POLICY

Dental Council
Te Kaunihera Tiaki Niho

Management of notifications about oral health practitioners

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Scope and purpose

1. This policy applies to management of all notifications related to all oral health practitioners registered with the Dental Council (the Council). It may also apply to practitioners who are no longer registered with the Council but were registered at the time of the alleged incident(s) in the notification. Its purpose is to protect public safety by ensuring the Council receives and manages notifications about practitioners in a manner that is:
   - timely
   - consistent
   - proportionate to the risk
   - fair
   - transparent.

2. When managing notifications, the Council will comply with its obligations under the Health Practitioners Competence Assurance Act 2003 (the HPCA Act).

Receiving a notification

3. The Council may receive a notification about a practitioner (a notification) at any time, including from (but not limited to):
   - a member of the public
   - Health and Disability Commissioner ((HDC)
   - Accident Compensation Corporation (ACC)
   - a colleague
   - an employer
   - a Registrar of a Court in New Zealand (notice of conviction).

4. The Council will acknowledge that it has received a notification and conduct an initial assessment of the notification.

5. If, on initial assessment, the Council believes the practice of the health practitioner does not raise questions of health, conduct or competence, the notifier will be advised and the matter will be closed with no further action.

6. Council may seek further information from the notifier, and will usually seek a response from the practitioner concerned.[1]

[1] For more information on the inquiries process refer to Plain English Guide: Facing a Dental Council inquiry

7. After completing its assessment, the Council may:
   - decide the notification is outside of the Council's jurisdiction (powers) and tell the notifier
   - send the matter to another agency
   - decide that the notification must be sent to the HDC
   - decide that the notification is frivolous or vexatious and take no further action
   - conduct further inquiries to gather additional information
   - refer the practitioner for a competence review
   - refer any questions about the practitioner's conduct for independent investigation
   - take further steps to assess the practitioner's mental or physical health.[2]

Notifications outside of Council's jurisdiction

8. Some notifications may raise matters that are outside of the Council's jurisdiction and cannot be dealt with by the Council. The Council cannot:
   - make decisions about refunds or financial compensation. The patient may need to discuss their concern about the cost of their treatment directly with the practitioner or the practice. The Disputes Tribunal considers disputes about costs, and the relevant professional association may also be able to provide assistance.
   - decide whether the patient is entitled to compensation for any injury from dental treatment provided. ACC considers claims for treatment injury.
   - provide legal advice to or advocate for a complainant. The HDC provides an advocacy service. The Citizens Advice Bureau or Community Law Centre may be able to provide advice
   - consider a notification about a person who is not a current or past registered oral health practitioner. The Ministry of Health investigates people who may be 'holding themselves out' to be a registered health practitioner
   - consider complaints about organisations. The HDC may consider organisational and systems issues when considering a complaint.

9. The Council may:
   - advise the notifier of the appropriate agency to consider the matter, or
   - refer the matter to another agency (e.g., HDC, NZ Police).

Health and Disability Commissioner (HDC)

10. The Council must refer to the HDC any notification alleging that the practice or conduct of a practitioner has affected a health consumer. It cannot conduct any disciplinary investigations while the matter is with the HDC, but may:
    - ask for the practitioner's response to the notification
    - consider whether to undertake a review of the practitioner's competence[3]
    - consider whether interim orders may be necessary to protect the public while the matter is being investigated by the HDC; and/or
    - consider whether to issue a Notice of Risk of Harm to specified agencies.

[2] See Health (Fitness to Practise) Policy
[3] A competence review is not a disciplinary process. It is intended to identify any issues in a practitioner's practice and support them to address these, while protecting the public.

11. The HDC may:
    - refer the matter back to the Council; or
    - conduct an assessment or investigation of the matter, and:
        - close the matter with no further action, and advise the Council that it is free to take whatever action it considers appropriate
        - refer the matter to another agency (e.g., ACC, Director-General of Health, Coroner etc)
        - refer the matter back to the Council with or without recommendations (for example, that a competence review be undertaken)
        - issue an opinion that the practitioner has breached the Code of Rights, and make recommendations
        - take action before the Health Practitioners Disciplinary Tribunal or the Human Rights Review Tribunal.

12. The steps that the HDC has (or has not) taken will be relevant to the Council's consideration of what (if any) further action is required.

13. The Council may also receive referrals from the HDC where a complaint was made directly to the HDC in the first instance.

Frivolous or vexatious complaints

14. From time to time, the Council may receive a complaint that it considers to be frivolous or vexatious.

15. A *"frivolous"* complaint might allege issues that are, on the face of it, trivial, meritless or without substance, or too vague to be meaningfully considered, such that investigation would be disproportionate or an inappropriate expenditure of time and resource.

