HANDLING COMPLAINTS
INFORMATION FOR UNREGISTERED
HEALTH PRACTITIONERS

The following guidelines are aimed to assist practitioners in how to deal with complaints made to them or about them and the health service they provided.

Why people complain
Complaints and the reason for them are different. Often people complain because:

- they want an acknowledgement that something went wrong and an explanation of why
- they want an apology for the distress they experienced
- they do not want to see other people facing a similar problem
- they want to improve the service for themselves or others in the future
- they want someone to be blamed, punished or held accountable for what happened
- they want compensation.

Preventing complaints
Many complaints are the result of poor communication between the client and the health service provider.

It is crucial for a health service provider to obtain informed consent from their clients before performing any treatment or procedure. This includes clearly describing the nature of the treatment, any possible side effects and also what outcomes can be reasonably expected.

It is also crucial to adequately record the treatment provided. This will also help to respond to any concerns or complaints from clients at a later stage.

Resolving complaints
If you receive a complaint, it is generally recommended to deal with it directly when it occurs and try to resolve it with the person that complains.

The following guidelines provide some tips on how to best manage complaints at an early stage.

What happens in cases, when complaints are lodged with the Health Care Complaints Commission will be outlined in the second part of these guidelines.

Tips for responding to a complaint
When facing a complaint there are some basic steps to follow in responding to the concerns the client has.

- Acknowledge the complaint
- Try to resolve the complaint directly with the complainant
- Be aware of differing views of what happened and what was said
- Reassure the complainant
- Have a complaint handling mechanism already in place
General principles

Timeliness
Respond to complaints as soon as possible, even if it is just to explain the process.

Give a commitment to a certain timeframe and stick to it. Keep the complainant informed and if there is a delay and explain the reasons for this.

Address all aspects
Provide a full response that addresses the important issues and shows the complainant that the complaint has been taken seriously.

Acknowledge areas of disagreement, or varying accounts without dismissing what the complainant has said.

Try not to be defensive
Acknowledge the distress of the complainant.

Acknowledge any errors that did occur and apologise, if appropriate. In any event be sympathetic.

Try to understand the situation from the complainant’s perspective. Find out what would resolve the matter for them, for example a written response, a phone discussion, changes in policy or procedure, a meeting.

Avoid official or technical language, jargon and clichés. Consider the cultural background and the use of interpreters.

Lessons learned
Where there has been an error, outline what went wrong, how it happened, what is being done to stop it happening again, and that you are sorry that it happened.

When a complaint is lodged with the Health Care Complaints Commission

The Health Care Complaints Commission is an independent body dealing with complaints about health service providers in NSW.

This includes complaints about unregistered practitioners, such as naturopaths or masseurs.

What is an unregistered practitioner?
An unregistered practitioner is any health practitioner, who is not required to be registered under Health Practitioner Regulation National Law (NSW), or who provides services that are unrelated to their registration.

What is the legislative framework for dealing with complaints?
The key features of legislation regarding complaints against unregistered health practitioners are:

- A code of conduct for unregistered health service providers that came into effect on 1 August 2008.
- The Health Care Complaints Commission’s power to deal with and investigate complaints about an unregistered health service provider breaching the code of conduct.
- The Commission’s powers to take action against unregistered health practitioners, including issuing prohibition orders.
- It is an offence for an unregistered health service provider to continue to provide a health service in breach of a prohibition order.
- It is an offence for health
practitioner whose registration had been cancelled to provide health services in breach of an order of the relevant Tribunal or Council.

- Any health practitioner whose registration has been cancelled and who continues to offer a health service must inform clients about that cancellation before commencing to provide that health service.

**Code of Conduct**

A code of conduct for unregistered health practitioners came into effect on 1 August 2008. The Code is contained in Schedule 3 of the Public Health Regulation 2012.

The intention of the code is to set out the minimum practice and ethical standards with which unregistered health service providers are required to comply.

The code of conduct informs consumers what they can expect from practitioners and the mechanisms by which they may complain about the conduct of, or services provided by, an unregistered health service provider.

**The key aspects of the code are that the health practitioner:**

- must provide health services in safe and ethical manner.
- if diagnosed with an infectious medical condition, must ensure that he or she practises in a manner that does not put clients at risk.
- must not make claims to cure certain serious illnesses.
- must adopt standard precautions for infection control.
- must not dissuade clients from seeking or continuing with treatment by a registered medical practitioner and must accept the rights of their clients to make informed choices in relation to their health care.
- must not practise under the influence or alcohol or drugs.
- must not practise with certain physical or mental conditions.
- must not financially exploit clients.
- is required to have an adequate clinical basis for treatments.
- must not misinform their clients.
- must not engage in a sexual or improper personal relationship with a client.
- must comply with relevant privacy laws.
- must keep appropriate records.
- must keep appropriate insurance.
- must display code and other information (with some exceptions)
- must not sell or supply an optical appliance without proper authorisation.
Powers of the Commission

The Commission has the power to:
- issue an order prohibiting the person from providing health services for a period of time
- issue an order placing conditions on the provision of health services
- provide a warning to the public about the practitioner and his or her services.

