How is compliance evaluated?

July 2018

Information sheet

Introduction

The National Board's role is to ensure that people who are registered as health practitioners have the knowledge and skills to practice competently and safely. Where the National Board has decided that it is necessary to impose restrictions on a person's registration part of the role of the National Board includes monitoring compliance with those restrictions.

How is compliance evaluated?

Ahpra collects information about compliance. The type of information collected varies depends on the restrictions and is set out in a monitoring plan provided to registrants. Wherever possible information is verified against independent records. This information is used to evaluate compliance with restrictions. Ahpra reports information about compliance to the National Board's at least once a month.

The evaluation is undertaken with reference to the specific requirements of the restrictions on your registration and any associated protocol as well as the monitoring plan provided to you at the commencement of monitoring (an updated regularly afterwards).

A registrant may be considered non-compliant with restrictions if any practice, behaviour or activity that is expressly prohibited by the restrictions or a related protocol occurs. A registrant may also be considered non-compliant with restrictions if they fail to provide information, nominate third parties, or evidence of compliance within the required timeframe(s). This is referred to as non-compliance.

A registrant may be deemed to be suspected to be non-compliant where further information is required to confirm a suspicion of non-compliance.

Examples of what might result in a change to the evaluation of a registrant's compliance are provided below:

Restriction category	Compliance events
All restriction categories	Failure to provide or return documents that are required by the restrictions and/or relevant protocol where no evidence of submission of the required information can be provided (eg evidence of recorded delivery postage). Failure to provide a scheduled report without reasonable explanation where no evidence of submission of the required information can be provided (eg evidence of recorded delivery postage). Persistent failure to ensure provision of reports in a timely fashion (i.e. reports are persistently late and require follow up) where this is within the control of the registrant Failure to provide a nomination (whether for information or approval) within the required timeframe (where such nomination is a requirement of the restriction and/or protocol). Failure to obtain approval of a monitoring parameter or third party prior to commencing or resuming practice (where obtaining approval is a requirement of the restriction and/or protocol) Relocation of registrant to another jurisdiction (including circumstances where the monitoring responsibility transfers to, or is received from, a co-regulatory body such as the HPCA). Providing false or misleading information in any form about their ongoing compliance. Receipt of new notifications or other information regarding a monitored registrant that suggests the registrant is or may have been non-compliant with any requirements of the restrictions including disclosures of relevant events under section 130 of National Law.
Audit	Failure to submit to audit of premises and/or records as required by restriction and/or protocol. Failure to provide suitable access to premises and/or records to be audited. Auditor's report indicates contravention of restrictions on practice (e.g. prescribing, consultation of restricted patient groups, practice outside of permitted scope/hours). Auditor's report indicates records are of sub-standard quality or questionable integrity. Auditor's report indicates sub-standard practice of the profession. Auditor's report indicates premises are of sub-standard quality or raise concerns regarding the practices conducted therein.
Chaperone	Failure to nominate for approval designated chaperones where this is a requirement (within required timeframe). Failure to provide, or provide access to, patient records and/or logs as required by the restriction and/or protocol where evidence of submission of the required information is not provided (eg evidence of recorded delivery postage). Treatment/consultation of restricted patient group(s) in the absence of a chaperone. Use of an unapproved chaperone (where approval of designated chaperone(s) is a requirement). Review of chaperone log or comparison with other records indicates log contains false or inaccurate information.

Restriction category	Compliance events
Education / Up-skilling	Failure to nominate for approval education/up-skilling activity (within required timeframe). Failure to attend education/up-skilling activity. Failure to provide evidence of satisfactory completion of education/up-skilling activity (including reflective activities). A report from an educator raises concern regarding health, conduct or performance or satisfactory engagement or progress in education.
Health	Failure to attend a treating registrant or treatment program as required. A report from a treating registrant indicates failure to comply with treatment regimen, or concerns over fitness to practice (including deterioration of known conditions, or the emergence of new issues).
Mentoring	Failure to attend/meet with mentor as required. Report indicates lack of progress/improvement/insight in respect of the registrant's issues or failure to follow the mentoring plan.
Practice / Employment	Failure to practise in accordance with the restriction(s) and/or protocol(s). Any practice when a condition or undertaking is in place preventing all practice of the profession. Prescribing/dispensing/selling/supplying/administering/self-administering/accessing/possessing drugs in contravention of a restriction and/or protocol. Practice outside of approved arrangements including scope/location/hours of practice. Treatment/consultation of restricted patient groups or treating greater numbers of patients than permitted. Report indicates cessation or termination of employment. Report indicates unsatisfactory level or performance and/or conduct or the restriction/withdrawal of clinical privileges.
Prohibited registrants/students	Evidence of practice or undertaking clinical placement when restriction or registration status does not permit practise.
Supervision	Failure to practise under supervision or under requisite level of supervision as specified by the restriction and/or protocol. Practice under unapproved supervision arrangements (including an unapproved supervisor or site). Failure to provide a supervised practice plan if required by the restriction and/or protocol. Report indicates unsatisfactory level of performance and/or conduct or the restriction/withdrawal of clinical privileges.

