NEW SOUTH WALES Medical Board

Board News

DECEMBER 2008

President's report

2008 draws to a close with the consolidation of a range of significant changes to registration and disciplinary systems in NSW, and with the promise of accelerated developments toward the introduction of the national registration scheme in 2010.

A number of important developments mentioned in my previous report have now been implemented.

The NSW Medical Practice Act amendments have commenced, including the provisions for mandatory reporting of misconduct and requiring doctors to provide evidence of their professional indemnity insurance at the time of annual renewal of registration. This edition of *Board News* includes more information on the management of mandatory reporting matters, and a copy of the guidelines developed to assist practitioners with interpretation of the provisions. The guidelines, as well as material to assist practitioners with the professional indemnity insurance requirements, can be accessed on the Board's website (www.nswmb.org.au).

The national pathways for registration of International Medical Graduates have also been introduced and the Board is pleased to report a high rate of suitable and accurate applications reflecting awareness and responsiveness of applicants and employers to the transition (see page 4).

At the same time, the process to establish a national registration and accreditation scheme is proceeding apace. The Board has made submissions to consultation papers issued by the national implementation body on proposed arrangements for registration, complaints, and information sharing and privacy. Board submissions are published on its website.

The Board supports the principle of national registration, but has emphasised that a national registration scheme must not lower standards or reduce the initiatives of the largest and most complex jurisdictions to the lowest common denominator. The national consultation paper on complaints arrangements has been among the most contentious, favouring a non-NSW model. The Board believes that with some small but important improvements, the NSW co-regulatory model offers the best complaints system. The Board notes that subsequent to the publication of discussion papers, consultation meetings and comments suggest that the national implementation team is listening to feedback. Until the final national framework is released, however, it remains a case of 'watch this space'.

Information on national consultations can found at www.nhwt.gov.au/natreg.asp

The Board continues to highlight to practitioners relevant professional conduct and practice issues and notes the Pharmaceutical Services Branch's concerns regarding inappropriate prescribing of Schedule 8 drugs, specifically *Oxycontin*. More information regarding this and other professional conduct matters is included in this edition of *Board News*.

Associate Professor Peter Procopis
President, NSW Medical Board

Reportable misconduct

New laws requiring registered doctors to report on misconduct committed by other medical practitioners came into effect on 1 October 2008.

The mandatory reporting of misconduct requirements were introduced in legislation passed by NSW Parliament earlier this year and focus on three specific areas of misconduct: practising medicine while intoxicated by drugs or alcohol; practising in a manner that constitutes a flagrant departure from accepted standards of practice or competence and risks harm to another person; engaging in sexual misconduct in connection with the practice of medicine.

Guidelines to assist practitioners with interpretation of the legislative provisions were jointly developed with medical defence insurers, NSW Health and the NSW AMA and published on the Board's website in August.

The 'Reportable Misconduct: Guidelines for Practitioners' appear on pages 7-8 of this edition of *Board News*.

The Board cannot provide legal advice to practitioners and doctors should seek independent advice from their insurer or professional organisations regarding any

Continued page 2

contents

NEW SOUTH WALES
Medical Board

Records summaries

The Board reminds doctors that it is appropriate professional practice to include an up-to-date patient record summary as part of each patient's record.

Summary pages help ensure that essential diagnostic and treatment information is clearly identifiable to any treating doctor, no matter what the length of the medical record.

Missed and forgotten medications in particular are a common source of complaints against practitioners.

Details of a patient's medication regimen can be missed in lengthy medical records, or in practices where patients see multiple practitioners, or during periods where a locum is covering a practice.

In cases before the Board, patients' warfarin and thyroxin were overlooked when repeat prescriptions were issued, and in both cases, serious adverse consequences resulted.

An up-to-date medication summary would have prevented these serious errors (*Board News,* May 2007).

A registered doctor's duties with regards to medical records are outlined in the *Medical Practice Act 1992* and *Medical Practice Regulation 2003*.

Summary pages help ensure that essential diagnostic and treatment information is clearly identifiable to any treating doctor, no matter what the length of the medical record.

