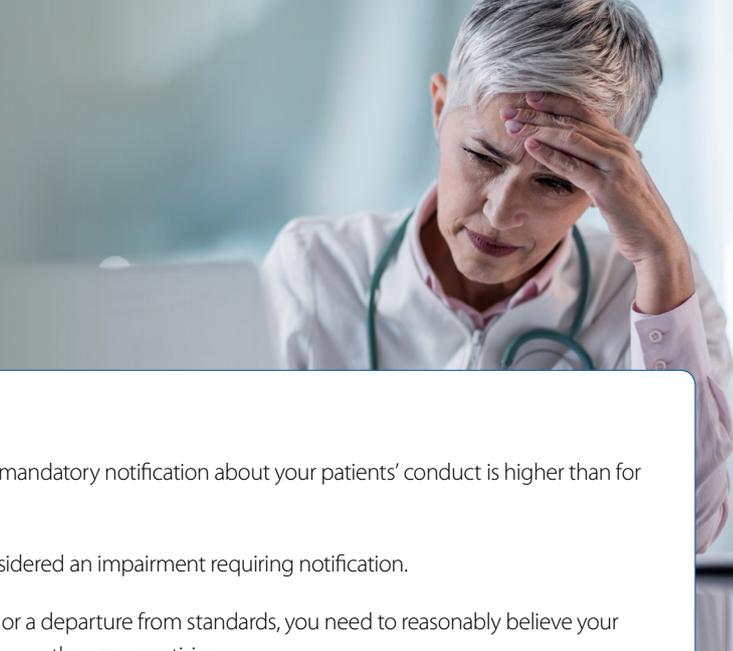


Avant factsheet:

Mandatory notifications for treating practitioners



Quick guide:

1. As a treating practitioner, the reporting threshold to make a mandatory notification about your patients' conduct is higher than for those outside a treating relationship.
2. Illness that is treated and well managed would rarely be considered an impairment requiring notification.
3. Before making a notification about impairment, intoxication or a departure from standards, you need to reasonably believe your patient is putting the public at substantial risk of harm by the way they are practising.

Note: If you are a practitioner, employer or educator who is concerned about another health practitioner, but you are not their treating practitioner, please refer to Avant's factsheet: *Mandatory notifications about health practitioners*.

Throughout this factsheet, a reference to 'patient' means your patient who is also a registered health practitioner. Treating practitioners in Western Australia are exempt from the requirement to make a mandatory notification about their patients who are also registered health practitioners or students.

What conduct do you need to report?

The first issue to consider is whether you have a reasonable belief that your patient is engaging in 'notifiable conduct'. Conduct that may be notifiable to Ahpra is the same for all practitioners, whether you are treating them or not. They are:

- practising with an impairment;
- practising while intoxicated;
- significant departure from professional standards; and
- sexual misconduct.

For more information about each type of notifiable conduct, please refer to Ahpra's Guidelines for mandatory notifications or Avant's factsheet: *Mandatory notifications about health practitioners*.

The obligation to notify applies to the 15 regulated health professions, not only doctors. This means that you may be required to make a notification about a health professional who is not a doctor.

Do you have a 'reasonable belief'?

Before making a mandatory notification, you must form a 'reasonable belief' that your patient's behaviour is notifiable conduct. This belief must come from treating the other practitioner and should be based on actual, known events rather than anecdotal accounts or speculation.

What is the notification threshold for treating practitioners?

You are only required to notify Ahpra if you consider your patient is placing the public at a 'substantial risk of harm' while practising with an impairment, while intoxicated or in a way that

significantly departs from accepted professional standards. A substantial risk of harm is a very high threshold.

The threshold for notifying about sexual misconduct is lower. You must have a reasonable belief that your patient has engaged, is engaging, or is likely to engage in sexual misconduct in connection with their practice. Assessing whether there is a risk of sexual misconduct can be difficult. Ahpra provides some guidance, stating that grooming behaviours or details of a plan to engage in sexual misconduct would be notifiable.

