



NEW ZEALAND
CHIROPRACTIC BOARD
TE POARI KAIKOROHITI O AOTEAROA

POLICY AND GUIDELINES:

Policy on Publication of Orders (“Naming Policy”)

April 2020

Revision Schedule		
Version	Date Approved	Next Review
One	01 April 2020	April 2023

Refers to the following key legislation:

- Health Practitioners Competence Assurance Act 2003
- Privacy Act 1993
- Official Information Act 1982
- Defamation Act 1992
- The New Zealand Bill of Rights Act 1990

And refers to the following related information on the Chiropractic Board website:

- Code of Conduct
- Competencies for Entry to the Register
- Code of Ethics
- Decisions by the Health Practitioners Disciplinary Tribunal

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1. POLICY STATEMENT

The role of the Chiropractic Board (the Board) is to protect public safety and oversee the professional standards in the Chiropractic profession. The Board ensures Chiropractors meet and maintain professional standards of education, conduct and performance, ensuring Chiropractors deliver high quality healthcare throughout their careers. The Board will hold Chiropractors to account if their conduct falls short of these standards.

This naming policy enhances public confidence in the Chiropractic profession by allowing patients to make an informed choice about the Chiropractor they engage with. It allows the Board to publish information about a Chiropractor where that Chiropractor has fallen short of professional expectations or is otherwise the subject of an order or direction.

PURPOSE¹

The naming policy² is issued in compliance with section 157B of the Health Practitioners Competence Assurance (HPCA) Act 2003 (the Act), which states that the purpose of the naming policy is to:

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

COMMENCEMENT AND REVIEW

This policy is issued on 31 March 2020 and applies in relation to orders and directions made by the Board on or after 1 April 2020 (commencement date). This policy will be reviewed three-years after the commencement date and thereafter at three-yearly intervals.

APPLICATION OF NAMING POLICY³

Order or direction made by the Board

This naming policy applies where the Board is considering whether to publish the name of the Chiropractor who is the subject of an order or direction made by the Board.

Exclusions

For the avoidance of doubt, this naming policy applies only to cases where a Chiropractor may be named by the Board in a naming notice. It does not apply to other cases where the Board may publish or disclose the name of a Chiropractor, including where information about a Chiropractor held by the Board is published under section 149⁴ of the HPCA Act, or where the Board discloses the name of the Chiropractor to third parties such as employers, business partners and other persons associated with the Chiropractor, accredited educational institutions, ACC, the Director-General of Health, the Health and Disability Commissioner, and other stakeholders of the Board.

¹ [s.157B](#) HPCA Act 2003

² [s.157A](#) HPCA Act 2003

³ [s.157B\(3\)\(a\)](#) HPCA Act 2003

⁴ [s.149](#) HPCA Act 2003

Order or direction by Court or Tribunal

This naming policy does not apply where an order or direction is made by a Court or the Health Practitioners Disciplinary Tribunal (the Tribunal) in relation to the naming of a Chiropractor. In such cases, the Board will comply with all orders or directions of the Court or the Tribunal that are binding on the Board. The Board will give due consideration to any requests or recommendations of a Court or the Tribunal regarding the publication of information concerning the Chiropractor.

2. HEALTH PRACTITIONERS FOR WHOM THE NAMING POLICY APPLIES

1. This naming policy applies to:
 - a. Any Chiropractor registered with the Board; or
 - b. Any Chiropractor who has previously held registration with the Board.
2. In New Zealand, Chiropractors are registered health practitioners who practise within the Chiropractic Scope of Practice, as prescribed by the Board under section 11⁵ of the HPCA Act.

