

## Consultation Paper

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**21 November 2011**

### Proposed Codes and Guidelines:

- Advertising guidelines
- Code of conduct for registered health practitioners
- Guidelines for mandatory notifications

### Introduction

The Medical Radiation Practice Board of Australia (the Board) is releasing for consultation proposed codes and guidelines.

This consultation paper has been developed under the requirements of the *Health Practitioner Regulation National Law Act* (the National Law), as in force in each state and territory. The National Law empowers the Board to develop and approve codes and guidelines to provide guidance to the profession. The National Law requires the Board to ensure there is wide-ranging consultation on the content of any proposed code or guideline. A link to the National Law is available at [www.ahpra.gov.au/Legislation-and-Publications.aspx](http://www.ahpra.gov.au/Legislation-and-Publications.aspx).

At the completion of the consultation on the content of the proposed codes and guidelines, the Board will consider the feedback prior to finalising the codes and guidelines for approval.

### Common National Board codes and guidelines

The guidelines for Advertising and Mandatory Notifications, together with the Code of Conduct for Registered Health Practitioners listed below are common across the 10 health professions that are currently regulated under the National Registration and Accreditation Scheme (NRAS) and have been in place since the start of the scheme on 1 July 2010. Preliminary drafts were subject to extensive public consultation so these proposed codes and guidelines have the benefit of having been tested through their implementation for the 10 health professions currently regulated.

#### Attachment 1: draft Advertising Guideline

The National Law includes obligations in relation to advertising by registered health practitioners (see section 133). The 10 National Boards have developed advertising guidelines that clarify the boards' expectations of practitioners in this area. The guidelines were implemented from the start of the NRAS on 1 July 2010 and apply to each of the ten professions currently regulated under NRAS.

As the National Law obligations regarding advertising will also apply to the Medical Radiation Practice profession from 1 July 2012, the Board considers it appropriate to implement the current advertising guideline to help guide the profession. The Board welcomes views on this proposal, such as what is acceptable advertising and whether guidance specific to the profession needs to be included in the advertising guideline finalised for the profession.

#### Attachment 2: draft Code of Conduct for Registered Health Practitioners

The common Code of Conduct developed by the 10 National Boards seeks to help and support registered health practitioners to deliver effective health services within an ethical framework. Practitioners have a duty to make the care of patients or clients their first concern and to practise safely and effectively. Maintaining a high level of professional competence and conduct is essential for good care.

The Code contains important standards for practitioner behaviour in relation to:

- providing good care, including shared decision making
- working with patients or clients
- working with other practitioners
- working within the health care system
- minimising risk
- maintaining professional performance
- professional behaviour and ethical conduct
- ensuring practitioner health
- teaching, supervising and assessing.

Medical Radiation Practitioners commonly work within ethical and professional conduct frameworks – some are set by their employers, others by professional associations. With the move to national registration, there is an opportunity for the Board to develop a common and national code of conduct to guide the profession, and to clarify the Board's expectations of registrants.

The Board considers it appropriate to use the current common Code of Conduct as a basis to help guide the profession with a proposal to make one change (i.e. the removal of the reference to information about government funded interpreter services being available on the Australian Government Department of Immigration and Citizenship website at section 3.3 (i) of this code).

The Board welcomes views on this proposal, and whether there are areas specific to the profession that need to be included in the Code of Conduct finalised for the profession.

### Attachment 3: draft Guideline for Mandatory Notifications

The 10 National Boards have developed guidelines to help explain the National Law requirements for registered health practitioners, employers of practitioners, and education providers to make mandatory notifications (complaints) to prevent the public being placed at risk of harm. The guidelines explain how the National Boards will interpret the mandatory notification requirements.

The Guideline aims to help practitioners, employers, and education providers understand whether they must make a notifications about a practitioner's conduct and when, and whether to make a notification about an impaired student. Making a mandatory notification is a serious step to prevent the public from being placed at risk of harm and will only be taken on sufficient grounds. The guideline explains when these grounds are likely to arise and are to help with decision-making. The National Law protects practitioners, employers and education providers who make notifications in good faith under the National Law.

The mandatory notification requirements under the National Law will also apply to the Medical Radiation Practice profession from 1 July 2012, and these notifications are about serious matters of conduct and impairment. It is important for the National Boards to provide clear and consistent guidance for all professions on this matter. The Board therefore considers it appropriate to implement the current guideline to help guide the profession.

## **Making a submission**

The Board now invites comment on the **proposed codes and guidelines** to the Medical Radiation Practice profession.

In particular, the Board –

- (a) **proposes** to apply these codes and guidelines to Medical Radiation Practice from 1 July 2012 (formatting and editorial corrections will be made prior to finalisation)
- (b) **seeks your views** on whether there is profession-specific guidance that needs to be included (keeping in mind that these codes and guidelines are common across the ten health professions currently regulated under the NRAS).

Electronic submissions are preferred and can be made by email marked "Codes and Guidelines" to [medicalradiationconsultation@ahpra.gov.au](mailto:medicalradiationconsultation@ahpra.gov.au) by close of business on **Monday 9 January 2011**.

Submissions by post should be addressed to the Executive Officer, Medical Radiation Practice Board of Australia, AHPRA, GPO Box 9958, Melbourne, 3001.

The Board will publish the submissions on its website to encourage discussion and inform the community and stakeholders ([www.medicalradiationpracticeboard.gov.au](http://www.medicalradiationpracticeboard.gov.au))

We will not place on our website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the reference. Before publication, we may remove personally identifying information from submissions.

The views expressed in the submissions are those of the individuals or organisations who submit them and their publication does not imply any acceptance of, or agreement with, these views by the Board.

The Board also accepts submissions made in confidence. These submissions will not be published on the website or elsewhere. Submissions may be confidential because they include personal or other sensitive information. Any request for access to a confidential submission will be determined in accordance with the *Freedom of Information Act 1982* (Cth), which has provisions designed to protect personal information and information given in confidence.

Please let us know if you do not want us to publish your submission, or want us to treat all or part of it as confidential.

## Background

On 1 July 2010, the National Registration and Accreditation Scheme (NRAS) commenced in all States and Territories, with Western Australia joining the new scheme on 18 October 2010. The NRAS replaced the previous system of state and territory registration for ten health professions. The *Health Practitioner Regulation National Law Act* (the National Law), as in force in each state and territory, provides the legal foundation for the NRAS. This law means that for the first time in Australia, 10 health professions are regulated by nationally consistent legislation. The Australian Health Practitioner Regulation Agency (AHPRA) is the organisation responsible for the implementation of the NRAS across Australia.

From 1 July 2012, four more professions will be registered under NRAS – Aboriginal and Torres Strait Islander health practice, Chinese medicine, Medical radiation practice, and Medical Radiation Practice. More information on NRAS can be obtained from the AHPRA website: [www.ahpra.gov.au](http://www.ahpra.gov.au)

Under NRAS, there are National Boards that are responsible for regulating their health professions. The primary role of the Boards is to protect the public and they set standards and policies that all registered health practitioners from their profession must meet.

In July 2011, the Ministerial Council appointed the:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Chinese Medicine Board of Australia
- Medical Radiation Practice Board of Australia and
- Occupational Therapy Board of Australia

to begin work twelve months in advance of national registration commencing and to support the four 2012 professions move from state and territory based registration to national registration. From 1 July 2012, each of the National Boards will have responsibility for the registration and regulation of their profession under the National Law.

However, before this can happen, the four National Boards are consulting on proposed registration standards and any other proposals relevant to achieving the 1 July 2012 start date. This is to enable practitioners to have time to familiarise themselves with the new national requirements for each of the four professions. The Board has previously released for consultation, proposed registration standards which can be accessed at [www.medicalradiationpracticeboard.gov.au](http://www.medicalradiationpracticeboard.gov.au) The closing date for submissions was 7 October 2011.

# Attachments

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## Contents

### Draft codes and guidelines

1. Draft Advertising Guidelines .....	5
2. Draft Code of conduct for registered health practitioners .....	19
3. Draft Guidelines for mandatory notifications .....	36

# 1. Draft Advertising Guidelines

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## National Boards

### Guidelines for advertising of regulated health services

#### Contents

Who needs to use these guidelines? .....	6
Summary of guidelines.....	6
Advertising of regulated health services.....	7
1 Definition of advertising.....	7
1.2 Advertising of products.....	7
2 Obligations under other legislation.....	7
2.1 <i>Competition and Consumer Act 2010</i> (Cwlth).....	7
2.2 Fair trading legislation.....	8
2.3 Therapeutic goods legislation.....	8
3 Professional obligations.....	8
3.1 Ensuring competence.....	8
3.2 Professional qualifications.....	9
3.3 Substantiation of claims.....	9
3.4 Authorising the content of advertising.....	9
3.5 No substitute for informed consent.....	9
4 What is acceptable advertising?.....	9
5 What is unacceptable advertising?.....	10
6 Specific requirements.....	11
6.1 Use of graphic or visual representations.....	11
6.2 Use of warning statements for surgical or invasive procedures.....	12
6.3 Use of comparative advertising.....	12
6.4 Advertising of qualifications and titles.....	12
6.5 Advertising of price information.....	14
6.6 Use of gifts or discounts in advertising.....	14
6.7 Use of scientific information in advertising.....	14
7 Advertising of therapeutic goods.....	15
7.1 Therapeutic Goods Advertising Code 2007.....	15
7.2 Advertising of scheduled medicines.....	15
7.3 Advertising of vitamin supplements.....	15
7.4 Advertisements for analgesics for internal use.....	15
7.5 Advertisements for Schedule 3 medicines listed in Appendix H of the current Poisons Standard.....	16
7.6 Use of Repeat Authorisation Forms for advertising.....	16
7.7 Other board-specific requirements.....	16
8 Consequences of breach of advertising requirements.....	16
8.1 Registered health practitioners.....	16
8.2 Persons who are not registered.....	17
9 How a notification or complaint may be made.....	17
10 Definitions.....	17
Attachment A Extract of relevant provisions from the <i>Health Practitioner Regulation National Law Act 2009</i> (Qld).....	18

## Advertising Guidelines

### Introduction

These guidelines for advertising of regulated health services (the guidelines) have been jointly developed by the national boards under s. 39 of the *Health Practitioner Regulation National Law 2009* (the National Law)<sup>1</sup>. The purpose of the guidelines is to provide guidance about the interpretation of the provisions of the National Law that apply to advertising of regulated health services. Under the National Law, a regulated health service means 'a service provided by, or usually provided by a registered health practitioner'.

The relevant sections of the National Law that apply to the regulation of advertising of regulated health services are set out in Attachment 1, 'Extract of relevant provisions from the *Health Practitioner Regulation National Law Act 2009*'. In particular, s. 133 of the National Law states that 'a person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that —

- (a) is false, misleading or deceptive or is likely to be misleading or deceptive; or
- (b) offers a gift, discount, or other inducement to attract a person to use the service or the business, unless the advertisement also sets out the terms and conditions of the offer; or
- (c) uses testimonials or purported testimonials about the service or business; or
- (d) creates an unreasonable expectation of beneficial treatment; or
- (e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.'

These guidelines have been developed to advise registered health practitioners and others who advertise the services provided by such practitioners of:

- the operation of s. 133 of the National Law
- how the boards are likely to interpret and apply these provisions, although boards will take into account all relevant facts and circumstances in each case
- what the boards have determined to be minimum standards of practice in relation to the advertising of regulated health services.

### Who needs to use these guidelines?

These guidelines apply to any person who provides or operates a business that provides regulated health services, including:

- practitioners registered under the National Law
- employers of practitioners
- other persons who provide services through the agency of a registered health practitioner.

Students who are registered under the National Law should also be familiar with these guidelines.

### Summary of guidelines

The national boards recognise the value of providing information to the public about registered health practitioners and the services they provide. Advertising can provide a means of conveying general information on the availability of services and procedures to consumers, helping them obtain a better understanding of services and options available, and enabling them to make informed health care choices.

Any information provided in an advertisement for a regulated health service should be reliable and useful, and assist consumers to make informed decisions about accessing services.

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<sup>1</sup> The National Law is contained in the schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld)

There are risks that false, misleading or deceptive advertising can lead to the indiscriminate or unnecessary provision of health services, or create unrealistic expectations about the benefits, likelihood of success and safety of such services, with possible adverse consequences for consumers. There is potential for inaccurate or misleading advertising of health services to cause harm to consumers, both physically and psychologically. This is particularly relevant in cases in which the consumer may be vulnerable or not sufficiently well informed to make a decision about the suitability of certain types of services.

The guidelines aim to support the provisions of the National Law, to protect the public from advertising that is false, deceptive and misleading, and provide guidance to practitioners about advertising of health services. They include an explanation of the possible consequences of breaching the advertising provisions of the National Law (see Section 8 below). The guidelines are also admissible in proceedings against a registered health practitioner as evidence of what constitutes appropriate professional conduct or practice for the health profession.

## **Advertising of regulated health services**

### **1 Definition of advertising**

The National Law does not contain a definition of 'advertising'. Therefore, for the purposes of these guidelines, advertising includes but is not limited to all forms of printed and electronic media, and includes any public communication using television, radio, motion pictures, newspapers, billboards, books, lists, pictorial representations, designs, mobile communications or other displays, the Internet or directories and includes business cards, announcement cards, office signs, letterhead, telephone directory listings, professional lists, professional directory listings and similar professional notices.

Advertising also includes situations in which practitioners make themselves available or provide information for media reports, magazine articles or advertorials, including where practitioners make comment or provide information on particular products or services, or particular practitioners.

This definition excludes material issued to persons during consultations where such material is designed to provide the person with clinical or technical information about health conditions or procedures, and where the person is afforded sufficient opportunity to discuss and ask questions about the material. However, the information should not refer to services by the practitioner that could be interpreted as promoting that practitioner's services as opposed to providing general information to the patient or client about a procedure or practice. Also, this definition is not intended to apply to material issued by a person or organisation for the purpose of public health information, or as part of a public health program or to health promotion activities (e.g. free diabetes screening, which confer no promotional benefits on the practitioners involved). The definition does not apply to tenders, tender process, competitive business quotations and proposals, and the use of references about nonhealth services in those processes, provided the relevant material is not made available to the general public or used for promotional purposes (e.g. published on a website).

### **1.2 Advertising of products**

The guidelines only apply to the advertising of products that are therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* (Cwlth) and do not apply to the advertising of other products that are not associated with the provision of professional services.

## **2 Obligations under other legislation**

These guidelines relate specifically to advertising of services under s. 133 of the National Law. Persons who advertise regulated health services must also comply with consumer protection legislation. Compliance with these guidelines does not exempt advertisements for services from the need to comply with these laws.

### **2.1 Competition and Consumer Act 2010 (Cwlth)**

The *Competition and Consumer Act 2010* (Cwlth) is the new name for the *Trade Practices Act 1974*. The new law includes what is now called the Australian Consumer Law, a single, national law covering consumer protection and fair trading. The new law is Commonwealth legislation and applies in the same way nationally. State and Territory governments will apply the entire Australian Consumer Law in each jurisdiction.

The Australian Consumer Law includes a general ban on conduct in trade or commerce that is misleading, deceptive or unconscionable. It is administered by the Australian Competition and Consumer Commission (ACCC) and each State and Territory's consumer law agency.

The ACCC takes action against persons who make false or misleading claims about their products or services.

Practitioners should become familiar with the Australian Consumer Law. Information can be found at <http://www.consumerlaw.gov.au>

## **2.2 Information on consumer protection legislation**

The relevant consumer affairs departments publish brochures with information regarding the advertising of services and penalties for breaches of the consumer protection legislation.

