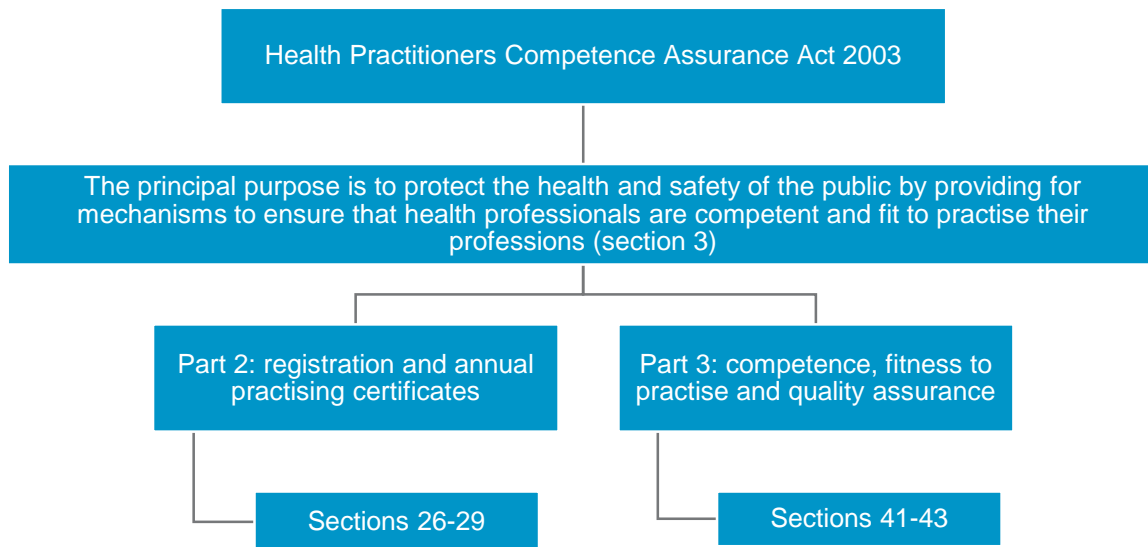


What does the law require us to do?

The statutory provisions relating to recertification are set out in Part 2 (specifically sections 26 to 29) and Part 3 (specifically sections 41 to 43) of the Act.

Part 2 of the Act governs what we must do to recertify a practitioner when they renew their APC and in so doing, assess their competence to practise. Part 3 sets out what we may do to ensure practitioner competence by enabling us to set recertification programmes.

Figure 1: our statutory responsibilities for recertification



APC renewal: sections 26-29 of the Act¹

To become a registered practitioner who can practise in New Zealand an applicant must complete a two-step process:

- step one – registration: the applicant must meet the required standards of entry into the profession (i.e. must be competent in the scope/s of practice they are applying for)
- step two – recertification: having gained registration, a practitioner must continue to meet the required standard of competence to recertify and be issued an APC every year.

Generally, fitness to practise is easily established. The more difficult inquiry is establishing that a practitioner is maintaining the required standard of competence. Section 29(1) of the Act prohibits us from issuing an APC unless we are satisfied the practitioner meets the required standard of competence.

Section 27 of the Act provides high-level guidance as to the nature of the inquiry we should undertake when assessing the standard of a practitioner's competence to practise. Section 27 also contains a list of restrictions (see Figure 2 below) that can prevent a practitioner from being

¹ See appendix 1 for the relevant provisions of sections 26-29 of the Act.

issued an APC. These restrictions are concerned with competence, recency of practice and fitness to practise.² Section 27 requires a Registrar to turn their mind to three areas of inquiry about a practitioner:

- are they competent to practice?
- do they have recency of practice?
- are they fit to practise?

To assist in addressing these questions, we are also permitted by section 26(2)(a) to ask any practitioner, who is applying for an APC, to provide whatever information we require in order to make our decision.³

Figure 2: restrictions under section 27 of the Act

Competence	Recency of practice	Fitness to practise
Has the practitioner:	Has the practitioner:	Is the practitioner:
<ul style="list-style-type: none">• maintained the required standard of competence• complied with any condition included in their scope/s of practice• satisfactorily completed the requirements of any competence programme	<ul style="list-style-type: none">• held an annual practising certificate within the last three years• lawfully practised the profession within the three years immediately preceding the date of application	<ul style="list-style-type: none">• unable to perform the functions required for their profession because of some mental or physical condition

Are we fulfilling our section 26-29 statutory responsibilities?

The purpose of recertification is for us to ascertain and confirm whether our practitioners are competent to practise. We think the statutory threshold is appropriately high and that the Act contains some strict conditions so we can make a meaningful assessment and declaration about the competence to practice of our practitioners; and where appropriate, issue an APC.

