

# defenceupdate

Publication for MDA National Members

Winter 2016

 **MDA National**  
Support Protect Promote

**Time to Renew**  
**Effective Conflict Resolution**  
**to Maintain Healthy Teams**  
**Beware Advertising Your Wares**  
**Female Genital Mutilation**  
**and Female Genital**  
**Cosmetic Surgery**

**A Mentally Healthy**  
**Workplace Culture**  
**Medico-legal Feature:**  
**Mandatory Reporting**  
**of Medical Practitioners**  
**MDA National CaseBook**



## Editor's Note

MDA National's Medico-legal Advisers and Claims Managers are acutely aware of the impact of medico-legal matters on the wellbeing of our Members. And, on occasion, a Member's ill health can lead to medico-legal problems. Our collaboration with *beyondblue* is part of MDA National's broader commitment to support and promote doctors' health and wellbeing. On page 10 is an outline from *beyondblue* about their initiatives to promote mentally healthy workplace cultures, and Dr Geoff Toogood discusses his personal journey from ill health to recovery.

Confusion and uncertainty still surround the legal obligations of doctors and employers in relation to the mandatory reporting of health practitioners. Our pull-out feature (pages 11-14) provides a summary of the mandatory reporting requirements, with a particular focus on the obligation to report impaired practitioners. MDA National continues to advocate for the national introduction of the mandatory reporting exemption for WA doctors when providing health services to a practitioner-patient.

The impact of the privacy legislation on medical practice continues to represent an area of medico-legal challenges and pitfalls. Our three Casebook articles (pages 15-18) address different areas of clinical practice where this legislation has an impact on doctors and their staff.

Other articles in this edition include your legal obligations if advertising medical services (page 8); the complex legal issues associated with genital surgery (page 9); and tips on how to resolve conflict in the workplace (page 6) which is the focus of our next educational workshop for Members.

And finally, your Membership and Policy are due for renewal by 30 June 2016 - see page 5 for details on how to renew.

**Dr Sara Bird**  
Manager, Medico-legal and Advisory Services  
MDA National



**Defence Update Online**

Visit [defenceupdate.mdanational.com.au](http://defenceupdate.mdanational.com.au).

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# Doctors for Doctors

When you are faced with problems, and threats to your career and professional standing, you want the highest quality of service you can get. This is when you realise the true value of being part of a medical defence organisation (MDO) that cares about you.



At the beginning of medical school, aspiring clinicians often sign up with a number of MDOs as policies are offered freely to them. Although not necessarily aware of what “indemnity” means, they tend to feel it might be important in some inconceivable abstract future. As they move through the prevocational years as junior medical staff, they find medical indemnity comes at a price. The inconceivable abstract future arrives and the indemnity policy becomes relevant - in some cases, very relevant.

## The value of true support

I have no issue admitting that during my first year as an intern, I made clinical mistakes. Inexperienced and unsupervised in a remote rural emergency setting, being the most senior medical person managing complex multi-trauma presentations and cardiac arrests with three months of clinical practice to draw on, your capabilities aren't going to be optimal and errors will occur.

I faced an adverse outcome myself in this setting when a miscommunication with a junior nursing colleague resulted in a patient receiving the wrong drug dosage. The hospital requested me to produce a number of documents explaining what had happened and why, followed by undocumented and unrecorded interviews with hospital staff. On contacting my then medical indemnity provider (who will remain unnamed), they sent me a letter outlining the events and a statement that it was due to a lack of supervision at the hospital.

In what was my first exposure to an adverse outcome, there was no advice on how I should respond to the hospital's information requests; how I could and should approach the patient; or how to regard the nursing staff whose defences were being rapidly constructed. Perhaps, most importantly, there was no guidance on how to raise the systemic issues that had created the error-prone environment, and how such mistakes could be avoided in the future. I concluded that this was the standard one could expect from an MDO.

At renewal time the following year, I joined MDA National - and my preconceptions about MDOs changed rapidly. I soon had the opportunity to work with like-minded individuals who were keen to see patient and practitioner safety supported and protected as a professional responsibility. I had the opportunity to join their President's Medical Liaison Council, a consultative and advisory body that identified medico-legal matters and emerging risks within the profession.

## The value of your involvement

The fact that I was able to have a voice so early in my involvement with MDA National is testament to how we see the importance of our Members' experiences and perspectives. As an MDA National Member, you have a tangible impact and an individual voting right to affect matters important to you and how you practise.

Member feedback drives MDA National's vision and initiatives in almost everything. So by being involved and taking an interest in MDA National, Members may influence the shaping of policies and decisions relating to clinical practice.

The framework governing medical practice is increasingly regulated both formally and informally. Legislative provisions, Medical Board mandates, college guidelines, hospital protocols, and peer-authoritative opinions and conduct vary substantially and are sometimes in conflict. There is no universally “correct” way for a clinician to practise in a dynamic healthcare system.

No matter what situation doctors find themselves in, I hope to continue to support and drive initiatives as a member of MDA National's Mutual Board, so that every doctor feels protected at every stage of their career.

**Dr Patrick Mahar OAM**  
**Dermatology Registrar**  
**MDA National Mutual Board Member**

# Notice Board

## Premium Support Scheme (PSS) - Are You Eligible?



The Australian Government offers the PSS to eligible medical practitioners to assist them in meeting the costs of their medical indemnity insurance. Our *PSS Important Information* booklet can help you determine whether you wish to be considered for the PSS.

In a few simple steps, you can determine whether you're eligible for the PSS by using the PSS Calculator on our website [mdanational.com.au](http://mdanational.com.au) under "Insurance Products". You can also download the *PSS Application Form*.

Any queries? Please contact our Member Services team on **1800 011 255** or email [peaceofmind@mdanational.com.au](mailto:peaceofmind@mdanational.com.au).

## Join Our Live Well Work Well Activities!

You're invited to join our MDA National team for the charity fun runs below. Team members will receive complimentary:

- virtual group training pep-emails on fitness, conditioning and nutrition to keep you motivated
- VIP access to our marquee, including food, refreshments, massages and prizes
- MDA National participant's pack including water bottle, sports shirt and more!



**2016 Run Melbourne**  
MDA National Team  
Sunday 24 July



**Sydney City2Surf 2016**  
MDA National Team  
Sunday 14 August

**Register today, our teams have limited places.\***

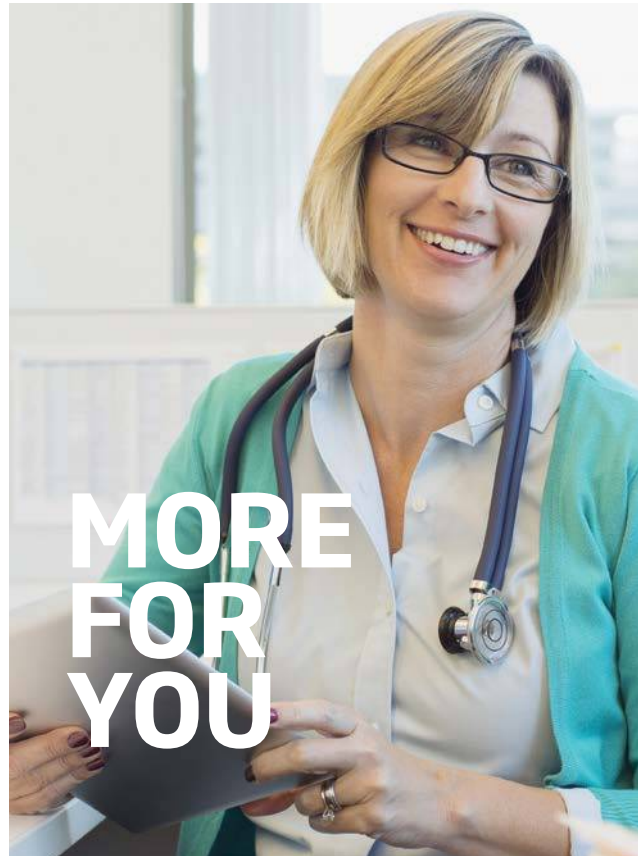


View registration details at: [mdanational.com.au/runteams](http://mdanational.com.au/runteams). Already registered and keen to join our team? Just email your bib number and registration name to:

Sydney City2Surf  
[sydneyc2steam@mdanational.com.au](mailto:sydneyc2steam@mdanational.com.au)

Run Melbourne  
[runmelbourne@mdanational.com.au](mailto:runmelbourne@mdanational.com.au)

\* MDA National Members are required to fund their own registration fee for these events.



