



Te Kaunihera Rata
o Aotearoa

**Medical Council
of New Zealand**

Publication of notices about orders or directions

The Medical Council of New Zealand (Council) may publish a notice setting out the effect of an order it has made, or a direction it has given, about a doctor. The notice must include the doctor's name.

Council is required to have a policy about when and how it will publish a notice. The purpose of the policy is to:

- a) Enhance public confidence in the medical profession and Council's disciplinary procedures by providing transparency about its decision-making processes; and
- b) Ensure that doctors whose conduct has not met expected standards may be named where it is in the public interest to do so; and
- c) Improve the safety and quality of health care.¹

Introduction

Council may at any time publish a notice setting out the effect of an order it has made, or a direction it has given, about a doctor. The notice must also name the doctor. This policy is about Council decisions to publish a notice of this type. It sets out the principles and considerations that Council must take into account when considering whether to publish a notice.²

Who does this policy apply to?

This policy applies to any doctor who is, or has previously been, registered with the Council under the HPCAA, about whom Council has made an order or direction under the HPCAA.

When will a notice about an order or direction be published?

Council will consider doing so when one or more of the factors below apply:

1. Publication of a notice may be required to protect public health and safety.
2. Council becomes aware, through its monitoring or from a notification, that a Council order or direction is not being complied with. Council may believe that publishing a notice is required to assure it of future compliance.
3. Council has information to suggest that there is new or continuing risk to public health and safety from the practice of the doctor and has reasonable grounds to believe that publication of a notice is likely to prevent or reduce that risk.

¹ Section 157B(2), HPCAA

² Section 157B(1). See also section 157G, which says a naming policy must be consistent with the [HPCAA 2003](#); the information privacy principles in section 6 of the [Privacy Act 1993](#); and the general law (including natural justice rights).

4. Council considers that a notice it has previously published is no longer necessary or appropriate (whether or not the order or direction has been revoked). A further notice may be needed to address any potentially adverse consequence of any previous publication of the order or direction.

How does this policy relate to other obligations on Council to notify or publish decisions?

If a court makes an order about a doctor under the HPCAA, it may order Council to publish a notice setting out the effect of an order about a named doctor, and a summary of the proceedings about the order that was made.³ In addition, the HPCAA makes it mandatory for Council to inform certain people of particular decisions it makes. This includes people who make formal notifications to Council⁴ and others who have a close or active professional association with the doctor.⁵

What minimum statutory criteria must Council apply when publishing a notice?

1. Council must consider the consequences for the doctor being named, including the likely harm to the doctor's reputation.
2. Council will not publish anything that discloses information about another person or someone whose identity could reasonably be ascertained from the information published, unless we have their consent.
3. Council may not publish any information that was not part of the original order or direction, finding and reasons, without the consent of the doctor.

What are Council's guiding principles?

Council will apply the following principles in decisions to publish a notice:

1. Council will weigh the public interest in the matter being published against the doctor's privacy interests, taking account of the factors set out in Appendix 4.
2. A doctor's privacy is important and in many cases rehabilitating a doctor requires that their privacy be maintained. The doctor's confidentiality should be preserved unless there are other factors which support disclosure.
3. Publication should not include information that breaches, or is likely to breach the privacy of another person, including patient records. Council may consider asking patients about their view on a practitioner being named, as some patients may prefer to 'go public' even if that will disclose their own health information.
4. When there are concerns about a doctor's health, Council will generally not name them under this policy. When there are concerns about the doctor's competence and they have engaged with Council and taken steps to remediate, we will generally not name them.
5. Council will consider the doctor's practice and the context or setting of this practice when deciding to publish a direction or order. Some settings and types of medical practice may pose a greater risk to the public and support publication.

³ Section 157(3), HPCAA

⁴ *Notifications of competence concern under s34* – If Council is notified by a health practitioner, the Health and Disability Commissioner or the Director of Proceedings that a doctor may raise a risk of harm by practising below the required standard of competence, Council must tell that notifier if Council decides to review the doctor's competence and if, after that review, Council makes any order under s38.

Notifications of competence concern under s45 – If Council is notified under s45 of a concern that a doctor may be unable to perform the functions required for medical practice because of some mental or physical condition, Council must tell the notifier if Council subsequently orders suspension of the doctor's practice certificate or conditions on the doctor's scope of practice.

