

# firstdefence

JMOs + Doctors in Training

WINTER 2010

 **MDA National**  
Support Protect Promote

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# **National Registration For Junior Doctors**

## What are the important changes from my perspective?

From 1 July 2010 the new Medical Board of Australia will operate under the Health Practitioner Regulation National Law ("the National Law"). There will no longer be a number of separately functioning Medical Boards around Australia, instead there will be a centralised Board located in Melbourne, and branch offices will be located in states and territories. The local branches will manage your registration and any complaints, apart from in New South Wales where health care complaints continue to be managed under different arrangements by the Health Care Complaints Commission. You will be registered to work in all Australian states and territories and will not need to register, and pay fees in separate states should you wish to move and work.

The scheme covers a wide range of health professionals such as dental care practitioners, medical practitioners, nurses and midwives, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, and psychologists. Other health professions are to be included in subsequent years.

The Board will publish information about your name, qualifications, registration status, and any conditions or disciplinary penalties applicable to your registration on the publicly available website. There is a discretion to refrain from publishing information relating to an impairment about which you have previously advised the Board.<sup>1</sup>

## Do I have any new or different obligations under the new scheme?

There is a newly developed *Code of Conduct*,<sup>2</sup> which sets out general requirements of a registered medical practitioner. If a complaint is made to the Medical Board, your actions will be measured against this Code of Conduct. It covers, inter alia, professional behaviour, your own health, teaching and supervising, advertising and accepting gifts.

The major addition of a mandatory obligation to report colleagues to the Medical Board who undertake "notifiable conduct" requires consideration. Essentially there is a formalised requirement of the ethical obligation which previously existed under the old schemes. The Medical Board of Australia has issued guidelines for practitioners making a report.<sup>3</sup> The obligation to report aims to prevent the public from being placed at risk of harm, and the practitioner making the report in good faith is protected from any liability. Importantly the requirement to notify covers all of the health professionals who will all fall under the umbrella of national registration.

Notifiable conduct includes conduct where 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."*<sup>4</sup>

Prior to making a mandatory report MDA National recommends that you should consult with a Medico-Legal Adviser.

## Is there anything I need to do at this stage following the introduction of national registration on 1 July 2010?

During April 2010 all registered practitioners received documentation about their registration status and information about how to renew their registration from the Medical Board. You must check all of the information carefully and alert the Board to any mistakes as soon as possible. If you are unclear you should contact a Medico-Legal Adviser for assistance.

## Where can I get more information?

To find out what you need to know as a MDA National Member visit [www.mdanational.com.au](http://www.mdanational.com.au) or visit [www.medicalboard.gov.au](http://www.medicalboard.gov.au)

**Helen Baxter**  
Medico-legal Adviser

## References

- 1 Communiqué: Sixth meeting of the Medical Board of Australia 24 March 2010, [www.medicalboard.gov.au/index.php](http://www.medicalboard.gov.au/index.php)
- 2 Full version available at [www.medicalboard.gov.au/documents/Good%20Medical%20Practice%20-%20Australian%20Medical%20Council.pdf](http://www.medicalboard.gov.au/documents/Good%20Medical%20Practice%20-%20Australian%20Medical%20Council.pdf)
- 3 Full version available at [www.medicalboard.gov.au/documents/AHPRA%20Codes%20and%20guidelines%20Medical.pdf](http://www.medicalboard.gov.au/documents/AHPRA%20Codes%20and%20guidelines%20Medical.pdf)
- 4 S140 National Law

# Introducing Our Support and Education Program for You

The *Partnering Your Professionalism Program* is MDA National's newest and most innovative education and support program designed to benefit both the professional lives and wellbeing of Australian Doctors.

A career in medicine, whilst rewarding, can be very challenging. The early years of a medical career can be especially demanding. The transition from medical school to a junior doctor includes many stressors and it can be difficult to maintain the balance between your professional life and your wellbeing.

YOUR CAREER

YOUR PRACTICE

YOUR SELF

YOUR LEARNING

YOUR COMMITMENT

The *Partnering Your Professionalism Program* aims to alleviate these challenges by exploring areas where your professional life, at all stages, can be impacted by external factors including the medico-legal environment.

## How Will This Program Benefit You?

MDA National will assist you to negotiate the challenges that you may face as a junior doctor including wellbeing, work, life, learning and performance with a comprehensive range of learning modules that sit under five main themes:

- **Your Career**
- **Your Practice**
- **Your Self**
- **Your Learning**
- **Your Commitment**

## How Can You Take Advantage Of This Program?

Be one of the first to have a session held in your hospital by contacting your State Liaison Manager for more information.

