



## **DRAFT Fitness to practise policy**

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## Policy statement

The Psychologists Board (the Board) has authority under sections 45 to 51 of the Health Practitioners Competence Assurance Act (the Act) to act upon any notification it receives that a registered psychologist may be unable to perform the functions of their profession due to a physical or mental condition - collectively known in this policy as a “health condition.”

The Board acknowledges that individuals have rights to confidentiality in relation to their health. Where the Board receives a health notification about a psychologist (“notice”), its aim is to manage any health condition with compassion for the affected psychologist, while ensuring that any risk to the public as a result of that condition is managed in line with the requirements of the Act.

Wherever possible, the Board will work collaboratively with the affected psychologist and their healthcare team. If this is not possible, or if the Board considers that there is a risk to the public that cannot be managed in collaboration with the psychologist, the Board will rely on its statutory powers to ensure that the risk is managed.

Generally, health notifications and ongoing management of these will not be treated as disciplinary in nature. There may be situations where both the psychologist’s health and conduct are in question. The Board will manage such cases carefully and with due regard to the individual circumstances of the case.

## Scope

1. This policy’s intended audience includes, but is not limited to:
  - All registered psychologists who may have a health condition affecting their fitness to practise;
  - Any registered psychologist who believes another registered psychologist may have a health condition affecting their fitness to practise;
  - The Board’s secretariat;
  - The Board’s Competence, Conduct and Fitness Committee (CCF) which holds delegation from the Board to consider and determine cases relating to psychologists’ fitness to practise.

## Background

2. The principal purpose of the Act is to protect public health and safety by ensuring health practitioners are competent and fit to practise. The Board is charged with ensuring that psychologists are competent and fit to practise when they apply for registration and on an ongoing basis.
3. The Act requires registered health practitioners and other specified people to notify the Board when they have reason to believe that a psychologist may be unable to perform the functions required for the practice of their profession due to a physical or mental condition.
4. Conditions that may affect a psychologist's fitness to practise include, but are not limited to:
  - physical injury;
  - short- or long-term illness or health condition;
  - infectious disease;
  - mental illness including any anxiety or mood disorder, stress-related condition, eating disorder, psychotic illness or personality disorder, or any other mental illness or disorder;
  - substance misuse or any other addiction;
  - impairment of sensory functions;
  - neurological condition, including decline in cognitive function due to dementia, brain injury or any other condition.
5. Some health problems may manifest themselves through unprofessional behaviour by the psychologist in question – particularly if the behaviour is new or out of character. Unprofessional behaviour includes but is not limited to:
  - bullying or intimidation;
  - abusive or offensive language
  - sexual harassment;
  - racial, ethnic or sexist slurs;
  - loud, rude comments;
  - failure to meet obligations;
  - throwing items;
  - offensive sarcasm;
  - threats of violence, retribution or vexatious litigation;
  - demands for special treatment;

- passive aggression;
  - unwillingness to discuss issues with colleagues in a cordial and respectful manner.
6. Similarly, changes in demeanour or interaction with others may indicate an underlying health condition. Examples include but are not limited to:
- episodes of distress or tearfulness;
  - withdrawal;
  - poor judgement;
  - unpredictable and changeable moods;
  - over-sharing of personal information in a professional setting;
  - being indiscreet.
7. Where a psychologist's behaviour or demeanour suddenly changes, health practitioners should consider whether this may be due to a health condition warranting notice to the Board.

## **Giving notice of a concern about a psychologist's fitness to practise**

### Self-notification

8. Although the Board's main concern is public safety, it aims to assist and support psychologists dealing with health conditions. The Board recognises that with support, treatment, monitoring and/or limitations on practice most psychologists with health conditions will be able to remain in practice.
9. The Board's approach to management of psychologists' health conditions aims to encourage psychologists to notify the Board if they have a health condition that may mean they are unable to perform the functions required to practise their profession. Generally speaking, the Board considers that psychologists with the insight to self-notify are likely to be in a position to take ownership of their health condition such that the Board's role can be one of support and monitoring.
10. Where a psychologist does not self-notify the Board of their health condition the Board expects the psychologist's peers to meet their legal obligations by making a notification.
11. Regardless of the type of health condition notified, or the notification channel, the Board's approach is non-judgemental with a focus on support for the psychologist, while ensuring public protection. With this in mind, the Board will usually ensure that an appropriate member of the secretariat is appointed as the psychologist's main point of

contact, to ensure that the psychologist understands the process and is able to ask questions as needed.

