



Board News

DECEMBER 2006

A national professional regulation authority

The Board is working to ensure the current high standards of medical regulation are not lost in the move toward a single national registration scheme for all health professionals.

Earlier this year the Council of Australian Governments agreed to establish by July 2008 a single national registration scheme for all health professionals, beginning with the nine health professions currently registered in all Australian jurisdictions. COAG also agreed to establish a single national accreditation scheme for health education and training.

The Board, through the Australian Medical Council's Joint Medical Boards Advisory Committee and other avenues, has for several years been actively promoting the concept of portability of registration with the aim of achieving a 'driver's licence' system. This would eliminate the need for multiple jurisdiction registration for medical practitioners wishing to practise in more than one state or territory. This initiative has been part of a wider move to foster greater

consistency and uniformity of process in relation to regulation of the profession.

However the COAG proposals go substantially further, envisaging one umbrella authority responsible for a wide range of health professionals and encompassing all jurisdictions.

A consultation process is currently underway, and while the Board supports portability and uniformity, it has indicated its concern that any more broadly based system should not be based on the lowest common denominator, potentially undermining significant initiatives such as its doctor Health and Performance programs.

As a subsidiary exercise, avenues for simplifying and standardising the registration of international medical graduates are also being explored. Again, the Board supports these initiatives, but with the proviso that workforce demands must not be met at the expense of the maintenance of proper standards required for public protection.

The Board's powers to act in an emergency situation

New legislation to enhance the Board's ability to rapidly suspend or impose conditions on a practitioner in the interests of public safety is expected to be introduced following a recent ministerial review.

The adequacy of the Board's powers to act in urgent cases received attention following the publicity over the recent conviction of a doctor for unlawfully administering a drug to a woman with intent to procure her miscarriage, and unlawfully causing a drug to be taken by a woman with intent to procure her miscarriage.

In 2002, the Board suspended the doctor concerned, following receipt of information regarding the incident which led to the criminal conviction, but the suspension was lifted as a result of a legal challenge.

The NSW Minister for Health, John Hatzistergos, subsequently announced an inquiry into the adequacy of section 66 of the Medical Practice Act, which allows the Board to act rapidly

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Registration renewal

The Board has clarified and standardised registration renewal processes to help doctors to complete their annual returns and stay on the Register.

The new protocol for annual renewals follows the publication of the Register online (see next page), which will also assist doctors who want to check their registration status and due dates.

Under the improved process, registration renewal notices will continue to be issued six to eight weeks in advance of the due date, as per the current procedure.

If payment is not received by the due date, a notice specifying a final payment date will be issued. This final date will generally be two weeks after the original due date. If renewal is not completed by the date specified in the final notice, the registrant's name will be removed from the Register.

This new protocol aims to provide doctors with a clear and specific process for registration renewal and expiry, as well as ensuring the accuracy and integrity of details on the Register itself. It also acknowledges the efforts of the vast majority of registrants who complete their renewals on time.

During the period between the due date and the final date, registration will continue but the online Register will indicate that the due date has passed and that removal from the Register will occur on the final date if registration renewal processes are not completed.

All registrants are urged to ensure that all renewal requirements are completed and returned to the Board prior to the due date shown in their renewal documentation.

All doctors will be reminded of these revised registration processes in their annual renewal papers.

Renewal – the basics

- Annual renewal of registration requires completion of annual renewal documentation and payment of the registration fee
- Renewal notices are sent out to doctors six to eight weeks in advance of the due date - for most doctors annual registration is due on their birth date each year.
- If payment is not received by the due date, the Board will issue another notice specifying a final date for renewal. The online Register will also show practitioners whether this renewal notice has been sent.
- If renewal is not completed by the date specified in the notice, the doctor's name will be removed from the Register.

What's new?

- Completing registration renewal is the responsibility of individual practitioners. However if renewal notices and payments are not completed when due – generally on a doctor's birth date – the Board will now issue another notice specifying a final payment date.
- Doctors can also check their registration renewal due dates and status on the online Register at www.nswmb.org.au, following the link "Register of Medical Practitioners".

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Register online

The NSW Register of Medical Practitioners is now available online, in keeping with developments in other jurisdictions and initiatives to improve national uniformity of medical regulation.

The NSW Medical Board is required by law to maintain a public register of all medical practitioners who are or have been registered in this state.

Members of the public have always been entitled to have access to certain information that is contained on the Register of Medical Practitioners, but to date this information has only been made available on direct application to the Board.

