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SECRETARIAT STAFF UPDATE

New Psychology Advisor

As the Board's Psychology Advisor, Anne Goodhead provides advice to the Board on complaints and competence matters; recruits independent senior practitioners to serve on Professional Conduct Committees and Competence Review Committees; is involved in registration decision-making; assists the Accreditation process; and helps develop policy. Anne brings to the role her many years of clinical practise experience (known as Anne Blakeney) and recent health research experience through the Health Services Research Centre, Victoria University. She is enjoying the many challenges arising from this role which neatly brings together her knowledge in both clinical psychology and public policy.

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NOTE: To avoid delays or mix-ups, please ensure that any material sent to the Board is clearly marked who it is for, what it is for and who it is from. Our thanks in advance for your assistance.

MESSAGE FROM THE BOARD CHAIR

The past few months have been a galvanising step forward for the Board. Changes foreshadowed in the previous two newsletters have now firmly progressed, and this means that the Board is now operating much more clearly in a Policy Governance® style. That is, the Board sets policy and direction, and the secretariat staff works to achieve the outcomes required by that policy. With the resultant reduction in the number of Board committees (down from ten to one at time of writing), the whole expertise of the Board (previously tucked away in committees) can now be involved in unified policy development and in monitoring how well we achieve our mandated role of protecting the public. It also means that Board members are freed up to determine and monitor strategic priorities - whether these be standing workforce issues, cultural/Treaty of Waitangi issues, or investing in working parties around specific matters that evolve.

Collectively, we are confident that this move will not only create greater efficiencies, but will also turn the Board's attention to the 'bigger picture' issues arising for the regulation of psychologists in New Zealand.

Psychologists should be aware of two important consultation processes underway and the resultant opportunity to make submissions.

First, over the next few months the Ministry of Health will undertake a **review of the HPCA Act**. We encourage you to make a submission either directly (www.moh.govt.nz/moh.nsf) or via the Board, Society, or College (who are all working towards a joint submission as well). We believe that it is important that the Ministry is made fully aware of any unexpected issues that have arisen, how well the Act protects the public, and how the Act might be improved.

Second, please note the **enclosed** consultation paper regarding a "**Counselling Psychologist**" scope of practice. The Board is particularly interested in the views of psychologists as key stakeholders in any decision ultimately made by the Board regarding prescription of this proposed scope.

This newsletter also contains an update on complaint and competence matters. The Health Practitioners Disciplinary Tribunal (HPDT) has recently published their first decision in regard to a psychologist. It goes without saying that important lessons can be learned from their decision.

In closing, I would like to once again thank all psychologists and laypeople who have served on professional conduct committees or competence review committees these past 6 months. Your commitment and contribution to our work and to the profession is greatly appreciated.

Lois Surgenor
Chairperson
New Zealand Psychologists Board

PSYCHOLOGISTS BOARD NEWS IN BRIEF

Board Member Appointment Update

The Ministry of Health recently put out a call for nominations for a new Board member to replace Mr Ron Chambers who completes his 9 year term of continuous service in August. Ron has made a significant contribution to the Board and profession throughout his tenure, particularly in the areas of workforce; assisting the Board in raising awareness of psychology workforce issues, and supervision, having been intrinsically involved in the review, accreditation and monitoring of supervision leading to registration. Since 2002 Ron has chaired the Board's (former) Supervision and Workforce Committees, and over the years has been an active member on eight Board committees including the Accreditation, Registration, Competence Review and Communication Committees. Ron has worked with the Board through the heady transition of the HPCA Act and most recently, the Board's successful shift to a policy governance model. The Board awaits the announcement of the new member to replace Ron later in the year. We wish him all the best in his 'life after the Board', and hope he will now have more time to enjoy his favourite pursuits such as South Island skiing.

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Qualifications 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. 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.



The New Zealand Psychological Society

Te Ripu Matari Hinengaro o Aotearoa

NZPsS ADVERTISEMENT

The New Zealand Psychological Society Inc. (NZPsS) organises an Annual Conference and other professional development events for members and non-member psychologists each year.

