



New South Wales

Public Health (General) Amendment Regulation 2008

under the

Public Health Act 1991

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Health Act 1991*.

REBA MEAGHER, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to amend the *Public Health (General) Regulation 2002* to prescribe a code of practice for the provision of health services by:

- (a) health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners), and
- (b) health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

Section 7 of the *Health Care Complaints Act 1993* specifically provides that a complaint may be made under that Act against a health practitioner in relation to an alleged breach of the code of practice.

This Regulation is made under the *Public Health Act 1991*, including sections 10AM and 82 (the general regulation-making power).

2008 No 250

Clause 1 Public Health (General) Amendment Regulation 2008

Public Health (General) Amendment Regulation 2008

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Public Health Act 1991

1 Name of Regulation

This Regulation is the *Public Health (General) Amendment Regulation 2008*.

2 Commencement

This Regulation commences on 1 August 2008.

3 Amendment of Public Health (General) Regulation 2002

The *Public Health (General) Regulation 2002* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] **Clause 25 Guidelines and codes**

Insert at the end of clause 25:

- (2) Subclause (1) does not apply to the code of conduct set out in Schedule 3.

[2] **Clause 25A**

Insert after clause 25:

25A Code of conduct for certain health practitioners

The code of conduct set out in Schedule 3 is prescribed under section 10AM of the Act as a code of conduct for the provision of health services by:

- (a) health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners), and
- (b) health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

[3] **Schedule 3**

Insert after Schedule 2:

Schedule 3 Code of conduct

(Clause 25A)

1 Definitions

In this code of conduct:

health practitioner, *health registration Act* and *health service* have the same meanings as in the *Health Care Complaints Act 1993*.

Note. The *Health Care Complaints Act 1993* defines those terms as follows:

health practitioner means a natural person who provides a health service (whether or not the person is registered under a health registration Act).

2008 No 250

Public Health (General) Amendment Regulation 2008

Schedule 1 Amendments

health registration Act means any of the following Acts:

Chiropractors Act 2001

Dental Technicians Registration Act 1975

Dental Practice Act 2001

Medical Practice Act 1992

Nurses and Midwives Act 1991

Optical Dispensers Act 1963

Optometrists Act 2002

Osteopaths Act 2001

Pharmacy Practice Act 2006

Physiotherapists Act 2001

Podiatrists Act 2003

Psychologists Act 2001.

health service includes the following services, whether provided as public or private services:

- (a) medical, hospital and nursing services,
- (b) dental services,
- (c) mental health services,
- (d) pharmaceutical services,
- (e) ambulance services,
- (f) community health services,
- (g) health education services,
- (h) welfare services necessary to implement any services referred to in paragraphs (a)–(g),
- (i) services provided by podiatrists, chiropractors, osteopaths, optometrists, physiotherapists, psychologists and optical dispensers,
- (j) services provided by dietitians, masseurs, naturopaths, acupuncturists, occupational therapists, speech therapists, audiologists, audiometrists and radiographers,
- (k) services provided in other alternative health care fields,
- (k1) forensic pathology services,
- (l) a service prescribed by the regulations as a health service for the purposes of this Act.

2 Application of code of conduct

This code of conduct applies to the provision of health services by:

- (a) health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners), and

- (b) health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

Note. Health practitioners may be subject to other requirements relating to the provision of health services to which this Code applies, including, for example, requirements imposed by Part 2A of the Act and the regulations under the Act relating to skin penetration procedures.

3 Health practitioners to provide services in safe and ethical manner

- (1) A health practitioner must provide health services in a safe and ethical manner.
- (2) Without limiting subclause (1), health practitioners must comply with the following principles:
 - (a) a health practitioner must maintain the necessary competence in his or her field of practice,
 - (b) a health practitioner must not provide health care of a type that is outside his or her experience or training,
 - (c) a health practitioner must prescribe only treatments or appliances that serve the needs of the client,
 - (d) a health practitioner must recognise the limitations of the treatment he or she can provide and refer clients to other competent health practitioners in appropriate circumstances,
 - (e) a health practitioner must recommend to his or her clients that additional opinions and services be sought, where appropriate,
 - (f) a health practitioner must assist his or her clients to find other appropriate health care professionals, if required and practicable,
 - (g) a health practitioner must encourage his or her clients to inform their treating medical practitioner (if any) of the treatments they are receiving,
 - (h) a health practitioner must have a sound understanding of any adverse interactions between the therapies and treatments he or she provides or prescribes and any other medications or treatments, whether prescribed or not, that the health practitioner is aware the client is taking or receiving,
 - (i) a health practitioner must ensure that appropriate first aid is available to deal with any misadventure during a client consultation,

2008 No 250

Public Health (General) Amendment Regulation 2008

Schedule 1 Amendments

- (j) a health practitioner must obtain appropriate emergency assistance (for example, from the Ambulance Service) in the event of any serious misadventure during a client consultation.

