Standard Operating Procedure
Reviewing the Clinical Competence of a Doctor or Dentist following Receipt of a Complaint or Concern

Purpose
This Standard Operating Procedure (SOP) provides direction regarding the Health Directorate’s approach to complaints and concerns regarding the clinical competence of a doctor or dentist. It is to be read in conjunction with the Consumer Feedback Management in the Health Directorate Policy and SOP.

Scope
This SOP covers all complaints and concerns regarding the clinical competence of a doctor or dentist made by any health care consumer (including their families, carers or other interested parties) or by other doctors and dentists, nurses and midwives and any other health professional or clerical, technical or health service officer (staff member).

This SOP does not cover general disciplinary issues.

For the purposes of this SOP, “complaint” will be used to mean both complaint and concern. The term “clinician” will be used to refer to junior doctors, senior doctors and dentists.

All staff within the Health Directorate (HD) must adhere to this SOP and corresponding Policy.

Procedures
The relevant Executive Director, in conjunction with the Clinical Director, is responsible for managing any investigation of a complaint or concern about the clinical competence of a clinician.

Complaints will be referred to the relevant Executive Director, usually through one of three pathways (see Figure 1).
1. Receipt of a complaint of concern

Pathway A. From a health care consumer (or representative)

The process for the management of all consumer feedback (including complaints and concerns about clinical competence) is outlined fully in the SOP – Consumer Feedback Management in the Health Directorate, and includes the following:

- Preventing the Need for Complaints
- Local Management of Complaints
- Involvement of Service Managers and Directors
- Management of Written Complaints
- Role of the Health Services Commissioner.

The management of consumer feedback is undertaken by the Consumer Feedback Engagement Team (CFET) within the Quality and Safety Unit (QSU).

If the complaint is assessed by CFET as relating to a complaint or concern about the clinical competence of a clinician, CFET will log the case into RiskMan and allocate feedback to the relevant Division or Branch where the incident occurred for investigation and preparation of a written response. Divisions must ensure the feedback received is related to a service of their area and, if not, return the complaint to CFET within 2 working days for reallocation.

Divisions and Branches are responsible for sending the approved, dated and signed acknowledgement letter to the complainant within 35 days and forwarding a copy to CFET for centralised filing.

The conduct of any competence review is confidential and as such, no person making a notification of a complaint will be provided with any information about the outcomes of the review of that complaint, including any findings of, or proposed actions arising from, the review.

Pathway B. Through incident reporting

The response to incidents notified through RiskMan may result in concerns about clinical competence being referred to the relevant Executive Director.

If a complaint about competence involves declaration of an adverse incident, the Medico Legal Coordinator in QSU must be advised. The Medico Legal Coordinator will liaise with the ACT Insurance Authority (ACTIA). ACTIA is the statutory authority that provides insurance protection and risk management advice for the HD.

Pathway C. From a staff member

Where possible, a member of staff should make the notification of a complaint or concern to the Clinical Director or Executive Director of the relevant area in which the clinician is working. If details of the relevant Clinical Director or Executive Director are unknown, the member of staff should contact the Director of the Medical and Dental Professional Standards Unit (MDSPU), who will identify the relevant point of contact.

Where possible, notification of a complaint should be in writing and should include detailed particulars of the complaint. Dependent upon the nature of the complaint, anonymous complaints may or may not be pursued. The identity of, and any personal information about, the member of staff making a complaint is confidential and will not be disclosed to the...
clinician. The Director of MDPSU is available to assist any staff member in receipt of such a complaint and will maintain a log of such enquiries which will be presented to the CPC on a regular basis.

2. Process for the Review of a Complaint or Concern about a Doctor or Dentist

2.1 Documentation

The process of managing all complaints and concerns about clinical concerns must be comprehensively documented. The Executive Director is responsible for:

- Providing documentation to CFET in relation to complaints made by a consumer (Pathway A) (See SOP Consumer Feedback Management in the Health Directorate);
- Maintaining documentation in relation to incidents which may involve concerns about clinical competence (Pathway B);
- Ensuring, in relation to complaints made by a staff member (Pathway C), that comprehensive documentation of the complaint and the management of that complaint is kept.

