

## **COMPLAINTS POLICY OF THE NEW ZEALAND ASSOCIATION OF PROFESSIONAL HYPNOTHERAPISTS INCORPORATED**

### **1 Overview**

- 1.1 This complaints policy (**Complaints Policy**) applies to all complaints made about hypnotherapists who are members of the New Zealand Association of Professional Hypnotherapists Incorporated (**NZAPH**) in respect of any concerns about a their conduct, competence, or fitness to provide the service of hypnotherapy (as that term is defined in the NZAPH Constitution (**Constitution**)). In this Complaints Policy, they are referred to as **Member Hypnotherapists**.
- 1.2 Member Hypnotherapists of NZAPH undertake to maintain professional standards as set out in the NZAPH Code of Ethics and any other policies or standards set by NZAPH from time to time.
- 1.3 This Complaints Policy is underpinned by the presumption that prior to making a complaint under this Policy, the person wishing to make a complaint has contacted the Member Hypnotherapist directly in order to attempt to resolve the complaint.

### **2 Complaints**

- 2.1 NZAPH will only consider complaints relating to a Member Hypnotherapist's conduct, competence, or fitness to provide the practice of hypnotherapy. This includes, but is not limited to, concerns that a Member Hypnotherapist:
  - 2.1.1 has engaged in misconduct, including serious misconduct;
  - 2.1.2 has breached or failed to comply with the Code of Ethics;
  - 2.1.3 is not competent, or is unfit, to practice.
- 2.2 In applying to become a Member Hypnotherapist, in accordance with the Constitution, Member Hypnotherapists agree that in the event that they are the subject of a Complaint they will disclose to NZAPH details relating to any associated employment investigation by their Employer and will ensure that any confidential settlement entered into with their Employer allows them to disclose the details of the investigation and settlement to NZAPH for the purposes of determining their ongoing membership with NZAPH (in accordance with clause 11.5.3 below).

### **3 Excluded matters**

- 3.1 NZAPH cannot consider:
  - 3.1.1 complaints brought against Member Hypnotherapists under the Constitution, in respect of the business of NZAPH as an incorporated society (in that instance, the dispute resolution process in the Constitution applies);
  - 3.1.2 employment matters and disputes between a Member Hypnotherapist and their employer relating to their employment arrangement, unless related to that Member Hypnotherapist's practice in hypnotherapy (and/or where we may have a mandatory reporting duty);
  - 3.1.3 complaints currently being investigated by another body, such as the Health & Disability Commission, an appropriate supervisory authority, or the Member Hypnotherapist's employer, although a complaint may be made under this Complaints Policy at the conclusion of an investigation by another body;

- 3.1.4 complaints involving a crime, which should be referred to the Police, or the breach of other applicable legislation, which should be referred to the relevant agency; and/or
  - 3.1.5 complaints about someone who is not a NZAPH Member Hypnotherapist.
- 3.2 NZAPH reserves the right to suspend or cease an investigation into a complaint if it becomes aware of any of the matters referred to in clause 3.1 above after commencing an investigation.
- 3.3 NZAPH may, within six (6) months of becoming aware of a complaint or the circumstances of a complaint, decline to investigate a complaint if NZAPH considers in its sole discretion that:
  - 3.3.1 it is trivial or vexatious;
  - 3.3.2 there is insufficient evidence to enable it to be investigated;
  - 3.3.3 there is an alternative remedy available to the Complainant, such as resource to a court, tribunal, appropriate supervisory authority, or commission; and/or
  - 3.3.4 having regard to all the circumstances, any further action is unnecessary or inappropriate.

#### **4 Complaints Convenor**

- 4.1 The NZAPH Secretary will act as the Complaints Convenor, and will be primarily responsible for receiving, responding to, and managing the escalation of complaints against any Member Hypnotherapist, in accordance with this Complaints Policy.
- 4.2 The Complaints Convenor will be appointed by the President.
- 4.3 For the avoidance of doubt, the Complaints Convenor may make a Complaint against a Member Hypnotherapist in accordance with this Complaints Policy, in which case the President will carry out the usual functions of the Complaints Convenor.

