POLICY

Dental Council
Te Kaunihera Tiaki Niho

Naming policy

Approved: 6 May 2024

For review: May 2027

Policy statement

If the Dental Council (Council) exercises its statutory power to make any order or direction that it has authority to make in respect of a health practitioner, it will turn its mind to whether to publish a notice naming the practitioner under section 157(1) of the Health Practitioners Competence Assurance Act 2003 (the HPCA Act).

In doing so, Council will be guided by the principles set out in this policy to ensure that its
decision complies with relevant laws, and appropriately balances the public interest in the practitioner being named against the private interests of the practitioner.

Key policy points

- Council's primary obligation is to ensure that it protects the health and safety of the
public. This includes ensuring that the public is provided with information in which it has an interest.
- When considering naming a practitioner, Council will consider the purpose of the Act, and the purpose of this Naming Policy as set out in section 157B(2).
- In each case before it, Council will weigh the public interest in naming the practitioner against the practitioner's privacy interests, including the consequences for the practitioner's reputation. Where the balance is even, Council is likely to favour public interest, and name the practitioner.
- Council is aware that a decision to name a practitioner is likely to have consequences for the practitioner. It will apply this policy judiciously and with appropriate regard for all of the circumstances of the particular case.
- If Council proposes to name a practitioner, it will first give the practitioner the opportunity to make submissions on the proposal before making a final decision.

Statutory context

1. The HPCA Act came into force in September 2004. Its principal purpose as described in section 3(1) is:

"… to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions."

2. Council is a statutory authority established under the Act. Section 118 of the Act sets out the functions of Council in terms of its obligations to protect the health and safety of members of the public, including:

> *"to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information."*

3. In April 2019, changes were made to the Act, including the requirement, under sections 157A to 157I, for Council to adopt a "Naming Policy" setting out the circumstances in which Council will publish the name of a practitioner under section 157(1) of the Act. These new sections were added to the Act in the context of a clear direction from Parliament (combined with other changes) that greater transparency in the regulation of health practitioners is required.[1]

Purpose of the policy

4. The purpose of this policy, as set out in section 157B(2) of the Act is to:

   (a) enhance public confidence in the health professions for which Council is responsible and its disciplinary procedures by providing transparency about its 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.

5. Council has developed this policy in order to assist it in meeting the statutory requirements of section 157B, and to:

   (a) reflect current practice in the courts and related decision-making authorities;

   (b) reflect increasing transparency in international health regulation;

   (c) enhance public confidence both in health practitioners, and in the regulation of health practitioners, by providing information that assures the public that regulation is responsive to risk;

   (d) provide members of the public with access to information that assists them in making an informed choice about healthcare services they seek.

[1] See 2018-2019 Hansard records (20 February 2018, 17 September 2018, 19 February 2019, 11 April 2019) relating to the Health Practitioner Competence Assurance Act.

Practitioners to whom this policy applies

6. This policy applies to all oral health practitioners (dentists, dental specialists, dental therapists, dental hygienists, oral health therapists, orthodontic auxiliaries, clinical dental technicians and dental technicians) who are currently registered by Council in any scope of practice, and former practitioners who have previously been registered by Council in any scope of practice (see section 157(5)).

Circumstances in which a practitioner may be named

7. Section 157(1) of the Act provides that Council may publish a notice setting out:

   - the effect of **any order or direction** it makes under the Act in respect of a health practitioner; and
   - a summary of any finding that it has made under the Act in respect of the health practitioner; and
   - the name of the practitioner.

8. A complete list of all the orders and directions Council may make in respect of a health practitioner is set out in **Appendix 1**.

9. In all circumstances where Council makes an order, the making of that order will trigger consideration of whether to publish a notice under section 157(1) of the Act naming the practitioner to whom the order applies.

10. It is unlikely that Council will publicly name a practitioner in every situation where an order or direction is made. The decision whether to name a practitioner will depend on:

    (a) the individual circumstances of the case at the time that the order or direction is made;

    (b) the nature of the order made; and

    (c) the application of the principles and criteria set out in this policy.

Principles guiding naming decisions

Core principles

11. In each case before it, Council will apply the following principles:

    (a) Council will have regard to the principal purpose of the Act, which is to protect public health and safety.

