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MESSAGE FROM THE BOARD CHAIR

Since the last Newsletter, a major part of the Board's work has involved either making submissions (HPCA Act review; Trans-Tasman Mutual Recognition Act Review) or consulting with stakeholders regarding the Board's own intended direction (e.g., vocational scopes review). Such activities are resource- and time-consuming, but the Board is clear that dialogue with the affected sectors should be meaningful and comprehensive. On each occasion, the volume, quality, and diversity of responses received by the Board has been particularly encouraging. I encourage practitioners to regularly check the Board's website for updates and announcements on such matters that may affect you.

As a new focus, this Newsletter describes some interesting practice issues that may not have reached threshold for formal investigation, but nonetheless point to valuable lessons that are usefully shared with all practitioners. It is hoped that this information will help practitioners reflect on their practice, and thereby provide the best possible service to the public. The appointment of a Psychology Advisor (Anne Goodhead) to the secretariat has greatly aided the Board's ability to produce these communications.

Finally, the Board's HPCA Act functions relating to continuing competence and accreditation (of programmes leading to registration) are two major activities that 'go live' over the next 12 months. First, the Continuing Competence Programme (CCP), which received strong endorsement from psychologists through 2007, is being piloted shortly. Second, the secretariat will be arranging training for accreditation teams before the first programme accreditation occurs in late 2008. The implementation of both these activities is only possible after sustained work from a large group of people not only at the Board and secretariat level, but also from psychologists themselves who have generously served on working parties and committees. The commitment by all concerned is very much appreciated.

Dr Lois Surgenor
Chairperson
New Zealand Psychologists Board

BOARD NEWS IN BRIEF

Board Member Appointment

It is with regret that we note the resignation of Ms Janet Peters from the Board in December 2007. Janet joined the Board in September 2000, and served terms as Deputy Chair and in the demanding role of Chair of the (former) Complaints and Discipline Committee. She was also an active member on 6 other Board committees and made a huge contribution to the Board's work and culture over several difficult transition years. We wish Janet all the best in her future endeavours.

On July 29th the Minister announced he had appointed Ms Beverly Burns to the Board. Ms Burns will be well known to many from her work with the New Zealand Psychological Society, and especially for her work with the "Supervision 2000" programme. The Board look forward to working with Bev, who will attend her first meeting in September.

Election Results

At its first meeting of 2008, the Board re-elected Dr Lois Surgenor as Chairperson and elected Ms Karen Ramsay as Deputy Chairperson.

Board Offices relocated

The Board were unable to renew their lease earlier this year, due to an unaffordable 50% increase in rent and because the Social Workers Registration Board (our co-tenants) decided to move to a larger, independent site. Despite a tight and expensive market, we were able to lease new space nearby (Level 9, 79 Boulcott Street) that required only modest renovations, and that will provide stability for many years to come (6 year lease with a further 3 year right of renewal). The new space was acquired at the same rate we were paying under our former lease, and includes a Boardroom that will be rented out to other organisations to help recoup costs. (Groups of psychologists are able to use the space at no cost).

NZCCP & NZPsS Annual Conferences 2008/2009

Board representatives will be amongst the presenters at the NZ Psychological Society's 2008 Annual Conference "Wellbeing (Hauora): Individual, Organisational, Community (Ritenga, Ia Tāngata, Iwi Whānau)" which is being held at the Hotel Grand Chancellor (Christchurch) from Friday 29th to Sunday 30th August. The Board's presentation will be on Saturday the 30th August from 11.30am until 12.30pm. We encourage registrants to come along to this session to catch up on the latest news, information, and advice.

The Board will also present at the NZ College of Clinical Psychologists 2009 Conference in Dunedin on January 31 to February 1 (the specific time in the conference programme has yet to be confirmed).

The Board welcomes your feedback on topics you would like to discuss at these forums.

When is a Psychologist off-duty?

A string of complaints which relate to psychologists' behaviour in their 'off-duty' hours indicates that the public expect a high standard of conduct and ethical behaviour from psychologists at all times and in all settings. Members of the public may well judge an individual psychologist's behaviour and then generalize to the profession as a whole. One practitioner's poor behaviour can bring the whole profession into disrepute.

