



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

28 November 2016

Senator Rachel Siewert
Chair
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: community.affairs.sen@aph.gov.au

Dear Senator

Further responses to the Senate Standing Committee on Community Affairs arising from the hearing of 22 November 2016 for the inquiry into the medical complaints process in Australia.

Thank you for the opportunity to provide further information on behalf of the Australian Health Practitioner Regulation Agency (AHPRA) to the Senate Standing Committee on Community Affairs (the Committee) on key areas of interest arising from the hearing of 22 November 2016. We provide general and public responses in Attachment A. [REDACTED]

Our contact is Mr Nick Lord, Executive Officer, NRAS Review on [REDACTED]. If you have any queries, please do not hesitate to contact me or Mr Lord.

We trust this information will assist the Committee with its work for the inquiry.

Yours sincerely

Martin Fletcher
Chief Executive Officer



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Attachment A

Responses to key issues of interest from the Australian Health Practitioner Regulation Agency (AHPRA) to the Community Affairs References Committee Inquiry into the medical complaints process in Australia.

We provide this information in response to the discussions and questions taken on notice from the Community Affairs References Committee (the Committee) at the public hearing of 22 November 2016 into the medical complaints process in Australia.

Our focus on protecting the public through standards of conduct and behaviour

The Health Practitioner Regulation National Law (the National Law), as in force in each State and Territory, sets out the objectives for the National Registration and Accreditation Scheme (the National Scheme). The first objective (provided in section 3 of the National Law) is 'to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.'

Regulating professional conduct and behaviour is therefore an important part of the work of the National Scheme in protecting the public. Each year, the National Boards for the health professions and AHPRA manage thousands of notifications and complaints that relate to practitioner conduct. Some of these can be considered at the lower end of public risk while others are more serious. Our website details the court and tribunal decisions made regarding public safety and practitioner conduct that is at the serious end of public protection, and we provide a snapshot of these matters over the previous twelve months in Attachment A1. Some examples of professional misconduct include:

- In July 2015, the State Administrative Tribunal of Western Australia reprimanded a medical practitioner and ordered that his registration be suspended for three months, following a referral from the Medical Board that he had consulted a patient for the treatment of cancer and advised treatment where there was no evidence it would be effective and where the medical practitioner had a direct financial interest (as a director and shareholder) in the company that sold the treatment to the cancer patient (for more information, refer to <http://www.medicalboard.gov.au/News/2015-08-27-dr-suspended-conditions-imposed.aspx>).
- In March 2016, following the commencement of disciplinary proceedings by the Medical Board of Australia, the Queensland Civil and Administrative Tribunal ordered the suspension of a medical practitioner for professional misconduct that included inappropriate communication and involvement in his former wife's medical treatment and inappropriate access to her medical record (for more information, refer to <http://www.medicalboard.gov.au/News/2016-09-23-doctor-suspended.aspx>).
- In April 2016, the Queensland Civil and Administrative Tribunal suspended the registration of a medical practitioner and ordered further conditions be placed on her registration, following a referral from the Medical Board of Australia, for professional misconduct that related to (amongst other things) inappropriate prescribing of drugs and poisons, failing to consider differential diagnoses for patient's medical conditions and failing to refer patients to specialist for their medical conditions (for more information, refer to <http://www.medicalboard.gov.au/News/2016-07-11-registration-suspended.aspx>).

These cases demonstrate why the National Boards and AHPRA take matters of practitioner conduct and behaviour seriously. However, it is also important to note that National Boards and AHPRA do not deal with notifications in NSW which are managed through a separate system. Of the 107,179 registered medical practitioners in Australia as at 30 June, 33,236 (or 31%) had a principal place of practice in NSW. It should also be noted that, in Queensland, National Boards and AHPRA only deal with those matters referred by the Office of the Health Ombudsman which is the point of entry for all notifications in Queensland.

Fairness and transparency

We recognise our responsibility to ensure fairness and transparency in our regulatory functions. Critical to this responsibility is ensuring decision making bodies (particularly the Boards within the National Scheme) have a balance of representatives of the profession and the community - in order that both professional and community expectations are properly considered, rather than the profession simply investigating and judging itself. Health Ministers appoint both practitioner and community members to National and state/territory boards.

Other ways that the National Scheme demonstrates fairness includes:

- Setting publicly available standards for registered practitioners to follow, including a Code of Conduct for each profession.
- Seeking early advice in the notifications process from people with a profession based background, such as a professional advisor or the relevant decision making Board/committee which contains profession and community based members.
- Providing opportunities for practitioners who are subject of notifications and complaints with the opportunity to respond to them prior to decisions being finalised by the Board/committee.

Amendments to the National Health Practitioner Regulation National Law Act as in force in each state and territory are a matter for the Australian Health Workforce Ministerial Council, comprising the health ministers of each state and territory and the Commonwealth.

Bullying and harassment

The Medical Board of Australia (MBA) and AHPRA have listened to the evidence provided to the inquiry, we've recognised the need to respond further to the issues of bullying, harassment and vexatious complaints in five ways:

1. The Board will strengthen *Good medical practice – A code of conduct for doctors in Australia* to make explicit the standards it expects on bullying and harassment. Setting clear standards and holding doctors to account against them is the role of the regulator in helping build a culture of respect.
2. We want to make sure there are no barriers to reporting concerns about bullying and harassment. We will continue our national awareness campaigns with employers, practitioners and the community to make sure that concerns about patient safety are being reported to the right body.
3. The Medical Board will toughen its Code of Conduct in relation to vexatious complaints. Establishing a clear benchmark will enable the Board to take further action against a practitioner who makes complaints purely to damage another registered practitioner.
4. AHPRA will commission research on vexatious complaints to deepen our understanding. We will publish what we learn, and act on it. As we have previously advised the Committee, the data we have indicates this is a very small problem but we recognise it has a big impact when it happens.
5. The Medical Board will lead the development and implementation of a national, annual survey of hospital trainees. This survey will give a voice to trainees and identify potential 'hot spots' of bullying and harassment. AHPRA and the Board will work with medical colleges, health departments, employers and the Australian Medical Council to establish this survey as soon as possible.