Are you on the NZPsS professional development mailing list? Registered Psychologists who want to be kept informed about NZPsS events are invited to contact the Society's National Office and provide current postal address details so we can send Conference and Workshop registration brochures directly to you.

Email: office@psychology.org.nz;

Web www.psychology.org.nz

Message to Organisations Regarding Vocational Scopes of Practice

The Board wishes to remind organisations and employers that the prescribed scopes of practice do not 'fence off' any exclusive territory (other than the use of the title). Any psychologist can perform any activity – as long as they are competent to do so, or are doing so under appropriate supervision (for example when training in a new area of practice). A vocational scope simply provides the practitioner with the right to use the title, and thereby clearly and simply signal to the public (or an employer) their competence in that scope. In short, practise is not restricted by scope, but by competence. Title use is restricted by scope....(continued top of next page)

Election of Chair and Deputy Chair

At its first meeting of the year, the Board elected Dr Lois Surgenor as Chairperson for another year. Ms Moana Waitoki was elected Deputy Chairperson.

REGISTRATION MATTERS

Annual Practising Certificates and the Law

There are a number of registered psychologists who held Annual Practising Certificates in the last APC year (01/04/2006-31/03/2007) that have not yet applied to renew their APCs for the current (01/04/2007-31/03/2008) year. The easiest way to get your APC is to print off and complete an APC application form from the Board's website and send it to the Board office with the correct fee. Staff will have your APC ready for posting within 5 days of deposit of payment.

If you do not intend to practise as a psychologist at any time from now until 31/03/08, please inform Board staff so that your entry in the Register of Psychologists can be updated.

All registered psychologists should be aware of the law governing the practice of psychology in New Zealand. In particular, you should note that the HPCA Act 2003 contains key provisions to protect the health and safety of members of the public by providing for mechanisms to ensure that registered psychologists are competent and fit to practise. These include provisions that –

- Prohibit persons other than registered psychologists with **current** practising certificates from claiming to be practising the profession of psychology.
- Prohibit registered psychologists from practising without current practising certificates or from practising their profession outside their scope of practice.

The Act further specifies that only a registered psychologist who holds a current practising certificate can claim to practise psychology or state or do anything that is calculated to suggest that they practise or are willing to practise psychology.

The Board is notified from time to time about people who are 'claiming to be' or 'holding themselves out to be' a registered psychologist in a Board prescribed scope of practice. For example, a person registered in the Psychologist scope advertising as a Clinical Psychologist. Only those psychologists who have applied for and been granted the "Clinical Psychologist" and "Educational Psychologist" vocational scopes of practice are legally entitled to use those protected titles.

Those registered psychologists who have not purchased an APC for the 2007-2008 year need to take steps to ensure that they are not in breach of these provisions. It is an offence punishable on summary conviction by a fine not exceeding \$10,000 for contravening the key provisions set out in Part 7 of the HPCA Act.

PROFESSIONAL LIAISON

NZCCP & NZPsS Annual Conferences 2007

Board representatives will be amongst the presenters at the NZ Psychological Society's 2007 Annual Conference "Psychology in Aotearoa: Partnership, Protection, Participation" which is being held at the University of Waikato from Thursday 23rd to Sunday 26th of August. **The Board's presentation will be on the 25th of August from 10.30am until 12.00pm.** We encourage registrants to come along to this session to catch up on the latest news, information and advice.

The Board is keen to present at the NZ College of Clinical Psychologists 2007 Conference in Nelson on 24th-25th of November, however confirmation of possible Board time in the conference programme has yet to be received.

The Board welcomes feedback from the profession on items you would like the Board to cover at these or future presentations.

CONSULTATION

Psychologists will be consulted by the Board on several important issues in the weeks ahead.

Health Practitioners Index (HPI)

The Ministry of Health is continuing to develop the Health Practitioners Index, or HPI, which will create a single system for identifying health professionals. Psychologists can expect a direct introduction to HPI during 2008, when they begin to receive their Common Person Number (CPN) as part of their normal Annual Practising Certificate application process.