4 Health practitioners diagnosed with infectious medical condition

- (1) A health practitioner who has been diagnosed with a medical condition that can be passed on to clients must ensure that he or she practises in a manner that does not put clients at risk.
- (2) Without limiting subclause (1), a health practitioner who has been diagnosed with a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.

5 Health practitioners not to make claims to cure certain serious illnesses

- (1) A health practitioner must not hold himself or herself out as qualified, able or willing to cure cancer and other terminal illnesses.
- (2) A health practitioner may make a claim as to his or her ability or willingness to treat or alleviate the symptoms of those illnesses if that claim can be substantiated.

6 Health practitioners to adopt standard precautions for infection control

- (1) A health practitioner must adopt standard precautions for the control of infection in his or her practice.
- (2) Without limiting subclause (1), a health practitioner who carries out a skin penetration procedure within the meaning of section 51 (3) of the Act must comply with the relevant regulations under the Act in relation to the carrying out of the procedure.

7 Appropriate conduct in relation to treatment advice

- (1) A health practitioner must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.
- (2) A health practitioner must accept the right of his or her clients to make informed choices in relation to their health care.

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- (3) A health practitioner should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.
 - (4) A health practitioner who has serious concerns about the treatment provided to any of his or her clients by another health practitioner must refer the matter to the Health Care Complaints Commission.

8 Health practitioners not to practise under influence of alcohol or drugs

- (1) A health practitioner must not practise under the influence of alcohol or unlawful drugs.
- (2) A health practitioner who is taking prescribed medication must obtain advice from the prescribing health practitioner on the impact of the medication on his or her ability to practice and must refrain from treating clients in circumstances where his or her ability is or may be impaired.

9 Health practitioners not to practise with certain physical or mental conditions

A health practitioner must not practise while suffering from a physical or mental impairment, disability, condition or disorder (including an addiction to alcohol or a drug, whether or not prescribed) that detrimentally affects, or is likely to detrimentally affect, his or her ability to practise or that places clients at risk of harm.

10 Health practitioners not to financially exploit clients

- (1) A health practitioner must not accept financial inducements or gifts for referring clients to other health practitioners or to the suppliers of medications or therapeutic goods or devices.
- (2) A health practitioner must not offer financial inducements or gifts in return for client referrals from other health practitioners.
- (3) A health practitioner must not provide services and treatments to clients unless they are designed to maintain or improve the clients' health or wellbeing.

11 Health practitioners required to have clinical basis for treatments

A health practitioner must not diagnose or treat an illness or condition without an adequate clinical basis.

2008 No 250

Public Health (General) Amendment Regulation 2008

Schedule 1 Amendments

12 Health practitioners not to misinform their clients

- (1) A health practitioner must not engage in any form of misinformation or misrepresentation in relation to the products or services he or she provides or as to his or her qualifications, training or professional affiliations.
- (2) A health practitioner must provide truthful information as to his or her qualifications, training or professional affiliations if asked by a client.
- (3) A health practitioner must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment or services provided if those claims cannot be substantiated.

13 Health practitioners not to engage in sexual or improper personal relationship with client

- (1) A health practitioner must not engage in a sexual or other close personal relationship with a client.
- (2) Before engaging in a sexual or other close personal relationship with a former client, a health practitioner must ensure that a suitable period of time has elapsed since the conclusion of their therapeutic relationship.

14 Health practitioners to comply with relevant privacy laws

A health practitioner must comply with the relevant legislation of the State or the Commonwealth relating to his or her clients' personal information.

15 Health practitioners to keep appropriate records

A health practitioner must maintain accurate, legible and contemporaneous clinical records for each client consultation.

16 Health practitioners to keep appropriate insurance

A health practitioner should ensure that appropriate indemnity insurance arrangements are in place in relation to his or her practice.

17 Certain health practitioners to display code and other information

- (1) A health practitioner must display a copy of each of the following documents at all premises where the health practitioner carries on his or her practice:
 - (a) this code of conduct,

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- (b) a document that gives information about the way in which clients may make a complaint to the Health Care Complaints Commission, being a document in a form approved by the Director-General of the Department of Health.
- (2) Copies of those documents must be displayed in a position and manner that makes them easily visible to clients entering the relevant premises.
- (3) This clause does not apply to any of the following premises:
- (a) the premises of any body within the public health system (as defined in section 6 of the *Health Services Act 1997*),
 - (b) private hospitals or day procedure centres (as defined in the *Private Hospitals and Day Procedure Centres Act 1988*),
 - (c) premises of the Ambulance Service of NSW (as defined in the *Health Services Act 1997*),
 - (d) premises of approved providers (within the meaning of the *Aged Care Act 1997* of the Commonwealth).