



# What happened on 18 September 2004:

## Life after the introduction of the Health Practitioners Competence Assurance Act (HPCAA), 2003

Maggie Roe-Shaw

Project Manager for the HPCAA, Professional Practice Team, Ministry of Education, Special Education

### ABSTRACT

This article provides an introduction to The Health Practitioners Competency Assurance Act (HPCAA) which took effect on 18 September 2004. The Act was introduced to provide consistent accountability across health professions and make it easier for the New Zealand public to understand what health service each registered professional provides. To make this transparent, each of the health profession's Authorities registered under the Act, has consulted widely with members to establish a scope or scopes of practice which the profession operates in. By making these scopes of practice transparent, health professionals will be limited to specific professional activities defined by their Registration Boards<sup>1</sup> and there will be penalties for operating outside these specified scopes of practice. Thirteen district meetings were held in 2004 to provide information to field staff about what the HPCAA means for their practice and what they can do about shaping practice to match the requirements of the Act. These meetings raised issues from the field about provision of equipment, professional development, portfolios, competencies, complaints and reflective practice.

### KEYWORDS:

Health services, legal processes, Physiotherapists, Occupational Therapists, Psychologists, professional standards.

### INTRODUCTION

The principal purpose of the HPCAA is to protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions. The Act (Part 1, S3) seeks to attain this principal purpose by:

- a consistent accountability regime for all health professions
- determining for each health practitioner the scope of practice which he or she is competent to practice in
- developing systems to ensure that no health practitioner practises outside his or her scope of practice
- restricting specified activities to particular classes of health practitioner to protect members of the public from the risk of serious or permanent harm
- maintaining certain protections for health practitioners who take part in quality assurance activities
- providing for additional health professions to become subject to this Act.

<sup>1</sup> under the HPCAA, registration Boards are called *Authorities*

Providing “consistent accountability” for each health professional includes provisions to prohibit persons who are not qualified to be registered as health practitioners of a profession from claiming or implying they can provide the services of that profession (Part 1, s7). It also prohibits persons without current annual practicing certificates (APCs) from practising the profession (Part 1, s8). The HPCAA states that each Authority must describe its profession in terms of one or more scopes of practice (Part 2, s11). The “scope(s) of practice” are to provide the definition and boundaries of the profession; that is what, for example, Physiotherapists do, and the title of the scope of practice for Physiotherapists becomes a protected title. This prohibits health practitioners from practising their professions outside their scopes of practice. Each health practitioner must have the qualifications prescribed by their Authority, be fit for registration (which includes the ability to communicate effectively for the purposes of practising within their scope of practice), be registered for a scope of practice, and be competent to practice within that scope of practice (Part 2, s15&16). On recommendation of the Minister of Health the Governor-General may declare an activity that constitutes part of a health service to be a restricted activity if he or she believes that members of the public face risk or permanent harm if the activity is performed by persons other than those health professionals permitted to perform that activity.

The HPCAA provides mechanisms for improving the competence of health practitioners, and for protecting the public from health practitioners who practice below the required standard of competence or who are unable to perform the required functions of their profession (Part 3, s34). These mechanisms include competence reviews (Part 3, s36), recertification programmes (Part 3, s41), medical examinations (Part 3, s49) and quality assurance activities (Part 3, s52).

Within the Ministry of Education, three occupational groups have been affected by the HPCAA: Occupational Therapists, Physiotherapists and Psychologists. Although these three occupational groups work in education settings, they are registered health professionals, and there is on-going work in progress to ensure that all field staff have support in preparing for the 2005 registration year. Currently, there are nineteen occupational groups covered by the HPCAA: Chiropractors, Dentists, Dental Hygienists, Dental Technologists, Dental Therapists, Dieticians, Medical Practitioners, Medical Laboratory Scientists and Technologists, Medical Radiation Technologists, Midwives, Nurses, Occupational Therapists,

**TABLE 1**  
**Requirements for recertification 2005**

OCCUPATIONAL THERAPISTS	PHYSIOTHERAPISTS	PSYCHOLOGISTS
Provide evidence of police clearance.	Provide evidence of Continuing Professional Development (CPD).	Provide evidence of qualifications, three character references, evidence of police clearance.
Provide photographic ID.		Provide photographic ID.
Register current address and qualifications on the Board's website.	Register current address with Board.	Register current address with Board.
Supply competence information and attestation by a third party registered OT to competence and fitness to practice.	Self declaration, stating competence and fitness to practice, and participation in a CPD programme.	Statutory declaration stating competence and fitness to practice.
Arrange for supervision.		Supply evidence of qualifications to register in a vocational scope (clinical or educational).
Payment of \$400.	Payment of \$333.	Payment of \$455.

