

**Consultation on the Making  
of Regulations under the  
Health Practitioners  
Competence Assurance  
Act 2003 to Allow the  
Medical Profession to  
Elect Members to the  
Medical Council of New  
Zealand**

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## Introduction

The Minister of Health has received a request from the Pan-Professional Medical Forum to make regulations under section 120 (4) of the Health Practitioners Competence Assurance Act 2003 (the Act) to require that one or more Medical Council (Council) members will be elected to the position by the profession.

Section 120 (4) of the Act states:

Regulations made under this Act may provide that 1 or more health practitioners appointed, under subsection (1), as members of an authority must be practitioners (in this section referred to as elected practitioners) who have been elected in an election conducted by the authority in accordance with those regulations.

## Background

If the process for the election is to be included in the regulations then prior to promulgating the regulations, an appropriate consultation with affected and interested persons and groups must be completed. A process for the election of three health practitioners who are registered with the Council is attached (Appendix 1) for your comment. The process largely follows the rules for holding elections of members previously prescribed by the Council under the Medical Practitioners Act 1995.

Should the Minister agree, following consultation, to make regulations, the Medical Council has recommended that the composition of the Council be as follows:

- three health practitioners to be elected by the profession;
- three health practitioners to be appointed by the Minister;
- three laypersons to be appointed by the Minister.

In making your comments, the statutory functions of the Council (refer Appendix 2) and the principal purpose of the Act (refer Appendix 3) should be kept in mind. In order to guide your comments, a number of questions are posed (refer to Appendix 4).

**Closing date for submissions is Friday 18 May 2007.**

Please forward your submissions to Ryan McLean:

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# Appendix 1: Process and criteria for electing members to the Medical Council of New Zealand

## Membership of the Council and number of members to be elected and appointed

The Council will consist of three elected health practitioners' and three health practitioners and three laypersons to be appointed by the Minister of Health.

## Terms of Office

Any elected member will be subject to the same terms of office as a member appointed under section 121 of the Act. Section 121 states:

- (1) Each [elected] member of [the Council] takes office from a date specified for that purpose in the notice [electing] the member or, if no date is specified in the notice, from the date on which the notice is published in the Gazette.
- (2) Each [elected] member—
  - a. Is [elected] for a term of 3 years or any shorter term that is specified in the notice of [election]; and
  - b. May be re[elected] from time to time, but is not eligible to be a member for more than 9 consecutive years; and
  - c. Continues in office after the expiry of his or her term of office (unless the member resigns or is removed from office) until—
    - i. The member is re[elected]; or
    - ii. The member's successor is [elected]; or
    - iii. The member is informed in writing by the Minister [or the Council] that the member is not to be re[elected].
- (3) Despite subsection (2), a member of the authority whose term of office has expired or who has resigned from office continues in office for the purpose of completing any matter heard by the authority before the expiry of the member's term of office or the member's resignation, whether or not that member's successor has come into office.

Terms of office of elected members will also be subject to section 120 (5). Section 120 (5) states:

If an elected practitioner ceases to hold office before the expiry of his or her term, the Minister may, by notice in the Gazette, appoint a person who has not been elected as a member of the authority for the remainder of the term of that elected practitioner.

## **Vacation of Office**

Elected members will be subject to section 122 of the Act. Section 122 states:

- (1) Any member of an authority may at any time resign his or her office by giving notice to that effect to the Minister.
- (2) A member of an authority must be considered to have vacated his or her office if—
  - a. He or she dies; or
  - b. He or she is adjudged bankrupt under the Insolvency Act 1967.
- (3) Any member of an authority may be removed from office by the Minister, by notice given to the member, on the grounds of inability to perform the duties of the office, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (4) A member of an authority may be removed from office by the Minister, with the concurrence of the [Council], by notice given to the member, on the ground that the member's performance on the authority is inadequate.
- (5) The powers of [the Council] are not affected by any vacancy in its membership.

## **Health practitioners will be eligible for election**

A health practitioner will be eligible for election to the Council if they:

- (1) are a registered health practitioner for the purposes of the Health Practitioners Competence Assurance Act 2003 and hold a current annual practising certificate.
- (2) are a member of good standing within a profession and are not currently, or have not been in the past, the subject of
  - a. a Professional Conduct Committee enquiry
  - b. an enquiry by the Health Practitioners Disciplinary Tribunal
  - c. an enquiry by the Police.

## **Medical practitioners will be eligible to vote**

Only medical practitioners who hold full registration with the Medical Council of New Zealand and hold a current annual practising certificate will be eligible to vote in elections under the previous clause.

## **Voting process**

- (1) The Medical Council will develop Candidate Election Rules by which candidates will be nominated and candidate nominations will be assessed.
- (2) Each candidate nomination must be supported by 15 other medical practitioners eligible to vote.

## **Appendix 2: The functions of an authority**

### **Section 118 – Functions of authorities**

The functions of each authority appointed in respect of a health profession are as follows:

- (1) To prescribe the qualifications required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies, or programmes:
- (2) To authorise the registration of health practitioners under this Act, and to maintain registers:
- (3) To consider applications for annual practicing certificates:
- (4) To review and promote the competence of health practitioners:
- (5) To recognise, accredit, and set programmes to ensure the ongoing competence of health practitioners:
- (6) To receive and act on information from health practitioners, employers, and the Health and Disability Commissioner about the competence of health practitioners:
- (7) To notify employers, the Accident Compensation Corporation, the Director-General of Health and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public:
- (8) To consider the cases of health practitioners who may be unable to perform the functions required for the practice of the profession:
- (9) To set standards of clinical competence, cultural competence, and ethical conduct to be observed by health practitioners of the profession:
- (10) To liaise with other authorities appointed under this Act about matters of common interest:
- (11) To promote education and training in the profession:
- (12) To promote public awareness of the responsibilities of the authority:
- (13) 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.

## **Appendix 3: Principle Purpose of the Act**

### **Section 3 – Purpose of Act**

- (1) The principal purpose of this 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.
- (2) The Act seeks to attain its principal purpose by providing, among other things,—
  - a. for a consistent accountability regime for all health professions; and
  - b. for the determination for each health practitioner of the scope of practice within which he or she is competent to practise; and
  - c. for systems to ensure that no health practitioner practises in that capacity outside his or her scope of practice; and
  - d. for power to restrict specified activities to particular classes of health practitioner to protect members of the public from the risk of serious or permanent harm; and
  - e. for certain protections for health practitioners who take part in protected quality assurance activities; and
  - f. for additional health professions to become subject to this Act.

## Appendix 4: Questions to Guide Your Comments

Please include explanations of your answers to these questions:

- (1) Would it be in the best interests of the public to require the profession to elect members to the Council?
- (2) Would requiring the profession to elect some members to the Council impact on the risk of harm to the public from medical practitioners?
- (3) Would the requirement to elect some members positively or negatively impact on the Council's ability to undertake its statutory functions?  
**(refer Appendix 2)**
- (4) Will the ability to elect members positively or negatively impact on the Council's ability to regulate impartially?
- (5) Do you agree with the proposed size, make-up and process for selecting the Council?
- (6) Do you have any other comments?