

Medical Council of New Zealand

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Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand MOU

24th August 2017

THIS MEMORANDUM OF UNDERSTANDING is made on the 24th day of August 2017

BETWEEN Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand

AND The New Zealand Police.

Introduction

1. Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand (MCNZ) is established under the Health Practitioners Competence Assurance Act 2003 (HPCAA) and governed by a Council appointed by the Minister of Health. The MCNZ is the agency that registers doctors in New Zealand and carries responsibilities in the areas of standards, conduct and competence. The MCNZ's role is to protect the health and safety of the public by ensuring the competence and fitness of doctors to practise medicine in New Zealand.

2. The New Zealand Police (Police) is established under and regulated by the Policing Act 2008 and Policing Regulations 2008. New Zealand Police has a vision to have the trust and confidence of all. It seeks to do this by working in partnership with citizens, communities, government and non-government agencies to prevent crime and crashes, enhance public safety and maintain law and order. One of the many functions of the New Zealand Police is maintaining public safety and confidence through the thorough investigations of reported crime and promoting Prevention First principles.

Purpose

3. There may be times where the parties have mutual interests, or one party wishes to seek assistance, cooperation or resources from the other.

4. The purpose of this Memorandum of Understanding (MOU) is to record and provide a framework for a continuing relationship between the parties, and to clarify the assistance or support each party may provide the other, and information that may be provided by one party to the other, in certain circumstances. Details of assistance, cooperation, support that may be provided, and information that may be shared, in accordance with this MOU are detailed in the schedules to this MOU.

5. Nothing in this MOU prevents either party from providing assistance, cooperation or support outside of the terms of this MOU or its schedules, where there is agreement between the parties.

Effect of this Memorandum of Understanding and Best Endeavours

6. This MOU confirms the relationship between the parties based on a spirit of goodwill and cooperation. The parties will apply best endeavours in the implementation of this MOU and in working together to achieve desired outcomes.

Outcomes

7. The desired outcomes of this MOU are to:

- i. Establish an effective arrangement between MCNZ and Police, which will better enable the MCNZ and Police to exercise functions in relation to the assurance and promotion of the health and safety of patients and the public;
- ii. Prevent and minimise potentially harmful activity in the community and in the delivery of health services that arise, or may arise, from the conduct or practice of a registered medical practitioner; and
- iii. Achieve mutual cooperation between the parties in operational and non-operational duties.

Schedules

8. From time to time the parties may develop schedules to this MOU that detail specific procedures and activities between the parties. These may include strategies to share information to enhance community safety. Every schedule will nominate a position in each agency responsible for the schedule, and provide contact details for those positions.

9. Schedules may be signed or amended by the MCNZ CEO or the MCNZ Registrar and by the appropriate Director, Police.

Status of MOU and schedules

10. The following applies to this MOU and each schedule (unless the schedule concerned specifically states otherwise):

- i. The effective date is the date of the last signature, and will continue to be in effect until termination;
- ii. A review is to be implemented every five years and amendments can be made in writing by mutual agreement of the parties;
- iii. Termination can take place at any time by either party giving the other three months written notification or notice that it will be effective immediately;
- iv. Termination of the MOU will terminate all schedules, but termination of a schedule will only affect that schedule;
- v. The most recent version supersedes and cancels all previous versions;
- vi. There is no intention to create any legal rights, duties or obligations, and this MOU is not binding on the parties; and
- vii. The parties' representatives are primarily responsible for ensuring that the intent of this MOU is followed.

Information sharing

11. MCNZ and the Police will continue to develop and implement strategies to share information, subject to legislative requirements (Official Information Act 1982 and Privacy Act 2020), to improve cooperation on all matters of mutual interest.

Communications and media

12. Where possible, parties will consult each other when providing information or comment to the media on a matter that is relevant to the other party or to the content of this MOU.

13. Any request a party receives for information originating from the other party will be notified to, and where appropriate transferred to, that other party.

Dispute resolution

14. Any concerns relating to this MOU, operational policies or practice will be raised through the appropriate internal channels and not through the media.

