28 November 2019

Dr Curtis Walker  
Chairperson  
Medical Council of New Zealand  
PO Box 10509  
The Terrace  
Wellington 6143  

By email: consultation@mcnz.org.nz

Tēnā koe Curtis

Re: Medical Council of New Zealand (MCNZ) – Consultation on Policy on Publication of Orders and Directions (Naming policy)

Introduction
The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises government on mental health care.

Some psychiatrists perform roles to support members by monitoring clinical standards of psychiatric practice, including; investigation, responding to specific complaints and making appropriate orders, or directions to change treatment.¹

The RANZCP collects personal information of its members for primary and secondary purposes, such as monitoring and investigating conduct; and interacts with government and regulatory bodies relating to the profession¹. We only disclose⁵ in connection with those purposes where required or authorized by law. We note that if disclosure of personal information is required, the RANZCP Legal Counsel acts as the Privacy Officer, in consultation with the Chief Executive Officer, to collect sensitive⁶ information, if the individual gives consent.

The RANZCP supports the intent of the MCNZ’s Policy on Publication of Orders and Directions, and notes that the policy will be issued in April 2020.

¹ Disclosure: The RANZCP will only disclose a member’s personal information for the primary purpose for which it was collected, for a secondary purpose if it directly relates to the primary purpose, or for any other lawful purpose.

⁵ Sensitive information: Information about an individual members professional conduct matters or investigations, attributes, membership of a professional association, ethnicity, or criminal record.
Specific points for consideration of the policy:

1. The RANZCP notes that the purpose of the policy is to:
   - Enhance public confidence in the medical profession and disciplinary procedures about its decision making processes.
   - Ensure that doctors whose conduct has not met expected standards, may be named where it is in the public interest to do so.
   - Improve the quality and safety of health care.

   (a) Review the competence of the health practitioner to practise his or her profession
   (b) Review the fitness of the health practitioner to practise his or her profession
   (c) Review the practitioner’s scope of practice
   (d) Refer the subject matter of the investigation to the Police
   (e) Counsel the practitioner.

The RANZCP is responsible for supporting its members, and identifies tensions in relation to non-members, public perception and confidence.

The MCNZ policy is not clear about doctors who are non-members of a professional organisation, nor does it provide direction about how they would work to improve standards, quality and public safety. In this respect, the RANZCP considers the policy has potential to impact negatively on professional organisations, e.g:
   - Not all psychiatrists are members of the RANZCP.
   - Non-members coming to the attention of MCNZ do not have a relationship with the College nor does it have a responsibility to engage them in processes to mitigate or improve practice, e.g. peer review, continuing professional development or quality improvement activities.
   - The impact of disclosure of non-members can be a problem for professional organisations due to public perception that Colleges have a responsibility to act on matters of public safety, i.e. there is no direct relationship through membership.

MCNZ Questions

1. Do you agree with the situations when a notice will be published? If not, what changes do you suggest and/or is there another situation you would like to see added?

   - The RANZCP’s role is to support its members, work with them and other sector organisations to protect the interests of public health and safety. We note that not all psychiatrists are members of the RANZCP.
     - The RANZCP recommends that the MCNZ include the inclusion of member or non-member status to reduce reputational risk.

   - In situations when a notice will be published, the RANZCP recognises the Health Practitioners Competence Assurance Act 2003 (HPCAA), and the MCNZ responsibilities and obligations under the Act.
- The RANZCP recommends that publication be in consultation with the RANZCP to enable us to meet our responsibilities to members.

- The RANZCP notes that publication of notices alone is unlikely to ensure compliance or reduce risks to public safety. Outcomes of regulatory actions taken are more likely to effect change.

- The RANZCP recommends that to balance the interests of the health practitioner and public health and safety, that the MCNZ policy publish, a statement providing assurance of future compliance within a quality improvement process to reduce risk to the public.

- The policy is unclear on the number of times a notice will be published. Depending on the situation, this may have unintended consequences and adversely affect a doctors reputation.

- The RANZCP recommends limits be placed on the MCNZ’s discretion in this regard. Natural justice principles would also dictate that the opportunity to make a personal submission in relation to each instance of publication should be permitted.

2. **Do you agree with the guiding principles Council will apply in decisions to publish a notice? If not, what changes do you suggest and/or is there another principle you would like to see added?**

- The guiding principles of the document are more specific by comparison with others. For example, see AHPRA’s [regulatory principles](#).

  - The RANZCP recommends that Point 10, replaces ‘considers’ with ‘joint working’, to better reflect the intent of the principles and the collaborative relationship that the College has with the MCNZ.

  - The RANZCP recommends that publication is time-limited unless there are extenuating circumstances.

3. **Do you agree with the ways an order or direction may be published?**

- The RANZCP notes that publishing an order or direction as outlined in the MCNZ policy may detrimental to the intent of the policy. It may be inappropriate for a warning be published only to a particular audience.

  - If the MCNZ’s ambit is to protect the public, then public publication should be the only appropriate way to publish these notices.

  - If publication is only disseminated to particular groups (i.e. not publically), then the MCNZ could be accused of a lack of transparency due to the wider public interest not being served.

  - There is also more potential for bias to arise (i.e. publishing more widely about one doctor than another) and the MCNZ may risk being accused of acting inconsistently and unfairly and/or result in an erosion of public confidence.

4. **Are there alternative or additional ways that you think Council should consider publishing an order?**
• The RANZCP supports proposed methods of publishing an order or direction but notes the point raised in question 3, of transparency and public perception of bias.

5. **Do you agree with the procedure and time frame for publication and submissions that Council proposes to follow?**

• The RANZCP notes that a doctor would be given a minimum of 14 days to allow a doctor to seek the advice of their legal advisor or medical indemnity insurer and 7 working days to respond to a notice of publication.
  
  - Based on the general law (including natural justice rights), we recommend that a practitioner could either provide a written response or appear in person.

6. **What else would you like to tell us about this proposed policy that would improve it?**

• The RANZCP has robust quality systems in place to monitor conduct and standards, works with regulatory bodies to maintain the profession and has policies regarding regulatory matters such as complaints management.
  
  - The RANZCP recommends that the MCNZ work with the sector to understand how to improve practitioner quality, safety and reduce the likelihood of risks to public health and safety.

Thank you for the opportunity to provide comment on the Council’s Policy on publication of orders and directions (or naming policy).

We look forward to continuing sector discussion the issues raised in consultation. The National Manager, New Zealand, Ms Rosemary Matthews who supports the New Zealand based Committees will be in contact with you shortly to arrange a meeting. In the meantime, if you require further information please contact Rosemary on 04 4727 265 or by email rosemary.matthews@ranzcp.org.

Ngā mihi nui

Dr Mark Lawrence, FRANZCP
Chair, New Zealand National Committee
*Tu Te Akaaka Roa*

**References**

---