### Mandatory notification

12. Under section 45 of the Act it is compulsory for certain people to notify the Board if they believe a psychologist (or psychology student) is unable to perform the functions required for the practice of their profession because of a health condition.
13. The following people must notify the Board in writing of such concerns:
  - a person in charge of an organisation that provides health services;
  - a registered health practitioner (whether that health practitioner is a psychologist, or a registered health practitioner in another profession);
  - an employer of psychologists;
  - a medical officer of health;
  - (in relation to a student of psychology) a person in charge of an educational programme in New Zealand that includes or consists of a course of study or training that is a prescribed qualification for any psychology scope of practice.
14. Not only are health practitioners legally required to make a health notification, but the Board also takes the view that there is an ethical obligation<sup>1</sup> to do so for the protection of patient safety and the psychologist in question. Health practitioners considering making a notification are encouraged to discuss their concerns and intended actions with the psychologist involved, unless they consider it unsafe to do so. They might also wish to consider:
  - discussing their concerns and obligations in supervision; and/or
  - contacting the Board's secretariat for advice.

### Other notifications

15. Any other person not captured above may notify the Board (under section 45(3) of the Act), if they have reason to believe a psychologist is unable to perform the functions of their profession because of a health condition. For the avoidance of doubt, this includes any member of the Board or its secretariat who, in the course of conducting Board work, becomes concerned about a psychologist's health.

### *Competence, Conduct and Fitness Committee (CCF)*

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<sup>1</sup> Code of Ethics for Psychologists working in Aotearoa New Zealand 2002 (reprinted 2008), Principle 2.1.11

16. The CCF has delegation from the Board to assess all notifications about psychologists in the first instance – including notices about fitness. If in the course of assessing information relevant to a psychologist’s competence or conduct, the CCF forms a belief that the psychologist may be unable to perform the functions of their profession due to a health condition, it will address that matter directly with the psychologist before deciding what, if any, action to take.

*Professional Conduct Committee (PCC)*

17. If in the course of investigating a matter under sections 72-78 of the Act a PCC believes the psychologist may have a health condition preventing them from performing required functions, the PCC may make a recommendation at the conclusion of the investigation that the Board review the psychologist’s fitness to practise. However, section 79 of the Act requires that if at any time in the course of the investigation, a PCC has reason to believe that the psychologist’s practice poses a risk of serious harm to the public, the PCC must immediately notify the Board of that belief and the reasons for it.

*Competence Review Panel (CRP)*

18. If, during a competence review under section 36 of the Act, a CRP has reason to believe that the psychologist’s health is affecting their ability to practise, it should notify the Board.

**Form and content of notices**

19. In making a notification under section 45 of the Act, the notifier must give the Board all the relevant circumstances relating to the notice. This might include, but is not limited to:
- Details of the incident(s) or behaviour(s) giving rise to the concern, including whether these are out of character for the psychologist;
  - Any background about which the notifier is aware that may assist in providing context to the notice;
  - An outline of any conversations the notifier has had with the psychologist about the issues of concern and the possibility of referring the matter to the Board;
  - Whether any measures have been put in place by the psychologist or their employer to manage the situation;
  - Any medical advice obtained by the notifier to assist in forming their opinion (see section 46 of the Act).
20. The Board expects the person making the notification to allow him or herself to be identified to the psychologist in question, and for a copy of their notice to be released to

the psychologist for a response. In certain circumstances the Board may withhold the name of the notifier if it could be withheld under the Privacy Act 1993. These circumstances are rare and the threshold for withholding information is high.

21. Section 45(6) of the Act provides that no civil or disciplinary proceedings lie against any person who gives a notice under this section in good faith.

### **Board consideration of a notice**

22. Upon receipt of a notice, the Board's Registrar will assess the information and, if necessary, contact the notifier for clarity on any details provided in the notice.
23. Under section 47 of the Act, the Registrar has an obligation to ensure that the notice is considered by the Board (or its delegate) as soon as reasonably practicable. Unless the Registrar considers that there appears to be an immediate risk to the public requiring urgent action, the Registrar will first provide a copy of the notice to the psychologist about whom the notice has been given, to seek their comment.

