Occupational Therapy Board of NZ

Kaihaumanu Turoro o Aotearoa

IMPORTANT INFORMATION TO ALL OCCUPATIONAL THERAPISTS

JULY 2004

Health Practitioners Competence Assurance Act (HPCAA) 2003

What it means for you as a health practitioner

The Occupational Therapy Board of NZ now has under three months left to prepare for the implementation of the Health Practitioners Competence Assurance Act (HPCA) which comes into force on 18 September 2004. It was passed into law on 18 September 2003 and it replaces the Occupational Therapy Act 1949.

This newsletter outlines some of the key elements of the new legislation which are likely to be of most interest and relevance to you as a currently practising therapist.

The information in this newsletter is by no means definitive, and some sections of the Act have been deliberately left out at this stage so the focus remains on the key elements for you, the practitioner.

Updated information related to HPCA will appear on the Board's website. Consultation documents will also be available on the website, and you are encouraged to visit the site at regular intervals. The Board will be consulting on several issues and feedback from a well-informed profession will benefit us all. Throughout the document all references in parentheses, e.g. (s.11) refer to the relevant section of HPCA.

At a glance ... what does HPCAA mean to me?

- From 18 September 2004, APCs will be linked to a scope of practice, which will describe what practitioners are entitled to do.
- If you are registered and hold an APC on 18 September 2004, you will be deemed competent to practice. Your current APC will remain valid until 31 March 2005 and you won't have to immediately re-train if your qualifications don't meet those gazetted for the scope of practice under the Act.
- However when you apply for your APC from 1 April 2005, you **will have to show the Board that you meet the competency requirements for your scope of practice**.
- Participation in the Board's Continuing Competence Framework will enable you to maintain competence, and will be an important part of the APC renewal application in the future.
- Practising outside your scope will attract significant penalties.
- The Board has consulted with the profession to develop a ***General Scope of Practice: Occupational Therapy***, and is now consulting on the Continued Competence Framework.
- The general scope of practice will be Gazetted in August, together with other health profession's scopes in a special edition of the Gazette.
- You can be confident that by the time the HPCAA comes into force, the competency framework will have been finalised and you will have been informed of all Board requirements for 2005 APC renewal application.

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ACKNOWLEDGEMENT

The Occupational Therapy Board would like to thank Dr William Whittaker for his kind permission to use and adapt HPCAA information published in the Physiotherapy Board newsletters.

What is HPCAA?

The principal purpose of HPCAA is to protect the health and safety of the public by providing ways to ensure that health practitioners are competent and fit to practise their professions (s.3).

It aims to:

- Provide consistent accountability across the health professions. All previously regulated professions (occupational therapists, doctors, dentists, nurses, physiotherapists, psychologists and so on) plus a few new ones – osteopaths, midwives, dental hygienists and dental therapists – will all be covered by the same legislation. This will make it easier for the public to understand.
- Establish the mechanisms for determining scopes of practice for each health practitioner. This is so the public can understand what health service each registered practitioner provides.
- Provide systems to ensure that health practitioners don't operate outside their own scope of practice.
- Restrict specified activities to particular classes of health practitioner. Certain activities posing a greater potential risk of harm to the public and which are within the domain or general area of specific professions will be notified. Only those health professions will be able to perform those tasks. Anyone else attempting to perform them will be breaking the law and can be prosecuted.
- Provide for additional health professions to become registered, e.g. osteopaths.

What will it mean to me as a registered occupational therapist?

Now

Until 18 September 2004 it will be business a usual under the Occupational Therapy Act 1949.

From Day One (18 September 2004)

There are conditions that you, as an occupational therapist, must meet in order to practise under HPCAA.

There are provisions that:

- Require every occupational therapist to be registered for a scope of practice.
- Require applicants for registration to:
  - have the qualifications prescribed by the Occupational Therapy Board for the applicant's scope of practice,
  - be competent to practise within that scope of practice,
  - be fit for registration, which includes the ability to communicate effectively for the purposes of practising within that scope of practice.
- Allow the Occupational Therapy Board to withhold approval for an APC until it is satisfied that the applicant is competent to practise within their scope(s) of practice.