Some organisations have decided – as is their right – to only employ or contract with psychologists who hold a certain scope. While this provides them with some assurance about the breadth and depth of the psychologist’s competencies, it may also eliminate from consideration some psychologists who are perfectly competent to perform the specific tasks required. Organisations may wish to consider the potential benefits and drawbacks of this ‘trade-off’ when setting the criteria for hiring/contracting. The Board has corresponded with the Family Court about this matter, and has been told that they intend to continue their practice of contracting on a case-by-case basis, utilising a range of psychologists who possess the skills, knowledge and experience needed for each case. We have also corresponded with ACC, who indicate that only a small range of contracts are restricted to holders of the Clinical Psychologist scope, and that this has been the case for many years. (See letter from ACC enclosed with this mailing). Psychologists who still have concerns about this issue may wish to use this article to facilitate discussion, and may also wish to provide feedback to the Board as part of the upcoming review of scopes (*see article in this newsletter - to the right*).

What is Professional Misconduct?

Professional misconduct expresses a high threshold for a breach of duty. The test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It requires deliberate departure from accepted standards or such serious negligence as to portray indifference (even though not deliberate) and an abuse of the privileges which accompany registration as a health practitioner (*J v Director of Proceedings* HC AK CIV 2006-404-2188 Baragwanath J).

With regard to the HPCA Act, a summary of relevant primary sections follows:

Part 4 of the HPCA Act concerns past conduct and potential exposure to penalties. It focuses particularly on the grounds on which a practitioner may be disciplined.

- The extent to which the practitioner has accepted and responded to a re-education process imposed under Part 3 is likely to be a relevant consideration when imposing a penalty under Part 4.
- The Act, as part of its focus on competence and fitness to practise, gives professional registration bodies the power to impose conditions on the scope of practice of that practitioner.

Penalties are not confined to those that punish and, like judicial sentencing, may be rehabilitative rather than punitive.

The Part 3 regime (competence and fitness to practise) is not disciplinary but instead prescribes a regime where the authority must ensure that the health practitioner practises at the required standard of competence. The regime is not designed to punish the practitioner but to assist the practitioner meet the required standard of competence. A competence review is one of the mechanisms used by the Board to address competence deficiencies. For more details, go to the “Professional Conduct” section on the Board’s website where updated information about competence and related reviews and programmes has been posted.

CPNs are unique identifiers that will eventually be allocated to all health practitioners in New Zealand. They enable linking of practitioners to the HPI, a database encompassing all registered practitioners. It is being created and managed by the Ministry of Health, working alongside Responsible Authorities (RAs) such as the Psychologists Board.

While many psychologists will be unaffected, for some the HPI will help to increase the accuracy of practitioners’, facilities’ and organisations’ identities, for example when submitting an ACC claim. The same CPN will be used when dealing with ACC, HealthPAC, DHBs, other health care providers and national collections such as the NHI (National Health Index). Over time it will simplify many business processes including payment systems.

It is anticipated that the sharing of health information electronically between multiple health providers will be enabled by having a clear identifier, while confidentiality will be maintained by restricting access to those with a legitimate purpose. This is likely to be most relevant to those working in larger treatment centres such as PHOs and DHBs.

Other anticipated benefits include making it easier for members of the public to search for registered health practitioners relevant to their needs; improved administration and analysis for funders and planners; and facilitating research on workforce and health system utilisation.

Security and privacy issues are a priority. The HPI will sit within the Ministry of Health’s technical infrastructure, which has extensive border and other security measures. As one of several steps to address privacy issues, the Ministry has developed a Privacy Impact Assessment, consulting with authorities including the Privacy Commissioner and RAs. Data Provision Agreements between the Ministry and RAs will determine what information appears on the HPI and who may access it. Data Access Agreements between the Ministry and organisations such as DHBs and ACC will define what information they may access. The Psychologists Board will provide the HPI only with that information that is already on the public Register, plus gender and birth date information to facilitate verification of records. Gender and birth date information will be supplied on a confidential basis, with a signed agreement that it will not be released to any other party.

The Board will write to each psychologist in the next few weeks to progress this project.