## **2.3 Therapeutic goods legislation**

The advertising of therapeutic goods (including medicines and appliances) is regulated by the Commonwealth Therapeutic Goods Administration under the *Therapeutic Goods Act 1989* (Cwlth) and the Therapeutic Goods Regulations 1990 (Cwlth).

Under the *Therapeutic Goods Act 1989* (Cwlth), an 'advertisement in relation to therapeutic goods includes any statement, pictorial representation or design, however made, that is intended, whether directly or indirectly, to promote the use or supply of the goods'.

With respect to the advertising of therapeutic goods, practitioners are expected to comply with the requirements of the *Therapeutic Goods Act 1989* (Cwlth), and regulations and relevant standards, including:

- *Therapeutic Goods Advertising Code 2007*
- *Price Information Code of Practice*.

The full text of the *Therapeutic Goods Advertising Code 2007* may be downloaded from the Therapeutic Goods Advertising Code Council's website at [www.tgacc.com.au](http://www.tgacc.com.au).

For specific requirements with respect to the advertising of therapeutic goods, see Section 7, 'Specific requirements of these guidelines'.

There are also restrictions on the advertising of scheduled medicines in each State and Territory's drugs and poisons legislation.

## **3 Professional obligations**

Practitioners should always consider their professional ethical obligations and their legal obligations when advertising services. Persons who advertise services should always be aware that consumers of regulated health services may not be in a position to judge the merits of advertised services and products, and that they are more likely to hold a regulated health provider in some esteem, making them more vulnerable to believing the advertising claims.

Practitioners should not advertise in a manner that could be considered as attempting to profit from or take advantage of limited consumer understanding of the properties of medicines, other therapeutic goods or services.

### **3.1 Ensuring competence**

When advertising a regulated health service, a practitioner should ensure that he or she is competent by reason of his or her education, training and/or experience to provide the service advertised, or to act in the manner or professional capacity advertised.



### **3.2 Professional qualifications**

Practitioners must state clearly their professional qualifications. Credentials and a practitioner's expertise in a particular field should be clear to the public. A practitioner who does not hold specialist registration or an endorsement must not claim or hold himself or herself out to be a specialist or to hold endorsed registration, either explicitly or by implication, or attempt to convey that perception to the public. See Section 6.4, 'Advertising of qualifications and titles' for further information.

### **3.3 Substantiation of claims**

Practitioners must be certain that they can substantiate any claims made in advertising material, particularly in relation to outcomes of treatment, whether implied or explicitly stated. Unless there is accepted scientific evidence that there are no material risks associated with the type of treatment, an advertisement for health services should alert the public to the fact that there are associated health risks.

### **3.4 Authorising the content of advertising**

Practitioners are responsible for the style and content of all advertising material associated with the provision of their goods and services. Practitioners may not delegate accountability for ensuring the accuracy of advertising and compliance with these guidelines to an administrator, manager, director, media or advertising agency, or other unregistered person.

An employed practitioner may not have direct control over the content of an advertisement. However, employed practitioners are required to review the content of any advertising of their services and to take reasonable steps to prevent any noncompliance with these guidelines.

Practitioners should not allow the services they provide to be advertised, or make themselves available for 'advertorials', media reports or magazine articles to promote particular health services or therapeutic goods unless they have made specific arrangements to approve and sign off the content, and have had reasonable opportunity to ensure that the published version of the advertorial or promotional article adheres to these guidelines. This requirement only applies to advertising, that is, promotional activities, and comments that are part of independent news reporting where individual practitioners or health services do not derive any benefit are not captured.

### **3.5 No substitute for informed consent**

The main purpose of advertising of health services is to present information that is reasonably needed by consumers to make an informed initial decision about the availability and suitability of the services offered. Any initial decision by a consumer in response to an advertised service does not substitute for informed consent and does not remove the obligation on a practitioner to obtain informed consent before proceeding to provide the service.

## **4 What is acceptable advertising?**

Advertising used to inform the public of the availability of regulated health services may be considered to comply with these guidelines if it is information published in the public interest, and is factual, honest, accurate, clear, verifiable and not misleading. This section is intended to provide examples of the type of advertising of services that the boards consider to be acceptable. These examples are not intended to be exhaustive. As such, advertising may contain:

- (a) a factual and clear statement of the service(s) and/or any product(s) offered
- (b) contact details of the office of the practitioner, including email or website addresses, and telephone numbers
- (c) the gender of practitioners
- (d) a statement of office hours regularly maintained by the practitioner and the availability of after-hours services
- (e) for any surgical and/or invasive procedures, the appropriate warning statement in a clearly visible position (see Section 6.2, 'Use of warning statements for surgical or invasive procedures')
- (f) non-enhanced photos or drawings of the practitioner or his or her office

- (g) advice on the availability of wheelchair access to any premises to which the advertisements relate
- (h) a statement of any language(s) other than English fluently spoken by the practitioner or another person in his or her office (this does not affect other guidance provided by the national board about use of qualified interpreters where appropriate)
- (i) a statement about fees charged, bulk-billing arrangements, or other insurance plan arrangements and instalment fee plans regularly accepted
- (j) a statement of the names of schools and training programs from which the practitioner has graduated and the qualifications received, subject to Section 6.4, 'Advertising of qualifications and titles'
- (k) reference to any practitioners who hold specialist registration or endorsement under the National Law and their area of specialty or endorsement
- (l) a statement of the teaching positions currently or formerly held by the practitioner in board-approved or accredited institutions, together with relevant dates
- (m) a statement of the accreditation or certification of the practitioner with a public board or agency, including any affiliations with hospitals or clinics
- (n) a statement of safety and quality accreditation of the practice or health care setting
- (o) a list of the practitioner's peer reviewed publications
- (p) any statement providing public health information encouraging preventative or corrective care (public health information should also be evidence based wherever possible).

## **5 What is unacceptable advertising?**

This section is intended to provide a clear indication of the type of advertising of services that the boards consider to be unacceptable. Where examples are provided, they are intended to assist practitioners and other persons who advertise regulated health services to comply with the advertising provisions of the National Law. They are not intended to be exhaustive.

To comply with s. 133 of the National Law and these guidelines, advertising of services must not:

- (a) create or be likely to create unwarranted and unrealistic expectations about the effectiveness of the health services advertised
- (b) encourage (directly or indirectly) inappropriate, indiscriminate, unnecessary or excessive use of health services; for example, references to a person improving their physical appearance and the use of phrases such as 'don't delay', 'achieve the look you want' and 'looking better and feeling more confident' have the potential to create unrealistic expectations about the effectiveness of certain services and encourage unnecessary use of such services
- (c) mislead, either directly, or by implication, use of emphasis, comparison, contrast or omission
- (d) use testimonials or purported testimonials
- (e) compare different regulated health professions where there is no evidence on which to base the comparison and/or in a way that may mislead or deceive
- (f) claim that the services provided by a particular regulated health profession are better, as safe as or safer than others
- (g) refer to the recovery time following provision of a regulated health service that may lead to unrealistic expectations
- (h) lead to, or be likely to lead to, inappropriate self-diagnosis or self-treatment
- (i) abuse the trust or exploit a lack of knowledge by patients or clients
- (j) fail to disclose that there are health risks associated with a treatment
- (k) omit the necessary warning statement (see Section 6.2, 'Use of warning statements for surgical or invasive procedures')
- (l) contain language that could cause undue fear or distress
- (m) contain any information or material that is likely to make a person believe his or her health or wellbeing may suffer from not taking or undertaking the health service

- (n) contain price information that is inexact, or fails to specify any conditions or variables to an advertised price (see Section 6.5, 'Advertising of price information'), or offers time-limited discounts or inducements
- (o) contain any claim, statement or implication that
  - either expressly, or by omission, that the treatment is infallible, unailing, magical, miraculous or a certain, guaranteed or sure cure
  - a practitioner has an exclusive or unique skill or remedy, or that a product is 'exclusive' or contains a 'secret ingredient'
  - a practitioner provides superior services to those provided by other registered health practitioners
  - the results of the health service offered are always effective
  - the services can be a substitute for public health vaccination or immunisation
- (p) purport to inform the public fully of the risks of undertaking a health procedure or to replace the process of informed consent
- (q) provide a patient or client with an unsolicited appointment time that has not been requested by the patient or client
- (r) promote tobacco products, smoking, alcohol, or any other addictive substances or products that are known to affect health adversely
- (s) be vulgar, sensational, contrary to accepted standards of propriety or likely to bring a health profession into disrepute, for example, because the advertising is sexist.

## **6 Specific requirements**

### **6.1 Use of graphic or visual representations**

Practitioners should use any graphic or visual representations in health service advertising with caution. This includes photographs of patients, clients or models, diagrams, cartoons or other images. A 'photograph' in relation to the advertised treatment includes images, graphic, or other visual representations or facsimiles.

If photographs of people are used in advertising of treatments, the photographs must only depict a real patient or client who has actually undergone the advertised treatment by the advertising doctor or practice, and who has provided written consent for publication of the photograph in the circumstances in which the photograph is used. Practitioners should not use photographs of actual patients or clients if the patient or client is vulnerable as a result of the type of treatment involved or if their ability to consent may be otherwise impaired.

Use of 'before and after' photographs in advertising of regulated health services has a significant potential to be misleading or deceptive, to convey to a member of the public inappropriately high expectations of a successful outcome and to encourage the unnecessary use of health services.

If 'before and after' photographs are used, care must be taken to ensure the public can trust the truthfulness of the images; for example by:

- providing images that are as similar as possible in content, camera angle, background, framing and exposure
- ensuring consistency in posture, clothing and make up
- ensuring consistency in lighting and contrast
- stating if photographs have been altered in any way
- confirming that the referenced procedure is the only visible change that has occurred for the person being photographed.

The guidelines do not prohibit use of stock photographs and models other than in relation to the advertising of particular treatments, provided that the other requirements of s. 133 and these guidelines are met. However, practitioners should exercise caution due to the potential to mislead consumers.

## 6.2 Use of warning statements for surgical or invasive procedures

Where a surgical (or 'an invasive') procedure is advertised directly to the public, the advertisement should include a clearly visible warning, with text along the following lines:

*'Any surgical or invasive procedure carries risks. Before proceeding, you should seek a second opinion from an appropriately qualified health practitioner.'*

The text of any warning label must not be in smaller print than the main text of the advertisement or in an obscure position in the advertisement.

## 6.3 Use of comparative advertising

It is difficult to include all required information to avoid a false or inaccurate comparison when comparing one health service or product with another. Therefore, comparative advertising is at risk of misleading the public. If practitioners use any form of comparative advertising, practitioners must not:

- make unsubstantiated claims
- deride or otherwise criticise the services or products offered by another practitioner
- make sensational statements that cannot be corroborated.

## 6.4 Advertising of qualifications and titles

A practitioner should state clearly his or her professional qualifications. Credentials and a practitioner's expertise in a particular field should be clear to the public.

### 6.4.1 Use of titles in advertising

Section 117 of the National Law prohibits a practitioner from knowingly or recklessly taking or using any title that could be reasonably understood to induce a belief that the practitioner is registered in a health profession or a division of a health profession in which the practitioner is not registered.

Section 116 of the National Law prohibits a person who is not a practitioner from knowingly or recklessly taking or using a title that, having regard to the circumstances, indicates or could be reasonably understood to indicate the person is a registered health practitioner, or authorised or qualified to practise in a health profession.

Practitioners should avoid developing abbreviations of protected titles as these may be confusing.

There is no provision in the National Law that prohibits a practitioner from using titles such as 'doctor' or 'professor'.

If practitioners choose to adopt the title 'Dr' in their advertising, and they are not registered medical practitioners, then (whether or not they hold a Doctorate degree or PhD) they should make it clear that they do not hold registration as medical practitioners; for example, by including a reference to their health profession whenever the title is used, such as:

- Dr Isobel Jones (Dentist)
- Dr Walter Lin (Chiropractor).

The Psychology Board of Australia has developed specific advice for its profession. It advises registered psychologists that use of the title 'doctor' in their practice has the potential to mislead members of the public. Specifically, patients or clients may be misled into believing that the practitioner is a psychiatrist when they are not. Therefore, registered psychologists may not use such a title unless they hold a doctoral qualification from an approved higher education provider as listed in Part 2-1 Division 16 of the *Higher Education Support Act 2003* (Cwlth) or an overseas institution with an equivalent accreditation status. Where a registered psychologist holds a doctoral qualification that meets the above standard, if they advertise their services to the public, they should make it clear when using the title 'doctor' that they are not a registered medical practitioner or psychiatrist, for example:

- Dr Vanessa Singh (Psychologist)
- Dr Ivan Hassam (Doctor of Psychology).

#### 6.4.2 Advertising of specialties and endorsements

Section 116 of the National Law prohibits an unregistered person from claiming to be registered under the National Law or holding himself or herself out as being registered under the National Law in any of the regulated health professions.

Section 115 of the National Law prohibits a person from knowingly or recklessly taking or using a specialist title for a recognised specialty unless the person is registered under the National Law in the specialty.

Section 118 of the National Law prohibits a person who is not a specialist health practitioner from taking or using a title, name, initial, symbol, word or description that, having regard to the circumstances indicates, or could be reasonably understood to indicate, that the person is a specialist health practitioner or is authorised or qualified to practise in a recognised specialty.

A list of health professions with recognised specialties and the approved specialist titles for each recognised specialty is available on the websites of the relevant national boards. A registered practitioner who does not hold specialist registration under the National Law may not use the title 'specialist', or through advertising or other means, present themselves to the public as holding specialist registration in a health profession.

Section 119 of the National Law prohibits a registered health practitioner from claiming:

- to hold a type of registration, or endorsement of registration that they do not hold
- to be qualified to hold an endorsement they do not hold.

A list of health professions with approved area of practice endorsements is available on the websites of the relevant national boards. The websites also explain the titles that a practitioner with an area of practice endorsement may use. A registered practitioner who does not hold an endorsement under the National Law may not, through advertising or other means, present themselves to the public as holding such an endorsement (e.g. using professional titles that are associated with an approved area of practice endorsement).

#### 6.4.3 Other qualifications or memberships

Advertising qualifications or memberships may be useful in providing the public with information about experience and expertise but may be misleading or deceptive if patients or clients can interpret the advertisements readily to imply that the practitioner is more skilled or has greater experience than is the case.

Patients or clients are best protected when practitioners advertise only those qualifications that are:

- approved for the purposes of registration or endorsement of registration
- or
- conferred by approved higher education providers (within the meaning of the *Higher Education Support Act 2003* [Cwlth])
- or
- conferred by an education provider that has been accredited by a government accreditation authority such as a government department.

A list of accreditation authorities and approved qualifications for each health profession is available at the website of the relevant national board.

Practitioners who are considering the use of titles, words or letters to identify and distinguish themselves in advertising, other than those professional titles protected under the National Law for their profession, are encouraged to ask themselves the following questions:

- Why do I wish to use this title, qualification, membership, words or letters in advertising material?
- Am I well qualified in the areas of practice that I offer and promote with these words?
- Is the basis for my use of title, qualification, membership, or other words or letters
  - relevant to my area of health practice?

- current?
- verifiable?
- credible?
- If I display or promote my qualifications in advertising materials, is it easy to understand?
- Is there any risk of people misunderstanding or misinterpreting the words, letters or titles that I use?

## **6.5 Advertising of price information**

Information in advertising of regulated health services about the price of procedures must be clear and not misleading. If the advertising is for goods or equipment that fall within the definition of a therapeutic good under the *Therapeutic Goods Act 1989* (Cwlth), then the advertising must comply with the *Therapeutic Goods Advertising Code 2007* and the *Price Information Code of Practice* as updated from time to time.

