

Medical Council of New Zealand and participating Private Surgical Hospitals Memorandum of Understanding

Signatories and parties

This memorandum of understanding (MoU) has been agreed in form and content by the Medical Council of New Zealand and the New Zealand Private Surgical Hospitals Association (NZPSHA)

The MOU is between the Medical Council of New Zealand (MCNZ) and each participating private surgical hospital (PPSH) named in Appendix 4 (the “parties”), as if this MOU had been signed direct between the MCNZ and that PPSH. Unless expressly stated, this MOU does not create any relationship or obligation between any PPSHs, or between the NZPSHA and any PPSH.

Introduction

The MoU contains information relevant to the MCNZ and the PPSH, in the credentialling of doctors by the PPSH (refer Appendix 2 and Appendix 4 to this MoU) and provides a framework for the appropriate exchange of information between MCNZ and the PPSH in the interest of public safety.

Purpose

The purpose of the MoU is to enable the MCNZ and the PPSH to clarify their respective roles and responsibilities (refer Appendix 1) and the objectives and intentions of the parties (refer Appendices 3 and 4) related to:

- the regulation of doctors in New Zealand, including the management of any competence, performance, conduct and health issues;
- the credentialling of self-employed doctors to practise in PPSHs;
- the context for the operation of the MoU; and
- how the PPSH and MCNZ intend to interact with each other.

This document is not intended to create binding legal obligations, but it sets out the behaviours that the parties expect of each other in discharging their respective functions. The parties to this MoU will use all reasonable endeavours to meet their responsibilities under this memorandum.

Principles

The parties recognise that:

- PPSHs have responsibilities to ensure that health and disability services provided within their facilities meet expectations of safety and
- the MCNZ has a responsibility to protect the health and safety of the public by ensuring the competence and fitness to practise of doctors.

The parties agree to foster a long-term collaborative relationship to enable us both to achieve their respective organisational objectives efficiently and effectively. The following principles will guide each in our mutual dealings:

- (a) Communicate with each other in an open and timely manner (including in relation to any request to review this MoU).
- (b) Work in a collaborative and constructive manner.
- (c) Comply with the provisions of legislation relevant to our respective roles and responsibilities.
- (d) MCNZ will make decisions within its decision-making principles (refer Appendix 3 to this MoU).
- (e) MCNZ and the PPSHs have their own respective strategic and policy directions and separate relationships with doctors (refer Appendix 3 and 4 to this MoU).
- (f) Any disagreements between MCNZ and the PPSH are resolved in good faith and in a timely fashion.

Meetings

The MCNZ and the PPSH will each monitor the performance of the MoU and may meet or correspond from time to time to discuss its implementation.

Such meetings or communications will address matters of mutual interest, including:

- (a) how the MoU relationship is working and how our mutual roles and responsibilities are being delivered,
- (b) opportunities for improvement,
- (c) how such improvement might be implemented,
- (d) wider medical regulation issues as they relate to the PPSH, and
- (e) other relevant matters.

The MCNZ will be represented by the Chief Executive, and relevant senior staff. The PPSH will be represented by the PPSH's Chief Executive and other relevant representatives.

Review

This MoU will be reviewed from time to time as agreed between the parties.

Signatures

Mr Greg Brooks
President NZPSHA

Date signed

Mr Philip Pigou
CEO, Medical Council of New Zealand

Date signed

- Appendix 1** Roles and Responsibilities
- Appendix 2** Glossary
- Appendix 3** Medical Council of New Zealand Protocol for Decision-making Principles 2012
- Appendix 4** Participating Private Surgical Hospital Profile Details

Appendix 1

Roles and Responsibilities

The respective roles and responsibilities of the MCNZ and the PPSH are outlined under key headings below). The left hand column outlines the MCNZ's role. The PPSH's role is shown in the matching column on the right.

Medical Council of New Zealand

Participating Private Surgical Hospitals

Register

Where a doctor is known to have current credentialed status with a PPSH the MCNZ will record that information on the register (as additional non-public information).