New Applicants for Registration

From 18 September 2004, new applicants will have to apply for registration under the General Scope of Practice: Occupational Therapy. The qualifications for this scope are listed under qualifications for Scopes of Practice. In addition, the Board will assess the applicant's competency to practice. When an APC is issued it will be endorsed with the registrant's scope of practice and any conditions, e.g. "Only able to perform certain (specified) work under supervision".

Practising Occupational Therapists

If on 18 September you are registered and hold an APC, you will be deemed to meet the requirements under HPCAA to operate within the *General Scope of Practice: Occupational Therapy*. Therefore, you will still be able to practise. It will not be until you are due for your next APC that you will have to apply under a scope of practice.

In other words, it will be presumed on 18 September that you are competent to practise. You will not need to re-train if your qualifications don't match those specified and Gazetted by the Board (for more on this, see 'Qualifications need to be prescribed') but all therapists will need to satisfy the Board that they are competent in their scope of practice when they apply for their APC in 2005.

Scopes of Practice

(Part 2 of the Act) Sections 11-33

Each authority must describe its profession in terms of one or more scopes of practice. This provides the definition and boundaries of the profession.

What is a Scope of Practice? (s.11)

A scope of practice may be described in any way the authority thinks fit and may be by reference to:

- A name or form of words that is commonly understood by people who work in the health sector;
- An area of science or learning;
- Tasks commonly performed;
- Illness or conditions to be diagnosed, treated or managed (s.11).

The Board has approved the following General Scope of Practice: Occupational Therapy:

General Scope of Practice: Occupational Therapy

Occupational therapists are registered health professionals, who use a process of **enabling occupation** to optimise human activity and participation in all **life domains** across the lifespan, and thus promote the health and well-being of individuals, groups, and communities.

These **life domains** include: learning and applying knowledge; general tasks and demands; communication; mobility; self-care; domestic life; interpersonal interaction and relationships; major life areas; and community, social and civic life. **Enabling occupation** incorporates the application of knowledge, principles, methods and procedures related to understanding, predicting, ameliorating or influencing people's participation in occupations within these life domains.

Such practice is evidence-based, undertaken in accordance with the Occupational Therapy Board's prescribed Competencies and Code of Ethics, and within the individual therapist's area and level of expertise.

Qualifications for the General Scope of Practice: Occupational Therapist

In order to practise within the General Scope of Practice: Occupational Therapist, the person will have a minimum of a bachelors degree in occupational therapy from an accredited[1] educational institution, or qualifications and experience assessed by the Board as equivalent.

[1] Accredited Institution: This refers to the Occupational Therapy Board's approval and accreditation of educational courses for the purpose of registration as an occupational therapist in New Zealand. At present there are two courses approved for registration under the Occupational Therapy Act 1949, these are: *Bachelor of Occupational Therapy*: BOT from Otago Polytechnic; and *Bachelor of Health Science (Occupational Therapy)*: BHs(OT) from Auckland University of Technology. The Board will consult with tertiary education providers in the coming months in order to determine processes for accreditation under the Health Practitioner Competence Assurance Act 2003.

- For additional information please refer to the International Classification of Impairment, Functioning and Disability (ICF), which was published by the World Health Organisation in 2001, and the Occupational Therapy Board's website: www.otboard.org.nz

It is important to note that competence to practise in the specified scope will need to be demonstrated every year to satisfy the authority that an annual practising certificate can be issued.

Qualifications need to be prescribed (S.12)

Authorities must prescribe the qualifications for every scope of practice and this may include:

- A degree or diploma from an authority-accredited institution, or an educational institution of a stated class, in New Zealand or abroad;
- A degree, course of studies, or programme accredited by the authority;
- A pass in a specified exam or any other assessment set by the authority or by another approved organisation;
- Registration with an overseas organisation that performs functions that correspond to those performed by the authority;
- Experience in providing health services of a particular kind, including at a nominated institution or class of institution, or under the supervision of a nominated health practitioner or class of health practitioner (s.12).

Prescribing the qualifications required for registration under a scope of practice will provide clarity. The term qualifications is interpreted broadly in the legislation and can mean degrees, diplomas, passing an examination, registration with another authority, experience or a combination of these. However, it will be the authorities' decision what will be acceptable and in prescribing qualifications the Board will have public protection uppermost in its mind.

