



What to do when you have concerns about a colleague

Doctors have an ethical responsibility to protect patients from risk of harm posed by a colleague's conduct, performance, competence or health. Patient safety should come first at all times.

Introduction

1. The purpose of this statement is to help you to:
 - understand where the threshold lies for acting on your concerns about a medical colleague's¹ conduct, performance, competence or health;
 - raise concerns; and
 - access the help and support available to you.
2. While the statement provides suggestions about what to do and who to approach, it is not exhaustive and you will need to use your judgement to apply the principles outlined to your particular circumstances. If you are unsure of how they apply to your situation then you should seek advice.
3. While all doctors have a duty to act on concerns about colleagues, doctors in management roles have an extra responsibility to ensure that appropriate reporting procedures exist and are known to staff who may need to use them.

Obstacles to taking action

4. You may be reluctant to act on concerns for a variety of reasons, for example because you fear that it may cause problems for colleagues, adversely affect working relationships, have a negative impact on your career or result in a complaint about you. If you are hesitating about

acting on a concern for these reasons, you should bear in mind that:

- you have a responsibility to protect patients from risk of harm posed by a colleague's conduct, competence or health. Patient safety comes first at all times².
- the Protected Disclosures Act 2000, the Health and Disability Commissioner Act 1996 and the Health Practitioners Competence Assurance Act 2003 provide you with legal protection from victimisation, dismissal and civil or disciplinary proceedings as a result of raising the concern³.
- you will be able to justify raising a concern – even if it turns out to be groundless – if you have done so honestly, promptly, on the basis of reasonable belief and through appropriate channels
- raising a concern is not necessarily the same thing as making a complaint. There are a range of processes which can be used to address a concern, and most of these are intended to provide support, education and/or rehabilitation rather than administer discipline.
- in certain circumstances a failure to act on concerns may be considered by the Council, the Health and Disability Commissioner or the Health Practitioners Disciplinary Tribunal. In those circumstances, this statement may be used as a standard by which conduct is measured⁴.

¹ Paragraph 35 contains advice about raising concerns when they relate to a non-medical colleague.

² Clause 74 of *Good medical practice*.

³ The Health Practitioners Competence Assurance Act and Health and Disability Commissioner Act provide very broad protections when you raise concerns in good faith with either the Council or the HDC. The Protected Disclosures Act 2000 only applies in fairly limited circumstances when you make a concern public. As outlined in paragraph 34 of this statement, you should always seek advice before taking this step.

⁴ Although no doctor was found to be in breach of the Code of Rights, the HDC's report *Dr Roman Hasil and Whanganui District Health Board 2005-6* included a finding that the Whanganui District Health Board breached the Code by "failing to respond to [Dr Hasil's] health issues and competence concerns in a timely manner".

Make reporting routine

5. Early notification of concerns can allow issues to be addressed, problems rectified and lessons learned without patients coming to any harm. You should familiarise yourself with, and use, the clinical governance, risk management and sentinel event reporting structures and processes within the organisations for which you work or to which you are contracted.

Raising a concern

Raising concerns directly with your colleague

6. The Council expects that when working in a team you will:

- communicate effectively with colleagues both within and outside the team
- participate in regular reviews and audit of the standards and performance of the team, taking steps to remedy any deficiencies
- support colleagues who have problems with performance, conduct or health⁵.

7. If a colleague:

- behaves in a way which is not conducive to good team work; or
- does not treat others fairly and with respect; or
- makes malicious or unfounded criticisms of colleagues; or
- is not readily available when on duty; or
- does not handle a conflict of interest appropriately; or
- does not keep colleagues well informed when sharing the care of patients; or
- behaves in any other manner which is inappropriate or unprofessional

then you should speak to them and raise your concerns in a constructive manner.

8. If the colleague does not respond to your concerns and continues to act inappropriately or unprofessionally, raise your concerns with a manager, appropriate senior colleague or external agency as described in paragraphs 9-12.

Raising concerns locally

9. If you have reasonable grounds to believe that patients are, or may be, at risk of harm for any reason, do your best to find out the facts⁶. Then you should follow your employer's procedures or policies, or tell an appropriate person or organisation straight away. Do not delay taking action because you yourself are not in a position to put the matter right.
10. In the first instance, wherever possible, raise your concerns with your manager, human resources staff or an appropriate senior colleague – such as the consultant in charge of the team, the Chief Medical Advisor⁷ or a practice partner⁸. Make them aware of any relevant evidence. If you are an intern or newly registered doctor it may be appropriate to raise your concern with your supervisor. You should follow any workplace procedure or policy for reporting adverse incidents and concerns.
11. Be clear, honest and objective about the reason for your concern. Acknowledge any personal criticism that may arise from the situation, but focus on the issue of patient safety.
12. Keep a record of your concerns and any steps taken to resolve them.