Will regularly inform the MCNZ whenever a doctor is credentialed to work at a PPSH hospital (and the specific hospital at which the doctor is credentialed), including any changes to the credentialed status as agreed (see below).

Practising certificates

Will send out applications to doctors at their postal or email address 6 to 8 weeks prior to the practising certificate expiry date.

At the time of the initial application for credentialling will check the MCNZ online register to ensure all doctors applying to be credentialed have a current practising certificate.

Will complete processing of applications and issue practising certificates within 20 working days of receipt of the application if no issues.

Will maintain an annual checking process for reviewing the MCNZ online register to check that all credentialed doctors hold a current practising certificate, or are considered by the MCNZ to be deemed to hold a current practising certificate pending MCNZ formally issuing a practising certificate.

Will send the PPSH:

- (a) a list of all doctors known by the MCNZ to be credentialed by that hospital whose practising certificate is due to expire, 2 weeks before expiry and
- (b) a further list of those doctors whose practising certificates have just expired.

Note: Once the MCNZ has received an application for a practising certificate from a doctor, he/she is deemed to have a practising certificate unless the doctor is notified otherwise by the Registrar.

MCNZ does not backdate a practising certificate if a doctor does not apply before the expiry date.

Competence and conduct

Will notify the PPSH, in relation to credentialled doctors when:

- there is a risk of harm or risk of serious harm arising from a doctor's practice
- there is a suspension
- conditions or other limitations/requirements are placed on the doctor's practice including a voluntary undertaking
- the MCNZ decides to order a performance assessment
- the MCNZ decides to refer the doctor to a professional conduct committee
- there is a need to access medical records
- the practising certificate is not renewed (other than for the reason that the doctor has ceased practice);
- the practising certificate is renewed but with different terms or conditions
- health matters arise

Will, upon receipt of formal notification of competence and or conduct or other issues, act promptly to inquire into the matter and consider a performance assessment or referral to a professional conduct committee.

Will continue to have a system to exchange information on concerns about doctors' competence and conduct with a DHB, private hospital or other providers that may credential a doctor. MCNZ accepts a single provider may not be aware of the other locations where a doctor practises (this is information which is provided by the doctor to MCNZ on the practising certificate renewal form).

Will take responsibility to ensure patients are not at risk while competence and conduct or other concerns are being reviewed by MCNZ.

Will maintain a current credentialling process for assessing and addressing concerns. The PPSH will ensure compliance with statutory requirements.

[NB Under section 34(1), where a health practitioner has reason to believe that a doctor may pose a risk of harm to the public by practising below the required standard of competence, that health practitioner may give the MCNZ written notice of the reasons on which that belief is based.]

Will maintain a process for managing doctors' performance and behaviour.

Will notify the MCNZ of changes or restrictions placed on a doctor's practice to address the potential risk of harm or other circumstances that meet the statutory threshold for reporting to the MCNZ.

Management and sharing of information regarding doctors

Will comply with the HPCAA, particularly sections 35 and 157, to ensure key stakeholders, including the PPSH receive timely notification of decisions concerning a doctor, where those stakeholders have a role, arising from the doctor's practice, in ensuring public health and safety.

Will, where an order or direction is made by MCNZ, concerning a doctor known to be credentialled by the PPSH, publish the order to the CEO of the PPSH.

Will, as far as legally possible, facilitate a process of information sharing where the PPSH does not have information relating to other employers, or organisations or individuals or doctors with whom the doctor practices or employed by or places of work.

On receipt of any order or notice, will confirm receipt to the MCNZ.

Will, on receipt of any order or notice about a credentialled doctor, consider whether any action is required, within its policies and agreements with credentialled doctors to ensure that risk to public safety is minimised arising from the practice of that doctor.

Will work with MCNZ (and other parties, including MOH and HDC) where there is an agreed multi-agency response to identified public safety issues arising from a doctor's practice to support the process and share information as far as is legally permissible.

