




Te Kaunihera Tapuhi o Aotearoa  
Nursing Council of New Zealand

# The Health Process

*Ki te whakarite i nga ahuatanga o nga  
Tapuhi e pa ana mo nga iwi katoa*

*Regulating nursing  
practice to protect public safety*



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## Introduction

This booklet explains the process for nurses who have a health condition and have been notified to the Nursing Council of New Zealand (the Council).

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. One of the functions is to consider and monitor nurses with a mental or physical condition, which includes impairment caused by alcohol or drugs.

The Council has appointed a Health Committee (the Committee) to consider whether a nurse is unable to perform the functions required for the practice of nursing because of a mental or physical condition. The Committee comprises three members of the Council including a layperson.

Although the Committee's main purpose is public safety it makes every effort to assist and support nurses through the health process. A nurse advisor (health) 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.

## Notifications: mandatory notifications

It is compulsory for the following people to notify the Council if they believe a nurse is unable to perform the functions required for the practice of nursing because of a mental or physical condition.

Any person who is:

- in charge of an organisation that provides health services
- a health practitioner
- an employer of health practitioners
- a medical officer of health



- in charge of an educational programme in New Zealand that provides a course of study that leads to a prescribed qualification for a nursing scope of practice.

### **Notifications from other people**

Any other person who believes a nurse is unable to perform the functions required for the practice of nursing because of a mental or physical condition **may** notify the Council in writing.

### **Protection for those making a notification**

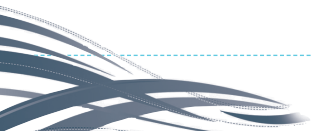
Any person who makes a notification about a nurse cannot be the subject of civil or disciplinary proceedings unless he or she has acted in bad faith.

### **Self-notification from a nurse**

A nurse must notify the Council of a mental or physical condition that is affecting his or her practice.

This may be declared on his or her application for an annual practising certificate (APC) or at any other time. If the nurse declares a health condition during the application process he or she will be asked to provide a brief explanation on the supplementary information form or a private and confidential letter for the Registrar of the Nursing Council (the Registrar) to consider. Health conditions that are temporary in nature and/or do not impact on a nurse's ability to practise **do not** need to be declared.

The nurse may be asked for further information so that the Registrar can determine the nature and severity of the health condition and whether the nurse needs to be referred to the Health Committee. The nurse will be advised in writing of any decision made by the Registrar.



## **Notifications from other committees**

A professional conduct committee, competence review panel or the registration committee may recommend that a nurse is referred to the Committee if it believes the nurse requires a health review.

## **Grounds for making a notification**

Any person making a notification must have reason to believe that a nurse (or student) is unable to perform the functions required for nursing because of a mental or physical condition. The person making the notification may seek whatever medical advice he or she considers appropriate to assist in forming that opinion. The written notification to the Registrar must include any medical advice obtained.

## **Form of notification**

The notification must be in writing to the Registrar, and provide details of all the circumstances.

## **Assessment of the notification**

The notification is assessed and a decision made either to take no further action or refer the nurse to the Health Committee.

## **Interim suspension**

If, after receiving the notification, the Council considers that the nurse is unable to perform the functions required for nursing because of a mental or physical condition, the Registrar may suspend the nurse's practising certificate or alter his or her scope of practice. This is generally done by including conditions in the scope of practice. The Council does not have to give the nurse notice that it intends to suspend his or her practising certificate or include conditions in his or her scope of practice.

This suspension or inclusion of conditions remains in place for up to 20 working days from the date that the



nurse receives the order. The Council may extend the suspension for a further 20 working days to allow the nurse to have a medical assessment. The nurse will be advised in writing of the order and the reasons it has been made.

