

Regulated health practitioners working as unregulated staff in the New Zealand health care setting

This may include:

- > **registered nurses (RNs)/nurse practitioners (NPs)/registered midwives working as caregivers/health care assistants (HCAs)/practice assistants/ambulance officers/paramedics/first aiders**
- > **enrolled nurses (ENs) working as caregivers/HCAs/ambulance officers/paramedics/first aiders**

Background

Due to a variety of factors, the New Zealand Nurses Organisation (NZNO) has become aware of an increasing number of situations where regulated health professionals are being employed in unregulated roles, eg as HCAs, caregivers or practice assistants, or are working in a voluntary or paid capacity, eg as an ambulance officer or paramedic. Working in an unregulated role is not illegal, and NZNO acknowledges this sometimes occurs due to the lack of opportunities for employment as an RN, EN, midwife or NP, or because the nurse chooses to take on a voluntary role.

Circumstances where this practice may occur include (but are not limited to):

- > new graduates who have not yet obtained a position as a RN, NP or midwife, or who have passed the state final examination and are awaiting their annual practising certificate (APC);
- > RNs or NPs who are unable to gain employment as a RN or NP, or who cannot get full-time work;
- > ENs who are unable to get employment as an EN;
- > ENs working as an HCA or a care associate or mental health support worker;
- > RNs, ENs or NPs working as voluntary or paid ambulance officers or paramedics or in first aider roles.

NZNO encourages nurses, NPs and midwives to seek employment as part of the regulated workforce where this is possible.

It may create role confusion when regulated health professionals work as unregulated staff members. Regulated health practitioners are unable to disengage themselves from their professional knowledge, skills, clinical decision-making and judgement (eg, when performing a nursing assessment of a client) and therefore the regulated nurse, NP or midwife, who works as an HCA or voluntary or paid ambulance officer, paramedic or first aider, may place him or herself in a vulnerable position. NZNO wishes to remind nurses, NPs and midwives of their professional accountability and of the potential professional risk involved in working in unregulated roles, as outlined below.

Accountability

If a nurse, NP or midwife is employed to fulfil the role of an HCA or of a voluntary or paid ambulance officer/paramedic or first aider, they should only undertake the roles and duties outlined within the relevant job description. However, by virtue of their registration, they would remain accountable for their practice. This means they would be bound by either the:

- > Nursing Council of New Zealand (NCNZ) competencies for RNs, ENs and NPs (NCNZ, 2007; 2008; 2010);
- > NCNZ Code of Conduct (2012);
- > Midwifery Council of New Zealand (MCNZ) competencies for midwives (MCNZ, 2007);
- > Code of Midwifery Professional Conduct (MCNZ, 2007);
- > Health Practitioners Competence Assurance (HPCA) Act (2003);
- > NZNO Code of Ethics (NZNO, 2010); and
- > NZNO Standards of Professional Practice (2012).

Their fitness to practise could also be called into question, regardless of their HCA status and if they were found to be in breach of any of the terms in the afore-mentioned documents which guide nursing and midwifery practice in New Zealand.

The Code of Conduct for Nurses (NCNZ, 2012, p.4) states that nurses “...are personally accountable for actions and omissions in their practice, and must be able to justify their decisions.”

The Code of Professional Midwifery Conduct (MCNZ, 2007, p.2) states “Midwives are accountable for their practice and for their conduct. They are accountable to the woman, the profession and to the community.”

In an emergency situation, where patient safety is at stake, there may be occasions where a RN, EN, NP or midwife working in an unregulated role could be required to work beyond the parameters of their contracted HCA or voluntary position description. As a regulated nurse, NP or midwife, they would be expected to use their professional knowledge, judgement and skills to determine occasions where it would be appropriate to work outside their HCA or voluntary role parameters. In these situations, the regulated nurse, NP or midwife should be prepared to account for their actions. An example of such a situation would be if a patient became suddenly unwell.

Principle Four of the Code of Conduct for Nurses (NCNZ, 2012, p. 20, 4.10) states that the nurse must: “*Practise in accordance with professional standards relating to safety and quality health care*”.