Over the last two years the following situations generated complaints to the Psychologists Board even though the incidents or communications occurred out of the work arena:

- A dispute between neighbours where one of the parties was a psychologist.
- An out-of-hours phone conversation where the complainant took exception to comments that the psychologist allegedly made.
- A parent was unhappy about a school's response to her child and complained about a psychologist who was on the Board of Trustees.
- Two university administrators (both registered psychologists but not functioning as such) were subjects of a complaint from a disgruntled student.
- A prolific contributor to Internet forums, who makes no secret of being a psychologist, attracted a complaint from somebody who does not approve of their (controversial) point of view.
- A psychologist on a committee made comments about another committee member which that person took exception to and deemed to be derogatory.

The Psychologists Board has adopted decision-making guidelines to assist with consideration of such complaints. Those guidelines state (in part);

"If the alleged conduct occurred outside of the psychologist's professional role, then when objectively viewed is it of sufficiently serious nature or is it manifestly incompatible with a person's registration as a psychologist? If so, it can constitute conduct with professional ramifications. That conduct will also be conduct which would tend to bring the profession into public disrepute and to lessen the

APC processing problems and practitioners' failure to renew

The Board's secretariat encountered some unexpected problems with APC renewals this year, resulting in significant delays before some psychologists received their printed APCs. We wish to apologise for any inconvenience or concern caused. The problem was purely procedural in nature, and it has been corrected. Please note that a psychologist is deemed to hold an APC from the moment the Board receives their (properly completed) renewal form and correct fee. If you are uncertain if your form and fee have been received by the Board, please feel free to contact us for confirmation. **It is each individual psychologist's responsibility to renew their APC each year and to ensure their form and fee are sent to the Board.** Group and organisational (e.g., DHB) payments seem to be the most prone to errors or outright omissions, which is why the Board will not normally accept them.

The secretariat has become aware of an increasing number of psychologists who have failed to renew their APC but who have nonetheless continued to practise. This is a serious breach of the HPCA Act which puts the public at risk and places an unfair financial burden on those practitioners who keep their APC current. Steps are now being taken to proactively and routinely identify such practitioners and to investigate the circumstances of their non renewal. Where it is warranted disciplinary charges will be laid and/or the matter will be referred to the District Court or to the Ministry of Health's Enforcement Team. **If you are currently practising without a current APC you are encouraged to contact the secretariat immediately to discuss your circumstances,** and to thereby reduce the chance of becoming subject to disciplinary and/or legal processes.

COMPLAINTS & DISCIPLINARY MATTERS

Complaints Update

At the time of our last newsletter (July 07), the Board was managing 19 active complaints, all of which have since been closed. Thirty-eight new complaints have been received by the Board since July 07, 22 of which have been closed and 16 of which remain active.

Complaints processed July 07 – July 08	Active in July 07	New complaints received	Complaints closed	Active complaints in July 08
	19	38	41	16

As prescribed by the HPCA Act and in accordance with the operational policies of the Board, a standard procedure is applied to each complaint. All complaints involving health consumers are immediately forwarded to the Health and Disability Commissioner (HDC), who (amongst other options) may decide to undertake his own investigation or refer the complaint back to the Board.

Complaints arising from the Family Court are sent to the Court for their opinion and/or action, in accordance with the 2006 Practice Note agreed between the Family Court and the Board.

Once considered by the HDC and/or the Family Court the psychologist who is the subject of the complaint is given the opportunity to make an initial submission. The committee delegated by the Board to process complaints and competence matters then considers the complaint along with the psychologist's submission and any comment or recommendation from the HDC and/or the Family Court. The Committee may then decide to:

- take no further action (NFA) or
- to refer the complaint to a Professional Conduct Committee (PCC) for further investigation or
- to refer the psychologist for a competence or fitness review or
- to refer the complaint to another agency such as an employer or the Police.

