

**Health and Disability Commissioner
Te Toihau Hauora Hauātanga**

and

**Te Kaunihera Rata o Aotearoa
Medical Council of New Zealand**

Memorandum of Understanding

The parties

This Memorandum of Understanding ('MoU') is between the Health and Disability Commissioner | Te Toihau Hauora Hauātanga ('HDC') and Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand ('the Council')

Introduction

This section of the MoU is intended to assist with the interpretation and implementation of other parts of the MoU by:

- providing the context for the operation of the MoU
- clarifying the objectives and intentions of the parties, and
- describing how the parties intend to interact with each other.

Purpose

This MoU documents the shared commitment of the HDC and the Council to the promotion and protection of the rights of health and disability consumers, the maintenance of competent and safe practice by doctors, and the protection of public health and safety.

The MoU aims to support the HDC and the Council in dealing with complaints and concerns about doctors' competence, conduct, or fitness to practise (health).

This MoU establishes effective communication channels between the HDC and the Council, to ensure transparency and aid collaboration to jointly uphold and promote the highest professional standards, including adherence to the Code of Health and Disability Services Consumers' Rights ('HDC Code'), and other regulatory requirements.

The MoU records the parties' shared responsibility, in carrying their respective roles, to promptly consider, and act on, any potential for risk of harm to patients or to the public as well as actively promote competent and safe medical practice.

It records the commitment between the parties to share information relating to doctors, to enhance each party's ability to effectively undertake its statutory responsibilities. The MoU sets out the controls in place to ensure that information is shared, used, and handled responsibly within legal parameters.

Recognising this shared goal, the parties wish to communicate and share information in a timely way to effectively manage situations where there may be specific risks to the health and safety of the public.

Core principles

The agreed core principles underpinning this agreement are:

1. **Mutual cooperation and collaboration:** both parties commit to fostering a spirit of cooperation and collaboration that enables each party to fulfill its obligations and duties, in the interest of public health and safety.
2. **Information sharing:** clear guidelines for the timely, secure and procedurally robust exchange of relevant information.
3. **Responsiveness:** both parties enable each other to be alert to and responsive to risk, ensuring that time and proportionate action can be taken to protect the public.

4. **Legislative compliance:** Affirm a commitment to operating within the legal frameworks governing healthcare and medical practice.
5. **Public engagement and education:** collaborate on initiatives to engage the public and raise awareness of each party's interrelated roles and processes,
6. **Joint oversight:** the parties acknowledge each has its own respective strategic and policy directions, and outline areas where collaborative efforts are essential for protecting public health and safety.

Legal and policy setting

This MoU is set within the framework of New Zealand legislation, including:

- the Health Practitioners Competence Assurance Act 2003 (HPCAA);
- the Health and Disability Commissioner Act 1994 (HDCA) and the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996;
- the Official Information Act 1982 (OIA);
- the Privacy Act 2020 and Health Information Privacy Code 2020.

The MoU does not provide a definitive legal interpretation of this legislation.

Relationship management

To facilitate and support the relationship between the HDC and the Council, each party will nominate a Relationship Manager. The Relationship Manager will be the first point of contact for each party with regards to the operation of this MoU.

Any dispute or difference between the HDC and the Council relating to the interpretation or performance of this MoU will be settled in the first instance by the Relationship Managers.

Relationship Managers nominated by each party, and their contact details, are set out in **Appendix 3**.

Relationship Managers may be changed from time to time by written notification by either party.

To ensure transparency and provide opportunities for the parties to regularly review any issues with the operation of this agreement and collaborate on areas of mutual concern, the Relationship Managers will meet every six months. The Relationship Managers may invite any other contacts from their respective agencies that they deem appropriate. The meetings may also include representatives from other agencies involved in receiving and managing complaints or issues related to the operation of the HPCAA and HDCA.

