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Australian Health Practitioner Regulation Agency

A guide for practitioners: Notifications in the National Scheme

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Introduction

Being the subject of a notification can be very confronting.

This information is written for health practitioners and outlines what they can expect if a notification (complaint) is made about them. It explains

- the role of National Boards¹ in relation to notifications
- the role of the Australian Health Practitioner Regulation Agency (AHPRA) in relation to notifications
- the process that is followed and
- the decisions that can be made.

This information complements the individual correspondence a registered health practitioner receives directly from AHPRA if they are the subject of a notification.

Managing notifications is an important part of health practitioner regulation. Information about the National Registration and Accreditation Scheme (the National Scheme), the National Law², and some of the other roles of AHPRA and the National Boards, is published on the AHPRA website at www.ahpra.gov.au.

Different systems for managing notifications exist in Queensland and New South Wales.

Notifications in New South Wales

The National Boards and AHPRA do not manage notifications that arise in New South Wales (NSW).

The health professionals councils and the Health Care Complaints Commission (HCCC) work together to assess and manage complaints about practitioners' conduct, health and performance for behaviour that occurred in NSW.

The National Boards have no role in handling notifications in NSW. AHPRA has a limited role in accepting mandatory notifications and referring them to the HCCC.

AHPRA ensures that all NSW notifications and their outcomes are recorded in the national database to promote information sharing.

If you would like more information about the notifications process in NSW, go to the HPCA at www.hpca.nsw.gov.au or the HCCC at www.hccc.nsw.gov.au.

Notification in Queensland

The National Boards and AHPRA only manage complaints that arise in Queensland if the Office of the Health Ombudsman (OHO) refers the complaint to us.

The OHO receives all complaints that arise in Queensland. The OHO may refer a complaint to AHPRA and the National Boards if the OHO is satisfied that the complaint is not serious.

If a complaint is referred by the OHO to a National Board and AHPRA, then this Guide identifies how the complaint will be managed.

If you would like more information about the notifications process in Queensland, go to the OHO at www.oho.qld.gov.au.

¹ There is a National Board for each of the 14 professions included in the National Registration and Accreditation Scheme.

² The Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

About notifications

A key role of the National Boards and AHPRA is to protect the public.

When a member of the public, an employer, an education provider or another practitioner notifies us of concerns about a practitioner, we consider those concerns and gather any additional information we might need to decide whether, because of a practitioner's health, conduct or performance, there is a risk to the public or proper professional standards have not been maintained.

If we decide that we need to act to protect the public, we will. Under the National Law, National Boards have a number of powers to take action to protect the public and ensure appropriate standards of practice are maintained.

When necessary, and after following processes that are guided by our legislation and based on our [regulatory principles for decision making](#), we might act by:

- restricting or suspending the registration of a practitioner who is found to have engaged in unprofessional conduct or unsatisfactory professional performance, or
- managing a practitioner when their health is impaired and may place the public at risk.

Details about the kinds of notifications that the National Boards receive, the number of notifications and their outcomes are published each year in the annual report of AHPRA and the National Boards. While AHPRA and the National Boards manage every notification individually, these data provide a useful context for, and information about, our work in relation to notifications.

The National Law also gives the National Boards the power to look at a number of notifications about the same practitioner together, to understand more about a pattern of conduct.

Any actions taken by a National Board aim first to protect the public, not to punish practitioners.

Regulation deals with the professional standards and conduct of individual registered health practitioners. National Boards and AHPRA work together to deal with registered health practitioners who may be putting the public at risk as a result of their conduct, professional performance or health.

It is not the role of a National Board or AHPRA to punish a practitioner. When a National Board decides to take action in relation to a practitioner, it does so to protect the public. Although these actions sometimes mean a practitioner has to meet additional burdens in order to continue to practise or that they cannot practise at all, the actions of a National Board are protective and are not designed to punish a practitioner.

AHPRA and National Boards only take action when an individual's health, conduct or performance has exposed or exposes the public to the risk of harm. We are not complaints resolution bodies so we do not act to resolve all complaints that a patient might have about their health practitioner.

We do work collaboratively with health complaints entities (HCEs) in each state and territory. HCEs provide avenues for complaints resolution that individual members of the public can pursue. If we think a HCE might provide assistance to a person who makes a notification, we can provide information to the HCE so that they can assist.

HCEs also investigate concerns raised about health systems or health service providers. They can investigate certain concerns about health practitioners, for example about fees and costs. In the National Scheme, HCEs and AHPRA work together to decide which organisation should take responsibility for concerns raised in complaints and how these should be dealt with. They work together to jointly assess concerns that could be, or have been, made to both agencies. If the HCE and the Board cannot agree on what action to take, the most serious action proposed must be taken.

More information about HCEs and how these entities work with AHPRA and the National Boards is published on page 14. AHPRA also has a Memorandum of Understanding with HCEs, which is published online.

What is a notification?

A notification is a complaint or concern about a registered practitioner that is lodged with AHPRA or a National Board. The word 'notification' is used in our law to mean more than *just* complaints. It recognises that a person might raise a concern about the behaviour or health of a practitioner even if it hasn't directly impacted them directly. A person might have a concern that if a practitioner's behaviour continued, it might cause harm to other members of the public.

National Boards are responsible for protecting the public and making sure all practitioners are safe to practise. **Sometimes, as a result of a notification, a National Board might limit a practitioner's registration in some way to achieve this goal.**

See *Monitoring and compliance* for more information

The National Boards and AHPRA do not have the jurisdiction to manage a notification that does not directly relate to the health, conduct or performance of a registered health practitioner.

