Is failing to declare a criminal history unprofessional conduct?
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A primary function of the National Registration and Accreditation Scheme is public protection and patient safety, achieved through the regulation of 619,509 practitioners across 14 professions under the Health Practitioner Regulation National Law (2009) (the National Law). Each year practitioners are required to declare whether they have met four mandatory regulation standards:
- criminal history;
- continuing professional development;
- recency of practice and;
- professional indemnity insurance.

The Australian Health Practitioner Regulation Agency (AHPRA) is required to assess the suitability of all new applicants to hold registration in their particular discipline and criminal history checks (CHC) are an important component of this assessment. All new applicants must declare any criminal history information (CHI) when they first apply for registration; those registered must declare any change in their criminal history since their last application for re-registration. The National Law empowers AHPRA to check the criminal history of new applicants as well as the history of those already registered at any time.

What should you disclose?
There is no national uniform jurisdictional definition of criminal history, hence what is included in a CHC will vary across each state/territory. Queensland for example, does not include traffic offences although Tasmania does whilst Victoria has a much narrower definition of criminal history resulting in less information being released in their reports. However, the National Law defines criminal history as:
- All convictions for an offence.
- All guilty pleas and findings of guilt by a court of an offence.
- All charges for an offence the person applying for registration regardless of jurisdiction either before or after the commencement of the national law.

Spent convictions legislation does not apply to a practitioner’s obligation to disclose a criminal history, hence all details of your criminal history must be disclosed regardless of when they occurred or the outcomes of the offence or charge laid. Each National Board has developed a Criminal History Registration Standard indicating the information that must be disclosed and the weight this will be given in terms of its relevance to an applicant’s registration. A serious and recent offence that has some relevance to professional practice will attract more weight when considering the persons suitability to practice. Serious offences include, rape, murder, armed robbery and terrorism whilst significant offences include common assault, dangerous/drunken driving, cultivating/dealing drugs, and theft. The following link will take you to the Nursing and Midwifery Board of Australia’s Standards on CHC: www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx

During 2013/14 AHPRA conducted 61,000 criminal record checks that showed 3,597 (6%) practitioners had a criminal history resulting in three applications for registration being refused and either conditions imposed upon or undertakings accepted on 152 further applications for registration.

Practitioner audits, where declarations that regulation standards have been met are conducted randomly each year. Whilst there is no offence under the national law for not disclosing a criminal history, a failure to do so may be grounds for the practitioners National Board to take some action as illustrated in the following cases.

In HCCC v Belkadi (No 2) complaints against the practitioner included inappropriately accessing confidential information of two discharged patients and subsequently visiting these, soliciting money totalling $47,017.71 from the first patient’s husband and $2,500 from the second patient. In addition, she also failed to disclose a series of criminal offences on her annual renewal of registration form with the Board from 2004-2009. These offences occurred in 2004 – convicted of stealing and larceny and 2005 - convicted of stealing, larceny and shoplifting. The tribunal finding the particulars of each complaint established held that the practitioner demonstrated, unsatisfactory professional conduct, professional misconduct and was an unsuitable person to hold registration. Throughout the hearing the practitioner continued to make misrepresentations of the circumstances of the offences, failed to demonstrate remorse with respect to the impact of her conduct on the victims, and demonstrated a lack of professional integrity and lack of candour on her registration renewals. On this point the tribunal noted that it was imperative that the regulatory authority must be able to rely on full and honest declarations of practitioners who hold registration. The practitioners’ registration as a nurse and midwife was cancelled, holding she was not entitled to reapply for three years and a prohibition order issued that prohibited her from providing a range of services including that of a personal care assistant, community health care, health education or mental health care until such time as she was once again registered.

In another case of dishonesty, the practitioner obtained a credit card and pin number from an elderly patient with metastatic prostate cancer in need of palliative care, without his knowledge or consent and used it to pay her own personal debts and to purchase an internet shopping voucher. Conduct that is not only criminal but a serious breach of trust and substantially below the standard that could be expected of a nurse of the same standing. The practitioner had also made successive applications for re-registration from 2008 to 2013 each time declaring that she had no CHI to declare, despite being convicted in 2008 of two counts of fraud inappropriately receiving $11,000 in Centrelink payments. For this offence she was sentenced to six months imprisonment, suspended on entering a good behaviour bond for 19 months. The tribunal noted that although this conduct had no apparent connection with nursing, when considered together, over several years, there was a demonstrable pattern of dishonesty. The tribunal returned a unanimous verdict of professional misconduct, reprimanding the practitioner in the strongest terms and cancelling her registration with an order that she could not apply for registration until 2018. In addition a prohibition order was issued preventing her from engaging in any services or acts related to or incidental to the practice of nursing and/or midwifery until 2018 (Nursing and Midwifery Board of Australia v Morely 2014).

It is understandable that practitioners may feel embarrassed and anxious about disclosing past criminal conduct, however, the legal and ethical obligations of a health professional require them to demonstrate a level of professional integrity through honest declarations when applying for registration.

References:
HCCC v Belkadi (No 2) [2012] NSW MRT 14
Nursing and Midwifery Board of Australia v Morely [2014] SMHPT 17

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