



Queensland Nurses' Union

Submission to the Australian Health Practitioner Regulation Agency

**Cross-Board consultation on common guidelines
and *Code of Conduct***

May, 2013



Introduction

The QNU thanks the Australian Health Practitioner Regulation Agency (AHPRA) for providing the opportunity to comment on Common Guidelines and *Code of Conduct*.

The QNU - the union for nurses and midwives - is the principal health union in Queensland. The QNU covers all categories of workers that make up the nursing workforce in Queensland including registered nurses, registered midwives, enrolled nurses and assistants in nursing who are employed in the public, private and not-for-profit health sectors including aged care.

Revised *Guidelines for advertising regulated health services*

The QNU notes that the guidelines provide a number of National Law definitions in Appendix 1. We note with concern that the definition of a 'health service' in the National Law does not include an aged care service. Without exception, Approved Providers of funded aged care services employ health practitioners to provide or coordinate health services to their aged care recipients.

The National Boards would no doubt be aware that many aged care services advertise their service as having '*nursing care when you need it*' or '*24-hour nursing care*'. However the Boards may not be aware that in many of those instances the registered nurse who is expected to provide or supervise that care is stationed by the Approved Provider quite a distance away from the aged care recipient and often remote to the facility.

The QNU submits that the inclusion within the definition of 'health service' of 'aged care service' and 'aged care services provided by registered health practitioners' would clarify and ensure that Approved Providers of aged care are required to comply with the guidelines for advertising regulated health services and also clarify that an aged care service which employs registered health practitioners is in fact a health service under the National Law.

Revised *Code of Conduct* or the draft proposed *Social media policy*

The QNU has no comment to make on the revised *Code of Conduct* or the draft proposed *Social media policy*.

Draft revised *Guidelines for Mandatory Notifications*

Introductory section

The QNU strongly supports the inclusion of the proposed paragraph in the introduction section which articulates that it is not necessary for treating practitioners to make mandatory notifications where the health practitioner is engaged in, and compliant with, treatment.

We believe the paragraph is absolutely necessary because, in our experience, treating health practitioners often make ‘mandatory notifications’ to AHPRA about other health practitioners when this is not truly required (for example, when the health practitioner patient has insight into their impairment and they are appropriately treated, or when the health practitioner is on leave from work and not practising the profession until their impairment issues are appropriately treated).

Consistent with the proposed paragraph, and to make the premise clear to all health practitioners and employers, the QNU would further urge the National Boards to propose amendments to the National Law in each state and territory which mirrors a provision contained in the National Law of Western Australia. The relevant provision, contained in s.141(4)(da) of the *Health Practitioner Regulation National Law (WA) Act 2010* states that a mandatory notification is not required if “*the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student*”

Establishing such a provision within the National Law across all jurisdictions will provide clarity for all treating practitioners and make a significant reduction to the volume of unnecessary notifications received by AHPRA. This could have a significant positive impact upon the workloads of AHPRA Officers in the processing and referring of notifications to the relevant National Boards.

What is a reasonable belief?

The QNU supports the inclusion of the proposed explanation of the legal phrase ‘reasonable belief’ which is based upon consideration of the phrase in case law. Many health practitioners would not have a good understanding that the term, when used in legislation, has a clear legal meaning and a much higher threshold than merely a suspicion. The inclusion of the explanation provides clarity on the meaning of the phrase.

Significant departure from accepted professional standards

It is our experience that many employers are dismissive of the need for health practitioners, particularly nurses and midwives, to comply with professional standards, stating that professional standards are not a legislative requirement and are therefore not mandatory with regard to compliance, as far as the employer is concerned.

This argument is given by employers, we believe, in order to minimise costs that would otherwise be expended if the professional standard is complied with. A good example of this dismissive position has occurred when employers have argued against mandatory compliance with the professional standards and guidelines listed in each and every module of Queensland's Clinical Services Capability Framework, or against professional standards that apply to nurses working in the aged care sector.

The Codes and Guidelines of the Nursing and Midwifery Board of Australia provide some good guidance to nurses and midwives regarding their professional obligations, however they too are often ignored by employers as being practitioner-specific and therefore being not relevant to the conduct of the employer.

This lack of employer support for compliance with professional standards and the Codes and Guidelines puts health practitioners in the unenviable position of having two masters to serve – the employer and the National Board – with the practitioner being faced with conflicting expectations from both. It has been our experience that this conflict has prompted many nurses and midwives to leave the profession.

We believe the National Boards, consistent with their obligation to protect the public, should provide guidance to employers regarding their imperative to support health practitioner compliance with professional standards. This could be done through the section of the guidelines which discusses 'significant departure from accepted professional standards' and describes what 'accepted professional standards' are.

The National Boards have an opportunity here to emphasise for employers the importance and relevance of professional standards, Codes and Guidelines in the provision of health services, as well as in the practice of individual health practitioners. There is also opportunity to explain the legal status of professional standards and the Codes and Guidelines developed pursuant to the National Law. Such explanation can then lead into clarification and emphasis of section 136 of the National Law and the potential for substantial penalties if an employer does not permit compliance, or encourages a practitioner not to comply, with a professional standard, Code or Guideline.

General comment

The QNU urges the National Boards, but particularly the Nursing and Midwifery Board of Australia, to direct AHPRA to engage in greater dissemination of the guidelines for mandatory notifications to health practitioners and employers. It is our experience that there is a wide variance in the level of understanding of health practitioners and employers with regard to the thresholds for a mandatory notification, with many tending to err on the side of caution and make a notification when it was not necessary.

However, at present, the receipt of a notification by AHPRA always enlivens a referral of the matter to the relevant Board, given that senior AHPRA Officers no longer have discretion to independently deal with notifications that do not meet the threshold of notifiable conduct.

Greater dissemination of the guidelines to health practitioners and employers, particularly via low-to-nil cost email, could significantly reduce the caseload of AHPRA Officers and the number of matters requiring attention by National Boards or State Boards.

Recommendations

1. That the National Law be amended so that the definition of 'health service' be extended to include 'aged care services provided by registered health practitioners' and 'aged care services'.
2. That the proposed introductory paragraph advising treating practitioners that it is not necessary to make a mandatory notification where the practitioner is engaged in and compliant with treatment be added as written.
3. That the National Boards give due consideration to enacting a provision of the National Law in all jurisdictions which is consistent with s.141(4)(da) of the *Health Practitioner Regulation National Law (WA) Act 2010*.
4. That the National Boards include in the Guidelines for mandatory notifications additional material which emphasises the importance of professional standards, Codes and Guidelines for employers and clarifies their status with regard to lawful compliance in the delivery of health services.
5. That the National Boards direct AHPRA to widely disseminate the guidelines for mandatory notifications to health practitioners and employers.