



NEW ZEALAND COUNCIL OF HOMEOPATHS

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Procedures for the Investigation of Professional Conduct (2013)

The New Zealand Council of Homeopaths (referred to as NZCH throughout this document) has a complaints procedure which demonstrates its concern that current members maintain the quality required for membership to NZCH.

The prime ground for a complaint, and for any subsequent disciplining of a practitioner, is that the practitioner has behaved in a manner prejudicial to the interests of NZCH. Such behaviour may include:

- a breach of professional duty to a client, especially failing to conform to the current Code of Health and Disability Services Consumers' Rights;
- a serious deviation from the practice of homeopathy as defined in NZCH's constitution, Rules of Practice and Code of Ethics;
- unprofessional conduct in relation to other homeopaths or medical professionals;
- making public statements or engaging in commercial activities inconsistent with professional dignity.

The complaints procedure has been developed to assist NZCH to deal with complaints made against its members. The aim is to have a process that is effective, fair, subject to external scrutiny and capable of providing timely resolution of complaints. The intention is to provide consistency in dealing with complaints and to incorporate the principles of natural justice. The process is one which is investigative and supervisory in nature and not primarily punitive.

The NZCH President shall be responsible for all procedures required following the receipt of a complaint to NZCH. If the NZCH President is either not available or the position is not currently filled, the NZCH Executive Members shall appoint a representative from the Executive to fill this role.

Overview of the procedure when a complaint is received by NZCH:

1. The NZCH Secretary determines that it fulfills the initial criteria to be accepted (refer Part 1: 1-3).
2. The complaint is referred to the NZCH President (refer Part 1: 3.2) who determines if the criteria are *met* or *not met* to consider action according to the procedure below (refer Part 1: 4 & 5).

3. The NZCH President shall appoint an NZCH Executive Member considered suitable to be involved in the complaint procedure (refer Part 1: 5.1). The NZCH President and Executive Member shall discuss the cause of concern, seriousness of the complaint or any other considerations or information to date to be taken into account.
4. The NZCH Executive Member shall subsequently be appointed as the coordinator of a Complaints Assessment Committee (referred to as the CAC) and will within 48 hours present to the NZCH President a list of possible candidates for the CAC (refer Part 1: 5.2).
5. The respondent shall be notified of the complaints process and the appointment of the CAC by the NZCH President (Refer Part 1: 6 & 7).
6. The CAC shall be composed of three members: the appointed NZCH Executive Member /CAC coordinator, a Full NZCH Member (RCHom) and an external person.
7. The CAC coordinator shall contact both the respondent and the complainant and discuss the complaint, the NZCH complaints procedure and offer a support person to both (refer Part 2: 9.1 – 9.3).
8. The CAC coordinator shall then take all information to the CAC to discuss what action is required for the complaint.
9. The function of the CAC is:
 - to determine the validity of the complaint
 - to determine the course of action according to NZCH's complaints procedure
 - to initiate and oversee the complaints procedure throughout
 - to inform any mediators or arbitrators as indicated
 - to report back to the NZCH President within 21 days of the CAC's formation.
10. The CAC may recommend to the NZCH President that a mediator be appointed to resolve the issues. The mediator may or may not be a member of NZCH but must have experience in mediation. The function of the mediator is:
 - is to help people find the best way to resolve their problems
 - encourage parties to identify the real issues
 - to help the parties explain those issues to each other.
11. When a complaint:
 - is not resolved following contact made to both the complainant and respondent by the CAC coordinator
 - or resolved through mediation
 - or requires further investigation,
 the NZCH President shall recommend that the complainant contacts an Advocacy Service who liaises with/for the HDC. The NZCH President shall also inform the respondent of the decision to recommend the complainant contacts the above.
12. The NZCH President shall report back to the NZCH Executive if the CAC findings show that there has been a breach of the NZCH Rules of Practice or Code of Ethics.

NB: Declaration of interest

Each member of any committee appointed under these procedures (or of NZCH itself) is responsible for declaring whether he/she as an individual, has any special interest or involvement in the case which would interfere with a fair and objective assessment of the situation, and should either disqualify themselves, or may be required to withdraw from consideration of the complaint.

Part 1: Action following a complaint received regarding professional conduct

1 Receiving complaints about the professional conduct of practitioners

- 1.1 Any person or body may make a complaint about a registered practitioner to NZCH, except that:
 - 1.1.1 No action will be taken on anonymous complaints.
 - 1.1.2 No action will be taken on any situation which occurred more than five years ago.