To do so, the Commission must find that the provider has:
- breached the code of conduct; or
- been convicted of an offence under Part 2A of the Public Health Act; or
- been convicted of an offence under the Fair Trading Act 1987 (NSW) or the Trade Practices Act 1974 (Cth) relating to the provision of health care services.

Stages in the complaints process

When dealing with complaints about unregistered health practitioners the Commission will generally take the following steps:

1. Commission receives complaint
   When the Commission receives a complaint, it will contact the complainant to clarify the issues; notify the provider and seek their response to the complaint.

2. Assessment
   When assessing a complaint the Commission may obtain health records to assist the assessment of clinical issues; and may seek advice from independent experts in the area.

   The Commission assesses all relevant information, including the complaint, any response from the provider, health records and any expert advice.

   At the end of the assessment, the Commission may:

   Refer to another body
   In some cases, it is appropriate to refer a complaint to another body to be dealt with by them. This may include referral to a body such as the Therapeutic Goods Administration or the Office of Fair Trading to consider taking appropriate action.

   Refer to Resolution Service
   Often a complaint may be resolved with the assistance of a Resolution Officer or independent conciliator. Participation in resolution or conciliation is voluntary.

   Discontinue
   The Commission can discontinue dealing with a complaint for many reasons including the age of the matter or that it might be better dealt with by some alternative means of redress.

   Investigate
   The Commission refers complaints about individual practitioners for formal investigation where it appears that there is:
   - a breach of the code of conduct, and
   - a risk to public health or safety.

3. Investigation
   The purpose of an investigation is to obtain information so that the Commission can determine the most appropriate action (if any) to take. The focus of investigations is on the protection of public health and safety.
At the end of an investigation the Commission may:

**Terminate**
That is to take no further action. This involves cases where the investigation found no evidence of inappropriate conduct, care or treatment.

**Refer matter to Director of Public Prosecutions**
The Commission may refer the matter to the Director of Public Prosecutions for the consideration of criminal charges.

**Make comments**
The Commission will make comments to a health practitioner where poor care or treatment was provided, but there is insufficient evidence to justify placing conditions on the practitioner, making a prohibition order, or issuing a public warning.

**Issue a public warning**
If the Commission finds that the health practitioner has breached the code of conduct, or has been convicted of a relevant offence, and is of the opinion that the practitioner poses a substantial risk to the health of members of the public, the Commission may issue a public warning.

This allows the Commission to quickly and effectively warn the public about unregistered health service providers who provide services that are a risk to the public.

**Issue a prohibition order placing conditions**
If the Commission finds that the health practitioner has breached the code of conduct, or has been convicted of a relevant offence, and is of the opinion that the practitioner poses a substantial risk to the health of members of the public, the Commission can issue a prohibition order that places conditions on the provision of health services.

The power to limit a prohibition to a particular type of health service allows the Commission to take action to protect the public from those aspects of the person’s practice that are of particular concern or danger to the public whilst allowing the person to continue to practise in areas that do not present a risk.

The unregistered practitioner must advise potential patients of the provisions of the prohibition order before treating them. A breach of the order is a criminal offence.

**Issue a blanket prohibition order**
The final option open to the Commission if it finds that the health practitioner has breached the code of conduct, or has been convicted of a relevant offence, and is of the opinion that the practitioner poses a substantial risk to the health of members of the public, is the issuing of a prohibition order against an unregistered health practitioner.

The power to impose a blanket prohibition on a person providing health services allows the Health Care Complaints Commission to ensure that unregistered health service providers who have practiced in a highly unethical or dangerous fashion are prohibited from providing future health services to the public.

**Right to appeal**
The practitioner has the right to appeal against the Commission’s decision. The appeal has to be made to the Administrative Decisions Tribunal within 28 days from the date of the Commission’s decision.
Communication with the health service provider

In dealing with a complaint against an unregistered health practitioner, the Commission is obliged to communicate with the practitioner during the handling of the complaint against them. The key steps where the Commission will usually communicate or notify a practitioner are:

- on receipt of the complaint
- after an assessment decision has been made
- in the closing stages of an investigation the Commission must notify the practitioner that the Commission is proposing to either:
  - make comments to the practitioner
  - issue a public warning
  - place conditions on the practitioner, or
  - issue a prohibition order.

This allows the practitioner to make a submission in relation to the proposed action.

After receipt of the practitioners submission, if the Commission decides to place conditions, or issue a public warning or prohibition order the Commission will provide the practitioner with a statement of this decision.

Communication with other parties

In addition to communicating with the practitioner, the Commission is obliged to notify an employer when it decides to investigate a practitioner.

More information

For more information about the Commission, please visit the website www.hccc.nsw.gov.au.

Contact the Commission

Office address
Level 13, 323 Castlereagh Street
Sydney NSW 2000

Hours of business
9.00am to 5.00pm Monday to Friday

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Locked Mail Bag 18
Strawberry Hills, NSW 2012 or
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Telephone (02) 9219 7444
Toll Free in NSW: 1800 043 159
Fax: (02) 9281 4585

People using telephone typewriters [TTY] please call (02) 9219 7555

Email: hccc@hccc.nsw.gov.au
Website: www.hccc.nsw.gov.au

Interpreter Service
People who prefer a language other than English can contact us through Telephone Interpreter Service (TIS National) on 131 450 (Monday to Friday 9.00 am - 5.00 pm).
Frequently Asked Questions

Do I have to display the code of conduct for unregistered practitioners if I practice in a hospital or medical centre?

