



NEW ZEALAND
CHIROPRACTIC BOARD
TE POARI KAIKOROHITI O AOTEAROA

POLICY AND GUIDELINES:

FITNESS TO PRACTISE (HEALTH) POLICY

Date

Associated Policy Documents

- **Competency-based standards for Chiropractors**
- **Code of Ethics**
- **Complaints and Notifications Policy**

Revision Schedule

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DEFINITIONS

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 of time that suggests 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. The Chiropractic Board (the Board) has authority under sections 45 to 51 of the Health Practitioners Competence Assurance Act (the HPCAA) to act upon any notification it receives that a registered chiropractor may be unable to perform the functions of their profession due to a physical or mental condition - collectively known in this policy as a “health condition.”
2. The Board acknowledges that individuals have rights to confidentiality in relation to their health. Where the Board receives a health notification about a chiropractor (“notice”), its aim is to manage any health condition with compassion for the affected chiropractor, while ensuring that any risk to the public as a result of that condition is managed in line with the requirements of the HPCAA.
3. Wherever possible, the Board will work collaboratively with the affected chiropractor and their healthcare team. If this is not possible, or if the Board considers that there is a risk to the public that cannot be managed in collaboration with the chiropractor, the Board will rely on its statutory powers to ensure that the risk is managed.
4. Generally, health notifications and ongoing management of these will not be treated as disciplinary in nature. There may be situations where both the chiropractor’s health and conduct are in question. The Board will manage such cases carefully and with due regard to the individual circumstances of the case.

FITNESS TO PRACTISE AND THE LAW

5. The principal purpose of the HPCAA is to protect public health and safety by ensuring health practitioners are competent and fit to practise. The Board is charged with ensuring that chiropractors are competent and fit to practise when they apply for registration and on an ongoing basis. This Policy sets out how the Board will approach notifications of fitness concerns.
6. The Act requires registered health practitioners and other specified people to notify the Board when they have reason to believe that a chiropractor may be unable to perform the functions required for the practice of their profession due to a health condition.
7. Conditions that may affect a chiropractor’s fitness to practise include, but are not limited to:
 - physical injury;
 - short- or long-term illness or health condition;
 - infectious disease;
 - mental illness including any anxiety or mood disorder, stress-related condition, eating disorder, psychotic illness or personality disorder, or any other mental illness or disorder;
 - substance misuse or any other addiction;
 - impairment of sensory functions;
 - neurological condition, including decline in cognitive function due to dementia, brain injury or any other condition.

8. Some health problems may manifest themselves through unprofessional behaviour – particularly if the behaviour is new or out of character. Unprofessional behaviour includes but is not limited to:
 - bullying or intimidation;
 - abusive or offensive language
 - sexual harassment;
 - racial, ethnic, or sexist slurs;
 - rudeness;
 - failure to meet obligations;
 - throwing items;
 - offensive sarcasm;
 - threats of violence, retribution, or vexatious litigation;
 - demands for special treatment;
 - passive aggression;
 - blurring or transgressing boundaries;
 - unwillingness to discuss issues with colleagues in a cordial and respectful manner.
9. Similarly, changes in demeanour or interaction with others may indicate an underlying health condition. Examples include but are not limited to:
 - frequent episodes of distress or tearfulness;
 - withdrawal;
 - poor judgement;
 - unpredictable and changeable moods;
 - over-sharing of personal information in a professional setting;
 - being indiscreet.
10. Where a chiropractor's behaviour or demeanour suddenly changes, health practitioners should consider whether this may be due to a health condition warranting notice to the Board.
11. The lists above are not exhaustive. They are intended to stimulate consideration of a fitness issue as a possible explanation for poor conduct or behavioural change. The Board acknowledges that a one-off incident of poor behaviour may be a response to a challenging personal or professional situation that would not, in itself, be indicative of a health condition.

GIVING NOTICE OF A CONCERN ABOUT A CHIROPRACTOR'S FITNESS TO PRACTISE

12. It is important to note that the existence of a health condition does not in itself mean that the matter must be notified to the Board. The notifier must also have reason to believe that the health condition is impacting on the safety of the chiropractor's practice. For example, a chiropractor may be experiencing an episode of depression but is managing this appropriately with assistance from health providers and/or medication. Provided the chiropractor's practice

continues to be safe and competent, there is no “reason to believe” that they are unable to perform the functions required of their profession.