Note: Depending on the nature of the complaint, external bodies (such as Australian Health Practitioner Regulation Agency and Health Services Commissioner) may need to be informed of the issue during the process of managing the complaint, or at the conclusion of the process. MDPSU will provide advice as necessary.

2.2 Establishing the basis of a complaint

A complaint that is frivolous, vexatious, misconceived or lacking in substance has the potential to cause extreme detriment to the clinical practice and/or reputation. The Executive Director, in conjunction with the Clinical Director, must therefore first evaluate the basis of the complaint, prior to the initiation of any formal action in relation to the management of the complaint.

2.3 Complaints about a non-specialist practitioner

A non-specialist practitioner may be a:

- postgraduate year 1 and 2 doctor (PGY1 and PGY2);
- resident;
- registrar;
- basic or advanced trainee;
- Fellow; or
- Career Medical Officers (CMO).

Note: A small number of CMOs hold a formally approved scope of clinical practice, as defined under the Health Act 1993 (the Health Act). Competence matters for these CMOs are to be considered as for Senior Medical and Dental Practitioners (SMDPs) (see 2.4). Competence concerns for non-specialist practitioners will generally be managed within the structure of their usual supervision and training, noting that the majority of these practitioners are employed in a training capacity.
On a rare occasion in which an extraordinary review is deemed necessary by the Executive Director, a scope of clinical practice committee (as defined by the Health Act) will be convened by the Executive Director of Medical Services (EDMS) at Canberra Hospital & Health Services or the Director of Medical Services at Calvary Health Care ACT (Calvary Public Hospital).

Guided by the review principles below (see 3.1), the complaint will be examined and a line of action agreed in consultation with the clinician. The constitution of the committee is to be agreed by the clinician and is to include a representative of the People, Service and Strategy Branch (PSSB).

2.4. Complaints about Senior Medical and Dental Practitioners (SMDPs)

The majority of competence concerns for SMDPs will be managed by the line manager with the assistance of the Clinical Director as necessary, or the Executive Director of the relevant area for complaints about Clinical Director competence. If the complexity of the matter requires additional assistance, the EDMS at Canberra Hospital & Health Services or the Director of Medical Services at Calvary Public Hospital will provide support and guidance to the Clinical Director and the clinician under review. The Director of MDPSU is available to clinicians, Clinical Directors and medical administrators for the provision of advice regarding options and resources for competence reviews.

3. Review Processes

3.1. Types of Review

The table below presents an outline of options for managing a complaint about the clinical competence of a clinician.

The types of review are descriptive, not prescriptive, and represent different approaches to management, depending on the nature of the complaint. They are intended as a guide to assist in determining the most appropriate management action for dealing with a complaint about the clinical competence of a clinician:

<table>
<thead>
<tr>
<th>A. Informal Review</th>
<th>B. Formal Review</th>
<th>C. Formal Extended Review</th>
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<tbody>
<tr>
<td>• An isolated variance in a patient’s health outcome, which is non-fatal or leads to non-serious impairment.</td>
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<tr>
<td>• A near miss.</td>
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<tr>
<td>• A variance in a patient’s health outcomes that leads to a fatality or disability or to serious impairment.</td>
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<tr>
<td>• A trend over time concerning clinical performance, behavior or practices that vary from those of peers or national standards.</td>
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<tr>
<td>• Evidence of a pattern of sub-optimal or serious gaps in clinical performance, behavior or practices.</td>
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All Type C reviews and many Type B reviews are most appropriately managed by referral to the CPC (see 3.3).
3.2 Principles for Reviews

The HD uses the CanMEDS 2005 Physician Competency Framework ("the CanMEDS Framework") as its framework of assessment of clinical competence (see Attachment 1). The review process is to be managed as expeditiously as possible, bearing in mind the impact of the process on the clinician and the clinical service. The clinician is to be provided with procedural fairness in all formal dealings with the HD. These include notification in writing of:

1. The anticipated process;
2. The nature of the allegation in sufficient detail to enable the clinician to respond to it;
3. The fact that the clinician is entitled to be accompanied by a support person in all formal forums;
4. The right of the clinician to request a reasonable time to become familiar with any relevant matters (minimum of 24 hours); and
5. The right of the clinician to be given a fair hearing prior to decision-making.