Dispensing Opticians, Optometrists, Osteopaths, Pharmacists, Physiotherapists, Podiatrists and Psychologists. Each of these professions has a Registration Board whose functions are to:

- prescribe the qualifications required for scopes of practice within the profession, and, for that purpose, to accredit and monitor educational institutions and degrees, courses of studies or programmes
- authorise the registration of health practitioners under the Act and maintain registers
- consider applications for annual practicing certificates
- review and promote the competence of health practitioners
- recognise, accredit, and set programmes to ensure the ongoing competence of health practitioners
- receive and act on information from health practitioners, employers and the Health and Disability Commissioner about the competence of health practitioners
- notify employers, the Accident Compensation Corporation, the Director General of Health, and the Health and Disability Commissioner that the practice of a health practitioner may pose a risk of harm to the public
- consider the cases of health practitioners who may not be able to perform the functions required for the practice of the profession
- set standards of clinical competence, cultural competence and ethical conduct to be observed by health practitioners of the profession
- liaise with other authorities appointed under this Act
- promote education and training in the profession
- promote public awareness of the responsibilities of the authority
- exercise and perform any other functions, powers, and duties that are conferred or imposed on it by or under this Act or any other enactment.

## HISTORICAL OVERVIEW

The professions of Physiotherapy and Occupational Therapy until 2003 were covered by the Physiotherapy Act, 1949, and the Occupational Therapy Act, 1949. The professional definition of these occupations and scopes of practice described under these Acts were outmoded and outdated. Requirements included registration to practice for Physiotherapists and Occupational Therapists each year. However, the registration process only required the practitioner to send in a cheque, and there were no processes to ensure those registering were competent and fit to practice. There were no requirements for practitioners to demonstrate evidence of on-going learning or professional development activities in order to obtain an annual practicing certificate.

Similarly, the Psychologists Act, 1981, required psychologists to abide by a code of ethics, but there was no requirement for practitioners to demonstrate competency and fitness for practice. The introduction of the HPCAA has forced the Psychologist's Board to introduce competency standards as required under the Act.

The introduction of the HPCAA has affected each occupational group differently. Each Registration Boards has decided on different approaches to recertification.<sup>2</sup> These requirements have been developed for the 2005 registration year 1st April to 31st March, and may well change for the 2006 registration year. These requirements for recertification are based on the stipulation to demonstrate competency and fitness to practice at the time of application.

## COMPETENCE

Although the HPCAA is based on health practitioner competence, the Act does not define or determine what competence is. It has been left to each of the Authorities to determine competence, fitness to practice and quality

<sup>2</sup> Recertification is the requirement for obtaining and/or renewing an Annual Practicing Certificate (APC).

assurance for the health practitioner group. The Authorities are obliged under the HPCAA to ensure that each practitioner applying for an APC is competent and fit to practise. In addition each Authority is required to set or recognise competence programmes for the purpose of maintaining, examining or improving the competence of health practitioners who hold or apply for practising certificates. These competence programmes may be made to apply to health practitioners registered with an Authority, in respect of a specified health practitioner or in respect of any class or classes of health practitioners. The competence programme may require the health practitioner to demonstrate competency through passing examinations or assessments, or through completion of a period of practical training. They may need to complete a period of practical experience, or undertake a course of instruction or a period of supervised practice.

The Occupational Therapy Board defines competence as: *a complex interaction and integration of four major components: knowledge, skills, judgement and diligence. These components are required sufficient to achieve the level of performance expected at the practitioner's level of responsibility.*

The Physiotherapy Board defines competence as: *the ability to consistently integrate and apply knowledge, skills, attributes and values in an independent, timely manner to a required standard.*

The Psychologists Board in consultation with the College of Clinical Psychologists and the New Zealand Psychological Society have begun a competency statement, but this is still in draft format. The Registrar expects this to be made public in April 2005.

The Ministry of Education Special Education staff job descriptions contain a set of organisational competencies that are considered necessary for field staff to complete tasks specified in the key achievement areas of their particular job description. The competencies that are specified by the authorities are similar to those of the Ministry's but are more specific for field staff that practice as an occupational therapist, physiotherapist or psychologist. As an employing body, the Ministry will ensure practitioners are able to meet both sets of competencies.

