



Podiatrists Board of New Zealand

Guidelines and Forms for Competence Review Committee (CRC) Members

April 2009, reviewed May 2010, reviewed September 2020

1 Introduction

The Health Practitioners Competence Assurance Act (HPCA) was passed on 18 September 2003 and came into operation on 18 September 2004.

The purpose of the Act is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions.

The Podiatrists Board (Board) has discretion about whether to refer matters that arise relating to the competence and fitness to practise of podiatrists to the Competence Review Committee (CRC).

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 podiatrist address it and prevent any potential risk of harm to the public. The Review is a formal assessment, the outcome of which may have major effects on the podiatrist so there is a limit on how informal the process can be.

A CRC must adopt and follow procedures that will ensure that, in relation to each matter referred to it:

- the podiatrist who is the subject of the reference,
- the Podiatrists Board, and
- any complainant,

are each kept informed about progress and the overriding requirement is that the process must comply with the rules of Natural Justice.

Part 3 of the HPCA Act deals with competence and fitness to practise. Sections 34 – 40 provide the framework for this process.

1.1 Aim of a Competence Review

The essence of the process is that a Review of the podiatrist's competence is undertaken to establish whether the podiatrist either:

- A. meets the required standard of competence for a registered Podiatrist, or
- B. does not meet the required standard of competence for a registered Podiatrist.

If, after considering the Competence Review Committee's report and recommendations, the Board has reason to believe the competence of the podiatrist is deficient, then the Board will make one or more of the following orders:

- That the podiatrist undergoes a competence programme.
- That one or more conditions be placed on the podiatrists' scope of practice.
- That the podiatrist sits a specified examination or assessment.
- That the podiatrist is counselled or assisted by one or more nominated persons.

As the process, at the minimum, is likely to inconvenience the podiatrist, and at most may lead to a podiatrist's suspension from practice, it is important that an equitable, lawful, and consistent process is followed in every case.

These Guidelines have been written to assist those people appointed to a CRC. They should always be read in conjunction with the relevant sections of the Act. Clarification should be sought from the Board Registrar.

2 Competence Review Committees – Appointment and Responsibilities

2.1 Membership of a CRC

The Board may appoint 1 of the members of each CRC to act as Chair at the meetings of the CRC. This is a leadership and liaison role and will ensure that the Registrar has an 'official' point of contact for the committee.

2.2 Members must declare any conflicts of interest

Before appointment to a CRC, potential members will be advised of the identity of the podiatrist to enable them to declare any conflict of interest before appointment.

A conflict of interest arises when a person has:

- A direct financial interest in the outcome of any decision the CRC may reach
- A relationship with either the podiatrist or the complainant
- Any personal prejudice towards the podiatrist or the complainant
- Already provided advice or received information about the matter
- Pre-determined the matter.

The podiatric community in New Zealand is relatively small and a situation is likely to arise where a CRC member knows either the podiatrist or the complainant. This does not necessarily mean that there is a conflict of interest, but if the member has been in a close personal or working relationship with either party, he or she must consider declaring a conflict of interest.

2.3 Members' responsibilities

Members should be familiar with relevant HPCA Act provisions and other legislation such as the Privacy Act and the Code of Health and Disability

Services Consumers' Rights. They should also have a good working knowledge of the minimum competency standards for practice in the scope of practice as a podiatrist, together with the Code of Practice and the Code of Ethics for podiatrists.

They must approach each case with an open mind and **always** act fairly, legally, and impartially.

Confidentiality

Members must maintain confidentiality and are asked to sign a declaration to this effect. When members obtain information solely as a result of investigations under the HPCA Act they must not disclose that information to another person or keep a record of the information unless it is for the purposes of the CRC investigation or determination. Section 83 of the Act requires this.

Exclusion of liability

Members are excluded from criminal or civil liability for their work as CRC members so long as they act in good faith and with reasonable care. Refer Section 119 of the Act.

