



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Public consultation paper

April 2013

Consultation on common guidelines and *Code of conduct*

Public consultation

The 14 National Boards in the National Registration and Accreditation Scheme (the National Scheme) are releasing this paper for public consultation. The consultation paper (attached) proposes:

- revisions to the *Guidelines for advertising* (common to all National Boards)
- a *Social media policy* (common to all National Boards)
- revisions to the *Guidelines for mandatory notifications* (common to all National Boards)

Most Boards are also consulting on a revised *Code of conduct* (either the code shared by most National Boards, or for some Boards there is a profession-specific code). (Boards which are not consulting on their code as part of this consultation are the Medical Board of Australia and Nursing and Midwifery Board of Australia.)

Please provide feedback by email to guidelinesconsultation@ahpra.gov.au by close of business on 30 May 2013.

How your submission will be treated

Submissions will generally be published unless you request otherwise. The Boards publish submissions on their websites to encourage discussion and inform the community and stakeholders. However, the Boards retain the right not to publish submissions at their discretion, and will not place on their website, or make available to the public, submissions that contain offensive or defamatory comments or which are outside the scope of the consultation.

Before publication, the Boards may remove personally-identifying information from submissions, including contact details. 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 Boards.

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 These submissions will not be published on the website or elsewhere.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

Please let the Boards know if you do not want your submission published, or want all or part of it treated as confidential.

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Overview

March 2013

Consultation on common codes and guidelines

The National Law requires the Boards to ensure there is wide-ranging consultation on the content of any proposed code or guideline.

This consultation paper seeks feedback on several related documents:

1. revised *Guidelines for advertising* – which provide guidance about the advertising restrictions imposed by the National Law, including social media
2. revised *Code of conduct* – which provides guidance about practitioner behaviour both in person and online
3. draft proposed *Social media policy* – to address social media issues which are not covered in the *Guidelines for advertising* and the *Code of conduct*, and
4. revised *Guidelines for mandatory notifications* – which provide guidance about the requirements for mandatory notifications under the National Law.

The National Boards are inviting general comments on these documents. There are also specific questions about each document in this consultation paper which you may wish to address in your response.

The first three documents are grouped together, as they discuss some common issues, which are explained below in the section on the draft *Social media policy*.

The National Boards will consider the consultation feedback on the proposed guidelines, code and policy, before finalising the documents.

Please provide feedback by email to guidelinesconsultation@ahpra.gov.au by close of business on 30 May 2013.

Background

There are 14 National Boards in the National Registration and Accreditation Scheme (the National Scheme). Ten National Boards entered the National Scheme in 2010, and a further four joined in 2012.

- Aboriginal and Torres Strait Islander Health Practice Board of Australia (from 1 July 2012)
- Chinese Medicine Board of Australia (from 1 July 2012)
- Chiropractic Board of Australia
- Dental Board of Australia
- Medical Board of Australia
- Nursing and Midwifery Board of Australia
- Medical Radiation Practice Board of Australia (from 1 July 2012)
- Occupational Therapy Board of Australia (from 1 July 2012)
- Optometry Board of Australia
- Osteopathy Board of Australia

- Pharmacy Board of Australia
- Physiotherapy Board of Australia
- Podiatry Board of Australia, and
- Psychology Board of Australia.

The Australian Health Practitioner Regulation Agency (AHPRA) works in partnership with each of the National Boards to implement the requirements of the National Scheme, which has maintaining public safety at its heart. Further information is available at www.ahpra.gov.au.

All National Boards participating in the review

The current *Guidelines for mandatory notifications* and *Guidelines for advertising* are the same for all professions in the National Scheme. The four National Boards that entered the National Scheme on 1 July 2012 (the 2012 Boards) also have the same *Code of conduct* as many of the 10 National Boards who joined in 2010. Because these documents are common across Boards, all 14 National Boards are participating in these reviews.

The 2012 Boards only recently finalised their *Guidelines for mandatory notifications*, *Guidelines for advertising* and *Codes of conduct*. The timeframes for consultation on these documents was tight. The 2012 Boards consider that there are benefits in participating in the current reviews to identify further opportunities to improve the Guidelines and Code, to maintain consistency of common documents and to give stakeholders a further opportunity for input.

Relationship between the *Guidelines for advertising of regulated health services*, the *Code of conduct* and the *Social media policy*

The revised draft *Guidelines for advertising of regulated health services* (the *Advertising guidelines*), the revised draft *Code of conduct* and the proposed draft *Social media policy* attached to this paper all include information about social media.

- The *Advertising guidelines* provide guidance about how the legal restrictions on advertising under the National Law apply to social media.
- The *Code of conduct* includes references to social media in the general guidance that Boards have established about good practice and practitioner behaviour.
- The proposed draft *Social media policy* explains this approach and identifies other guidance which may be useful to practitioners.

Accordingly, these documents are presented as a package in this consultation paper and should be read together.

Estimated impacts of the revised documents

The impacts on practitioners, business and other stakeholders arising from the changes proposed in the revised documents, are expected to be small. The changes proposed are minimal, and focus on providing explanation and clarification.

The status quo would involve making no changes to the *Guidelines for mandatory notifications* and *Guidelines for advertising of regulated health services*. These guidelines provide an explanation of the provisions of the National Law rather than imposing new requirements. The proposed changes improve the clarity and usefulness of the explanatory information rather than adding requirements.

The *Code of conduct* provides guidance to practitioners about professional and ethical conduct. The proposed changes clarify this guidance rather than adding new obligations.

Guidelines for advertising of regulated health services (the Guidelines for advertising)

Section 133 of the National Law contains legal restrictions on advertising involving a health practitioner or the services they provide. Section 133 is set out in the attachment.

The *Guidelines for advertising* provide guidance about the advertising restrictions imposed by the National Law.

National Boards have had a range of feedback about the *Guidelines for advertising* over the 30 months that the guidelines have been in place. In particular, there has been feedback that the guidelines:

1. could provide clearer information
2. could have better examples
3. could be more clearly linked to the legal restrictions on advertising in the National Law, and
4. should explain how the legal restrictions in the National Law apply to social media.

The attached draft *Guidelines for advertising* have been substantially revised to address these issues. A summary of the changes is also attached to highlight what is different in the revised guidelines.

The National Boards are seeking feedback on the revised *Guidelines for advertising* and also on the following questions.

- How are the existing guidelines working?
- Is the content of the revised guidelines helpful, clear and relevant?
- Is there any content that needs to be changed, deleted or added in the revised guidelines?
- Is there anything missing that should be added to the revised guidelines?
- Do you have any other comments on the revised guidelines?

In preliminary consultation, some comments suggested that the revised guidelines should include more real-life examples. Others suggested that the revised guidelines should be simpler and shorter. Although some additional examples have been added, it is not possible to include an exhaustive list of examples, so the guidelines now include some guiding principles to help practitioners evaluate whether their advertising complies with the National Law.

Code of conduct

The *Code of conduct*, shared by most of the 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 of conduct* 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, and
- teaching, supervising and assessing.

Only a small number of issues have been raised about the code since it commenced, which are addressed in the revised *Code of conduct* (attached). The revisions have been shaded in grey in this consultation document. A summary of the revisions is also attached later in this document.

An issue which has attracted mixed feedback is the section on end of life care. Some feedback was received that this section should be deleted as it is not relevant to all professions. Other feedback was that the section was relevant to practitioners who may from time to time have a terminally ill patient as well as those working specifically in end of life care. The section has been deleted from the shared code but feedback is invited about whether it should be reinstated, perhaps with some qualifying wording about its application.

The Board includes references to the Pharmaceutical Society of Australia's *Code of ethics* and the Society of Hospital Pharmacists of Australia's *Code of ethics* in its *Code of conduct* and proposes to continue this. These references are included in the following paragraph which is included in the Board's *Code of conduct*.

Codes of ethics

The Pharmacy Board of Australia advises pharmacists to also be guided by a code of ethics relevant to their practice. The Board endorses the Code of ethics for Pharmacists 2011 published by the Pharmaceutical Society of Australia Ltd and the Code of ethics-February 2012 published by the Society of Hospital Pharmacists of Australia. Given the definition of practice as it applies to pharmacy, other codes of ethics may also be applicable to pharmacists' practice. Pharmacists are advised to ensure that in addition to complying with the Code of conduct for registered health practitioners that they be guided by the code(s) of ethics relevant to their practice.

You are invited to provide feedback

The National Boards are seeking feedback on the proposed changes to the *Code of conduct* as well as on the following questions.

- How is the current code working?
- Is the content of the revised code helpful, clear and relevant?
- Is there any content that needs to be changed, added or deleted in the revised code?
- Do you have any other comments on the revised code?

Social media policy

As regulators, National Boards have a role in providing appropriate guidance on social media from a regulatory perspective. This perspective is different to the role of other organisations who may, for example, provide advice to facilitate use of social media. For example, health professional peak organisations have often dedicated time and resources to develop detailed documents on social media use which can provide helpful information for registered health professionals.

The National Boards' responsibility in relation to social media is to clearly articulate how the obligations under the National Law which focus on protecting the public apply to social media.

The National Boards have had a range of feedback about the development of a social media policy. Some practitioners are seeking guidance from National Boards about their use of social media. Other practitioners are concerned that a social media policy could constrain the use of social media to assist good practice.

The National Boards have responded to this feedback and are proposing an approach which addresses the regulatory issues related to social media, consistent with the Boards' role, but which does not unnecessarily restrict the use of social media that is unrelated to a practitioner's professional life. The approach focuses on actions that are regulated under the National Law, or general standards of professional conduct, consistent with the National Boards' regulatory role.

The revised *Guidelines for advertising* and the revised *Code of conduct* attached to this paper include guidance about social media. This is in the context of the legal restrictions on advertising under the National Law and the general guidance that Boards have established about good practice and practitioner behaviour.

The attached draft *Social media policy* explains this approach and that the National Boards do not intend to limit the use of social media consistent with good practice. The draft policy explains that the principles of professional behaviour and ethical conduct apply equally in person or online.

You are invited to provide feedback

The National Boards are seeking feedback on the proposed draft *Social media policy* as well as on the following questions.