Who can make a notification?

Any person, or any organisation, can make a notification to AHPRA.

AHPRA receives notifications on behalf of a National Board.

The person who raises a concern by making a notification is called the notifier.

Most notifications are made voluntarily by individuals with concerns about the health, conduct or performance of a registered health practitioner. The National Law helps to explain what we mean by those terms:

- health (impairment) – the practitioner has, or may have, a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect their practice of the profession
- conduct – the professional conduct of the practitioner is, or may be, of a lesser standard than might reasonably be expected by the public or the practitioner’s professional peers, or
- performance – the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of their health profession is, or may be, below the standard reasonably expected of a health practitioner of an equivalent level of training or experience.

The grounds for a possible notification are detailed later in this document and in section 144 of the National Law.

The National Law provides protection from civil, criminal and administrative liability for people who make a notification in good faith.

Registered health practitioners, employers and education providers have mandatory reporting obligations imposed by the National Law.

See *Mandatory reporting* for more information.

National Boards can also initiate an investigation without having received a notification.

See *Investigations* for more information.

Voluntary notifications

Typically, notifications are made by patients or their families, other health practitioners, employers and representatives of statutory bodies.

The National Boards and AHPRA take every notification they receive seriously, as they are responsible for making sure that only practitioners who have the skills and qualifications to provide safe care are registered to practise.

Every notification is managed individually. When multiple notifications are received about the same practitioner, these can be considered together, in case the Board can identify any patterns of conduct.

There is a nationally consistent process for managing notifications, but there is no uniform response as every notification is different and is dealt with separately. **The fact that a notification has been made does not automatically affect a practitioner's ability to practise unless the notification indicates there is a serious risk to public safety.**

See *Immediate action* for more information.

Grounds for voluntary notifications

The National Law sets out the grounds for voluntary notifications about registered practitioners. For a National Board or AHPRA to be able to manage a notification, it must relate to one of the following criteria:

- the practitioner's professional conduct is, or may be, of a lesser standard than that expected by the public or the practitioner's professional peers
- the knowledge, skill or judgement possessed, or care exercised by the practitioner is, or may be, below the standard reasonably expected
- the practitioner is not, or may not be, a suitable person to hold registration
- 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 of their registration or an undertaking given to the Board, and/or
- the practitioner's registration was, or may have been, obtained improperly.

Notifications can be made about students only in relation to offences or impairment. The National Boards have no role in relation to students' academic or personal performance.

Common types of notification

People raise a range of concerns about registered health practitioners with AHPRA and the National Boards.

AHPRA and the National Boards classify notifications into the following categories:

- behaviour
- billing
- boundary violation
- clinical care
- communication
- confidentiality
- conflict of interest
- discrimination
- documentation
- health impairment
- infection/hygiene
- informed consent
- medico-legal
- National Law breach (such as breach of a registration standard, endorsement, condition or undertaking)
- National Law offence (such as an advertising breach)
- offence
- offence by student
- pharmacy/medication
- research/training/assessment
- response to adverse event, or
- teamwork/supervision.

More information on these definitions is provided in the glossary published on the AHPRA website. Some notifications raise concerns about more than one issue and are classified based on the primary concern raised.

More information is available at www.ahpra.gov.au/Support/Glossary

The most common types of notification made about each profession in the National Scheme are published in the AHPRA and National Boards' annual report, which is published on the AHPRA website.

More information is available at <http://www.ahpra.gov.au/Publications/Corporate-publications/Annual-reports.aspx>

Mandatory notifications

All registered health practitioners have a professional and ethical obligation to protect and promote public health and safe healthcare. Under the National Law, health practitioners, employers and education providers also have some mandatory reporting responsibilities.

The threshold to require mandatory reporting is high. 'Reasonable belief' is a term commonly used in legislation, including in criminal, consumer and administrative law. While it is not defined in the National Law, in general, a reasonable belief is a belief based on reasonable grounds. This means the practitioner must have reasonable grounds to suspect notifiable conduct has occurred before they are required to submit a mandatory notification.

Note: Anyone can make a *voluntary* notification at any time.

Each National Board has published guidelines on mandatory notifications for its profession.

Information about mandatory notifications is available on each National Board website. These guidelines help individuals to decide whether they are required to make a mandatory notification or not.

The National Law requires registered health practitioners, and employers of registered health practitioners, to advise AHPRA or a National Board if they have formed a reasonable belief that a health practitioner has behaved in a way that constitutes notifiable conduct in relation to the practice of their profession.

Notifiable conduct by registered health practitioners is defined as:

- practising while intoxicated by alcohol or drugs
- sexual misconduct in the practice of the profession
- placing the public at risk of substantial harm because of an impairment (health issue), or
- placing the public at risk because of a significant departure from accepted professional standards.

There are specific exceptions to the requirements for all practitioners in Australia that relate to the circumstances in which the 'reasonable belief' is formed, for example in the medico-legal context.

In Western Australia there is no legal requirement for treating practitioners to make mandatory notifications about patients (or clients) who are practitioners or students in one of the regulated health professions. However, all registered practitioners have a professional obligation to comply with professional and ethical standards set down by their National Board.

National Boards have the power under the National Law to take action with respect to the registration of a practitioner who does not comply with this requirement.

Ministers have the power to name employers that do not meet their mandatory reporting responsibilities.

Education providers have an obligation to make a mandatory notification if they have formed a reasonable belief that a student undertaking clinical training has an impairment that may place the public at substantial risk of harm. AHPRA has the power to publish information about education providers that do not meet their mandatory reporting obligations.

