



NEW ZEALAND
CHIROPRACTIC BOARD
TE POARI KAIKOROHITI O AOTEAROA

POLICY AND GUIDELINES:

COMPLAINTS POLICY

May 2022

Associated Policy Documents

- Competency-based standards for chiropractors
- Code of Ethics
-

Revision Schedule

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DEFINITIONS

ACC: Accident Compensation Corporation

Complainant: Any person (or entity) who makes a complaint about a chiropractor.

Complaint: A complaint or notice alleging that the practice or conduct of a chiropractor has affected a health consumer

Chiropractic Board or Board: The title 'Chiropractic Board' and 'Board' refers to the Chiropractic Board, including the appointed Board members or the Secretariat, as the context requires. The Board is a Responsible Authority under the HPCAA.

HDC: Health and Disability Commissioner appointed under the Health and Disability Commissioner Act 1994.

HPCAA: Health Practitioners Competence Assurance Act 2003.

Privacy Act: Privacy Act 2020.

Risk of Harm: Risk of harm may be indicated by:

- a pattern of practice or behaviour over a period suggesting the chiropractor's practice of chiropractic may not meet the required standards; or
- a single incident that demonstrates a significant departure from accepted standards of chiropractic practice; or
- recognised poor practice or performance where local interventions have failed – this does not exclude notification of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern; or criminal offending; or
- professional isolation with declining standards that become apparent.

Risk of Serious Harm: Risk of serious harm may be indicated by:

- the potential that an individual patient is seriously harmed by the chiropractor; or
- the chiropractor may pose a continued threat to more than one patient and as such the harm is collectively considered 'serious'; or
- sufficient evidence to suggest that an alleged criminal offending is of such a nature that the chiropractor poses a risk of harm to one or more members of the public.

INTRODUCTION

1. This policy sets out the principles and processes the Board has adopted for the assessment and management of complaints and notifications about chiropractors. The Board exercises statutory functions set out in section 118 of the HPCAA. Those functions include the appropriate management of complaints about chiropractors conduct or ethical practice.
2. The policy is not intended to cover every specific complaint scenario, but to provide guidance on how complaints will generally be assessed and managed.

PRINCIPLES WHEN MANAGING COMPLAINTS

Public safety is paramount

The HPCAA is designed to protect the health and safety of the public (s 3(1) HPCAA) by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.

3. As the Responsible Authority for the profession of chiropractic, the protection of the health and safety of members of the public is the Board's principal purpose and will be at the forefront of the Board's decision-making when responding to complaints or concerns brought to its attention. This purpose requires the Board to take appropriate action when bona fide complaints or concerns that risk public health and safety are brought to its attention.
4. When assessing a complaint/notification against the Board's statutory obligation to protect public health and safety, the Board will consider its definitions of 'risk of harm' and 'risk of serious harm'.
5. Where a complaint/ notification is received that alleges criminal, sexual or drug offending by a chiropractor, the Board is likely to consider this to be a risk of serious harm. Given the purpose and functions of the Board under the HPCAA, actual patient harm or an adverse outcome does not have to be established for action to be taken. It is sufficient for the Board to have reasonable grounds to hold an opinion that there is a risk of harm to the public.
6. Where a risk of serious harm is identified, the Board may consider making orders under sections 39 or 69 of the HPCAA, irrespective of what other action the Board may have already taken or may propose to take.

NATURAL JUSTICE

HPCAA Schedule 3, clause 2

Information authorities may act on

'Each authority must observe the rules of natural justice but, subject to that requirement, may receive as evidence any statement, document, information, or matter, whether or not it would be admissible in a court of law'.

7. Decisions made by the Board in the performance of its statutory functions are subject to judicial review. A judicial review is conducted by the High Court and enables a decision by a public body that might affect rights, interests, or expectations of others to be legally challenged. This means that the Board must observe the rules of natural justice, act fairly and lawfully, and give reasons for its decisions.

8. The Board will comply with the principles of natural justice when dealing with chiropractors and complainants/notifiers and when referring complaints for investigation under Part 4 HPCAA. Those principles require the Board to:
 - Avoid bias and pre-determination (and the appearance of bias or pre-determination)
The Board will appropriately manage any conflicts of interest that may arise. The Board shall also consider complaints with an open mind without a predisposition to decide any cause or issue in a particular way.
 - Give the chiropractor a reasonable opportunity to be heard. The Board will give the chiropractor adequate notice of what is said about them and sufficient opportunity to reply before making any decision that may be averse to the chiropractor's interests.
9. The Board will deal with chiropractors and complainants in a fair and reasonable way. Bearing in mind that the role of the Board is not to investigate complaints, the Board will inquire into and assess all relevant and available information before deciding whether a complaint or notification about a chiropractor warrants further action.