It is generally difficult to provide an accurate price of a health service in an advertisement due to the personal nature of such services and the number of variables involved in the treatment of each person. Any person advertising regulated health services should be very careful when including price information in health service advertising due to the significant potential for such information to mislead or encourage the unnecessary use of health services.

If fees and price information are to be advertised, then price information should be exact, with all fees for services clearly identifiable, and any conditions or other variables to an advertised price or fee disclosed.

Practitioners or other persons who advertise services:

- must not use phrases like 'as low as' or 'lowest prices', or similar words or phrases when advertising fees for services, prices for products or price information, or stating an instalment amount without stating the total cost
- should not compensate or give anything of value to a representative of the press, radio, television or other communication medium for professional publicity unless the fact of compensation is made known publicly
- must not advertise time-limited and special offers.

## **6.6 Use of gifts or discounts in advertising**

The use of gifts or discounts in advertising is inappropriate, due to the potential for such inducements to encourage the unnecessary use of regulated health services.

If a practitioner or a person advertising a regulated health service does use a discount, gift or any other inducement to attract patients or clients to a service, the offer must be truthful, and the terms and conditions of that offer must be set out clearly in the advertisement.

Discounts, gifts or other inducements must not be used in advertising of medicines that have potential for abuse or misuse due to the greater potential for harm. In relation to other medicines and therapeutic goods, the boards strongly discourage the use of prizes, bonuses, bulk purchases or other endorsements that may encourage the unnecessary consumption of medicines or other therapeutic goods.

## **6.7 Use of scientific information in advertising**

The boards encourage caution when using scientific information in advertising of regulated health services. When a practitioner chooses to use scientific information in advertising, it should:

- be presented in a manner that is accurate, balanced and not misleading
- use terminology that is understood readily by the audience to whom it is directed
- identify clearly the relevant researchers, sponsors and the academic publication in which the results appear
- be from a reputable and verifiable source.

## **7 Advertising of therapeutic goods**

### **7.1 Therapeutic Goods Advertising Code 2007**

Under the *Therapeutic Goods Advertising Code 2007*:

- there are general prohibitions on advertisements for therapeutic products that
  - appeal to fear
  - are misleading
  - raise unrealistic expectation on claims to efficacy
  - claim to have miraculous properties, etc
- advertising must not be directed to minors, with certain exceptions (e.g. sunscreen and condoms)
- representations about abortifacient action, neoplastic disease (except in relation to the use of sunscreens), sexually transmitted diseases (except in relation to contraceptive devices), HIV/AIDS or mental illness are prohibited
- approval must be obtained from the Therapeutic Goods Administration to advertise therapeutic goods for 'serious diseases' that are listed in the code.

Advertisements must contain:

- the trade name of the product
- a reference to its permitted indications only
- (where applicable) a list of the ingredients
- the following statements prominently displayed
  - always read the label
  - use only as directed
  - if symptoms persist, see your doctor/health care professional.

### **7.2 Advertising of scheduled medicines**

Almost all State and Territory drugs and poisons laws prohibit the advertising to the public of substances in Schedule 4 (prescription only medicines), Schedule 8 (controlled drugs) and Schedule 9 (prohibited substances) of the current Poisons Standard (the *Standard for Uniform Scheduling of Drugs and Poisons*). The same restriction applies to the advertising of substances in Schedule 3 (pharmacist only medicines), with the exception of those substances listed in Appendix H of the current Poisons Standard.

A list that states only the names, strengths, pack sizes and prices of medicines in the above categories is a price list rather than an advertisement. Other words, and pictorial representations and photographs are not permitted in price lists.

### **7.3 Advertising of vitamin supplements**

Advertisements for vitamin supplements must be accompanied by the words '*Vitamin supplements may be of assistance if dietary intake is inadequate*'. These words must be placed as close as possible to the item being advertised. Placement of these words in a footnote is not acceptable.

### **7.4 Advertisements for analgesics for internal use**

Subject to Section 7.2, 'Advertising of scheduled medicines', any advertisements for analgesics for internal use are to be accompanied by the words '*Use only as directed. Incorrect use could be harmful. Consult your health care practitioner if pain or symptoms persist*'. These words must be placed as close as possible to the item being advertised. Placement of these words in a footnote is not acceptable.

An analgesic for internal use consists of one or more of the following:

- salicylic acid and its derivatives and their salts
- codeine
- other nonsteroidal anti-inflammatory drugs
- paracetamol, except when formulated in combination with other ingredients for symptomatic and episodic use in the treatment of colds.

## **7.5 Advertisements for Schedule 3 medicines listed in Appendix H of the current Poisons Standard**

Advertisements for Schedule 3 medicines listed in Appendix H of the current Poisons Standard (the Standard for Uniform Scheduling of Drugs and Poisons) are to be accompanied by the words '*Your pharmacist's advice is required*'. These words must be placed as close as possible to the item being advertised. Placement of these words in a footnote is not acceptable.

## **7.6 Use of Repeat Authorisation Forms for advertising**

The tear-off strip on the right-hand side of Repeat Authorisation Forms for prescription medicines must not be used for advertising, other than a statement, if considered necessary, of the name, address and telephone number of the pharmacy that issued the repeat authorisation and their hours of business.

## **7.7 Other board-specific requirements**

The Pharmacy Board of Australia also requires that advertising of medicines must not:

- offer any personal incentives to pharmacy assistants or employed pharmacists to recommend or supply therapeutic products
- include an offer of a sample.

Advertising of other therapeutic goods must state '*Your (practitioner) will advise you whether this preparation (product name) is suitable for you/your condition*'.

## **8 Consequences of breach of advertising requirements**

The national boards remind all practitioners of their legal and ethical responsibilities in providing the public with clear and accurate information about the availability of health services. Practitioners are also reminded that members of the public may have limited understanding of many aspects of these services and may be vulnerable as a result.

In determining whether an advertisement is misleading, whether it creates an unreasonable expectation of beneficial treatment, or encourages (directly or indirectly) the indiscriminate or unnecessary use of regulated health services or medicines, the boards will consider the overall impression of the advertisement and the likely impact the advertisement may have on a member of the public. Specifically, a national board will consider what conclusions a member of the public can reasonably infer from material contained within an advertisement and whether the material is likely to mislead or deceive, either directly or by omission. Qualifiers or disclaimers should be displayed obviously rather than contained in fine print.

National boards cannot give legal advice or opinion, and cannot 'vet' or pre-approve advertisements for compliance with these guidelines. If a person is in doubt about whether his or her advertisement might be in breach of the National Law, that person should seek his or her own advice (e.g. from professional indemnity insurers or lawyers) before placing the advertisement.

### **8.1 Registered health practitioners**

Failure to adhere to the guidelines may be investigated by a national board (either in response to a notification or on its own motion). A breach of the guidelines may constitute unprofessional conduct and/or professional misconduct, and as such, may be dealt with by the boards through the disciplinary mechanisms available under the National Law.

When a practitioner is found by a national board's performance and professional standards panel, or a State or Territory tribunal to have engaged in unprofessional conduct and/or professional misconduct in relation to advertising of regulated health services, the determinations that may be made under the National Law include, but are not limited to, one or more of the following:

- requiring the practitioner to undergo counselling
- cautioning the practitioner
- reprimanding the practitioner
- requiring the practitioner to undertake further education
- imposing conditions on the registration of the practitioner (e.g. require the practitioner to publish a retraction or correction)



- imposing a fine on the practitioner
- suspending or cancelling the practitioner's registration.

Breach of consumer legislation independent of these guidelines may be dealt with under relevant Commonwealth, State or Territory laws.

## **8.2 Persons who are not registered**

A breach of s. 133 of the National Law by a person who is not a registered health practitioner or a body corporate may result in the person (or body corporate) being prosecuted in the relevant State or Territory Magistrates' Court, and a financial penalty may be imposed.

## **9 How a notification or complaint may be made**

Under s. 146 of the National Law, if a person reasonably believes that a registered practitioner or an unregistered person has breached s. 133 of the National Law with respect to the advertising of a regulated health service, the person may make a notification to the Australian Health Practitioner Regulation Agency (AHPRA). A notification or complaint must include the basis for making the notification; that is, it must specify what the notification is about.

A complaint may be made verbally, by phoning 1300 419 495 or at any of the State and Territory offices of AHPRA:

*ACT:* 11 Torrens Street, Braddon, ACT 2612

*New South Wales:* Level 51, 680 George Street, Sydney, NSW 2000

*Northern Territory:* Level 2,,Cnr McMinn and Bennett Streets, Darwin, NT 0800

*Queensland:* Level 18, 179 Turbot Street, Brisbane, Qld 4000

*South Australia:* Level 8, 121 King William Street, Adelaide, SA 5000

*Tasmania:* Level 12, 86 Collins Street, Hobart, Tas 7000

*Victoria:* Level 8, 111 Bourke Street, Melbourne, Vic 3000

*Western Australia:* Level 1, 541 Hay Street, Subiaco, WA 6001

To make a notification in writing:

- post your notification to AHPRA, GPO Box 9958 in your capital city or
- use the online enquiry form on the AHPRA website (see the 'Contact Us' page) or
- fax 03 8708 9003.

## **10 Definitions**

**Invasive procedure** means any operation or other procedure that:

- penetrates or pierces the skin by any instrument other than a needle, other than minor dental or minor podiatric procedures, or
- is an elective procedure requiring more than local anaesthetic or sedation, or
- requires admission to a day procedure centre (DPC) or hospital, or
- involves significant risk associated with surgical and/or anaesthetic complications.

<b>Date of issue:</b> <<date to be inserted>>
<b>Date of review:</b> This guideline will be reviewed at least every three years
<b>Last reviewed:</b> 21 November 2011

**Attachment A Extract of relevant provisions from the *Health Practitioner Regulation National Law Act 2009* (Qld)**

**Part 5, Division 3 Registration standards and codes and guidelines**

**39 Codes and guidelines**

A National Board may develop and approve codes and guidelines —

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

**Example.** A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

**40 Consultation about registration standards, codes and guidelines**

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website —
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect —
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

**41 Use of registration standards, codes or guidelines in disciplinary proceedings**

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory

jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

**133 Advertising**

- (1) A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that —

- (a) is false, misleading or deceptive or is likely to be misleading or deceptive; or
- (b) offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertising also states the terms and conditions of the offer; or
- (c) uses testimonials or purported testimonials about the service or business; or
- (d) creates an unreasonable expectation of beneficial treatment; or
- (e) directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Maximum penalty

- (a) in the case of an individual — \$5,000; or
  - (b) in the case of a body corporate — \$10,000.
- (2) A person does not commit an offence against subsection (1) merely because the person, as part of the person's business, prints or publishes an advertisement for another person.
  - (3) In proceedings for an offence against this section, a court may have regard to a guideline approved by a National Board about the advertising of regulated health services.

- (4) In this section — regulated health service means a service provided by, or usually provided by, a health practitioner.

## 5 Definitions

Health practitioner' means an individual who practises a health profession.

'Health profession' means the following professions, and includes a recognised specialty in any of the following professions —

- (a) Aboriginal and Torres Strait Islander health practice;
- (b) Chinese medicine;
- (c) chiropractic;
- (d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
- (e) medical;
- (f) medical radiation practice;
- (g) nursing and midwifery;
- (h) Medical Radiation Practice;
- (i) optometry;
- (j) osteopathy;
- (k) pharmacy;
- (l) physiotherapy;
- (m) podiatry;
- (n) psychology.

**Part 11** of the National Law provides powers for inspectors to conduct investigations to enforce compliance with the National Law. Schedule 6 sets out the powers of inspectors, including power to obtain information, enter places, obtain a warrant, and seize evidence etc.

**Section 243** states that if a person's behaviour constitutes an offence against this Law and constitutes professional misconduct, unsatisfactory professional performance or unprofessional conduct, the fact that proceedings for an offence have been taken in relation to the behaviour does not prevent proceedings being taken before an adjudication body (a panel, tribunal, Court or entity declared in a co-regulatory jurisdiction to be an adjudication body) for the same behaviour. This means that where a registered health practitioner engages in behaviour that may breach section 133, the Board may choose to prosecute the practitioner through the courts or deal with the matter as a conduct or performance matter, depending on the circumstances.

## 2. Draft Code of conduct for registered health practitioners

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### Code of conduct for registered health practitioners

#### Overview

This Code seeks to assist and support registered health practitioners to deliver effective regulated health services within an ethical framework. Practitioners have a duty to make the care of patients or clients their first concern and to practise safely and effectively. Maintaining a high level of professional competence and conduct is essential for good care.

The Code contains important standards for practitioner behaviour in relation to:

- providing good care, including shared decision making
- working with patients or clients
- working with other practitioners
- working within the health care system
- minimising risk
- maintaining professional performance
- professional behaviour and ethical conduct
- ensuring practitioner health
- teaching, supervising and assessing.

Making decisions about health care is the shared responsibility of the practitioner and the patients or clients (or their representative).

Relationships based on openness, trust and good communication will enable practitioners to work in partnership with their patients or clients. An important part of the practitioner-patient/client relationship is effective communication.

Practitioners have ethical and legal obligations to protect the privacy of people requiring and receiving care. Patients or clients have a right to expect that practitioners and their staff will hold information about them in confidence, unless information is required to be released by law or public interest considerations.

Practitioners need to obtain informed consent for the care that they provide to their patients

or clients. Caring for children and young people brings additional responsibilities for practitioners.

Good practice involves genuine efforts to understand the cultural needs and contexts of different patients or clients to obtain good health outcomes. Practitioners need to be aware that some patients or clients have additional needs and modify their approach appropriately.

When adverse events occur, practitioners have a responsibility to be open and honest in communication with patients or clients to review what has occurred.

In some circumstances, the relationship between a practitioner and a patient or client may become ineffective or compromised and may need to end.

Good relationships with colleagues and other practitioners strengthen the practitioner-patient/client relationship and enhance care.

Practitioners have a responsibility to contribute to the effectiveness and efficacy of the health care system.

Minimising risk to patients or clients is a fundamental component of practice. Good practice involves understanding and applying the key principles of risk minimisation and management to practice.

Maintaining and developing a practitioner's knowledge, skills and professional behaviour are core aspects of good practice.

Teaching, supervising and mentoring practitioners and students is important for the development of practitioners and for the care of patients or clients. It is part of good practice to contribute to these activities, and provide support, assessment, feedback and supervision for colleagues, practitioners in training and students.

## Definitions

**‘Providing care’** includes, but is not limited to any care, treatment, advice, service or goods provided in respect of the physical or mental health of a person. , whether remunerated or pro bono.

**‘Practice’** means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a practitioner in their regulated health profession. For the purposes of this Code, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct nonclinical relationship with patients or clients, working in management, administration, education, research, advisory, regulatory or policy development roles and any other roles that impact on safe, effective delivery of regulated health services in the health profession.

**‘patient or client’** includes all consumers of health care services

## 1 Introduction

### 1.1 Use of the Code

This Code seeks to assist and support practitioners to deliver appropriate, effective services within an ethical framework. Practitioners have a professional responsibility to be familiar with this Code and to apply the guidance it contains.

This Code will be used:

- to support individual practitioners in the challenging task of providing good health care and fulfilling their professional roles and to provide a framework to guide professional judgement
- to assist boards in their role of protecting the public by setting and maintaining standards of good practice - if professional conduct varies significantly from this Code, practitioners should be prepared to explain and justify their decisions and actions and serious or repeated failure to meet this Code may have consequences for registration
- as an additional resource for a range of uses that contribute to enhancing the culture of professionalism in the Australian health system: for example, in practitioner education; orientation, induction and

supervision of students; and by administrators and policy makers in hospitals, health services and other institutions.

