CHAPTER 27

How medical practice standards are set by legislation 1: the Health Practitioners Competence Assurance Act

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Registration 215
Practising certificates 216
Scopes of practice

*General scope of practice (and provisional general scope of practice)* 216
*Vocational scopes of practice (and provisional vocational scopes of practice)* 216
*Special purpose scopes of practice* 217
Recertification 217
Professional standards 217

*Interim suspension or imposition of conditions* 219
*Health Practitioners Disciplinary Tribunal (HPDT)* 219
The regulation of health professionals in New Zealand is governed by the Health Practitioners Competence Assurance Act 2003 (the HPCAA 2003). The principal purpose of the HPCAA 2003 is to protect the health and safety of the public by establishing mechanisms to ensure that health practitioners are competent and fit to practise medicine. This provides the framework for the policies, procedures and standards applied by the Medical Council of New Zealand (the Council) to the regulation of doctors.

The intention of the HPCAA 2003 is to increase consistency, transparency and efficiency in the regulation of health professionals. In applying the mechanisms under the Act, the Council applies the principles of natural justice, with the Council striving to make well informed and reasoned decisions.

The HPCAA 2003 details a number of important functions that the Council is required to perform, including but not limited to:

- determining scopes of practice and qualifications required for registration
- registering doctors in specific scopes of practice
- requiring doctors to demonstrate competence at registration and maintenance of competence when applying for practising certificates
- conducting competence reviews (performance assessments) and requiring programmes for up-skilling or retraining of doctors who are not practising at the required standard
- receiving notifications of any mental or physical conditions affecting the fitness of a doctor to practise medicine (referred by Council to its Health Committee where necessary for expert assessment and follow up)
- setting standards of cultural and clinical competence, and ethical conduct
- accrediting branch advisory bodies, medical schools and intern runs.

**Registration**

Under the HPCAA 2003, Council is required to define what falls within “the practice of medicine” in New Zealand in terms of one or more “scopes of practice”. These “scopes of practice”, define aspects of the practice of medicine and the health services that a doctor may provide within the scopes.

The HPCAA 2003 requires that each doctor must be fit to practise, hold a relevant qualification “prescribed” by the Council, and be competence to practise within the scope of practice applied for. These prescribed qualifications will vary between the different scopes of practice. In many cases, a “prescribed” qualification will be an identified medical degree, or fellowship of a medical college, but in some cases the Council will require a combination of a medical degree, and additional training, or approved experience. In such cases, the doctor will be required to meet all these requirements before he or she will be recognised as holding the “prescribed” qualification.
In assessing an application for registration, the Council may consider placing one or more conditions on a doctor’s scope of practice. Examples include conditions requiring a period of supervision in a specified position or identifying a form of assessment that must be completed upon which the limitation may be removed. Such conditions do not necessarily suggest an identified competence, conduct or health concern. Instead, they enable a doctor to be registered in a practice context that best corresponds to the areas that the doctor has previously worked in, or been formally assessed in.

**Practising certificates**

A doctor must hold a practising certificate to practise medicine in New Zealand. The practising certificate is valid for a period of time, up to 1 year. The certificate records the doctor’s registered scope(s) of practice, place of work, supervision requirements and/or conditions (if applicable).

**Scopes of practice**

**General scope of practice (and provisional general scope of practice)**

New Zealand and Australian medical graduates who have completed their internships in either country are eligible for registration in a general scope of practice after a year of provisional registration and supervised practice. These graduates will have a year of provisional registration first (which is the internship).

International medical graduates (IMG) who apply for registration in New Zealand in a general scope of practice must first be eligible or become registered in a provisional general scope of practice. This allows Council to determine whether a doctor is able to work at the required standard required in the New Zealand health system.

Doctors registered in a provisional general scope of practice are required to work satisfactorily under supervision in an approved position or positions for 6-12 months consecutively to qualify for registration in a general scope of practice. Once the doctor has satisfied the Council that all conditions have been met under their provisional general scope of practice, they can then apply for registration within a general scope of practice.

**Vocational scopes of practice (and provisional vocational scopes of practice)**

The vocational scopes of practice are the scopes for specialised medical practice. There are currently 36 different vocational scopes of practice. Each scope has an associated accredited postgraduate training programme and prerequisite (‘prescribed’) Australasian postgraduate qualification.
International medical graduates who hold a postgraduate qualification (but not the prescribed Australasian qualification) and who wish to apply for registration within a vocational scope practice, must first be registered within a *provisional vocational scope of practice.* In deciding whether to register IMGs in a provisional vocational scope, the Council seeks advice from the branch advisory bodies. The BAB will advise Council whether the doctor has training, qualifications and experience equivalent to, or as satisfactory as, that of a doctor trained in New Zealand who holds the prescribed qualification. The Council considers this advice in making its final decision.

**Special purpose scopes of practice**

The Council provides special purpose scopes of practice for short-term registration. Registration in these scopes of practice is limited in duration and is for a range of defined purposes. They provide registration options for doctors wishing to teach, train, conduct research, work as a locum specialist, assist in an emergency or pandemic scenario in New Zealand or provide teleradiology to New Zealand health services.

Doctors may work as a postgraduate trainee registered in a special purpose scope of practice for a maximum of 2 years. This registration option is specifically designed to allow IMGs to work in New Zealand and gain skills and experience that they can take back to their countries of origin. Time registered in a special purpose scope of practice as a postgraduate trainee will not be counted toward gaining registration in any other scope of practice.