You do not have to display the Code of Conduct, if you work in the public health system, or at a private hospital or private day procedure centre.

Clause 17 of the Code of Conduct states all health practitioners have to display the full code of conduct and the approved notice about how a client can make a complaint to the Health Care Complaints Commission, **except** health practitioner that work:

- in any premises of the public health system
- Private hospitals and day procedures centre
- Premises of the Ambulance Service of NSW
- Premises of approved providers that fall under the Commonwealth Aged Care Act 1997, such as nursing homes.

Must the code of conduct be displayed in an educational institute, where students are providing a health service under supervision?

Yes, unless the premises fall under the exemptions listed above.

If a practitioner wrongly claims to be a member of an association, is this a matter for the Health Care Complaints Commission?

The Health Care Complaints Commission is interested in patient care and risks to public health. The Commission does not deal with matters of membership, education, or qualifications, unless they have a negative impact on the health service provided to the client.

For example, if a practitioner performs a procedure that is outside their expertise and training, they are in breach of clause 3 (2)(b) of the Code of Conduct, which provides that ‘a health practitioner must not provide health care of a type that is outside his or her experience or training’.

If a practitioner gains a commercial advantage from falsely claiming membership of an association, the Department of Fair Trading may investigate false or misleading advertising.

If an unqualified practitioner provides some form of therapy, is this a matter for the Health Care Complaints Commission?

If a practitioner performs a procedure that is ‘outside his or her experience and training’, they are in breach of clause 3 (2)(b) of the Code of Conduct.

Qualifications may not be the crucial issue on their own, rather the code of conduct requires the practitioners to have an adequate clinical basis for treating or diagnosing an illness or condition [clause 11].
Can a complaint be resolved directly with the practitioner or their professional association instead of lodging a complaint with the Health Care Complaints Commission?
Yes, the Health Care Complaints Commission encourages complainants to try to resolve their concerns directly with the health practitioner.

Can a professional organisation / association or registration authority make a complaint about one of their members?
Yes, anyone can make a complaint to the Commission. That includes the person that received the health service in question, as well as their family or other concerned parties.

If you are concerned about the conduct of another unregistered practitioner, are you obliged to report this to the Health Care Complaints Commission?
No, there is no obligation for anyone, including for unregistered practitioners to report concerning conduct of another practitioner to the Commission.

However, depending on the nature of the complaint, we would recommend that you refer a potential complainant to the Commission, if there are serious issues of public health and safety.

Complaints about sexual assault or other criminal action should be referred to the police.

Will the Commission inform a health practitioner that a complaint has been made about them?
Yes, when receiving a complaint, the Commission usually notifies the health service provider and asks them to provide a response. However, the Commission may decide not to notify a provider, if it would prejudice the following investigation or could threaten the health and safety of a person.

When handling complaints, the Commission observes the principles of procedural fairness. Before taking any adverse action like issuing a prohibition order or public warning, the Commission would give the provider a full and fair opportunity to respond to the complaint.

Does the Health Care Complaints Commission contact the association the provider is a member of, to inform them that a complaint has been made?
No; the Commission is bound by the Health Care Complaints Act when dealing with complaints, and is unable to notify an association or professional body about a complaint that was made against one of their members.

After assessing a complaint, the Commission may refer a complaint to an association or professional body for its action.

At the conclusion of an investigation, the Commission also has the power to refer its findings to a professional body or association.

When the Commission, decides to take adverse action, such as issuing a public warning or prohibition order after investigating a complaint, it may then inform the
professional bodies as well as the general public.

**Is a complaint about a certain practitioner ever made public?**
Generally, the Commission cannot disclose information about a complaint. In exceptional circumstances and only for the purposes of the *Health Care Complaints Act*, the Commission may disclose information about a complaint to protect the public health and safety.

However, if after investigating a complaint, the Commission decides to take adverse action, such as issuing a public warning or prohibition order, it would then inform the public through its website [www.hccc.nsw.gov.au](http://www.hccc.nsw.gov.au).

**Will there be public warnings regarding practitioners who have complaints against them?**
The Commission will only publish details of those practitioners against whom it has issued a prohibition order or public warning after full investigation. Complaints that are otherwise dealt with are not publicised.

**Can the Health Care Complaints Commission give warnings regarding certain services and treatments?**
Yes, if following an investigation, the Commission believes that a certain treatment or health service poses a risk to the public health and safety, it can issue a public statement that informs or warns about a certain treatment or health service. [*Health Care Complaints Act*, section 94A (1)]

**Will the Health Care Complaints Commission monitor the number of complaints it receives about unregistered health practitioners?**
Yes, the Commission monitors all complaints it receives; this includes complaints about unregistered health practitioners. The Commission releases statistical data in its annual report about the number and nature of complaints it receives and deals with.