Keeping clear, accurate and contemporaneous patient records are also one of the statutory obligations of a doctor under the *Code of Professional Conduct: Good Medical Practice.*

For more information visit *www.nswmb.org.au, 'Publications and Policies'.*

Continued from page 1

Reportable misconduct

individual matters.

However, the Board has received a number of inquiries from doctors about reporting and complaint management processes and reminds practitioners that mandatory reports are accepted and managed in the same way as any complaints received by the Board and the Health Care Complaints Commission.

Whether a notification to the Board is made in response to mandatory reporting requirements or as general complaint, the following processes apply:

- Complaints must be in writing, clearly setting out the details of the complaint and the doctor's name and address. People forwarding a complaint to the Board should be aware that the doctor will be advised that a complaint has been made and the details of the complaint.
- The Board and the HCCC jointly review every complaint received. Following that initial assessment and consultation, the HCCC decides whether it will investigate the matter, or refer it to the Board's Health or Performance programs, or refer it for conciliation, or determine that no further action be taken.
- The Board may also take urgent action to suspend a practitioner to protect the health or safety of any person, or if it is otherwise in the public interest. This is an interim action to ensure public safety while a matter is investigated.

Information about how to make a complaint and how complaints are managed is available on the Board's website (www.nswmb.org.au).

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DECEMBER 2008

Warning over oxycodone prescribing

Doctors are reminded of the dangers of inappropriate prescribing of high-dose *Oxycontin* (oxycodone), with NSW Health authorities warning of the growing illicit trade and misuse of the drug, which is also known as 'hillbilly heroin'.

Included with this edition of *Board News* is information for doctors from NSW Health regarding responsible opioid prescribing and handling drug-seeking patients.

NSW Acting Chief Pharmacist Bruce Battye said in October that the NSW Health Pharmaceutical Services Branch (PSB) was working hard to monitor the distribution of the drug to make sure it is being appropriately prescribed.

He warned that doctors found to be prescribing *Oxycontin* irresponsibly risked losing their authority to prescribe Schedule 8 drugs.

Eleven matters involving inappropriate prescribing of Schedule 8 drugs were referred by the PSB to the Board in the 12 months to 28 October 2008.

In nine of those cases the Board used its emergency powers to protect the public by suspending two doctors and imposing registration conditions requiring seven doctors to relinquish their Schedule 8 prescribing authorities. When the Board uses its powers to take urgent interim action, the matter is then referred to the Health Care Complaints Commission for investigation. One other doctor voluntarily relinquished registration.

Doctors getting into difficulty with patients seeking prescriptions for drugs of addiction is an ongoing issue before the Board (*Board News,* January 2008.) In a decision to de-register a practitioner in relation to inappropriate prescribing matters, the Medical Tribunal noted that: *'Overall, the flavour of the respondent's evidence was that he was the slave to the patients' requests for drugs, he could counsel and advise them to reduce but in the end he submitted to their demands. The Tribunal finds this demonstrates both a lack of insight but also a failure to exercise his responsibilities as a medical practitioner.'* (*Board News*, July 2008).

The PSB has a number of resources on the prescribing of opioids. The Duty Pharmacist can be contacted on 02 9879 3214 during business hours for further details.

Anaesthetist attendance and relief duty

Complaints related to anaesthetist attendance arrangements have highlighted the need to remind practitioners of their professional obligation to maintain continuous attendance on patients during operations and to arrange cover if temporary relief is necessary.

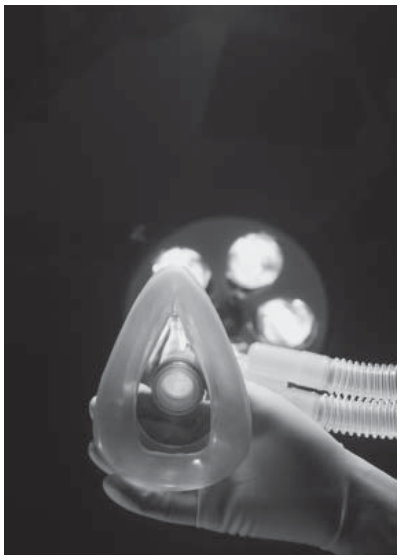
The Medical Board recently dealt with a complaint about an anaesthetist who left the operating theatre for an extended period while the patient was anaesthetised, without informing the surgeon or arranging cover. The patient suffered a serious hypotensive episode and required resuscitation by another anaesthetist who happened to be available. Fortunately, the patient suffered no lasting adverse consequences.

