

Helping you understand mandatory notifications

7 February 2020

Case studies

Introduction

The case studies below are intended to help you understand when you may (or may not) need to make a mandatory notification. They should be read in conjunction with the *Guidelines on mandatory notifications about registered health practitioners*¹ (the guidelines) and sit alongside other resources that are designed to help treating practitioners, non-treating practitioners, employers and education providers.

About us

The key role of the National Boards and Ahpra is to protect the public.

The 15 National Boards regulating health practitioners in Australia are responsible for registering practitioners and students², setting the standards that practitioners must meet, and managing notifications (concerns) about the health, conduct or performance of practitioners.

Ahpra works in partnership with the National Boards to implement the National Registration and Accreditation Scheme under the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

Important information

How to use these case studies

Are you unsure if you need to make a mandatory notification? The following case studies are provided to help you apply the guidelines in practice. When a notification is made about a registered health practitioner the unique circumstances of each case are considered by the National Board making the determination.

¹ These guidelines are currently under review. See the Past Consultations section of the Ahpra website: www.ahpra.gov.au/News/Consultations.

² Except for in psychology, where students are registered as provisional psychologists.

Case study 1 – Illicit drug use outside of the workplace

Case summary

Chloe is an enrolled nurse working in residential aged care.

Chloe's colleague Suneet, who is a registered nurse, has recently seen Chloe using an illicit drug at a party. While Chloe was clearly intoxicated at the party, Suneet has never seen her intoxicated at work.

Suneet is unsure if she is required to make a mandatory report about Chloe.

Applying the guidelines

1. As Suneet is a registered health practitioner and so is Chloe, the *Guidelines for mandatory notifications about registered health practitioners* apply.
2. Suneet is Chloe's colleague and has never provided a health service to Chloe, so she looks at the section of the guidelines on 'What is intoxication while practising?' and 'Notifications by non-treating practitioners'.
3. Suneet reads the guidelines, which state that:

If a practitioner is practising their health profession while intoxicated, this can trigger a mandatory notification. A practitioner is considered to be intoxicated when their reasonable care and skill in the practice of the profession is impaired or adversely affected by drugs or alcohol.

The key issue is that the practitioner is practising while intoxicated, regardless of when they consumed the drugs or alcohol.

Fact: You do not need to make a mandatory notification about the practitioner if they are intoxicated in their private life (when not practising their profession), unless the intoxication triggers another concern for a mandatory notification.

Outcome

Suneet has never seen Chloe intoxicated at work and has no reason to think she is affected by drugs while practising.

Suneet decides that she does not need to make a mandatory notification about Chloe, as she has never witnessed Chloe intoxicated at work. If Chloe appears intoxicated at work, Suneet should speak to her manager immediately and Chloe should be prevented from practising if she is intoxicated. If Chloe does practise while intoxicated, a mandatory notification will be necessary.

Case study 2 – Intoxication in the workplace

Case summary

Sophie is an enrolled nurse who often works at a hospital with Brett, a registered nurse. Sophie thinks Brett is a good nurse who cares about his patients and often helps Sophie with practice decisions.

Sophie knows firsthand that Brett drinks at the local pub quite a lot after shifts, but recently she has smelt alcohol on Brett's breath when he begins his shifts. Brett seems slower when making rounds and pays less attention to Sophie and the other enrolled nurses under his supervision. On a recent shift, Sophie heard Brett slurring his speech and looking unsteady on his feet, before finding him asleep in a chair in an unoccupied patient room.

Sophie is unsure if she is required to make a mandatory report about Brett.

Applying the guidelines

1. As Sophie is a registered health practitioner and so is Brett, the *Guidelines for mandatory notifications about registered health practitioners* apply.
2. Sophie is Brett's colleague and has never provided a health service to him, so she looks at the section of the guidelines on 'What is intoxication while practising?', 'Notifications by non-treating practitioners' and 'What is reasonable belief?'.
3. Sophie reads the guidelines, which state that:

If a practitioner is practising their health profession while intoxicated, this can trigger a mandatory notification. A practitioner is considered to be intoxicated when their reasonable care and skill in the practice of the profession is impaired or adversely affected by drugs or alcohol.

