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Competence Review and Competence Programme

Guidelines for Psychologists

Health Practitioners Competence Assurance Act 2003
[Reference Part 3, sections 34 – 44]

PLEASE READ THESE GUIDELINES CAREFULLY BEFORE PARTICIPATING IN A BOARD-ORDERED
COMPETENCE REVIEW OR COMPETENCE PROGRAMME.

FIRST ADOPTED BY THE NEW ZEALAND PSYCHOLOGISTS BOARD ON 13 FEBRUARY 2007.

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Guidelines for Psychologists undergoing a Competence Review and/or a Competence Programme arising from a Competence Review

Introduction to Competence Reviews and Competence Programmes

The New Zealand Psychologists Board (the **Board**) is legally required to oversee a system for conducting Competence Reviews (**Reviews**) and Competence Programmes (**Programmes**) for psychologists. We encourage you to review the detailed information about competence under the Health Practitioners Competence Assurance Act 2003 (the **Act**) that is available on the Board's website (www.psychologistsboard.org.nz).

Please note: Competence Reviews and Competence Programmes are not disciplinary in nature. A Review is conducted to assess your competence, and it is therefore meant to be evaluative and educational in nature. A Competence Programme arising from a Review is remedial in nature. The Board prefer that Reviews and Programmes be conducted in as collaborative and supportive a manner as possible.

Competence Reviews

Part 1 About Competence Reviews

When Competence Issues Arise

The following section explains how competence matters tend to arise and describes the Board's processes for addressing them.

Why are Competence Reviews conducted?

There are a number of pathways under the Act that may lead to a decision to refer a psychologist for Competence Review:

- A **competence notification** under section 34 of the Act. The Board may have received this from psychology colleagues or other health practitioners. Employers may also notify the Board, especially if a practitioner resigns or is dismissed for reasons relating to competence. After conducting initial inquiries, the Board's Conduct, Competence and Fitness (CCF) Committee ¹ (the **Committee**) may decide that the notification raises concern that the practitioner may not be meeting the required standards of competence.
- A **complaint** received by the Board may be referred for a Competence Review in accordance with section 36(4) of the Act. The Committee may decide that a complaint raises concern about the practitioner's competence.
- A **Professional Conduct Committee (PCC)** which investigates a complaint may recommend that a psychologist is referred for a Competence Review, in accordance with section 80(2)(a) of the Act. The Committee consider whether or not to accept this recommendation, and may choose an alternative action.
- The **Board can independently order** a Review, whether or not there is reason to believe that a psychologist's competence may be deficient. [Refer section 36(4) of the Act.]
- The **Health and Disability Commissioner (HDC)** or the Director of Proceedings under the Health and Disability Commissioner Act 1994 can also notify the Board of competence concerns.

¹ The Board acts through its CCF Committee, which is delegated by the Board to deal with complaint, competence, and fitness issues and is named after the relevant parts of the HPCA Act.

What is a section 37 notice?

The decision to review the competence of a practitioner will be stated in a section 37 notice (**Notice**) sent to the practitioner. Any written Notice must set out the reasons why it is believed that the psychologist may pose a risk of harm to the public by practising below the required standard of competence. It will state what information is held by the Board in support of that decision and will outline the terms of reference for the intended Review.

How does the Board initially screen a competence notification?

The Board recognises that a Review is likely to be a significant and anxiety-provoking intrusion into the life of a psychologist. A Review is not carried out if the notification is considered frivolous, vexatious, or if inadequate information is received. The decision to proceed with a Review is made only after careful consideration of all of the information made available to the Board.

Generally speaking, the following factors *increase* the probability of underlying competence concerns, and therefore the Board deciding to proceed with a Review:

- A pattern of poor standards of care or competence - several instances, or one instance over a sustained period;
- The magnitude of the mistakes, including the size of the suspected deficit, and the possible degree of serious departure from normal safe and accepted standards of practice.
- It is also recognised that incompetent practice may be the result of gradually evolving illness or disability.

