



Te Kaunihera Tapuhi o Aotearoa  
Nursing Council of New Zealand

# The competence review process

**December 2008**

*Ki te whakarite i nga ahuatanga o nga Tapuhi e pa ana mo nga iwi katoa  
Regulating nursing practice to protect public safety*



# The competence review process

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### Introduction

This booklet explains the process for nurses who have been referred to the Nursing Council (the Council) for a review of their competence.

The Council is a statutory body continued in existence by the Health Practitioners Competence Assurance Act 2003 (HPCA Act). The HPCA Act sets out several functions concerning the registration, continuing competence and fitness to practise of nurses.

Under the HPCA Act, the Council can review the competence of a nurse if he or she has not maintained the required standard of competence or there is evidence to suggest the nurse's practice poses a risk of harm to the public or at any other time.

The Council has appointed panels to undertake competence reviews. Although the Council's main purpose is public safety it makes every effort to assist and support nurses through the competence review process. A nurse advisor is available as a point of contact for nurses.

Nurses are also encouraged to contact a support person and/or legal representative to assist them.

### Mandatory notifications

An employer **must** notify the Council when a nurse has resigned or been dismissed for reasons relating to competence. A notification must also be made to the Council by the Health and Disability Commissioner or the Director of Proceedings if he or she believes that a nurse poses a risk of harm to the public by practising below the required standard of competence.

## Notifications from other health professionals

Any health professional **may** notify the Council if he or she believes a nurse poses a risk of harm to the public by practising below the required standard of competence. Professional conduct committees appointed by the Council may also recommend that the Council review the competence of a nurse following the investigation of a complaint.

## Protection for those making notifications

Any person who makes a notification about a nurse cannot be the subject of civil or disciplinary proceedings, unless that person has acted in bad faith.

## Form of notification

The notification must be in writing to the Registrar of the Nursing Council (the Registrar) and include the reasons why the person making it believes the nurse poses a risk of harm to the public by practising below the required standard of competence.

## Initial assessment/inquiry

The Council may ask for further information from the notifier or other sources before deciding whether to refer the nurse for a competence review. A copy of the notification is sent to the nurse requesting any information he or she might wish to put to the Council to assist with its decision-making process. This may include evidence of professional development and competence assessments completed within the last three years.

## The competence review process

Nurses may choose, and are encouraged, to seek the representation or support of a legal representative, professional advisor or support person through this process. Professional organisations, including the New Zealand Nursing Organisation, Public Service Association or the College of Nurses, may provide representation and support for their members.

The Council will decide whether a competence review is required once the relevant information has been assessed.

### Notification of risk of harm to other agencies

If the Council believes the practice of a nurse poses a risk of harm to the public, it must promptly notify the following agencies in writing of the circumstances that led to that belief:

- Accident Compensation Corporation
- Director-General of Health
- Health and Disability Commissioner
- employer of the nurse.

A copy of this notice is also given to the nurse. When the Council is of the view that the nurse's practice never posed or no longer poses a risk to the public it must notify the above agencies of this view.

### Panel membership

Competence reviews are carried out by panels appointed by the Council. Each panel comprises a layperson and two nurses with expertise and knowledge in the area in which the nurse practises.

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A letter is sent to the nurse informing him or her that a panel will carry out a competence review, the reasons for it and the membership of the proposed panel. The nurse has the opportunity to object to a panel member if the nurse believes there may be a conflict of interest.

### Interim suspension/conditions in scope of practice

If the panel believes the nurse poses a risk of **serious** harm to the public by practising below the required standard of competence it may suspend the nurse's practising certificate or place conditions in his or her scope of practice pending the review or assessment.

The nurse will have an opportunity to respond, either orally or in writing, and meet with the panel before it makes any such order.

If the panel decides to take any action, it will advise the nurse in writing, including the reasons for its decision. An order takes effect from the date the nurse receives it or from a later date if stated in the order.

An order ceases to have effect once the nurse has completed the review or attained a pass in an examination or assessment.

### Meeting with competence review panel Meeting times and venues

The panel meets in a centre close to where the nurse lives; generally in a hotel meeting room. A competence review meeting usually takes a day.

### The meeting process

The nurse is invited to forward any information he or she would like the panel to consider in advance, but this can also be provided at the meeting. The meeting is recorded.

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The meeting is not a disciplinary meeting and is informal. The nurse may choose to have representation and support for this part of the process.