From 1 July 2016, Members will enjoy even more cover with the following policy enhancements:

### More Communicable Disease Cover

We've added an additional three communicable diseases to our Professional Indemnity Insurance Policy to protect your medical career, should you have to permanently cease practice or substantially alter your practice due to a diagnosis of:

- HIV
- Hepatitis B
- Hepatitis C
- extremely drug resistant tuberculosis (XDRTB) - **new**
- multi-drug resistant tuberculosis (MDRTB) - **new**
- New Delhi Metallo enzyme enterococci - **new**

### More Cover for Your Practice - Clinical Trials Cover

MDA National's Practice Indemnity Policy now covers civil liability claims against the Practice or an insured person for health care provided as part of a clinical trial or research project carried out with approval of an ethics committee in accordance with the National Health and Medical Research Council (NHMRC) guidelines. The cover does not cover the trial itself or liabilities arising from the sponsorship or administration of the trial, as these would be covered by the trial's indemnity.

# Time to Renew



You should have recently received your 2016 Renewal Notice in the mail. Here are some steps to guide you in renewing your Membership and Policy.

**If you have not received your Renewal Notice or any details are incorrect, please contact our Member Services team prior to the expiry of your Membership and Policy.**

Please ensure you read and understand the Declaration on the Renewal Notice and the Important Information section of your renewal documentation.

## Check that you are in the correct risk category and billings bands for the work you are performing

This may affect your premium and cover under your Policy. You can access a copy of the **Risk Category Guide 2016/17** from the Downloads section of our website: [mdanational.com.au](http://mdanational.com.au). If a change is required to the level of cover you require, we will re-issue you with a revised Renewal Notice.

## Review the risk category changes

We have reviewed the Risk Category Guide for Medical Practitioners and made some changes (effective from 1 July 2016) - these include broadening of cover, inclusion of procedures, and some wording changes to provide greater clarity. Please read the **Risk Category Guide 2016/17** (accessible from the Downloads section of our website: [mdanational.com.au](http://mdanational.com.au)) to ensure you have selected the most appropriate risk category for your practice.

## Ensure you have informed us of all claims, complaints, investigations, employment disputes - or any incidents you are aware of - that may lead to a claim for indemnity under your Policy

Early notification enables us to support you better and can help prevent matters from escalating.

## Review the Policy changes

Please also read the section detailing the summary of Policy changes for 2016/17 which has been included in your renewal documentation.

## Renew your Membership and Policy by 30 June 2016

If the information on your Renewal Notice is correct, you can make your payment by phone, online via our Member Online Services, BPay or direct debit. Your Renewal Notice (page 2) outlines the payment options available to you. If you have set up a direct debit arrangement, we will debit your nominated account on, or shortly after, 1 July 2016.

## Any queries about your Membership or Policy? Need changes to your Renewal Notice?

Our Member Services team is here to assist you. Please contact us on **1800 011 255** from Monday to Friday between 8.30am and 8.00pm (AEST), or email [peaceofmind@mdanational.com.au](mailto:peaceofmind@mdanational.com.au).

For your convenience, your Renewal Notice includes:

- your tax invoice/receipt which is valid upon payment. A receipt will only be sent if you specifically request one
- your Certificate of Insurance which can be used as proof of indemnity upon payment. Once we receive your payment, we will automatically post you a Certificate of Currency. If you renew online, you can print it out immediately after payment.

**Thank you for your Membership and ongoing loyalty. We look forward to continuing to support and protect you.**

*I've been a medical practitioner for several decades and have always been a Member of MDA National. I've constantly found them extremely supportive, probably because they're run by doctors who have a greater understanding of the types of problems we encounter. I've only received three worrying complaints during my career. These always cause extreme anxiety, stress and sleepless nights. However the staff at MDA National, including doctors and lawyers, provided huge support and helped me through the experience. Thankfully, the complaints never eventuated to much, but that doesn't change the fact that I'm very grateful to have MDA National on my side.*

**Dr James Rohr, Nedlands, WA**

# Effective Conflict Resolution to Maintain Healthy Teams

Disagreement between team members needs to be effectively managed at the outset. Repressed conflicts can escalate and become more difficult to resolve.<sup>1</sup> This article outlines the top tips from our new *Win-Win Conflict Resolution* workshop.

**Differences in opinions, values, beliefs, skills, interests, backgrounds and priorities based on different types of personalities, workplaces, specialties, team environments and career stages mean conflict is sometimes unavoidable.**

The following scenarios are based on actual medico-legal claims or referrals.\*

A private practice compromised the health of patients due to inconsistent medical practices caused by bitter infighting. The practice was split in two camps over different approaches to patient care. The acrimony between staff caused a breakdown in communication, respect and professional cohesion.

A doctor had concerns in having to share an office with another colleague when providing confidential patient telephone advice. He felt he was unable to raise the issue with his supervisor due to an ongoing conflict and instead discussed his concerns with multiple junior colleagues in an attempt to create dissent from the ground up.

In the interest of patient safety, a doctor felt he had to speak loudly and quickly to a nurse due to her hearing difficulties. The nurse made a complaint to her manager about the doctor's communication towards her being rude and aggressive.

\* The case scenarios are based on actual medical negligence claims or medico-legal referrals; however, certain facts have been omitted or changed to ensure anonymity of the parties involved.

## Top tips for a constructive resolution

- Use the DESC script to formulate an assertive response.<sup>2</sup>
  - › Objectively **describe** the situation or specific behaviour, e.g. "I have noticed that for the past couple of days you have been 45 minutes late to work".
  - › **Express** how the situation makes you feel and what your concerns are, e.g. "This made me feel frustrated when I had to take on some of your work and it worries me that I won't be able to get my work done as well".
  - › **Suggest** alternative actions and seek agreement, e.g. "Do you think it would be possible for you to get to work on time tomorrow or make up the lost time?"
  - › State the **consequences** in terms of impact on the team, e.g. "When we all pull our weight our team can improve our productivity and patient satisfaction".
- Focus on interests rather than positions. (Positions are what people want, which are often irreconcilable. Interests are why they want it, which may be compatible.<sup>3</sup>) By understanding others' interests you can shift the focus of the conversation to the actual underlying issue which will help when exploring solutions.
- Remove blame which may cause the other person to argue a point by turning "you" statements into "I" messages. For example, say "I felt my suggestions were not acknowledged" rather than "You never listen when I make suggestions".<sup>4</sup>
- Acknowledge emotions. A useful phrase may be "I can see you're upset. It's important to me that we can work together".
- Collaboratively evaluate potential solutions. This creates a shared stake in the outcome which can help to end stalemates and improve commitment to the agreed resolution.<sup>4</sup>



### Top tips for a mediator

You may be called on to mediate conflicts between others, or it may be necessary to restore team functioning.

- Remain neutral. Do not take sides even if you personally dislike or disagree with one of the parties.
- Actively listen with your full attention to show you take the situation seriously. Paraphrase to show you have heard and understood what someone has said.
- Be aware of body language and explain behaviour that is counterproductive, e.g. someone pointing their finger or rolling their eyes can escalate animosity.