The Board is concerned this is not an isolated incident, having received a number of complaints related to anaesthetists' attendance and relief during operations.

In circumstances where a practitioner's professional conduct is reckless, that is, heedless of the potential for there to be adverse consequences of their actions, it is likely that disciplinary action will be taken against them.

In addition, the Board is aware of least one incident in NSW in which criminal charges have been brought against an anaesthetist who left a patient unattended.

The Australian and New Zealand College of Anaesthetists' professional standards document requires the continuous presence of an anaesthetist and for appropriate arrangements to be made for temporary relief. The Board has written to the College to highlight this matter and appreciates its assistance in reinforcing professional standards in this regard.



IMG pathways implemented

Following agreement by federal, state and territory governments, nationally consistent assessment and registration pathways for International Medical Graduates (IMGs) were introduced across Australia in July 2008.

Leading up to the implementation of the new pathways, the Board sought to raise awareness and readiness for the transition in NSW by regularly communicating information through this newsletter, its website, and a registration 'Bulletin' sent to hospitals, employers and other stakeholders.

More than 97% of International Medical Graduate (IMG) registration applications have been successful since the implementation of the national pathways, reflecting a positive awareness and responsiveness of applicants and employers to the new processes.

From 1 June to 15 November 2008, the Board received 224 IMG applications for registration. Three applications were withdrawn during that time, and 215 were approved for registration.

Of the other six IMG applications, only two were unsuccessful due to incomplete applications. The remaining four applications were unsuccessful as they did not meet requirements for specific Area of Need positions.

The Board is encouraged by the responsiveness of employers and prospective registrants to the new processes and reminds readers that up to date registration information and guidance is available on the Board's website (www.nswmb.org.au).

Board information on registered doctors

To assist practitioners, employers and members of the public seeking accurate and relevant information about doctors, the Board wishes to clarify what information it can provide about a registered practitioner.

Recent media coverage of matters related to a currently suspended doctor falsely claimed that a prospective employer had contacted the Board and was denied relevant information about the doctor when he was still registered. In addition to the fact the employer has confirmed that no such inquiry was made, it was inaccurately suggested the Board could release any information it may hold about a doctor including matters relating to a doctor's health, ongoing investigations, or criminal and personal histories.

The Medical Board can provide details of a doctor's current registration status and category, including any practice conditions or orders imposed on their registration under the provisions of the Medical Practice Act.

This information is contained in the publicly available Register of Medical Practitioners, which includes the following details:

- the doctor's registration number, name, and sex
- the year and place of their primary medical degree
- a suburb location nominated by the doctor (unless suppressed)
- the year of their first registration in NSW and the date on which their annual renewal of registration is due
- the doctor's current registration status and category, and practice conditions (if applicable).

The Board also provides on its website lists of currently suspended and de-registered doctors and published disciplinary decisions.

Confidentiality and privacy provisions in legislation mean that, apart from what is published on the Register of Medical Practitioners or in disciplinary decisions, the Board is prohibited from publicly releasing any other information it may collect about an individual doctor in the course of its regulatory activities.

Information related to a doctor's registration in NSW may be published in a disciplinary or other legal decision or report. The Board can outline general processes and may be in a position to confirm or clarify facts published in such reports, however it cannot discuss details of an individual matter. The Board is legally prevented from disclosing information about individual complaints or Health Care Complaints Commission investigations.

Information about a doctor's medical registration history outside NSW, and criminal, employment, or personal histories should be confirmed directly with the relevant authority, employer, and/or doctor.

On inquiry, the Board can also provide registration information that was previously published in the publicly available Register of Medical Practitioners.