The panel will assess whether a nurse meets the required standard of competence against the competencies for his or her scope of practice. The panel will consider all the relevant information and meet with the nurse to assess his or her competence. The nurse is given copies of all information relevant to the panel's consideration of his or her competence.

The nurse will have an opportunity to respond to the information at the meeting with the panel. The panel will discuss with the nurse the circumstances leading to the notification, the concerns raised and any professional development the nurse may have undertaken. The panel will assess the nurse's competence through testing, role play, working through scenarios, or questions related to his or her area of practice.

At the conclusion of the meeting, the panel usually informs the nurse orally of the decision it has reached. It also informs the nurse in writing of any recommendations it will make to the Registrar.

### Orders concerning competence

The panel then reports to the Registrar recommending no further action or remedial support to assist the nurse to meet the required standard of competence.

The Registrar **may** make one of the following orders if she/he believes the nurse fails to meet the required standard of competence:

- the nurse completes a competence programme
- one or more conditions are included in the nurse's scope of practice

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- the nurse sits an examination or undertakes an assessment specified in the order
- one or more people are nominated to assist or counsel the nurse.

A copy of the order is given to the nurse and his or her employer, or the person who works in partnership with the nurse, within five working days of the order being made.

### Failure to respond

If the nurse fails to respond to the notification and the panel is unable to review the nurse's competence, or the panel believes that the nurse fails to meet the required standard of competence, it may recommend that Council makes orders regarding the nurse's practice.

### Costs

The nurse covers his or her costs for meeting the panel. The Council pays for the cost of the panel meeting.

If a nurse is required to undertake a competence programme, assessment or organise supervision, professional oversight or counselling, that cost is paid for by the nurse.

### Completion of an individual competence programme

If the nurse is required to complete an individual competence programme, he or she must do one or more of the following:

- pass an examination and/or assessment
- complete a period of practical training

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- complete a period of practical experience
- undertake a course of instruction
- permit an examination of their clinical records by another nurse specified by the Council
- undertake a period of supervised practice.

The Council will specify the timeframe in which the nurse must comply with the requirements of the programme. The nurse will be notified in writing that he or she is required to undertake a competence programme (and what it will entail) within 20 working days of the date the Council set or recognised the programme.

### Completion of programme assessments and competence assessments

The assessor and/or programme provider will report to the Council on the completion of the competence programme and the nurse will receive a report of assessments undertaken.

### Completion of professional oversight/supervision

The professional peer or supervisor in practice will report to Council at specified times.

### Unsatisfactory results of a competence programme or orders

If the nurse does not meet the requirements of a competence programme or other Council orders, the Registrar reports to the Council and it may decide to make either of the following orders:

- alter the nurse's scope of practice by changing any health services he or she is permitted to perform or include appropriate conditions
- suspend the nurse's registration.

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If the Council decides to make such a recommendation, it will inform the nurse and give the nurse the opportunity to make oral and written submissions.

Failure to meet the competence requirements is not grounds for the Council to take disciplinary action.

### **Confidentiality of information**

No one may disclose any information obtained from examining clinical records during the competence review about an identifiable person except for the purpose of:

- making a report to the Council
- any criminal investigations or proceedings taken against the nurse
- making the information available to the person to whom it relates in any case when the Council directs it, or the person requests access to the information.

### **Nurse's statement**

Any information or statement provided by a nurse for a competence review or programme that relates to his or her conduct may only be used for the purpose of the review or programme and is not admissible in any proceedings.

### **Review**

A nurse may ask the Council for a review of the panel's decision. This request must be in writing and be made within 20 working days of the nurse receiving the decision. A review is conducted on the information provided to the panel and any written submission the nurse may wish the Council to consider.

### Appeal

Alternatively, the nurse may appeal the following decisions made by the panel or Council to the District Court within 20 working days of receiving the decision.

- suspension of his or her practising certificate
- inclusion or variation of conditions included in his or her scope of practice.

A decision or order against which the nurse has lodged an appeal continues in force unless the District Court orders otherwise.