### **Notification of risk of harm to other agencies**

If the Council receives information in the notification and believes the practice of a nurse may pose a risk of harm to the public, it must promptly notify the following agencies in writing of the circumstances that led to that belief:

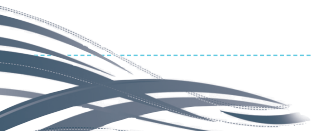
- Accident Compensation Corporation
- Director-General of Health
- Health and Disability Commissioner
- employer of the nurse.

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.

### **Initial notification to nurse**

Once the nurse has been referred to the Committee, a thorough assessment of the nurse's health condition is required. The Committee may require the nurse to have a medical examination or testing by a medical practitioner or specialist testing service.

In the initial letter sent to the nurse advising his or her of the notification the nurse is also given a copy or summary of the notification, advised that a medical assessment is required and invited to contact the nurse advisor to discuss the assessment.



## Medical examination

The nurse is given the opportunity to suggest which medical practitioner he or she would prefer to provide the report and to discuss the date of assessment. Generally, the Committee requires an examination from a practitioner who specialises in a particular area and will not accept a report from a nurse's general practitioner.

The Committee pays for the cost of obtaining the medical report and any test results requested.

Once the medical practitioner has been agreed or decided on, the nurse is notified in writing of the:

- mental or physical condition that may make the nurse unable to practise
- name and address of the medical practitioner who is to carry out the assessment
- date by which the nurse must see the practitioner
- tentative date of the scheduled meeting with the Committee.

If the nurse is unable to attend the assessment he or she must notify the nurse advisor and another date will be arranged.

The nurse may take a support person to their medical assessment as an observer.

## Medical report

The medical practitioner completing the assessment is asked to provide a comprehensive report to the Committee and comment on the following questions:

- whether the nurse has the condition named and, if so, to detail the nurse's condition including any current treatment plan
- whether the nurse has any other physical or mental condition



- whether that health condition means the nurse is unable to perform the functions required for nursing
- whether that condition means the nurse would be able to perform the functions required for nursing but only if particular conditions were placed on his or her practice
- an indication of what conditions the practitioner would consider necessary to enable the nurse to practise safely.

The medical practitioner may consult with any other health practitioners that he or she considers are able to assist in the completion of the assessment, for example, cognitive testing by a psychologist.

The nurse is given a copy of the medical report and is able to provide a response to it to the Committee.

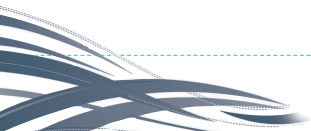
### **Non-attendance at medical examination**

If the nurse does not attend an examination by the date noted in the letter, the Committee is still able to consider the notification and make orders suspending practice or including conditions in a nurse's scope of practice.

### **Health Committee meeting: meeting times and venues**

The Committee meets at least monthly in one or more of the following centres: Wellington, Auckland or Christchurch. The meetings generally take place in hotel meeting rooms.

A meeting with a nurse for the first time usually takes one hour and a meeting to review a suspension or conditions included in the nurse's scope of practice usually takes 45 minutes.



## Before the meeting

The nurse is invited to forward any information he or she would like the Committee to consider in advance or may choose to provide information at the meeting.

The nurse is advised in advance of the proposed date and venue where the Committee is to meet. This information is confirmed in writing. The nurse may bring a support person and/or a legal representative to that meeting.

## The meeting process

The Registrar or another Council staff member attends the meeting to provide administrative and advisory support to the Committee.

The meeting is informal and an opportunity for the nurse to respond to the notification and medical report. The Committee will generally discuss the medical report and any other information received, the circumstances leading to the notification, the current state of the nurse's health, the care or treatment he or she is receiving and any current and/or future nursing practice plans.

The support person or legal representative is also given an opportunity to provide information to the Committee.

The nurse and support people will be asked to leave the room while the Committee considers the information and reaches a decision. Generally, the nurse is invited back into the meeting and advised of the Committee's decision. Occasionally, a decision is deferred until further information has been provided. The nurse will be advised in writing of the decision shortly after meeting with the Committee.

The meeting is recorded and minutes are taken.



