

3 How medical practice standards are set by legislation: the Health Practitioners Competence Assurance Act

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The Health Practitioners Competence Assurance Act 2003 (HPCAA) was passed into law on 18 September 2003; however the majority of its provisions did not come into effect until 18 September 2004.

The passing of the HPCAA was seen as reformative in nature given its intention is to increase consistency, transparency and efficiency in the regulation of health professionals in New Zealand. In doing so, its implementation saw the repeal of the eleven regulatory statutes that existed at the time.

The framework of the HPCAA covers a broad range of health professional occupational groups, of which the medical profession is one. The advantage of one legislative framework is it promotes the use of consistent terminology and procedures across the occupational groupings.

What is more, the HPCAA is the outcome of a desire for increased regulation and accountability of health professionals on the one hand with the desire to maintain professional autonomy (often characterised as “self regulation”) as much as possible on the other.

The principal purpose of the HPCAA “is to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and safe to practise their professions”. The term “mechanism” is not defined which means that the responsible authority (regulatory authority) has a relatively broad mandate to determine the instruments it deems necessary to meet the principal purpose of the HPCAA.

The HPCAA outlines a number of important functions that the Council is required to perform, including

- determining each doctor’s scope of practice within which they are competent to practise

- registering doctors in a scope of practice
- requiring doctors to demonstrate that they have gained or maintained competence in order to obtain an annual practising certificate
- conducting competence reviews (performance assessments) and arrange upskilling or retraining of those who are not practising at the required standard
- receiving notifications of any mental or physical condition affecting the fitness of a doctor to practise medicine and referring these to the Health Committee (a subcommittee of the Council) for expert assessment and follow up
- setting standards of clinical competence and cultural competence, and ethical conduct
- monitoring with the AMC postgraduate qualifications and accrediting branch advisory bodies, Medical Schools and hospital runs.

Furthermore the HPCAA provides for

- a consistent accountability regime for all health professions
- additional occupational groupings to become subject to the Act
- restricting specified activities to particular classes of health practitioner to protect members of the public from the risk of serious or permanent harm
- certain protections for health practitioners who take part in quality assurance activities.

Registration

Under the HPCAA each doctor must be fit for registration, which includes having the ability to communicate effectively for the purposes of practising in their scope of practice.

Furthermore, regulatory authorities are required to determine “scopes of practice” and the “qualifications” required for each scope of practice for those individuals registered with the authority. These define the services a practitioner is competent (and therefore legally permitted) to provide including the parameters within which the services can be provided. All scopes of practice and qualifications prescribed by the Council must be published in the *New Zealand Gazette*.

After having regard to a doctor’s qualifications, training and experience, the Council may also consider that one or more conditions need to be included on a person’s scope of practice to ensure that they are competent to practice. Examples of conditions are that the doctor practise under supervision, work in a specified position, or sit and pass an examination.

Once a doctor is registered, their authorised scope of practice is entered on the medical register and endorsed on the annual practising certificate (along with any conditions). Without registration and an annual practising certificate a doctor will be in contravention of the HPCAA should they practise medicine.

The Council has prescribed the following scopes of practice:

- A general scope
- A number of vocational scopes
- A special purpose scope

General scope of practice

To qualify for a general scope, applicants must

- have the prescribed qualifications
- be considered fit for registration
- be competent to practise
- once registered (and they have been issued an annual practising certificate) meet on going recertification requirements (continuous professional development) by maintaining a collegial relationship.

Doctors who wish to register to work in New Zealand in a general scope of practice must first become registered in a provisional general scope of practice. The exception is for graduates from New Zealand or Australian university medical schools who have completed their internships in New Zealand or Australia. Doctors registered in a provisional general scope are required to work under supervision in approved positions for 1-2 years to qualify for registration in a general scope.

During this time the supervisors will assess whether the doctors are able to work at the standard required in the New Zealand health system.

Once doctors have satisfied the Council that they have fulfilled all conditions while working in a provisional general scope, they can apply for registration in a general scope.

Vocational scope of practice

To qualify for a vocational scope, applicants must

- have the prescribed qualifications
- be considered fit for registration
- be competent to practise
- once registered (and they have been issued an annual practising certificate) participate in an approved recertification programme (continuous professional development) to maintain their registration.

Vocational scopes of practice reflect different types of specialised medical practice, each defined by an accredited postgraduate training programme and qualification. Council has a system of accrediting and reaccrediting the postgraduate training and recertification programmes which go to make up a vocational scope.

Special purposes scope of practice

The Council has set requirements for doctors wishing to enter New Zealand to teach, train, carry out research, work as a locum tenens as a specialist, or to assist in an emergency or other unpredictable, short term purpose.

