NZNO Medico-Legal Team

Working within scope

(and what happens when you don't)

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- What is SOP
- What is Expanded SOP
- Consequences of acting outside SOP
- HPDT Cases
- Failing to act to the full extent of SOP
- HDC Cases

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WHAT IS SCOPE OF PRACTICE?

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Health Practitioners Competence Assurance Act 2003

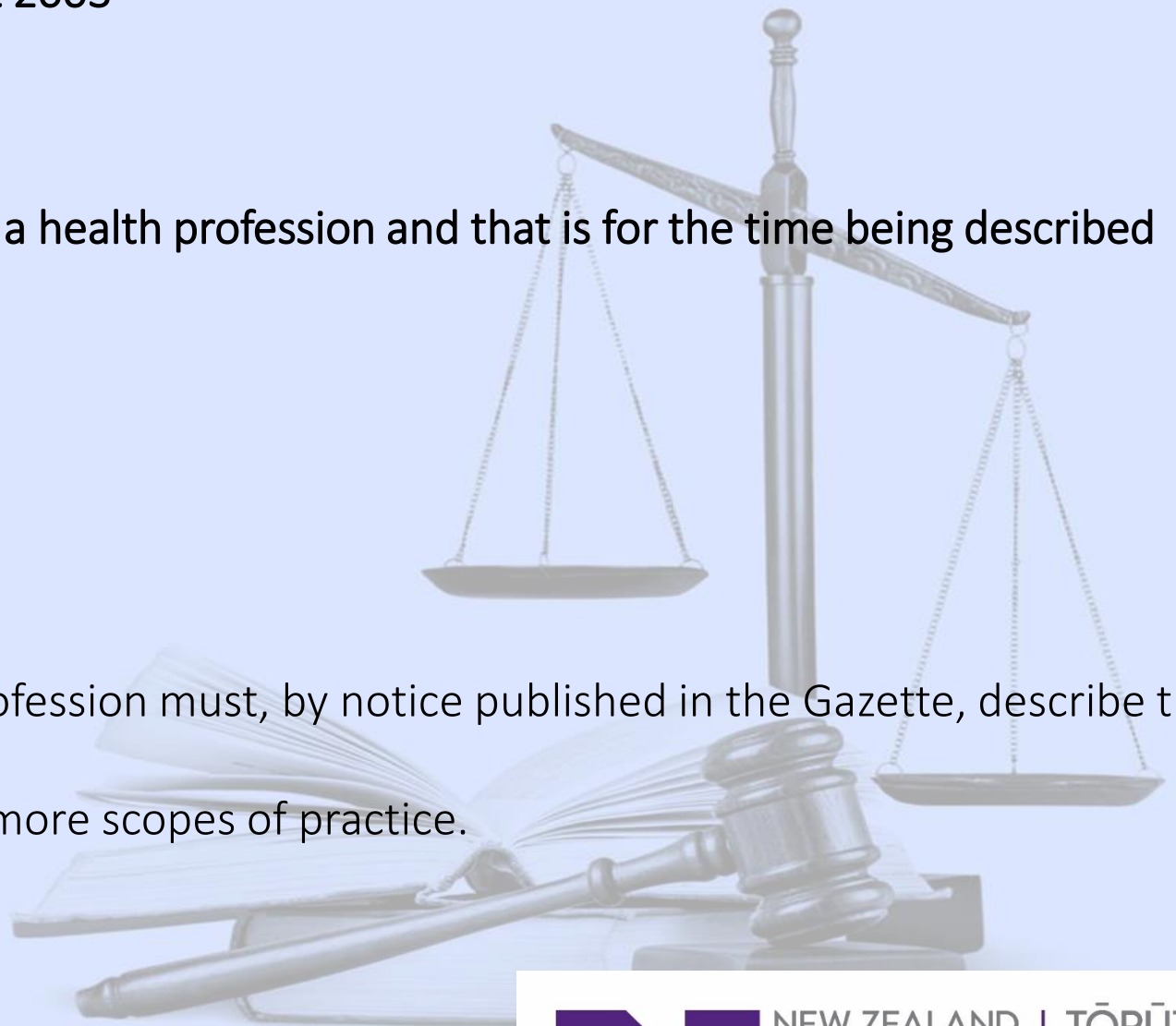
scope of practice—

(a) means **any health service that forms part of a health profession and that is for the time being described under section 11**; and

…

11 Authorities must specify scopes of practice

(1) Each authority appointed in respect of a profession must, by notice published in the Gazette, describe the contents of the profession in terms of 1 or more scopes of practice.



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Gazette Notice – Scope of Practice – Registered Nurses

An RN's scope is:

- To use nursing knowledge to provide health care
- To employ skills and permitted activities as set out in Competencies
- May practise in a variety of contexts
- To delegate and direct to ENs and HCAs
- Must comply with conditions
- Prescribing (if authorised by Nursing Council)

RNs are accountable for ensuring services they provide are within their education, competence,

legislation, and standards

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WHAT IS SCOPE OF PRACTICE?

- **Nursing Council Guideline says:**

  "In a rapidly changing health care environment the scope of practice for registered nurses is constantly evolving. It is not easily described by tasks or procedures and is influenced by the health care context."

  (Nursing Council *Guideline: Expanded Practice for Registered Nurses* September 2016)

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WHAT IS SCOPE OF PRACTICE?

Actions outside of scope

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WHAT IS AN EXPANDED SCOPE OF PRACTICE?