    (b) Council will have regard to the statutory purpose of the naming policy as set out in section 157B. That is, to:

        i. enhance public confidence in the health professions for which Council is responsible and its disciplinary procedures by providing transparency about its decision-making processes; and

ii. 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

iii. improve the safety and quality of health care.

(c) A decision to name will not be made for punitive purposes.

(d) Council will abide by the principles of natural justice, including providing the practitioner with the right to make submissions before a final decision is made on whether to name.

(e) Council will consider the individual circumstances of the case when weighing the practitioner's privacy interest(s) against the public interest in the practitioner being named. In doing so, Council will refer to the considerations set out in Appendix 2.

(f) Where Council has weighed the practitioner's privacy interest(s) against the public interest and it is evenly balanced, Council is likely to favour the public's right to know.

Decisions relating to competence orders under section 38 and 43

12. Section 38 orders must be made if, after conducting a competence review, Council has reason to believe that a practitioner fails to meet the required standard of competence.

13. Section 43 orders may be made if a practitioner who is required to complete a competence or recertification programme does not satisfy the requirements of the programme.

14. In both of these cases, Council considers that members of the public have a strong interest in having access to information to assist them in making an informed choice about whether to receive health services from the practitioner. For this reason, the presumption will be that the practitioner **will** be named, unless there is good reason not to do so.

Decisions relating to orders made under sections 48 – 50

15. Orders made under sections 48 – 50 relate to interventions where there are concerns about a practitioner's health/fitness to practise and include interim orders in that regard.

16. In these cases, Council will have regard to the highly sensitive nature of the practitioner's personal health information. With this in mind, the presumption will be that the practitioner **will not** be named, unless there is good reason to do so

Additional principles that will apply where interim order are made (other than interim orders relating to health/fitness to practise)

17. Council is conscious that interim orders are usually made to ensure that public safety is protected while further information is gathered to determine whether the practitioner does in fact pose a risk to the public—and if so, the extent of that risk. When

considering whether to name under this policy, Council will have regard to the following additional considerations:

(a) The unsubstantiated nature of the matter before it, and

(b) The extent to which Council can be satisfied that any perceived risk can be mitigated by the interim action taken.

Principles that will apply when ordering the revocation of orders

18. Section 51 of the Act provides that Council may make an order revoking any suspension imposed under section 39, 48, or 50, or revoke or vary any conditions imposed under section 39, 48, 50, 67A or 69A.

19. If Council did not name the practitioner when making the original order, it is unlikely to name the practitioner when revoking or amending that order.

20. If Council named the practitioner when making the original order, it may publish a notice that it has revoked or varied the order. Council will apply the principles set out in this policy to its decision, but acknowledges that the practitioner may have a reputational interest in the publication or otherwise of a second notice. Council will take into account the practitioner's views on whether publication of an order of revocation is likely to have a positive or negative effect on their reputation.

Criteria to be applied when making a naming decision

21. Council has adopted the following criteria that are to be met before a decision to name may be made:

(a) Council has made an order or direction under the Act (a list of all possible orders and directions is set out in Appendix 1) in relation to a practitioner that is registered, or has previously been registered by Council.

(b) Council is satisfied that naming the practitioner is consistent with the statutory purposes of the naming policy as set out in section 157B(2) of the Act (i.e., public confidence; public interest; and safety and quality of healthcare).

(c) Having referred to the considerations set out in Appendix 2, Council is satisfied that the public interest in naming the practitioner outweighs the practitioner's privacy interest.

(d) Council has given the practitioner notice of its proposed decision to name the practitioner, including the proposed wording of the notice and an indication of the method(s) of publication, and has advised the practitioner of their right to make submissions on the proposal.

(e) Council has considered and applied the relevant principles of Right Touch/Risk Based regulation to its decision. These principles are:

i. ***Consistency:*** Council is satisfied that its decision is consistent with legal requirements, and the requirements of this policy.

ii. ***Transparency:*** Council is satisfied that its process has been transparent, and that its decision complies with its obligations to provide transparency to the public about the health practitioners Council regulates.

iii. ***Targeting*****:** Council is satisfied that the way in which it proposes to name the practitioner, including the media in which the notice will be published, is appropriately targeted towards the members of the public who may seek healthcare services from the practitioner.

iv. ***Accountability***: Council is satisfied that its decision assists it in meeting its responsibility to be accountable to the public, and to the practitioners it regulates.

v. ***Proportionality*****:** Council is satisfied that its decisions relating to naming the practitioner—including the decision to name, the contents of the notice, and the media in which the notice will be published—are proportionate to the risk identified.

vi. ***Agility*****:** Council is satisfied that it has responded appropriately to the issue, including acting where it believes action is necessary to mitigate risk to the public, as opposed to delaying action until that risk eventuates. Council has also put systems in place to ensure that it is able to reconsider the matter promptly at any point where new information appears to alter its current position.