2.4 Further members' responsibilities

The CRC may regulate its procedure as it thinks fit but must:

- Ensure that the podiatrist and the Board are kept informed of progress, **and**
- Comply with other provisions of the HPCA Act and to any regulations made under the Act, and the rules of natural justice.

2.5 Natural Justice

All procedures are subject to the rules of natural justice.

The fundamental principles of natural justice are:

- That the person who is the subject of the investigation is given sufficient details of the case to be answered
- That the parties have sufficient time to prepare their case
- That the parties be given adequate time and opportunity to be heard; **and**
- That the decision-maker(s) are impartial.

The principle of impartiality requires that you should:

- Have no prior knowledge of the facts such as would affect decision making.
- Ensure you do not demonstrate bias through the manner or type of questions
- Not attempt to explain the reason for your question or attempt to justify it as this can open you to criticism for appearing to hold a particular view
- Listen to both sides.
- Give all parties an adequate opportunity to present their case.
- Not discuss the circumstances of the case in public (i.e., lifts and corridors etc.) or with anyone other than your fellow CRC members.

2.6 Good decision-making processes

Natural justice is one component of the wider concept that decision-makers should use fair and legal processes in reaching decisions.

For a good decision-making process, a CRC should ensure that it has:

- Acted within the scope of its power
- Identified the parties who may be adversely affected by the decision and given them an opportunity to make submissions
- Adhered to the principles of natural justice
- Taken account of all relevant matters and not taken account of irrelevant matters
- Not been motivated by an improper purpose (an 'improper purpose' is where the decision-maker makes a decision that is outside the purpose or spirit of the Act that confers the power to make a decision)
- Not been influenced by a factual error
- Not applied a pre-determined policy without regard to the merits of the case under consideration
- Not acted under direction of a third party
- Been unbiased
- Acted fairly and reasonably.

Note: Although a CRC is not bound by its earlier decisions, or the decisions of other CRCs, it is generally desirable that there is some consistency of decisions between cases with similar fact situations.

2.7 Layperson (if appointed)

The layperson has a distinctive role on the CRC. The layperson is not an advocate for the complainant in the same way that podiatrists on the CRC are not there to defend the practitioner. The registered podiatrists appointed to the CRC will have opinions about practice issues before the CRC and should discuss them freely with the layperson. The layperson will be able to present his/her consumer perspective on the matter or matters before the CRC.

2.8 Role of the Chair

The Chair's role is critical to the functioning of the CRC. He or she is responsible for ensuring that the CRC undertakes its responsibilities under the HPCA Act in a fair and efficient manner, and that its work is completed as soon as practicable.

The Chair has the following additional responsibilities:

Planning

1. Convening a face-to-face meeting or teleconference of the Committee

It is recommended that this be done within two weeks of the CRC membership being confirmed by the Registrar. It is advisable to plan for a meeting that is long enough to permit:

- A thorough review of the Guidelines.
- Preliminary discussion on the matter before the CRC; and
- Development of a plan for how the CRC is going to approach its task (this should be written up with proposed tasks and timeframes).

2. **Send a copy of the plan to the Registrar** and then liaise with her/him by phone. If a Legal Adviser is necessary, the Registrar will engage a lawyer approved by the Board.