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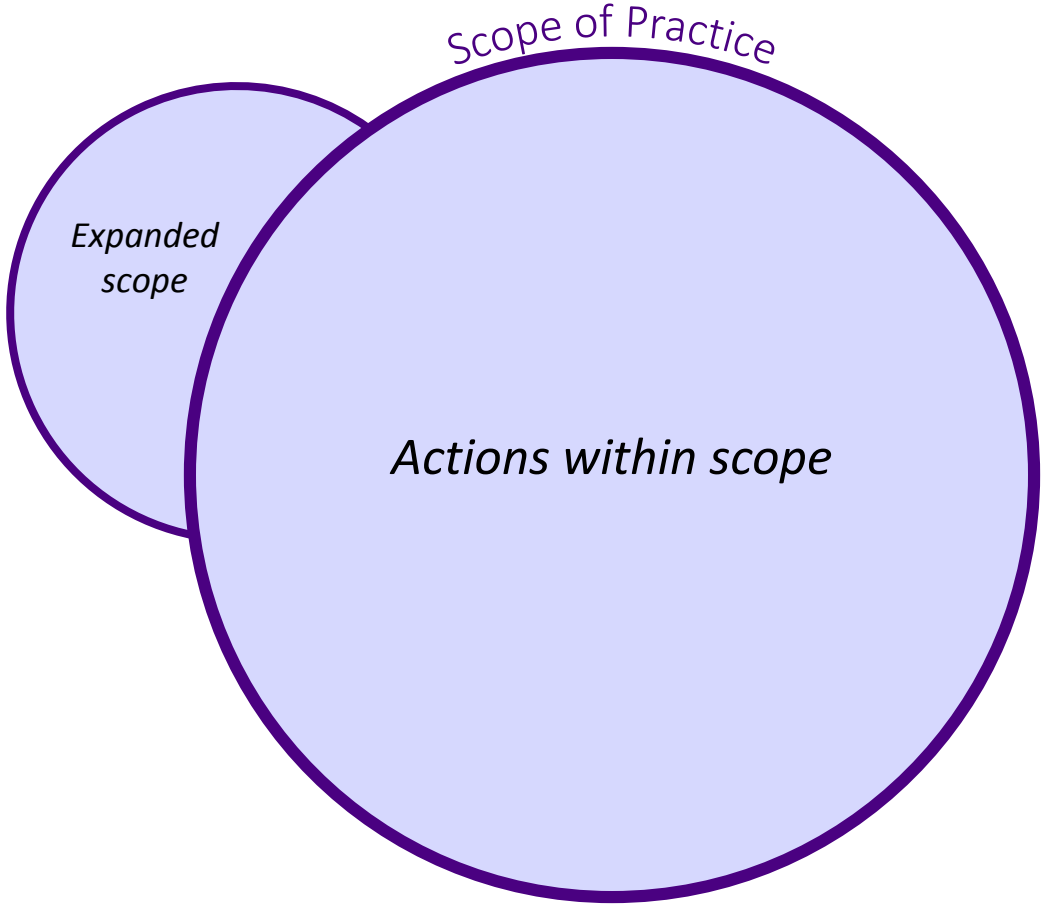
WHAT IS AN EXPANDED SCOPE OF PRACTICE?



Actions outside of scope

WHAT IS AN EXPANDED SCOPE OF PRACTICE?

Expanded means:

- The activity is **not usually carried out in this setting by a registered nurse** and/or
- The activity has **historically been undertaken by another profession** and/or
- This activity involves **new technology or procedure** and/or
- This activity requires a **greater degree of autonomous judgment or intervention**.

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WHAT IS AN EXPANDED SCOPE OF PRACTICE?

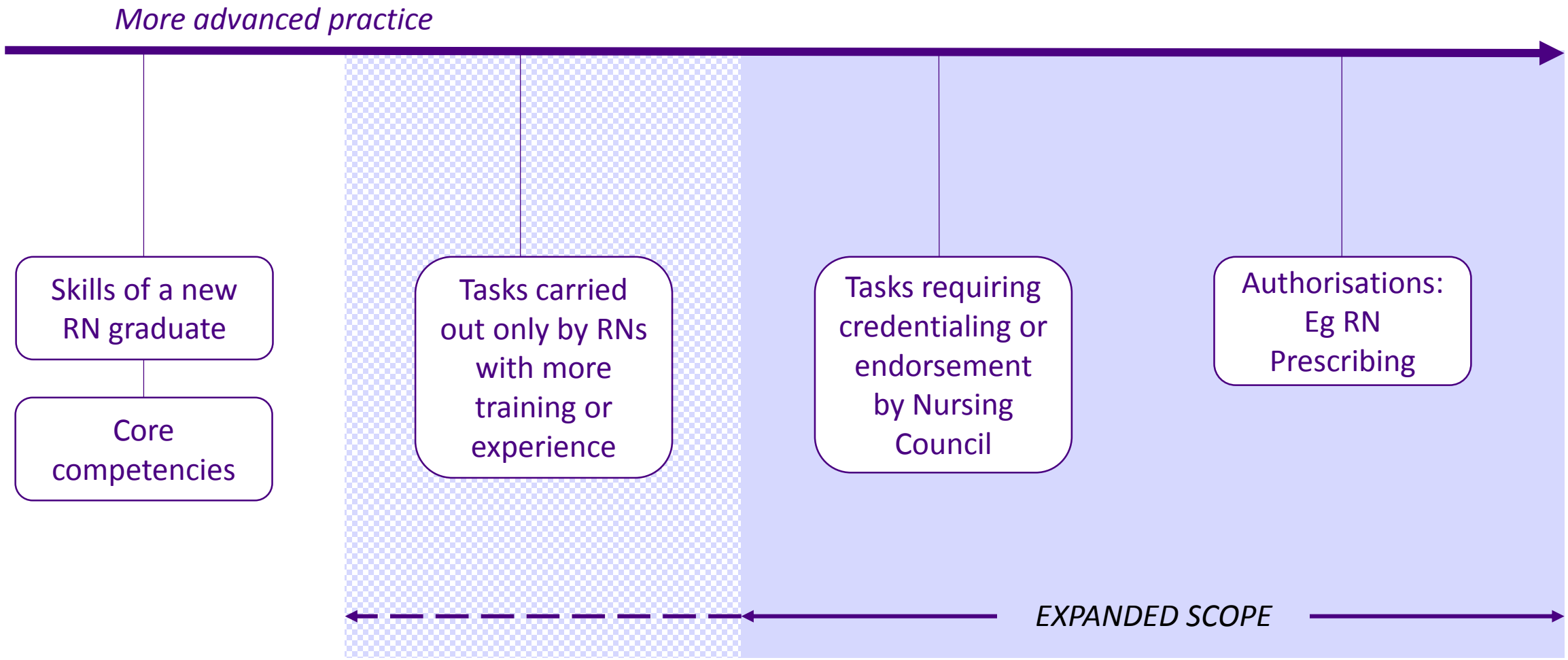
- Nursing Council: *Guideline: Expanded practice for Registered Nurses*