Health

Will, if there is a reason to believe a doctor is not fit to practise because of a mental or physical condition, notify the PPSH's CEO or nominee where there is:

- a risk of harm or risk of serious harm arising from the doctor's practice
- a suspension;
- one or more conditions or other limitations placed on the doctor's practice;
- a health agreement with the doctor;
- any significant monitoring requirements that have been established by the MCNZ.

Will ensure assessments are completed to ascertain if a doctor is fit to practise.

Will, where the MCNZ agrees on a voluntary agreement with a doctor to protect public health and safety, while also maintaining the doctor in safe practice, ensure the PPSH is aware of any relevant health issues requiring management including:

Note: Doctors and those organisations that employ registered medical practitioners or credential doctors have a duty to report to the MCNZ under section 45 HPCA Act 2003 if there is reason to believe a doctor is not fit to practise if, because of a mental or physical condition, he or she is not able to perform the functions required for the practice of medicine.

Those functions would include:

- the ability to make safe judgements
- the ability to demonstrate the level of skill and knowledge required for safe practice
- behaving appropriately
- not risking infecting patients with whom the doctor comes in contact
- not acting in ways that impact adversely on patient safety.

Where a PPSH is aware a doctor has a physical or mental health condition that may impair the doctor's performance or behaviour, and where the credentialled

- chronic deteriorating conditions
- situations where there may be substance abuse
- risk of misuse of medication and associated supplies.

status may be deemed to have lapsed, be modified, suspended or terminated, the PPSH will (a) recommend self-disclosure to the MCNZ and (b) will comply with legislative requirements.

Where a doctor advises the PPSH management of a personal health issue or disability that may affect the doctor's ability or capacity to practise, the PPSH will (a) recommend self-disclosure to MCNZ and (b) will comply with legislative requirements.

Where the MCNZ has ordered, or obtained the doctor's agreement to, monitoring of health concerns in the workplace, including any random testing, the PPSH will take reasonable steps to support it.

For the purpose of this MOU:

Credentiailling and Defining Scope of practice

“Credentiailling”, is a formal process used to verify the qualifications, experience, professional standing and other relevant professional attributes of medical specialists, for the purpose of forming a view about a practitioner’s competence, performance and professional suitability to provide safe, high-quality healthcare services.

“Scope of Practice”, defines the extent of a doctor’s permitted clinical practice at a particular Hospital, based on the doctor’s qualifications, competence, performance and professional suitability. The scope of practice is hospital-specific and takes into account the capability of that Hospital to support the medical specialist’s scope of clinical practice. The medical specialist may state within their vocational speciality the range and type of procedures they are applying to perform and those they do not intend to perform.

Risk of harm and Risk of serious harm

Risk of harm may be indicated by:

- a pattern of practice over a period of time that suggests the doctor’s practice of medicine may not meet the required standard of competence; or
- a single incident that demonstrates a significant departure from accepted standards of medical practice; or
- recognised poor performance where local interventions have failed – this does not exclude notification of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern; or criminal offending; or
- professional isolation with declining standards that becomes apparent.

Risk of serious harm may be indicated where:

- an individual patient may be seriously harmed by the doctor; or
 - the doctor may pose a continued threat to more than one patient and as such the harm is collectively considered ‘serious’; or
 - there is sufficient evidence to suggest that alleged criminal offending is of such a nature that the doctor poses a risk of harm to one or more members of the public.
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Protocol for decision-making principles

Background

- 1 The Council's governance role is to establish the strategic direction of the Council consistent with its purpose of protecting the health and safety of the public by ensuring doctors are competent and fit to practise.
- 2 The Council has a quasi-judicial function that is distinct from its strategic governance role. This function must be exercised within the Council's powers and responsibilities under the Health Practitioners Competence Assurance Act 2003 (HPCAA). These functions relate mainly to the exercise of Council's powers of registration, competence, conduct and health in relation to a specifically identified doctor.
- 3 The Council's decision-making principles will need to reflect these differences in Council's roles. Although there are likely to be common principles for both roles, it is also likely that each role will have distinctly separate principles. The remainder of this protocol identifies common and separate principles, relevant to Council's roles.

