

## Faster Cancer Treatment: Nurse Endoscopy

# Review: Professional accountability and liability Nurse Endoscopy training

This review has been prepared by Jacky Watkins, Project Manager, Northern Regional Alliance with oversight by Margaret Dotchin, Clinical lead endoscopy nursing project, Chief Nursing Officer, Auckland DHB and as part of a Service Improvement Initiative for the Ministry of Health's (MoH) Faster Cancer Treatment (FCT) Programme.

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# Introduction

Capitalising on the momentum created by the Endoscopy Workforce Symposium (28 April 2014) with Health Workforce New Zealand (HWNZ) and the Ministry of Health a National Nurse Endoscopy Advisory Group (NEAG) was established to develop and implement endoscopy nursing roles as part of the expected workforce demands of the Bowel Screening program. The Northern Regional Authority (Faster Cancer Treatment) contracted with the Ministry of Health to set up a Nurse Endoscopist (NE) project to align with the national process.

The Ministry of Health project brief required a report of training and service requirements to support the introduction of Nurse Endoscopy. The National Nurse Endoscopy Advisory Group (NEAG) acknowledge that work based training in an apprenticeship model is central to successful endoscopist training. This requires a consultant endoscopist (who has preferably completed the colonoscopy train the trainer course) having a reduced list with a trainee NE. The reduction in patients will allow time for teaching before, during and after each patient. The NRA NE project manager engaged with DHB gastroenterology services to assess capacity and willingness for provision of work based training for Nurse Endoscopy.

A common theme that emerged during the consultation process was concern about the Consultant trainer having on-going accountability for the Nurse Endoscopist's practice after their training was completed. The Nursing Council New Zealand Guideline for expanded practice poses the question: Does the nurse understand their level of accountability? Accountability for practice is clearly explained in the Nursing Council New Zealand Guideline for expanded practice as well as the Medical Council of New Zealand Good Medical Practice guideline. This paper will review Nurse Endoscopist expanded nursing scope of practice in New Zealand and the implications for nursing, medical and employing organisation accountability and liability. New Zealand legislation and literature will be reviewed with reference to international best practice where appropriate.

## Nurses' accountability and liability

All nurses working in New Zealand are accountable for their practice and major nursing organisations in New Zealand (as in other countries) include professional indemnity insurance as part of the membership package (Carryer & Boyd, 2003).

### Working within scope of practice

Nursing practice in New Zealand is governed by Nursing Council New Zealand (NCNZ) as legislated in the Health Practitioners Competence Assurance Act 2003 (HPCA) ). The primary function of NCNZ is to protect the health and safety of members of the public by ensuring that nurses are competent and fit to practise. Part 1 section 8 of the HPCA states that 'No health practitioner may perform a health service that forms part of a scope of practice of the profession in respect of which he or she is registered unless he or she is permitted to perform that service by his or her scope of practice; and performs that service in accordance with any conditions stated in his or her scope of practice'.

### Nursing accountability

The Registered Nurse scope of practice states that: 'Registered nurses are accountable for ensuring all health services they provide are consistent with their education and assessed competence, meet legislative requirements and are supported by appropriate standards' (Nursing Council of New Zealand website, 2015). The New Zealand Nurses Organisation Gastroenterology Nurse Section (NZGNS) standards of practice state that "gastroenterology and endoscopy nurses are accountable for their own nursing practice and provide safe, quality care" (NZGNS, 2000).

**Nursing Council of New Zealand Code of Conduct for Nurses** (2012) states that a nurse should:

- 'Maintain health consumer trust by providing safe and competent care
- Recognise and work within the limits of your competence and your scope of practice.
- Ask for advice and assistance from colleagues especially when care may be compromised by your lack of knowledge or skill.
- Reflect on your own practice and evaluate care with colleagues.
- Deliver care based on best available evidence and best practice.' (pg. 6)

### Disciplinary charges of professional misconduct

The grounds on which a health care practitioner including a nurse may be disciplined are stated in section 100 of the HPCA. 'A nurse may be disciplined if the Health Practitioners Disciplinary Tribunal finds the nurse guilty of professional misconduct because of an act or omission that amounts to malpractice or negligence, or she or he has brought, or is likely to bring, discredit to the profession.

Other grounds for discipline under the Act are if the nurse is convicted of an offence that reflects adversely on his or her fitness to practise, practising without a practising certificate, or practising outside his or her scope of practice or the conditions included in his or her scope of practice' (NCNZ Code of Conduct Pg. 10).

## Expanded practice for Registered Nurses

Nursing Council New Zealand Guideline: Expanded practice for Registered Nurses published in 2010 stated that the individual nurse is responsible for regulating his or her own practice and competence, engages in on-going professional development and is aware of the professional context of her/his own practice, i.e. understands the professional standards and employer policies that guide practice (pg. 6).

In addition there should be principles to guide scope of practice decisions

- 'The primary motivation for any decision about a health activity is to meet consumer's health needs or to enhance health outcomes. This may be an identified gap in health services which results in the public not having access to a service or strategic initiative.
- Ensuring patient safety is the primary consideration when determining if expansion of practice is appropriate.
- Expansion of the scope of practice is based on appropriate consultation and planning, educational preparation and a formal assessment of the nurse's competence to undertake an expanded scope of practice.
- All nurses are accountable for their decisions about whether an activity is beyond their own capacity or scope of practice and for consulting with or referring to other health professionals' (Pg. 11).
- 'Nurses expanding their practice must have the necessary educational preparation and experience to do so safely. Their competence must be assessed by a qualified, competent health practitioner (A person who is registered under the Act, e.g. midwife, medical practitioner, occupational therapist) and documented' (pg. 14).
- 'The outcomes of expanded practice activities are monitored and evaluated' (pg. 12).

For nurses performing endoscopy this will be through maintaining a clinical log and will form part of a professional development portfolio and annual performance review or as part of NCNZ recertification audit process including evidence pertaining to the three expanded practice competencies:

- 'Demonstrates initial and ongoing knowledge and skills for specific expanded practice role/activities through postgraduate education, clinical training and competence assessment.
- Participates in the evaluation of the outcomes of expanded practice, e.g. case review, clinical audit, multidisciplinary peer review.
- Integrates and evaluates knowledge and resources from different disciplines and health-care teams to effectively meet the health care needs of individuals and groups' (NCNZ 2010 Pg.8).

## Complaints to Health and Disability Commissioner

Nurses may also be the subject of complaints to the Health and Disability Commissioner and may be subject to investigation and findings of breach of the Code of Health and Disability Services Consumers' Rights (the Code). Relevantly, under Right 4 of the Code, consumers have the right to have services provided with reasonable care and skill, to have services provided that comply with legal, professional, ethical and other relevant standards, and to have services provided in a manner that minimises the potential harm to, and optimises the quality of life of, that consumer.

Where a provider is found in breach of the Code, the Commissioner has a wide range of recommendatory, reporting and referral powers. The Commissioner is required to notify the Nursing Council in the case of an investigation of a nurse.

The Commissioner may also refer a nurse found in breach of the Code to the Director of Proceedings to decide whether to institute disciplinary proceedings in the Health Practitioners Disciplinary Tribunal for professional misconduct and/or proceedings in the Human Rights Review Tribunal for damages for breach of the Code.

## Civil liability for negligence

Because of New Zealand's no-fault accident compensation scheme, most civil claims for negligence against health professionals, including nurses, are barred by the ACC legislation and claims are extremely rare.

## DHB disciplinary policies

Nurses can be subject to disciplinary action under DHB disciplinary policies for incompetence or poor performance. If a nurse fails to perform in their role to an acceptable standard, even after counselling, coaching or training, there may be grounds for disciplinary action. Disciplinary action may also be taken for acts or omissions amounting to misconduct or, in serious cases, serious misconduct.

# Medical practitioners' accountability and liability

Concern about medical practitioners being held responsible for nurses' practice is not new. Carryer and Boyd (2003) discussed the issue in the context of nurse practitioner and nurse prescribing development. The authors describe medical liability for nursing practice as a myth; in fact nurses are autonomous practitioners who do not require supervision by other health professionals when practising within their designated scope of practice.

The Medical Council of New Zealand “Good Medical Practice” publication (2013) states: ‘Remember that you are personally accountable for your professional practice – you must always be prepared to explain your decisions and actions’ (pg7).

### Delegating patient care to colleagues

The Medical Council of New Zealand “Good Medical Practice” publication (2013) states:

‘Delegating involves asking a colleague to provide treatment or care on your behalf. When you delegate care to a colleague, you must make sure that they have the appropriate qualifications, skill and experience to provide care for the patient. Although you are not responsible for the decisions and actions of those to whom you delegate, you remain responsible for your decision to delegate and for the overall management of the patient. You should pass on complete, relevant information about patients and the treatment they need.

You should ensure that the patient is aware of who is responsible for all aspects of their care, and how information about them is being shared’ (Pg. 14).

As this statement from Good Medical Practice suggests, doctors (including training consultants) will not be responsible for the actions and clinical practice of nurse endoscopists who have completed their training, are credentialed to perform a procedure independently and are acting within their expanded scope of practice.

However, because they remain responsible for their own decisions in assigning or delegating aspects of care to nurse endoscopists and may be responsible for the overall management of patients under their care, doctors should ensure that the procedures and aspects of care delegated or assigned to nurse endoscopists are within the scope of their nurse endoscopy training and expanded scope of practice.

### Medical practitioners’ legal liability

Medical practitioners may be subject to complaints to the Health and Disability Commissioner, disciplinary charges before the Health Practitioners Disciplinary Tribunal, proceedings for damages in the Human Rights Review Tribunal and DHB disciplinary processes, just as nurses are. However, the subject of any findings, charges or proceedings against a medical practitioner would need to be their actions, the clinical care provided by them or decisions made by them (including to delegate to nurse endoscopists).

### Assessment and supervision

A repeated comment heard during engagement around nurses performing endoscopy has been: ‘I want to make sure nurses are kept safe’. This could be interpreted as paternalistic or as positive desire to ensure safe expansion of practice. The most effective way of ensuring safe expansion of practice is to follow Good Medical Practice guidance (2013) on providing objective assessments of performance and supervision that apply equally to assessment or supervision of a nurse:

- ‘Be honest and objective when appraising or assessing the performance of colleagues, including those whom you have supervised or trained. Patients may be put at risk if you describe as competent someone who has not reached or maintained a satisfactory standard of practice’ (p27).
- ‘Make sure that all staff for whom you are responsible and who require supervision, including locums, less experienced colleagues, and international medical graduates who are new to practice in New Zealand are properly supervised. If you are responsible for supervising staff, you should make sure you supervise at an appropriate level taking into account the work situation and the level of competence of those being supervised’ (p34).

Use of direct observation of procedural skills (DOPs) and direct observation of polypectomy skills (DOPyS) help to reduce subjectivity (Sedlack 2010, Gupta 2012) and will be built into the training program for nurses performing endoscopy. This is equivalent to the training of other endoscopist in New Zealand in keeping with the strategic goal of the National Endoscopy Quality Improvement Programme (NEQIP) to train endoscopists not surgeons, physicians or nurses who perform endoscopy.

A training doctor has a responsibility to ensure that teaching and assessment is consistent with national standards irrespective of who they are teaching.

## Organisational accountability and liability

Employing organisations may be vicariously liable for the acts or omissions of employees including doctors and nurses. Vicarious liability recognises the role the employer plays in for instance employing the right people, controlling the resources available to an employee and in facilitating or creating barriers to on-going education (Carryer & Boyd 2003).

Vicarious liability of employers does not replace direct liability of individual doctors and nurses. The individual nurse or doctor at fault will remain liable as well.

Employing organisations could be found directly or vicariously liable for a breach of the Code of Health and Disability Services Consumers’ Rights for failing to have adequate training and credentialing in place for nurse endoscopy or failing to have appropriate systems in place, including appropriate training and credentialing, to support nurse endoscopy practice.

Indeed, the New Zealand Nursing Council “Guideline: Expanded Practice for Registered Nurses” contains clear statements as to the expectations and responsibilities of employers in relation to expanded practice for registered nurses:

- “Employers need to ensure they have the appropriate systems in place to support the safe expansion of registered nurse activities or role.
- Non-nurse employers are expected to seek professional advice on expanded practice activities and roles, from their director of nursing, senior nurse or professional organisation.
- The employer is responsible for ensuring the appropriate skill mix of staff so that additional activities completed by the registered nurse/s do not compromise the standard of care provided to health consumers.
- The employer must ensure there are clear role descriptions for nurses and others based on their expanded scope of practice, policies and quality and risk systems to support the registered nurse in this role.
- The employer is responsible for recruiting or nominating registered nurses who have demonstrated an appropriate level of practice beyond the ‘competent’ level to perform expanded activities or roles and to provide adequate education and clinical training for the provision of safe and competent care.
- The employer is responsible for ensuring registered nurses are supported and have been appropriately assessed as competent to undertake the expanded activity or role. Assessments should be documented as part of an organisation’s PDRP or credentialing programme.
- The employer is expected to pilot the expanded scope of practice for a specific time and evaluate before full introduction of the change.
- The employer should have processes in place for monitoring the outcomes of expanded practice and for staff to document and report client-related concerns” (NCNZ 2010 Pg. 14).

## References

- Carrier J., & Boyd M. (2003) The myth of Medical liability for Nursing practice *Nursing Praxis in New Zealand* 19(3) 4-13.
- Gupta S, Bassett P, Man R, Suzuki N, Vance ME, Thomas-Gibson S. (2012) Validation of a novel method for assessing competency in polypectomy. *Gastrointestinal Endoscopy* 75(3):568-75.
- Health and Disability Commissioner. (2009). The Code of Health and Disability Services Consumers' Rights Retrieved 24 January 2012, 2012, from <http://www.hdc.org.nz/the-act--code/the-code-of-rights>
- Health Practitioners Competence Assurance Act, 48 Stat. N.Z. (2003).
- Medical Council of New Zealand (2013) Good medical practice Retrieved 02 December, 2014, <http://www.mcnz.org.nz/assets/News-and-Publications/good-medical-practice.pdf>
- New Zealand Nurses Organisation Gastroenterology Section standards of practice (2000) Retrieved 26 February, 2015 from [http://www.nzno.org.nz/groups/sections/gastroenterology/nzgns\\_standards](http://www.nzno.org.nz/groups/sections/gastroenterology/nzgns_standards)
- Nursing Council of New Zealand. (2012). Code of Conduct for Nurses Retrieved 03 December, 2014, from <http://www.nursingcouncil.org.nz/Nurses/Code-of-Conduct>
- Nursing Council of New Zealand. (2010). Guideline: Expanded practice for Registered Nurses Retrieved 26 July, 2011, from <http://www.nursingcouncil.org.nz/download/226/expanded-pract-sept10.pdf>
- Nursing Council of New Zealand. (2010). Registered Nurse - Scope of Practice Retrieved 11 November, 2011, from <http://www.nursingcouncil.org.nz/index.cfm/1,40,html/Registered-Nurse>
- Sedlack RE (2010) The Mayo Colonoscopy Skills Assessment Tool: validation of a unique instrument to assess colonoscopy skills in trainees *Gastrointestinal Endoscopy* 72(6) 1123 - 1133