  *"Sometimes scope of practice decisions can be **reactive and unplanned**. In these situations the individual nurse and health consumer can be at risk."*

  …

  "There is a formal pathway to role expansion that entails further education and credentialing."

WHAT IS AN EXPANDED SCOPE OF PRACTICE?



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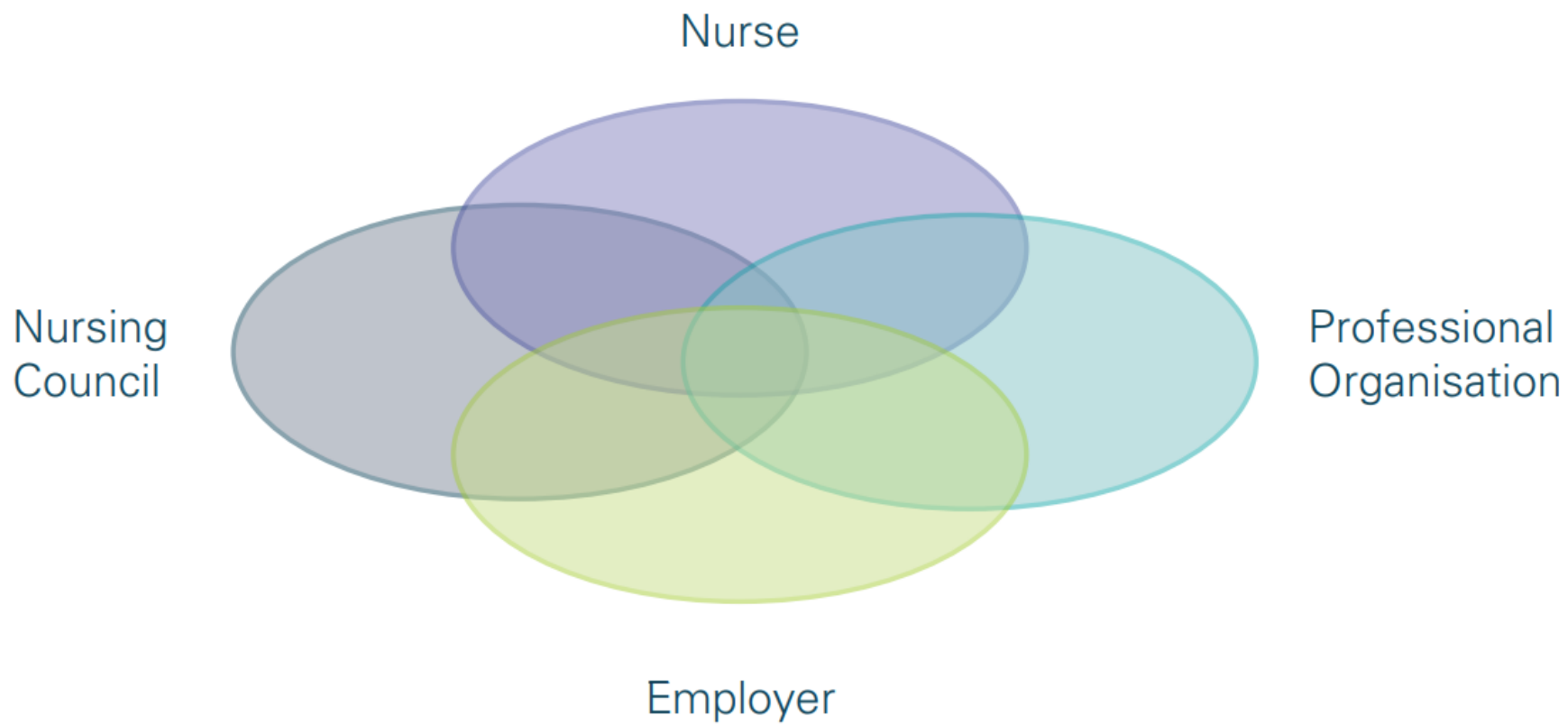
WHAT IS AN EXPANDED SCOPE OF PRACTICE?

Regulation of nursing practice for public safety relies on shared accountability



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A NOTE ON STANDING ORDERS….

- Standing Orders are often a pitfall around scope of practice

- Medicines (Standing Order) Regulations 2002:

  - Must be in writing, signed, state reason
  - Specify class/competency of person permitted to supply/administer
  - Specify circumstances, treatments, medicines, indications/contraindications, dose calculation, method of administration and required documentation
  - Countersigning requirements

- Ministry of Health *Standing Order Guidelines* (2016, 2nd ed)

  "All staff potentially affected by the standing order should be identified in the development of the standing order. It is recommended that the standing order be developed in consultation with the staff who will be expected to work under that standing order, or representatives of those staff."

