

# **Medical Council of New Zealand and Otago Medical School, University of Otago**

## **Memorandum of Understanding**

### **Section 1 – Introduction**

#### **The parties**

This Memorandum of Understanding (MoU) is between the Medical Council of New Zealand (the Council) and the Otago Medical School, University of Otago (the Medical School).

#### **Introduction**

This section of the MoU is intended to assist with the interpretation and implementation of other parts of the MoU by:

- providing the context for the operation of the MoU
- clarifying the objectives and intentions of the parties, and
- describing how the Medical School and the Council intend to interact with each other.

#### **Purpose**

The objective of the MoU is to enable the Medical School and the Council, working in a collaborative and equal relationship, to clarify our respective roles and responsibilities related to the evaluation and reporting of fitness to practise issues, including concerns over competence, conduct and health, that may affect a medical student's fitness for registration or ability to perform the functions required for the practice of medicine.

The MoU does not provide a definitive legal interpretation of the Health Practitioners Competence Assurance Act 2003 (HPCAA).

The parties will use all reasonable endeavours to meet the obligations under this memorandum. The parties will hold each other accountable for their performance under the memorandum.

#### **Values and principles**

As an accredited medical programme, the fundamental purpose of the Medical School is to provide a course of study and training resulting in a qualification recognised by the Medical Council for the purposes of registration as a medical practitioner.

The Medical School has responsibility, in delivering an undergraduate medical programme, to ensure that students are aware of, and meet, high standards of professionalism and conduct.

The Council has a responsibility to ensure that doctors granted registration are competent to practice and are fit for registration and to practise.

The Medical School and the Council recognise that early and timely engagement with a student who falls below expected standards of competence or conduct, or who has health concerns, will ultimately assist that student upon registration to commence medical practice with appropriate support, assistance and monitoring.

It is agreed that it is important students understand early-on the expectations of them and that at a certain point Council will be notified of any issues.

Recognising the shared goal, the Medical School and the Council wish to communicate and share information in a timely way to effectively manage situations where there may be specific risks to the health and safety of the public or doctors may need additional support upon registration and commencement of their first prevocational year.

We agree to foster a long-term collaborative relationship to enable us both to meet our responsibilities and manage potential risks to the health and safety of the public. The following relationship principles will guide each of us in our mutual dealings:

- a) We will communicate with each other in an open and timely manner (including in relation to any request to review any aspect of this MoU).
- b) We will work in a collaborative and constructive manner that enables each party to fulfil its obligations
- c) We will comply with the provisions of legislation relevant to respective roles and responsibilities.
- d) We acknowledge that the Council and Medical School have their own respective strategic and policy directions.
- e) We will work in good faith to resolve any disagreements in a timely fashion.
- f) We will recognise and value each other's skills, expertise and commitment to ensure high quality medical practice and patient safety in New Zealand.

#### Meetings

The Council and Medical School will meet at least once a year. Topics will include reviewing the operation of the MoU, how our mutual roles and responsibilities are being delivered, and areas for improvement in the functioning of our business and relationship.

#### Nominated officer

A nominated officer will be the primary point of operational contact between the Council and the FMHS/Medical School.

#### Review

A 2-yearly review will take place, or earlier, as agreed between the parties.

#### Signatures



\_\_\_\_\_  
Professor Peter Crampton  
Dean, Otago Medical School

24.02.18

\_\_\_\_\_  
Date signed



\_\_\_\_\_  
Joan Simeon  
CEO, Medical Council of New Zealand

19/2/18

\_\_\_\_\_  
Date signed

## **Section 2 - Roles and responsibilities**

The Medical School and the Council recognise that health, competence and/or conduct issues prior to graduation may have an impact on the medical students' fitness for registration or their ability to perform the functions required for the practice of medicine.

The Council has stated that the functions required for the practice of medicine include:

- the ability to make safe judgements
- the ability to demonstrate the level of skill and knowledge required for safe practice
- behaving appropriately
- not risking infecting patients with whom the doctor comes in contact and
- not acting in ways that impact adversely on patient safety.