Any recommendation arising from the review process must be made without bias and be based on evidence. It is a requirement of employment or engagement with the HD that clinicians comply with an appropriately conducted competence review process.

The conduct of any competence review is confidential and as such, no person making a notification of a complaint will be provided with any information about the outcomes of the review of that complaint, including any findings of, or proposed actions arising from, the review.

Situations will arise, from time to time, where a person participating in a competence review may perceive a conflict of interest related to the complaint. When this occurs, it is the responsibility of that person to declare the nature of the interest as soon as is reasonably practicable after the relevant facts come to the person’s knowledge. In all formal reviews, the clinician will have the option to decline the involvement of a colleague in the review, if the clinician perceives that the colleague has a conflict of interest. Conflict of interest must be formally documented prior to a review process.

3.3 Involvement of the Clinical Practice Committee (CPC)

The CPC is an approved public sector scope of clinical practice committee under the Health Act 1993 (the Health Act). The Terms of Reference (TOR) for the CPC are at Attachment 2.

High level complaints about the clinical competence of SMDPs are referred by the Executive Director to the CPC by contacting the Director of MDPSU. Calvary Public Hospital complaint referral would be initiated by the Director of Medical Services contacting the Director of MDPSU.

The CPC facilitates a competence review by peers of the clinician through a process specified in the Health Act.

Recommendations from the CPC are provided to the decision-maker as defined under the Health Act:

- For health facilities operated by the HD, the decision-maker is the Deputy Director-General – Canberra Hospital and Health Services, noting the Director-General of the Health Act.
HD, acting under the power in section 35 (4) of the Public Sector Management Act 1994, has delegated the decision-making powers under Part 5 of the Health Act to the Deputy Director-General – Canberra Hospital and Health Services; and

- For Calvary Public Hospital, it is the Chief Executive Officer of Calvary Health Care ACT.

The secrecy provisions of the Health Act apply to reviews conducted by the CPC, and specifically:

- Protect the confidentiality of documents created by, or solely for, these review processes;
- Protect the confidentiality of proceedings of these review processes;
- Protect documents and proceedings of these review processes from being used in legal actions; and
- Protect from liability and indemnity all persons involved in the conduct of these review processes who act in good faith in carrying out their responsibilities.

The CPC will consider the information provided in support of the concern about competence and will seek authentication of the concerns through discussions with the clinician, medical record review, staff interviews and other data as necessary.

3.4 External Review

The CPC may decide to commission an external review when there is:

- A perceived lack of internal expertise to conduct the review; or
- The potential for an internal review to be criticised through perceived lack of impartiality; or
- The complaint involves a sub-specialty with only a small number of practitioners in the ACT.

On receipt of a confidential report arising from an external review, the CPC will:

- Consider the findings and recommendations of the report and formulate a proposed response in relation to any recommendations of the external review;
- Provide the clinician with a copy of the report, together with the CPC proposed recommendations arising from the report;
- Invite the clinician to make a submission to the CPC about the confidential report and proposed recommendations; and
- Consider any submission made by the clinician about the confidential report.

