NEW SOUTH WALES MEDICAL BOARD

Newsletter

JUNE 2005

PRESIDENT'S MESSAGE

BRIAN McCAUGHAN STEPS DOWN

After serving as President of the NSW Medical Board for five years from October 1999, A/Professor Brian McCaughan stepped down from Presidency and membership of the Board on 31 December 2004.

During his tenure of the Presidency, Professor McCaughan oversaw major changes in the regulation of the profession in NSW, including significant initiatives of the Board, as well as some dramatic and far reaching external issues. Amongst these were the introduction of the Medical Practice Amendment Act 2000 which brought in the nation's first performance assessment model as well as more exacting requirements to enable doctors to remain on the Register.

Two major external issues were the indemnity crisis in 2002/2003 and the Camden/Campbelltown Inquiry of 2003/2004. As part of the Government solution to the indemnity crisis, the Board was named in the legislation as the body responsible for ensuring that all medical practitioners in NSW hold approved professional indemnity insurance, or fit within an exempt category. The Board went on to develop a set of policies and procedures that fulfil this requirement while causing practitioners as little inconvenience as possible.

While the Camden/Campbelltown Inquiry was focused more on the process of investigation of complaints by the Health Care Complaints Commission, the final report of the Walker Special Commission made a number of significant positive references to the Board, in particular affirming the importance of the Performance Program, and noting that some of the problems that arose could well have been avoided if matters had been properly referred to the Board at an early stage.

During the period of Professor McCaughan's leadership, the Board also undertook the major step of acquiring and refurbishing new premises for offices within the grounds of the Gladesville Hospital to enable it to cope with the ever increasing volume of work that has arisen through the growing medical workforce and the expanding scope of Board responsibilities.

In addition to his formal role as a member of the Australian Medical Council, Professor McCaughan played a highly visible role in a wide range of National and State activities, and his willingness to speak his mind and challenge shibboleths was well known. His vision of "the standard gauge" for medical registration throughout Australia has been supported at both State and National level, and is likely to be implemented in the next two years.

During his Presidency the Board has maintained and enhanced its reputation as a progressive and adaptable regulatory authority, committed to its charter of public protection within the context of fairness to the profession which it regulates.

NEW PRESIDENT APPOINTED

Professor Peter Procopis has been appointed as President following Professor McCaughan's resignation. Professor Procopis has been on the Board as the nominee of the Royal Australasian College of Physicians since 1999, and is a paediatric neurologist in practice at Westmead.

Professor Michael Fearnside has been appointed Deputy President.

Professor Fearnside has been a Board member as the nominee of the Royal Australasian College of Surgeons since 1997, and is a neurosurgeon in practice at Westmead.

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New category of registration for Limited Prescribing and Referral

Who is it for?

Practitioners who have retired or who have left clinical practice, but who wish to remain registered in order to undertake strictly limited prescribing and referral.

Registration will be subject to the following conditions, which reflect a recently introduced exemption from the requirement to hold Professional Indemnity Insurance (PII) under the Health Care Liability Act.

May not practise, other than as follows:

1. The registrant may, without fee or reward, refer a person to another medical practitioner for the purposes of providing health care,
2. The registrant may, without fee or reward, prescribe a therapeutic substance in either of the following circumstances:
   - (i) the prescription involves the renewal of a prescription provided by another medical practitioner (who is in active medical practice) within the previous period of 6 months and does not relate to a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966*, or
   - (ii) the prescription is provided to a person who requires temporary relief or first-aid pending attendance on that person by another medical practitioner

provided that if such limited prescribing occurs, the registrant must, within the period of 12 months preceding the date on which the prescription is provided, have undertaken professional education activities relating to the prescribing of therapeutic substances.

This category of registration is primarily for practitioners who do not intend to return to active practice. If practitioners with this registration wish to reapply for general registration at a later date they will have to satisfy the Board's requirements for re-registration.