Date of commencement

This MoU comes into force on Tuesday 27 August 2024 and replaces any former memorandum of understanding on information exchange. However, both the HDC and the Council agree in principle that the agreement can be applied to complaints that were initiated before this date, which have been closed or are still under assessment or investigation.

Review

The Relationship Managers will review the terms of this MoU at each yearly meeting, and discuss whether modification is required. The MoU may also be reviewed at such other time as may be agreed by the HDC and the Council's Chief Executive.

Non-binding

The parties agree that this MoU is not legally binding and does not create legal relations between the parties. However, the parties will use all reasonable endeavours to meet the obligations under this memorandum. Each party will hold other parties accountable for their performance under the memorandum.

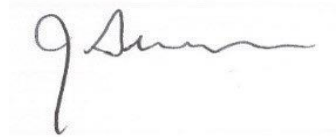
The parties agree that this agreement is not intended to fetter the discretion of the HDC granted under the HDCA.

Signatures



Dr Vanessa Caldwell
Acting Health and Disability Commissioner

Date: 27 August 2024



Joan Simeon
Chief Executive, Medical Council

Date: 27 August 2024

Appendix 1 - Referrals, notifications, and information-sharing

This appendix covers:

1. Definitions
2. Obligations of the HDC under the HDCA
3. Other notifications/actions under the HDCA
4. Obligations of the Council under the HPCAA and HDCA
5. Other notification/actions under the HPCAA
6. Information sharing – general principles
7. Medical records
8. Sharing information with complainants

1. Definitions

A **conduct concern** means a matter that raises questions about the appropriateness of the conduct or the safety of the practice of a doctor.

A **competence concern** means a matter that raises concerns regarding a doctor's level of skill or expertise, or the application of such skills or expertise, as would be expected of a doctor practising in that scope of practice.

A **fitness to practise concern** means a matter that raises questions that the doctor is unable to perform the functions required for the practice of their profession because of some mental or physical condition.

Risk of harm (for the purposes of section 39 HDCA, and sections 34(2) or 35(1) of the HPCAA) may include but is not limited to:

- a pattern of practice that suggests the doctor's competence is below the required standard; or
- A single incident that demonstrates a significant departure from accepted standards of medical practice; or
- Recognised poor performance where local interventions have failed; or
- Professional isolation with declining standards that have become apparent.

2. Obligations of the HDC under the HDCA and HPCAA:

- a. The HDC **must** notify the Council when it commences an investigation into a doctor (section 42(1) HDCA and section 66 HPCAA).

When notifying an investigation, the HDC will routinely require in writing any information the Council holds regarding the doctor under investigation, or any other information, that in the HDC's opinion, is relevant to the subject matter of the investigation (section 62(1) HDCA).

- b. After the HDC completes an investigation that directly concerns a doctor, the HDC **must** inform the Council of the results of the investigation and any action that the HDC proposes to take (including a referral to the Director of Proceedings, if relevant) or that the HDC proposes to take no action (section 43(1) HDCA).

- c. Where the HDC completes an investigation that directly concerns a doctor in breach of the Code of Health and Disability Services Consumers' Rights, the HDC may report its opinion with reasons and any recommendations to the Council (section 45(2)(b)(i) HDCA).
- d. When the HDC has reason to believe that the practice of a doctor may pose a **risk of harm** to the public, HDC **must** promptly notify the Council of that belief and the reasons for it (section 39 HDCA and section 34(2) HPCAA)

The HDC will notify the Council within three working days of deciding that the practice of a doctor may pose a **risk of harm** to the public.

3. Other notification/actions under the HDCA

- a. When, following a preliminary assessment of a complaint, the HDC considers that the competence or fitness to practise of a doctor, or the appropriateness of their conduct, may be in doubt, the HDC **may** refer the complaint to the Council in whole or in part (section 34(1)(a) HDCA).

The HDC will use best endeavours to refer all complaints relating to a doctor's competence, fitness to practise or conduct to the Council within three working days of receiving the relevant complaint, unless the HDC intends to formally investigate the complaint.