4. Outcomes of the Review Process

4.1 Report and Outcomes

The CPC is responsible for ensuring that a report and any recommendations arising from the review (either internal or external) are:

- Supported by the findings of the review;
- Commensurate with identified gaps in the performance, skills or knowledge of the clinician; and
- Responsive to potential, or real, health and safety risks.
4.2 Withdrawal or amendment of scope of clinical practice

4.2.1. Where the CPC proposes to make a recommendation that the clinician’s scope of clinical practice is to be withdrawn or amended, or the clinician’s terms of engagement should be amended, suspended or ended, the recommendation must not be forwarded to the decision-maker until:

- The clinician has been provided with a written notice (a recommendation notice) stating the proposed change and the reasons for the committee’s proposed change;
- The clinician has been given an opportunity, in accordance with Section 65 of the Health Act, to make a submission to the CPC within 21 days; and
- The CPC has considered any submission made by the clinician.

4.2.2 On completion of the review, the CPC must prepare a report (a scope of clinical practice report) about the review and provide a copy to the decision-maker and the clinician. In accordance with Section 67(3) of the Health Act the recommendation must include whether -

a) the scope of clinical practice of the clinician should stay the same, be amended or be withdrawn; and

b) the terms of engagement of the clinician by the health facility should be amended; and

c) the engagement of the clinician by the health facility should be suspended or ended; and

d) the reasons for the CPC’s recommendation.

4.2.3 The decision-maker considers the CPC recommendation and must notify the clinician and relevant staff in writing of a decision in relation to the scope of clinical practice within 10 working days of receipt of the CPC recommendation.

When the decision-maker decides that a scope of clinical practice is to be changed from that originally determined and the change is likely to be detrimental to the clinician, the decision-maker is required to develop a “scope of clinical practice executive decision notice” and notify the clinician and other persons as specified in Section 70 of the Health Act.

NOTE: A scope of clinical practice decision notice must meet the requirements of a reviewable decision notice under the ACT Civil and Administrative Tribunal Act 2008 and the ACAT Regulations.

The requirements of a reviewable decision notice are set out in the regulations as follows:

7 Requirements for reviewable decision notices—Act, s 67A (3)

A reviewable decision notice given to a person in relation to a decision under an authorising law must —

(a) state the decision; and

(b) if the decision puts, or amends, a condition on a licence or registration— include a copy of the condition; and

(c) state that the person may apply for a reasons statement in relation to the decision under the Act, section 22B; and

(d) state that the person may apply to the ACAT for review of the decision; and

(e) state how to make the application; and

(f) state the other options available under ACT laws to have the decision reviewed.
4.2.4 Appeals

Where the decision-maker makes a decision to:
- (a) amend or withdraw the scope of clinical practice of the clinician; or
- (b) amend the terms of engagement of the clinician; or
- (c) suspend or end the engagement of the clinician;
the affected clinician may make an application to the ACT Civil and Administrative Appeals Tribunal (ACAT) for a review of the decision on its merits. Further information about the ACAT can be found at [www.acat.act.gov.au](http://www.acat.act.gov.au).

### Evaluation

Refer to the Consumer Feedback Management Policy

#### Outcome

100% of concerns and complaints regarding the clinical competence of a doctor or dentist are managed according to this SOP.

#### Method

All competency reviews will be evaluated on conclusion by the Director of the Medical and Dental Professional Standards Unit, utilising:
1. A customer satisfaction tool provided to all stakeholders.
2. A record of duration of the review with explanation of inappropriate delays.
3. A record of the outcome of the review.
4. Summary information from each review will be provided at six month intervals to the Quality and Safety Committee.
5. Close liaison about management and evaluation will be maintained with the Executive Director, Medical Services, Canberra Hospital and Health Services.

### Related Legislation and Policies

**Related Legislation**

- *Health Records (Privacy and Access) Act 1997*
- *Human Rights Act 2004*
- *Health Practitioner Regulation National Law (ACT) Act 2010*
- *Discrimination Act 1991*
- *Territory Records Act 2002*
- *Public Interest Disclosure Act 1994*
- *Health Act 1993*
- *ACT Civil and Administrative Tribunal Act 2008*
- *ACAT Regulations*
- *Public Interest Disclosure Act 1994*