### A structured process to mediation

- **Bring both parties together in a private area.** Ensure the room is set up in a way that is conducive to cooperation, e.g. position chairs at an angle to each other so that everyone can see and hear one another, but are not close enough for touching and not face to face (which can feel confrontational).
- **Establish ground rules.** Explain that each person will have a chance to discuss their concerns so there should be no interruptions, and that the process is confidential.
- **Identify key issues.** Allow each party equal and sufficient opportunity to discuss their concerns from their point of view. Make a list of the issues and, if possible, prioritise them in order of urgency.
- **Understand both sides.** Invite each party to explain how they feel about each item on the list. The objective is for each party to understand where the other is coming from.
- **Find a resolution for each issue that is acceptable or at least tolerable to both parties.** Invite each individual to suggest solutions and their consequences. Discuss options that seem to meet both parties' interests. Get both parties to agree to the solution.

Conflict within a team can cause members to become distracted and can negatively affect processes and patient care through breaks in communication, cooperation, and processing of information.<sup>5</sup> When conflict is handled well, problems are not only resolved but team relationships are potentially strengthened.<sup>6</sup>

See page 23 or visit [mdanational.com.au](http://mdanational.com.au) for upcoming *Win-Win Conflict Resolution* workshops.

### MDA National Education Services

- 1 Greer L, Saygi O, Aldering H, de Dreu C. Conflict in Medical Teams: Opportunity or Danger? *Med Educ* 2012;46(10):935-42. Available at: [onlinelibrary.wiley.com/doi/10.1111/j.1365-2923.2012.04321.x/pdf](http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2923.2012.04321.x/pdf)
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# Beware Advertising Your Wares

**In order to protect public interest, the Australian Health Practitioner Regulation Agency (AHPRA) and the National Boards administer the Health Practitioner Regulation National Law (the National Law).**

Under the National Law, a regulated health service must not advertise in a way that:

- is false, misleading or deceptive
- uses gifts, discounts or inducements without the terms and conditions of the offer
- uses a testimonial or purported testimonial
- creates an unreasonable expectation of beneficial treatment
- directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Clear and thorough guidelines<sup>1</sup> have been developed to help medical practitioners understand their obligations.

## Complaints about advertising

AHPRA received 300 complaints about advertising in 2014/15<sup>2</sup> across all regulated health professions. This was a decrease from 547 in the previous year.

## Penalties

A recent media statement by AHPRA and the Chiropractic Board stated:<sup>3</sup>

*Over the last five years since the National Scheme began, the vast majority of practitioners have responded to the first AHPRA warning letter and amended their advertising, eliminating the need for and cost of further regulatory action.*

*If the practitioner fails to amend or remove their advertising, the Board considers and often takes possible disciplinary action - either for breaches of professional conduct under the National Law or for a statutory offence, which can be prosecuted through the magistrate's court.*

Breaching the National Law's advertising requirements carries a maximum fine of \$10,000 for a body corporate or \$5,000 for an individual, per offence.

AHPRA has referred several more serious matters to the Australian Competition and Consumer Commission (ACCC).

Besides the National Law, medical practices' advertising must also comply with:

- the Australian Consumer Law, administered by the ACCC - in particular, regarding misleading or deceptive advertising
- laws administered by the Therapeutic Goods Administration - in particular, restrictions on advertising medicines.

**Karen Stephens**  
Risk Adviser, MDA National

## FAQs

### Is my practice website considered to be advertising?

Yes.

### Can I use images in advertising?

Yes. Images of a real patient (who has provided written consent) are less likely to be misleading than stock photos or images of models. The guidelines state that "before and after" shots have a significant potential to be misleading or deceptive, and encourage the unnecessary use of health services. Before and after shots should be as similar as possible in content, camera angle, background, framing, exposure, posture, clothing, make-up, lighting and contrast.

### What about testimonials on social media?

While testimonials are prohibited, doctors are not responsible for removing (or trying to have removed) unsolicited testimonials published on a website or in social media over which they do not have control. For example, doctors do not have control over the RateMDs website (ratemds.com), but they do have control over their own Facebook page.<sup>4</sup>

### Should advertisements for surgical procedures contain a warning statement?

Yes. Advertisements for a surgical (or "an invasive") procedure must include a clearly visible warning, with text as specified in the AHPRA guidelines.<sup>5</sup>

### Can I use the terms "specialist" or "specialising in"?

You cannot use the title "specialist" unless you hold specialist registration as recognised under the National Law. The guidelines note that the phrase "specialises in" may be misleading or deceptive, and suggest the alternate phrases "substantial experience in" or "working primarily in".

- 1 Australian Health Practitioner Regulation Agency. Guidelines for Advertising Regulated Health Services. May 2014. Available at: [medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-advertising-regulated-health-services.aspx](http://medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-advertising-regulated-health-services.aspx)
- 2 Australian Health Practitioner Regulation Agency. AHPRA Annual Report 2014/15. Available at: [ahpra.gov.au/annualreport/2015/](http://ahpra.gov.au/annualreport/2015/)
- 3 AHPRA and Chiropractic Board take Action on False or Misleading Advertising [Media Statement] - 18 January 2016. Available at: [ahpra.gov.au/News/2016-01-18-complaints.aspx](http://ahpra.gov.au/News/2016-01-18-complaints.aspx)
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- 5 Australian Health Practitioner Regulation Agency. Guidelines for Advertising Regulated Health Services. May 2014. Appendix 6, p22. Available at: [medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-advertising-regulated-health-services.aspx](http://medicalboard.gov.au/Codes-Guidelines-Policies/Guidelines-for-advertising-regulated-health-services.aspx)



## Legal Issues

# Female Genital Mutilation and Female Genital Cosmetic Surgery

Female genital mutilation (FGM) is currently a criminal offence in Australia.<sup>1</sup> The penalties for FGM range from 7-12 years' imprisonment.

While there is some variation in each state and territory, the legislation is broadly consistent in defining FGM as including any of the following:

- a) a clitoridectomy
- b) excision of any other part of the female genital organs
- c) infibulation or any other similar procedure
- d) any other mutilation of the female genital organs.

Depending on the state or territory, the FGM legislation provides exceptions relating to medical procedures:

- for genuine therapeutic purposes
- if necessary for the health of the person
- performed on a person in labour or who has just given birth, and for medical purposes connected with that labour or birth
- for sexual re-assignment procedures.

### Culture or religion is no defence for FGM

Cultural, religious or other social custom is not regarded as a genuine therapeutic purpose. It is not a defence to a charge of FGM that the person on whom the procedure was performed, or their parent, consented to the procedure.

Recently, there has been a successful prosecution under the FGM legislation in NSW.<sup>2</sup>

A 2013 review by the Attorney General's Department<sup>3</sup> noted the broad definition of FGM and the removal of consent as a defence, and that this raises issues in relation to female genital cosmetic surgery (FGCS) which may involve procedures technically very similar to those defined in the FGM legislation. The review further notes that the status of these procedures under existing laws is untested and is a complex issue.

### FGCS is on the rise in Australia

The incidence of FGCS in Australia is increasing<sup>4</sup> and a number of clinics advertise various procedures. It is arguable that some of the FGCS procedures fall within the definition of FGM and some of the procedures may be contrary to the FGM legislation, if the exceptions under the FGM legislation do not apply. The absence of comprehensive clinical guidelines for FGCS increases the risk that practitioners who perform these procedures may be prosecuted.