⁵ *Copies of orders* – Council must give a copy of any order about a doctor, to the doctor concerned. The order must include the reasons why the order is made. Council must also give a copy of the order to the doctor's employer(s) and any person working in partnership or association with the doctor. (s156A)

6. If an order or direction is on the public register, this will be considered satisfactory publication unless Council considers there is good reason, taking this policy into account, to publish further information in the form of a notice.
7. Council will take into account any information it has already shared or must share, as required by the HPCAA, with notifiers or people closely associated with the doctor's practice.
8. Publication may be required to provide information to the public so they can make informed decisions about their care or treatment.
9. Publication may be necessary to ensure compliance of an order or direction. This could include, allowing better monitoring of compliance where there is a high risk of non-engagement or where there is information to believe that the risk of the doctor's practice or conduct posing a risk of harm to the public is increasing or has increased.
10. Council will consider if the information can be published in a way that satisfies, or can more effectively satisfy, the purposes of the policy without publication under section 157. Council may decide to publish to a particular group or to a wider audience. Targeted publication will be preferred over general publication unless there are mitigating circumstances. Council will assume that once a notice is published to a specific recipient or section of the community, it is likely that the information will be disseminated further and become more widely known.
11. Publication should be tailored to the purpose and audience identified by Council. It should be published with sufficient detail, as widely and in such a way as to provide the identified level of information to the identified audience. When possible, findings will be summarised to avoid unnecessary disclosure of the doctor's personal information.
12. If action is being taken by another agency about the same matter on which the order or directions, Council will consider publication that occurs jointly with, or with reference to, publication being made by that agency.
13. If a notice is proposed to be published on a website, Council will consider whether it should be removed on a certain date or after a set period.

Giving priority to the statutory purpose of the policy

Where, having weighed the public interest in the matter being published against the doctor's privacy interests, the balance is even, Council will give priority to the public interest.

What information may be disclosed when publishing a notice?

Any notice Council publishes must set out:

1. the effect of an order or direction Council has made about a doctor
2. a summary of any finding Council made about the doctor
3. the name of the doctor

Council is not required to publish an order and direction, or the reasons for it, in full. Instead, it is required to include in a notice *the effect* of the order or direction and *a summary* of any finding. Council will consider what wording and summary best informs the reader, and allows the reader to make any decisions that the information reasonably informs, without providing more of a doctor's personal information than is required to achieve that.

1. *Effect of an order or direction*

Depending on the nature of the order or direction, and intended readers, the description of the *effect* of an order or direction, should allow a reader to understand:

- a) What limits, conditions or other requirements the order or direction places on the named doctor's practice.
- b) The effect of any limits or conditions on the health services that the doctor is able to provide, or the way the doctor is able to practice.
- c) The manner in which the doctor is expected to practice medicine or conduct themselves professionally.

2. *Summary of any finding*

The summary should contain enough information to provide the reader with an understanding of the reasons for the decision, including any key finding relevant to the decision. This will be based on Council's reasons for making the order or direction, modified as appropriate.

Public confidence in Council's commitment to protecting public health and safety is reinforced through transparent decision-making. One of Council's functions is to promote public awareness of Council's responsibilities. As far as possible, within the principles set out in this section, the wording used in the notice should allow the reader to understand better the purpose of Council's decision and related Council function.

Council will also consider and may publish, within, or in association with the notice, electronic links or written information that provides information of a general nature about the statutory functions, and any standard Council processes, relevant to the decision.

How will an order or direction be published?

Council may publish a notice about an order or direction 'in any publication'. Council may also publish using one method, or a combination of methods. Where Council wishes to reach a particular sector of the community or group of health consumers, Council may use methods that it considers will best achieve this.

Options for publication include:

1. By way of letter or letters to specific organisations or individuals, within New Zealand or internationally.
2. In a manner that Council considers will be seen by a targeted audience;
 - a) in any print publication that Council considers is most likely to be accessible to, or read by that group
 - b) in an electronic medium that Council considers is more accessible to that group
 - c) in more than one language, either online or in printed media.
3. With the agreement of, a medical professional college, association or society, publication in the online resources or printed publications of that organisation.
4. On Council's website.

Duration/frequency of publication

If Council proposes to publish a notice on more than one occasion, it must identify either:

1. the dates of publication; or
2. the frequency of publication and the last date of publication.

If Council proposes a mode of publication that constitutes "continuous publication" (eg on a website), Council must identify a date on which that publication will cease.

What procedure and time frame does Council follow before publishing a notice?

Where Council proposes to publish a notice, having applied the principles and criteria set out in this policy, Council will consult with the doctor on the proposed notice and the terms of publication. Council will consider the doctor's submissions on the proposed notice and the terms of publication before making a final decision.

