

Psychotherapists Board of Aotearoa New Zealand (Board)

Naming policy

Refers to the following key legislation:

- Health Practitioners Competence Assurance Act 2003
- Privacy Act 1993
- Official Information Act 1982
- Defamation Act 1992
- The New Zealand Bill of Rights Act 1990

And refers to the following related information on the Board website:

- Standards of Ethical Conduct
- Core Clinical Competencies
- Cultural Competencies
- Decisions by the Health Practitioners Disciplinary Tribunal

Policy statement

The Psychotherapists Board of Aotearoa New Zealand (Board) exists to protect public safety.

As a regulator it oversees professional standards for psychotherapists. The Board makes sure psychotherapists meet and maintain profession specific standards of training, education, conduct and performance, so that psychotherapists deliver quality healthcare.

This naming policy will enhance public confidence in psychotherapists by allowing members of the Aotearoa New Zealand public to make an informed choice about the psychotherapist they engage with. It allows the Board to publish information about a psychotherapist where that psychotherapist is the subject of an order or direction¹.

The naming policy was developed in accordance with section 157B of the Health Practitioners Competence Assurance Act 2003 (HPCAA), which states that the purpose of the naming policy is to:

- enhance public confidence in psychotherapists by providing transparency about the Board's disciplinary procedures and decision-making processes; and
- ensure that psychotherapists whose conduct has not met expected standards may be named where it is in the public interest to do so; and
- improve the safety and quality of health care.

1. Health practitioners for whom the naming policy applies

This naming policy applies to:

- i. Any psychotherapist registered with the Board; or
- ii. Any psychotherapist who has previously held registration with the Board².

In Aotearoa New Zealand, psychotherapists are registered health practitioners who practise within a scope of practice, as prescribed by the Board under section 11 of the HPCAA.

2. Circumstances in which a psychotherapist may be named

Publication of psychotherapist's name shall only occur following the completion of any Board process, and not while any investigation or deliberations are ongoing.

¹ An order or direction is made by the Board. For example: suspension and inclusion of a condition on a scope of practice.

² section 157(5) of the HPCAA. This may occur in relation to orders or directives relevant to, acts, omissions or events that occurred while the practitioner was registered.

Notwithstanding the above, the Board may decide to name a psychotherapist who is the subject of an interim suspension order; or has interim change to or conditions imposed on their scope of practice, under sections 38, 39(1), 43, 48 or 69 of the HPCAA.

The Board will not routinely publish the names and details where psychotherapists were investigated but are not the subject of any orders or direction, except for:

- i. Psychotherapists who have been exonerated during any investigation, who may ask the Board to publish their name and the details of that exoneration in order to clear their name
- ii. Psychotherapists who are the subject of confusion where their name is the same as or very similar to that of another psychotherapist or health practitioner named in an order, who may ask the Board to publish their name with clarification to avoid confusion.

This policy does not affect the existing requirement/s for the Board to share information about a practitioner under sections 35, 138 or 156A(2)(a) of the HPCAA.

3. General principles that will guide the Board's naming decisions

In making a decision about the publication of information relating to a psychotherapist, the Board will maintain a focus on protecting public safety.

When deciding what information is published, the Board must weigh the public interest in making the information available against the consequences of the psychotherapist being named, including the likely harm to the psychotherapist's reputation.

4. Criteria that the Board must apply when making a naming decision

When assessing whether to publish the name of a psychotherapist in a notice issued under s 157(1) of the HPCAA, the Board must consider the Privacy Act 1993, natural justice rights and any other relevant matters, including the following criteria:

- i. Public safety: ensuring the safety and quality of health care and the competence of psychotherapists; non-disclosure in a particular case may run the risk of harm to members of the Aotearoa New Zealand public in the future; disclosure may elicit other complaints or concerns about a practitioner's competence.
- ii. Public choice: the right to know the disciplinary history of a particular psychotherapist so as to be able to make an informed choice whether to engage their services in the future.
- iii. Accountability: psychotherapists are accustomed to being accountable 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.
- iv. The nature of the concerns: does the concern raise serious safety or competence concerns? Does non-disclosure raise a risk of harm to members of the Aotearoa New Zealand public in the future? Concerns of a serious nature will raise stronger public interest considerations.
- v. 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 or compromise the investigation.
- vi. Action taken in respect of the outcome of an investigation: where the public interest in disclosure will likely be higher and where a concern has been investigated and

found to be substantiated, a psychotherapist's legitimate expectation of privacy will be reduced. It may be in the public interest to know the remedial actions or consequences imposed on the psychotherapist.

- vii. 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 any investigation; the purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and to institute any protective measures or remedial action.
- viii. Likelihood of harm to the psychotherapist arising from disclosure: there may be factors that heighten the risk of personal or professional harm arising from disclosure, for example the physical or mental health of the psychotherapist, or the size of the community/area in which they practise.
- ix. Likelihood of harm to any other person arising from disclosure: there may be factors that heighten the risk of personal harm to anyone involved in the investigation or the whanau or family of the psychotherapist.

5. Information the authority may disclose when naming a psychotherapist

Where the Board has elected to publish information about a psychotherapist, it will release a summary of the information with appropriate context.

Publications instigated by the Board may include the name, location and practising status of the psychotherapist, a short context of the concern and citation of the relevant section of the HPCAA.

Where the order relates to the health of a psychotherapist, additional consideration is needed with regards to the impact any disclosure may have on the psychotherapist.

6. Means by which a psychotherapist may be named

Publication will be made via posting on the relevant section of the Board's website; and may also be by inclusion in the Board's electronic newsletter or other suitable media.

In addition, the Board may also annotate the psychotherapist's entry on the Register to include a reference to the order or direction.

Information published on the Board's website will be reviewed periodically at an interval of not more than two (2) years.

The Board may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.

7. Procedures that Board must follow when making a naming decision

Where the Board proposes to publish information about a psychotherapist, having considered the factors in section 4 of this policy, it will be required to make the psychotherapist aware of this proposal and the proposed content twenty (20) working days in advance of the anticipated publication.

This will be achieved by sending the proposal to publish information to the psychotherapist's last known email address.

It is considered that ten days' notice provides the psychotherapist with an opportunity to:

- i. consider the content and make any submissions to the Board within ten (10) working days of receiving the notice; and

- ii. make their employer or any practice partners aware of the publication.

Where the psychotherapist provides a submission to the Board in accordance with section 7 (above), the Board must consider those submissions before making a final decision whether or not to make the publication, and the content and scope of any publication.

Where a publication relates to a specific event or concern, irrespective of whether that clearly identifies a psychotherapist and their family, the Board must also provide the intended publication content to that/those members of the public in advance of publication.

The psychotherapist and their family will be given an opportunity to consider the content and make a submission to the Board within ten (10) business days of receiving the notice.

The Board may consider extending the above timeframes if good and sufficient reason is given

<i>Approved by: The Board</i>	<i>Policy in effect from: March 2020</i>
<i>Previous review dates: Nil</i>	<i>Date to be reviewed: March 2023</i>

Decision-making process on naming a psychotherapist under section 157 of the Health Practitioners Competence Assurance Act 2003 (HPCAA)

