



HEALTH PROFESSIONS LICENSING AUTHORITY	
TITLE: Management of practitioners who have been practising unlicensed	
EFFECTIVE DATE: May 2004	UPDATED: August 2005: October 2008
BOARD: All Health Practitioner Registration Boards	

Purpose

This procedure has been developed to provide guidance to the staff at the Health Professions Licensing Authority, members of Health Practitioner Registration Boards and registrants in relation to the actions to be taken by the Health Practitioner Registration Boards when practitioners are found to be practising unlicensed.

Legislative Requirements Under The Health Practitioners Act (The Act).

Section 101. Offence to practise health care if unregistered;

- (1) A person must not –
- (a) carry out an act that by or under an Act is required to be carried out by a health practitioner; or
 - (b) carry out an act that by or under an Act is required to be carried out by a health practitioner holding a practising certificate,

unless he or she is registered or enrolled and holds a practising certificate.

...

Section 102. Offence to practise in restricted area unless authorised

- (1) A person must not practise in a restricted practice area unless the person has an authorisation to practise in this area.

...

Section 103. False claims

- (1) A person must not hold himself or herself out, or allow himself or herself to be held out, as being registered or enrolled in a category of registration or enrolment unless he or she is registered or enrolled in the category.

- (2) A person must not hold himself or herself out, or allow himself or herself to be held out, as being in any way entitled to practise in a category of health care practice unless he or she holds a practising certificate issued by the relevant Board.

- (3) A person must not hold himself or herself out, or allow himself or herself to be held out, as being in any way authorised to practise in a restricted practice area unless he or she has an authorisation to practise in the restricted practice area.

Section 104. Unauthorised use of certain titles

- (1) A person must not practise a profession or trade under a title specified in Schedule 7, column 2 unless he or she is registered or enrolled in a category of registration or enrolment in the category of health care practise specified opposite the title column 1

The Act also provides that an offence under sections 101, 102, 103 and 104 is a regulatory offence, with a penalty of 500 penalty units.

Section 55. Making complaints

Section 55(2) of the *Health Practitioners Act 2004* states that “*the relevant Board may on its own motion, make a complaint in respect of the conduct of a health practitioner.*”

Section 56 Specific matters in respect of which complaints may be made

Section 56(2) of the Act states that a health practitioner is guilty of professional misconduct if the health practitioner:

...

(e) *when required to have a practising certificate – practises without a practising certificate;*

(f) *practises in a restricted practice area without an authorisation to practise in the area;*

...

Procedure

First offence

The practitioner will be required to provide a written explanation to the relevant Board as to the circumstances that led to them practising unlicensed.

Action

The Board will consider the written explanation.

The Board may then:

- Require the practitioner to meet with the Board to provide further explanations;
- Provide professional advice via a letter notifying the registrant that subsequent breaches will attract a serious penalty;
- Make an own motion complaint and conduct a preliminary investigation; or
- Seek to have the penalty imposed by a prosecution process.

Second and subsequent offences

The practitioner will be required to provide a written explanation to the relevant Board as to the circumstances that led to them practising unlicensed.

Action

The Board will consider the written explanation.

The Board may then:

- Require the practitioner to meet with the Board to provide further explanations;
- Make an own motion complaint and conduct a preliminary investigation; or
- Seek to have the penalty imposed by a prosecution process.