### **Possible outcomes following consideration of a notice**

24. Upon receipt of the notice (and any response from the psychologist, if applicable) the Board will consider what, if any, action is required. Depending on the circumstances of the case, options available include:
- Closing the matter with no further action if the Board is satisfied that the psychologist either does not have a health condition, or that any health condition they have does not impact on their ability to practise psychology;
  - Obtaining further information from the psychologist, which may include asking the psychologist to provide an up to date medical report from their general practitioner;
  - Discussing with the psychologist the possibility of entering into a voluntary undertaking with the Board to assist in monitoring and managing any health condition the psychologist has;
  - Making an order under section 49 of the Act that the psychologist is required to undergo an examination or test by a registered health practitioner, at the Board's expense;
  - Making interim orders under section 48 of the Act that the psychologist's practising certificate is suspended, or that conditions are included in the psychologist's scope of practice. Such orders will usually be made where the Board has ordered an

examination under section 49 of the Act, and is awaiting the results of that examination.

#### No further action

25. If the Board is satisfied that no further action is required it will advise that psychologist of that decision and close the file. A record of the notice will be held on the psychologist's file for future reference.

#### Suspected inability to perform required functions

26. If, after receiving a notice, the Board suspects that the psychologist is unable to perform required functions due to a mental or physical condition, it may make one of the following interim orders under section 48 of the Act, pending a full assessment of the condition:

- suspending the psychologist's practising certificate; or
- altering the psychologist's scope of practice.

27. The Board will adopt a proportionate approach when considering its options under section 48 of the Act – meaning that it will aim to apply the least regulatory force necessary to achieve safety. However, if, based on the information available to it, the Board considers that allowing the psychologist to remain in any sort of practice pending a full assessment would place the health and safety of the public at risk, it will order an interim suspension of the psychologist's practising certificate.

28. If the Board determines that the practitioner can still safely remain in practice but only if subject to certain requirements and limitations on their scope of practice, the Board may alter the psychologist's scope of practice by either of the following methods:

- changing any health services that the psychologist is permitted to perform; or
- including any condition or conditions that it considers appropriate.

29. In deciding whether interim action is required the Board will consider the individual facts of the case, with reference to all of the information available to it.

30. If an interim order is made, the psychologist will be provided with a copy of the order, and is legally required to comply with it. The order remains in place for up to 20 working days from the date that the psychologist receives the order, but the Board may extend the order for up to a further 20 working days if it is necessary for the completion of any examination or testing under section 49 of the Act.

### Voluntary undertaking

31. A voluntary undertaking is a “non-statutory” tool that can have benefits for the psychologist in the management of their health condition via a private agreement with the Board as an alternative to the imposition of public conditions on the psychologist’s registry record.
32. Where appropriate, the Board will consider offering a psychologist with a health condition the opportunity to enter into a voluntary undertaking with the Board to assist the Board in monitoring and managing any risk to the public associated with the psychologist’s health condition.
33. The Board’s willingness to offer a voluntary undertaking to a psychologist instead of using the statutory powers available to it will depend on several factors, including (but not limited to):
- Whether the Board is satisfied that the psychologist is willing and able, in the circumstances, to take ownership of their journey to wellness;
  - The psychologist’s state of mind and level of wellness at the relevant time;
  - Whether the psychologist self-notified their condition to the Board and has been forthcoming with information about their situation;
  - The level of insight demonstrated by the psychologist regarding the potential risks to the public associated with their condition;
  - Any proactive steps the psychologist has taken to minimise risk to the public associated with their health condition;
  - Whether the psychologist has already engaged suitable health professionals to support and assist them in their recovery, and whether the psychologist consents to those health professionals discussing the psychologist’s health condition with the Board as appropriate;
  - The level of support in place for the psychologist in both personal and professional settings.
34. If the Board and psychologist agree that a voluntary undertaking is to be drawn up the terms will be discussed with the psychologist before being signed by both parties (see list of most common terms below). The voluntary undertaking takes effect from the date both parties have signed it.
35. The existence of a voluntary undertaking does not preclude the Board from taking statutory measures to protect public health and safety, if necessary.

### Examples of voluntary undertaking terms or formal conditions on practice

36. The terms of a voluntary undertaking or any formal conditions vary from case to case and might include - but are not limited to - any number of the following requirements:

#### *Employment:*

- the psychologist is employed by a Board-approved employer
- the psychologist authorises their employer to provide the Board with progress reports
- the psychologist must inform colleagues about the relevant health issues
- the psychologist's practice is to be supervised, or supervised in a particular manner or at specified intervals
- a senior psychologist is appointed as a mentor.

#### *Medical:*

- the psychologist authorises their general practitioner or other appropriate health practitioner to provide progress reports to the Board
- the psychologist must continue with their current treatment plan
- the psychologist must undergo therapy or counselling
- the psychologist authorises their therapist or counsellor to provide progress reports.

