

Candidate Information on the Terms and Conditions of

Appointment to the

Health Practitioners Disciplinary Tribunal

Health Practitioners Competence Assurance Act 2003

Introduction

This document provides information for prospective candidates for membership of the Health Practitioners Disciplinary Tribunal (the 'Tribunal'). It sets out the:

- role and powers of the Tribunal
- composition of the Tribunal
- terms and conditions of appointment
- duties and responsibilities of a member.

The role of Registration Authorities in Regulation Occupations

Consumers do not always have enough knowledge to make an informed decision on whether health practitioners are competent to carry out their occupation. This can be a matter of concern when the actions of an incompetent practitioner may impact on the health and safety of consumers. Occupational regulation is one way of providing consumers with information on a practitioner's competence. It ensures that only practitioners who have demonstrated that they meet the minimum standards for entry to an occupation can practice or use particular protected titles. It also provides a mechanism for disciplining health practitioners.

Section 84 of the Health Practitioners Competence Assurance Act 2003 establishes the Health Practitioners Disciplinary Tribunal. The Tribunal considers disciplinary charges referred to it by the Director of Proceedings from the Office of the Health and Disability Commissioner and professional conduct committees established by registration authorities.

The Minister must maintain a panel of health practitioners of each profession, each of whom must hold a current practising certificate and laypersons. The Health Practitioners Competence Assurance Act 2003 defines a health practitioner as a person who is, or deemed to be, registered with an authority as a practitioner of a particular health profession. It defines a layperson as a person who is neither registered nor qualified to be registered as a health practitioner.

Functions of the Health Practitioners Disciplinary Tribunal

The Tribunal is established under section 84 of the Health Practitioners Competence Assurance Act 2003. The purpose of the Tribunal is to protect the consumers of health services through hearing charges brought against the conduct of health

practitioners. As a result of hearings it can also provide a valuable educative role in relation of health profession standards.

The functions and powers of the Tribunal are set out in sections 85, 91, 100 and 101 of the Health Practitioners Competence Assurance Act 2003.

- To hear and determine charges brought to the Tribunal by the Director of Proceedings from the Office of the Health and Disability Commissioner or a professional conduct committee established by a registration authority.
- To exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

If, after conducting a hearing in accordance with the Health Practitioners Competence Assurance Act 2003, the Tribunal is satisfied in respect of any health practitioners that the practitioner has:

- (a) 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 practise in respect of which the practitioner was registered at the time that the conduct occurred
- (b) been guilty of professional misconduct because of any act or omission that, in the judgment of the Tribunal, has brought or was likely to bring discredit to the profession that the health practitioner practised at the time that the conduct occurred
- (c) been convicted of an event that reflects adversely on his or her fitness to practise
- (d) practised his or her profession while not holding a current practising certificate; or
- (e) 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
- (f) failed to observe any conditions included in the practitioner's scope of practice
- (g) breached an order of the Tribunal under section 101.

The Tribunal may, subject to certain requirements, impose the following penalties:

- (a) order that the registration of the health practitioner be cancelled
- (b) order that the registration of the health practitioner be suspended for a period not exceeding 3 years

- (c) order that the health practitioner may, after commencing practice following the date of the order, for a period not exceeding three years, practise his or her profession only in accordance with any conditions as to employment, supervision, or otherwise that are specified in the order
- (d) order that the health practitioner be censured
- (e) subject to subsections (2) and (3), order that the health practitioners pay a fine not exceeding \$30,000
- (f) order that the health practitioner pay part of all of the costs and expenses of and incidental to any or all of the following:
 - I. any investigation by the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject matter of the charge
 - II. any inquiry made by a professional conduct committee in relation to the subject matter of the charge
 - III. the prosecution of the charge by the Director of Proceedings of a professional conduct committee, as the case may be:
 - IV. the hearing by the Tribunal.

Every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise under section 95 or 97 of the Health Practitioners Competence Assurance Act 2003.

Composition of the Health Practitioners Disciplinary Tribunal

For each hearing of the tribunal there are five members consisting of:

- the chairperson of the Tribunal or a deputy chairperson of the Tribunal; and
- 4 persons selected by the chairperson or deputy chairperson from the panel maintained by the Minister under section 87, of whom
 - 3 must be professional peers of the health practitioner who is the subject of the hearing
 - 1 must be a layperson

The panel from which the members are drawn for a hearing comprises of 8 lay people and a number of health practitioners representing the scopes of practice within the health professions.

