



Immediate action against health practitioners

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Hall Payne Lawyers often acts for health practitioners facing proposed '*immediate action*' from Health Practitioner National Boards, the Australian Health Practitioner Regulation Agency (AHPRA) and the Office of the Health Ombudsman (OHO) in Queensland.

Facing the prospect of having immediate action taken against their professional registration can be one of the most stressful times in a health practitioner's professional career, and it can be difficult for health practitioners to determine who to turn to for assistance.

Acting without receiving appropriate advice is fraught with risk and can have far-reaching effects. It is important for health practitioners in this situation to seek specialist advice early.

What is immediate action and what immediate action can be taken?

When a notification is made to AHPRA or the OHO in relation to a health practitioner, this will be assessed. In the most serious cases, AHPRA or the OHO may propose to take immediate action against a health practitioner, to place restrictions on their registration on an urgent basis.

The types of '*immediate action*' that can be taken against a practitioner include the suspension or imposition of conditions on the health practitioner's registration. The National Boards, such as the Medical Board of Australia (MBA) and Nursing and Midwifery Board of Australia (NMBA), amongst others, also have the power to accept undertakings from health practitioners.

Why might a National Board or the OHO propose to take immediate action against a practitioner?

National Boards and the OHO may propose to take immediate action against a practitioner if they reasonably believe that:

- because of the practitioner's health, conduct or performance, the practitioner poses a '*serious risk to persons*', and it is necessary to take the action "*to protect public health or safety*";
- the registered health practitioner's registration was improperly obtained;
- the practitioner's registration has been cancelled or suspended in another jurisdiction (e.g. overseas); or
- '*the action is otherwise in the public interest*'.

An example provided in the legislation of where action may be taken in the public interest is where:

"a registered health practitioner is charged with a serious criminal offence, unrelated to the practitioner's practice, for which immediate registration action is required to be taken to maintain public confidence in the provision of services by health practitioners".

Evidence required to take immediate action

Given the serious nature of the actions that can be taken by Health Practitioner National Boards and the OHO and the serious consequences which may follow, it might be thought that the standard of proof would be high. and the evidence would need to be strong.

However, that is not the case and in some cases, immediate action can be taken against a practitioner based solely on unsubstantiated allegations.

This is because the primary guiding principle of the governing legislation for the National Boards and the OHO is that the health and safety of the public are paramount. A practical implication of this is that action can be taken where there are serious concerns in relation to a practitioner's health, performance or conduct, even when the evidence may not be strong, or where there may be competing evidence.

The action taken in immediate action matters is also regarded as an interim action – action taken whilst a more detailed assessment or investigation is undertaken.

Action can be taken in some cases, for example, based on criminal charges alone if they are sufficiently serious, even where there has been no determination of those charges. Whilst a practitioner may indeed be innocent until proven guilty in the criminal courts, the National Boards and OHO do not need to await any guilty finding before taking immediate action to restrict a health practitioner's registration in the meantime. The registration action taken would be reassessed at the end of the criminal process.

Timeframes

Where a National Board or OHO proposes to take immediate action against a health practitioner, there is usually a very short timeframe for the practitioner to respond.

In some serious cases, the OHO is able to take immediate action without inviting a response from the practitioner first.

Seek experienced advice promptly - [1800 659 114](tel:1800659114)

It is imperative that health practitioners facing proposed immediate action to restrict their registration seek advice promptly, to maximise their prospects of achieving the best possible outcome. We strongly recommend that [practitioners do not respond to AHPRA or the OHO without first seeking appropriate advice.](#)

Whether immediate action is taken depends on the facts and circumstances of each case, and specialist advice is needed to assist health practitioners put their case forward. We generally recommend written submissions, though in some cases, verbal submissions are made.

What happens next?

If immediate action is taken to restrict a health practitioner's registration, that action (eg suspension of registration) will remain in effect until the restriction is revoked by the OHO or National Board, or the decision is set aside on appeal. The practitioner can also apply to their National Board or the OHO for a review or variation of the immediate action decision if there is a material change in circumstances.

There is no fixed time period for any restrictions which are imposed. This uncertainty can be very difficult for practitioners. Immediate action restrictions will remain in place until other processes are completed by the National Boards or OHO, such as an investigation, or an independent performance and health assessment and reconsideration by the regulator.

The consequences if immediate action is taken to restrict a practitioner's professional registration can be very serious. They can impact on the practitioner's ability to earn a living, as well as their wellbeing, reputation and good standing in the profession.

How often is immediate action taken?

Approximately [1 in 15 people employed in Australia is a registered health practitioner](#), regulated by AHPRA.

In 2019-20, the National Boards, through AHPRA, [took immediate action 580 times!](#) AHPRA's annual report notes that this was more than a 50% increase compared with 2018-19, but the higher rate was in line with longer-term trends.

AHPRA reports that immediate action was taken in approximately 5% of cases, following a notification being made, which is approximately 1 in 20 cases.

In addition, in 2019-20, the [OHO took immediate registration action against 34 registered health practitioners in Queensland](#), as well as 16 unregistered health practitioners.

Seek legal advice from a health lawyer

By seeking legal advice early, registered health practitioners maximise their chances of achieving a good outcome when immediate action to restrict their registration is proposed.

If you need advice or representation in relation to any type of [professional discipline matter](#), including AHPRA matters, you should seek advice as soon as possible.

Hall Payne Lawyers is highly skilled in advising and representing health practitioners in AHPRA and regulatory complaint processes to achieve the best possible outcome.

Contacting Hall Payne Lawyers

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

Email: general@hallpayne.com.au

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