16. The Council recognises that some people may have difficulty expressing a genuine concern – whether due to disability, mental health condition, or another vulnerability. Wherever possible, the Council will attempt to clarify any concerns with the complainant before deciding whether there is enough information to decide whether to proceed.

17. The main intent of a *"vexatious"* complaint is to cause harassment, annoyance, frustration, worry, or cost (such as the engagement of legal counsel) to the subject of the complaint. The complainant may also escalate in their behaviour and/or make multiple contacts to the Council on the same issue.

18. If the Council decides that a complaint is frivolous or vexatious, it will notify the complainant, and the practitioner, giving the reason why no further action will be taken. The information will be retained on the practitioner's file.

19. When the Council considers whether a complaint is frivolous or vexatious it will always consider each complaint on its own merits. For example, just because someone has made a frivolous or vexatious complaint before, it does not mean their next complaint will be.

20. If the person making a frivolous or vexatious complaint is a practitioner registered with the Council, the Council may consider whether the nature of the complaint raises questions about the practitioner's conduct. Similarly, if the person is registered with another responsible authority, the Council may refer the matter to that responsible authority (e.g., Medical Council, Nursing Council).

Anonymous and protected notifications

21. From time to time, the Council may receive information from anonymous sources. The Council will consider its obligations in terms of natural justice and compliance with the Privacy Act 2020 before deciding whether to proceed with notifications of this kind.[4]

Council consideration of notification

22. If the notification does not need to be referred to the HDC, or when the HDC refers the matter back to the Council, the Council will, in the first instance, seek the practitioner's response to the notification, together with a copy of any relevant patient records. It may also seek an updated response if an initial response was provided when the practitioner was notified of the referral to the HDC.

23. Having considered the notification and the practitioner's response (as well as any other relevant information)[5] options open to the Council include:
    - taking no further action on the matter, and advising the parties accordingly;
    - identifying possible health concerns (see Health Policy);
    - identifying possible competence concerns; or
    - identifying possible conduct concerns.

24. In some circumstances, a matter may raise both conduct and competence concerns, leading the Council to take action under both "pathways."

25. If the Council identifies a possible health concern impacting on the practitioner's ability to perform the required functions of their profession, it will have regard to this when considering whether further competence or conduct inquiries are appropriate.

Competence

Competence inquiries

26. Before deciding whether to order a competence review, the Council may make further inquiries such as a practice visit or a review by a subject matter expert for the purpose of gathering more information to assist the Council in making a decision.

[4] The Council's Privacy Policy sets this out in more detail.
[5] Other relevant information may include (for example) conduct or competence information already held on the practitioner's file.

27. The goals of a practice visit are to:
    - establish the practitioner's view on the matters notified
    - discuss with the practitioner their reflections on the notification
    - obtain a clearer understanding of the practitioner's practice setting, professional development, general wellbeing, and other relevant factors
    - explore the practitioner's understanding of and compliance with Council Standards.

28. The goals of an expert review are to:
    - review and consider any information relevant to a specialty area of dentistry
    - provide a specialist option on the issues in the notification
    - obtain a clearer understanding of the practitioner's education and training in a specific area of practice.

29. Alternatively, the Council may decide that the initial notification and the response from the practitioner is sufficient to decide that a review of the practitioner's competence is (or is not) required.

30. The Council may defer a decision on whether a competence review is required, giving the practitioner educational advice on aspects of their practice to improve, and following up with a practice visit – usually within 3 to 6 months - to confirm that the recommended improvements have been made.

31. If the Council decides that a competence review is required, it will also consider:
    - whether a Notice of Risk of Harm is required to be issued to specified agencies; and
    - whether it believes there is a risk of serious harm to the public, requiring a proposal to make interim orders of conditions on practice or suspension, pending the outcome of the competence review.[6]

32. If interim orders are proposed, the practitioner will be told the reasons for the proposal, and given a reasonable opportunity to make submissions and be heard before a final decision is made. The Council does not provide an opportunity to make submissions and be heard on a decision that a competence review is required.

Competence review[7]

33. The Council may review a practitioner's competence at any time; however, Council will usually only conduct a competence review if there is a concern about a practitioner's practice.

34. A competence review may take any form determined by the Council. It will usually involve a practice visit by two peers (Competence Review Committee (CRC)). The CRC

[6] See the Dental Council's Policy on Risk of Harm and Risk of Serious Harm
[7] For more details on the competence process, refer to Plain Language Guide: What to expect during a competence review

will conduct a range of activities set out in Terms of Reference for the competence review, including (but not limited to):

- discussion about the practitioner's current practice, and any reflections they have on the notification
- review of a random selection of records
- observation of the practitioner treating patients
- practice systems review, including infection prevention control
- professional discussion and case-based orals.

35. If the practitioner is not practising or has conditions on their practice that may limit the CRC's ability to assess their competence, the Council may decide to carry out the review in another way, such as an individual assessment in a test environment, simulation lab, or other suitable venue.

