New Zealand Medical Radiation Technologists Board
Te Poari Ringa Hangarau Iraruke

Policy

Publication of Practitioners Names Subject to an Order or Direction (Naming Policy)

Effective xx xx xxxx

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Scope	This policy applies to Te Poari Ringa Hangarau Iraruke | The Medical Radiation Technologists Board

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Three			

Associated documents
2020 Code of Ethical Conduct
2023 Competence Standards for Medical Imaging and Radiation Therapy Practice in Aotearoa New Zealand

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Overview

1. Te Poari Ringa Hangarau Iraruke | The Medical Radiation Technologists Board (the Board) is a responsible authority appointed under the Health Practitioners Competence Assurance Act 2003 (the Act). The Board is responsible for protecting the health and safety of the Aotearoa New Zealand public through the regulation of medical imaging and radiation therapy practitioners.

2. This includes an obligation to receive information from any person about the practice, conduct, or competence of health practitioners and, if it is appropriate to do so, act on that information (s118[f]).

3. Sections 157A to 157I of the Act require the Board to adopt a Naming Policy which sets out the circumstances in which the Board will publish the name of a practitioner under section 157(1) of the Act.

Purpose

4. The purpose of this policy as set out in section 157B(2) of the Act is to:

    - Enhance public confidence in the medical imaging and radiation therapy profession and the Board's disciplinary procedures by providing transparency about its decision-making processes; and
    - Ensure that medical imaging and radiation therapy practitioners 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.

Scope

5. This policy applies to the following classes of practitioners currently registered with the Board:

    - Medical Imaging Technologist
    - Radiation Therapist
    - Nuclear Medicine Technologist
    - Sonographer
    - Magnetic Resonance Imaging (MRI) Technologist

6. It also applies to all classes of practitioner who have been registered with the Board.

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Circumstances for considering naming of a practitioner

7. Application of the naming policy is limited to registered medical imaging and radiation therapy practitioners who are subject to an order or direction made by the Board.

8. Orders or directions may relate to issues concerning competence, health, or conduct.

9. A summary of the types of orders and directions the Board may make under the Act are provided in Appendix 1.

10. When the Board makes an order, the making of the order will trigger consideration of whether to publish a notice under section 157(1) of the Act naming the practitioner to whom the order applies.

Principles under-pinning the decision-making process

11. Any decision to publish the name of a practitioner, and the effect of any order or direction made by the Board will be subject to a rigorous decision-making process.

12. The Board will ensure that decisions made under this policy are compliant with relevant legislation including:

    - The Health Practitioners Competence Assurance Act 2003
    - The Privacy Act 2020
    - General law, including rights of natural justice.

13. Each decision on naming a practitioner is made on a case-by-case basis.

14. The Board will apply the following guiding principles to inform its decision-making in respect of publishing the name of the practitioner concerned:

    - The core purpose of the Act being to protect public health and safety. That publication of an order or direction may be necessary to enable the public to make informed decisions in respect of their health care or service.
    - A publication will not disclose information about the matters of another person or someone whose identity could reasonably be ascertained from the information published.
    - The publication must only contain information pertaining to the effect of the order or direction, a summary of any finding made in respect of the practitioner, and the name of the practitioner. Information of any other kind can only be published with the consent of the practitioner concerned.
    - A decision to publish a practitioner's name must not be made for punitive reasons.
    - Publication should not occur if there is a risk of a breach of an identifiable consumer of health services privacy.

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- The Board must have regard to the possible consequences for the practitioner to being named including the likely reputational harm to the individual and practice (where applicable).
- The practitioner's privacy interests are to be weighed against the public interest and considered on the individual circumstances of the case. Appendix 2 provides a list of considerations the Board will use to help inform their decision as to whether or not the practitioner should be named.
- Should the practitioner's privacy interests be found to be evenly balanced against the public interest, the public's right to protection of their health and safety and their right to be informed will be given priority.
- Any publication should be issued in a format and manner that will provide the required level of information to the audiences as identified by the Board.
- In accordance with the principles of natural justice, the Board must ensure it considers each case objectively and without bias. When deciding whether to publish a notice, the practitioner affected by the publication will be given adequate notice and an opportunity to be heard prior to the Board making a final decision.

