



Health and Disability Commissioner
Te Toihau Hauora, Hauātanga

1 August 2007

Dr ~~Karon Wood~~ *Richard Steele*
Chairman and Vice President (NZ)
The Royal College of Pathologists of Australasia
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Dear Dr ~~Wood~~ *Steele*

Naming policy

As of 1 July 2007, HDC has introduced a new policy whereby we will routinely name healthcare providers that have breached the Code of Health and Disability Services Consumers' Rights in our final reports. The purpose of this letter is to advise you of the details of this new policy and the background to it.

Policy context

I have been concerned for some time that, despite being one of the first countries to move to a system of co-regulation (ie, by professional registration authorities and an independent Commissioner), New Zealand has adopted a more secretive approach to complaints and discipline than other countries using systems of traditional professional self-regulation.

In my view, this secrecy is undermining public confidence in the health professions and disciplinary procedures. The public is currently being "kept in the dark" about information that may influence a person's choice of practitioner or facility and there is an increasing public desire for openness. The veil of secrecy is all the more remarkable given the absence in New Zealand of the major alternative forum for public hearings about the quality of health care — the civil courts (as a result of the statutory accident compensation regime).

More than a decade after the public disquiet that led to the overhaul of the complaints and medical disciplinary system, I consider that the time is now right to normalise the process of identifying providers in appropriate cases and that this may actually lead to less sensationalism in the media.

The details of the naming policy that will apply from 1 July 2007 are as follows:

Group providers

HDC will routinely name group providers (district health boards, rest homes, private hospitals, pharmacies and medical centres) in our reports unless identification would not be in the public interest or would unfairly compromise the privacy interests of an individual. Relevant public interest factors may include:

- whether identification would detract from quality improvement efforts of the provider;
- the nature and circumstances of the breach;
- the passage of time since the events in question.

Group providers will be offered an opportunity to comment on the decision to name when the provisional opinion is issued.

Individual providers

HDC will continue to anonymise the names of individual providers in the majority of cases. Individual providers have a strong interest in protecting their professional reputations and livelihoods and identification in an HDC opinion may lead to negative media coverage that could impact on an individual's career and standing in their profession.

However, there will be situations where an individual's privacy interests may be outweighed by the public interest in making this information available. This may lead to the individual provider being named if one of the three following situations arise:

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| public safety concerns | – | the conduct of the provider demonstrates a flagrant disregard for the rights of the consumer or a severe departure from an acceptable standard of care; or |
| frequent breaches | – | the provider has been found in breach of the Code in relation to three separate episodes of care within a three to five year period; or |
| recalcitrant behaviour | – | the provider has refused to comply with recommendations in the final report. |

In determining whether an individual provider should be named under these criteria, HDC will have regard to other mechanisms that are available to protect the public, such as competence reviews and conditions on practice that can be imposed by registration authorities. However, in the case of unregistered providers who pose a risk of harm to the public, there may be few other options for limiting their practice.

Again, individual providers will be offered an opportunity to comment on the decision to name when the provisional opinion is issued.

If you have any queries arising out of the introduction of this policy, please do not hesitate to contact Senior Legal Advisor, Tina Mitchell, on 04 494 7918 or tmitchell@hdc.org.nz.

Yours sincerely

A handwritten signature in black ink that reads "Ron Paterson". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Ron Paterson
Health and Disability Commissioner