The *Partnering Your Professionalism Program* is available for ongoing release from July 2010.

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## Have You Renewed?

You will have received your 2010/2011 renewal documents in the mail and if you haven't already, you need to renew now to ensure there are no interruptions to your medical indemnity coverage.

### Renew Online

With our Member Online Services (MOS), you can renew and pay your 2010/2011 Professional Indemnity Insurance Policy. Visit [www.mdnational.com.au](http://www.mdnational.com.au)

If you have any questions about your renewal contact us on 1800 011 255.

# Blood Alcohol Testing In The ED

**What would you do in each of the following situations?**

## Case 1

The 17 year old patient was involved as a driver in a motor vehicle accident (MVA). He was brought to the regional Emergency Department (ED) by ambulance. He was unconscious and had massive facial injuries. He was haemorrhaging severely and his airway was partially obstructed. The patient required complex and intensive management to stabilise his ventilation and circulation. Arrangements were made for the patient to be retrieved and transferred to a tertiary trauma centre as quickly as possible.

**Q: Would you take blood for blood alcohol testing in this situation?**

## Case 2

The 18 year old girl was riding her horse along a road when a car veered towards her, causing her horse to rear and the girl to fall on the road. The girl was transferred to the ED where she was diagnosed with a pelvic fracture.

**Q: Do you need to take a blood alcohol sample?**

## Case 3

One of your friends dropped by your apartment for a few drinks after work. During the course of the evening the friend said he had been involved in a MVA as a driver a few hours earlier when another car ran into the back of his car. He tells you that his neck is now feeling a bit sore and he has numbness in his fingers. You think your friend should be reviewed by a doctor and, because it is late, you suggest he goes to the local ED.

**Q: Will your friend (who has now consumed a lot of alcohol) be required to undergo blood alcohol testing if he goes to the ED?**

## Discussion

JMOs who are working in the ED should familiarise themselves with the legislation in their state or territory with regard to taking, labelling and storing blood samples for testing for blood alcohol levels.

As noted in the table on the next page, the legislation varies in each state and territory. In general terms, in all jurisdictions, patients who are involved in a MVA and who attend hospital/ED for treatment are required to provide a blood sample for the purposes of blood alcohol testing. In all states and territories, except South Australia, the doctor taking blood is granted protection from liability if a sample is taken. In some jurisdictions, a doctor who fails to take a blood alcohol sample may be charged with an offence, unless a reasonable excuse for non-compliance exists.

Members are encouraged to review the legislative requirements and their hospital policy with respect to compulsory blood alcohol testing when they commence work in the ED.

## Answers

### Case 1

No, in this situation it is likely that a 'reasonable excuse' exists because taking the blood sample would be detrimental to the person's medical condition and treatment.

### Case 2

In NSW only, and not in other states and territories. In NSW, blood alcohol testing is required in a road accident or road related area involving a motor vehicle, other vehicle or a horse.

### Case 3

The answer depends on the time since the MVA occurred. It should be noted that the time within which the MVA occurred and the requirement to take a blood alcohol sample varies from state to state - see table on next page.

