

HEALTH PRACTITIONERS COMPETENCE ASSURANCE ACT 2003

THE HEALTH PROCESS

Introduction

This booklet explains the process for making notifications to Te Kaunihera Manapou Paramedic Council (the Council) for paramedics who have a health condition.

The Council encourages anyone involved in the process, particularly paramedics, to contact the Paramedic Council staff or their professional body to discuss the process.

The Council is a statutory body continued in existence by the Health Practitioners Competence Assurance Act 2003 (the Act). The Act sets out several functions concerning the registration, continuing competence, and fitness to practise of paramedics. One of its functions is to consider and monitor paramedics with a mental or physical condition, which includes impairment caused by alcohol or drug abuse.

The Council has appointed Health Committees (Committees) to consider whether a paramedic is unable to perform the functions required for the practice of paramedicine due to a mental or physical condition.

Although the Committee's main purpose is to protect public safety it makes every effort to assist and support paramedics through the health process. Council staff are available as a point of contact for paramedics. Paramedics are also encouraged to contact a support person and/or legal representative to assist them.

Notifications

Mandatory notifications

It is mandatory for the following people to notify the Council if they believe a paramedic is unable to perform the functions required for the practice of paramedicine due to 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 paramedic scope of practice.

Notifications from other people

Any other person who believes a paramedic is unable to perform the functions required for the practice of paramedicine due to 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 paramedic cannot be made the subject of civil or disciplinary proceedings unless they have acted in bad faith.

Self-notification from a paramedic

A paramedic must notify the Council if they are unable to perform the functions required for the practice of paramedicine because of a mental or physical condition.

A paramedic is also required to declare a mental or physical condition in their application for an annual practising certificate (APC). If the paramedic declares a health condition, they will be asked to provide a brief explanation on the supplementary information form or a private and confidential letter for the Registrar of the Paramedic Council (the Registrar) to consider. Health conditions that are temporary in nature and/or do not impact on a paramedic's ability to practise **do not** need to be declared.

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

Notifications from other committees

A Professional Conduct Committee or Competence Review Committee may recommend that a Paramedic be referred to the Committee if it believes the paramedic requires a health review.

Grounds for making a notification

Any person making a notification must have reason to believe a paramedic is unable to perform the functions required for paramedicine due to a mental or physical condition. The person making the notification may seek whatever medical advice they consider 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 submitted in writing to the Registrar and provide details of all the circumstances.

Assessment of the notification

When the notification is assessed, a decision will be made to either take no further action, request further information, or refer the paramedic for a review of their health. The Council may decide to take no action if the paramedic is managing their own health in conjunction with their employer and clinician. The paramedic and the person making the notification will be advised of that decision.

Interim suspension

If, after receiving the notification, the Council considers that the paramedic is unable to perform the functions required for paramedicine due to a mental or physical condition, the Registrar may suspend the paramedic's practising certificate or alter their scope of practice. This is generally done by including conditions in the scope of practice. The Council does not have to give the paramedic notice that it intends to suspend his or her practising certificate or include conditions in their scope of practice. The paramedic will be informed of this decision by telephone or email.

This suspension or inclusion of conditions remains in place for up to 20 working days from the date the paramedic receives the order. The Council may extend the suspension for a further 20 working days to allow the paramedic to complete a medical assessment. The paramedic 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 believes the practice of a paramedic may pose a risk of harm to the public, it must promptly notify the following in writing including the circumstances that have led to that belief:

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

A copy of this notice is also given to the paramedic. If the Council concludes the paramedic's practice never posed or no longer poses a risk to the public, it must notify the above agencies.

Initial notification to paramedic

Once the paramedic has been referred for a review of their health, the Committee may require the paramedic to have a medical examination or test by a medical practitioner/specialist.

In the initial letter sent to the paramedic advising them of the notification, they are also given a copy or summary of the notification, advised that a medical assessment is required, and invited to contact Council staff to discuss the assessment.

Medical examination

The paramedic is given the opportunity to discuss the date of assessment and suggest which medical practitioner they would prefer to conduct the examination. Generally, the Committee requires an examination from a practitioner who specialises in a particular area and will not accept a report from a paramedic's general practitioner or treating psychiatrist. The Council has a list of preferred medical practitioners who are familiar with the requirements of the report.

The Council covers the cost of obtaining the medical report.

Once the medical practitioner has been agreed upon, the paramedic is notified in writing of the:

- name and address of the medical practitioner who is to carry out the assessment
- date by which the paramedic must see the practitioner
- tentative date of the scheduled meeting with the Committee.

If the paramedic is unable to attend the assessment, they must notify Council staff and another date will be arranged.

