



## Policy Statement

The Psychologists Board (the Board) exists to protect public safety. As New Zealand's regulator of Psychologists it oversees professional standards in psychology. The Board makes sure Psychologists meet and maintain professional standards of education, conduct and performance, so that Psychologists deliver high quality healthcare throughout their careers. The Board will hold Psychologists to account if their conduct falls short of these standards.

This naming policy will enhance public confidence in psychology as a profession by allowing the public to make an informed choice about the Psychologist they engage with. It allows the Board to publish information about a Psychologist where that Psychologist has fallen short of professional expectations or is otherwise the subject of an order or direction.

While the Board has, since 2004, had the power to name Psychologists under section 157 of the Health Practitioners Competence Assurance Act 2003 (HPCAA), the requirement for a naming policy was introduced with amendments to the HPCAA in April 2019. This naming policy was developed in accordance with section 157B of the HPCAA which states that the purpose of a naming policy is to:

- enhance public confidence in Psychologists by providing transparency about the Board's disciplinary procedures and decision-making processes; and
- ensure that Psychologists whose conduct has not met expected standards may be named where it is in the public interest to do so; and
- improve the safety and quality of health care.

## Key Policy Points

The Board's primary obligation is to ensure that it protects the health and safety of the public. This includes ensuring that the public is provided with information in which it has an interest.

When considering naming a practitioner, the Board will consider the purpose of the Act, and the purpose of this Naming Policy as set out in section 157B(2).

In each case before it, the Board will weigh the public interest in naming the practitioner against the practitioner's privacy interests, including the consequences for the practitioner's reputation. Where the balance is even, the Board is likely to favour public interest, and name the practitioner.

The Board is aware that a decision to name a practitioner is likely to have consequences for the practitioner. It will apply this policy judiciously and with appropriate regard for all of the circumstances of the particular case.

If the Board proposes to name a practitioner, it will first give the practitioner the opportunity to make submissions on the proposal before making a final decision.

## 1. Related Legislation And Policy

Refers to the following key legislation:

- Health Practitioners Competence Assurance Act 2003
- Privacy Act 1993
- Official Information Act 1982
- Defamation Act 1992

- The New Zealand Bill of Rights Act 1990

And refers to the following related information on the Psychologists Board website:

- Code of Ethics for Psychologists working in Aotearoa/New Zealand
- Core Competencies for the Practice of Psychology in Aotearoa New Zealand
- Cultural Competencies for Psychologists Registered Under the Health Practitioners Competence Assurance Act
- Decisions by the Health Practitioners Disciplinary Tribunal
- Suspended Practitioners
- Newsletters

## **2. Health Practitioners For Whom The Naming Policy Applies**

- This naming policy applies to:
  - Any Psychologist registered with the Board; or
  - Any Psychologist who has previously held registration with the Board.
- In New Zealand, Psychologists are registered health practitioners who practise within any of the scopes of practice prescribed by the Board under section 11 of the HPCAA.

## **3. Circumstances In Which A Psychologist May Be Named**

- The Board may publish in any publication the name of a Psychologist who is the subject of an order or direction made by the Board under the HPCAA. Appendix 1 of this Policy sets out the full list of orders and directions that the Board may make.
- Publication of a Psychologist's name shall only occur following the completion of any Board process, and not while any investigation or deliberations are ongoing.
- Notwithstanding 3b above, the Board may decide to name a Psychologist who is the subject of an interim suspension order; or has interim change to or conditions imposed on his or her scope of practice, under sections 38, 39(1), 43, 48 or 69 of the HPCAA.
- The Board will not routinely publish the names and details where Psychologists were investigated but are not the subject of any orders or direction, except for:
  - Psychologists who have been exonerated during any investigation, who may ask the Board to publish their name and the details of that exoneration in order to clear their name.
  - Psychologists who are the subject of confusion where their name is the same as or very similar to that of another Psychologist or health practitioner named in an order, who may ask the Board to publish their name with clarification to avoid confusion.
- This policy does not affect the existing requirement/s for the Board to share information about a practitioner under sections 35, 138 or 156A(2)(a) of the HPCAA.