3. CIRCUMSTANCES IN WHICH A CHIROPRACTOR MAY BE NAMED

1. The Board may publish in any publication the name of a Chiropractor who is the subject of an order or direction made by the Board under the HPCA Act.
2. Publication of Chiropractor's name shall only occur following the completion of any Board process, and not while any investigation or deliberations are ongoing.
3. The Board may decide to name a Chiropractor who is the subject of an interim suspension order; or has interim change to or conditions imposed on his or her scope of practice, under sections 38, 39(1), 43, 48 or 69 of the HPCA Act.
4. The Board will not routinely publish the names and details of Chiropractors who were investigated but were not the subject of any orders or direction, except:
 - a. On the request of a Chiropractor who has been exonerated during any investigation, who may ask the Board to publish their name and the details of that exoneration in order to clear their name.
 - b. On the request of a Chiropractor whose name is the same as or very similar to that of another Chiropractor or health practitioner named in an order, such that their name maybe the subject of confusion and who may ask the Board to publish their name with clarification to avoid confusion.
5. This policy does not affect the existing requirement/s for the Board to share information about a practitioner under sections 35, 138 or 156A(2)(a) of the HPCA Act.

4. GENERAL PRINCIPLES THAT WILL GUIDE THE BOARD'S NAMING DECISION

1. In deciding the publication of information relating to a Chiropractor, the Board will maintain a focus on protecting public safety.

⁵ [s.11 HPCA Act 2003](#)

2. When deciding what information is published, the Board must weigh the public interest in making the information available against the consequences for the Chiropractor being named, including the likely harm to the Chiropractor's reputation.

5. CRITERIA THE BOARD MUST APPLY WHEN MAKING A NAMING DECISION

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

1. *Public safety* - ensuring the safety and quality of health care and the competence of Chiropractors. Non-disclosure in a particular case may run the risk of harm to future patients. Disclosure may elicit other complaints or concerns about a practitioner's competence.
2. *Public choice* - The right of existing and potential patients and their whanau to know the disciplinary history of a particular Chiropractor so as to be able to make an informed choice whether to engage their services in the future.
3. *Accountability* - Chiropractors are accustomed to being held to account for the standard of care or service they provide. They should expect some information may need to be disclosed if serious accountability or health and safety concerns are raised, including non-compliance with an existing order.
4. *Nature of the concerns* - does the concern raise serious safety or competence concerns, does non-disclosure raise a risk of harm to future patients and their whanau? Concerns of a serious nature will raise stronger public interest considerations in favour of disclosure.
5. *Whether the investigation is ongoing* - disclosing the details of an allegation during an ongoing investigation may unfairly suggest there is substance to the allegation.
6. *Action taken in respect of the outcome of an investigation* – the public interest in disclosure will be higher, and a Chiropractor's legitimate expectation of privacy will be reduced, where a concern has been investigated and found to be substantiated. It may be in the public interest to know the remedial actions or consequences imposed on the Chiropractor.
7. *Extent to which information is already in the public domain* - the privacy interest may be diminished by prior knowledge or public availability of the information. If information about the concern is already in the public domain, this may increase the public interest in disclosure of a summary about the outcome of any investigation. The purpose of such disclosure would be to demonstrate that appropriate action has been taken to investigate the concern and institute any protective measures or remedial action.
8. *Likelihood of harm to the Chiropractor arising from disclosure* - there may be factors that heighten the risk of personal or professional harm arising from disclosure, for example the physical or mental health of the Chiropractor, or the size of the community in which they practise.

6. INFORMATION THE BOARD MAY DISCLOSE WHEN NAMING A CHIROPRACTOR

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

7. MEANS BY WHICH A CHIROPRACTOR MAY BE NAMED

1. Publication will be made via posting on the relevant section of the Board website; and may also be by inclusion in the Board's electronic newsletter or any other suitable media⁶.
2. In addition, the Board may also annotate the Chiropractor's entry on the Register to include a reference to the order or direction.
3. Information published will be reviewed periodically at an interval of not more than two (2) years.
4. The Board may elect to share the information with other health regulators in New Zealand, or equivalent regulatory bodies overseas.