The respective roles and responsibilities of the Council and Medical School are outlined below:

### **Medical Council of New Zealand**

The Council's purpose is to ensure that medical practitioners are competent and fit to practise medicine, in order to protect and promote public health and safety as required by the Health Practitioners Competence Assurance Act 2003 (HPCAA).

Under section 16 of the HPCAA, the Council must ensure that no person is registered as a doctor in New Zealand whose previous or current competence, health or conduct may pose a risk to public health and safety. The Council's registration application form will require all applicants to declare any disciplinary activity related to fitness to practise, including convictions, and/or conduct issues noted while they were a medical student at any university attended or prior. Applicants are also asked to declare health issues.

The Council requires declarations from all graduating medical students seeking registration asking them to declare if they:

- have been affected by, diagnosed with, or assessed as having, a mental or physical condition with the capacity to affect the applicant's ability to perform the functions required for the current or future practice of medicine. These include neurological, psychiatric or addictive (drug or alcohol) conditions, including physical deterioration due to injury, disease, or degeneration,
- are or have ever been the subject of university disciplinary proceedings, or
- have been involved with the university's fitness to practise committee for any matter (health, competence or conduct) which remains unresolved and /or requires ongoing monitoring and/or support.

The Council will present annually to medical students about the Council's role and explain that a supportive approach is taken when considering disclosures (and possibly provide case studies to illustrate this point). This will generally be in Year 3 of the programme unless otherwise agreed between the Council and the Medical School.

### **Otago Medical School, University of Otago**

The parties recognise that a responsibility falls on the Medical School to notify the Council of competence and conduct concerns and that this includes concerns that are identified in advance of students making application for registration.

The Medical School will, as early in the final year as possible, advise the Council if it has reason to believe that a medical student has a mental or physical condition or conduct and competence concerns that may have an impact on their ability to practice safely.

The Medical School will provide the necessary details to assist the Council's Health Committee to undertake a fitness for registration assessment and to determine what requirements to put in place, if any.

#### *Promoting professionalism*

The Medical School will provide a professionalism curriculum to ensure that medical students learn expected standards of professionalism. The Medical School will ensure that medical students are familiar with the Council's standards and statements.

#### *Identifying and managing fitness to practise matters*

The Medical School will maintain a Code that it considers appropriate to managing fitness to practise concerns.

The Code will include remedial and supportive mechanisms that enable medical students to remain in the undergraduate programme wherever possible, providing the proposed remedial action does not place the public, the medical student or the University at risk before or after graduation. As far as possible, the Medical School will endeavour to resolve the concerns at an early stage, with the medical student's cooperation.

At a minimum, the Code will outline three areas of concern which may affect fitness to practise:

#### **Health or personal Issues**

Issues that may affect the medical student's future ability to practise medicine, including but not limited to:

- Mental health disorders.
- Physical impairment.
- Infectious diseases including transmissible blood-borne viral infections.
- Drug and alcohol issues.

These are likely to:

- affect a medical student's studies, progression or career pathways
- expose the medical student, patients or staff members to potential risk
- expose the Medical School or partner organisation to potential risk.

#### **Professional attitudes and behaviours**

Issues of concern regarding professional attitudes and behaviours during the programme including:

- Failure to develop and maintain attitudes and behaviours which are expected of medical professionals in their conduct towards patients and colleagues, including honesty, reliability, responsibility, accountability.
- Plagiarism.
- Poor attendance.
- Inappropriate behaviour where this is in breach of, or judged to be below, minimally accepted standards.
- Contravention of significant aspects of ethical codes or policy, eg. sensitive examinations.

### **Issues external to the programme**

Issues regarding the actions of medical students occurring outside the programme, such as any offence which is potentially punishable by imprisonment (eg alcohol or drug-related convictions, pornography offences). Where a student is granted a discharge without conviction or is granted diversion by the police with regard to such an offence, the student must disclose this information to the head of programme.

### **Classification of issues**

Any concerns raised are categorised as follows:

#### **Non-critical**

An issue that raises concerns about future fitness to practise, that would best be dealt with through support and counselling. Examples would include poor attendance, or relatively minor inappropriate behaviour.