## **4. General Principles That Will Guide The Board's Naming Decisions**

- In deciding about the publication of information relating to a Psychologist, the Board will maintain a focus on protecting public safety.
- When deciding what information is published, the Board must weigh the public interest in making the information available against the consequences for the Psychologist of being named, including the likely harm to the Psychologist's reputation.

## 5. Criteria That The Board Must Apply When Making A Naming Decision

When assessing whether to publish the name of a Psychologist in a notice issued under section 157(1) of the HPCAA the Board must consider the Privacy Act 1993, natural justice rights and any other relevant matters. The Board will apply the following criteria:

- a. Public safety - ensuring the safety and quality of health care and the competence of Psychologists. Non-disclosure in a particular case may run the risk of harm to clients or members of the public in the future. Disclosure may elicit other complaints or concerns about a Psychologist's competence. Conversely, in the context of the provision of psychology services, it is conceivable that disclosure may raise a risk of harm to the Psychologist's clients.
- b. Public choice - The right of the public, existing and potential clients of Psychologists to know the practice history of a particular Psychologist so as to be able to make an informed choice whether to engage their services in the future.
- c. Professional accountability - Psychologists are accustomed to being held to account for the standard of care or service they provide. They should expect that some information may need to be disclosed if serious health and safety concerns are raised, including (for example) non-compliance with an existing order.
- d. Nature of the concerns - does the concern raise serious safety or competence concerns, does non-disclosure raise a risk of harm to clients in the future? Concerns of a serious nature will raise stronger public interest considerations in favour of disclosure.
- e. Whether the investigation is ongoing - disclosing the details of an allegation during an ongoing investigation may unfairly suggest that there is substance to the allegation.
- f. Action taken in respect of the outcome of an investigation - the public interest in disclosure will be higher, and a Psychologist's legitimate expectation of privacy will be reduced, where a concern has been investigated and found to be substantiated. It will often be in the public interest to know the remedial actions or consequences imposed on the Psychologist.
- g. Extent to which information is already in the public domain - the privacy interest may be diminished by prior knowledge or public availability of the information. If information about the concern is already in the public domain, this may increase the public interest in disclosure of a summary about the outcome of any investigation. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and institute any protective measures or remedial action.
- h. Likelihood of harm to the Psychologist arising from disclosure - there may be factors that heighten the risk of personal or professional harm arising from disclosure, for example the physical or mental health of the Psychologist, or the size of the community in which they practise. The Board is conscious that a decision to name a Psychologist is a "high stakes" decision for the Psychologist in question. This does not mean that the Board will not name in situations where there are likely to be consequences for the Psychologist. However, it does mean that the Board will carefully consider the question of consequences for the Psychologist (and, if relevant, their family/whānau) before proceeding.
- i. The Board has considered and applied the relevant principles of Right Touch/Risk Based regulation to its decision. These principles are:
  - i. **Consistency:** The Board is satisfied that its decision is consistent with legal requirements, and the requirements of this policy.
  - ii. **Transparency:** The Board is satisfied that its process has been transparent, and that its decision complies with its obligations to provide transparency to the public about the health practitioners the Board regulates.

- iii. **Targeting:** The Board is satisfied that the way in which it proposes to name the practitioner, including the media in which the notice will be published, is appropriately targeted towards the members of the public who may seek healthcare services from the practitioner.
  - iv. **Accountability:** The Board is satisfied that its decision assists it in meeting its responsibility to be accountable to the public, and to the practitioners it regulates.
  - v. **Proportionality:** The Board is satisfied that its decisions relating to naming the practitioner—including the decision to name, the contents of the notice, and the media in which the notice will be published—are proportionate to the risk identified.
  - vi. **Agility:** That Board is satisfied that it has responded appropriately to the issue, including acting where it believes action is necessary to mitigate risk to the public, as opposed to delaying action until that risk eventuates. The Board has also put systems in place to ensure that it is able to reconsider the matter promptly at any point where new information appears to alter its current position.
- j. In applying the above criteria, the Board will have regard to the considerations set out in **Appendix 2** of this Policy, which will assist it in balancing the Psychologist's privacy interest against the public interest.