IDENTITY OF COMPLAINANT

10. Natural justice requires an accused to know the identity of the accuser where this information is needed to enable the accused to respond effectively to the accusation. The Board will respect the chiropractor's right to know what information about the chiropractor is being presented to the Board, and to be allowed to provide an informed response to that information, by providing the chiropractor with an opportunity to answer the complaint/notification and a reasonable period in which to do so.
11. The Board expects the person making the complaint to allow themselves to be identified to the chiropractor in question, and for a copy of their notice to be released to the chiropractor for a response. In certain circumstances the Board may withhold the name of the notifier if it could be withheld under the Privacy Act 2020. These circumstances are rare and the threshold for withholding information is high.

SUFFICIENT RELEVANT INFORMATION

12. Before making a decision, the Board will ensure that it has sufficient information to make a decision that is fair and reasonable in the circumstances. This includes ensuring it considers all relevant information, and not considering any irrelevant information.

PRIVACY AND DISCLOSURE OF PERSONAL INFORMATION

Privacy Act 2020

Principle 6 Access to personal information

- (1) *Where an agency holds personal information in such a way that it can readily be retrieved, the individual concerned shall be entitled —*
 - (a) *to obtain from the agency confirmation of whether or not the agency holds such personal information; and*
 - (b) *to have access to that information.*
- (2) *Where, in accordance with subclause (1)(b), an individual is given access to personal information, the individual shall be advised that, under principle 7, the individual may request the correction of that information.*

(3) *The application of this principle is subject to the provisions of Parts 4 and 5*

13. The Board will promote transparency and accountability with all parties involved in the complaint - including complainants, chiropractors, and relevant external agencies (for example, HDC, ACC). The Board must consider and apply the privacy principles and comply with any obligations of confidentiality assumed by the Board, subject to the over-riding principle that the Board must protect public health and safety.
14. The Board recognises the chiropractor has the right to receive information held by the Board that is required by the chiropractor to respond effectively to any complaint or notification. Complaints or concerns about a chiropractor, are the chiropractor's "personal information" and accordingly subject to a right of access by that chiropractor under privacy principle 6.
15. Information will only be withheld where there is 'good reason' under the Privacy Act for that information, or some of that information, to be withheld.

INDEPENDENT DECISION-MAKING

16. The Board does not represent the chiropractic profession or its interests. Its primary duty is to protect the health and safety of the public, free from influence from external bodies. Therefore, the Board will act as an independent decision-maker and will exercise its powers independently of any stakeholder interest, personal interest or relationship, and professional interest or relationship. Where an individual Board member declares a conflict of interest in relation to any individual matter, the Board will manage that conflict in accordance with good governance, and existing policy on Conflict of Interest.

ACCOUNTABILITY

17. The Board is accountable for its decisions to the public, the Minister of Health and Parliament, and - in relation to the efficient use of funds to achieve its purpose under the HPCAA - to the profession. Consequently, the Board will ensure its decisions are consistent with :
 - The Board's principal purpose – to protect the health and safety of the public, and
 - the performance of the Board's functions under the HPCAA.

CONSISTENCY

18. All decisions will continue to be made on a case-by-case basis having regard to the circumstances of each case. That said, good decision making requires consistency. Therefore, the Board will consider earlier decisions when exercising its powers under Part 4 HPCAA, recognising both that regulatory standards change over time and decisions need to consider the standards in place at the time of the conduct under consideration.

INITIAL RECEIPT OF A COMPLAINT

TRIAGE

19. The HPCAA and its interface with the HDC Act is complex and can lead to confusion for the public and the profession. To assist with understanding this, a flow chart of the process is attached as Appendix 1.
20. Complaints may come to the Board's attention from a variety of sources such as:
 - Patients / health consumers

- Patients' family/caregiver/whānau
 - Government agencies such as the Ministry of Health, ACC or HDC
 - Employers
 - Colleagues or other health professionals.
21. Upon receipt of a notification, Board staff will conduct an initial review. The purpose of the initial review process is to:
- identify whether there is a concern that may require urgent interim action to protect public safety, and if so, to ensure that the matter is put before the Board as a matter of urgency;
 - ensure that any referral (i.e., to HDC) required by the HPCAA is facilitated;
 - identify what, if any, further information is required; and
 - ensure that each complaint is brought to the Board's attention in a timely manner.
22. The Registrar (or delegate) will prioritise complaints and notifications identified as involving a higher risk to public health and safety. Where the initial review identifies a risk of serious harm to the public the Board will act immediately to protect public health and safety.

