

# **AHPRA investigations into the conduct of registered health practitioners**

(Prepared June 2011)

## *BACKGROUND*

### *INFORMATION FROM AHPRA AND THE PSYCHOLOGY BOARD OF AUSTRALIA*

- The notification process
- Further investigation
- Referral to a Panel hearing or a Tribunal hearing

### *APS ADVICE AND RECOMMENDATIONS*

- What information should members seek if a complaint is made against them?
- How should members respond to a request for information as part of an AHPRA investigation?
- How should members respond to a request for a report on their work with a client?

## **BACKGROUND**

Over the past few months the APS has received an increasing number of calls from members who have been contacted by The Australian Health Practitioner Regulation Agency (AHPRA) regarding a notification (complaint) against them. The APS has received feedback from members that specific information about complaints made against them has not been provided. Rather, members have been asked to provide a generic response to what is often a vague complaint. Other members have received requests for client notes when their client happens to be a registered health practitioner who has had a complaint made against them.

Of concern to the APS is the lack of detail provided on the AHPRA website regarding the processes for dealing with notifications and the lack of communication with registrants who have become part of a complaints investigation either through a notification against them or through a request for the provision of information. While it is clear that AHPRA has a legal standing to conduct such investigations, the APS believes that it would be more consistent with the principles of natural justice for AHPRA to be open in their communications, clearly inform registrants of their alleged wrongdoing and the grounds of any notification, and provide clear information to health practitioners regarding the investigation process, and in particular, address concerns regarding the protection of confidential information provided as part of an investigation.

The APS sought additional information from the Psychology Board of Australia on these matters and has included this information below. Several issues of concern remain to be clarified, such as how the Psychology Board of Australia (Psychology Board) will ensure that the investigation process meets the principles of natural justice for practitioners and how confidential client information will be protected during the investigation. Members will be provided with additional information as it becomes available.

## **INFORMATION FROM AHPRA AND THE PSYCHOLOGY BOARD OF AUSTRALIA**

*The following information has been compiled through information sourced from the AHPRA website and through direct correspondence with the Psychology Board of Australia.*

### **The notification process**

Under the new National Registration and Accreditation Scheme, AHPRA is the regulatory body for the registered health practitioners including psychologists. AHPRA is assigned under the Health Practitioner Regulation National Law Act with the ability to investigate notifications against health professionals. Hence, AHPRA is now the agency that manages complaints made against psychologists. AHPRA supports the Psychology Board in managing notifications. The Psychology Board has delegated most of its powers in such matters to its Regional Boards. The exception to this is in NSW where a co-regulatory model exists with the NSW Psychology Council and the NSW Health Care Complaints Commission.

AHPRA receives complaints about practitioners either by telephone, letter, or completion of the online/hardcopy form. According to the Psychology Board, when someone is under investigation they will be notified of the complaint that has been made and of the investigation process. The exception to this is where notification may interfere with the investigation or place someone at risk of harm, harassment or intimidation. If the complaint was made about a practitioner working in NSW then the complaint is handled by the NSW Health Care Complaints Commissioner. In all other cases a preliminary assessment by AHPRA staff will determine whether the complaint is handled by AHPRA or by another health complaints entity (State based).

Following the preliminary assessment AHPRA will determine what action to take. This may include:

- taking no further action,
- immediate limiting of the psychologist's registration including imposing conditions,
- issuing a caution,
- further investigation, or
- referring the case to a panel hearing or a tribunal hearing.

The initial decision about how to proceed with a notification is made by AHPRA staff at Regional Boards. According to the Psychology Board, individuals making these decisions are experienced and qualified although no specific information on the types of qualifications and experience has been provided. (The APS will seek more information from the Psychology Board on the qualifications and experience of these assessors given the sensitive nature of the work and the requirement of ensuring confidential practitioner and client information is protected.) According to the Psychology Board the process for the preliminary assessment which is consistent across all Regional Boards ensures decision-making that is reliable at a national level.

Most complaints are said to be dealt with within a 30 day period unless they are particularly complicated. If the complainant is not satisfied with the final decision there is a process for review. In addition, the complainant may contact the National Health Practitioner Ombudsman who may choose to conduct an independent review. The one National Health Practitioner Ombudsman works across all health professions captured under the National Registration and Accreditation Scheme.

## **Further investigation**

A Regional Board will undertake further investigation if it views the complaint as being valid, that is, if a finding of practitioner impairment, unsatisfactory practices or unacceptable conduct is found. In most cases the investigation will be conducted by an AHPRA Investigation Officer who may seek additional evidence such as statements from relevant people, client notes, telephone records or video surveillance footage. In the case of impairment, assessing or treating health practitioner records are likely to be sought. The Regional Board may also choose to seek an independent health assessment or in the case of unsatisfactory practice, to ask the psychologist to undertake a performance assessment.

With regard to the requirement of practitioners to produce client files, the Psychology Board has indicated that this may occur if there is a claim by another health practitioner that the psychologist was providing unsatisfactory treatment. It is more likely that the psychologist will be asked to provide a report about their work with the client where the client is not a health practitioner..