Carrying out the plan

3. All CRC correspondence will be on Podiatrists Board letterhead clearly headed "Competence Review Committee". All emails and any correspondence mailed should be marked "Private & Confidential".
4. Maintain a diary log of all activities related to the CRC work e.g., minutes of CRC meetings, notes of telephone conversations, and copies of letters sent.
5. Raise any queries about the process and procedures with the Registrar or the Legal Adviser.
6. Monitor the CRC deliberations in terms of the principles of "natural justice", including the goal of keeping to fair and reasonable timeframes.
7. Liaise with the Registrar at least monthly on progress of the investigation of the complaint. E-mails or phone calls are recommended.
8. Inform the podiatrist about progress being made.
9. Draft the CRC report and send the draft report to the other CRC members for comment and approval.
10. If necessary, send the draft report to the Legal Adviser. If a Legal Adviser has been engaged at any time during the Competency Review, then the final report should not be signed off until the Legal Adviser has had the opportunity to comment on the draft report and provide any final advice to the CRC.
11. Forward the report to the Registrar for the Podiatrists Board. Send all papers to the Registrar for reference back to the Board or for filing as appropriate. The papers should be assembled in chronological order.
12. If considered necessary organise a final de-briefing meeting of the CRC to discuss any feedback that the Chair should provide to the Registrar to improve the Guidelines.
13. Make sure all CRC members have submitted a claim or invoice.

If the CRC is not able to continue its work for reasons such as the workloads of the CRC members, family problems, or the ill health of a member, please contact the Board Registrar, as it is possible to discharge, alter, or reconstitute a CRC.

3 Process for dealing with a Complaint or a Notice that practitioner practising below the standard of competence.

3.1 Initial assessment

Any complaint that has affected a health consumer will, in the first instance, be referred to the Health and Disability Commissioner. The Board may decide to refer other complaints to a CRC but does not have to do so. The Board

may also, at any time, review the competence of a practitioner whether there is reason to believe that the practitioner's competence may be deficient. (See Section 36(4) of the Act).

3.2 Complaints referred to the Commissioner

If the conduct has affected a health consumer the complaint is forwarded to the Health and Disability Commissioner (HDC) and the Board cannot take any action on it until:

1. The Commissioner notifies the Board that:
 - the matter will not be investigated, or investigated further, under the Health and Disability Commissioner Act 1994
 - the complaint or matter has been resolved
 - the matter is not being referred to the Director of Proceedings.
2. The Director of Proceedings notifies the Board that disciplinary proceedings will not be instituted.

The HDC will only refer a complaint back to the Board un-investigated if the complaint either:
fails to breach the Code of Consumers Rights, or
does not come within its jurisdiction.

In some cases, the result of the HDC investigation will be a recommendation that the practitioner undergo a competence review. These cases enter this process at Paragraph 3.3.4 of the below-noted process.

It is also important to note that notifications that involve Risk of Harm or Risk of Serious Harm are referred directly to the Board at Paragraph 3.3.3 below.

3.3 All other complaints or Notices that practitioner practising below the standard of competence

The process noted below applies to all notifications received from a Health Practitioner (not necessarily being a podiatrist i.e., nurse, physiotherapist etc). Section 36 (1) stipulates that the CRC can only review the competence of a podiatrist who is registered *and* holds a current practising certificate. The Registrar will check this information before proceeding further.

3.3.1. Notification received

It is expected that most complaints will be by phone or email. If it is appropriate the Registrar will request the complainant to complete the standard form which collects the standard information needed by the CRC to commence its competence review.

3.3.2 Refer Notification to podiatrist for initial response

The Notification is referred to the podiatrist for their initial response to the allegation. The Board will consider the Notification and the initial response to assess whether, in its view, the matter is:

- A competence issue
- A discipline issue
- Whether further action should be taken or not (Section 36(1) refers).
- Whether risk of harm or risk of serious harm to public is identified.

The podiatrist is given 7 days to provide an initial response (if desired).

3.3.3 Notification and initial response (if any) referred to the Board

The Board is to consider whether the matter is:

- A competence issue
- A discipline issue
- Vexatious or frivolous (Section 36(3) refers. No action need be taken if the Board believes that the Notification is vexatious or frivolous)
- Whether further action should be taken or not
- Whether risk of harm or risk of serious harm to public is identified.

The Board should give full and detailed reasons for the decision that they make here, ensuring that they follow a good decision-making process, and adhere to the rules of natural justice.