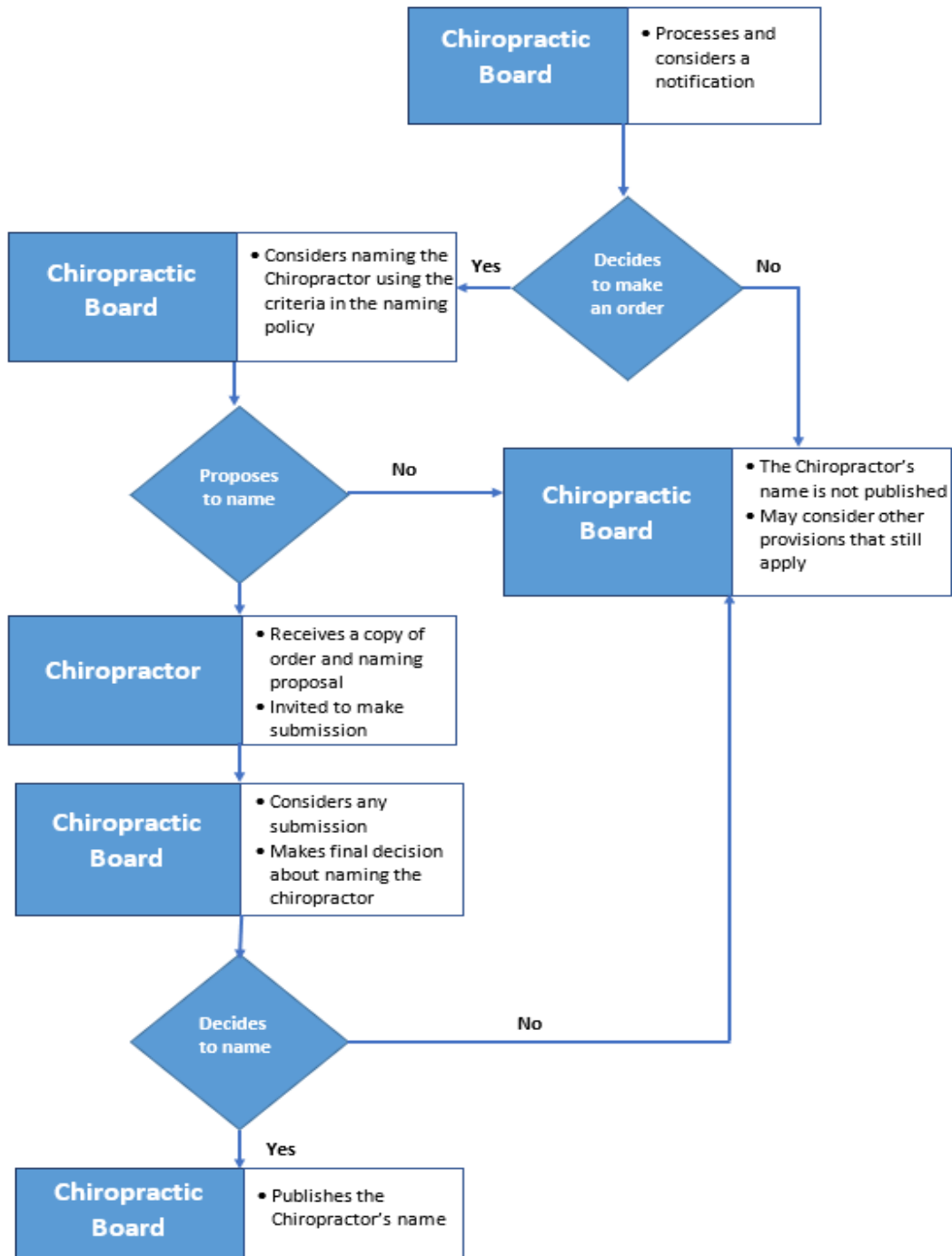
8. PROCEDURES THAT BOARD MUST FOLLOW WHEN MAKING A NAMING DECISION

1. Where the Board proposes to publish information about a Chiropractor, having considered the factors in section four of this policy, it will be required to make the Chiropractor aware of this proposal and the proposed content twenty (20) business days in advance of the anticipated publication.
2. Sending the information to the Chiropractor's last known email address will be sufficient for this purpose.
3. The advance notice timing provides the Chiropractor with an opportunity to:
 - a. consider the content and make any submissions to the Board within ten (10) working days of receiving the notice; and
 - b. make their employer or any practice partners aware of the publication.
4. Where the Chiropractor provides submissions to the Board, it must consider those submissions before making a final decision whether or not to make the publication and the content and scope of any publication.
5. Where a publication relates to a specific event or concern, irrespective of whether that clearly identifies a patient and their whanau, the Board must also provide the intended publication content to that patient and their whanau in advance of publication.