## 6. Information The Board May Disclose When Naming A Psychologist

- a. Where the Board has elected to publish information about a Psychologist, it will release a summary of the information with appropriate context.
- b. Publications instigated by the Board may include the name of the Psychologist, a short context of the concern and citation of the relevant section of the HPCAA.
- c. Where the order relates to the health of a Psychologist, additional consideration is needed with regards to the impact any disclosure may have on the Psychologist.

## 7. Means By Which A Psychologist May Be Named

- a. Publication will be made via posting on the relevant section of the Board website; and may also be by inclusion in the Board's electronic newsletter or other suitable media.
- b. In addition, the Board may also annotate the Psychologist's entry on the Register to include a reference to the order or direction.
- c. Information published on the Board's website about a named Psychologist will be reviewed when the circumstances relating to the risk presented by that Psychologist change.
- d. The Board may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.
- e. When the Board decides to publish a notice, it will also confirm the conditions and timeframe for reviewing the relevance (and ongoing availability) of the notice.
- f. When publishing on sites other than the Board's website, the Board will generally only publish a link to the notice for use by other media.

## 8. Procedures That Board Must Follow When Making A Naming Decision

- a. Where the Board proposes to publish information about a Psychologist, having considered the factors in part 5 of this policy, it will be required to make the Psychologist aware of this proposal and the proposed content twenty (20) working days in advance of the anticipated publication.

- b. Sending the information set out in 7a. to the Psychologist's registry email address (or to any other email addresses nominated by the Psychologist) will be sufficient for this purpose.
- c. The advance notice set out in 8a. provides the Psychologist with an opportunity to:
  - i. consider the content and make any submissions to the Board within ten (10) working days of receiving the notice; and
  - ii. make their employer or any practice partners aware of the publication.
- d. Where the Psychologist provides submissions to Board in accordance with 8c. of this policy, the Board must consider those submissions before making a final decision whether or not to make the publication and the content and scope of any publication.
- e. Where a publication relates to a specific event or concern, irrespective of whether that clearly identifies any person or whānau, the Board must also provide the intended publication content to that person in advance of publication.
- f. the person will be given an opportunity to consider the content and make a submission to the Board.

<b>Policy Name:</b> Naming Policy			
<b>Policy Number:</b> PRO-03			
<b>Governor</b>	Board	<b>Policy Lead</b>	CE/Registrar
<b>Effective From</b>	N/A	<b>Approval Date</b>	06 April 2020
<b>Review By</b>	April 2026	<b>Version</b>	1
<b>Related Policies:</b>	Health Practitioners Competence Assurance Act		

\* Unless otherwise indicated, this policy will still apply beyond the review date

Appendix 1: Table of all orders that The Board may make that will trigger consideration of whether to name the practitioner

Section	Order/Direction
31(4)	Cancel interim practising certificate
38(1)	Where the Authority has reason to believe the practitioner fails to meet the required standard of competence, it may order one or more of the following: <ul style="list-style-type: none"> <li>• Competence programme</li> <li>• Conditions</li> <li>• Examination or assessment</li> <li>• Counselling or assistance</li> </ul>
39	Interim suspension of practising certificate or conditions pending competence review, where there are reasonable grounds for believing the practitioner poses a risk of serious harm.
43	Where a practitioner does not satisfy the requirements of a competence or recertification programme, the authority may: <ul style="list-style-type: none"> <li>• Change permitted health services s43(1)(a)(i)</li> <li>• Include conditions s43(1)(a)(ii)</li> <li>• Suspend registration s43(1)(b)</li> </ul>
48(2)	Authority <u>suspects</u> practitioner is unable to perform required functions due to mental or physical condition: <ul style="list-style-type: none"> <li>• Interim suspension s48(2)(a)</li> <li>• Changing permitted health services s48(2)(b)(i)</li> <li>• Conditions s48(2)(b)(ii)</li> </ul>
48(3)	Extension of s48(2) order – 20 more days
50	Authority <u>is satisfied</u> that the practitioner is unable to perform required functions due to physical or mental condition Suspension – s50(3) Conditions –s50(4)
51	Revoking suspension imposed under 39, 48, 50, 67A – s51(1) Revoking conditions imposed under 39, 48, 50, 67A – s51(2) Order to vary conditions imposed under 39, 48, 50, 67A, 69A
67A(2)	Upon receipt of notice of conviction, Authority may order: <ul style="list-style-type: none"> <li>• Medical examination or treatment ((2)(b)(i))</li> <li>• Psychological or psychiatric examination ((2)(b)(ii))</li> <li>• Course of treatment or therapy for alcohol or drug abuse ((2)(b)(iii))</li> </ul>
67A(6)(b)	Following 67A orders, Authority may order conditions.
69	Interim action if appropriateness of practitioner's conduct is in doubt Suspension - s 69(2)(a) Conditions – s 69(2)(b)

