



Sara Bird

# Mandatory reporting of health practitioners

## Notifiable conduct

Case histories are based on actual medical negligence claims or medicolegal referrals; however certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

On 26 March 2008, the Council of Australian Governments signed an Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions. The new scheme is scheduled to be introduced on 1 July 2010. As part of the scheme all registered health practitioners will be legally required to report any other registered health practitioner who has behaved in a manner that constitutes 'notifiable conduct'. The threshold to be met to trigger the requirement to report notifiable conduct in relation to a practitioner is high, and the practitioner or employer must have first formed a 'reasonable belief' that the behaviour constitutes notifiable conduct. This article discusses this new legislation, the circumstances in which a colleague's conduct must be reported and how a notification should be made.

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harm, when he returned to work. The GP was not sure what else she should do and she contacted her medical defence organisation for further advice.

The general practitioner was advised that she had a legal obligation to report the locum GP to the Australian Health Practitioner Regulation Agency (the National Agency), which would then refer the notification to the Medical Board of Australia for assessment. The notification should be made as soon as practicable and include the basis and the reasons for the notification, and the date and time that she noticed the conduct that led to the notification. This legal obligation arose as part of all registered health practitioners' obligations to report 'notifiable conduct' under the *Health Practitioner Regulation National Law Act 2009* (the National Law), which came into effect on 1 July 2010.

### Case study

Midmorning the practice nurse advised the general practitioner owner of the practice that the locum GP smelled of alcohol and that a number of patients that morning had complained about the locum's manner and management. The GP immediately spoke to the locum, also noting that he smelled of alcohol and had slurred speech. She asked the locum GP to stop seeing patients and not to return to the practice. She recommended that he seek professional assistance and consider contacting the Medical Board to ensure that he was not putting patients at risk of

### What is 'notifiable conduct'?

'Notifiable conduct' is defined in the National Law and means the practitioner has:

- (a) practised the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) engaged in sexual misconduct in connection with the practice of the practitioner's profession; or
- (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.

‘Impairment’ is defined in the National Law as a person who has ‘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’?

The National Registration and Accreditation Scheme for the Health Professions imposes a duty to report notifiable conduct on all registered health practitioners and employers. This means that there is a legal obligation to report a registered health practitioner who the notifier, in the course of practicing their profession, has formed a ‘reasonable belief’ that the practitioner has behaved in a way that constitutes notifiable conduct.

The 10 health professions covered by the scheme are:

- chiropractors
- dental care practitioners
- medical practitioners
- nurses and midwives
- optometrists
- osteopaths
- pharmacists
- physiotherapists
- podiatrists
- psychologists.

The obligation to make a mandatory notification applies to the conduct or impairment of all registered practitioners, and not just those in the same health profession as the practitioner who is making the notification.

Education providers also have an obligation to make a mandatory notification in relation to students, if the provider reasonably believes a student who is enrolled with the provider, or who is undertaking clinical training with the provider, has an impairment that in the course of the student undertaking clinical training, may place the public at substantial risk of harm.

### What is ‘reasonable belief’?

Making a mandatory notification is a serious step to prevent the public from being placed at risk of harm and should only be taken on sufficient grounds. For practitioners reporting notifiable conduct, a ‘reasonable belief’ must be formed in the course of practising the profession.

A reasonable belief requires a stronger level of knowledge than a mere suspicion. Generally it would involve direct knowledge or observation of the behaviour that gave rise to the notification. Mere speculation, rumours, gossip or innuendo are not enough to form a reasonable belief. However, conclusive proof is not needed.

A report should be based on personal knowledge of facts or circumstances that are reasonably trustworthy and that would justify a person of average caution, acting in good faith, to believe that notifiable conduct has occurred or that a notifiable impairment exists.

### Am I protected if I make a notification?

The National Law protects practitioners, employers and education providers who make notifications in good faith (well intentioned or without malice). Protection is provided 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 I fail to make a notification?

There are no penalties prescribed under the National Law for a practitioner who fails to make a mandatory notification; however, a practitioner who fails to make a mandatory notification when required to do so may be subject to action by their registration board.

There are consequences for an employer who fails to notify the National Agency of notifiable conduct. If the National Agency becomes aware of such a failure, the National Agency must give a written report about the failure to the responsible minister for the participating jurisdiction in which the notifiable conduct occurred. The minister must report the employer’s failure to notify to a health complaints entity, the employer’s licensing authority or another appropriate entity in that participating jurisdiction.

### Risk management strategies

General practitioners are encouraged to seek advice from their medical defence organisation if they are unsure about their obligations in a

particular situation, or uncertain whether to make a notification. It should be noted that health practitioners who are employed or engaged by professional indemnity insurers, including medical defence organisations, are exempted from the obligation to make a mandatory notification. There is also an exception where the practitioner required to make the notification reasonably believes that someone else has already made a notification.

### Resource

Guidelines for mandatory notifications. Medical Board of Australia: [www.medicalboard.gov.au](http://www.medicalboard.gov.au).

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