#### *Scope of practice:*

- the psychologist's practice is limited to certain practice areas/client types, practice locations, practice hours etc

#### *Drug and alcohol specific:*

- the psychologist must remain abstinent from alcohol and/or drugs
- the psychologist must undergo urine and/or hair and/or blood testing to check for the presence of alcohol or drugs
- the psychologist must attend peer support groups such as Alcoholics Anonymous or Narcotics Anonymous.

## **Assessment of health condition**

### Examination or testing

37. If at any stage of the management of the psychologist's health condition, the Board decides that some sort of examination or testing of the psychologist's health condition is necessary, the secretariat will contact the psychologist to discuss options for the health practitioner who is to conduct the assessment ("health assessment") under section 49 of

the Act. The Board will consider any suggestions made by the psychologist but will not necessarily appoint their preferred assessor. The Board will take into account who may be able to provide the type of assessment it requires, whether it considers any particular area of expertise is required, and practical matters such as timeliness of scheduling the assessment.

38. A health assessment is most likely to be ordered when the Board first receives a notice about a psychologist's health and needs to determine whether the psychologist is fit to practise, and again at any point during the management of the psychologist's health condition if it is unclear whether the psychologist's condition has changed to the extent that a review of existing monitoring is required.
39. Depending on the nature of the health condition, the assessor may be any health practitioner regulated by the Act. For example, it may be appropriate for the psychologist to undergo a medical assessment by a medical practitioner, an eye examination conducted by an optometrist, a psychological assessment conducted by a psychologist, or a workplace assessment conducted by an occupational therapist.
40. Once the assessor has been decided on, the psychologist is advised in writing of the:
- health condition(s) that may make them unable to perform the functions required for the practice of their profession;
  - name and address of the assessor who is to carry out the health assessment; and
  - date by which they must see the assessor.
41. The psychologist may take a support person to their health assessment as an observer. If the psychologist is unable to attend the health assessment in the timeframe given, they must notify the Registrar as soon as practicable. The reason for this is that if the psychologist does not attend an examination by the agreed date and has not contacted the Registrar to arrange another date, the Board may still make orders under section 50 of the Act based on the information it has available.

#### Assessor's report

42. The health practitioner completing the health assessment will be asked to provide a comprehensive report to the Board and comment on the following questions:
- whether the psychologist has the condition(s) named by the Board, and if so, to what extent, if any, that condition affects the psychologist's ability to perform the functions required for the practice of psychology
  - whether the health condition means the psychologist would be able to perform the required functions for the practice of their profession but only if conditions were

placed on their scope of practice – and if so, an indication of what conditions would be necessary to enable the psychologist to practise safely; and

- information about the psychologist's health condition including prognosis, and any current or recommended treatment plan;
- any other information that the assessor considers relevant to the assessment or monitoring of the psychologist's fitness to practise.

43. The Act also allows for the appointed assessor to consult with any other health practitioner that they consider would be able to assist in the completion of the assessment.

44. The assessor's report must be provided to the Registrar as soon as reasonably practicable after the examination or test.

#### Consideration of assessor's report

45. Upon receipt of the assessor's report the Registrar will promptly provide the psychologist with a copy of the report and a reasonable opportunity to make written submissions and be heard on the matter, either personally or by their representative.

46. Upon receipt of any submissions, or if no submissions have been received within the timeframe given, the Registrar will forward a copy of the assessor's report to the Board along with any written submissions. The Board will consider the report and all the relevant circumstances of the case.

#### **Board decision following health assessment**

47. The Board will consider the psychologist's fitness to practise as soon as practicable, and has the following options available to it:

- take no further action if it is satisfied that the psychologist is fit to practise;
- defer a decision pending further information;
- ask the psychologist to enter into a voluntary undertaking which would require the psychologist to conform to requirements relevant to their health condition;
- include conditions in the psychologist's scope of practice;
- suspend the psychologist's registration.

#### Suspension or conditions on scope of practice

48. When considering the matter, the Board will aim to use the least regulatory force necessary to achieve safety. This means that it will first consider whether the

psychologist can practise safely if subject to conditions or a voluntary undertaking (see page 8 for examples of commonly used conditions).

49. The Board may decide to suspend the psychologist's registration or under section 50 of the Act if it is satisfied that the psychologist is unable to perform the functions required for the practice of their profession with conditions or limitations on practice, or if the psychologist failed to attend the required health assessment.