### RECERTIFICATION PROGRAMMES

The HPCAA has brought public safety to the forefront of health legislation in New Zealand. A key part of protecting the public is ensuring that all health professionals are competent and fit to practise. Under S 41 (6) of the HPCAA, all registered health professionals are expected to maintain their competence. It is the responsibility of registrants to maintain this competence, not the responsibility of the employer.

A feature of the Act is the introduction of continuing professional development or 'recertification' programmes for practitioners. Each of the Authorities has their own recertification programme.

#### Psychologists Competence Plan

The Board has commenced planning the framework for the development of competency programmes, but at the time of writing this has not been made available.

### PROFESSIONAL DEVELOPMENT

Competence programmes have a component of professional development, and one method of documenting on-going competence is through a professional development (PD) portfolio. A PD portfolio represents *a collection of evidence which demonstrates the continuing acquisition of skills,*

## 1. OCCUPATIONAL THERAPY COMPETENCE PLAN

Competency self-assessment	<i>Self review and evaluation</i> of performance in relation to knowledge, skills, judgement and diligence based on the seven core competencies <sup>3</sup>  <i>Identification</i> of needs in performance in relation to knowledge, skills, judgement and diligence based on the seven core competencies
Objectives for continuing competence	Based on the outcomes of self assessment, identify one objective for each of the seven competency areas
Plan for achieving objectives	Plan is made in consultation with supervisor(s), and electronically logged or kept in recertification portfolio
Record competence activities	Record the activity(s) undertaken to meet set objectives for continuing competence
Critical reflection on outcomes	Identify changes in practice that have occurred as a result of the professional development activities undertaken through independent critical reflection, reflection with peers or with nominated supervisor(s)
Supervision	The Board's code of ethics document requires all occupational therapists to receive professional supervision relevant to their work setting. A supervision log must be maintained and submitted with the continued competence recertification portfolio

<sup>3</sup> Based on Occupational Therapy Board's competencies for registration as an occupational therapist (2000)

## 1. PHYSIOTHERAPY COMPETENCE PLAN

CPD plan	Maintain a record of all CPD activities in a portfolio. Complete a minimum of 120 hours of CPD activity over three years beginning January 1st 2005. The minimum amount of time per year is 20 hours. There are four categories of CPD
CPD activity 1	Work-based learning. Could include case studies, reflective practice, peer review, supervision of students, project work
CPD activity 2	Professional activity learning. Could include membership of professional body, presentations at conferences, and developing skills
CPD activity 3	Formal education learning. Could include courses, conference attendance, and submission of articles/papers
CPD activity 4	Self-directed learning. Could include reading, review of articles, and updating knowledge via internet
Professional Development Plan (PDP)	The recording of CPD activities (evidence that learning has taken place). This is expected to reflect the physiotherapists area of practice and needs

*knowledge, attitudes, understanding and achievement*, (Brown, 2002). Portfolios can be used to demonstrate a summary of the portfolio owner's continuing education and workplace experiences. When used in a workplace specific context, portfolios move beyond an assessment tool by allowing the owner to create an individualised self-portrait of their competence and capabilities. Under the requirements of the HPCAA, each registered health professional is required to produce evidence of ongoing professional development, and a commitment to life-time learning, for their respective Authority. This credential system places the responsibility for learning, professional development and career direction on the individual practitioner (Weddle, Himburg, Collins & Lewis, 2002). The portfolio usually includes three components that reflect the conceptual basis for their use:

- the design (what are purposes and goals)
- the enactment (how will the goals be carried out)
- and outcomes (what are the results and how will these be analysed).

Each of the elements represents the process for building and assessing portfolios (Paschal, Jensen, & Mostrom, 2002). One of the important components for developing and using a PD portfolio is an understanding of reflective practice. Reflective practice can mean *meditative or thoughtful or produced by reflection* (O'Connor & Diggins, 2002). Used in the context of practice, this can be defined as thinking about how you practise your profession and how you refine your practice as a result of reflection. In this sense it is a cycle. Reflective thinking encompasses all your knowledge about professional practice in an education setting to provide safe and effective practice, for example, your knowledge of curriculum and the child or young person in the school or early childhood setting. The use of reflective practice in workplace learning for professional development means you have a toolkit for documenting your ongoing learning, and the changes to your practice that arise from reflection. If, as part of the Authorities audit process, you are asked to provide evidence of competency and fitness to practice, your PD portfolio is the ideal vehicle to demonstrate this.