The HDC may consult with the Council as to the most appropriate means of dealing with a complaint, before referring a complaint (section 34(2) HDCA).

- b. Where a complaint alleges a boundary violation, that part (or where appropriate, all) of the complaint should be referred to the Council in the first instance, for the Council to take any necessary action to protect the public. The HDC will use best endeavors to make a referral within three working days of receiving the relevant complaint or information.

Any referral may be subject to prior discussion between the HDC and the complainant. The HDC will take the complainant's wishes into consideration in any decision to refer the complaint to the Council.

Where a complaint is referred to the Council, the Council may refer any outstanding issues to the HDC at the conclusion of its process (i.e. issues relating to a group provider). The complainant will be advised that they may re-submit their complaint to the HDC at the conclusion of the Council's process if they consider any issues to be outstanding.

- c. When the HDC is aware of three complaints within five years relating to a doctor that may indicate a pattern of conduct or behaviour indicative of wider competence or conduct concerns, the HDC **will** disclose relevant information to the Council, on the basis that such disclosure is desirable in the public interest (section 59(4) HDCA).¹

¹ A section 59(4) notification is not a referral of the complaint, unlike a section 34(1)(a) complaint referral.

- d. The HDC will notify Council when it considers it is necessary or desirable in the public interest to bring a matter to Council's attention (section 59(4) HDCA). The HDC may refer such information proactively, or in response to an information request from the Council.
- e. The HDC **may** disclose any complaint assessment decision to the Council if the HDC considers it necessary or desirable in the public interest to bring this information to the Council's attention (section 59(4) HDCA).

4. Obligations of the Council under the HPCAA and HDCA

- a. When the Council receives a notification alleging that the practice or conduct of a doctor has affected a health consumer, the Council **must** promptly forward the complaint to the HDC (section 64(1) HPCAA).
- b. When the Council has reason to believe that the practice of a doctor may pose a **risk of harm** to the public it **must** inform the HDC (section 35(1)(c)).

The Council will notify the HDC within three working days of coming to that belief.

If the Council subsequently forms the view that the practice of a doctor never posed or no longer poses a risk of harm to the public, the Council must promptly notify the HDC of the Council's current position (section 35(3) HPCAA).

- c. On being provided a written s 62 notice for information from HDC, the Council **must** provide the information required by the HDC (section 62 HDCA);
- d. Where a complaint is referred to the Council by the HDC (section 34(1)(a) HDCA), the Council **must** promptly:
 - i. acknowledge receipt of the complaint (section 35(a) HDCA)
 - ii. advise the HDC of any significant steps taken by the Council in its consideration of the complaint (section 35(b) HDCA)

This may include whether the matter has been referred to a Professional Conduct Committee (PCC), a Performance Assessment is ordered, or the matter has been submitted to the Council's Health Committee.

- iii. advise the HDC of the outcome of its consideration or examination of the complaint (section 35(c) HDCA)

This may include the PCC's determinations and/or recommendations, if the doctor meets the required standard of competence following a PAC, or if the doctor is found unable to perform the functions required for medical practice due to a mental or physical condition. The Council will advise the HDC if it has determined no further action, or an educational approach, has been taken on the complaint.

