

The HPCA Act's rehabilitation focus

NURSING COUNCIL



The primary purpose of the Act

Under section 3 the primary purpose of the Act is to protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.



Registration with convictions

- The HPCA Act permits the Council to consider whether convictions may reflect adversely on fitness to practise and take into account the circumstances of the offending and the time since the convictions occurred.
- May require health assessment or testing for more than one drink driving offence or a high reading
- May register with conditions
- May register and refer to health process



Fitness to practise options

- Refer for a review of competence
- Refer for a review of health
- Refer to Health and Disability Commissioner (if conduct affected a health consumer) or PCC
- No further action



Case management

Every complaint or notification is considered by the Registrar/Deputy Registrar to determine if the issue is:

- Within jurisdiction (professional not personal or employment)
- There are public safety issues
- The notifier or complainant is identified or willing to be identified (natural justice) - some exceptions



Is it serious enough?

- Minor issue e.g. one drug error - no further action
- Not serious - e.g. poor communication - may ask for a response from the nurse
- Moderately serious - e.g. inappropriate comments may carry out an initial inquiry for competence or conduct
- Serious - e.g. professional boundaries - May refer to HDC or PCC for investigation
- Risk of serious harm - e.g. sexual misconduct - may consider interim orders under competence, health or conduct



Competence or conduct

- Does the nurse lack the skills or knowledge – may be competence
- Did the nurse choose to act in a particular way -may be conduct
- Was remedial action taken - may be competence
- Was the conduct hidden and no remedial action taken - may be conduct



Is it a health issue?

- Health concerns will always be addressed first if possible
- May be raised in the notification or revealed during further inquiry.
- Generally mental health, substance or alcohol use or cognitive functioning issues require health review
- Physical conditions usually self limiting
- Nurse may take a health break if unwell and contact Council when intends practising again



Review of health – substance use disorder

- Diana taking opiates from her workplace which she denied
- Dismissed and referred to Council
- Contacted by Nurse Advisor – no legal representation
- Options discussed and accepts that has substance use disorder
- Referred for a review of health
- Denies drug diversion - referred for PCC investigation - cannot rehabilitate if nurse does not accept they have an issue



Health assessment

- Completed by assessor approved by Council
- Nurse consulted on assessor but generally won't accept assessment by treating clinician
- Treating clinician may provide information to the Council or to the assessor
- Paid for by Council
- Includes travel to the appointment
- Report provided to nurse on receipt
- If no health issue identified Registrar will consider if competence issue present or no further action



Health Committee meetings

- Meet with two nurses or nurse and lay appointment
- Mental health nurses consider reports
- Māori lay and nurse on panels
- Meetings held in Auckland, Wellington, Christchurch and Dunedin and Council pays for nurse to attend if travel required.
- Whānau and other support encouraged



Health Committee meetings

- Not a formal hearing
- An opportunity to discuss the report
- Committee will discuss any proposed conditions or if intending suspension of registration to receive response from the nurse
- Decision given orally to nurse at the meeting or on the day where possible
- Will impose the least restrictive conditions possible to be able to monitor the health of the nurse



Health Committee decisions

- Suspension (rare) usually have waited for nurse to be ready to practise again
- Conditions:
 - Confidential – except for employer and other authorities (overseas or dual registration) to prevent public disclosure of health condition
 - Will show as “other conditions apply”
 - May accept undertakings
 - Employer approval on public register – used across many processes



Conduct - initial assessment

- Complaint from a mental health consumer about Sarah a mental health nurse
- Numerous vague issues identified, gave an injection, wrote inaccurate notes, communication issues
- Interview the patient to identify the concerns and access the notes
- Information provided to the nurse for a response
- May be no further action if appropriate care
- May refer to PCC if witnessed inappropriate communication e.g. racist comments



PCC investigation

- Impartial investigation
- Takes into account the context in which the conduct occurred e.g. Aged care facility or DHB with staffing issues
- Information provided to nurse well in advance of PCC hearing with opportunity to object to information on basis of relevancy or prejudicial information
- Meeting held in nurse's locality to encourage attendance in person and support.



PCC investigation – condition included

- Martha works in aged care
- Becomes very attached to a resident with no family
- Martha tries to have input into decisions about resident, where she will live, whether she should have a higher level of care, isolates from other staff, develops personal relationship and visits her
- No financial benefit, no malicious intent, no harm to resident



PCC possible outcome

- Recognised breach of professional boundary
- Eventually accepted that not beneficial for resident
- Conditions recommended
 - Complete further education on professional boundaries or (if already completed)
 - Professional supervision by Council approved supervisor
- No further disciplinary action required



PCC investigation - Refer to HPDT

- Tim accessed notes of patients not under his care on multiple occasions over 12 months
- Included notes of colleagues, friends , family, neighbours
- Raised issues re workload, personal issues, everyone does it, carrying out research
- PCC refers to HPDT as clear breach of privacy
- Likely to be professional misconduct and may lead to deregistration



HPDT penalty considerations

- What penalty most appropriately protects the public
- Setting professional standards
- The punitive function (not the principal purpose)
- Rehabilitation
- Assessing the nurse's conduct against the spectrum of sentencing options - maximum penalties are reserved for the worst offenders and penalties in similar cases
- Imposing a penalty that is the least restrictive that can reasonably be imposed in the circumstances.
- Is the penalty fair, reasonable and proportionate in the circumstances presented.



Reinstatement by Council

- HPDT may set date before which the nurse cannot apply for re-registration
- May impose conditions to satisfy before they can apply for registration
 - Education or training can be required
 - Medical examination, counselling or treatment is with the consent of the nurse.



Competence process

- PIP should have been in place to work in restorative manner to improve competence – mandatory reporting
- Inquiry must occur before any further action taken by Council -looking at competence now
- Practice profile completed to respond to notification, provide reflection, declare any health issues that may have impacted on performance, provide current competence assessment
- May result in no further action, referral for competence review or requirement for further information, e.g. assessment in 3 months



Competence example

- Notification that Mary making mistakes in medication management, failing to escalate care or carry out appropriate assessment
- Referred for competence review with aged care scenario, assessment and care planning (ACE) and exam.
- Common conditions are assessed, nurse chooses 4 medications she works with.
- Exam covers competencies that not already assessed
- Assessed at entry level competence



Review process

- 3 independent senior nurses assess video and ACE
- Can't know the nurse, don't see notification
- No discussion
- Assessments to nurse adviser who looks at everything and proposes order to nurse if required
- Nurse may agree – become final orders
- Nurse may disagree – opportunity to respond to competence review committee



Review outcomes

- Conditions included in scope e.g. not the sole RN on duty, employer approval, supervision (direct/indirect), administer medication under supervision
- Completion of competence programme
 - Further education through nursing schools
 - Supervision in practice and competence assessment
 - Not prevented from working. Council, employer and nurse work together to support competent practice.



Review of delegated decisions

- Health Committee and Competence review decisions are delegated decisions of Council
- Those adversely affected may require the Council to review those decisions and the Council must affirm or revoke them
- Alternatively the nurse can appeal any conditions included or suspension in the District Court
- All decisions are open to Judicial Review in the High Court.