2 The criteria for accepting a complaint

- 2.1 Complaints must be made in writing and addressed to the NZCH Secretary.
- 2.2 The complaint shall name current member(s) of NZCH as the respondent(s).
- 2.3 The complaint shall state what offending behaviour took place.
- 2.4 The complaint shall state, at least approximately, when and where the behaviour complained about took place.
- 2.5 The complaint shall identify any witness or witnesses to the offending behaviour.
- 2.6 The complaint shall clearly contain the full name and address of the person making the complaint.

3 Initial action on receipt of a complaint

- 3.1 On receipt of a complaint the NZCH secretary shall determine whether the respondent is a current NZCH member.
 - 3.1.1 If the respondent **is not** a current NZCH member the secretary shall contact the NZCH President to confirm that the complainant shall be advised in writing accordingly *within 7 days*, and if necessary NZCH shall suggest alternative action that the complainant might take, or provide other relevant guidance, or refer the complainant to an appropriate body.
- 3.2 If the respondent **is** a current NZCH member and subject to assessment and disciplinary procedures the NZCH Secretary shall send the complaint to the NZCH President *within 7 days*.
 - 3.2.1 The NZCH President shall check the complaint material against the criteria required for accepting a complaint for investigation and shall decide if the complaint **meets** or does **not meet** the criteria for investigation under the NZCH Complaints Procedure (2013)

4 Action on complaints where the criteria are *not met* for investigation by NZCH

- 4.1. When the criteria are **not met** the NZCH President shall instruct the NZCH Secretary to acknowledge the receipt of the complaint in writing *within 7 days*, provide the complainant with a copy of the NZCH Rules of Practice and Code of Ethics and advise them of the process involved in making a complaint.
 - 4.1.2 The NZCH President shall suggest alternative action that the complainant might take, or provide other relevant guidance, or refer the complainant to an appropriate body.
- 4.2 When the criteria are **not met** the NZCH President shall inform the respondent *within 14 days* that a complaint was received but that it did not meet the criteria required for accepting a complaint for investigation.

5 Action on complaints where the criteria *are met* for investigation by NZCH

- 5.1 When the criteria ***are met*** the NZCH President shall appoint an NZCH Executive Member as the Coordinator of the CAC.
- 5.1.2 The Coordinator shall subsequently appoint the two other members of the CAC who shall be endorsed by the NZCH President.
- 5.2 The NZCH President shall instruct the Secretary to forward all relevant information on the complaint to the CAC coordinator by tracked post *within 7 days*.

6 Notification to the complainant when criteria *are met*

- 6.1 When the criteria ***are met***, the NZCH President shall instruct the NZCH Secretary to acknowledge the receipt of the complaint in writing *within 7 days*.
- 6.2. The response to the complainant shall include a consent form to be completed and signed to waive the respondent's duty of confidentiality.
- 6.2.1 If the complainant does not respond to the request for the consent form to be completed and signed to waive the respondent's duty of confidentiality *within 14 days*, the NZCH President shall discuss with the CAC whether the complaint should be closed or if there is sufficient information for the CAC to proceed with the matter with the information already received.
- 6.3 The complainant shall be informed of the role of the CAC in the NZCH Complaints Procedure.
- 6.4 The complainant shall be informed of the name of the CAC coordinator.
- 6.5 The complainant shall receive a statement of the time frame expected for the CAC coordinator to make contact with them regarding the complaint.

7 Notification to the respondent when the criteria *are met*

- 7.1 When the criteria ***are met***, the NZCH President shall inform the respondent *within 7 days* that a complaint was received and that it met the criteria required for accepting a complaint for investigation.
- 7.2 The respondent shall be given the following information by tracked post to the last known postal address *within 7 days*.
- 7.2.1 A copy of the complaint letter and details of any other information which may be presented in evidence against him or her.
- 7.2.2 A copy of the NZCH Rules of Practice and Code of Ethics, the Constitution, and Complaints Procedure Document. The respondent shall be directed to read these documents.
- 7.2.3 A statement of the time frame expected for the CAC to provide an outcome for the complaint.
- 7.3 The respondent shall be advised that any information verbal or written provided by them will become part of the complaint.
- 7.4 The respondent shall be notified of the NZCH Executive member who shall act as the CAC Coordinator for this procedure.
- 7.4.1 The respondent shall be informed that the CAC coordinator shall contact them *within 7 days* to discuss the complaint and notify them of the names of other CAC members.
- 7.4.2 If the respondent has objections to the involvement of any CAC member, these objections and the reasons for them shall be sent to the NZCH President *within 7 days*

for consideration and the CAC member(s) concerned may be required to withdraw from assessing the complaint.