Employers, colleagues and patients should be aware that although doctors renew their registration annually, a doctor's registration status may change at any time in response to information received by the Board or the Health Care Complaints Commission, or the outcome of any disciplinary investigations or proceedings. The Register of Medical Practitioners reflects the current status of a doctor's registration.

In the Medical Tribunal

The Medical Tribunal is responsible for hearing serious complaints against doctors. The Tribunal has the power to de-register, suspend, fine and place conditions on a doctor's registration. The Tribunal is made up of a District Court judge, two doctors and a person who is not a doctor. The Health Care Complaints Commission prosecutes complaints before the Tribunal and the doctor is generally assisted by a medical defence organisation. The Medical Board appears as the opponent/respondent in Tribunal matters involving a person seeking restoration to the Register, and in matters where a practitioner is appealing a Board decision.

Suspension appeal

Details

Dr David Charles Lindsay (MBBS, Sydney, 1989), a solo practitioner in a metropolitan skin cancer clinic, was suspended from practising medicine under section 66 of the Medical Practice Act on 19 December 2007. An order extending the period of suspension was made on 8 February 2008.

The focus of the appeal to the Medical Tribunal was against the orders to suspend him and the nature of multiple complaints relating to his conduct with patients, and the question of whether he may be impaired.

Findings/orders

The Tribunal found the number of complaints and their similarities gave rise to serious concerns about Dr Lindsay's conduct towards his patients, posing a risk to their physical and mental health. The Tribunal also concluded it was gravely concerned that he may suffer from a psychiatric condition and was possibly impaired.

The appeal was dismissed and the suspension confirmed.

Date of Tribunal decision: 15 April 2008

Appeal against PSC rulings

Details

Dr Brendan Thomas O'Sullivan (MBBS, Sydney, 1980), a psychiatrist, appealed (under section 88 of the *Medical Practice Act)* against a number of rulings made by the Chairperson of a Professional Standards Committee in its preparation to hear a complaint against him.

Findings/orders

The Medical Tribunal upheld two of the seven grounds for appeal: the Chairperson's refusal to issue a summons for a particular witness to appear and give evidence; and the Chairperson's order that Dr O'Sullivan was 'not to threaten, harass or seek to intimidate any potential witness to the PSC Inquiry'.

Judge Solomon found that the 'expected evidence' from the witness, as set out by Dr O'Sullivan, did on the face of it contain material that could be relevant to the PSC Inquiry and therefore Dr O'Sullivan was entitled to have a summons issued for that person to give evidence.

Regarding the order in relation to Dr O'Sullivan and potential witnesses, Judge Solomon noted the case law which provides that Tribunals have implied powers, including incidental powers that are necessary to enable a Tribunal to work effectively within its jurisdiction. However, he found in this case that there was not sufficient evidence to make the direction, and therefore the Chairperson improperly exercised the implied power.

Date of Tribunal decision: 16 May 2008

Document falsification

Complaint

It was alleged Dr Fareed Bahrami (MBBS, Otago, 1995), a metropolitan general practitioner, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to complaints that he falsified registration documents and provided such documents to a specialist college.

Dr Bahrami's registration had been subject to practice and health conditions, imposed by the Medical Tribunal in 2003 after it severely reprimanded him in relation to complaints of professional misconduct and conviction of criminal offences.

The 2008 Tribunal heard complaints that the practitioner had on multiple occasions altered photocopies of his registration card to replace the word 'conditional' to 'general', presented the altered registration card to a Justice of the Peace for certification, and then provided the altered card to the specialist college as part of his application for entry to its training program.

Findings/orders

The Tribunal found the complaints proven and concluded it could not *'confidently determine that the respondent would accept the high standards of probity demanded of a member of the medical profession when he states that he was unaware of the gravity of the criminal act of making a false declaration'.*

It noted he had all the necessary technical qualifications to be registered as a practitioner, but did not consider that 'at this time the respondent has the necessary character to fulfil his ambitions'.

The Tribunal de-registered Dr Bahrami for a minimum period of three years.