- Do you support the approach of including general guidance in the draft policy, the *Guidelines for advertising* and the *Code of conduct*, with appropriate cross-referencing?
- Does the guidance in these documents reflect the National Boards' regulatory role?
- Do you agree with the approach of referring practitioners to other sources for guidance on social media that goes beyond the National Boards' regulatory role?
- Is the content of the draft *Social media policy* helpful?
- Is there any content that needs to be changed, added or deleted in the draft policy?
- Do you have any other comments on the draft policy?

Guidelines for mandatory notifications

The National Boards have developed guidelines to help explain the National Law requirements for registered health practitioners, employers of registered practitioners and education providers to make mandatory notifications (complaints) to protect the public. The guidelines provide a detailed explanation of the mandatory notification requirements.

The *Guidelines for mandatory notifications* aim to help practitioners, employers, and education providers understand whether and when they must make a notification about a practitioner's conduct, 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 should 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.

Only a small number of issues have been raised about the *Guidelines for mandatory notifications* since they commenced. The attached revised *Guidelines for mandatory notifications* address a number of issues which have been raised.

The revisions have been shaded in grey in this consultation document. A summary of the revisions is also attached later in this document.

You are invited to provide feedback

The Boards are seeking feedback on the proposed changes to the *Guidelines for mandatory notifications* and also on the following questions.

- How are the current guidelines working?
- Is the content of the revised guidelines helpful, clear and relevant?
- Is there any content that needs to be changed, deleted or added in the revised guidelines?
- Is there anything missing that needs to be added to the guidelines?
- Do you have any other comments on the guidelines?

Relevant sections of the National Law

Section 35 of the National Law allows the National Boards to develop or approve standards, codes and guidelines for the health profession, including the development and approval of codes and guidelines that provide guidance to health practitioners registered in the profession. Section 39 explicitly states that a National Board may develop and approve codes and guideline to provide guidance to the health practitioners it registers; and about other matters relevant to the exercise of its functions.

Section 133 of the National Law limits how regulated health services can be advertised. It provides:

(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 advertisement 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.

*In this section — **regulated health service** means a service provided by, or usually provided by, a health practitioner.*

Next steps

The National Boards will consider the valuable feedback from consultation and decide whether to revise the documents to take the feedback into account. National Boards will release the final version of the guidelines and policy with information about the timeframe for implementation.

April 2013

Guidelines for advertising regulated health services

1. Authority

The *Guidelines for advertising regulated health services* were jointly developed by the National Boards under section 39 of the Health Practitioner Regulation National Law, as in force in each state and territory (the National Law).

All obligations outlined in this document are those required under the National Law unless stated otherwise.

2. Definitions

A list of definitions is included in **appendix 1**.

Restrictions on advertising are included in other legislation. Practitioners should note that definitions in that legislation may be different and should refer to the relevant definitions to ensure compliance with that legislation.

3. Purpose

This document provides guidance on the legal requirements of advertising services that are provided by, or usually provided by, a health practitioner ('regulated health services' or 'services'). Section 133 of the National Law regulates advertising by health practitioners.

Section 133 of the National Law provides:

- (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 advertisement 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.*

*In this section — **regulated health service** means a service provided by, or usually provided by, a health practitioner.*

These guidelines:

- set out the obligations of advertisers (see definition in **appendix 1**)
- explain advertising that is prohibited
- describe information commonly found in advertising, and
- clarify that advertisers of regulated health services also have responsibilities under other legislation administered by other regulators.

The National Law and these guidelines focus on consumer protection. The role of these guidelines is to explain the limits placed on regulated health services advertising under the National Law, not to explain to practitioners how to advertise. The wording of s. 133 is broad and it is not possible to provide an exhaustive list of advertising that will, or will not, contravene the National Law.

Those advertising regulated health services, including individual practitioners, are responsible for ensuring that their advertisements comply with the law. Neither AHPRA nor the National Boards are able to provide legal advice to health practitioners about advertising and these guidelines are not a substitute for legal advice.

4. Who these guidelines apply to

These guidelines apply to any person (as defined in **appendix 1**) who advertises a regulated health service, including registered health practitioners, non-registered health practitioners, individuals and bodies corporate (advertisers).

A breach of advertising requirements is a criminal offence. The National Law imposes a penalty up to \$5,000 for an individual and \$10,000 for a body corporate.

A court may consider these guidelines when hearing advertising offences against section 133 of the National Law.

5. The basis for these guidelines

The following principles apply to these guidelines:

- advertising may be a valuable tool in communicating the services health practitioners offer to the public to enable health consumers to make informed choices
- advertising which contains false and misleading information undermines the integrity of our health system as well as the trust of the public in the health profession being advertised
- the public should be protected from false and misleading advertisements, and
- the indiscriminate or unnecessary use of health services should be discouraged.

6. Obligations under the National Law and other legislation

Advertisers of regulated health services must comply with the National Law, available at www.ahpra.gov.au.

Australian regulators such as the Australian Competition and Consumer Commission (ACCC) and the Therapeutics Goods Administration (TGA) also have responsibility for laws governing the advertising of health products and services. More information about this is included in **appendices 3 and 4**.

A registered health practitioner (and those who have previously been registered health practitioners) may also be subject to disciplinary action under Part 8 of the National Law (which relates to health, performance and conduct) for unprofessional conduct (this is described as 'unsatisfactory professional conduct' in NSW) in relation to advertising. One of the grounds for a voluntary notification is that the health practitioner has, or may have, contravened the National Law (see section 144).

These guidelines should also be read in conjunction with codes and guidelines published by National Boards that convey the Board's expected standards of professional conduct. Each National Board has published a *Code of conduct for registered health practitioners*, or similar document. Practitioners have a

professional responsibility to be familiar with, and apply, this code. The code describes the professional standards expected of practitioners, including when advertising.

In some circumstances, advertiser may also breach the title and practice protection provisions of the National Law, whether or not they have been prosecuted under the advertising provisions.

Compliance with these guidelines does not excuse advertisers of regulated health services from the need to comply with other applicable laws. Advertising of regulated health services often involves the advertising of products and/or therapeutic goods and care must be taken to ensure compliance with all relevant legislation.

If a complaint about an advertisement may be of interest to another Australian regulatory authority such as the TGA or ACCC, AHPRA may refer the matter to the most appropriate regulator.

Other laws and authorities that regulate advertising are described in **appendix 2**.

7. The advertising provisions of the National Law

The following sections explain advertising which may contravene or are not likely to contravene the advertising requirements of the National Law.

The ACCC has provided the following information on how to avoid being misleading and deceptive when advertising, which may be useful guidance for advertisers considering the requirements of the National Law.

- *Sell your professional services on their merits.*
- *Be honest about what you say and do commercially.*
- *Look at the overall impression of your advertisement. Ask yourself who the audience is and what the advertisement is likely to say or mean to them.*
- *Remember, at a minimum, that it is the viewpoint of a layperson with little or no knowledge of the professional service you are selling that should be considered.¹*

7.1 Information included in advertisements. The following factual information is commonly included in health services advertisements, and may assist advertisers. The list below is not intended to be exhaustive.

Information commonly included in health services advertising

- Office details
 - contact details
 - office hours, availability of after-hours services
 - accessibility (e.g. wheelchair access)
 - languages spoken (this does not affect other guidance provided by the national board about use of qualified interpreters where appropriate)
 - emergency contact details
- Fees
 - a statement about fees charged, bulk-billing arrangements, or other insurance plan arrangements and installment fee plans regularly accepted
- Qualifications

¹ Australian Competition and Consumer Commission, *Professions and the competition and consumer act*, 2011, www.accc.gov.au/content/index.php/ml/tag/professions

- a statement of the names of schools and training programs from which the practitioner has graduated and the qualifications received, subject to the specific information in these guidelines on, 'advertising of qualifications and titles'
- reference to any practitioners who hold specialist registration or endorsement under the national law and their area of specialty or endorsement
- a statement of the teaching positions currently or formerly held by the practitioner in board-approved or accredited institutions, together with relevant dates
- a statement of the accreditation or certification of the practitioner with a public board or agency, including any affiliations with hospitals or clinics
- a statement of safety and quality accreditation of the practice or health care setting
- For any surgical and/or invasive procedures, the appropriate warning statement in a clearly visible position²
- Non-enhanced photos or drawings of the practitioner or his or her office
- Any statement providing public health information encouraging preventive, restorative or corrective care (public health information should also be evidence based wherever possible)

7.2 Prohibited advertising under the National Law

Section 133 of the National Law covers five key aspects of advertising. These relate to advertising that:

- a) is false, misleading or deceptive or is likely to be so
- b) offers a gift, discount or other inducement to attract a user of the health service without stating the terms and conditions of the offer
- c) uses testimonials or purported testimonials
- d) creates an unreasonable expectation of beneficial treatment, and/or
- e) encourages the indiscriminate or unnecessary use of health services.

The section below explains what may constitute a breach of the National Law and what could generally be considered inconsistent with the National Law.

7.2.1 *Misleading or deceptive advertising*

Section 133 of the National Law states:

- (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*

A common meaning of 'mislead or deceive' is 'lead into error'. The Courts have considered the phrase 'mislead or deceive' and those that are misled are almost by definition deceived as well. Misleading someone may include lying to them, leading them to a wrong conclusion, creating a false impression, leaving out (or hiding) important information, making false or inaccurate claims.

As the ACCC explains, 'Patients can be physically, psychologically or financially affected by misleading conduct, and these effects can be long lasting. It is essential that patients be given honest, accurate and complete information in a form they can understand.'³

More information about the meaning of 'mislead or deceive' is available on the ACCC website.⁴

² Note that some Boards may provide specific guidance on the use of warning statements for surgical and invasive procedures. See appendix 6.

³ www.accc.gov.au/business/professional-services/medical-professionals

⁴ www.accc.gov.au/business/advertising-promoting-your-business/false-or-misleading-claims

Examples of advertising that may be false or misleading include those that:

- mislead, either directly, or by implication, use of emphasis, comparison, contrast or omission
- compare different regulated health professions or practitioners, in the same profession or across professions, in a way that may mislead or deceive
- only provide partial information which could be misleading
- uses phrases like 'as low as' or 'lowest prices', or similar words or phrases when advertising fees for services, prices for products or price information in a way which is misleading or deceptive
- imply that the regulated health services can be a substitute for public health vaccination or immunisation, and/or
- use words, letters or titles that may mislead or deceive a health consumer into thinking that the provider of a regulated health service is more qualified or more competent than a holder of the same registration category (e.g. 'specialising in XX' when there is no specialist registration category for that profession).