7.4.3 The respondent shall be informed that the decision of the NZCH President regarding the members of the CAC shall be final.

7.5 On receipt of the formal consent form from the complainant the NZCH President shall *within 7 days* instruct the NZCH Secretary to inform the respondent that the formal consent form for the release of client information has been signed by the complainant and that the CAC Coordinator will require copies of the case notes and any additional information relevant to the complaint.

7.6 Any counter-complaint from a respondent against a complainant may not be considered until completion of the initial complaint.

8 Action required of respondent

8.1 The respondent is required to reply in writing to a request by the CAC to provide information relevant to the complaint. This information must be supplied *within 14 days* of the date of registration of the letter advising of the complaint.

8.2 If the respondent believes there is a conflict between responsibilities to clients and the request for information, he/she may contact the CAC coordinator for clarity on this.

8.2.1 If the respondent believes he/she holds information which may incriminate the complainant, advice should be sought from the CAC coordinator in order to help resolve this conflict.

8.2.2 The respondent is free to seek legal advice at any time about any conflict or incriminating evidence.

8.3 The respondent has the right to notify their indemnity insurer (if applicable).

8.4 If the respondent wishes to object to the members of the CAC, he/she must apply in writing to the NZCH President (as per 7.4.2 above) *within 7 days* of the date of contact made by the CAC coordinator.

8.5 If the respondent fails to respond, or delays in responding, or fails to cooperate in the investigation, it shall not prevent NZCH continuing with the complaint procedure as per clause 14 in the NZCH Rules of Practice.

Part 2: Investigations into professional conduct

9. Action of the Complaints Assessment Committee (CAC)

9.1 The CAC Coordinator shall contact both the complainant and the respondent *within 7 days* of the formation of the CAC to discuss the details and to explain the process involved in the NZCH Complaints Procedure (2013).

9.1.1 The CAC coordinator shall inform the respondent of the members of the CAC.

9.1.2 NZCH shall offer to appoint a support person for both the complainant and the respondent at this point. Both parties are entitled to accept the NZCH appointed support person suggested by the CAC coordinator or may choose their own support person.

9.2 The CAC Coordinator shall report back to the other CAC members to discuss the outcome of the contact made with both the complainant and the respondent.

- 9.2.1 The CAC Coordinator shall inform the other CAC members of any additional information that has been requested and the outcome of this.
- 9.3 If the CAC require further information, they shall instruct the NZCH Secretary to request this *within 7 days*.
- 9.3.1 Information relevant to the complaint may be sought from other sources, provided that any such information obtained shall be disclosed to the respondent and the respondent given opportunity to comment upon it.
- 9.3.2 The CAC may request information about any and all previous steps taken to remedy the situation (including complaints lodged with other entities).
- 9.4 The CAC shall meet *within 7 days* of all information received, to consider if there is sufficient evidence to decide whether the alleged conduct (if proven) would constitute a breach of the NZCH Rules of Practice and Code of Ethics or Constitution.
- 9.5 If the complainant does not respond to the request for the consent form to be completed and signed to waive the respondent's duty of confidentiality *within 21 days*, the CAC shall recommend to the NZCH President that the complaint should either be closed, or that there is sufficient information for the committee to proceed with the matter on its own initiative.
- 9.6 Where there is sufficient information supplied, initially the CAC shall consider whether the complaint might be appropriately resolved by facilitating a mediated meeting between the complainant and respondent.

10 Outcome of the Complaints Assessment Committee (CAC)

- 10.1 When the CAC has completed its assessment of the statement received from the complainant, and any statements requested from the respondent or from other sources, it shall make appropriate recommendations to the NZCH President regarding any further stages of the complaints procedure. This may include, but is not limited by, the following:
- 10.1.1 That the complaint should be referred to a mediator (refer clause 12).
- 10.1.2 That the complaint should be referred by the NZCH President to another entity e.g. the Health and Disability Commissioner (HDC). The NZCH President shall advise the complainant to consider such action, regardless of whether NZCH shall continue with the complaints procedure.
- 10.1.3 That the complaint action should be discontinued and the case closed.
- 10.2 The CAC Coordinator shall write a report following the CAC meeting and send to the NZCH President *within 7 days*, outlining all findings, decisions and any recommended actions relating to the complaint.

