

Speaking Out Safely

Doctors owe a dual and fundamental duty of care to their patients and the public. The Medical Council statement on good practice states *“Make the care of patients your first concern. Protect and promote the health of patients and the public.”*ⁱ Adhering to this duty, however, is not necessarily supported by policies implemented by Health NZ/Te Whatu Ora (HNZ/TWO). You may face situations where you feel your ethical duties conflict with compromises in patient care that exist in your workplace e.g. harm caused by delayed care or rationing decisions.

The Medical Council requires that:

- You help patients make informed decisions about their care. This requires that you give your patient the information they need to help them make a fully-informed decisionⁱⁱ.
- Informed consent includes honestly telling patients about the options for care available including those that you may not be able to provide yourself.
- This includes situations where resource constraints prevent optimal care being delivered from your service provider. The guideline on resource constraints states *“Doctors have a responsibility to advocateⁱⁱⁱ for [their] patients, to seek the provision of appropriate resources for [their] patients’ care and report any deficiencies to the appropriate authorities.”*^{iv}
- You disclose iatrogenic harm to patients as soon as practicable.^v

HNZ/TWO states that it supports staff to *“speak up if we know or reasonably believe that something isn’t right, and we are supported to raise such concerns”*. However, this is a restricted open disclosure policy as HNZ/TWO also requires:

- You avoid situations and activities that could negatively impact the way the public sees HNZ/TWO.
- Your right to speak up is subject to complying with HNZ/TWO policies.
- You are allowed to raise concerns provided you do this with what are called the appropriate channels.



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The HNZ/TWO Media policy^{vi} prohibits staff from making off the record comments to the media and requires that all responses to the media must be made through the media team stating:

“The media team should always be the first point of contact in any staff interactions with media where the request is for the staff member to comment on behalf of the organisation. This includes in situations where employees may be approached privately or independently of the media team.”

Doctors employed by HNZ/TWO are now also subject to a code of conduct that was issued in March 2026. It requires that employees of the public service are expected to behave in certain ways including:

- *“Political neutrality – to act in a politically neutral manner.”*
- *“If we are members of a profession or have a statutory role that involves public advocacy, we need to fulfil our professional obligations or statutory role while staying politically neutral.”*
- *“Professional codes of ethics or obligations – such as those for medical [professionals] – apply alongside this Code. If there is inconsistency or conflict between our professional obligations and this Code, we need to raise it with our organisation.”*
- *“Be open and honest with our organisation and consider any legal requirements that may apply – before speaking out.”*

There are protections that allow doctors to speak out under what is called the whistle blowers legislation^{vii}. The HNZ/TWO media policy also recognises that it may be permissible for employees to make statements to the media in line with their collective agreement and codes of conduct. Good news stories are not subject to the same restrictions that apply to information that may show the employer in a bad light.^{viii}

The Bill of Rights Act states that: *“Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”*. Though there is case law that suggests this might not protect “in employment” expressions of opinion.^{ix}



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Practising safely

Whenever you consider saying something about patient care that is not a good news story be aware that:

- This puts you at professional risk and may attract threatened disciplinary action from your employer.
- The safest thing to do is to seek advice from your Union or professional body if there are conflicts between the employers policies and your ethical duties as navigating this is difficult.
- Unless cleared to speak by the employer, be very clear about the role applicable when speaking, and be very careful not to speak as an employee. When speaking on behalf of your Union or professional body for example make this clear, and distance yourself from your position as an employee.
- You must never disclose confidential patient information to third parties without consent.
- You must never facilitate filming on site at HNZ/TWO without express permission.^x
- You have obligations to disclose iatrogenic harm to patients but it is safer to do so after consulting with colleagues. Some districts require this is only done after completing an incident report.
- It is protective to notify your employer before making any statement or to follow agreed best practice in your department for example when advising patients of non-funded treatment options.

- Statements made to promote your own interests such as private work or a political campaign rather than achieve optimal patient care risk a disciplinary response.
- When speaking publicly speak as an expert and only express opinions supported by evidence. Acknowledge contrary views and why you hold a different view. Do so logically not emotively or dramatically. If you are in a state of distress that is not the time to speak out – if possible delay. Health Practitioners Disciplinary Tribunal cases have upheld a doctors right to freedom of expression under the Bill of Rights Act but this is subject to professional expectations about mode and manner so as not to bring discredit to the profession.

The harsh reality is that while free speech is a claimed ideal it is not an unreservedly supported work reality and you should always ensure you are protected before speaking out.

- [MCNZ Good Medical Practice](#)
- [MCNZ Informed Consent](#)
- [Health New Zealand Te Whatu Ora Code of Conduct](#)
- [MCNZ Safe Practice in an environment of Resource Limitation](#)
- [MCNZ Disclosure of Harm Following an Adverse Event.](#)
- Health NZ media policy published August 2024 review date August 2026.
- [Protected Disclosures \(Protection of Whistleblowers\) Act 2022.](#)
- Clause 23 of the Media Policy.
- [Turner v Te Whatu Ora \[2024\] NZCA 203.](#)
- Clause 43 of the Media Policy.

Contact Us

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Contact us if you have any questions about your medical indemnity cover.

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