Linked to these five actions is our ongoing work to improve the management of notifications and complaints, and our work to improve the transparency and accountability of the assessment of international medical graduates.

The MBA and AHPRA will also continue to address concerns and confusion in the public domain regarding expectations of medical practitioners. On 24 November 2016, the MBA released a public statement that endorsed registered medical practitioners providing appropriate dietary advice when this is indicated, and that any decision to restrict an individual medical practitioner's registration in some way will reflect the specific facts and circumstances of that case. The statement can be found at <http://www.ahpra.gov.au/News/2016-11-24-media-statement.aspx>.

We now provide responses to questions on notice from the hearing of 22 November 2016.

Risk assessment framework in managing notifications

Hansard page reference: 9

Hansard extract:

Mr Fletcher: That is correct. So there were over 10,000 notifications. If you exclude New South Wales—because, as you know, we do not deal with notifications in New South Wales; they are dealt with in a separate arrangement—there were just over 6,000 notifications, 6,056 notifications, across Australia. Just over 53 per cent of those were in relation to medical practitioners, so just over half of our notifications relate to medical practitioners. That has been a pretty consistent pattern throughout the life of the national scheme. Medical practitioners represent about 16½ per cent of the registered health professionals in Australia. There are over 100,000 registered medical practitioners in a cohort of about 657,000 registered practitioners across the 14 professions.

When we receive a notification we essentially look at the information provided by the notifier and we would often talk to the notifier to see if there is any additional information. We would then provide that information to the practitioner who is subject to the notification. There are some exceptional circumstances where we may not do that—for example, if there was a police investigation underfoot and there might be questions about the action the police might be taking. We risk assess the information because we have powers under the national law for a board to take immediate action if there is a concern about immediate risk to patient safety.

Senator XENOPHON: There is a risk assessment matrix, is there?

Mr Fletcher: Yes, a risk assessment framework.

Senator XENOPHON: Is that something you can provide to the committee or is it confidential?

Mr Fletcher: Yes, we can provide information about how we risk assess.

Response

We provide further information on how AHPRA assesses risk in Attachment A2.

Background and requirements of notifications staff in AHPRA

Hansard page reference: 11

Hansard extract:

Senator DUNIAM: My interest is very much in the investigators, the people who are looking at the information that is being presented, because they would have to have some understanding of what I would imagine—not having a medical degree or any experience in midwifery or anything like that—to be very complex. So I am particularly interested in those with a medical degree or that sort of experience.

On the selection criteria, on page 15 of 17 in the answers to questions on notice, under the section 'Qualifications and experience—required qualifications', it refers to 'relevant tertiary qualification—for example, lawyer, journalist or health practitioner'. That is obviously not an exhaustive list. In terms of a threshold, is it anything? Could you have an arts degree? I suppose you can if a journalist can be an investigator. It comes back to the question I just asked: how many of your investigators actually have a medical or nursing degree?

Mr Fletcher: What we have said is that one in four in our notifications division have some sort of health practitioner background. But what I understand you to be asking me, Senator, is to narrow that down to nursing and medicine?

Senator DUNIAM: Yes. If you could break it so within those 42 what is the breakdown by—

Mr Fletcher: What is the professional background.

Senator DUNIAM: Yes. If you could that would be very handy.

Response

Of the notifications staff identified as having a health practitioner background, 23 staff have a background in nursing and/or midwifery, and 4 staff have a background in medicine.

Vexatious complaints

Hansard page reference: 3

Hansard extract:

Mr Fletcher: In terms of numbers. If I can give you one example, we have a research partnership with the University of Melbourne. They looked at 850 mandatory notifications over a 12-month period. They found fewer than six that they believed potentially met the criteria for a vexatious notification. The point I am also making is that, even though the numbers are small, we recognise that the impact on the individuals involved can be significant.

Senator XENOPHON: Can we go back a step. You said there were 850 mandatory notifications and six were found to—

Mr Fletcher: Under six. They said 'under half a dozen'.

Senator XENOPHON: Under half a dozen were found to be vexatious. Can you provide, on notice, the criteria for that assessment. In other words, how did they come to that conclusion? It could be an eminently reasonable conclusion they came to. Was there a natural justice process involved? In other words, what was the process to establish whether it is vexatious or not? There are 850 cases. What was the rigour involved? What were the mechanisms? Was there a like-for-like comparison? I am just trying to understand the robustness of the process.

Response

AHPRA has a research partnership with the University of Melbourne. As part of a research project on mandatory notifications, the researchers reviewed 850 notifications. The reviewers had legal backgrounds and were trained to flag any notification where the notification on the face of it appeared not to have been made in good faith. The review identified less than six notifications that potentially met their criteria for a vexatious notification ie appeared to be made in bad faith. However, the researchers note that it can be difficult to assess "bad faith" and there can be an overlap between notifications that are motivated by ill-will and those that raise legitimate concerns.

The notifications that were flagged as potentially vexatious typically disclosed an acrimonious relationship between an individual notifier and an individual respondent along with insufficient grounds for a mandatory report. 20% of the 850 cases were independently reviewed by a second senior reviewer and there was good agreement on the coding that had been applied. The reviewers did not access the investigation file or consider the final outcome of the case as part of this review.

AHPRA has committed to undertaking further research to deepen our understanding of vexatious complaints.

Hansard page reference: 4

Hansard extract:

Senator XENOPHON: Finally—you may want to take this on notice—I am still not sure how you deal with vexatious complaints or determining whether a complaint is vexatious or not, what the triggers are or how the matrix of it all works. If a doctor says, 'Look, I think this is a vexatious complaint,' does that trigger a certain line of inquiry? On notice, can you provide in writing how that actually works so I can just try to get an idea. Is there a format? Is there a protocol? Is there a kind of labyrinth you go through to try to determine the various factors, such as whether a patient has made a complaint, whether another medical practitioner has made a complaint, whether there are allegations of commercial rivalry et cetera? Could you take that on notice, please.