Date of Tribunal decision: 6 June 2008

Re-registration application

Details

In 2001, the Medical Tribunal ordered Ian Leigh Ferguson (MBBS, Melbourne, 1960) be removed from the Register for a minimum of three years following the successful prosecution of complaints regarding inappropriate prescribing of Schedule 4D and 8 drugs in relation to 17 patients, inappropriate prescribing of pethidine to his wife, and the steps taken to disguise the prescribing for his wife.

In March 2006 the Tribunal refused an application for reinstatement to the Register. It ordered he not make another application for reinstatement for a period of 18 months.

Findings/orders

On the evidence presented in his 2008 application, the Tribunal was satisfied he now had insight as to his inappropriate prescribing and misconduct, he had had a reformation of character, he had accepted the need to be supervised in practice and had achieved a level of knowledge and skill to be re-registered to practise.

Continued page 6

In the Medical Tribunal (continued from page 5)

The Tribunal ordered that his name be restored to the Register of Medical Practitioners and imposed registration conditions restricting his prescribing and requiring supervision of his practice.

Date of Tribunal decision: 25 July 2008

Multiple conduct and health concerns

Complaint

It was alleged Dr David Charles Lindsay (MBBS, Sydney, 1989), a solo practitioner in a metropolitan skin cancer clinic, was guilty of unsatisfactory professional conduct and/or professional misconduct in relation to six complaints based on multiple incidents involving Dr Lindsay and his patients and their relatives, medical colleagues and an assistant to the Commissioner of the HCCC.

The complaints related to a number of issues of concern including his communication and behaviour, his lack of insight into the complaints and disciplinary processes, his impairment, and inadequate history taking and medical record keeping.

Findings/orders

The Tribunal found that Dr Lindsay suffered from an impairment and that by reason of that impairment he was not competent to practise medicine.

He was also found guilty of professional misconduct in relation to complaints about his clinical conduct and skills, including: acts which might be regarded as threatening conduct directed to patients, medical colleagues and others, with the apparent object of stopping them or others from giving evidence against him in disciplinary proceedings; a failure to make and keep proper records of medical treatment; and acts which might be regarded as extreme rudeness and lack of sensitivity in his contact with patients, their families and friends; and, in three cases, a significant lack of clinical skills.

The Tribunal ordered that his name be removed from the Register for a minimum of three years.

Date of Tribunal decision: 20 August 2008

At the time of publication, the Board was advised that this decision was subject to an appeal by the practitioner.

Every effort is made to ensure accuracy and balance in these summaries, but readers are also advised to access the Board's website to read full Tribunal and court decisions and to check the Register of Medical Practitioners to ascertain the current status of any doctor (www.nswmb.org.au). The summaries are based on decisions handed down between April and August 2008. These decisions provide valuable information to the profession and the community about standards and disciplinary processes.

National registration

The pace has now lifted significantly in the process of developing and implementing a system of national registration for health professionals by 1 July 2010.

After the initial announcements in 2006, there was a long period during which nothing concrete emerged. Since the signing of the Intergovernmental Agreement in March 2008, an extensive array of working groups, consultation bodies, etc, has been established by the National Registration and Accreditation Implementation Project Team, chaired by Dr Louise Morauta, with the objective of putting flesh on the bones of the original proposals.

Legislation establishing the broad structure of the Scheme has been passed by the Queensland Parliament and is expected to be passed by other jurisdictions next year.

Five Consultation Papers have been issued in relation to Registration, Complaints Handling, Accreditation, Information Sharing and Privacy, and Other Matters. These papers, together with submissions made by stakeholders, are available on NRAIP's website at www.nhwt.gov.au/natreg.asp , and the Board has placed its submissions on its website at www.nswmb.org.au.

The CEO of the National Agency, which will be responsible for administrative oversight of the whole system at a national level, is to be appointed early in 2009, and one of the early tasks will be to set up the 10 individual National Boards for the different professions covered by the National Scheme.

From the perspective of the practising doctor, in principle the changes will make little obvious difference other than making it possible to practise anywhere in Australia without any additional paperwork, application fees, etc. A practitioner with General registration without limitations will be able to practise anywhere in Australia on the basis of this registration. Doctors in border regions or with practice in several jurisdictions will no longer have to hold registration in each separate jurisdiction.

