

Policy Directive



Ministry of Health, NSW
 73 Miller Street North Sydney NSW 2060
 Locked Mail Bag 961 North Sydney NSW 2059
 Telephone (02) 9391 9000 Fax (02) 9391 9101
<http://www.health.nsw.gov.au/policies/>

Complaint or Concern about a Clinician - Principles for Action

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 Clinical/ Patient Services - Governance and Service Delivery
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 Personnel/Workforce - Occupational Health & Safety

Summary The policy describes the principles for managing complaints or concern regarding all clinicians and outlines the roles and responsibilities for ensuring all complaints or concerns are managed by the PHO, and outlines the legislative responsibility for doing so.

Replaces Doc. No. Complaint or Concern About a Clinician - Management [PD2005_610]

Author Branch Workplace Relations

Branch contact Workplace Relations 9391 9360

Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations, Community Health Centres, Dental Schools and Clinics, Government Medical Officers, NSW Ambulance Service, Ministry of Health, Public Hospitals

Audience Administration, all clinical staff

Distributed to Public Health System, Community Health Centres, Dental Schools and Clinics, Divisions of General Practice, Government Medical Officers, Health Associations Unions, Health Professional Associations and Related Organisations, NSW Ambulance Service, Ministry of Health, Public Health Units, Public Hospitals, Tertiary Education Institutes

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Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

**COMPLAINT OR CONCERN ABOUT A CLINICIAN
PRINCIPLES FOR ACTION**

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1. INTRODUCTION

1.1 Purpose

The purpose of this Policy Directive is to establish a set of principles, which must be addressed when managing a complaint or concern about a clinician. A **clinician is defined** as a health practitioner or health service provider (whether or not the person is registered under a Health Registration Act).

This Policy Directive and any associated policies are applicable to all clinicians working in the NSW health system, whether employed or contracted.

The Policy Directive should be read in conjunction with the *Complaint or Concern about a Clinician - Management Guidelines GL2006_002*, which set out a framework that Public Health Organisations can adopt and adapt at a local level. The Guidelines describe how to address the complaint or concern, while ensuring that the interests of the organisation, the public and the needs of the professional are met.

The Policy Directive and Guidelines are part of a suite of documents relating to Complaints Handling across the NSW health system. Section 2 provides guidance on the appropriate policy to pursue, depending on the nature of complaint or concern.

Compliance with this policy is mandatory.

1.2 Rationale

Management of complaints or concerns about clinicians is an important component of improving patient safety and clinical quality within a health service.

Management of a complaint or concern includes a number of steps to ensure that any immediate risks identified are managed appropriately, and effective action is taken to provide safe and appropriate care and maintain community confidence.

1.3 Scope

This Policy Directive applies to all concerns or complaints about a clinician that occur within the NSW Public Health System while recognising that other policies may be relevant to the particular complaint (see section 2). The Directive:

- Establishes the Principles which must be complied with when dealing with a complaint or concern and;
- Describes when a matter must be reported to a health registration board under the Health Services Act (1997).

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1.4 Background

The NSW Department of Health produced a Guideline on The Management of a Complaint or Concern about a Clinician in 2001. The guideline was developed in collaboration with the NSW Medical Board, the NSW Department of Health, the Health Care Complaints Commission (HCCC), the NSW Council on Quality in Health Care, the Wentworth Area Health Service and the Hunter Area Health Service Clinical Governance Unit.

The guideline has been reviewed, revised and updated into two documents, A Policy Directive establishing **mandatory Principles for Action** and a Guideline establishing a *Framework for Management*, to recognise and support the following initiatives:

1. Amendments to the Health Services Act (1997), which require Chief Executives (CE) to report professional misconduct or unsatisfactory professional conduct of visiting practitioners and employees to their relevant registration board;
2. The *NSW Patient Safety and Clinical Quality Program* (PD2005_608), establishment of Clinical Governance Units in Area Health Services (AHS) and other Public Health Organisations (PHO), and the Incident Management System and,
3. Policies relating to the Appointment of Visiting Practitioners and Staff Specialists, (PD2005_496 & PD2005_500), Delineation of Privileges for Visiting Practitioners and Staff Specialists (PD2005_497) and the Performance Review of Visiting Practitioners (PD2005_498).