Mr Fletcher: Yes.

Response

Section 151 of the National Law sets out that a National Board may decide to take no further action in relation to a notification if the Board reasonably believes the notification is frivolous, vexatious, misconceived or lacking in substance. In receiving a notification, it is important that risks to the public are properly considered in the first instance. We provide information in Attachment A2 as to the consideration and assessment of risk in assessing a notification.

Essentially, if a matter lacks substance or is deemed to be vexatious the Board will close the matter without taking any regulatory action. This will often occur following assessment. The assessment process

would usually involve sending the information provided by the notifier to the practitioner who is subject to the complaint for a response. It may also involve discussion with the notifier to clarify issues. This information, along with the response from the practitioner, would then be considered by a Board or its committee to determine whether the risk threshold for regulatory action has been met or whether further investigation is needed or a health or performance assessment.

All regulatory decisions about notifications are made by a National Board or a Committee of a Board. AHPRA does not make regulatory decisions about notifications.

The majority of notifications are closed following assessment with 59% closed at this stage in 2015/16. However, as there is a potential overlap between a notification made in 'bad faith' and the possibility of a risk to patient safety, it may be necessary to further investigate a notification in order to determine whether it is vexatious, especially if the notification raises potentially serious risks.

A Board can take regulatory action in relation to a registered practitioner who has acted in a manner that does not meet the requirements of the Code of Conduct for their profession including in relation to a vexatious complaint. A Board has no power to deal with a person who is not a registered practitioner and who has made a complaint that may be considered to be vexatious.

Further clarification

On page 6 of the public hearing transcript, in response to questions by Senator Whish-Wilson, Mr Fletcher indicated Dr Fettke was advised by AHPRA an hour before a statement went out and that we were intending to release a media statement. Mr Fletcher meant that approximately one hour in advance of the media statement, Dr Fettke was advised that AHPRA was writing to seek his consent to publicly release confidential information on his matters.

Appendix A1.

A 12 month snapshot of actions to reduce serious risk of harm to the public

- Mr Orlando Marquinez was fined \$10,000 and received a criminal conviction after knowingly and recklessly holding out as a registered nurse. Mr Marquinez's registration as a nurse was cancelled in 2014 by the NSW Civil and Administrative Tribunal following findings of unsatisfactory professional conduct and professional misconduct. He has not been registered since that time. More information: <http://www.ahpra.gov.au/News/2016-07-11-unregistered-nurse.aspx>
- The Victorian Civil and Administrative Tribunal (VCAT) reprimanded dentist, Dr Ayu Abdullah and found she had engaged in professional misconduct and unprofessional conduct, after her treatment of a patient was found to be 'of an ongoing poor standard.' Dr Abdullah has been registered as a dentist since January 2007 with her primary place of practice in Victoria. The complete tribunal findings are available on the [AustLII website](http://www.austlii.edu.au/au/other/austrlii/au/other/victrib/tribunal-highlights.aspx). More information: <http://www.dentalboard.gov.au/News/2016-09-22-tribunal-highlights.aspx>
- The ACT Civil and Administrative Tribunal (the tribunal) has reprimanded Dr Kanapathipillai, suspended and imposed conditions on her registration following repeated illicit drug use, amounting to professional misconduct. The reasons for the decision are available on the [tribunal's website](http://www.tribunal.act.gov.au/News/2016-10-10-practitioner-suspended.aspx). More information: <http://www.medicalboard.gov.au/News/2016-10-10-practitioner-suspended.aspx>
- The Victorian Civil and Administrative Tribunal (VCAT) reprimanded Dr George Koniuszko and imposed conditions on his registration after making findings that he had engaged in professional misconduct. Dr Koniuszko practised as an ophthalmologist for approximately 30 years. The allegations and the proceedings arose from treatment Dr Koniuszko provided outside that specialty during the period August 2007 to March 2012. VCAT reprimanded Dr Koniuszko and imposed a number of conditions on his registration. These include restricting him from prescribing, administering or possessing Schedule 8 poisons, benzodiazepines, Imovane, Stilnox, or Unisom sleep gel, limiting his practice to treat patients' ophthalmological conditions only and not permitting him to provide medical treatment to family members. The tribunal imposed a review period of five years from 1 April 2016. VCAT's decision is available on [AustLII](http://www.austlii.edu.au/au/other/austrlii/au/other/victrib/tribunal-highlights.aspx). More information: <http://www.medicalboard.gov.au/News/2016-10-10--conditions-imposed.aspx>
- The MBA referred Dr Frank Charles Fox to the Victorian Civil and Administrative Tribunal following an investigation into his professional conduct. Dr Fox faced 115 allegations, spanning 12 years from June 2000 to August 2012 involving the treatment of 19 patients. In March 2016, Dr Fox admitted all the allegations and the tribunal found that he engaged in professional misconduct, and unprofessional conduct of both a serious and not serious nature. VCAT reprimanded Dr Fox, placed conditions on his registration and suspended his registration for 12 months effective from 11 May 2016. Due to the lengthy time span over which the offending occurred, there were three laws that governed the professional conduct. The tribunal made findings under all three laws. The tribunal's decision is available on the [AustLII website](http://www.austlii.edu.au/au/other/austrlii/au/other/victrib/tribunal-highlights.aspx). More information: <http://www.medicalboard.gov.au/News/2016-10-06-Medical-practitioner-reprimanded.aspx>
- The MBA referred Dr Robert Wolman to the State Administrative Tribunal of Western Australia (the tribunal) on 10 December 2014. Dr Wolman, a general practitioner was reprimanded, fined \$20,000, ordered to pay legal costs and disqualified from reapplying for registration as a medical practitioner for 10 years for professional misconduct. The decision can be found on the [tribunal website](http://www.tribunal.wa.gov.au/News/2016-09-29-practitioner-disqualified.aspx). More information: <http://www.medicalboard.gov.au/News/2016-09-29-practitioner-disqualified.aspx>
- The Medical Board of Australia (MBA) received a complaint in May 2011, alleging that Dr Quentin Malone, a specialist neurosurgeon, performed spinal surgery on a patient at the incorrect level and then attempted to cover the error by rewriting the operative records. Board decided to investigate in October 2011. The matter was subsequently referred to the WA State Administrative Tribunal for hearing and determination on 29 January 2013. In May 2016, after several mediations, the tribunal found that Dr Malone had behaved in a way that constituted professional misconduct and ordered that he be reprimanded; his registration be suspended for 12 months from 30 May 2016; and he pay the Board's costs amounting to \$107,000. Dr Malone admitted to behaving in a way that constituted professional misconduct and wrote to the Board in March 2016 expressing remorse for his conduct. The reasons for the tribunal's decision are published on its [website](http://www.tribunal.wa.gov.au/News/2016-09-27-surgery-error.aspx). More information: <http://www.medicalboard.gov.au/News/2016-09-27-surgery-error.aspx>
- The MBA commenced disciplinary proceedings against Dr Tahir Shah in the Queensland Civil and Administrative Tribunal (Tribunal) on 6 August 2015 for his involvement in his former wife's medical

