

Policy on Publication and Naming of Osteopaths Subject to an Order or Direction

Policy Statement

Where the Osteopathic Council has made an order or direction in respect of an osteopath it will consider whether to publish a notice setting out the effect of the order, a summary of the findings and naming the osteopath under section 157(1) of the Health Practitioners Competence Assurance Act 2003.

Under the Health Practitioners Competence Assurance Act (the Act) the role of the Osteopathic Council (the Council) is to protect the health and safety of members of the public by providing for mechanisms to ensure that osteopaths are competent and fit to practise their profession.

The purpose of the publication and naming policy as set out under section 157B of the Act is to enhance public confidence in the osteopathic profession and the Council's disciplinary procedures by providing transparency about its decision-making process, ensuring that osteopaths whose conduct has not met expected standards may be named where it is in the public interest to do so, and improving the safety and quality of health care.

Content of a naming policy

A naming policy must set out the:

- classes of osteopaths to whom it applies
- circumstances in which an osteopath may be named
- general principles that will guide the Council's naming decisions
- criteria the Council must apply when making a naming decision
- requirement to have regard to the consequences for the osteopath of being named, including the likely harm to the osteopath's reputation



- procedures the Council must follow when making a naming decision.

Naming policies must be consistent with the law

A naming policy must be consistent with this Act, the information privacy principles in section 6 of the Privacy Act 1993 and the general law (including natural justice rights).

General principles for all publication and naming notices under the Act

- The naming policy applies to all registered osteopaths and former registrants whose name has been removed from the register.
- The osteopath may be named when there are public safety reasons to do so. This will be weighed against the practitioner's privacy interests (including interests under the Health Information Privacy Code), and the consequences for the osteopath's reputation.
- If the Council proposes to name an osteopath the osteopath will be provided with a reasonable opportunity to make written submissions and be heard on the matter, either personally or by their representative.
- The Council will consider whether naming an osteopath is required to protect the health and safety of the public, taking into account other disclosure provisions in the Act requiring an order to be provided to employers and those working in partnership or association with the osteopath.
- Publication may be required to provide information to the public so they can make informed decisions about their care or treatment.
- Publication may be necessary to ensure compliance of an order or direction. This could include allowing better monitoring of compliance where there is a high risk of non-engagement or where there is information to believe that the risk of the osteopath's practice or conduct posing a risk of harm to the public is increasing or has increased.
- The Council may decide to publish to a particular group or to a wider audience. Targeted publication may be preferred over general publication unless there are mitigating circumstances.
- Publication should be tailored to the purpose and audience identified by the Council. It should be published with sufficient detail, as widely and in such a way as to provide the identified level of information to the identified audience.
- If a notice is proposed to be published on a website, the Council will also consider whether it should be removed on a certain date or after a set period.
- Consideration will always be given as to whether publication may cause harm to a health consumer, complainant or the person who made a notification about an osteopath's health or competence.

Processes and criteria for individual orders



The Council makes orders for different purposes under the Act and policies have been developed for each of the processes as different criteria will apply.

Registration and issuing of practising certificates

- Osteopaths who have failed to fulfil or comply with conditions included in their scope of practice under section 27(1)(b) may be named. Conditions are included by the Council, competence review committees, health committees and the Health Practitioners Disciplinary Tribunal (the Tribunal).
- Those osteopaths will be provided with the opportunity to submit on the proposed orders and whether they should be named to the Council, a competence review committee or health committee depending on the reason for the inclusion of conditions.
- If the condition has been included by the Tribunal a decision will be made as to whether the matter is referred to a professional conduct committee to consider whether to lay a charge under section 100(1)(f) of the Act.
- Osteopaths will have the opportunity to submit to the Tribunal as to whether they are granted name suppression under section 95.
- Where an osteopath's registration has been cancelled under section 146 on the grounds of making a false or misleading representation or declaration the osteopath may be named.
- Those osteopaths will be provided with an opportunity to submit on the proposed cancellation and whether they will be named to the Council.
- Where an osteopath's registration has been cancelled or suspended under section 147 on the grounds that their qualification has been removed or their registration has been cancelled or suspended by an overseas authority the osteopath may be named.
- Those osteopaths will be provided with an opportunity to submit on the proposed cancellation or suspension and whether they will be named to the Council.