2. Coverage of this Policy

As noted above, this Policy Directive and the Framework form part of a suite of complaints and accountability policies operating in NSW Health. When a complaint or concern arises, managers must consider whether action is required in accordance with this and/or other policies, as follows:

- If the complaint involves system related incidents it should be managed in accordance with the Incident Management Policy (PD2005_604);
- Disciplinary matters should be managed in accordance with A Framework for Managing the Disciplinary Process in NSW Health (PD2005_225);
- Grievances should be managed in accordance with Effective Grievance Resolution: Policy & Better Practice (PD2005_584);
- Child related complaints should be managed in accordance with Part 3A of the Ombudsman's Act 1974, Policy and Guidelines for the Development of Protected Disclosures Procedures in Health Services (PD2005_135), and Protecting Children and Young People (PD2005_299), noting the specific reporting and investigation requirements outlined in these policies;

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- Harassment matters should be managed in accordance with Joint management and Employee Association Policy Statement on Bullying, Harassment and Discrimination (PD2005_223)
- Possible corrupt conduct should be managed in accordance with Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption (PD2005_173).

In regard to criminal matters, health services are required to review all complaints or allegations against employees as to whether a criminal offence is involved.

3. ROLES AND RESPONSIBILITIES

3.1 The Responsibility of the Chief Executive

The Chief Executive (CE) of the Area Health Service (AHS) or other Public Health Organisation (PHO) has a primary obligation to ensure complaints and concerns are acted upon, by way of investigation and, where necessary, appropriate action to implement findings.

The CE is responsible for reporting to registration boards in accordance with the provisions of the Health Services Act (1997) any conduct of a visiting practitioner (or employee) that the CE suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the Health Registration Act by which the registration authority is constituted.

The CE is also responsible for ensuring that recommendations resulting from the management of complaints or concerns are considered by the appropriate forum, and acted upon where appropriate.

The CE is responsible for notifying the Director-General and relevant external agencies where a complaint against a clinician concerns a serious criminal matter, professional misconduct, unsatisfactory professional conduct or inappropriate child related conduct.

3.2 The Responsibility of the Director of Clinical Governance

The Area Health Service Directors of Clinical Governance (DCG) takes the overarching responsibility to ensure the system for managing complaints about clinicians is in place, and functions effectively.

The DCG should be notified of all complaints via appropriate organisational reporting structures, and agree on the proposed steps to manage the complaint.

All Clinical Governance Units are required to have an identified Designated Senior Complaints Officer. The Designated Senior Complaints Officer or their delegate must be contactable 24 hours a day, 7 days a week.

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The Director of Clinical Governance is responsible for ensuring the appropriate process for managing complaints or concerns is understood, and followed by the organisation.

4. Legislative Requirement to Act on Clinician Performance Issues

The CE is responsible for reporting to registration boards in accordance with the provisions of the Health Services Act (1997) any conduct of a visiting practitioner (or employee) that the CE suspects on reasonable grounds may constitute professional misconduct or unsatisfactory professional conduct under the Health Registration Act by which the registration authority is constituted.

Refer to the list of Acts included in Section 7 Definitions of this Policy Directive.¹

5. The Role of Codes of Conduct

All Area Health Service and other PHO staff and contractors are expected to behave and practise in a manner consistent with the NSW Health Code of Conduct (PD2005-626).

A number of professional groups have Codes of Conduct that set out minimum standards of behaviour and practice for that professional group. All clinicians are expected to behave and practise in a manner consistent with their respective Codes of Conduct.

For professional groups where there is no registration board (such as for Occupational Therapists and Social Workers), the NSW Health Code of Conduct serves as a reference to expected standards of behaviour and is important in managing complaints or concerns regarding those professional groups.

The following **NSW Health Professional Registration Boards have binding codes** of Professional Conduct made pursuant to health professional legislation:

- NSW Medical Board: Code of Professional Conduct, Good Medical Practice – Duties of a Doctor Registered with the NSW Medical Board 2005;
- NSW Podiatrists Registration Board: Code of Professional Conduct 2000;
- NSW Psychologists Registration Board: Code of Professional Conduct 2004;
- NSW Chiropractors Registration Board: Code of Professional Conduct 2004;

¹ Health Services Act 1997 at <http://www.legislation.nsw.gov.au> (accessed 12/12/2005)

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- NSW Optometrists Registration Board: Code of Professional Conduct 2005;
- NSW Osteopaths Registration Board: Code of Professional Conduct 2004

Although **the following are non-binding codes** of professional conduct under the legislation, these codes are instructive of expected standards of practice and behaviour in the professions to which they relate.