15. Any disputes between the parties about the interpretation or performance of this MOU will, in the first instance, be attempted to be resolved by local representatives or managers.

16. When disputes cannot be resolved at the local level they will be referred to the Registrar, MCNZ and the Director: Operational Capability, NZ Police.

17. If disputes cannot be resolved between the above nominated persons within 28 days of referral, then the matter will be referred in writing to the Chief Executive MCNZ and the Commissioner of Police, for final resolution.

18. The parties will resolve any disputes arising under the MOU by discussion and cooperation and will not refer any difference to any third party.

Costs

19. The cost of meeting the commitments of the MOU shall be met by the party incurring the cost, unless agreed otherwise.

Conditions

20. Nothing in this MOU shall make either party liable for the actions of the other or constitute any legal relationship between the parties.

21. The provisions of this MOU are to be read subject to any Chief Executive or Cabinet directives, and any enactment.

22. Where there are changes to Government policy which may affect the purpose and functions of this MOU, each party agrees to inform the other of those changes at the earliest possible time thereafter and agrees to meet to re-negotiate if necessary any aspects

of this MOU.

Liaison and coordination meetings

23. To ensure that the parties continue to develop and implement strategies to share information, to improve cooperation on all matters of mutual interest, it will be advantageous to establish regular meetings between the CE, MCNZ and the Director, Operational Capability, Police or their delegates. In order to foster and maintain this relationship, the parties will meet annually to:

- i. Brief each other on their respective roles, responsibilities and capabilities;
- ii. Review the exchange of information between MCNZ and Police; and
- iii. Explore other opportunities for collaboration within the intent of the MOU and its schedules.

SIGNED at Wellington for and on behalf of Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand and the New Zealand Police

Philip Pigou	M. Bush, MNZM
Chief Executive	Commissioner of Police
Te Kaunihera Rata o Aotearoa Medical Council of New Zealand	New Zealand Police
Dated this 24th day of August 2017	Dated this 24th day of August 2017

Schedule 1: Information Sharing

Introduction and purpose

1. The parties have developed this schedule to the MOU for the purposes of cooperating in mutual information sharing for operational reasons. The schedule identifies the specific responsibilities of the parties in contributing to the achievement of the overall purpose of the MOU in the exchange of information.

Meaning of “information”

2. For the purposes of this schedule, “information” includes any communication or representation of knowledge such as facts, data, and opinions in any medium or form, electronic as well as physical. Information includes any text, any numerical, graphic, or cartographic information, any narrative, or any audio or visual representation.

Legal basis

3. The parties may share information that is relevant to the other upon request or proactively, as appropriate. Any information exchanged between the parties will be in accordance with the provisions of the Official Information Act 1982 (OIA) and the Privacy Act 2020, or any other applicable legislation particularly the Health Practitioners Competence Assurance Act 2003 (HPCAA).

4. The parties acknowledge that information sharing will be considered on a case-by-case basis, not automatically, and may be permitted where:

- a. under the OIA, the public interest in disclosure outweighs any interests requiring protection (for example, a privacy interest), or
- b. under the Privacy Act, an exception to non-disclosure of personal information applies - for example, where the party disclosing believes on reasonable grounds that disclosure:

‘Public interest’ reason for disclosure	Privacy Act exception	Example
is one of the purposes for which it was obtained (or directly related to the purposes)	principle 11(1)(a)	It has already been made public that information about relevant offending may be disclosed.
is authorised by the individual concerned	principle 11(1)(c)	Consent (preferably in writing) is provided by the doctor.
is necessary to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution and punishment of offences	principle 11(1)(e)(i)	A complaint, charge, investigation or conviction about a doctor’s behaviour which may be criminal or affect fitness to practice.
is necessary for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation)	principle 11(1)(e)(iv)	The doctor is subject to a disciplinary charge laid in the Health Practitioners Disciplinary Tribunal
is necessary to prevent or lessen a serious threat (having regard to likelihood, severity and time) to public health or public safety, or the life or health of an individual	principle 11(f)	The doctor is likely to reoffend or presents a real risk to patient safety.

