

Threshold for notification of risk of harm to another organisation policy

Date last reviewed	July 2007
Scheduled review	
Approved by	Council

Purpose

The purpose of this policy is to ensure a consistent approach is applied by the Dental Council when deciding whether to notify ACC, Director General of Health, Health and Disability Commissioner and employers that it has reason to believe that the practice of an oral health practitioner may pose a risk of harm to the public.

Scope

This policy applies to all situations where the Dental Council has identified a potential risk of harm.

Policy

1. The Council will not release information about a practitioner being reviewed without the permission of the practitioner unless it believes that the practitioner's practice may pose a risk of harm to the public, applying the threshold test below.
2. If the threshold is met, Council is legally required to give the following persons written notice of the circumstances that have given rise to that belief:
 - (a) The Accident Compensation Corporation;
 - (b) The Director-General of Health;
 - (c) The Health and Disability Commissioner;
 - (d) The employer of the practitioner.
3. The Council may also notify any person who works in partnership or in association with the practitioner

References

1. Dental Council Policy on Complaints and Concerns.
2. Dental Council Policy on Competence Review.

Threshold test

The question of whether, in any particular case, Council is obliged to notify can be tested by asking the following questions:

	Threshold	Test
“reason to believe”	<p>Only when Council has “reason to believe” is it obliged to notify.</p> <ul style="list-style-type: none"> • Subjectively, the Council’s belief must be a genuine one. • Objectively, the Council must have reasonable ground for its belief. At one extreme, rumour could never provide a foundation for a reasonable belief. At the other extreme, there is no reason to think that it is necessary in all circumstances to carry out a comprehensive investigation before reasonably forming a belief. 	<p>Is that belief reasonable in the sense that it has been arrived at fairly on the basis of adequate information, or is there a need for further investigation?</p> <p>It seems likely that in the majority of cases, Council will only be in that position as a result of an investigation such as a competence review.</p>
“risk of harm”	<p>The Council's belief must relate to a risk of harm. The nature of health practitioners’ occupations is such that merely engaging in practice presents a risk of harm. Plainly the Council cannot be obliged to notify of a risk which arises merely by reason of a practitioner carrying on practice. The risk must be one which exists over and above the risk of harm which is a necessary incident of practice.</p> <p>This is a high threshold.</p>	<ol style="list-style-type: none"> 1. Has Council reached a genuine belief that a practitioner’s practice may pose a risk of harm (i.e. the risk is not fanciful)? Council has agreed that risk of harm is indicated by a recognised factor including: <ol style="list-style-type: none"> (a) A pattern of practice over a period of time that suggests the practitioner's practice may not meet the required standards of competence (b) A one-off incident that demonstrated a significant departure from accepted standards (c) Recognised poor performance where local interventions have failed – this does not exclude notifications of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern. (d) Professional isolation with declining standards that become apparent. 2. Is the Council satisfied that the risk of harm identified is a risk which is more than the acceptable risk which arises by reason simply of the carrying on of practice?

“to the public”	The risk must be to the public. The provision does not apply to risks to the practitioner. Nor is it likely to apply to risks to a practitioner’s colleague or business associate. The risk must be to a member of the public, i.e. patients, or potential patients.	<ol style="list-style-type: none">1. Is the risk of harm identified in a risk to the public?2. Has the context and circumstances of the practitioner and his/her practice been taken into consideration?
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