



BOARD POLICY

Decision guidelines – non-compliance with CPD recertification requirements

1. Purpose

1.1 This Guideline sets out some key considerations for the Board to work through when dealing with practitioners who have been referred to it for non-compliance with CPD recertification requirements. It also includes some example “case studies” to help the Board establish its general position in practice.

2. Principles

2.1 The Board has stated in its CPD recertification programme policy (the CPD Policy) that CPD is the means by which chiropractors remain current in advances and trends in delivery of healthcare services in order to ensure the safety of their patients.

2.2 Although not stated outright in the CPD Policy, the Policy is a cornerstone of the Board’s competence assurance processes. This process is, at this time, the only “proactive” process in place to ensure that practising chiropractors are practising competently; other measures rely on notification to the Board of concerns about a chiropractor’s competence, conduct or fitness to practise. With this in mind, the Board should take seriously any failure to meet requirements. The Board has stated in its policy that it will do so.

2.3 This Guideline is not intended to provide exhaustive details on good decision-making; however, some general principles of natural justice and right touch regulation are set out below, to assist the Board in arriving at a fair and well-reasoned decision in each case referred to it. The Board should note that its internal processes mean that cases will only be referred to it where an auditor has recommended that a chiropractor has not met requirements, or when two auditors have been unable to agree on whether a chiropractor has met requirements.

Natural Justice

2.4 The rules of natural justice provide for:

- The right to freedom from bias; and
- The right to a fair hearing.

2.5 Broadly speaking, when dealing with CPD non-compliance, the Board needs to meet these natural justice obligations by:

- Giving the affected practitioner fair notice of the issue to be considered, and
- Providing the practitioner with a copy of all of the information that the Board will be considering (including the relevant policy), and
- Offering the practitioner a fair chance to put their case, and
- Ensuring that decision makers are free from bias, and
- Dealing with the practitioner in a fair and reasonable way.

2.6 In order to meet the above obligations, the Board needs to ensure that any conflicts of interest are declared and managed appropriately before discussing the relevant case. When considering

the case, it must ensure that it considers all *relevant* information, and does not consider *irrelevant* information. Relevant information is likely to include (for example):

- the Board’s CPD recertification programme policy, and
- the degree to which the practitioner has failed to meet requirements, and
- any submissions made by the practitioner in respect of their failure to meet requirements, and
- whether the practitioner has previously failed to meet requirements, and
- whether the Board has any concerns, generally, about the practitioner’s competence.

2.8 Irrelevant information might include (for example):

- previous dealings the practitioner may have had with the Board that are unrelated to their competence, such as their role as a trusted competence reviewer or professional conduct committee member, and
- any information in the Board’s possession about other chiropractors with whom the practitioner shares a practice (whether that is detrimental or beneficial to the practitioner in question).

2.9 Importantly, before making any final decision, the Board must ensure that it has given the practitioner the right to be heard. The SOP provides for an opportunity for the practitioner to make submissions before the matter goes to the Board, section 43 requires that any proposal made under this section must be put to the practitioner in a notice stating:

- the reasons for the proposal, and
- that the practitioner has a reasonable opportunity to make submissions and be heard on the matter, either personally or by a representative.

2.10 Essentially, this means that even if the Board has received submissions from the practitioner prior to considering the matter, if it decides to invoke section 43, it will need to write to the practitioner again with a specific proposal for the practitioner to consider and make submissions on.

2.11 If after considering any submissions made by the practitioner, the Board decides to proceed with a proposal to invoke section 43, it must be transparent with the practitioner, and advise them of their right to appeal the Board’s decision under section 106 of the Act.

Right Touch Regulation

2.12 Some of the principles of Right Touch Regulation cross over with those of natural justice. The table below sets out the types of questions the Board should ask itself in order to be confident in its decision-making.

Transparency	<ul style="list-style-type: none"> • Is the Board satisfied that the practitioner was aware, throughout the CPD cycle, of his/her obligations to meet requirements by the due date? • Has the practitioner been clearly advised, in writing, of the reasons that he/she has been referred to the Board, and the options that are open to the Board? • Has the practitioner been offered the opportunity to provide comments?
Consistency	<ul style="list-style-type: none"> • Has proper process been followed, in accordance with Board policy, up to the point of referral to the Board? • Is the option the Board is considering consistent with its policy, and with decisions made in relation to other referrals?