5. Where information is subject to a suppression order, the party holding the information will carefully consider whether disclosing it to the other would amount to publication, resulting in a breach of suppression. The parties acknowledge that the judicial approach to the meaning of publication is flexible and depends on the circumstances, focusing on whether the other party has a genuine interest in

knowing the information. The parties will consider whether a doctor's conduct raises obvious and legitimate concerns about their ability to practise medicine safely and competently, or about public health or safety.

Scope - relevant, necessary & proportionate

6. The scope of information requested or disclosed may include complaints or allegations of offending, active investigations, criminal charges or convictions, depending on the circumstances.

7. Any disclosure of personal information by the parties will be relevant to the purpose of disclosure and be limited to what is necessary and proportionate to that purpose.

8. Police may consider the following examples of offending are relevant to MCNZ:

- a. Offences against children or vulnerable people;
- b. Offences against anyone having received medical treatment from the doctor concerned;
- c. Sexual offences;
- d. Violent offences;
- e. Drug offences;
- f. Theft, especially of drugs or involving a serious abuse of trust;
- g. Dishonesty offences, including false declarations of professional qualifications; and
- h. Drink driving offences.

9. MCNZ may consider the following examples of alleged offending are relevant to NZ Police:

- a. Offences against children or vulnerable people;
- b. Sexual offences;
- c. Violent offences;
- d. Drug offences;
- e. Theft, especially of drugs or involving a serious abuse of trust;
- f. Dishonesty offences, including false declarations of professional qualifications; and
- g. Drink driving offences.

Charging

10. No charge under the OIA will ordinarily be made by Police for the provision of information, except as may be provided for the provision of Police vetting services.

Information-sharing channels

11. Each party will be responsible for ensuring that their respective staff are aware of, and adhere to, the information sharing channels and requirements outlined in this schedule, while ensuring the security of information.

Confidentiality and ownership

12. In the event a party receives a request for information held by the other, the party receiving the request will:

- i. promptly notify the other party of the existence of any such request and consult in relation to the appropriate response; and
- ii. if the information is more closely connected to the functions of the other party, transfer the request.

13. Ownership of information will remain with the party who provided it in response to a request.

Inappropriate access or dissemination of information

14. In the event that a party believes that information provided by the other party has been inappropriately accessed or disseminated, they will immediately inform the other party and jointly consider what actions may be necessary.

SIGNED at Wellington for and on behalf of Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand and the New Zealand Police

David Dunbar	C. Scahill
Registrar	National Manager - Response and Operations
Te Kaunihera Rata o Aotearoa Medical Council of New Zealand	New Zealand Police
	027 243 1081
Dated this 24th day of August 2017	Dated this 24th day of August 2017

Schedule 2: Information exchange guidelines

Guiding principles

1. When either party responds to a written or verbal Request for Information (RFI), or provides written or verbal information, they must consider and observe the requirements of the Privacy Act 2020 and the Official Information Act 1982 as and when applicable.

Request for Information (RFI) process

MCNZ will:

2. Submit all RFIs in writing, online via the Police website. All responses delivered must follow the response process via the Police website. Oral requests will be accepted and processed only on the understanding that a written request must be submitted within 1 - 2 working days thereafter. Each request must have a unique designator attached to the request.

Police will:

3. Where reasonable, when seeking evidential material in a criminal case, obtain a production order under the conditions for obtaining a production order, under section 72 of the Search and Surveillance Act 2012 (reasonable grounds to suspect an offence has been committed under a NZ enactment and reasonable grounds to believe the documents sought constitute evidential material and are in the possession or under the control of the person against whom the order is sought).

4. Submit all RFIs in writing via email. All responses from MCNZ must be delivered via email. Oral requests may be accepted and processed only on the understanding that a written request must be submitted within 1 - 2 working days thereafter.

5. Understand disclosure of the information requested is voluntary. The information supplied by Police is intended to assist the agency receiving it.

6. Not obtain the information directly from the individual concerned (or obtain their authorisation for its disclosure), because:

- It is not reasonably practicable to do so; or
- collection from the individual concerned would prejudice the purpose of the collection of such information; or
- collection of the information from the individual concerned would prejudice the maintenance of the law.