11 NZCH response following CAC investigation of complaint

- 11.1 Following the CAC report the NZCH President shall in writing, *within 7 days*, notify the respondent and the complainant of the outcome of the CAC meeting.
- 11.1.1 If, at any stage of the proceedings, a complaint is disallowed, or is considered inappropriate on the basis that, if proven, it would not constitute a breach of NZCH Rules of Practice, Code of Ethics or Constitution, the NZCH President shall close the current complaint.

- 11.1.2 If the decision has been made to close the complaint the NZCH President shall advise the NZCH Secretary to write to both parties *within 7 days* to inform them of this decision and offer any appropriate guidance.
- 11.2 The NZCH President shall write to both the respondent and complainant with the decision made by the CAC and their recommendations at this point in the proceedings.
- 11.2.1 Both the complainant and the respondent shall be notified in writing stating whether the complaint was upheld or not upheld relating to any supposed breach of the NZCH Rules of Practice and Code of Ethics.
- 11.2.2 Both the complainant and the respondent shall be notified of any relevant action that NZCH may take following consultation after the CAC report.
- 11.3 If the CAC recommendations require a meeting to be held between both parties and/or formal mediation is required, the NZCH President shall appoint a senior RCHom as mediator or suggest that either part seek formal mediation (as per clause 12).
- 11.4 The NZCH President shall seek advice from the NZCH Executive members as to the content of the correspondence to both parties.

12. Mediation

- 12.1 A mediator shall be appointed by the NZCH President and be independent of any other committee involved in this complaint.
- 12.2 A mediator chairs a meeting between the complainant and the respondent and guides the conversation to help it develop constructively. Mediators give the parties involved the chance to negotiate any agreement that might be possible without judgment or influencing any decisions.
- 12.3 The complainant and the respondent will be told of the appointed mediator and will each be given the chance to raise any objections to the appointment.
- 12.3.1 If the mediator suggested by NZCH is not acceptable to either part then a professional mediator shall be employed at the expense of the objecting party/parties.
- 12.3.2 The respondent and complainant shall be informed that any costs involved in mediation shall be covered according to clause 17 of this document.
- 12.4 The outcome of the mediation will be reported to the NZCH President by the mediator *within 7 days* of the meeting/hearing arranged by the mediator, but otherwise will remain confidential.
- 12.5 If insufficient understanding or resolution is reached through mediation, the NZCH President shall recommend that should the complainant wish to continue with the process then they will need to consider involving an Advocacy Service or the Health and Disability Commissioner (HDC).

13. Powers to initiate or to continue complaint procedures

- 13.1 NZCH may initiate an investigation at its own discretion (or on the advice of its CAC) when a member appears to have breached the NZCH Rules of Practice, Code of Ethics or Constitution, by having engaged in conduct that might adversely affect the public, NZCH or the profession as a whole.
- 13.1.1 Any member subject to such investigation shall be informed by the NZCH President *within 14 days* of the existence of the investigation and the background to it.

- 13.2 If a complaint is withdrawn by the complainant, NZCH may proceed with the matter on its own initiative.
- 13.2.1 Any member subject to such investigation shall be informed by the NZCH President *within 14 days* of the decision to proceed with the investigation and the background to it.
- 13.3 The NZCH President reserves the right to inform relevant legal authorities should the complaints procedure confirm unlawful or illegal actions have occurred or that the respondent has breached the HDC regulations.
- 13.3.1 Where, if at a later date, legal action is taken by the Police, the HDC, or another Government agency, NZCH shall provide copies of its complaint process and findings.