### The doctor's role in educating and counselling patients

Concern has been expressed that while there has been a significant increase in demand for FGCS, what is involved in these procedures and the associated risks and benefits is not clear.<sup>5</sup> A role for practitioners in educating and counselling patients has been identified, and resource material for General Practitioners and other health professionals is available.<sup>5,6,7</sup> In 2015, the RACGP produced guidelines on FGCS, and RANZCOG updated their statement on vaginal rejuvenation and cosmetic vaginal procedures.

### Summary points

- Medical practitioners who are involved in FGCS should ensure they are familiar with the professional guidelines and the FGM legislation in their state or territory.
- If you are uncertain as to how to proceed in a particular situation, we encourage you to contact our Medico-legal Advisory Services team for advice.

Medical practitioners who are performing cosmetic procedures need to also be aware of new Medical Board Guidelines for Cosmetic Procedures effective 1 October 2016 – see our Medico-legal Blog post at [mdanational.com.au/resources/blogs/cosmetic-procedures](http://mdanational.com.au/resources/blogs/cosmetic-procedures).

See also the article in our upcoming Spring/Summer 2016 edition of *Defence Update*.

**Karen McMahon**  
Medico-legal Adviser (Solicitor)  
MDA National

For a full list of references visit [defenceupdate.mdanational.com.au/articles/legal-issues-fgm-fgcs](http://defenceupdate.mdanational.com.au/articles/legal-issues-fgm-fgcs).

# A Mentally Healthy Workplace Culture

The mental health of our medical profession has been an ongoing concern to *beyondblue*. Findings from their landmark research found that one in five medical students and one in 10 doctors had suicidal thoughts in a 12-month period.

## The mental health stigma

Creating mentally healthy work practices across large medical facilities is a challenge for even the most motivated leadership teams. It is made more complex by the stigma of seeking support for mental health issues among medical professionals who must work at their peak under pressure for long hours alongside peers and, in many circumstances, competitors. Seeking support can be seen as a sign of weakness or an inability to cope.

*beyondblue* approached leaders of major health organisations across Australia with our mental health workplace initiative, Heads Up, and appealed to them to change their workplace cultures.

*beyondblue* has now joined several hospital Grand Rounds to spread the word among medical communities that mental health is just as important as physical health.

Research shows that one of the most effective ways for organisations to reduce mental health stigma is to invite people with a personal experience of recovery and management of a mental health condition to share their stories in the workplace.

## Sharing a personal experience

"As a volunteer *beyondblue* speaker, I've shared my experience of depression and anxiety with hundreds of people - but doing so in front of my medical peers at hospital Grand Rounds has been particularly confronting and rewarding," said Dr Geoff Toogood.

"Over many years, there were times when I suspected I was struggling with depression, but I didn't seek support because I was afraid of the repercussions on my work as a Cardiologist. I understand the stigma attached to a depression diagnosis among medical professionals all too well.

"A few years ago I was separating from my wife and had recently taken on a specialist job role. I noticed I was gradually losing interest in the things I loved and withdrawing from people in my life. It was a struggle to get out of bed, and even very simple tasks seemed near impossible.

"I felt trapped in despair and began considering suicide, especially in the early hours of the morning. I didn't want to die, but I didn't want to live with the painful feelings I was experiencing. I didn't open up to anyone about this or get help for about two years. I was afraid I would lose my job and my practice if word got out."

**Completing a *beyondblue* online checklist that measures distress made Dr Toogood realise he needed support urgently.**

# Heads up

THE MENTALLY  
HEALTHY  
WORK  
PLACE ALLIANCE



"I saw my GP who recommended I take time off work and seek further support. I took time off work although I didn't feel supported in this by all of my employers. It staggers me how little some people in the medical profession understand mental illness. Having said this, the support I did receive made me feel far less alone in what I was going through.

"As medical practitioners, we need to recognise our own mental health issues when they occur and have the courage to seek help - but when we do, our colleagues should support our courage. It is what we would expect of our patients.

"I recovered significantly after six months of treatment. Returning to work was important to me because it's a great part of my life's purpose; to help contribute to people achieving their best possible health. It seems strange to me now that I denied myself that, because I was afraid of what others would think."

## Heads Up for mental health

The Heads Up website - [heads.up.org.au](https://heads.up.org.au) - developed by *beyondblue* in collaboration with the Mentally Healthy Workplace Alliance, provides free practical information and resources to help organisations to reduce stigma and create mentally healthy workplaces.

The website also has information and tools to:

- help individuals look after their own mental health
- weigh up the pros and cons of disclosing a mental health condition to their boss
- assist a colleague who may be struggling.

The site has a dedicated page for hospitals - [heads.up.org.au/doctors](https://heads.up.org.au/doctors).

Mental health professionals are available at the *beyondblue* Support Service.

- 24-hour phone line: **1300 22 4636**
- Online chat (3.00pm-12.00am AEST): [beyondblue.org.au/get-support](https://beyondblue.org.au/get-support)

**This article has been provided by *beyondblue*.**

Supporting, protecting & promoting doctors' mental health

# Mandatory Reporting of Health Practitioners

All registered health practitioners have a legal obligation to report any other health practitioner who has behaved in a manner that constitutes notifiable conduct.

# Mandatory Reporting of Health Practitioners

## What is notifiable conduct?

Section 140 of the National Law defines notifiable conduct as when a practitioner has:

- a) practised the practitioner's profession while intoxicated by alcohol or drugs; or
- b) engaged in sexual misconduct in connection with the practice of the practitioner's profession; or
- c) placed the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment;\* or
- d) placed the public at risk of harm because the practitioner has practised the profession in a way that constitutes a significant departure from accepted professional standards.

\* Section 5 of the National Law defines impairment for a practitioner as meaning a person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect a person's capacity to practise the profession.

## Who is required to report notifiable conduct?

The mandatory notification obligation applies to all registered health practitioners and employers of practitioners. For practitioners who are reporting notifiable conduct, a reasonable belief (see the section on reasonable belief) about the conduct or impairment must be formed in the course of practising the profession.

The obligation to report applies to practitioners in all health professions, not just those in the same profession as the practitioner. It also applies where the notifying practitioner is the treating practitioner for a practitioner-patient, except in Western Australia and Queensland in certain circumstances (see the section on exceptions).

There is also a mandatory obligation for education providers and health practitioners to report a student with an impairment that may place the public at substantial risk of harm.

## What is reasonable belief?

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:
  - a) all known considerations relevant to the formation of a belief are taken into account including matters of opinion, and
  - b) those known considerations are objectively assessed.
4. A just and fair judgement that reasonable grounds exist in support of a belief can be made when all known considerations are taken into account and objectively assessed.

A reasonable belief requires a stronger level of knowledge than a mere suspicion. Generally, it would involve direct knowledge or observation of the behaviour which gives rise to the notification or, in the case of an employer, it could also involve a report from a reliable source(s). Mere speculation, rumours, gossip or innuendo are not enough to form a reasonable belief.

A reasonable belief has two elements:

- an *objective* element - that there are facts which could cause the belief in a reasonable person
- a *subjective* element - that the person making the notification actually has that belief.

A notification should be based on personal knowledge of facts or circumstances that are reasonably trustworthy and that would justify a person of average caution, acting in good faith, to believe that notifiable conduct has occurred or that notifiable impairment exists. Conclusive proof is not needed.

The professional background, experience and expertise of the practitioner, employer or education provider will also be relevant in forming a reasonable belief.

## Are there any exceptions to the requirement to make a mandatory notification?

The exceptions relate to the circumstances in which the health practitioner forms the reasonable belief. They arise where the practitioner who would be required to make a notification:

- a) is employed or engaged by a professional indemnity insurer, and forms the belief because of a disclosure in the course of a legal proceeding or the provision of legal advice arising from the insurance policy
- b) forms the belief while providing advice about legal proceedings or the preparation of legal advice
- c) is exercising functions as a member of a quality assurance committee, council or other similar body approved or authorised under legislation which prohibits the disclosure of the information
- d) reasonably believes that someone else has already made a notification
- e) is a treating practitioner, practising in Western Australia; or
- f) is a treating practitioner, practising in Queensland in certain circumstances.