For example, the ACCC comments that it would be misleading or deceptive for a business to advertise the health benefits of a therapeutic device or health product but have no proof that such benefits can be attained.⁵

7.2.2 Gifts and discounts

Section 133 of the National Law states:

- (1) *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*
 - b. Offers a gift, discount or other inducement to attract a person to use the service or the business, unless the advertisement also states the terms and conditions of the offer*

Any advertisement that offers gifts, prizes or free items must state the terms and conditions of the offer. The use of unclear, unreadable or misleading terms and conditions attached to gifts, discounts and other inducements would not meet this requirement.

Consumers generally consider the word 'free' to mean absolutely free. When the costs of a 'free offer' are recouped through a price rise elsewhere, the offer is not truly free. An example is an advertisement which offers 'make one consultation appointment, get one free', but raises the price of the first consultation to largely cover the cost of the second (free) appointment. This type of advertising could also be misleading or deceptive.

The terms and conditions should be in plain English, readily understandable, accurate and not in themselves misleading about the conditions and limitations of the offered service.

Advertising may contravene the National Law when it:

- contains price information that is inexact
- contains price information that fails to specify any terms and conditions or variables to an advertised price, or that could be considered misleading or deceptive
- states an instalment amount without stating the total cost (which is a condition of the offer), and/or
- does not state the terms and conditions of offers of gifts, discounts or other inducements.

7.2.3 Testimonials

Section 133 of the National Law states:

- (1) *A person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that –*
 - c) Uses testimonials or purported testimonials about the service or business*

⁵ Australian Competition and Consumer Commission, Misleading and deceptive conduct, <http://www.accc.gov.au/consumers/misleading-claims-advertising/false-or-misleading-claims>

The National Law does not define testimonial, so the word has its ordinary meaning, which includes a recommendation about a service or its quality.

A testimonial includes recommendations, or statements, made by an individual about their experience or benefits of a particular practitioner or regulated health service.

Testimonials can distort a person's judgment in his or her choice of health practitioner, may misrepresent the skills and or expertise of practitioners and create unrealistic expectations of the benefits such practitioners may offer health consumers.

Testimonials in advertising include:

- (i) using or quoting testimonials on a website, such as patients posting comments about a practitioner on the practitioner's business website, particularly where the website encourages patients to post comments and/or selectively publishes patient comments
- (ii) self-testimonials, such as in a newsletter or on a website, and
- (iii) the use of patient stories.

A practitioner must take reasonable steps to have any unsolicited testimonials associated with their advertising removed once they become aware of them. Reasonable steps include taking action within the practitioner's power, such as directly removing, or requesting removal, of the testimonials.

For example, an advertisement on a social media site eg a Facebook page that includes a recommendation from a patient, or statement from a person about the benefits of the regulated health service or business they received from a registered health practitioner, may contravene the National Law. Once the practitioner is aware of the testimonials, he or she must take reasonable steps to have the testimonial removed (also refer to section 8.1 on social media).

7.2.4 Unreasonable expectation of beneficial treatment

Section 133 of the National Law states:

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

d) Creates an unreasonable expectation of beneficial treatment

This often arises when advertisers take advantage of the vulnerability of health consumers in their search for a cure or remedy. The claims of beneficial treatment can range from miracle cures to unsubstantiated scientific claims. The expectation has to be reasonable from an objective point of view.

For example, advertising may contravene the National Law when it:

- creates an unreasonable expectation (such as by exaggerating or by providing incomplete or biased information) of recovery time following provision of a regulated health service
- fails to disclose the health risks associated with a treatment
- omits the necessary warning statement for a surgical or invasive procedure⁶
- contains 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, and/or
- contains a claim, statement or implication that is likely to create an unreasonable expectation of beneficial treatment by:
 - either expressly or by omission, indicating that the treatment is infallible, unfailing, magical, miraculous or a certain, guaranteed or sure cure, and/or
 - a practitioner has an exclusive or unique skill or remedy, or that a product is 'exclusive' or contains a 'secret ingredient' that will benefit the patient.

⁶ Note that some Boards may provide specific guidance on the use of warning statements for surgical and invasive procedures. See **appendix 6**.

7.2.5 Encouraging indiscriminate or unnecessary use of health services

Section 133 of the National Law states:

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

- e) Directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services

The unnecessary use of health services is not in the public interest.

Advertising may contravene the National Law when it:

- encourages a person to improve their physical appearance together with the use of phrases such as ‘don’t delay’, ‘achieve the look you want’ and ‘looking better and feeling more confident’
- provides a patient or client with an unsolicited appointment time
- uses prizes, bonuses, bulk purchases, bulk discounts or other endorsements to encourage the unnecessary consumption of health services that are unrelated to clinical need or therapeutic benefit
- uses promotional techniques that are likely to encourage consumers to use health services regardless of clinical need or therapeutic benefit, such as offers or discounts, online/internet deals, vouchers, and/or coupons, and/or
- advertises time-limited offers which influence a consumer to make decisions under the pressure of time and money rather than about their health care needs. An offer is considered time-limited if it is offered for purchase for a limited or specific period of time (or available for use within a limited period of time or by a specific date).

8. Further information about specific types of advertising

These guidelines cover all types of advertising, including social media, blogs and websites. The following sections discuss some aspects of advertising in more detail, to provide further guidance to practitioners.

8.1 Social media

The National Law prohibits advertising in any way that uses testimonials or purported testimonials. Testimonials, or comments that may amount to testimonials, made on social media sites by patients or other people may contravene the National Law.

Social media includes work related and personal pages on social networks such as Facebook, LinkedIn and Twitter.

A person is responsible for content on their social networking pages even if they were not responsible for the initial publication of the information or testimonial. This is because a person responsible for a social networking account accepts responsibility for any comment published on it, once alerted to the comment. Practitioners with social networking accounts should carefully review content regularly to make sure that all material complies with their obligations under the National Law.

These guidelines should be read in conjunction with the *Social media policy*, to be published on National Boards’ websites.

8.2 Advertising qualifications and titles⁷

Advertisers should take care using qualifications and titles when advertising regulated health services (as defined in **appendix 1**).

The inclusion of professional qualifications in an advertisement that also promotes the use or supply of therapeutic goods may be interpreted as a professional endorsement. These are prohibited under the *Therapeutic Goods Advertising Code 2007*.

⁷ A National Board may provide further, profession specific advice on the use of titles in advertising in **appendix 5**

The misuse of titles in advertising may also contravene other sections of the National Law related to title protection (please refer to **appendix 5(a)**). For specific guidance on use of titles in the psychology and physiotherapy professions, please refer to **appendix 5(b)**.

8.2.1 Use of titles in advertising

The National Law regulates the use of certain titles. Misuse of a protected title is an offence under the National Law.

Advertisers should be aware of the protected titles for the profession that they are advertising.⁸

Advertisers should avoid developing abbreviations of protected titles as these may mislead the public. It may also be misleading to use symbols, words or descriptions associated with titles.

There is no provision in the National Law that prohibits a practitioner from using titles such as 'doctor' but there is potential to mislead or deceive if the title is not applied clearly. 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 clearly state their profession.

Clarity may be achieved by including a reference to their health profession whenever the title is used, such as:

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

8.2.2 Advertising specialties and endorsements

The National Law allows for and protects specialties and endorsements. A registered health practitioner who does not hold specialist registration 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.

The National Law prohibits claims of:

- holding a type of registration, including specialist registration, or endorsement of registration not held, and/or
- being qualified to hold an endorsement they do not hold.

While the National Law protects specific titles, use of some words (such as 'specialises in') may be misleading or deceptive as patients or clients can interpret the advertisements as implying that the practitioner is more skilled or has greater experience than is the case.

These words should be used with caution and need to be supported by fact. Words such as 'substantial experience in' or 'working primarily in' are less likely to be misunderstood as a reference to endorsement or specialist registration.

A registered health practitioner who does not hold an endorsement may not, through advertising or other means, present themselves to the public as holding such an endorsement (such as using professional titles that are associated with an approved area of practice endorsement).

A list of health professions with approved endorsements, including endorsements for scheduled medicines and area of practice endorsements, is available on the websites of the relevant National Board. These websites also explain the titles that a registered health practitioner with an area of practice endorsement may use.

8.2.3 Advertising qualifications or memberships

Advertising qualifications or memberships may be useful in providing the public with information about the experience and expertise of health practitioners. However, it may be misleading or deceptive if the advertisement implies that the practitioner has more skill or greater experience than is in fact the case.

⁸ Refer to the relevant National Board website for a list of the endorsements and recognised specialties for that profession.

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

- approved for the purposes of registration, including specialist registration and endorsement of registration
- conferred by approved higher education providers⁹, or
- conferred by an education provider that has been accredited by an accreditation authority.

A list of accreditation authorities and approved qualifications for each health profession is available on the relevant National Board's website.

Helpful questions to consider

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.

- *Is it appropriate for me to use this title, qualification, membership, words or letters in advertising material?*
- *Am I skilled in the services I am advertising?*
- *If I display or promote my qualifications in advertising materials, is it easy to understand?*
- *Is there any risk of people being misled or deceived by the words, letters or titles that I use?*
- *Is the basis for my use of title, qualification, membership, or other words or letters:*
 - *relevant to my practice?*
 - *current?*
 - *verifiable?*
 - *credible?*

8.3 Advertising therapeutic goods

The Therapeutic Goods Administration (TGA) is responsible for regulating therapeutic goods including medicines, medical devices, biologicals, blood and blood products.

If the advertising comprises only pricing for Prescription-only (Schedule 4 and 8) and certain Pharmacist-only (Schedule 3 of the Poisons Standard) medicines, then the advertisement must comply with the *Therapeutic Goods Act 1989*, *Therapeutic Goods Regulations 1990*, the Therapeutic Goods Advertising Code 2007 and the Price Information Code of Practice. A list of practitioners permitted to advertise price information for certain Schedule 3, Schedule 4 and Schedule 8 medicines is included in the Price Information Code of Practice, available via the TGA website: www.tga.gov.au.

