

The Psychotherapists Board  
of Aotearoa New Zealand

*Te Poari o nga Kaihauumanu Hinengaro o Aotearoa*

# Guidelines for Competence Review Committee Members

Sections 34-44 of the Health Practitioners  
Competence Assurance Act 2003

*Approved: December 2011*

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## Contact details

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# Guidelines for committee members appointed to carry out a competence review

## 1) Nature of the process

Although a specific concern may have prompted a competence review (review), this is a review of a psychotherapist's competence rather than an investigation of any kind of complaint or disciplinary matter.

The review process is part of an overall procedure that is essentially *evaluative* and *educational* in nature. If there is a competence concern, then the Board wants to help the practitioner address it, and minimise any risk of harm to the public. The review is a formal assessment, the outcome of which may have major (and potentially adverse) consequences for the psychotherapist being assessed. While a consultative and collegial approach is always preferred, there may be occasions during some reviews when a more directive approach is required.

NOTE: reviews are carried out under Part 3 of the Health Practitioners Competence Assurance Act 2003 (HPCAA) and are not disciplinary in nature; they are intended to be evaluative and educational, with the goal of working with the practitioner to identify any problems that need to be remedied. The Board believes that reviews should be as supportive of the practitioner as possible. It is expected that direct dialogue with the practitioner is likely to facilitate such support and collaboration.

After reviewing a psychotherapist's competence, Competence Review Committee (CRC) members are required to consider the following and then recommend to the Board whether the psychotherapist's practice of the profession either:

- a) **meets** the required standard of competence, or
- b) **does not** meet the required standard of competence [refer s36(5) of the HPCAA].

If, after considering the CRC report and recommendations, the Board has reason to believe the competence of the psychotherapist is deficient, then the Board will make one or more of the following orders [refer s38(1)]:

- that the psychotherapist undertake a Competence Programme;
- that one or more conditions be included in the psychotherapist's scope of practice;
- that the psychotherapist sit an examination or undertake an assessment specified in the order;
- that the psychotherapist be counselled or assisted by one or more nominated persons.

NOTE: The CRC is not required to decide what orders should apply – the CRC's task is only to decide whether or not the psychotherapist's practice of the profession meets the required standard of competence. It is helpful to the Board, however, to understand the CRC's reasons, concerns or recommended areas for remediation, should the CRC choose to state them.

## 2) Preliminary process prior to appointment of the review committee

The Board will have issued the psychotherapist being reviewed with notice<sup>1</sup> of the review. This notice informs the psychotherapist of the substance of the grounds on which the Board has decided to carry out the review, together with any information relating to his or her competence that is in the possession of the Board.

The psychotherapist will have been given a reasonable opportunity to make initial submissions on the form of the review and the composition of the CRC. Any submissions received by the Board will be forwarded to the CRC Convener when appointed. The psychotherapist will be expecting to hear from the CRC Convener as soon as practicable or within the next 3 weeks (e.g. 15 working days from the date the CRC was appointed).

## 3) The review process

The recommended steps for conducting the review are as follows:

- 1) At the CRC's first meeting, each member needs to complete and send to the Board the 'confidentiality agreement' provided.
- 2) The CRC receives documentation from the Board about the psychotherapist undergoing the review. This will include a copy of the review notice, any submissions received, and a copy of the correspondence that prompted the review. CRC members should read this thoroughly before contacting the psychotherapist.
- 3) The CRC Convener should contact the psychotherapist concerned (by phone or in writing) within 3 weeks to introduce themselves and to confirm with the psychotherapist that the review process is underway.
- 4) The CRC Convener then makes arrangements for the CRC to meet either in person or by teleconference to discuss the review process and set provisional dates for the review. The letter of appointment sent to CRC members (and the notice sent to the psychotherapist) sets out the terms of reference and the scope of the review. The CRC should set a process which will allow them to efficiently evaluate the areas of competence defined in the scope of the review.
- 5) The CRC is usually free to determine the activities included in the review process, although in some cases the terms of reference determine the process to be followed. Evaluation may include, but is not limited to, review of clinical files, requests for information, discussion of hypothetical cases or scenarios, interviewing the psychotherapist's supervisor or colleagues, and discussion of professional issues. The process should enable the CRC to decide whether or not the psychotherapist's practice of the profession meets the minimum standards of competence on the aspects outlined in the scope of the review.
- 6) The procedure to be followed (and the provisional dates for any review meetings) should be communicated to the psychotherapist as soon as possible.
- 7) If any interviews and/or file audits form part of the review, these should be semi-structured (questions/process agreed before the interview/file audit) and careful notes should be made.
- 8) The CRC Convener contacts the psychotherapist to confirm time(s) and venue(s) for the review to take place. Efforts should be made to settle on arrangements that minimise disruption to the psychotherapist's work and that keep the review as confidential as possible. (If difficulties or ongoing delays arise out of efforts to confirm the review date, please inform the Board's Registrar.)

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<sup>1</sup> Section 37 of the HPCAA

- 9) The CRC Convener should advise the psychotherapist of any preparation they should make before any review meeting(s).
- 10) All details regarding practical arrangements and verbal requests for information from the psychotherapist should also be formally documented in letters to the psychotherapist. Requests should be communicated clearly, provide written evidence of having done so, and give the psychotherapist reasonable time to respond unless agree otherwise (e.g. within 14 working days). It is recommended that the CRC provide the psychotherapist with a timetable for the practical component of the review, making it explicit what is required of the psychotherapist, where they need to be, and when.
- 11) A visit to the psychotherapist's practice room/s may form part of the review.
- 12) In accordance with section 37(1)(c) of the HPCAA, the psychotherapist must be given a reasonable opportunity to make written submissions and to be heard on the matter of the review, either personally or by his or her representative.
- 13) Many reviews will be able to take place at the worksite of the psychotherapist. If this is not possible or desirable, the CRC may need to hire a room for the day. In such circumstances, the Board's Registrar can provide guidance on reasonable costs and billing arrangements.
- 14) If flight bookings are required, CRC members should do this using the cheapest fare options available. The Board's Registrar can book flights for CRC members if this is more convenient.
- 15) The Board's Registrar is available to assist with the process of the review. However, the actual assessment and all evaluations of the psychotherapist's competence should be conducted independently of the Board and its staff.

### **Guidelines for Natural Justice**

Committee's making decisions should always ensure that they observe the rules of natural justice. This includes decisions made by the Psychotherapist Board, its workforce boards and its committees.

Natural justice broadly requires that authorities:

- a) Give practitioners affected by their decisions fair notice of concerns made against them
- b) Provide practitioners with all the information relied on in support of the concern
- c) Offer practitioners a fair chance to put their case
- d) Ensure that the decision-makers are free from bias and that the decision is not predetermined
- e) Generally deal with practitioners in a fair and reasonable way

Natural justice is especially important for authorities because they will often be exercising a quasi judicial power – make decision that impose penalties and constraints on practitioner's practice.

The CRC must, therefore, ensure that the process by which they reach decisions is as fair as possible, and that everyone affected by the authority's decision is given an opportunity to put forward his or her view. Committee's should also ensure that they are not open to any allegations of bias when exercising their powers. If there is any suggestion of appearance of bias, the potentially biased decision-maker should step down and the decision should be made by someone else.

## 4) Meeting with the psychotherapist under review

The psychotherapist is entitled to make oral submissions in the presence of a support person, or have a representative make submissions on their behalf [refer s37(1)(c)]. The CRC Convenor should establish before the review, whether the psychotherapist intends to bring a support person or representative. If there is to be a support person present, this person will need to sign a confidentiality form. Please note that the support person should not be present if a client is being discussed, and that all clinical material discussed in the support person's presence must be made anonymous.

The CRC should meet with the psychotherapist concerned on the day and at the time agreed, to complete all activities scheduled for that meeting.