Provision of information on a voluntary basis

7. The provision of information on a voluntary basis must be put in writing.

Legal status of information exchanged

8. When a party responds to a written RFI, or voluntarily provides information, they must consider the legal status and use to which the information will be put. This should be done at the point of transfer, and each piece of information must be clearly marked to show the exploitation opportunities or constraints particular to it. Doing so will reduce the risk of inappropriate use and lead to greater trust and cooperation between the parties.

9. The information-sharing activity requires the transaction to be tied to an office or function and not to individuals within these entities. However, each participating unit is encouraged to identify a position through which all requests for information sharing is facilitated.

SIGNED at Wellington for and on behalf of Te Kaunihera Rata o Aotearoa | Medical Council New Zealand and the New Zealand Police

David Dunbar	C. Scahill
Registrar	National Manager - Response and Operations
Te Kaunihera Rata o Aotearoa Medical Council of New Zealand	New Zealand Police
	027 243 1081
Dated this 24th day of August 2017	Dated this 24th day of August 2017

Schedule 3: Compliance and Investigations

Introduction

1. Activities that take place in Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand (MCNZ) environment involve the safety and security of patients and/or the public, and cover the fitness of medical practitioners to practise. In the ideal world, everyone operating in the health sector would operate safely, responsibly, and lawfully. In reality, on occasion some form of intervention is necessary to ensure that members of the medical community take account of their behaviour and the associated risks.
2. MCNZ operates under the Health Practitioners Competence Assurance Act 2003 (HPCAA), the functions of which include the maintenance of professional standards, promotion of health practitioner fitness, and the health, safety, security, and protection of the public in New Zealand. This includes ensuring that the health sector and other agencies are able to respond to unlawful behaviour and any associated risks, through timely sharing of information that enables employers, colleagues and other agencies or persons with a lawful interest to assist to manage and/or monitor risk or to carry out their own functions with respect to that behaviour.

Purpose

3. The purpose of this schedule is to enhance collaboration between the MCNZ and Police in monitoring, investigating and enforcing compliance within New Zealand's medical sector environment.
4. The desired outcomes of this schedule are to:
 - i. Improve mutual understanding between MCNZ and NZ Police as to their respective roles, responsibilities and powers in monitoring, investigating and enforcing compliance within New Zealand's health sector environment; and
 - ii. Enhance co-operation between the parties in monitoring, investigating and enforcing compliance within New Zealand's health sector environment.

MCNZ responsibilities

5. Health and Safety. The health sector works on a base of patient trust and confidence which makes a focus on health and safety particularly important for medical practitioners. The MCNZ is concerned about the harmful effects on individual patients and public confidence that arises from a medical practitioner's unlawful or inappropriate conduct or medical practice. In particular, MCNZ is concerned about practices that:
 - i. have caused, or have the potential to cause harm, to patients; or
 - ii. may pose a risk of harm to the health and safety of members of the public.

Investigations of inappropriate conduct of medical practitioners

6. It is MCNZ practice to refer matters relating to inappropriate conduct or unsafe practice to Professional Conduct Committees (PCCs) for investigation, where necessary and as permitted by the HPCAA. In addition, the MCNZ has options to curtail or limit the practice of a doctor alleged to have engaged in conduct under investigation by the Health and Disability Commissioner or a PCC or who is facing criminal proceeding. That is, where the conduct casts doubt on the appropriateness of the doctor's conduct in his or her professional capacity, the MCNZ may, after giving notice to the doctor and allowing an opportunity to be heard and make submissions on a proposal, suspend the doctor's practicing certificate or place one or more conditions on the doctor's scope of practice. Further, the MCNZ may immediately suspend a doctor's practicing certificate without notice if MCNZ believes the doctor's conduct may pose a serious risk of harm to the public. In this way, the MCNZ acts to protect public health and safety while the investigation proceeds.

SIGNED at Wellington for and on behalf of Te Kaunihera Rata o Aotearoa | Medical Council of New Zealand and the New Zealand Police

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