The notifications process

Who does what?

Most decisions about how to deal with individual notifications are made by National Boards.

Different National Boards have established different structures for dealing with notifications, or have delegated some of their decision-making to their committees and AHPRA officers in state and territory offices. The Appendix shows the structure of National Board committees, including those that manage notifications.

See the Appendix for more information about how each National Board is structured to manage notifications

AHPRA sends notices and other correspondence on behalf of the Boards and their committees to practitioners, notifiers or others involved in a notification. AHPRA and the National Boards also publish individual fact sheets about each step in the notifications process, and send these to practitioners at the relevant stage. These fact sheets are published on the website.

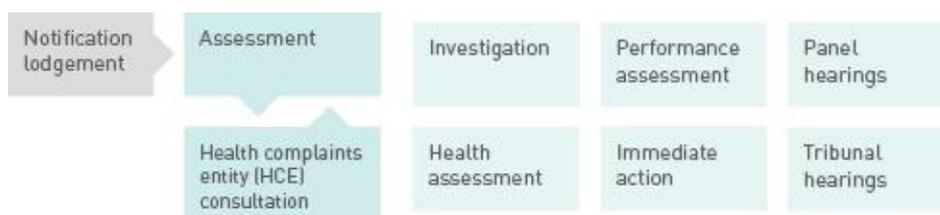
More information is available at <http://www.ahpra.gov.au/Notifications/Fact-sheets.aspx>

Stages of the process

There is a nationally consistent process for managing notifications, which can include the following stages:

- lodgement
- assessment
- investigation
- health or performance assessment
- immediate action
- panel hearings, and
- tribunal hearings.

Figure 1: Notifications process



These notification stages are not always completed in a linear sequence and, importantly, not every notification goes through all the possible stages. For example, in 2014-15 62.9% of all notifications were closed at the end of the assessment stage¹.

AHPRA and the National Boards treat all notifications seriously. They are managed according to legal requirements, including confidentiality, privacy and natural justice principles.

Lodgement

Anyone can lodge concerns about a registered health practitioner with AHPRA, which receives them on behalf of a National Board. Concerns can be lodged by telephone, by completing a notifications form (sent by email or in hard copy), or in person at an AHPRA office.

People lodge all sorts of concerns about registered health practitioners. However, not all initial concerns lodged meet the legal requirement for a notification.

AHPRA makes a preliminary assessment of each matter lodged to establish that it:

- relates to a registered practitioner, and
- **relates to a matter that is a ground for notification.**

See *Voluntary notifications* for more information

If these criteria are met, it is considered a notification under the National Law and it is assessed by a National Board (see next section).

If the concerns lodged do not contain enough information to establish them as a notification, AHPRA will seek this information and, consistent with the National Law, provide reasonable assistance to the notifier in this process.

If this cannot be done within 30 days and the concerns lodged still do not meet the requirements for a notification, AHPRA will recommend that the National Board closes the matter.

If the concerns identify a practitioner, they will be recorded on the practitioner's file but not considered a notification. We will write to the practitioner to let them know that we have received concerns and what they are, but will not be progressing it.

Figure 2: Lodgement process



* A National Board may decide to take additional time to seek further information, in the public interest.

Assessment

AHPRA conducts an assessment to see if the concerns raised can be quickly and easily addressed and if not, to make sure they are dealt with in the most effective way possible.

Sometimes, we will ask the notifier for more information before we ask a National Board to make an assessment decision about the notification. If enough information has been provided initially, we may not need to do this.

We will usually send the health practitioner a copy of the notification we have received and ask them to respond. Occasionally, we are not able to ask the practitioner for a response at this stage because this would:

- prejudice an investigation
- place a person's safety at risk, or
- place a person at risk of intimidation.

When we have gathered the initial information, AHPRA refers the notification to a National Board for assessment. Under the National Law, this happens within 60 days of the concerns lodged being established as a notification.

A National Board can consider a single notification or a group of notifications about a practitioner that suggest a pattern of conduct. **A National Board can also consider notifications initially made to a health complaints entity (HCE), because AHPRA and HCEs in each state and territory work together.**