If the advertising promotes one or more products (i.e. therapeutic goods under the Therapeutic Goods Act 1989), then the advertising must comply with the *Therapeutic Goods Act 1989*, *Therapeutic Goods Regulations 1990*, the Therapeutic Goods Advertising code 2007 and, where relevant, the Price Information Code of Practice.

The definition of "advertisement" in the *Therapeutic Goods Act 1989* should be noted.

8.4 Advertising price information

Any information about the price of procedures used in advertising of regulated health services must be clear and not misleading.

⁹ Within the meaning of the *Higher education support act 2003* (Cth),

It is often difficult to provide an accurate price of a regulated health service in an advertisement due to the individual nature of services and the number of variables involved in the treatment. If fees and price information are to be advertised, then price information should be clear, with all costs involved and out of pocket expenses clearly identifiable, and any conditions or other variables to an advertised price or fee disclosed. This is to avoid misleading consumers and to ensure they are fully informed and are able to provide their full consent about health services.

Use of phrases like 'as low as' or 'lowest prices', or similar words, phrases or questions when advertising fees for services, prices for products or price information, or stating an installment amount without stating the total cost may be misleading and could contravene the advertising provisions of the National Law.

8.5 Use of scientific information in advertising

To not mislead or create false impressions, caution should be taken when using scientific information in the advertising. When a practitioner chooses to include scientific information in advertising, the information 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, and
- be from a reputable (e.g. peer reviewed), and verifiable source.

9. Consequence of a breach of advertising requirements

Complaints about possible breaches of the National Law and these guidelines should be reported to AHPRA. Information on how to do this is available on the AHPRA website.¹⁰

Table 2 summaries the options available to the Boards/AHPRA in the event of a breach of the National Law or guidelines.

¹⁰ Go to www.ahpra.gov.au and follow the *Make a notification* link

Table 2

Who breached the National Law or guidelines	Options available to the Boards/AHPRA
<ul style="list-style-type: none"> • Registered health practitioners • Persons who don't hold a current registration but who have been registered health practitioners in the past 	<ul style="list-style-type: none"> • Prosecute under the advertising provisions of the National Law in the relevant state or territory magistrates court, which may lead to a financial penalty • Take action under the National Law for unprofessional conduct (described as 'unsatisfactory professional' conduct in NSW) • Take action under the title protection provisions of the National Law, as relevant • Refer the matter to another regulator for investigation of a potential breach of other legislation • A person (see definition in appendix 1) may also be disciplined under the National Law as a result of action taken under other legislation. This can occur regardless of whether or not they are prosecuted under the National Law or any other legislation
<ul style="list-style-type: none"> • Persons who are not registered health practitioners • Bodies corporate 	<ul style="list-style-type: none"> • Prosecute under the advertising provisions of the National Law in the relevant state or territory magistrates court, which may lead to a financial penalty • Take action under the National Law regarding the use of protected titles • Refer the matter to another regulator for investigation of a potential breach of other legislation

10. Associated documents

These guidelines should be read in conjunction with codes and guidelines published by National Boards that convey the Board's expected standards of professional practice.

11. Review

This guideline will be reviewed at least every three years. This guideline replaces any previously published National Board guidelines on advertising.

Date of issue:
Date of review:

Appendix 1 Definitions

Advertiser

Any person or business which advertises a regulated health service

Advertising

For the purpose of the Guidelines, advertising includes but is not limited to all forms of printed and electronic media that promotes a regulated health service and includes any public communication using:

- television
- radio
- motion pictures
- newspapers
- billboards
- books
- public and professional lists
- pictorial representations
- designs
- mobile communications or other displays
- internet
- social media
- all electronic media that promote a regulated health service
- business cards, announcement cards
- office signs
- letterhead
- public and professional directory listings, and
- any other similar professional notice (e.g. patient recall 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 for the purposes of promoting or advertising a regulated health service.

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. 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.
- 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)
- tenders, tender process, competitive business quotations and proposals, and the use of references about non-health services in those processes, provided the relevant material is not made available to the general public or used for promotional purposes (such as being published on a website).

The definition of "advertising" and "advertisement" may be different in other legislation. These definitions should be taken into account when considering compliance with that legislation. In particular the definition of "advertisement" in the *Therapeutic Goods Act 1989* should be noted.

AHPRA

AHPRA is the abbreviation for the Australian Health Practitioner Regulation Agency. AHPRA's operations are governed by the National Law (defined below), which came into effect on 1 July 2010. AHPRA

supports the 14 National Boards that are responsible for regulating the health professions. The primary role of the National Boards is to protect the public and they set standards and policies that all registered health practitioners must meet.

Health practitioner

A health practitioner means an individual who practises a health profession.

Health service

A health service includes the following services, whether provided as public or private services:

- a) services provided by registered health practitioners
- b) hospital services
- c) mental health services
- d) pharmaceutical services
- e) ambulance services
- f) community health services
- g) health education services
- h) welfare services necessary to implement any services referred to in a) to g) above
- i) services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists, and
- j) pathology services.

Also refer to the definition of regulated health service

Invasive Procedure

For the purposes of these guidelines:

Invasive procedure means any operation or other procedure that:

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

National Law

The 'National Law' means the Health *Practitioner Regulation National Law* as in force in each state and territory.

Person

A person includes an individual or a body politic or corporate.

Purported testimonial

A purported testimonial is a statement or representation that appears to be a testimonial.

Product

For the purpose of these guidelines, a 'product' is a therapeutic good within the meaning of the therapeutic Goods Act 1989 (Cwlth) and does not apply to the advertising of other products that are not associated with the provision of regulated health services.

Regulated health service

Means a service provided by, or usually provided by, a health practitioner (as defined in the National Law).

Social media

'Social media' describes the online and mobile tools that people use to share opinions, information, experiences, images, and video or audio clips and includes websites and applications used for social networking. Common sources of social media include, but are not limited to, social networking sites such as Facebook and LinkedIn, blogs (personal, professional and those published anonymously), WOMO, True Local and microblogs such as Twitter, content sharing websites such as YouTube and Instagram, and discussion forums and message boards.

Appendix 2 Associated legislation and agencies

Legislation	Responsible agency	Further information
Australian Consumer Law	Australian Competition and Consumer Commission (ACCC) and relevant state and territory consumer protection departments and agencies	www.accc.gov.au
Therapeutic Goods Act 1989 (Clth) Therapeutic Goods Regulations 1990 Therapeutic Goods Advertising Code 2007 Price Information Code of Practice	Department of Health and Ageing - Therapeutic Goods Administration	www.tga.gov.au
Poisons Standard (Standard for the Uniform Scheduling of medicines and Poisons)	Department of Health and Ageing – Therapeutic Goods Administration	www.tga.gov.au
Drugs and Poisons legislation	Agencies in each Australian state and territory	<p>Queensland: Health (Drugs and Poisons) Regulation 1996, www.legislation.qld.gov.au</p> <p>New South Wales: <i>Poisons and Therapeutic Goods Act 1966</i>, Poisons and Therapeutic Goods Regulation 2008, www.legislation.nsw.gov.au</p> <p>Victoria: <i>Drugs, Poisons and Controlled Substances Act 1981</i>, and Drugs, Poisons and Controlled Substances Regulations 2006, www.legislation.vic.gov.au/</p> <p>Tasmania: Poisons Act 1971, www.thelaw.tas.gov.au</p> <p>ACT: Medicines, Poisons and therapeutic goods Act 2008. Medicines, Poisons and therapeutic goods Regulation 2008, www.legislation.act.gov.au</p> <p>South Australia: <i>Controlled Substances Act 1984</i> Controlled Substances (Poisons) Regulations 2011, www.legislation.sa.gov.au</p> <p>Western Australia: <i>Poisons Act 1964</i>, Poisons Regulations 1965 www.slp.wa.gov.au/legislation/statutes.nsf/default.html</p> <p>Northern Territory: <i>Poisons & Dangerous Drugs Act</i>, www.dcm.nt.gov.au/strong_service_delivery/support</p>

Appendix 3 The Australian Consumer Law

In addition to complying with these guidelines, regulated health services need to comply with the Australian Consumer Law (ACL) which commenced on 1 January 2011. The ACL harmonised the consumer protection provisions in the Trade Practices Act 1974 (TPA) and in State and Territory fair trading laws, and replaced consumer protection provisions in at least 20 different Commonwealth, state and territory laws with one law.

The ACL is a national law which applies in the same way to all sectors and in all Australian jurisdictions. This means that all consumers in Australia enjoy the same rights and all businesses have the same obligations, irrespective of which state or territory they engaged in transactions.

The ACL covers general standards of business conduct, prohibits unfair trading practices, regulates specific types of business-to-consumer transactions, provides basic consumer guarantees for goods and services and regulates the safety of consumer products and product-related services.

The ACL is located in Schedule 2 to the Competition and Consumer Act 2010 (Cwlth).

The ACL includes:

- a national unfair contract terms law covering standard form consumer contracts
- a national law guaranteeing consumer rights when buying goods and services
- a national product safety law and enforcement system
- a national law for unsolicited consumer agreements covering door-to-door sales and telephone sales
- simple national rules for lay-by agreements, and
- new penalties, enforcement powers and consumer redress options.

The ACL applies nationally and in all States and Territories, and to all Australian businesses. For transactions that occurred prior to 1 January 2011, the previous national, State and Territory consumer laws continue to apply.

The ACL is administered and enforced jointly by the Australian Competition and Consumer Commission and the State and Territory consumer protection agencies, with the involvement of the Australian Securities and Investments Commission for financial services matters.

Advertisements must comply with all requirements of the ACL in addition to compliance with these guidelines.

Appendix 4 Advertising of therapeutic goods

As stated, compliance with these guidelines does not exempt advertisements for regulated health services from the need to comply with other applicable laws. This includes legislation administered by the [Therapeutics Goods Administration](#) (TGA).

The TGA is part of the Australian Government Department of Health and Ageing, and is responsible for regulating therapeutic goods including medicines, medical devices, biological, blood and blood products.

Certain advertisements directed at consumers require approval prior to broadcast or publication.

The advertising of therapeutic goods to consumers and health practitioners is controlled respectively by statutory measures administered by the TGA and self-regulation through codes of practice administered by the relevant therapeutic goods industry associations. Certain advertisements directed to consumers require approval prior to broadcast or publication.