Privacy of information considerations

15. When considering the naming of a practitioner under this policy the Board will have regard to its legislative obligations under section 22 of the Privacy Act 2020 (information privacy principles). The privacy principles articulate standards for handling information about an identifiable individual, including that an individual's personal information should not be disclosed to other parties without the individual's authorisation, or in accordance with one of the established exceptions.

16. A key premise on which information may be used or disclosed without authorisation is where the information is being used for a purpose directly related to a reason why the information was collected (Information privacy principle 10 (1) (a) and 11 (1) (a)). The Board collects information to protect public health and safety by ensuring registered medical imaging and radiation therapy practitioners are competent and fit to practise. Use or disclosure that is consistent with the purpose for which the information was collected would be consistent with the information privacy principles.

17. Using or disclosing information without authorisation is also permissible when it is necessary to prevent or lessen a serious threat to public health or public safety. Section 7 of the Privacy Act defines "serious threat" as that which the Board reasonably believes to be serious having regard to all the following:

    - the likelihood of the threat being realised; and
    - the severity of the consequences if the threat is realised; and
    - the time at which the threat may be realised.

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18. An Information Sharing Agreement exists as part of the shared secretariat agreement operated between the Board and Te Kaunihera Pūtaiao Hauora O Aotearoa | The Medical Sciences Council. This Information Sharing Agreement allows for the lawful, efficient, and consistent collection, use, and sharing of information when there are issues of concern, including matters relating to the naming of a practitioner.

Criteria for making a naming decision

Decisions relating to competence orders (Sections 38 and 43)

19. A practitioner who has been issued an order under section 38 (failure to meet the required standard of competence) or section 43 (unsatisfactory results of a competence programme or a recertification programme) will generally not be named under this policy. This will not apply if the Board considers there is an overriding risk to public health and safety which cannot be effectively mitigated by other means.

20. The above does not restrict the publication in the public register of any related or consequential order involving the suspension of the practitioner's practising certificate or imposition of conditions on their practice.

21. Furthermore, it does not restrict the Board notifying the terms of the order to third parties including:

    - any person to whom the Registrar must give a copy of the order under section 156A(2);
    - any person who notified the Board of competence concerns in respect of the named practitioner, whether that was through a complaint, a notice given under section 34, or other means;
    - any person engaged by the Board to conduct a competence review or otherwise to advise the Board in relation to the practitioner's competence;
    - any educational institution that places medical imaging and radiation therapy students at the department or practice where the practitioner is practising.

Decisions relating to health/fitness to practice orders (Sections 48 and 50)

22. Orders made under section 48 and 50 relate to interventions where there are concerns about a practitioner's health or fitness to practice and may include interim orders in that regard (s48).

23. In these cases, the Board will give regard to the sensitive nature of the practitioner's personal information and will generally not name the practitioner concerned. This will not apply if the Board considers there is an overriding risk to public health and safety that cannot be effectively mitigated by other means.

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Decisions relating to interim orders (other than interim orders relating to health/fitness to practise) (Sections 39, 69/69A)

24. Interim orders are normally used as a mechanism to ensure the protection of public safety while the Board gathers information to help determine whether the practitioner does in fact pose a risk of harm to the public, and the extent of any such risk. When considering whether to name a practitioner subject to an interim order, the Board will give due consideration to the unsubstantiated nature of the matter, and the extent to which it can be satisfied that any perceived risk can be mitigated by the requirements of the interim order.

Decisions relating to ordering the revocation of orders

25. Under section 51 the Board may make an order revoking any suspension or any conditions as imposed under sections 39, 48, or 50. The Board may also revoke or vary any condition imposed under sections 39, 48, 50, 67A, or 69A.

26. The Board is unlikely to name the practitioner when revoking or amending the order if the practitioner was not named when the original order was made.

27. If the practitioner was named at the time of the original order, the Board may publish a notice advising the order has been revoked or varied. While the Board will apply the principles as set out in this policy to its decision, it will give regard to the potential impact a second notice may have in terms of a reputational interest to the practitioner concerned. The practitioner's views on whether the publication of an order of revocation is likely to have a positive or negative effect on their reputation, will be taken into account.

Further considerations applied when making a naming decision

28. The Board has made an order or direction under the Act in relation to a practitioner that is registered with the authority or who has previously been registered with the authority.