See <i>Working with health complaints entities</i> for more information

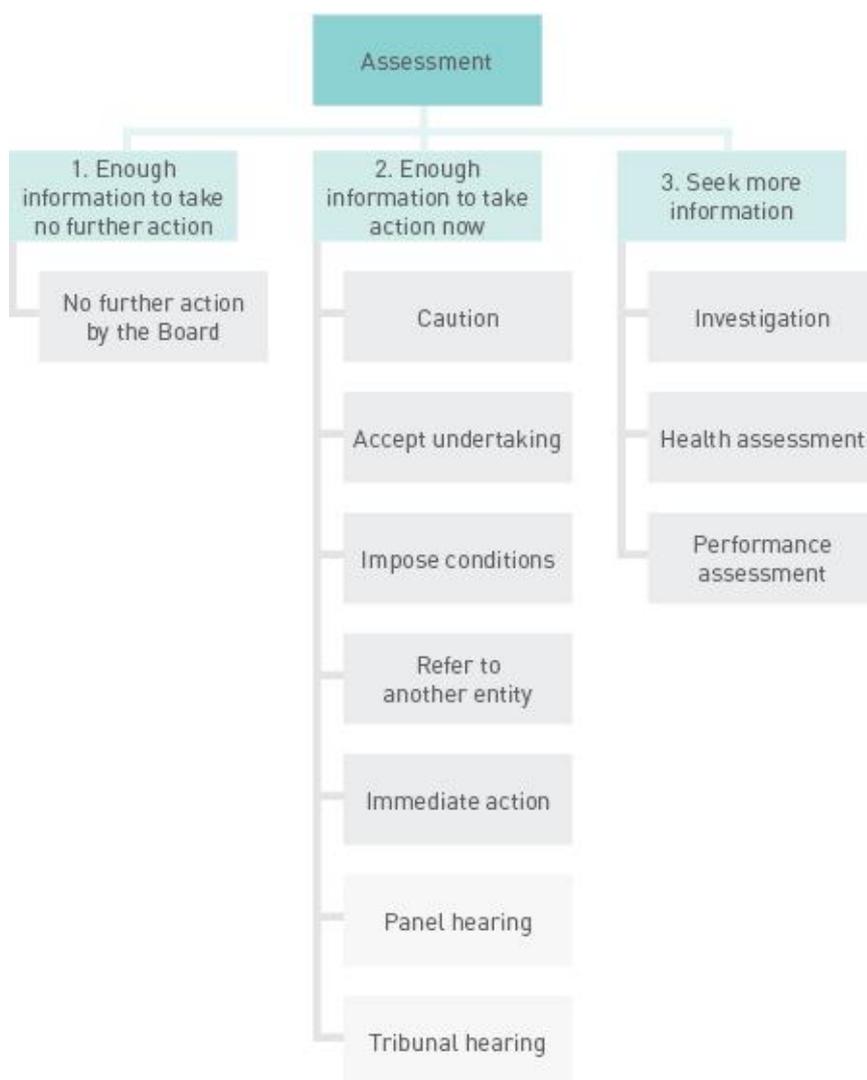
When making a decision after assessing a notification, a National Board has to decide if it raises issues of professional misconduct, unprofessional conduct, unsatisfactory professional performance or impairment of a registered practitioner.

At this stage, the National Board has 10 options for what to do next. Not every assessment leads to an investigation or to another form of action by a National Board.

The decisions the National Board can make during the assessment stage fall into three broad categories:

1. Enough information is available to decide no further action by the Board is necessary to protect the public.
2. Enough information is available to decide to take action now.
3. Not enough information is available, seek more information.

Figure 3: Assessment pathways



1. Enough information is available to decide no further action is necessary to protect the public

Sometimes there is enough information available at this stage in the process for a National Board to decide there is no action required by the National Board in response to the concerns raised in a notification. In these cases the Board can decide to take no further action.

The Board's decisions are focused on keeping the public safe. When a National Board decides to take no further action after an assessment it generally means that the National Board thinks that:

- there is no risk to the public that needs to be managed
- the issue does not require the National Board to take any action, including action that would mean that a practitioner's registration was restricted in some way, or
- progressing the matter would not be in the public interest, because, for example
 - there has been a significant amount of time between a person becoming concerned and the time when the concerns are raised with the National Board and investigating the concerns would be too difficult.
 - the concerns have been raised and dealt with by another entity and the National Board is satisfied that action taken has already resulted in protection of the public.

2. Enough information is available to decide to take action now

In some cases a National Board believes it has enough information from the notifier, and perhaps the practitioner, at this stage to decide that some action is appropriate to keep the public safe. In these cases, it can take any one or more of the following six courses of action:

1. caution the practitioner or student
2. accept an undertaking from the practitioner or student (to do or to not do something in relation to their practice)
3. impose conditions on the registration of the practitioner (or student), for example that the practitioner:
 - undertakes further education or training and/or
 - has their practice supervised and/or
 - does, or does not do, something in relation to their practice and/or
 - manages their practice in a certain way and/or
 - reports to a specified person at set times about their practice and/or
 - does not employ someone or a type of person
4. refer the concerns to a health complaints entity, or another organisation outside the National Scheme, for investigation or other action
5. take immediate action to protect the public by limiting the practitioner's registration in some way. This is an interim step and always involves another course of action as well, such as referral to an investigation
6. refer the practitioner to a panel hearing, or
7. refer the practitioner to a tribunal hearing.

When a National Board decides to take immediate action, caution or impose conditions on a practitioner's registration, we will seek submissions from the practitioner or student about what the Board proposes to do. These submissions can be made face-to-face or in writing and will inform the final decision made by the National Board.

If the Board decides to limit a practitioner's registration in some way, any restrictions are published on the register of practitioners. The only exception is in relation to private health information, which is not published.

It is not common for a Board to refer a matter directly to a panel or a tribunal without investigation, but this is possible under the National Law.

3. Not enough information is available, seek more information

Sometimes the Board decides it needs more information before it can make an informed decision about what, if any, action might be necessary to keep the public safe. In these cases, the Board can:

- refer the matter to investigation, and/or
- refer the practitioner to a health or performance assessment.

Joint consideration with health complaints entities

After a National Board makes decision about what to do next about a notification that could also be made to a health complaints entity, **AHPRA works with the local HCE to make sure both agencies agree that the most appropriate organisation is managing the notification.** This 'joint consideration' process is a requirement of the National Law and makes sure that notifications are managed in the best way to protect the public.

See *Working with health complaints entities* for more information

Updating practitioners

After the joint consideration process, in almost all cases we will write to you to let you know what the Board has decided to do about the notification that has been made about you. This is not the case if we think doing so will prejudice an investigation, place a person's safety at risk or place them at risk of intimidation. Under the National Law, a National Board must conduct the assessment within 60 days of establishing the concerns as a notification.

The Board and AHPRA communicate directly with each individual practitioner involved in this process or their representative, and with the notifier.

