

Case 15 – Connie

Connie, a woman aged 27, requests a referral to a counsellor. She has been seeing one but feels she can't go back to him. After some discussion she reveals that she is upset with the counsellor and stated that "things got physical".

Best Practice Response

Material facts

- The relevant facts are:
 - Connie has disclosed facts which suggest that the counsellor has behaved inappropriately at her consultation with him.

Relevant ethical considerations and medico-legal issues

The issue in the case study is whether the counsellor's alleged behaviour requires a mandatory report by the medical practitioner to AHPRA.

AHPRA's website provides the following comprehensive information regarding mandatory reporting:

- The 14 National Boards regulating registered health practitioners in Australia are responsible for registering practitioners and students (except for in psychology, which has provisional psychologists), setting the standards that practitioners must meet, and managing complaints and concerns (notifications) about the health, conduct or performance of practitioners.
- The 14 National Boards are as follows:
 - 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](#)
- 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 and Queensland in certain circumstances (see Section 4 *Exceptions to the requirement of practitioners to make a mandatory notification* of these guidelines for details).

- 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 AHPRA as soon as practicable. The definition of 'notifiable conduct' is set out in section 140 of the National Law. In this context, the word 'practicable' has its ordinary meaning of 'feasible' or 'possible'.

- 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.*

- 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.

MDA's recommendations

- It is necessary to consider whether the practitioner who has allegedly behaved inappropriately is a health practitioner regulated by one of the National Boards. Mandatory reporting only applies to those practitioners who are registered by one of the National Boards.
- It should be presumed that the counsellor is a health practitioner regulated by one of the National Boards, however, if there is reason to doubt this, further enquiries could be considered.
- Consideration must then be given as to whether the actions of the counsellor require a mandatory report to AHPRA.
- The bar for forming a "reasonable belief" is set very high. Even if a mandatory report is not required, a voluntary report may be made.
- Seek advice from your MDO regarding your mandatory reporting obligations.

Links to resources:

[Mandatory%20Notification%20of%20Colleagues%20-%20Notifiable%20Conduct%20-%20DU%202013 Reporting-Obligations-Fact-Sheet Guidelines-for-mandatory-notifications%20-%20AHPRA%20-%202014](#)

The MDA National Group is made up of MDA National Limited ABN 67 055 801 771 and MDA National Insurance Pty Ltd ABN 56 058 271 417 AFS Licence No. 238073. MDA National recommends you always contact your indemnity provider when you require specific advice in relation to your insurance policy. The case study is based on actual medical negligence claims or medico-legal referrals; however, certain facts have been omitted or changed by MDA National to ensure the anonymity of the parties involved.