However, the information we have about sections 26-29 requirements suggests there is room for improvement. We think our current recertification requirements do not give us assurance that every practitioner we issue an APC to, is competent to practise.

Sections 41-43 of the Act⁴

Sections 41-43 of the Act set out a discretionary regime that provides us a range of tools to determine whether practitioners are competent to practise (see figure 3 below).

Section 41 allows us to set a recertification programme. Historically, we have interpreted this section as allowing us to establish a one-size-fits-all programme focused on prescribed CPD and practitioner peer contact.

² Except for ss27(1)(e), all of the restrictions relate to practitioner competence and have their genesis in the precursor to the Act, the Medical Practitioners Act 1995. Subsection 27(1)(e) was added by the Health Select Committee and relates to fitness to practise.

³ The information we currently require a practitioner to provide is set out in "June 2017 Discussion document – our current approach to recertification."

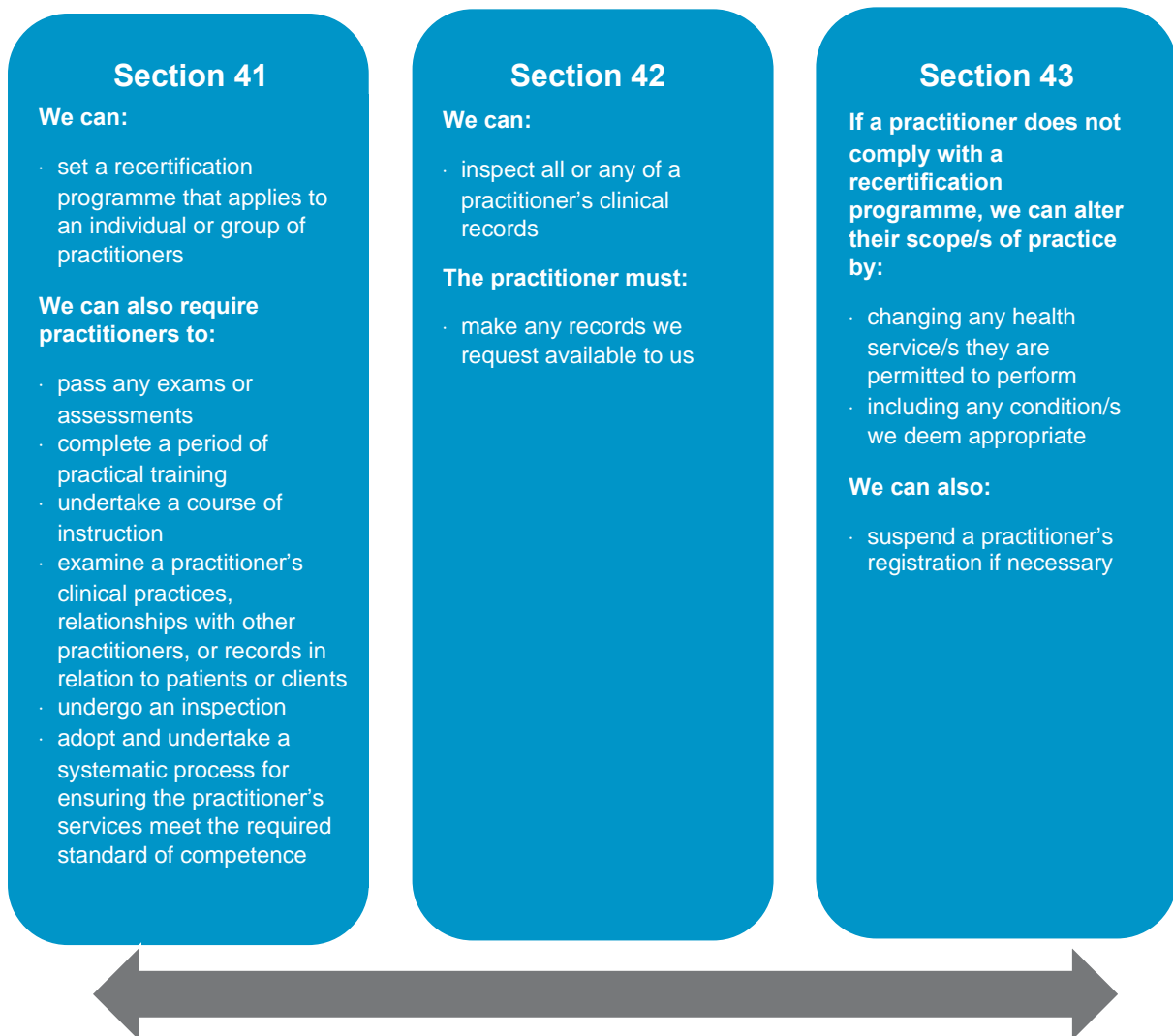
⁴ See appendix 1 for the relevant provisions of sections 41-43 of the Act.