(f) Council has considered and is satisfied that naming the practitioner is fair, reasonable, proportionate and rationally-connected to the statutory purpose of publication under section 157 (i.e., public confidence; public interest; and safety and quality of healthcare).

Information that may be disclosed when naming a practitioner

22. Section 157(1) of the Act provides that if Council decides to publish a notice, the notice sets 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.

23. When deciding whether to publish a notice, Council will provide the practitioner with a draft of the proposed notice, and will consider any submissions from the practitioner on the proposed content.

Privacy Act principles

24. Council must have regard to its obligations to comply with the information privacy principles (IPP) in section 22 of the Privacy Act 2020. The IPPs reflect accepted standards for handling information about an identifiable individual, including that an

individual's personal information should not be 'made public' without the individual's authorisation, or in accordance with one of the established exceptions.

25. One of the key grounds on which information may be used or disclosed without authorisation is where the information is being used or disclosed for a purpose directly related to a reason why the information was obtained (IPP 10(1)(a) and 11(1)(a)). Council collects information to ensure the practitioners it regulates are competent and safe to practise – thereby protecting the public. Any use or disclosure that is directly related to the purpose for which the information was collected (e.g. the protection of the public) would be consistent with the IPPs.

26. Another justification for using or disclosing information without authorisation is whether such use or disclosure is necessary to prevent or lessen a serious threat to public health or public safety or the life or health of an individual (IPP 10(1)(f) and IPP 11(1)(f)). Section 7 of the Privacy Act 2020 defines "serious threat" as a threat that Council reasonably believes to be a serious threat having regard to all of the following:

    26.1. the likelihood of the threat being realised; and

    26.2. the severity of the consequences if the threat is realised; and

    26.3. the time at which the threat may be realised.

Procedures Council will follow when deciding whether to name a practitioner

27. To ensure the decision-making process is consistently applied, Council's procedure will be as follows:

    (a) Having made an order or direction, Council will consider whether to propose to publish a notice under section 157(1) of the Act, including naming the practitioner.

    (b) In considering whether to do so, Council will apply the principles and criteria set out in this policy (above).

    (c) If, having applied the principles and criteria of this policy, Council forms a view that it will propose to publish a notice naming the practitioner, it will consider the proposed content of the notice, and the proposed means by which the practitioner may be named.

    (d) Having formed views on these matters, Council will advise the practitioner of its proposal to name the practitioner, including the proposed content of the notice and the proposed means of naming, and will provide the practitioner with a reasonable opportunity to make written submissions on the proposal.

    (e) Having provided the practitioner with a reasonable opportunity to make submissions on the matter, Council will consider any submissions made by the practitioner or on his/her behalf, before making a final decision on whether to publish the proposed notice.