Practitioners must always act in accordance with the law. The Code is not a substitute for the provisions of the *Health Practitioner Regulation National Law Act 2009* (the National Law), other relevant legislation and case law. If there is any conflict between the Code and the law, the law takes precedence. Practitioners need to be aware of and comply with the standards, guidelines and policies of their board.

The Code does not address in detail the range of general legal obligations that apply to practitioners, such as those under privacy, child protection and antidiscrimination legislation. Practitioners should ensure that they are aware of their obligations under the general law and other legislation and act in accordance with them.

This Code is not an exhaustive study of professional ethics or an ethics guide. It does not address the standards of practice within individual health professions or disciplines. These standards of practice are found in documents issued by the relevant boards and/or professional bodies.

While good health care respects the rights of patients or clients, this Code is not a charter of rights (an example of a charter is the *Australian Charter of Health Care Rights* issued by the Australian Commission on Safety and Quality in Health Care and available at [www.safetyandquality.gov.au](http://www.safetyandquality.gov.au))

### 1.2 Professional values and qualities

While individual practitioners have their own personal beliefs and values, there are certain professional values on which all practitioners are expected to base their practice.

Practitioners have a duty to make the care of patients or clients their first concern and to practise safely and effectively. They must be ethical and trustworthy. Patients or clients trust practitioners because they believe that, in addition to being competent, practitioners will not take advantage of them and will display qualities such as integrity, truthfulness, dependability and compassion. Patients or

clients also rely on practitioners to protect their confidentiality.

Practitioners have a responsibility to protect and promote the health of individuals and the community.

Good practice is centred on patients or clients. It involves practitioners understanding that each patient or client is unique and working in partnership with patients or clients, adapting what they do to address the needs and reasonable expectations of each person. This includes cultural awareness: being aware of their own culture and beliefs and respectful of the beliefs and cultures of others, and recognising that these cultural differences may impact on the practitioner–patient/client relationship and on the delivery of services. It also includes being aware that differences such as gender, sexuality and age may influence care needs.

Good communication underpins every aspect of good practice.

Professionalism embodies all the qualities described here and includes self-awareness and self-reflection. Practitioners are expected to reflect regularly on whether they are practising effectively, on what is happening in their relationships with patients or clients and colleagues, and on their own health and wellbeing. They have a duty to keep their skills and knowledge up-to-date, refine and develop their clinical judgement as they gain experience, and contribute to their profession.

Practitioners have a responsibility to recognise and work within the limits of their competence and scope of practice. Scopes of practice vary according to different roles; for example, practitioners, researchers and managers will all have quite different competence and scopes of practice. To illustrate, in relation to working within their scope of practice, practitioners may need to consider whether they have the appropriate qualifications and experience to provide advice on over the counter and scheduled medicines, herbal remedies, vitamin supplements, etc.

Practitioners should be committed to safety and quality in health care (the Australian Commission on Safety and Quality in Health Care is at [www.safetyandquality.gov.au](http://www.safetyandquality.gov.au) ).

### **1.3 Australia and Australian health care**

Australia is culturally diverse. We inhabit a land that, for many ages, was held and cared for by Indigenous Australians, whose history and culture have uniquely shaped our nation. Our society is further enriched by the contribution of people from many nations who have made Australia their home.

Practitioners in Australia reflect the cultural diversity of our society and this diversity strengthens the health professions.

There are many ways to practise a health profession in Australia. Practitioners have critical roles in caring for people who are unwell, assisting people to recover and seeking to keep people well. This Code focuses on these roles. For practitioners with roles that involve little or no contact with patients or clients, not all of this Code may be relevant, but the underpinning principles will still apply.

#### **1.4 Substitute decision makers**

There are several conditions or situations in which patients or clients may have limited competence or capacity to make independent decisions about their health care; for example, people with dementia or acute conditions that temporarily affect competence and children or young people, depending on their age and capacity (see Section 3.5 Informed consent).

In this Code, reference to the terms ‘patients or clients’ also includes substitute decision makers for patients or clients who do not have the capacity to make their own decisions. These can be parents or a legally appointed decision maker. If in doubt, seek advice from the relevant guardianship authority.

## **2 Providing good care**

### **2.1 Introduction**

Care of the patient or client is the primary concern for health professionals in clinical practice. Providing good care includes:

- a) assessing the patient or client, taking into account his or her history, views and an appropriate physical examination where relevant; the history includes relevant psychological, social and cultural aspects

- b) formulating and implementing a suitable management plan (including providing treatment and advice and, where relevant, arranging investigations and liaising with other treating practitioners)
- c) facilitating coordination and continuity of care
- d) recognising the limits to a practitioner's own skills and competence and referring a patient or client to another practitioner when this is in the best interests of the patients or clients
- e) recognising and respecting the rights of patients or clients to make their own decisions.

## 2.2 Good care

Maintaining a high level of professional competence and conduct is essential for good care. Good practice involves:

- a) recognising and working within the limits of a practitioner's competence and scope of practice
- b) ensuring that practitioners maintain adequate knowledge and skills to provide safe and effective care
- c) when moving into a new area of practice, ensuring that a practitioner has undertaken sufficient training and/or qualifications to achieve competency in that area
- d) practising patient/client-centred care, including encouraging patients or clients to take interest in, and responsibility for the management of their health and supporting them in this
- e) maintaining adequate records (see Section 8.4 Health records)
- f) considering the balance of benefit and harm in all clinical management decisions
- g) communicating effectively with patients or clients (see Section 3.3 Effective communication)
- h) providing treatment options based on the best available information
- i) taking steps to alleviate the symptoms and distress of patients or clients, whether or not a cure is possible
- j) supporting the right of the patient or client to seek a second opinion
- k) consulting and taking advice from colleagues when appropriate
- l) making responsible and effective use of the resources available to practitioners (see Section 5.2 Wise use of health care resources)
- m) ensuring that the personal views of a practitioner do not affect the care of a patient or client adversely

- n) practising in accordance with the current and accepted evidence base of the health profession, including clinical outcomes.

## 2.3 Shared decision making

Making decisions about health care is the shared responsibility of the treating practitioner and the patient or client who may wish to involve his or her family, carer/s and/or others (also see Section 1.4 Substitute decision makers).

## 2.4 Decisions about access to care

Practitioner decisions about access to care need to be free from bias and discrimination. Good practice involves:

- a) treating patients or clients with respect at all times
- b) not prejudicing the care of a patient or client because a practitioner believes that the behaviour of the patient or client has contributed to his or her condition
- c) upholding the duty to the patient or client and not discriminating on grounds irrelevant to health care, including race, religion, sex, disability or other grounds specified in antidiscrimination legislation
- d) investigating and treating patients or clients on the basis of clinical need and the effectiveness of the proposed investigations or treatment, and not providing unnecessary services
- e) keeping practitioners and their staff safe when caring for patients or clients; while action should be taken to protect practitioners and their staff if a patient or client poses a risk to health or safety, the patient or client should not be denied care, if reasonable steps can be taken to keep practitioners and their staff safe
- f) being aware of a practitioner's right to not provide or participate directly in treatments to which the practitioner objects conscientiously, informing patients or clients and, if relevant, colleagues of the objection, and not using that objection to impede access to treatments that are legal
- g) not allowing moral or religious views to deny patients or clients access to health care, recognising that practitioners are free to decline to provide or participate in that care personally.

## 2.5 Treatment in emergencies

Treating patients or clients in emergencies requires practitioners to consider a range of issues, in addition to the provision of best care. Good practice involves offering assistance in an emergency that takes account of the practitioner's own safety, skills, the availability of other options and the impact on any other patients or clients under the practitioner's care, and continuing to provide that assistance until services are no longer required.

## 3 Working with patients or clients

### 3.1 Introduction

Relationships based on openness, trust and good communication will enable practitioners to work in partnership with patients or clients.

### 3.2 Partnership

A good partnership between a practitioner and the person he or she is caring for requires high standards of personal conduct. This involves:

- a) being courteous, respectful, compassionate and honest
- b) treating each patient or client as an individual
- c) protecting the privacy and right to confidentiality of patients or clients, unless release of information is required by law or by public interest considerations
- d) encouraging and supporting patients or clients and, when relevant, their carer/s or family in caring for themselves and managing their health
- e) encouraging and supporting patients or clients to be well-informed about their health and assisting patients or clients to make informed decisions about their health care activities and treatments by providing information and advice to the best of a practitioner's ability and according to the stated needs of patients or clients
- f) respecting the right of the patient or client to choose whether or not he or she participates in any treatment or accepts advice
- g) recognising that there is a power imbalance in the practitioner-patient/client relationship and not exploiting patients or clients physically, emotionally, sexually or financially (also see Section 8.2 Professional boundaries and Section 8.12 Financial and commercial dealings).

## 3.3 Effective communication

An important part of the practitioner-patient/client relationship is effective communication. This involves:

- a) listening to patients or clients, asking for and respecting their views about their health and responding to their concerns and preferences
- b) encouraging patients or clients to tell a practitioner about their condition and how they are managing it, including any alternative or complementary therapies they are using
- c) informing patients or clients of the nature of and need for all aspects of their clinical care, including examination and investigations, and giving them adequate opportunity to question or refuse intervention and treatment
- d) discussing with patients or clients their condition and the available health care options, including their nature, purpose, possible positive and adverse consequences, limitations and reasonable alternatives wherever they exist
- e) endeavouring to confirm that a patient or client understands what a practitioner has said
- f) ensuring that patients or clients are informed of the material risks associated with any part of a proposed management plan
- g) responding to questions from patients or clients and keeping them informed about their clinical progress
- h) making sure, wherever practical, that arrangements are made to meet the specific language, cultural and communication needs of patients or clients and being aware of how these needs affect understanding
- i) becoming familiar with, and using wherever necessary, qualified language interpreters or cultural interpreters to help meet the communication needs of patients or clients, including those who require assistance because of their English skills, or because they are speech or hearing impaired (wherever possible, practitioners should use trained translators and interpreters rather than family members or other staff)
- j) when using interpreters:
  - taking reasonable steps to ensure that the interpreter is competent to work as an interpreter in the relevant context
  - taking reasonable steps to ensure that the interpreter is not in a relationship with the patient or client



that may impair the interpreter's judgement

- taking reasonable steps to ensure that the interpreter will keep confidential the existence and content of the service provided to the patient or client
  - taking reasonable steps to ensure that the interpreter is aware of any other relevant provisions of this Code
  - obtaining informed consent from the patient or client to use the selected interpreter
- k) a health practitioner must communicate appropriately with and provide relevant information to other stakeholders including members of the treating team.

### 3.4 Confidentiality and privacy

Practitioners have ethical and legal obligations to protect the privacy of people requiring and receiving care. Patients or clients have a right to expect that practitioners and their staff will hold information about them in confidence, unless release of information is required by law or public interest considerations. Good practice involves:

- a) treating information about patients or clients as confidential
- b) seeking consent from patients or clients before disclosing information where practicable
- c) being aware of the requirements of the privacy and/or health records legislation that operates in relevant States and Territories and applying these requirements to information held in all formats, including electronic information
- d) sharing information appropriately about patients or clients for their health care while remaining consistent with privacy legislation and professional guidelines about confidentiality
- e) where relevant, being aware that there are complex issues relating to genetic information and seeking appropriate advice about disclosure of such information
- f) providing appropriate surroundings to enable private and confidential consultations and discussions to take place
- g) ensuring that all staff are aware of the need to respect the confidentiality and privacy of patients or clients and refrain from discussing patients or clients in a non-professional context
- h) using appropriate consent forms for release of information which limits

disclosure to relevant health and medical information.

### 3.5 Informed consent

Informed consent is a person's voluntary decision about health care that is made with knowledge and understanding of the benefits and risks involved. A useful guide to the information that practitioners need to give to patients is available in the National Health and Medical Research Council (NHMRC) publication *General Guidelines for Medical Practitioners in Providing Information to Patients* ([www.nhmrc.gov.au/](http://www.nhmrc.gov.au/)). The NHMRC Guidelines cover the information that practitioners should provide about their proposed management or approach, including the need to provide more information where the risk of harm is greater and likely to be more serious and advice about how to present information.

Good practice involves:

- a) providing information to patients or clients in a way they can understand before asking for their consent
- b) obtaining informed consent or other valid authority before undertaking any examination or investigation, providing treatment (except in an emergency) or involving patients or clients in teaching or research, including providing information on material risks
- c) when referring a patient or client for investigation or treatment, advising the patient or client that there may be additional costs, which he or she may wish to clarify before proceeding
- d) when working with a patient or client whose capacity to give consent is or may be impaired or limited, obtaining the consent of people with legal authority to act on behalf of the patient or client and attempting to obtain the consent of the patient or client as far as practically possible
- e) documenting consent appropriately, including considering the need for written consent for procedures which may result in serious injury or death.

### 3.6 Children and young people

Caring for children and young people brings additional responsibilities for practitioners.

Good practice involves:

- a) placing the interests and wellbeing of the child or young person first
- b) considering the young person's capacity for decision making and consent; in general, where a practitioner judges that a person is of a sufficient age and of sufficient mental and emotional capacity to give consent to a service, then that person should be able to request and provide informed consent to receive services without the consent of a parent, guardian or other legal representative
- c) ensuring that, when communicating with a child or young person, practitioners:
  - treat the child or young person with respect and listen to his or her views
  - encourage questions and answer those questions to the best of the practitioner's ability
  - provide information in a way the child or young person can understand
  - recognise the role of parents and, when appropriate, encourage the child or young person to involve his or her parents in decisions about care
  - remain alert to children and young people who may be at risk and notify appropriate child protection authorities as required by law. This may include where a parent is refusing treatment for his or her child or young person and this decision may not be in the best interests of the child or young person.

### **3.7 Culturally safe and sensitive practice**

Good practice involves genuine efforts to understand the cultural needs and contexts of different patients or clients to obtain good health outcomes. This includes:

- a) having knowledge of, respect for and sensitivity towards the cultural needs of the community practitioners serve, including those of Indigenous Australians and those from culturally and linguistically diverse backgrounds
- b) acknowledging the social, economic, cultural and behavioural factors influencing health, both at individual and population levels

- c) understanding that a practitioner's own culture and beliefs influence his or her interactions with patients or clients
- d) adapting practice to improve engagement with patients or clients and health care outcomes.

### **3.8 Patients who may have additional needs**

Some patients or clients (including those with impaired decision making capacity) have additional needs. Good practice in managing the care of these patients or clients includes:

- a) paying particular attention to communication
- b) being aware that increased advocacy may be necessary to ensure just access to health care
- c) recognising that there may be a range of people involved in their care such as carers, family members or a guardian, and involving them when appropriate
- d) being aware that these patients or clients may be at greater risk.

### **3.9 Relatives, carers and partners**

Good practice involves:

- a) being considerate to relatives, carers, partners and others close to the patient or client and respectful of their role in the care of the patient or client
- b) with appropriate consent, being responsive in providing information.

### **3.10 Adverse events and open disclosure**

When adverse events occur, practitioners have a responsibility to be open and honest in communication with a patient or client to review what has occurred and to report appropriately (also see Open disclosure at Section 6.2(a)). When something goes wrong, good practice involves:

- a) recognising what has happened
- b) acting immediately to rectify the problem, if possible, including seeking any necessary help and advice
- c) explaining to the patient or client as promptly and fully as possible what has happened and the anticipated short-term and long-term consequences
- d) acknowledging any patient or client distress and providing appropriate support

- e) complying with any relevant policies, procedures and reporting requirements, subject to advice from a professional indemnity insurer
- f) reviewing adverse events and implementing changes to reduce the risk of recurrence (see Section 6 Minimising risk)
- g) reporting adverse events to the relevant authority as required (see Section 6 Minimising risk)
- h) ensuring patients or clients have access to information about the processes for making a complaint (for example, through the relevant board or health care complaints commission).