1. *Proposed notice and terms of publication*

The proposed notice must include the wording relating to the effect of the relevant order or direction and the summary of findings. The proposed terms of publication must include:

- mode of publication

- the recipients
- date(s)/frequency of publication
- date the publication will cease (if relevant)

The first date of publication must be no earlier than 10 working days after the date of Council’s resolution to propose a notice.

2. *Information to be sent to doctor with invitation to make submissions*

The Council will promptly send the doctor a written proposal and invite the doctor to make a written submission on the proposal. The doctor will be given no less than 7 working days from the date the proposed notice is sent to them, to make submissions.

The proposal must contain:

- the proposed notice
- the proposed terms of publication
- the reasons for Council’s proposed notice and terms of publication
- a statement informing the doctor of the right to provide submissions on either or both the proposed notice and the proposed terms of publication

When will Council consider publishing a further notice?

Council may consider publishing one or more further notices about an order or direction it has made, if it considers that there are reasonable grounds for doing so, that satisfy the grounds and circumstances set out in this policy. Council may publish the further notice(s) in any way that it wishes, not limited to the method used to publish the earlier notices.

If Council decides to revoke or amend an order or direction, Council may publish a further notice about this. Council will take into account the views of the doctor when publishing a further notice and if they believe that this is likely to have a positive or negative affect on their reputation.

Appendices to this policy

Appendix 1 – ss157 and 157B, relating to the publication of orders or directions and to naming policies

Appendix 2 – Orders or directions to which this policy applies

Appendix 3 – Naming policy decision-making flow chart

Appendix 4 – Weighing the public interest and a doctor’s privacy interests

Version	Date	Details
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1.0	December 2019	Approved by Council
	1 April 2020	This policy applies to orders and directions made by Council on or after 1 April 2020
	June 2021	Scheduled for review

Policy – Publication of notices about orders or directions [Naming Policy] – 1 April 2020
DM# 10266368

Appendix 1 – ss157 and 157B HPCAA, relating to the publication of orders or directions and to naming policies

157 Publication of orders

- (1) An authority may publish in any publication a notice setting out—
 - a. the effect of any order or direction it has made under this Act in respect of a health practitioner; and
 - b. a summary of any finding it has made under this Act in respect of the health practitioner; and
 - c. the name of the health practitioner.
- (2) If the Tribunal makes an order under this Act in respect of a health practitioner, the appropriate executive officer of the Tribunal must publish, in any publication the Tribunal directs, a notice stating—
 - a. the effect of the order; and
 - b. the name of the health practitioner; and
 - c. a summary of the proceedings in which the order was made.
- (3) If a court makes an order under this Act in respect of a health practitioner, the authority with which the health practitioner is or was registered must publish, in any publication the court directs, a notice stating—
 - a. the effect of the order; and
 - b. the name of the health practitioner; and
 - c. a summary of the proceedings in which the order was made.
- (4) Subsections (2) and (3) apply subject to—
 - a. any order of the Tribunal under section 95; and
 - b. any order of the court.
- (5) In this section, the term health practitioner includes a former health practitioner.