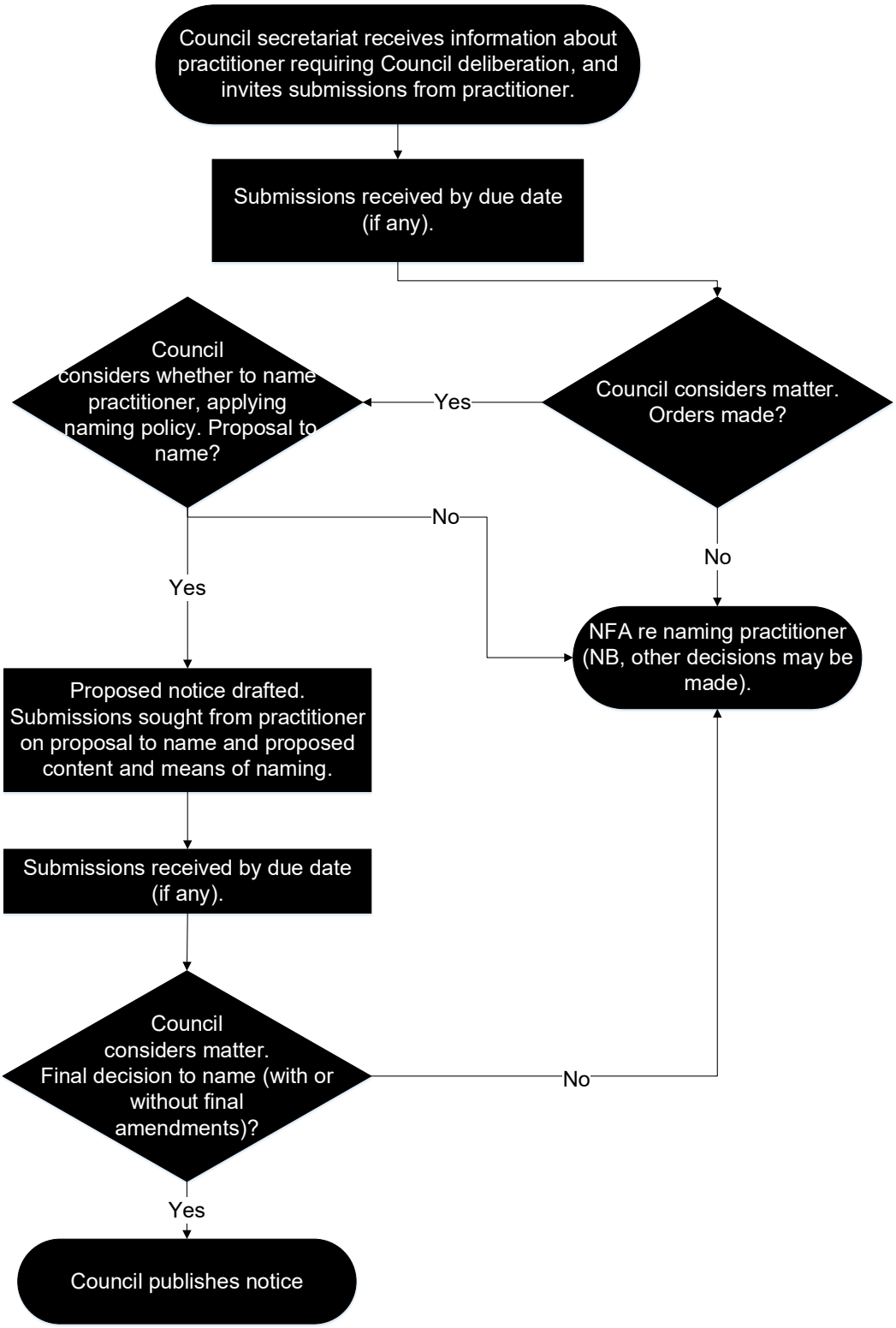
(f) When the Council decides to publish a notice, it will also confirm the conditions and timeframe for reviewing the relevance (and ongoing availability) of the notice.

28. Council will make a written record of its decision-making with respect to the steps set out at 27(a)-(f) above, including any decision not to publish a notice under section 157.

Flowchart of process

(See next page for flowchart of process)

Overview – Council decision-making process on naming practitioners under s 157



Regard to consequences for the health practitioner

29. Section 157B(3)(e) requires the Council to have regard to the consequences for the practitioner being named, including the likely harm to the practitioner's reputation. The practitioner's reputation encompasses both their personal and professional reputation.

30. Council is conscious that a decision to name a practitioner is a "high stakes" decision for the practitioner in question. This does not mean that Council will not name in situations where there are likely to be consequences for the practitioner. However, it does mean that the Council will carefully consider the question of consequences for the practitioner before proceeding.

31. There are two points in the process where it is appropriate for Council to pause and consider the consequences for the practitioner, before determining how to proceed, as follows:

    (a) When deciding whether to propose to name the practitioner, and if so, deciding what information is to be included in the proposed notice; and

    (b) When considering submissions from the practitioner (if any) and deciding whether to confirm its proposal to name.

32. If, having considered all the relevant information and determined that the practitioner is to be named, Council will adopt the following principles when considering the consequences for the practitioner:

    (a) Council will provide only the information that is permitted by section 157(1), unless agreed otherwise with the practitioner.

    (b) Council will refer to and consider any submissions from the practitioner on this point.

    (c) Any notice(s) will only be published where it is most likely to be seen by members of the public likely to be affected by, or have an interest in, the order.

