



Podiatrists Board of New Zealand

Te Poari Tiaki Waewae O Aotearoa

Consultation on the proposed Naming Policy for the Podiatrists Board

January 2020

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1 Consultation document for Naming Policy

The Podiatrists Board (the Board) is the regulator of podiatrists in Aotearoa New Zealand, established under the Health Practitioners Competence Assurance Act 2003 (HPCAA). The role of the Board is to protect the health and safety of the public by ensuring podiatrists are fit and competent to practise.

1.1 Why is the Board developing a naming policy?

The Board is required by recent amendments to the HPCAA to develop a naming policy which describes the circumstances under which a podiatrist who is the subject of an order or determination under section 157(1) of the HPCAA may be publicly named. This policy must be in place by 11 April 2020.

The purposes of this policy as defined in section 157B(2) of the HPCAA are to:

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

1.2 What has the Board done to develop this naming policy so far?

The Board has worked collaboratively with other health regulators to understand the requirements and intentions of the new HPCAA amendments. The naming policy was drafted and then subjected to review by a legal firm to ensure alignment with the requirements of section 157B of the HPCAA.

The draft was then reviewed by the Privacy Commissioner, the Health and Disability Commissioner and the Director-General of Health as required by section 157C of the HPCAA. Their feedback has been incorporated into this document, so we are now sending it out for wider stakeholder consultation.

1.3 What is the current situation?

The Board has had the powers to name podiatrists who are the subject of competence, health and conduct orders under section 157(1) since the inception of the HPCAA in 2003.

The Board currently is able to publish information on its website about podiatrists who have been the subject of Health Practitioners Disciplinary Tribunal decisions, or who may be suspended by the Board.

The naming policy defines the circumstances under which the Board would consider naming a podiatrist along with the method of naming and information that may be included.

Currently, under other sections in the HPCAA, the Board must share information regarding podiatrists who are subject to orders.

This includes:

- noting on the podiatrists 's entry on the public register where the podiatrist is suspended or has conditions on their practice (s138)
- mandatory notifications to Accident Compensation Corporation, Health and Disability Commissioner, employers and other related parties where a podiatrist may have posed a risk of harm to the public (s35(1), s35(2))
- the naming policy does not change these requirements.

1.4 Who will the naming policy apply to?

The policy will apply to all registered podiatrists who are the subject of an order or direction, regardless of their practising certificate status. The policy will also apply to podiatrists who have previously been registered with the Board.

1.5 What will the Board consider when making a decision to name a podiatrist?

The primary purpose of naming any podiatrist under this policy will be to protect the public. The decision to name will not be done to punish the podiatrist.

The Board will consider the risk posed to the public, along with the existing levels of transparency that occur under other sections of the HPCAA. The Board will also consider the effect of naming on the podiatrist, particularly where there may be sensitive information such as health issues.

The affected podiatrist will always be advised of the intent to name, and their feedback will be taken into consideration before a final decision to name is made. The Board will also consider the potential for other people to be identified in any published information.

1.6 Privacy

The Board is required under the Privacy Act 1993 to protect the privacy of all individuals whose personal information it holds. When considering naming a podiatrist the Board will give due consideration to this requirement and the effect naming could have on the practitioner and others who could be identified as a result of the naming decision. Particular consideration will be given to orders or directions that are made as a result of a health condition.

1.7 Transparency

The Board operates under a cross cutting principle of transparency. The processes the Board uses when making a decision are shared with the podiatrist. Information the Board uses to make an order or direction will be shared with the podiatrist wherever possible. This principle also applies to the public, where the Board aims for transparency in its decision-making process and outcomes. Information about action that the Board has taken forms part of this process.

1.8 Natural justice

When considering naming, the affected podiatrist will be given a copy of the proposed content and publication form of the notice. The podiatrist will be given an opportunity to make submissions about the proposal which will be considered by the Board prior to making a final decision on naming.

1.9 What kind of information could be shared?

The Board may, on a case by case basis, name a podiatrist who is the subject of an order or determination, along with a summary of the issue and action/s taken by the Board.

1.10 Where will the information be published?

The method of sharing information will be decided on a case by case basis. Options include the Board website, Board newsletters or any other publication that would fulfil the requirement to protect the public.

1.11 Why are we contacting you?

The Board is now seeking comments from you on the draft Naming Policy, particularly:

- the circumstances under which a podiatrist may be named,
- the principles and criteria the Board will use when making a naming decision,
- the information to be disclosed and the means of information publication,
- the procedures to be used by the Board when considering naming a practitioner.

Please provide your feedback to us by 5pm **Thursday 13 February 2020**.

Feedback can be made by email to registrar@podiatristsboard.org.nz – please ensure the email has a subject line of **Naming Consultation**.

Note that due to the timeframe requirements for finalising and publishing this document, late submissions will not be considered.

2 Consultation Questions:

Section of Naming Policy	Yes	No
Section 2		
Do you agree with the proposed circumstances under which a podiatrist may be named?		
Under what circumstances do you think a podiatrist should be named?		