## Health Committee decisions

The Committee has the following options:

- take no further action on the notification
- allow the nurse to practise with conditions included in his or her scope of practice
- suspend the nurse from practice
- defer making a decision until a later date.

## No further action

The Committee may decide to take no further action if it is satisfied the nurse does not have a mental or physical condition that means he or she is unable to perform the functions of nursing.

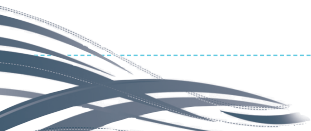
## Conditions in scope of practice

The Committee may consider the nurse is safe to practise with conditions included in his or her scope of practice. Examples of conditions are as follows:

- Council-approved employer
- employer progress reports
- general practitioner (GP) progress reports
- counsellor/therapist or key worker reports
- urine and/or blood tests results for alcohol or drug use
- continue with current treatment plan
- remain abstinent from alcohol and/or drugs.

## Employer approval

The nurse must have his or her employment approved by the Council before commencing practice. This ensures the employer is aware of the conditions in the nurse's scope of practice and that the nurse is working in a supportive environment.



## **Employer report**

A report from the nurse's employer provides the Committee with information about the nurse's practice. The person providing the report must be approved by the Council.

## **Health professional report**

A report from a health professional involved in the nurse's care and treatment, such as a counsellor, GP, psychiatrist or key worker, may be required to provide the Committee with information regarding the nurse's health status and progress.

## **Test results for alcohol and drug use**

These tests are organised through the nurse's employer, GP or other agencies. If the nurse provides a positive test result he or she will be asked explain this to the Committee.

## **Compliance with conditions**

If the nurse does not comply with the conditions and the Committee is satisfied the nurse is unable to perform the functions required for the practice of nursing it may suspend the nurse from practice.

## **Suspension**

The Committee may decide to suspend the nurse from practice if it is satisfied that the nurse is unable to perform the functions required for the practice of nursing, or if the nurse has failed to attend a medical assessment. This suspension may be for a specified period or until the nurse asks for a review of that suspension.

The suspension takes effect from the date that the nurse receives the letter advising of the suspension. The letter must be sent to the nurse within five working days after the decision is made by the Committee. The nurse is required to return his or her practising certificate to the Council.



### **Annual practising certificate**

If the Committee decides a nurse is only able to practise with conditions in his or her scope of practice the nurse is required to return his or her practising certificate to the Council. A new practising certificate will then be issued to the nurse with the conditions listed, except for those that may identify a health condition. Confidential conditions will only be available to a prospective employer or person with a legitimate reason to have access to that information.

### **Monitoring and review**

The Committee will review the conditions or suspension at the nurse's request or if the Committee receives further information about the nurse's practice. The nurse is encouraged to contact the nurse advisor or Manager of Health to discuss his or her ability to comply with the conditions within the timeframes specified.

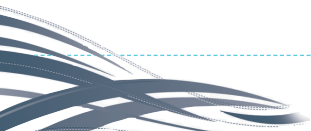
### **Review meeting**

The nurse may attend and is able to provide any information he or she would like the Committee to consider. The nurse may be asked to have a further medical assessment before the meeting.

### **Options**

The following options are available to the Committee:

- make no changes to the existing conditions
- vary the existing conditions
- revoke the existing conditions
- revoke a suspension.
- revoke a suspension and include conditions in the nurse's scope of practice.



## Review and Appeal rights

A nurse may ask for a review of the Committee's decision by the full Council. The nurse must make this request in writing within 20 working days of receiving the decision. A review will be conducted on the information provided to the Committee and any written submission the nurse may wish the Council to consider.

Alternatively, the nurse may appeal the decision to the District Court within 20 working days of receiving the decision.

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 the Health Committee 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 these provisions or this process should be directed to the manager or the nurse advisor responsible for the health process.