maintain adequate records. The tribunal noted that Mr Anton co-operated with AHPRA, admitted his conduct at a relatively early stage, no other issues have arisen in relation to his conduct before, or since, and that in all the circumstances it is not necessary to interfere with Mr Anton's right to practise pharmacy. The reasons for the tribunal's decisions are published on the [AustLII website](#). More information: <http://www.pharmacyboard.gov.au/News/2016-09-23-victorian-pharmacist.aspx>

- A pharmacist convicted of drug trafficking has been disqualified by a tribunal from applying for registration for three years. In July 2016, the Victorian Civil and Administrative Tribunal (the tribunal) found that Ali Kozanoglu had engaged in professional misconduct and disqualified him from applying for registration as a registered pharmacist for three years from 3 August 2016. He was also reprimanded by the tribunal. In imposing the three-year disqualification period, the tribunal noted that a substantial disqualification period was required in order to 'send a message of deterrence to pharmacists and to uphold the profession's reputation'. The tribunal also affirmed the Board's decision to refuse Mr Kozanoglu's application for renewal of his registration noting the application for review had been abandoned. The reasons for the tribunal's decision will be published on the AustLII website. More information: <http://www.pharmacyboard.gov.au/News/2016-08-30-pharmacist-disqualified.aspx>
- The Victorian Civil and Administrative Tribunal (VCAT) found that Mr Mark Tunstall engaged in professional misconduct and reprimanded him, disqualifying him from applying for registration for 18 months. Mr Tunstall had previously let his registration lapse in November 2012. The Psychology Board of Australia referred the matter to the tribunal in October 2015, after a notification was received by AHPRA concerning Mr Tunstall's conduct as a registered psychologist, namely entering into a relationship with a client. As Mr Tunstall had not been registered as a psychologist since November 2012, the determinations that could be imposed were limited. VCAT reprimanded Mr Tunstall, further disqualifying him from applying for registration as a registered psychologist until 27 January 2018 (a period of 18 months) and indicated that any shorter period would fail to convey to the profession its strong disapproval of Mr Tunstall's conduct. The full decision is available on the [Austlii website](#). More information: <http://www.psychologyboard.gov.au/News/2016-09-23-psychologist-reprimanded.aspx>
- The Medical Board of Australia referred Dr Nadhum Shimmari to the WA Administrative Tribunal, after it received a notification in November 2014 alleging Dr Shimmari had engaged in inappropriate sexual behaviour towards a male patient. In a step to keep the public safe, the Board took immediate action under the National Law and imposed conditions on his registration restricting him from consulting with, or treating, any male patients without a chaperone present. In May 2016, the Tribunal reprimanded Dr Shimmari and ordered that he carry out further education in relation to the diagnosis and treatment of sexually transmitted illnesses and engage in mentoring sessions on how to obtain informed consent, the diagnosis and treatment of STIs, communication across cultures and record-keeping. The full decision can be viewed on the [Tribunal's website](#). More information: <http://www.medicalboard.gov.au/News/2016-06-23-professional-misconduct.aspx>
- The State Administrative Tribunal of Western Australia reprimanded Mr Aran John Bowden Denford, cancelled his medical registration and disqualified him for applying for registration for two and a half years, for accessing child pornography over 14 years. The Medical Board of Australia suspended his registration in August 2014 as an interim step to protect the public, pending other inquiries. In April 2015, the Board referred him to the Tribunal. The tribunal decision will be published on the WA SAT website and Austlii. More information: <http://www.medicalboard.gov.au/News/2016-06-22-registration-cancelled.aspx>
- The Queensland Civil and Administrative Tribunal confirmed a decision of the Medical Board of Australia to refuse an application by Dr Rhandy Cabading for renewal of limited registration. The Board refused his application on the basis that Dr Cabading had consistently failed the Royal Australian College of General Practitioners fellowship examination and the Australian Medical Council examinations and had failed to progress to general or specialist registration in the 10 years that he had held limited registration. Reasons for the tribunal's decision will be published on the [AustLII website](#). More information: <http://www.medicalboard.gov.au/News/2016-06-01-registration-refused.aspx>
- The Medical Board of Australia started disciplinary proceedings with the Queensland Civil Administrative Tribunal against Dr Deon Rall in April 2014. The Tribunal found Dr Rall engaged in unsatisfactory professional conduct in the examination of two female patients and cannot reapply for registration in Australia for three years. This decision follows an investigation into allegations that Dr Rall had performed internal vaginal examinations on two patients when the examinations were not necessary and were inconsistent with the correct procedure. The reasons for the tribunal's decision will be published on the [AustLII website](#). More information: <http://www.medicalboard.gov.au/News/2016-06-01-unable-to-reapply.aspx>
- The Health Professional Review Tribunal of the Northern Territory found that general practitioner Dr Ajay Naidu engaged in professional misconduct and unprofessional conduct after he failed to