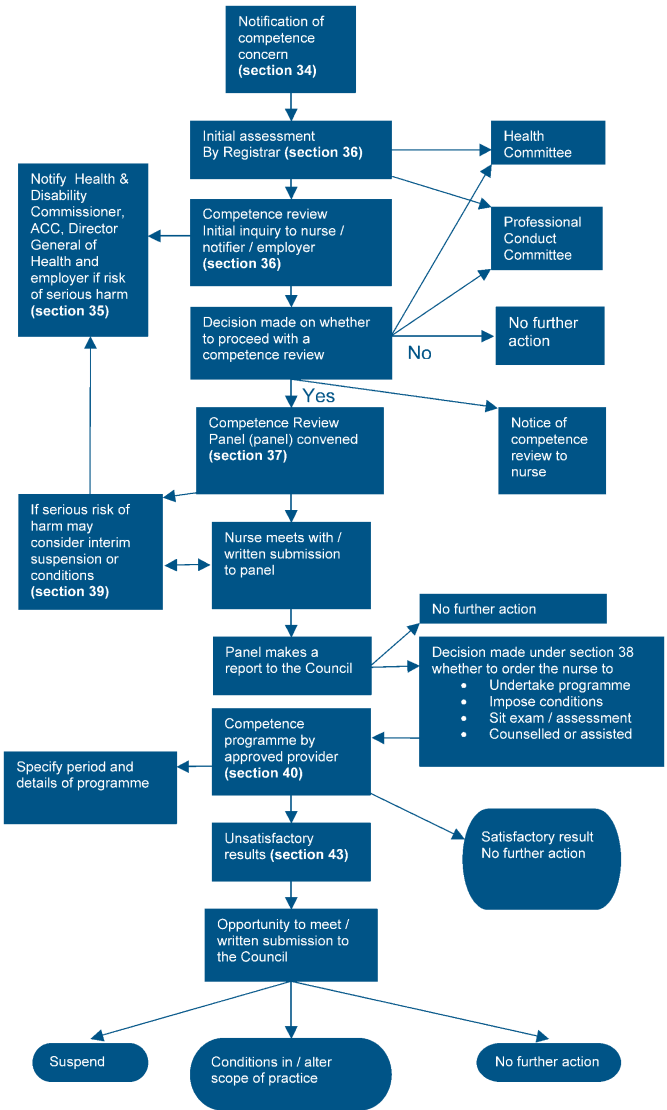
### Judicial review

Decisions of panels or the Council may be reviewed in the High Court. The purpose of a judicial review is to assess the process that the decision maker used to come to a decision and ensure that the decision itself is within the confines of the Act and is not clearly unreasonable. The question is whether a fair and reasonable process resulted in a fair and reasonable outcome.

### Enquiries

Any enquiries about the competence review process should be addressed to the Nurse Advisor, Professional Standards and/or the Professional Standards Manager.

## Flow chart of competence review process



The relevant sections of the Health Practitioners Competence Assurance Act 2003 follow.

### Part 3

## Competence, fitness to practise, and quality assurance

### *Referral of complaints and interim suspensions*

#### **34 Notification that practice below required standard of competence**

- (1) If a health practitioner (**health practitioner A**) has reason to believe that another health practitioner (**health practitioner B**) may pose a risk of harm to the public by practising below the required standard of competence, health practitioner A may give the Registrar of the authority that health practitioner B is registered with written notice of the reasons on which that belief is based.
- (2) If a person holding office as Health and Disability Commissioner or as Director of Proceedings under the Health and Disability Commissioner Act 1994 has reason to believe that a health practitioner may pose a risk of harm to the public by practising below the required standard of competence, the person must promptly give the Registrar of the responsible authority written notice of the circumstances on which that belief is based.
- (3) Whenever an employee employed as a health practitioner resigns or is dismissed from his or her employment for reasons relating to competence, the person who employed the employee immediately before that resignation or dismissal must

promptly give the Registrar of the responsible authority written notice of the reasons for that resignation or dismissal.

- (4) No civil or disciplinary proceedings lie against any person in respect of a notice given under this section by that person, unless the person has acted in bad faith.

**35 Authority must notify certain persons of risk of harm to public**

- (1) Whenever an authority that a health practitioner is registered with has reason to believe that the practice of the health practitioner may pose a risk of harm to the public, the authority must promptly give the following persons written notice of the circumstances that have given rise to that belief:

- (a) the Accident Compensation Corporation:
- (b) the Director-General of Health:
- (c) the Health and Disability Commissioner:
- (d) any person who, to the knowledge of the authority, is the employer of the health practitioner.

- (2) Whenever an authority that a health practitioner is registered with has reason to believe that the practice of the health practitioner may pose a risk of harm to the public, the authority may give written notice to any person who works in partnership or in association with the practitioner of the circumstances that have given rise to that belief.