In Western Australia, practitioners are not required to make a mandatory notification when their reasonable belief about misconduct or impairment is formed in the course of providing health services to a health practitioner or student.

In Queensland, practitioners are not required to make a mandatory notification when their reasonable belief is formed as a result of providing a health service to a health practitioner, where the practitioner providing the service reasonably believes that the notifiable conduct relates to an impairment that will not place the public at substantial risk of harm and is not professional misconduct.

**How do I make a notification?**

In every state and territory except Queensland, notifications should be made to the Australian Health Practitioner Regulation Agency (AHPRA) which will then refer the notification to the relevant National Board. In Queensland, notifications are made to the Office of the Health Ombudsman.

The notification should include the basis for making the notification - i.e. practitioners, employers and education providers must document the reasons for the notification, including the date and time they noticed the conduct or impairment.

You can download a notification form from the AHPRA website at: [ahpra.gov.au/notifications/make-a-notification.aspx](http://ahpra.gov.au/notifications/make-a-notification.aspx).

**Am I protected if I make a notification?**

The National Law protects practitioners, employers and education providers who make notifications in good faith (well intentioned or without malice). Section 237 of the National Law provides protection from civil, criminal and administrative liability, including defamation. Making a notification is not a breach of professional ethics or a departure from accepted standards of professional conduct. Legally mandated notification requirements override privacy laws and confidentiality.

Notifications that are frivolous, vexatious or not in good faith are not protected and may be subject to disciplinary action.

**What if I fail to make a notification?**

There are no penalties prescribed under the National Law for a practitioner who fails to make a mandatory notification. However, a practitioner who fails to make a notification when required to do so may be subject to action by their registration Board.<sup>1</sup>

If AHPRA becomes aware of a failure by an employer to notify notifiable conduct, it must give a written report about the failure to the responsible Minister for the jurisdiction in which the notifiable conduct occurred. As soon as practicable after receiving such a report, the responsible Minister must report the employer's failure to notify to a health complaints entity, the employer's licensing authority or another appropriate entity.

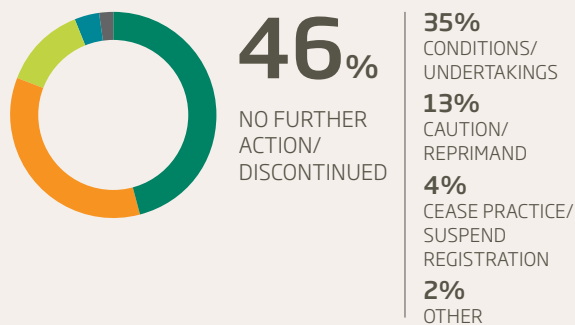
**What are mandatory notifications about and what are the outcomes?**

In 2014/15, mandatory notifications comprised 10% of the 8,426 notifications made to AHPRA about health practitioners.<sup>2</sup> Interestingly, this represented a 27% reduction in the number of mandatory notifications received in the previous 12 months.

**Mandatory notifications about doctors involved:**



**The outcomes of mandatory notifications about doctors included:**



*The content of this article contains summarised information from the AHPRA National Board guidelines for registered health practitioners: Guidelines for Mandatory Notifications. March 2014. Available at: [ahpra.gov.au/News/2014-02-13-revised-guidelines-code-and-policy.aspx](http://ahpra.gov.au/News/2014-02-13-revised-guidelines-code-and-policy.aspx)*

1 See case study article: McMahon, K. Failure to Make a Mandatory Notification. *Defence Update* Winter 2015:15. Available at: [defenceupdate.mdanational.com.au/en/articles/mandatory%20notification%20failure](http://defenceupdate.mdanational.com.au/en/articles/mandatory%20notification%20failure)  
 2 Australian Health Practitioner Regulation Agency. AHPRA Annual Report 2014/15. Available at: [ahpra.gov.au/annualreport/2015/](http://ahpra.gov.au/annualreport/2015/)

# Impairment Explained

The National Law defines impairment as meaning a person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect a person's capacity to practise the profession.

A physical or mental health condition, disorder or disability does not equate to impairment under the National Law, unless it has an impact on the practitioner's capacity to safely practise their profession. With appropriate treatment, many practitioners can practise safely with an illness or disability.

In order to trigger a mandatory notification, an impaired practitioner must have placed the public at risk of substantial harm, as a result of their impairment. "Substantial harm" means considerable harm, such as a failure to correctly diagnose or treat a patient. The context of the practitioner's work is also relevant. If the employer knows of the practitioner's impairment, and has put safeguards in place such as monitoring and supervision, this may reduce or prevent the risk of substantial harm.

For example:

- a practitioner who has a blood-borne virus who practises appropriately and safely in light of their condition and complies with professional guidelines, standards and protocols would not trigger a notification
- a practitioner who has an illness which causes cognitive impairment that prevents them from practising effectively, and has no insight into their condition, would require a mandatory notification.

## Problems with the mandatory reporting of impairment

Practitioners who are physically or mentally unwell may fail to seek their own treatment for fear that in doing so, they may be reported and ultimately lose their professional livelihood. These concerns may result in a delay in a practitioner seeking necessary medical care, thus increasing the risk to themselves and the patients they serve.

What changes can be made? MDA National has argued that the exception currently enjoyed by treating doctors in Western Australia should be introduced across Australia to minimise the perception (and, at times, the reality) that practitioners should be fearful of seeking treatment. Importantly, this change will bring consistency, making it a genuine National Law.

Further, the wording of the "notifiable conduct" provisions in the National Law should be amended to reflect the intended focus of the legislation on the protection of patients prospectively, rather than examining past conduct; that is, the wording should be changed to "placing the public at risk of substantial harm", rather than "placed".

## Registration renewal: impairment question

One of the questions you are required to answer when you renew your registration by 30 September each year is:

***Do you have an impairment that detrimentally affects, or is likely to detrimentally affect, your capacity to practise the profession?***

If you answer "yes", you will need to provide details of the impairment and how it is being managed. If you are unsure how to answer this question, we recommend you discuss the matter with your treating practitioner(s).

## What do we know about the mandatory notification of impaired practitioners by treating doctors?

A retrospective review of mandatory notifications revealed 8% were made by treating practitioners.<sup>1</sup> Of these, only 20% were made by the practitioner-patient's regular care provider and 80% arose from an encounter during an acute admission, first assessment or a "corridor consultation". The reported practitioner-patients were being treated for mental illness (44%) or substance misuse (39%).

The outcomes of the mandatory notifications by treating practitioners were:

- no further action - 44%
- voluntary agreements with the relevant Board regarding monitoring, treatment or practice restrictions - 30%
- imposition of formal conditions on the practitioner's registration - 22%
- a fine or formal reprimand - 4%.

The authors of the review suggest that although almost half of the treating doctor mandatory notifications resulted in no further action, it would be erroneous to infer that these reports were inappropriate or unfounded. However, it is difficult to see how these notifications could have reached the high threshold for making a mandatory notification.

Members are encouraged to contact our Medico-legal Advisory Services team if uncertain about their obligations in a particular situation.

**Dr Sara Bird**  
**Manager, Medico-legal and Advisory Services**  
**MDA National**

1 Bismark MM, Spittal MJ, Morris JM, Studdert DM. Reporting of Health Practitioners by Their Treating Practitioner under Australia's National Mandatory Reporting Law. *Med J Aust* 2016;204(1):24.e1-24.e5.