50. If a formal order for conditions or suspension are made under section 50 of the Act, the psychologist will be advised in writing of the order made and the reasons for it. The order takes effect from the date the psychologist receives it.

#### Other options

51. If the Board decides to offer the psychologist a voluntary undertaking, the details of the undertaking will be discussed between the Board and the psychologist. See page 8 for more details on voluntary undertakings.

### **Non-compliance with health monitoring requirements**

#### Breach of formal orders

52. The Board does not take lightly any decision to suspend a psychologist's registration or include conditions in their scope of practice. Such decisions are taken where the Board considers there is a need to do so for the protection of the public.

53. This means that in normal circumstances, a breach of any Board order is grounds for disciplinary action. However, the Board acknowledges that some health conditions may impair the psychologist's judgement in this regard. The Board will take this into account when deciding whether to take disciplinary action in relation to any alleged breach of health-related orders.

#### *Breach of conditions*

54. If a psychologist breaches health-related conditions in their scope of practice, the Board is likely to take immediate action to ensure that the public is protected. This may include interim suspension of the psychologist's practising certificate under section 48 of the Act until a further assessment of the psychologist's fitness to practise can be made, or considering suspension of the psychologist's registration under section 50 of the Act.

### *Breach of suspension order*

55. If a psychologist breaches an order for suspension of their registration or practising certificate on health-related grounds, the Board's management of any alleged breach will depend on the circumstances of the case; however, it may include the involvement of other authorities to assist in ensuring the psychologist does not present a risk to the public.

### Breach of voluntary undertaking

56. A voluntary undertaking enables the psychologist to remain in practice whilst maintaining their privacy and protecting public health and safety. It will generally only be offered to a psychologist if the Board believes them to be capable of managing their health condition. While a voluntary undertaking is not a statutory tool, if a psychologist enters into one with the Board, they will be expected to treat the terms of the voluntary undertaking with the utmost seriousness.
57. If a psychologist who has signed a voluntary undertaking breaches any of its terms the Board is likely to consider interim suspension under section 48 of the Act while it reconsiders the matter, or considering suspension of the psychologist's registration under section 50 of the Act.
58. Given the Board has a process for ensuring that it does not offer voluntary undertakings to psychologists who may not be capable of compliance, the Board may take a view that a breach of a voluntary undertaking warrants disciplinary action. This will depend on the circumstances of the breach, including (for example) whether there has been a downturn in the psychologist's health since signing the voluntary undertaking.

### **Case reviews**

59. Any health-related requirements put in place by the Board will be reviewed when the psychologist's circumstances change. The Board will work with the psychologist and their healthcare team to obtain relevant information that will assist the Board in reviewing the psychologist's fitness to practise. If necessary, the Board may order a further health assessment under section 49 of the Act.
60. If the Board is satisfied that the psychologist is fit to practise it will make an order revoking any previous orders, or it will release the psychologist from any voluntary undertaking.

61. If, having reviewed the psychologist's situation, the Board decides that the psychologist's condition has improved, but that monitoring is still required for public safety, the Board will make a proposal to do one or more of the following:
- revoke any suspension and impose conditions or offer a voluntary undertaking;
  - revoke and/or vary any conditions and/or offer a voluntary undertaking
  - introduce a voluntary undertaking.
62. Before deciding how to proceed, the Board will give the psychologist a reasonable opportunity to make written submissions and be heard on the matter.

### Resolution of health condition

63. While some health conditions may require career-long monitoring, others can be short and/or one-off issues. When the Board is satisfied that a health condition has resolved and that there is no risk to public health and safety it will close the health file without, in itself, affecting the psychologist's standing with the Board. The information will be securely retained on the psychologist's registration file.
64. It should be noted that if a psychologist applies for registration in another jurisdiction while a health condition is unresolved, the Board would be required to disclose that to the registering authority if requested by that authority. However, the Board would not disclose details if the health condition has resolved and the psychologist is no longer being monitored by the Board.

### Policy status

<i>Policy name</i>	Fitness to Practise Policy
<i>Governor</i>	Board
<i>Policy Lead</i>	GM/Registrar
<i>Approval Date</i>	<i>DRAFT as at 3 March 2020</i>
<i>Effective Date</i>	N/A
<i>Review Date*</i>	Approval date + 3 years (maximum)
<i>Date of Last Revision</i>	Not Applicable
<i>Related Policies</i>	All

\* Unless otherwise indicated, this policy will still apply beyond the review date.