

## Health Insights

# Western Australia: What are the Mandatory Reporting Requirements for Registered Health Practitioners?

In early 2020, the Australian Health Practitioner Regulation Agency (**AHPRA**) released revised guidelines for mandatory notifications made to AHPRA by treating practitioners. These guidelines were issued in anticipation of amendments to the Health Practitioner Regulation National Law, as in force in participating states and territories. The amendments came into effect in March 2020.

The purpose of these amendments is to raise the reporting threshold for treating practitioners. Treating practitioners are now required to notify AHPRA only if they believe that another practitioner (i.e. their patient) poses a 'substantial risk of harm' to the public.

For those based in Western Australia, it is important to be aware that the above amendments do not alter the position in Western Australia; no amendments have been made to *the WA Health Practitioner Regulation National Law (WA) Act 2010 (the National Law)*.

It is, however, still important for Western Australian practitioners to be familiar with the Guidelines: Mandatory Notifications about registered health practitioners dated March 2020 which summarise the requirements in each state and territory.

### WA mandatory reporting requirements

In WA, treating practitioners providing a health service to another practitioner/student remain exempt from the requirements to make a mandatory notification. This exemption is set out in section 141(4)(ca) of the National Law (**the treating practitioner exemption**).

The mandatory notification requirements still exist for WA practitioners when dealing with non-patients and colleagues. The standard for what conduct constitutes a mandatory notification and who must notify is set out in Part 8 Division 2 of the National Law.

A mandatory notification is triggered by what is considered 'notifiable conduct'. Notifiable conduct in relation to a registered health practitioner is defined in section 140 of the National Law and means the practitioner has:

- practised their profession while intoxicated by alcohol or drugs;
- engaged in sexual misconduct;

- placed the public at substantial risk of harm because of an impairment; or
- placed the public at substantial risk of harm because they have practised their profession in a way that departs from accepted professional standards.

An 'impairment' means the person 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 practise the profession.<sup>1</sup>

Section 141 of the National Law sets out the requirements for a registered health practitioner to make a mandatory notification about another registered health practitioner. A health practitioner must make a notification if, in the course of practising their profession, they form a reasonable belief that another registered health practitioner has behaved in a way that constitutes notifiable conduct.

A 'reasonable belief' is considered to be direct knowledge, not just a suspicion of the incident or behaviour that led to a concern. This is most likely to occur from an observation, not from speculation, rumours, gossip or innuendo. Where a report is made to an employer or practitioner from a reliable source, who may have direct knowledge, they should be encouraged to make a notification themselves. Factors such as professional background, level of insight, experience and expertise will help form a reasonable belief.<sup>2</sup>

The notification must be made to AHPRA as soon as is practicable after forming the reasonable belief. A contravention of this requirement does not constitute an offence but may constitute behaviour for which action may be taken against the health practitioner.<sup>3</sup>

Section 142 of the National Law sets out the requirement for employers to make a mandatory notification about a registered health practitioner. In short, if an employer of a registered health practitioner reasonably believes the health practitioner has behaved in a way that constitutes notifiable conduct, the employer must notify AHPRA.

## Exemptions

Section 141(4) of the National Law sets out the exemptions to the requirement for a registered health practitioner to make a mandatory notification about another.

In addition to the treating practitioner exemption, there are specific exemptions for circumstances in which the 'reasonable belief' is formed in the medico-legal context. This includes practitioners providing an expert opinion and medical advisors working for insurers.

## Voluntary notifications

Notwithstanding the treating practitioner exemption, treating practitioners still have a professional and ethical obligation to protect and promote public health and safety. In some circumstances, they may

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<sup>1</sup> *The National Law* s 5.

<sup>2</sup> AHPRA, 'Guidelines: Mandatory notifications about registered health practitioners' (March, 2020) 7 <<https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-mandatory-notifications.aspx>>.

<sup>3</sup> *The National Law* s 141(3).

consider the necessity of making a voluntary notification if they have concerns about the practitioner's ability to practise safely.

The grounds for making a voluntary notification are set out in s 144 of the National Law. In summary, a voluntary notification can be made on any of the following grounds:

- the practitioner's professional conduct is, or may be of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers;
- the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the course of practising is, or may be, below the standard reasonably expected;
- the practitioner is not, or may not be, a suitable person to hold registration in the health profession, including, for example, that the practitioner is not a fit and proper person to be registered;
- the practitioner has, or may have, an impairment;
- the practitioner has, or may have, contravened the National Law;
- the practitioner has, or may have, contravened a condition on their registration or an undertaking they gave to a National Board; or
- the practitioner's registration was, or may have been, improperly obtained on the basis of false or misleading material.

## Protection of Notifiers

Section 237 of the National Law provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under the National Law. This applies to both mandatory and voluntary notifications.

On the other hand, practitioners who make notifications that are frivolous, vexatious or not in good faith may be subject to a future disciplinary action.

The National Law clarifies that making a notification is not a breach of professional etiquette or ethics as it is consistent with a practitioner's ethical responsibilities. As such, privacy obligations do not prevent a practitioner from making a mandatory or voluntary notification.<sup>4</sup>

## Further information

Health practitioners should ensure they carefully read the Guidelines: Mandatory Notifications about registered health practitioners dated March 2020.

For further information and assistance, contact AHPRA or your professional indemnity insurer.

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<sup>4</sup> Australian Health Practitioner Regulation Agency, 'Guidelines: Mandatory notifications about registered health practitioners' (March, 2020) 6 <<https://www.medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-mandatory-notifications.aspx>>.

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