The key issue is that the practitioner is practising while intoxicated, regardless of when they consumed the drugs or alcohol.

Fact: Before making a mandatory notification, you must form a 'reasonable belief'. To do so, you generally need direct knowledge (not just a suspicion) of the incident or behaviour that led to a concern. As a practitioner or employer, you are most likely to do this when you directly observe the incident or behaviour. Speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

Outcome

Sophie can't be sure that Brett is intoxicated at work but has witnessed worrying behaviour that indicates he might be. She decides to speak to her professional association, the Australian College of Nursing, who advise her to speak to her manager and/or HR before making a mandatory notification.

Sophie's manager advises her that she needs to let a shift manager know as soon as a colleague appears intoxicated at work, to make sure patients are not put at risk. Sophie's manager speaks to Brett directly and begins a process to understand the causes of his behaviour and to support his health.

If Sophie or her manager have a reasonable belief that Brett has practised while intoxicated, they will need to make a mandatory notification.

Case study 3 – Sexual relationship with a vulnerable former patient

Case summary

Devesh is the owner and director of a small family medical centre. He employs several GPs and a nurse.

Devesh has become aware that one of his employees, Jonathon, is having a sexual relationship with one of his recent former patients. Jonathon treated the patient over several years. The patient has long-standing mental health issues. Devesh believes the relationship to be consensual.

Devesh is unsure if he is required to make a mandatory report about Jonathon.

Applying the guidelines

1. As Devesh is an employer of a registered health practitioner, the *Guidelines for mandatory notifications about registered health practitioners* apply.
2. As Jonathon's employer, Devesh looks at the section of the guidelines for 'What is sexual misconduct' 'Notifications by employers of practitioners,' and 'When must I report sexual misconduct?'
3. The guidelines state that:

For mandatory notifications, sexual misconduct is:

- *in connection with the practice of the practitioner's health profession, and*
- *with people under the practitioner's care or linked to the practitioner's practice of their health profession.*

The guidelines also give clear advice about **former** patients:

Engaging in sexual activity with a person formerly under a practitioner's care after the professional relationship has ended may also be sexual misconduct. This depends on:

- *whether the patient or client is vulnerable because of age, capacity or health conditions*
- *the means by which sexual activity was established (for example, whether a practitioner used information obtained during a treating relationship to contact a patient and commence sexual activity)*
- *the extent of the professional relationship (for example, a one-off treatment in an emergency department compared to a long-term program of treatment)*
- *the length of time since the practitioner–patient/client relationship ended.*

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| Fact: Sexual activity with a former patient may still be sexual misconduct. |
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Outcome

Devesh takes into account that Jonathon had treated the patient on a semi-regular basis for several years, only ending the professional relationship about three months earlier. Devesh is concerned that the patient was previously receiving treatment for mental health issues, which puts the patient in a vulnerable position.

Devesh decides to make a mandatory notification about Jonathon, because he believes that the former patient is vulnerable and that the professional relationship between Jonathon and the patient was recent and long-term.

Case study 4 – Burnout and anxiety

Summary of conduct

Tien is a surgeon who has begun seeing a clinical psychologist, Shauna, about her problems with anxiety and her stressful work environment.

Tien rates her stress as 'very high' and decides to see a psychologist after experiencing a panic attack at work one morning. Tien is having trouble coping when things go wrong at work.

Tien and Shauna have agreed on a treatment plan and Tien has said that her anxiety has lessened since she started seeing Shauna.

Shauna has not had a client who is a registered health practitioner previously. She is concerned that she should make a mandatory report about Tien.

Applying the guidelines

1. As Shauna is a registered health practitioner and so is Tien, the *Guidelines for mandatory notifications about registered health practitioners* apply.
2. Shauna has become aware of Tien's health issues while providing her with a health service. This means the guidelines section for 'Notifications by treating practitioners' and 'When must I report impairment?' applies.
3. The guidelines state that:

You must make a mandatory notification if you form a reasonable belief that your practitioner-patient is placing the public at substantial risk of harm (a very high threshold for reporting risk of harm to the public) by practising with an impairment.