understand and maintain professional boundaries. The Medical Board of Australia referred Dr Naidu to the tribunal in July 2015, after it was alleged he had behaved in a way that constitutes professional misconduct by failing to maintain professional boundaries with a number of his patients and failing to maintain adequate medical records. In February 2016, Dr Naidu appealed the tribunal's decision. The appeal was dismissed, upholding the tribunal's original decision. The reasons for the Supreme Court's decision are published on [AustLII](#). More information: <http://www.medicalboard.gov.au/News/2016-05-26-professional-misconduct.aspx>

- The South Australian Health Practitioners Tribunal reprimanded a former nurse and disqualified her from reapplying for registration for a period of time for professional misconduct. The Nursing and Midwifery Board of Australia referred Rebecca Anne Greenwood to the tribunal because of Ms Greenwood's conduct in 2011 and 2012. Over this period, Ms Greenwood forged a prescription, stole schedule 4 and 8 narcotic analgesic and benzodiazepine medications from her employers and stole narcotic medication from a client. Ms Greenwood has not practised as a nurse since August 2012 and her registration subsequently lapsed on 31 May 2013. The Minutes of Order can be found on the [tribunal's website](#). More information: <http://www.nursingmidwiferyboard.gov.au/News/2016-06-23-nurse-reprimanded.aspx>
- The State Administrative Tribunal of Western Australia reprimanded nurse Ms Merrilee Baker and suspended her registration for seven months for her involvement in the administration and provision of unproven cancer treatments to patients in Perth in 2005. The Nursing and Midwifery Board of Australia referred Ms Baker to the tribunal in February 2014, due to concerns about her role in providing treatment devised by unregistered overseas doctor, Helfried Sartori. The treatment administered by Ms Baker involved the intravenous administration of various nutrients, minerals and substances including caesium, potassium, magnesium, and dimethylsulphoxide, and taking nutritional supplements and specifically prepared food. A coronial investigation by the WA Deputy State Coroner found that the treatment hastened the death of four patients. The decision will be available on Austlii and the WA SAT. More information: <http://www.nursingmidwiferyboard.gov.au/News/2016-06-20-unproven-treatments.aspx>
- The WA State Administrative Tribunal reprimanded former nurse Mrs Simone Phasey and disqualified her from reapplying for registration for two years for her involvement in administering unproven treatments to cancer patients in WA and practising while not registered. The Nursing and Midwifery Board of Australia referred Mrs Phasey to the Tribunal after a referral from the state coroner. The Board alleged that Mrs Phasey practised as a nurse while unregistered and had been actively involved in the administration of an alternative, unproven medical treatment to cancer patients. The decision will be available on Austlii and the WA SAT. More information: <http://www.nursingmidwiferyboard.gov.au/News/2016-06-20-nurse-disqualified.aspx>
- The South Australian Health Practitioners Tribunal reprimanded Mr David Andrew Stephenson in the strongest possible terms, cancelled his registration and disqualified him from applying for registration as a nurse for a period of four years after it found he had engaged in professional misconduct. The Nursing and Midwifery Board of Australia referred Mr Stephenson to the tribunal alleging that he engaged in sexual contact with a fifteen year old and engaged in a sexual relationship with the wife of a terminally ill patient being treated by him and this behaviour amounted to professional misconduct. The reasons for the tribunal's decision are published on the [South Australian Health Practitioners Tribunal](#). More information: <http://www.nursingmidwiferyboard.gov.au/News/2016-06-17-nurse-deregistered.aspx>
- The Nursing and Midwifery Board of Australia referred Ms Silva Csepregi to the South Australian Health Practitioners Tribunal alleging professional misconduct. The tribunal suspended Ms Csepregi's registration for one year, three months and six days, expiring on 9 June 2017. The Tribunal found Ms Csepregi engaged in professional misconduct for unwarranted physical contact with a patient. The behaviour was aggravated by the falsification of a SA Health Safety Learning System database (SLS Report) and her attempts to enlist the cooperation of a colleague who observed the behaviour to corroborate her false version of events. The tribunal decision is published on the [South Australian Health Practitioners Tribunal website](#). More information: <http://www.nursingmidwiferyboard.gov.au/News/2016-06-17-registration-suspended.aspx>
- The Chinese Medicine Board of Australia referred practitioner Mr Graeme Lindsay Garvin to the Queensland Civil and Administrative Tribunal alleging he had behaved in a way that constituted professional misconduct. Mr Garvin ceased practice in November 2012 and his registration lapsed in 2013. On 23 June 2015, QCAT found Mr Garvin had engaged in professional misconduct, reprimanded him and ordered him to pay the Board's legal costs. Mr Garvin was not registered at the time of the decision. The full reasons for the decision are published on the [AustLII website](#). More information: <http://www.chinesemedicineboard.gov.au/News/2016-06-23-professional-misconduct.aspx>