## Piggy in the Middle

**A parent's request for a copy of their child's medical records is a common reason why Members contact us for advice. The key challenge in this situation is to avoid getting caught in the crossfire between two parents who are in dispute with one another. That said, the legislative requirements related to accessing medical records can make this difficult to achieve.**

### Case history

You have looked after five-year-old Tom since birth. He has always been brought to consultations by his mother. You are aware that Tom's parents are separated and going through an acrimonious divorce. Your Practice Manager receives a phone call from Tom's father demanding a complete copy of Tom's medical records, citing your obligations under the *Privacy Act 1988*.

### Medico-legal issues

#### **Access to the medical records of children who do not have capacity to make their own health decisions**

In general terms, either parent can obtain a copy of their child's medical records or information about their health care, unless there is an exception to access under the *Privacy Act 1988*. The exceptions that may apply include the following:

- Denying access is required or authorised by law or a court/tribunal order - e.g. a court order may grant custody and access to health information to one parent only.
- Giving access would pose a serious threat to the life, health or safety of any individual - a serious threat is one that poses a significant danger to an individual(s) or the public, and includes harm to physical or mental health.
- Giving access would have an unreasonable impact on the privacy of other individuals - you should not give access to records which contain personal information about individual(s) other than the patient, where disclosing this information would have an unreasonable impact on the privacy of the other individual(s); e.g. the contact details of the other parent or information about the other parent's illnesses.
- Giving access would be unlawful - e.g. this may apply if a notification has been made to the child protection services and the identity of the notifier needs to be protected.

In order to assess whether to provide access to the parent, you may need to contact the other parent to ask if any of the above exceptions apply. The bar to refuse access is high, so it is important to stress that the purpose of contacting the parent is not to seek their permission, but to ensure none of the exceptions apply.

If you refuse to provide access to the medical records, you must give a written response which sets out:

- your reason(s) for refusing to provide access - you do not have to provide reasons to the extent that this would be unreasonable given the grounds for refusal
- how they can make a complaint - your practice's complaints process and/or details of the Office of the Australian Information Commissioner.

#### **Access to the medical records of children and young persons who have capacity to make their own health decisions**

If a young person under the age of 18 years is a "mature minor", i.e. has the capacity to make their own decisions about medical treatment, then the young person's permission must be sought in order to release their medical records to a parent.

### Discussion

In this case, the Practice Manager advised Tom's father to put his request in writing, and that the Practice would need to contact Tom's mother to inform her of his request. Tom's mother confirmed that none of the exceptions applied. The medical records were then provided to the father, following receipt of payment for the costs of printing the records.

### Summary points

- Be wary of a request for a copy of a child's medical records where the parents are separated or divorced, and ensure none of the exceptions to access apply - this may require contacting the other parent.
- Before providing a parent with a copy of their child's medical records, carefully review the records to ensure they do not contain information relating to another person.
- If you are unsure of how to proceed in a particular case, contact our Medico-legal Advisory Services team - you may be able to avoid becoming "piggy in the middle" of a dispute that should not involve you or your practice.



You may also be interested in the recent WA Court ruling against parents' refusal to consent to their child's medical treatment - see our Medico-legal Blog post at [mdanational.com.au/resources/blogs/court-overrules-parents-decision](http://mdanational.com.au/resources/blogs/court-overrules-parents-decision).

**Dr Sara Bird**  
**Manager, Medico-legal and Advisory Services**  
**MDA National**



## Collateral Damage Dealing with Unsolicited Information

Prevention is often better than cure, so we like to share challenging medico-legal issues with our Members before they find themselves in the middle of a dispute.

Collateral information provided by concerned family members can often assist doctors in providing timely clinical care. However, unsolicited information is sometimes volunteered which may not be in the best interests of the patient.

### Case history

You have been treating an elderly patient, Edna, for a number of years – both before and after her husband's death. You have had minor interactions with one or two of Edna's four children when they accompanied Edna to an appointment, but she usually comes to consultations alone. Edna is starting to experience some short-term memory loss, but she still drives short distances and lives independently.

You have a new patient, Tracey, coming in. You have no idea that Tracey is one of Edna's daughters. It is only when you welcome Tracey into the consultation room that she discloses the reason she has come to see you is to discuss concerns about her mother.

Tracey says:

**"Doctor, someone needs to take Mum in hand. Dad left her very comfortable financially, but lately she has been donating large sums of money to the local church and other charities. She's spending our inheritance at a rate of knots!**

**"She's clearly being influenced by someone in the church and I'm concerned that she has lost the plot. This old bloke at the church started coming over to her house and I think he's stealing her money. Here's a copy of a recent bank statement, so you can see how much has been taken from her savings account.**

**"Can't you declare her incompetent and stop her spending so much?"**

### Discussion

So what do you do when a family member volunteers unsolicited information about a patient, and where should you document this information?

The first thing you should do is explain to Tracey that as the purpose of her visit was to discuss her mother, and not her own health, this does not constitute a doctor-patient relationship. Tracey agrees that she has her own GP and is not seeking clinical care. You should then explain that you owe Edna a duty of confidentiality and privacy, and you cannot discuss her personal health information without her express consent, nor can you accept unsolicited information about Edna without her knowledge.

Tracey says, "You can't tell her I came to see you, she will be furious. I just want you to stop her spending so much money!"

At this point there are two options available to you.

1. Make it clear to Tracey that if she wants you to raise these issues with Edna, you will need to advise Edna of the conversation and the concern raised.  
If Tracey agrees to this, you can take note of the concerns (separate to the clinical notes) and raise them with Edna at the next consultation, or even suggest that Tracey comes to the next consultation with her mum. Once you have raised the concerns with Edna, you can clearly document the conversation in the notes with her full knowledge.
2. If Tracey does not want Edna to know about her visit, you can inform Tracey that it is a family matter, not a medical issue, and direct Tracey to the tribunal in your state which deals with guardianship if the problem cannot be resolved within the family.

If Tracey does not want her concerns documented or raised with Edna, you can still make your own enquiries, given that Edna is a vulnerable elderly patient.



## Your duty is to the patient – not to the person providing the unsolicited information.

At your next consultation with Edna, you decide to approach the conversation on a general social and wellbeing basis. You ask, "So how have you been getting on since Bill died?"

Edna replies:

**"It was hard at first, but the kids made sure I had plenty of time with the grandkids to keep me occupied. I recently joined a social club through my local church and I have met some lovely people there, including a man who also recently lost his partner. We have a lot in common."**

**"We have been fortunate through our lives and have healthy grown-up children who have their own families now. We wanted to give back to the community and we have been looking into local charities and trying to distribute some of our money to those most in need."**

You have satisfied yourself that Edna is not being fleeced, without the need to raise Tracy's concerns or to discuss Edna's care without her knowledge or consent.

This is a fictional scenario and life is not always so neatly packaged, but the same principles generally apply.

The issues raised may be legitimate, and the concern may be genuine and well meaning – but whether your patient is elderly, vulnerable or mentally ill, they are still entitled to patient confidentiality, privacy and good clinical care. This means not talking about them with others without their consent and knowledge.

These issues can be very complex. If you are in any doubt about your legal and professional obligations in these circumstances, please contact our Medico-legal Advisory Services team for further advice.

**Nerissa Ferrie  
Medico-legal Adviser  
MDA National**

### General principles

- Your duty is to the patient – not to the person providing the unsolicited information.
- If you receive unsolicited information, either in person or in writing, advise the person that in order to act on the information you will need to disclose the content and the source to the patient. The sooner you have this conversation, the better.
- If you don't have consent to discuss the unsolicited information with the patient, any written material should be destroyed or returned to the person who provided it.
- If the person providing the unsolicited information is also your patient, you should only record information in the clinical notes relevant to that patient's clinical care, e.g. "having difficulty sleeping due to concerns about elderly mother". You should not document anything in the notes of the patient who is the subject of the unsolicited information without first discussing it with them.
- Encourage the friend/relative to raise their concerns directly with the patient, or see if the patient will agree to the friend/relative attending the next consultation where the issues can be raised in an open forum.