The following factors *decrease* the likelihood of the Board deciding to proceed with a Review:

- If the matter would be more appropriately dealt with by other agents, such as the Privacy Commissioner or the Courts, and does not directly relate to professional or clinical competence;
- Situations more appropriately dealt with (for example) by the employer, a Professional Conduct Committee, conciliation, or the Health and Disability Commissioner.

If the Board considers that the competence notification gives reason to believe that the practice of the psychologist may pose a risk of harm to the public, the Board is required under section 35 of the Act to inform the ACC, HDC, Director General of Health, and any employer. If such notices are issued, the psychologist will be provided with a copy. These organisations will also be promptly updated once the Review is complete.

Do I have the right to challenge the decision to review my competence?

Because the decision to refer you for a Competence Review was made under delegation, the Act provides for you to apply to the Board for a review of that decision. Any such application must be made in writing within 20 working days of receiving the section 37 notice.

The Act also gives you the right to make written submissions and to be heard as part of the Review. You are entitled to make your submissions either personally or through your representative.

The Competence Review Process

Who conducts the Review?

A Competence Review Panel (**CRP**) is engaged by the Board to conduct the Review. The membership of the CRP is listed in the section 37 Notice or may be communicated through a separate letter if the nominations occur after the Notice has been sent. CRPs usually consist of two psychologists who are carefully chosen for their knowledge and expertise in your areas of

practice. The CRP may co-opt others for specific expertise or advice (e.g., where cultural issues are the source of the concern, the CRP should include or seek external cultural expertise).

CRP members are practitioners who are considered professionally competent, have good interpersonal skills, and have some knowledge of performance and educational assessment. You may object to the proposed CRP membership if you perceive a serious conflict of interest or you believe that the CRP lacks the necessary expertise to review the competence matters outlined in the terms of reference in the Notice. You will need to raise any such concerns within five working days of receiving the Notice. This should be done in writing and should include a detailed explanation of the reasons why you are requesting any change. Objections received will be carefully considered, but the Board is not obliged to act on them.

How will the Review proceed from this point on, and what do I need to do now?

The Board has issued you with a Notice, detailing the following:

- The substance of the concerns, and the grounds (if any) on which the Board has decided to carry out the Review;
- Information relevant to your competence that is in the possession of the Board;
- The terms of reference for the Review. This gives the detail or competencies of what the Review will focus on; and
- The proposed CRP membership.

The precise activities involved in assessing your competence will be developed by the CRP. Commonly accepted assessment tools may be used in addition to reviewing files and written work and discussion of clinical/professional issues. Your colleagues and supervisor(s) may also be interviewed.

Once the CRP membership is confirmed and the documentation is forwarded to the members, they will start their process by meeting to decide how they will approach the Review. The CRP Chairperson will contact you to introduce him or herself shortly after that.

If you have chosen to have a legal representative for this process, the CRP will offer at this stage to meet with you and your lawyer to discuss the proposed process and content of the review. It is hoped that these can be mutually agreed, thereby minimising the chance of any unnecessary complications and allowing the Review to proceed smoothly and on a positive, collaborative footing.

Once the specific Review activities are finalised, the CRP Chairperson will notify you of these, and arrangements to find a suitable time and place will be made with you and any other necessary parties. Initially, many of these practical arrangements may be negotiated over the phone. These discussions will be followed by written letters confirming the arrangements made.

Any meeting to conduct the Review may take up to three or four hours. Depending on the breadth of the Review, the CRP may need to meet with you more than once.

The Board, through the CRP, has the right to inspect any or all of your clinical records and therefore you must make them available. [Refer section 42 of the Act.]

You are entitled to the presence of a support person (or persons) of your choice during the Review. Please note that a support person cannot be present when discussing actual clients.

Although the Review will focus on the terms of reference as defined in the Notice, if any other significant competence issues are identified during the course of the Review, the CRP may notify the Board and these concerns may (with proper additional notice) be added to the terms of reference for the Review.