However, it should be noted that section 41 is far broader than our current interpretation of what may be included in our recertification programme. While it is quite permissive, section 41 does not refer to CPD at all. However, it does explicitly set out a number of options, one or more of which, may be included in our future recertification programmes.

Section 42 of the Act gives us the statutory power under a recertification programme to inspect a practitioner's clinical records.

Section 43 sets out sanctions that may apply if a practitioner does not satisfactorily complete their recertification programme requirement/s. The sanctions range from including conditions on a practitioner's scope/s of practice, to suspension of registration. These sanctions can remain in place until a practitioner has satisfactorily completed the prescribed recertification programme.

Figure 3: statutory powers under sections 41-43 of the Act



Appendix 1: Sections 26-29 and 41-43 of the Health Practitioners Competence Assurance Act 2003

Section 26—Applications for annual practising certificate

Section 26 of the Act—provides [emphasis added]:

- (2) Every application for an annual practising certificate must—
 - (a) be in the form and **include the information, that is determined by the authority**, including a statement specifying whether or not the applicant is, at the date of the application, practising the profession in respect of which the authority is appointed;
 - (b) ...

Section 27—Restrictions of issue of annual practising certificate

Section 27 of the Act states:

- (1) Subsection (2) applies to an application for an annual practising certificate to the authority concerned **if the Registrar believes on reasonable grounds** [emphasis added] that—
 - (a) the applicant has, at any time, failed to maintain the required standard of competence; or
 - (b) the applicant has failed to fulfil, or has failed to comply with, a condition included in the applicant's scope of practice; or
 - (c) the applicant has not satisfactorily completed the requirements of any competence programme that he or she has been ordered by the authority to complete; or
 - (d) the applicant has not held an annual practising certificate of a kind sought by the application within the 3 years immediately preceding the date of application; or
 - (e) the applicant is unable to perform the functions required for the applicant's profession because of some mental or physical conditions; or
 - (f) the applicant has not, within the 3 years immediately preceding the date of application, lawfully practised the profession to which the application relates.
- (2) If this subsection applies to an application, **the Registrar must promptly**—[emphasis added]
 - (a) ascertain whether the Registrar is able to consider and determine the application under a delegation given to the Registrar under clause 17 of Schedule 3; or
 - (b) if that is not the case, submit the application to the authority for its consideration.

Section 29—Decisions of authority as to practising certificate and scope of practice

Section 29 states—

- (1) When an application for an annual practising certificate has been referred to the authority concerned by the Registrar, the authority must not decide that the certificate should be issued unless it is satisfied that the applicant meets the required standard of competence.

Section 41—Recertification programmes

Section 41(1) states—

- (1) For the purpose of ensuring that health practitioners are competent to practise within the scopes of practice in respect of which they are registered, each authority may from time to time set or recognise recertification programmes for practitioners who are registered with the authority.
- (2) A recertification programme may be made to apply generally in respect of all health practitioners, or in respect of a specified health practitioner, or in respect of a specified class or classes of health practitioner.
- (3) A recertification programme may require a practitioner to do any 1 or more of the following at intervals (if any) prescribed in the programme:
 - (a) pass any examinations or assessments, or both;
 - (b) complete a period of practical training;
 - (c) undertake a course of instruction;
 - (d) permit a health practitioner specified by the authority to examine—
 - (i) any or all of his or her clinical and other practices;
 - (ii) any or all of his or her relations with other health practitioners;
 - (iii) any or all of the clinical records and other practitioner in relation to his or her patients or clients;
 - (e) undergo an inspection;
 - (f) adopt and undertake a systematic process for ensuring that the services provided by the practitioner meet the required standard of competence.

Section 42 of the Act—Health practitioners may be required to make records available

Section 42—Health practitioners may be required to make records available

An authority that is reviewing the competence of a health practitioner or that has set a competence programme or recertification programme for a health practitioner may, for the purposes of the review or programme, inspect all or any of the clinical records of the

health practitioner, and that health practitioner must make those records available for those purposes to any person duly authorised by the authority.

Section 43—Unsatisfactory results of competence programme or recertification programme

- (1) If a health practitioner who is required to complete a competence programme or a recertification programme does not satisfy the requirements of the programme, the responsible authority may make either of the following orders:
 - (a) that the health practitioner's scope of practice be altered—
 - (i) by changing any health services that the practitioner is permitted to perform;
or
 - (ii) by including any condition or conditions that the authority considers appropriate;
 - (b) that the practitioner's registration be suspended.