



Impact of medico-legal processes on the health of doctors

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This paper provides a brief overview the issues raised by medico-legal processes on the health of doctors and has been prepared in as a briefing paper for a Collaborative for Better Health and Regulation forum at The University of Melbourne.

Introduction

Medico-legal claims, complaints, and disciplinary processes are designed to protect the public. However, many doctors experience distress as a result of these processes which may - paradoxically - cause further deterioration in their health and compromise the quality of patient care.

Why does the health of doctors matter?

The health of doctors matters for the doctors themselves, their families, their colleagues, and the communities they serve.

Even before the pandemic, doctors experienced higher rates of depression, anxiety, and substance abuse compared to the general population. (BeyondBlue, 2019) The pandemic has amplified these risks. Risk factors include long working hours, stressful working environments, exposure to traumatic experiences, poor work-life balance, and easy access to prescription medications. (Bradfield et al., 2022) Doctors are more likely than other professionals to continue working when sick; more likely to avoid or delay seeking medical treatment; and more likely to self-diagnose and self-medicate. (Galbraith et al., 2021)

From a patient safety perspective, poor doctor health can contribute to poor patient outcomes. (West et al., 2016) Doctors with good health and wellbeing are less likely to make mistakes, to have higher patient satisfaction, and to keep working in the profession.

What is the role of regulation?

When poor health impairs a doctor's ability to safely practise medicine, they may come to the attention of medical regulators, such as the Australian Health Practitioner Regulation Agency (Ahpra) and the Medical Board of Australia. In Queensland and NSW the Health Ombudsman, Health Care Complaints Commission and Medical Council of NSW have a co-regulatory role.

Anyone can complain to Ahpra about a doctor. However, health practitioners and employers are mandated to do so if they reasonably believe that a doctor is practicing while intoxicated with alcohol or drugs or are practising with a health impairment and are placing the public at risk of substantial harm (hereafter "mandatory reporting"). Under the National Law, a doctor is impaired if they have "a physical or mental impairment, disability, condition, or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect his or her capacity to practise the profession". (Health Practitioner Regulation National Law)

Where needed to protect the public, medical regulators can restrict the practice of impaired doctors by: imposing conditions on or suspending their registration; directing them to undergo a health assessment; or taking immediate action in urgent situations.

Positive impacts of regulation on unwell doctors

The primary aim of these regulatory actions is to protect patients from harm. However, by requiring health assessment, treatment, and monitoring, regulatory actions may also ensure that doctors receive care that is needed for their diagnosis and recovery. This is particularly important for doctors who may lack insight into their illness, as may occur in psychosis, mania, or dementia, or who have been unwilling to engage with treatment, as may occur

in substance use disorder. Those who work in doctors' health can readily call to mind examples of doctors whose careers, and even lives, were saved by mandated treatment and monitoring.

Negative impacts of regulation on unwell doctors

Regulatory processes may have significant emotional, psychological, financial, vocational, and reputational consequences for unwell doctors. Being involved in regulatory processes forces doctors into situations and roles that are unfamiliar and, at times, misunderstood. It is therefore not surprising that regulatory processes can have serious negative consequences for doctors. These include heightened stress, anxiety, shame and, at times, self-harm and even suicide.

Among doctors who are already unwell, the stress of regulatory processes can trigger psychological distress and symptom relapse, and may delay recovery. (Bradfield et al, 2022 in press) Others may develop an acute stress reaction or even post-traumatic stress disorder in response to the trauma of a prolonged and intrusive investigation process.

In the UK, a 2013 report found that the stress of UK regulatory processes contributed to the suicide of 28 doctors. It concluded that the UK medical regulator had a positive obligation to ensure that regulatory processes do not damage the mental health of doctors. (Horsfall, 2014) A more recent survey of nearly 8000 UK doctors found that doctors with a recent or current complaint are twice as likely to experience depression, anxiety, or suicidal thoughts compared to doctors with no prior complaint. (Bourne et al., 2015)

What reforms are needed?

