

A framework for identifying and dealing with vexatious notifications

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Background

Ahpra has committed to developing a framework for our staff and regulatory decision makers to assist in identifying potentially vexatious notifications. This forms part of our work to ensure a strong reporting culture so that genuine concerns about patient safety are reported and appropriately addressed.

Purpose

The purpose of the framework is to assist Ahpra and National Boards to more effectively manage notifications by:

- identifying the features of a potentially vexatious notification for the purposes of the National Law
- outlining how to manage notifications where those features are identified¹
- ensuring the utilisation of the resources of the national registration and accreditation scheme in an appropriate way
- reducing the serious impact of vexatious notifications on practitioners, and
- ensuring the process is fair and open for all involved.

What is a vexatious notification?

A vexatious notification is a notification without substance, made with an intent to cause distress, detriment or harassment to the practitioner named in the notification.

Principles

- The consequences for a practitioner of being the subject of a vexatious notification can be serious and damaging, both professionally and personally.
- Evidence is available to suggest that vexatious notifications are rare².
- Identifying vexatious notifications is inherently difficult, as classification primarily rests on identifying the motivation of the notifier, and this is often concealed from Ahpra and the National Board.
- Understanding pre-existing relationships between notifiers and practitioners, and the broader context, can help to identify potentially vexatious notifications. It may be possible to explore these with a notifier and where possible, a practitioner.
- Care is required to avoid the risk of deterring good faith notifications. Section 237 of the National Law provides protection for people who make a notification in good faith.
- Some notifications made with an intent to cause distress or detriment nevertheless disclose a genuine patient safety issue or concern and care must be taken to avoid dismissing these as vexatious for that reason alone.
- Obtaining independently verifiable information as soon as possible will assist in preventing delayed decision making on vexatious notifications.
- The time and resources required from Ahpra and the National Boards in dealing with vexatious notifications can adversely impact their work in protecting patients and the community.
- Professional and community confidence in the National Registration and Accreditation Scheme may also be adversely impacted by vexatious notifications.

¹ Morris, Canaway and Bismark, *Reducing, identifying and managing vexatious complaints*, University of Melbourne, 2017

² Ibid

Features of a vexatious notification

The National Law does not include a definition of a vexatious notification.

A vexatious notification (made to Ahpra and National Boards) is not defined by outcome (e.g. no further action) or a practitioner's perception or experience (vexing) alone, but by the specific combination of the intent of the notifier (motivational) and the lack of grounds of the notification.

When attempting to identify vexatious notifications it is important to distinguish them from *inadequate, incomplete or misconceived* notifications sometimes made by notifiers, including some who make them repeatedly.

When considering whether a notification is vexatious, it is useful to explore the differences between types of sub-optimal notifications. Examples of these can be found in [Appendix 3 of the summary report](#)³.

Vexatious notifications may come from anyone, including patients, members of the public and other practitioners.

Significant impacts of vexatious notifications

Vexatious notifications are likely to have significant, negative impacts on the practitioner who is subject to the notification, including

- stress and anxiety,
- damage to reputation and career,
- fear or apprehension for self and family,
- feelings of being under attack, victimised and / or powerless,
- emotional exhaustion,
- mental and physical health impacts, and
- financial damage.

The Codes of Conduct for National Boards⁴ make clear that health practitioners should not make vexatious complaints about other health practitioners.

Vexatious notifications made by a registered health practitioner with the intent of harming another practitioner are taken seriously. A Board will take action against a practitioner who makes a vexatious notification about another health practitioner. This includes investigating the practitioner and, where vexatiousness is apparent, taking action that could affect the practitioner's registration. Vexatious notifications do not have good faith protections under the National Law.

Vexatious notifications are also likely to have significant adverse impacts on the resources of Ahpra and National Boards and negatively impact public trust and confidence in regulation.

Potential indicators of a vexatious notification

The simplest way to understand a notifier's motivation for making a notification is to ask them.

A notifier asserting a good faith motivation for making a notification is not necessarily determinative of the notification being made in good faith. In certain circumstances, true motivations may be concealed.

When conducting an assessment of a notification, you should consider notifier characteristics that might be indicators of a need to consider vexatiousness:

- whether a notifier has a historical pattern of making notifications about the same practitioner, same practice, or the same issues about multiple practitioners
- whether a notifier has engaged in organised, strategic or calculated behaviour that appears to want to catch a person (or practitioner) out
- personal gain such as a sense of satisfaction from causing distress to the subject, or exercising power, control or revenge over them (e.g. family law dispute)

³ Ibid

⁴ Please see the National Boards website to read their Code of Conduct.

- where there are assertions made by a notifier that appear irrational
- professional competitiveness and gain (career advancement of a practitioner, business competition or disputes)
- notifications lodged during legal proceedings or relationship breakdown between the notifier and the practitioner, or two entities involving the notifier and the practitioner, and
- strong criticism of a practitioner's health care or approach to treatment on issues where there is valid disagreement and acceptance of different opinions amongst the broader profession.