At this stage it is too early to predict exactly how the regulatory aspects of the system will work. The Consultation Papers have given an indication of how the Project Team is thinking, but they acknowledge that there remains a lot of work to be done and stakeholders' views to be taken into consideration.

The concern of the NSW Medical Board, as the largest medical board in the most complex jurisdiction, is that in an attempt to cater for smaller jurisdictions and smaller boards in a one-size-fits-all approach, some of the sophistication and innovation that has been developed by the Board may be diluted or lost. The Board has been making and will continue to make strong representations in this regard, and in doing so, it has the backing of the Minister and NSW Health. Particular issues of concern include possible devaluing of the Performance Program, and a move away from the co-regulatory model in relation to complaints management.

Reportable misconduct: Guidelines for practitioners

1. Background

Section 71A of the *Medical Practice Act* introduces a new concept of 'reportable misconduct', placing an obligation on doctors to report certain types of misconduct to the Medical Board. This requirement will come into force on 1 October 2008.

The legislation is quoted in full at the end of the document.

In its July 2008 newsletter, the Board foreshadowed the publication of some guidance to practitioners in relation to these provisions. These guidelines have been developed in consultation with the AMA (NSW) Limited, NSW Health and medical defence organisations. Please note that they are not a substitute for the legislation, and each instance of possible reportable misconduct needs to be considered on its merits. If you are concerned that you may have obligations under the reportable misconduct provisions, you should be seeking advice from your defence organisation or other appropriate body or person.

2. General points

The reportable misconduct provisions reflect the existing statutory *Code of Professional Conduct: Good Medical Practice*. They are not in any way inconsistent with the existing professional obligations, though the obligation to report certain categories of particularly serious misconduct is now mandatory.

The provisions apply to all registered medical practitioners regardless of the context in which the reasonable belief is formed.

The obligation is on any registered medical practitioner who believes or ought reasonably to believe that reportable misconduct has been committed to report the conduct to the Board as soon as practicable.

A reasonable belief requires a stronger level of knowledge than a mere suspicion. For example, you should not be reporting mere speculation, rumours, gossip or innuendo. A report 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 reportable misconduct has occurred. You do not need conclusive proof that reportable misconduct has occurred. Your own professional background, experience and expertise will also be relevant in forming a reasonable belief.

As noted above, the *Code of Professional Conduct* already reflects the principles set out in the new provisions. In addition, medical practitioners working in the NSW Health public sector are already subject to a range of requirements relating to incident reporting, managing complaints or concerns about clinicians, and performance management. The reportable misconduct provisions complement rather than substitute for these requirements.

3. Three categories of reportable misconduct

The reporting obligations are not general, but focus on three areas of serious misconduct. In relation to the three specific categories of reportable misconduct, the following is noted:

3.1 practises medicine whilst intoxicated by drugs (whether lawfully or unlawfully administered) or alcohol,

Reporting is only required if the practitioner is believed to be practising medicine while intoxicated. There is no legal obligation under these provisions to report a practitioner who is intoxicated while not practising medicine.

Whilst 'intoxicated' is not defined in the legislation, the Board considers that a practitioner is likely to be intoxicated where his or her capacity to exercise reasonable care and skill in the practice of medicine is impaired or affected as a result of being under the influence of drugs or alcohol.

Practitioners will continue to have a broader professional obligation to refer a colleague whose use of drugs or alcohol, whilst short of being intoxicated at work, may be a threat to patients as a result of its impact on, for example, the practitioner's health or behaviour. The Board may assess and manage such practitioners as part of its Impaired Registrants Program. The *Code of Professional Conduct* already states in this regard:

'In order to protect your patients and the public, you should:

- be vigilant in identifying doctors or other colleagues whose health, conduct, behaviour or performance may be a threat to the public;
- do your best to find out the facts, then if necessary, notify an appropriate person such as the hospital chief executive or the Medical Board. Your comments about colleagues must be honest. If you are not sure what to do, ask an experienced colleague or contact the Medical Board or your defence organisation for advice. The safety of patients must come first at all times; and
- report adverse events which reflect on the professional performance or conduct of colleagues to a hospital Chief Executive or Medical Board.'

