

# Avant factsheet:

## Dealing with a professional conduct complaint

### Quick guide

- As soon as you become aware of a complaint to Ahpra, the HCCC, the OHO or another health complaints entity, you should contact Avant for advice.
- It is important not to delay responding to a complaint. Avant can explain the process and help you respond in a way that protects your interests.
- Effective responses are those that are objective, supported by medical records and demonstrate a level of insight.

Receiving a complaint about your professional conduct can be a stressful and confronting experience. This is particularly true if you have not had a complaint before.

We encourage members to try to view a complaint as an opportunity to reflect on your professional practice. While at first it may feel like a direct attack on your personal and professional integrity, in many cases there is often at least one thing a doctor or practice can learn from a complaint.

### What should I do if I receive a complaint?

Sometimes, the first you may know of a patient complaint is when you receive a telephone call, email or letter from either Ahpra or a health complaints entity, such as the Health Care Complaints Commission (HCCC) in NSW, or the Office of the Health Ombudsman (OHO) in Queensland.

If you receive a telephone call, the health complaints entity may simply be letting you know to expect a letter, or it may invite you to respond to the complaint during the call. Before providing any response over the phone, we recommend that you contact Avant for advice, as any information given could be considered as evidence by the entity. Without access to the relevant records or the time to consider all the information, your initial comments may not be your final position.

The letter will normally come with a copy of the complaint (or 'notification') enclosed. The complaint may have been made using the entity's online complaints form, by email, letter or even a telephone call. It is most common for a complaint to come directly from a patient. However, anyone can make a complaint, including a relative of the patient, a colleague or a hospital staff member. Sometimes the entity is notified of a complaint from another entity, such as the Coroner (following a coronial inquest) or the Department of Health (following a Medicare audit).

At this early point in the process, it is important to ensure you:

- **DO NOT** contact the patient or the person who has made the complaint. This could be interpreted as an attempt to encourage the person to withdraw their complaint.

Dissuading people from complaining could be considered inappropriate conduct, and in NSW it may be an offence.

- **DO NOT** contact Ahpra or the complaints entity until you have sought advice from Avant. We will talk you through the process to help make sure your interests are protected.
- **CALL AVANT** – Seek our advice on how best to respond to the complaint.

### Preliminary assessment

Normally, the first stage in a professional conduct complaint is the assessment stage. Depending on the state or territory you are in, this usually involves consultation between the complaints-handling entity (for example, Ahpra or the HCCC) and the Medical Board (or in NSW, the Medical Council) to decide which entity will deal with the notification. If the Board deals with the notification, then it has 60 days to carry out a preliminary assessment. In most states and territories Ahpra assists with the preliminary assessment. However, in Queensland, Ahpra or OHO may proceed and in NSW, the HCCC deals with the preliminary assessment.

The Assessment Officer gathers the information to assess the complaint. The Assessment Officer may:

- contact the patient or person who made the complaint to clarify the concerns
- seek a response to the complaint from the doctor or the health organisation
- seek to obtain the patient's medical records to enable a clinical assessment of the care provided.

### Preparing a response

The Assessment Officer usually allows you 14 days to provide a written response. This time can vary, but we recommend that you notify Avant as soon as you become aware of the complaint. That will allow you the most opportunity to draft the response. Avant will seek an extension if more time is required.

In our experience, a response that is factual, insightful and understanding of the patient's situation is more likely to result in a good outcome for the doctor or organisation.

An effective response usually contains the following elements:

- Acknowledgement of the patient's (or other person's) point of view. It is helpful to remember that the patient genuinely believes in their complaint and an insightful, conciliatory response may assist in resolving their concerns.
- Provision of factual information to address the issues raised. Where possible, your response should be supported by entries in the patient's medical record.
- Clarification or correction of misunderstandings.
- An apology – either for the problem perceived by the patient or for an outcome referred to in the complaint.
- A description of changes you will make in your practice to avoid a similar set of circumstances, or at least an assurance that you have considered the patient's comments carefully.
- A suggestion for an action that may resolve the patient's complaint. For example, "I will forward a copy of the records to Dr A immediately" or "In hindsight, I recognise that while I am not prepared to sign Mr P's letter, I could compile a factual medical report for his solicitor".

### Ask Avant to review your response

Before preparing your response, you should consider who has made the complaint and whether you will be breaching a patient's confidence in providing a response; your team at Avant can guide you on this. It can be very difficult to maintain your objectivity in the face of a complaint about your professional care and therefore it is in your interests to allow us to review any response you have prepared before you provide it to Ahpra or the health complaints entity. Please try to provide your response to us as soon as possible. This gives us time to review the response and discuss recommended amendments with you. We will liaise with Ahpra or the health complaints entity on your behalf.

### Possible outcomes of an assessment

Ahpra or the health complaints entity can take the following action in relation to a notification:

- Decide no further action is required, or discontinue with comments.
- Issue a caution.
- Accept undertakings.
- Impose conditions on your medical practice.
- Proceed with an investigation.
- Carry out a health or performance assessment.
- Refer you to a panel or tribunal hearing.

**\*IMPORTANT:** This publication is not comprehensive and does not constitute legal or medical advice. You should seek legal or other professional advice before relying on any content, and practise proper clinical decision making with regard to the individual circumstances. Persons implementing any recommendations contained in this publication must exercise their own independent skill or judgement or seek appropriate professional advice relevant to their own particular practice. Compliance with any recommendations will not in any way guarantee discharge of the duty of care owed to patients and others coming into contact with the health professional or practice. Avant is not responsible to you or anyone else for any loss suffered in connection with the use of this information. Information is only current at the date initially published. © Avant Mutual Group Limited 2021 fact-0271a 09/21 (DF-2102)

In our experience, most complaints are closed with no further action. Ahpra has also reported that most notifications end in no further action.

Our Risk Advisory Service may provide advice or recommendations to reduce your risk of further complaints. Sometimes we recommend to members that they voluntarily engage with our Risk Advisory Service before the Board makes a decision about the complaint. In our experience, this can (but not always) lessen the likelihood of the Board deciding regulatory action is required.

### What happens if there is an investigation?

If there are serious concerns arising from the complaint, the matter may be referred for investigation. This involves a peer review process and may result in disciplinary action. You will be given an opportunity to provide a detailed response to the allegations being investigated and Avant will guide you through every stage of the investigation. We may obtain independent expert opinion on your behalf.

### Looking after yourself

Avant aims to make this process as straightforward as we can for our members. However, we recognise it can be confronting to receive a complaint, and you should not underestimate how stressful this can be for you and your family.

Your claims manager and lawyer are available to answer any questions you might have about your matter or the process involved.

It is critical that you look after yourself through the process of dealing with a complaint. Avant's [Key Support Services](#) outline includes a range of options to help you through this time.

### Additional resources

To hear an Avant member talk about his firsthand experience with the disciplinary process, listen to our podcast: [It happened to me: the disciplinary process](#).

You can find additional resources including articles, podcasts and webinars in the [Avant Learning Centre](#).

For more resources about doctors' health and wellbeing, particularly during a medico-legal complaint, please visit [Avant's Doctors' Health and Wellbeing](#) web page.

**For more information or immediate advice, call our Medico-legal Advisory Service on 1800 128 268, 24/7 in emergencies.**

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