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CONSEQUENCES OF ACTING OUTSIDE SCOPE OF PRACTICE

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Health Practitioners Competence Assurance Act 2003

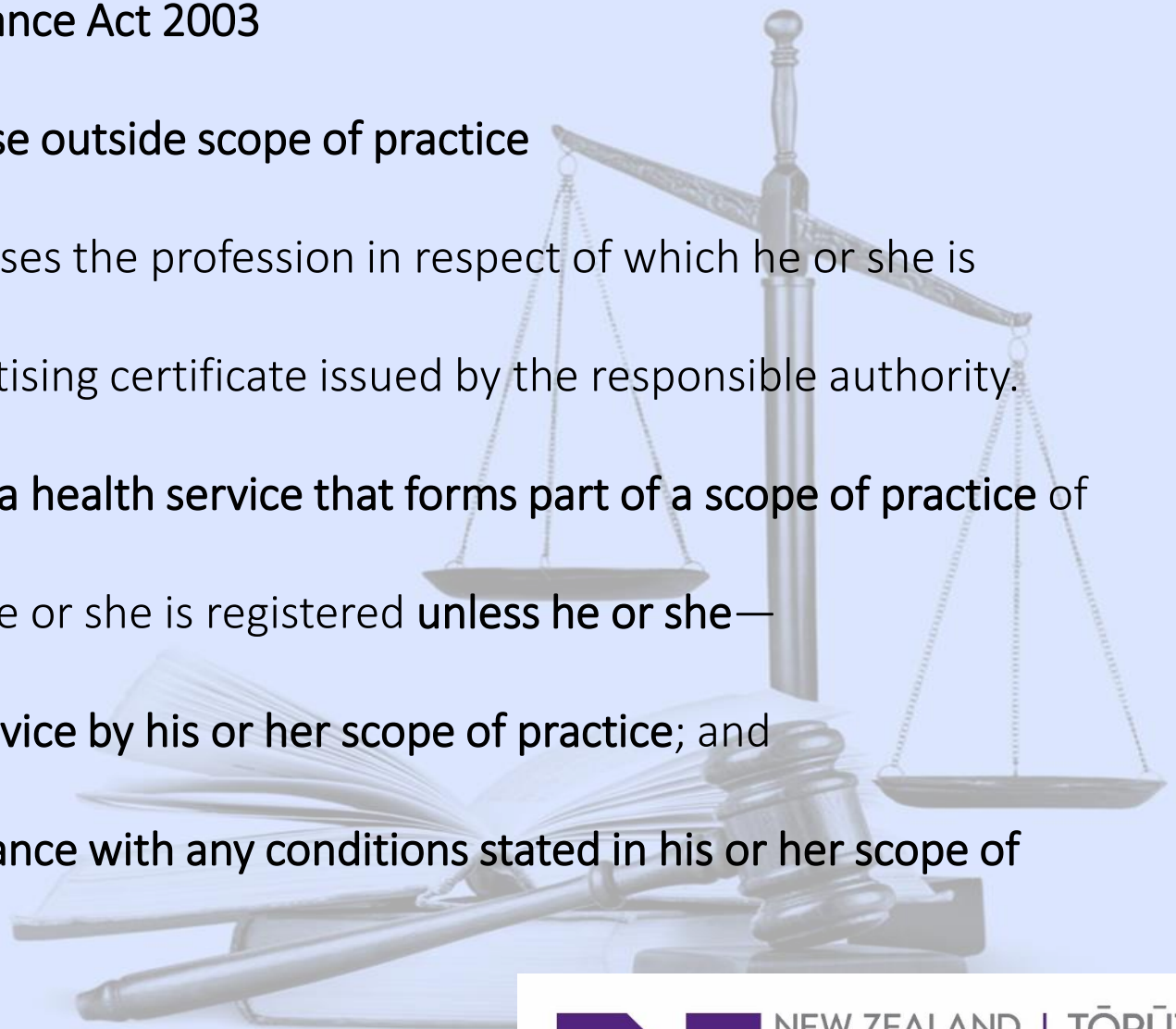
8 Health practitioners must not practise outside scope of practice

(1) Every health practitioner who practises the profession in respect of which he or she is registered must have a current practising certificate issued by the responsible authority.

(2) **No health practitioner may perform a health service that forms part of a scope of practice** of the profession in respect of which he or she is registered **unless he or she**—

(a) **is permitted to perform that service by his or her scope of practice**; and

(b) **performs that service in accordance with any conditions stated in his or her scope of practice**.



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Health Practitioners Competence Assurance Act 2003

100 Grounds on which health practitioner may be disciplined

(1) The Tribunal may make any 1 or more of the orders authorised by section 101 if, after conducting a hearing on a charge laid under section 91 against a health practitioner, it makes 1 or more findings that—

(a) the practitioner has been **guilty of professional misconduct** because of any act or omission that, in the judgment of the Tribunal, amounts to malpractice or negligence **in relation to the scope of practice** in respect of which the practitioner was registered at the time that the conduct occurred;