157B Authorities to issue naming policies

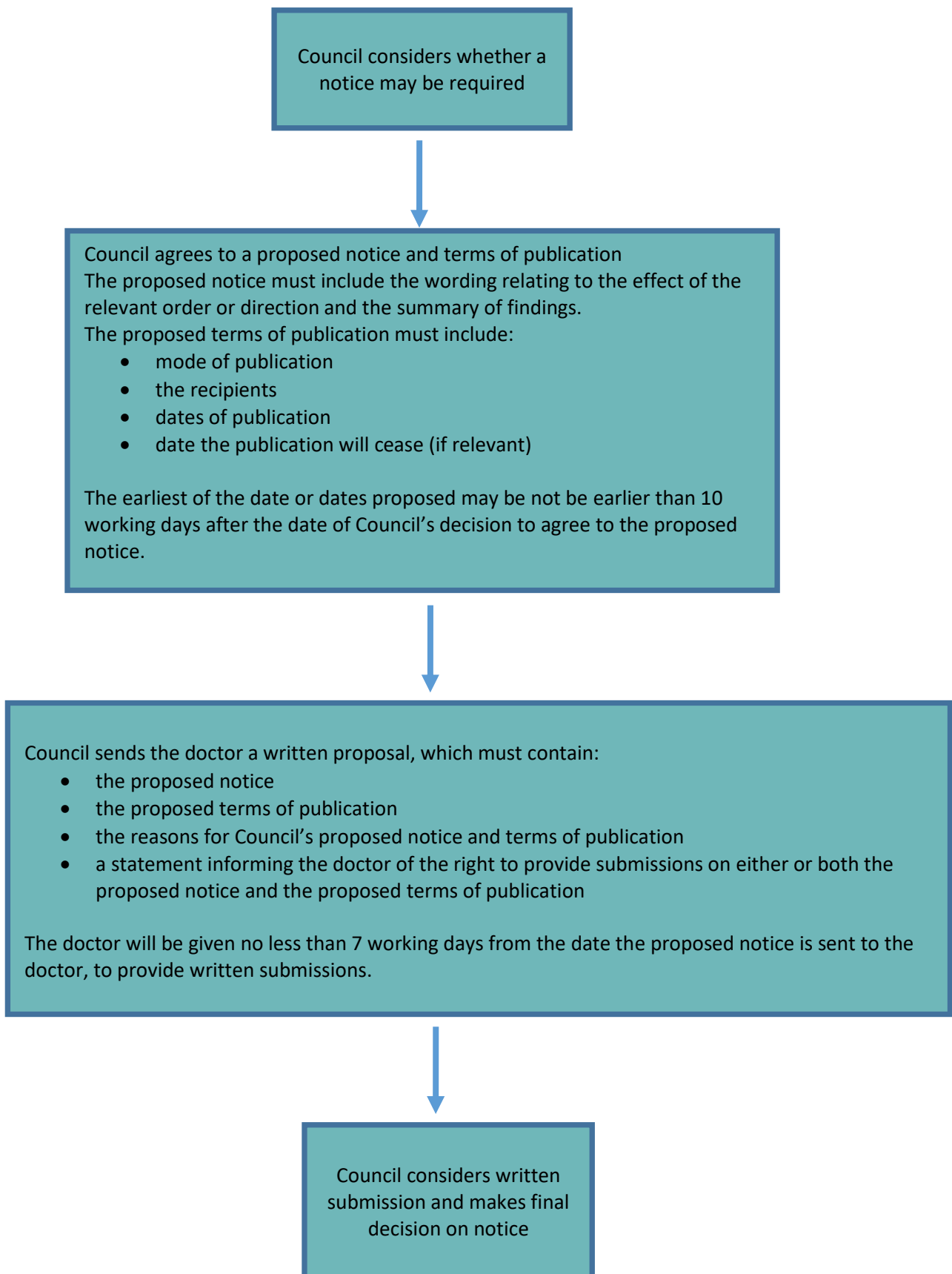
- (1) Each authority must issue a naming policy not later than 12 months after this section comes into force.
- (2) The purpose of the naming policy is to—
 - a. enhance public confidence in the health professions for which the authority is responsible and their disciplinary procedures by providing transparency about their decision-making processes; and
 - b. ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and
 - c. improve the safety and quality of health care.
- (3) A naming policy must set out—
 - a. the class or classes of health practitioners in respect of whom the naming policy applies; and
 - b. the circumstances in which a health practitioner may be named; and
 - c. the general principles that will guide the authority’s naming decisions; and
 - d. the criteria that the authority must apply when making a naming decision; and
 - e. the requirement to have regard to the consequences for the health practitioner of being named, including the likely harm to the health practitioner’s reputation; and
 - f. the procedures that the authority must follow when making a naming decision; and
 - g. the information the authority may disclose when naming a health practitioner; and

h. the means by which a health practitioner may be named.

Appendix 2 - Orders or directions under the HPCAA to which this policy applies

Section	Possible order	Section	Possible order
31(4)	Cancellation of interim practising certificate	51(3)	Varying conditions imposed under 39, 48, 50, 67A, 69A
38	<ul style="list-style-type: none"> Competence (education) programme Conditions Examination or assessment Counselling or assistance 	67A(2)	Order for: <ul style="list-style-type: none"> medical examination or treatment; psychological or psychiatric examination; or treatment/therapy for alcohol or drug abuse
39	Interim suspension/conditions pending PAC	67A(6)(b)	Conditions (after health examination complete)
43	<ul style="list-style-type: none"> Changing permitted health services s43 (1)(a)(i) Conditions s43(1)(a)(ii) Registration suspended s43(1)(b) 	69	<ul style="list-style-type: none"> Suspension – s 69(2)(a) Conditions – s 69(2)(b)
48(2)	<ul style="list-style-type: none"> Interim suspension s48(2)(a) Changing permitted health services s48(2)(b)(i) Conditions s48(2)(b)(ii) 	69(4)	Revocation of ‘with notice’ orders for suspension or conditions
48(3)	Extension of s48(2) order	69A	Suspension where risk of serious harm
50	<ul style="list-style-type: none"> Suspension – s50(3) Conditions s 50(4) 	69A(5)	Revoking (without notice) suspension
51(1)	Revoking suspension imposed under 39, 48, 50	69A(6)	Conditions (when revoking s69A suspension)
51(2)	Revoking conditions imposed under 39, 48, 50, 67A, 69A		
Possible directions			
142	Cancellation directed by Council, at request of doctor		
143	Cancellation directed by Council, on death of doctor		
144	Cancellation directed by Council following revision of register process		
146	Cancellation (where false/misleading application)		
147	Cancellation (after review following overseas action)		