SELF-NOTIFICATION

13. Although the Board’s main concern is public safety, it aims to assist and support chiropractors dealing with health conditions. The Board recognises that with support, treatment, monitoring and/or limitations on practice most chiropractors with health conditions will be able to remain in practice.
14. The Board’s approach to management of chiropractors’ health conditions aims to encourage chiropractors to notify the Board if they have a health condition that may mean they are unable to perform the functions required to practise their profession. Generally speaking, the Board considers that chiropractors with the insight to self-notify are more likely to be in a position to take ownership of their health condition such that the Board’s role can be one of support and monitoring.
15. Where a chiropractor does not self-notify the Board of their health condition the Board expects the chiropractor’s peers to meet their legal obligations by making a notification.
16. Regardless of the type of health condition notified, or the notification channel, the Board’s approach is non-judgemental with a focus on support for the chiropractor, while ensuring public protection.

MANDATORY NOTIFICATION

17. Under section 45 of the HPCAA it is compulsory for certain people to notify the Board if they believe a chiropractor (or chiropractic student) is unable to perform the functions required for the practice of their profession because of a health condition.
18. The following people must notify the Board in writing of such concerns:
 - a person in charge of an organisation that provides health services;
 - a registered health practitioner (whether that health practitioner is a chiropractor, or a registered health practitioner in another profession);
 - an employer of chiropractors;
 - a medical officer of health;
 - (in relation to a student of chiropractic) a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training that is a prescribed qualification for registration as a chiropractor.
19. Not only are registered health practitioners legally required to make a health notification, but the Board also takes the view that there is an ethical obligation to do so for the protection of patient safety and the chiropractor in question. Health practitioners considering making a notification are encouraged to discuss their concerns and intended actions with the chiropractor involved unless they consider it unsafe to do so. They might also wish to consider:
 - discussing their concerns (with respect for privacy considerations) with a trusted colleague; and/or
 - contacting Board staff for advice.

OTHER NOTIFICATIONS

20. Any other person not captured above may notify the Board (under section 45(3) of the HPCAA), if they have reason to believe a chiropractor is unable to perform the functions of their profession because of a health condition. For the avoidance of doubt, this includes any member of the Board or its staff who, in the course of conducting Board work, becomes concerned about a chiropractor's health.

Professional Conduct Committee (PCC)

21. If, in the course of investigating a matter under sections 72-78 of the HPCAA, a PCC believes the chiropractor may have a health condition preventing them from performing required functions, the PCC may make a recommendation at the conclusion of the investigation that the Board review the chiropractor's fitness to practise. However, section 79 of the HPCAA requires that if at any time in the course of the investigation, a PCC has reason to believe that the chiropractor's practice poses a risk of serious harm to the public, the PCC must immediately notify the Board of that belief and the reasons for it.

Competence Review Panel

22. If, during a competence review under section 36 of the HPCAA, the Competence Review Panel has reason to believe that the chiropractor's health is affecting their ability to practise, the panel should notify the Board of that belief and the reasons for it.

FORM AND CONTENT OF NOTICES

23. In making a notification under section 45 of the HPCAA, the notifier must give the Board all the relevant circumstances relating to the notice. This might include, but is not limited to:
 - Details of the incident(s) or behaviour(s) giving rise to the concern, including whether these are out of character for the chiropractor;
 - Any background about which the notifier is aware that may assist in providing context to the notice;
 - An outline of conversations (if any) the notifier has had with the chiropractor about the issues of concern and the possibility of referring the matter to the Board;
 - Whether any measures have been put in place by the chiropractor or their employer to manage the situation;
 - Any medical advice obtained by the notifier to assist in forming their opinion (see section 46 of the HPCAA).
24. The Board expects the person making the notification 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.
25. Section 45(6) of the HPCAA provides that no civil or disciplinary proceedings lie against any person who gives a notice under this section in good faith.

BOARD CONSIDERATION OF A NOTICE

RECEIPT OF A NOTICE

Upon receipt of a notice, the Board's Registrar will assess the information and, if necessary, contact the notifier for clarity on any details provided in the notice.

Under section 47 of the HPCAA, the Registrar must ensure that the notice is considered by the Board as soon as reasonably practicable. Unless the Registrar considers that there appears to be an immediate risk to the public requiring urgent action, the Registrar will first provide a copy of the notice to the chiropractor about whom the notice has been given, to seek their comment.