…

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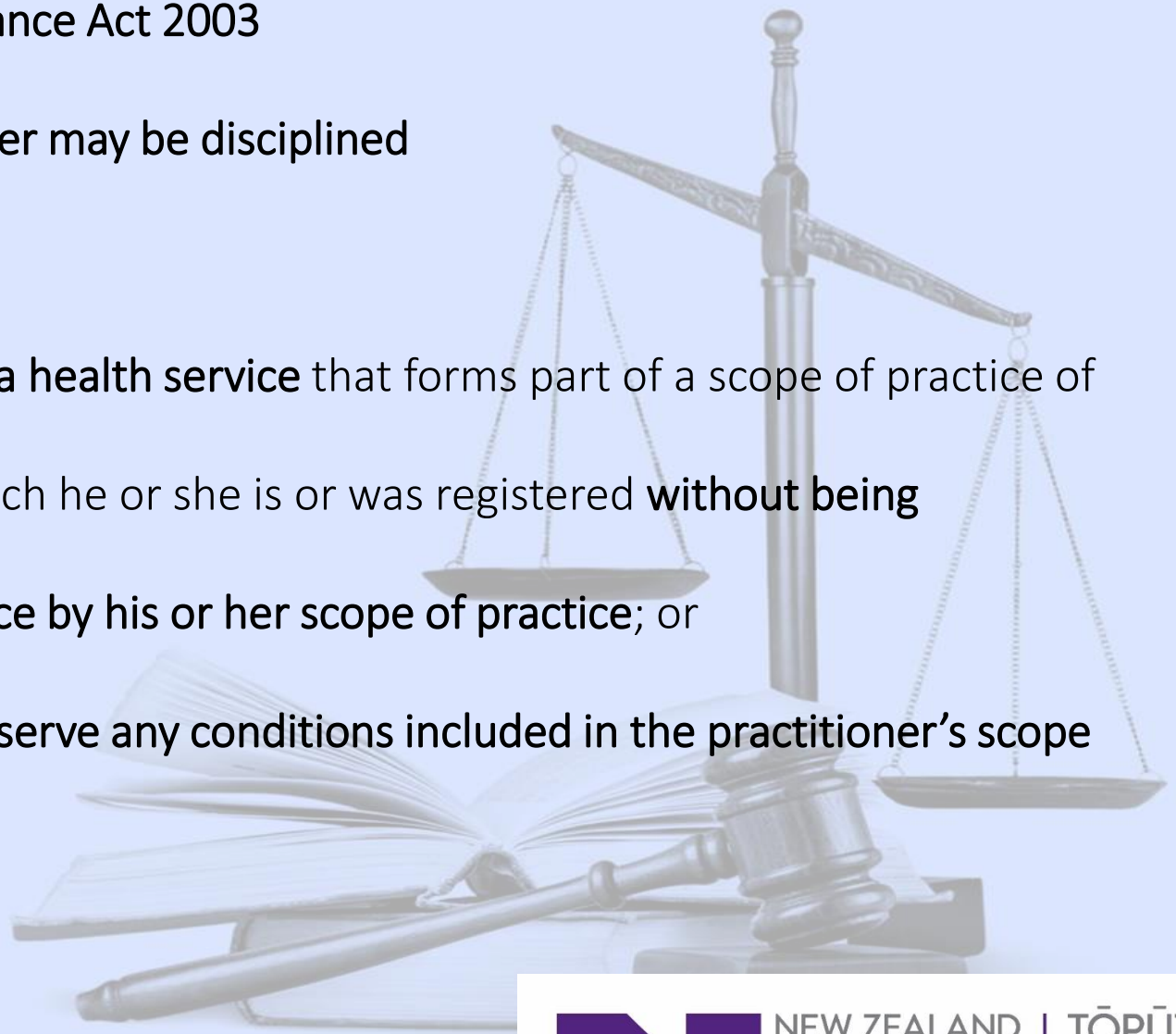
100 Grounds on which health practitioner may be disciplined

…

(e) **the practitioner has performed a health service** that forms part of a scope of practice of the profession in respect of which he or she is or was registered **without being permitted to perform that service by his or her scope of practice**; or

(f) **the practitioner has failed to observe any conditions included in the practitioner's scope of practice**; or

…



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The two stage test for disciplinary sanction

1) Professional misconduct, OR Acting outside scope of practice

AND

2) The conduct is sufficiently serious to warrant disciplinary sanction to protect the public

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Health Practitioners Competence Assurance Act 2003

101 Penalties

- Cancellation of registration
- Suspension of registration <3 yrs
- Conditions on practice – e.g. clinical supervision
- Censure
- Fine <$30,000
- Costs

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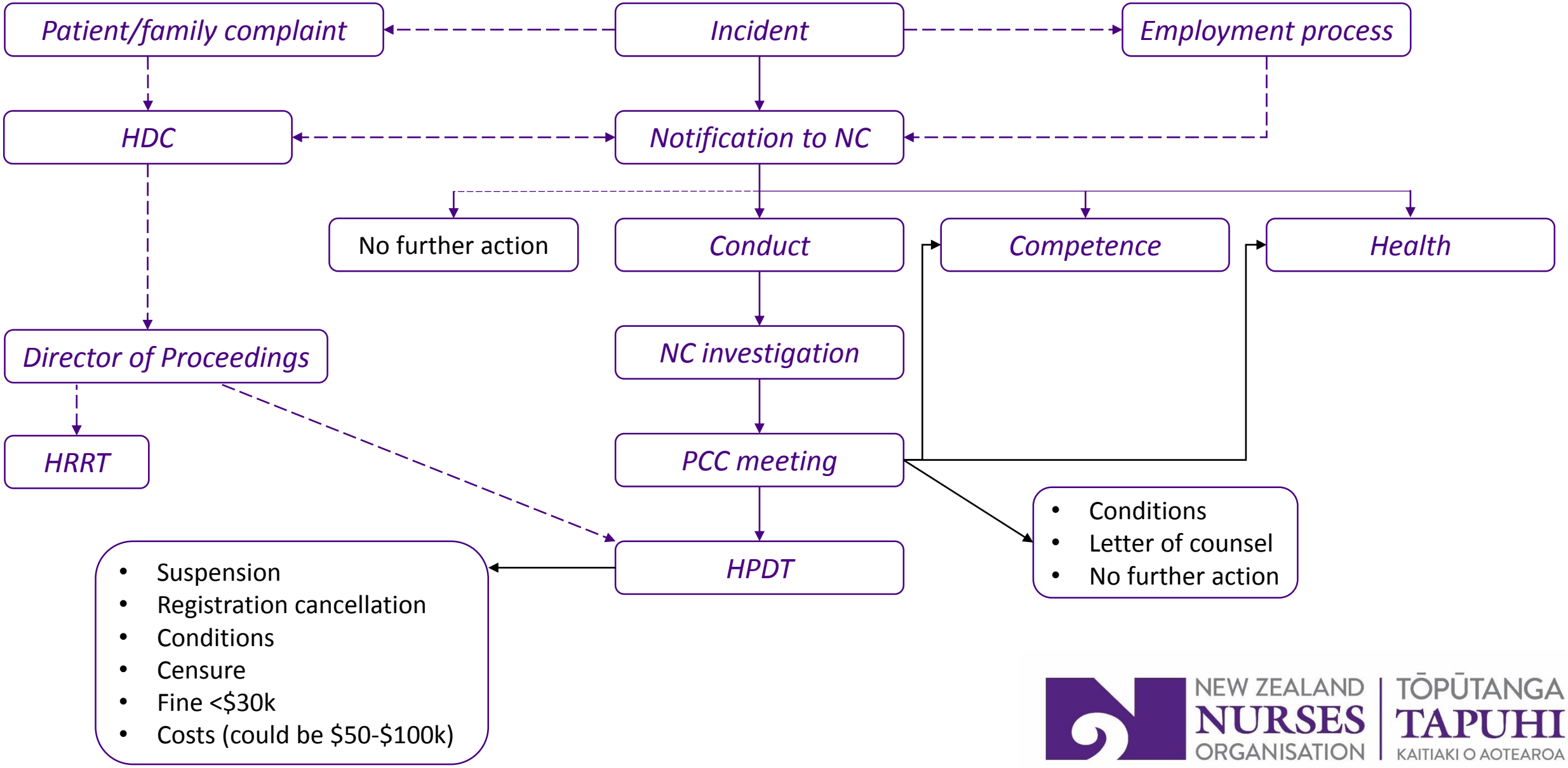
CONSEQUENCES OF ACTING OUTSIDE YOUR SCOPE OF PRACTICE



