

Podiatrists Registration Board of Tasmania

Guidelines and Operating Protocol between the Health Complaints Commissioner and the Podiatrists Registration Board

Policy Number 3/2002	Date Implemented 30/8/2002	Last Review 1/9/2007	Next Review 1/9/2010
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A good working relationship between the Office of the Health Complaints Commissioner and the Registration Boards is essential for the successful and appropriate referral and resolution of complaints.

The Podiatrists Registration Board of Tasmania is the statutory authority responsible for the regulation of podiatry in the public interest. The Board is empowered under the Podiatrists Registration Act 1995 to investigate complaints and, as necessary, undertake disciplinary action against registered podiatrists.

The provisions of Part 4 of the Podiatrists Registration Act prescribe the matters in respect of which complaints may be made; the manner of dealing with these complaints, and the various options the Board has for dealing with these.

The attached protocols define how the Board and the Commissioner will manage complaints.

Approved

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Chairperson

PROTOCOLS BETWEEN THE HEALTH COMPLAINTS COMMISSIONER AND REGISTRATION BOARDS

1. Purpose

- 1.1 The purpose of these Protocols is to set out principles and procedures which are to apply to the dealings under the *Health Complaints Act* 1995 (the Act) between the Health Complaints Commissioner (HCC) and the Registration Boards (Boards) listed in Schedule 2 to the Act. The Protocols are intended to supplement the relevant provisions of the Act and of the statutes governing the operations of the Boards, and should be read in conjunction with those provisions.
- 1.2 The Protocols are not binding, and are not intended to in any way limit the exercise of any statutory discretion.
- 1.3 The word "complaint" in the Protocols is intended to cover a grievance within the terms of s 57 of the Act.

2. Meetings

- 2.1 The HCC will meet with each Board at least once a year, to discuss the dealings between the parties under the Act and other matters of mutual interest.
- 2.2 Meetings will also take place from time to time between HCC and Board staff for the purpose of consultation required by the Act, to ensure the timely handling of complaints by both parties, and to address other matters of mutual interest. Such meetings may be requested by either party.

3. Consultation

- 3.1 The Act requires consultation between the HCC and a Board –
 - where the complaint has been received in the first instance by the HCC, before the HCC determines to refer the complaint to the Board under s 25(1A)(a) – see s 25(3); and
 - where the HCC considers that a matter raised by or during the course of an investigation should be investigated by the Board, before the HCC determines whether or not to refer that matter to the Board – see s 49(2); and

- where a complaint has been received in the first instance by the Board, before a decision is taken on whether or not the complaint should be referred to the HCC – see s 57(1)(b); and
 - where the Board investigates a complaint pursuant to s 58(1) of the Act, in relation to whether the complaint, or any part of the complaint or any issue arising out of it, should be referred to the HCC – see ss 58(3) and (4).
- 3.2 Consultation will normally be by letter, but may also occur in meetings, by email or by telephone.
- 3.3 Consultation with a Board will take place through the Registrar of the Board unless other arrangement is made.
- 3.4 Each party will provide the other with all information necessary to make sure that the consultation takes place on an informed basis.
- 3.5 Where a party wishes a particular matter to be referred to it, the party will provide reasons for doing so.
- 3.6 Each party will respond as quickly as practicable to any request by way of consultation for its views on whether a particular matter should be referred.

4. Principles applying to referral

- 4.1 A matter of complaint will usually be referred to or retained by a Board if, were it to be proven (either alone or as part of an apparent pattern of conduct), the matter –
- would represent professional misconduct within the terms of the statute which governs the operation of the Board (other than by reason of constituting negligence or incompetence which is not of such seriousness as to warrant the use of the disciplinary powers of the Board); or
 - involves the maintenance of the standards of professional practice; or
 - is best addressed using the disciplinary powers of the Board.
- 4.2 It may also be appropriate to transfer a matter of complaint to a Board on the ground that the HCC is without jurisdiction, or is required to dismiss the complaint under s 25(5) of the Act.
- 4.3 A matter of complaint will usually be referred to or retained by the HCC if it –
- does not warrant referral to or retention by the Board in accordance with para 4.1; or
 - may be amenable to early resolution under s 25A of the Act; or
 - may be amenable to resolution by conciliation; or