**Recertification**

To maintain the right to practice doctors must meet ongoing recertification requirements. For the general scope of practice, this is achieved by maintaining a collegial relationship. Doctors must also meet other continuing professional development (CPD) requirements, including audit of medical practice, peer review and CME). Within a vocational scope of practice, doctors must participate in an approved recertification programme.

**Professional standards**

**Competence and performance**

The Act permits the Council to review the competence of a doctor to practise medicine at any time, whether or not there is a reason to believe the doctor’s competence may be deficient. Commonly, however, such reviews follow formal notification to the Council of potential competence concerns. The HPCAA 2003 refers to “competence” (ability) and “standard of competence” (performance). This distinction means that the ability to practise well is not enough; any assessment also needs to show whether the doctor is actually practising well (ie at the required standard of competence’).
A competence review (also known as a performance assessment) is a broad-based assessment of how the doctor is practising, using a variety of assessment tools (including notes reviews and peer assessment). The process is thorough, and is ultimately intended to be educative. If following the assessment, the Council has reason to believe that the doctor does not meet the required standard of competence, the Council must make one or more of the following orders:

- that the doctor undertakes a competence programme (also known as an educational programme)
- that conditions be placed on the doctor’s scope of practice
- that the doctor sits an examination or assessment
- that the doctor is counselled or assisted by a named person.

In most cases the Council orders a 12-month education programme, with specific, targeted standards for the doctor to achieve.

**Conduct**

The HPCAA 2003 enables the Council to appoint a professional conduct committee (PCC) to investigate complaints about conduct, or to investigate the circumstances of offences committed by doctors.

Most complaints about a doctor's conduct the Council receives must first be referred to the Health and Disability Commissioner (the Commissioner) and may not be referred to a PCC until the Commissioner informs the Council that:

- the matter is not being investigated by the Commissioner; or
- the matter has been resolved by the Commissioner; or
- the Director of Proceedings will not be considering or proceeding with the matter.

If a doctor is convicted of an offence punishable by imprisonment for a term of 3 months or more, the Council will be notified and is required under the Act to refer the matter to the PCC for an investigation (regardless of the actual sentence ordered by the Court).

For other matters, the Council has residual power to refer the matter to a PCC if the Council considers that information in its possession raises one or more questions about the appropriateness of the practice or conduct of the doctor.

After considering a case the PCC may make a number of recommendations to the Council, including recommending that Council review a doctor’s competence or fitness to practise, or scope of practice (including placing conditions on their scope of practice), and in some cases referral to the police. The PCC may, alternatively, make its own determinations, independent of the Council. These include laying a charge before the Health Practitioners Disciplinary Tribunal (HPDT).
Interim suspension or imposition of conditions

In association with a review of a doctor’s competence or conduct, Council has powers in more serious cases to suspend a doctor’s right to practise, or impose conditions on a doctor’s scope of practice, for an interim period. The processes differ, depending on whether the core concern relates to matters of competence or conduct.

**Conduct**

Council may also place an interim suspension on a practising certificate or place conditions on a doctor’s scope of practice, where Council believes on reasonable grounds that a conduct issue casts doubt on the appropriateness of the doctor’s conduct in their professional capacity.

The Act does not always require that a matter be before a PCC before action can be taken. The Council may also consider imposing an interim suspension or conditions when a doctor’s alleged conduct is relevant to a pending criminal proceeding or is being investigated by the Commissioner.

**Competence**

Where a doctor’s competence is being or has been reviewed, and the Council considers it has reasonable grounds for believing the doctor poses a risk of serious harm to the public by practising below the required standard of competence, the Council may propose conditions or suspension for an interim period. The condition or suspension will remain in effect until the performance assessment is completed or the doctor has passed an examination or assessment required by Council.

However, in either situation, Council adheres to natural justice principles and the specific provisions in the Act. Council will first propose its decision and give the doctor the opportunity to provide submissions and be heard by Council before finalising any proposed interim suspension or conditions.

**Health Practitioners Disciplinary Tribunal (HPDT)**

The HPDT hears and determines charges brought by the Director of Proceedings or by a PCC. The main purpose of the HPDT is to protect the health and safety of the public from incompetent and improper conduct by doctors by ensuring that doctors conform to standards reasonably expected from them.

A doctor can be charged with ‘professional misconduct’. Should the doctor be found guilty then the gravity of the doctor’s offence is reflected in the nature of the penalty imposed by the HPDT. Penalties could include the cancellation of a doctor’s registration, suspension for a period of up to 3 years, imposition of conditions, a fine not exceeding NZ$30,000, and censure.

Decisions of the HPDT may be appealed to the High Court. The High Court decision is final and can only be appealed to the Court of Appeal on points of law.
References

1. Section 12(2) of the HPCAA 2003 lists the aspects that may form part of a prescribed qualification, which include training, educational qualification and experience. Once a doctor is registered, their authorised scope of practice is entered on the publicly-available medical register, along with any conditions.

2. Council has a system of accrediting and reaccrediting the postgraduate training and recertification programmes associated with each vocational scope.

3. See 2

4. The Office of the Health and Disability Commissioner was created under the Health and Disability Commissioner Act 1994, to promote the rights of the health and disability services consumers and facilitate the fair, simple, speedy and efficient resolution of complaints.

5. The Director of Proceedings (DP) is a lawyer appointed under the Health and Disability Commissioner Act. When the Commissioner has found a breach of consumer rights, he may refer the provider to the DP. The DP reviews the case and makes an independent decision on whether or not to take any further action.