



## Health practitioners' obligations to notify AHPRA of criminal charges

Author: [Luke Forsyth](#)

Email: [lukef@hallpayne.com.au](mailto:lukef@hallpayne.com.au)

Phone: 02 8280 4100

Date: Monday February 7, 2022

Hall Payne Lawyers often acts for health practitioners in their dealings with the Australian Health Practitioner Regulation Agency (AHPRA) and the Office of Health Ombudsman (OHO) in Queensland. The firm also assists a variety of clients in relation to criminal charges.

Health practitioners often ask, "*Do I need to tell AHPRA I've been charged with an offence?*"

The short answer is that in most cases, registered health practitioners will be required to inform their relevant health practitioner National Board (via AHPRA) that they have been charged with a criminal offence.

However, there are some exceptions related to the requirement to report criminal charges to your National Board.

### When do health practitioners need to report criminal matters to AHPRA?

AHPRA's governing legislation, the *Health Practitioner Regulation National Law Act 2009* (National Law) provides that registered health practitioners must inform their health practitioner Board (such as the Medical Board of Australia, Nursing and Midwifery Board of Australia, or Paramedicine Board of Australia etc) if a 'relevant event' has occurred.

Importantly, a health practitioner is required to notify their National Board if they:

- are charged with an offence that is potentially punishable by 12 months imprisonment or more (whether or not any period of actual imprisonment is likely at the end of the matter); or
- plead guilty, or are found guilty, of an offence able to be punished by any period of imprisonment at all (whether or not a conviction is recorded and whether or not any period of imprisonment is actually ordered to be served).

The legislation states that any notification that is required to be made to a National Board must be made **within 7 days** of the event occurring, so health practitioners should act promptly if they are required to make a notification.

## Using a criminal lawyer versus a professional discipline lawyer

Many criminal lawyers are not aware of health practitioners' obligations to inform their National Board when they are charged, or convicted, of a criminal offence. We do not criticise criminal lawyers in relation to this, as professional discipline is a specialist area of law. We strongly recommend that health practitioners seek specific advice in relation to any professional discipline matters, particularly those involving their National Board and AHPRA.

## Common misperceptions about reporting requirements

It is a common misperception that registered health practitioners are not required to tell AHPRA about a charge before it is determined.

This is not true.

If a health practitioner is charged with an offence potentially punishable by 12 months imprisonment or more, they are required to inform their National Board of the charge within 7 days of being charged, even though it has not yet been finalised.

It is another common misperception that registered health practitioners are not required to tell AHPRA about an offence if no conviction is recorded. However, as outlined above, a notification is required to be made to AHPRA where the practitioner pleads guilty or is found guilty, of an offence able to be punished by imprisonment, and this is regardless of whether or not a conviction is recorded.

## What does 'punishable by imprisonment' mean?

The legislation refers to offences which are 'punishable by imprisonment'. What does this mean?

Where the legislation refers to offences which are 'punishable' by a period of imprisonment, this does not refer to the specific period of imprisonment (if any) ordered to be served by the health practitioner. Rather, the wording of the legislation refers to the maximum period of imprisonment which may be applicable to the offence.

If there is no potential period of imprisonment that attaches to an offence (for example, some regulatory offences, where the maximum penalty is a fine), this is not required to be notified to AHPRA within 7 days.

However, even if a matter is not required to be disclosed to a National Board within 7 days of it occurring (as there is no potential period of imprisonment), the practitioner may be required to report it to their National Board when they seek renewal of their registration. It is important for practitioners to read the registration renewal form carefully and seek advice if necessary, to confirm whether or not any additional disclosures are required at renewal time.

## Disclosure to your National Board/AHPRA may be required at a later date

There are also matters where a health practitioner may not need to disclose a charge to their National Board initially, but may later need to disclose the matter when they plead guilty or are found guilty of the offence.

A good example of where this may occur is in relation to certain drink-driving offences in Queensland.

For example, the maximum period of possible imprisonment for a first offence drink-driving matter in Queensland is less than 12 months. A practitioner charged with certain drink driving offences may therefore not need to report the matter to AHPRA when they are charged. However, if they later plead guilty or are found guilty of that offence, they will need to notify their National Board within 7 days of that occurring, as it is an offence potentially punishable by imprisonment.

As outlined above, this will apply whether or not any actual period of imprisonment is ordered and regardless of whether a conviction is recorded.

Legislation differs between states regarding whether or not certain offences are punishable by imprisonment, so it is important to seek specific advice.

Whether or not a criminal matter needs to be notified to a National Board is not always straightforward, though most criminal matters will need to be disclosed.

## What happens when a health practitioner discloses a criminal matter to their National Board?

If a practitioner is required to make a notification of a criminal matter to their National Board, the National Board (and/or, in Queensland, the Office of the Health Ombudsman (OHO)) will consider whether or not the criminal matter may have any bearing on the practitioner's fitness and suitability to practise their profession.

Criminal offences do not need to be directly connected with a health practitioner's work to potentially have a bearing on their fitness and suitability to practise.

It is likely that the National Board, or the OHO, will request additional information from the practitioner in relation to the criminal matter. Some matters may be resolved by providing further information. Other matters may result in a further investigation and enquiry by AHPRA on behalf of the National Board.

If a matter is sufficiently serious, a National Board may take interim action against a practitioner's registration until the criminal matter has been determined.

## Seek legal advice from a health lawyer

If you have been charged with a criminal offence, you should seek advice in relation to your National Board reporting obligations as a matter of urgency.

If you need advice or representation in relation to any type of professional discipline matter, including making a notification of a criminal matter to your National Board, we are here to assist.

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

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](mailto:general@hallpayne.com.au)

## Find this article useful or interesting?

You may also like to read:

- [Making statements over the phone to AHPRA](#)
- [Nursing and Midwifery Board decision: AHPRA notification frivolous and vexatious](#)
- [AHPRA framework to manage vexatious complaints against health practitioners](#)

---

*This article relates to Australian law; either at a State or Federal level. The information contained on this site is for general guidance only. No person should act or refrain from acting on the basis of such information. Appropriate professional advice should be sought based upon your particular circumstances. For further information, please do not hesitate to contact Hall Payne Lawyers.*