POSSIBLE OUTCOMES FOLLOWING CONSIDERATION OF A NOTICE

Upon receipt of the notice (and any response from the chiropractor, if applicable) the Board will consider what, if any, action is required. Depending on the circumstances of the case, options available include:

- Closing the matter with no further action if the Board is satisfied that the chiropractor either does not have a health condition, or that any health condition they have does not impact on their ability to practise Chiropractic;
- Obtaining further information from the chiropractor, which may include asking the chiropractor to provide an up-to-date medical report from their general practitioner, medical specialist, or other primary healthcare provider who is regulated by the HPCAA;
- Discussing with the chiropractor the possibility of entering into a voluntary undertaking with the Board to assist in monitoring and managing any health condition the chiropractor has;
- Making an order under section 49 of the HPCAA that the chiropractor is required to undergo an examination or test by a registered health practitioner, at the Board's expense;
- Making interim orders under section 48 of the HPCAA that the chiropractor's practising certificate is suspended, or that conditions are included in the chiropractor's scope of practice. Such orders will usually be made where the Board has ordered an examination under section 49 of the HPCAA and is awaiting the results of that examination.

No further action

26. If the Board is satisfied that no further action is required, it will advise that chiropractor of that decision and close the file. A record of the notice will be held on the chiropractor's file for future reference.

Suspected inability to perform required functions

27. If the Board suspects that the chiropractor is unable to perform required functions due to a health condition, it may make one of the following interim orders under section 48 of the HPCAA, pending a full assessment of the condition:

- suspending the chiropractor's practising certificate; or
- altering the chiropractor's scope of practice.

28. The Board will adopt a proportionate approach when considering its options under section 48 of the HPCAA – meaning that it will aim to apply the least regulatory force necessary to achieve

safety. However, if, based on the information available to it, the Board considers that allowing the chiropractor to remain in any sort of practice pending a full assessment would place the health and safety of the public at risk, it will order an interim suspension of the chiropractor's practising certificate.

29. If the Board determines that the practitioner can still safely remain in practice but only if subject to certain requirements and limitations on their scope of practice, the Board may alter the chiropractor's scope of practice by either of the following methods:
 - changing any health services that the chiropractor is permitted to perform; or
 - including any condition or conditions that it considers appropriate.
30. In deciding whether interim action is required the Board will consider the individual facts of the case, with reference to all of the information available to it.
31. If an interim order is made, the chiropractor will be provided with a copy of the order and is legally required to comply with it. The order remains in place for up to 20 working days from the date that the chiropractor receives the order, but the Board may extend the order for up to a further 20 working days if it is necessary for the completion of any examination or testing under section 49 of the HPCAA.

Voluntary undertaking

32. While the Board does not usually consider a voluntary undertaking appropriate in the case of a complaint or competence concern, it acknowledges that, in certain circumstances it is appropriate that a chiropractor's right to privacy of health information outweighs public interest in knowing about it. A voluntary undertaking is a "non-statutory" tool that can have benefits for the chiropractor in the management of their health condition via a private agreement with the Board as an alternative to the imposition of public conditions on the chiropractor's registry record.
33. Where appropriate, the Board will consider offering a chiropractor with a health condition the opportunity to enter into a voluntary undertaking with the Board to assist the Board in monitoring and managing any risk to the public associated with the chiropractor's health condition.
34. The Board's willingness to offer a voluntary undertaking to a chiropractor instead of using the statutory powers available to it will depend on several factors, including (but not limited to):
 - Whether the Board is satisfied that the chiropractor is willing and able, in the circumstances, to take ownership of their health condition;
 - The chiropractor's state of mind and level of wellness at the relevant time;
 - Whether the chiropractor self-notified their condition to the Board and has been forthcoming with information about their situation;
 - The level of insight demonstrated by the chiropractor regarding the potential risks to the public associated with their condition;
 - Any proactive steps the chiropractor has taken to minimise risk to the public associated with their health condition;

- Whether the chiropractor has already engaged suitable health professionals to support and assist them in their recovery, and whether the chiropractor consents to those health professionals discussing the chiropractor's health condition with the Board as appropriate;
 - The level of support in place for the chiropractor in both personal and professional settings.
35. If the Board and chiropractor agree that a voluntary undertaking is to be drawn up the terms will be discussed with the chiropractor before being signed by both parties (see list of most common terms below). The voluntary undertaking takes effect from the date both parties have signed it.
36. The existence of a voluntary undertaking does not preclude the Board from taking statutory measures to protect public health and safety, if necessary.

Examples of voluntary undertaking terms or formal conditions on practice

37. The terms of a voluntary undertaking or any formal conditions vary from case to case and might include - but are not limited to - any number of the following requirements:

Employment:

- the chiropractor is employed by a Board-approved employer
- the chiropractor authorises their employer to provide the Board with progress reports
- the chiropractor must inform colleagues about the relevant health issues
- the chiropractor's practice is to be supervised, or supervised in a particular manner or at specified intervals
- a senior chiropractor is appointed as a mentor.

