



Policy Statement:

The Board has a legal obligation to give notice to certain persons where it believes a psychologist may pose a risk of harm to the public. In all cases where the Board is considering further action in relation to health, competence or conduct of a psychologist, the Board will also turn its mind to whether the psychologist presents a risk of harm to the public.

This policy sets out the guiding principles that the Board will apply when considering whether the individual matter before it reaches the threshold for risk of harm.

Background

1. The principal purpose of the Health Practitioners Competence Assurance Act 2003 (HPCA) is to protect public health and safety by ensuring health practitioners are competent and fit to practise. The Psychologists Board (the Board) is charged with ensuring that psychologists are competent and fit to practise when they apply for registration and on an ongoing basis.
2. Section 35 of HPCA requires the Board to notify certain persons in writing, if it has reason to believe that the practice of a psychologist may pose a risk of harm to the public. In addition, the Board may notify people who work with the psychologist.

Risk of Harm

3. The Board does not usually release information about an individual psychologist without the permission of the psychologist. However, where it believes that the psychologist's practice may pose a risk of harm to the public the Board, in accordance with s 35(1) of the HPCA must give the following persons written notice of the circumstances that have given rise to that belief:
 - The Accident Compensation Corporation
 - The Director-General of Health
 - The Health and Disability Commissioner
 - The employer of the psychologist.
4. The Board may also notify any person who works in partnership or in association with the psychologist under section 35(2).
5. The threshold for notification Section 35(1) has three key features, as follows:

Reason for belief

6. The Board is only obliged to notify when it has reason to believe that there is a risk of harm. This requirement has both subjective and objective components. Subjectively, the Board's belief must be a genuine one. Objectively, the Board must have reasonable grounds for its belief. At one extreme, rumour could never provide a foundation for a reasonable belief. At the other extreme, it is not necessary in all circumstances to carry out a comprehensive investigation before reasonably forming a belief. The question will always be whether the Board has adequate information before it to fairly conclude that there are reasonable grounds for its belief.

Belief must relate to risk of harm

7. The Board's belief must relate to a risk of harm. The nature of psychologists' occupation is such that merely engaging in practice presents a risk of harm. Plainly the Board cannot be obliged to notify of a risk that arises merely by reason of a psychologist practising. The risk must be one which exists over and above the risk of harm that is a necessary incident of practice.
8. Harm may include (but is not limited to):
 - a. Physical harm;
 - b. Mental harm;
 - c. Cultural harm; and
 - d. Emotional harm
9. The risk of harm must be to the public. The provision does not apply to risks to the psychologist. Nor is it likely to apply to risks to a psychologist's colleague or business associates. The risk must be to a member of the public, i.e. patients/clients, or potential patients/clients.

Test for risk of harm

10. Against the background of this analysis of s35(1), the question of whether, in any particular case, the Board is obliged to notify will be tested by asking the following questions:
 - Has the Board reached a genuine belief that a psychologist's practice may pose a risk of harm (ie. the risk is not fanciful)? The Board has agreed that risk of harm is indicated by a recognised factor including but not limited to:
 - A pattern of practice over a period of time that suggests the psychologist's practice may not meet the required standards of competence, or
 - A one-off incident that demonstrates a significant departure from accepted standards, or
 - Recognised poor performance where previous competence review panel
 - recommendations have failed – this does not exclude notifications of serious concerns where internal review or audit is inaccessible or unavailable to the person with the concern,
 - Relevant criminal offending, or
 - Professional isolation with apparent declining standards.
 - Is that belief reasonable in the sense that it has been arrived at fairly on the basis of adequate information, or is there a need for further investigation?
 - Is the Board satisfied that the risk of harm identified is a risk that is more than the acceptable risk that arises by reason simply of the carrying on of practise?
 - Is the risk of harm identified in a risk to the public?
 - Has the context and circumstances of the psychologist and his/her practice been taken into consideration?
11. If all of these questions are answered in the affirmative, then the Board is entitled to regard the case as one which meets the threshold in respect of which it is obliged to notify under s 35(1).

Interim suspension and risk of serious harm

12. Risk of serious harm may be indicated when:
 - a patient may be seriously harmed;
 - the psychologist may pose a threat to more than one patient and as such the harm is collectively considered 'serious'; and/or
 - there is sufficient evidence to suggest that alleged criminal offending is of such a nature that the psychologist poses a risk of serious harm to one or more members of the public.

13. There are two provisions in the HPCA where the Board may turn its mind to risk of serious harm:

- Section 39: if a psychologist has had, or is to have a competence review, and the Board has reasonable grounds for believing that the psychologist poses a risk of serious harm to the public by practising below the required standard of competence; and
- Section 69A: if a psychologist is alleged to have engaged in conduct that is relevant to either a criminal proceeding that is pending, or a Professional Conduct Committee investigation or an investigation by the Health and Disability Commissioner and, in the Board's opinion, held on reasonable grounds, the psychologist poses a risk of serious harm to the public.

14. Section 39 of the HPCA gives the Board the authority to order interim suspension of a psychologist's annual practising certificate or place conditions in the psychologist's scope of practice while the psychologist is undergoing a performance assessment.

15. This can be ordered where there are reasonable grounds to believe that the psychologist poses a risk of serious harm to the public through practising below the required standard of competence. Where the Board proposes to make such an order, the psychologist will be informed of the Board's proposal, and given an opportunity to make written or oral submissions on the matter before a final decision is made.

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