherwise.

## **Other provisions**

### **Policy on Risk of Harm**

Under section 35 of the Act, whenever the Board has reason to believe that the practice of an optometrist or a dispensing optician may pose a risk of harm to the public, the Board must promptly give written notice to the ACC, the Director-General of Health, the Health and Disability Commissioner and any person who, to the Board's knowledge, employs the practitioner. The Board will meet its obligations in this regard if, during the assessment of a health notification, it forms the view that a practitioner's practice may pose a risk of harm to the public and makes the required notifications.

### **Disciplinary action**

Under section 71 of the Act, the Board may appoint a professional conduct committee to investigate cases where professional conduct is in question.

In rare cases where the Board receives a notification indicating that the practitioner has knowingly practised with a health condition and has put patients at risk, the Board may consider referring the matter to a professional conduct committee to investigate. In deciding whether to make such a referral, the Board will take into account the individual facts of the case, including the type of health condition and its potential impact on the practitioner's judgment.

## **Enquiries**

Any enquiries about these provisions or this process should be directed to the Registrar.

## **Appendices**

Appendix 1 – relevant sections of Health Practitioners Competence Assurance Act 2003

*Related policies:*

*Policy on Risk of Harm*

*HRANZ Joint Guidelines on Transmissible Major Viral Infections*

*Approved by the Board 28 January 2011*

## APPENDIX I

The relevant sections of the Health Practitioners Competence Assurance Act 2003 are as follows:

### *Inability to perform required functions*

#### **45 Notification of inability to perform required functions due to mental or physical condition**

- (1) Subsection (2) applies to a person who—
  - (a) is in charge of an organisation that provides health services; or
  - (b) is a health practitioner; or
  - (c) is an employer of health practitioners; or
  - (d) is a medical officer of health.
- (2) If a person to whom this subsection applies has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.
- (3) If any person has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person may give the Registrar written notice of the matter.
- (4) Subsection (5) applies to a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training (a course) that is a prescribed qualification for a scope of practice of a health profession.
- (5) If a person to whom this subsection applies has reason to believe that a student who is completing a course would be unable to perform the functions required for the practice of the relevant profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.
- (6) No civil or disciplinary proceedings lie against any person in respect of a notice given under this section by that person, unless the person has acted in bad faith.

#### **46 Power to seek medical advice**

- (1) When a person contemplates giving a Registrar notice under section 45, he or she may seek whatever medical advice, whether psychiatric or otherwise, he or she considers appropriate to assist him or her in forming his or her opinion.
- (2) Any notice given under section 45 must state any medical advice obtained under this section in respect of that notice.

#### **47 Duty of Registrar**

On receiving a notice given under section 45, the Registrar must take all reasonable steps to have the notice considered by the authority as soon as reasonably practicable.

#### **48 Interim suspension of practising certificate or inclusion of conditions in scope of practice in cases of suspected inability to perform required functions due to mental or physical condition**

- (1) This section applies to a health practitioner if the authority considers that the health practitioner may be unable to perform the functions required for the practice of his or her profession because of some mental or physical condition.

- (2) If subsection (1) applies to a health practitioner, the responsible authority may order that for a period of not more than 20 working days from the date that a copy of the order is given to the health practitioner under subsection (6)—
  - (a) the practising certificate of the health 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 authority considers appropriate.
- (3) The authority may order that the period of an order made under subsection (1) be extended by a further period of not more than 20 working days if that extension is necessary for any examination or testing required under section 49.
- (4) The authority is not obliged to give the health practitioner notice that the authority intends to make an order under this section.
- (5) Every order made under this section must—
  - (a) be in writing; and
  - (b) contain a statement of the reasons on which it is based; and
  - (c) be signed by the Registrar.
- (6) The Registrar must ensure that a copy of an order made under this section is promptly given to the health practitioner concerned.

#### **49 Power to order medical examination**

- (1) If the responsible authority considers (whether or not as a result of a notice given under section 45 or of a recommendation made under section 79) that a health practitioner may be unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the authority may, by notice given to the health practitioner, require him or her to submit himself or herself for examination or testing by a medical practitioner at the expense of the authority.
- (2) Every notice given under this section must—
  - (a) specify—
    - (i) the mental or physical condition that may make the health practitioner unable to perform the functions required for the practice of his or her profession; and
    - (ii) the name and address of the medical practitioner who is to conduct the examination or test; and
    - (iii) a date by which the examination or test is to be conducted, being a date that is not less than 5 working days after the date on which the notice is given to the health practitioner, to submit himself or herself for examination or testing; and
  - (b) be signed by the Registrar.
- (3) Before giving a notice under this section, the authority must endeavour to consult with the health practitioner about the medical practitioner who is to conduct the examination or test.
- (4) A health practitioner who is required by a notice given under this section to submit himself or herself for examination or testing by a medical practitioner may have another person chosen by him or her attend the examination or testing as an observer.
- (5) A medical practitioner who conducts an examination or test under this section may consult any other health practitioner who the medical practitioner considers is able to assist in the completion of the examination or test.
- (6) When a medical practitioner has examined or tested a health practitioner under this section, he or she must, as soon as reasonably practicable after the examination or test,

make a written report to the Registrar of the responsible authority on whether or not the practitioner has the mental or physical condition stated under subsection (2) and, if that is the case, the extent, if any, to which that condition affects the practitioner's ability to perform the functions required for the practice of his or her profession.