## **Referral to a Panel hearing or a Tribunal hearing**

The Regional Board may decide to refer a particular case to a panel hearing or a Tribunal. Referral to a Tribunal in a psychologist's State or Territory will occur if there is an allegation of 'professional misconduct'.

A panel is made up of both registered psychologists and community members who have been appointed by the Board for the specific purpose of considering evidence related to complaints about psychologists. (It is unclear from the information provided to the APS to date, the conditions under which referral to a panel may occur.)

At any point in the steps outlined above, immediate action can be taken by the Board which may include suspending the psychologist's registration, to impose conditions under which the psychologist may practise, or to accept an undertaking from the psychologist with regard to their practice. According to the Psychology Board, once a decision has been made and an action imposed the psychologist will be offered the opportunity to 'show cause' as to why the decision should not be enforced.

## **APS ADVICE AND RECOMMENDATIONS**

### **What information should members seek if a complaint is made against them?**

The APS recommends that members insist on specific information about the complaint in order for them to provide a satisfactory rejoinder. If members become the subject of a complaint they should seek legal advice in formulating a response. Members should contact their professional indemnity insurer to access legal representation. It is part of the malpractice policy requirement to inform your insurer regarding any event which may lead to a claim.

### **How should members respond to a request for information as part of an AHPRA investigation?**

It is important that members cooperate if they have received documentation from AHPRA regarding an investigation. Generally speaking, a letter from an investigator appointed by AHPRA will include either reference to, or extracts of, the National Law relevant to the conduct of the investigation. We recommend that psychologists read through any such extracts to understand the context in which information is being requested.

The investigative provisions of the National Law specifically supersede legal and ethical obligations regarding privacy and confidentiality of information relating to a practitioner who is under investigation. The National Law also requires AHPRA to give notice to anyone who is under investigation, so that a person under investigation should have already received notice before another person is asked to provide information about them to an investigator.

AHPRA policy is to require reports without payment unless the writing of the report goes significantly beyond what would generally be furnished to other members of a treating team, for example a report back to a referring GP. What this means for psychologists is that questions from an investigator should be answered in the most straight forward way possible. An example of the questions that are posed by investigators, and the level of detail that may constitute a sufficient response is set out for your assistance below.

Be aware that a report made to an investigator will be considered in the investigative process and may be used to support recommendations about actions to be taken in regard to a registered practitioner. Any psychologist providing information to an investigator will be protected from legal or ethical prosecution pursuant to section 237 of the National Law.

AHPRA provides a summary of complaints and its findings in its annual report, and outcomes of tribunal hearings are available to the public on the AHPRA website.

The APS is particularly concerned about the request for client notes and access to such notes by AHPRA staff who may not be appropriately qualified psychologists with the capability to make an assessment. The APS will be seeking clarification from the Psychology Board on the qualifications of such assessors. When members are providing confidential client information as part of an investigation, the APS recommends sealing the notes in an envelope marked 'Confidential information to be reviewed by a psychologist only'.

### **How should members respond to a request for a report on their work with a client?**

*The following questions are based on an actual request to a psychologist for a report on a client. The questions are provided by way of example of the kind of questions that may be asked of a psychologist as part of the AHPRA investigative process. The answers to these questions set out below are provided by way of example only, and should not be copied.*

**Questions:** I would be grateful if you could provide me with a report indicating:

- Mr Citizen's current health status;

**Answer:** Mr Citizen is experiencing a moderate level of disturbance in psychological health.

- your opinion of Mr Citizen's prognosis;

**Answer:** Mr Citizen will require intensive intervention to stabilise his condition and it is likely he will need regular follow-up.

- your assessment of Mr Citizen's insight into his condition;

**Answer:** Good insight.

- his current treatment regime including any medication that Mr Citizen is taking;

**Answer:** I am not in a position to comment on medication. I am currently providing CBT interventions as part of Mr Citizen's psychological care.

- your opinion about the medical care that will be required for Mr Citizen's to remain well into the future;

**Answer:** I am not in a position to comment on medical care and can only comment on Mr Citizen's psychological care. Mr Citizen is currently receiving psychological intervention and is likely to require regular review for at least the next 12 months.

- Should you consider it appropriate to do so, the Board would also appreciate receiving your opinion as to whether Mr Citizen's ability to practice is impaired by a health problem and if so, whether any restrictions on his practice are required to ensure the safety of the public and Mr Citizen.

**Answer:** I believe Mr Citizen's current psychological problems do not impair his ability to practice.

- If you believe that restrictions are required, please specify what you consider those restrictions to be. Common restrictions imposed by the Board may include a requirement to work only in a group practice or public hospital, reduced working hours, prohibition of access to schedule 8 drugs, regular attendance on a treating doctor, having a work supervisor and repeat assessment.

**Answer:** In my opinion Mr Citizen's current psychological problems do not lead to the requirement for any restrictions.