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



## Health Practitioners Competence Assurance Act 2003

*Inability to perform required functions*

### **45 Notification of inability to perform required functions due to mental or physical condition—**

- (1) Subsection (2) applies to a person who—
  - (a) is in charge of an organisation that provides health services; or
  - (b) is a health practitioner; or
  - (c) is an employer of health practitioners; or
  - (d) is a medical officer of health.
- (2) If a person to whom this subsection applies has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.
- (3) If any person has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person may give the Registrar written notice of the matter.
- (4) Subsection (5) applies to a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training (a course) that is a prescribed qualification for a scope of practice of a health profession.
- (5) If a person to whom this subsection applies has reason to believe that a student who is completing a course would be unable to perform the functions required for the practice of the relevant profession because of some mental or physical condition, the person must promptly give the

Registrar of the responsible authority written notice of all the circumstances.

#### **46 Power to seek medical advice—**

- (1) When a person contemplates giving a Registrar notice under section 45, he or she may seek whatever medical advice, whether psychiatric or otherwise, he or she considers appropriate to assist him or her in forming his or her opinion.
- (2) Any notice given under section 45 must state any medical advice obtained under this section in respect of that notice.

#### **47 Duty of Registrar—**

On receiving a notice given under section 45, the Registrar must take all reasonable steps to have the notice considered by the authority as soon as reasonably practicable.

#### **48 Interim suspension of practising certificate or inclusion of conditions in scope of practice in cases of suspected inability to perform required functions due to mental or physical condition—**

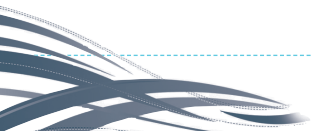
- (1) This section applies to a health practitioner if the authority considers that the health practitioner may be unable to perform the functions required for the practice of his or her profession because of some mental or physical condition.
- (2) If subsection (1) applies to a health practitioner, the responsible authority may order that for a period of not more than 20 working days from the date that a copy of the order is given to the health practitioner under subsection (6)—
  - (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 order that the period of an order made under subsection (1) be extended by a further period of not more than 20 working days if that extension is necessary for any examination or testing required under section 49.
- (4) The authority is not obliged to give the health practitioner notice that the authority intends to make an order under this section.
- (5) Every order made under this section must—
  - (a) be in writing; and
  - (b) contain a statement of the reasons on which it is based; and
  - (c) be signed by the Registrar.
- (6) The Registrar must ensure that a copy of an order made under this section is promptly given to the health practitioner concerned.

**49 Power to order medical examination—**

- (1) If the responsible authority considers (whether or not as a result of a notice given under section 45 or of a recommendation made under section 79) that a health practitioner may be unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the authority may, by notice given to the health practitioner, require him or her to submit himself or herself for examination or testing by a medical practitioner at the expense of the authority.



- (2) Every notice given under this section must—
- (a) specify—
- (i) the mental or physical condition that may make the health practitioner unable to perform the functions required for the practice of his or her profession; and
  - (ii) the name and address of the medical practitioner who is to conduct the examination or test; and
  - (iii) a date by which the examination or test is to be conducted, being a date that is not less than 5 working days after the date on which the notice is given to the health practitioner, to submit himself or herself for examination or testing; and
- (b) be signed by the Registrar.
- (3) Before giving a notice under this section, the authority must endeavour to consult with the health practitioner about the medical practitioner who is to conduct the examination or test.
- (4) A health practitioner who is required by a notice given under this section to submit himself or herself for examination or testing by a medical practitioner may have another person chosen by him or her attend the examination or testing as an observer.
- (5) A medical practitioner who conducts an examination or test under this section may consult any other health practitioner who the medical practitioner considers is able to assist in the completion of the examination or test.
- (6) When a medical practitioner has examined or tested a health practitioner under this section, he or she must, as soon as reasonably practicable after the examination or test, make a written report to the Registrar of the responsible authority

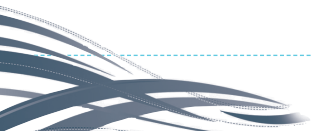


on whether or not the practitioner has the mental or physical condition stated under subsection (2) and, if that is the case, the extent, if any, to which that condition affects the practitioner's ability to perform the functions required for the practice of his or her profession.

