THE CAP IN THE FCA/FCC

ARE NOTIFICATIONS TO AHPRA INEVITABLE?

DR ROBERT ADLER
Well almost yes
ARE NOTIFICATIONS TO AHPRA INEVITABLE?

OVERVIEW

• Disclosures
• Data
• Why are notifications almost inevitable
• What resources are available to help
• Minimising risk
ARE NOTIFICATIONS TO AHPRA INEVITABLE?

Disclosures

• Conducted assessments for the Family Court of Australia and Federal Circuit Court for > 20 years
• 12 years as member of MPBV
• Defendant in one action in Supreme Court of Victoria
• Subject of three complaints to AHPRA/ HCCC
• Fortunately, no adverse findings
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DATA

Hotspots of complaint risk among mental health practitioners (2011-2016)

- 3706 reg’d psychiatrists received 1944 complaints
- 1130 psychiatrists (30.5%) rec’d at least one complaint
- Equates to ~1 complaint/ 8 years of practice
- <10% of all complaints were against psychiatrists
- Reports, followed by breaches of confidentiality were commonest subject of complaints when compared with physicians

Practitioners at high risk of complaints –
Predicted Risk of New Event for Health Practitioners (PRONE-HP)

• Notifications to AHPRA 2011-2016 (inclusive)
• Psychiatrists make up 3.7% of all medical practitioners
• Psychiatrists make up 6.7% of all complaints about medical practitioners
• Rate per 1000 person years = 123.3 (1/8yr practice)
  – O&Gs = 124.1; Surgeons = 112.0; GPs = 75.2
• Psychiatrist (PRONE-HP) score = 17

**Practitioners at high risk of complaints – PRONE-HP**

**Calculate your own PRONE-HP score**

<table>
<thead>
<tr>
<th>RISK FACTOR</th>
<th>SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>2</td>
</tr>
<tr>
<td>Age 36-45; &gt;45</td>
<td>3-4</td>
</tr>
<tr>
<td>Psychiatrist</td>
<td>17</td>
</tr>
<tr>
<td>Previous complaints - 1</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>10</td>
</tr>
<tr>
<td>=&gt;7</td>
<td>15</td>
</tr>
<tr>
<td>Complaint issue in last 12mo - reports</td>
<td>3</td>
</tr>
</tbody>
</table>

**MY GRAND TOTAL** 33

**Probability of further complaint in next two years** 53-54%

Practitioners at high risk of complaints – PRONE-HP

Doctors with PRONE-HP score of 30 or more

- Positive PV = 93.1%
- Negative PV = 90.1%
- Sens = 17.6%
- Spec = 99.8%

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WHY are notifications almost inevitable?

Since FLA (1975) Parents can only argue about children and money
“The FCA/FCC are impossible jurisdictions”

Bob Adler

The dominant emotions are

anger, hurt & often guilt

“If the hatred that the parents in these proceedings feel towards each other could be bottled, it would be an insidious weapon of mass destruction.”

Altobelli, FM
FCA/FCC PROCEEDINGS INVOLVING CHILDREN

- 16% hearing
- 9% litigation
- 75% reach agreement about parenting arrangements, more or less by consent
Are notifications to AHPRA inevitable?

With apologies to Abraham Lincoln

• You may please some of the people some of the time but you won’t please all of the people all of the time

• In Family Court reports
  – It is important to express your opinion without fear of the consequences
  – you will rarely if ever please both parties, but
  – you will often upset at least one of the parties, and
  – you may upset both
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RESOURCES

AHPRA website:
- Good Medical Practice – A code of conduct for doctors
- Video: A notification has been made about me: A practitioners experience
  - https://youtu.be/0N5zfLfHiwk

RANZCP
- RANZCP PPG #3 – Guidelines for Psychiatrists in Relation to Family Court Proceedings – Australian Family Court
- RANZCP PPG #11 – Developing reports and conducting medical examinations in medico-legal settings
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• **Trust in the relationship between doctors and patients is the cornerstone of medical practice**
  - This may be absent or at least much more difficult to establish during a medico-legal assessment

• **Understanding the difference between a clinical consultation and a medico-legal assessment is essential**
  - Purpose of the assessment is to provide a report to a third party NOT to provide treatment, therefore
  - The doctor-patient relationship is very different to the doctor-patient relationship in a therapeutic setting
  - The person being assessed wants to present themselves in the most favourable light
  - The psychiatrist’s role is to assist the Court in its decision-making not to act as an advocate for either party

Good Medical Practice: A code of conduct for doctors in Australia (AHPRA, 2014)
Are notifications to AHPRA inevitable?

**Mitigating risk**

- Be courteous and respectful at all times
- Be open about your fees,
  - including payment before release of report
- Take time with introductions and explanations
  - Emphasise non-confidential nature of interview
- Allow enough time (2hr minimum)
- Be aware of any potential conflict of interest
- Keep good records of interviews, including times
- Be aware of your own biases
- Be timely in completing your report
- Limit your report & evidence to your area of expertise
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Mitigating risk #2

• Do **NOT** alter a report once completed
  – If errors are pointed out, issue a supplementary report

• Your role is to assist the Court **NOT** to advocate for either party

• When giving evidence
  – Prepare thoroughly
  – Treat the Court, lawyers & litigants with respect
  – Self-represented litigants pose particular challenges for you and the Court
  – Don’t get involved in legal argument
  – Be prepared to take new information into account
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Mitigating risk #3

• Notify your medical indemnity insurer early
  – Seriously consider taking additional ‘away from work costs’ insurance
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- [https://youtu.be/0N5zfLfHiwk](https://youtu.be/0N5zfLfHiwk)

- Despite the challenges it is interesting and worthwhile work – trying to act at all times in the best interests of the child(ren).

- Isn’t that why we did child and adolescent psychiatry in the first place