Competence provisions

- Osteopaths who have orders under section 38 following a competence review will generally not be named as these orders clearly have a rehabilitation focus, and if conditions have been included in the osteopath's scope of practice they will appear on the public register, and the order will be provided to the osteopath's employer or associate. However, where there are serious public safety concerns the Council will consider naming the practitioner.
- Where the rehabilitation of the osteopath is an important factor the confidentiality of the osteopath may be preserved unless there are public safety factors that support disclosure. Where they have engaged with the Council and taken steps to remediate, the Council will generally not name them.
- Those osteopaths will be provided with the opportunity to submit on the proposed orders and whether they should be named to a competence review committee.



- Osteopaths who are the subject of interim orders, (inclusion of conditions or suspension of their practising certificate) under section 39, may have orders published and be named as there are reasonable grounds for believing that the osteopath poses a risk of harm to the public. There will be a rebuttable presumption in favour of naming.
- Those osteopaths will be provided with the opportunity to submit on the proposed orders and whether they should be named to a competence review committee. They will also be provided with an opportunity to submit to this committee on whether they will be named if the order is revoked under section 51.
- Osteopaths who have failed to satisfy the requirements of a competence programme under section 43 following a competence review may have orders published and be named. There will be a rebuttable presumption in favour of naming.
- They will be provided with the opportunity to submit on the proposed orders to a competence review committee.
- Osteopaths who have failed to satisfy the requirements of a recertification programme under section 43 may have orders published and be named. There will be a rebuttable presumption in favour of naming.
- They will be provided with the opportunity to submit on the proposed notice to the Council.

Health provisions

- Osteopaths who have mental or physical conditions and are the subject of orders under section 50 will generally not be named as these orders clearly have a rehabilitation focus and there are health information privacy principles to consider. In those cases there is a rebuttable presumption against naming because of the sensitive personal information at issue when the review relates to the practitioner's health or fitness to practice. It will ensure that a practitioner's privacy is appropriately protected when naming would disclose this sensitive health information.
- If osteopaths have had their registration suspended their name will not be on the public register and they will not be able to practise. If conditions have been included in the osteopath's scope of practice they will appear on the public register and the order will be provided to the osteopath's employer.
- Osteopaths who are the subject of interim orders under section 48 (inclusion of conditions or suspension of their practising certificate) but continue practising or fail to comply with those conditions may be named where there may be reasonable grounds for believing that the osteopath poses a risk of harm to the public. The Council will ensure that a practitioner's privacy is appropriately protected when naming to ensure that sensitive health information is not disclosed.



- Those osteopaths will be provided with the opportunity to submit on whether they should be named to a health committee. They will also be provided with an opportunity to submit to this committee on whether they will be named if the order is revoked under section 51.
- Osteopaths who have conditions included under section 50 or whose registration is suspended under section 50 but fail to comply with those conditions or that suspension may be named.
- They will be provided with the opportunity to submit on the proposed notice to a health committee.

Discipline provisions

- Under the disciplinary provisions of the Act osteopaths who are the subject of an investigation are not subject to orders by the Council except for interim orders under sections 69 and 69A of the Act. It is the Tribunal that makes orders following a disciplinary hearing and osteopaths are able to make submissions on name suppression at that hearing. The Council is limited in its ability to publish interim orders and name osteopaths as this may defeat the osteopath's right to apply for name suppression.
- However, osteopaths who are the subject of interim orders under section 69 but fail to comply with the suspension of their practising certificate or conditions included in their scope of practice may be named as there must be reasonable grounds for believing that the osteopath poses a risk of harm to the public and the suspension or conditions put in place to protect the public are not being complied with. In those cases the public interest may override the interests of the osteopath. There will be a rebuttable presumption in favour of naming.
- Those osteopaths will be provided with the opportunity to submit on the proposed orders and whether they should be named to the Council.
- They will also be provided with the opportunity to submit to the Council on whether they will be named if the order is revoked.
- Osteopaths who are the subject of interim orders under section 69A and continue practising may be named. They will be provided with the opportunity to submit on the proposed orders to the Council. There will be a rebuttable presumption in favour of naming.
- They will also be provided with the opportunity to submit to the Council on whether they will be named if the order is revoked