	<ul style="list-style-type: none"> • While taking into account decisions made on other cases, does the option also take into account the particular facts of the case, including any mitigating or aggravating circumstances?
Proportionality	<ul style="list-style-type: none"> • When taking into account the purpose of mandatory CPD, is the option the least intervention required to achieve safety? That is, will a warning letter and strong encouragement to remedy a small gap in requirements achieve the desired result, or is it necessary to take regulatory action such as imposing conditions or suspending practice?
Accountability	<ul style="list-style-type: none"> • Does the Board have sound reasons for its decision, which it is prepared to set out in writing to the practitioner, and to external assessors such as the Courts, if necessary?

3. Case consideration – working examples

3.1 To follow are some cases that it would be useful for the Board to work through together before implementing decisions in relation to practitioners. This will assist the Board in finding the right balance of all the above considerations, while taking into account the weight that it puts on CPD as a primary competence assurance tool for practising chiropractors.

Practitioner 1

- Has completed 47 CPD hours;
- Is short 2 Group A CPD hours and 1 Group B CPD hour;
- Completed a rationale outlining that she wanted to improve her knowledge in relation to paediatrics. 10 of her Group A CPD hours are related to paediatrics.
- Has completed a review indicating that while she felt the focused refresher was worthwhile, she is confident that she was practising well in this field before she took the additional education.
- Has not provided submissions directly related to her CPD, but did notify the Registrar in late November that she was taking sick leave until 11 January for unexpected but significant surgery.

Issues to consider

- Has not met minimum requirements in terms of number of CPD hours required.
- Is 3 CPD hours short (6% of total requirement).
- Has identified and worked towards a rationale relevant to her practice.
- Has reflected on learning for the year.
- Was unexpectedly taken ill at the end of the CPD cycle.
- Any other issues? E.G. Is this the first time the practitioner has been behind in requirements at the end of the cycle?

Possible Options (in order from maximum to minimum regulatory intervention)

- Propose to suspend under section 43 pending completion of outstanding 3 CPD hours on the grounds that the practitioner has failed to meet the minimum requirements of the recertification programme; or
- Propose to include conditions under section 43 requiring that the 50 CPD hours in current cycle and the 3 CPD hour deficit are completed by the end of the current cycle, on the grounds that the practitioner has failed to meet the minimum requirements of the recertification programme; or
- Propose to include conditions requiring that half of all CPD hour requirements (both Group a and B), plus 3 CPD hour deficit are completed by 31 December in the first year of the cycle, on the grounds that the Board wishes to see that the practitioner is taking seriously the need to remain

up to date with minimum requirements, and the Board does not wish to allow a further shortfall to grow over the coming cycle.

- Ask the practitioner to enter into a voluntary undertaking that half of all CPD hour requirements (both Group a and B), plus the outstanding 3 CPD hours are completed by 31 December in the first year of the cycle, on the grounds that the Board wishes to see that the practitioner is taking seriously the need to remain up to date with minimum requirements, and the Board does not wish to allow a further shortfall to grow over the coming cycle. The practitioner would be notified that this is being offered on compassionate grounds, while taking into account the Board's wish to convey a strong message that CPD is an integral part of ensuring competent practice. The Board would view seriously any failure to satisfy the voluntary undertaking by the due date.
- Ask the practitioner to enter into a voluntary undertaking with the Board requiring completion of 50 CPD hours, plus the outstanding 3 CPD hours by the end of the current cycle, on the grounds that although the practitioner has not met requirements, she was on track to do so until she became unwell, and notified the Board that she was taking sick leave before she did so. The situation was beyond her control and on balance the Board is satisfied that her CPD record shows commitment to the CPD process. The practitioner would be notified that this is being offered on compassionate grounds, while taking into account the Board's wish to convey a strong message that CPD is an integral part of ensuring competent practice. The Board would view seriously any failure to satisfy the voluntary undertaking by the due date.
- Waive requirements on compassionate grounds, noting that although the practitioner has not met requirements, she was on track to do so until she became unwell, and notified the Board that she was taking sick leave before she did so. The situation was beyond her control and on balance the Board is satisfied that her CPD record shows commitment to the CPD process; or
- No further action, but add the practitioner to the pool of practitioners to receive a follow-up audit at the end of the next cycle.
- An alternative option, with defined reasons.