⁶ The publication naming a practitioner may be translated into another language upon request.

- a. the patient and their whānau will be given an opportunity to consider the content and make a submission to the Board within ten (10) business days of receiving the notice.

9. OVERVIEW OF BOARD DECISION-MAKING PROCESS ON NAMING PRACTITIONERS UNDER S157.



APPENDIX 1: Table of orders that may trigger consideration of whether to name the practitioner

SECTION	ORDER/DIRECTION
31(4)	Cancel interim practising certificate
38(1)	<p>Where the Authority has reason to believe the practitioner fails to meet the required standard of competence, it may order one or more of the following:</p> <ul style="list-style-type: none"> • Competence programme • Conditions • Examination or assessment • Counselling or assistance
39	Interim suspension of practising certificate or conditions pending competence review, where there are reasonable grounds for believing the practitioner poses a risk of serious harm.
43	<p>Where a practitioner does not satisfy the requirements of a competence or recertification programme, the authority may:</p> <ul style="list-style-type: none"> • Change permitted health services s43(1)(a)(i) • Include conditions s43(1)(a)(ii) • Suspend registration s43(1)(b)
48(2)	<p>Authority suspects practitioner is unable to perform required functions due to mental or physical condition:</p> <ul style="list-style-type: none"> • Interim suspension s48(2)(a) • Changing permitted health services s48(2)(b)(i) • Conditions s48(2)(b)(ii)
48(3)	Extension of s48(2) order – 20 more days.
50	<p>Authority is satisfied that the practitioner is unable to perform required functions due to physical or mental condition</p> <p>Suspension – s50(3)</p> <p>Conditions –s50(4)</p>
51	<p>Revoking suspension imposed under 39, 48, 50, 67A – s51(1)</p> <p>Revoking conditions imposed under 39, 48, 50, 67A – s51(2)</p> <p>Order to vary conditions imposed under 39, 48, 50, 67A, 69A</p>
67A(2)	<p>Upon receipt of notice of conviction, Authority may order:</p> <ul style="list-style-type: none"> • Medical examination or treatment ((2)(b)(i)) • Psychological or psychiatric examination ((2)(b)(ii)) • Course of treatment or therapy for alcohol or drug abuse ((2)(b)(iii))

67A(6)(b)	Following 67A orders, Authority may order conditions.
69	Interim action if appropriateness of practitioner's conduct is in doubt Suspension – s 69(2)(a) Conditions – s 69(2)(b)
69(4)	Revocation of 'with notice' orders for suspension or conditions
69A	Without notice interim suspension where there is a conduct or criminal proceeding and Authority believes the practitioner poses a risk of serious harm to the public.
69A(5)	Revoking (without notice) suspension
69A(6)	Authority may include conditions when revoking without notice suspension.
142	Health Practitioner requests cancellation – Authority may direct Registrar to cancel registration.
142	Health Practitioner dies - Authority may direct Registrar to cancel registration.
144(5)	Authority may direct Registrar to cancel an entry in the Register.
146	Authority may direct Registrar to cancel registration if: • Practitioner gave false information - s146(1)(a) • Practitioner is not entitled to registration -s146(1)(b) Authority may direct Registrar to notify cancellation in any publications it so directs – s146(3)
147(5)	Authority may review the registration of a practitioner where their qualification is cancelled or suspended or an overseas authority removes, cancels or suspends the practitioner's registration. Authority may suspend or cancel the practitioner's registration s147(5)(b)