Part 3 NZCH action following investigation of a complaint

14 Action when investigation upholds a complaint

- 14.1 The NZCH President following resolution with the NZCH Executive shall instruct the NZCH Secretary to advise the respondent in writing of the findings of the CAC. When considering a finding that a breach of NZCH Rules of Practice, Code of Ethics or Constitution has occurred, the respondent shall be invited to make written submissions based on the findings of the CAC to NZCH. Following these one or more courses of action will be considered:
 - 14.1.1 The NZCH President cautions or reprimands the respondent and requests that they cease the misconduct complained of immediately.
 - 14.1.2 The NZCH President requires the respondent to undergo counseling or supervision and to complete it within a specified timeframe. The counsellor/supervisor shall report back in writing to the NZCH President every six months and/or at the completion of the specified timeframe.
 - 14.1.3 The NZCH President requires the respondent to undertake further education of the kind stipulated stated by the NZCH Executive and to complete it within a specified timeframe.
 - 14.1.4 The NZCH Secretary shall keep a record of these requirements and report back to the NZCH President once completed.
- 14.2 The NZCH President following resolution with the NZCH Executive shall in writing inform the respondent that NZCH may impose conditions, limitations or restrictions on their registration.
 - 14.2.1 NZCH is then required to actively and systematically monitor for a specified length of time the respondent's compliance with the specific requirements stated.
- 14.3 The NZCH President following resolution with the NZCH Executive may suspend the registration of the respondent for a specified timeframe (as per clause 6.4 of the NZCH Constitution 2011).
- 14.4 The NZCH President following resolution with the NZCH Executive may cancel the registration of the respondent with no conditions for resuming membership (as per Clause 6.4 of the NZCH Constitution)

15. Acceptance of NZCH's decision by respondent

- 15.1 Correspondence to the respondent relating to actions with regard to any of the matters concerning the complaints procedures shall be by tracked post to the last known postal address.
- 15.1.1 The respondent shall acknowledge in writing *within 30 days* the NZCH Complaints Procedures decision as documented by the NZCH President.
- 15.1.2 Subsequently the respondent shall provide satisfactory evidence of compliance with the decision.
- 15.2 If either of these requirements is not met, the NZCH President following consultation with the NZCH Executive shall determine what appropriate action is to be taken.

Part 4: Respondents rights following investigation

16 Respondent's right to review

- 16.1 The respondent shall be entitled to seek a review of the decisions made by the NZCH President and Executive Members following the completion of the NZCH Complaints Procedure.
- 16.1.2 The request by the respondent for a review must be made *within 14 days* of the date of the tracked post informing both parties of the decision. The reasons for the respondent seeking a review must be clearly stated.
- 16.2 Any such reviews, if agreed to, shall be conducted by an independent arbitrator, the appointment of whom shall be made by the NZCH President following consultation with the NZCH Executive.
- 16.2.1 The NZCH Secretary shall in writing acknowledge receipt of the respondent's request, and if such a review is agreed to, shall *within 14 days* of receiving the respondent's right to review, name the intended arbitrator.
- 16.2.2 The NZCH President shall inform the respondent that any costs incurred in a review process shall be dealt with as per clause 17 of this document.
- 16.3 The respondent may request *within 14 days* of the date of the tracked post from the NZCH Secretary, that the intended arbitrator be not appointed.
- 16.3.1 Any such request by the respondent to not appoint an arbitrator must be in writing and include a full explanation as to the reasons for this request.
- 16.4 The decision of the NZCH President on any such request for a review or appointment or non-appointment of an arbitrator shall be final.
- 16.5 The arbitrator's decision must be received by the Secretary *within 21 days* of the arbitrator's appointment.
- 16.5.1 The arbitrator's decision shall be final.

Part 5: Costs of investigations

17 Costs

- 17.1 The NZCH President in consultation with the NZCH Executive has the power to make such order as it thinks fit in relation to the costs incurred in investigating and

disposing of a complaint. This may include payment for CAC members, mediation, arbitration or legal advice.

- 17.1.1 Payment structure for the CAC or any NZCH members involved in a complaint will be set annually. The current fee structure is:
 - a. CAC coordinator: \$100
 - b. CAC members: : \$25
 - c. Mediator: \$100
 - d. Individual cost on application to the Executive to the maximum of \$25 per activity.
- 17.2 If a complaint is either admitted by the respondent, or found proved, the NZCH President may make such order as thought fit requiring the respondent to make a contribution to all or part of the costs which have been incurred by NZCH.
- 17.3 If mediation or arbitration finds that the complaint against the respondent is not upheld or of significant seriousness to warrant further action then the NZCH President may make such order as thought fit requiring the complainant to make a contribution to all or part of the costs which have been incurred by NZCH.
- 17.4 If the NZCH Complaint Procedure finds that a complaint lodged by one NZCH member against another NZCH member is frivolous, vexatious or made in bad faith, the NZCH President on consultation with the NZCH Executive may make such order as thought fit requiring the complainant to make a contribution to all or part of the costs which have been incurred by NZCH in the investigation and resolution of the complaint.
- 17.5 The NZCH Secretary shall under instruction from the NZCH President, advise the respondent to contact their public liability insurer (if they have an indemnity policy).