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CASE EXAMPLES

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CASE EXAMPLE 1

PCC v J 35/Nur05/20P – Administering medication without prescription

- Facts: Dementia ward – administering brufen, paradex, diazepam, and risperidone without prescription or altering prescribed dose
- HPDT found professional misconduct
- Penalty: Conditions on practice – supervision, competence assessment (incl health assessment), and PDP
- Lessons: Do not act outside your scope of practice

CASE EXAMPLE 2

PCC v H 1051/Nur19/440P – CNS administering sedation

- Facts: Administering sedation either without prescription or pursuant to undocumented verbal orders

- HPDT found:
  - No professional misconduct – PCC could not prove that there were no verbal orders
  - Lack of documentation was negligent, but not sufficiently serious to warrant disciplinary sanction

- Lessons:
  - Document everything!
  - Don't let a fall-back practice become the norm
  - "Everyone does it that way" is difficult to argue

CASE EXAMPLE 3

PCC v H 198/Nur08/92P – Administering botox without prescription

- Facts: Nurse set up clinic and wrongly thought that there was a standing order for procurement and administration of botox

- HPDT found professional misconduct

- Penalty:
  - Supervision 6 mnths
  - Censure
  - Costs

- Lessons:
  - The individual nurse is responsible for their own scope of practice
  - Keep a copy of Standing Order!

CASE EXAMPLE 4

PCC v C 421/Nur11/189P – Administration of medication in breach of standing order

- Facts:
  - Standing Orders for paracetamol, and Maxalon only for gastro patients
  - RN prescribed 10mgs of Maxalon and 10mgs Paramax to pregnant patient

- HPDT found professional misconduct

- Penalty:
  - If return to practice, medication administration education programme and competence
  - Supervision 12 mnths
  - Censure
  - Fine $3,000

- Lesson: Follow Standing Orders precisely

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CASE EXAMPLES

Key takeaways…

- All HPDT cases that we have found where nurse acted outside scope relate to:
    - Nurses acting in autonomous roles
    - Fairly experienced nurses with additional training
    - Generally the nurses have not read or properly considered the terms of their additional role, expanded scope, or Standing Order
- Only most serious cases go to HPDT – does not mean that less serious cases not dealt with

FAILING TO ACT TO THE FULL EXTENT OF SCOPE OF PRACTICE

- Critical Thinking
- Escalation & Raising Concerns

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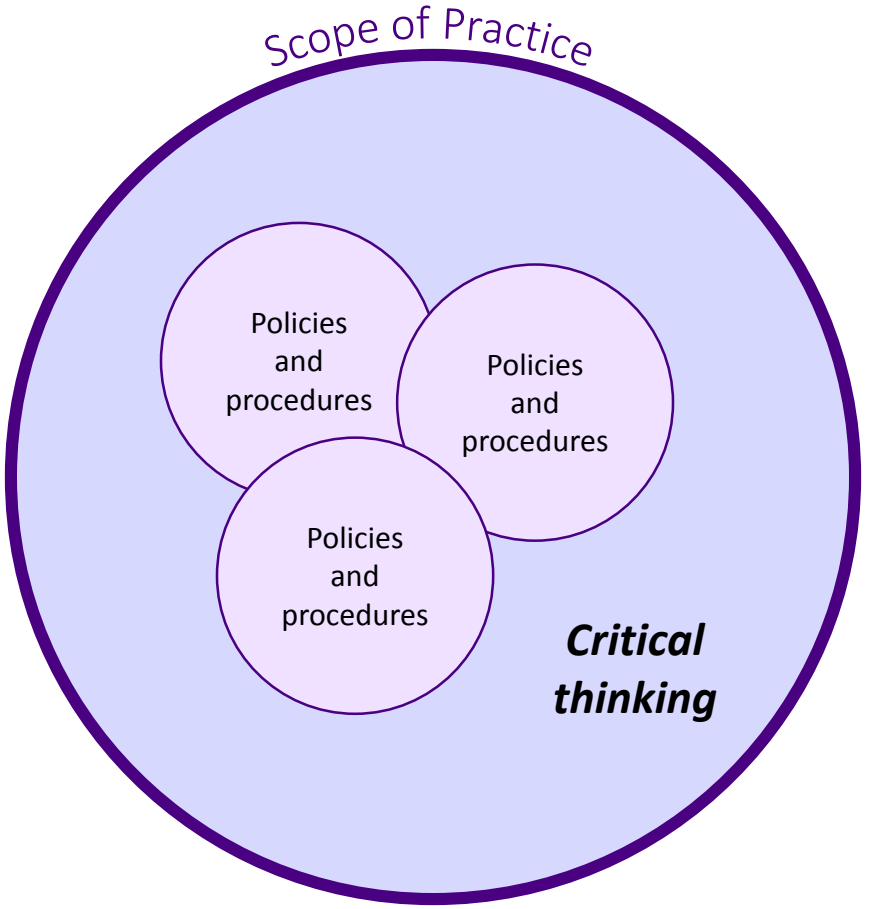
CRITICAL THINKING



