

MEDICAL COUNCIL OF NEW SOUTH WALES

POLICY

TITLE	Recording of proceedings under Part 8 Division 3 Subdivision 7	FILE REF	DD10/10882
NUMBER	C20.2	HPRNL (NSW) REF	Part 8 Div 3 Subdiv 7
DATE CREATED	8 May 2007		
REVISIONS	12 June 2008, 4 August 2008, 13 July 2010		
RELATED RECORDS	96/376		

1. LEGISLATION

- 1.1. Section 150 of the *Health Practitioner Regulation National Law (NSW)* (the National Law (NSW)) allows the Council to take action (suspension or conditions) in relation to a registered medical practitioner or student at any time if it is satisfied that it is appropriate to do so for the protection of the health and safety of any persons or if satisfied that the action is otherwise in the public interest.
- 1.2. Section 150A allows a practitioner/student to seek a review of a decision made under section 150. Following review the Council may affirm or vary the decision, or set it aside and take any action the Council has the power to take under section 150.
- 1.3. Section 150C of the National Law (NSW) allows the Council at any time to alter or remove conditions or end a period of suspension imposed under the relevant Sub-Division and to take any other action under s150. The Council is to give written notice of any action taken under this section to the practitioner/student concerned.

RECORDING OF HEARINGS

Section 150B of the National Law (NSW) states:

150B Audio recording of meeting [NSW]

- (1) A Council must cause an audio recording to be made of any proceedings of the Council in connection with the consideration by the Council of the exercise or proposed exercise of a function under this Subdivision in respect of a registered health practitioner or student—
 - (a) during which the practitioner or student, or the practitioner's or student's adviser, is present; or
 - (b) during which a person other than a member of the Council or a staff member of the Council is present and gives the Council oral information relevant to the Council's consideration.
- (2) A recording under this section is not admissible in evidence in—

- (a) civil or criminal proceedings in a court of law (other than proceedings under this Law); or
- (b) an inquest or inquiry under the *Coroners Act 2009*.

2. PRACTICAL IMPLEMENTATION

- 2.1. The Council records the Proceeding by digital sound recording, enabling a Compact Disc (CD) to be produced of the Proceeding.
- 2.2. The Council will provide a copy of the CD of the Proceeding to the Medical Practitioner/Student upon request in writing, at no cost, but a copy shall not be made available to other persons without the consent of the Medical Practitioner/Student involved or as otherwise required by law. There are Privacy and Freedom of Information factors which warrant consideration in such instances, and a formal request must be completed before releasing a copy of the recording.
- 2.3. A copy of the recording may be provided to the Health Care Complaints Commission (HCCC) pursuant to section 150D(2) of the National Law (NSW).
- 2.4. No other person shall be permitted to make an electronic recording of a Proceeding.
- 2.5. The Council will not provide a written transcript of the proceedings.
- 2.6. Any technical difficulties which may result in part or all of the proceedings not being recorded will not provide grounds for the matter being reheard (or provide a basis for rehearing the matter).
- 2.7. The following information should be read onto the record at the beginning of a section 150 Proceeding:

“Please note that these proceedings are required to be recorded pursuant to section 150B of the Health Practitioner Regulation National Law (NSW).

The recording is not admissible in evidence in any civil or criminal proceedings in a court of law (other than proceedings under this Law) It is also not admissible as evidence in an inquest or inquiry under the Coroners Act 2009.

For the purposes of the recording:

The time is _____ on _____ .

The Proceeding is being held in the _____ Room of the _____ Medical Council Building.

The following persons are present:

I ask that all present speak in a clear and audible voice so that you are clearly heard throughout the proceedings.”