Section 3 and 4		
Do you agree with the principles the Board proposes to use when making decisions about naming a podiatrist?		
What other factors should the Board consider when making naming decisions?		

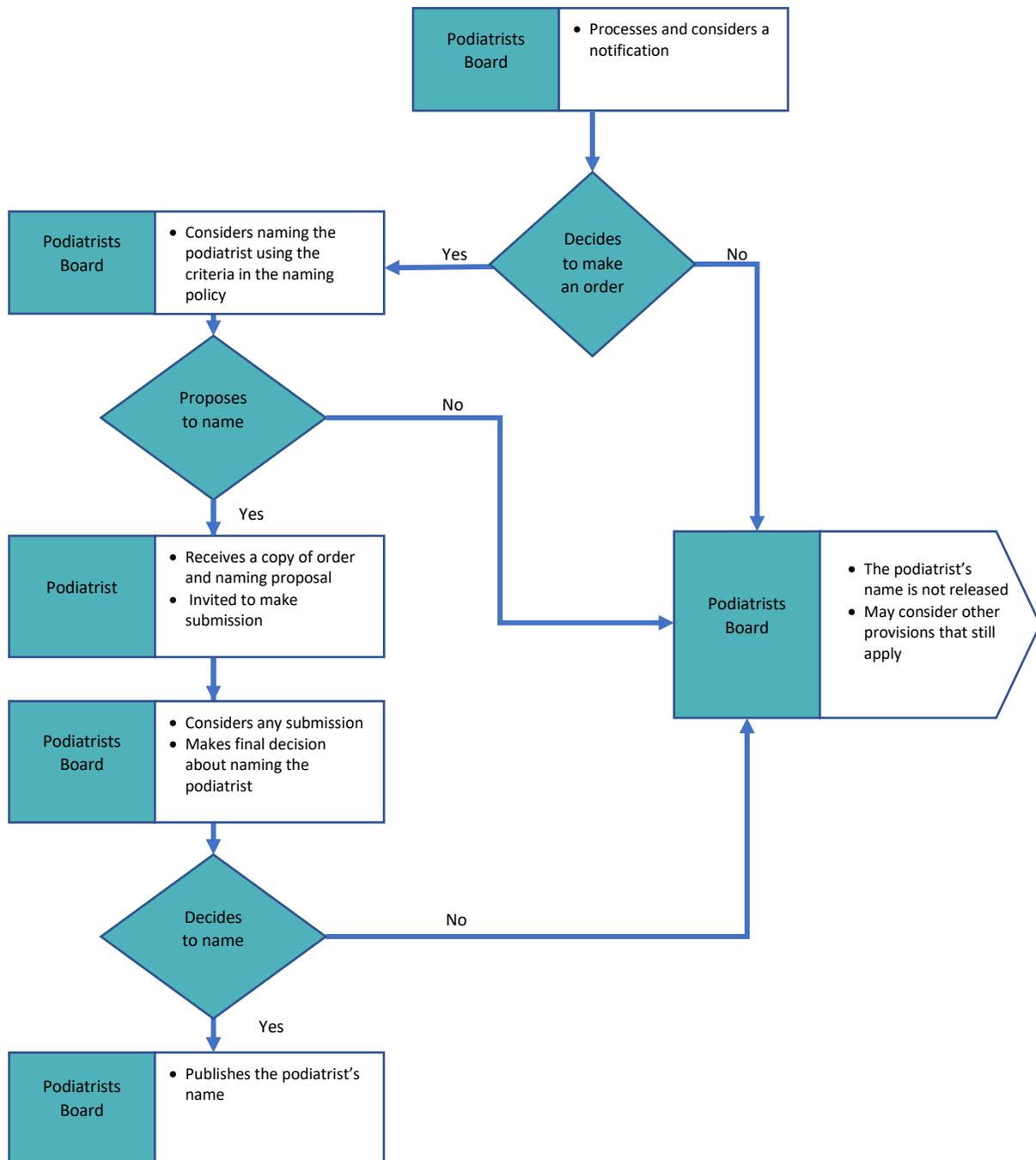
Section 5		
Do you agree with the information the Board may disclose when naming a practitioner?		
What information do you think should be disclosed by the Board?		

Section 6		
Do you agree with the proposed methods of naming a podiatrist?		
What notification methods should the Board use when naming a podiatrist?		

Section 7		
Is the notification period (20 business days) to the practitioner adequate?		
What time period should it be?		

Any other comments		
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3 Appendix 1: Overview of the process for naming podiatrists subject to an order or direction*



* An order or direction is made by the Podiatrists Board: For example: Suspension, inclusion of conditions or change in permitted health services when a practitioner does not satisfy the requirements of a competence or recertification programme under section 43(1) of the HPCAA.

4 Appendix 2: Relevant section of the HPCAA

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.

