



Policy on publication and naming of a Chinese medicine practitioner subject to an order or direction made by the Council (“Naming Policy”)

Policy statement

If the Chinese Medicine Council of New Zealand (the Council) exercises its statutory power to make any order or direction that it has authority to make in respect of a health practitioner, it will turn its mind to whether to publish a notice naming the practitioner under section 157(1) of the Health Practitioners Competence Assurance Act 2003 (the HPCA Act).

In doing so, the Council will be guided by the principles set out in this policy to ensure that its decision complies with relevant laws, and appropriately balances the public interest in the practitioner being named against the private interests of the practitioner.

Introduction

The Council may at any time publish a notice setting out:

- a) The effect of any order or direction it has made under the HPCA Act in respect of a practitioner; and
- b) A summary of any finding it has made under the HPCA Act in respect of the practitioner; and
- c) The name of the practitioner.

This policy is about the Council’s decision to publish a notice of this type. It sets out the principles and criteria that the Council must take into account when considering whether to publish a notice.

A Naming Policy must set out:

- a) The class or classes of practitioner to whom it applies; and
- b) The circumstances in which a practitioner may be named; and
- c) The general principles that will guide the Council’s naming decisions; and
- d) The criteria the Council must apply in making a naming decision; and
- e) The requirement to have regard to the consequences for the practitioner of being named, including the likely harm to the practitioner’s reputation; and
- f) The procedures that the Council must follow when making a naming decision; and
- g) The information the Council may disclose when making a naming decision; and
- h) The means by which a practitioner may be named.

Purpose

The Council is required to have a policy about when and how it will publish a notice. The purpose of the policy is to:

- a) Enhance public confidence in the Chinese medicine profession and the Council’s disciplinary procedures by providing transparency about its decision-making processes; and
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	<ul style="list-style-type: none"> b) Ensure that Chinese medicine practitioners whose conduct has not met expected standards may be named where it is in the public's interest to do so; and c) Improve the safety and quality of health care.
Key policy points	<ul style="list-style-type: none"> • The Council's primary obligation is to ensure that it protects the health and safety of the public. This includes ensuring that the public is provided with information in which it has an interest. • When considering naming a practitioner, the Council will consider the purpose of the HPCA Act, and the purpose of this Naming Policy as set out in section 157B(2). • In each case before it, the Council will weigh the public interest in naming the practitioner against the practitioner's privacy interests, including the consequences for the practitioner's reputation. Where the balance is even, the Council is likely to favour public interest, and name the practitioner. • The Council is aware that a decision to name a practitioner is likely to have consequences for the practitioner. It will apply this policy judiciously and with appropriate regard for all the circumstances of the particular case. • If the Council proposes to name a practitioner, it will first give the practitioner the opportunity to make submissions on the proposal before making a final decision.
Naming policies must be consistent with the law	A Naming Policy must be consistent with the HPCA Act, the information privacy principles in section 22 of the Privacy Act 2020, and the general law (including natural justice rights).
Who does this policy apply to?	This policy applies to any Chinese medicine practitioner who is, or has previously been, registered with the Council under the HPCA Act, about whom the Council has made an order or direction under the HPCA Act.
When will a notice about an order or direction be published?	<p>The Council will consider doing so when one or more of the factors below apply:</p> <ol style="list-style-type: none"> 1. Publication of a notice or direction may be required to protect public health and safety. 2. The Council becomes aware, through its monitoring or from a notification, that a Council order or direction is not being complied with. The Council may believe that publishing a notice is required to assure it of future compliance. 3. The Council has information to suggest that there is new or continuing risk to public health and safety from the practice of the practitioner and has reasonable grounds to believe that publication of a notice is likely to prevent or reduce that risk. 4. The Council considers that a notice it has previously published is no longer necessary or appropriate (whether the order or direction has been revoked). A further notice may be needed to address any potentially adverse consequence of any previous publication of the order or direction.

General principles

The Council will apply the following principles in decisions to publish a notice:

1. A practitioner may be named when there are public safety reasons to do so. This will be weighed against the practitioner's privacy interests (including interests under the Health Information Privacy Code), and the consequences for the practitioner's reputation.
2. If the Council proposes to name a practitioner, the practitioner will be provided with a reasonable opportunity to make written submissions and be heard on the matter, either personally or by their representative.
3. The Council will consider whether naming a practitioner is required to protect the health and safety of the public, taking into account other disclosure provisions in the Act requiring an order to be provided to employers and those working in partnership or association with the practitioner.
4. Publication may be required to provide information to the public, so they are able to make informed decisions about their care or treatment.
5. Publication may be necessary to ensure compliance of an order or direction. This could include, allowing better monitoring of compliance where there is a high risk of non-engagement or where there is information to believe that the risk of the practitioner's practice or conduct posing a risk of harm to the public is increasing or has increased.
6. The Council may decide to publish to a particular group or to a wider audience. Targeted publication may be preferred over general publication unless there are mitigating circumstances.
7. Publication should be tailored to the purpose and audience identified by the Council. It should be published with sufficient detail, as widely and in such a way as to provide the identified level of information to the identified audience.
8. If a notice is proposed to be published on a website, the Council will also consider whether it should be removed on a certain date or after a set period.
9. Consideration will always be given as to whether publication may cause harm to a health consumer, complainant, or other person who made a notification about a practitioner's health or competence.