- NSW Dental Technicians Board: Guidelines for Professional Practice;
- NSW Nurses and Midwives Board endorse the Australian Nursing Council: Code of Professional Conduct for Nurses in Australia 2003 (Applicable to all Nurses and Midwives);
- Australian Physiotherapy Association: Code of Conduct 2001 (Applicable to all Physiotherapists who are members of the APA);
- The Society of Hospital Pharmacists of Australia: Code of Ethics 1996 (applicable to all Pharmacists who are members of the SHPA);
- Pharmaceutical Society of Australia: Code of Professional Conduct;
- OT Australia: Code of Ethics 2001 (A guide for all Occupational Therapists);
- Australian Association of Social Workers: AASW Code of Ethics, 2nd Edition, 2002 (Applicable to all members of the AASW);
- Australian institute of Radiography: Code of Ethics 2002;
- Dietitians Association of Australia's (DAA) Code of Professional Conduct and Code of Ethics 2001.

6. General Principles

Certain general principles apply to the management of a complaint or concern about a clinician regardless of the severity or nature of action to be taken. The nature of the complaint or issue may dictate how these principles are given effect and so a degree of flexibility in the approach taken to manage the complaint/concern may be required.

These general principles are:

- **Notification.** Notification of the complaint or concern may initially be verbal or written. Anyone can notify a complaint or concern. All verbal complaints must subsequently be documented, either by the person making the notification or by the person receiving the complaint. Any

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matter (whether notified as a complaint or not) involving patient harm (or a near miss) will be entered into the Incident Information Management System (IIMS);

- **Reporting.** Anyone who has a concern or receives a complaint must report this to a supervisor, or the Area Designated Senior Complaints Officer. It is the responsibility of all staff to be vigilant in identifying and raising a complaint or concern about colleagues whose health, conduct or performance is a risk patient safety, to the organisation, or others;
- **Health and safety of patients.** The primary concern in managing complaints or concerns about a clinician is the health and safety of patients. Any risk to the safety of patients must be removed or managed as the first step in the management of a complaint or concern about a clinician.
- **Responsibility for action. It is the responsibility of management to act on complaints or concerns about clinicians.** The AHS or other PHO must actively manage the complaint or concern, and cannot defer this obligation to a registration board or the Health Care Complaints Commission. If a registration board takes emergency suspension action, or uses its emergency powers to place conditions on the clinicians' practice, then the AHS or other PHO will need to respond to address the external restrictions.
- **The decision to immediately suspend , to alter clinical privileges, or provide alternative non-clinical duties,** is at the discretion of the CE in consultation with the clinician's clinical director. The reasons for taking action, or for electing not to take action should be clearly documented; A decision to take administrative action in relation to a clinician as a result of an initial risk assessment should in no way be an indication of the guilt or misconduct of an employee.
- **Appropriate investigation** of all complaints (including apparently frivolous, vexatious and trivial complaints) must be undertaken;
- **Risk management.** Complaints and concerns should be investigated at the earliest stages, to reduce the risk of adverse outcomes;
- **Fairness.** Investigations are to be conducted in a fair, impartial and appropriate manner, having regard to the circumstances of the complaint or concern including;
 - providing the clinician with information about the issues under review or investigation at the appropriate time;
 - giving the clinician a fair hearing and an opportunity to respond to all allegations;
 - ensuring decisions are made by an unbiased or impartial decision maker; and,

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- ensuring decisions are based on material that is relevant to the case;
- know who the complainant is unless the complaint is made under Protected disclosures.

The complainant has:

- the right to have their complaint taken seriously;
 - the right to have their complaint properly investigated;
 - the right to be given feedback on the outcome of the investigation.
- **Standards.** The standards against which judgments are to be made, or are being made, must be made explicit. In general, this will be the standard reasonably expected of a clinician of an equivalent level of training and experience, at the time of service. Standards to be applied may be legislative, professional or sources in NSW Health policy obligations;
 - **Privacy and Confidentiality.** Details of the matter should be disclosed only on a “need to know” basis, recognising any obligation to report information to other bodies, for example professional registration boards; Privacy legislation and Department privacy requirements need to be considered in the management of a complaint or concern about a clinician. All information in respect of complaints is to be treated as private and confidential
 - **Independence and Impartiality.** Conflicts of interest should be avoided wherever possible, and where unavoidable, must be disclosed. There should be no relationship between the investigator and the clinician being investigated or other significant party, which could reasonably be perceived to bias the investigation. For example, a competing clinician in the same small town or specialty, or a peer in the same clinical unit, or a friend of the clinician, or anyone who may gain a pecuniary or other benefit from a decision;
 - **Support person.** If the investigation of the matter involves an interview with the clinician, he or she is entitled to be accompanied by a support person (for example, a professional association representative). The support person does not have input into the investigation interview and must sign a confidentiality agreement.
 - **Impairment of a clinician where there is a registration board.** At any level of investigation, inquiries may uncover impairment as a major contributor to performance concerns. If this is the case the matter should also be referred to the appropriate registration board for action under their procedures for dealing with impaired registrants;
 - **Impairment of clinician where there is no registration board.** Where there is no relevant registration board, eg for social workers and