The paramedic 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 paramedic has the condition named in the notification and, if so, to detail their condition, including any current treatment plan
- whether the paramedic has any other physical/mental condition
- whether that health condition means the paramedic is unable to perform the functions required for paramedicine
- whether that condition means the paramedic would be able to perform the functions required for paramedicine, but only if conditions were placed on their practice
- an indication of what conditions the practitioner would consider necessary to enable the paramedic to practise safely.

The medical practitioner may consult with any other health practitioners they consider are able to assist in the completion of the assessment – for example, cognitive testing by a psychologist.

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

Non-attendance at medical examination

If the paramedic does not attend an examination by the date noted in the letter, the notification will remain active and the Committee may still make orders suspending practice or include conditions in the paramedic's scope of practice.

Health Committee meeting

Meeting times and venues

The Committee meets in one or more of the following centres: Wellington, Auckland, or Christchurch. The meetings generally take place in hotel meeting rooms, or if necessary, at the Council's headquarters at Willeston St., Wellington.

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

Before the meeting

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

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

The meeting process

The Registrar or an advisor attends the meeting to provide administrative and advisory support to the Committee.

The meeting is informal and an opportunity for the paramedic 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 paramedic's health, the care or treatment they are receiving, and any current and/or future paramedic practice plans.

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

The paramedic and support person will then be asked to leave the room while the Committee considers the information and reaches a decision. Sometimes the paramedic is invited back into the meeting and immediately advised of the Committee's decision, or an oral decision is provided by telephone on the same day. Occasionally, a decision is deferred until further information has been provided. The paramedic will be advised in writing of the decision shortly after meeting with 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 paramedic to practise with conditions included in their scope of practice
- suspend the paramedic from practice
- defer making their decision until a later date.

No further action

The Committee may decide to take no further action if it is satisfied the paramedic does not have a mental or physical condition that prevents them from performing the functions of paramedicine.

Conditions in scope of practice

The Committee may allow the paramedic to practise with conditions included in their scope of practice for a limited period, which will 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 or drug use
- remaining abstinent from alcohol and/or drugs.

Employer approval

If the paramedic is already employed by a Council-approved employer, they will be issued with a practising certificate. If the paramedic is seeking employment, the approval of the Committee is required before a practising certificate is issued. This ensures the employer is aware of the conditions in the paramedic's scope of practice and that they are working within a supportive environment.

Employer reports

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

Test results for alcohol and drug use

These tests are organised through the paramedic's employer, GP, or other agencies. If the paramedic provides a positive test result, they will be requested to provide an explanation to the Committee.

Compliance with conditions

If the paramedic does not comply with the conditions, and the Committee is not satisfied the paramedic is able to perform the functions required for the practice of paramedicine, it may suspend the paramedic from practice.

Suspension

The Committee may decide to suspend the paramedic from practice if it is not satisfied the paramedic is able to perform the functions required for the practice of paramedicine, or if the paramedic has failed to attend a medical assessment. This suspension continues until the Committee is satisfied that the paramedic is again able to practise paramedicine satisfactorily.

The suspension takes effect from the date the paramedic receives the letter advising of the suspension. The letter must be sent to the paramedic within five working days after the decision is made by the Committee.

Annual practising certificate

If the Committee decides a paramedic is only able to practise with conditions in their scope of practice, their registration file will be updated to reflect the conditions listed, except for those that may identify a health condition, which remain confidential. Confidential conditions will only be available to a prospective employer or person with a legitimate reason to access that information, such as an overseas regulatory authority where the paramedic is registered.

Monitoring and review

The Committee will reconsider the conditions or suspension at the paramedic's request. The Committee may also reconsider the conditions if it receives further information about the paramedic's practice. The paramedic is encouraged to contact Council staff to discuss their ability to comply with the conditions within the timeframes specified.

Revocation or variation meetings

The paramedic may be invited to attend and is able to provide any information they would like the Committee to consider. The paramedic may be asked to have a further medical assessment before the meeting.

Options on review

The following options are available to the Committee:

- make no changes to the existing conditions
- vary the existing conditions on the basis that the variation should have been part of the original condition or because of a change in circumstances
- revoke the existing conditions on the basis that those conditions are no longer necessary
- revoke a suspension on the basis that the paramedic is again able to practise paramedicine satisfactorily.

Review and Appeal rights

A paramedic may ask for a review of the Committee's decision by the full Council. The paramedic 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 submission the paramedic may wish the Council to consider.

Alternatively, the paramedic 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 the Health Committees may be reviewed in the High Court. The purpose of a judicial review is to assess the process the decision maker used to come to a decision and to ensure 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 Registrar, or the Deputy Registrar. Anyone involved in the process is encouraged to contact the Council to discuss what is required. The Council is happy to assist.

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.
- (6) 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.

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
 - (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.