

Kia ora koutou

We sent the first email in our APC fee and disciplinary levy communications series last month, as we lead up to the release of our APC fee consultation document in late October. If you missed this, you can read it [here](#).

Our series aims to enhance understanding of Council's statutory role to protect public health and safety, the financial challenges of fulfilling this function as the Responsible Authority for pharmacists in Aotearoa New Zealand, and the rationale for Council's proposed new APC fee and disciplinary levy, which combined will be just over \$1,000 (from \$925 this year).

Reasons for the increase include: a rise in the number and complexity of notifications and complaints we are receiving in relation to pharmacists' health, conduct and/or competence to practise, the need to replenish our general and disciplinary reserves, and general inflationary pressures.

In email two, we focus on notifications and complaints, including the steady rise in the number of notifications we are receiving.

### **Council's purpose and our statutory obligation to respond to notifications**

Council's purpose as a Responsible Authority (RA) is defined in the Health Practitioners Competence Assurance Act 2003 (HPCAA): *"To protect the health and safety of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise in their professions."* HPCAA; s3 (1)

Council fully acknowledges that most pharmacists are competent and practise safely, however when we receive a notification relating to the appropriateness of a pharmacist's conduct, the safety of their practice (whether in relation to competence, or fitness to practise), we have a statutory obligation to manage each notification (the HPCAA covers this in Part 3 competence, fitness to practise and quality assurance; and Part 4 complaints and discipline).

### **The value of a notifications and complaints process**

The value of our notifications process is twofold: 1) protection of the public and 2) providing the pharmacist with an opportunity to learn and to prevent similar concerns being raised about their practice in future. These outcomes help to maintain the public's trust in the profession, enabling pharmacists to better contribute to improving the health and wellbeing of their patients.

### **How Council responds to notifications and our approach**

Notifications may come from: a member of the public, a health practitioner, Medicines Control, Health New Zealand or the Health and Disability Commissioner (HDC), which may have been notified first, rather than Council.

Our compliance team assesses every notification it receives to determine the level of risk to public safety. The key question for the team is always: is there a risk to public safety and what is the level

of this risk? This assessment is in effect a 'triage' system to enable us to prioritise notifications and respond appropriately. The team must also consider whether the notification relates to a pharmacist's competence, conduct, or health, or a combination of these three factors. There will be times where conduct does not pose a risk of harm to the public but still warrants a regulatory response. Note that in some instances, a notification may be due to a miscommunication or a false allegation and therefore no issue will be found with the pharmacist's practice.

Our approach is to engage with the pharmacist who is the subject of the notification. We always contact the pharmacist to provide a written response to the information Council holds so that the pharmacist can explain the situation and provide their own evidence (in exceptional circumstances where Council determines there is an immediate risk to the public, we reserve the right to act without asking for this initial response).

The time it takes the Council to resolve each case will vary and will depend in part on whether the case is simple or complex, and the resourcing and costs incurred (e.g., an educational letter versus a case that is referred to a PCC for investigation). Below we outline the factors which contribute to a case being deemed complex.

### ***Simple versus complex cases Council responds to***

Most notifications can be resolved simply and quickly without statutory action when pharmacists are willing to engage and address concerns raised about their practice and implement practice improvements (if needed) of their own accord and/or with the guidance of Council, e.g., Council recommending suitable training. When pharmacists engage with Council, it helps to avoid a protracted process for the pharmacist and Council (reducing the time it takes to resolve the issue and therefore the cost) and may decrease the likelihood of Council needing to refer a complaint to a Professional Conduct Committee (PCC) to investigate which incurs additional costs e.g., legal costs for both the pharmacist and Council.

Factors which lead to a case being categorised as complex may include:

- Multiple incidents or errors
- Alleged conduct happened over an extended period
- More than one practitioner is involved
- The practitioner refutes some or all of the alleged conduct
- The practitioner does not demonstrate insight
- There is difficulty in obtaining information or communicating with one or more parties
- Large volume of information provided by the parties and/or the matter requires significant investigation.

Some cases require multiple correspondences with the pharmacist and/or their legal representatives, particularly when the information provided by the pharmacist is incomplete, contradictory, or conflicting. Council needs to be satisfied that the pharmacist has reflected, learnt from, and made improvements to their practice to ensure they are fit and competent to practise.

### **Quantifying the rise of informal enquiries, notifications, and complaints**

Council has seen a steady rise in informal enquiries (i.e., information Council receives and assesses which does not reach the threshold for escalation), as well as formal notifications and complaints. Additionally, Council has received a steady increase in the number of referrals from the HDC. The collated figures for both can be viewed [here](#).

### **Reasons for the rise in notifications and complaints**

The increase in the number of notifications and complaints we are receiving mirrors what other RAs and the HDC are experiencing. This is not confined to pharmacists, but across all health professions, including medical, nursing, and dental. HDC has reported a 40 percent rise in complaints in the last three to four years, attributing this rise to multiple factors: a pressured health system, health reforms, and the COVID pandemic.

**How Council covers the costs of compliance and discipline** Most of the triage work undertaken by our compliance team is funded through the APC fee while any matter that is then referred to an independently appointed Professional Conduct Committee (PCC) for investigation is funded through the disciplinary levy. If the PCC lays a charge with the Health Practitioners Disciplinary Tribunal (HPDT) those hearing costs are also funded by the disciplinary levy. Council's reserves are not large, and in fact when compared to the reserves of other RAs these reserves are minimal as we have illustrated [here](#)

The increased volume and costs associated with the work our compliance team does means we must build up and replenish our reserves through increases to both the APC fee and disciplinary levy.

Our disciplinary costs reserve currently has a negative balance (in effect it is being subsidised by the general reserve) and can only be replenished by an increase to the disciplinary levy. We will explore the disciplinary levy and reserve in more detail in our next communication.

We trust that you will find our communications series insightful and informative, and we look forward to continuing to connect with you on the APC fee consultation in the weeks ahead.