Of the 41 complaints closed over the past year:

- Twenty-five were against psychologists in the clinical scope, 13 were against psychologists in the 'general' scope, and 3 were against a trainee psychologist.
- Eight were Family Court related, and 7 were related to other court or Department of Corrections processes. Three were about assessment, 2 about boundary violations, 2 involved allegations of sexual relationship with a client, 1 was about business matters, and 17 were about more general standards of care. One was a notification from the Courts of a conviction against a psychologist.
- Twenty-three resulted in a decision to take no further action in relation to the complaint.
- Four resulted in a decision to take no further action but with a "letter of education" acknowledging that, while the complaint had not been fully investigated, the Board wished to encourage caution and/or suggest that the practitioner discuss key aspects of the complaint in supervision.
- Fourteen went to a PCC for investigation:
 - Of these, 6 resulted in a determination of no further action, and 5 were referred to the HPDT for charges to be heard.
 - Three recommendations were made that the psychologist be counselled, and 2 were recommended for fitness review.

community's confidence in the profession of psychology."

In each of the scenarios above, the committee delegated by the Board to consider complaints and competence matters considered the following questions:

- Has the psychologist acted in such a way to bring discredit to the profession?
- Is the person's behaviour such that it raises questions about their fitness to practise (ethically or in terms of their mental health)?
- Has the person's conduct lessened the community's confidence in the profession of psychology?
- Has the psychologist demonstrated attitudes that are incompatible with professional practice?

Although none of the above complaints reached the threshold to warrant further investigation under the HPCA Act, the frequency of such complaints is evidence that psychologists are conspicuous because of their title, and are held to a high standard of conduct by members of the public. Professional privilege comes with professional obligations, and psychologists would be wise to ensure they do not unnecessarily promote their professional role or title in interpersonal disputes, and that they consider the possible ramifications of their actions even when off-duty.

Probable fee increase

Despite an increase in fees two years ago, the Board has experienced a significant budget deficit in the 2007/2008 financial year, and has budgeted for a further deficit this year. The major cause for this is legal fees arising from complaints processes. The Board cannot control the number of complaints that are made each year, and has very little influence over the functioning of Professional Conduct Committees who are able to regulate their own procedure and to appoint their own legal advisors. Similarly, the Board has no direct control over the Health Practitioners Disciplinary Tribunal but are nonetheless responsible for payment of all of their costs related to Psychologist hearings. Because the HPCA Act is still quite new, there is a lack of case law or precedent and hence the need for sound and reliable legal advice is greater than normal. New legislation is open to more frequent challenge, and the number of appeals (District Court) and Judicial Reviews (High Court) have risen. As has previously been reported (July 2007 Newsletter), the Board has fared very well in these appeals and reviews, but under the court's rules we have recovered only a fraction of our costs. In summary, legal costs have escalated beyond all expectations, and will not likely decrease significantly for several years ahead.

That said, the Board continue to minimise legal (and indeed all) costs whenever possible. New PCC Guidelines have been drafted and further PCC Chair training will be conducted in the next few months. This should result in more confidence within the PCCs, and better adherence to improved guidelines should moderate each PCC's reliance on its legal advisor. The Board's Executive Officer function has been contracted out to the Medical Council, which we expect will provide cost savings through reduced FTE. Perhaps most importantly, the Board has begun developing Best Practise Guidelines which (following broad consultation and revision) will be published to guide psychologists in their efforts to offer safe, effective services. It is hoped that this will reduce the number of complaints we receive each year. The

Of the 16 complaints still being actively managed:

- Three are Family Court related, 1 involves ACC work, and 1 involves CYFS work.
- Three involve allegations of boundary violation, 6 allege substandard care, 1 alleges improper business practices, and 1 is a notification of conviction from the courts.

As a generalisation, psychologists can safeguard themselves from complaints by maintaining high standards of competence and ethical behaviour. Any psychologist may nonetheless be challenged by clinical presentations with high ambiguity or complex boundary issues. For example, when private practitioners undertake counselling work with couples, what are the professional and ethical obligations to each of the individuals involved? In one scenario from this year's complaints, it was alleged that a psychologist failed to fully assess or notice the wife was suffering a significant post-partum mood disorder. This oversight delayed referral for medical intervention. In hindsight the symptoms seemed obvious, but was the psychologist distracted from perceiving it in that frame by the focus on marital disharmony?