Information that may be disclosed

- Under section 157 the Council may publish a notice setting out the effect of any order, a summary of any finding it has made and the name of the osteopath. The Council will ensure that the notice does not include information that may breach the privacy of any other person, including health consumers.
- The effect of the order will include any conditions or other requirements the osteopath is required to meet. The findings will contain sufficient information to inform the public of the reasons for the decision but will be limited to avoid unnecessary disclosure.



- Publication of orders under the health provisions of the Act must take into account the principles of the Health Information Privacy Code.

Where publication will occur

In general, publication will be on the Osteopathic Council website as this is the most effective method of communication. However, it may use other methods of publication such as the media, professional organisation websites or more targeted communication to national or international organisations, groups or individuals where warranted. This may occur if the Council is aware that an osteopath continues to practise or is not complying with conditions in their scope of practice with the knowledge that health consumers may not access the Council's website.

Process for publication and naming

Before publishing an order and naming an osteopath the Council or the relevant Committee will provide the osteopath with a draft of the proposed notice, the proposed method of publication, the intended recipients of the notice, the reasons for publishing the order and a reasonable opportunity to submit on the proposal.

The osteopath will be given no less than 10 working days from the date the proposed notice is sent to them to make submissions.

If Council proposes a mode of publication that constitutes "continuous publication" (e.g. on a website) the Council must identify a date on which that publication will cease.

Dates of policy

This policy comes into effect on 12 April 2020 and will be reviewed by 12 April 2021.

Appendices

Appendix 1 Table of orders

Appendix 2 Relevant sections of the Health Practitioners Competence Assurance Act



Appendix 1 –Table of orders

Section	Description	Factors to be weighed	Process
section 27(1) (b)	Osteopath has failed to fulfil or comply with condition(s)	There will be a rebuttable presumption in favour of naming	Refer to the Council, health committee, competence review committee or PCC
section 146	Cancellation of registration by the Council on grounds of making a false or misleading representation or declaration	There will be a rebuttable presumption in favour of naming	Refer to the Council
section 147	Removal of qualification or cancellation of registration overseas	There will be a rebuttable presumption in favour of naming	Refer to the Council
section 38	Competence orders following a review of competence	There will be a rebuttable presumption in favour of naming	Refer to competence review committee
section 39	Inclusion of conditions or suspension of practising certificate pending or following a review of competence	There will be a rebuttable presumption in favour of naming	Refer to competence review committee
section 51	Revoking section 39 orders	There will be a rebuttable presumption in favour of naming	Refer to competence review committee
section 43	Unsatisfactory results of competence programme	There will be a rebuttable presumption in favour of naming	Refer to competence review committee
section 43	Unsatisfactory results of recertification programme	There will be a rebuttable presumption in favour of naming	Refer to the Council
section 48	Interim suspension or inclusion of conditions for mental or physical condition	There will be a rebuttable presumption against naming	Refer to health committee
section 51	Revoking section 48 orders	There will be a rebuttable presumption against naming	Refer to health committee
section 50	Restriction imposed in case of inability to perform functions because of mental or physical condition	There will be a rebuttable presumption against naming	Refer to health committee
section 51	Revoking orders under section 50	There will be a rebuttable presumption against naming	Refer to health committee



section 69	Inclusion of conditions or interim suspension of practising certificate or revoking interim orders	There will be a rebuttable presumption in favour of naming	Refer to the Council
section 69A	Interim suspension of practising certificate for risk of serious harm or revoking interim suspension	There will be a rebuttable presumption in favour of naming	Refer to the Council