Common principles – governance and quasi-judicial roles

- **Accountability:**
Council is accountable for its decisions to the public, the Minister of Health and Parliament and, in relation to the efficient use of funds to achieve its purpose under the HPCAA, to the profession. This means that the Council will consider:
 - Whether the decision is consistent with its principal purpose – to protect the health and safety of the public.
 - Whether the decision is consistent with its functions under the HPCAA ie, setting standards, ensuring competence, promoting education and training, promoting public awareness, etc.
 - Whether the decision is consistent with its values and principles as expressed in the Business Plan.
 - Whether the decision is the most efficient means of meeting Council's obligations under the HPCAA.
- **Trust:**
Council will consider trust in key relationships when deciding governance and quasi-judicial matters. The key relationships are:
 - Between the profession and the public.
 - Between the public and the Council.
 - Between the profession and the Council.

Council will consider:

- would the decision improve the trust in one or more of these relationships?

- What would be the impact on the other relationship(s)?
- Independence:
 - The independence of Council members is important to ensure the integrity of Council decisions. The Council does not represent the profession and Members must be free from influence from external bodies. Council will decide governance and quasi-judicial matters independently of any stakeholder interest, personal interest or relationship and professional interest or relationship. (Please also refer to Council's *Policy on conflict of interest*).
- Inquiry:
 - Council will inquire into and assess all relevant and available information in deciding governance and quasi-judicial matters. This would include examining critically all assumptions to determine opinion and fact.
- Consistency:
 - Council aims to ensure good decisions over time by giving consideration to earlier decisions when deciding governance and quasi-judicial matters. Council acknowledges that regulatory standards change over time and decisions will always be based on the standards existing at that time.
- Cultural competence:
 - Council recognises that doctors in New Zealand work with a population that is culturally diverse and therefore cross-cultural doctor-patient and doctor-clinical team interactions are common. Council will itself demonstrate and continue to promote awareness amongst all doctors of cultural diversity and the ability to function effectively, and respectfully, when working with people of different cultural backgrounds.

Specific principles – governance roles

- Responsibility:
 - Council, in relation to any regulatory intervention of a strategic or policy nature, has a responsibility to the profession to engage, consider comment and feedback fairly, and to make decisions that can be effectively implemented.

Specific principles – quasi-judicial roles

- HPCAA:
 - The Council will always act consistent with the purpose, principles and specific enabling provisions of the HPCAA.
- Principles of natural justice:
 - The Council will apply the specific provisions of the HPCAA regarding providing relevant information and giving reasonable opportunity to make written submissions and be heard.
 - Proceedings of Council will be conducted so that they are fair to all parties.
 - The Council will only take into account relevant considerations and extenuating circumstances and ignore irrelevant considerations.
 - All members of Council should act without bias (refer to Council's *Policy on conflict of interest*) and act in good faith.
- Risk of harm and risk of serious harm
 - The Council, in considering individual cases, will expressly apply its definitions of risk of harm and risk of serious harm. The relevant definitions are:

Risk of harm may be indicated by:

- A pattern of practice over a period of time that suggests the doctor's practice of medicine may not meet the required standard of competence; or
- A single incident that demonstrates a significant departure from accepted standards of medical practice; or
- Recognised poor performance where local interventions have failed – this does not exclude notification of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern; or criminal offending.
- Professional isolation with declining standards that become apparent.

Risk of serious harm may be indicated when:

- An individual patient may be seriously harmed by the doctor; or
- The doctor may pose a continued threat to more than one patient and as such, the harm is collectively considered 'serious'; or
- There is sufficient evidence to suggest that alleged criminal offending is of such a nature that the doctor poses a risk of serious harm to one or more members of the public.

Approved by Council: 13 May 2009
Amended by Council: 16 May 2012

Appendix 4 Participating Private Surgical Hospital Profile Details

Legal Name of PPSH:	
Postal Address:	
Facility Description:	
Chief Executive Officer /General Manager:	
Phone and email details:	

Signed: _____

Date: _____

Position: _____