- The Victorian Civil and Administrative Tribunal reprimanded Chinese medicine practitioner, Ms Silvia Russo, for professional misconduct and ordered her to continue to participate in her existing mentor arrangement until 1 October 2016. Ms Russo admitted that she had engaged in a personal and sexual relationship with a male patient which constituted professional misconduct. The decision is published on [Austlii](#). More information: <http://www.chinesemedicineboard.gov.au/News/2016-06-22-tribunal-reprimands.aspx>
- The State Administrative Tribunal of Western Australia found Mr Pei Ren Un engaged in professional misconduct, reprimanded him and disqualified him from reapplying for registration as a medical radiation practitioner for a period of 18 months. In November 2014, the Medical Radiation Practice Board of Australia received a notification alleging that Mr Un had engaged in inappropriate sexual behaviour towards a female patient. In a step to keep the public safe, the Board took immediate action and imposed conditions on Mr Un's registration restricting him from consulting with or treating any female patients without a chaperone present. The Board referred the matter to the tribunal as it reasonably believed that Mr Un had behaved in a way that constitutes professional misconduct. The reasons for the tribunal's decision are on the [State Administrative Tribunal \(WA\) website](#). More information: <http://www.medicalradiationpracticeboard.gov.au/News/2016-05-03-professional-misconduct.aspx>
- The South Australian Health Practitioners Tribunal has reprimanded psychologist Michelle Bakjac for professional misconduct and suspended her registration. The Psychology Board of Australia referred Ms Bakjac to the tribunal for sanction after she admitted to engaging in professional misconduct. The tribunal also imposed conditions on her registration and ordered Ms Bakjac pay the Board's costs. Reasons for the tribunal's decision are available on [AustLII](#). More information: <http://www.psychologyboard.gov.au/News/2016-06-20-psychologist-reprimanded.aspx>
- The Victorian Civil and Administrative Tribunal reprimanded a psychologist for professional misconduct, and suspended his registration for nine months from 10 March 2016. The Psychology Board of Australia referred allegations to VCAT about the conduct of the psychologist in November 2014. The allegations concern a relationship the psychologist formed with a vulnerable young woman, close to the time he terminated their professional relationship. As a result of orders made by the Tribunal in August 2015, the psychologist's name is anonymised to avoid causing undue distress or embarrassment to his former client (client A) because identification of the psychologist (IVX) would identify his former client with whom he now lives. VCAT also ordered that IVX undergo a period of mentoring and/or education to the satisfaction of the Board at his own expense and that following resumption of registration, IVX is to undertake professional supervision for a period of twelve months at fortnightly intervals. The reasons for the Tribunal's decision are available on [AustLII](#). More information: <http://www.psychologyboard.gov.au/News/2016-05-18-Tribunal-reprimands.aspx>
- At a hearing in the Adelaide Magistrates Court, a South Australian man received a \$7,500 fine and a criminal conviction for knowingly and recklessly using the title "psychologist" between 21 January 2014 and 28 February 2014 in breach of the National Law. Mr Pierre Allauch's registration as a psychologist lapsed in 2011 and he has not been registered since that time. For more information: <http://www.ahpra.gov.au/News/2016-06-14-unregistered-psychologist.aspx>
- The State Administrative Tribunal of WA acted on a call by the Medical Board of Australia (the Board) to cancel the registration of a Dr Robert Taylor, a medical practitioner who was found to have behaved in a way that was not consistent with him being a fit and proper person to hold registration as a medical practitioner. Dr Taylor's registration was cancelled after he failed to declare his criminal history to AHPRA. He was also disqualified him from applying for registration for two years. Since February 2015 AHPRA has been using [a process for checking international criminal history](#) that provides greater public protection, while being fair and reasonable for practitioners. The decision is available on the [tribunal website](#). For more information: <http://www.ahpra.gov.au/News/2016-03-24-cancel-registration.aspx>
- Jennifer Anne Reed pled guilty to seven counts of deception for falsely claiming to be a registered nurse. The conviction follows a joint investigation by AHPRA on behalf of the Nursing and Midwifery Board of Australia (NMBA) and South Australian Police (SAPOL), the Commonwealth Department of Human Services (DHS), New South Wales Police and the South Australian Health and Community Services Complaints Commissioner. Ms Reed gained employment at six different aged care facilities across South Australia and New South Wales. The offences were committed over a five year period from 2009 to 2014 in towns in South Australia including Gawler, Semaphore and Moonta, as well as Deniliquin in New South Wales. During this time, Ms Reed dishonestly received more than \$340,000 in wages. Ms Reed was jailed in March 2016 for four years with a non-parole period of 14 months. More information: <http://www.ahpra.gov.au/News/2016-03-18-fake-nurse.aspx>
- Cynthia Weinstein, a former registered medical practitioner, pleaded guilty in the Melbourne Magistrates' Court to one count of recklessly holding herself out as a registered medical practitioner,

[website](#) and will be published on Austlii. More information: <http://www.ahpra.gov.au/News/2015-11-12-Tribunal-cancels-registration.aspx>