Competency Two of the Midwifery Competencies for Entry to the Register of Midwives states (MCNZ, 2007): “*The midwife applies comprehensive theoretical and scientific knowledge with the affective and technical skills needed to provide effective and safe midwifery care.*”

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Role confusion

- > Other staff (and patients and families) might know a staff member is a RN/EN/NP/midwife or has previously practised in such a capacity, but which in their role as HCA or voluntary or paid ambulance officer, paramedic or first aider, they are not contracted to do.
- > Nurses, NPs or midwives in this position have to be very clear with their manager, other staff, patients and families that they are working within a caregiver/HCA/ambulance officer/paramedic/first aider job description only.
- > In order to avoid misleading people in their care, nurses, NPs or midwives working as HCAs or voluntary or paid ambulance officers, paramedics or first aiders, must ensure they can be identified as working in support of regulated staff, eg by wearing appropriate name badges for clarification.

Professional Practice

- > In order to meet the requirements for the maintenance of registration, nurses are required to have undertaken: a minimum of 450 hours practice by virtue of their nursing qualification and at least 60 hours of learning activity relevant to practice, during the three years prior to renewal of registration.
- > Nurses working as HCAs or voluntary or paid ambulance officers, paramedics or first aiders, particularly for an extended length of time, would need to be able to demonstrate to NCNZ they are competent to practise and able to meet these requirements, if they wish to retain their registration and annual practicing certificate.
- > Similar criteria apply to NPs and midwives.

Vicarious liability

- > Vicarious liability means the employer is accountable for the standard of care delivered and is responsible for employees working within agreed limits of competence, appropriate to the abilities of that employee.
- > To remain covered by an employer's vicarious liability clause, an employee must only work within their area of assessed competence and within the responsibilities of their role and job description.
- > Nurses, NPs or midwives, who undertake HCA or voluntary or paid ambulance officer, paramedic or first aider roles, should, therefore, inform their employer they are on the NCNZ register as a nurse or NP, or MCNZ register as a midwife, and that in exercising their professional accountability, they may be required to step outside their contract of employment as an HCA or voluntary or paid ambulance officer, paramedic or first aider (in agreed exceptional circumstances only). They should also seek to ensure their contract recognises the extent and parameters of their role and that the job description is clear about what is expected of them in this role.

NZNO recommends that nurses, NPs or midwives in this position contact their professional organisation to discuss the scope of their own indemnity insurance and ascertain if, and to what extent, they are indemnified when working in support roles.

Internationally qualified nurses (IQN)

Internationally qualified nurses (IQNs) who may be awaiting registration in New Zealand but are not currently holding a legal practicing certificate and regulated under New Zealand law, are expected to practise within their caregiver/HCA job description. We recommend caregivers in this situation do not practise outside their job description, even if they may have the knowledge from their previous employment, until they become registered and therefore regulated under New Zealand law.

Case Study

On November 25, 2009, the Health and Disability Commissioner (HDC) received a complaint from the Coroner regarding services provided to Mr A in a rest home. One of the staff investigated was Mr D who was employed as a Caregiver and Team Leader. The Commissioner's office stated that Mr D was required to provide care at the level that would be expected of a competent caregiver, and in accordance with his job description. From the assessments he undertook, and the information he passed to Ms C (the clinical co-ordinator), it appears that he did what was expected of him in the circumstances. Despite the fact that Mr D undertook nursing cares (e.g. vital signs) it is irrelevant that he was a registered nurse in his home country, as that is not the basis on which he was employed. (<http://www.hdc.org.nz/decisions--case-notes/commissioner's-decisions/2012/09hdc02110>).

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Correspondence to: nurses@nzno.org.nz

Principal author: Lorraine Ritchie, Professional Nursing Adviser

Mission statement

NZNO is committed to the representation of members and the promotion of nursing and midwifery. NZNO embraces Te Tiriti o Waitangi and works to improve the health status of all peoples of Aotearoa/ New Zealand through participation in health and social policy development.

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