3.2 practises medicine in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person,

Dictionary definitions of 'flagrant' include:

> 'glaring, notorious, scandalous' (Macquarie Dictionary);

Continued page 8

Reportable misconduct: Guidelines for practitioners (continued from page 7)

and

'conspicuously offensive; especially: so obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality' (Merriam-Webster On-Line Dictionary).

The term carries with it a connotation of conspicuous or gross departure, with an element of a wilful or reckless flouting of acceptable standards.

The Board considers a flagrant departure from accepted standards involves a very high degree of departure from such standards. Conduct which is merely careless or negligent (in the sense that it fails to meet the standards of care owed to patients) will generally not be flagrant. Whilst it is possible for reasonable practitioners to disagree about whether a particular practice is or is not negligent, a flagrant departure is likely to be one which is both serious and obvious to any reasonable practitioner. This is particularly likely to be the case where another practitioner engages in reckless, unethical, wilful or criminal behaviour.

As previously stated, if in doubt about whether something involves 'a flagrant departure from accepted standards', seek advice.

The term 'flagrant departure from accepted standards of professional practice or competence' encompasses not only clinical skills, but would also include a flagrant departure from accepted standards of professional behaviour.

The reportable misconduct must pose a risk of harm to some other person as well as constituting a flagrant departure from accepted standards of professional practice or competence, before mandatory reporting is required.

3.3 engages in sexual misconduct in connection with the practice of medicine.

The misconduct to be reported is linked to the practice of medicine. Under current Board policy, it is an absolute rule that a medical practitioner who engages in sexual activity with a current patient is guilty of professional misconduct. Engaging in sexual activity with a patient following the termination of the doctor/patient relationship may also amount to professional misconduct, depending on the circumstances of each case. For more information refer to the Board's policy on sexual misconduct.

4. Other legal obligations

In some circumstances, medical practitioners will be under specific legal obligations not to disclose information. In particular practitioners who are members of an approved quality assurance committee or root cause analysis team pursuant to the Health Administration Act must not disclose any information acquired in their capacity as a member, except in certain specified circumstances. It is an offence to do so. Accordingly, where a practitioner forms a belief or reasonable belief that reportable misconduct has occurred based on information received in their capacity as a member of an approved QA committee or RCA team, they are not required to report the matter to the Board under these new provisions. Existing processes for bringing these matters to attention should be followed.

Medical practitioners who are members of non-approved quality assurance or peer review committees are not subject to statutory non-disclosure requirements, and so will be required to report to the Medical Board where they believe or ought reasonably to believe there has been reportable misconduct by another practitioner.

If you have any concerns as to whether you are obliged to notify the Medical Board of reportable misconduct, or need legal advice as to whether the conduct itself is reportable, contact your defence organisation or AMA. Legal advice provided to you will remain confidential.

5. Legislation

Section 71A provides as follows:

71A Reportable misconduct

(1) A registered medical practitioner commits reportable misconduct in the following circumstances:

(a) if he or she practises medicine while intoxicated by drugs (whether lawfully or unlawfully administered) or alcohol,

(b) if he or she practises medicine in a manner that constitutes a flagrant departure from accepted standards of professional practice or competence and risks harm to some other person,

(c) if he or she engages in sexual misconduct in connection with the practice of medicine.

(2) A registered medical practitioner who believes, or ought reasonably to believe, that some other registered medical practitioner has committed reportable misconduct must, as soon as practicable, report the conduct to the Board.

Note. Pursuant to sections 36 (1) (b) and 37, failure to comply with this section will constitute either unsatisfactory professional conduct or professional misconduct.

(3) A report under this section:

(a) is to be made and dealt with in the same way as a complaint, and

(b) is taken to be a complaint, both for the purposes of this Part and for the purposes of sections 96 and 98 of the Health Care Complaints Act 1993.

These guidelines are also published on the Board's website at www.nswmb.org.au > Publications and Policies. First published August 2008.