Criteria to be applied

When assessing whether to publish the name of a practitioner in a notice issued under s157(1) of the HPCA Act, the Council must consider the Privacy Act 2020, natural justice rights, and any other relevant matters.

Whether the Council names a practitioner who is subject to any specific order or direction will be something to be determined on a case-by-case basis taking into consideration the public interest in knowing the name of the practitioner and the private interest the practitioner has in not being named. The Council will apply the following criteria:

- a) Public safety – ensuring the safety and quality of health care and the competence of practitioners. Non-disclosure in a particular case may run the risk of harm to patients in the future. Disclosure may elicit other complaints or concerns about a practitioner's competence.
 - b) Public choice – the right of existing and potential patients to know the disciplinary history of a particular practitioner so as to be able to make an informed choice whether to engage their services in the future.
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- c) Accountability – practitioners need to be held to account for the standard of care or service they provide. They should expect that some information may need to be disclosed if serious accountability or health and safety concerns are raised, including non-compliance with an existing order.
 - d) Nature of the concerns – does the concern raise serious safety or competence concerns, does non-disclosure raise a risk of harm to patients in the future? Concerns of a serious nature will raise stronger public interest considerations in favour of disclosure.
 - e) Whether the investigation is ongoing – disclosing the details of an allegation during an ongoing investigation may unfairly suggest that there is substance to the allegation.
 - f) Action taken in respect of the outcome of an investigation – the public interest in disclosure will be higher, and a practitioner’s legitimate expectation of privacy will be reduced, where a concern has been investigated and found to be substantiated. It will be in the public interest to know the remedial actions or consequences imposed on the practitioner.
 - g) Extent to which information is already in the public domain – the privacy interest may be diminished by prior knowledge or public availability of the information. If information about the concern is already in the public domain, this may increase the public interest in disclosure of a summary about the outcome of the investigation. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and implement any protective measures or remedial action.
 - h) Likelihood of harm to the practitioner arising from disclosure – there may be factors that heighten the risk of personal or professional harm arising from the disclosure, for example, the physical or mental health of the practitioner, or the size of the community in which they practise.
 - i) Likelihood of harm to any complainant arising from non-disclosure – there may be factors that heighten the risk of harm to a complainant from not naming the practitioner and/or how a practitioner is named.

How does this policy relate to other obligations on the Council to notify or

If a court makes an order about a Chinese medicine practitioner under the HPCA Act, it may order that the Council publish a notice setting out the effect of an order about a named practitioner, and a summary of the proceedings about the order that was made.¹

In addition, the HPCA Act makes it mandatory for the Council to inform certain people of particular decisions it makes².

¹ Section 157(3) of the HPCA Act.

² Notifications of competence concern under s34 – If the Council is notified by a health practitioner, the Health and Disability Commissioner or the Director of Proceedings that a practitioner may raise a risk of harm by practising below the required standard of competence, the Council must tell that notifier if the Council decides to review the practitioner’s competence and if, after that review, the Council makes any order under s38.

Notifications of competence concern under s45 – If the Council is notified under s45 of a concern that a practitioner may be unable to perform the functions required for safe practice because of some mental or physical condition, the Council

Publish decisions?	This includes people who make formal notifications to the Council and others who have a close or active professional association with the practitioner ³ .
Information to be disclosed	<p>Where the Council has elected to publish information about a practitioner, it will release a summary of the information with appropriate context.</p> <p>Publications instigated by the Council may include the name of the practitioner, a short context of the concern and citation of the relevant section of the HPCA Act.</p> <p>Where the order relates to the health of a practitioner, additional consideration is needed with regards to the impact any disclosure may have on the practitioner.</p>
Where will publications occur?	<p>Publication may be made by posting on the relevant section of the Council’s website; and may also be by inclusion in the Council’s electronic newsletter or other suitable media.</p> <p>In addition, the Council may also annotate the practitioner’s entry in the Register to include reference to the order or direction.</p> <p>Information published on the Council’s website will be reviewed periodically, at an interval agreed by the Council at the time the information is first published, or as new information comes to hand but not more than two years after publication.</p> <p>The Council may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.</p>
What procedure and timeframe does the Council follow before publishing a notice?	<p>Before publishing an order and naming a Chinese medicine practitioner, the Council will provide the practitioner with the following:</p> <ul style="list-style-type: none"> • a draft of the proposed notice • the proposed method of publication • the intended recipients of the notice • the reasons for publishing the order • date(s)/ frequency of publication⁴ • an invitation with a reasonable opportunity to provide a submission on either or both the proposed notice and the proposed method of publication. • The CM practitioner will be given no less than 10 working days from the date the proposed notice is sent to them, to make