Health system reforms

Before discussing regulatory reforms, it is helpful to consider upstream opportunities to prevent doctors becoming impaired. These include safer workplaces, better access to peer support, and ready access to health services that meet their needs.

At the organisational level, there is a need for compassionate leadership that facilitates a sense of belonging, supports teams to prepare for and debrief from difficult events, and is attuned to the challenges that different groups of healthcare workers may face, such as cultures of presenteeism and differentials in caring responsibilities. (Bismark et al., 2022)

Within the profession, peer support is a way of providing emotional and wellbeing assistance where the facilitator and participant interact as equals. Peer support is supported by research as an effective pre-clinical mental health intervention which helps people to connect through lived experiences. Hand-n-Hand (Helping Australian & New Zealand Nurses and Doctors) is a nationwide peer support organisation founded by Dr Tahnee Bridson in March 2020 to provide support to health practitioners during the pandemic. (Bridson et al, 2021)

When doctors become unwell, they face multiple barriers to health access, including included limited time, stigma, denial, and lack of access to services that understand and meet their needs. (Bismark et al., 2022) It is crucial for doctors to have their own general practitioner, along with access to psychology, psychiatry, and addiction services that are confident and skilled in working with doctors.

Regulatory reforms

For the small number of impaired doctors who do require regulatory intervention, there is an urgent need to ameliorate the unintended harms of prolonged and stressful processes.

In recent years, Ahpra has undertaken extensive work to expedite its response to notifications, develop staff communication skills, and to make interactions kinder and less legalistic. (Biggar et al., 2022) We are supportive of this work, and believe more work is needed to make regulatory pathways involving unwell doctors more therapeutic.

By adopting attitudes, processes, and communication methods that are trauma-informed, non-judgmental, compassionate, and empathic, medical regulators can play an important role in generating a positive psychological impact on unwell doctors that can facilitate doctors' recovery and rehabilitation. This "therapeutic jurisprudence" (Wexler & Winick, 1996) approach has been successfully applied in other settings involving people with mental illness, including mental health tribunals (Diesfeld & McKenna, 2007) and victims of crime compensation tribunals. (Bennett Cattaneo & Goodman, 2010)

Conclusions

Regulatory processes can have a profound psychological and emotional impact on the wellbeing, treatment, and recovery of doctors with health conditions. Regulatory and health systems both have a role to play in better supporting doctors with health conditions, such as mental illness and substance use, while protecting patients from harm. It is possible, and necessary, for us to develop regulatory responses that are kinder and fairer towards unwell doctors without abrogating from the responsibility to keep patients safe from harm. (Biggar et al., 2022)

We recommend that health leaders and regulators:

- Advocate for wider health system reforms to address underlying drivers of poor doctors' health, including long work hours, cultures of bullying and harassment, and inadequate cover for sick leave.
- De-stigmatise help-seeking for mental health conditions, and dismantle barriers to accessing professional supports, including cost, time and suitability of supports.
- Address myths and misunderstandings regarding mandatory reporting, so that doctors understand that they can access confidential care as long as patients are protected from harm.
- Strengthen programmes aimed at preventing or ameliorating poor health, including mental illness and substance use, among doctors. These may include peer support programs and doctors' health programs
- Develop a more nuanced approach to regulation: use better risk assessment to differentiate serious concerns from more minor one-off events, and move away from a 'one-size-fits-all' approach to managing concerns about practitioners.
- Employ and train regulatory staff who are trauma-informed and have expertise in doctors' health including recognition of relapses as a common part of the recovery journey.
- Improve the timeliness and transparency of regulatory processes with expedited assessments, clear and respectful communication, and regular updates.
- Support the development of, and access to, supports for unwell doctors who are going through regulatory processes.

Doctors are not the only profession exposed to the adverse personal or professional consequences of regulatory processes. Similar improvements may also benefit other registered professions, such as the fourteen other health professions, lawyers, engineers, accountants, and teachers.

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