29. The Board is satisfied that naming the practitioners is consistent with the criteria documented in section 157 B (2) of the Act.

30. Having reviewed considerations listed in Appendix 2, the Board is satisfied that public interest in naming the practitioner outweighs the practitioner's privacy interests.

31. The Board has given the practitioner notice of its proposed decision to name the practitioner including the proposed wording of the notice and an indication of the method(s) of publication. The practitioner has been given the opportunity to make submissions on the proposal.

32. The Board has considered and is satisfied that naming the practitioner is fair and reasonable. That the action is proportionate and that it is consistent with the purpose of publication with the purpose of the policy (public confidence, safety and to improve quality and safety of health care).

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33. The Board will document its decision making with regard to the above which includes documenting a decision not to publish a notice under section 157.

Content of publication information

34. Information that is published by the Board must comply with sections 157 (1) of the Act. This includes:

    - The effect of the order; and
    - A summary of findings; and
    - The name of the health practitioner.

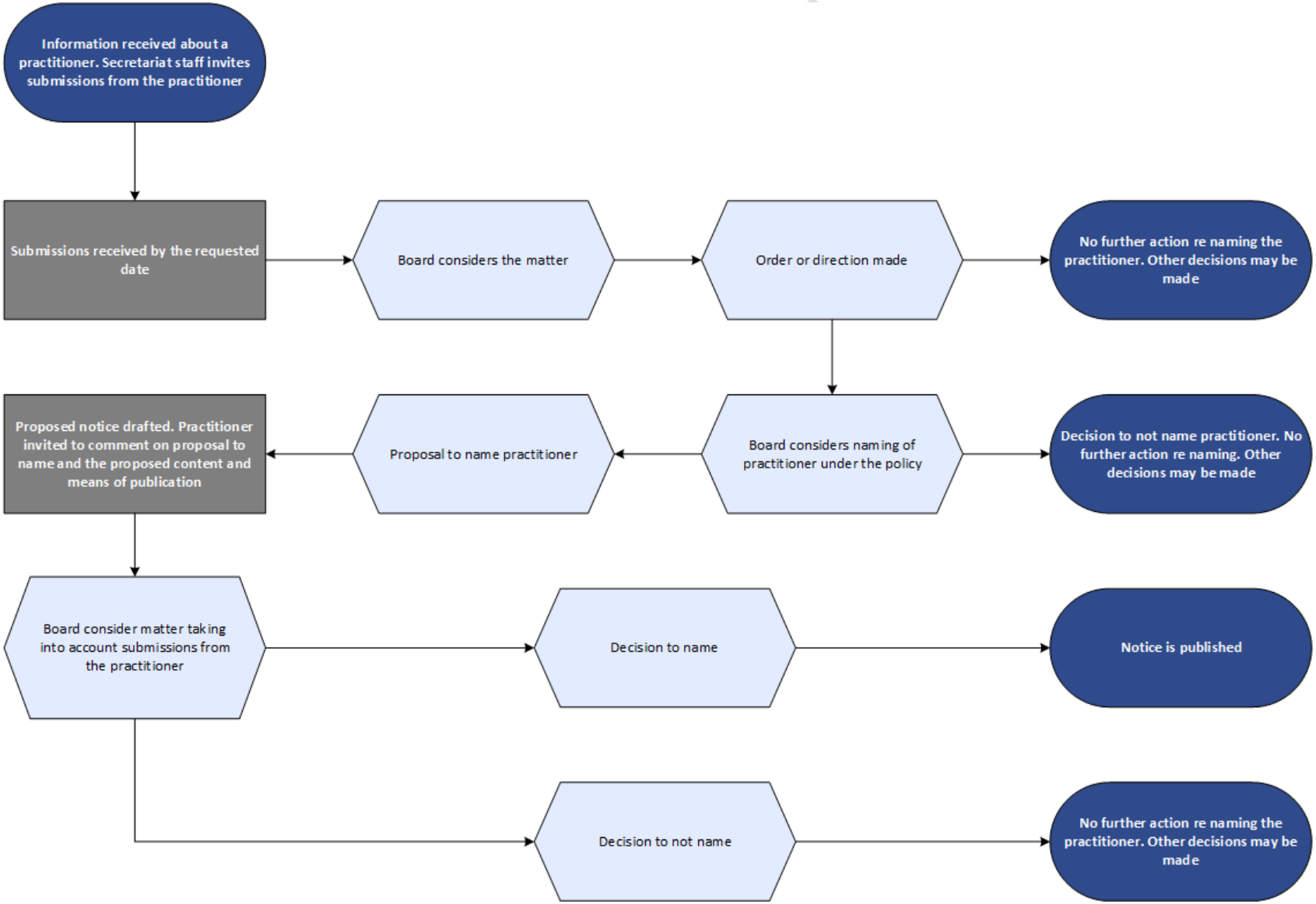
35. The Board will consider the most appropriate wording and summary to best inform the reader while ensuring no more of the practitioner's personal information is disclosed than that required to achieve that.

