Statement for the profession on what to do when you are concerned about a colleague

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| **Statement** **for the profession** **on what to do when you are concerned about a colleague** | |
| **To protect the safety of clients, psychotherapists have a professional obligation to take action if concerned about a colleague’s conduct or competence, as well as a legal responsibility to take action if concerned about a colleague’s health.** | |
| **Introduction** | This statement seeks to help you take appropriate action if you are concerned about a colleague or other health practitioner.  This statement aims to provide guidance on:   * your responsibilities under the HPCA Act * the difference between a complaint and a notification * why you should raise concerns about someone * raising concerns at a local level as a first option * to whom you should raise your concerns * the Board’s action following communication of your concerns what support is available to you and to the practitioner involved.   The notices and responsibilities mentioned in this document apply to **all** health practitioners registered under the HPCA Act, not just psychotherapists. This means that you may be required to give notice of your concerns to another responsible authority, for example the Medical Council of New Zealand or the New Zealand Psychologists Board, depending on which sort of health practitioner you have concerns about. The same applies to other health practitioners who may be required to raise a concern about you with the Board. The Board acknowledges that it can be very difficult deciding at what point it is time to contact the Board (or other regulatory authority) with your concerns. The information in this document aims to help you with this decision-making process. However, this statement is not exhaustive and you will need to use your own judgement to apply this guidance to your particular circumstances.  If you are unsure how to proceed, please contact the Board for advice. Advice in the first instance will be provided by the Board’s Registrar. |
| The difference between a complaint and a notification | The Board considers that a **notification** is written notice of your **general concerns** about the competence, conduct and/or health of a practitioner, as opposed to a **complaint** about their competence, conduct and/or health **in relation to care provided to a specific client or patient**.  This document relates to a health practitioner making a **notification** about the competence, conduct and/or health of another health practitioner.  Health consumers (clients/patients) are able to make complaints to the Health and Disability Commissioner (HDC).Any complaint received by a regulatory authority alleging that the competence, conduct and/or health of a practitioner has affected a health consumer will be sent directly to the HDC for consideration.  If a health consumer is unable or unwilling to lay a complaint with the HDC, and you feel strongly that a complaint should be made, you can make a complaint yourself with the HDC and can do so by contacting the office of the HDC. Should you decide to take this action, the Board recommends that you first advise the practitioner and their client that you will be doing so. |
| **What are my responsibilities?** | **Health concerns**  Under Section 45(2) of the HPCA Act, if you have 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, you **must** promptly give the Registrar of that person’s responsible authority written notice of all the circumstances.  **Competence concerns**  Under Section 34(1) of the HPCA Act, if you have reason to believe that another health practitioner may pose a risk of harm to the public by practising below the required standard of competence, you **may** give the Registrar of that person’s responsible authority written notice of the reasons on which that belief is based.  No legal action can be taken against any person in respect of notices given under either of these sections of the HPCA Act unless the person has acted in bad faith.  **Conduct**  Conduct refers to wrongful, improper, unlawful, unethical or immoral behaviour or actions. While there are no formal reporting requirements under the HPCA Act in relation to raising concerns about the conduct of a health practitioner, the Board believes that psychotherapists have a professional obligation to take action and expects that you will exercise your own moral judgement and report concerns accordingly. |
| **Why raise concerns about someone?** | Early notification of concerns can allow issues to be addressed and problems rectified without clients or patients coming to any harm.  The Board understands that you may be hesitant to act on concerns for a number of reasons, for example because you feel it may adversely affect working relationships or because it may result in someone making a complaint or notification about you.  If you are hesitating to act on a concern for these reasons, please remember:   * no civil or disciplinary proceedings lie against you in respect of notices given under the HPCA Act unless you have acted in bad faith * you will be able to justify raising a concern, even if it turns out to be groundless, if you have done so honestly, promptly, on the basis of reasonable belief and through appropriate channels * raising a concern is not necessarily the same thing as making a complaint. There are a range of processes which can be used to address a concern, and most of these are intended to provide support, education and/or rehabilitation rather than administer discipline * in certain circumstances, a failure to act on concerns may be considered by the Board, the HDC or the Health Practitioners Disciplinary Tribunal. |
| **Resolving concerns at a local level before contacting the Board** | Health concerns should be reported immediately; however, there are some instances where you may be able to resolve the concerns before involving the Board or other regulatory authority.  As a first step, if possible, you should talk with the involved practitioner about your concerns.  If you do not work in private practice, your employer may have protocols and/or policies for reporting concerns as well as managing them once they are raised. If so, you should follow these before contacting the Board or other regulatory authority (with the exception of health concerns that should be reported immediately).  If in doubt, contact the Board for advice. |
| **Who should I raise my concerns with?** | * The health practitioner concerned (if possible) * Your and/or their employer (if applicable) * The practitioner’s supervisor (if known to you) * The Board or other relevant regulatory authority as appropriate. |
| **What will the Board do with my concerns?** | The Board will:   * receive and consider the concerns you’ve raised * advise the involved practitioner that concerns have been raised * give the involved practitioner an opportunity to respond to the concerns raised * take necessary steps, in line with Parts 3 and 4 of the HPCA Act, to resolve or investigate the concerns raised in a confidential manner and as sensitively and respectfully as possible.   If health concerns are raised about a psychotherapist, the Board has specific powers under section 49 of the HPCA Act to request that the psychotherapist submit themselves for examination or testing with a medical practitioner in order to determine whether there is a mental or physical condition affecting their ability to practise safely. This medical practitioner will provide a report to the Board on their findings, including any recommendations for supporting the practitioner to return to safe practice.  Where possible, the Board will refrain from issuing orders to interim suspend a psychotherapist’s practising certificate or to impose interim conditions on their scope of practice while enquiries are conducted into concerns raised. This will be determined on a case by case basis in conjunction with the perceived level of risk posed to the public.  As mentioned earlier, if your concerns relate to a practitioner’s care of a particular client, the Board will be required to refer the concerns to the HDC for consideration in the first instance. This does not stop the Board from taking action simultaneously on competence or health concerns raised, but it does stop the Board from referring conduct concerns to a professional conduct committee for investigation until such time as the Commissioner has concluded his or her enquiries. |
| **What support is available?** | As mentioned above, the Board aims to handle concerns sensitively and respectfully; however, practitioners with conduct, competence or health concerns may still find the experience stressful.  Psychotherapists can seek support through the following avenues:   * talking with their supervisor or a trusted colleague * contacting their association (if a member of one) * talking with their health care providers (if appropriate).   Helping someone who is going through these processes can also be stressful. If you need advice on how to support someone through this difficult time, please contact:   * your supervisor * the Board * your association (if you are a member of one) * your association’s local supervisor group. |

*NB: The Medical Council of New Zealand’s Statement on ‘What to do when you have concerns about a colleague’ was used to inform this document.*

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