Medical:

- the chiropractor authorises their general practitioner or other appropriate health practitioner to provide progress reports to the Board
- the chiropractor must continue with their current treatment plan
- the chiropractor must undergo therapy or counselling
- the chiropractor authorises their therapist or counsellor to provide progress reports.

Scope of practice:

- the chiropractor's practice is limited to certain practice areas/client types, practice locations, practice hours etc

Drug and alcohol specific:

- the chiropractor must remain abstinent from alcohol and/or drugs
- the chiropractor must undergo urine and/or hair and/or blood testing to check for the presence of alcohol or drugs
- the chiropractor must attend peer support groups such as Alcoholics Anonymous or Narcotics Anonymous.

ASSESSMENT OF HEALTH CONDITION

Examination or testing

38. If at any stage of the management of the chiropractor's health condition, the Board decides an examination or testing of the chiropractor's health condition is necessary, Board staff will contact the chiropractor to discuss options for the health practitioner who is to conduct the assessment ("health assessment") under section 49 of the HPCAA. The costs associated with any such testing is undertaken at the Board's expense. The Board will consider any suggestions made by the chiropractor but will not necessarily appoint their preferred assessor. The Board will consider who may be able to provide the type of assessment it requires, whether it considers any particular area of expertise is required, and practical matters such as timeliness of scheduling the assessment.
39. A health assessment is most likely to be ordered when the Board first receives a notice about a chiropractor's health and needs to determine whether the chiropractor is fit to practise. An assessment may be required again at any point during the management of the chiropractor's health condition if it is unclear whether the chiropractor's condition has changed to the extent that a review of existing monitoring is required.
40. Depending on the nature of the health condition, the assessor may be any health practitioner regulated by the HPCAA. For example, it may be appropriate for the chiropractor to undergo a medical assessment by a medical practitioner, an eye examination conducted by an optometrist, a psychological assessment conducted by a psychologist, or a workplace assessment conducted by an occupational therapist.
41. Once the assessor has been decided on, the chiropractor is advised in writing of the:
 - health condition(s) that may make them unable to perform the functions required for the practice of their profession;
 - name and address of the assessor who is to carry out the health assessment; and
 - date by which they must see the assessor.
42. The chiropractor may take a support person to their health assessment as an observer. If the chiropractor is unable to attend the health assessment in the timeframe given, they must notify the Registrar as soon as practicable. The reason for this is that if the chiropractor does not attend an examination by the agreed date and has not contacted the Registrar to arrange another date, the Board may still make orders under section 50 of the HPCAA based on the information it has available.

ASSESSOR'S REPORT

43. The health practitioner completing the health assessment will be asked to provide a comprehensive report to the Board and comment on the following questions:
 - whether the chiropractor has the condition(s) named by the Board, and if so, to what extent, if any, that condition affects the chiropractor's ability to perform the functions required for the practice of chiropractic;
 - whether the health condition means the chiropractor would be able to perform the required functions for the practice of their profession but only if conditions were placed on their

scope of practice – and if so, an indication of what conditions would be necessary to enable the chiropractor to practise safely; and

- information about the chiropractor’s health condition including prognosis, and any current or recommended treatment plan;
 - any other information that the assessor considers relevant to the assessment or monitoring of the chiropractor’s fitness to practise.
44. The Act also allows for the appointed assessor to consult with any other health practitioner that they consider would be able to assist in the completion of the assessment.
45. The assessor’s report must be provided to the Registrar as soon as reasonably practicable after the examination or test.

CONSIDERATION OF ASSESSOR’S REPORT

46. Upon receipt of the assessor’s report the Registrar will promptly provide the chiropractor with a copy of the report and a reasonable opportunity to make written submissions and be heard on the matter, either personally or by their representative.
47. Upon receipt of any submissions, or if no submissions have been received within the timeframe given, the Registrar will forward a copy of the assessor’s report to the Board along with any written submissions. The Board will consider the report and all the relevant circumstances of the case.

BOARD DECISION FOLLOWING HEALTH ASSESSMENT

48. The Board will consider the chiropractor’s fitness to practise as soon as practicable, and has the following options available to it:
- take no further action if it is satisfied that the chiropractor is fit to practise;
 - defer a decision pending further information;
 - ask the chiropractor to enter into a voluntary undertaking which would require the chiropractor to conform to requirements relevant to their health condition;
 - include conditions in the chiropractor’s scope of practice;
 - suspend the chiropractor’s registration.