## Finding your way Missing Persons, Medical Records and Privacy

### Case history

Your patient has been missing for a month and the police are on the phone. Yes, that patient - the 22-year-old diabetic with a history of IV drug use which had not been disclosed to their family. The police want a copy of the records to assist the investigation. What do you do?

### Discussion

According to the Australian Federal Police,<sup>1</sup> an estimated 35,000 people are reported missing each year in Australia. Thankfully, 99.5% of missing persons are eventually located (85% within a week). Medical records may be requested to assist the search.

Access to medical records which do not have the patient's consent is governed by state and commonwealth privacy legislation and professional standards, including the Medical Board of Australia's Code of Conduct. Third parties requesting records may be completely oblivious as to the obligations a doctor must consider.

You face an unenviable decision - release some or all of the records and face a backlash from the patient if they are found, or refuse to release the records and risk hindering the investigation.

In this case, the police suspected the patient had met with foul play. The GP sought advice and determined that the history of IV drug use was relevant to the enquiries and agreed to release information in the form of a written summary (but not records) to the police. The GP also communicated the strict need not to disclose this information to the public or family. Dental records and other identifying information (orthopaedic plate) were also provided.

### Medico-legal issues

#### Exceptions to duty of confidentiality and privacy under the Commonwealth Privacy Act

In private practice, the *Commonwealth Privacy Act 1988* (Section 16A (1))<sup>2,3</sup> is relevant to missing persons' record requests. The Act contains a number of exceptions whereby a doctor's duty of confidentiality and privacy may be outweighed by public interest in disclosing information (termed "permitted general situations" under the Act).

There is an exception in the Act relevant to locating "missing persons". Where you have received a request from a specific "locating body" (a defined list including federal or local police, Salvation Army Family Tracing Service, Australian Red Cross Tracing Service, International Social Service Australia, Link-Up services, Department of Foreign Affairs and Trade), records can be released if the following conditions are met:

1. You have a reasonable belief that the information is necessary for locating the person.
2. It is unreasonable or impractical for you to obtain consent from the person.
3. The information to be provided is limited to that which is reasonably necessary to make contact with, or offer proof of life of, the person reported as missing.
4. There is no prior contrary wish made by the missing person regarding disclosure.
5. The release of the information does not pose a serious threat to the life, health or safety of any individual.

#### Your obligations

You **must** make a written note of the disclosure in the patient's records including the:

- date of disclosure
- details of the information disclosed
- details of the locating body, e.g. police
- basis of your reasonable belief that the information was necessary to assist in locating the person (this could be a copy of the request, if the request was provided in writing).

You should ensure you understand why the information sought from you is likely to be useful to the locating body - as this *may* determine what information is provided to the locating body, and *will* determine the reasons you put in your records. You may choose to limit what records you provide.

**Dr Julian Walter**  
**Medico-legal Adviser**  
**MDA National**

- 1 Australian Federal Police. Statistics on Missing Persons. Available at: [afp.gov.au/media-centre/facts-stats/national-missing-persons](http://afp.gov.au/media-centre/facts-stats/national-missing-persons)
- 2 *Privacy Act 1988* (Cth). Available at: [austlii.edu.au/au/legis/cth/consol\\_act/pa1988108/s16a.html](http://austlii.edu.au/au/legis/cth/consol_act/pa1988108/s16a.html)
- 3 Office of the Australian Information Commissioner. Chapter C: Permitted General Situations. Available at: [oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-c-permitted-general-situations](http://oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-c-permitted-general-situations)

# Education Activity

## Winter 2016

You can receive professional development (PD) recognition for this *Defence Update* issue by completing the questionnaire below. See page 22 for more information.

### Activity learning outcomes

By the end of this activity participants should be able to:

- explain how to use the DESC mnemonic to help effectively resolve conflict between team members
- identify circumstances that necessitate a mandatory report of notifiable conduct
- describe at least three situations in which it is appropriate to decline a parent's request for access to their child's medical records.

### Questionnaire

<b>1</b>	<b>Rate the extent to which you agree with the following statements (this is a personal reflection exercise).</b>	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
	Handling conflict situations well can strengthen working relationships.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	I would be very confident if I needed to mediate a conflict between healthcare team members.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Medical workplaces should invite doctors with a personal experience of mental health recovery and management to share their experiences with the workplace team.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	The exception to mandatory notification requirements that applies to treating practitioners in Western Australia should be introduced across Australia.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>2</b>	<b>Respond true or false to the following statements.</b>				True	False
	Excising any part of a female's genital organs fits within the definition of female genital mutilation (FGM).				<input type="checkbox"/>	<input type="checkbox"/>
	Cultural custom is not regarded as a genuine therapeutic purpose for FGM to occur.				<input type="checkbox"/>	<input type="checkbox"/>
	Consent to FGM by the person who had the procedure is not a defence to an FGM charge.				<input type="checkbox"/>	<input type="checkbox"/>
	There is specified text for warnings that need to be included in any advertisement for a surgical or invasive procedure.				<input type="checkbox"/>	<input type="checkbox"/>
	A statement from a patient about the quality of a medical service can be used in advertising that service.				<input type="checkbox"/>	<input type="checkbox"/>
	Unsolicited information received from a third party about the health of a patient needs to be immediately documented in the medical record of the patient whom the information is about.				<input type="checkbox"/>	<input type="checkbox"/>
	Even if you were concerned that giving a parent access to a child's medical records posed a serious threat to a person's mental health, the <i>Privacy Act 1988</i> requires you to give the access.				<input type="checkbox"/>	<input type="checkbox"/>
	When deciding whether to release a child's medical records to a parent it is appropriate to contact the other parent.				<input type="checkbox"/>	<input type="checkbox"/>
	Deciding not to release a child's medical records after a parent's request is standard - any concerns warrant withholding access.				<input type="checkbox"/>	<input type="checkbox"/>
	A "mature minor" needs to give their permission for a parent to access their medical records.				<input type="checkbox"/>	<input type="checkbox"/>
	An Anaesthetist going to the movies who saw a Surgeon colleague drug-affected and verbally harassing people outside a nightclub would not have a mandatory reporting obligation.				<input type="checkbox"/>	<input type="checkbox"/>
	An employer who has a senior manager (who has always been very thoughtful, thorough and trustworthy) inform them of sexual misconduct by a Physician employee needs to make a mandatory notification.				<input type="checkbox"/>	<input type="checkbox"/>
	Conclusive proof is not needed for a doctor to make a mandatory notification.				<input type="checkbox"/>	<input type="checkbox"/>
	All reports of notifiable conduct may be subject to civil, criminal or administrative liability action such as defamation.				<input type="checkbox"/>	<input type="checkbox"/>

**3 Write short notes to answer the following questions.**

Give an example scenario where granting a parent access to a child's medical records could disclose information that would have an unreasonable impact on another person's privacy.

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What would be your top priorities if you received unsolicited information, in person or in writing, by a concerned family member about one of your patients?

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Why do you need to understand the reasons that medical record information being requested from you to help find a missing person will likely be useful to the locating authority?

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Think of a situation in which you were aware that members of a medical care team were in conflict. In hindsight, and after reading the article on pages 6 and 7 of this issue, is there anything you would do differently to help resolve the situation in a better way?

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Think of a situation in which you could be or have been in conflict with another person. Identify below what each letter of the DESC script mnemonic - for constructively responding to a person you are in conflict with - stands for and give an example phrase that may be or could have been useful in that scenario.

