

# The health process



## Introduction

This information sheet explains the process for nurses who have been notified to the Nursing Council or who have informed the Council that they have a health condition.

To provide a culturally safe and appropriate response for nurses, after consultation with those participants, the process will be conducted in a way that is consistent with the principles of Te Tiriti o Waitangi, has regard to appropriate tikanga Māori, upholds the mana of the nurse and has regard to any specific cultural preferences they may have.

One of the Council's functions is to consider and monitor nurses with a mental or physical condition, which includes substance or alcohol use disorders.

Nurses 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 Nurses Organisation, Public Service Association, Society of Nurses or College of Nurses, provide representation and support for their members. Nurses who wish to have representation are strongly recommended to engage their representative early to ensure they are involved in the process.

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.

## Mandatory notifications

It is mandatory 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
- a person 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 practise 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 they have acted in bad faith.

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

A nurse must notify the Council that they may be unable to perform the functions required for the practice of nursing because of a mental or physical condition.

A nurse is also required to declare a mental or physical condition when applying for an annual practising certificate (APC). 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 Council can consider the nature and severity of the health condition and whether the nurse needs to be referred for an assessment of their health.

## **Notifications from other committees**

A professional conduct committee or competence review committee may recommend that a nurse is referred for a review of their health if it believes the nurse's practice may be affected by a health condition.

## **Grounds for making a notification**

Any person making a notification 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 appropriate medical advice to assist in forming that opinion and record any medical advice obtained with the notification.

## **Form of notification**

A notification should contain enough information to enable the Council to decide what action should be taken about the notification. If the notification does not include sufficient detail, the person making the notification may be asked to provide further information. The Council has a form on its website that can be completed online but will accept any form of written notification.



## **Assessment of the notification**

After assessment the Council will decide to take no further action, require further information or refer the nurse for a review of their health. The Council may decide to take no further action if the nurse is managing their own health with the involvement of their employer and clinician. The nurse and the person making the notification are advised of that decision.

## **Interim suspension**

If the Council considers that the nurse is unable to perform the functions required for nursing because of a mental or physical condition and there is a public safety risk, the Council may suspend the nurse's practising certificate or include conditions in their scope of practice. The nurse adviser (health) will generally make contact with the nurse before any action is taken. Some nurses choose to stop practising until they have a health assessment.

Any suspension or conditions remain 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 health assessment.

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

If the Council believes that the practice of a nurse may pose a risk of harm to the public, it must notify the following agencies 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 notifies the above agencies of this view.

## **Initial notification to nurse**

Once the nurse has been referred for a review of their health an assessment of the nurse's health condition may be required. The Committee may require the nurse to have a health examination or testing by a medical practitioner/specialist or other health practitioner. The nurse is invited to contact the nurse advisor to discuss the assessment.

## **Health examination**

The nurse is given a choice of assessors and the opportunity to suggest which health practitioner they would prefer to provide the report and to discuss the date of assessment. Generally, the



Committee requires an independent examination from a practitioner who specialises in a particular area and will not accept a report from a nurse's general practitioner or treating psychiatrist. This is to preserve the therapeutic relationship between the nurse and practitioner. The Council has approved health practitioners who are familiar with the requirements of the report.

The Committee pays for the cost of obtaining the report, any tests required and travel costs. If the nurse is unable to attend the assessment, they must notify the nurse advisor and another date will be arranged.

The nurse may take a support person to their assessment as an observer. The assessment can take a couple of hours and will be an in depth examination.

### **Health assessment**

The health practitioner completing the assessment is asked to provide a comprehensive report to the Council 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/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 included in their scope of practice
- an indication of what conditions the practitioner would consider necessary to enable the nurse to practise safely.

The assessing health practitioner may consult with other health practitioners to assist with the report, for example, cognitive testing by a psychologist.

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

### **Non-attendance at health examination**

If the nurse fails to attend the scheduled examination a Committee is still able to consider the notification and make orders suspending their practice or including conditions in their scope of practice.

### **Health assessment**

If the assessor does not identify a condition that may impact on the nurses' ability to practise then the Council may decide that no further action is required.



## **Health Committee meeting**

To recognise Council's commitment to the principles of Te Tiriti O Waitangi, where the nurse who is the subject of the review is Māori a Māori member will be appointed to the Health Committee meeting the nurse.