How to identify potentially vexatious notifications:

Look out for:

Notification format

- Multiple, excessive and unusual methods of emphasis in the format of a notification
- Rhetorical questions in written communication
- Offensive, expressive or dramatic language or expression
- Significant and unnecessary repetition and lengthy notification format, or
- Providing excessive and irrelevant supporting information

Notification content

- Poorly defined concerns
- Seeking specific, unreasonable, unrealistic outcomes as a result of making the notification
- Giving forceful and unlikely instructions to follow in relation to notification management
- Overstating impacts of the concerns on the notifier (damage to reputation, financial loss, social status)
- Contains obviously incorrect information, or
- Alleges a multi-agency and/or multi-practitioner conspiracy personally against the notifier or others who have received health services.

A notifier's behaviour

- Frequent, repetitive, demanding and/or lengthy contact or communication
- Changes in the nature of the concerns raised in a notification
- Intimidating, confrontational or rude behaviour towards notification staff or about the practitioner, including making threats, towards others or of self-harm, or
- The notifier wishes to remain anonymous but the rationale behind remaining anonymous is not clear from the notification or subsequent discussion with the notifier.

It is important to recognise that a notifier with possible mental health issues should not be dismissed and all aspects of the notification should be considered.

Relationship between practitioner and notifier

- Notifier appears to have no connection at all with the practitioner,
- Notifier has a personal, competitive or historical connection with the practitioner, or
- A person related to or close to the notifier has a pre-existing motivation to cause damage to the practitioner.

Discussions with a practitioner might alert us to a potentially vexatious notification

It is not uncommon for a practitioner to feel like a misconceived notification has been made vexatiously. This can be a reasonable, human response to criticism. It is not of itself an indication of a lack of insight or reflection by a practitioner.

It is important to explore in conversation with a practitioner why they believe a notification could have been made vexatiously when the possibility is raised.

The practitioner may be aware of a pre-existing relationship or other circumstances that may need to be considered. They may have other information that could be considered an indicator of vexatiousness.

An assumption should not be made that a notification is vexatious when this possibility is raised by a practitioner. However, the fact that such a concern is raised by a practitioner should be considered and discussed as part of the process described in the next section.

It is also important to be aware of the common scenarios in which practitioners may seek to misapply the 'vexatious defence', including

- denial as a defence (practitioner claims the notification is vexatious to deflect blame)
- lack of insight (practitioner lacks insight into their conduct, performance or health)
- opposing accepted standards (practitioner does not dispute the facts of the notification but disputes that the circumstances amount to wrongdoing, often claiming their behaviour is ethically virtuous).

What to do where there is a concern that a notification may be vexatious

Indicators of a notification being vexatious may be identified from the *notification format*, *notification content*, *notifier behaviour* or because the prospect is raised by a practitioner.

For each of these cases, you should:

1. analyse the indicators suggesting the notification may be vexatious
2. refer to a National Manager where the analysis of the indicators suggests the notification may be vexatious. National Managers are to indicate whether the notification is to be treated as *suspected vexatious* from this time. National Managers may seek assistance from clinical advisors or others.
3. where there is agreement to pursue the consideration further, schedule a conversation with the notifier, seeking to understand and document:
 - 3.1 any pre-existing business, commercial, personal or other relationship between the notifier and a practitioner (to be verified with a practitioner)
 - 3.2 any pre-existing animosity between the notifier and the practitioner (to be verified with the practitioner)
 - 3.3 the specific concerns and expectations of the notifier in bringing the notification to Ahpra and the National Board.
4. identify and document any information that could promptly and independently validate any of the concerns of the notifier, or the practitioner's or Ahpra's concerns about vexatiousness and seek to obtain that independent information. For example, discussion with a clinical advisor familiar with the area of practice in question may be helpful.
5. where information obtained supports a view that the notification is vexatious, the relevant National Manager should be re-consulted. If the National Manager forms a reasonable view that the notification appears to be vexatious, present that information to a delegate of the National Board with appropriate recommendations to close the notification. The wording to support a recommendation for no further action on the basis that a notification is vexatious should be carefully considered. Standard wording has been developed by Ahpra and the NHPO that should be considered.
6. where Ahpra's recommendation is supported by a National Board, and the notification is made by a health practitioner, there are further actions that will follow. The Board should be asked to initiate an own motion investigation into the conduct of a health practitioner. When there is evidence available after our investigation that proves the notification is vexatious, regulatory action should be taken. There is no *good faith* protection offered to a person who makes a vexatious notification.
7. where a National Board does not support a recommendation that a notification is vexatious, the Board may ask that Ahpra continue to deal with the matter.
 - 7.1 Care should be taken in the management of these cases to identify independent sources of evidence to verify or disprove allegations. If further indications of vexatiousness are identified during the management of the matter, return it to the delegate of the National Board quickly for its consideration.

Further reading

This framework should be considered in conjunction with the literature review Morris, Canaway and Bismark, *Reducing, identifying and managing vexatious complaints*, University of Melbourne, 2017