36. Regardless of the form of the review, if the CRC identifies possible issues during the review, it may explore these as part of the review. It must notify the Council promptly if it believes the practitioner poses a risk of serious harm to the public.

37. As soon as practicable after conducting the competence review, the CRC will write a report of its findings, including a recommendation to the Council as to whether the CRC believes the practitioner meets the required standard of competence – and if not, where the deficiencies lie, and how these might be remedied.

38. After seeking the practitioner's response to the CRC's report, the Council will decide whether the practitioner meets the required standard of competence.

Remediation and public protection

39. If the practitioner does not meet the required standard of competence, the Council must make one or more of the following orders:
    - require the practitioner to undergo a competence programme
    - include conditions in the practitioner's scope of practice
    - require the practitioner to sit an examination or undertake an assessment
    - order the practitioner be counselled or assisted by a person nominated by the Council.

40. In most cases, the Council will require the practitioner to undergo a competence programme under the supervision of a Council-approved supervisor. It may also (or alternatively) make any of the other orders listed above.

41. The supervisor will report regularly to the Council on the practitioner's safety, while any appointed educators will report on progress towards completion of programme objectives.

42. When the practitioner has satisfactorily completed all requirements of the competence programme, Council will release them from their competence programme, and they can ask to have any related conditions removed.

Failure to remediate

43. If the practitioner does not satisfactorily complete all requirements of the competence programme within the timeframe specified, the Council may:
    - Pending completion of requirements:
        - propose to include conditions or limit the practitioner's scope of practice; or
        - suspend the practitioner's registration; or
    - Extend the timeframe to complete requirements, at the practitioner's request.

Further notification after remediation

44. If a further notification is received about a practitioner who has completed a competence programme, the Council will have regard to the history of the matter and any current circumstances that are relevant.

45. If the Council considers that there is no satisfactory explanation for the practitioner's failure to maintain their practice following Council-ordered remediation, the Council may either:
    - treat the matter as a fresh competence issue; or,
    - form a view that the practitioner's failure to maintain the standard of practice after Council intervention raises questions about the practitioner's conduct.

46. The Council's decision on how to proceed in such situations will be determined on a case-by-case basis.

Conduct

Professional Conduct Committee[8]

47. If the Council decides that the notification raises questions about the appropriateness of the conduct or safety of the practitioner's practice, it may refer those questions to a Professional Conduct Committee (PCC).

48. A PCC is appointed by the Council to investigate the questions referred to it by the Council. It has wide-ranging powers to request information to assist it in conducting its investigation, and making recommendations and/or determinations as to the outcome.

49. The PCC will engage with the practitioner and notifier as parties to the matter; however, it may also identify other people or agencies that it wishes to meet or seek information from.

50. Once the PCC has gathered all the information it believes it needs, the practitioner will be given the opportunity to review all the information and meet with, or write to the PCC.

[8] For more details on the disciplinary process, refer to Guidelines for oral health practitioners who are referred to a PCC.

51. The PCC may make one or more of the recommendations and determinations set out in the table below. Determinations are 'final decisions' of the PCC, while recommendations are for the Council to consider, and decide how to proceed.

Recommendations to the Council (one or more)	Determinations (no more than one)
Review the practitioner's competence	Take no further action
Review the fitness (health) of the practitioner	Refer the complaint to conciliation
Review the practitioner's scope of practice	Lay a charge with the HPDT
Refer the matter to the Police	
Counsel the practitioner	

Health Practitioners Disciplinary Tribunal (HPDT)

52. If a PCC determines to lay a charge with the HPDT, the PCC will be responsible for prosecuting that charge. The Council itself is not a party to the proceedings; however, the prosecution of the charge is funded through disciplinary levies paid to the Council by registrants.

Notice of a conviction

53. Where the Registrar of a New Zealand Court notifies the Council that a practitioner has been convicted of an offence that meets certain thresholds,[9] the Council must either:
    - Refer the matter to a PCC; or
    - With the practitioner's consent, order a health examination, treatment, counselling or therapy.

Administration

Related policies and guidelines

1. Policy on Risk of Harm and Risk of Serious Harm
2. Health (Fitness to Practise) Policy
3. Naming Policy
4. Plain Language Guide: Facing a Dental Council inquiry? Here's what you need to know
5. Plain Language Guide: What to expect during a competence review
6. Plain Language Guide: What happens after a competence review
7. Plain Language Guide: What to expect during a professional conduct committee investigation

[9] The offence is punishable by 3 or more months in prison (whether or not the practitioner was sentenced to a period in prison).

Version control

Policies replaced or rescinded by this policy	
CAC001	Acting on information received about oral health practitioners
-	Cases of suspected illegal practice procedures
COM001	Competence review
REG002	Notification to relevant responsible authorities