#### **5 Making a complaint**

- 5.1 A complaint should contain the following information, to the extent known by the Complainant:
  - (a) the Complainant's name and contact details;
  - (b) the name of the Member Hypnotherapist(s) against whom the complaint is made;
  - (c) a brief description of the complaint;
  - (d) any relevant supporting evidence;
  - (e) whether the Complainant has contacted the Member Hypnotherapist first to attempt to resolve the dispute and why it was unable to be resolved; and
  - (f) whether the complaint has been referred to any other regulatory body or government authority, the Member Hypnotherapist's employer, and/or whether there have been any related legal proceedings.
- 5.2 If the Complainant cannot provide the information set out in clause 5.1, the complaint may not be able to be accepted for consideration.
- 5.3 Complaints must be in writing and addressed to the Complaints Convenor. Where possible email to [info@NZAPH.com](mailto:info@NZAPH.com) is preferred, or alternatively by post to: Secretary NZAPH, 39 Black Beech Street, Birchville, Upper Hutt 5018.

## **6 Receipt of a complaint**

6.1 Upon receiving a complaint, the Complaints Convenor will:

- 6.1.1 receive and assess the complaint;
- 6.1.2 acknowledge receipt of the complaint in writing to the Complainant within 21 working days, we will endeavour to acknowledge within 3 working days and if necessary, request any further information from the Complainant so the complaint satisfies clause 5.1 above;
- 6.1.3 keep a record of progress of the complaint; and
- 6.1.4 report to the President that a complaint has been received.

## **7 Confidentiality**

7.1 From the moment a complaint is made, the fact of the complaint itself and the complaint investigation process must remain confidential so as to not to prejudice the outcome of the complaint process.

7.2 For the avoidance of doubt, this obligation of confidence applies to the Complaints Policy as a whole, and is subject only to clause 15 relating to publication of outcomes.

7.3 Where the Complainant or the Respondent wishes to involve a third party in the complaint process such that they will be providing details of the complaint to that third party (such as an in-person witness, representative, or support person), they must first obtain the written consent of the other party to the complaint. Practically, the Complaints Convenor will facilitate the seeking and obtaining of written consent so that the Complainant and Respondent do not communicate directly with each other. For the avoidance of doubt, this will not be necessary:

- 7.3.1 where a party is obtaining legal advice; and/or
- 7.3.2 where a party obtains a written character statement from a third party who is otherwise not provided with details of the complaint.

## **8 Complaint which is not accepted**

8.1 If a complaint is not accepted for investigation in accordance with this Complaints Policy, the Complaints Convenor will notify the Complainant in writing and communicate the reason/s for such decision. They may recommend, where applicable, a suitable supervisory authority or other third party to whom a complaint could be made.

8.2 In addition, the Complaints Convenor will report to the President on any complaint which is not accepted, the reasons for which it was not accepted, and what action has been taken.

8.3 The President will have the right to review the complaint and be provided with a copy of all correspondence and other relevant documentation and may take any necessary action as deemed appropriate.

## **9 Complaint which is accepted**

9.1 If a complaint is accepted for investigation in accordance with this Complaints Policy, the Complaints Convenor will notify the Complainant in writing that:

- 9.1.1 the complaint has been accepted for investigation; and
- 9.1.2 the complaint will be forwarded:
  - (a) first to the Respondent for their response; and

(b) then to the Respondent's manager/supervisor (where applicable).

9.2 When notifying the Complainant, the Complaints Convenor must advise them that their name will be provided.

## **10 Respondent**

10.1 The Complaints Convenor will forward the complaint to the Respondent, who will be given 15 working days to respond to the Complaints Convenor.

10.2 When forwarding the complaint in accordance with clause 10.1, the Complaints Convenor will notify the Respondent that:

10.2.1 the complaint will be sent to the Respondent's manager / supervisor (where applicable) in three (3) working days; and

10.2.2 must specify the date on which the manager / supervisor will be provided with the complaint (where applicable).

10.3 On the specified date, the Complaints Convenor will provide the complaint to the Respondent's manager / supervisor (where applicable).

10.4 The manager and/or supervisor will then be given 15 working days to respond to the Complaints Convenor (where applicable).

10.5 Neither party will be provided with a copy of the other party's response (including that of the Respondent's manager / supervisor where applicable), except at NZAPH's sole discretion.

