



Health Professional Councils Authority

## LEGAL PRACTICE NOTE No. 9

### Mandatory notifications concerning students

#### Background

The *Health Practitioner Regulation National Law (NSW)* [National Law (NSW)] provides a framework for registering students undertaking courses or clinical training which will lead to qualifications in a registered health profession. Currently all National Boards other than the Psychology Board register students. These registers unlike those for registered health practitioners are not accessible to members of the public.

The rationale for student registration is that it allows certain complaints to be made about students. Specifically complaints can be made about serious criminal convictions or findings; impairment; and breach of conditions on registration. Registration also means that students are captured by the mandatory reporting regime.

It is also important to note that student registration provides students in NSW with access to the Councils' health programs and support networks. This access is available if the student makes a self-notification or if a complaint (including a mandatory notification) is made.

#### Mandatory notifications concerning students – who can make one

Sections 141 and 143 of the National Law (NSW) impose clear statutory obligations on registered health practitioners and education providers in terms of mandatory notifications about registered students. Those sections provide:

##### 141 Mandatory notifications by health practitioners

- (1) This section applies to a registered health practitioner (the **the first health practitioner**) who, in the course of practising the first health practitioner's profession, forms a reasonable belief that-
- (a) .....; 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.

### **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.

### **What are the requirements of a mandatory notification about a student?**

Before making a mandatory notification the registered health practitioner or the education provider must have formed a reasonable belief that:

1. the student has an impairment within the statutory definition of that term (see below), and
2. the student's impairment may place the public at substantial risk of harm during the student's clinical training.

### **What constitutes "in the course of practising .. the profession" for a notifying health practitioner?**

The definition of "practice" applied by the National Boards in the relevant Codes of Professional Conduct is very broad. It includes clinical care, teaching, research, education, administration, advisory and regulatory roles, in which the individual uses their professional knowledge and skills, whether for remuneration or in a volunteer capacity.

### **What amounts to impairment under the National Law (NSW) for students?**

Impairment is defined in section 5 of the National Law (NSW):

**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) .....

- (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.

The nature of the impairment needs to detrimentally affect or have the capacity to detrimentally affect the student's capacity to undertake clinical training. If the particular condition is being appropriately managed by the student in conjunction with his/her treating health practitioners, it will generally not impact on the student's capacity to undertake clinical training and provide supervised treatment to members of the public in that capacity.

### **How is a mandatory notification made and managed?**

Mandatory notifications are made to AHPRA and can be made online via the AHPRA website.

In NSW a mandatory notification is taken to be a complaint and AHPRA will refer the notification to the relevant health professional Council and the Health Care Complaints Commission for consultation and management.

The making of a mandatory notification about a student may be a trigger for the Council to have the student's health assessed. The cost of the assessment and report are met by the Council. The assessment report provides the Council with an independent means of ascertaining the nature of any health issues without interfering with any current treating relationship the student may have formed with other health professionals.

In appropriate cases, the student can be referred to, and assisted by, the relevant Council's health program and the student's progress will be monitored by the Council. If health conditions are imposed on the student's registration these will not be available to the public.

### **Overlap between impairment under the National Law (NSW) and disability under the discrimination and disability legislation**

A physical disability could fall within the ambit of the definition of impairment. For example a person with a visual acuity condition may be assisted with visual aids in their clinical work as a physiotherapist depending of the severity of the condition but this may not be feasible for an optometry student if the student cannot perform the inherent requirements of the clinical training as an optometrist.

Education providers endeavour to provide reasonable adjustments to facilitate a student with a disability being able to engage in a program of study and comply with the *Disability Discrimination Act 1992 (Commonwealth)* and the *NSW Anti-Discrimination Act 1977*. However, upon conferral of qualifications the student may find that practice restrictions are imposed, on his/her registration, particularly where it is apparent that he/she is unable to perform the inherent requirements of a position in a clinical environment, for example a nurse with mobility issues seeking work in the intensive care or emergency department of a busy public hospital.

Irrespective of whether a written complaint or mandatory notification is made about a registered student, where a Council is of the view that the registered student's actions are placing the health or safety of the public at risk, the Council can take urgent interim action to suspend or impose conditions on the student's registration under section 150(1) of the National Law (NSW).

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Resources:

[www.ahpra.gov.au](http://www.ahpra.gov.au) Guidelines for Mandatory Notifications

### **NOTE:**

This HPCA Legal Practice Note (Our ref: HP15/11736) has been prepared by legal staff of the Health Professional Councils Authority and is to read in conjunction with the applicable legislation and any relevant case law. Its content is information, not advice, and is not a substitute for the provisions of the legislation or relevant case law. Appropriate legal advice relevant to your own circumstances should be obtained before taking any action on the basis of the information contained in this document.