3.3.3(a) Suspension of podiatrist's practising certificate if the public is at risk

If at any time during the initial assessment the Board has reason to believe that the podiatrist's practice poses a **risk of serious harm** to the public, the Board may order that the podiatrist's practising certificate be suspended or that the podiatrist's scope of practise be altered. The Board should seek legal advice during consideration of the need for suspension.

If at any time while conducting a competence review the CRC has reason to believe that the podiatrist's practice poses a **risk of serious harm** to the public, the CRC must notify the Board with its reasons for that belief and may recommend that the Board take appropriate action.

3.3.4 Convening a CRC

When the Board decides that this is a competence issue, then the Board convenes a Competence Review Committee (CRC) and decides the Terms of Reference for the CRC i.e., the particular area they are to look in to.

In deciding the composition of the CRC, the Board will have regard to the seriousness of the Notification. It is anticipated that CRCs shall have more than 1 member, however some Notifications may fall at the less-serious end of the scale and have only 1 member.

3.3.5 Deciding Terms of Reference

Section 36(5) of the Act provides the aim of the competence review, which is to establish whether the podiatrist:

- meets the required standard of competence for a registered Podiatrist, or
- Does not meet the required standard of competence for a registered Podiatrist, in the areas noted in the Terms of Reference. (Copy attached).

Therefore, the terms of reference will relate specifically to an area on the competency framework and may require judgement against the standard of 'industry best practice'.

If the CRC or the Board becomes aware of a further matter that should form part of the CRC's consideration, the Board must ensure that the podiatrist is given written notice of the particulars of that matter. Notice must be given as soon as reasonably practicable after the further matter is referred to the CRC.

3.3.6 Information to be given to podiatrist

Section 37(1) of the HPCA Act requires the Board, in every case, to give the podiatrist under review:

- a notice containing sufficient particulars to inform the podiatrist clearly of the reasons (if any) on which the authority has decided to carry out the review, **and**
- copies of information relevant to the podiatrist's competence that is in the possession of the Board.

The podiatrist is also advised of the intended membership of the CRC.

The podiatrist may request changes in the membership of the CRC within 7 days of being informed of the membership, stating the reason for the request. The Board must consider the request but does not have to comply with it.

At the same time the Board can request details of the podiatrist's employer(s) if any and any person who works in partnership or association with the podiatrist. (Section 35 (1) & (2) refers). The Board requests a response to these 2 questions within 7 days and says that the CRC will contact them when it is finally confirmed.

3.3.7 Information to be given to CRC

If no issues as to conflict are advised within 7 days, confirm that the CRC is approved, and provide:

- Notification, and
- Initial response from podiatrist, and
- Terms of Reference, and
- Confidentiality Declaration

3.3.8 CRC members meet

This preliminary meeting will generally be held by telephone/zoom/conference and is to decide what particular areas need to be enquired into, and whether any other person needs to be interviewed.

3.3.9 CRC arranges a meeting with the podiatrist ***Notice***

Within 21 working days after the composition of the CRC is confirmed, CRC will contact the podiatrist to arrange a meeting with the podiatrist. The meeting must be at least 3 weeks away and must be confirmed in writing to the podiatrist. It is usual for this meeting to take place in the podiatrist's clinic, but this might not always be the case. If this is not the case, then the CRC should liaise with the Registrar to find another venue for the meeting.

Further information

The information gathered during the review includes but is not limited to:

- Statements from the complainant
- Statements from the witnesses who observed the conduct or who were involved in subsequent local investigations of the conduct
- Clinical files
- Relevant parts of a disciplinary file

Prior to any meeting is held, any further information gathered to date should be sent to the podiatrist. The podiatrist is invited to provide a written response in advance of the meeting and is given adequate time to reply. The CRC should not take into account any information on which the podiatrist is not given an opportunity to respond, either orally or in writing.