Understanding impairment

Reducing barriers to seeking treatment

In light of concerns that mandatory notification laws imposed a barrier for health practitioners seeking treatment for health issues, the laws were amended in 2020.

The amendments raised the threshold at which treating practitioners must notify Ahpra about their patient's impairment, with the specified intention of encouraging health practitioners to seek the health care they need (as patients) at the time they need it, without fear of being reported.

In its resources on the new laws, Ahpra has set the expectation that it is unlikely treating practitioners would need to notify about their patient's impairment if it were being appropriately managed, as this would be unlikely to pose sufficient risk of harm to the public.

Illness is not impairment

'Impairment' is defined as a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence), that detrimentally affects or is likely to detrimentally affect the practitioner's capacity to practise the profession.

Therefore, an illness is not automatically an impairment. If your patient's illness or condition does not negatively affect their capacity to practise, Ahpra does not need to be notified.

Risk factors

Ahpra only needs to be notified if a your patient's impairment places the public at a substantial risk of harm. If the condition is being managed and the risk to the public is reduced by effective controls, there is no requirement to notify. Controls could include treatment, sick leave or a break from practice, supervision or a modified scope of practice.

The legislation outlines several factors to consider when deciding whether you need to notify:

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

Protecting the treating relationship

At the outset of the treating relationship you could consider talking to your patient about mandatory notifications generally and reassuring them of the circumstances in which you would need to notify Ahpra. It can be helpful to explain you are not currently concerned and discuss what sort of steps might address any concerns (such as them taking leave from work).

Scenarios

Consider, for example, a practitioner who you treat, who has a stable mental health condition (such as depression) and who is engaged and compliant and receptive to treatment. As long as you are satisfied that there is not a substantial risk of harm to the public, then you would not need to make a mandatory notification to Ahpra. Using the risk factors outlined above to assess the risk will help you make your decision.

Compare this with an ageing, solo practitioner who you treat, who is isolated and showing signs of dementia. The practitioner may be able to take steps such as moving to a group practice and ensuring their condition is monitored with regular follow-ups. This may help satisfy you that they are not posing a substantial risk of harm to the public. However, if they are unable or unwilling to take such steps and their condition remains unmanaged, they may be placing the public at a substantial risk of harm by continuing to practise. In that situation you may need to consider making a notification.

Intoxication and departure from professional standards

If your patient's intoxication or significant departure from accepted professional standards is related to an impairment, consider whether it can be treated and whether, with treatment, your patient is still placing the public at a substantial risk of harm.

Isolated past incidents are unlikely to require notification, as long as there is no current substantial risk of harm to the public. However, in assessing the risk of harm, it is important to consider whether the behaviour was an isolated incident or whether you believe it indicates a pattern of behaviour. Consider what steps your patient is taking to avoid a recurrence.

What about my privacy obligations to my patient?

Your mandatory notification obligation overrides your privacy obligation. As long as you make a report on reasonable grounds and in good faith, you will be protected from legal liability. That means that you act with good intentions and without malice. Regardless of the outcome of your notification, you cannot be subject to claims such as defamation or breach of privacy. Making a notification is not considered a breach of professional standards.

What steps can I take if I am considering making a notification to Ahpra?

The purpose of a mandatory notification is to keep the public safe, so this must be your primary consideration. If you are genuinely concerned that your patient is putting the public at risk, act quickly.

However, if the concern is less immediate, it can be helpful to talk to a senior colleague about the circumstances, while still upholding your privacy obligations to your patient.

If you believe your patient is becoming a risk to the public, you may also encourage them to self-notify to Ahpra so that the treating relationship can continue.

Read Ahpra's Guidelines for mandatory notifications and view its other resources to help you make your decision. These can clarify your decision about whether a mandatory notification is the right option.

You can also call Avant's Medico-legal Advisory Service to discuss your circumstances and obligations.

Additional resources

Ahpra - Guidelines: [Mandatory notifications about registered health practitioners](#)

Ahpra - Resources: [helping you understand mandatory notifications](#)

Avant factsheet: [Mandatory notifications about health practitioners](#)

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