Thus scopes of practice are linked to qualifications. The only qualifications currently recognised by the Board for initial registrations are:

The Bachelor of Health Science (Occupational Therapy): BHSc(OT) from Auckland University of Technology.

Bachelor of Occupational Therapy: BOT from Otago Polytechnic

Qualifications and experience assessed by the Board as equivalent

For people who graduated from previous programmes (eg. CIT Diploma), and were previously registered, you will be deemed to meet the qualification requirements for registration. However, the Board needs to be satisfied of competence as well as qualifications, so if you have never practised, or have not practised for some time you may be required to complete a competence programme. Please refer to the section on Competence Programmes and the consultation document on Continued Competence Framework for more information.

There may also be specialist or advanced scopes of practice. The purpose and practicality of advanced scopes needs to be carefully considered from various perspectives, including the prescribed qualifications for a specialist scope. The Board will be consulting further on advanced scopes once the initial implementation of the HPCAA has been completed.

What the Occupational Therapy Board will be doing

The Board will be Gazetting the approved general scope of practice which was completed after wide consultation with the profession. Currently the Board favours starting simple and adding greater sophistication once the Act has been successfully applied. Therefore, consultation on specialist scopes of practice will follow later.

Your relationship with the Board

At present you are legally required to notify the Board if any of your contact details change, and whether or not you are currently practising in New Zealand.

Under HPCAA you will need to:

- Apply for your APC and a scope of practice
- Demonstrate to the Board that you meet the competency requirements for the scope (that you are actively participating in the Board's Continuing Competence Framework)
- Notify the Board of any change of address or personal details, e.g. if you change your name through marriage.
- Advise the Board about your employment for the last three years, and your intentions for the year ahead.

In other words, you will need to assume greater **personal responsibility** for maintaining your relationship with the Board. The penalties for non-compliance are much higher under HPCAA. For example, practising without a current APC is a disciplinary offence for which you may be charged.

Protection of Title

Under the Occupational Therapy Act 1949 there is title protection. Only people registered with the Board can call themselves occupational therapists. The same applies under HPCAA because the scope of practice defines what occupational therapists do, and the title of the scope of practice becomes a protected title. Restricted activities can only be performed by listed registered health professionals.

For further information on the penalties for anyone operating outside their scope of practice, see the Complaints and Discipline section later.

Competence, fitness to practice
(Part 3 of the Act) Sections 34-63

Assurance, Measurement and Review

The Act's purpose is to ensure a more consistent level of competence across the regulated health environment. Competence assurance therefore lies at its heart. By requiring regulatory authorities to ensure that all practitioners (those with current APCs) demonstrate a commitment to maintaining competence, there will be further differentiation between regulated health professionals and unregistered practitioners.

The role of regulatory authorities is to assure the public that the practitioners they issue APCs to are competent to practise within their scope of practice. Practitioners will have to assure the regulatory authorities that this is so by way of **competence assurance**. When practitioner competency falls below the required minimum, regulatory authorities will have several ways of protecting the public and directing the practitioner towards bridging that deficit (**competence review** and **competence programmes**). Regular competence maintenance will be covered by **re-certification programmes**, i.e. what may be required in order to be eligible for the issue of an APC each year. Re-certification is linked to APC renewal.

The Occupational Therapy Act 1949 is silent on competence assurance and the Board has petitioned successive governments for updated legislation modeled on the Medical Practitioners Act. In principle, therefore, the Board welcomes these provisions. The challenge is to develop effective tools to achieve the purpose of competence assurance. The Act does not define competence nor does it prescribe how competence should be measured. Considerable scope therefore exists for interpretation and application. The Board has now circulated a consultation document on a Continuing Competence Framework and your response will be appreciated.

Renewing an Annual Practising Certificate

Each year all APC holders will be expected to undergo some personal professional development to maintain their competence. This should be done within the continued competence framework which the Board is currently consulting on. The need for training/education will be self-identified by each individual practitioner, with goals set in each of the seven competence areas with the aim of enabling the practitioner to develop professionally, and to operate more effectively and safely.

