



FREE SPEECH UNION SUBMISSION ON THE MEDICAL COUNCIL'S DRAFT STATEMENTS ON CULTURAL COMPETENCE, CULTURAL SAFETY, AND HAUORA MĀORI

INTRODUCTION

The Free Speech Union supports respectful, non-discriminatory medical care for all patients, including Māori, and recognises the importance of addressing health inequities. Our concern in this submission is not with those goals but with the mechanism the Medical Council has chosen to pursue them. Requiring doctors to adopt specified ideological frameworks and engage in political advocacy as conditions of professional practice goes beyond the Council's statutory mandate, is inconsistent with the New Zealand Bill of Rights Act 1990 ("NZBORA"), and risks silencing practitioners rather than improving patient care.

SUMMARY OF SUBMISSION

The Free Speech Union submits that the Draft Statements on Cultural Competence, Cultural Safety and Hauora Māori ("Draft Statements") are fundamentally flawed and should be withdrawn for the following reasons:

- The Draft Statements exceed the Council's statutory mandate. The Health Practitioners Competence Assurance Act 2003 ("the Act") empowers the Medical Council to set standards of "*cultural competence*". The Draft Statements use the broader concept of "*cultural safety*" without legislative authority to do so and impose requirements that bear no recognisable relationship to the Act's principal purpose of protecting public health and safety through ensuring clinical competence.
- The Draft Statements present contested sociological and political narratives, drawn from Critical Social Theory, postcolonial theory, and indigenous rights frameworks, as professional facts that doctors must accept as conditions of practice. This substitutes ideology with clinical knowledge.
- The Draft Statements compel speech and activism by requiring doctors to publicly affirm contested ideological positions, advocate for political approaches, and challenge the views of colleagues, going well beyond regulating clinical conduct into regulating belief and expression, in breach of sections 13 and 14 of the NZBORA.

The Free Speech Union recommends that the Draft Statements be withdrawn and that the Council redraft both statements within its statutory mandate, setting standards of cultural competence focused on respectful, non-discriminatory, and culturally aware clinical conduct. Any redrafted statements should be reviewed for consistency with the NZBORA before being finalised.



SUBMISSION

BEYOND THE COUNCIL'S STATUTORY MANDATE

1. The Council's authority to set standards derives from section 118(1)(i) of the Act, which empowers authorities to set standards of "*clinical competence, cultural competence (including competencies that will enable effective and respectful interaction with Māori), and ethical conduct.*"
2. Parliament chose the term "*cultural competence.*" Yet the draft statements go materially beyond this term, introducing "*cultural safety*" as a distinct and more expansive concept, and making it central to the standards doctors are expected to meet. The Draft Statements use a broader concept that Parliament did not authorise. In doing so, the Council is not interpreting its mandate but enlarging it. That is a legislative function, not a regulatory one.
3. The Act's overarching purpose confirms this. Section 3 provides that the principal purpose of the Act is to "*protect the health and safety of members of the public by providing for mechanisms to ensure that health practitioners are competent and fit to practise their professions.*" Requirements to adopt ideological frameworks or undertake political advocacy are not mechanisms for ensuring clinical competence, and do not protect the health and safety of the public in any sense recognisable within the Act's framework.

THE SHIFT TO MANDATORY IDEOLOGICAL FRAMEWORKS AND VIEWS

4. The 2019 Statement on Cultural Safety acknowledges the inherent power imbalance in the doctor-patient relationship, whereas the Draft Statements escalate this to sweeping sociological narratives about colonialism, systemic oppression, and structural power. These contested narratives are presented as professional facts:
 - a. The Draft Statements accept and apply Critical Social Theory - the view that society is structured by power relationships that systematically advantage some groups and disadvantage others. Clinical encounters are viewed as sites of potential oppression; therefore, doctors should use their influence to identify and dismantle unfair systems and power imbalances.¹
 - b. In New Zealand, healthcare and medical professions are informed by the 'dominant culture' which often does not align with Māori culture or other cultures of diverse groups.² The 'dominant culture' in New Zealand is based on the values and worldviews of "*settler traditions from the United Kingdom and western Europe*" which disadvantages those who do not align with the 'norms' of that time (19th-century British colonisation and settlement). Māori patients do not align with these historical settler norms, resulting in

¹ Draft Hauora Māori Statement, at [6d.]

² Draft Cultural Competence and Cultural Safety Statement, at [1b].