This one-on-one correspondence clearly explains what issues the Board is considering in the notification. We advise the practitioner what action, if any, they need to take and in what timeframe.

Immediate action

In some cases a National Board needs to consider taking immediate action to keep the public safe. The National Boards have this power, in case they need to act quickly (for example, before an investigation is conducted) to protect the public.

The National Boards take immediate action relatively rarely. Immediate action enables a National Board to limit or suspend a practitioner's registration if it reasonably believes that, because of a practitioner's conduct, performance or health, there may be a serious risk and it is necessary to act immediately to protect public health or safety.

National Boards can take immediate action on students in relation to impairment, offences or if they have not complied with conditions on their registration.

More information about immediate action is available at www.ahpra.gov.au/Notifications/Fact-sheets/Immediate-action

Working with health complaints entities

More detail about working with HCEs is available at www.ahpra.gov.au/Notifications/Fact-sheets/Health-complaints-entities

Health complaints entities (HCEs) are established in each state and territory and are authorised to investigate complaints about health systems and health service providers. **AHPRA works with the HCE in each state/territory to ensure the appropriate organisation investigates the concerns that have been raised about registered health practitioners.**

Information sharing between AHPRA and HCEs provides AHPRA with a complete view of a practitioner's complaint history, as well as a record of any interaction between the practitioner and the HCE.

Each state and territory has its own procedures for processing HCE complaints, subject to agreement and the Memorandum of Understanding (MoU) between AHPRA and all HCEs.

The HCE may be able to assist when the notifier (the person who has raised the concerns) is seeking financial compensation and/or resolution through mediation/conciliation. Neither of these outcomes is available under the National Law. AHPRA will manage the matter on behalf of a National Board if it relates to a practitioner's health, performance or conduct.

Table 1: How notifications are managed between AHPRA and HCEs

Notification to AHPRA involving practitioner and patient	Notification to AHPRA not involving practitioner and patient*	Complaint to HCE involving practitioner	Complaint to AHPRA without individual practitioner – a system or organisation problem	Complaint made to both AHPRA and HCE
▽	▽	▽	▽	▽
Recorded by AHPRA, shared with HCE and joint decision made about who will manage it.	Recorded by AHPRA and managed solely by AHPRA on behalf of a National Board.	Recorded by HCE, shared with AHPRA and joint decision made about who will manage it.	Recorded by AHPRA but usually handled by HCE.	Recorded by both organisations, shared between both and a joint decision made about who will manage it.

* Examples of notifications that do not involve a practitioner and a patient include employer-initiated concerns about a practitioner's performance and notifications from other health practitioners about the health of a practitioner.

No further action

A Board can decide to take no further action at any time during the assessment of a notification, but only after the issues raised have been carefully considered. The Board analyses the concerns raised in all types of notifications and uses this information to help guide the profession, improve standards of practice and promote patient safety.

A decision by a National Board to take no further action in relation to a notification does not prevent the Board or a tribunal (the independent authority in the courts system in each state and territory) taking the notification into consideration at a later time, as part of a pattern of conduct or practice by the practitioner.

We will advise you in writing if a National Board decides to take no further action after receiving a notification.

See *Assessment* for more information

Reasons for taking no further action after an assessment

After assessing a notification based on the allegations, facts and evidence, a National Board can decide to take no further action if:

- the Board believes the notification is frivolous, vexatious, misconceived or lacking in substance
- it is not possible for the Board to investigate or deal with the notification, given the amount of time that has elapsed since the matter that is the subject of the notification occurred
- the person to whom the notification relates has not been, or is no longer, registered and it is not in the public interest to investigate or deal with the notification
- the subject matter of the notification has already been dealt with adequately by the Board, or
- the subject matter of the notification is being dealt with, or has already been dealt with, adequately by another entity.

Details about the outcomes of notifications are published in the annual report of AHPRA and the National Boards. Individual practitioners are not identified in this published information.

De-identified information about the outcome of notifications is published in the annual report at <http://www.ahpra.gov.au/Publications/Corporate-publications/Annual-reports.aspx>

Investigation

A National Board may decide to investigate a registered practitioner or student if it believes that:

1. the practitioner or student has, or may have, an impairment, and/or
2. the way the practitioner practises is, or may be, unsatisfactory, and/or
3. the practitioner's conduct is, or may be, unsatisfactory.

A National Board assesses the risk to the public when considering whether or not to investigate. Not every notification lodged is investigated and not every investigation arises from a notification. A National Board has the power to initiate an investigation (called an 'own motion' investigation in the National Law). It might do this when it becomes concerned about a practitioner through information that is in the public domain, or when information about a practitioner is revealed in an investigation about another practitioner.

A Board may also conduct an investigation to ensure that a practitioner or student is complying with conditions imposed on their registration or an undertaking given by the practitioner or student to the Board.

The investigation process

The investigation is conducted by an investigator appointed by the Board.

How it is conducted will depend on the facts of the case and be guided by nationally consistent policies and procedures. It will usually involve the investigator seeking extra information to inform the Board's decision. This may include:

- further information from the person who raised their concern with the Board (the notifier)
- responses and explanations from the practitioner about whom the notification was made
- an examination of patient records
- information from other practitioners involved if relevant
- material relating to the care of the patient or client
- information from other relevant people (for example, family members or receptionist)
- independent opinions from experts
- police reports, and/or
- data from other sources such as pharmacy records, Medicare Australia, etc.

An investigation will also consider whether a practitioner has complied with a National Board's registration standards, codes and guidelines.

Are practitioners aware of the investigation?