At the end of the time spent with the psychotherapist it is *not appropriate* for the CRC to discuss the outcome of their assessment or their recommendations with the psychotherapist, as these may be changed as a result of further deliberations by the CRC or Board.

Detailed notes of the review process and findings should be made. Where possible, CRC members should plan the review process and structure note taking accordingly.

## 5) After meeting with the psychotherapist

The CRC will normally meet in person or by teleconference to decide what findings it will communicate to the Board with regard to the psychotherapist's competence. The CRC may also offer observations on areas of concern and recommendations for remedial action; however, this information is not essential.

Please note that the CRC should also bring to the Board's attention any competence concerns which may be outside the scope of the review but which may be deemed to pose a risk to public safety.

The CRC Convener, with the assistance of the other CRC members, will write a report in the required layout (an electronic version of the template will be provided by the Board's Registrar).

A copy of the draft report will be sent to the psychotherapist to allow him or her the opportunity to comment on any perceived factual inaccuracies. Allow 5 working days for any submission to be made. Draft conclusions and any draft recommendations should be withheld at this stage, to avoid debate about the CRC's evaluation/opinions. The report (and any conclusions and recommendations) should only be finalised after the CRC has considered any comment from the practitioner regarding factual errors.

The CRC Convener sends the completed final report to the Board. All members of the CRC must have agreed to the final report in writing or by electronic means before the Convenor signs it off.

To protect the public from potential harm and to reduce any disruption to the psychotherapist's practice arising from the review, the review should be completed as quickly as possible. If it is likely to take more than 3 months from when the papers are received (i.e. copy of the Notice issued to the psychotherapist and the psychotherapist's submissions, etc) until the completion of the report, the Registrar should be informed.

## 6) After the report has been submitted

The CRC's report and recommendations will be considered as soon as practicable, and the Board decides what action (if any) will be taken under the relevant sections of the HPCAA. If a Competence Programme is ordered, this will be drawn up by the Board with due consideration given to any suggestions made by the CRC.

Compile all accumulated documents, material, and notes into a clearly labelled file. Send this file to the Registrar. This material will be kept by the Board in accordance with its record retention policy. CRC members must submit expense claims with appropriate documentation (refer Section 9).

## 7) Confidentiality of information

In accordance with section 42 of the HPCAA a practitioner must make available for inspection all or any clinical records that the CRC chooses to review.

In accordance with section 44 of the HPCAA, no person who examines any clinical records of any health practitioner under a requirement of a competence review (or competence programme) may disclose any information (being information about any identifiable individual) obtained by that person as a result of that examination, except for the purpose of:

- making a report to the Board in relation to the practitioner concerned;
- for the purposes of any criminal investigation or any criminal proceedings taken against the practitioner;
- for the purpose of making the information available to the person to whom the information relates in any case where the Board directs that the information be made available or where the person requests access to the information (this does not affect the Privacy Act 1993 [refer s 44(2)]).

Every person commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 who discloses any information in contravention to the above [refer s44(3)].

No information, statement, or admission that is disclosed or made by any practitioner in the course of, or for the purposes of satisfying the requirements of, any competence review or competence programme and that relates to any conduct of that practitioner (whether that conduct occurred before or during that review or programme):

- may be used or disclosed for any purpose other than the purposes of that review or programme; or
- is admissible against that person, or any other person, in any proceedings in any court or before any person acting judicially [refer s 44(4)].

## 8) Exclusion of liability

In accordance with section 119(3) of the HPCAA, no person is under any civil liability in respect of anything done or omitted, or for any words spoken or written, in the course of conducting or assisting in conducting any competence review or competence programme. This section does not exclude the liability of any person for anything done or omitted in bad faith or without reasonable care.

## 9) Costs and expenses

### Fees

CRC members are entitled to claim the following fees (exclusive of GST):

- CRC Convener: \$80 per hour.
- CRC Member: \$80 per hour.