69(4)	Revocation of 'with notice' orders for suspension or conditions
69A	Without notice interim suspension where there is a conduct or criminal proceeding and Authority believes the practitioner poses a risk of serious harm to the public.
69A(5)	Revoking (without notice) suspension
69A(6)	Authority may include conditions when revoking without notice suspension.
142	Health Practitioner requests cancellation - Authority may direct Registrar to cancel registration.
143	Health Practitioner dies - Authority may direct Registrar to cancel registration.
144(5)	Authority may direct Registrar to cancel an entry in the Register.
146	<p>Authority may direct Registrar to cancel registration if:</p> <ul style="list-style-type: none"> <li>• Practitioner gave false information - s146(1)(a)</li> <li>• Practitioner is not entitled to registration -s146(1)(b)</li> </ul> <p>Authority may direct Registrar to notify cancellation in any publications it so directs – s146(3)</p>
147(5)	Authority may review the registration of a practitioner where their qualification is cancelled or suspended or an overseas authority removes, cancels or suspends the practitioner's registration. Authority may suspend or cancel the practitioner's registration s147(5)(b).

## Appendix 2: Considerations when balancing practitioner's privacy interest against public interest<sup>1</sup>

Table 1: Practitioner's privacy interest

Extent to which information is already known to the requester, or in the public domain	<ul style="list-style-type: none"> <li>The privacy interest may be diminished by prior knowledge or public availability of the information.</li> </ul>
Age and relevance of information	<ul style="list-style-type: none"> <li>The privacy interest may be higher if the matter is historical and of no current relevance. In this context, the disclosure of personal information about the health practitioner may be unfair.</li> </ul>
Whether the matter is substantiated	<ul style="list-style-type: none"> <li>The privacy interest is higher where the matter is unsubstantiated— the allegation made has not been formally upheld (i.e., at initial receipt of the notification, and while inquiries are being made or an investigation is being undertaken).</li> <li>A health practitioner's legitimate expectation of privacy will be diminished where the matter has been substantiated (e.g., results of competence review, Tribunal decision).</li> </ul>
Whether the investigation is ongoing	<ul style="list-style-type: none"> <li>Health practitioners are likely to have a higher privacy interest while the investigation of a matter is ongoing. Disclosing the existence of a matter during an ongoing investigation may unfairly suggest that there is substance to the matter.</li> </ul>
Likelihood of harm arising from disclosure	<ul style="list-style-type: none"> <li>There may be factors that heighten the risk of personal or professional harm arising from disclosure of information, for example the physical or mental health of the health practitioner, or the size of the community in which they practise.</li> </ul>
Minimising harm by placing information in context	<ul style="list-style-type: none"> <li>It is important to consider whether any potential harm from disclosure can be mitigated by releasing summary information with appropriate context.</li> </ul>

Table 2: Public interest considerations

Public safety	<ul style="list-style-type: none"> <li>Ensuring the safety and quality of health care and the competence of health practitioners. Non-disclosure in a particular case may run the risk of harm to future patients. Disclosure may elicit other complaints or concerns about a practitioner's competence or conduct.</li> </ul>
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<sup>1</sup> Adapted by the Dental Council of New Zealand from the Ombudsman Opinion "Request for health practitioner's complaint history with HDC" Case number 355627, June 2016, and HDC Naming Policy, 1 July 2008, and used with the Dental Council's permission.



