

Health and Disability Commissioner  
*Te Toihau Hauora, Hauātanga*

13 May 2009

Philip Pigou  
Chief Executive  
Medical Council of New Zealand  
P O Box 11649  
WELLINGTON 6142

Dear Philip

Thank you for the amended Memorandum of Understanding which has now been signed by the Commissioner. Please sign the **enclosed** MOU and return it to us.

Many thanks.

Yours sincerely

Nicola Sladden  
Chief Legal Advisor

**AGREEMENT BETWEEN THE HEALTH AND DISABILITY  
COMMISSIONER AND THE MEDICAL COUNCIL OF NEW ZEALAND –  
(Revised April 2009)**

In the interests of the safety of health and disability services consumers and of expediting the process of dealing with complaints and concerns related to registered medical practitioners, the Health and Disability Commissioner (“HDC”) and the Medical Council of New Zealand (“the Medical Council”) have agreed to the following:

**The HDC will:**

1. Notify the Medical Council in accordance with the mandatory notification provisions in the Health and Disability Commissioner Act 1994 (the Act) and the Health Practitioners Competence Assurance Act 2003 (the HPCA), including:
  - When an investigation into a registered medical practitioner is commenced (pursuant to section 42(1) of the Act and section 66 of the HPCA). When notifying of an investigation, the Commissioner will routinely require in writing any information the Medical Council holds regarding the registered medical practitioner under investigation that is, in the opinion of the HDC, relevant to the subject matter of the investigation (pursuant to section 62 of the Act);
  - The outcome of the investigation (pursuant to section 43 of the Act), including whether the Commissioner recommends a referral for consideration of a competence review or any other action (pursuant to section 45(2)(b)(1) of the Act);
  - When the Commissioner has reason to believe that a registered medical practitioner may pose a risk of harm to the public (pursuant to either sections 39(1) of the Act or 34(2) of the HPCA). If the Commissioner does have reason to believe that a registered medical practitioner may pose a risk of harm to the public, the Commissioner will notify the Medical Council immediately.
  
2. Notify the Medical Council in accordance with the Act:
  - When the HDC considers that it is necessary or desirable in the public interest (whether for reasons of public health or public safety or for any other reasons) that a matter be brought to the attention to the Medical Council (pursuant to section 59(4) of the Act) and/or the Commissioner considers that the competence of a registered medical practitioner or his or her fitness to practise or the appropriateness of his or her conduct may be in doubt (pursuant to section 34(1)(a) of the Act);
  - When the HDC is aware of three or more similar ‘low level’ matters relating to a registered medical practitioner within the past five years, which may indicate a pattern of conduct indicative of wider competence concerns. ‘Low level’ matters may include complaints referred to advocacy (pursuant to section 37 of the Act) or to the provider for resolution (pursuant to section 34(1)(d) of the Act), and/or complaints on which the Commissioner took no action or no further action (pursuant to section 38(1) of the Act). In these

circumstances, the HDC will provide the Medical Council with the medical practitioner's complaint history (including information received prior to the five year period).

**The Medical Council will:**

Notify the HDC in accordance with the mandatory notification provisions in the Health and Disability Commissioner Act 1994 (the Act) and the Health Practitioners Competence Assurance Act 2003 (the HPCA), including:

- When the Medical Council has reason to believe that a registered medical practitioner may pose a risk of harm (pursuant to section 35(1) of the HPCA)<sup>1</sup>.
- When the Medical Council forms the view that the practice of a registered medical practitioner no longer poses a risk of harm to the public, for example, the practitioner is no longer practising or has limited his or her scope of practice (pursuant to section 35(3) of the HPCA);
- On being provided by the HDC with notification of an investigation into a registered medical practitioner, provide information held by it regarding the practitioner that is relevant to the investigation and is required by the HDC under section 62 of the Act.
- Acknowledging receipt of a complaint to the Council by the HDC (pursuant to section 34(1) of the Act);
- Advising the HDC of any significant steps taken by the Medical Council in its consideration or examination of a matter referred by the HDC under section 34(1) of the Act (pursuant to section 35(b) of the Act), which may include whether the matter has been referred to a Professional Conduct Committee (PCC), Professional Assessment Committee (PAC), or the Medical Council's Health Committee;
- Advising the HDC of the outcome of its consideration or examination of a matter referred by the HDC under section 34(1) of the Act (pursuant to section 35(c) of the Act), which may include the PCC's determination, if the registered medical practitioner meets the required standard of competence following a competence review, or if the doctor is able to perform the functions required for the practice of medicine.
- Upon receipt of a notification about a medical practitioner under section 34 of the HPCAA, the Council will advise the HDC and request any information held by the HDC regarding that medical practitioner.

The Medical Council will routinely:

- Flag its database on notification that the HDC is investigating a complaint about a registered medical practitioner, to ensure that it records that the practitioner is under investigation by the HDC; and
  - Notify the Commissioner of the outcome of its consideration or examination of the complaint, which may include whether (pursuant to section 35(b) of the HDC Act 1994) the matter has been referred to a Professional Conduct Committee (PCC), Performance Assessment Committee (PAC) or the Medical Council's Health Committee.

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<sup>1</sup> Refer to Note 2, page 4, for the relevant definitions

- Where a new matter relating to a medical practitioner has been brought to the HDC's attention, the Medical Council, will upon request from the HDC, provide general information to the HDC regarding Council's recent involvement with the registered medical practitioner, to enable the HDC to consider whether the new matter is more properly within the scope of the functions of the Medical Council.

### **Medical records**

The HDC and the Medical Council have agreed that the HDC will not expect access to a medical practitioner's health information held by the Medical Council, but the Medical Council will provide a summary of any relevant information about a medical practitioner's medical history where relevant to an HDC investigation.

### **Updating complainants**

The Medical Council of New Zealand acknowledges that when the HDC is closing a complaint on the basis that the matter has been referred to the Medical Council for their consideration a complainant is more likely to accept this decision if the HDC is able to inform, in general terms, what steps the Medical Council may take. In these circumstances, it is agreed that the following wording will be used by the HDC in their letters to complainants:

*In the circumstances I have decided to refer Dr XXXX to the Medical Council of New Zealand in accordance with section 34(1)(a) of the Health and Disability Commissioner Act 1994. The Medical Council will consider the complaint and other information it may hold and decide what action is required. It has a range of powers in dealing with complaints against doctors which may include requiring the doctor to undertake a competence review and then a competence programme or referring a doctor to a professional conduct committee for investigation. The Medical Council has the power to interim suspend or impose conditions when there is a serious risk to public health and safety.*

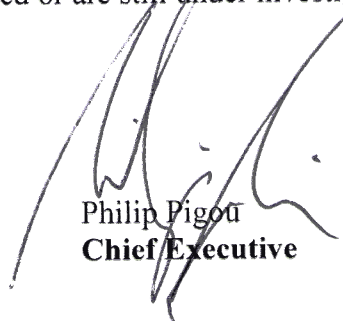
*Any action taken by the Medical Council is confidential. However, the Council is legally required to report back to me on the outcome of its consideration of this referral and I have the discretion to reconsider this matter if I believe further action by me may be necessary.*

### **Date of commencement**

This protocol comes into force on 1 April and replaces any former memorandum of agreement on information exchange. However, both the HDC and the Medical Council agree in principle that the protocol can be applied to complaints that were initiated before this date, which have been closed or are still under investigation.



Ron Paterson  
**Health and Disability Commissioner**



Philip Figgott  
**Chief Executive**