- The State Administrative Tribunal of Western Australia found Dr Premanandan Vayal Veetil, who works in general practice, guilty of unsatisfactory professional performance and professional misconduct. The Medical Board of Australia referred Dr Vayal Veetil to the Tribunal in February 2015, alleging he had engaged in sexual misconduct with a patient who he first met in March 2013 when he treated her at home out of hours. Dr Vayal Veetil denied the allegations. In June 2014, the Board took immediate action by imposing conditions on his registration as an interim step to manage the risk to the public, pending other enquiries. The reasons for the Tribunal's decision are published on [AustLII](#). More information: <http://www.ahpra.gov.au/News/2015-11-18-professional-misconduct.aspx>
- The Queensland Civil and Administrative Tribunal (QCAT) suspended Dr Rene Gomez's registration for six months, ordered him to never again see female patients and found that he engaged in both professional misconduct and unprofessional conduct. The Medical Board of Australia referred Dr Gomez, a general practitioner, to the Tribunal for sexual boundary violations and breaches of undertakings. The reasons for the Tribunal's decision are available on [AustLII](#). More information: <http://www.ahpra.gov.au/News/2015-11-18-doctor-suspended.aspx>
- The Queensland Civil and Administrative Tribunal (QCAT) reprimanded Dr Andrew Alfred George Leggett, a psychiatrist and ordered him to undertake counselling for having a personal and sexual relationship with a former patient. The QCAT decision is [published on Austlii](#). More information: <http://www.ahpra.gov.au/News/2015-11-24-Tribunal-reprimands-doctor.aspx>
- The Queensland Civil and Administrative Tribunal (QCAT) reprimanded Dr Chitrakanti Kapadia, a specialist surgeon for unprofessional conduct, for failing to disclose information to the Medical Board of Australia when applying to renew his medical registration. The Board alleged that Dr Kapadia had failed to advise AHPRA and the Board that he was being investigated by the General Medical Council (GMC) in the United Kingdom when he had applied to renew his registration in Australia. The reasons for the tribunal's decision are [published on Austlii](#). More information: <http://www.ahpra.gov.au/News/2015-11-24-unprofessional-conduct.aspx>
- The State Administrative Tribunal of Western Australia found enrolled nurse Miss Jilian St Joan Patrick provided false and misleading information to the Nursing and Midwifery Board of Australia to gain registration in Australia. In November 2014, the NMBA received a notification alleging that she had improperly obtained her registration as an enrolled nurse by providing false documentation. The issue related to information she provided to indicate she met the Board's English language registration standard, when she did not. The reasons for the tribunal's decision are on the [State Administrative Tribunal \(WA\) website](#) and will be published on Austlii. More information: <http://www.ahpra.gov.au/News/2015-11-16-media-release.aspx>
- The Supreme Court of Western Australia dismissed Dr Keith Woollard's application for judicial review of a decision of the Medical Board of Australia Performance and Professional Standards Panel. In August 2014, a panel found that Dr Woollard, a cardiologist, had behaved in a way that constitutes unsatisfactory professional performance and cautioned him for failing to maintain clear, appropriate, accurate and detailed clinical records of his discussions with his patient about the risks and potential complications of a coronary angioplasty he had performed in 2011. Dr Woollard has appealed the Court's decision. The Supreme Court decision is published on [Austlii](#) More information: <http://www.ahpra.gov.au/News/2015-12-04-judicial-review.aspx>
- The Victorian Civil and Administrative Tribunal affirmed a decision by the Psychology Board of Australia to refuse registration to Dr Karl Hanes, who originally applied for general registration as a psychologist in 2009, 18 years after practising as a psychologist for three and a half months. When Dr Hanes appealed that decision by the former Victorian Board in 2010, the VCAT ordered him to complete a period of 240 days of supervised practice before re-applying. Dr Hanes applied for general registration in April 2013 and the national board decided that he had not completed the required period of supervised practice and refused general registration, a decision that Dr Hanes appealed. In affirming the Psychology Board's decision, VCAT noted that Dr Hanes could continue to work in the fields that he had worked in for the past 18 years, but could not engage in unregistered practice as a psychologist or call himself a psychologist. The reasons for the Tribunal's decision are available on [AustLII](#) More information: <http://www.ahpra.gov.au/News/2015-12-30-media-release.aspx>
- In September 2016, Mr Nicholas Crawford pleaded guilty to holding himself out as a registered nurse in Queensland and using the protected titles of 'nurse' and 'registered nurse'. In August 2015 in the Perth Magistrates Court, Mr Crawford was also convicted of claiming to be qualified to practise, unlawfully using the title or name 'acting clinical nurse' and 'holding himself out' as a registered nurse and fined \$30,000. For more information: www.ahpra.gov.au/News/2016-10-04-media-release-nmba.aspx .

- The State Administrative Tribunal of Western Australia reprimanded Dr William Barnes, suspended him for three months, imposed conditions on his registration, and awarded costs. After a referral from the WA State Coroner, the Board and AHPRA investigated concerns that Dr Barnes had been actively involved in the administration of an alternative, unproven medical treatment to cancer patients in WA. The reasons for the tribunal's decision are on the [State Administrative Tribunal \(WA\) website](#) and will be published on Austlii. For more information: <http://www.ahpra.gov.au/News/2015-08-27-dr-suspended-conditions-imposed.aspx>.
- The Medical Board of Australia imposed strict conditions on the medical registration of Dr Phillip Nitschke in a mediated settlement that concludes longstanding legal and tribunal proceedings. The 25 conditions imposed by the Board restrict the scope of Dr Nitschke's medical practice and put an end to his involvement in providing any advice or information to any patient or member of the public about how to commit suicide. This includes workshops, the Peaceful Pill Handbook videos or on-line fora. For more information: <https://www.ahpra.gov.au/News/2015-10-26-media-release.aspx>.

Appendix A2.

How AHPRA assesses risk in managing notifications

AHPRA Notifications

1. Operational Directive for health, performance and conduct management

- a) AHPRA's operational directive for health, performance and conduct management states that a Director or Manager of notifications must review all notification enquiries and assign a risk rating (clinical input required, high, or normal) based upon the information available, and indicate the next steps required in relation to the enquiry. For serious matters this may include preparing for immediate action consideration.
- b) When assessing risk, Directors and Managers will specify which parties (if any) to contact for further information and what information should be sought, ensuring that consideration is given to whether patient consent is required to obtain the additional information and advising accordingly.
- c) In accordance with AHPRA's Key Performance Indications, an initial risk evaluation must be performed within three calendar days of receipt of a notification enquiry. The result of the initial risk assessment must be recorded on AHPRA's data record system.

2. The framework for risk assessment

- a) Since March 2016, AHPRA has been trialling a new risk assessment framework in its Victorian, Tasmanian and Australian Capital Territory offices.
- b) This risk assessment framework is intended to assist AHPRA and National Boards to both assess the risks identified in a notification about a practitioner, and to also assist AHPRA in determining what further information should be requested from the notifier, practitioner or third party. The framework was developed to assess risk in three broad categories:
 - risks associated with the individual practitioner,
 - risks identified in the information provided (by the practitioner, notifier or third party), and
 - risks associated with the nature of the practitioner's particular practice.
- a) Criteria that is considered by AHPRA when assessing the risk of a practitioner continuing to practice includes:
 - The practitioner's practise of the profession has caused injury to a patient (eg. causing harm or significant potential to cause harm, death or serious injury).
 - There is a pattern of concern or repeated incidents identified in the notification.
 - The information contained in the notification has arisen from an authoritative source.
 - The notification identifies two or more streams of concern (health, conduct or performance).
 - The notification identifies criminal or unethical behaviour undertaken by the practitioner.
 - Prima facie, the notification identifies that the care provided by the practitioner is significantly below acceptable standards.
 - The practitioner has an adverse registration history.
 - The practitioner has prior notifications history and/or a monitoring and compliance profile (open or closed).