When practitioners apply for an Annual Practising Certificate, they will have to assure the Board that they meet the competency requirements for their scope of practice. The application for an APC will require a practitioner statement indicating that in the practitioner's view, they have met the competence assurance requirements set by the Board. This statement must be endorsed by the practitioners' supervisor's/peer/mentor/third party.

The Board will audit up to 20% of practitioners each year. This is to ensure that the framework is administratively feasible, and that practitioners are applying the framework to a standard which satisfies the Board that competence is being maintained. APCs will only be issued if the Board is satisfied that the a practitioner is competent in the scope of practice.

Competence programmes (s.40)

Under the HPCAA a competence programme is for the purpose of maintaining, examining or improving the competence of health practitioners.Under a competence programme a practitioner may be required to pass an examination or assessment, complete a period of practical training or experience, or undertake a course of instruction or a period of supervised practice. However, competence programmes may be specified for individual practitioners or classes of practitioners (s. 40.2) following competence review. The obvious trigger will be concern over patient safety.

At this stage the Board is not considering any general competence programmes, but will set competence programmes on a case-bye-case basis as required, eg. where a therapist requires assistance or up-skilling in particular circumstances such as returning to work after a long absence, changing fields of practice area specialities, or to address specific performance needs.

Returning to Work

For those who wish to return to the workforce, in order to obtain an APC the occupational therapist will need to demonstrate to the Board that the competencies required under the scope of practice are met. Failure to do this may require a period of re-training or completion of a competence programme. The Board will consider each application on its merits, and, as discussed above, may consider a competence programme to assist the therapist to demonstrate their competence.

Re-certification programmes (s.41)

All practitioners will engage in re-certification programmes to demonstrate their experience as a prerequisite for obtaining an APC.

Re-certification programmes may be applied to a single practitioner or a class of practitioner (s.40.2). However, it is more likely that a framework will be established by the Board for all occupational therapists to follow.

Failure to meet the requirements of a re-certification programme may result in an APC not being issued.

Practising below the required standard: Posing a Risk of Harm (s.34)

Who may notify and who must be notified

To reduce the likelihood of incompetent practitioners remaining at large in the community, the Act contains several provisions for notifying actual or perceived concerns surrounding public safety:

- If you have a concern about the performance of a colleague (whether in your discipline or not) you **may** inform the registrar of that person's authority (s. 34.1).
- The authority must also be notified by employers of dismissals due to competence issues (s.34.3).
- Court registrars must inform authorities of convictions involving health practitioners under HPCA. This applies if the conviction was punishable by a term of 3 months imprisonment or for convictions relating to specific acts of parliament, e.g. Medicines Act (1981) the Misuse of Drugs Act (1975) or the Radiation Protection Act (s.67).
- If the authority has reason to believe a practitioner's competence poses a risk of harm it must also notify the following agencies:
  - ACC;
  - Director-General of Health;
  - Health & Disability Commissioner;
  - Any person who, to the knowledge of the authority, is the employer of the health practitioner and if the authority believes that there is a risk of harm to the public, it may notify any practitioner who works in association with them (s.35. 1-2).

Competence Review (s.36)

The regulatory authority may review a practitioner's competence at any time and where it believes that continued practice may pose a risk of harm to the public it may temporarily suspend a person's APC. There are provisions/procedures that ensure that the practitioner has rights of response, review etc. This occurs throughout the Act. The purpose of competence review is:

- To identify areas of weakness;
- To assist the practitioner.

To assure itself and the public of safety of practice, the Board can review any individual, any group of occupational therapists or any treatment performed by a occupational therapist.

It may not necessarily be poor individual practitioner performance that initiates a review. For example, new research may encourage the Board to examine certain practices. There should be no stigma attached to this since the purpose is to satisfy the authority that the health practitioner's practice meets the required standard. (s.36.5).

Under section 37 the Authority must send a notice to the practitioner. This should include details of the grounds for concern. Furthermore the practitioner must be provided with a reasonable opportunity to make written submissions or be heard personally to clarify any issues surrounding education, training and registration (s. 37.3).

Once a review is under way, the practitioner must make records available to the authority (s. 42). There are confidentiality provisions surrounding the examination of any clinical records (s.44).

