



## *Medical Council of New Zealand*

# Statement on employment of doctors and the Health Practitioners Competence Assurance Act 2003

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### **Introduction**

1. This document provides general advice to employers (including DHBs and some PHOs) about their responsibilities as an employer of a doctor. More detailed information is available on the Council website, [www.mcnz.org.nz](http://www.mcnz.org.nz) or from the Council office 04 384 7635/0800 286 801.
2. The Medical Council of New Zealand (Council) is the statutory organisation responsible for protecting public health and safety by ensuring doctors are competent and fit to practise medicine. This responsibility is met in part by setting the standards of the medical profession and Council functions.
3. Functions of Council are set out in section 118 of the Health Practitioners' Competence Assurance Act 2003 (HPCAA) and include:
  - authorisation of doctor's registration
  - review and promotion of a doctor's competence
  - consideration of a doctor who may be unable to perform the functions required to practise medicine because of a physical or mental condition
  - issuing of annual practising certificates (APCs)
  - promoting medical education and training
  - recognition, accreditation and the setting of programmes to ensure the ongoing competence of doctors
  - receiving and acting on information from sources about the competence of doctors
  - notifying various bodies if a doctor's practice may pose a risk of harm to the public
  - setting standards of clinical competence, cultural competence and ethical conduct to be observed by doctors
  - prescribing the qualifications required for scopes of practice
  - liaising with other authorities about matters of common interest
  - promoting public awareness of the responsibilities of the authority
  - exercising and performing other functions, powers and duties as conferred under the HPCAA.

### **Registration**

4. Under section 8 of the HPCAA a registered doctor must hold a current APC to practise medicine.
5. It is a doctor's responsibility to obtain registration and a current APC before he or she can practise in New Zealand.

6. It is the employer's responsibility to make sure that their doctors are properly registered and certified to practise. Employers must view a copy of the APC before the doctor starts work and ensure that it is current.
7. When employing a doctor from overseas, employers should allow sufficient time for the doctor's application for registration to be processed. Allow 15 working days for processing of the application. However, processing of applications for registration within a vocational scope may take three to six months. A self-assessment checklist to assist the doctor (or employer) access the correct registration pathway and application forms are available on Council's website, [www.mcnz.org.nz](http://www.mcnz.org.nz).
8. It is the employer's responsibility to ensure that a doctor's skills, knowledge and experience match the relevant position of employment. The checks that Council conducts are limited to its statutory responsibility to ensure the doctor is competent and fit to practise. Council advises employers to check references directly with referees.
9. It is recommended that employers require doctors, by means of their employment agreement, to notify them of all health or competence issues that may affect their ability to practise medicine.
10. A doctor registered to practise in New Zealand will be working within one of five scopes of practice; provisional vocational, vocational, provisional general, general or special purpose.
  - Doctors within a provisional general, provisional vocational or special scope of practice must work under the supervision of an appropriately qualified doctor (refer to clause 11-15).
  - Doctors registered within a general or vocational scope of practice must be participating in an approved recertification programme (refer to clause 16-22).

## **Supervision**

11. Council supervision is a condition of registration for all doctors registered within a provisional general, provisional vocational or special purpose scope of practice and helps Council ensure that the doctor has the requisite knowledge, skills and attitudes to practise safely in New Zealand.
12. A supervisor will usually be registered in the same vocational scope of practice as the doctor being supervised and is expected to work in the same place as the doctor and to be readily available.
13. Council must approve the appointment of all supervisors. In extraordinary circumstances Council may approve indirect supervision where the supervisor works somewhere else and can easily be contacted by telephone.
14. The supervisor is required to:
  - make sure that the doctor takes part fully in an induction programme
  - set out ground rules for communicating with other team members
  - make sure that protected supervision time is scheduled regularly and kept free of interruptions
  - be readily available and approachable

- monitor and verify what the doctor is doing and that the doctor is capable of carrying out his or her duties competently
  - raise significant performance issues with the employer and Council
  - arrange for regular review of the doctor's understanding and knowledge of key clinical areas
  - ensure the doctor knows the protocols for getting back-up help when necessary and that he or she is competent to work with the level of support available
  - provide supervision reports to the Council when requested, including reporting any concerns about significant issues or ongoing poor performance
  - make sure alternative arrangements for supervision are made if the supervisor is unavailable or has a conflict of interest.
15. Supervisors are agents of the Council and so, unless they act in bad faith or without reasonable care, they are not civilly liable for the actions of those they supervise.