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occupational therapists, the relevant professional association may still be able to assist in a review or investigation, or may wish to revoke professional membership, and should therefore be informed in lieu of a registration body;

- **Statutory obligations.** These principles do not negate any statutory obligations in relation to reporting, investigating or otherwise dealing with a matter;
- **External agency involvement.** Where the matter has required the notification and /or involvement of an external body, for example Police, appropriate ongoing liaison with that body should occur to ensure that both the PHO and the external body's requirements and obligations are satisfactorily met and the management of the complaint or concern by either party is not compromised.
- **Provision of information.** All relevant parties in the process should be informed of the outcome;
- **Complaints or concerns that are withdrawn** should still be investigated, and managed according to the findings;
- **Referral of issues to the relevant body for consideration.** For example where following an investigation, it is considered that a medical practitioner's clinical privileges should be reviewed, a recommendation should be made to the Medical and Dental Appointments Advisory Committee for such a review;
- **Appropriate outcomes.** Outcomes must be supported by the findings of the review or investigation and be proportionate with any identified areas of poor practice or conduct;
- **Records** are to be kept and the outcome documented. The **Director of Clinical Governance** is to report individual and/or trend information to the Chief Executive of the organisation. Where a decision is made not to take action in response to a complaint or concern, this decision, and the rationale for not proceeding must be documented.

7. Definitions

Area Health Services (AHS) - provide the operational framework for the provision of public health services in NSW. They are constituted under the Health Services Act 1997 and are principally concerned with the provision of health services to residents within the geographic area covered by that health service.

Clinician – a health practitioner or health service provider regardless of whether the person is registered under a Health Registration Act.

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Clinical Governance Unit (CGU) - Established within each Area Health Service to oversee the implementation of the NSW Patient Safety and Clinical Quality Program.

Complaint - includes any expression of dissatisfaction by a complainant that may have one or more associated issues.

Concern – feedback regarding any aspect of service where the person does not make a complaint, but that identifies issues requiring investigation².

Department – The NSW Department of Health

Health Registration Act – includes any of the Acts listed below

- Chiropractors Act 2001
- Dental Technicians Registration Act (1975)
- Dental Practice Act (2001)
- Medical Practice Act (1992)
- Nurses and Midwives Act (1991)
- Optical Dispensers Act (1963)
- Optometrists Act (2002)
- Osteopaths Act (2001)
- Pharmacy Act (1964)
- Physiotherapists Act (2001)
- Podiatrists Act (1989) & Podiatrists Act (2003) uncommenced
- Psychologists Act (2001) No 69

Health Service – includes:

- Medical, hospital and nursing services
- Dental services
- Psychiatric and psychological services
- Pharmaceutical services
- Ambulance services
- Community health services

² Based on Western Australian Complaint Management Policy, Information Series No.6, Western Australia Department of Health, 2001

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- Health education services
- Services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, acupuncturists, occupational therapists, speech pathologists, audiologists, audiometrists, radiographers, social workers, nutritionists and dieticians, orthoptists, environmental and public health professionals, prosthetists and therapeutic counsellors
- Services provided in other allied or alternative health care fields
- Welfare services necessary to implement any services referred to above

Impairment means a person suffers from any physical or mental impairment, disability, condition or disorder, which detrimentally affects or is likely to detrimentally affect the person's physical or mental capacity to practise.

Line manager – the manager to whom an individual reports.

Performance – refers to the knowledge and skill possessed and applied by the clinician in the course of their duties. Performance is also influenced by experience, application and attitude.

Public Health Organisation (PHO) - refers to a statutory health corporation or an affiliated health organisation in respect of its recognised establishments and recognised services as defined in the Health Services Act (1997) and the Ambulance Service of NSW.