Results of a competence review (s.39)

On completion of a competence review the authority may order that:

- A practitioner's APC is suspended;
- The practitioner's scope of practice be altered by changing any health services they are allowed to perform, or by including conditions of practise (s. 39.2).

It may only do that after it has given the practitioner an opportunity to make written submissions or be heard (s.39.3). A competence programme may be applied following the results of a competence review.

Inability to practice (s.45)

People in charge of an organization that provides health services or a registered health practitioner, employers of registered health practitioners or medical officers of health have obligations too. If they believe that a health practitioner is unable to perform satisfactorily because of some mental or physical condition, they must inform the registering authority as soon as possible (s.45.1-2). If an authority believes that the practice of a health practitioner registered with it poses a risk to the public, it may give written notice to anyone who works with, or in association with, that person giving reasons (s.35.2).

The authority has the power to suspend an APC for 20 working days with powers of further extension by 20 working days, or include conditions in the scope of practice (s.48).

The authority may order an examination by a medical practitioner at the authority's expense (s.49).

If the results of the examination are unsatisfactory or that the health practitioner does not submit to examination, then the authority may suspend the practitioner's registration (s.50.3).

Revocation (s.51)

Once the authority is satisfied that the practitioner is again able to practise their own profession satisfactorily, it may make an order revoking any suspension or conditions of practice.

What the Occupational Therapy Board is doing

The Occupational Therapy Board has developed a draft framework to assist it to monitor the continuing competence of all New Zealand registered occupational therapists via regular audit and review processes. Inherent in the framework is the capacity to identify practitioners who fall below the standards of the baseline competencies for registration, and assist them to improve their competence to an acceptable level where indicated. The focus is thus both to monitor and facilitate professional competence to practice.

It should be noted that the Board's concern is with the practice of occupational therapy in it's broadest sense, incorporating notions of development of the profession, as well as recipients of services, and taking account of the many spheres of possible practice which draw on occupational therapy knowledge and practice bases.

The Board has elected to adopt a high-trust model which emphasizes individual responsibility, flexibility, and choice. A process of self-declaration and third-party endorsement forms the basis for Board determination of continuing competence and fitness to practise of an individual therapist.

The framework requires practitioners to assess, plan for, select, provide evidence of, and evaluate a range of professional development activities undertaken to develop, enhance and maintain competence. Activities selected will be based on goals related to the Board's Competencies for Registration as an Occupational Therapist (2000).

A rigid system applied to all occupational therapists that is not relevant to current practice situations was not considered feasible. The Board is starting with a high trust model which relies on therapists' professional responsibility and self-commitment to continuous professional development that maintains competence.

This consultation provides the opportunity for input from the profession.

In terms of application, the guiding conceptual framework will be the ***APPLE*** *acronym:*

A*dministratively feasible – it must be workable.*

P*ublicly credible – the public should believe that it makes a difference.*

P*rofessionally acceptable – the professionals who are expected to comply with the regulatory approach should believe that the approach is reasonable and makes a difference in their practice.*

L*egally defensible – it should be fair, reliable and accurate and should therefore not discriminate against any group or groups.*

E*conomically affordable – an approach should be cost-effective, making appropriate use of limited human and fiscal resources (Sheets 1997).*

References Sheets, V. *(1997). What's out there? A Critical look at two paradigms : Markers model vs. Continuous quality assurance model. In:* Continued Competency Summit: Assessing the Issues, Methods and Realities for Health Care Professions *(course materials: a compendium of conference handouts). Chicago Interprofessional Workgroup on Health Professions Regulation.*

Complaints and discipline
(Part 4 of the Act) Sections 64-105

The disciplinary procedures contained in the Act are intended to provide consistency across the regulated health profession environment. This part of the Act is prescriptive and draws heavily on the procedures outlined in the Medical Practitioners Act 1995.

It provides for each regulatory authority to establish Professional Conduct Committees (PCCs) to investigate complaints referred by the Health and Disability Commissioner (H&DC). PCCs are also required to investigate the circumstances of certain offences committed by health practitioners.

This part of the Act also establishes a single tribunal, the Health Practitioners Disciplinary Tribunal, to hear and determine charges brought against practitioners by the Director of Proceedings or by a PCC.