- (7) The Registrar must, promptly after receiving a report under subsection (6), send a copy to the health practitioner to whom the report relates.

**50 Restrictions may be imposed in case of inability to perform required functions—**

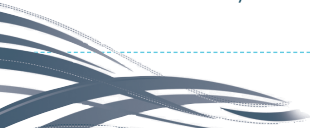
- (1) Subsection (2) applies if a health practitioner has been given a notice under section 49; and
  - (a) either—
    - (i) the health practitioner has not, by the time specified in the notice, submitted himself or herself for examination or testing by the medical practitioner named in the notice; or
    - (ii) the Registrar of the responsible authority has received a written report in respect of the health practitioner from the medical practitioner named in the notice; and
  - (b) the authority has given the health practitioner a reasonable opportunity to make written submissions and be heard on the matter, either personally or by his or her representative.
- (2) The authority must consider the report (if any) and all the relevant circumstances of the case.
- (3) The authority may order that the health practitioner's registration be suspended if the authority has considered the case of the health practitioner and the authority is satisfied that—



- (a) the health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition; or
  - (b) the health practitioner has not submitted himself or herself for examination or testing in accordance with a notice under section 49.
- (4) The authority may order that conditions be included in the practitioner's scope of practice if the authority has considered the case of the practitioner and the authority is satisfied that the practitioner is able to perform the functions required for the practice of his or her profession, but only if those conditions are observed.
- (5) Every order made under subsection (3) or subsection (4) must—
- (a) be in writing; and
  - (b) contain a statement of the reasons on which it is based; and
  - (c) be signed by the chairperson of the authority or by a person authorised by the chairperson.
- (6) The Registrar of the authority must ensure that, after an order under subsection (3) or subsection (4) is made,—
- (a) a copy of the order is given to the health practitioner concerned within 5 working days after the making of the order; and
  - (b) all administrative steps are taken to give effect to the order.
- (7) An order made under subsection (3) or subsection (4) takes effect from the day on which a copy of the order is given under subsection (6) to the health practitioner concerned, or a later date specified in the order.



**51 Revocation of suspension or conditions—**

- (1) An authority may at any time make an order revoking any suspension that it has imposed under section 39 or section 50 if it is satisfied that the health practitioner concerned is again able to practise the health practitioner's profession satisfactorily.
  - (2) The authority may at any time make an order revoking any conditions or changes imposed under section 39 or section 50 if it is satisfied that those conditions or changes are no longer necessary.
  - (3) The authority may make an order varying a condition imposed under section 39 or section 50 if it is satisfied that the variation should have been part of the original order or is required by a change in circumstances.
  - (4) The authority may not make an order under subsection (3) otherwise than in accordance with an application from the health practitioner concerned unless it has first—
    - (a) informed the health practitioner why it may vary the condition; and
    - (b) given the health practitioner a reasonable opportunity to make written submissions on the proposed variation, and be heard on the question, either personally or by his or her representative.
  - (5) An order under this section may be made on the application of the health practitioner or on the authority's own initiative.
  - (6) The Registrar of the responsible authority must ensure that, after an order under this section is made,—
    - (a) a copy of the order is given to the health practitioner concerned within 5 working days after the making of the order; and
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- (b) all administrative steps are taken to give effect to the order.
- (7) An order under this section takes effect immediately.

## Part 5 Appeals

### 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 the person's proposed 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.

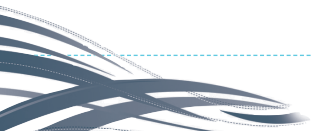


**107 Notice of right of appeal—**

When notifying a person under this Act of any decision or order against 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.

**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.







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