5. Other notification/actions under the HPCAA

- a. The Council will notify the HDC of the outcome of its consideration of any notification from the HDC to the Council where the HDC has recorded a reason to believe that a doctor may pose a risk of harm to the public (section 39 HDCA and section 34(2) HPCAA).
- b. When the HDC requests information under section 14(1)(m) of the HDCA in relation to a matter relating to a doctor, the Council must consider the HDC's request. Without limiting the Council's response, the Council may:
 - i. advise that having regard to the Council's recent involvement the new matter is more properly within the scope of the functions of the Council; or
 - ii. provide the HDC with any similar fact information and information about any pending, current or concluded performance assessments in relation to the doctor. The Council may continue to provide relevant information to the HDC in response to that request until notified that the HDC process is concluded.
- c. Upon receipt of a notification about a doctor under section 34 of the HPCAA, the Council may advise the HDC of the notification and may request any information held by HDC about the doctor. The HDC must consider the Council's request and may provide the Council with information in response to that request.
- d. When the HDC notifies the Council of an HDC investigation that directly concerns a doctor, the Council may not take any disciplinary action against that doctor under the HPCAA in relation to any subject matter of the investigation (section 42(2) HDCA and section 70 HPCAA). However, section 70 of the HPCAA is subject to sections 69 and 69A of the HPCAA, which permit the Council to take other specific actions during this period. The Council may also take action under Part 3 of the HPCAA, including reviewing the doctor's competence, ordering an educational programme or recertification programme, placing conditions on the doctor's scope of practice, or interim suspension. The Council will advise the HDC if any of these actions are taken or intended.
- e. When a request is made to the HDC by a PCC of Council, for information which may assist it to deal effectively with the subject of its investigation, the HDC should promptly provide such information, no later than 15 working days from date of receipt unless otherwise agreed (section 76 HPCAA). Should the PCC consider that the HDC has failed to comply with a section 76 request, the PCC may by notice in writing, require the HDC to produce the requested information if the conditions listed under section 77 are met. In such circumstances, the HDC will promptly provide such information within 10 working days.

6. Information sharing – general principles

- a. The information that will generally be shared in accordance with clauses 2-5 above is set out in **Appendix 2**. The parties agree the information in Appendix 2 is necessary to meet the purposes for which the information will be shared.
- b. In addition to the above requirements, the HDC and the Council recognise the benefits of early intervention, open communication, and a collaborative working relationship. The parties, therefore, acknowledge that information may be shared both formally and informally, as required by the circumstances and the particular purpose. In particular, the parties recognise the importance of sharing information of mutual concern, including but

not limited to complaint trend information, systemic concerns regarding medical services and relating to individual complaints.

7. Sharing health information about a doctor

- a. The parties agree that the HDC will not have automatic access to doctors' health information held by the Council. However, the HDC may **request** a doctor's health information to carry out a statutory function (section 14(1)(m) HDCA). The Council should consider the request and may share the doctor's health information, or a summary, with HDC in response.
- b. The HDC may **require** a doctor's health information from the Council where it relates to any matter being investigated by the HDC and where it is relevant to the subject matter of HDC's investigation (section 62(1) HDCA). The Council must provide the required health information to the HDC.

8. Sharing information with complainants

- a. The HDC and the Council acknowledge that, when the HDC refers a complaint to the Council under section 34 of the HDCA, a complainant is more likely to be satisfied with this referral if they are provided with information about what action the Council may take in relation to the complaint. Therefore, it is agreed that the HDC will advise the complainant that:
 - i. The complaint (or part of their complaint) has been referred to the Council to consider whether the complaint raises a broader question regarding the doctor's competence and/or appropriateness of their conduct, requiring action on Council's part (as appropriate);
 - ii. After assessing the complaint and other relevant information, actions open to the Council include:
 - requiring the doctor to undergo a performance assessment
 - referring the information for investigation by a PCC
 - taking an educational approach to the concerns raised in the complaint; or
 - taking no further action on the matter.
 - iii. If a performance assessment is required, it will be a broad-based assessment of the doctor's overall competence; it is not a disciplinary process. The review process aims to ensure that a doctor is practising safely and has an acceptable level of knowledge, skills, attitude, and judgement as expected of someone in that scope of practice. The complainant's input will not be required, as a performance assessment is not an investigation of the circumstances of the complaint.
 - iv. If a complaint relates to a doctor's conduct, the Council may refer information to a PCC for a full investigation. If that occurs, the complainant may be invited to participate in the PCC process.
 - v. Council might, in addition to ordering a performance assessment or PCC, impose conditions on the doctor's practice, or suspend the doctor's practising certificate if it believes that there is a risk of serious harm to public health and safety, or if the alleged

conduct casts doubt on the appropriateness of the doctor's conduct in their professional capacity.