Launched in October, the online Register can be searched by name or registration number (MPO), and the following information is made available:

- Full name
- Sex
- Registration number (MPO)
- Suburb (extracted from registered address)
- Qualifications, awarding institution, year of award
- Year of first registration
- Due date
- Registration status
- Registration category
- Registration conditions (other than conditions relating to the doctor's personal health)

The Board has recently taken the opportunity to rationalise its terminology in relation to registration status and registration categories (see right, 'Registration terminology').

If you wish to update your details on the Register, you should complete and submit the appropriate form and any associated supporting documentation, available on the Board's website, www.nswmb.org.au

Registration terminology

Registration status

This describes whether an individual is on the Register of Medical Practitioners. Registration status may be:

- Registered
- Not registered
- Suspended
- Applicant (application lodged but not completed)

Registration category

This describes the type of registration held by an individual whose registration status is 'Registered' as follows:

- General (formerly known as either General or Full)

Categories with *inherent* conditions*:

- Intern
- AMC
- Student
- Postgraduate trainee
- Area of Need
- Conditional Specialist
- Temporary Board discretion
- Non-practising
- Limited prescribing and referral
- Retired

* *Inherent conditions*

All categories other than 'General' have inherent conditions, that is, that conditions exist by virtue of the category. For example, all interns must work under supervision in an approved position and so their registration category includes that inherent condition.

Imposed conditions

If a category is described as '*...with conditions*', it means that the registrant has had specific conditions imposed on their registration in relation to their performance, conduct or health.

The majority of registrants do not have imposed conditions. Their registration categories are described as 'General', 'Intern', 'Postgraduate trainee', etc.

However it is possible for most registration categories to have imposed conditions in addition to any inherent conditions.

The registration categories of those few registrants who have imposed conditions are described as 'General with conditions', 'AMC with conditions', 'Conditional Specialist with conditions', etc.

Standards for delegation

Inquiries about the relevant standards of practice for when a doctor delegates patient treatment to another health care professional have recently been received by the Board.

It is not the Board's role to endorse or approve any specific clinical guidelines about delegation, but the Board's 'Code of Professional Conduct: Good Medical Practice' does set out the general standards of practice expected of medical practitioners in NSW.

The Code sets out general principles in relation to areas such as performance and competence, as well as professional and ethical obligations. In relation to issues of delegation (standard 3.5) the Code specifically states:

'Delegation involves asking a nurse, doctor, medical student or other health care worker to provide treatment or care on your behalf. When you delegate or refer care or treatment you should:

- ⇒ *be sure that the person to whom you delegate or refer is competent to carry out the procedure or provide the therapy*

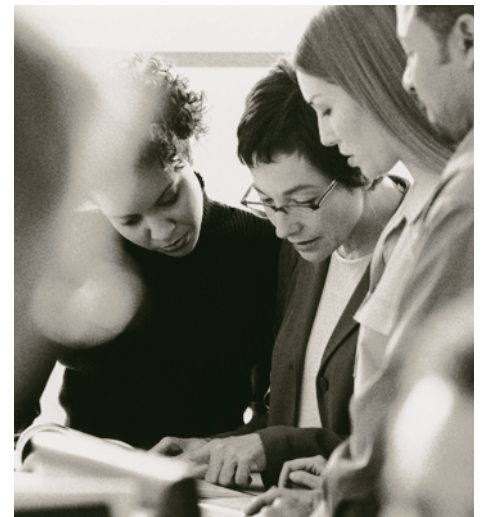
involved. You should always pass on all relevant information about the patient's history and current condition.

Sometimes the delegation of treatment to another practitioner will still require supervision by the doctor. It is the responsibility of medical practitioners to ensure they assess each individual patient and treatment for such a need, and provide supervision where appropriate.

The Board also draws doctors' attention to standard 1.1, which states that good clinical care includes *'an adequate assessment of the patient's condition, based on the history and clinical signs and appropriate examination'*.

Any departure from standards outlined in the Code of Professional Conduct could result in a finding of unsatisfactory professional conduct or professional misconduct against a doctor.

A copy of the Code of Professional Conduct can be found on the Board's website www.nswmb.org.au, following the link "Publications and Policies".



Delegation

The Board expects doctors will:

- ⇒ personally assess a patient's condition prior to delegating treatment to another health care professional.
- ⇒ be sure the person to whom they delegate is competent to carry out the procedure of provide the therapy involved.

The Board's powers to act in an emergency situation

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to impose conditions on a practitioner's registration - or in extreme cases to suspend the practitioner - where it considers that it is necessary to do so "for the purposes of protecting the life or physical or mental health of any person".