Practitioner 2

- Has completed 25 CPD hours; all are Group B
- Had completed a rationale outlining that he wanted to build professional interactions with colleagues on the basis of the Board's encouragement for individuals to join peer groups.
- Has submitted that while he acknowledges that he is very short on Group A CPD hours, he would like the Board to acknowledge that he spent a lot of time he could not claim for, setting up and maintaining a peer group in the small community where he practises – this has been running successfully for 18 months, and chiropractors from surrounding towns have started joining in. Prior to him setting up the group, none of the chiropractors in the group had previously been involved in peer groups and all have stated that they find the process is beneficial for their practice.
- Has promised that he will make up his Group A requirements when he attends a 3 day conference in the USA in two weeks, then ensure that he completes all CPD requirements for the existing cycle. He has provided a plan outlining how he will get his Group A CPD hours in the coming cycle. He expects that peer group meetings will account for all of his Group B CPD hours.

Issues to consider

- Has not met minimum requirements in terms of number of CPD hours required.
- Is 15 CPD hours short (30% of total, and 100% of Group A requirements).
- Has delivered on an objective that he had set in his original CPD.
- Is aware of the shortfall and has a plan to address it.
- Has outlined a reason for the shortfall – to what extent, if any, does this satisfy the Board?

- Is this the first time the practitioner has been behind in requirements? If not, what were the reasons last time? Are they relevant to the current consideration?
- Anything else?

Possible Options (in order from maximum to minimum regulatory intervention)

- Propose to suspend under section 43 pending completion of outstanding 15 CPD hours on the grounds that the practitioner has failed to meet the minimum requirements of the recertification programme; or
- Propose to include conditions under section 43 requiring 50 CPD hours in current cycle plus outstanding 15 CPD hours are completed by the end of the current cycle, on the grounds that the practitioner has failed to meet the minimum requirements of the recertification programme; or
- Propose to include conditions requiring that half of all CPD hour requirements (both Group a and B), plus the outstanding 15 CPD hours are completed by 31 December in the first year of the cycle, on the grounds that the Board wishes to see that the practitioner is taking seriously the need to remain up to date with minimum requirements, and the Board does not wish to allow a further shortfall to grow over the coming cycle.
- Ask the practitioner to enter into a voluntary undertaking with the Board requiring completion of 50 CPD hours, plus the outstanding 3 CPD hours by the end of the current cycle, on the grounds that although the practitioner has not met requirements, his work in setting up a peer group should be recognised in some way.
- An alternative option, with defined reasons.

Practitioner 3

- Has completed 2 CPD hours (4% of total requirements), both in Group A and earned from a single activity.
- Has set an objective, but has not completed a review of the year's CPD.
- Has been given an opportunity to provide comments, but nothing has been received.

Issues to consider

- Is significantly below requirements, both in terms of CPD hours, and the qualitative aspects of setting a plan and reflecting on learning
- Has given no information to help the Board to understand why he has not met requirements.
- Is this the first time the practitioner has failed to meet requirements?
- Anything else?

Possible options (in order from maximum to minimum regulatory intervention)

- Propose to suspend under section 43 pending completion of the outstanding 48 CPD hours, as well as a specified number of CPD hours required within the current recertification cycle, within a timeframe specified by the Board. The grounds for this proposal are that the practitioner has failed to satisfy the requirements of the CPD recertification programme. This recertification programme is a key aspect of the Board's obligations to ensure that chiropractors are competent to practise, and in light of this, the Board takes a serious view of such a substantial failure to comply with requirements; or
- Propose to include conditions in the practitioner's scope of practice under section 43, requiring remedy of the deficit in CPD hours and a specified number of CPD hours required within the current recertification cycle, within a timeframe specified by the Board (for example, it may be that the Board requires 100 CPD hours by 31 December at the end of the next cycle, but gives

clear warning that failure to meet these requirements is likely to result in consideration of suspension, given that it would amount to a four year deficit) and/or

- Require the practitioner to complete a competence review under section 36(4) of the HPCAA. The grounds for this decision are that the CPD recertification programme is a key aspect of the Board's obligations to ensure that chiropractors are competent to practise. In light of such an egregious departure from minimum requirements, and noting the recertification programme's centrality to competence assurance, the Board is of the view that the practitioner's practice may be deficient; or
- An alternative option, with defined reasons.