Section 157B: inserted, on 12 April 2019, by [section 46](#) of the Health Practitioners Competence Assurance Amendment Act 2019 (2019 No 11).

5 Appendix 3: DRAFT Podiatrists Board Naming Policy



Te Poari Tiaki Waewae O Aotearoa

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 Podiatrists Board website:

- Podiatry Competency Standards
- Principles and Standards for the Practice of Podiatry in NZ
- Ethical Principles and Standards of Conduct
- Cultural Awareness Statement
- Decisions by the Health Practitioners Disciplinary Tribunal

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Policy statement

The Podiatrists Board (the Board) exists to protect public safety. As the podiatrists' regulator it oversees professional standards in podiatry. The Board ensures podiatrists meet and maintain professional standards of education, conduct and performance, so that podiatrists deliver high quality healthcare throughout their careers. The Board will hold podiatrists to account if their conduct falls short of these standards.

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 podiatrists by providing transparency about the Board's disciplinary procedures and decision-making processes; and
- ensure that podiatrists 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.

This naming policy will enhance public confidence in podiatry as a profession by allowing the public to make an informed choice about the podiatrist they choose.

1 Health practitioners for whom the naming policy applies

- a. This naming policy applies to:
 - I. Any podiatrist registered with the Board; or
 - II. Any podiatrist who has previously held registration with the Board.
- b. In New Zealand, podiatrists are registered health practitioners who practise within the Podiatrist Scope of Practice, as prescribed by the Board under section 11 of the HPCAA. A few also hold the scope of Podiatric Surgery and Podiatric Radiographic Imagery. The naming policy applies to podiatrists who hold these further scopes of practice regulated by the Board.

2 Circumstances in which a podiatrist may be named

- a. The Board may publish in any publication the name of a podiatrist who is the subject of an order or direction made by the Board under the HPCAA.
- b. Publication of podiatrist's name shall only occur following the completion of any Board process, and not while any investigation or deliberations are ongoing.

- c. Notwithstanding section 2b above, the Board may decide to name a podiatrist who is the subject of an interim suspension order; or has interim change to or conditions imposed on his or her scope of practice, under sections 38, 39(1), 43, 48 or 69 of the HPCAA.
- d. The Board will not routinely publish the names and details where podiatrists were investigated but are not the subject of any orders or direction, except for:
 - I. Podiatrists 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. Podiatrists who are the subject of confusion where their name is the same as or very similar to that of another podiatrist or health practitioner named in an order, who may ask the Board to publish their name with clarification to avoid confusion.
- e. 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

- a. In making a decision about the publication of information relating to a podiatrist, the Board will maintain a focus on protecting public safety.
- b. When deciding what information is published, the Board must weigh the public interest in making the information available against the consequences for the podiatrist of being named, including the likely harm to the podiatrist's reputation.

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

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

- a. Public safety - ensuring the safety and quality of health care and the competence of podiatrists. Non-disclosure in a particular case may run the risk of harm to the public 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 podiatrist so as to be able to make an informed choice whether to engage their services in the future.
- c. Accountability – podiatrists are accustomed to being 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 the public 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 podiatrist’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 podiatrist.
- 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 any investigation. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and institute any protective measures or remedial action.
- h. Likelihood of harm to the podiatrist 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 podiatrist, or the size of the community in which they practise.

5 Information the authority may disclose when naming a podiatrist

- a. Where the Board has elected to publish information about a podiatrist, it will release a summary of the information with appropriate context.
- b. Publications instigated by the Board may include the name of the podiatrist, a short context of the concern and citation of the relevant section of the HPCAA.
- c. Where the order relates to the health of a podiatrist, additional consideration is needed with regards to the impact any disclosure may have on the podiatrist.

6 Means by which a podiatrist may be named

- a. 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.

- b. In addition, the Board may also annotate the podiatrist's entry on the Register to include a reference to the order or direction.
- c. Information published on the Board's website will be reviewed periodically at an interval of not more than two (2) years.
- d. The Board may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.

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

- a. Where the Board proposes to publish information about a podiatrist, having considered the factors in section four (4) of this policy, it will be required to make the podiatrist aware of this proposal and the proposed content twenty (20) business days in advance of the anticipated publication.
- b. Sending the information in section 7a to the podiatrist's last known email address will be sufficient for this purpose.
- c. The advance notice timing in section 7a above provides the podiatrist with an opportunity to:
 - I. Consider the content and make any submissions to the Board within ten (10) business days of receiving the notice; and
 - II. Make their employer or any practice partners aware of the publication.
- d. Where the podiatrist provides submissions to the Board in accordance with section 7c of this policy, 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.
- e. The Board may delay the publication of a podiatrist's name, in appropriate cases, to provide him or her more time to consider the content of the proposed publication.
- f. Where a publication relates to a specific event or concern, irrespective of whether that clearly identifies a patient, the Board must also provide the intended publication content to that patient in advance of publication.
 - I. The patient 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.