To decide if a practitioner-patient's impairment puts the public at substantial risk of harm, consider:

- *the nature, extent and severity of the impairment*
- *what steps a practitioner-patient is taking, or willing to take, to manage the impairment*
- *how well the impairment can be managed with treatment, and*
- *any other matter relevant to the risk the impairment poses.*

Fact: Not all impairments need to be reported. A practitioner-patient may have an impairment that causes a minor detrimental impact on their capacity to practise but, unless it poses a substantial risk of harm to patients, it does not trigger a mandatory notification.

Outcome

Shauna thinks about whether Tien's anxiety is a high risk to her patients. Shauna does not think Tien's decision-making is impaired. While Tien has had some anxiety episodes at work, to Shauna's knowledge she is continuing to make clear and thoughtful decisions, shows insight about her anxiety and is responding well to treatment. Shauna decides she does not need to make a mandatory report about Tien, because her condition is being managed and it does not appear to place the public at substantial risk of harm. If Tien's anxiety was to worsen to the point that Shauna felt her decision-making was impaired, Shauna may need to consider making a mandatory notification.

Case study 5 – Practising with a neurodegenerative condition

Summary of conduct

Beverly is a registered nurse in her early sixties who works in a busy regional hospital and has seen her GP, Gary, for most of her adult life.

Gary has recently diagnosed Beverly with early onset Alzheimer's disease. He referred Beverly to a specialist who confirmed his diagnosis. Beverly's symptoms so far have been forgetfulness and difficulty in focusing. Beverly has always been a very articulate person but is starting to have trouble finding the right words for things.

Beverly is in the mild cognitive decline phase but does not yet have dementia, which she may not experience for several years. Gary has advised her to consider retirement in the near future, due to her symptoms of forgetfulness and difficulty in communicating precisely.

Beverly does not want to retire and insists that she can continue working through this stage of her illness. She is refusing to let her employer or family know about her condition.

Gary is unsure as to whether he needs to make a mandatory notification about Beverly.

Applying the guidelines

1. As Gary is a registered health practitioner and so is Beverly, the *Guidelines for mandatory notifications about registered health practitioners* apply.
2. Gary has become aware of Beverly's health issues while providing her with a health service. This means the guidelines section for 'Notifications by treating practitioners' and 'When must I report impairment?' applies.
3. The guidelines state that:

You must make a mandatory notification if you form a reasonable belief that your practitioner-patient is placing public at substantial risk of harm (a very high threshold for reporting risk of harm to the public) by practising with an impairment.

To decide if a practitioner-patient's impairment puts the public at substantial risk of harm, consider:

- *the nature, extent and severity of the impairment*
- *what steps a practitioner-patient is taking, or willing to take, to manage the impairment*
- *how well the impairment can be managed with treatment*
- *any other matter relevant to the risk the impairment poses.*

Fact: You only need to make a mandatory notification if your practitioner-patient is placing the public at substantial risk of harm by practising with an impairment.

Outcome

Gary thinks about whether Beverly's impairment is placing the public at substantial (very high) risk of harm. While Beverly does not have dementia yet, she has several symptoms including forgetfulness and difficulty in communicating precisely, which Gary believes could be a risk to her patients as even early cognitive changes could affect her judgment and clinical reasoning in her day to day work. While Beverly is seeking treatment from Gary, he does not believe she is willing to take the necessary steps to manage her impairment because she is refusing to let her family and employer know about her condition. Gary believes the risk is exacerbated by the fact that Beverly's employer does not know about her condition. Gary does not think that treatment alone can manage her impairment.

Gary decides to make a mandatory notification because Beverly may be placing the public at substantial risk of harm. If Beverly discloses her condition to her employer and can demonstrate the steps being taken to manage her impairment at work, Gary may not have to make a mandatory notification.