Raising concerns externally

13. You should contact an external body with authority to investigate the issue in the following circumstances:
 - if there is no responsible person or body locally that you can report to
 - if you cannot raise the issue with the responsible person or body locally because you believe that they are part of the problem
 - if there is an immediate risk to patients from a colleague and an external body needs to be alerted straight away (though in such cases you should also, at the same time or as soon as possible afterwards, make the appropriate local person or body aware of your concerns and the action you have taken)
 - if you have raised your concern through local channels but are not satisfied that the responsible person or body has taken adequate action
 - if you have a statutory or ethical responsibility to report (see below).

⁵ *Good medical practice*, paragraph 39.

⁶ Although you should have reasonable grounds, the Council acknowledges that you may not have access to all the information needed to assess the significance of a concern, and does not expect you to provide incontrovertible evidence or proof. In most cases, early notification of a concern is best.

⁷ Within a hospital the credentialling process might be a useful tool for helping an individual in a confidential way.

⁸ If your concern is about a partner then it may be appropriate to raise it outside the practice – for example with the Medical Director of a PHO or the relevant branch advisory body (College).

14. If you are concerned that a colleague's conduct, competence or health might be putting patients at risk you should contact the Medical Council, and if you have a complaint about the care provided to an individual patient you should contact the Health and Disability Commissioner's Office (HDC).
15. You should take care when providing personal information relating to patients to an external body. In general you should only do this when there is a risk of harm and disclosure is necessary to lessen that risk; when reporting is mandatory; or when you have sought and obtained the patient's consent.

Reporting concerns to the Council

16. The Health Practitioners Competence Assurance Act 2003 (HPCAA) makes reporting to the Council mandatory in some cases. While the Council's primary responsibility when responding to concerns is to protect the health and safety of the public, it aims to intervene in a non-punitive and rehabilitative manner.

Concerns about a doctor's health

17. The HPCAA makes it mandatory for doctors, persons in charge of organisations that provide health services, and employers of health practitioners to inform the Council if they believe a doctor may be unable to perform the functions required to practise because of a mental or physical condition. Those in charge of a training programme are also required to inform the Council if a student who is completing that course has a mental or physical condition which means that they would be unable to perform the functions required to practise⁹.
18. Details of any serious concern about a doctor's health 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 on when and how to report is available from the Health Manager at Council's office.
19. Concerns drawn to the Council's attention will be referred to the Health Committee. The Health Committee's main focus is to protect the health and safety of the public by working with doctors who have health problems to ensure that they regain and maintain their fitness to practise medicine.

Concerns about a doctor's competence

20. Although it is not mandatory, you are encouraged to report any concerns about a colleague's competence to Council. If there is a serious concern you should notify in writing the Registrar of Council immediately.
21. Reporting to the Council is mandatory where an employee is dismissed or resigns for reasons of competence. In these cases the person who employed that doctor must promptly give the Registrar written notice of the reasons for that resignation or dismissal.
22. The Council has developed the following criteria for "risk of harm" and "risk of serious harm" to help outline where the thresholds for acting on concerns about competence lie. The Council recommends that you take action to raise concerns locally and also consider notifying the Council if a "risk of harm" exists, and that you always notify the Council if there is a "risk of serious harm".

Risk of harm may be indicated by:

- a pattern of practice over a period of time that suggests the doctor's practice of medicine may not meet the required standard of competence; or
- a single incident that demonstrates a significant departure from accepted standards of medical practice; or
- recognised poor performance where local interventions have failed - this does not exclude notification of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern; or
- criminal offending; or
- professional isolation with declining standards that become apparent.

Risk of serious harm may be indicated when:

- an individual patient may be seriously harmed by the doctor; or
- the doctor may pose a continued threat to more than one patient and as such the harm is collectively considered 'serious'; or
- there is sufficient evidence to suggest that any alleged criminal offending is of such a nature that the doctor poses a risk of serious harm to one or more members of the public.

⁹ Health Practitioners Competence Assurance Act 2003, sections 45-51

Unprofessional behaviour within a health care team

23. Recognising and managing unprofessional behaviour is important in protecting the health and safety of the public. Unprofessional behaviour can include chronic and repetitive pattern of inappropriate behaviour that adversely affects the effective functioning of other staff and teams; a style of interaction that interferes with patient care; or single or intermittent severe impulse control problems that are out of proportion to precipitating stressors. Unprofessional behaviours often occur when an individual is in a dominant power relationship with another or with a group. This situation exists at many levels in health service, so it is important that individuals with such power use it with restraint. Most doctors behave appropriately, but when unprofessional behaviour does occur it can adversely affect patient care. While unprofessional behaviour is usually an organisational issue, it should be reported to Council when it poses a risk of harm to the public. Please refer to the Council's guidelines on *Unprofessional behaviour and the health care team* for more information.