36. The Board will provide the practitioner with a draft of the proposed notice and will consider submissions on proposed content.

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Decision-making procedure needs to include documentation of decision

HPCA Act 2003 Section 157B(3)(f): a naming policy must set out the procedures that the authority must follow when making a naming decision



Publication media

1. The Board may use a variety of media to publish a notice and, depending on the circumstances, may decide to publish in more than one media.

2. When considering the most appropriate publication media the Board will give regard to the options that are most likely to reach the audiences who will benefit from publication of the naming notice. These audiences are members of the public and consumers of health services most likely to have an interest in or be affected by the Board's order.

3. Means of publication may include notice by way of letter to relevant people including people who have the power to ensure compliance with the Board's order. Any hard copy media publication that in the Board's view is likely to be read by members of the public likely to seek healthcare services by the practitioner. Any electronic medium that is likely to be accessed by members of the public. This includes but is not limited to; the Board's own website, online news platforms and relevant community pages on social media sites. Any other publication that the Board considers is appropriate for the particular circumstances considering the need to ensure access to information by members of the public most likely to have need to access this information.

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Appendix 1: Orders made by the Board that will mean consideration of the need to name a practitioner

Section	Order or Direction
31(4)	Cancel interim practising certificate
38(1)	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: - Competence programme - Conditions on practice - Examination or assessment - Counselling or assistance
39	Interim suspension of practising certificate or imposition of conditions pending the outcomes of a competence review, where there are reasonable grounds for believing the practitioner poses a risk of serious harm
43	Where a practitioner does not satisfy the requirements of a competence or recertification programme the Authority may: - Change health services the practitioner can perform - Include conditions on practice - Suspend registration
48(2)	When the Authority *suspects* a practitioner is unable to perform required functions due to a physical or mental condition it may: - Order interim suspension of practising certificate - Change the health services the practitioner can perform - Include conditions
48(3)	Extension of s48(2) – order may be extended for 20 more days
50	When the Authority is satisfied the practitioner is unable to perform the required functions due to a physical or mental condition it may order: - Suspension of registration - Conditions on scope of practice
51	Revocation of suspension imposed under sections 39, 48, 50, Revocation of conditions imposed under section 39, 48, 50, 67A, 69A Order to vary conditions imposed under sections 39, 48, 50, 67A, 69A
67A(2)	Upon receipt of notice of conviction, the Authority may order a: - Medical examination or treatment - Psychiatric or psychological assessment - Course of treatment or therapy for alcohol or drug abuse
67A(6)(b)	Following 67A orders, the Authority may order conditions
69	Interim action if appropriateness of the practitioner's conduct is in doubt. Orders are given with notice: - Suspension of practising certificate - Imposition of conditions on practice
69(4)	Revocation of 'with notice' orders for suspension or conditions

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69A	Without notice interim suspension of practising certificate where there is a conduct or criminal proceeding and the 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
143	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 a practitioner: - Gives false information - Is not entitled to registration Authority may direct Registrar to notify cancellation in any publications it so directs
147(5)	Authority may review the registration of a practitioner where their qualification is cancelled or suspended by the issuing educational institution or an overseas authority removes, cancels, or suspends the practitioner's registration. Authority may suspend or cancel the practitioner's registration

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Appendix 2: Considerations of practitioner's privacy interest against public interest