Appendix 2 – Relevant sections of the Health Practitioners Competence Assurance Act

156A Orders of Authority

- (1) An order made by a responsible authority must:
 - (a) be in writing
 - (b) state the reasons why it was made
 - (c) state clearly the health practitioner's right to appeal to the District Court against the order
 - (d) be signed by the Registrar of the authority.
- (2) The Registrar of a responsible authority must as soon as practicable after an order is made by the authority:
 - (a) ensure that a copy of the order is given to:
 - (i) the health practitioner concerned
 - (ii) any employer of the health practitioner
 - (iii) any person who works in partnership or association with the practitioner
 - (b) take all administrative steps necessary to give effect to the order.

156B When orders of authority or Tribunal take effect

Unless otherwise provided in this Act, an order made by an authority or the Tribunal takes effect on the day on which, under [section 156](#), the order is to be treated as having been received by the health practitioner concerned, or any later date specified in the order.

157 Publication of orders

- (1) An authority may publish in any publication a notice setting out:
 - (a) the effect of any order or direction it has made under this Act in respect of a health practitioner
 - (b) a summary of any finding it has made under this Act in respect of the health practitioner
 - (c) the name of the health practitioner.
- (2) If the Tribunal makes an order under this Act in respect of a health practitioner, the appropriate executive officer of the Tribunal must publish, in any publication the Tribunal directs, a notice stating:
 - (a) the effect of the order
 - (b) the name of the health practitioner
 - (c) a summary of the proceedings in which the order was made.
- (3) If a court makes an order under this Act in respect of a health practitioner, the authority with which the health practitioner is or was registered must publish, in any publication the court directs, a notice stating:
 - (a) the effect of the order
 - (b) the name of the health practitioner



- (c) a summary of the proceedings in which the order was made.
- (4) Subsections (2) and (3) apply subject to:
 - (a) any order of the Tribunal under section 95
 - (b) any order of the court.
- (5) In this section, the term **health practitioner** includes a former health practitioner.

157A Meaning of naming policy

In section 157B to 157I, **naming policy** means a policy issued by an authority relating to the naming of a health practitioner in a notice published by the authority under section 157(1).

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
 - (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
 - (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
 - (b) the circumstances in which a health practitioner may be named
 - (c) the general principles that will guide the authority's naming decisions
 - (d) the criteria that the authority must apply when making a naming decision
 - (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
 - (f) the procedures that the authority must follow when making a naming decision
 - (g) the information the authority may disclose when naming a health practitioner
 - (h) the means by which a health practitioner may be named.

157C Consultation on naming policies

Before issuing its naming policy, an authority must consult, and take into account any comments received from the following people:



- (a) the health practitioners registered with the authority
- (b) the Privacy Commissioner
- (c) the Director-General of Health
- (d) the Health and Disability Commissioner.

157D Naming policies to be available on Internet

Immediately after issuing a naming policy an authority must make its naming policy available on an internet site maintained by or on behalf of the authority.

157E When naming policies come into force

A naming policy comes into force on the day after the date on which it is issued.

157F Review of naming policies

- (1) An authority must review its naming policy within 3 years after the policy comes into force, and then at intervals of not more than 3 years.
- (2) Section 157B to 157E apply with all necessary modifications to the review of a naming policy.

157G Naming policies to be consistent with law

A naming policy must be consistent with:

- (a) this Act
- (b) the information privacy principles in section 6 of the Privacy Act 1993
- (c) the general law (including natural justice rights).

157H Status of naming policies

A naming policy is:

- (a) not:
 - (i) a legislative instrument for the purposes of the Legislation Act 2012 or
 - (ii) a disallowable instrument for the purposes of the Legislation Act 2012
- (b) not required to be presented to the House of Representatives under section 41 of the Legislation Act 2012.

157I Authority naming health practitioner in accordance with naming policy protected by qualified privilege

For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any notice published by an authority under section 157(1) that names a health practitioner in accordance with a naming policy issued by the authority must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