#### **Critical**

Issues that raise much more significant concerns in regards to future fitness to practice issues or career options. Examples would include dishonesty, serious health issues, and significant contraventions of a policy or drug and alcohol abuse. Two or more repeated non-critical concerns may escalate to this category.

#### **Extraordinarily critical**

An event giving rise to the need for immediate action because of the likelihood of significant harm, either involving a medical student, or resulting from the action of a medical student.

## **Section 3 - Preparing for registration with the Council**

The Medical School considers that if a student is not fit for registration / practice in New Zealand, the medical student will not satisfy the degree requirements.

The Medical School will notify the Council during the medical student's 6<sup>th</sup> year if a medical student has been referred to the Medical School's fitness to practise committee and the issue remains unresolved and/or requires ongoing monitoring or support. The notification is made so the Council can put in place any additional arrangements or support that may be required to ensure, once the medical student is registered, that he or she, and the public are safe.

The Medical School will require any enrolling medical student to sign a declaration that they understand that the Council will be notified of any issues before a Fitness to Practise Committee in the medical students' final year that remain unresolved (and therefore require ongoing monitoring or support) relating to the health, competence or conduct of a graduating medical student.

The Council will maintain a template notification form to assist the Medical School to provide key information to the Council (refer Appendix 4).

The Medical School must notify the Council if there is reason to believe a medical student who is completing a course would be unable to perform the functions required for the practice of medicine because of some mental or physical condition (Section 45 HPCAA).

For this purpose, the Council will:

- nominate a member of the Health team to liaise
- ensure assessments are completed to ascertain if a medical student is fit to practise
- transition the student from Medical School oversight to Health Committee oversight upon registration.



## **Risk assessment process: factors for assessing risk in relation to risk of serious harm, risk of harm and questions about the safety of practice.**

In determining whether a doctor's practice poses a risk of serious harm or their conduct raises questions about the safety of their practice, the Council will consider:

- the likelihood of a similar circumstance or set of circumstances arising again, and
- the impact on patient(s) or the public if a similar circumstance or set of circumstances arises again,

before the doctor successfully completes a competence improvement programme or a conduct process under the HPCAA.

"Serious harm" may include but is not limited to:

- harm caused to one or more patients or members of the public
- physical, emotional or psychological harm
- a series of incidents that individually may not reach the threshold but collectively indicate a pattern of practice that does.

### Likelihood of risk of serious harm

The following factors may be relevant in relation to likelihood:

- the nature and veracity of clinical or criminal evidence
- where more than one unrelated complainant has made similar complaints
- the likelihood of ongoing risk or repetition of the harm
- the complaint raises wider concerns about the soundness of the doctor's judgment and/or adherence to ethical standards
- the doctor's attitude to the concerns raised as evidenced in his/her response
- the circumstances and context in which the doctor practices
- any factors mitigating against the risk.

### Impact on patient(s) or the public of risk of serious harm

The following factors may be relevant in relation to impact:

- the circumstances have or may be expected to lead to death or permanent disability or incapacity
- the circumstances have or can be expected to cause greater un-wellness or unnecessary complications
- professional boundaries have been breached
- criminal charges are pending or already laid
- unprofessional behaviour

## Notes for guidance

### Clinical factors indicating potential risk may include evidence of:

- a series of clinically significant errors
- one egregious mistake
- practise (including prescribing) outside NZ norms
- inaccurate or inadequate clinical records
- not practising evidence based medicine
- clinical knowledge being out of date
- a range of deficits across several domains of competence
- lack of patient monitoring appropriate to the clinical situation
- failure to diagnose accurately
- poor clinical judgment
- working outside the doctor's scope of practice or level of expertise.
- incomplete knowledge about necessary systems inherent in the delivery of health care in New Zealand
- lack of knowledge of regulatory requirements
- possible cognitive decline.

### Behaviours indicating potential risk may include that the doctor;

- has failed or is unable to reflect on an error
- is unwilling to contemplate changing practise methods
- attempts to blame others
- is not engaged in an appropriate recertification programme
- the doctor has not improved their practice or practice systems despite earlier assurances to the Council
- fails to adequately respond to the Council
- is alleged to have made a serious breach of the code of conduct, particularly relating to unprofessional behaviour and breach of trust
- has been charged with criminal offences which potentially adversely affect the doctor's professional practice
- has drug or alcohol dependence or use (supported by evidence)
- is non-compliant with the Council's Health Committee.