Advertisements for therapeutic goods in Australia are subject to the requirements of the *Therapeutic Goods Act 1989*, Therapeutic Goods Regulations 1990, the Therapeutic Goods Advertising Code and the Price Information Code of Practice (collectively the therapeutic goods legislation) and other relevant laws including the *Competition and Consumer Act 2010*.

Health practitioners should note the definition of “advertisement” in the *Therapeutic Goods Act 1989* when considering their compliance with the therapeutic goods legislation. Implicit and explicit references to specific therapeutic products as well as more generic references may fall within the meaning of “advertisement”.

In general, the advertising to the public of “Prescription Medicines” (Schedule 4) or “Controlled Drugs” (Schedule 8) and certain Pharmacist-only Medicines (Schedule 3 of the Poisons Standard) is prohibited by the therapeutic goods legislation. Exceptions to this are set out in the therapeutic goods legislation.

The purpose of these requirements is to protect public health by promoting the safe use of therapeutic goods and ensuring that they are honestly promoted as to their benefits, uses and effects. Controls are placed on the advertising of therapeutic goods (medicines and medical devices) to ensure advertisements are socially responsible, truthful, appropriate and not misleading.

Further information on Australia's advertising regulation for therapeutic goods, including details of the Complaints Resolution Panel (TGACRP) and the Complaints register, may be obtained from the [TGACC website](#) and the TGACRP website.

This includes:

- advertising to consumers
- advertising prescription medications to health professionals (including Best practice guideline on prescription medicine labelling)
- advertising medical services that include Schedule 4 (prescription) substances
- Price Information Code of Practice, and
- The application and approval process for advertising of therapeutic goods.

Those intending to advertise therapeutic goods are advised to familiarise themselves with the requirements of the therapeutic goods legislation in addition to any requirements under the National Law and in these guidelines.

Appendix 5 Title Protection

A5(a) Relevant sections of the National Law

Sections 113 – 119 describe the title and practice protections under the National Law including the penalties for offences by individuals and body corporate.

Section 113 provides that a person cannot knowingly or recklessly take or use a protected title found in the table of that section or a prescribed title for a health profession which would induce a belief that the person is registered in that profession.

Section 115 provides that a person cannot knowingly or recklessly take or use the titles, 'dental specialist', 'medical specialist' or 'a specialist title for a recognised specialty' unless the person is registered under that specialty.

Section 116 provides that a person who is not a registered health practitioner must not knowingly or recklessly (i) take or use the title 'registered health practitioner' or claim to be so registered or (ii) take or use a title, name, initial, symbol, word or description to indicate the person is a health practitioner or claim to be a health practitioner or (iii) indicate the person is authorised or qualified to practise as a health practitioner.

Section 117 provides that a person must not knowingly or recklessly claim or hold him or herself out to be registered or qualified to practise in a health profession or a division of a health profession if the person is not so registered. Section 117 also provides that a person cannot use or take a title which would induce a belief that such a person is so registered.

Section 118 provides that a person who is not a specialist health practitioner must not knowingly or recklessly take or use the title 'specialist health practitioner'. Further a person must not use a title, name, symbol, word or description that would induce a belief that a person is or is authorised or qualified as a specialist health practitioner. Further the person must not claim or hold out to be registered in a recognised specialty or claim to be qualified to practise as a specialist health practitioner.

Section 119 provides that a person must not knowingly or recklessly claim or hold out to have or be qualified to have a type of registration or endorsement in a specialty if the person does not have that registration or endorsement. Further a person must not claim or hold out to have or be qualified with a specialised registration endorsement in a specialty.

A5(b) Board specific advice on the use of titles in advertising

Some Boards have developed statements to assist in the use of titles by the practitioners of the specific profession.

Psychology Board of Australia

The Psychology Board of Australia advises registered psychologists that use of the title 'doctor' in their practice has the potential to mislead members of the public.

Specifically, the use of titles may be misleading 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 or an overseas institution with an equivalent accreditation status.

Where a registered psychologist holds a doctoral qualification that meets the above, 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), and
- Dr Ivan Hassam (Doctor of Psychology).

Physiotherapy Board of Australia

The Physiotherapy Board of Australia recognises the established history of specialised physiotherapy practice achieved through recognised higher education via the Australian College of Physiotherapy. As such the Board considers that appropriate use of qualifications in advertising is acceptable when accompanied by wording that establishes those credentials.

For Example: 'Mr P Smith, Specialist Musculoskeletal Physiotherapist (as awarded by the Australian College of Physiotherapists in 2008')

Appendix 6

A6(a) Use of graphic or visual representations

If a practitioner chooses to use any graphic or visual representations in health service advertising (including photographs of patients, clients or models; diagram; cartoons; or other images), they should be used with caution.

If photographs of people are used in advertising of treatments, use of a real patient or client who has actually undergone the advertised treatment by the advertising practitioner or practice, and who has provided written consent for publication of the photograph in the circumstances in which the photograph is used is less likely to be misleading.

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.

Use of 'before and after' photographs is less likely to be misleading if:

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

The guidelines do not limit use of stock photographs and models other than in relation to the advertising of particular treatments, provided that the provisions of the National Law and these guidelines are otherwise met. However, practitioners should exercise caution due to the potential to mislead consumers.

A6(b) 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.'

If the text of any warning label is in smaller print than the main text or placed in an obscure position of an advertisement, the advertisement may contravene the National Law.



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Public consultation draft¹¹

March 2013

Draft revised *Code of conduct for registered health practitioners*

This Code has been developed by most National Boards under section 39 of the Health Practitioner Regulation National Law Act as in force in each state and territory (the National Law).

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
- research.

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, in all forms, including in person, written and electronic.

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.

¹¹ The revisions to the existing code are highlighted in grey. A summary of changes to the *Code of conduct* adopted by most National Boards is included later in this document.

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

'Electronic' means any digital form of communication, including email, skype, internet, social media etc

'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 health services in the health profession.

'Patient or client' includes all consumers of health care services

'Social media' includes websites and applications used for social networking. Common sources of social media include, but are not limited to, social networking sites such as Facebook and LinkedIn, blogs (personal, professional and those published anonymously) and microblogs such as Twitter, content sharing websites such as YouTube and Instagram, and discussion forums and message boards.

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, as in force in each state and territory (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 **legal obligations 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 generally 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 Healthcare Rights* issued by the Australian Commission on Safety and Quality in Health Care and available at www.safetyandquality.gov.au).

The focus of this Code is on good practice and professional behaviour. It is not intended as a mechanism to address disputes between professional colleagues, e.g. in relation to termination of business relationships and disputes over patients or clients.

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. **These professional values apply to the practitioner's conduct regardless of the setting, including in person and electronically e.g. social media, e-health etc.**

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. **Good practice also includes being aware that differences such as gender, sexuality, age and belief systems may influence care needs, and avoiding discrimination on the basis of these differences.**

Effective communication in all forms 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).

1.3 Australia and Australian health care

Australia is **culturally and linguistically diverse**. We inhabit a land that, for many ages, was held and cared for by Aboriginal and/or Torres Strait Islander 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 and not influenced by financial gain or incentives

- 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
- o. evaluating practice and the decisions and actions in providing good care.

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 **respect**, 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 other health advice they have received, any prescription or other medications they have been prescribed and any other conventional, 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) [*Information on funded interpreter services which is not relevant to all professions has been deleted*]
- 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. using social media, e-health and personally controlled electronic health records appropriately, consistent with this code
- l. 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 and applying appropriate security to electronic and hard copy information
- 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. complying with relevant legislation, policies and procedures relating to consent
- i. using consent processes, including formal documentation if required, for the release and exchange of health and medical information
- j. ensuring that use of social media and e-health is consistent with the practitioner's ethical and legal obligations to protect privacy.

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). 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 (this may not be possible 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. where the practitioner undertakes to make a device for a patient or client (a custom-made device) such as dentures, informing the patient or client if the device will be made outside Australia
- f. documenting consent appropriately, including considering the need for written consent for procedures which may result in serious injury or death.

Fees and Financial consent

- a. Patients or clients should be made aware of all the fees and charges involved in a course of treatment, prior to the health service being provided as much as practical
- b. Discussion about fees should be in a manner appropriate to the professional relationship and should include discussion about the cost of all required services and general agreement as to the level of treatment to be provided.

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 or guardians and, when appropriate, encourage the child or young person to involve his or her parents or guardians 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 an understanding of the cultural needs and contexts of all patients and 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 Aboriginal and/or Torres Strait Islander Australians and those from culturally and linguistically diverse backgrounds. For example, better and safer outcomes may be achieved for some patients if they are able to be consulted or treated by a practitioner of the same gender
- b. acknowledging the social, economic, cultural, historic 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 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.

3.13 Understanding boundaries (also see 8.2 professional boundaries)

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 of 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
- the personal relationship does not in any way impair clinical judgement
- at all times an option to discontinue care is maintained.

3.14 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, including whether it could compromise the quality of care (see also Section 3.4 Confidentiality and Privacy).

3.15 Closing or relocating a practice

When closing or relocating a practice, or when an employed practitioner moves between practices, good practice involves:

- a. giving advance notice where possible and as early as 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 privacy and 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,
- c. behaving professionally and courteously to colleagues and other practitioners at all times, including when using social media.

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 any 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, with benefits for patient care. In addition, practitioners who are employers are vicariously liable for the actions of their employees.

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
- g. supporting students and practitioners receiving supervision and others within the team.