### 3.11 When a notification is made

Patients or clients have a right to complain about their care. When a notification is made, good practice involves:

- a) acknowledging the person's right to complain
- b) working with the person to resolve the issue where possible
- c) providing a prompt, open and constructive response including an explanation and if appropriate an apology
- d) ensuring the notification does not affect the person's care adversely; in some cases, it may be advisable to refer the person to another practitioner
- e) complying with relevant complaints legislation, policies and procedures.

### 3.12 End of life care

Practitioners have a vital role in assisting the community to deal with the reality of death and its consequences. In caring for patients or clients towards the end of their life, good practice involves:

- a) taking steps to manage a person's symptoms and concerns in a manner consistent with his or her values and wishes
- b) where relevant, providing or arranging appropriate palliative care
- c) understanding the limits of services in prolonging life and recognising when efforts to prolong life may not benefit the person
- d) for those practitioners involved in care that may prolong life, understanding that practitioners do not have a duty to try to prolong life at all cost but do have a duty to know when not to initiate and when to cease attempts at prolonging life, while

ensuring that patients or clients receive appropriate relief from distress

- e) accepting that patients or clients have the right to refuse treatment or to request the withdrawal of treatment already started
- f) respecting different cultural practices related to death and dying
- g) striving to communicate effectively with patients or clients and their families so they are able to understand the outcomes that can and cannot be achieved
- h) where relevant, facilitating advanced care planning
- i) taking reasonable steps to ensure that support is provided to patients or clients and their families, even when it is not possible to deliver the outcome they desire
- j) communicating with patients or clients and their families about bad news or unexpected outcomes in the most appropriate way and providing support for them while they deal with this information
- k) when a patient or client dies, being willing to explain, to the best of the practitioner's knowledge, the circumstances of the death to appropriate members of his or her family and carers, unless it is known the patient or client would have objected.

### 3.13 Ending a professional relationship

In some circumstances, the relationship between a practitioner and a patient or client may become ineffective or compromised and may need to end. Good practice involves ensuring that the patient or client is informed adequately of the decision and facilitating arrangements for the continuing care of the patient or client, including passing on relevant clinical information.

### 3.14 Personal relationships

- Good practice recognises that providing care to those in a close relationship, for example close friends, work colleagues and family members, can be inappropriate because the lack of objectivity, possible discontinuity of care and risks to the practitioner or patient. When a practitioner chooses to provide care to those in a close relationship, good practice requires that: adequate records are kept
- confidentiality is maintained
- adequate assessment occurs
- appropriate consent is obtained to the circumstances which is acknowledged by both the practitioner and patient or client
- at all times an option to discontinue care is maintained.

### **3.15 Working with multiple clients**

Where practitioners are considering treating multiple patients or clients simultaneously in class or group work, or more than one individual patient or client at the same time, practitioners should consider whether this mode of treatment is appropriate to the patients or clients involved. (see also Section 3.4 Confidentiality and Privacy)

### **3.16 Closing a practice**

When closing or relocating a practice, good practice involves:

- a) giving advance notice where possible
- b) facilitating arrangements for the continuing care of all current patients, including the transfer or appropriate management of all patient records while following the law governing health records in the jurisdiction.

## **4 Working with other practitioners**

### **4.1 Introduction**

Good relationships with colleagues and other practitioners strengthen the practitioner–patient/client relationship and enhance patient care.

### **4.2 Respect for colleagues and other practitioners**

Good care is enhanced when there is mutual respect and clear communication between all health professionals involved in the care of the patient or client. Good practice involves:

- a) communicating clearly, effectively, respectfully and promptly with colleagues and other practitioners caring for the patient or client
- b) acknowledging and respecting the contribution of all practitioners involved in the care of the patient or client.

### **4.3 Delegation, referral and handover**

‘Delegation’ involves one practitioner asking another to provide care on behalf of the delegating practitioner while he or she retains overall responsibility for the care of the patient or client. ‘Referral’ involves one practitioner sending a patient or client to obtain an opinion or treatment from another practitioner. Referral

usually involves the transfer (in part) of responsibility for the care of the patient or client, usually for a defined time and a particular purpose, such as care that is outside the referring practitioner’s expertise or scope of practice. ‘Handover’ is the process of transferring all responsibility to another practitioner.

Good practice involves:

- a) taking reasonable steps to ensure that the person to whom a practitioner delegates, refers or hands over has the qualifications, experience, knowledge and skills to provide the care required
- b) understanding that, although a delegating practitioner will not be accountable for the decisions and actions of those to whom he or she delegates, the delegating practitioner remains responsible for the overall management of the patient or client and for the decision to delegate
- c) always communicating sufficient information about the patient or client and the treatment needed to enable the continuing care of the patient or client.

### **4.4 Teamwork**

Many practitioners work closely with a wide range of other practitioners. Effective collaboration is a fundamental aspect of good practice when working in a team. The care of patients or clients is improved when there is mutual respect and clear communication as well as an understanding of the responsibilities, capacities, constraints and ethical codes of each other’s health professions. Working in a team does not alter a practitioner’s personal accountability for professional conduct and the care provided. When working in a team, good practice involves:

- a) understanding the particular role in the team and attending to the responsibilities associated with that role
- b) advocating for a clear delineation of roles and responsibilities, including that there is a recognised team leader or coordinator although care within the team may be provided by different practitioners from different health professions within different models of care
- c) communicating effectively with other team members
- d) informing patients or clients about the roles of team members

- e) acting as a positive role model for team members
- f) understanding the nature and consequences of bullying and harassment and seeking to avoid or eliminate such behaviour in the workplace.

#### **4.5 Coordinating care with other practitioners**

Good patient care requires coordination between all treating practitioners. Good practice involves:

- a) communicating all the relevant information in a timely way
- b) ensuring that it is clear to the patient or client, the family and colleagues who has ultimate responsibility for coordinating the care of the patient or client.

### **5 Working within the health care system**

#### **5.1 Introduction**

Practitioners have a responsibility to contribute to the effectiveness and efficiency of the health care system.

#### **5.2 Wise use of health care resources**

It is important to use health care resources wisely. Good practice involves:

- a) ensuring that the services provided are appropriate for the assessed needs of the patient or client and are not excessive, unnecessary or not reasonably required
- b) upholding the right of patients or clients to gain access to the necessary level of health care, and, whenever possible, helping them to do so
- c) supporting the transparent and equitable allocation of health care resources
- d) understanding that the use of resources can affect the access other patients or clients have to health care resources.

#### **5.3 Health advocacy**

There are significant disparities in the health status of different groups in the Australian community. These disparities result from social, cultural, geographic, health-related and other factors. In particular, Indigenous

Australians bear the burden of gross social, cultural and health inequity. Other groups may experience health disparities including people with intellectual or physical disabilities, those from culturally and linguistically diverse backgrounds and refugees. Good practice involves using expertise and influence to protect and advance the health and wellbeing of individual patients or clients, communities and populations.

#### **5.4 Public health**

Practitioners have a responsibility to promote the health of the community through disease prevention and control, education and, where relevant, screening. Good practice involves:

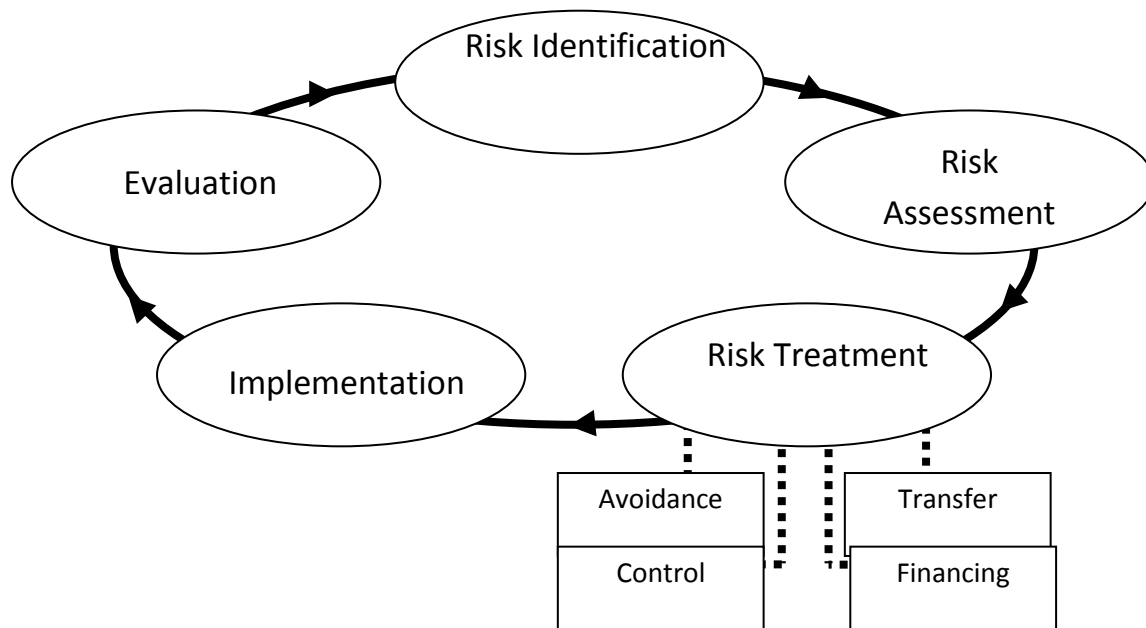
- a) understanding the principles of public health, including health education, health promotion, disease prevention and control and screening
- b) participating in efforts to promote the health of the community and being aware of obligations in disease prevention, including screening and reporting notifiable diseases where relevant.

### **6 Minimising risk**

#### **6.1 Introduction**

Risk is inherent in health care. Minimising risk to patients or clients is an important component of practice. Good practice involves understanding and applying the key principles of risk minimisation and management in practice.

## Basic Model of Risk Management



### 6.2 Risk management

Good practice in relation to risk management involves:

- being aware of the principles of open disclosure and a non-punitive approach to incident management; a useful reference is the Australian Commission on Safety and Quality in Health Care's *National Open Disclosure Standard* available at [www.safetyandquality.gov.au](http://www.safetyandquality.gov.au).
- participating in systems of quality assurance and improvement
- participating in systems for surveillance and monitoring of adverse events and 'near misses', including reporting such events
- if a practitioner has management responsibilities, making sure that systems are in place for raising concerns about risks to patients or clients
- working in practice and within systems to reduce error and improve the safety of patients or clients and supporting colleagues who raise concerns about the safety of patients or clients
- taking all reasonable steps to address the issue if there is reason to think that the safety of patients or clients may be compromised.

### 6.3 Practitioner performance

The welfare of patients or clients may be put at risk if a practitioner is performing poorly. If there is a risk, good practice involves:

- complying with statutory reporting requirements, including those under the National Law
- recognising and taking steps to minimise the risks of fatigue, including complying with relevant State and Territory occupational health and safety legislation
- if a practitioner knows or suspects that he or she has a health condition that could adversely affect judgement or performance, following the guidance in Section 9.2 Practitioner health
- taking steps to protect patients or clients from being placed at risk of harm posed by a colleague's conduct, practice or ill health
- taking appropriate steps to assist a colleague to receive help if there are concerns about the colleague's performance or fitness to practise
- if a practitioner is not sure what to do, seeking advice from an experienced colleague, the employer/s, practitioner health advisory services, professional indemnity insurers, the boards or a professional organisation.

## 7 Maintaining professional performance

### 7.1 Introduction

Maintaining and developing knowledge, skills and professional behaviour are core aspects of good practice. This requires self-reflection and participation in relevant professional development, practice improvement and performance-appraisal processes to

continually develop professional capabilities. These activities must continue through a practitioner's working life as science and technology develop and society changes.

## **7.2 Continuing professional development**

Development of knowledge, skills and professional behaviour must continue throughout a practitioner's working life. Good practice involves keeping knowledge and skills up-to-date to ensure that practitioners continue to work within their competence and scope of practice. The National Law requires practitioners to undertake CPD. Practitioners should refer to the board's Registration Standard and guideline regarding CPD for details of these requirements.

## **8 Professional behaviour**

### **8.1 Introduction**

In professional life, practitioners must display a standard of behaviour that warrants the trust and respect of the community. This includes observing and practising the principles of ethical conduct.

The guidance contained in this section emphasises the core qualities and characteristics of good practitioners outlined in Section 1.2 Professional values and qualities.

### **8.2 Professional boundaries**

Professional boundaries refers to the clear separation that should exist between professional conduct aimed at meeting the health needs of patients or clients and a practitioner's own personal views, feelings and relationships which are not relevant to the therapeutic relationship. Professional boundaries are integral to a good practitioner-patient/client relationship. They promote good care for patients or clients and protect both parties. Good practice involves:

- a) maintaining professional boundaries
- b) never using a professional position to establish or pursue a sexual, exploitative or otherwise inappropriate relationship with anybody under a practitioner's care; this includes those close to the patient or client, such as their carer, guardian, spouse or the parent of a child patient or client

- c) recognising that sexual relationships with people who have previously been a practitioner's patients or clients are often inappropriate, depending on the extent of the professional relationship and the vulnerability of a previous patient or client
- d) avoiding the expression of personal beliefs to patients or clients in ways that exploit their vulnerability or that are likely to cause them distress.

### **8.3 Reporting obligations**

Practitioners have statutory responsibility under the National Law to report matters to the boards, please refer to the board's guidelines on Mandatory Reporting. They also have professional obligations to report to the boards and their employer/s if they have had any limitations placed on their practice. Good practice involves:

- a) being aware of these reporting obligations
- b) complying with any reporting obligations that apply to practice
- c) seeking advice from the boards or professional indemnity insurer if practitioners are unsure about their obligations.

### **8.4 Health records**

Maintaining clear and accurate health records is essential for the continuing good care of patients or clients. Practitioners should be aware that some boards have specific guidelines in relation to records Good practice involves:

- a) keeping accurate, up-to-date and legible records that report relevant details of clinical history, clinical findings, investigations, information given to patients or clients, medication and other management
- b) ensuring that records are held securely and are not subject to unauthorised access, regardless of whether they are held electronically and/or in hard copy
- c) ensuring that records show respect for patients or clients and do not include demeaning or derogatory remarks
- d) ensuring that records are sufficient to facilitate continuity of care
- e) making records at the time of events or as soon as possible afterwards
- f) recognising the right of patients or clients to access information contained in their health records and facilitating that access
- g) promptly facilitating the transfer of health information when requested by patients or clients.

## 8.5 Insurance

Practitioners have a statutory requirement to ensure that practice is appropriately covered by professional indemnity insurance (see the boards' professional indemnity insurance registration standard).

## 8.6 Advertising

Advertisements for services can be useful in providing information for patients or clients. All advertisements must conform to relevant consumer protection legislation such as the Australian Consumer Law. Good practice involves:

- a) complying with board guidelines on advertising and State and Territory legislation
- b) making sure that any information published about services is factual and verifiable
- c) practitioners who are not medical practitioners must ensure that any use in advertising of the title 'Dr' is not misleading and does not imply being a medical practitioner; refer to Section 6.4 Advertising of qualifications and titles in the boards' Guidelines for advertising of regulated health services and any specific guidance from a board on this issue.