### Contexts of practice indicating potential risk may include that the doctor:

- has very vulnerable patients
- was enrolled in but has left a vocational training programme
- is not using or does not have effective practice management systems
- appears to be professionally isolated
- is practising in physical isolation and/or in a sole practice
- works in area of high need or high intensity
- has been dismissed from their employment because of the concerns.

Potential risk may also be indicated when:

- the employer believes the doctor requires intense supervision to practise safely
- the circumstances may affect public confidence in the medical regulatory system.

Approved by Council December 2015, Amended July 2016



**Health Practitioners Competence Assurance Act 2003 - sections 16 and 45**

**16 Fitness for registration**

No applicant for registration may be registered as a health practitioner of a health profession if—

(a) he or she does not satisfy the responsible authority that he or she is able to communicate effectively for the purposes of practising within the scope of practice in respect of which the applicant seeks to be, or agrees to be, registered; or

(b) he or she does not satisfy the responsible authority that his or her ability to communicate in and comprehend English is sufficient to protect the health and safety of the public; or

(c) 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, and he or she does not satisfy the responsible authority that, having regard to all the circumstances, including the time that has elapsed since the conviction, the offence does not reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

(d) the responsible authority is satisfied that the applicant is unable to perform the functions required for the practice of that profession because of some mental or physical condition; or

(e) he or she is the subject of professional disciplinary proceedings in New Zealand or in another country, and the responsible authority believes on reasonable grounds that those proceedings reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

(f) he or she is under investigation, in New Zealand or in another country, in respect of any matter that may be the subject of professional disciplinary proceedings, and the responsible authority believes on reasonable grounds that that investigation reflects adversely on his or her fitness to practise as a health practitioner of that profession; or

(g) he or she—

(i) is subject to an order of a professional disciplinary tribunal (whether in New Zealand or in another country) or to an order of an educational institution accredited under section 12(2)(a) or to an order of an authority or of a similar body in another country; and

(ii) does not satisfy the responsible authority that that order does not reflect adversely on his or her fitness to practise as a health practitioner of that profession; or

(h) the responsible authority has reason to believe that the applicant may endanger the health or safety of members of the public.

**45 Notification of inability to perform required functions due to mental or physical condition**

(1) Subsection (2) applies to a person who—

(a) is in charge of an organisation that provides health services; or

(b) is a health practitioner; or

(c) is an employer of health practitioners; or

(d) is a medical officer of health.

(2) If a person to whom this subsection applies has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.

(3) If any person has reason to believe that a health practitioner is unable to perform the functions required for the practice of his or her profession because of some mental or physical condition, the person may give the Registrar written notice of the matter.

(4) Subsection (5) applies to a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training (a course) that is a prescribed qualification for a scope of practice of a health profession.

(5) If a person to whom this subsection applies has reason to believe that a student who is completing a course would be unable to perform the functions required for the practice of the relevant profession because of some mental or physical condition, the person must promptly give the Registrar of the responsible authority written notice of all the circumstances.

(6) No civil or disciplinary proceedings lie against any person in respect of a notice given under this section by that person, unless the person has acted in bad faith.

## The Council's statements

### Definitions for doctors

- Definition of clinical practice and non-clinical practice (Aug 2006)
- Definition of fitness to practise (Nov 2012)
- Definition of the 'practice of medicine' (Aug 2004)
- Risk assessment process: factors for assessing risk in relation to risk of serious harm, risk of harm and questions about the safety of practice (July 2016)

### Standards for doctors

#### *Good Medical Practice*

- Good medical practice (Dec 2016)

#### *Medical care*

- Doctors and CAM (Complementary and alternative medicine) (Nov 2017)
- A doctor's duty to help in a medical emergency (Aug 2006)
- HRANZ Joint Guidelines for registered health care workers on transmissible major viral infections (Nov 2005)
- Cosmetic procedures (Nov 2017)
- Safe practice in an environment of resource limitation (Aug 2008)