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CASE EXAMPLE - CRITICAL THINKING

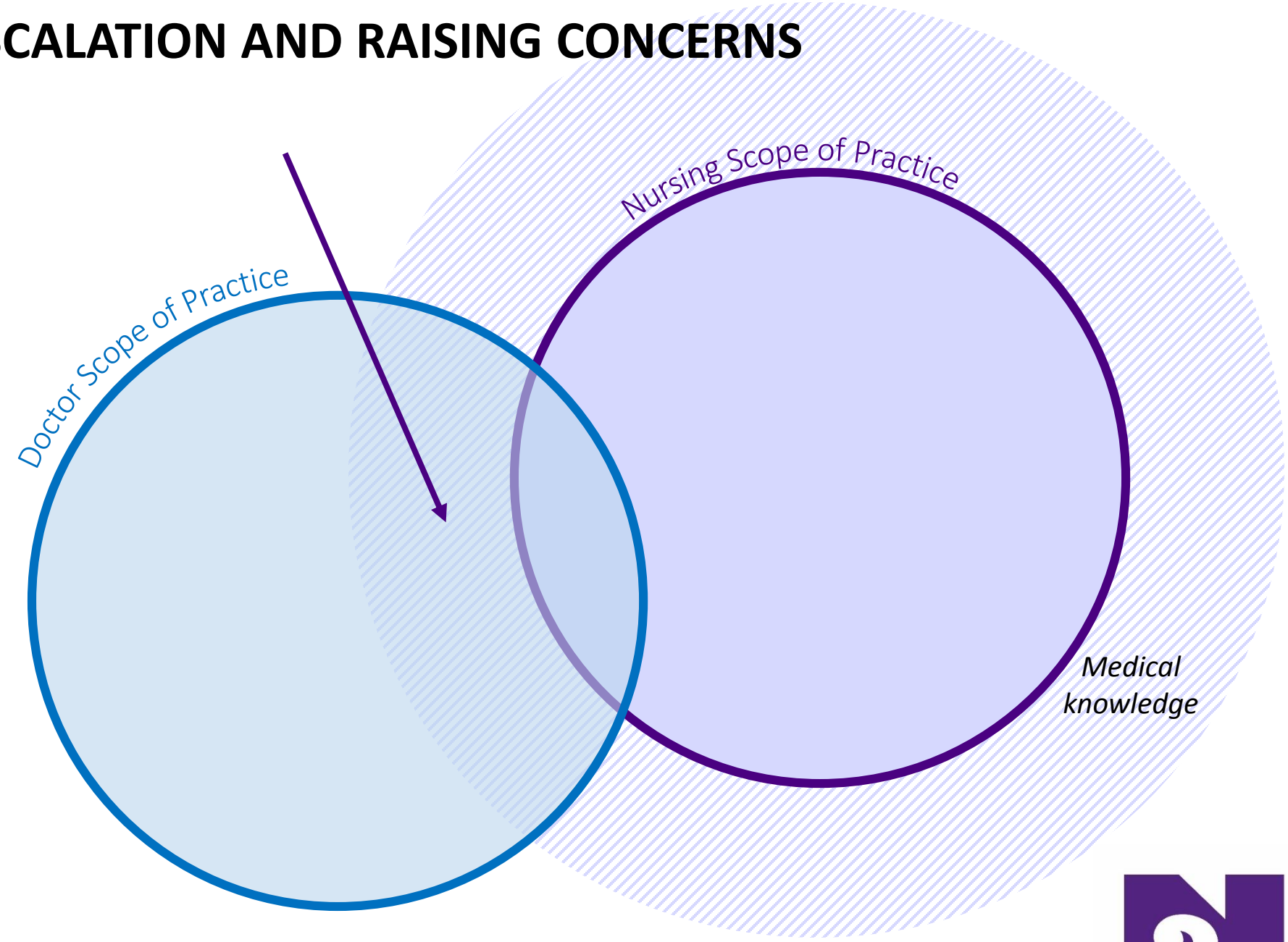
15HDC00423: Lack of critical thinking in management of necrotic wound

- Facts:
  - Multiple medical conditions
  - Wound management in hospital-level aged care facility
  - Dressing, cleaning, and evaluation continued, but no medical advice sought despite deterioratio
  - Later, patient unresponsive – vital signs taken and faxed to Dr

- Some non-compliance with policy, but generally followed – but **serious lack of critical thinking**