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

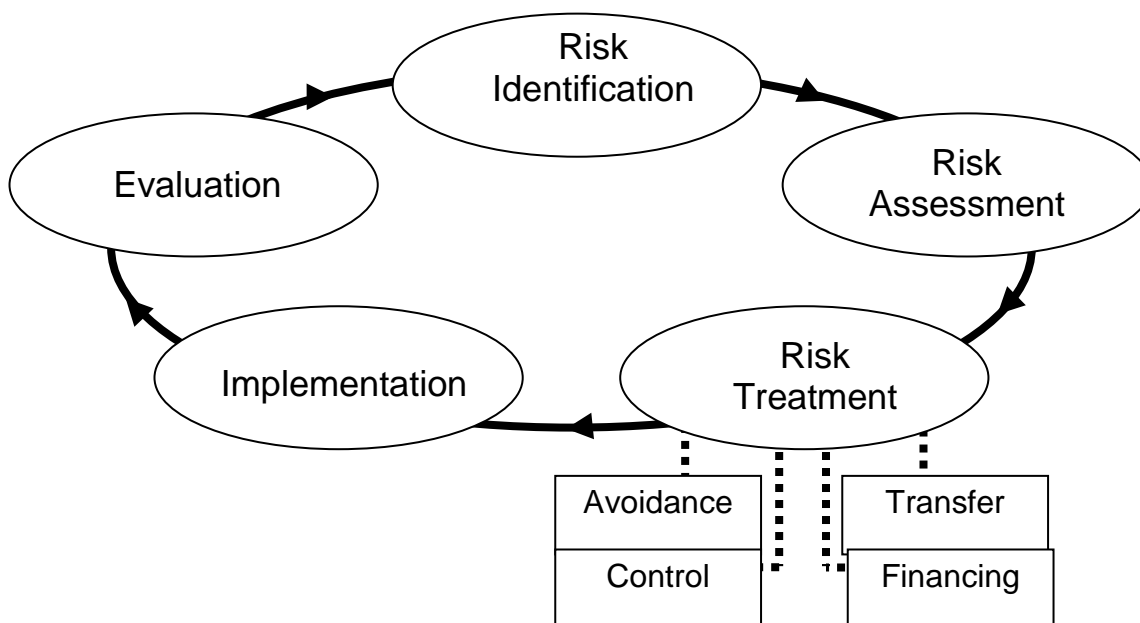
- b. participating in efforts to promote the health of the community and being aware of obligations in disease prevention, including screening and reporting notifiable diseases where relevant.

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:

- a. 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
- b. participating in systems of quality assurance and improvement
- c. participating in systems for surveillance and monitoring of adverse events and 'near misses', including reporting such events to the relevant authority
- d. if a practitioner has management responsibilities, making sure that systems are in place for raising concerns about risks to patients or clients
- e. 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
- f. 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:

- a. complying with statutory reporting requirements, including those under the National Law
- b. recognising and taking steps to minimise the risks of fatigue, including complying with relevant State and Territory occupational health and safety legislation

- c. 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
- d. taking steps to protect patients or clients from being placed at risk of harm posed by a colleague's conduct, practice or ill health
- e. taking appropriate steps to assist a colleague to receive help if there are concerns about the colleague's performance or fitness to practise
- f. 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 allow a practitioner and a patient/client to engage safely and effectively in a therapeutic relationship. 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 and other personal relationships with people who have previously been a practitioner's patients or clients are usually 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 and sections 130 and 141 of the National Law. 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, factual, objective and legible records that report relevant details of clinical history, clinical findings, investigations, information given to patients or clients, medication and other management in a form that can be understood by other health practitioners and without using profession-specific shorthand
- 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 guidelines issued by the National Board on the advertising of regulated health services, relevant consumer protection legislation, and State and Territory fair trading Acts and, if applicable, legislation regulating the advertising of therapeutic goods. Good practice involves complying with the Board's guidelines on advertising of regulated health services and relevant State and Territory legislation.

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, and
- 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 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
- 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 **relevant** practitioner health program 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 practitioner 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 under the National Law
- 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 reasonably believed the colleague may be ill and impaired; and if this impairment has placed patients or clients at risk of substantial 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.

Practitioners should refer to the NHMRC publications listed above for more guidance.

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.

Date of issue: (to be included when the revised code is approved)

Date of review: This guideline will be reviewed at least every three years

Public consultation draft

March 2013

Proposed *Social media policy*

Introduction

The use of social media is expanding rapidly. Individuals and organisations are embracing user-generated content, such as social networking, personal websites, discussion forums and message boards, blogs and microblogs.

Whether an online activity is able to be viewed by the public or is limited to a specific group of people, health professionals need to maintain professional standards and be aware of the implications of their actions, as in all professional circumstances. Health professionals need to be aware that information circulated on social media may end up in the public domain, and remain there, irrespective of the intent at the time of posting.

Context

A key objective of the National Registration and Accreditation Scheme and of the National Boards is to protect the public. The Health Practitioner Regulation National Law, as in force in each state and territory (National Law), and codes and guidelines developed by National Boards are relevant when considering social media.

This policy explains how the National Law and the following existing codes and guidelines relate to social media:

- section 133 of the National Law which establishes obligations about advertising by registered health practitioners provisions and the *Guidelines on advertising of regulated health services*, and
- the relevant National Board's code of ethics and professional conduct/practice (the *Code of conduct*).

Health practitioners should be aware of their ethical and regulatory responsibilities when they are interacting online, just as in person. This policy provides guidance to registered health practitioners on understanding their responsibilities and obligations when using and communicating on social media.

Who needs to use this policy?

Registered health practitioners and students in Board-approved courses should be aware of the implications of using social media.

Definition of social media

'Social media' includes websites and applications used for social networking. Common sources of social media include, but are not limited to, social networking sites such as Facebook and LinkedIn, blogs (personal, professional and those published anonymously) and microblogs such as Twitter, content sharing websites such as YouTube and Instagram, and discussion forums and message boards.

Obligations in relation to social media

In using social media, just as with all aspects of professional behaviour, health practitioners should be aware of their obligations under the National Law, the *Code of conduct* for their profession, the *Guidelines for advertising regulated health services (Advertising guidelines)* and other relevant legislation.

1. Professional obligations

The *Code of conduct* contains guidance about the required standards of professional behaviour, which apply to registered health practitioners whether they are interacting in person or online. The *Code of conduct* also articulates standards of professional conduct in relation to privacy and confidentiality of patient information, including when using social media. For example, posting unauthorised photographs of patients in any medium is a breach of the patient's privacy and confidentiality, including on a personal Facebook site or group even if the privacy settings are set at the highest setting (such as for a closed, 'invisible' group).

2. Obligations in relation to advertising

Section 133 of the National Law imposes limits on how health services delivered by registered health practitioners can be advertised. These limits apply to all forms of advertising, including through social media and on the internet. For example, the National Law prohibits the use of testimonials in advertising. The *Advertising guidelines* provide guidance about how the legal restrictions on advertising under the National Law apply to social media.

Summary

When using social media, health practitioners should remember that the National Law, the *Code of conduct* and the *Advertising guidelines* apply.

Registered health practitioners should only post information that is not in breach of these obligations by:

- not breaching professional obligations
- not breaching confidentiality and privacy obligations (such as discussing patients or posting pictures of procedures, case studies, patients or sensitive material which may enable patients to be identified and/or without having obtained consent in appropriate situations), and/or
- presenting information in an unbiased, evidence informed context and not making unsubstantiated claims.

Additional information material may be available from professional bodies and/or employers, which aims to support health practitioners' use of social media. However, the legal obligations that registered health practitioners must adhere to are set out in the National Boards' respective *Code of Conduct* and *Advertising guidelines*.

Review

This policy will commence on (date/month) and be reviewed annually.



Aboriginal and Torres Strait
Islander Health Practice
Chinese Medicine
Chiropractic
Dental
Medical
Medical Radiation Practice
Nursing and Midwifery
Occupational Therapy
Optometry
Osteopathy
Pharmacy
Physiotherapy
Podiatry
Psychology

Australian Health Practitioner Regulation Agency

Public consultation draft¹²

March 2013

Draft revised *Guidelines for mandatory notifications*

Overview

These guidelines have been developed jointly by the national boards under s. 39 of the Health Practitioner Regulation National Law, as in force in each state and territory (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.

¹² The revisions to the existing guidelines are highlighted in grey. A summary of the changes is included later in this consultation document.

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

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, that could place members of the public at risk. For students, the requirements focus on serious cases of impairment of students.

That is, the requirements focus on 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.

Similarly, if the only risk is to the practitioner him or herself, and there is no risk to the public, the threshold for making a mandatory notification would not be reached. For example, a case where the risk is clearly addressed by being appropriately managed through treatment and the practitioner is known to be fully compliant with that, notification would not be required. Conversely, a mandatory notification is required if the risk to the public is not mitigated by treatment of the practitioner or in some other way.

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 or for notifications made by individuals who are not subject to the mandatory notification obligations such as patients or clients (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. Section 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 if they make notifications that are frivolous, vexatious or not in good faith, they 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 section 140 of the National Law (also refer to section 3 of these

guidelines for more information on Notifiable conduct). In this context, the word ‘practicable’ has its ordinary meaning of “feasible” or “possible”.

The mandatory notification obligation applies to all practitioners and employers of practitioners in relation to the notifiable conduct of practitioners. The obligation applies to practitioners in all registered health professions, not just those in the same health profession as the practitioner. It also 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*.

These Guidelines do not affect other mandatory reporting requirements that may be established in separate legislation, for example requirements to report child abuse.

What is a reasonable belief?

For practitioners reporting notifiable conduct, a ‘reasonable belief’ must be formed in the course of practising the profession. The following principles are drawn from legal cases which have considered the meaning of reasonable belief.

1. A belief is a state of mind.
2. A reasonable belief is a belief based on reasonable grounds.
3. A belief is based on reasonable grounds when:
 - i. all known considerations relevant to the formation of a belief are taken into account including matters of opinion, and
 - ii. those known considerations are objectively assessed.
4. A just and fair judgement that reasonable grounds exist in support of a belief can be made when all known considerations are taken into account and objectively assessed.

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 notification 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. Where a practitioner is told about notifiable conduct that another practitioner or patient has directly experienced or observed, the person with most direct knowledge about the notifiable conduct should be encouraged to make a notification themselves.

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

Section 140 of the National Law defines ‘notifiable conduct’ as when 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.