### **Recertification**

16. Recertification is the term given to the process by which all medical practitioners demonstrate their competence as a condition of holding an APC.
17. All doctors must undertake continuous professional development (CPD) to ensure their skills and knowledge meet acceptable standards and meet the requirements of recertification. The practice of medicine continues to change and CPD plays an important role in maintaining competence.
18. The employer's role is to ensure that there are opportunities for doctors to participate in their recertification programmes by providing time and resources to complete requirements for recertification.
19. Council expects that arrangements for payment of this time will be negotiated between the employer and the doctor.
20. A collegial relationship is a supportive, professional relationship between two doctors for the purpose of continuing professional development. Most doctors registered within a general scope must establish a collegial relationship with a doctor registered within the same or a related vocational scope and either participate in a branch advisory body recertification programme or arrange their own CPD programme with the help of their colleague.
21. A doctor may require assistance from the employer to locate someone to develop a collegial relationship with. They do not have to be located at the same place of employment. The Council has some discretion if difficulties arise locating a colleague. Please contact Council if advice or assistance is required.
22. For further information see the Council's publication *Continuing professional development and recertification*. This pamphlet and further information can also be found on Council's website.

### **Doctors unable to perform the functions required to practise**

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23. It is a mandatory requirement under the HPCAA for persons in charge of organisations that provide health services, registered doctors, and employers of health practitioners to inform Council if they believe a doctor may be unable to perform the functions required to practise because of a mental or physical condition.<sup>1</sup>
24. Any person who notifies Council with concern about a doctor's inability to perform the function required to practise is excluded from liability (civil or disciplinary) as long as the report is made with reasonable care and in good faith.
25. Details of any concerns should be put in writing to the Registrar of the Council. The reasons for the concern should be outlined with any supporting evidence and the name and work details of the doctor. General advice is available from the Health Manager at Council's office.
26. Concerns drawn to the Council's attention will be referred to the Health Committee. While the Health Committee's primary responsibility is to protect the health and safety of the public, it also focuses on working with doctors who have health problems to ensure that they regain and maintain their fitness to practise medicine.
27. If workplace monitoring of a doctor's practice is required, the Health Committee will ask for an appropriate person in the doctor's workplace to be involved.
28. The resources of the Health Committee are limited and while it can give advice, employers are responsible for managing any workplace issues.

### **Competence concerns**

29. When dealing with issues relating to a doctor's competence to practise medicine, employers should act in a manner which:
  - protects patients
  - is fair
  - helps the doctor
30. Before taking any other action, the employer should work with the doctor to solve the problems and protect public safety.

### ***Doctor registered within a vocational or general scope of practice***

31. If there has been a recent audit of the doctor's work, review the results.
32. Where appropriate, investigate the incident. Make sure that the outcome of the investigation and the agreed course of action are recorded.
33. If the doctor is registered within a vocational scope of practice, check when he or she was last credentialed and consider whether he or she can be recredentialed.
34. If the doctor is registered within a general scope of practice, discuss the concerns with the doctor with whom he or she is in a collegial relationship.

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<sup>1</sup> Health Practitioners Competence Assurance Act 2003, sections 45-51

35. Meet with the doctor, offer assistance and discuss whether he or she is willing to help put things right.
36. Determine whether there are any factors such as stress or health concerns which might be affecting the doctor's performance. If there are, then consider notifying the Council's Health Committee and suggest that the doctor contact the Doctors' Health Advisory Service (telephone 0800 471 2654).
37. Consider writing to the Council to request a performance assessment (called competence reviews in the HPCAA). Enclose a comprehensive summary of the problems, your investigations, your audit and the outcome, and any other steps you have taken to protect patient safety.

***Doctor registered within a provisional vocational, provisional general or special scope of practice***

38. Ensure all aspects of induction and orientation have been met and address any gaps.
39. Ask the doctor's supervisor whether he or she has concerns and establish what assistance has been given. Review previous reports from the supervisor to help identify any problems.
40. Implement a more robust supervision plan and ask the doctor's supervisor to set up a system of case management to check competence. The Council's Medical Advisor can assist you.
41. Meet with the doctor, offer assistance and discuss whether he or she is willing to help put things right.
42. Determine whether there are any factors such as stress or health concerns which might be affecting the doctor's performance. If there are, then consider notifying the Council's Health Committee and suggest that the doctor contact the Doctors' Health Advisory Service (telephone 0800 471 2654).
43. Consider writing to the Council to request a performance assessment. Enclose a comprehensive summary of the problems, the supervisor's concerns, the action you have taken to remedy the situation and the steps taken to protect public safety.

***Bringing concerns to the attention of the Council***

44. Council has the resources to undertake performance assessments to assess whether a doctor has the skills, knowledge and attitudes required to practice safely.
45. Employers and the profession are encouraged to report any concerns about a doctor's competence to Council. If there is a serious concern the Registrar of Council should be contacted immediately.
46. Reporting is mandatory where an employee is dismissed or resigns for reasons of competence.

47. Whenever a doctor resigns or is dismissed from his or her position for reasons relating to competence, the employer must give written notice to the Registrar of the reasons for the resignation or dismissal.