The Council endeavours to have ethnicity/ cultural and gender identities of the nurse reflected in the Committee membership. The Committee is made up of two members, one of whom is a mental health nurse.

## **Meetings**

The Committee meets 2-3 weekly in one or more of the following centres: Wellington, Auckland, Christchurch and Dunedin. The Council will assist with travel costs. The meetings take place in hotel meeting rooms and will usually take under an hour. If a nurse would prefer to meet by Zoom or teleconference this can occur, but it is not the preferred way of meeting.

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

## **The meeting process**

To promote a culturally safe and appropriate response for Māori nurses and after consultation with those participants, the hearing can be conducted in a Tikanga/Kawa appropriate process. This can include:

- Karakia (to open and close the hui)
- Mihimihi from participants to the hearing
- Inclusion of Council's Kaumatua at the hearing
- Consideration of where best to have the hearing – possibly at a marae if appropriate
- Consideration of individual specific cultural needs

Further work is being undertaken on tikanga appropriate meetings for Māori nurses and this work is ongoing.

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



The support person or legal representative may provide information to the Committee. Usually the decision is discussed at the meeting and followed up by an email the following day. Occasionally, a decision is deferred until further information has been provided.

Advisors attend the meeting to provide administrative and advisory support to the Committee. The meeting is recorded, and an electronic copy can be provided on request.

## **Health Committee decisions**

### **Options**

The Committee has the following options:

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

### **No further action**

The Committee may take no further action if it is satisfied the nurse does not have a health condition that means they are unable to practise or they do not require any monitoring or support.

### **Conditions in scope of practice**

The Committee may decide the nurse can practise with conditions in their scope of practice. These are usually for a limited period of time and once satisfied can be removed, provided the reports are satisfactory. 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 use
- Hair testing for drug use
- remain abstinent from alcohol and/or drugs.

### **Employer approval**

If the nurse is seeking employment, the approval of the Council is required. This ensures the employer is aware of the conditions in the nurse's scope of practice, and in a position to provide monitoring and support. This is usually a public condition that is recorded on the online register.



It is a common condition used across all processes and will not disclose that the nurse has a health condition.

### **Employer reports**

A report from the nurse's employer provides the Committee with information about the nurse's health and practice. A template is provided to the employer to assist with completing this report. This is generally a confidential condition.

### **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 about the nurse's engagement and progress.

### **Testing for alcohol and drug misuse**

Hair tests are organised through TDDA with the assistance of the Council's Health Coordinators.

Tests for alcohol use may be organised through the nurse's GP.

If the nurse provides a positive hair test result that indicates drug use or a blood test result that shows that they may have been drinking alcohol excessively they will be asked for an explanation and may be referred to the Committee again.

### **Compliance with conditions**

If the nurse does not comply with the conditions and the Registrar is not satisfied they are able to practise safely they are invited to meet with the Committee and may be suspended from practice or have further conditions included in their scope of practice.

### **Suspension**

The Committee may decide to suspend the nurse from practice if it is satisfied that the nurse is unable to practise or has failed to attend a health assessment. This suspension continues until the Committee is satisfied that the nurse is again able to practise satisfactorily.

### **Confidential conditions**

Conditions that may identify a health condition are confidential and do not appear on the online register. However, the register will record "other conditions exist, please contact the Council" Confidential conditions will only be available to prospective employers or those with a legitimate reason to have access to that information.



## **Monitoring and review**

The Council will consider the conditions or suspension at the nurse's request. The Committee may also consider the conditions if it receives further information about the nurse's practice. Nurses are encouraged to contact the nurse advisor, to discuss their ability to comply with the conditions within the timeframes specified.

## **Removing the suspension**

The nurse is invited to attend a further Committee meeting and is able to provide any information they would like the Committee to consider. The nurse may be asked to have a further health assessment before the meeting, paid for by the Council.

## **Review and Appeal rights**

A nurse may ask for a review of a Committee's decision to include conditions or suspend their registration by the full Council. A review will be conducted on the information provided to the Committee and any information the nurse wishes the Council to consider.

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

The decision or order continues in force unless the District Court orders otherwise.

## **Judicial review**

Decisions of Health Committees 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 nurse advisor (health). Anyone involved in the process is encouraged to contact the Council to discuss what is required.