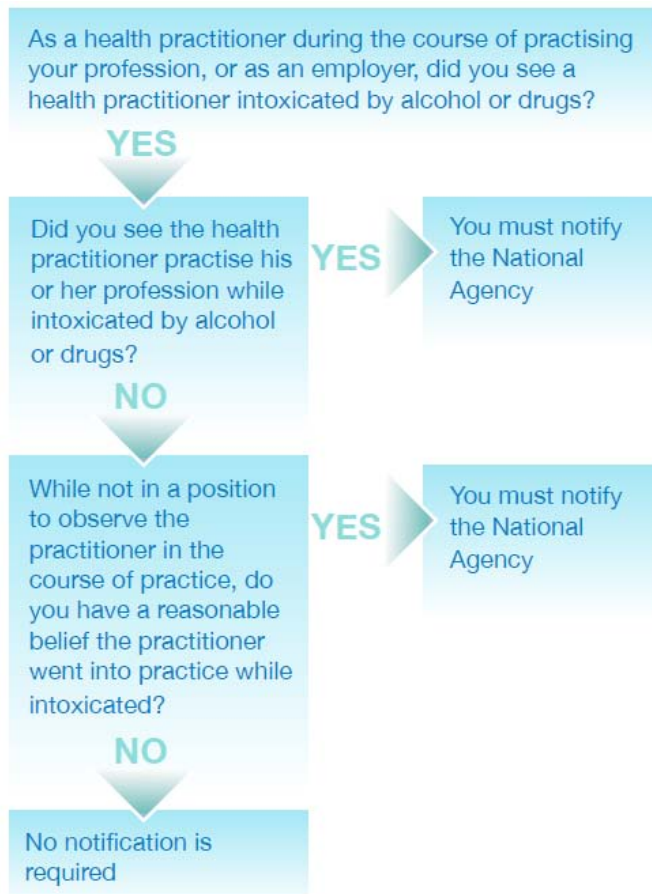
Practise while intoxicated by alcohol or drugs (section 140(a))

The requirement to make a mandatory notification is triggered by a practitioner practising his or her profession while intoxicated by alcohol or drugs. The word ‘intoxicated’ is not defined in the National Law, so the word has its ordinary meaning of ‘under the influence of alcohol or drugs’.

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 key issue is that the practitioner has practised whilst intoxicated, regardless of the time that the drugs or alcohol were consumed.

The National Law does not require mandatory notification of a practitioner who is intoxicated when he or she is not practising his or her health profession (that is, in their private life), unless the intoxication triggers another ground for mandatory notification.

Decision guide – notifying intoxication



Note: Voluntary notifications can still be made.

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

Section 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.

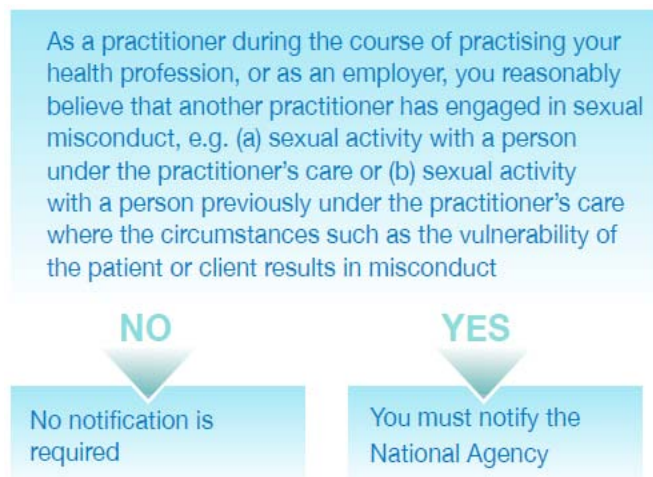
Engaging in sexual activity with a current patient or client will constitute sexual misconduct in connection with the practice of the practitioner's health profession, regardless of whether the patient or client consented to the activity or not. This is because of the power imbalance between practitioners 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 (section 140(c))

Section 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 (section 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.

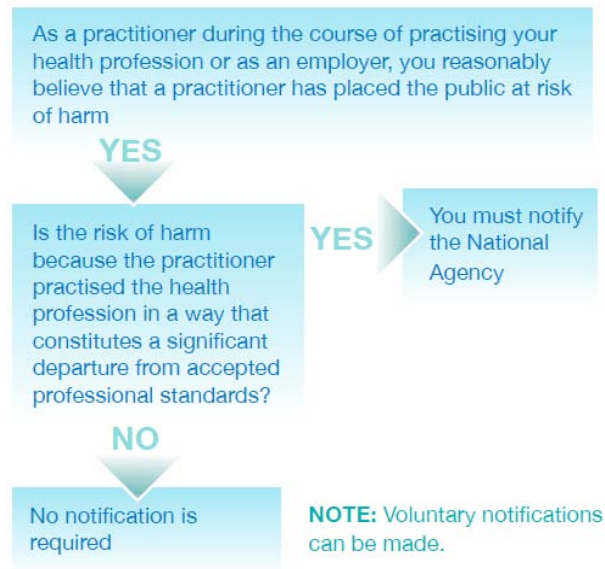
Mandatory notifications about a practitioner from another health profession are most likely to arise in a team environment where different health professions are working closely together and have a good understanding of the contribution of each practitioner; for example, a surgical or mental health team.

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



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 engaged by a professional indemnity insurer, and forms the belief because of a disclosure in the course of a legal proceeding or the provision of legal advice arising from the insurance policy
- 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 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 **appendix A** of these Guidelines for an extract of the relevant legislation; see section 141(4) if it is possible one of these exceptions might apply.

5. Exceptions to the requirement of practitioners to make a mandatory notification

Education providers are also required, under section 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 (section 141(1)(b)).

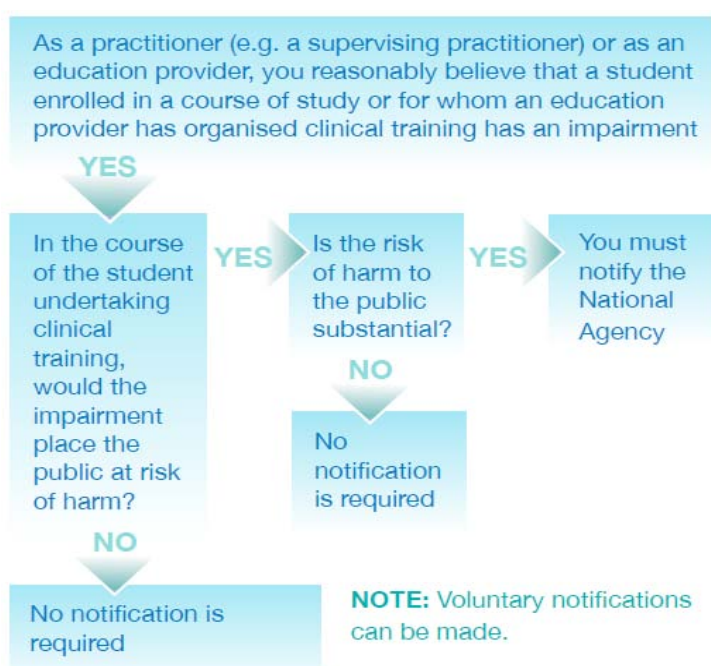
In all cases, the student's impairment must place the public at substantial, or considerable, risk of harm in the course of clinical training.

In relation to a student, 'impairment' is defined under section 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 —

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

An education provider who does not notify the National Agency as required by section 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



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 section 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 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 (section 146)

Under the National Law, notifications are be made to AHPRA, which receives notifications and refers them to the relevant National 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 AHPRA office.

To make a notification in writing, go to the Notifications and Outcomes section of the AHPRA website at www.ahpra.gov.au, download a notification form and post your completed form to AHPRA, GPO Box 9958 in your capital city.

Date of issue:
Date of review: This guideline will be reviewed at least every three years
Last reviewed: 1 February 2011 (minor corrections only)

Appendix A – Extract of relevant provisions from National Law

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)(d) 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

(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 making of the notification or giving of the information.



Summary

Summary of changes to *Guidelines for advertising of regulated health services*

The following table outlines the key changes to the *Guidelines for advertising of regulated health services* (the Guidelines) to allow for comparison of the existing guidelines to the guidelines published for preliminary consultation.

Current guidelines section	Change	Rationale
Introduction	<p>Information broken up into:</p> <ul style="list-style-type: none"> - authority - purpose - who these guidelines apply to - the basis for these guidelines - obligations under National Law and other legislation 	<p>Clarity for practitioners</p> <p>More prominent authority statement communicates how the guidelines may be used linking to Part 8 action and prosecution. This is consistent with common AHPRA policy framework sections.</p> <p>Purpose clarifies the precise requirements of the National Law and clarifies the purpose of the guideline in that context and clarifies that the guideline is not intended to explain to practitioners how to advertise.</p> <p>'Who these guidelines apply to' makes clearer that they apply to anyone who advertises a regulated health service.</p> <p>The 'Basis for these guidelines' embodies the principles upon which this guideline is based and is consistent with AHPRA policy framework.</p> <p>Purpose section now includes a copy of section 133 for clarity.</p> <p>Wording simplified.</p>

Current guidelines section	Change	Rationale
Summary of guidelines	Now articulated under ‘the basis for these guidelines’	<p>The current version had repetition and detail that created a dense document with the important key points lost.</p> <p>The new version has been developed around tight and specific links to the provisions under section 133 and a set of principles (bases) that underpin the guidelines.</p> <p>This allows for consistent principle-based decision making in applying the guidelines, is clearer and will better support compliance.</p>
1. Definition	Definition section	<p>The current guidelines define terms throughout the document.</p> <p>These have been collated and have been formatted into a distinct section at the end of the document (Appendix 1) to allow for easier reference for the reader. As a way of standardising nomenclature throughout the document so as to encompass all those who are obliged to adhere to the advertising provisions (and other sections of the National Law), the term ‘advertiser’ has been defined in the definition section</p>
1.2 Advertising of products	Moved to definitions, item 8.3 and appendix 4.	As above and at item 8.3 (Advertising therapeutic goods) and expanded upon at appendix 4 (in recognition that not all registered health practitioners advertise products).
2 Obligations under other legislation	<p>Condensed</p> <p>Specific reference to other legislation summarised in table 2.</p> <p>Reference websites for practitioners to seek out other information included</p>	<p>The guideline is specific to the provisions of the National Law but explains that other authorities also have responsibility for laws governing advertising of health products and services. The guideline also clarifies the links between other <i>sections</i> of the National Law regarding professional conduct in relation to advertising of health services.</p> <p>There is a stronger focus in this and the introductory section on the course of action available under other legislation and the links and referral paths open to the Boards and AHPRA to other entities.</p> <p>Where possible, practitioners are referred to primary sources of information on the work of other regulators and the legislation they oversee. Duplication in text from other regulators and legislation is avoided so that the risk of a Board publishing out of date information is reduced.</p>