HDC REFERRAL

23. If a complaint alleges that a chiropractor's conduct or practice has affected a health consumer, the Board must refer the complaint to the HDC. The Board may not investigate the complaint until the HDC has either referred the matter back to the Board or closed the complaint. However, while the HDC is considering the complaint, the Board may:
- consider whether interim orders are necessary to protect the public, under section 69 of the Act; and
 - consider whether the complaint indicates competence or fitness concerns requiring further inquiry, and if so, to decide whether to proceed with those inquiries in accordance with the relevant policy, or to await the outcome of the HDC decision.
24. When the HDC closes the complaint and/or refers it back to the Board to consider, the Board may then take whatever action it considers necessary.

CONSIDERATION OF THE COMPLAINT

25. Once the HDC has closed the complaint, and/or referred it back to the Board, the Board will seek the chiropractor's response (in addition to any submissions it has already received for consideration of interim orders). The Board will then consider the complaint to determine what, if any, action is required. It will usually have before it:
- The complaint;
 - The referral from the HDC (which may or may not include a summary of the investigation undertaken and/or any expert advice sought); and
 - The chiropractor's response.
26. The Board's options are:
- To seek further information and reconsider;

- To take no further action;
- To take no further formal action, but provide the chiropractor with feedback on practice issues they may wish to consider addressing;
- To determine that the matter is outside the Board's jurisdiction, and if so, to advise the complainant of any appropriate authority that they may wish to contact;
- If concerns about the chiropractor's competence are raised, to refer the chiropractor for a competence review (refer to the Board's Competence Review Policy);
- If concerns about the chiropractor's health are raised, to refer the chiropractor for a fitness assessment (refer to the Board's Health Policy); or
- If the complaint raises questions about the appropriateness of the conduct or safety of the practice of the chiropractor, to refer the matter to a Professional Conduct Committee (PCC) for investigation (Refer to the Board's PCC Guidelines).

CONSIDERATION OF PROTECTIVE MEASURES

27. As noted above, upon receipt of a complaint, the Board may make interim orders under section 69 or 69A of the HPCAA if it believes they are required for public protection. The thresholds and processes for section 69 and 69A differ slightly, as set out below.

Section 69

28. The Board may make interim orders to include conditions in a chiropractor's scope of practice, or suspend the chiropractor's practising certificate if there is an allegation that:
- a chiropractor has engaged in conduct that is relevant either to a criminal proceeding, or an investigation under the HDC Act or HPCAA; and
 - The alleged conduct casts doubt on the appropriateness of the chiropractor's conduct in their professional capacity.
29. Before making an interim order, the Board must advise the chiropractor why it is considering that and give the chiropractor the opportunity to make submissions and be heard on the matter – either personally or by a representative.

Section 69A

30. Under section 69A of the HPCAA, the Board may make interim orders (conditions or suspension) without prior notice to the chiropractor. It may only do so where the chiropractor:
- has engaged in conduct that is relevant either to a criminal proceeding, or an investigation under the HDC Act or HPCAA; and
 - In the Board's opinion, held on reasonable grounds, poses a risk of serious harm to the public.
31. If the Board makes an order under section 69A, it must advise the chiropractor of the reasons for the order and provide them with an opportunity to make written submissions and/or be heard (either personally or by a representative) within 20 working days of making the order.

Examples of conditions

32. The imposition of interim orders is not punitive – its purpose is to protect the public while further inquiries or investigations are undertaken. With that in mind, the Board will always aim to impose the least regulatory force necessary to protect the public. This means it will not suspend a chiropractor’s practising certificate if it is satisfied that public safety can be achieved with the imposition of conditions.
33. Without limiting the Board’s options, examples of conditions include:
 - A requirement to practise under supervision, or in a specified practice setting; or
 - A restriction on providing care to patients of a particular demographic (where there is an allegation of transgression of sexual boundaries, or similar).
34. Where conditions are imposed, the Board will also implement a monitoring process to ensure that the chiropractor is complying with those conditions.

RETENTION OF INFORMATION

35. The Board will retain information relevant to any complaint on the chiropractor’s file and will take reasonable steps to store that information securely so that it remains available as required but is protected from unauthorised access or disclosure.
36. Information held on file may be reviewed by the Board if any further complaint is made about the chiropractor at any time. The purpose of any review is to identify whether the combination of the existing information and the new information indicate a pattern of conduct in the chiropractor’s practice that raises concerns that may not have been apparent based on a single complaint.

Triage of notifications about practitioners