In the 12 months to July 2006, the Board used that power 27 times, which resulted in the suspension of six doctors, and conditions placed on registration in 14 cases. Seven cases did not proceed any further or resulted in no further action.

The cases included alleged sexual misconduct, dangerous or reckless prescribing, self administration of drugs and lack of competence, all at a level of seriousness to warrant consideration of exercising the power of suspension.

After the Board has acted under these emergency provisions it refers the matter to the Health Care Complaints Commission to conduct a more detailed investigation, with a view to having the matter heard in formal disciplinary proceedings as soon as

possible. If practitioner impairment is the primary issue, the Board can deal with the matter through its Impairment Program.

The current ministerial inquiry consists of Justice Deirdre O'Connor (chair), Dr Peter Castaldi and Mr Verne Dalton. It is anticipated that legislation will soon be brought forward to clarify the Board's powers and, where necessary, strengthen its ability to act in situations where the public safety requires urgent action.

Significance of registration conditions

The importance of doctors 'scrupulously' observing any conditions placed on their registration has been highlighted by the NSW Court of Appeal.

The Court recently upheld a Medical Tribunal decision to remove a doctor from the Register of Medical Practitioners and direct that he not apply for re-registration for a period of two years.

The Tribunal's recommendation followed the breach of conditions imposed on his registration, failure to comply with the legal requirements of Poisons and Therapeutic Goods regulations, and providing false information to the Health Insurance Commission.

The Tribunal concluded that the doctor 'was quite prepared to disregard the conditions on his right to practice when it did not suit his convenience'.

Making its judgement to uphold the Tribunal's decision, the Court of Appeal stated that: 'When conditions are imposed, as they were here, for restoration of practise, those conditions must be scrupulously observed...'

'It is even more serious when dishonesty supervenes, reflected here in the [doctor's] statement... "So, I relented and wrote him the prescriptions, knowing full well I shouldn't be doing it and frankly, hoping that no-one would ever notice".'

Citation: (Prakash v Health Care Complaints Commission [2006] NSWCA 153)

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Medical Tribunal in brief

The primary role of the Medical Tribunal is to adjudicate on allegations of professional misconduct which, if proven, could warrant suspension or de-registration.

When the Tribunal makes a finding that a doctor is guilty of professional misconduct and/or unsatisfactory professional conduct, it may it may suspend or de-register a practitioner but also has the power to:

- caution or reprimand
- order that the person seek and undergo medical or psychiatric treatment or counselling
- direct that conditions be imposed relating to the person's practice of medicine
- order that a person complete educational courses
- order that the person report on his or her medical practice
- order that the person seek and take advice in relation to the management of his or her practice
- issue a fine.

The Tribunal is legally separate from and independent of the Board. Each specially constituted Tribunal consists of four members, including a judge of the District Court, one lay person, and two registered medical practitioners.

UPDATE: Medical Tribunal decisions can now be accessed on the Board's website (www.nswmb.org.au). Tribunal decisions for 2006, to date, are available and work is underway to also have decisions from previous years placed on the website.

News laws on unregistered practitioners

For many years the Board has acted to protect the public by prosecuting unregistered individuals who hold themselves out as doctors.

A recent example of this work is a case against a 55-year-old woman who posed as a doctor and was hired by a NSW charity to care for troubled young people. Lorraine Brooke-Smith faced a Sydney court last month on a charge of pretending to be a medical practitioner. The case was adjourned until this month.

At the same time, legislation to strengthen the system for investigating and disciplining unregistered health care providers was passed by the NSW Parliament last month.

The *Health Legislation (Unregistered Health Practitioners) Bill 2006* is aimed at two broad groups, namely, de-registered health practitioners and individuals in areas where this is no registration regime, such as traditional Chinese medicine.

Under the legislation, the Board will be required to publish certain decisions, particularly Medical Tribunal decisions, and provide other information to the public, such as publishing a list of suspended and de-registered medical practitioners.

The legislation also prohibits advertising a health service that is to be provided by a practitioner who is de-registered or subject to a prohibition order unless the advertisement specifies these matters.

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Other amendments include:

- requiring medical practitioners who are de-registered or subject to prohibition orders to notify their patients and employers of their de-registration or prohibition order before providing a health service;
- the development of a code of conduct for unregistered health practitioners;
- permitting the HCCC to give public warnings about unsafe treatments and practitioners, and to make prohibition orders against unregistered health care practitioners who pose a substantial risk to the health of members of the public or who breach the code of conduct. A prohibition order will have the effect of banning the person from providing a health service or place conditions on the provision of health services.

Although passed by Parliament last month, at the time of publication the Bill was still awaiting assent to come into force.

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