## QUESTIONS FROM THE FIELD

During 2004, a series of district meetings, throughout Special Education were held to provide information to field staff and managers about the purpose, implications and potential changes to practice of the HPCAA. There were over 320 staff in attendance at these meetings, including Boards of Trustees, Therapists and Principals. These meetings generated 327 questions from the ten district gatherings. During the presentation (three hours with a lunch break), questions were encouraged from the floor at any time. This meant each presentation became slightly different depending on the types of questions and the sequencing of delivery. The content of the presentation remained constant. A member from each group was asked to record the questions, to ensure I could concentrate on answering (or asking my co-presenter to answer). It became apparent that there were two different strands of questions; firstly, those about organisational issues, and secondly, about specific Authorities intentions as regards recertification programmes, competence programmes and APC's. The Physiotherapy Board, the Occupational Therapy Board and the Psychologists Board have been sent a list of questions specific to their occupational group to highlight the information areas registrants were clearly uncertain about. The organisational questions were thematically coded using an inductive thematic analysis (Boyatzis, 1998). The seven categories of questions identified are shown in Table 2.

These questions are currently being answered, and will be available on the dedicated Ministry Intranet and Internet page that includes Group Special Education (GSE) news. There will a HPCAA section on the website which will include all the questions and answers from the district meetings.

## LEGAL IMPLICATIONS OF THE HPCAA

The following is a summary of an opinion from the Ministry's legal division on the scope of employer indemnity for damages, costs and penalties incurred by employee health practitioners. This opinion also deals with the effect on employment in the cancellation of an APC and with the attestation of competency.

**TABLE 2**  
**Exemplars of questions raised at district meetings**

THEME	EXEMPLAR QUESTIONS
Equipment	<ul style="list-style-type: none"> <li>• If equipment is not provided by the Ministry, can we refuse to do a particular job?</li> <li>• Who decides what equipment is necessary to do a job, the professional or the employer?</li> <li>• Are we vulnerable if equipment is not provided?</li> <li>• In a dispute about equipment, how would this be dealt with?</li> </ul>
Human resources	<ul style="list-style-type: none"> <li>• How is GSE going to make the HPCAA fit with performance appraisal?</li> <li>• Will competence assurance, performance appraisals and service standards be linked?</li> <li>• Will the Ministry's human resource requirements be changed to reflect the competencies in the HPCAA?</li> </ul>
Professional Development (PD)	<ul style="list-style-type: none"> <li>• Is the employer responsible for funding professional development for employees to achieve competence?</li> <li>• Does every person under the HPCAA have access to PD?</li> <li>• What is classed as PD?</li> </ul>
Portfolios	<ul style="list-style-type: none"> <li>• What is a portfolio? What guidelines can we expect from the Ministry about portfolio development and planning?</li> <li>• Will there be a universal portfolio for all Ministry staff?</li> <li>• Will there be time allocated in work hours to update the portfolio?</li> </ul>
Competencies	<ul style="list-style-type: none"> <li>• Are schools and parents aware of professional competencies?</li> <li>• What is the organisational expectation of an individual employee about realistic competency as opposed to those written by the Authorities?</li> <li>• How will we deal with informed consent if we use a case study to demonstrate competency?</li> </ul>
Complaints	<ul style="list-style-type: none"> <li>• Where or who will complaints about us go?</li> <li>• Is there counselling available from the Ministry about complaints?</li> <li>• If a complaint is serious enough to be stood down, will we still be on the payroll?</li> </ul>
Reflective practice	<ul style="list-style-type: none"> <li>• Is it the responsibility of the Ministry or the BoT via Principals to see that we practise reflection-in-action?</li> <li>• There seems to be a big assumption that we know how to reflect. Who will teach us?</li> <li>• What guidance from the Ministry can we expect about reflective practice and how it works?</li> </ul>

1. There is no implied indemnity for damages payable by an employee for negligence or other breach of duty in the course of employment.
2. There is no implied indemnity for legal costs incurred by an employee in defending criminal charges arising from the course of employment. Government departments do have the discretion to reimburse costs.
3. Under S86 of the State Sector Act, public servants are immune from personal liability arising from claims made against a department. The immunity extends to claims for professional negligence or any other breach of duty by a public servant for which the employer is vicariously liable.
4. Where claims of professional negligence are made against a public servant, they are entitled to be indemnified for costs under the cabinet rules.
5. There is no immunity for prosecution for disciplinary offences under the HPCAA.
6. There is no employer indemnity for penalties or fines against an employee health practitioner under the HPCAA.
7. The need for indemnity insurance may be limited to costs incurred by an employee in relation to proceedings under the HPCAA. It is unlikely that insurance is available for liability for penalties and fines under the HPCAA.
8. A person attesting to the competency of a health practitioner should only do so if they have personal knowledge of the practitioner and a genuine belief based on reasonable grounds that the practitioner is both fit and competent to practice.