The means by which a health practitioner may be named

33. Depending on the circumstances of the case, Council may publish a notice in one or more media platforms.

34. Where possible, the medium or media selected for publication will be targeted towards the members of the public and/or patient base(s) most likely to have an interest in, or be affected by, Council's order. If necessary and appropriate, Council may order that the notice be translated into the language or languages of the practitioner's key patient base(s), and published in a relevant publication in that language.

35. Means of publication may include:

    (a) A notice by way of letter to relevant people (whether health practitioners or otherwise) including, but not limited to, people who have the power to ensure compliance with Council's order.

(b) Any hard copy media publication that, in Council's view, is likely to be read by members of the public likely to seek healthcare services from the practitioner.

(c) Any electronic medium that, in Council's view, is likely to be accessed by members of the public in the geographical location, or area of practice, serviced by the practitioner. This includes but is not limited to the Council's own website, online news platforms and relevant community pages on social media sites (e.g. Twitter, Facebook, Neighbourly). *When using sites other than Council's website, the Council will generally only publish a link to the notice, so that it retains control of the published information*.

(d) Any other publication that Council considers is appropriate in the particular circumstances, and having regard to the need to ensure access to the necessary information by members of the public most likely to have an interest in the information.

Administration

36. In accordance with section 157F of the Act, Council will review this policy within three years after it comes into force, and then at intervals of no more than three years.

Appendix 1: Table of all orders that Council may make that will trigger consideration of whether to name the practitioner

Section	Order/Direction
31(4)	Cancel interim practising certificate
38(1)	Where the Authority has reason to believe the practitioner fails to meet the required standard of competence, it may order one or more of the following: Competence programme Conditions Examination or assessment Counselling or assistance
39	Interim suspension of practising certificate or conditions pending competence review, where there are reasonable grounds for believing the practitioner poses a risk of serious harm.
43	Where a practitioner does not satisfy the requirements of a competence or recertification programme, the authority may: Change permitted health services s43(1)(a)(i) Include conditions s43(1)(a)(ii) Suspend registration s43(1)(b)
48(2)	Authority suspects practitioner is unable to perform required functions due to mental or physical condition: Interim suspension s48(2)(a) Changing permitted health services s48(2)(b)(i) Conditions s48(2)(b)(ii)
48(3)	Extension of s48(2) order – 20 more days
50	Authority is satisfied that the practitioner is unable to perform required functions due to physical or mental condition Suspension – s50(3) Conditions –s50(4)
51	Revoking suspension imposed under 39, 48, 50– s51(1) Revoking conditions imposed under 39, 48, 50, 67A – s51(2) Order to vary conditions imposed under 39, 48, 50, 67A, 69A
67A(2)	Upon receipt of notice of conviction, Authority may order: Medical examination or treatment ((2)(b)(i)) Psychological or psychiatric examination ((2)(b)(ii)) Course of treatment or therapy for alcohol or drug abuse ((2)(b)(iii))

67A(6)(b)	Following 67A orders, Authority may order conditions.
69	Interim action if appropriateness of practitioner's conduct is in doubt Suspension – s 69(2)(a) Conditions – s 69(2)(b)
69(4)	Revocation of 'with notice' orders for suspension or conditions
69A	Without notice interim suspension where there is a conduct or criminal proceeding and Authority believes the practitioner poses a risk of serious harm to the public.
69A(5)	Revoking (without notice) suspension
69A(6)	Authority may include conditions when revoking without notice suspension.
142	Health Practitioner requests cancellation - Authority may direct Registrar to cancel registration.
143	Health Practitioner dies - Authority may direct Registrar to cancel registration.
144(5)	Authority may direct Registrar to cancel an entry in the Register.
146	Authority may direct Registrar to cancel registration if: • Practitioner gave false information - s146(1)(a) • Practitioner is not entitled to registration -s146(1)(b) Authority may direct Registrar to notify cancellation in any publications it so directs – s146(3)
147(5)	Authority may review the registration of a practitioner where their qualification is cancelled or suspended or an overseas authority removes, cancels or suspends the practitioner's registration. Authority may suspend or cancel the practitioner's registration s147(5)(b)

Appendix 2: Considerations when balancing practitioner's privacy interest against public interest[2]