In another scenario the complainant was unhappy that a psychologist chose to discontinue a joint assessment session in order to interview his partner alone. No explanation was offered and he concluded from the partner's account that the psychologist encouraged her to break off the relationship. The psychologist's submission was that it was observed the woman was dissociating in the face of criticism, therefore her psychological safety was at issue. He believed that the content of that discussion could not be disclosed without breaking confidentiality. The psychologist denied advising the woman to leave the relationship. Both of these complaints were dealt with by recommending to the psychologist that they discuss them fully in supervision.

Health Practitioners Disciplinary Tribunal – Cases

Recently a psychologist, Mr H. was found guilty of professional misconduct by the Health Practitioners Disciplinary Tribunal due to malpractice in the preparation of two forensic assessment reports. The psychologist pleaded guilty and the Tribunal found both charges were upheld.

A Professional Conduct Committee investigated the complaint that the practitioner had prepared two substandard reports for the Parole Board and thereby placed the public at risk by misinforming that decision-making body about the level of risk of sexual re-offending against children. Consequently the PCC laid charges that the psychologist was found guilty of malpractice or having been negligent by using inappropriate methodology and drawing inappropriate conclusions.

The acts and omissions included:

- the inappropriate use and interpretation of psychometric tests;
- failing to interpret, evaluate and state the limitations of interview data, thereby drawing inappropriate conclusions and misleading the Court;
- failing to make a distinction between opinion and fact;
- failing to state the limitations on collateral information relevant to the risk assessment of sexual re-offending against children;
- exhibiting a lack of specialist professional knowledge of risk assessment of child sex offenders;
- practicing beyond his scope of competence and expertise and thereby making inappropriate recommendations to the Court;
- failing to exercise professional duties as a supervisor to oversee and proofread a report prepared by a supervisee;
- producing reports not conforming to ethical and professional standards;
- misquoting a published article to support conclusions of the report when the author does not support the conclusions drawn; and
- plagiarism.

The psychologist was also charged with professional misconduct bringing discredit to the profession by describing himself inappropriately (misleading title) and by making unsubstantiated and inappropriate personal criticisms to discredit the work of a Department of Corrections psychologist who had prepared previous risk assessment reports on the clients involved. The Tribunal was completely satisfied that Mr H had used an inappropriate title as no such scope of practice exists. The Tribunal was also completely satisfied that Mr H had made inappropriate and unsubstantiated personal criticisms about the work of the Department of Corrections psychologist who had provided the initial risk assessment to the Court, in a manner which was unethical and exceeded a reasonable approach to the provision of expert opinion.

The Tribunal concluded that the cumulative failures represented within the two charges amounted to malpractice and negligence in each charge, and that the departures from relevant standards were so serious as to warrant discipline for the purposes of protecting the public, maintaining professional standards and punishing the psychologist.

The Tribunal imposed significant restrictions on Mr H's professional activities and required a rehabilitative educational programme to apply for three years. He was also ordered to pay \$10,000 towards the cost of the PCC and the Tribunal. Without the prior written approval of the Board, the psychologist must not undertake any forensic psychology work or assessments for the Parole Board and must not undertake any private practice work nor act as a clinical

Board's new Continued Competence Programme (CCP) should also prove beneficial.

While the Board will continue to do everything it can, we must be prepared to manage ongoing costs. The CCP will raise our costs, though as designed it should be relatively inexpensive. Legal costs will be managed as far as possible, but we will still not be able to predict how many complaints we must manage, how complex they will be, or how many appeals or judicial reviews are launched. Two consecutive years of deficits combined with start-up and transition costs have greatly diminished the Board's reserves. This has been acceptable (and perhaps even wise) in the short term, but it cannot continue. A modest fee increase is therefore inevitable, although it could take either of two different forms.

The Board has the option under the HPCA Act of imposing a "disciplinary levy" when and as needed. Some other HPCAA Boards are now imposing such a levy every year. This approach clearly separates discipline-related costs from all other costs (registration, accreditation, governance, prevention, operations etc). Each year every practitioner receives an APC notification and invoice with two distinct components; a (predictable) annual fee for the APC and a (variable) disciplinary levy calculated to cover the Board's discipline related costs from the previous year. This clearly has benefits and drawbacks. While it may be useful for each psychologist to know how much 'discipline' is costing them each year, it may be difficult for some to safely budget for such a variable amount. Alternatively, the Board could keep setting an 'all inclusive' APC fee, based on our best predictions and on our actual costs in the preceding year(s).