**Dr Sara Bird,**  
Manager, Medico-Legal and Advisory Services

## Compulsory Blood Alcohol Testing Following MVA

STATE	LEGISLATION	MIN AGE	MAN-DATORY SAMPLE?	CRITERIA FOR MANDATORY SAMPLING/OTHER REQUIREMENTS	PROTECTED FROM LIABILITY IF SAMPLE TAKEN	REASONABLE EXCUSES FOR NON-COMPLIANCE
ACT	<i>Road Transport (Alcohol &amp; Drugs) Act 1977</i>	≥15	✓	Driver involved in an accident involving motor vehicle. Accident occurred < 6 hours before the patient arrived at the hospital. Within 2 hours after the time the patient arrives at the hospital.	✓	Sampling would be detrimental to medical condition. If person objects (unless based on religious, or conscientious grounds or medical grounds) after being advised will constitute an offence. Sample already been taken. Unable to comply due to behaviour of patient. Reasonable cause.
NSW	<i>Road Transport (Safety and Traffic Management) Act 1999</i>	≥15	✓	Vehicle driver/rider, in driving seat and attempting to put vehicle in motion, driver accompanying learner driver and pedestrian. As soon as practicable but < 12 hours after accident.	✓	Any reasonable cause. Blood sample already taken by another doctor or nurse. Sampling would prejudice proper care and treatment. Doctor reasonably believes person under 15. Doctor did not believe person had been involved in accident. More than 12 hrs passed since accident. Doctor couldn't reasonably determine which of 2 or more persons involved in accident they were required to take sample from. No reasonable opportunity due to person's behaviour.
NT	<i>Traffic Act 1987</i>	>15	✓	Injuries which may have been received in a crash involving a motor vehicle. As soon as practicable.	✓	Concentration of alcohol in blood is already known. Sampling would be detrimental to person's medical condition. Injuries were not received in a MVA/ MVA occurred more than 12 hours before person entered hospital.
QLD	<i>Transport Operations (Road Use Management) Act 1995</i>	N/A	✗	<b>Not mandatory</b> but lawful for police to request member to take blood without patient consent where patient has driven or attempted to drive or was in charge of, a motor vehicle, tram, train or vessel.	✓	Sampling would be prejudicial to treatment. Reasonable excuse. Breath analysis/ Saliva analysis has been taken and a certificate completed.
SA	<i>Road Traffic Act 1961</i>	>14	✓	Person suffered injury/ admitted to hospital for treatment. Within 8 hours of MVA and as soon as practicable take blood sample. If patient reported to coroner as DOA, blood sample must still be taken by doctor reporting to coroner.	✗	Blood sample already taken by another doctor or nurse.
TAS	<i>Road Transport (Alcohol &amp; Drugs) Act 1970</i>	N/A	✗	<b>Not mandatory</b> but lawful for police to request member to take blood without patient consent if within 3 hours of MVA. If no sample taken doctor must provide police with an opinion about whether the person has alcohol, or illicit drug in his body and answer questions.	✓	Prejudicial to proper care and treatment of the person.
VIC	<i>Road Safety Act 1986</i>	>15	✓	Injuries which were received in an accident involving a motor vehicle.	✓	Sampling would prejudice proper care and treatment. Police advised doctor preliminary breath test did not indicate prescribed concentration of alcohol was exceeded. Doctor advised patient was an occupant/ not in charge of any vehicle. Blood sample already taken by another doctor or nurse.
WA	<i>Road Traffic Act 1974</i>	N/A	✗	<b>Not mandatory</b> but lawful for police to request driver or person in charge of motor vehicle to give blood sample. Within 4 hours of driving.	✓	

# The JMO, The Stripper and The Line in the Sand

## Case History

One of our JMO Members recently raised an interesting dilemma:

During his plastic surgery term, the JMO was involved in the care of a young female patient who had undergone a breast augmentation. The patient's surgery and post operative course was uneventful. While he was removing the patient's sutures, just before her discharge from hospital, the patient told the JMO that she was a stripper and proceeded to invite him to her "Gentleman's Club". The patient left him her card, which he threw in the waste bin.

Nothing happened over the months, until one Saturday night when at a "Buck's Night" for his friend, the JMO attended a strip club. Guess who was there? The former patient who had the breast augmentation said "Hello Doc" ... the JMO wanted to disappear through the cracks in the floor. She gave the JMO her card with her mobile phone number written on it and asked him to contact her. Again he threw the card away.

His query: was he right with his actions? If by chance he went out with her and commenced a sexual relationship, could there be any ramifications for his medical registration? Is there anything he needs to worry about (apart from keeping away from strip clubs - author's addition)?

## Discussion

Sexual relationships between doctors and patients have always been condemned. They are considered to be a serious professional boundary violation. Indeed, the Hippocratic Oath states:

"Whatever houses I may visit, I will come for the benefit of the sick, remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons, be they free or slaves".

A sexual relationship between a doctor and a current patient is a serious breach of professional conduct which is likely to result in a doctor losing their medical registration and their ability to practice as a doctor. The reason for this is that the medical profession has acknowledged that the special relationship of trust between doctor and patient, and the power imbalance between the two parties, must not be abused by the doctor establishing any type of

improper or sexual relationship. This prohibition has recently been widely re-stated. Good Medical Practice: A Code of Conduct for Doctors in Australia, which was published in July 2009 and recently adopted by the Medical Board of Australia, states:

"Professional boundaries are integral to a good doctor-patient relationship...

Good medical practice involves:

...Never using your professional position to establish or pursue a sexual, exploitative or other inappropriate relationship with anybody under your care. This includes those close to the patient, such as their carer, guardian or spouse or the parent of a child patient".