Sexual misconduct

24. If you receive, or become aware of, information that another doctor may have breached sexual boundaries with a patient you have certain ethical obligations. Please refer to the Council's booklet *Sexual boundaries in the doctor-patient relationship* for more information.

What happens when you notify Council – is this a formal complaint?

25. When you notify the Council of a concern, a member of the Council's staff will discuss the situation with you and explain what action the Council may take. Information about our processes is also available on our website.
26. Your notification will not be considered a formal complaint about the peer without your cooperation.
27. Because the Council's processes are designed to be educative and supportive for the doctor involved they are often confidential and the feedback the Council is able to give you about the actions taken and their outcomes can sometimes be limited.

Additional responsibilities for supervisors

Intern supervisors

28. Intern supervisors are the Council agents responsible for ensuring that the standards of intern clinical experience and education are maintained at their hospital or hospitals. Intern supervisors are the first person to contact with any concerns or questions about interns. Intern supervisors have an important statutory role¹⁰ and must report to the Council on an intern's suitability for registration¹¹.

Supervisors of international medical graduates

29. International medical graduates (IMGs) who are new to New Zealand require orientation, induction and supervision to ensure a smooth transition into New Zealand practice. Supervisors of IMGs are required to complete three monthly reports to help determine whether the doctor has the requisite knowledge, skills and attitudes to practise safely in New Zealand. If supervisors become concerned about a doctor's practice, they have a responsibility to:

- report their concerns to Council; and
- take steps within their employment situation to ensure patients are not put at risk; and
- work with the IMG to assist them to address any deficiencies in their practice.¹²

30. In a hospital setting the supervisor should discuss any ongoing concerns with clinical leaders and the Chief Medical Advisor.

Complaining to the Health and Disability Commissioner

31. The HDC's objective when considering complaints is to secure their fair, simple, speedy and efficient resolution. To this end, the HDC has a number of different options for resolution, including investigation, referral to advocacy and mediation, provider education and directed continuous quality improvement activities¹³.
32. Because complaints to the HDC are usually about the care provided to a particular patient, it is usually wise to consider the patient's wishes before contacting the Commissioner's office.

¹⁰ Outlined in s.22(3)(a) and s.23 of the Health Practitioners Competence Assurance Act 2003

¹¹ For more information on the role of intern supervisors and Council's expectations, please refer to the Council resource *Education and supervision for interns*.

¹² For more information on the role of supervisors, please refer to the Council resource *Induction and supervision for newly registered doctors*.

¹³ Approximately 90% of complaints to the HDC are resolved without the need for an investigation. Refer to www.hdc.org.nz for more information.

33. If a patient comes to you for assistance in making a complaint about a colleague you should support them and answer any questions honestly, but avoid making judgemental comments about the colleague's competence or conduct – particularly if you were not present when the patient was treated or do not have all the information about what happened. If the patient is not sure how to make a complaint, advise him or her of any internal processes and the right to complain to the HDC.

Making a concern public

34. If you:

- have done all you can to resolve your concerns by raising them with the appropriate local person or body, or with the relevant external body; and
- have good grounds to believe that patient safety is still at risk

then you may consider making your concerns public, provided that patient confidentiality is not breached. You should consult a medical defence body or professional association (such as the NZMA, ASMS or RDA) before making a decision of this kind.

Concerns about non-doctors

35. If you have a concern about a health worker who is not a doctor, most of the advice in this statement remains relevant. The health worker, employer, contractor or manager should still be the first port of call, and the HDC is the agency you should contact to make a complaint. However, regulatory bodies other than the Medical Council may have a very different approach to acting on reports about competence or health concerns. If the health worker is a member of a regulated profession you should contact the appropriate regulatory body to discuss their processes before putting your concerns to them in writing.

Providing support to a colleague

36. Doctors involved in an adverse event or subject to a report or complaint may find the experience stressful and difficult. It is important that doctors, as well as patients, have access to support.
37. Doctors need the opportunity to discuss incidents in a safe environment. The Council recommends that employers provide training, peer support and a supportive work environment.

Related resources

- *Education and supervision for interns*
- *Induction and supervision for newly registered doctors*
- *Sexual boundaries in the doctor-patient relationship*
- *Confidentiality and public safety*
- *Guidelines for managing disruptive behaviour*
- *Disclosure of harm following an adverse event*
- *Responsibilities of doctors in management and governance*
- *The employment of doctors and the Health Practitioners Competence Assurance Act*
- *Cole's medical practice in New Zealand*

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This statement is scheduled for review by December 2015. Legislative changes may make this statement obsolete before this review date.

Decision tree