The Board will be writing to all psychologists later this year to provide more detail and to consult with them regarding a fee increase, and/or any proposed move to a disciplinary levy.

Register Check

You may have checked your entry in the Board's on-line Register when last visiting our webpage. If you have noticed any errors or omissions, please contact the Board office by email or post to have your record corrected.

It is a legal requirement for all psychologists to promptly give the Registrar written notice of any change of name or change in their postal, residential, or work address. (Refer s140 and 141 HPCA Act)

If you want to add new qualifications to your Register entry it should be noted that in general the qualifications listed are only those which were relevant to you gaining registration. This means that in most cases the undergraduate degree is not recorded. Higher academic degrees such as PhDs and Doctorates will normally be added on request. If you wish to have a qualification added to your record please forward a copy of your certificate to Bill King, Deputy Registrar - Registrations

supervisor. Mr H must fund an additional supervisor to guide him through the educational programme, which includes the use of psychometrics. The Tribunal expressed its strong disapproval for the significant departure from appropriate standards which had occurred. It granted Mr H permanent name suppression, and ordered that a précis of the decision be published in this newsletter and in professional publications. Further, for the next three years Mr H must inform any and all of his employers about the Tribunal's findings.

This case provides a powerful reminder that psychologists must practise only within the bounds of their competence. To do otherwise places the public at risk and may also bring the profession into disrepute.

CONSULTATION

The Board's use of Vocational Scopes of Practice

There has been an excellent response to the consultation with stakeholders to review the Board's use of scopes of practice. Approximately 220 submissions have been received, including some from groups and organisations. Although most of the submissions have been from psychologists, there has also been interest from other stakeholders who may potentially be affected by any changes, such as DHBs, Government Departments and also GPs in PHOs.

The responses have been collated and the analysis of responses and themes of concern is underway. The Board made a start on considering this complex matter at its meeting 29-30 June, but will consider the full report at the next scheduled meeting on 11-12 September. Until the Board has had the opportunity to consider all submissions, their details will remain confidential. Suffice it to say there have been strong and quite divergent opinions expressed.

Thank you to all who took the trouble to make submissions. Your efforts and well considered opinions are much appreciated

The introduction of a Continuing Competence Programme

The Board intends to introduce a Continuing Competence Programme (CCP) at the time of the 2009 APC round. That means that at the time of application for an APC each applicant must sign a declaration that they intend to undergo a review with their supervisor (or mentor or respected senior colleague) within the following two months or have already undertaken a review within the previous three months. The review should be comprehensive enough to generate goals for intended professional development over the following year. Goals may be quite specific or deliberately general to encompass opportunistic professional development as opportunities arise.

The review itself should be a structured and directed discussion between the psychologist and their supervisor (or mentor or respected senior colleague) which systematically evaluates and assesses progress towards desired professional competence or goals. The review should be fully recorded as evidence for any future audit and as a benchmark comparison with later reviews.

Psychologists are advised to consider how they may best approach the review exercise and to reflect on current professional development aspirations. The Board acknowledges this will be a learning process and has avoided prescribing the process for undertaking this exercise, given the wide range of professional activities and stages of professional development. However it will be compulsory that:

- There is a written record of a comprehensive review of the psychologist's state of professional activity occurring at least once a year;
- That this exercise is conducted in conjunction with a supervisor or senior colleague who countersigns the APC declaration;
- That learning goals or domains of professional development are identified for action, preferably with identified endpoints;
- That some goals at least are actioned by planned activities, as well as opportunistic development being taken up; and
- That the progress towards goals is assessed against target endpoints either later in the year or at the annual review.

Over the coming weeks, a randomly selected sample of active registered psychologists will be invited to trial the review process and to identify any difficulties that arise with that exercise. This will enable an evaluation of the proposed CCP as a process intended to enhance self-reflective professional awareness and to generate learning goals.