- HRT proceedings against provider - settled

ESCALATION AND RAISING CONCERNS



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CASE EXAMPLE 1

13HDC00482: Post-operative anaesthesia complications

- Facts:
    - Emergency appendectomy
    - Post-operative laryngospasm in PACU treated with PEEP
    - Discharge to children's ward – Anaesthetist prescribed O2 via HFM/NPs to keep sats > 94%
- HDC found:
    - Anaesthetist in breach
    - Adverse comment to RN assisting – failed to raise concerns re discharge to ward and level of O2 prescribed

CASE EXAMPLE 2

14HDC00307: Informed consent for hysterectomy

- Facts
    - Surgeon sought consent for additional procedure on operating table
    - Surgeon and anaesthetist were in breach
    - All other clinicians present received adverse comment for failing to raise concerns
    - During surgery agreed that ovaries also needed removal – consent sought on operating table
- Adverse comment against nurses present for failing to raise concerns

CASE EXAMPLE 3

14HDC01187: Discharge on second admission

- Facts:
    - 2+ yr girl – died of cerebellar herniation secondary to sepsis – autopsy showed acute myeloid leukaemia
    - Three admissions – decision to discharge on second admission queried
    - Nurse knew patient was unwell, but was not present during decision to discharge

- HDC critical of DHB culture where HS and Nurse felt unable to raise concerns

Continued……..

CASE EXAMPLE 3

14HDC01187: Discharge on second admission (cont'd)

- Serious Adverse Event Review:

  "…**medical decisions were made while the nurse was out of the room**. However **an attitude of valuing the nursing perspective would have overcome that** and ensured that there was adequate communication of concerns and opinions.

- HDC Decision:

  Any individual in the clinical team should be able to ask questions or challenge decisions at any time, and it is important that employers such as DHBs encourage such a culture. Good support systems (including **the safety net of vigilant senior nurses** and readily available consultants) are also crucial.

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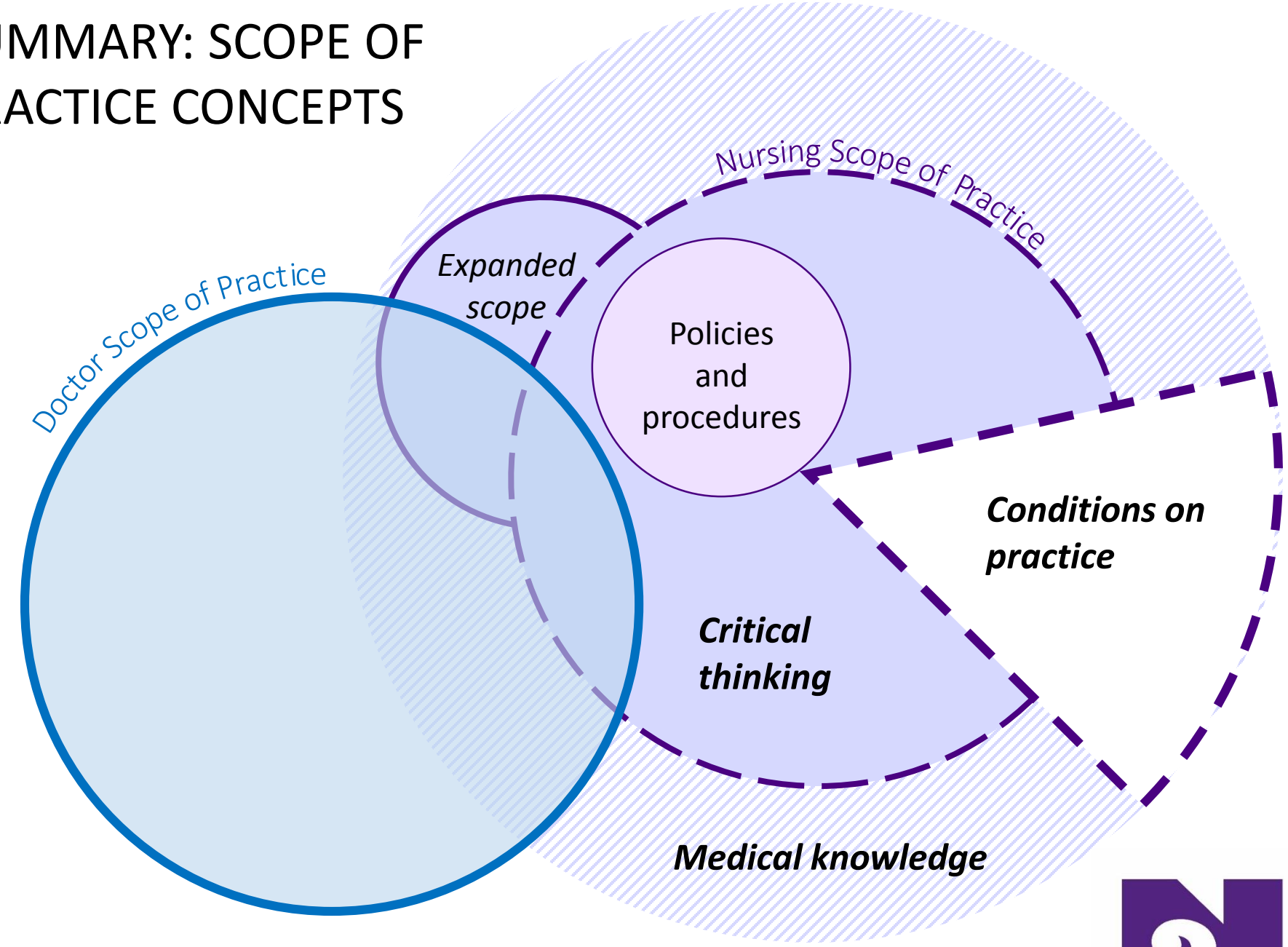
SUMMARY: SCOPE OF PRACTICE CONCEPTS



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CONTACT THE MEDICO-LEGAL TEAM FOR ADVICE

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