The Board may take action prior to the Review being completed

If the initial information provided to the Board or to the CRP gives reasonable grounds for believing that a psychologist poses a risk of serious harm to the public by practising below the required standard of competence, the Board may place a condition on the scope of practice or even suspend the practice of the psychologist in the interim period while the Review is occurring. [Refer section 39(2) of the Act.] This action would only be taken after informing the psychologist that it is being considered and after giving him or her a reasonable opportunity to make written submissions and to be heard on the proposed action. If one of these interventions was to be considered by the Board, it would aim to use the least intrusive intervention necessary to mitigate any perceived risk to the public, while also aiming to minimise the disruption to the psychologist's practice.

What decisions can the CRP make?

Within one month of conducting the Review, the CRP must write a report to the CCF Committee with their opinion that you either:

- Meet the required standard of competence; or
- Do not meet the required standard of competence.

If the CRP believes that you do not meet the required standard they may make suggestions to the Committee regarding what action or intervention could be taken to remedy or rehabilitate your practice (see below).

What decisions can the Committee make?

The Committee will consider the CRP's report. If the Committee accepts the report and any opinion that you are practising competently, then no further action will be taken and the matter will be closed.

If the Committee accepts the report and any opinion that you do not meet the required standard of competence, then under the Act they must make one or more of the following orders:

- that you undertake a Competence Programme;
- that one or more conditions be included in your scope of practice;
- that you sit a specified examination or assessment; and/or
- that you are counselled or assisted by one or more nominated persons.

What are the confidentiality requirements of the CRP?

CRP members sign a confidentiality agreement in which they undertake not to reveal or release any personal or health information obtained about you or your clients, except as legally required during the course of the review. In addition, where specific cases are included in the report or discussed with the Committee, no client identifying information is included. If client consultations are observed, the client must sign a consent form prior to the observation.

Who knows that a Competence Review is taking place?

If you are employed in a hospital or other organisation, it may be desirable that the relevant clinical director be informed. Aspects of the Review, such as reviewing client records and interviewing colleagues, often requires others in the workplace to be aware of the Review. That said, excepting those who must (according to the Act) be notified of a Review, the Board does not normally release information about a psychologist undergoing a Competence Review without the permission of that psychologist. Circumstances of risk or harm may however override confidentiality.

Who knows the outcome of the Competence Review?

If the Review determines that you do not meet the required standard of competence, the Act states that a copy of the orders then made under section 38(1) must be given to:

- you;
- your employer(s); and
- any person who works in partnership or association with you.

The results of the review may also be shared with the original notifier.

What if I decline to take part in the Review?

If the Board is unable to conduct or complete a Review because you fail to respond adequately to the Notice, the Act states that the Board then has reason to believe that you fail to meet the required standard of competence.² This outcome can lead to a suspension, a Competence Programme, conditions being placed on your scope of practice, an examination, and/or a requirement that you receive assistance from one or more specified persons.

What information does the person who made the initial notification get?

The person (notifier) who made the notification or complaint is given only basic information about the Review process and is advised that it is not a disciplinary process. They are informed that *if* problems are identified, the psychologist to whom the referral relates *may* be required to undergo a Competence Programme. The results of the review may also be shared with the original notifier. Depending on the circumstances which gave rise to the notification, the CRP may choose to interview the notifier as part of the Review process.

Should I have formal representation during the Review?

As part of your right to be heard on the matters involved in the Review, it is your right to have a representative attend with you or act on your behalf. Please note that a Competence Review is intended to be a facilitative, constructive, and supportive discussion between psychology colleagues. It is hoped that the explanation of the intended process will answer any concerns that your legal representative may have about possible risks to your rights to practice. Our experience has shown that the participation of a legal representative during the actual process of the review can significantly distract and complicate this collegial discussion.

What if I want a support person with me during the Review?

You are entitled to have a support person (or persons) present during the Review. A confidentiality declaration will need to be signed by them, and this will be organised by the CRP at the time. The Board can provide a copy of its 'Guidelines for Support People' where required.

² Set as the standard of a graduating psychologist in your scope(s) of practice and as expected in the chosen specialist area of practice.

Should my supervisor(s) be part of the Review?

It is possible that the CRP may find it helpful to talk with, or meet, any professional supervisor(s) you have. If so, the CRP will include this in the list of activities that will form the practical component of the Review. It is also possible that you may want your supervisor(s) to contribute to any submissions you make.