Restriction category	Compliance events
Substance use	Positive result for a drug or substance that has not been prescribed, approved or administered by the registrant's nominated registrant where that substance is included in Ahpra's schedule of substances for screening or is a substance of abuse by the registrant. Failure to notify of a new prescribed substance within the required timeframe where that substance is included in Ahpra's schedule of substances for screening or is a substance of abuse by the registrant. Failure to attend for testing when directed or required by the restriction and/or protocol (this includes attending for additional testing). Providing samples for testing outside of the approved collection and testing regimen. Evidence which indicates a registrant has knowingly used, made, altered or possesses any object or product in such a way as to defraud or attempt to defraud any type of drug or alcohol screening test designed to detect the presence of substances and/or alcohol. **Urine drug screening** Failure to provide samples for testing under the required level of observation. Providing urine samples that are dilute, or otherwise fail to meet the requirements of the Australian Standard (temperature, adulterants, chain of custody). **Hair testing** Providing hair samples that are not suitable for testing, or not maintaining hair at an adequate length. Providing hair samples that fail to meet chain of custody. **Breathalyser testing** Returning a positive breath test result for alcohol prior to commencing a work period, during a work period or at the conclusion of a work period. Commencing practice having not undergone a breath test for alcohol as required by the restriction and/or protocol Failure to provide, or provide access to log book or records of work hours as required by the restriction and/or protocol where evidence of submission of the required information is not provided (eg evidence of recorded delivery postage) Use of unapproved breath testing supervisor (where approval of designated breath testing supervisor is a requirement). Review of audit log or comparison with other records indicates audit log contains false or inaccurate information.

What happens if an evaluation of compliance status is changed?

If Ahpra receives information that suggests that a registrant may not be or is not complying with the restrictions, the situation specific risk will be assessed to determine what, if any, risk management activity is required in the circumstances. In assessing the risk, the following considerations may apply:

- Whether the non-compliance is suspected or confirmed.
- The reasons for the initial imposition of the restrictions.
- The inherent risk associated with the practice of the profession of the registrant or student.
- The categories and details of the restrictions on the registrant's registration
- The current nature of employment and the presence of any supervision requirements.
- The specific characteristics of the circumstances that mitigate risk
- The registrant's history of compliance.
- Whether there were extenuating/mitigating circumstances which could reasonably explain the non-compliance.
- Whether the registrant advised Ahpra and/or the National Board of the non-compliance.
- If there is a new complaint that indicates non-compliance, the nature of the allegations, the existence of witnesses and the strength of evidence being relied upon.
- Whether the registrant has deliberately tampered with evidence of compliance or frustrated a process.

Ahpra will usually write to the registrant to tell them about our concerns and ask them to provide additional information. This will provide the registrant an opportunity to have a say in the process. This may occur before or after the National Board has considered to the non-compliance or suspected non-compliance.

Ahpra may also request further information from other third parties such as supervisors, treating registrants, Department of Health, Department of Immigration, or employers where allowed by the terms of the restrictions or otherwise permitted by the National Law or any other applicable law.

What action can a National Board take?

Most restrictions are intended to allow a registrant to continue to practise whilst providing a mechanism to ensure that the registrant's practise is safe and competent. The National Boards view non-compliance with restrictions as very serious as it indicates that the restrictions no longer provide the required assurance that the public is adequately protected. In these circumstances, the Board may consider it appropriate to take further action in order to manage the risk posed to the public. Any action taken by the National Board is guided by the regulatory principles which can be located at the following link http://www.ahpra.gov.au/About-Ahpra/Regulatory-principles.aspx.

The possible outcomes of consideration by a National Board include:

- no action
- an increase in the requirement to provide evidence of compliance
- a change to the restrictions that apply to your registration, and/or
- health, conduct or performance action under Part 8 of the Health Registrant Regulation National Law, as in force in each state or territory, including but not limited to:
    - Caution
    - Immediate action
    - Investigation
    - Health or performance assessment
    - Referral to a Panel or a Tribunal

If a Board proposes to take action to change restrictions or to impose new restrictions, the registrant will be given the opportunity to make a written or verbal submission to the Board. The Board must consider any submissions a registrant makes prior to making a decision.