#### *Good prescribing practice*

- Statement on good prescribing practice (Nov 2016)
- Doctors and performance enhancing medicines in sport (Feb 2017)

#### *Communication and informed consent*

- Information, choice of treatment and informed consent (Mar 2011)
- Ending a doctor-patient relationship (Mar 2011)
- Use of the internet and electronic communication (Dec 2016)
- Telehealth (Dec 2016)
- Maintenance and retention of patient records (Aug 2008)
- Disclosure of harm following an adverse event (Dec 2010)
- When another person is present during the consultation (Mar 2004)
- Statement on advertising (Dec 2016)

#### *Cultural competence*

- Cultural competence (Aug 2006)
- Best practices when providing care to Māori patients and their whānau (Aug 2006)
- Best health outcomes for Māori: Practice implications (Oct 2006)
- Best health outcomes for Pacific Peoples: Practice implications (May 2010)
- Competence Partnership Equity (Sept 2015)

#### *Management*

- Responsibilities of doctors management and governance (Mar 2011)

#### *Professionalism*

- What to do when you have concerns about a colleague (Dec 2010)

- Unprofessional behaviour and the health care team. Protecting patient safety (Aug 2009)
- Medical certification (Sept 2013)
- Sexual Boundaries in the Doctor-Patient Relationship - A resource for doctors (Oct 2009)
- Providing care to yourself and those close to you (Nov 2016)
- Non-treating doctors performing medical assessments of patients for third parties (Dec 2010)
- Doctors and health-related commercial organisations (Jul 2012)

#### *Patients*

- What to expect from your doctor when you have a cosmetic procedure (Jun 2008)
- You and your doctor (Mar 2008)
- The importance of clear sexual boundaries in the patient-doctor relationship. A guide for patients (Oct 2006)

### **Guides & Booklets**

- Cole's Medical Practice in New Zealand (2011)

#### **Get Registered**

##### *Registration*

- Medical Registration in New Zealand (July 2013)
- Medical Registration Handbook 2016 (Mar 2017)
- Orientation Induction and Supervision for International Medical Graduates (Jan 2011)

#### **Maintain Registration**

##### *Practising Certificate*

- Guide to completing a Practising Certificate application (April 2017)

##### *Recertification and CPD*

- Continuing Professional Development and Recertification (2014)

##### *Supervision*

- Orientation Induction and Supervision for International Medical Graduates (Jan 2011)

#### **Fitness to Practise**

##### *Conduct*

- Sexual boundaries a guide for patients (Oct 2006)
- What to expect if your complaint is referred to a professional conduct committee (Apr 2011)
- What to expect if you are referred to a professional conduct committee (Apr 2011)
- You and your doctor (Mar 2008)

##### *Competence*

- Assessing Doctors' Performance (May 2005)
- Performance Assessment what you can expect (Apr 2010)

##### *Health*

- Doctors' health (Dec 2004)

Statements may vary from time to time, for the most recent versions of these documents please visit [www.mcnz.org.nz](http://www.mcnz.org.nz).



## Medical Council of New Zealand Notification Form

Under the Memorandum of Understanding between the Medical Council of New Zealand and the Otago Medical School, the Medical School will notify the Council during a student's final training year if the student

- has appeared before the Medical School's Fitness to Practise Committee for any matter (health, competence or conduct) which remains unresolved and/or requires ongoing monitoring and/or support; or
- has a fitness to practise concern that may have an impact on his or her ability to perform the functions required for the practice of medicine.

Notification given under memorandum of understanding between Medical Council of New Zealand and Otago Medical School	
Student:	
Notification in relation to:	[Health] [Conduct] [Competence]
Date(s) before the FtP Committee:	
Reason for appearing before the FtP Committee:	Conduct: [plagiarism, boundaries, inappropriate interactions with patients, criminal conviction or charge pending, privacy, professionalism, not working within limits, not following instruction, bullying, sexual harassment other] Competence: [continued poor performance, other]
Impact on ability to practice	Health: [mental health, physical impairment, infectious disease, drug and/or alcohol issues]
Details:	
Status at time of notification to Council	Ongoing support / assistance / monitoring required Specify: _____
Dean / Nominated Officer:	
Signature:	
Date:	

cc: Student