Appendix 3 - Naming policy decision-making flow chart



Appendix 4 - Weighing the public interest and a doctor's privacy interests

Public's interest considerations	
Are there concerns about public safety?	<p>Our purpose is to ensure the safety and quality of health care and the competence of doctors. Non-disclosure in some cases may run the risk of harm to future patients.</p> <p>Disclosure may encourage other notifications or concerns about a doctor's competence or conduct.</p>
Have we done the "reasonable patient" test?	<p>Would a reasonable patient expect to know about the order or direction made, so that they can make an informed choice about whether to receive health services from the doctor? If so, that will weigh in favour of publishing the name of the doctor.</p>
A doctor's accountability	<p>Doctors are accustomed to being held to account for the standard of care or service they provide. They should expect that some information about their practice needs to be disclosed if serious accountability or health and safety concerns are raised.</p>
Council's accountability	<p>Council is responsible for making an assessment and investigating matters and must take any necessary remedial action.</p>
What is the nature of the information?	<p>Does the information raise serious safety or competence concerns? Does non-disclosure raise a risk of harm to future patients? Disclosure of serious notifications and concerns should be favoured in the interest of the public.</p>
Have there been multiple notifications?	<p>A high frequency of notifications, or notifications raising recurrent themes may indicate wider competence or conduct issues, and justify disclosure of additional information in the public interest.</p>
Does the doctor's position, seniority, degree of responsibility, and ability impact on members of the public?	<p>In relation to a DHB psychiatrist, former Ombudsman David McGee noted 'the competing public interest is also high, particularly where the employee in question held a position of responsibility in respect of particularly vulnerable members of society'.</p>

Has Council decided to take action about the matter?	The public interest in disclosure may be higher where a complaint has been investigated and found to be substantiated.
Is the information already public?	If information about the matter is already public, this may increase the public interest in disclosure of a summary about the outcome of the matter. The purpose this disclosure would be to demonstrate that appropriate action has been taken to investigate and implement any protective measures or remedial action.
Are the complaints historical?	The public interest in disclosure may be lower if the issues raised are historical and have minimal relevance.
Is there a risk of harm or risk of serious harm?	Where the Council has decided that a doctor poses a risk of harm or a risk of serious harm (under the relevant sections of the Act), that might weigh in favour of naming the doctor.
Is the information already public?	The doctor's privacy interest may be reduced because the information is already publicly available.
The doctor's privacy interest	
Is the matter historical or relevant?	The doctor's privacy interest may be higher if the matter is historical and has no current relevance. In this context, the disclosure of personal information about the health practitioner may be unfair.
Is the matter substantiated?	The doctor's privacy interest is higher where the matter is unsubstantiated or a final decision has not been made. For example, at initial receipt of the notification, and while inquiries are being made or an investigation is being undertaken. A doctor's legitimate expectation of privacy will be diminished where the matter has been substantiated (e.g., results of competence review, Tribunal decision).
Is the investigation ongoing?	Doctors are likely to have a higher privacy interest while the investigation of a matter is ongoing. Disclosing the existence of a matter during an ongoing investigation may unfairly suggest that there is substance to it.
Is harm likely to arise because of naming?	There may be factors that increase the risk of personal or professional harm arising from disclosure. For example, the physical or mental health of the health

	practitioner, or the size of the community where they practise.
Does the information have context?	Consider if any potential harm from naming a doctor can be mitigated by releasing a summary of information with appropriate context.
General public interest considerations against naming	
Are we discouraging open disclosure?	Routinely naming individual doctors may undermine progress in creating a culture of open disclosure to improve the quality of safe care.
Will early resolution hinder the doctor improving their practice?	Doctors may seek early resolution to complaints to avoid risk of being named. While this may suit the individual complainant, the underlying issues may not be addressed, risking repeat, and an ultimate failure to properly ensure that the public is protected.
Will disclosure damage their colleague's reputation?	Doctors considering notifying of concerns about a colleague's competence may be less inclined to do so if they fear this will unfairly impact on the colleague's reputation.