Table 1: Practitioner's privacy interest

Likelihood of professional harm arising from publication	While naming a practitioner will always have some risk of professional harm, the risk of permanent and/or disproportionate harm to a practitioner should be considered, especially if the matter is unsubstantiated and involves a serious allegation (e.g. sexual or criminal misconduct).
Likelihood of personal harm arising from publication	There may be factors that heighten the risk of personal harm arising from publication of information, for example the physical or mental health of the health practitioner or people close to the practitioner, or the size of the community in which they practise.
Extent to which information is already known to the requester, or in the public domain	The privacy interest may be diminished by prior knowledge or public availability of the information.
Age and relevance of complaint information	The privacy interest may be higher if the matter is historical and there is no imminent risk of harm to the public. In this context, naming the health practitioner may be unfair.
Whether the matter is substantiated	The privacy interest is higher where the matter is unsubstantiated— the allegation made has not been formally upheld (i.e., at initial receipt of the notification, and while inquiries are being made or an investigation is being undertaken). A health practitioner's legitimate expectation of privacy will be diminished where the matter has been substantiated (e.g. results of competence review, Tribunal decision).
Whether the investigation is ongoing	Health practitioners 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 the matter.
Minimising harm by placing information in context	It is important to consider whether any potential harm from publication can be mitigated by releasing summary information with appropriate context.

[2] Adapted from the Ombudsman Opinion "Request for health practitioner's complaint history with HDC" Case number 355627, June 2016, and HDC Naming Policy, 1 July 2008

Degree of insight and cooperation with statutory process	A practitioner may have a higher privacy interest if they display some insight into the issue that is the subject of the order or direction and have cooperated with requests and processes to date. Where there is a high degree of insight and cooperation, this will trigger consideration of whether publication is necessary and proportionate.
Have third parties been notified about the practitioner's conduct already	Third parties may have already been notified about the practitioner's conduct and the potential for risk of harm to the public (e.g through a section 35 notice). Any restrictions on a practitioner's practice may also be noted on the public register. Where there has already been some publication about the practitioner, this will trigger consideration of whether wider publication is necessary and proportionate.

Table 2: Public interest considerations

Public safety	Ensuring the safety and quality of health care and the competence of health practitioners. Non-publication in a particular case may run the risk of harm to future patients. Publication may elicit other complaints or concerns about a practitioner's competence or conduct.
The "reasonable patient" test	If a reasonable patient would expect to know about the order or direction made, so that the patient can make an informed choice about whether to receive health services from the practitioner that will weigh in favour of publishing the name of the practitioner.
Accountability of health practitioners and providers of health services	Health practitioners 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 accountability or health and safety concerns are raised.
Accountability of agency	An agency receiving notifications about health practitioners is accountable for the proper discharge of its responsibilities in the assessment and investigation of those matters and in taking any necessary remedial action.

Nature of information	Does the information raise serious safety or competence concerns? Is the information from a credible and reliable source? Does non-publication raise a risk of harm to future patients? Complaints and concerns of a serious, as opposed to trivial or inconsequential nature, will raise stronger public interest considerations in favour of disclosure.
Number of notifications	A high frequency of notifications, or notifications raising recurrent themes may be indicative of wider competence issues, and justify publication in the public interest.
Role of practitioner and seniority, degree of responsibility, and ability to impact on members of the public	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'*.
Action taken in respect of the matter	The public interest in publication may be higher where a complaint has been investigated and found to be substantiated.
Extent to which information about the matter is already in public domain	If information about the matter is already in the public domain, this may increase the public interest in publication. The purpose of such publication would be to demonstrate that appropriate action has been taken by making inquiries into and instituting any protective measures or remedial action.
Age of complaint information	The public interest in publication may be lower if the issues raised are historical and there is no imminent risk to the public.
Rational connection	The reason for publication must be rationally connected to the principal purpose of the Act – to protect the health and safety of the public. The public interest in publication will be reduced if it is unlikely to have any protective benefit. A practitioner should not be named for punitive purposes or to shame them.
Risk of harm or risk of serious harm	Where the Council has formed a view that a practitioner 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 practitioner.

Table 3: General public interest considerations against naming

Inhibiting open disclosure	Routinely naming individual practitioners may undermine progress in creating a culture of open disclosure to improve the quality of safe care.

Early resolution may hinder improved practice	Practitioners 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.
Damage to colleague's reputation	Registered health practitioners 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.