### Expenses

Receipts for expenses related to any CRC work (e.g. word processing, toll calls, postage, couriers, photocopying, meals etc) should be attached to claim forms. Mileage allowance, where applicable, will be paid at \$0.77 per kilometre.

### Completing the claim form

A completed IR330 should be submitted with a CRC member's first claim for fees.

The reference number for the individual review should be noted on the top of the claim form.

Completed claim forms should be sent to:

Registrar

The Psychotherapists Board of Aotearoa New Zealand

[registrar@pbanz.org.nz](mailto:registrar@pbanz.org.nz)

CRC members should submit their claim forms with associated receipts to the Board as soon as possible after completing their final report.

### Withholding tax

Payments are made to the individual person concerned and are subject to withholding tax. Unless the Board has received a Certificate of Exemption, it has an obligation to deduct withholding tax from payments made, regardless of the individual's GST status.

### Submitting a GST invoice

Those who are registered for GST can supply a tax invoice with any claim form. The requirements of a valid tax invoice for GST purposes, as defined by legislation, must:

- include the name and address of the supplier;
- include the words 'Tax Invoice';
- include the supplier's GST number;
- be dated;
- describe the goods or services provided;
- show the amount excluding GST and the GST charged;
- show the total amount payable.

### Payment

The Board's preference is to make payment directly to a bank account. A bank deposit slip should be attached to a CRC member's first claim. Claim forms or invoices received will normally be paid on the 20th of the month<sup>2</sup>.

### End of the financial year

Please be aware that the Board's financial year ends on 30 September. All outstanding claims and invoices for work and expenses should therefore be submitted by 15 September if at all possible.

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<sup>2</sup> provided they are received by the 10<sup>th</sup> of the month



## 10) Board contact details

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# Appendix 1

## Basic communication skills

### Verbal

- What is said – word choice, use of plain language and the avoidance of jargon, type of questions used.
- How it is said – tone, volume, rate, articulation, use of pauses.
- When it is said – appropriate timing of detail.
- What is not said?

Although closed questions (ones that can be answered with a “yes” or a “no” can sometimes be the quickest way of obtaining information; open questions signal to the listener that some detail is welcomed. More specific but still open questions can sharpen the focus. Another type of question to consider using is the “multi-choice.”

### Non-verbal

80 – 90% of our communication is nonverbal.

- Body language – facial expressions, gestures, posture, physical positioning.
- Physiological signs
- Eye contact
- Touch
- Space
- Use of visual aids
- Silence and waiting time – allows space for thought

It is important to pay close attention to nonverbal communication and to remember that body language is a two-way interaction.

### Examples of positive nonverbal communication

Body language that demonstrates attentiveness:

- Nods
- Smiles
- Frequency of eye contact
- A lack of fidgeting
- Posture that is relaxed, open and turned towards the other person.

### Examples of negative non-verbal communication

Body language that indicates disinterest, annoyance, irritation:

- Facial expressions such as frowns
- Minimal eye contact
- Looking at a watch or clock
- Fidgeting

Effective use of nonverbal communication makes verbal communication more effective.

### **Listening – What are the key elements to listening well?**

- The person listens with attentive silence and pauses are allowed.
- Appropriate body language and posture is used; such as a nod, eye contact, smiles, leaning towards the person.
- Appropriate social distance is used.
- “Door openers” such as “tell me what is on your mind” are used.
- “Continuers” such as “please tell me more,” or “ please go on,” or “yes, I see” will be part of the conversation.
- Interruptions are infrequent.
- Open-ended questions are asked in order to continue following the thoughts that are expressed by the speaker. Eg “can you tell me more about ...?”
- Clarifiers such as “what I hear you saying is ... is that right?”
- Facilitation of responses
  - Verbally eg ‘ah ha,” yes,” “go on”
  - Nonverbally eg leaning forward, nodding, smiling, keeping eye contact.

Remember that there can be cultural aspects to consider when communicating.