Considerations of the practitioner's privacy interests	
What is the extent to which the information is already known to the notifier and/or in the public domain?	The privacy interest for the practitioner may be less due to prior knowledge and/or public availability of the information.
What is the likelihood of professional harm coming from publication	The risk of permanent or disproportionate harm should be considered especially if the matter is unsubstantiated and involves serious allegations
What is the likelihood of personal harm coming from publication	Personal and contextual factors should be considered
Consider the age and relevance of the information	If the matter is historical and does not pose a risk of harm to the public, the privacy interest for the practitioner may be higher especially as the disclosure of personal information may be unfair.
Is the matter substantiated or unsubstantiated?	If the matter is unsubstantiated the privacy interest of the practitioner will be higher as the allegation has not been formally upheld. The practitioner's expectation for privacy may be lower when the matter has been substantiated such as the results of a competence review or a Tribunal decision.
What is the status of the investigation?	The practitioner's privacy interest will be higher where investigation of the matter is ongoing. Disclosure of information while an investigation is ongoing may unfairly suggest there is substance to the matter.
Information must be put in context so as to minimise harm	It is important to consider that any potential harm from disclosure could be mitigated by issuing summary information with appropriate context?
Practitioner demonstrates insight and actively engages in processes	Higher privacy interests may be considered if practitioners demonstrate insight into the issue that has given rise to the order and cooperates with processes.
Existing third-party notifications	Consideration should be given to other processes that mean third parties may already be aware/have been alerted to matters. Restrictions on practice may already be noted on the public register and therefore should be taken into consideration if further publication is proposed.

Consideration of the public interest	
Public safety	Ensuring the safety and quality of medical imaging and radiation therapy services. Non-publication in a particular case may run a risk of harm to other consumers of health care services. Publication may elicit other complaints or concerns about the practitioner's competence or conduct.
"Reasonable patient" test	If a 'reasonable' person would expect to know about the order or direction so that they can make an informed choice in respect of receiving medical imaging and radiation therapy services from that practitioner, then this would suggest that publication is favoured.
Accountability	Health practitioners are accustomed to being held to account for the standard of interventions and treatment they provide. It is reasonable for them to expect that some information about their practice needs to be disclosed if accountability or health and safety concerns are raised.
Accountability of agency	An agency that receives any notification about registered health practitioner is accountable for the proper discharge of its responsibilities in the assessment and investigation of those matters and taking any necessary remedial action.
Nature of information	Does the information raise serious safety or competence concerns? Is it from a credible and reliable source? Does non-disclosure raise a risk of harm to consumers of health care services? Complaints and concerns of a serious nature, as opposed to a trivial or inconsequential nature will raise stronger public interest considerations in favour of name disclosure.
Number of notifications	Where the practitioner has been the subject of a high frequency of notifications, and/or notifications that raise recurring themes, this may indicate wider issues and publication could be justified in the public interest.
Practitioner's position and level of responsibility	*"The competing public interest is also high, particularly where the employee in question held a position of responsibility in respect of particularly vulnerable members of society"* (former Ombudsman David McGee in relation to a DHB psychiatrist).
Action taken	Where a complaint has been investigated and substantiated the public interest in publication may be higher.
Extent to which information is already in the public domain	If information about the matter is already in the public domain, the public interest in publication may be higher in respect of a summary about the outcome of the matter. Publication in this instance would be to demonstrate that appropriate action has been taken by making enquiries into and instituting any protective measures or remedial action.

Age of the information	If the issues raised are historical, have minimal relevance and the risk of harm is low public interest in publication may be lower.
Risk of harm or serious harm	Where the Board has formed a view that the practitioner poses a risk of harm or a risk of serious harm (as per the relevant sections of the Act), that may weigh in favour of name disclosure.
Appropriate action	A practitioner should not be named for punitive purposes of to shame them.

Public interest considerations against naming	
Open disclosure	Routine naming of individual practitioners should be avoided as it may undermine a culture of open disclosure to improve the quality of safe care.
Early resolution may hinder improved practice	Practitioners may seek early resolution to complaints to avoid the risk of being named. There is a risk any underlying issues may not be addressed thereby risking repeat, and an ultimate failure to properly ensure the public is protected.
Reputational harm for colleagues	Registered health practitioners notifying of concerns about a colleague's competence may be less inclined to do so if they fear this will unfairly impact on the colleague's reputation.

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