## 8.7 Legal, insurance and other assessments

When a practitioner is contracted by a third party to provide a legal, insurance or other assessment of a person who is not his or her patient or client, the usual therapeutic practitioner-patient/client relationship does not exist. In this situation, good practice involves:

- a) applying the standards or professional behaviour described in this Code to the assessment; in particular, being courteous, alert to the concerns of the person and ensuring the person's consent
- b) explaining to the person the practitioner's area of practice, role and the purpose, nature and extent of the assessment to be conducted
- c) anticipating and seeking to correct any misunderstandings that the person may have about the nature and purpose of the assessment and report
- d) providing an impartial report (see Section 8.8 Reports, certificates and giving evidence)
- e) recognising that if an unrecognised, serious problem is discovered during the

assessment, there is a duty of care to inform the patient or client or their treating practitioner.

## 8.8 Reports, certificates and giving evidence

The community places a great deal of trust in practitioners. Consequently, some practitioners have been given the authority to sign documents such as sickness or fitness for work certificates on the assumption that they will only sign statements that they know, or reasonably believe, to be true. Good practice involves:

- a) being honest and not misleading when writing reports and certificates and only signing documents believed to be accurate
- b) taking reasonable steps to verify the content before signing a report or certificate and not omitting relevant information deliberately
- c) if so agreed, preparing or signing documents and reports within a reasonable and justifiable timeframe
- d) making clear the limits of a practitioner's knowledge and not giving opinion beyond those limits when providing evidence.

## 8.9 Curriculum vitae

When providing curriculum vitae, good practice involves:

- a) providing accurate, truthful and verifiable information about a practitioner's experience and qualifications
- b) not misrepresenting by misstatement or omission a practitioner's experience, qualifications or position.

Also see Section 10.3 Assessing colleagues in relation to providing references for colleagues.

## 8.10 Investigations

Practitioners have responsibilities and rights relating to any legitimate investigation of their practice or that of a colleague. In meeting these responsibilities, it is advisable to seek legal advice or advice from a professional indemnity insurer. Good practice involves:

- a) cooperating with any legitimate inquiry into the treatment of a patient or client and with any complaints procedure that applies to a practitioner's work
- b) disclosing to anyone entitled to ask for it information relevant to an investigation



into the conduct, performance or health of a practitioner or colleague

- c) assisting the coroner when an inquest or inquiry is held into the death of a patient or client by responding to his or her enquiries and by offering all relevant information.

### 8.11 Conflicts of interest

Patients or clients rely on the independence and trustworthiness of practitioners for any advice or treatment offered. A conflict of interest in practice arises when a practitioner, entrusted with acting in the interests of a patient or client, also has financial, professional or personal interests or relationships with third parties which may affect his or her care of the patient or client.

Multiple interests are common. They require identification, careful consideration, appropriate disclosure and accountability. When these interests compromise, or might reasonably be perceived by an independent observer to compromise the practitioner's primary duty to the patient or client, practitioners must recognise and resolve this conflict in the best interests of the patient or client.

Good practice involves:

- a) recognising potential conflicts of interest that may arise in relation to initiating or continuing a professional relationship with a patient or client
- b) acting in the best interests of patients or clients when making referrals and when providing or arranging treatment or care
- c) informing patients or clients when a practitioner has an interest that could affect or could be perceived to affect patient or client care
- d) recognising that pharmaceutical and other marketing may influence practitioners and being aware of ways in which practice may be influenced
- e) not asking for or accepting any inducement, gift or hospitality of more than trivial value from companies that sell or market drugs or other products that may affect or be seen to affect the way practitioners prescribe for, treat or refer patients or clients
- f) not asking for or accepting fees for meeting sales representatives
- g) not offering inducements to colleagues or entering into arrangements that could be perceived to provide inducements
- h) not allowing any financial or commercial interest in a hospital, other health care

organisation or company providing health care services or products to adversely affect the way in which patients or clients are treated. When practitioners or their immediate family have such an interest and that interest could be perceived to influence the care provided, practitioners must inform their patients or clients.

### 8.12 Financial and commercial dealings

Practitioners must be honest and transparent in financial arrangements with patients or clients. Good practice involves:

- a) not exploiting the vulnerability or lack of knowledge of patients or clients when providing or recommending services
- b) not encouraging patients or clients to give, lend or bequeath money or gifts that will benefit a practitioner directly or indirectly
- c) not accepting gifts from patients or clients other than tokens of minimal value such as flowers or chocolates and if token gifts are accepted, making a file note or informing a colleague where possible
- d) not becoming involved financially with patients or clients; for example, through loans and investment schemes
- e) not influencing patients or clients or their families to make donations to other people or organisations
- f) being transparent in financial and commercial matters relating to work, including dealings with employers, insurers and other organisations or individuals and in particular:
  - declaring any relevant and material financial or commercial interest that a practitioner or his or her family might have in any aspect of the care of the patient or client
  - declaring to patients or clients any professional and financial interest in any product a practitioner might endorse or sell from his or her practice and not making an unjustifiable profit from the sale or endorsement.

## 9 Ensuring practitioner health

### 9.1 Introduction

As a practitioner, it is important to maintain health and wellbeing. This includes seeking an appropriate work-life balance.

## 9.2 Practitioner health

Good practice involves:

- a) attending a general practitioner or other appropriate practitioner to meet health needs
- b) seeking expert, independent, objective advice when a practitioner needs health care and being aware of the risks of self-diagnosis and self-treatment
- c) understanding the principles of immunisation against communicable diseases and being immunised against relevant communicable diseases
- d) for practitioners who are able to prescribe, conforming to the legislation in the relevant States and Territories in relation to self-prescribing
- e) recognising the impact of fatigue on practitioner health and ability to care for patients or clients and endeavouring to work safe hours whenever possible
- f) being aware of any practitioner health program in the relevant States and Territories if advice or help is needed
- g) if a practitioner knows or suspects that he or she has a health condition or impairment that could adversely affect judgement, performance or the health of patients or clients:
  - not relying on self-assessment of the risk posed to patients or clients
  - consulting a doctor or other practitioner as appropriate about whether, and in what ways, the affected practitioner may need to modify practice and following the treating practitioner's advice
  - being aware of practitioner responsibility under the National Law to notify the boards in relation to certain impairments.

## 9.3 Other practitioners' health

Health practitioners have a responsibility to assist their colleagues to maintain good health.

Good practice involves:

- a) providing practitioners who are patients or clients with the same quality of care provided to other patients or clients
- b) notifying the boards if treating another registered who has patients or clients at risk of substantial harm when practising their profession because they have an impairment (refer to the board's guidelines on mandatory reporting); this is a professional as well as a statutory responsibility
- c) notifying the boards and encouraging a colleague (who is not a patient or client)

who you work with to seek appropriate help if it is believed the colleague may be ill and impaired; and if this impairment has placed patients or clients at risk of harm, refer to the notification provisions of the National Law and the boards' guidelines on mandatory notifications

- d) recognising the impact of fatigue on the health of colleagues, including those under supervision and facilitating safe working hours wherever possible.

## 10 Teaching, supervising and assessing

*Note: Supervision in the psychology profession has a particular meaning which is not specifically addressed in this section.*

### 10.1 Introduction

Teaching, supervising and mentoring practitioners and students is important for their development and for the care of patients or clients. It is part of good practice to contribute to these activities and provide support, assessment, feedback and supervision for colleagues, practitioners in training and students. It also adds value to the supervisor's practice through engagement with the person being supervised and their learning needs. There are a range of supervision models being adopted in the health professions, including coach, mentor and shadow.

### 10.2 Teaching and supervising

Good practice involves:

- a) seeking to develop the skills, attitudes and practices of an effective teacher, whenever a practitioner is involved in teaching
- b) as a supervisor, recognising that the onus of supervision cannot be transferred
- c) making sure that any practitioner or student under supervision receives adequate oversight and feedback, including undertaking an assessment of each student supervised; reflecting on that student's ability, competence and learning requirements; and planning his or her supervision based on that assessment rather than any external direction
- d) avoiding any potential for conflict of interest in the supervisory relationship; for example, by supervising someone who is a close relative or friend or where there is another potential conflict of interest that could impede objectivity and/or interfere

with the supervised person's achievement of learning outcomes or relevant experience.

### 10.3 Assessing colleagues

Assessing colleagues is an important part of making sure that the highest standards or practice are achieved. Good practice involves:

- a) being honest, objective and constructive when assessing the performance of colleagues, including students; patients or clients will be put at risk of harm if an assessment describes as competent someone who is not
- b) when giving references or writing reports about colleagues, providing accurate and justifiable information promptly and including all relevant information.

### 10.4 Students

Students are learning how best to care for patients or clients. Creating opportunities for learning improves their clinical practice and nurtures the future workforce. Good practice involves:

- a) treating students with respect and patience
- b) making the scope of the student's role in patient or client care clear to the student, to patients or clients and to other members of the health care team
- c) informing patients or clients about the involvement of students and encouraging their consent for student participation while respecting their right to choose not to consent.

## 11 Undertaking research

### 11.1 Introduction

Research involving humans, their tissue samples or their health information is vital in improving the quality of health care and reducing uncertainty for patients and clients now and in the future and in improving the health of the population as a whole. Research in Australia is governed by guidelines issued in accordance with the *National Health and Medical Research Council Act 1992* (Cwlth). Practitioners undertaking research should familiarise themselves with and follow these guidelines.

Research involving animals is governed by legislation in States and Territories and by guidelines issued by the NHMRC.

### 11.2 Research ethics

Being involved in the design, organisation, conduct or reporting of health research involving humans brings particular responsibilities for practitioners. These responsibilities, drawn from the NHMRC guidelines, include:

- a) according to participants the respect and protection that is due to them
- b) acting with honesty and integrity
- c) ensuring that any protocol for human research has been approved by a human research ethics committee, in accordance with the *National Statement on Ethical Conduct in Human Research* issued by the NHMRC (which addresses privacy issues, and refers to the need to consider relevant State, Territory and federal privacy legislation)
- d) disclosing the sources and amounts of funding for research to the human research ethics committee
- e) disclosing any potential or actual conflicts of interest to the human research ethics committee
- f) ensuring that human participation is voluntary and based on informed consent and an adequate understanding of sufficient information about the purpose, methods, demands, risks and potential benefits of the research
- g) ensuring that any dependent relationship between practitioners and their patients or clients is taken into account in the recruitment of patients or clients as research participants
- h) seeking advice when research involves children or adults who are not able to give informed consent to ensure that there are appropriate safeguards in place, including ensuring that a person empowered to make decisions on the behalf of patients or clients has given informed consent or that there is other lawful authority to proceed
- i) adhering to the approved research protocol
- j) monitoring the progress of the research and reporting adverse events or unexpected outcomes promptly
- k) respecting the entitlement of research participants to withdraw from any research at any time and without giving reasons
- l) adhering to the guidelines regarding publication of findings, authorship and peer review

- m) reporting possible fraud or misconduct in research as required under the *Australian Code for the Responsible Conduct of Research* issued by the NHMRC.

### 11.3 Treating practitioners and research

When practitioners are involved in research that involves patients or clients, good practice includes:

- a) respecting the right of patients or clients to withdraw from a study without prejudice to their treatment
- b) ensuring that a decision by patients or clients not to participate does not compromise the practitioner-patient/client relationship or the care of the patient or client.

<b>Date of issue:</b> <<date to be inserted>>
<b>Date of review:</b> This code will be reviewed at least every three years
<b>Last reviewed:</b> 21 November 2011

### 3. Draft Guidelines for mandatory notifications

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#### Introduction

These guidelines have been developed jointly by the national boards under s. 39 of the *Health Practitioner Regulation National Law Act 2009* (the National Law). The guidelines are developed to provide direction to registered health practitioners, employers of practitioners and education providers about the requirements for mandatory notifications under the National Law.

The inclusion of mandatory notification requirements in the National Law is an important policy initiative for public protection.

The relevant sections of the National Law are attached.

#### Who needs to use these guidelines?

These guidelines are relevant to:

- health practitioners registered under the National Law
- employers of practitioners
- education providers.

Students who are registered in a health profession under the National Law should be familiar with these guidelines. Although the National Law does not require a student to make a mandatory notification, a notification can be made about an impaired student.

#### Summary of guidelines

These guidelines explain the requirements for practitioners, employers of practitioners and education providers to make mandatory notifications under the National Law to prevent the public being placed at risk of harm.

The threshold to be met to trigger a mandatory notification in relation to a practitioner is high. The practitioner or employer must have first formed a reasonable belief that the behaviour constitutes notifiable conduct or a notifiable impairment or, in the case of an education provider, a notifiable impairment.

Making a mandatory notification is a serious step to prevent the public from being placed at risk of harm and should only be taken on sufficient grounds. The guidelines explain when these grounds are likely to arise.

Importantly, the obligation to make a mandatory notification applies to the conduct or impairment of all practitioners, not just those within the practitioner's own health profession.

These guidelines also address the role of the Australian Health Practitioner Regulation Agency (the National Agency) as the body for receiving notifications and referring them to the relevant board.

# Guidelines for mandatory notifications

## 1. Introduction

The National Law requires practitioners, employers and education providers to report 'notifiable conduct', as defined in s. 140 of the National Law, to the National Agency in order to prevent the public being placed at risk of harm.

These guidelines explain how the boards will interpret these mandatory notification requirements. They will help practitioners, employers and education providers understand how to work with these requirements; that is, whether they must make a notification about a practitioner's conduct and when.

The threshold to be met to trigger the requirement to report notifiable conduct in relation to a practitioner is high; and the practitioner or employer must have first formed a reasonable belief that the behaviour constitutes notifiable conduct.

The aim of the notification requirements is to prevent the public from being placed at risk of harm. The intention is that practitioners notify the Agency if they believe that another practitioner has behaved in a way which presents a serious risk to the public. The requirements focus on serious instances of sub-standard practice or conduct by practitioners or serious cases of impairment of students or practitioners; this is, behaviour that puts the public at risk of harm, rather than not liking the way someone else does something or feeling that they could do their job better.

### Voluntary notifications

The National Law also provides for voluntary notifications for behaviour that presents a risk but does not meet the threshold for notifiable conduct (see ss. 144 and 145 of the National Law).

### Protection for people making a notification

The National Law protects practitioners, employers and education providers who make notifications in good faith under the National Law. 'Good faith' is not defined in the National Law so has its ordinary meaning of being well-intentioned or without malice. S. 237 provides protection from civil, criminal and administrative liability, including defamation, for people making notifications in good faith. The National Law clarifies that making a notification is not a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct. These provisions protect practitioners making mandatory notifications from legal liability and reinforce that making mandatory notifications under the National Law is consistent with professional conduct and a practitioner's ethical responsibilities. Legally mandated notification requirements override privacy laws. Practitioners should be aware that notifications which are frivolous, vexatious or not in good faith may be subject to conduct action.

## 2. General obligations

The obligation is on any practitioner or employer who forms a reasonable belief that another practitioner has engaged in notifiable conduct to make a report to the National Agency as soon as practicable. The definition of 'notifiable conduct' is set out in s. 140 of the National Law and in Section 3 Notifiable conduct of these guidelines.

The mandatory notification obligation applies to all practitioners and employers of practitioners in relation to the notifiable conduct of all practitioners, not just those in the same health profession as the practitioner. It applies where the notifying practitioner is also the treating practitioner for a practitioner, except in Western Australia (see Section 4 *Exceptions to the requirements of practitioners to make a mandatory notification* of these *Guidelines* for details).

There is also a mandatory obligation for education providers and practitioners to report a student with an impairment that may place the public at substantial risk of harm.