## **11 Management Committee to review complaints**

11.1 Upon receipt of any response from the Respondent's manager / supervisor within the 10-working day timeframe (where applicable), the Complaints Convenor will contact the NZAPH Management Committee (**MC**) and advise them that a complaint has been received in respect of the Respondent. The Respondent will be named, and the MC will be asked to advise if they have any conflicts of interest in respect of the complaint. The MC may convene a subcommittee for the purposes of this Complaints Policy, in accordance with the Constitution.

11.2 A conflicted MC Member may not participate any further and will be removed from the MC for the purposes of the complaint.

11.3 Once the Complaints Convenor has confirmed that there are no conflicts of interest among the MC Members (noting clause 11.2 above), the Complaints Convenor will provide the following to the MC;

11.3.1 the complaint and any supporting documentation received with it;

11.3.2 the Respondent's response and any supporting documentation received with it;

11.3.3 the response from the Respondent's manager and/or supervisor and any supporting documentation received with it; and

11.3.4 any other relevant information.

11.4 The MC will review the material referred to at clause 11.3 and advise its findings in respect of the complaint to the Complaints Convenor, who will prepare a draft report for review by the MC.

11.5 If the MC concludes that the complaint is upheld, in whole or in part, it may among other things:

11.5.1 issue a warning and place the Respondent on probation;

- 11.5.2 impose conditions on the Respondent's membership of NZAPH;
- 11.5.3 issue recommendations to the President and/or the Board where it considers necessary, including an order that the Respondent's membership of NZAPH be suspended or terminated;
- 11.5.4 determine that no further action or measures are necessary; and/or
- 11.5.5 direct the Complainant to refer the matter, including the MC's findings, to Police, or to another appropriate tribunal or professional body.
- 11.6 Findings of the MC must be reached by consensus. In the event of a lack of consensus, the MC must do all things reasonably necessary to reach a consensus (e.g., request further information from the parties).
- 11.7 Where the MC recommends termination of membership of NZAPH, the Respondent may request to meet with the MC in person or via electronic means, prior to any decision being made by the Board.
- 12 Draft report**
  - 12.1 Once reviewed and approved by the MC, the draft report will be sent separately to each of the Complainant and the Respondent, who will be given 15 working days to respond.
  - 12.2 The Complaints Convenor will provide any responses received from the Complainant and/or Respondent to the MC, who will review and finalise their report in accordance with clause 13 below.
- 13 Final report**
  - 13.1 The Complaints Convenor will update and finalise the report in accordance with the final findings reached by the MC.
  - 13.2 The Complaints Convenor will review the final report for consistency with past complaint findings, and for any other discrepancies with previous practice. The Complaints Convenor may consult with the President as necessary to ensure consistency of the findings and recommendations. Any concerns about consistency will be conveyed to the MC, who will have the final say as to the content of the report.
  - 13.3 The Complaints Convenor will provide the final report separately to each of the Complainant and the Respondent, notifying them of the complaint outcome and the right of appeal.
  - 13.4 Reports (draft and final) will remain confidential to the parties, subject to clause 15 below regarding publication of outcomes.
- 14 Appeals**
  - 14.1 The Complainant and/or the Respondent may appeal a finding of the MC within 15 working days of the date on which they receive the final report, by notice in writing to the President (**Appeal**).
  - 14.2 Appeals may be made by submissions on the following grounds:
    - 14.2.1 Where there has been a procedural error in the MC's process;
    - 14.2.2 Where there has been a material error of fact in the MC's findings; and/or
    - 14.2.3 Where the MC's findings otherwise took into account irrelevant factors or ignored some relevant factors to the extent that a reasonable decision-maker could not have properly arrived at that finding.

- 14.3 Upon receipt of a request for Appeal, the President will:
- 14.3.1 acknowledge receipt to the Appellant;
  - 14.3.2 notify the Appellant in writing as to whether the Appeal is accepted on the basis that it meets the grounds set out in clause 14.2 above, or declined on the basis that it does not meet the grounds set out in clause 14.2.
- 14.4 Where an Appeal is accepted for consideration, the President will notify the Appellant in writing that the opposing party will be advised of the request for appeal, and will then forward the request for appeal to the opposing party.
- 14.5 Upon being notified of the Appellant's request to appeal, the opposing party to the Appeal will have 15 working days to respond to the Appellant's submissions in writing to the President.
- 14.6 Where the opposing party exercises their right of response within the time frame specified in clause 14.5 above, the President will review the response and accordingly re-consider whether the Appeal should proceed in accordance with the grounds listed in clause 14.2.
- 14.7 Where one is provided, the opposing party's response will be provided to the Appellant subject to any lawful grounds for withholding (such as to protect an individual's privacy or where material is legally privileged), as determined by the President.
- 14.8 Where the opposing party does not exercise its right to respond in the time frame set out in clause 14.5, the appeal request will proceed.
- 14.9 An Appeal will be considered on the papers by the President, who shall consider among other things:
- 14.9.1 the complaint;
  - 14.9.2 the MC's final report;
  - 14.9.3 any submissions or responses filed by the Appellant; and
  - 14.9.4 any submissions or responses filed by the opposing party.
- 14.10 The President shall issue their decision in writing as soon as practicable, and will inform the Complaints Convener who will separately inform each of the Respondent, the Complainant, and the MC of the outcome of the appeal. The President's decisions can include:
- 14.10.1 the appeal is unsuccessful;
  - 14.10.2 one of the grounds of appeal is made out, and the complaint is to be directed to the MC for reconsideration;
  - 14.10.3 one of the grounds of appeal is made out, and the complaint is to be directed to a new MC to be considered afresh; or
  - 14.10.4 one of the grounds of appeal is made out, but in the circumstances, the MC's decision was not materially prejudiced by this error, and the MC's decision still stands.
- 15 Publication of outcome**
- 15.1 Where a complaint is upheld, the MC may request the Complaints Convenor to advise all Member Hypnotherapists, professional associations, industry professionals, and/or the public of the outcome and any disciplinary measures taken against a Member Hypnotherapist in a manner the MC recommends, having regard to the confidentiality of complaints.

- 15.2 Alternatively the MC may direct the Complaints Convenor to publish a summary of the outcome in relation to an upheld complaint in a manner that does not identify the Member Hypnotherapist and the Complainant, nor provides information that enables the Member Therapist or Complainant to be identified.
- 15.3 A Respondent against whom a complaint is not upheld may request publication of the outcome. The MC will consider whether there are compelling reasons against publication of the outcome of a complaint that has not been upheld, and if it considers it appropriate (in its sole discretion) the MC will ask the Complaints Convenor to advise all Member Hypnotherapists, professional associations, industry professionals, and/or the public of the outcome in a manner the MC recommends, having regard to the confidentiality of complaints.

## **16 Compliance with timeframes**

- 16.1 Failure to comply with a timeframe specified in this Complaint Policy does not automatically invalidate a complaint or an appeal, or the consideration or investigation of a complaint or an appeal in accordance with this Complaints Policy. If a timeframe stipulated in this Complaints Policy is not complied with, the President will report to the Board about that non-compliance and the Board will:

16.1.1 determine whether:

- (a) the Complainant has shown there are exceptional circumstances which have led to a timeframe not being complied with; or
- (b) the failure to comply has caused or is likely to cause unfairness to the Respondent; and if so

16.1.2 whether the unfairness or exceptional circumstances are of such a level that the consideration or investigation of the complaint or appeal should be discontinued; and, if so

16.1.3 discontinue the complaint or appeal and instruct the Complaints Convenor to notify the parties accordingly.

## **17 Interpretation**

- 17.1 Unless the context otherwise requires:

**Appellant** means the party seeking to appeal a finding.

**Board** has the meaning in set out in the Constitution.

**Complainant** means the person making a complaint.

**Complaints Convenor** means the person appointed in accordance with clause 4 to receive, respond to, and manage complaints as set out in this Complaints Policy, usually NZAPH's Secretary.

**Hypnotherapy** has the meaning set out in the Constitution.

**Management Committee** means the Management Committee of the NZAPH, as per the Constitution.

**Respondent** means the Member Hypnotherapist who is the subject of a complaint.

**President** means the President of NZAPH.

**Working day** means a day which is not a Saturday, Sunday, or public holiday in New Zealand.

17.2 Terms defined in the Constitution have the same meaning in this Complaints Policy.

17.3 In applying this Complaints Policy:

17.3.1 The terms **written** and **in writing** include the sending of any information in electronic form, including by email;

17.3.2 Singular will include plural and vice versa; and

17.3.3 References to clauses are to clauses of this Complaints Policy.