

Practitioner health and mandatory notifications

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What is mandatory reporting?

Mandatory reporting refers to the legal obligation of a registered health practitioner, employer, or education provider to report the “notifiable conduct” of another registered health practitioner to the Australian Health Practitioner Regulation Agency (Ahpra).

What is notifiable conduct?

Section 140 of the Health Practitioner Regulation National Law Act 2009 (“the National Law”) defines “notifiable conduct” in relation to a practitioner as having:

- (a) practised the practitioner’s profession while intoxicated by alcohol or drugs;
- (b) engaged in sexual misconduct in connection with the practice of the practitioner’s profession;
- (c) placed the public at risk of substantial harm in the practitioner’s practice of the profession because the practitioner has an impairment; or
- (d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

In addition, the National Law defines ‘impairment as ‘a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the person’s capacity to practice the profession.

Who is required to report notifiable conduct?

Section 141 of the National Law imposes a legal obligation on all registered health practitioners (as well as practitioners’ employers and students’ educational providers) to report another registered health practitioner to Ahpra if, during the course of practising their profession, they form a reasonable belief that the practitioner has behaved in a way that constitutes notifiable conduct. The obligation applies irrespective of whether or not the practitioner with the obligation practises in the same profession as the other practitioner. More recent amendments to the National Law clarify that treating practitioners need only make a mandatory notification about their practitioner-patient if they form a reasonable belief that their patient is placing the public at substantial risk of harm. This is a higher threshold.

What is a reasonable belief?

Ahpra has released guidelines for mandatory notifications that clarify the meaning of reasonable belief. It states that a reasonable belief generally requires direct observation of the notifiable conduct or knowledge of it from a reliable and trustworthy source while the notifying practitioner is practising their profession. It means more than mere suspicion, speculation, rumours, gossip, or innuendo. Although conclusive proof is not required, a person of “average caution”, acting in good faith, ought to reasonably believe that notifiable conduct has occurred or that a notifiable impairment exists. It is a serious step that must not be taken lightly.

Are there exceptions to the requirement to report notifiable conduct?

There are three important exceptions where a mandatory notification about a practitioner is not required:

1. Treating practitioners in Western Australia providing a health service to a practitioner-patient or student are exempt from the requirement to make a mandatory notification. They are not required to notify of matters if they learned of it through a treating relationship.
2. If you are providing legal advice or are employed or engaged by a professional indemnity insurer, such as MIPS.
3. Where there is a reasonable belief that someone else has already made a notification about the same notifiable conduct.

Are practitioners protected who make mandatory notifications?

This is a very common question from members, given the serious nature of mandatory notifications. The National Law protects practitioners who make mandatory notifications in good faith from civil, criminal and administrative liability, including defamation, for practitioners making notifications in good faith. Making a notification is not a breach of professional etiquette or ethics, or a departure from accepted standards of professional conduct. What happens if a practitioner fails to report notifiable conduct? While it is not an offence to fail to make a mandatory notification, it could result in a finding of unprofessional conduct or professional misconduct.

Concluding remarks

Doctors' health is important not only from the perspective of the individual practitioner's well-being, but also from that of patient safety. Doctors in Australia experience higher rates of depression, anxiety, psychological distress, suicidal ideation, and substance use challenges compared to the general population or to other professional groups. We also know that young doctors, female doctors, overseas trained doctors, and rural doctors are at higher risk.

There are several reasons why doctors are at increased risk of poorer health and wellbeing. These include: long working hours, stressful work environments, poorer work-life balance, difficulties transitioning from the role of doctor to patient, as well as sometimes stigmatising attitudes within the profession that may view illness as a sign of fallibility. In addition, doctors face unique barriers in accessing healthcare. These include fear of mandatory reporting and regulatory sanctions if they disclose their symptoms to a colleague or treating practitioner. As a result of this fear, some doctors may avoid or delay accessing treatment, or may even attempt to self-manage their problem. This can result in deteriorating health.

Mandatory reporting is controversial. Regulators argue that it is important to ensure robust systems are in place to protect the public from harm resulting from practitioners with health, conduct or performance concerns. Others argue that (particularly in relation to health concerns), mandatory reporting can undermine trust in the relationship between unwell practitioners and their treating practitioner, leading to fear and avoidance of treatment. Therefore, it is vitally important for practitioners to properly understand their mandatory reporting obligations to ensure that they only report notifiable conduct (particularly in relation to impairment) when the high thresholds are met.

More information

The Medical Board of Australia and the Dental Board of Australia have both published guidelines in relation to mandatory notifications, which provides further information about what some of these legal terms mean. MIPS has also recently provided a webinar in relation to mandatory reporting. A link to the webinar can be found here: [Mandatory notifications - Supporting doctors and protecting patient safety](#).

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Resources

[National Mental Health Survey of Doctors and Medical Students](#)

[Making a mandatory notification](#)

[Guidelines for mandatory notifications](#)

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