No person who is a member of a statutory authority is eligible for appointment as chairperson or as a deputy chairperson or as a member of the panel.

Appointment as a Member of the Health Practitioners Disciplinary Tribunal

In making yourself available to be considered for appointment, please ensure that:

- there is no conflict of interest which would preclude your appointment; and
- you are available to serve for a term of office of 5 years.

Terms and Conditions of Appointment

Tribunal members are expected to follow the terms and conditions set out below.

Chairperson and Deputy Chairpersons

Both the Chairperson and Deputy Chairpersons positions must be held by barristers or solicitors of the High Court of not less than 7 year's practice, whether or not they have held judicial office.

The Minister of Health appoints the Chairperson and Deputy Chairpersons of the Tribunal for a term of office not exceeding 3 years. No person may hold the position of Chairperson or Deputy Chairperson for more than nine consecutive years.

Any person who holds office as the chairperson or as a deputy chairperson of the Tribunal may at any time be removed from office by the Minister, by notice given to the person, on the grounds of inability to perform the functions of the office, or for neglect of duty, or misconduct, proved to the satisfaction of the Minister.

Panel Members

The Minister of Health appoints panel members for an indefinite term of office. However the Minister is given the opportunity to review panel members' appointments every five years.

The Chairperson, Deputy Chairperson and panel members will be removed from the Tribunal if –

- (a) he or she dies; or
- (b) he or she is adjudged bankrupt under the Insolvency Act 1967; or
- (c) he or she becomes a member of an authority; or
- (d) he or she has been convicted by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 3 months or longer.

Liability

Neither the Tribunal nor any member, employee, agent of the Tribunal is under any civil liability in respect of:

- any act done or omitted in the course of the performance or exercise or intended performance or exercise of any of their functions, duties, or powers under this the Health Practitioners Competence Assurance Act 2003
- any words spoken or written at, or for the purpose of, a hearing or inquiry or other proceeding under the Health Practitioners Competence Assurance Act 2003.

Duties and Responsibilities of a Member

As an independent statutory body, the Tribunal has an obligation to conduct its activities in an open and ethical manner and to observe the rules of natural justice. The Tribunal has a duty to operate effectively in a manner consistent with its powers set out in sections 91 – 103 of the Health Practitioners Competence Assurance Act 2003. Tribunal members are accountable to the Minister of Health (and through the Minister to the public of New Zealand).

Legislation and Conflicts of Interest

It is important that Tribunal members have a common understanding of their role as a member in order that decisions can be reached within the spirit of the governing legislation, namely, for the purpose of protecting the public interest through the discipline of health practitioners.

Tribunal members will be expected, overtime, to become familiar with, and operate according to the:

- Health Practitioners Competence Assurance Act 2003 (particularly parts 4 and 5)
- Commissions of Inquiry Act 1908
- Principles of natural justice and administrative law
- Health and Disability Commissioner Act 1994
- Code of Health and Disability Services Consumers' Rights
- Privacy Act 1993
- Health Information Privacy Code 1994
- Codes of Ethics of the Profession

- Treaty of Waitangi.

Tribunal members should perform their functions in good faith, honestly and impartially and avoid situations that might compromise their integrity or otherwise lead to conflicts of interest. Proper observation of these principles will protect them and will enable public confidence to be maintained.

Confidentiality

Tribunal members must ensure that Tribunal documents are kept securely to ensure the confidentiality of Tribunal work is maintained. Release of Tribunal correspondence or papers can only be made with the approval of the Tribunal.

Hearings of the Health Practitioners Disciplinary Tribunal

The Tribunal will meet as and when required. This will be dependent on the number of hearings per year. The time commitment for hearings varies. It may be from one to four days depending on the nature of the case. The majority are heard with two or three days.

Fees and Allowances

Under clause 4 of the first schedule of the Health Practitioners Competence Assurance Act 2003 the chairpersons of the professional authorities agree on the principles that are to govern the determination of fees payable to members of the Tribunal.

More detailed information can be obtained from:

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