While the mandatory reporting provisions in the National Law are an important policy change and are new to most practitioners, the duties covered in them are consistent with current ethical practice and professional obligations. In addition to their legal obligations with respect to mandatory reporting, practitioners are also under an ethical obligation to notify concerns about a practitioner, in accordance with the broad ethical framework set out in the health profession's code of conduct (see the code of conduct and the voluntary reporting provisions of the National Law).

There are some exceptions to the requirement for practitioners to notify the National Agency of notifiable conduct, which are discussed at Section 4 Exceptions to the requirement of practitioners to make a mandatory notification.

### **What is a reasonable belief?**

For practitioners reporting notifiable conduct, a 'reasonable belief' must be formed in the course of practising the profession.

A reasonable belief requires a stronger level of knowledge than a mere suspicion. Generally it would involve direct knowledge or observation of the behaviour which gives rise to the notification, or, in the case of an employer, it could also involve a report from a reliable source or sources. Mere speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

A reasonable belief has an objective element – that there are facts which could cause the belief in a reasonable person; and a subjective element – that the person making the notification actually has that belief.

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

The most likely example of where a practitioner or employer would form a reasonable belief is where the person directly observes notifiable conduct, or, in relation to an education provider, observes the behaviour of an impaired student.

### **What is 'the public'?**

Several of the mandatory notification provisions refer to 'the public being placed at risk of harm'. In the context of notifications, 'the public' can be interpreted as persons that access the practitioner's regulated health services or the wider community which could potentially have been placed at risk of harm by the practitioner's services.

### 3. Notifiable conduct

S. 140 of the National Law defines 'notifiable conduct' as where a practitioner has:

- (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.'

The following sections of the guidelines discuss these types of notifiable conduct, followed by the exceptions. The guidelines are only examples of decision making processes, so practitioners, employers and education providers should check the exceptions to make sure they do not apply. If a practitioner engages in more than one type of notifiable conduct, each type is required to be notified.

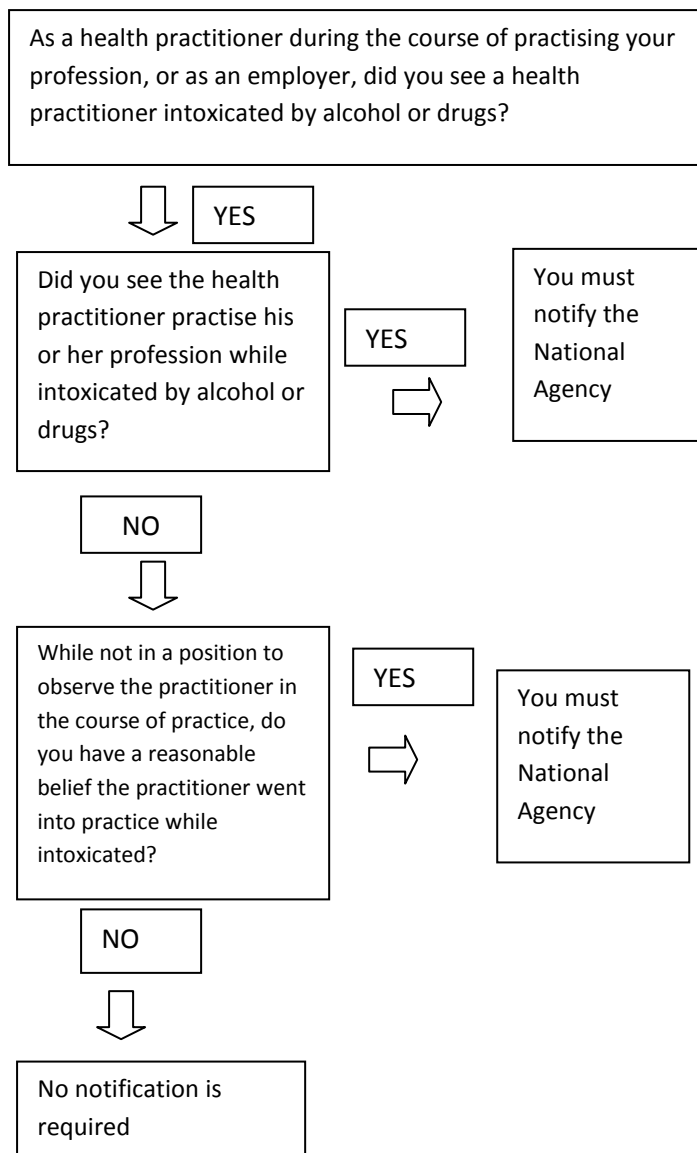
#### **Practise while intoxicated by alcohol or drugs (s. 140(a))**

The word 'intoxicated' is not defined in the National Law, so the word has its ordinary meaning. The boards will consider a practitioner to be intoxicated where his or her capacity to exercise reasonable care and skill in the practice of the health profession is impaired or adversely affected as a result of being under the influence of drugs or alcohol.

The National Law does not require notification of a practitioner who is intoxicated outside the practice of his or her health profession, unless the intoxication triggers another ground for notification.



*Decision guide – notifying intoxication*



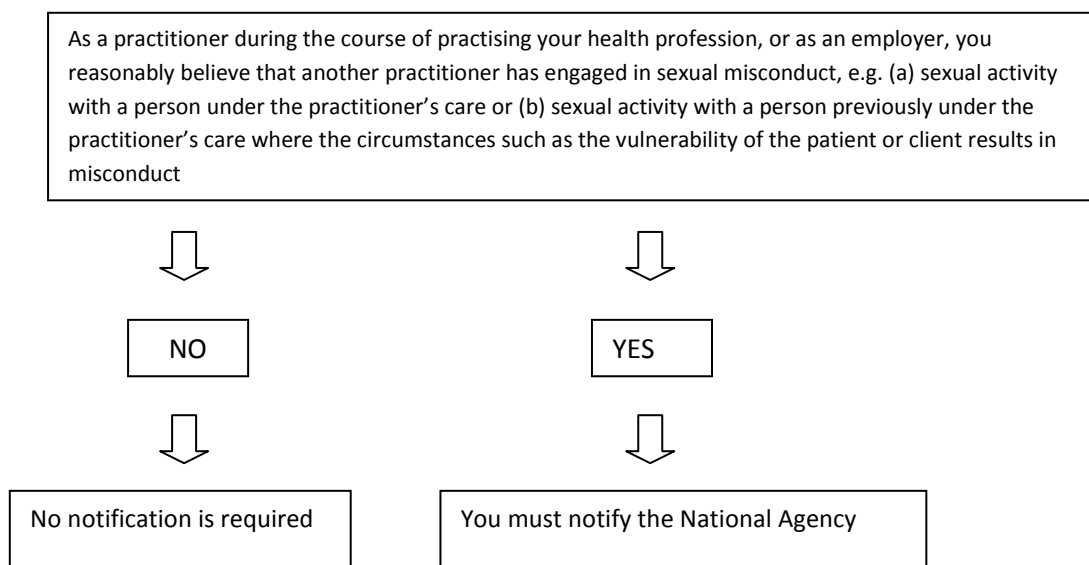
**NOTE:** Voluntary notifications can be made.

## Sexual misconduct in connection with the practice of the practitioner's profession (s. 140(b))

S. 140(b) relates to sexual misconduct in connection with the practice of the practitioner's health profession; that is, in relation to persons under the practitioner's care or linked to the practitioner's practice of his or her health profession. Engaging in sexual activity with a current patient or client will constitute sexual misconduct in connection with the practice of the practitioner's health profession, regardless of whether the patient or client consented to the activity or not. This is because of the power imbalance between practitioners and their patients or clients. Sexual misconduct also includes making sexual remarks, touching patients or clients in a sexual way, or engaging in sexual behaviour in front of a patient or client, etc. Engaging in sexual activity with a person who is closely related to a patient or client under the practitioner's care may also constitute misconduct. In some cases, someone who is closely related to a patient or client may also be considered a patient or client; for example, the parent of a child patient or client.

Engaging in sexual activity with a person formerly under a practitioner's care (i.e. after the termination of the practitioner-patient/client relationship) may also constitute sexual misconduct. Relevant factors will include the vulnerability of the patient or client due to issues such as age, capacity and/or health conditions; the extent of the professional relationships; for example, a one-off treatment in an emergency department compared to a long term program of treatment; and the length of time since the practitioner-patient/client relationship ceased.

### *Decision guide – notifying sexual misconduct*



**NOTE:** Voluntary notifications can be made.

## Placing the public at risk of substantial harm because of an impairment (s. 140(c))

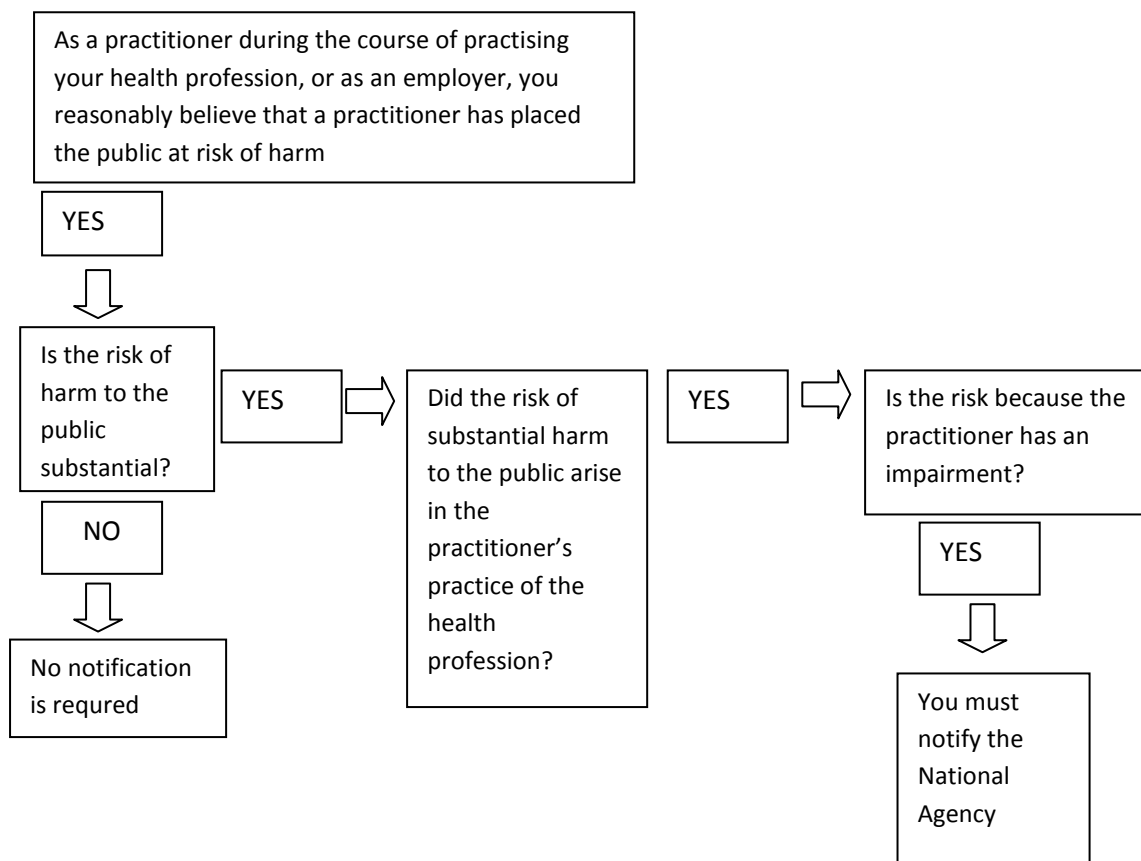
S. 5 of the National Law defines 'impairment' for a practitioner or an applicant for registration in a health profession as meaning a person has 'a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the person's capacity to practise the profession.'

To trigger this notification, a practitioner must have placed the public at risk of substantial harm. 'Substantial harm' has its ordinary meaning; that is, considerable harm such as a failure to correctly or appropriately diagnose or treat because of the impairment. For example, a practitioner who has an illness which causes cognitive impairment so he or she cannot practise effectively would require a mandatory notification. However, a practitioner who has a blood borne virus who practises

appropriately and safely in light of his or her condition and complies with any registration standards or guidelines and professional standards and protocols would not trigger a notification.

The context of the practitioner’s work is also relevant. If registered health practitioners, employers and education providers are aware that the employer knows of the practitioner’s impairment, and has put safeguards in place such as monitoring and supervision, this may reduce or prevent the risk of substantial harm.

*Decision guide – notifying impairment in relation to a practitioner*



**NOTE:** Voluntary notifications can be made.

\* for notification of student impairment, please see Education Providers Section 6 of guidelines

The context of the practitioner’s work is also relevant. If registered health practitioners are aware that the employer knows of the practitioner’s impairment, and has put safeguards in place such as monitoring and supervision, this may reduce or prevent the risk of substantial harm.

**Placing the public at risk of harm because of practice in a way that constitutes a significant departure from accepted professional standards (s.140(d))**

The term ‘accepted professional standards’ requires knowledge of the professional standards that are accepted within the health profession and a judgement about whether there has been a significant departure from them. This judgement may be easier for other members of the practitioner’s health profession.

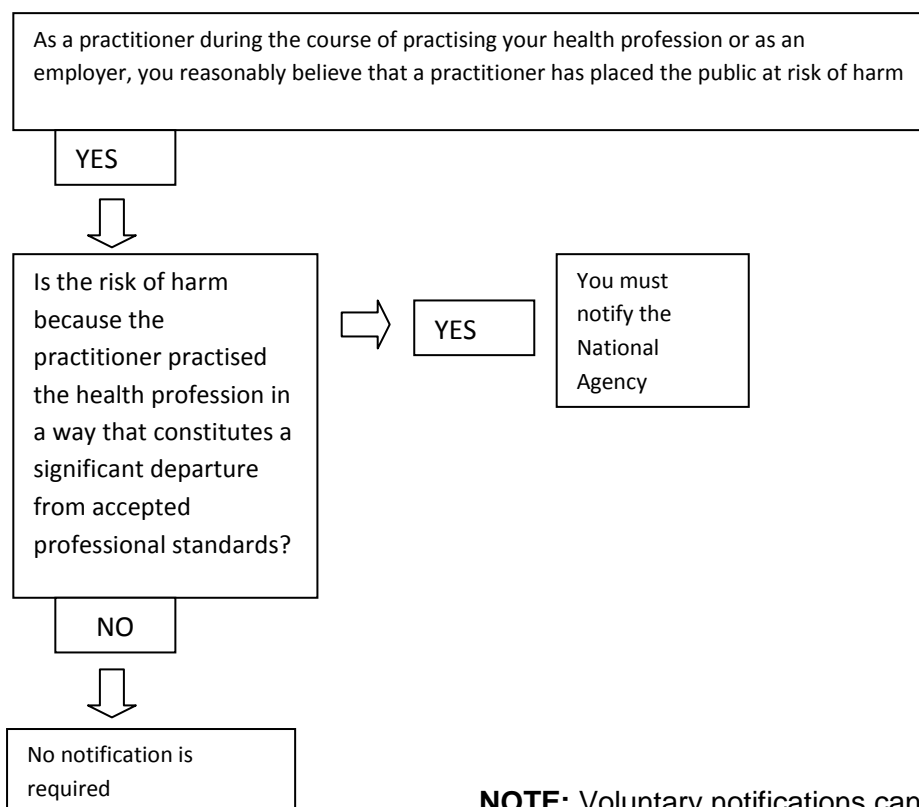
Mandatory notifications about a practitioner from another health profession are most likely to arise in a team environment where different health professions are working closely together and have a good understanding of the contribution of each practitioner; for example, a surgical or mental health team.