Requirement to make records available

Section 42 of the Act requires that the podiatrist who is under review to make available all or any of the clinical records to the CRC for inspection. Section 44 controls the confidentiality of the information and the use to which any material from clinical records can be put. Except in 3 stipulated situations the material may only be used for the purposes of reporting to the Board. The Act provides serious penalties for anyone breaching confidentiality.

Failure of podiatrist to respond

If the CRC is unable to conduct or complete the review because the podiatrist has failed to respond adequately, or provide submissions, then the CRC should make its report to Board accordingly. Under Section 38(2) of the Act this is a reason to believe that the health practitioner fails to meet the required standard of competence.

The right to be heard

Section 37(2) of the Act states that the podiatrist under review must be given a reasonable opportunity to make written submissions *and* to “be heard”. This means the podiatrist has the right to attend a meeting and speak face-to-face to the CRC if he/she wishes to. The matter may not be dealt with based on the documentation unless the practitioner agrees to that happening.

The CRC must give the podiatrist written notice of:

- The latest date by which the CRC will receive written submissions; and
- The date on which the Committee will hear persons who are entitled to be heard and wish to be heard.

Support Person

The podiatrist is entitled to have a support-person of their choice present at any review meeting (section 37(2) refers). The support-person does not have an automatic right to be heard. As a competence review is not supposed to be an adversarial procedure, it is unlikely that a support person would be prevented from talking.

The podiatrist and the support person should be asked to sign the Declaration of Confidentiality.

3.3.10 Report

At the conclusion of the meeting the CRC discusses and decides whether the required standard of competence has been met. The CRC then completes a Report to the Board. All members of the CRC sign it, and it is sent to the Board for further action. It is expected that the Report to Board will be received within 4 weeks of the meeting (if any). Redacted examples of CRC Reports will be provided by the Registrar.

4 Result

4.1 Report received and referred to the Board

If the CRC decides that the required standard of competence was met in relation to the Notification, then no further action will be taken. The Board will give the podiatrist and the complainant (if any) written notice of the determination and the CRC’s reasons for the determination.

If the required standard of competence is not met, then the Board will determine what remedial action is to be taken. Monitoring of performance to ensure the podiatrist is complying with the remedial action ordered will be carried out by the Registrar.

5 Statutory obligations

Section 38 (3) refers. The Registrar is to ensure that a copy of any order made is provided to:

- the podiatrist, and
- the employer of the practitioner, and
- any person who works in partnership or association with the podiatrist

within 5 days of the order being made.

6 Administration matters

6.1 Secretariat assistance

The Registrar will assist the CRC to complete its work. The CRC should make its needs known to the Registrar. The Registrar may have to discuss the CRC's needs with the Board's Chair.

6.2 CRC budget, fees, and expenses

There is no pre-set budget for the work of the CRC, however, it is expected that the CRC will endeavour to be economical in its handling of the matter before it. The CRC has responsibility for the expenditure on investigating a complaint. The Board will pay the invoices, and fee and expense claims of the CRC members.

Fees

The CRC members are entitled to claim from the Authority the following fees.

Meetings:

CRC Members: \$600 per day or \$75 per hour excl. GST

Other duties:

CRC Members \$600 per day or \$75 per hour excl. GST

Withholding Tax will be deducted before payment, unless an IRD exemption certificate is provided.

Expenses

Receipts for expenses related to any CRC work (e.g., food, word processing, calls, postage, courier, photocopying) should be attached to claim forms.

Completing the claim form

A completed IR 330 for the current tax year should be submitted with any claim for fees. Claim forms and IR 330 forms will be provided by the Registrar.

Please include the name of the CRC case at the top of the claim form.

The completed claim form should be emailed to the registrar@podiatristsboard.org.nz.

Submitting a GST Invoice

Fees and expenses may be also claimed by submitting a GST invoice if preferred.

Receipts for expenses related to any CRC work (e.g., word processing, calls, postage, courier, photocopying) should be attached to the invoice.