- involves a matter or matters of public interest (*eg* system failure or a significant issue of public safety) best addressed by the HCC; or
 - is best addressed using the powers of the HCC.
- 4.4 In considering whether a complaint should be referred or retained, both the HCC and the Board will consider the desirability of –
- simultaneous referral to the Board and retention by the HCC for conciliation, pursuant to s 25(1B);
 - the splitting of the complaint under s 29;
 - a joint investigation in accordance with s 43(4) or 58(6) of the Act; or
 - a separate investigation by the HCC under s 40(1)(c) or (d) of the Act.
- 4.5 Where a Board considers that it is urgent that it act upon a complaint without delay, it may ask the HCC for urgent assessment and referral. The HCC will consider and act upon the case with minimal delay under such circumstances.

5. Notification

- 5.1 Acting in accordance with s 24A of the Act, the HCC will notify the relevant Board as soon as practicable, and in any event within 5 days, of the receipt by the HCC of a complaint within the jurisdiction of the Board, giving the Board details of –
- the file number allocated to the complaint;
 - the name of the provider;
 - the name of the complainant;
 - a brief summary of the complaint, including the date or dates when the matter of complaint arose.

The purpose of so doing is to give the Board early notice of the complaint. Consultation with respect to the complaint will occur later in accordance with the Act and these Protocols.

- 5.2 A Board will notify the HCC as soon as practicable of any decision to commence disciplinary proceedings, to enable the HCC to determine whether to intervene in the proceedings pursuant to s 62 of the Act.
- 5.3 Subject to s 35(4) (which limits the information which may be provided to a Board about the outcome of conciliation), the HCC and the relevant Board will each inform the other forthwith of the outcome of the handling of a complaint.

6. Provision of Information

- 6.1 Subject to clauses 6.4 and 6.5, where the HCC refers a matter to a Board, the HCC will provide the Board with a copy of all medical reports, investigation reports and other materials which are held by the HCC which may reasonably assist the Board in carrying out its functions.
- 6.2 Subject to clauses 6.4 and 6.5, where a Board refers a matter to the HCC, the Board will provide the HCC with a copy of all medical reports, investigation reports and other materials which are held by the Board which may reasonably assist the HCC in carrying out its functions .
- 6.3 Subject to clauses 6.4 and 6.5, where the HCC is conciliating a matter of complaint and a Board is exercising or has exercised functions with respect to that matter or a related matter of complaint, the Board will at the request of the HCC provide the HCC with all medical reports, investigation reports and other materials which are held by the Board which may reasonably assist in the conciliation.
- 6.4 A party may request in writing at the time of providing materials in accordance with this clause that the materials or any specified part of the materials be kept confidential, and any such request will be met.
- 6.5 Subject to the requirements of the Act, a party may decline to provide materials in accordance with this clause, and in that event will inform the other party of the general nature of the materials being withheld and the reasons why they are being withheld.

7. Joint Investigations

- 7.1 A joint investigation may be proposed by either the HCC or the relevant Board.
- 7.2 The investigation will be carried out by an investigative panel appointed by the parties. The panel would usually include the HCC's case officer, a person nominated by the relevant Board, and a person or persons chosen by the parties who will bring necessary professional expertise to the investigation.
- 7.3 To minimise any potential for confusion or duplication, primary administrative responsibility for the matter of complaint will remain with the party which initially received the complaint. Any correspondence or other materials generated or received by either party with respect to the complaint is to be copied without delay to the other party.

8. Codes

Each Board will at all times ensure that the HCC has an up-to-date copy of all of the codes of conduct which apply to practitioners under the jurisdiction of that Board.

9. Review

These Protocols will be reviewed by the HCC after they have been in operation for a period of 12 months, and periodically thereafter. The review will take place in consultation with each of the Boards.

SIMON ALLSTON
HEALTH COMPLAINTS COMMISSIONER

19 March 2007