In almost every case, practitioners and students who are being investigated are aware of the investigation, as they are given notice of the investigation and information about what is being investigated. The issues being investigated will be set out in written advice from AHPRA. AHPRA provides practitioners or students being investigated (and notifiers) with three-monthly updates on the progress of the investigation. The only exceptions are when the Board believes that giving notice to the practitioner may:

- seriously prejudice the investigation
- place someone's health or safety at risk, or
- place someone at risk of harassment or intimidation.

What happens next?

After analysing the issues raised and facts of the case, the investigator prepares a report for a National Board to consider. The report informs the Board's decision about what, if any, action to take next.

The length of the investigation depends on a number of issues, including how long it takes to gain access to the relevant records or information. The National Law requires the investigation to be conducted in a timely way. At the end of an investigation, the National Board must decide to either take no further action, to take action necessary to protect the public or to refer the matter to another entity.

As a result of an investigation a National Board can make the following decisions based on the allegations, facts and evidence:

- take no further action if the issues of unprofessional conduct, impairment or unsatisfactory performance have not been substantiated
- refer the practitioner for a health assessment
- refer the practitioner for a performance assessment
- refer the matter to a health panel
- refer the matter to a performance and professional standards panel
- impose conditions on/accept an undertaking from the practitioner
- caution the practitioner
- refer the matter to a tribunal, or
- refer the matter to another entity.

Figure 4: Investigation outcomes



Health or performance assessment

Health assessment

A National Board may require a practitioner or student to undergo a health assessment if it believes that the practitioner or student has, or may have, an impairment that may put the public at risk because it affects their ability to practise safely.

More detail about health assessments is available at www.ahpra.gov.au/Notifications/Fact-sheets/Health-assessments

The health assessment is conducted by an experienced and appropriately qualified, independent medical practitioner or psychologist who is not a member of the National Board. The Board pays for the assessment and the assessor writes a report for the Board.

The practitioner or student who was assessed is given a copy of the report unless it contains information that may be prejudicial to their health or wellbeing. In this case the report is given to a medical practitioner or psychologist nominated by the practitioner or student. The medical practitioner or psychologist will then decide when it is appropriate to discuss the report with the practitioner or student.

After the practitioner or student who was assessed receives the report, a person nominated by the Board must discuss the report with them. The practitioner can choose to have someone with them at this time. If there are any adverse findings, this provides an opportunity to discuss ways of dealing with the findings.

- As a result of a health assessment a National Board can decide to:
- take no further action
- investigate the practitioner
- refer the practitioner to a health panel
- require the practitioner to undergo a performance assessment
- impose conditions on, or accept an undertaking from, the practitioner
- refer the practitioner to another entity, or
- refer the practitioner to a tribunal.

Performance assessment

A National Board may require a practitioner to undergo a performance assessment if it believes that the way they practise the profession is, or may be, unsatisfactory.

More detail about performance assessments is available at www.ahpra.gov.au/Notifications/Fact-sheets/Performance-assessments

Performance assessments are conducted by one or more independent practitioners who are not Board members and who have the expertise to assess someone in a particular field of practice. The Board pays for the assessment and the assessor writes a report.

The practitioner who was assessed is given a copy of the report unless it contains information that may prejudice their health or wellbeing. In this case the report is given to a medical practitioner or psychologist nominated by the practitioner or student. The medical practitioner or psychologist will then decide when it is appropriate to discuss the report with the practitioner or student.

After the practitioner who was assessed receives the report, a person nominated by the Board must discuss the report with them. The practitioner can choose to have someone with them at this time. If there are any adverse findings, this provides an opportunity to discuss ways of dealing with the findings. It also gives the practitioner a chance to discuss any proposals for upskilling, education, mentoring or supervision proposed by the assessor.

As a result of a performance assessment a National Board can decide to:

- take no further action
- investigate the practitioner
- refer the matter to a performance and professional standards panel
- impose conditions on/accept an undertaking from the practitioner

- caution the practitioner
- require the practitioner to undergo a health assessment
- refer the matter to a tribunal, or
- refer the matter to another entity.

Immediate action

A National Board has the power to take immediate action at any time, if it believes this is necessary to protect the public. Taking immediate action is a serious step that a Board can only take when it believes that, because of a practitioner's conduct, performance or health there may be a serious risk to public health and safety, and it is necessary to act to protect the public.

The practitioner is always advised that the National Board is considering taking immediate action and given the opportunity to make submissions to the Board. The timelines for this process vary based on the degree of risk to the community, but the practitioner is always afforded natural justice.

Immediate action means:

- suspending, or imposing a condition on, the registration of the practitioner or student, or
- accepting an undertaking from the practitioner or student, or
- accepting the surrender of the registration of the practitioner or student.

The 'show cause' process

When a National Board proposes to take immediate action, a 'show cause' process is involved. This ensures that there is natural justice for the practitioner. 'Show cause' means that a Board gives the practitioner notice that it proposes to take immediate action, and the practitioner has the opportunity to respond to this notice. The National Boards encourage practitioners to seek legal representation through their professional indemnity insurer at this stage.

The Board must take into account any submissions received from the practitioner or their legal representative, before deciding on what action, if any, to take.

There are some common issues that can prompt a National Board to propose immediate action, summarised in Table 2 below. The Boards must base their decision to take immediate action on evidence and also consider the credibility of witnesses.

