

# NZIMLS CPD PROGRAMME

## Health Practitioners Competence Assurance Act (2003) Sections 40 to 45

### Appendix 1



#### Section 40 – Competence Programmes

1. For the purpose of maintaining, examining, or improving the competence of health practitioners to practise the profession in respect of which an authority is appointed, the authority may from time to time set or recognise competence programmes in respect of health practitioners who hold or apply for practising certificates.
2. Any competence programme may be made to apply generally in respect of all such health practitioners, or in respect of a specified health practitioner, or in respect of any specified class or classes of such health practitioners.
3. Any competence programme may require a health practitioner to do any 1 or more of the following, within a period, or at intervals, prescribed in the programme:
  - a. pass any examinations or assessments, or both:
  - b. complete a period of practical training:
  - c. complete a period of practical experience:
  - d. undertake a course of instruction:
  - e. permit another health practitioner specified by the authority to examine the clinical records of the health practitioner in relation to his or her clients:
  - f. undertake a period of supervised practice.
4. The authority may specify a period within which the health practitioners to which a competence programme applies must comply with the requirements of the programme.
5. The authority may exempt any health practitioner or class of health practitioner from all or any of the requirements of a competence programme.

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6. Within 20 working days after a competence programme is set or recognised by the authority, the Registrar must notify every health practitioner who is required to undertake the programme of that fact and of the details of the programme.

Compare: 1995 No 95 s 62

#### Section 41 – Recertification Programmes

1. For the purpose of ensuring that health practitioners are competent to practise within the scopes of practice in respect of which they are registered, each authority may from time to time set or recognise recertification programmes for practitioners who are registered with the authority.
2. A recertification programme may be made to apply generally in respect of all health practitioners, or in respect of a specified health practitioner, or in respect of a specified class or classes of health practitioner.

3. A recertification programme may require a practitioner to do any 1 or more of the following at intervals (if any) prescribed in the programme:
  - a. pass any examinations or assessments, or both;
  - b. complete a period of practical training;
  - c. undertake a course of instruction;
  - d. permit a health practitioner specified by the authority to examine—
    - i. any or all of his or her clinical and other practices;
    - ii. any or all of his or her relations with other health practitioners;
    - iii. (iii) any or all of the clinical records of the practitioner in relation to his or her patients or clients;
  - e. undergo an inspection;
  - f. adopt and undertake a systematic process for ensuring that the services provided by the practitioner meet the required standard of competence.
4. Every recertification programme must allow a reasonable time for a practitioner to whom it relates to comply with its requirements.
5. The authority may exempt any health practitioner or class of health practitioner from all or any of the requirements of a recertification programme.
6. Within 20 working days after a recertification programme is set or recognized by the authority, the Registrar must notify every health practitioner who is required to undertake the programme of that fact and of the details of the programme.  
Compare: 1995 No 95 s 63

#### **Section 42 – Health practitioners may be required to make records available**

An authority that is reviewing the competence of a health practitioner or that has set a competence programme or recertification programme for a health Part 3 s  
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38 practitioner may, for the purposes of the review or programme, inspect all or any of the clinical records of the health practitioner, and that health practitioner must make those records available for those purposes to any person duly authorised by the authority.

#### **Section 43 – Unsatisfactory results of competence programme or recertification programme**

1. If a health practitioner who is required to complete a competence programme or a recertification programme does not satisfy the requirements of the programme, the responsible authority may make either of the following orders:
  - a. that the health practitioner's scope of practice be altered—
    - i. by changing any health services that the practitioner is permitted to perform; or
    - ii. by including any condition or conditions that the authority considers appropriate;
  - b. that the practitioner's registration be suspended.
2. If the authority proposes to make an order under subsection (1), it must give to the health practitioner concerned—
  - a. a notice stating—
    - i. why the authority proposes to make the order; and
    - ii. that he or she has a reasonable opportunity to make written submissions and to be heard on the matter, either personally or by his or her representative; and
  - b. a copy of any information on which the authority is relying in proposing to make the order.
3. The notice under subsection (2)(a)(i) must contain sufficient detail to inform the person clearly of the particular grounds for the proposal to make the order.

4. Any order made under subsection (1) remains in effect until the health practitioner concerned has satisfied all the requirements of the competence programme or, as the case requires, the recertification programme, and for that purpose the authority may, on the application of the practitioner, extend the period within which the practitioner is required to satisfy those requirements.
5. The failure of a health practitioner to satisfy the requirements of any competence programme or recertification programme that applies to the health practitioner is not, of itself, a ground for taking disciplinary action under Part 4 against that health practitioner.
6. Subsection (2)(b) is subject to section 154.  
Compare: 1995 No 95 s 64  
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#### Section 44 – Confidentiality of Information

1. No person who examines any clinical records of any health practitioner under a requirement of a competence review, competence programme, or recertification programme may disclose any information (being information about any identifiable individual) obtained by that person as a result of that examination, except for 1 or more of the following purposes:
  - a. for the purpose of making a report to the authority in relation to the health practitioner concerned;
  - b. for the purposes of any criminal investigation or any criminal proceedings taken against that health practitioner;
  - c. for the purpose of making the information available to the person to whom the information relates in any case where—
    - i. the authority directs that the information be made available; or
    - ii. the person requests access to the information.
2. Subsection (1)(c)(ii) does not affect the Privacy Act 1993.
3. Every person commits an offence and is liable on conviction to a fine not exceeding \$10,000 who discloses any information in contravention of subsection (1).
4. No information, statement, or admission that is disclosed or made by any health practitioner in the course of, or for the purposes of satisfying the requirements of, any competence review, competence programme, or recertification programme and that relates to any conduct of that health practitioner (whether that conduct occurred before or during that review or programme)—
  - a. may be used or disclosed for any purpose other than the purposes of that review or programme; or
  - b. is admissible against that person, or any other person, in any proceedings in any court or before any person acting judicially.

Compare: 1995 No 95 s 65

Section 44(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).  
*Inability to perform required functions*

#### Section 45 – Notification of Inability to Perform Required Functions due to mental or physical condition

1. Subsection (2) applies to a person who—
  - a. is in charge of an organisation that provides health services; or
  - b. is a health practitioner; or
  - c. is an employer of health practitioners; or
  - d. is a medical officer of health.

Part 3 s 44 Health Practitioners Competence Assurance Act 2003  
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