- (3) If, after giving notice under this section in respect of a health practitioner, the authority forms the view that the practice of the health practitioner never posed, or no longer poses, a risk of harm to the public, the authority must promptly notify every recipient of the notice under this section of the current position in respect of the health practitioner.
- (4) Promptly after giving a notice under this section about a health practitioner, the Registrar of the authority must give a copy of the notice to the practitioner.

**36 When authority may review health practitioner's competence**

- (1) Promptly after receiving a notice of the kind described in subsection (2), an authority must make inquiries into, and may review, the competence of a health practitioner who is registered with the authority and who holds a current practising certificate.
- (2) The notices referred to in subsection (1) are—
  - (a) a notice of a professional conduct committee's recommendation under section 80(2)(a) or section 79(b), so far as that recommendation relates to competence; or
  - (b) a notice given under section 34.
- (3) Subsection (1) does not apply if the authority has reason to believe that a notice given under section 34 by a health practitioner is frivolous or vexatious.

- (4) The responsible authority may at any time review the competence of a practitioner who holds a current practising certificate, whether or not—
- (a) there is reason to believe that the practitioner's competence may be deficient; or
  - (b) the authority receives a notice of the kind described in subsection (2).
- (5) In conducting a review under this section, the authority must consider whether, in the authority's opinion, the health practitioner's practice of the profession meets the required standard of competence.

Compare 1995 No 95 s 60

### **37 Matters to be observed in reviewing competence**

- (1) The form of a review under section 36 is at the authority's discretion, but in every case the authority must give the health practitioner under review—
- (a) a notice containing sufficient particulars to inform that health practitioner clearly of the substance of the grounds (if any) on which the authority has decided to carry out the review; and
  - (b) information relevant to his or her competence that is in the possession of the authority; and
  - (c) a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.

- (2) When a health practitioner exercises the right under subsection (1)(c) to be heard personally, the practitioner is entitled to the presence of a support person of his or her choice.
- (3) Subsection (1)(b) is subject to section 154.

### **38 Orders concerning competence**

- (1) If, after conducting a review under section 36, the authority has reason to believe that a health practitioner fails to meet the required standard of competence, the authority must make 1 or more of the following orders:
  - (a) that the health practitioner undertake a competence programme:
  - (b) that 1 or more conditions be included in the health practitioner's scope of practice:
  - (c) that the health practitioner sit an examination or undertake an assessment specified in the order:
  - (d) that the health practitioner be counselled or assisted by 1 or more nominated persons.
- (2) If the authority is unable to conduct or complete a review of a health practitioner under section 36 because of the health practitioner's failure to respond adequately to a notice under section 37, the authority has, for the purposes of subsection (1), reason to believe that the health practitioner fails to meet the required standard of competence.

- (3) The Registrar of the authority must ensure that, after the making of an order under subsection (1),—
- (a) a copy of the order is given within 5 working days after the making of the order to—
    - (i) the health practitioner concerned; and
    - (ii) any employer of the practitioner; and
    - (iii) any person who works in partnership or association with the practitioner; and
  - (b) all administrative steps are taken to give effect to the order.
- (4) An order made under subsection (1) takes effect on a date stated in the order, which, if the order is sent to the health practitioner by post, may not be earlier than 4 days after it is posted.

Compare 1995 No 95 s 61

**39 Interim suspension of practising certificate or inclusion of conditions in scope of practice pending review or assessment**

- (1) This subsection applies to a health practitioner if —
- (a) the health practitioner has been, or is to be, reviewed under section 36; and
  - (b) there are reasonable grounds for believing that the health practitioner poses a risk of serious harm to the public by practising below the required standard of competence.

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- (2) If subsection (1) applies to a health practitioner, the responsible authority may order that—
  - (a) the practising certificate of the health practitioner be suspended; or
  - (b) 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.
- (3) The authority may not make an order under subsection (2) unless it has first—
  - (a) informed the health practitioner concerned why it is considering making the order; and
  - (b) given the health practitioner a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative
- (4) An order made under subsection (2) takes effect from the day on which the health practitioner receives a copy of the order or from any later date stated in the order
- (5) An order under subsection (2) ceases to have effect on the later of—
  - (a) the completion of the review; or
  - (b) the attainment of a pass in any examination or assessment specified in the order under section 38(1)(c).

**40 Competence programmes**

- (1) For the purpose of maintaining, examining, or improving the competence of health practitioners to practise the profession in respect of which an authority is appointed, the authority may from time to time set or recognise competence programmes in respect of health practitioners who hold or apply for practising certificates.
  