- vi. Further information regarding the Council's process upon receiving a referral is provided on the Council's website.
- vii. The complainant should direct any further queries about Council's process to the Council (standards@mcnz.org.nz) in the first instance.

9. Protected disclosures

- a. All referrals of protected disclosures will be managed in accordance with the Protected Disclosures (Protection of Whistleblowers) Act 2022 (**PDA**).
- b. Each party must make its own independent assessment of the merits of the protected disclosure, including whether the criteria for being considered a protected disclosure under the Whistleblowers Act are met. Neither party is bound by the other's decision in respect to eligibility under the Act, nor by any decision to afford anonymity to the discloser. The discloser should be advised of this at the time of consultation (see section 16(3) of the PDA).
- c. Referrals, pursuant to section 16(2) of the PDA, will include all relevant information, including the discloser's name and contact details as per the usual complaint assessment pathway.

Appendix 2 – Information sharing

The information that will generally be shared in accordance with Appendix 1 of this MoU is set out below. The parties have agreed that it is necessary to share the information referred to in this Appendix to meet the purposes for which the information will be shared, as outlined in this MoU.

The parties reserve the ability to request and/or share other information not outlined below and will ensure that any use or disclosure of information is permitted by the relevant legislation, including the Privacy Act 2020, Health Information Privacy Code 2020, and Official Information Act 1982.

The HDC will generally share the following information with the Council:

MoU Reference	Notification/Referral	Information to be shared
Para 2(a)	Notification of commencement of investigation	<ul style="list-style-type: none">• Complaint; and• Response to complaint from doctor (if available); and• Independent and/or in-house clinical advice (if available and doctor has received a reasonable opportunity to comment on advice). In these circumstances, the Council will be advised of any comments made by the doctor in response to the advice.
Para 2(b)	Notification of outcome of investigation	<ul style="list-style-type: none">• Anonymised final report, including any recommendations and/or follow-up actions• The name of the doctor
Para 2(c)	Risk of harm notification	<ul style="list-style-type: none">• Complaint(s); and/or• Any relevant information giving rise to belief that the practice of the doctor may pose a risk of harm to the public. This may include:<ul style="list-style-type: none">○ Response to complaint from doctor (if available); and/or○ Independent and/or in-house clinical advice (if available and doctor has received a reasonable opportunity to comment on advice).
Para 3(a)	Referral of complaint received by HDC	<ul style="list-style-type: none">• Complaint (in whole or in part); and• Decision letter to complainant (including relevant provisional decision(s)).
Para 3(b)	Referral of complaint (boundary breach) received by HDC	<ul style="list-style-type: none">• Complaint (in whole or in part); and• Decision letter to complainant.

Para 3(c)	Notification of three complaints within five years, which may indicate a pattern of conduct indicative of wider competence or conduct concerns	<ul style="list-style-type: none"> • Complaints; and • Reasoning for considering the complaints may indicate a pattern of conduct indicative of wider competence or conduct concerns, such as decision letters.
Para 3(d)	Public interest notification	<ul style="list-style-type: none"> • Complaint; and/or • Any relevant information giving rise to belief that it is necessary or desirable in the public interest to bring the matter to the attention of the Council. This may include: <ul style="list-style-type: none"> ○ Response to complaint from doctor (if available); and/or ○ Independent and/or in-house clinical advice (if available and doctor has received a reasonable opportunity to comment on advice); and/or ○ Decision letter to complainant (if available, including relevant provisional decision(s)).
Para 3 (e)	Decision on complaint referred by the Council, or submitted to both the HDC and the Council by complainant	<ul style="list-style-type: none"> • Complaint; and • Decision letter to complainant (including relevant provisional decision(s); and • Response to complaint from doctor (if available); and • Independent and/or in-house clinical advice (if available and doctor has received reasonable opportunity to comment on advice).
Para 3(f)	HDC completes an investigation that directly concerns a doctor	<ul style="list-style-type: none"> • Anonymised final report (including the doctor/s name/s), including any recommendations and/or follow-up actions
Para 5(c)	Response to request from the Council for information relating to doctor (following notification received by the Council under section 34 of the HPCAA)	<ul style="list-style-type: none"> • Written confirmation of complaint history (if any). • If there are any complaints relating to the doctor, the HDC will provide a copy of the complaint(s), advise the status of the complaint(s), and advise the outcome of the complaint(s) (if closed).

