MDA National
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MIIAA Forum: Mandatory Reporting and Complaints Handling

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Complaints against Practitioners in WA

- Handled by either Health and Disability Services Commissioner (HADSCO) or AHPRA
- They refer matters to each other
- In practice AHPRA handles the more serious matters

Point of Difference for HADSCO

- Provides an informal, direct interaction between practitioner and patient
- Much quicker than the formal AHPRA approach
- HADSCO deals with matters around billing and patient information and satisfaction

AHPRA/Board Complaints in WA

- Receipt of notification (complaint)
- Preliminary assessment
  - No further action
  - Referral to Panel (PPSP)
  - Referral to Tribunal (SAT)
  - Referral for Health/Performance Assessment
  - Board takes action
  - Investigate further

AHPRA/Board Complaints in WA

- Investigation
  - No further action
  - Referral to Panel (PPSP)
  - Referral to Tribunal (SAT)
  - Referral for Health/Performance Assessment
  - Board takes action
- Immediate Action
  - Board may initiate process urgently in interests of public safety

Areas of Concern with AHPRA/Board processes

- Inconsistencies between jurisdictions undermining the national nature of the accreditation and registration scheme
- Adherence to the principles of Natural Justice

Natural Justice/Procedural Fairness

- Examples
  - Practitioner must be provided with all the info required to answer the allegations
  - Info must be provided within a reasonable time frame
  - Practitioner has opportunity to respond to all allegations/decisions affecting their interests and person's response is genuinely considered
  - Decision maker has evidence to support decisions
  - Legitimate inquiry into matters in dispute

Issues of Concern

- In some jurisdictions responses are requested before Board allegations are articulated
- ie responses requested to original patient complaints or documents produced by 3rd parties (eg police statement of material facts)
- However, in other jurisdictions practitioners:
  - receive written notification of issues to address in responses; or
  - informal calls to discern investigation focus

Issues of Concern

- Provision of expert evidence
  - No notification of external expert report relied on
  - No notification of internal medical opinion relied on
  - External expert evidence provided as extracts only
  - No notification of exculpatory expert report and alternate expert evidence sought
  - Expert reports provided to practitioners in full

Issues of Concern

- Medical Records
  - Previously the investigating entity provided relevant medical records from other practitioners/hospitals to assist in making a response.
  - In some jurisdictions this no longer occurs and investigating entities refuse FOI requests

Mandatory Reporting

- In certain circumstances, practitioners, employers & education providers are required to make a mandatory notification to the Board regarding a practitioner, or a student where they have engaged in notifiable conduct

Notifiable Conduct (s140)

Where the practitioner has:

a. Practiced the practitioner's profession while intoxicated by alcohol or drugs; or
b. Engaged in sexual misconduct in connections 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 practiced the profession in a way that constitutes a significant departure from accepted professional standards.

Practise while Intoxicated by Alcohol or Drugs (s140(a))

- "Intoxicated" is not defined in the National Law
- The Boards will consider a practitioner to be intoxicated where his or her capacity to exercise reasonable care & skill in the practice of the health profession is impaired or affected as a result of being under the influence of drugs or alcohol
- The law does not require notification of a practitioner who is intoxicated outside the practice of his or her health profession

Sexual Misconduct in Connection with Practice (s140(b))

- Sexual activity with a current patient, a past patient, or a close relative of a patient may be misconduct
- Includes both sexual acts and remarks
- Consider vulnerability including age, capacity, health conditions, the extent of the professional relationship, length of time since practitioner/patient relationship ceased.

Impairment & Placing the Public at Risk of Substantial Harm

- Impairment = 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"
- To trigger this notification, a practitioner must pose a risk of substantial harm to the public

Impairment

- In practice impairment notifications are especially problematic because of continuing confusion around what "impairment" means

Mandatory Notification

- The aim of the notification requirements is to prevent the public from being at risk of harm
- The threshold to be met to trigger a mandatory notification in relation to a practitioner is high:
  - making a mandatory notification is a serious step to prevent the public from being placed at risk of harm & should only be taken on serious grounds

Mandatory Notification – Decision Making

- The practitioner or employer must have first formed a "reasonable belief" that the behaviour constitutes notifiable conduct

What is "Reasonable Belief"?

- 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 which gives rise to the notification, or, in the case of an employer, it could also involve a report from a reliable source

What is "Reasonable Belief"?

- Mere speculation, rumour, gossip or innuendo are not enough to form a reasonable belief
- A reasonable belief has an objective & a subjective element
  - there are facts which could cause the belief in a reasonable person
  - the person making the notification actually has that belief

What is "Reasonable Belief"?

- Conclusive proof is not needed
- A report should be based on a personal knowledge of facts & circumstances that are reasonably trustworthy & that would justify a person of average caution acting in good faith to believe that notifiable impairment exists
- The professional background, experience & expertise of a practitioner, employer or education provider will also be relevant in forming a reasonable belief

Exceptions to the Requirements of Practitioners to Make a Mandatory Notification (s141(4))

- Where the practitioner required to make the notification reasonably believes that someone else has already made a notification
- Practitioners employed or engaged by a MII
- Practitioner providing advice about legal proceedings
- Practitioner exercising functions as a member of a quality assurance committee, council or other similar body approved or authorised under legislation, which prohibits the disclosure of the information
- The practitioner is the treating doctor (WA only)

Concerns with Mandatory Reporting by Treating Practitioners

- Mandatory reporting for treating practitioners may:
  - Create a conflict for the treating practitioner
  - Damage/end the therapeutic relationship
  - Discourage practitioners who are unwell from seeking treatment
  - Produce erroneous reporting due to jurisdictional confusion

Issues with Mandatory Reporting generally

- There is no exemption for spouses
- There is a concern that employers may be using the mandatory reporting provisions in circumstances of employer/employee relationship breakdown
- 60% of mandatory reports come from employers
- Similar concerns regarding practitioners who have a problem with a colleague
- In either case the reporter may be able to make the report with the protections in the National Law