Table 2: Immediate action – common issues

Category	Example
Police charges	Particularly offences relating to a health practitioner's work/professional practice
Patient outcome	A patient has died unexpectedly or a routine operation has had severe adverse outcomes
Drugs	Notified by a practitioner, or an independent body. Includes accusations of self-administering and inappropriate prescribing of illicit or prescription drugs
Alcohol	Allegations of presenting to work under the influence
Sexual behaviour	Inappropriate touching or professional/sexual boundary violation
Theft	Stealing drugs from the workplace
Health	Impairments – serious (for example, involuntary admission to hospital under the Mental Health Act) or concerns about memory/behaviour
Breach of conditions	A practitioner has conditions on their registration and the conduct/incident described may breach registration conditions

Immediately after deciding whether or not to take immediate action, a Board must also decide what further action it considers appropriate. This can include:

- conducting an investigation
- seeking a health or performance assessment, or

- referring a matter directly to a tribunal.

The National Board, through AHPRA, gives written notice to the practitioner and states the reasons for its decision.

Period of immediate action

The decision to take immediate action takes effect either on the date the notice of a decision by the National Board is given to the practitioner or student, or a later day stated on the notice.

The immediate action decision continues until:

- the decision is set aside after appeal to the responsible tribunal
- the suspension is revoked by the Board (when the practitioner or student has been suspended)
- the conditions are removed by the Board (when the practitioner or student has had conditions imposed), or
- the Board and the practitioner or student agree to end the undertaking (when the Board has accepted an undertaking).

Advice to practitioners and students

Immediate action is a serious matter. **If you are the subject of immediate action you should contact your insurer or legal adviser. You may also choose to contact your professional association.**

Restrictions on a practitioner's registration as a result of immediate action are usually published on the register of practitioners. This is not the case with private health information, which is not published.

Right of appeal

Many of the decisions of a National Board can be appealed by the practitioner or student.

A decision to suspend a practitioner or student's registration or impose conditions as a result of immediate action can be appealed to the responsible tribunal. **More detail about avenues for appeal and grounds on which appeals can be made is published in the fact sheet on immediate action.**

More detail about appeals is available at www.ahpra.gov.au/Notifications/Fact-sheets/Appeals

More detail about immediate action is available at www.ahpra.gov.au/Notifications/Fact-sheets/Immediate-action

Panel hearings

The Board can refer a matter to either:

- a health panel, or
- a performance and professional standards panel.

Health panel

A Board may establish a health panel if it decides it is necessary or appropriate to do so and believes that a registered practitioner or student has, or may have, an impairment.

A health panel consists of at least three members selected from a list of people approved by the Board, including:

- at least one member who is a registered practitioner in the relevant health profession
- at least one member who is a medical practitioner with expertise relevant to the matter subject to the hearing, and
- at least one member who is not, and has never been, a registered health practitioner in the relevant profession.

Information about health panel hearings, including how they are conducted and who sits on them, is available at www.ahpra.gov.au/Notifications/Fact-sheets/Panel-hearings

Performance and professional standards panel

A Board may establish a performance and professional standards panel if it decides it is necessary or appropriate to do so and believes that because of a notification, or for any other reason that:

- the way a registered practitioner practises is, or may be, unsatisfactory, or
- the registered practitioner's professional conduct is, or may be, unsatisfactory.

A performance and professional standards panel consists of at least three members, selected from a list of people approved by the National Board:

- At least half, but no more than two-thirds of the members of the panel must be registered practitioners in the same profession as the practitioner, and
- at least one person must represent the community.

Information about performance and professional standards panel hearings, including how they are conducted and who sits on them, is available at www.ahpra.gov.au/Notifications/Fact-sheets/Panel-hearings

Tribunal hearings

More information about tribunals is available at www.ahpra.gov.au/Notifications/Fact-sheets/Tribunal-hearings

A National Board can refer a matter to a tribunal for hearing. This happens only when the allegations involve the most serious unprofessional conduct (professional misconduct), when a Board believes suspension or cancellation of the practitioner's registration may be warranted.

There are tribunals in each state and territory.

Table 3: Tribunals in each state and territory

State/Territory	Tribunal
New South Wales	Civil and Administrative Tribunal
Australian Capital Territory	Civil and Administrative Tribunal
Northern Territory	Civil and Administrative Tribunal
Queensland	Civil and Administrative Tribunal
South Australia	Health Practitioners Tribunal
Tasmania	Health Practitioners Tribunal
Victoria	Civil and Administrative Tribunal
Western Australia	State Administrative Tribunal

Monitoring and compliance

When health practitioners or students are initially registered, or sometimes as a result of the notifications process, a National Board, panel or tribunal may impose conditions on their registration. Sometimes, a practitioner or student will give an undertaking to the Board in relation to their registration or the practice of their profession. These conditions or undertakings are designed to keep the public safe.

‘Compliance’ is the term used in the National Scheme to describe the process of monitoring registered health practitioners or students who have conditions or undertakings in place. It ensures that practitioners or students comply with those conditions or undertakings.

More information about compliance is available at www.ahpra.gov.au/Notifications/Fact-sheets/Monitoring-and-compliance

The compliance process does not always start at the conclusion of the notifications process. Sometimes conditions and undertakings come into effect as a result of a Board taking immediate action to protect public safety while an investigation is carried out, or when a practitioner is initially registered.