SUSPENSION OR CONDITIONS ON SCOPE OF PRACTICE

49. When considering the matter, the Board will aim to use the least regulatory force necessary to achieve safety. This means that it will first consider whether the chiropractor can practise safely if subject to conditions or a voluntary undertaking (see page 8 for examples of commonly used conditions).
50. The Board may decide to suspend the chiropractor’s registration or under section 50 of the HPCAA if it is satisfied that the chiropractor is unable to perform the functions required for the practice of their profession with conditions or limitations on practice, or if the chiropractor failed to attend the required health assessment.

51. If a formal order for conditions or suspension are made under section 50 of the HPCAA, the chiropractor will be advised in writing of the order made and the reasons for it. The order takes effect from the date the chiropractor receives it.

OTHER OPTIONS

52. If the Board decides to offer the chiropractor a voluntary undertaking, the details of the undertaking will be discussed between the Board and the chiropractor. See page 8 for more details on voluntary undertakings.

NON-COMPLIANCE WITH HEALTH MONITORING REQUIREMENTS

REACH OF FORMAL ORDERS

53. The Board does not take lightly any decision to suspend a chiropractor's registration or include conditions in their scope of practice. Such decisions are taken where the Board considers there is a need to do so for the protection of the public.
54. This means that in normal circumstances, a breach of any Board order is grounds for disciplinary action. However, the Board acknowledges that some health conditions may impair the chiropractor's judgement in this regard. The Board will take this into account when deciding whether to take disciplinary action in relation to any alleged breach of health-related orders.

BREACH OF CONDITIONS

55. If a chiropractor breaches health-related conditions in their scope of practice, the Board is likely to take immediate action to ensure that the public is protected. This may include interim suspension of the chiropractor's practising certificate under section 48 of the HPCAA until a further assessment of the chiropractor's fitness to practise can be made or considering suspension of the chiropractor's registration under section 50 of the HPCAA.

BREACH OF SUSPENSION ORDER

56. If a chiropractor breaches an order for suspension of their registration or practising certificate on health-related grounds, the Board's management of any alleged breach will depend on the circumstances of the case; however, it may include the involvement of other authorities to assist in ensuring the chiropractor does not present a risk to the public.

BREACH OF VOLUNTARY UNDERTAKING

57. A voluntary undertaking enables the chiropractor to remain in practice whilst maintaining their privacy and protecting public health and safety. It will generally only be offered to a chiropractor if the Board believes them to be capable of managing their health condition. While a voluntary undertaking is not a statutory tool, if a chiropractor enters into one with the Board, they will be expected to treat the terms of the voluntary undertaking with the utmost seriousness.
58. If a chiropractor who has signed a voluntary undertaking breach any of its terms the Board is likely to consider interim suspension under section 48 of the HPCAA while it reconsiders the

matter or considering suspension of the chiropractor's registration under section 50 of the HPCAA.

59. Given the Board has a process for ensuring that it does not offer voluntary undertakings to chiropractors who may not be capable of compliance, the Board may take a view that a breach of a voluntary undertaking warrants disciplinary action. This will depend on the circumstances of the breach, including (for example) whether there has been a downturn in the chiropractor's health since signing the voluntary undertaking.

CASE REVIEWS

60. Any health-related requirements put in place by the Board will be reviewed when the chiropractor's circumstances change. The Board will work with the chiropractor and their healthcare team to obtain relevant information that will assist the Board in reviewing the chiropractor's fitness to practise. If necessary, the Board may order a further health assessment under section 49 of the HPCAA.
61. If the Board is satisfied that the chiropractor is fit to practise it will make an order revoking any previous orders, or it will release the chiropractor from any voluntary undertaking.
62. If, having reviewed the chiropractor's situation, the Board decides that the chiropractor's condition has improved, but that monitoring is still required for public safety, the Board will make a proposal to do one or more of the following:
 - revoke any suspension and impose conditions or offer a voluntary undertaking;
 - revoke and/or vary any conditions and/or offer a voluntary undertaking
 - introduce a voluntary undertaking.
63. Before deciding how to proceed, the Board will give the chiropractor a reasonable opportunity to make written submissions and be heard on the matter.

RESOLUTION OF HEALTH CONDITION

64. While some health conditions may require career-long monitoring, others can be short and/or one-off issues. When the Board is satisfied that a health condition has resolved and that there is no risk to public health and safety it will close the health file without, in itself, affecting the chiropractor's standing with the Board. The information will be securely retained on the chiropractor's registration file.
65. It should be noted that if a chiropractor applies for registration in another jurisdiction while a health condition is unresolved, the Board would be required to disclose that to the registering authority if requested by that authority. However, the Board would not disclose details if the health condition has resolved, and the chiropractor is no longer being monitored by the Board.