**Standards**

- *ACHS EQuIP 5*
- *ACSQHC Standard 2- Partnering with Consumers*
- *Australian Charter of Healthcare Rights*
- *Australian Standard on Complaint Handling (AS ISO 10002)*
Related Policies
Health Directorate Workplace Safety Policy (CED10-040)
Health Directorate Open Disclosure Policy (CED10-008)
Health Directorate Consumer and Carer Participation Framework (DGD11-094)
Health Directorate Engaging and Consulting with the Aboriginal and Torres Strait Islander Communities in the ACT, The Health Directorate Guide (DGD12-008)
ACT Government Shared Services Procurement policies
Consumer Feedback Management in the Health Directorate Policy and SOP
Health Directorate Public Interest Disclosure Policy

Definitions

**Clinical practice** - means the professional activity undertaken by doctors and dentists for the purposes of investigating patient symptoms and preventing and/or managing illness, together with associated professional activities related to patient care.

**Clinician** – means all doctors and dentists, including interns, resident medical officers, registrars, career medical officers, Fellows, staff specialists and VMOs and does not include nursing and allied health staff. Differentiation of sections applicable to particular staff subgroups is specified in the text.

**Competence** - means the demonstrated ability to provide health care services at an expected level of safety and quality (ACSQHC, 2004).

**Credentials** - means the qualifications, professional training, clinical experience, and training and experience in leadership, research, education, communication and teamwork that contribute to a doctor’s or dentist’s competence, performance and professional suitability to provide safe, high quality health care services.

**Scope of clinical practice** – means the approved extent of an individual doctor’s or dentist’s clinical practice within a particular organisation based on the individual’s credentials, competence, performance and professional suitability, and the needs and the capability of the organisation to support the doctor’s or dentist’s scope of clinical practice.

**Vexatious** – means without sufficient grounds and serving only to cause annoyance.

References

- Australian Commission on Safety and Quality in Health Care (ACSQHC, 2004). *Standard for Credentialling and Defining the Scope of Clinical Practice.* Canberra: Australia. ACSQHC.

Attachments

**Attachment 1:** CanMeds 2005 Physician Competency Framework Summary
**Attachment 2:** CPC Terms of Reference
The CanMEDS 2005 Physician Competency Framework

Medical Expert As Medical Experts, physicians integrate all of the CanMEDS Roles, applying medical knowledge, clinical skills, and professional attitudes in their provision of patient-centered care. Medical Expert is the central physician Role in the CanMEDS framework.

**Enabling Competencies:** Physicians are able to...
1. Function effectively as consultants, integrating all of the CanMEDS Roles to provide optimal, ethical and patient-centered medical care
2. Establish and maintain clinical knowledge, skills and attitudes appropriate to their practice
3. Perform a complete and appropriate assessment of a patient
4. Use preventive and therapeutic interventions effectively
5. Demonstrate proficient and appropriate use of procedural skills, both diagnostic and therapeutic
6. Seek appropriate consultation from other health professionals, recognizing the limits of their expertise

Communicator As Communicators, physicians effectively facilitate the doctor-patient relationship and the dynamic exchanges that occur before, during, and after the medical encounter.

**Enabling Competencies:** Physicians are able to...
1. Develop rapport, trust and ethical therapeutic relationship with patients and families
2. Accurately elicit and synthesize relevant information and perspectives of patients and families, colleagues, and other professionals
3. Accurately convey relevant information and explanations to patients and families, colleagues and other professionals
4. Develop a common understanding on issues, problems and plans with patients, families, and other professionals to develop a shared plan of care
5. Convey effective oral and written information about a medical encounter

Collaborator As Collaborator, physicians effectively work within a healthcare team to achieve optimal patient care.

**Enabling Competencies:** Physicians are able to...
1. Participate effectively and appropriately in an interprofessional healthcare team
2. Effectively work with other health professionals to prevent, negotiate, and resolve interprofessional conflict

Manager As Manager, physicians are integral participants in healthcare organizations, organizing sustainable practices, making decisions about allocating resources, and contributing to the effectiveness of the healthcare system.

