

Risk of harm or serious harm

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Scope and purpose

1. This policy applies to all registered oral health practitioners (practitioners) in New Zealand. Its purpose is to ensure a consistent approach is applied by the Dental Council (the Council) when:
 - deciding whether it has reason to believe that the practice of a practitioner may pose a risk of harm to the public;
 - notifying relevant agencies of a risk of harm;
 - deciding whether it has reason to believe that the practice of a practitioner may pose a risk of serious harm to the public; and
 - considering interim orders to protect the health and safety of the public.
2. The purpose of making notifications of risk of harm or making interim orders under the Health Practitioners Competence Assurance Act 2003 (the Act) is not to punish the practitioner, but to minimise any risk of harm to the public by restricting or preventing practice, if required, and ensuring that appropriate agencies have the information they need to take protective steps, if necessary.
3. In considering these matters, the Council will comply with its obligations under the Health Practitioners Competence Assurance Act 2003 (“the Act”).

Consideration of risk of harm

4. Harm may include physical injury and emotional distress, and risk relates to the likelihood of harm occurring. A risk of harm may exist if a practitioner's practice or conduct is found, or is alleged, to fall below accepted standards. The Council will consider the context and circumstances of each case when assessing a risk of harm.
5. The Council will consider three key features when deciding whether a risk of harm exists: whether there is reason to believe a risk of harm exists, and if so, whether the risk of harm is to the public. The risk must be one which is over and above the acceptable risk that exists in the usual course of oral health practice.
6. Without limitation, a risk of harm may be indicated by:
 - more than one complaint or notification over a period of time which suggest the practitioner's practice may not meet the required standard of competence;
 - a single incident or notification that demonstrates a significant departure from accepted standards of practice;
 - deficits in clinical knowledge/skills which potentially impact on patient safety;
 - lack of ability to discern the abnormal;
 - professional isolation with an apparent decline in standards;
 - practising outside scope of practice or individual competence;
 - a series of errors;
 - criminal offending;
 - behaviours such as:
 - failure to accommodate a patient's (or their whānau's) cultural needs;
 - displaying a lack of ability to reflect on their practice;
 - failing to be accountable for their own practice and behaviour;
 - lacking insight into less-than-optimal practice;
 - allowing personal ideology to impact negatively on care.
7. The Council will consider whether there is a reason to believe a risk of harm to the public exists, by taking into account:
 - Is there a genuine belief that a practitioner may pose a risk of harm, based on adequate information, or is there a need for further information?
 - Is the risk to one or more members of the public (i.e. a patient or potential patient?)
 - Is it satisfied that the risk of harm is more than the acceptable risk which arises in the usual course of oral health practice?
 - Has the context and circumstances of the practitioner and their practice been taken into consideration?

If risk of harm exists

8. If the Council is satisfied that a risk of harm to the public exists, it must give the following persons written notice of the circumstances that have given rise to that belief:
 - The Accident Compensation Corporation;

- The Director-General of Health;
 - The Health and Disability Commissioner;
 - The employer of the practitioner.
9. The Council may also notify any person who works in partnership or association with the practitioner. When considering whether to notify such people, the Council's primary consideration will be whether making the notification will support its goal of public protection.

Risk of serious harm

10. Risk of serious harm may be indicated when:
- a patient has been or may be seriously harmed or impacted;
 - the practitioner may pose a threat to more than one patient and as such the harm is collectively considered 'serious'; and/or
 - there is sufficient evidence to suggest that alleged criminal offending is of such a nature that the practitioner poses a risk of serious harm to one or more members of the public.
11. Risk of serious harm may be considered:
- if a practitioner has had, or is to have a competence review, and the Council has reasonable grounds for believing that the practitioner poses a risk of serious harm to the public by practising below the required standard of competence (section 39); or
 - if a practitioner is alleged to have engaged in conduct that is relevant to either a criminal proceeding that is pending, a Professional Conduct Committee investigation, or an investigation by the Health and Disability Commissioner, and, in the Council's opinion, held on reasonable grounds, the practitioner poses a risk of serious harm to the public (sections 69, 69A).

Section 39

12. If the Council believes a risk of serious harm exists under this section, it may order interim suspension of a practitioner's annual practising certificate or place conditions in their scope of practice. The practitioner will be given the opportunity to make submissions and be heard before a decision is made.

Sections 69, 69A

13. If the Council believes a risk of serious harm exists under either of these sections, it may:
- order the interim suspension of the practitioner's annual practising certificate. The practitioner will be given the opportunity to make submissions and be heard before a decision is made (section 69).

- order the interim suspension of the practitioner’s annual practising certificate without notice, and provide the practitioner with an opportunity to make submissions and be heard within 20 working days of the interim suspension (section 69A).

Administration

Related policies

1. Notifications Policy
2. Health Policy

Version control

Policies replaced or rescinded by this policy

COM006	Threshold for notification of risk of harm to another organisation
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