Is this a disciplinary process?

No. Reviews are not disciplinary in nature – they are intended to be evaluative and educational, with the goal of working with you to identify any possible problems to be remedied. The Board believes that Reviews should be as supportive of the psychologist as possible. It is expected that direct dialogue with the psychologist concerned is likely to facilitate such support and collaboration.

Does the Board obtain feedback about the Review process?

Once the Review has been completed, the Board will send you an evaluation form inviting feedback about the Review process. Completion of this evaluation form is voluntary. The information is sought as a means of refining our processes and protocols in the future. The CRP completes a similar form. Your name will be removed from the form and any information will be pooled with feedback received from others who have taken part in Reviews. It is planned that themes and issues emerging from this pooled information will be shared with the profession through the Board's usual communication outlets (e.g., conferences, newsletters, Annual Report).

Competence Programmes

Part 2 About Competence Programmes

What the HPCA Act says about Competence Programmes

Competence Programmes are provided for under section 40 of the Act. For the purpose of maintaining, examining, or improving the competence of a psychologist to practise psychology the Board may set or recognise Competence Programmes in respect of psychologists who hold or apply for practising certificates.

A Competence Programme may require a psychologist to do any one or more of the following, within a period, or at intervals, prescribed in the programme:

- pass any examination or assessment, or both;
- complete a period of practical training;
- complete a period of practical experience;
- undertake a course of instruction;
- permit another health practitioner specified by the Board to examine the clinical records of the psychologist in relation to his or her clients;
- undertake a period of supervised practice with a Board-approved supervisor.

The Board may specify a period within which you must comply with the requirements of the Programme.

Competence Programmes arising from a Competence Review

If and when appropriate, a Programme will be:

- designed to fill gaps in your skills (as described in the CRP's report);
- developed to include specific objectives and educational activities and an agreed process of reporting or reassessment at the end of the process;
- developed to ensure that the Programme is feasible.

When necessary, this may include the appointment of a supervisor to guide you through the educational, clinical, or practical activities required.

The Board drafts the requirements for the Programme based on the CRP's report, input from the CRP Chair, discussions with any other appropriate educational providers, and taking into consideration your current domains of practice.

What is included in a Competence Programme?

A Programme may include the following:

- specific objectives;
- details of educational activities you should participate in to meet these objectives (e.g., specified courses, audits, individual study, practice enhancement activities);
- the specific skills to be monitored by any Programme supervisor ;

- the method for assessing whether the objectives have been met (e.g., supervisor's reports commenting on observed progress on the programme objectives);
- a repeat Review or endpoint evaluation;
- the date by which progress on the Programme will be reviewed and the Programme closed (if you are ultimately assessed to be reliably demonstrating competence).

Please note that the Committee prefers to work collaboratively with the psychologist to ensure that the Programme is feasible and acceptable. The Committee then approves the Programme, and an order (referred to as a Section 38 Notice) containing the Programme's details is sent to the psychologist (and to the supervisor where one is appointed), including the starting date of the Programme (usually set by the date on which a contract with the supervisor is signed). If a further Review is required at the completion of the Programme, whenever possible the original CRP members carry out that second Review. (The Programme supervisor is not normally part of the Review team.)

Who may become a Competence Programme supervisor?

The person engaged as a Programme supervisor should (whenever possible):

- be a peer working in the same broad domain and scope of practice as you;
- possess good facilitation and interpersonal skills;
- have had significant experience as a psychology educator or supervisor;
- be competent and have recognised experience in the area of concern; and
- be acceptable to you.

The Board appoints a supervisor after discussions with you, other relevant education providers or professional organisations (e.g., the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists), and (where necessary) cultural advisors.

Who pays for the costs of completing a Competence Programme?

The psychologist undergoing the Programme is responsible for payment of all direct costs, including any supervisor costs. (A standard contract and rate per session is available from the Board to formalise the relationships between the supervisor and psychologist if agreement cannot be reached between the parties.)

PART 3 CONTACT DETAILS FOR THE PSYCHOLOGISTS BOARD

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