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Re: Mandatory reporting under the Health Practitioner Regulation National Law

The Australian Medical Students' Association (AMSA) welcomes the opportunity to provide a submission to this discussion paper on mandatory reporting under the Health Practitioner Regulation National Law.

AMSA is the peak representative body for Australia's 17,000 medical students. AMSA provides a voice for these students on issues that affect them, both currently and in the immediate future as doctors in training. Optimising the mental health of medical students and junior doctors is a priority for AMSA.

The mental health of medical students has been consistently demonstrated to be worse than that of the general population, with levels of psychological distress for final year medical students even greater than for newly graduated doctors. [1] Access to mental health support services for medical students is vital, and barriers to access must be addressed. Although just one aspect of a broader problem, one perceived barrier is the mandatory reporting requirements as they apply to both doctors and medical students. [2]

AMSA thus appreciates COAG's attention to reform of the National Law. A number of recent suicides of medical students, in addition to recent junior doctor suicides that have been reported in the media, mean that reform is urgently required. AMSA supports the full national implementation of the Western Australian model (option 2 in the discussion paper). This would assist in a reduction of confusion surrounding mandatory reporting requirements. As described in the discussion paper, professional and ethical safeguards would remain to ensure patient safety.

Mandating the reporting of students' impairment also poses issues. While the increased threshold for reporting of students ideally should be sufficient to avoid creating barriers, anecdotally it still deters students from seeking help from their university. Universities have a responsibility to their students, which is compromised when their legal requirements of mandatory reporting deter students from discussing mental health conditions with appropriate staff. Additionally, for the safety of the public and the wellbeing of the student, it is important that students are encouraged to disclose conditions to appropriate members of staff at their universities so that reasonable and confidential accommodations may be made.

Key Recommendations

1. A nationally consistent approach to mandatory reporting should be adopted. This should align with the current law in Western Australia (Option 2), in which, for the treating doctor, mandatory reporting requirements should not apply.
2. With respect to mandatory reporting requirements for students:
 - a. Treating health practitioners and education providers should not be subject to any mandatory reporting requirements
 - b. For other registered health practitioners, a mandatory reporting requirement for impairment should still apply, at the current higher threshold.

Mandatory reporting exemptions for health practitioners

There is consistent evidence supporting the incredible burden of mental ill-health in the medical profession [3]. This poor mental health may put patients at risk of inferior care, and yet efforts to support doctors seeking help are impaired by the existence of mandatory reporting requirements. AMSA believes that the principle of doctor-patient confidentiality must be upheld where possible, and that the threat of mandatory reporting confuses and deters doctors from seeking appropriate help. Although the law intended to set a high bar for reporting doctors, in reality it appears that treating doctors are unclear on their legal obligations and may report unnecessarily. Option 2 would allow for the protection of patients, because professional and ethical obligations would remain alongside the avenue of voluntary reporting.

The major issue we see with both Options 3 and 4 is that they may further increase the confusion surrounding mandatory reporting. Furthermore, Option 3 mandates the retrospective reporting of notifiable conduct, creating a career-long barrier to seeking help. While impairment in relation to mental health is our major concern, we do believe that all mandatory notifications should be exempt for treating doctors. The reasoning behind this again comes down to clarity and confidence to receive treatment. Investigation into the Western Australian system reveals no evidence to support markedly decreased reporting rates or of increased patient risk due to a lack of reporting. Further, the 2014 Snowball review found that exemptions consistent with the Western Australian law should be applied nationwide. [4]

While lacking the clarity of Option 2, a modified version of Option 4 would also be preferable to the status quo in every state except for Western Australia. One option AMSA would be amenable to is to retain mandatory reporting for sexual misconduct and departure from professional standards, but to exempt the treating doctor from mandatorily reporting impairment and disclosures of practicing while intoxicated by alcohol or other drugs. Mental health conditions and alcohol and drug misuse are interrelated, [5] and so both should not be subject to mandatory reporting. There is, however, a risk that this option would continue the confusion surrounding mandatory reporting amongst doctors and medical students.

The culture of the Australian medical workforce significantly stigmatises mental health, a recognised factor in the recent cluster of junior doctor suicides. In the 2013 Beyondblue National Mental Health Survey 52.5% of respondents identified concerns about lack of confidentiality as an important barrier to seeking treatment for anxiety or depression [1]. Fear and misperceptions around mandatory reporting laws disincentivise students and doctors from seeking early, preventative mental health care. It follows that mandatory reporting minimises the availability of appropriate primary care and early intervention strategies for medical professionals. Such approaches are crucial to minimise the impact of the mental health condition and in decreasing the risk of suicide.

Mandatory reporting requirements for medical students

Currently education providers and medical practitioners are mandated to report medical students who demonstrate impairment that may place the public at substantial risk of harm (with the exception of WA).

Given the notable barrier to seeking support that the current mandatory reporting laws create for medical students, AMSA believes that in addition to removing mandatory reporting requirements for treating doctors, requirements for education providers to report medical students should also be removed.

As it stands, medical students have low rates of help-seeking behaviour [6] and face significant barriers such as the physical distance of clinical sites from university campuses [1]. There are anecdotal accounts that fear of being reported is a significant factor for a number of students who have been reluctant to seek help from their universities. Confusion remains despite students generally being taught of the existence of mandatory reporting and that the threshold for reporting is higher for students than doctors. It is the understanding of AMSA that the average student is not confident of the details of student-specific provisions to mandatory reporting policy, and how they apply in practice.

The mandatory reporting requirements placed on universities puts them in the difficult position of simultaneously having a duty of care to support students and being legally required to report students who disclose. This creates a paradoxical situation where faculty may discourage students from approaching them about their mental health in order to protect them from reporting requirements. One student reported that they had been advised by members of faculty to not seek support and counselling services or disclose mental health conditions to other faculty members because they would be reported to AHPRA, despite having sought appropriate management of their condition.

If a student feels unable to approach staff for help with a mental health condition, access to effective, appropriate support provided by the university is limited. The impact of this extends beyond healthcare to educational processes, including special consideration for assessment and academic support.

Significantly, these changes would not remove safeguards to patient protection. Due to the inclusion of both education around and assessment of professional standards in medical school curricula, mechanisms to identify and address at risk students already exist at a university level. [7] In addition, it is important to note that voluntary notifications would still be able to be made.

Creating a healthy culture whereby doctors feel comfortable seeking appropriate mental healthcare starts at ensuring medical students can access help. The amendment of Option 2 to include the exemption of education providers from mandatory reporting is pivotal to fostering a help-seeking culture for students from the beginning of their medical careers.

Conclusion

The effects of mental ill-health of medical students and doctors on patients and the health care system, in addition to the practitioners themselves, means that this is an area in which reform is urgently required. As it currently stands, mandatory reporting is a significant deterrent for medical students and junior doctors alike to seek support in issues regarding their mental health. Many medical students and junior doctors are fearful of being mandatorily reported, and having the conditions placed on their practice of medicine, as the result of seeking this support. AMSA believes that changes to the national law in line with the Western Australian model (Option 2), with additional amendments to release education providers of students from mandatory reporting, would encourage more medical students and junior doctors to seek support for their mental health that would have positive downstream effects for the health and safety of both doctors and patients alike. AMSA thanks COAG for the opportunity to provide comment on this important issue, and looks forward to the implementation of nationally consistent reforms in the near future.

Sincerely,



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