

When does a practitioner's health become a medico-legal concern – and what should practitioners, colleagues and employers know about their obligations?

Reading time:

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A recent study in the Medical Journal of Australia, co-authored by MIPS Chief Medical Officer Dr Owen Bradfield, examined a decade of health impairment notifications to the Medical Board of Australia. It found that health impairment notifications against doctors are rare, and that even if a notification is made, it is overwhelmingly likely to result in no further action. These are important take-home messages for members, who often fear regulatory processes and may delay necessary help-seeking for fear of losing their medical or dental registration as a result of their health challenges.

The findings are also a timely reminder that having a health condition does not make a registered health practitioner unsafe to practise. Most practitioners who experience physical or mental illness, or who are managing a health condition, continue to practise safely by seeking treatment, taking leave, or adjusting their scope of work.

Under the Health Practitioner Regulation National Law, an “impairment” is a physical or mental impairment, disability, condition or disorder, including substance abuse or dependence, that detrimentally affects or is likely to detrimentally affect a person's capacity to practise. A health condition and an impairment are not the same thing. An illness that does not affect a practitioner's capacity to practise safely is not an impairment, and it becomes a medico-legal concern only when it places the public at risk of harm. Understanding where that line sits, and who is responsible for acting on it, matters for practitioners, their colleagues and their employers alike.

When it's a concern for the practitioner

Practitioners are expected to recognise when their own health may be affecting their practice and to respond appropriately. For example, the Medical Board of Australia's Good Medical Practice Code of Conduct, which sets the professional standards expected of all registered doctors, frames this as a professional obligation. It expects doctors to have a treating practitioner independent of their own practice, to seek independent advice rather than self-diagnose or self-treat, and to follow that practitioner's advice about fitness to work. The code is also explicit that doctors should not self-prescribe. Doctors are not expected to be infallible about their own health, but they are expected to engage with treatment and act on it once a concern is identified.

When it's a concern for colleagues

Registered health practitioners have a legal duty to make a mandatory notification if they form a reasonable belief that a colleague is practising while intoxicated by drugs or alcohol, or is practising with an impairment that places the public at substantial risk of harm. A “reasonable belief” generally requires direct knowledge of the conduct concerned, not suspicion, rumour or secondhand reports. Anyone, including colleagues, can also make a voluntary notification where the threshold for a mandatory report isn't met but a concern remains.

Treating practitioners face a higher threshold than non-treating colleagues before a mandatory report is triggered, reflecting the importance of practitioners being able to seek treatment without undue fear of professional consequences. This gap is most pronounced for intoxication: a non-treating colleague or employer must report simply on forming a reasonable belief that a practitioner practised while intoxicated, while a treating practitioner must additionally believe this places the public at substantial risk of harm. In Western Australia, treating practitioners are exempt from mandatory reporting altogether, though a voluntary report may still be appropriate. Anyone who notifies in good faith is protected from liability.

When it's a concern for employers

Employers have their own mandatory reporting duty. This is triggered when an employer forms a reasonable belief that a practitioner is practising while intoxicated, or with an impairment placing the public at risk of substantial harm. Relevant factors include the nature and severity of the condition, the type of practice involved, whether the condition can be managed through treatment or other strategies, and the practitioner's level of insight and engagement with treatment. Importantly, a notification is not required where effective controls are already in place, such as treatment, leave, modified scope of practice, or supervision. Employers play a significant role in supporting practitioners to access these controls before a notification becomes necessary.

The reassuring context

National data on health impairment notifications shows that most practitioners are never the subject of one, and that most notifications, once made, result in no further action. This reflects a system that is, on the whole, working as intended: identifying practitioners who need support, while allowing the vast majority of unwell practitioners to manage their health and continue practising safely.

Practitioners, colleagues and employers all have a part to play in getting the balance right, and MIPS members who are uncertain about their obligations, or who have concerns about their own or a colleague's fitness to practise, are encouraged to seek advice early.

References

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