- The practitioner works in an area of practice that requires qualifications of a higher level than expected for general registration in their profession (ie. speciality, time since qualification).
- The practitioner's practice is not subject to any oversight, audit or supervision.
- In their practice, the practitioner is required to provide oversight, audit or supervision of others.
- The practitioner is currently practising.
- The practitioner's employer has restricted the practitioner's ability to practice (including the removal of credentials, suspension, restricted practice, etc).
- The practitioner undertakes procedures or practices that are of increased risk of harm to patients, eg. Exposure prone procedures, neurology.
- The practitioner has demonstrated an intent in relation to conduct or practice.
- The practitioner has not demonstrated any insight in to concerns identified about their conduct or practice.
- The practitioner practice is not subject to third party visibility (Eg. they practice in a private facility or in patient's home; isolated practice; rural or remote practice).
- In their practice, the practitioner has access to drugs of dependence or dangerous substances.
- The practitioner works with a particularly vulnerable patient or client group.

3. Risk Pathways

Immediate Action pathway

- A National Board takes immediate action to protect the public when it reasonably believes it is necessary, in accordance with Division 7 of the National Law. It is an interim step that Boards can take while more information is gathered or while other processes are put in place.
- The Director of notifications in each state/territory office, in consultation with an AHPRA legal adviser, is responsible for approving all immediate action referrals to the board. The AHPRA legal adviser is responsible for ensuring papers being provided to the board contain sufficient legal input to assist the board in making a determination.
- The decision to refer to a board takes into account the legal implications of taking immediate action and the need for AHPRA to provide the board with the opportunity to make a decision under Division 7.
- The Director may wish to have certain facts confirmed or information clarified before referring a matter to a board. Gathering information to provide context and certainty about allegations must not significantly delay the referral to immediate action. Forming a reasonable belief does not involve a detailed inquiry by the board at this stage.

High risk pathway

- a) A notification assessed as high risk is where the concerns presented by the notification enquiry indicate serious concerns which if proven would certainly require some action from the board.
- b) Matters evaluated as high risk will be processed with urgency. Increased efforts and an overall focus on timeliness are expected, particularly with respect to assessing and preparing information for the board to consider.

Examples of issues that may be assessed as higher risk matters include:

- Sexual boundary violations.
- Impairment issues that represent an ongoing risk of harm to the public.
- Matters referred to AHPRA from the police or the coroner.
- Multiple notifications lodged from difference sources regarding the same practitioner.
- Single notification raising multiple elements of practice and/or conduct.
- Matters related to a practitioner with a notification history, including current open cases or closed prior notifications.
- Matters indicating breaches of conditions/undertakings on a practitioner's registration.
- Lack of consent provided for invasive treatments.
- Practise outside of a practitioner's scope of practice that represents an ongoing risk of harm to the public.
- Removal of, or restrictions on, a practitioner's clinical or billing privileges, or authority to prescribe scheduled medications.
- Breaches of infection control procedures that represent an ongoing risk of harm to the public.
- Reports of serious injury or harm during practise.
- Suspension of, or restrictions on, a practitioner's registration by another registration authority.
- Criminal charges or convictions punishable by imprisonment, or behaviour that could be classified as criminal (assault/harassment etc.).
- Conduct which may result in criminal charges or convictions.
- Matters which, as a result of the practice situation, represent an ongoing risk of harm to the public.
- Registrations that may have been improperly obtained.
- Falsifying clinical records.

Clinical input required pathway

- a) Denoting that a notification requires clinical input does not indicate the need for obtaining an expert clinical opinion, but identifies early on whether the clinical aspects of a notification:
 - present a higher risk or alter the nature of the concerns raised, or
 - require clarification or questions to be put to the practitioner when requesting a response.
- b) Notifications containing concerns related to the knowledge, skill or judgement possessed, or care exercised by a registered health practitioner in the practice of the health profession in which the practitioner is registered or concerns related to the way the practitioner practises the health profession with respect to approved codes and guidelines may be considered to require clinical input.
- c) Matters classed as requiring clinical input may include:

- Errors in prescribing, supplying or administering medication.
 - Matters relating to adverse effects experienced as a result of prescribed/dispensed medication.
 - Inadequate or excessive treatment or examinations.
 - Inappropriate (not sexual) or incompetent treatment or examinations.
 - Infection control, discharge or diagnosis procedures that deviate from published codes and guidelines for the profession.
 - Practitioners performing activities outside scope of practice.
 - Death as a direct result of a practitioner's treatment.
- d) AHPRA must seek to obtain the advice of a professional officer or allocated board member (assessment) to determine to what extent the clinical aspects of the notification contribute to the seriousness of the concerns.
- Where a professional officer is available, the information should be forwarded to them for comment.
 - A professional officer must provide input on notification enquiries forwarded to them within seven calendar days.
 - Where a professional officer is not available, the information should be forwarded to an allocated board member (assessment) for comment.
 - An allocated board member (assessment) must provide input on notification enquiries forwarded to them within seven calendar days.

Normal risk pathway

- e) A notification enquiry will be categorised as normal risk where the concerns presented do not within any of the categories defined above. Denoting a notification enquiry as normal risk indicates that it will be triaged to undergo AHPRA's approved standard assessment methods prior to presentation to the board, in accordance with the timelines set out for normal risk activity.