The Council will generally share the following information with the HDC:

MoU Reference	Notification/Referral	Information to be shared
Para 4(a)	Referral of notification received by Council	<ul style="list-style-type: none"> • Notification; and

		<ul style="list-style-type: none"> Any interim actions taken, or proposed to be taken, by the Council (as per clause 5 of this MoU). The doctor's contact details.
Para 4(b)	Risk of harm notification	<ul style="list-style-type: none"> Notification(s); and/or Any relevant information giving rise to belief that a doctor may pose a risk of harm to the public. Any interim actions taken, or proposed to be taken, by the Council
Para 4(b)	Notification that doctor no longer poses a risk of harm	<ul style="list-style-type: none"> Any relevant information giving rise to belief that a doctor no longer poses a risk of harm to the public. This may include details regarding a change in the doctor's practising circumstances
Para 4(c)	Information relevant to investigation	<ul style="list-style-type: none"> Written confirmation of any similar conduct, competence, or fitness to practise concerns raised with the Council in relation to the doctor; and Written confirmation of whether the Council has taken any action (disciplinary or otherwise) in relation to the doctor; and Any other information the HDC considers relevant to the subject matter of the investigation and has requested pursuant to section 62 of the HDCA.
Para 4(d)(ii)	Advising the HDC of any significant steps taken by the Council in its consideration of a matter referred to it by the HDC	<ul style="list-style-type: none"> Written confirmation of any significant steps taken.
Para 4(d)(iii)	Advising the HDC of the outcome of its consideration of a complaint referred to it by the HDC	<ul style="list-style-type: none"> Written confirmation of the outcome.
Para 5(a)	Advising the HDC of the outcome of its consideration of a matter referred to it by the HDC where the HDC believes that a doctor may pose a risk of harm to the public	<ul style="list-style-type: none"> Written confirmation of the outcome.
Para 5(b)	Provision of general information upon request by the HDC, that is relevant to a new matter regarding a doctor brought to the HDC's attention, to assist the HDC in considering whether the new matter is more	<ul style="list-style-type: none"> Written confirmation of any recent involvement with the doctor. This may include: <ul style="list-style-type: none"> Any similar conduct, competence, or fitness to practise concerns recently raised with the Council in relation to the doctor; and/or

	properly within the scope or functions of the Council	<ul style="list-style-type: none"> ○ Whether the Council has recently taken or is considering taking any action (disciplinary or otherwise) in relation to the doctor.
Para 5(b)	Provision of information upon request by the HDC, that is relevant to a particular complaint received by the HDC	<ul style="list-style-type: none"> • Written confirmation of: <ul style="list-style-type: none"> ○ Any similar conduct, competence, or fitness to practise concerns raised with the Council in relation to the doctor; and/or ○ Whether there are any pending, current, or completed performance assessments in relation to the doctor.
Para 5(c)	Notification of notification received about a doctor under section 34 of the HPCAA	<ul style="list-style-type: none"> • Written confirmation that a notification has been received; and • The relevant notification.

Appendix 3 Relationship Managers

Relationship Managers nominated by each party, and their contact details, are as follows:

Health and Disability Commissioner	Medical Council
Role: Amanda James, Principal Advisor Complaint Resolution Phone: Email: Amanda.james@hdc.org.nz	Role: Phone: Email: