

Board Practice Direction: Private Hearings, Suppression and Media Attendance at Hearings

Purpose

1. The purpose of this Practice Direction is to set out the Board's practice and procedure in relation to private hearings, suppression and media attendance at hearings.

Hearings in Private

2. Disciplinary hearings are conducted as public hearings. The Board's Complaint Procedures note:

Hearings to be Public

3.12.32 Hearings are to be held in public except where the Board is of the opinion that it is proper to hold a Hearing or part of a Hearing in private, having regard to the interests of any person (including, without limitation, the person's privacy interests) and the public interest.

3.12.33 The Respondent may request that a Hearing or part of a Hearing be held in private either in writing before the Hearing or in person at the Hearing. A request for a Hearing to be held in private must include the reasons why and it will be heard with the Respondent in attendance but otherwise in private. The Board will consider the decision on the application in private and will deliver its decision with the Respondent in attendance but otherwise in private.

3. When an application is made for a hearing to be in private, the onus is on the applicant to satisfy the Board that, on the balance of probabilities, the hearing should be held in private.
4. The Board, when considering an application, applies the principles set out in section 197(2) of the Criminal Procedure Act:
 - (2) *The court may make an order under subsection (1) only if the court is satisfied that—*
 - (a) *the order is necessary to avoid—*
 - (i) *undue disruption to the conduct of the proceedings; or*
 - (ii) *prejudicing the security or defence of New Zealand; or*
 - (iii) *a real risk of prejudice to a fair trial; or*
 - (iv) *endangering the safety of any person; or*
 - (v) *prejudicing the maintenance of the law, including the prevention, investigation and detection of offences; and*
 - (b) *a suppression order is not sufficient to avoid that risk.*
5. An application should address the above matters.
6. Until such time as the application is determined, all matters pertaining to the hearing will be suppressed.

Suppression

7. In New Zealand, there is a principle of open justice and open reporting. The Board publishes its decisions, and it names Licensed Building Practitioners who are disciplined in those decisions. It does not, generally, name other hearing participants.
8. If a Licensed Building Practitioner or other hearing participant wants to have their name or any other particulars suppressed, then an application is to be made in writing prior to the hearing, or it may be made in person during the hearing. The onus is on the applicant to satisfy the Board that, on the balance of probabilities, a suppression order should be made.
9. The Board, when considering an application, applies the principles set out in sections 200 and 202 of the Criminal Procedure Act, which include, in the context of a disciplinary hearing, that publication would be likely to:
 - (a) *cause extreme hardship to the person charged, a witness or a person connected to those persons or the matters; or*
 - (b) *cast suspicion on another person that may cause undue hardship to those persons; or*

- (c) *cause undue hardship to any victim of the offence; or*
- (d) *create a real risk of prejudice to a fair trial; or*
- (e) *endanger the safety of any person; or*
- (f) *lead to the identification of another person whose name is suppressed by order or by law.*

10. Applicants should note that “extreme hardship” requires a very high level of hardship, and it falls outside of the ordinary consequences usually associated with proceedings or publication. It is something more than hardship. It requires hardship that is disproportionate or is greater than the circumstances warrant.

11. Applicants should also note the factors set out by the High Court in *N v Professional Conduct Committee of Medical Council*.¹

The tribunal must be satisfied that suppression is desirable having regard to the public and private interests and consideration can be given to factors such as:

- *issues around the identity of other persons such as family and employers;*
- *identity of persons involved and their privacy and the impact of publication on them; and*
- *the risk of unfairly impugning the name of other practitioners if the responsible person is not named.*

12. The Board, when an application is made, weighs the competing interests of the applicant and the public, taking into account such matters as whether the complaint has been upheld, the seriousness of the offending, the views of the complainant and the public interest in knowing the outcome.

13. Until such time as the application is determined, all matters pertaining to the hearing will be suppressed.

Media Applications

14. The Board has adopted the Ministry of Justice In-Court Media Coverage Guidelines 2015. Any applications for in hearing media coverage must be made and will be considered in accordance with those Guidelines.

15. Where the Board is advised that media will or may attend a hearing, the respondent will be informed so that he or she may consider whether they want to make an application for a hearing to be held in private or for suppression.

Signed and dated this 15 day of September 2023.



Mr M Orange, BPB Chair

¹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350