The Board’s use of Vocational Scopes of Practice

As noted in the Board Chair’s message (*front page*), the government’s legislated review of the HPCA Act is just getting underway. The Board will be circulating a questionnaire to all psychologists to facilitate their contribution, and as a part of that exercise we will be asking specifically for feedback on the Board’s use of “vocational scopes”. (Currently the Board has two vocational scopes: “Clinical Psychologist” and “Educational Psychologist”). You may recall the vigorous discussion that ensued when the adoption of vocational scopes was first proposed. Did we get it right in the end? What have been the consequences (positive or negative) of their adoption? Are there aspects of our use of scopes that could be changed to further enhance protection of the public? We hope you will take the time to discuss the questionnaire with your colleagues and make a submission.

Continued Competence

Finishing touches are now being put on the Board’s proposed model for Continued Competence Programme. We hope to circulate a discussion document early in August 2007, in time for discussion at this year’s NZPsS and NZCCP conferences. The model will also include a proposal for a “Return-to-work” process, to facilitate the safe reintegration of those psychologists who have not held a practising certificate for three years (or more).

COMPLAINTS & DISCIPLINARY MATTERS

Health Practitioners Disciplinary Tribunal – Cases

A registered psychologist who faced charges laid before the HPDT by the Director of Proceedings in May was subsequently found guilty of professional misconduct and struck off the Register. The Tribunal fined the practitioner \$5,000 and ordered the payment of costs of \$5,000 – 50% of which were costs with regard to the investigation made by the Health and Disability Commissioner and the prosecution of the charge by the Director of Proceedings; and 50% to the conduct of the hearing by the Tribunal. The Tribunal also made a final order of non publication of name and identifying features of the practitioner and patient involved. You can read the Tribunal’s decision on the HPDT website: www.hpdt.org.nz.

A Professional Conduct Committee investigating a complaint against another registered psychologist recently determined that a charge(s) be brought against the psychologist before the HPDT – the hearing is expected to occur in September. It is anticipated that at least three more psychologists will face charges arising from PCC determinations and/or HDC investigations in the next 12 months.

The Role of the Expert Witness

A recent judicial review prompted Judge Ronald Young to define the role of the expert witness. The complaint against the practitioner had arisen from her evidence on an assessment of a client delivered to the Employment Relations Authority. There were financial gains for the client if it was found that a medically diagnosable condition led to the termination of employment.

Judge Young stated the expert witness has a special place in the Court, as defined in the rules specific to each Court. Schedule 4 of the High Court Rules sets out explicitly that the expert witness has an overriding duty to assist the Court impartially on relevant matters within the expert's area of expertise which by its nature is likely to be unfamiliar to the judicial officer. Furthermore, an expert witness is not an advocate for the party who engages the witness and therefore they must take special care to ensure their report is non-partisan. If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate that qualification must be stated in his or her evidence. Judge Young also noted that expert witnesses are always going to be subject to cross examination about their evidence.

The Schedule also allows for an expert witness to be directed by the Court to confer with another expert witness to try to reach agreement on matters within their common field of expertise. After such a conference the witnesses would be required to prepare and sign a joint witness statement which outlines the matters on which they agree and the matters on which they do not agree, including the reasons for their disagreement. In conferring with another expert witness the expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person to withhold or avoid agreement.

The Pressure to be an Advocate

A key aspect of the complaint against the practitioner who was the subject of the judicial review was that she had not exercised professional judgement in appraising the client's account of events, and therefore could be perceived as acting as an advocate, rather than an impartial expert witness. Psychologists may experience pressures from multiple sources to adopt an advocacy role with regard to a client who is the subject of a court hearing. The client themselves may naively assume that the psychologist is "working for them"; the psychologist may naturally feel sympathetic towards the individual concerned in the mutual engagement that occurs in the process of an assessment; and the legal counsel for the client may overtly or covertly encourage a point of view.

Discussing expectations and the limitations on the role in advance may be helpful to address such pressures.