Glossary

Term	Definition
AHPRA	The Australian Health Practitioner Regulation Agency, established by section 23(1) of the National Law.
Allegation	An allegation is a claim of a fact which a person claims to be able to prove. Allegations remain assertions without proof, until they can be proved.
Board delegate	Any individual role/organisation (committee) which has been delegated powers by a National Board.
Co-regulatory jurisdictions (s. 5)	A jurisdiction which is not participating in the health, performance and conduct process provided by the National Law, but is involved in other parts of the National Scheme. New South Wales is a co-regulatory jurisdiction, so the health professionals councils work with the Health Care Complaints Commission to assess and manage concerns about practitioners' conduct, health and performance.
Entity (s. 5)	Company, corporation, individual or organisation, for example, hospital, health practice registered as a business.
Health complaints entity (HCE) *specific to each state (s. 5)	An entity: <ul style="list-style-type: none"> a. that is established by or under an Act of a participating jurisdiction, and b. whose functions include conciliating, investigating and resolving complaints made against health service providers and investigating failures in the health system.
Health (Impairment) (s. 5)	Physical or mental impairment, disability, condition or disorder (including substance abuse or dependence), that detrimentally affects or is likely to detrimentally affect a registered health practitioner's capacity to safely practise the profession or a student's capacity to undertake clinical training.
Immediate action (s.155)	Immediate action can include: <ul style="list-style-type: none"> a. the suspension, or imposition of a condition on, the registered health practitioner's or student's registration, or b. accepting an undertaking from the registered health practitioner or student, or c. accepting the surrender of the registered health practitioner's or student's registration.
Issue/s	Concerns about the registered practitioner's health, performance, or conduct, related to events/behaviour raised within a notification. Also applies to concerns about a student's health.
Mandatory notifications (s. 5)	Notification that an entity is required to make to AHPRA under Division 2 of Part 8 of the National Law.
Ministerial Council	Australian Health Workforce Ministerial Council comprising Commonwealth, state and territory health ministers, which oversees the National Scheme.
National Board	Appointed by Ministerial Council to regulate the profession in the public interest and meet the responsibilities set down in the National Law. National Board members and/or state board members and/or committee members are delegated the functions/powers of the National Board.
National Law	The Act, adopted in each state and territory, setting out the provisions of the Health Practitioner Regulation National Law. The National Law has been adopted by the parliament of each state or territory through adopting legislation. The National Law is generally consistent in all states and territories. New South Wales did not adopt Part 8 of the National Law.

Term	Definition
National Scheme	The National Registration and Accreditation Scheme for registered health practitioners, established by the Council of Australian Governments (COAG). In 2010, under the National Law, 14 professions became nationally regulated by a corresponding National Board. In 2012, four additional professions joined the National Scheme.
Notifiable conduct (s. 140)	<p>The registered health practitioner has:</p> <ul style="list-style-type: none"> 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.
Registered health practitioner (s. 5)	<p>An individual who:</p> <ul style="list-style-type: none"> a. is registered under the National Law to practise a health profession, other than as a student, or b. was, but is no longer, registered in a health profession under the National Law, or c. holds a non-practising registration in a health profession under the National Law.
Student (s. 5)	A person whose name is entered in a student register as being currently registered under the National Law.
Unprofessional conduct (s. 5)	<p>Professional conduct that is of a lesser standard than that which might reasonably be expected of the health practitioner by the public or the practitioner's professional peers. A more extensive definition is available under section 5 of the National Law.</p> <p>Each profession has a set of standards and guidelines which clarify the acceptable standard of professional conduct. Go to www.ahpra.gov.au to access the website of each National Board.</p>
Unsatisfactory professional performance (s. 5)	The knowledge, skill or judgement possessed, or care exercised by, the practitioner in the practice of the health profession in which the practitioner is registered is below the standard reasonably expected for a health practitioner of an equivalent level of training or experience.
Voluntary notification (s. 5)	A notification made on a voluntary basis. The grounds for a voluntary notification are set out in section 144 of the National Law.

Appendix: National Board structures to manage notifications

National Board	National committees	Regional boards	State and territory boards	State and territory committees
Aboriginal and Torres Strait Islander Health Practice Board of Australia	Registration and Notifications Committee	None	None	None
Chinese Medicine Board of Australia	Notifications Committee	None	None	None
Chiropractic Board of Australia	Immediate Action Committee Registration, Notifications and Compliance Committee	None	None	None
Dental Board of Australia	None	None	None	Immediate Action Committee (excluding New South Wales) Registration and Notification Committee (excluding New South Wales)
Medical Board of Australia	None	None	All states and territories	Health Committee (excluding New South Wales) Immediate Action Committee (excluding New South Wales) Notifications Assessment Committee (excluding New South Wales) Performance and Professional Standards Committee (excluding New South Wales)
Medical Radiation Practice Board of Australia	Notifications Committee Immediate Action Committee	None	None	None

Nursing and Midwifery Board of Australia	None	None	All states and territories	Immediate Action Committee (excluding New South Wales) Notifications Committee (excluding New South Wales)
Occupational Therapy Board of Australia	Registration and Notifications Committee Immediate Action Committee	None	None	None
Optometry Board of Australia	Immediate Action Committee Registration and Notifications Committee	None	None	None
Osteopathy Board of Australia	Registration and Notifications Committee	None	None	None
Pharmacy Board of Australia	Immediate Action Committee Notifications Committee	None	None	None
Physiotherapy Board of Australia	None	None	All states and territories	None
Podiatry Board of Australia	Immediate Action Committee Registration and Notifications Committee	None	None	None
Psychology Board of Australia	None	Australian Capital Territory, Tasmania and Victoria South Australia, Northern Territory and Western Australia New South Wales Queensland	None	Immediate Action Committee

ⁱ AHPRA Annual Report 2014-15, Table N3: Notifications closed in 2014/15 by profession, stage at closure and jurisdiction (including NSW)