## INTRANET AND INTERNET INFORMATION

Table 3 shows a number of useful websites about the HPCAA.

### SUMMARY

The HPCAA is law. All Occupational Therapists, Physiotherapists and Psychologists have a recertification process in place for the 2005 registration year. Practitioners must sign a statutory declaration and provide third party attestation, or a self declaration that they are fit and competent to practice. Occupational Therapists have been given a complete recertification portfolio by the Occupational Therapy Board. At the time of writing Physiotherapists and Psychologists have not been given a framework to assemble and build a professional development portfolio. The Ministry hopes to conduct, **Guidelines to Building a Professional Development Portfolio**, a series of workshops in the Districts over the next three months. These will give clear guidelines on how to turn living practice into reflective practice, and make links between the Authorities requirements for recertification and the Ministry's performance management process.

All health practitioners should make themselves familiar with their occupational website and refer to it over the next twelve months with rigour because there may be significant changes and developments.

### REFERENCES

Boyatzis, R.E. (1998). *Transferring qualitative information: Thematic analysis and code development*. New York: Barnes & Noble.

Brown, R. (2002). *Portfolio development and profiling for nurses*. Lancaster: Quay Publications.

O'Connor, A., & Diggins, C. (2002). *On reflection*. Lower Hutt: Open Mind Publishing.

Paschal, K., Jensen, G., & Mostrom, E (2002). Building portfolios: A means for developing habits of reflective practice in physical therapy education. *Journal of Physical Therapy Education*, 16 (3), 38-51.

The Health Practitioners Competence Assurance Act (2003). Wellington: New Zealand Government.

Weddle, D., Himburg, S., Collins, N., & Lewis, R. (2002). The professional development portfolio process: Setting goals for credentialing. *Journal of the American Dietetic Association*, 102, 1439-1444.

### PROFILE OF AUTHOR

Maggie Roe-Shaw is the Project Manager of the HPCAA within the Professional Practice Team, Ministry of Education, Special Education. She has a background in physiotherapy, and completed her PhD, *Workplace Realities and Professional Socialisation of recently graduated Physiotherapists in New Zealand*. Prior to her current position with the Ministry, Maggie worked for the University of Otago as clinical coordinator of final year physiotherapy students learning in the clinical setting, and in a variety of physiotherapy practice settings in Australia and the UK. Her professional interests include workplace learning, situated learning, reflective practice and professional development portfolios.

Contact at: [maggie.roeshaw@minedu.govt.nz](mailto:maggie.roeshaw@minedu.govt.nz)

TABLE 3

#### Website information about the HPCAA

WEBSITE	INFORMATION ON THIS WEBSITE
<a href="http://www.moh.govt.nz/hpca">www.moh.govt.nz/hpca</a>	Information about the HPCAA and Frequently asked Questions (FAQs) on the Ministry of Health website.
<a href="http://www.moh.govt.nz">www.moh.govt.nz</a>	A pamphlet that explains how all registered health professionals are now governed by one piece of legislation, and how the HPCAA protects the public's health and safety. Included in this pamphlet are contact details for the registering Authorities.
<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>	Look under 'Statutes-Health Practitioners Competence Assurance Act' for the full 218 pages of the HPCAA. Copies of the Act can be purchased from Bennett's Government Bookshop for \$15.00.
<a href="http://www.hdc.org.nz">www.hdc.org.nz</a>	Information from the Health and Disability Commissioner about what to do if you have a complaint about a health practitioner.
<a href="http://www.hpdt.org.nz">www.hpdt.org.nz</a>	Information about the role of the Health Practitioners Disciplinary Tribunal.
<a href="http://www.otboard.org.nz">www.otboard.org.nz</a>	Information for Occupational Therapists.
<a href="http://www.physioboard.org.nz">www.physioboard.org.nz</a>	Information for Physiotherapists.
<a href="http://www.psychologistsboard.org.nz">www.psychologistsboard.org.nz</a>	Information for Psychologists.
<a href="http://www.regboards.co.nz">www.regboards.co.nz</a>	An excellent website for sorting out FAQs and giving up-to-date information about the changing roles of Registration Boards. This site specialises in providing support services to public authorities responsible for regulating professions for the protection of consumer health and safety.