The difference from accepted professional standards must be significant. The term 'significant' means important, or of consequence (Macquarie Concise Dictionary). Professional standards cover not only clinical skills but also other standards of professional behaviour. A significant departure is one which is serious and would be obvious to any reasonable practitioner.

The notifiable conduct of the practitioner must place the public at risk of harm as well as being a significant departure from accepted professional standards before a notification is required. However, the risk of harm just needs to be present - it does not need to be a substantial risk, as long as the practitioner's practice involves a significant departure from accepted professional standards. For example, a clear breach of the health profession's code of conduct which places the public at risk of harm would be enough.

This provision is not meant to trigger notifications based on different professional standards within a health profession, provided the standards are accepted within the health profession; that is, by a reasonable proportion of practitioners. For example, if one practitioner uses a different standard to another practitioner, but both are accepted standards within the particular health profession, this would not qualify as a case of notifiable conduct. Similarly, if a practitioner is engaged in innovative practice but within accepted professional standards, it would not trigger the requirement to report.

*Decision guide – significant departure from accepted professional standards*



**NOTE:** Voluntary notifications can be made.

#### 4. Exceptions to the requirement of practitioners to make a mandatory notification

There are particular exceptions to the requirement to make a mandatory notification for practitioners. The exceptions relate to the circumstances in which the practitioner forms the reasonable belief in misconduct or impairment. They arise where the practitioner who would be required to make the notification;

- is employed or otherwise engaged; for example, a contractor by a professional indemnity insurer
- forms the belief while providing advice about legal proceedings or the preparation of legal advice
- is exercising functions as a member of a quality assurance committee, council or other similar body approved or authorised under legislation which prohibits the disclosure of the information
- reasonably believes (refer to Section 2 *General Obligations: What is a reasonable belief?* of these *Guidelines* for an explanation of reasonable belief) that someone else has already made a notification or
- is a treating practitioner, practising in Western Australia.

Practitioners in Western Australia are not required to make a mandatory notification about patients (or clients) who are practitioners or students in one of the health professions. However, practitioners in Western Australia continue to have a professional and ethical obligation to protect and promote public health and safety. They may therefore make a voluntary notification or may encourage the practitioner or student they are treating to self-report.

Practitioners should refer to *Attachment A* in these *Guidelines* for an extract of the relevant legislation; see s141(4) of the Health Practitioner Regulation National Law Act (National Law) as in force in each state and territory if it is possible one of these exceptions might apply.

## **5. Mandatory notifications by education providers and practitioners in relation to impaired students**

Education providers are also required, under s.143 of the National Law, to make mandatory notifications in relation to students, if the provider reasonably believes:

- a student enrolled with the provider has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm
- a student for whom the provider has arranged clinical training has an impairment that, in the course of the student undertaking the clinical training, may place the public at substantial risk of harm.

Practitioners are required to make a mandatory notification in relation to a student if the practitioner reasonably believes that a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm (s.141(1)(b)).

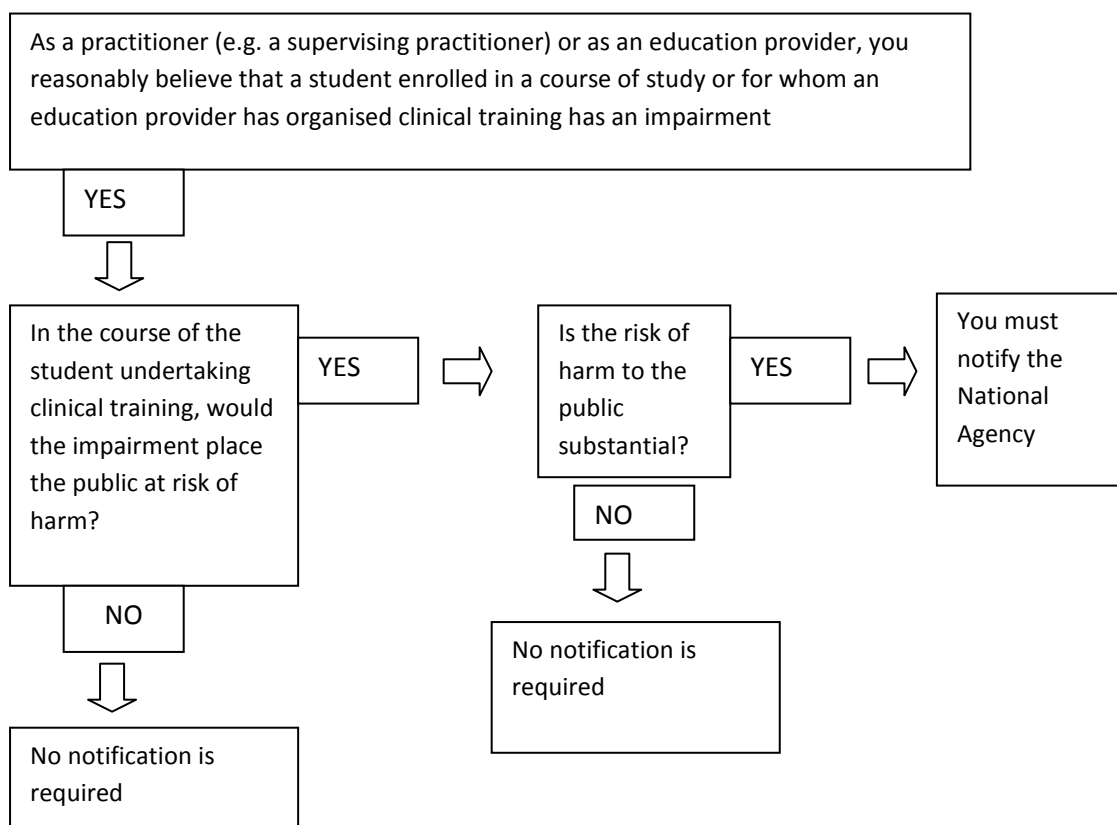
In all cases, the student's impairment must place the public at substantial, or considerable, risk of harm in the course of clinical training.

In relation to a student, 'impairment' is defined under s. 5 of the National Law to mean the student 'has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect the student's capacity to undertake clinical training —

- as part of the approved program of study in which the student is enrolled; or
- arranged by an education provider.'

An education provider who does not notify the National Agency as required by s. 143 does not commit an offence. However, the national board that registered the student must publish details of the failure to notify on the board's website and the National Agency may, on the recommendation of the national board, include a statement about the failure in the National Agency's annual report.

## Decision guide – student impairment



**NOTE:** Voluntary notifications can be made.

## 6. Consequences of failure to notify

### Registered health practitioners

Although there are no penalties prescribed under the National Law for a practitioner who fails to make a mandatory notification, any practitioner who fails to make a mandatory notification when required may be subject to health, conduct or performance action.

### Employers of practitioners

There are also consequences for an employer who fails to notify the National Agency of notifiable conduct as required by s. 142 of the National Law.

If the National Agency becomes aware of such a failure, the National Agency must give a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred. As soon as practicable after receiving such a report, the responsible Minister must report the employer's failure to notify to a health complaints entity, the employer's licensing authority or another appropriate entity in that participating jurisdiction.

Importantly, the requirement to make a mandatory notification does not reduce an employer's responsibility to manage the practitioner employee's performance and protect the public from being placed at risk of harm. However, if an employer has a reasonable belief that a practitioner has behaved in a way that constitutes notifiable conduct, then the employer must notify, regardless of whether steps are put in place to prevent recurrence of the conduct or impairment, or whether the practitioner subsequently leaves the employment.

## 7. How a notification is made (s. 146)

The National Law provides for notifications to be made to the National Agency, which receives notifications and refers them to the relevant board. The notification must include the basis for making the notification; that is, practitioners, employers and education providers must say what the notification is about. It may assist practitioners, employers and education providers in making a notification if they have documented the reasons for the notification, including the date and time that they noticed the conduct or impairment.

To make a notification verbally, practitioners, employers and education providers may ring 1300 419 495 or go to any of the State and Territory offices of the National Agency:

ACT: 11 Torrens Street, Braddon, ACT 2612

New South Wales: Level 51, 680 George Street, Sydney, NSW 2000

Northern Territory: Level 2, Harbour View Plaza, Cnr McMinn and Bennett Streets, Darwin, NT 0800

Queensland: Level 18, 179 Turbot Street, Brisbane, QLD 4000

South Australia: Level 8, 121 King William Street, Adelaide, SA 5000

Tasmania: Level 12, 86 Collins Street, Hobart, TAS 7000

Victoria: Level 8, 111 Bourke Street, Melbourne, VIC 3000

Western Australia: Level 1, 541 Hay Street, Subiaco, WA 6008

To make a notification in writing, go to the Notifications and Outcomes section of the National Agency website at [www.ahpra.gov.au](http://www.ahpra.gov.au), download a notification form and post your completed form to AHPRA, GPO Box 9958 in your capital city.

<b>Date of issue:</b> xxxxxxxxxxxx
<b>Date of review:</b> This guideline will be reviewed at least every three years
<b>Last reviewed:</b> 21 November 2011

## Attachment A – Guidelines for mandatory notifications

### Extract of relevant provisions from the Health Practitioner Regulation National Law Act 2009

**s. 5** impairment, in relation to a person, means the person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect—

- (a) for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or
- (b) for a student, the student's capacity to undertake clinical training—
  - (i) as part of the approved program of study in which the student is enrolled; or
  - (ii) arranged by an education provider.

### Part 5, Division 3 Registration standards and codes and guidelines

#### 39 Codes and guidelines

A National Board may develop and approve codes and guidelines—

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

**Example.** A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

#### 40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.

- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website—
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect—
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

#### 41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory

jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

### Part 8, Division 2 Mandatory notifications

#### 140 Definition of notifiable conduct

In this Division—

**notifiable conduct**, in relation to a registered health practitioner, means the practitioner has—

- (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.

Education provider means-

- (a) a university; or
- (b) a tertiary education institution, or another institution or organisation, that provides vocational training; or
- (c) a specialist medical college or other health profession college.

#### 141 Mandatory notifications by health practitioners

- (1) This section applies to a registered health practitioner (the **first health practitioner**) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that—
  - (a) another registered health practitioner (the **second health practitioner**) has behaved in a way that constitutes notifiable conduct; or
  - (b) a student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (2) The first health practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's notifiable conduct or the student's impairment.

**Note.** See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (3) A contravention of subsection (2) by a registered health practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) For the purposes of subsection (1), the first health practitioner does not form the reasonable belief in the course of practising the profession if—
  - (a) the first health practitioner—
    - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and
    - (ii) forms the reasonable belief the second health practitioner has behaved in a way that constitutes notifiable conduct, or the student has an impairment, as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy; or
  - (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the notifiable conduct or impairment for the purposes of a legal proceeding or the preparation of legal advice; or
  - (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the notifiable conduct or impairment is an issue; or

## Application of National Law in Western Australia

### Part 2, Section 4(7) Health Practitioner Regulation National Law (WA) Act 2010

In this Schedule after section 141(4)(c) insert:

141(4)(da) the first health practitioner forms the reasonable belief in the course of providing health services to the second health practitioner or student; or

- (d) the first health practitioner—
  - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
  - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or
- (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the notifiable conduct or impairment that forms the basis of the reasonable belief.

#### 142 Mandatory notifications by employers

- (1) If an employer of a registered health practitioner reasonably believes the health practitioner has behaved in a way that constitutes notifiable conduct, the employer must notify the National Agency of the notifiable conduct.

**Note.** See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (2) If the National Agency becomes aware that an employer of a registered health practitioner has failed to notify the Agency of notifiable conduct as required by subsection (1), the Agency must give

a written report about the failure to the responsible Minister for the participating jurisdiction in which the notifiable conduct occurred.

- (3) As soon as practicable after receiving a report under subsection (2), the responsible Minister must report the employer's failure to notify the Agency of the notifiable conduct to a health complaints entity, the employer's licensing authority or another appropriate entity in that participating jurisdiction.
- (4) In this section—

**employer**, of a registered health practitioner, means an entity that employs the health practitioner under a contract of employment or a contract for services.

**licensing authority**, of an employer, means an entity that under a law of a participating jurisdiction is responsible for licensing, registering or authorising the employer to conduct the employer's business.

#### 143 Mandatory notifications by education providers

- (1) An education provider must notify the National Agency if the provider reasonably believes—
  - (a) a student enrolled in a program of study provided by the provider has an impairment that, in the course of the student undertaking clinical training as part of the program of study, may place the public at substantial risk of harm; or
  - (b) a student for whom the education provider has arranged clinical training has an impairment that, in the course of the student undertaking the clinical training, may place the public at substantial risk of harm;

**Note.** See section 237 which provides protection from civil, criminal and administrative liability for persons who make a notification under this Law. Section 237(3) provides that the making of a notification does not constitute a breach of professional

etiquette or ethics or a departure from accepted standards of professional conduct and nor is any liability for defamation incurred.

- (2) A contravention of subsection (1) does not constitute an offence.

#### **144 Grounds for voluntary notification**

(1) A voluntary notification about a registered health practitioner may be made to the National Agency on any of the following grounds—

- (a) that the practitioner's professional conduct is, or may be, of a lesser standard than that which might reasonably be expected of the practitioner by the public or the practitioner's professional peers;
- (b) that the knowledge, skill or judgment possessed, or care exercised by, the practitioner in the practice of the practitioner's health profession is, or may be, below the standard reasonably expected;
- (c) that the practitioner is not, or may not be, a suitable person to hold registration in the health profession, including, for example, that the practitioner is not a fit and proper person to be registered in the profession;
- (d) that the practitioner has, or may have, an impairment;
- (e) that the practitioner has, or may have, contravened this Law;
- (f) that the practitioner has, or may have, contravened a condition of the practitioner's registration or an undertaking given by the practitioner to a National Board;
- (g) that the practitioner's registration was, or may have been, improperly obtained because the practitioner or someone else gave the National Board information or a document that was false or misleading in a material particular.

(2) A voluntary notification about a student may be made to the National Agency on the grounds that—

- (a) the student has been charged with an offence, or has been convicted or found guilty of an offence, that is punishable by 12 months imprisonment or more; or
- (b) the student has, or may have, an impairment; or
- (c) that the student has, or may have, contravened a condition of the student's registration or an undertaking given by the student to a National Board.

#### **145 Who may make voluntary notification**

Any entity that believes that a ground on which a voluntary notification may be made exists in relation to a registered health practitioner or a student may notify the National Agency.

**Note.** See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.

### **Part 8, Division 4 Making a notification**

#### **146 How notification is made**

- (1) A notification may be made to the National Agency—
  - (a) verbally, including by telephone; or
  - (b) in writing, including by email or other electronic means.
- (2) A notification must include particulars of the basis on which it is made.
- (3) If a notification is made verbally, the National Agency must make a record of the notification.

**Part 11, Division 1, section 237**  
**Protection from liability for persons**  
**making notification or otherwise**  
**providing information**

making of the notification or giving  
of the information.

- (1) This section applies to a person who, in good faith—
  - (a) makes a notification under this Law; or
  - (b) gives information in the course of an investigation or for another purpose under this Law to a person exercising functions under this Law.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Without limiting subsection (2)—
  - (a) the making of the notification or giving of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and
  - (b) no liability for defamation is incurred by the person because of the making of the notification or giving of the information.
- (4) The protection given to the person by this section extends to—
  - (a) a person who, in good faith, provided the person with any information on the basis of which the notification was made or the information was given; and
  - (b) a person who, in good faith, was otherwise concerned in the