Complaints about practitioners (S.64)

These must always be forwarded to the Health & Disability Commissioner, as is the case under the Occupational Therapist Act. However, under HPCAA the Commissioner will now be able to hear complaints relating to incidents occurring before 1 July 1996 when the Health & Disability Commissioner Act 1994 came into force.

The Health & Disability Commissioner may refer the complaint back to the authority. This is likely to be the case when there are issues surrounding the practitioner's clinical competence, as opposed to behaviour, e.g. inappropriate sexual contact.

Grounds on which a practitioner may be disciplined (S.100)

There are basically seven grounds (as opposed to three under the Occupational Therapy Act 1949) on which a practitioner may be disciplined. Two charges relate to professional misconduct, with one constituting malpractice or negligence in relation to a practitioner's scope of practice and the other constituting bringing the profession into disrepute. The remaining five relate to more specific circumstances, such as breaching specific legislation.

The grounds are:

- Guilty of **professional misconduct** because of any act or omission that, in the judgment of the Tribunal, amounts to **malpractice or negligence** in the scope of practice of which the practitioner was registered at the time;
- Guilty of **professional misconduct** because of any act or omission, that was likely to bring the discredit to the profession;
- The practitioner has been **convicted of an offence that reflects adversely on his or her fitness to practise**;
- The practitioner has **practised without a current APC**;
- The practitioner has **practised outside of his or her Scope of Practice**;
- The practitioner has **failed to observe any conditions included on his or her scope of practice**;
- The practitioner has **breached an order of the Tribunal** under s.101.

Penalties (S.101)

These are much stronger than under the Occupational Therapy Act 1949. Following a hearing the Tribunal may order that:

- The **registration** of the health practitioner be **cancelled**;
- The **registration** of the health practitioner be **suspended** for a period not exceeding 3 years;
- The health practitioner **practice in accordance with any conditions** as to employment, supervision or as otherwise specified by the Order of the Tribunal;
- The health practitioner be **censured**;
- A fine be imposed **not exceeding $30,000** – subject to certain conditions;
- The practitioner pay **part or all of the costs** and expenses arising out of any or all of the following:
  - an **investigation by the Health & Disability Commissioner** in relation to the subject matter of the charge,
  - an **inquiry by a Professional Conduct Committee** in relation to the subject matter of the charge,
  - the **prosecution of the charge** by the Director of Proceedings or a professional conduct committee,
  - the **hearing** by the Tribunal.

Other information (s71-79)

It is assumed that most occupational therapists are unfamiliar with the complaints process employed by the Board under the Occupational Therapy Act 1949 simply because they have not been complained against. Comparisons between the two systems are therefore unnecessary.

The new Act has several features:

1. Under HPCAA it is a very clearly prescribed process. Under the Occupational Therapy Act 1949 there is little prescription and, therefore, greater scope for interpretation.
2. Membership of Professional Conduct Committees is more flexible. They may contain two health practitioners who are registered with the authority and one layperson. The authority may appoint a heath practitioner or layperson who are members of the authority, i.e. Board members (s.71).
3. Committees may appoint legal advisers and investigators. Neither are allowed to be part of the committee's deliberations and the legal advisor cannot represent the committee before the Tribunal (s.73).
4. There are clear timelines and procedures for providing the complainant and practitioner information (s.74), the opportunity for requesting changes in the composition of the committee (s.75) and so on.
5. Sources and admissibility of evidence (s.76) and powers vested in committees enabling them to call for evidence or various types (s.77).
6. The committee may recommend the suspension of a practitioner's APC if the public is at risk (s.79).

Results of Professional Conduct Committee investigations (S.80)

On conclusion of an investigation the PCC may make:

- One or more recommendations to the authority;
- One determination;
- Both.

A recommendation is just that – a recommended course of action to be considered by the authority:

- To review the **competence** of the practitioner;

What the Occupational Therapy Board will be doing

The Board will provide more information on the disciplinary process on the Boards website. The detail contained here is designed to emphasise the seriousness and nature of complaints investigations, outline the legal processes followed and indicate the connection between scopes of practice, competence and discipline.

- To review the **fitness** of the practitioner;
- To review the practitioner's **scope of practice**;
- To refer the matter t**o the Police**;
- To **counsel** the practitioner.