Topic	Example effective phrase to use in discussion of this topic
D	
E	
S	
C	

## Activity evaluation

**1 Please rate to what degree the activity learning outcomes were met.**

	Not met	Partially met	Entirely met
Explain how to use the DESC mnemonic to help effectively resolve conflict between team members.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Identify circumstances that necessitate a mandatory report of notifiable conduct.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Describe at least three situations in which it is appropriate to decline a parent's request for access to their child's medical records.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**2 Rate to what degree your personal learning needs were met.**

Not met       Partially met       Entirely met

**3 Rate to what degree this activity was relevant to your practice.**

Not relevant       Partially relevant       Entirely relevant

**4a Has the content in *Defence Update Winter 2016* caused you to consider making any change(s) to your practice?**

Yes       No

**4b If you answered "yes" to question 4a, what change(s) do you envisage making?**

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**5 How likely is it that you would recommend this activity to a friend or colleague?**

	0	1	2	3	4	5	6	7	8	9	10	
<b>x</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**6 Please rate the quality of the following in relation to *Defence Update Winter 2016*.**

	Very poor	Poor	Neutral	Good	Very good
Magazine content	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Magazine presentation (hard copy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Questionnaire content	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Questionnaire presentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**7 What could be done to improve this activity?**

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**8 What future educational resources would you like MDA National to produce? Feel free to nominate any topics and any delivery formats, e.g. "responding to errors, online presentation", "cross-cultural communication, face-to-face workshop", "managing staff, *Defence Update* article".**

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**9 Please indicate your career stage:**

- Prevocational    Vocational trainee    Early career    Mid-career    Late career    Retired

**10 If chosen, please indicate your specialty:** \_\_\_\_\_

**Your details**

Name	
Email	Phone
Address	
Name of college PD program in which you participate	
RACGP/ACRRM identification number (if applicable)	MDA National Member number

**Please sign and date here**

Signed \_\_\_\_\_ Date (DD/MM/YYYY)   /   /

Tick here if you do not wish to receive your completion certificate by email.

In completing this form you consent to your comments being used for promotional purposes by the MDA National Group.

Tick here if do not consent to your evaluation comments being used anonymously by the MDA National Group for promotional purposes.

**Activity directions**

- Read *Defence Update* Winter 2016.
- Complete the education activity questionnaire in hard copy . Fill out the activity evaluation and provide your details.
- Submit your activity by:
  - > **email** [peaceofmind@mdanational.com.au](mailto:peaceofmind@mdanational.com.au)
  - > **fax** 1300 011 244
  - > **post** Level 3, 100 Dorcas Street, SOUTHBANK, VIC 3006
- Receive your completion certificate.
- Report to your college's PD program if it is a self-reporting program.
- MDA National will report relevant points for the following programs on your behalf:
  - > Royal Australian College of General Practitioners (RACGP) Quality Improvement and Continuing Professional Development (QI&CPD) Program
  - > Royal Australian and New Zealand College of Ophthalmologists (RANZCO) CPD Program
  - > Australian College of Rural and Remote Medicine (ACRRM) Professional Development Program (PDP).

**Accreditation details**

Visit [mdanational.com.au/resources/learning-activities/print-activities/defence-update-cpd-activities](http://mdanational.com.au/resources/learning-activities/print-activities/defence-update-cpd-activities) for this activity's PD recognition details.

This activity is usually accredited with colleges for General Practice, Emergency Medicine, Ophthalmology, Obstetrics and Gynaecology, and Radiology. Other specialists can receive PD recognition too.

# What's On?

## MORE FOR YOU with education events

Join us for education sessions created with, and facilitated by, MDA National Members. Collaborate on challenging areas of medicine with colleagues in regional and capital cities around Australia. All activities below are recognised for continuing professional development with multiple medical colleges.

## June 2016

14 The Challenging Emotions of Difficult News  
**Brisbane, QLD**

14 Enhancing Patient Understanding: Health Literacy and Communication  
**Geraldton, WA**

16 Avoiding Misunderstandings around Physical Contact and Intimate Examinations  
**Townsville, QLD**

18 Win-Win Conflict Resolution: Positive Communication in Hospital-based Clinical Teams  
**Melbourne, VIC**

18 Win-Win Conflict Resolution: Positive Communication in Hospital-based Teams  
**Perth, WA**

21 Medico-legal Education Evening:  
• Maintaining Boundaries in Challenging Doctor-Patient Interactions  
• The Challenges of Children's Consent  
**Wollongong, NSW**

25 Education Day:  
• Enhancing Patient Understanding: Health Literacy and Communication  
• Achieving Valid Informed Consent: Explicit Treatment Consent with Adult Patients  
**Wagga Wagga, NSW**

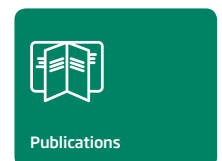
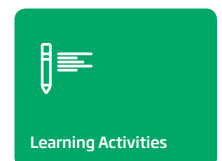
25 Win-Win Conflict Resolution: Positive Communication in Hospital-based Teams  
**Sydney, NSW**

For more information or to register, visit [mdanational.com.au](http://mdanational.com.au), call us on 1800 011 255 or send an email to [events@mdanational.com.au](mailto:events@mdanational.com.au).

We continually add education sessions to our events calendar. Avoid missing out - keep an eye on **Upcoming Events** at [mdanational.com.au](http://mdanational.com.au).

## MORE FOR YOU with online resources

Check out our new **Resources** section at [mdanational.com.au](http://mdanational.com.au) for more convenient access to articles, blogs, case studies, medico-legal FAQs, videos and more.

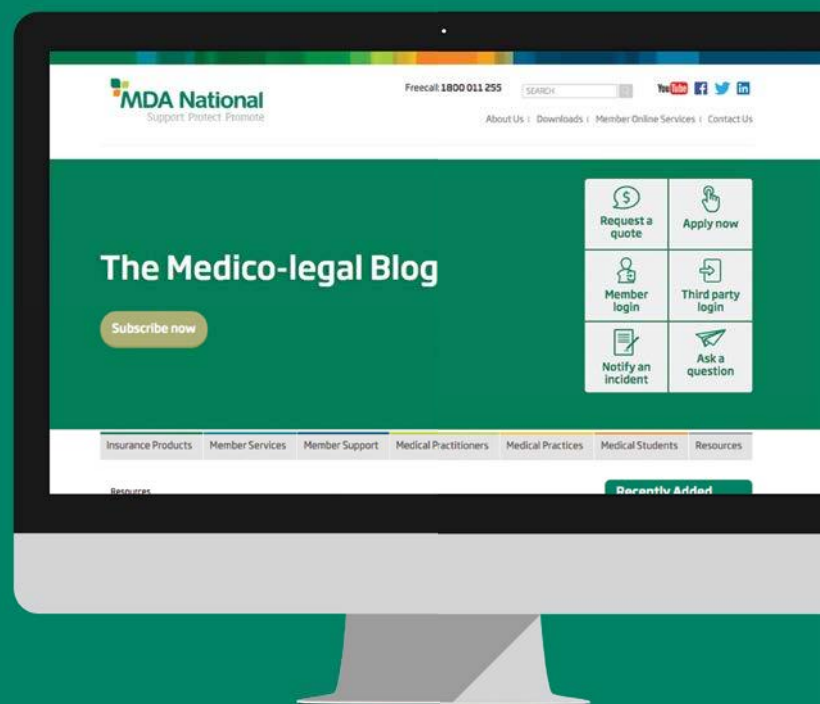


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Hobart TAS 7001  
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Fax: (03) 6234 2344

#### Melbourne

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#### Disclaimer

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The case histories used have been prepared by the Claims and Advisory Services team. They are based on actual medical negligence claims or medico-legal referrals; however where necessary certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

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