Importantly, the mandatory notification of colleagues which will be introduced on 1 July 2010 as part of the National Registration and Accreditation Scheme for the Health Professions, requires health practitioners to report to the Board any practitioner who has "engaged in sexual misconduct in connection with the practice of the practitioner's profession". This new legislative requirement reinforces the existing ethical and professional responsibilities of doctors. Engaging in sexual activity with a current patient will constitute sexual misconduct, regardless of whether the patient consented to the activity or not. Sexual misconduct includes making sexual remarks, touching patients in a sexual way, or engaging in sexual behaviour in front of a patient. Engaging in sexual activity with a person who is closely related to a patient under the practitioner's care may also constitute misconduct.

However, the case presented by our JMO involved a former patient. What professional conduct is expected and required in this situation? It should be noted that engaging in sexual activity with a person formerly under a practitioner's care (i.e. after the termination of the doctor-patient relationship) may also constitute sexual misconduct. Relevant factors that will be taken into consideration will include the vulnerability of the patient due to issues such as age, capacity and/or health conditions; the extent of the professional relationship, e.g. a one-off treatment in an emergency department compared to a long term program of treatment; and the length of time since the doctor-patient relationship ceased.

**Dr Sara Bird,**  
Manager, Medico-Legal and Advisory Services



### Have Your Say

What do you think the JMO should do in this situation? Do you think that there would be professional ramifications for the JMO if he commenced a sexual relationship with his former patient? We'd appreciate hearing from you. You can email your comments to [firstdefence@mdanational.com.au](mailto:firstdefence@mdanational.com.au)

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### References

Breen KJ, Corder SM, Thomson CJH, Plueckhahn VD. Good Medical Practice: Professionalism, Ethics and Law. Cambridge University Press, Port Melbourne, 2010.  
Good Medical Practice: A Code of Conduct for Doctors in Australia. Available at [www.goodmedicalpractice.org.au](http://www.goodmedicalpractice.org.au)  
Guidelines for mandatory notifications. Medical Board of Australia. Available at [www.medicalboard.gov.au](http://www.medicalboard.gov.au)

# Am I covered for... Locum Work?

As a junior doctor or doctor in training, you will probably want to undertake locum work at some time during your postgraduate years. Locum work is a great opportunity for you as a young doctor to use your skills, spend time in different locations and supplement your income. Many of our Members contact us to find out whether they are indemnified for this work.

The Professional Indemnity Insurance Policy provides indemnity to doctors who are in our Post Graduate or Doctors in Specialist Training categories for both employer indemnified work and private practice, but there are some limitations.

## Practising in a private hospital

If your locum work is in a private hospital or clinic, you can generate up to \$50,000 in billings or income per annum from work undertaken outside your normal employer indemnified hospital position or training program for no additional cost. Cover is available provided you have the appropriate training and/or qualifications for the work you will be doing, but we do exclude cover for private cosmetic or obstetric practice. If your billings or income exceed or are likely to exceed the annual limit, you will need to contact us to discuss your cover, and you may need to change your category.

## Practising in a public hospital

If your locum work is in a public hospital you will usually be entitled to indemnity from the state or Government under the hospital's indemnity scheme. It's always a good idea to check your individual entitlements with the hospitals you locum for as there may be situations

where the hospital's indemnity scheme does not extend to protect you. Your locum agency should be able to direct you to the best person within the hospital to advise you on these matters.

If you are entitled to indemnity under the hospital's indemnity scheme, you will usually be covered for the costs of a claim made against you by a patient but any other cover you receive may vary based on your employer and/ or your individual employment agreement.

If you are not entitled to indemnity through your public hospital employer, you should contact us immediately to discuss your circumstances and will need to complete a Treatment of Public Patients Proposal and return it to us with written confirmation from the hospital regarding your indemnity status. An additional premium may apply if this cover is issued.

## What else is covered?

Your policy also provides you with cover for investigations and inquiries arising from both your public and private practice. This may assist with matters such as Coronial inquiries, Medical Board inquiries, Hospital inquiries, Disciplinary Tribunals, and Royal Commissions. You also have access to our Medico-Legal Advisory Service any time, every day.

## Do you have any questions?

If you have any questions in relation to indemnity for your locum work or any other aspect of your cover with MDA National Insurance, contact us on our freecall number 1800 011 255.

**Erin Ahern and Rachel Northcott Underwriters**

**In the next issue:** Am I covered for... Good Samaritan Acts?



# Contact your State Liaison Manager

MDA National's team of State Liaison Managers are available to provide support to Members through provision of educational and risk management activities and sponsorship of both educational and social activities.

If you have any suggestions or opportunities for events at your hospital or within your Area Health Service that MDA National could be involved with, contact your State Liaison Manager on 1800 011 255.

All State Liaison Managers can be contacted on

## Freecall 1800 011 255



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**Freecall: 1800 011 255 Member Services Fax: 1300 011 244**

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