Current guidelines section	Change	Rationale
3 Professional obligations	<p>Concepts referred to in the current version converted to 'the basis for these guidelines'.</p> <p>New section 'Obligations under National Law and other legislation' with link to other codes and guidelines by which Boards convey the expected standards of professional practice.</p> <p>New section 7. The advertising provisions of the National Law</p>	<p>Some current concepts described broader concepts of professional practice usually covered in other Board codes and guidelines</p> <p>Narrows the scope specifically to s133 but allows for action under other codes or guidelines. Content which goes beyond the parameters of the advertising provisions of the National law could compromise the effectiveness of the guidelines and any prosecutions.</p> <p>Provides a 'checklist' for advertisers in plain language as a means of guidance (also includes information from the ACCC)</p>
4 What is acceptable advertising	Existing examples reviewed and now presented as <i>Information commonly included in advertisements.</i>	<p>Term 'acceptable' advertising was ambiguous.</p> <p>Aim is now to strike a balance between providing some guidance and the following principle listed: 'It is the responsibility of practitioners to ensure their advertisement complies with the National Law. Neither AHPRA or the National Boards are able to provide legal advice to health practitioners. Nor should these guidelines be considered by advertisers as substitution for legal advice' Importantly, this list is not intended to be exhaustive.</p> <p>The section on testimonials explains that it is the National Law which prohibits the use of testimonials and purported testimonials and so the document provides guidance about what a testimonial is and the obligations of a practitioner from a third-party testimonial.</p>

Current guidelines section	Change	Rationale
What is unacceptable advertising	<p>Now refers to 'Prohibited advertising under the National Law'</p> <p>This links specifically to each of the 5 key criteria listed under s133.</p> <p>(r) and (s) removed</p>	<p>Specific link to section 133</p> <p>Helps define scope and an understanding of what the Boards may actually not have 'jurisdiction' over. Information broken up into each of the 5 areas of section 133.</p> <p>Some examples removed as refer more to the notion of what is 'professional practice' and would be covered under other Board codes and guidelines on acceptable standards of professional (see earlier note on inclusion of 'Obligations under the National Law and other legislation' section).</p> <p>The usefulness of the guideline is weakened with language that constrains its scope – e.g. what is acceptable/unacceptable. It is not possible to list all examples, therefore, this language is no longer used. The document is not intended to, and cannot, provide a checklist of things that may or may not be in possible breach or not of the National Law.</p>
Specific requirements		
6.1 Use of graphic or visual representations	<p>Moved to a topic-specific appendix as may not be applicable to all professions. Original inclusion was to address matters arising from cosmetic procedures.</p>	<p>Not applicable for all professions so moved to appendix 6.</p>
6.2 Use of warning statements for surgical or invasive procedures	<p>Refer to 'Topic specific application' appendix 6(b) as required</p>	<p>Not applicable for all professions</p>
6.3 Use of comparative advertising	<p>Listed as an example of what may be considered a breach of the National Law</p>	<p>Clarity</p>
6.4 Advertising of qualifications and titles	<p>Retained with minor editorial change only. Now listed under '8. Further information about specific types of advertising'</p>	<p>Further detail contained in appendix 5.</p>
6.5 Advertising of price information	<p>Retained with modifications to better link to the National Law and listed under '8. Further information about specific types of advertising'.</p>	<p>Clearer link to the applicable provision of the National Law. Further detail provided in appendix 4 for those professions which advertise price information.</p>

Current guidelines section	Change	Rationale
6.6 Use of gifts or discounts	Listed as an example of what may be considered a breach of the National Law if not clearly displaying terms and conditions. Now listed under 'item 7.2.2.	Clarity and clearer links to the applicable provision of the National Law.
6.7 Use of scientific information in advertising	Retained with some editorial change Now and listed under '8. Further information about specific types of advertising' at item 8.5	Clearer link to the applicable provision of the National Law.
7 Advertising of therapeutic goods	Included as an appendix of the main document	Does not apply to all professions but of extreme importance to others e.g. pharmacy Refers to matters that are covered in detail by other legislation. This appendix directs readers to the primary source of information and further guidance on the application of the other legislation
8. Consequences of breach of advertising requirements	Some concepts moved introductory section, specifically 'the basis for these guidelines' List consequence of referral to another entity as one outcome. See Table 2 at end of document.	Provides clarity of who can be held to account. Provides further clarity regarding the options open to National Boards and AHPRA and the links with other parts of the National Law.
9 How a notification or complaint may be made	General reference in section above.	This information is available on the AHPRA website Plain-language information sheets being developed for notification processes in general
10 Definitions	Expanded and moved to the end of the document into appendix 1.	The current guidelines define terms throughout the document. These have been collated and formatted into a distinct section at the end of the document to allow for easier reference for the reader.
Relevant sections of the National Law	Deleted	Referred to and linked throughout.

Summary

Summary of changes to *Code of conduct* adopted by most National Boards

Issue	Change	Reason
Reference to authority to develop the code	Reference added at beginning of code	Clarification
List of content areas in Code	Reference to research added	Clarification
References to electronic communication and social media	Reference to communication in any form, including in person, written and electronic, added to overview, 1.2 professional values and qualities	Feedback from preliminary consultation on a draft Social Media Policy was that it would be useful to include references in the code of conduct
Definitions	Definitions of electronic and social media added	Clarity
Reference to National Law	Reworded in section 1.1	Consistency with other references
Reference to legal obligations	Reworded in section 1.1	Clearer wording
Use of the word Indigenous	Replaced with Aboriginal and/or Torres Strait Islander	Better wording
Clarification of the purpose of the code	A new paragraph has been added to 1.1 Use of the Code about disputes between professional colleagues. A new paragraph in 4.2 clarifies the obligation to behave professionally and courteously to colleagues and other practitioners at all times	The new paragraph clarifies that the Code is not primarily intended to address disputes between professional colleagues, as its focus is practice rather than commercial activity
Avoiding discrimination	Words have been added to section 1.2 to refer to good practice includes avoiding discrimination	Clarification
Communication	Reference to "good" communication changed to "effective" communication	Clarity
Linguistic diversity	Reference to linguistic diversity added to section 1.3	Completeness

Issue	Change	Reason
Good care	Words added to paragraph h about avoiding being influenced by financial gain Paragraph o added to section 2.2 include evaluating practice	Clarification
Respect	Reference to respect added to 3.1 – working with patients or clients and reference to openness removed	Completeness/clarity
Other health advice	Paragraph b of section 3.3 reworded to broaden the scope of queries about how patients are managing their health	Clarification that practitioners should encourage a patient to disclose other health advice they have received
Interpreter services	Paragraph l of section 3.3 reworded to remove reference to funded services which are not relevant to all professions	Clarification
Social media	Paragraph k of section 3.3 added to include reference to social media	Clarification that the obligations in the code apply to social media
Confidentiality and privacy	Detail added to paragraph a about information security	Clarification
	Paragraphs h, i and j of section 3.4 reworded	Clarification
Social media	Paragraph i of section 3.4 added to include reference to social media	Clarification that the ethical and privacy obligations in the code apply to social media
Children and young people	References to guardians added to section 3.6	Clarification
Culturally safe and sensitive practice	Rewording and reference to Aboriginal and Torres Strait Islander in section 3.7 rather than Indigenous	Improve wording
	Example added to paragraph a of section 3.7	Clarification
End of life care	Section removed	Responding to feedback that this section is not relevant to all professions
Understanding boundaries	3.13 retitled and now linked to professional boundaries (8.2).	Clarification

Issue	Change	Reason
Working with multiple clients	Section 3.14 reworded to include consideration of the impact on quality of care	Clarification
Relocating a practice	Reference added to heading for 3.15 and rewording to include employed practitioners moving practices	Better reflects the content of the section and clarifies
Behaviour to colleagues	A new paragraph in 4.2 clarifies the obligation to behave professionally and courteously to colleagues and other practitioners at all times	Address gap
Teamwork	Reference added to section 4.4 teamwork about employing practitioner's vicarious liability for their employees	Clarification
Supporting students and practitioners receiving supervision	Reference added to section 4.4 teamwork	Includes another aspect of team work
Risk management	Words added to 6.2(c)	Clarity
Professional boundaries	Sentence added to 8.2	Clarification
Reporting obligations	References to relevant sections of the National Law added to 8.3	Clarity
Health records	Rewording and addition to 8.4(a) to clarify that records should be kept in a way that can be understood by other practitioners and avoid the use of profession-specific shorthand	Clarification
Advertising	Section 8.6 reworded consistent with the revised draft Guidelines for Advertising of Regulated Health Services	Consistency across the code and guideline
Conflicts of interest	Words "or more than trivial value" removed from 8.11(e)	Clarify the potential for conflicts in relation to medications and products
Practitioner health	Paragraph 9.2(f) reworded	Improved wording
Other practitioners' health	Word practitioner added to 9.3(b)	Clarity
Research ethics	Sentence added to 11.2 to encourage reference to NHMRC publications	Completeness

Issue	Change	Reason
Review date	Section on issue and review date added	Completeness



Summary

Summary of changes to *Guidelines for mandatory notifications*

The following table outlines the key changes to the *Guidelines for mandatory notifications* (the Guidelines) to allow for comparison of the existing guidelines to the guidelines published for preliminary consultation.

Current guidelines section	Change	Rationale
1. Introduction	Content added to clarify the situation where a practitioner is only a risk to him or herself.	Clarifies that a mandatory notification is required if the risk to the public is not mitigated by treatment of the practitioner or in some other way.
Voluntary notifications	Words added to clarify the scope of voluntary notifications	Clarity
Protection for people making a notification	Editorial change to last sentence.	Clarifies language.
2. General Obligations	Sentences added at end of first paragraph and end of section	Clarifies the meaning of 'practicable' and the difference between mandatory reporting under the National Law and other mandatory reporting requirements.
What is a reasonable belief	Editorial changes and further detail	Clarity and consistency
3. Notifiable conduct: Practise while intoxicated by alcohol or drugs	Editorial changes to clarify circumstances that trigger a mandatory notification	Existing document does not clearly delineate between practising while intoxicated and being intoxicated when not practising.
Exceptions	Paragraph 4(a) reworded	Clarity
7. How a notification is made	Deleted street addresses of AHPRA offices	Links to AHPRA website in line with other Board documents – directing practitioners and others to the AHPRA/National Board website in the first instance (where street addresses of AHPRA offices are listed) as well as enabling telephone and email notifications to be made.