Clients may also have motives for creating an impression that is more disturbed or healthier than they actually are, due to goals which are reasonable by normal social criteria. That such motives exist should not be considered evidence of psychopathology, but the psychologist should consider the possible effects on the assessment and testimony (Brodsky, S. 1993 *Testifying in Court: Guidelines and Maxims for the Expert witness. Published by American Psychological Association, Washington, DC.*)

It is worth noting that every hearing of the Tribunal must be held in public unless the Tribunal orders otherwise. This means that any member of the public, including media, can attend and hear the charges and evidence given throughout the hearing. In most cases defence counsel will make a case for name suppression for one or more of the parties involved. For the Tribunal, aside from the interests of the client, other interests that are relevant in deciding whether or not to make an order for name suppression include the administration of justice, human dignity, deterrence and open justice. This can include any public interest in the discovery of additional misconduct which will outweigh factors pointing to suppression. In some cases, in the interests of deterrence and public awareness an appeal for name suppression may be declined. In each case, the HPDT Executive Officer will prepare a public notice for publishing in the local/regional newspaper (for the region in which the practitioner resides/works) and following the conclusion of the hearing, the media are again notified about the decision and directed to it on the HPDT website.

Complaints and Professional Conduct Committees Update

Since the last Board newsletter issued in September 2006, the Board has received 19 complaints against registered psychologists. The outcomes of those complaints provide a good example of how the provisions of the HPCA Act enables Board to deal with and resolve complaint matters in much fairer and more appropriate manner than was the case under the Psychologists Act 1981:

Of the 19 complaints received since September 2006:

- 8 resulted in a Board decision to take no further action in relation to the complaint and the complaint file was subsequently closed. This included three matters that were referred to other agencies, e.g. Family Court or employer;
- 7 were referred to Professional Conduct Committees to investigate the allegations made by the complainant;
- 1 is currently being investigated by the Health and Disability Commissioner;
- 3 have been referred to the HDC and are expected to be referred back to the Board.

Since the commencement of the HPCA Act, the Board has established 30 Professional Conduct Committees to investigate complaints referred to the Board from the HDC. The recommendations and determinations made by those PCCs were as follows (note a PCC can make one or more of 5 recommendations and/or one of three determinations as set out in section 80 of the Act):

- 14 still being investigated;
- 1 determination that a charge be brought against the practitioner before the HPDT;
- 7 determinations that no further steps be taken under the HPCA Act in relation to the subject matter of the investigation;
- 8 recommendations that the Board counsel the practitioner;*
- 1 recommendation that the Board review the practitioner's competence.

*The option of counselling the practitioner typically involves a 'letter of education' being sent to the practitioner and there may be a further requirement for the practitioner to submit a 'practise plan' to address the areas of concern and/or a period of supervision by a Board approved supervisor.

Update on Appeals

In respect of a (Psychologists Act) disciplinary hearing held in March 2005, the psychologist (Ian Geary of Timaru) filed an appeal in the High Court in July 2005 and the matter was heard in the High Court on 23 May 2007. In his decision Judge Young upheld the appeal on the lesser of the Board's two guilty findings, but dismissed the appeal on the more serious charge. As a result the fine imposed by the Board was reduced from \$9,000 to \$8,000. The Judge noted that he could see nothing in the questioning by the Board which was inappropriate or unfair or that could create any impression of a lack of impartiality. He found that the Board was not biased or prejudiced against Mr Geary, and that they had properly taken account of previous disciplinary findings against him.

In May 2005 another psychologist filed an application for a judicial review of a decision by a Complaints Assessment Committee, constituted under the Psychologists Act, to send complaints referred to it about the practitioner's conduct to the Board for a disciplinary hearing. The matter was heard in the High Court in February 2007. One of the original eleven charges and one of thirteen particulars in the original charges were struck out, but in all other respects the judicial review was refused. Consequently, a disciplinary hearing will be scheduled to hear the remaining ten charges.

The Board therefore has just one hearing remaining to be conducted under the Psychologists Act 1981. In recent years there have been five appeals against Board findings, but with the exception noted above the findings have consistently been upheld. The process is very expensive and only a small portion of costs are recoverable, but these successes on appeal provide assurance to the public and to psychologists that they can be confident in the Board's efforts to deal with complaint matters fairly, reasonably, and legally.