must tell the notifier if the Council subsequently orders suspension of the practitioner’s practising certificate or includes conditions in the practitioner’s scope of practice.

³ Copies of orders – the Council must give a copy of any order about a practitioner, to the practitioner concerned. The order must include the reasons why the order is made. The Council must also give a copy of the order to the practitioner’s employer(s) and any person working in partnership or association with the practitioner. (s156A of the HPCA Act)

⁴ If the Council proposes a mode of publication that constitutes “continuous publication” (e.g. on a website), the Council must identify a date on which that publication will cease.

submissions. The Council will consider the practitioner's submissions on the proposed notice and the terms of publication before making a final decision.

References **Sections 156A & B, 157, 157A, 157B, 157D, 157E, 157F, 157G, 157H, and 157I of the HPCA Act.**

Section 22 of the Privacy Act 2020.

Appendices **Appendix 1** - Table of orders or directions that may trigger consideration of naming a CM Practitioner

Appendix 2 - Relevant sections of the Health Practitioners Competence Assurance Act 2003

Appendix 3 – Decision flow chart

Policy approved July 2023

Policy to be reviewed The HPCA Act requires that this policy be reviewed within 3 years after it comes into force, and then at intervals of not more than 3 years.

Appendix 1 – Table of orders or directions that may trigger consideration of naming a Chinese Medicine Practitioner

Section	Possible order
31(4)	Cancellation of interim practising certificate
38	<ul style="list-style-type: none"> • Competence (education) programme • Conditions • Examination or assessment • Counselling or assistance
39	Interim suspension/conditions pending competence review
43	<ul style="list-style-type: none"> • Changing permitted health services s43(1)(a)(i) • Conditions s43(1)(a)(ii) • Registration suspended s43(1)(b)
48(2)	<ul style="list-style-type: none"> • Interim suspension s48(2)(a) • Changing permitted health services s48(2)(b)(i) • Conditions s48(2)(b)(ii)
48(3)	Extension of s48(2) order
50	<ul style="list-style-type: none"> • Suspension s50(3) • Conditions s50(4)
51(1)	Revoking suspension imposed under 39, 48, 50
51(2)	Revoking conditions imposed under 39, 48, 50, 67A, 69A
51(3)	Varying conditions imposed under 39, 48, 50, 67A, 69A
67A(2)	Order for: <ul style="list-style-type: none"> • Medical examination or treatment; • Psychological or psychiatric examination; or • Treatment/therapy for alcohol or drug abuse.
67A(6)(b)	Conditions (after health examination complete)
69	<ul style="list-style-type: none"> • Suspension s69(2)(a) • Conditions s69(2)(b)
69(4)	Revocation of 'with notice' orders for suspension or conditions
69A	Suspension where risk of serious harm
69A(5)	Revoking (without notice) suspension
69A(6)	Conditions (when revoking s69A suspension)
Possible directions	

142	Cancellation directed by the Council, at request of practitioner
143	Cancellation directed by the Council, on death of practitioner
144	Cancellation directed by the Council following revision of register process
146	Cancellation (where false/misleading application)
147	Cancellation (after review following overseas action)

Appendix 2 – Relevant sections of the Health Practitioners Competence Assurance Act 2003

156A Orders of authority

1. An order made by a responsible authority must—
 - a. be in writing; and
 - b. state the reasons why it was made; and
 - c. state clearly the health practitioner’s right to appeal to the District Court against the order; and
 - d. be signed by the Registrar of the authority.

(2)

The Registrar of a responsible authority must, as soon as practicable after an order is made by the authority,—

- (a) ensure that a copy of the order is given to—
 - (i) the health practitioner concerned; and
 - (ii) any employer of the health practitioner; and
 - (iii) any person who works in partnership or association with the practitioner; and
- (b) take all administrative steps necessary to give effect to the order.

156B When orders of authority or Tribunal take effect

Unless otherwise provided in this Act, an order made by an authority or the Tribunal takes effect on the day on which, under [section 156](#), the order is to be treated as having been received by the health practitioner concerned, or any later date specified in the order.