The applicant may work as a postgraduate trainee registered in a special purpose scope of practice for a maximum of two years. Time registered in a special purpose scope of practice as a postgraduate trainee will not be counted towards gaining registration in a provisional general or a general scope of practice.

Competence, performance, and conduct

Competence and performance

The HPCAA permits the Council to review the competence to practise medicine, whether or not there is a reason to believe that a doctor (or class of doctors) may be deficient. The Act refers to “competence” (ability) and “standard of competence” (performance). This means the ability to practise well is not enough: the assessment will also show whether the doctor is actually practising well.

The Council has adopted an educational approach to this work, where competence reviews (performance assessments) are based on international medical education literature. Remedial education is required for those doctors who have been assessed as needing it.

Conduct

The Council may appoint Professional Conduct Committees (PCCs) from time to time to investigate a complaint and/or investigate the circumstances of certain offences committed by doctors. Council may only refer a matter to a PCC once it has been notified by the HDC that the matter is not being investigated by the HDC, that the matter has been resolved, or that the Director of Proceedings will not be considering or proceeding with the matter.

In relation to certain offences, the Council is required to refer the matter to a PCC for an investigation. In relation to other matters the Council has discretion to refer, the test under the HPCAA being, “if [the Council] considers that the information in its possession raises one or more questions about the appropriateness of the conduct or the safety of the practice...”

A PCC receives evidence and investigates a case or class of cases. This may include oral evidence and written submissions and statements from a range of people involved with the complaint, and where necessary, a clinical expert. In some circumstances the PCC has the power to require that information and documentation be provided.

PCCs may make a number of recommendations or determinations. Recommendations include reviewing performance, fitness to practice or scope of practice, or referral to the police.

Determinations include laying a charge before the Health Practitioners Disciplinary Tribunal (HPDT) or that no further action is taken.

Suspension or imposition of conditions

The Council may suspend a doctor or impose conditions on a doctor’s scope of practice for an interim period. The circumstances on which Council can do this vary depending on whether the matters relate to competence or conduct.

For competence related concerns, the Council should be satisfied that the doctor has been, or is to undergo a performance assessment and that there are reasonable grounds for believing that they pose a risk of serious harm to the public by practising below the required standard of competence. For instance, a doctor may

pose a threat to more than one patient and as such the harm is collectively considered “serious” or a one off event may have an impact on a patient that is so severe as to be considered “serious”.

For conduct related concerns the practitioner may be facing a criminal trial that reasonably calls into question the appropriateness of the doctor’s conduct in their professional capacity, or on the recommendation of a PCC that has reason to believe the doctor’s practice poses a risk of serious harm to the public.

In all situations the Council must observe the rules of natural justice and thereby give the doctor an opportunity to provide submissions and be heard on the matter before the Council imposes conditions or suspends.

Health Practitioners Disciplinary Tribunal (HPDT)

Consistent with the intention that there should be one regulatory framework for all registered health professional occupational groups the HPCAA established a single disciplinary tribunal for all health practitioners.

The HPDT hears and determines charges brought by the Director of Proceedings or a PCC. Consistent with the principal purpose of the HPCAA, the main purpose of the HPDT is the protection of public health and safety from incompetent and improper conduct by doctors by ensuring that doctors conform to the standards generally expected of them.

The HPCAA has “professional misconduct” as the sole level of charge. Should the doctor be found guilty then the gravity of the doctor’s offending is reflected in the nature of the penalty imposed by the HPDT.

The HPCAA does not specify that certain penalties must be imposed for particular types of offending – rather each case is decided on own its facts and circumstances. Penalties include the cancellation of the doctor’s registration, suspension for a period of no more than three years, the imposition of conditions, and a fine not exceeding \$30,000.

Decisions of the HPDT are appealed to the High Court and that court’s decision is final except on points of law which may be further appealed to the Court of Appeal.

The HPCAA requires as soon as practicable after the expiry of the period of 3 years since its full implementation that the Director-General of Health reviews the operation of the legislation and consider whether any amendments to it are necessary or desirable. A result of the review will be a report from the Director-General of Health to the Minister of Health – it is anticipated that the report will be ready by December 2008.

The review will examine the impact of the legislation on the public, health care service providers and health professions, and determine whether the way in which the legislation is being used is appropriate given the costs to these parties. The review also provides an opportunity to provide information to affected parties on the HPCAA and its potential to improve the quality of, and access to, health services. Furthermore it provides an opportunity for the investigation of whether the HPCAA could be used more efficiently to achieve its primary purpose of protecting the public.