**Enabling Competencies:** Physicians are able to...
1. Participate in activities that contribute to the effectiveness of their healthcare organizations and systems
2. Manage their practice and career effectively
3. Allocate finite healthcare resources appropriately
4. Serve in administration and leadership roles, as appropriate

Health Advocate As Health Advocate, physicians responsibly use their expertise and influence to advance the health and well-being of individual patients, communities, and populations.

**Enabling Competencies:** Physicians are able to...
1. Respond to individual patient health needs and issues as part of patient care
2. Respond to the health needs of the communities that they serve
3. Identify the determinants of health for the populations that they serve
4. Promote the health of individual patients, communities, and populations

Scholar As Scholar, physicians demonstrate a lifelong commitment to reflective learning, as well as the creation, dissemination, application and translation of medical knowledge.

**Enabling Competencies:** Physicians are able to...
1. Maintain and enhance professional activities through ongoing learning
2. Critically evaluate medical information and its sources, and apply this appropriately to practice decisions
3. Facilitate the learning of patients, families, students, residents, other health professionals, the public and others, as appropriate
4. Contribute to the creation, dissemination, application and translation of new knowledge and practices

Professional As Professionals, physicians are committed to the health and well-being of individuals and society through ethical practice, profession-led regulation, and high personal standards of behaviour.

**Enabling Competencies:** Physicians are able to...
1. Demonstrate a commitment to their patients, profession, and society through ethical practice
2. Demonstrate a commitment to their patients, profession and society through participation in profession-led regulation
3. Demonstrate a commitment to physician health and sustainable practice
## Terms of Reference

### Role

The role of the Clinical Practice Committee (CPC) is to provide specialist advice in the credentialing and defining of scope of clinical practice of senior medical practitioners and dentists, through its conduct of extraordinary (or unplanned) review of the scope of clinical practice. The CPC is established as an approved public sector scope of clinical practice committee under the *Health Act 1993* ("the Health Act") and exercises its powers and perform its functions according to the *Health Act*.

### Reporting mechanism

In accordance with the Health Act, the CPC reports to the “Chief Executive (CE) of the health facility”:

- For health facilities operated by the Health Directorate, the CE is the Deputy Director-General – Canberra Hospital & Health Services, noting the Director-General of the Health Directorate, acting under the power in section 36 (4) of the *Public Sector Management Act 1994*, has delegated the decision-making powers under Part 5 of the Health Act to the Deputy Director-General – Canberra Hospital & Health Services; and
- For Calvary Public Hospital, the CE is the Chief Executive Officer of Calvary Health Care ACT.

### Functions

To conduct the extraordinary review of medical and dental scope of clinical practice for senior medical practitioners and dentists.

### Membership

The core membership of the CPC includes:

- two senior medical practitioners nominated by the Canberra Hospital Medical Staff Council (MSC),
- two senior medical practitioners nominated by Calvary Public Hospital Medical Staff Council (MSC), and
- two senior medical practitioners nominated by the Health Directorate.

Core members are appointed for a 3-year term and may be re-appointed for additional 3-year terms. Other senior medical and dental practitioners may be co-opted as members to the CPC on an “as required” basis to work on a particular review. If a satisfactory CPC cannot be formed for a particular review, an external review may be arranged.

### Quorum

Three members.
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<tr>
<th><strong>Chair</strong></th>
<th>As appointed by the Director-General for each review.</th>
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<tbody>
<tr>
<td><strong>Deputy Chair</strong></td>
<td>Nominated on an “as required” basis for a particular review.</td>
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</tbody>
</table>
| **Secretariat** | • Dr Elizabeth O’Leary, Medical Administrator.  
• MDPSU Secretariat. |
| **Agenda requests** | Meeting papers prepared by Secretariat and circulated in advance of meetings. |
| **Meeting Frequency /Duration** | On an as-required basis / 2-3 hours.  
A bi-annual review meeting will be held for the purposes of reflective learning and process improvement. |
| **TOR Review Frequency** | Annual. |