- (7) The Registrar must, promptly after receiving a report under subsection (6), send a copy to the health practitioner to whom the report relates.

## **50 Restrictions may be imposed in case of inability to perform required functions**

- (1) Subsection (2) applies if a health practitioner has been given a notice under section 49; and

(a) either—

- (i) the health practitioner has not, by the time specified in the notice, submitted himself or herself for examination or testing by the medical practitioner named in the notice; or
- (ii) the Registrar of the responsible authority has received a written report in respect of the health practitioner from the medical practitioner named in the notice; and

(b) the authority has given the health practitioner a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.

- (2) The authority must consider the report (if any) and all the relevant circumstances of the case.

- (3) The authority may order that the health practitioner's registration be suspended if the authority has considered the case of the health practitioner and the authority is satisfied that—

- (a) the health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition; or
- (b) the health practitioner has not submitted himself or herself for examination or testing in accordance with a notice under section 49.

- (4) The authority may order that conditions be included in the practitioner's scope of practice if the authority has considered the case of the practitioner and 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.

- (5) Every order made under subsection (3) or subsection (4) must—

- (a) be in writing; and
- (b) contain a statement of the reasons on which it is based; and
- (c) be signed by the chairperson of the authority or by a person authorised by the chairperson.

- (6) The Registrar of the authority must ensure that, after an order under subsection (3) or subsection (4) is made,—

- (a) a copy of the order is given to the health practitioner concerned within 5 working days after the making of the order; and
- (b) all administrative steps are taken to give effect to the order.

- (7) An order made under subsection (3) or subsection (4) takes effect from the day on which a copy of the order is given under subsection (6) to the health practitioner concerned, or a later date specified in the order.

## **51 Revocation of suspension or conditions**

- (1) An authority may at any time make an order revoking any suspension that it has imposed under section 39 or section 50 if it is satisfied that the health practitioner concerned is again able to practise the health practitioner's profession satisfactorily.
- (2) The authority may at any time make an order revoking any conditions or changes imposed under section 39 or section 50 if it is satisfied that those conditions or changes are no longer necessary.
- (3) The authority may make an order varying a condition imposed under section 39 or section 50 if it is satisfied that the variation should have been part of the original order or is required by a change in circumstances.
- (4) The authority may not make an order under subsection (3) otherwise than in accordance with an application from the health practitioner concerned unless it has first—
  - (a) informed the health practitioner why it may vary the condition; and
  - (b) given the health practitioner a reasonable opportunity to make written submissions on the proposed variation, and be heard on the question, either personally or by his or her representative.
- (5) An order under this section may be made on the application of the health practitioner or on the authority's own initiative.
- (6) The Registrar of the responsible authority must ensure that, after an order under this section is made,—
  - (a) a copy of the order is given to the health practitioner concerned within 5 working days after the making of the order; and
  - (b) all administrative steps are taken to give effect to the order.
- (7) An order under this section takes effect immediately.

## **Part 5 Appeals**

### **106 Rights of appeal**

- (1) A person may appeal to a District Court against any decision or direction of an authority to—
  - (a) decline to register the person as a health practitioner with the authority; or
  - (b) decline to authorise a change to the existing scope of practice of the person; or
  - (c) decline to issue a practising certificate to the person; or
  - (d) suspend his or her practising certificate or registration; or
  - (e) cancel his or her registration with the authority; or
  - (f) include conditions in the person's scope of practice or the person's proposed scope of practice; or
  - (g) vary any conditions in the person's scope of practice.
- (4) An appeal—
  - (a) must be brought to the appropriate court by way of notice of appeal in accordance with rules of court; and
  - (b) must be lodged within 20 working days after notice of the decision or order is communicated to the appellant, or within any further time a District Court Judge or, as the case requires, a High Court Judge allows on application made before or after the period expires.

### **107 Notice of right of appeal**

When notifying a person under this Act of any decision or order against which section 106 gives him or her a right of appeal, the Registrar or, as the case requires, the appropriate

executive officer of the Tribunal must also notify him or her in writing of the right of appeal and the time within which an appeal must be lodged.

**108 Orders to have effect pending determination of appeal**

A decision or order against which an appeal is lodged under this Part continues in force unless the District Court or the High Court orders otherwise