Payment

Claim forms or invoices received by the 8th of a month will be paid by the 20th of the following month. If direct credit payment is preferred, please attach a bank deposit slip.

End of the Financial Year

CRC's which have finished their work at the end of the first quarter of the year need to be aware that the Board's financial year ends 31 March and so claims and or invoices should be lodged by 28 March.

6.3 Feedback to the Board

The Board welcomes feedback on Competence Review processes, including the:

- Legal Adviser (quality of advice including clarity, usefulness, and timeliness) (if any)
- Registrar support
- Suggestions for improving the Guidelines.

6.4 Registrar contact details

Registrar,
Podiatrists Board
PO Box 9644
Marion Square
Wellington
Tel 04 474 0706
E mail: registrar@podiatristsboard.org.nz

The following is a list of some, but not all, areas that have been identified as having potential to be the subject of a notification. As a general guideline only, and to aid consistency the Board has made a preliminary assessment of which areas it considers to be "educative" (leading to a competency review) and which areas it considers to be "conduct/disciplinary" (leading to referral to the Profession Conduct Committee).

Educative	Conduct/Disciplinary
Unusual or inadequate financial management, including breach of IRD requirements, ACC requirements, financial reporting requirements and/or inadequate money handling procedures.	Failure to keep adequate records
Lack of HR policies/knowledge (potential of causing breach of Employment Law)	Failure to keep records secure (hardcopy, and/or electronic records)
Suspicious or unlawful advertising or marketing campaigns	Breach of client confidentiality
Inadequate client management/control	Inadequate security of premises

Failure to meet bylaw requirements, and/or failure to have building Warrant of Fitness (Breach of Buildings Act)	Failure to provide safe (physically, mentally) environment for other podiatrists, and members of the public
Inadequate signage in and around clinic	Failure to respect cultural competency standards Failure to respect Māori Protocols and Values Inappropriate application of cultural competency standards
Inadequate lighting in and around clinic	Misdiagnosis
Failure to keep Accident/Hazard register	Inadequate infection control procedures
Failure to display evacuation procedures	Unsatisfactory patient discharge/exit from treatment
Inadequate waste disposal procedures Inadequate disease control procedures	Inappropriate treatment for condition Excessive number of treatments required for condition
Unhygienic conditions	Lack of appropriate emergency response
Unclean conditions	Lack of informed consent
Inadequate supervision of student interns (if any)	Breach of Code of Consumer rights
Indiscriminate prescribing of medicines or therapeutic goods	
Allegation that treatment inflicts pain	
Allegation that treatment caused further damage	

Unusual operation of clinic could fall into either category dependent upon the circumstances

Competence Review Committee Report Cover Sheet

To: The Registrar
Podiatrists Board
P.O. Box 10-202
Wellington 6143

Date:

Background

This is a Competence Review Committee (CRC) report on its review of the practice of:

(Name of Podiatrist)

The CRC was appointed under section 36(4) of the Health Practitioners Competence Assurance Act 2003 to conduct a competence review of the above-named podiatrist and establish whether the podiatrist either:

- A. meets the required standard of competence for a registered podiatrist, or
- B. does not meet the required standard of competence for a registered podiatrist

The CRC members are: -

The CRC completed its review on (date): -

The attached CRC Report is dated: -

The Committee has completed its investigation in an impartial and confidential manner.

Process undertaken in the review.

The Committee should comment of how the review was undertaken in the final CRC Report.

The Committee believes that it has given both the practitioner and complainant (if any) reasonable opportunity to make written submissions and be heard on the incident under review (if any), either personally or by a representative.

The findings of the CRC should be detailed in the final CRC Report. If the podiatrist does not meet the standard of competence, then the Board will use these findings as a basis for its decisions as to what action should be taken.

Conclusion

The CRC finds that does/does not meet the standard of competence for a registered podiatrist.

CRC Chair
Signature

CRC Lay member
Signature