- poorer healthcare access, experience, and outcomes. These disadvantages extend to other patients differing in ethnicity, gender, disability, sexual orientation, class, or socio-economic status.³
- c. Colonial histories and institutional structures directly shape health outcomes for Māori. Specifically, *“historical and ongoing colonisation means that Māori are prevented from accessing resources that promote good health”*.⁴
 - d. Māori, as tangata whenua, hold inherent Indigenous rights to health, self-determination and equity.⁵ Therefore, doctors are professionally responsible for taking meaningful action to advance health equity for Māori.⁶ They must ensure that the care they provide results in equitable outcomes for Māori compared to non-Māori.⁷
 - e. Doctors should be guided by the patient and their whanau in how to apply Mātauranga Māori (Māori knowledge systems) alongside clinical medicine.⁸
5. Rather than simply acknowledging clinical power imbalances and leaving room for differing ideological frameworks and views, the Draft Statements present specific sociological narratives as professional facts. This is inappropriate because these narratives draw from a combination of contested intellectual and political traditions including Critical Social Theory, postcolonial theory, and indigenous rights frameworks - none of which constitute established clinical or scientific knowledge. Mandating their acceptance through recertification requirements that directly affect the right to practise does not regulate conduct, it regulates belief, and regulated belief (or, compelled belief) is fundamentally incompatible with the rights to freedom of expression, thought, and belief protected under sections 13 and 14 of the NZBORA.
6. It may be argued that these narratives simply reflect Treaty of Waitangi obligations understood in a modern context. However, while the Crown's broad obligations to Māori health under the Treaty are recognised, what those obligations specifically require of individual health practitioners, and whether they extend to mandating particular ideological frameworks as conditions of professional practice, remains genuinely contested and is not settled by law or by the Treaty itself. More fundamentally, even accepting broad Treaty obligations to Māori health equity, those obligations do not require doctors to adopt any particular ideological framework. Respectful, non-discriminatory, and equitable clinical care, which the Free Speech Union supports, can be achieved without mandating belief in specific causal narratives about

³ Draft Cultural Competence and Cultural Safety Statement, Appendix.

⁴ Draft Hauora Māori Statement, Introduction.

⁵ Draft Hauora Māori Statement, at [1].

⁶ Draft Hauora Māori Statement, at [5].

⁷ Draft Hauora Māori Statement, at [7].

⁸ Draft Hauora Māori Statement, at [4].



colonialism, power structures, or systemic oppression. Presenting one contested interpretation of Treaty obligations as a professional fact, and making compliance with it a requirement for recertification, goes well beyond giving effect to the Treaty. It conflates a live constitutional debate with established clinical knowledge.

COMPELLED SPEECH AND ACTIVISM

7. The Draft Statements do not merely require awareness of sociological narratives - they require doctors to publicly affirm and actively promote them. This is compelled speech. The right to freedom of expression under the NZBORA includes the right not to speak. The Draft Statements violate that right in several ways:
 - a. Doctors are required to *"actively acknowledge and address"* their own internal biases and privilege as a condition of their competence.⁹
 - b. Doctors are expected to *"advocate for approaches"* that respond to social determinants and to *"dismantle unfair systems."*¹⁰
 - c. Doctors must be prepared to *"challenge the bias"* of colleagues and systemic bias, effectively requiring them to act as political activists within their professional environment.¹¹
 - d. A doctor may privately disagree with these sociological interpretations while still providing exemplary and respectful care to all patients, yet these drafts make such disagreement a professional liability.
8. The patient-defined standard of cultural safety compounds this problem. Defining cultural safety as *"what the patient experiences as a health care consumer"* creates an unpredictable standard that encourages self-censorship.¹² Because safety is determined by the listener's experience rather than objective clinical conduct, a doctor may feel compelled to avoid any expression or inquiry that could be subjectively interpreted as 'culturally unsafe' by a patient or community.
9. The compelled speech concern is further aggravated by the enforcement mechanism. Although framed as statements rather than binding regulation, doctors are explicitly required to *"identify and address"* cultural gaps *"in your recertification activities"*.¹³ The vagueness of terms like *"address"* and *"advance equity"* means practitioners face professional consequences for non-compliance with standards that provide no clear threshold for what compliance actually requires. Because compliance is tied to the right to practise, these

⁹ Draft Cultural Competence and Cultural Safety Statement, at [6].

¹⁰ Draft Hauora Māori Statement, at [6d].

¹¹ Draft Cultural Competence and Cultural Safety Statement, at [15].

¹² Draft Statement on Cultural Competence and Cultural Safety, Introduction; see also Appendix (definition of Cultural Safety).

¹³ Draft Statement on Cultural Competence and Cultural Safety, at [11].



standards function as a political loyalty test. Doctors who decline to affirm these frameworks or engage in mandated advocacy risk their licence, effectively forcing them to publicly express beliefs they may not hold to keep their jobs.

10. Mandating that doctors grant professional standing to specific knowledge systems, such as mātauranga Māori, creates a further compelled speech problem for practitioners whose own religious or philosophical frameworks hold different views, for example, on the spiritual dimensions of health or the authority of traditional knowledge systems. The statements provide no accommodation for such conflicts.

RECOMMENDATIONS

11. The Free Speech Union makes the following recommendations:

- The Draft Statements should be withdrawn in their current form.
- The Council should redraft both statements within its statutory mandate under section 118(1)(i) of the Act, setting standards of cultural competence focused on respectful, non-discriminatory, and culturally aware clinical conduct, without mandating the adoption of specified ideological frameworks or requiring political advocacy as conditions of professional practice or recertification.
- Any redrafted statements should be reviewed for consistency with the rights protected under sections 13 and 14 of the NZBORA before being finalised.

CONCLUSION

The Draft Statements require doctors to adopt contested ideological frameworks, publicly affirm political positions, and engage in systemic advocacy as a condition of licensing to practise. This goes beyond anything the Act authorises, and beyond anything that can be justified by reference to Treaty obligations or health equity goals. The Draft Statements should be withdrawn, and any future drafts should be developed within the Council's statutory mandate and in a manner consistent with the rights protected under the NZBORA.

Submitted 18 March 2026.