- (2) Any competence programme may be made to apply generally in respect of all such health practitioners, or in respect of a specified health practitioner, or in respect of any specified class or classes of such health practitioners.
  
- (3) Any competence programme may require a health practitioner to do any 1 or more of the following, within a period, or at intervals, prescribed in the programme:
  - (a) pass any examinations or assessments, or both:
  - (b) complete a period of practical training:
  - (c) complete a period of practical experience:
  - (d) undertake a course of instruction:
  - (e) permit another health practitioner specified by the authority to examine the clinical records of the health practitioner in relation to his or her clients:
  - (f) undertake a period of supervised practice.

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- (4) The authority may specify a period within which the health practitioners to which a competence programme applies must comply with the requirements of the programme.
- (5) The authority may exempt any health practitioner or class of health practitioner from all or any of the requirements of a competence programme.
- (6) Within 20 working days after a competence programme is set or recognised by the authority, the Registrar must notify every health practitioner who is required to undertake the programme of that fact and of the details of the programme.

Compare: 1995 No 95 s 62

### **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.

**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.
  
- (2) If the authority proposes to make an order under subsection (1), it must give to the health practitioner concerned—
  - (a) a notice stating—
    - (i) why the authority proposes to make the order; and
    - (ii) that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by his or her representative; and
  - (b) a copy of any information on which the authority is relying in proposing to make the order.
  
- (3) The notice under subsection (2)(a)(i) must contain sufficient detail to inform the person clearly of the particular grounds for the proposal to make the order.

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- (4) Any order made under subsection (1) remains in effect until the health practitioner concerned has satisfied all the requirements of the competence programme or, as the case requires, the recertification programme, and for that purpose the authority may, on the application of the practitioner, extend the period within which the practitioner is required to satisfy those requirements.
- (5) The failure of a health practitioner to satisfy the requirements of any competence programme or recertification programme that applies to the health practitioner is not, of itself, a ground for taking disciplinary action under Part 4 against that health practitioner.
- (6) Subsection (2)(b) is subject to section 154.

### **44 Confidentiality of information—**

- (1) No person who examines any clinical records of any health practitioner under a requirement of a competence review, competence programme, or recertification programme may disclose any information (being information about any identifiable individual) obtained by that person as a result of that examination, except for 1 or more of the following purposes:
  - (a) for the purpose of making a report to the authority in relation to the health practitioner concerned:
  - (b) for the purposes of any criminal investigation or any criminal proceedings taken against that health practitioner:

- (c) for the purpose of making the information available to the person to whom the information relates in any case where -
    - (i) the authority directs that the information be made available; or
    - (ii) the person requests access to the information.
- (2) Subsection (1)(c)(ii) does not affect the Privacy Act 1993
- (3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who discloses any information in contravention of subsection (1).
- (4) No information, statement, or admission that is disclosed or made by any health practitioner in the course of, or for the purposes of satisfying the requirements of, any competence review, competence programme, or recertification programme and that relates to any conduct of that health practitioner (whether that conduct occurred before or during that review or programme) -
  - (a) may be used or disclosed for any purpose other than the purposes of that review or programme; or
  - (b) is admissible against that person, or any other person, in any proceedings in any court or before any person acting judicially.

Compare: 1995 No 95 s 65

**106 Rights of appeal—**

(1) A person may appeal to a District Court against any decision or direction of an authority to-

- (a) decline to register the person as a health practitioner with the authority; or
- (b) decline to authorise a change to the existing scope of practice of the person; or
- (c) decline to issue a practising certificate to the person; or
- (d) suspend his or her practising certificate or registration; or
- (e) cancel his or her registration with the authority; or
- (f) include conditions in the person's scope of practice; or
- (g) vary any conditions in the person's scope of practice.

(4) An appeal-

- (a) must be brought to the appropriate court by way of notice of appeal in accordance with rules of court; and
- (b) must be lodged within 20 working days after notice of the decision or order is communicated to the appellant, or within any further time a District Court Judge or, as the case requires, a High Court Judge allows on application made before or after the period expires.

**107 Notice of right of appeal—**

When notifying a person under this Act of any decision or order which section 106 gives him or her a right of appeal, the Registrar or, as the case requires, the appropriate executive officer of the Tribunal must also notify him or her in writing of the right of appeal and the time within which an appeal must be lodged.

Compare:1995 No 95 s 115

**108 Orders to have effect pending determination of appeal—**

A decision or order against which an appeal is lodged under this Part continues in force unless the District Court or the High Court orders otherwise.

Compare:1995 No 95 s 117

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