The “reasonable patient test” <sup>2</sup>	<ul style="list-style-type: none"> <li>If a reasonable patient/client would expect to know about the order or direction made, so that the client can make an informed choice about whether to receive health services from the practitioner that will weigh in favour of publishing the name of the practitioner.</li> </ul>
Accountability of health practitioners and providers of health services	<ul style="list-style-type: none"> <li>Health practitioners are accustomed to being held to account for the standard of care or service they provide. They should expect that some information about their practice needs to be disclosed if serious accountability or health and safety concerns are raised.</li> </ul>
Accountability of agency	<ul style="list-style-type: none"> <li>An agency receiving notifications about health practitioners is accountable for the proper discharge of its responsibilities in the assessment and investigation of those matters and in taking any necessary remedial action.</li> </ul>
Nature of information	<ul style="list-style-type: none"> <li>Does the information raise serious safety or competence concerns? Does non-disclosure raise a risk of harm to future patients? Complaints and concerns of a serious, as opposed to trivial or inconsequential nature, will raise stronger public interest considerations in favour of disclosure.</li> </ul>
Number of notifications	<ul style="list-style-type: none"> <li>A high frequency of notifications, or notifications raising recurrent themes may be indicative of wider competence issues, and justify disclosure of additional information in the public interest.</li> </ul>
Role of practitioner and seniority, degree of responsibility, and ability to impact on members of the public	<ul style="list-style-type: none"> <li>In relation to a DHB psychiatrist, former Ombudsman David McGee noted <i>‘the competing public interest is also high, particularly where the employee in question held a position of responsibility in respect of particularly vulnerable members of society’</i>.</li> </ul>
Action taken in respect of the matter	<ul style="list-style-type: none"> <li>The public interest in disclosure may be higher where a complaint has been investigated and found to be substantiated.</li> </ul>
Extent to which information about the matter is already in public domain	<ul style="list-style-type: none"> <li>If information about the matter is already in the public domain, this may increase the public interest in disclosure of a summary about the outcome of the matter. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate and institute any protective measures or remedial action.</li> </ul>
Age of complaint information	<ul style="list-style-type: none"> <li>The public interest in disclosure may be lower if the issues raised are historical and have minimal relevance.</li> </ul>
Risk of harm or risk of serious harm	<ul style="list-style-type: none"> <li>Where the Board has formed a view that a practitioner poses a risk of harm or a risk of serious harm (under the relevant sections of the Act), that might weigh in favour of naming the practitioner.</li> </ul>

Table 3: General public interest considerations against naming

<sup>2</sup> The Board recognises that use of the term “patient” is not common practice in the context of psychology practice. The term “reasonable patient test” is widely recognised in New Zealand in the context of informed consent, following Australian case law: *Rogers v Whitaker* (1992) 175 CLR 479.

Inhibiting open disclosure	<ul style="list-style-type: none"> <li>Routinely naming individual practitioners may undermine progress in creating a culture of open disclosure to improve the quality of safe care.</li> </ul>
Early resolution may hinder improved practice	<ul style="list-style-type: none"> <li>Practitioners may seek early resolution to complaints to avoid risk of being named. While this may suit the individual complainant, the underlying issues may not be addressed, risking repeat, and an ultimate failure to properly ensure that the public is protected.</li> </ul>
Damage to colleague's reputation	<ul style="list-style-type: none"> <li>Registered health practitioners considering notifying of concerns about a colleague's competence may be less inclined to do so if they fear this will unfairly impact on the colleague's reputation.</li> </ul>
Disclosure may cause harm to clients or members of the public	<ul style="list-style-type: none"> <li>Where a client is a complainant, consideration will be given to the potential impact of naming the Psychologist on the client, and, if applicable, other clients or members of the public who may be harmed.</li> </ul>