The **determinations** are that:

- No further steps be taken under the Act;
- A charge be brought before the Tribunal;
- The complaint be submitted to conciliation.

Conciliation (s.82)

The ability to refer the matter to conciliation is an important new facility that offers an alternative means of dispute resolution. If conciliation fails the PCC can decide whether:

- A charge be laid before the tribunal;
- The PCC makes one or more recommendations (see above) to the authority;
- No further steps be taken.

The costs of conciliation must be paid by the responsible authority.

The Health Practitioners Disciplinary Tribunal (HPDT) (S.91)

The function of HPDT is to hear and determine charges under s. 91 which states that a charge may be laid before the Tribunal:

- By the Director of Proceedings where the case comes under section 49 of the Health & Disability Commissioner Act 1994;
- By a PCC under sections 81 & 82 of the HPCAA;

Both may be represented by legal counsel (s. 91.5).

The Tribunal is appointed by the Minister of Health by notice in the Gazette (s.86). No member of an authority is eligible for appointment to the Tribunal. Thus, the regulatory authority is at arm's length from the disciplinary tribunal.

The Minister must maintain a panel of practitioners of each profession, each of whom must hold a current APC, and laypersons (s.87.1). The Chairperson or Deputy Chairperson(s) must be a barrister or solicitor of the High Court of not less than 7 years' practice (s.86.1).

For the purposes of the hearing the Chairperson must select 4 members of the Tribunal pool of which:

- Three must be professional peers of the health practitioner;
- One must be a layperson.

Therefore, a practitioner will be adjudged by five people, three of whom are members of the profession.

The procedure to be followed will be explained in a later document. It is worth noting here that:

- Hearings are to be in public unless the tribunal orders otherwise (s.95);
- There are protection provisions for certain witnesses, such as those involved in sexual cases (s.98).

Costs (S.104)

The responsible (parent) authority must:

- Pay the fees of Tribunal members;
- Pay actual and reasonable expenses incurred on behalf of the Tribunal;
- Make available premises and suitable personnel for the hearing to take place.

The authority may from time to time by notice in the Gazette impose a disciplinary levy on every health practitioner for the purpose of funding the costs arising out of investigations by PCCs and proceedings of the Tribunal (s.131).

Keeping up to date

HPCAA

HPCAA is a large piece of legislation. Sections of the legislation have not been included here e.g. **Appeals** (Part 5) and **Structures and Administration** (Part 6). These will be covered later and will be available on the Board's website for reference, as will updates on the Board's implementation work.

It is recommended that you regularly check the website for updates. The Occupational Therapy Act 1949 has been the guiding piece of legislation for occupational therapist for the past 54 years. HPCA will be with us for some considerable time too. It is worth becoming familiar with it, and with the work that the Occupational Therapy Board of NZ does.

Consultation

You have been consulted on Scopes of Practice and are now being consulted on a Continuing Competence Framework. Future consultation will include specialist scopes of practice.

Visit our website

This document and others will be posted on the website

www.otboard.org.nz

Familiarise yourself with the Act

We recommend that all occupational therapists familiarise themselves with the Act, which is available from Bennetts bookshops for around $15.00. Alternatively, it can be viewed online at www.legislation.govt.nz. There is a link from the Board's website www.otboard.org.nz. All relevant information and guidance will be placed on our website.

Glossary

The Act includes the following definitions:

Authority means a body corporate appointed, by or under this Act, as the body that is, in accordance with this Act, responsible for the registration and oversight of practitioners of a particular health profession.

Condition (as applied to "conditions of practice") means a restriction or limit.

Health Service means a service provided for the purpose of assessing, improving, protecting, or managing the physical or mental health of individuals or groups of individuals.

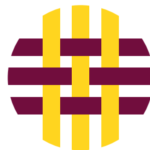
Required Standard of Competence in relation to a health practitioner, means the standard of competence reasonably to be expected of a health practitioner practising within that health practitioner's scope of practice.

Scope of Practice

(a) means any health service that forms part of a health profession

(b) in relation to a health practitioner of that profession, means one or more of such health services that the practitioner is permitted to perform, subject to any conditions being imposed (by the responsible authority).

Tribunal means the Health Practitioners Disciplinary Tribunal (established by s. 84).



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