157 Publication of orders

- (1) An authority may publish in any publication a notice setting out—
 - a) [the effect of any order or direction it has made under this Act in respect of a health practitioner; and](#)
 - b) a summary of any finding it has made under this Act in respect of the health practitioner; and
 - c) the name of the health practitioner.
- (2) If the Tribunal makes an order under this Act in respect of a health practitioner, the appropriate executive officer of the Tribunal must publish, in any publication the Tribunal directs, a notice stating—
 - (a) [the effect of the order; and](#)
 - (b) [the name of the health practitioner; and](#)
 - (c) [a summary of the proceedings in which the order was made.](#)
- (3) If a court makes an order under this Act in respect of a health practitioner, the authority with which the health practitioner is or was registered must publish, in any publication the court directs, a notice stating—

- (a) the effect of the order; and
 - (b) the name of the health practitioner; and
 - (c) a summary of the proceedings in which the order was made.
- (4) Subsections (2) and (3) apply subject to—
 - (a) any order of the Tribunal under [section 95](#); and
 - (b) any order of the court.
- (5) In this section, the term **health practitioner** includes a former health practitioner.

157A Meaning of naming policy

In [sections 157B to 157I](#), **naming policy** means a policy issued by an authority relating to the naming of a health practitioner in a notice published by the authority under [section 157\(1\)](#).

157B Authorities to issue naming policies

- (1) Each authority must issue a naming policy not later than 12 months after this section comes into force.
- (2) The purpose of the naming policy is to—
 - (a) enhance public confidence in the health professions for which the authority is responsible and their disciplinary procedures by providing transparency about their decision-making processes; and
 - (b) ensure that health practitioners whose conduct has not met expected standards may be named where it is in the public interest to do so; and
 - (c) improve the safety and quality of health care.
- (3) A naming policy must set out—
 - (a) the class or classes of health practitioners in respect of whom the naming policy applies; and
 - (b) the circumstances in which a health practitioner may be named; and
 - (c) the general principles that will guide the authority’s naming decisions; and
 - (d) the criteria that the authority must apply when making a naming decision; and
 - (e) the requirement to have regard to the consequences for the health practitioner of being named, including the likely harm to the health practitioner’s reputation; and
 - (f) the procedures that the authority must follow when making a naming decision; and
 - (g) the information the authority may disclose when naming a health practitioner; and
 - (h) the means by which a health practitioner may be named.

157C Consultation on naming policies

Before issuing its naming policy, an authority must consult, and take into account any comments received from, the following persons:

- (a) the health practitioners registered with the authority; and
- (b) the Privacy Commissioner; and
- (c) the Director-General of Health; and
- (d) the Health and Disability Commissioner.

157D Naming policies to be available on Internet

Immediately after issuing a naming policy, an authority must make its naming policy available on an Internet site maintained by or on behalf of the authority.

157E When naming policies come into force

A naming policy comes into force on the day after the date on which it is issued.

157F Review of naming policies

- (1) An authority must review its naming policy within 3 years after the policy comes into force, and then at intervals of not more than 3 years.
- (2) [Sections 157B to 157E](#) apply with all necessary modifications to the review of a naming policy.

157G Naming policies to be consistent with law

A naming policy must be consistent with—

- (a) this Act; and
- (b) the information privacy principles in [section 22](#) of the Privacy Act 2020; and
- (c) the general law (including natural justice rights).

157H Status of naming policies

[Repealed]

Section 157H: repealed, on 28 October 2021, by [section 3](#) of the Secondary Legislation Act 2021 (2021 No 7).

157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege

For the purposes of [clause 3](#) of Part 2 of Schedule 1 of the Defamation Act 1992, any notice published by an authority under [section 157\(1\)](#) that names a health practitioner in accordance with a naming policy issued by the authority must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Appendix 3 – Decision Flow Chart

The Council considers whether a notice may be required



The Council agrees to a proposed notice and the terms of publication.
The proposed notice must include the wording related to the effect of the relevant order or direction and the summary of findings.

The proposed terms of publication must include:

- Mode of publication
- The recipients
- Dates of publication
- Date the publication will cease (if relevant).

The earliest of the date or dates proposed must not be earlier than 12 working days after the date of the Council's decision to agree to the proposed notice.



The Council sends the practitioner a written proposal, which must contain:

- the proposed notice
- the proposed terms of publication
- the reasons for the Council's proposed notice and terms of publication
- a statement informing the practitioner of the right to provide submissions before a final decision is made.

The practitioner will be given no less than 10 working days from the date the proposed notice is sent to them, to make submissions.



The Council will consider the practitioner's submissions on the proposed notice and terms of publication before making a final decision.