### ***The performance assessment process***

48. The HPCAA emphasises the maintenance of professional standards in medical practice. Under the HPCAA doctors can have their competence reviewed at any time, or in response to concerns about their practice.
49. The procedures (set out in Part 3 of the HPCAA), are designed to protect the public, to focus on improvement, and to use a process that is thorough and fair.
50. Council will not automatically advise employers if a doctor is required to undergo a performance assessment, but encourages doctors to do so themselves.
51. If the Chair, CEO and Registrar of the Council agree and it is in the interests of public health and safety, the employer or a person working in association with a doctor can be notified of Council's order that the doctor undergo a performance assessment. Council will also notify employers if a performance assessment requires access to patient records.
52. If aspects of a doctor's practice are found deficient the doctor will be required to undertake an educational programme (called a competence programme under the HPCAA). Council will liaise with employers if an educational programme is necessary. Employers are expected to assist and support such a programme.
53. The Registrar and Council staff in the Performance Assessment Team are available to give general guidance or advice about competence issues.

### **Complaints**

54. Every provider must have complaint procedures and Right 10(6) of the Code of Health and Disability Services Consumers' Rights outlines specific requirements of that procedure.
55. There should be internal employment policy and systems in place to allow employees to communicate any concerns about colleagues or work conditions to their employer. Requirements under the Protected Disclosures Act 2000 create a good basis for policy development in this area.
56. A patient who informs an employer that he or she would like to make a complaint to the appropriate professional standards body should be directed to the Health and Disability Commissioner's office (telephone 0800 11 22 33).
57. Employers may be found vicariously liable for the actions of their employees.

### **Indemnity and APC**

58. Doctors may not be covered by indemnity insurance if they practise medicine without a current APC.
59. Employers may be vicariously liable if a doctor in their employment does not have a current APC.

## Confidentiality

60. Doctors and employers have a primary responsibility to protect the confidentiality of patient information unless there is an issue of safety. Employers should be aware of and comply with privacy provisions in the Health Information Privacy Code 1994 and Council's statement on Confidentiality and Public Safety.

## Locums

61. All the requirements for employment and good practice apply to permanent and temporary employed doctors, including locums.

## Good medical practice

62. Council expects every employer to arrange an orientation for doctors new to the community, especially if the doctor has been employed from overseas. An important role of the employer is to provide support to their employees through good employer practices.
63. Employers will need to make themselves aware of the requirements for setting up a medical practice and should be familiar with other legislative requirements including general responsibilities of being an employer.
64. Council has developed over 50 statements and guidelines on different issues that set the standard for good medical practice. These are available on Council's website under Professional Standards and some are summarised in Council's publication *Cole's medical practice in New Zealand*.
65. Employers have the responsibility to ensure workloads do not compromise quality of care. Employees should not be required to undertake excessive patient numbers or long hours where excessive fatigue may place patient safety at risk (refer to Council's guideline *Doctors' duties in an environment of competition or resource limitation*).
66. In recognition of the rights and interests of the public in health services, the employer should recognise and respect the right of its employees to comment publicly and engage in public debate on matters relevant to their professional expertise and experience.
67. Council's *Statement on Safe Practice in an Environment of Resource Limitation* (previously *Ethical Guidelines for Doctors' Duties in an Environment of Competition or Resource Limitation*) advises doctors on the steps they should take before making public statements.

**Revised December 2005**

## Relevant Council publications

- *Good Medical Practice*  
A booklet that summarises the ethical obligations of doctors and the requirements for good medical practice.
- *Cole's medical practice in New Zealand*  
A book on the legal, regulatory and professional ethical conduct requirements of doctors registered in New Zealand.
- *Education, Training and Supervision for New Doctors*  
A resource for interns and their supervisors that provides information on the internship year and pre-vocational training.
- *Continuing professional development and recertification*  
A resource for doctors registered within a general and/or vocational scope of practice to help them with recertification.
- *What you can expect: the performance assessment process*  
A pamphlet that explains the procedures of the review, who is involved, how long it takes and possible outcomes.
- *Statements available on website (under Publications and Guidance)*  
The Medical Council has developed statements on issues relating to medical practice including internet medicine, prescribing, resource limitation and doctors in management. These are available on Council's website or from Council's office.

## Contact details of the Medical Council

PO Box 11-649

Wellington

[www.mcnz.org.nz](http://www.mcnz.org.nz)

email [mcnz@mcnz.org.nz](mailto:mcnz@mcnz.org.nz)

ph: 04 384 7635 or 0800 286 80

fax: 04 385 8902

Office hours: 8.30am – 5.00pm

## Contact details of other organisations that may be able to assist:

- New Zealand Medical Association      ph: (04) 472 4741, PO Box 156, Wellington
- Ministry of Health                      ph: (04) 496 2000, PO Box 5013, Wellington
- Medical Protection Society            ph: 0800 22 55 677, PO Box 156, Wellington
- Health and Disability Commissioner    ph: 0800 11 22 33, PO Box 1791, Auckland
- Privacy Commission                    ph: 0800 803 909, PO Box 10094, Wellington
- Human Rights Commission            ph: 0800 496 877, PO Box 5045, Wellington

Contact details of employment agencies or representative groups like rural support networks or Te ORA are available at the Council office or can be located in regular medical publications like NZ Doctor and the NZ Medical Journal (online only).