The Fee

An annual fee of $50 will be required to be registered in the category of Limited Prescribing and Referral.

How to apply

Amendments are currently being made to the annual renewal forms to include the option to transfer to this category of registration. Annual renewal forms sent from the Board after 1 July 2005 will include this amendment to enable you to select the option to transfer. If you receive your renewal form prior to this date and wish to take up this option, or have any other queries regarding this matter please contact the registration department on (02) 9879 2295 for assistance.

Please note, there is no provision to refund fees already paid by practitioners who currently hold General registration and wish to transfer to the category of Limited Prescribing and Referral before their next annual renewal.

REPORTING MEDICARE AND PBS FRAUD

The Health Insurance Commission (HIC) has developed new procedures to make it easier for doctors and others to contact it with concerns in relation to possible fraud or abuse of Medicare or the PBS.

Details are on the HIC's website at **hic.gov.au** or through **1800 202 011**.

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KICKBACKS AND PROFESSIONAL MISCONDUCT

The recent announcement of HIC approval to a group of doctors to have an interest in a pathology authority has given rise to renewed interest in the "anti-kickback" provisions in the New South Wales Medical Practice Act, 1992. These provisions deem unsatisfactory professional conduct to include a variety of arrangements where benefits are offered or received for referrals, provisions of service, recommendations, etc, in circumstances where one or other of the parties is giving or receiving a benefit.

The Board's draft Code of Professional Conduct, "Good Medical Practice", reinforces these provisions which apply to all medical practice, and all doctors should be aware of them. The relevant sections of the Medical Practice Act are set out in full below, and should be carefully considered. If you have any doubts about the nature of an arrangement, then you should seek legal advice from your medical defence organisation or other adviser.

36 Meaning of "unsatisfactory professional conduct"

(1) For the purposes of this Act, **unsatisfactory professional conduct** of a registered medical practitioner includes each of the following:

(e) Accepting from a health service provider (or from another person on behalf of the health service provider) a benefit as inducement, consideration or reward for:

(i) referring another person to the health service provider, or

(ii) recommending another person use any health service provided by the health service provider or consult with the health service provider in relation to a health matter.

(f) Accepting from a person who supplies a health product (or from another person on behalf of the supplier) a benefit as inducement, consideration or reward for recommending that another person use the health product.

(g) Offering or giving any person a benefit as inducement, consideration or reward for the person:

(i) referring another person to the registered medical practitioner, or

(ii) recommending to another person that the person use any health service provided by the practitioner or consult the practitioner in relation to a health matter.

(h) Referring a person to, or recommending that a person use or consult:

(i) another health service provider, or

(ii) a health service, or

(iii) a health product,

when the practitioner has a pecuniary interest in giving that referral or recommendation (as provided by subsection (2)), unless the practitioner discloses the nature of that interest to the person before or at the time of giving the referral or recommendation.

(2) Registered medical practitioner has a **pecuniary interest** in giving a referral or recommendation:

a) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a public company and the practitioner holds 5% or more of the issued share capital of the company, or

(b) if the health service provider, or the supplier of the health product, to which the referral or recommendation relates is a private company and the practitioner has any interest in the company, or

(c) if the health service provider, or the supplier of the health product, to whom the referral or recommendation relates is a natural person who is a partner of the practitioner, or

(d) in any circumstances prescribed by the regulations.

(5) In this section:

benefit means money, property or anything else of value.

recommend a health product includes supply or prescribe the health product.

supply includes sell.

AMENDMENT TO GUIDELINES FOR MEDICO-LEGAL CONSULTATIONS

A member of the profession recently informed the Board of instances where individuals had been referred by an insurance company to a psychiatrist in medico-legal practice for an independent medical assessment, and the psychiatrist then commenced treating relationships with the individuals. The Board considered that although it was implicit in its guidelines that a treating relationship should not follow a medico-legal consultation, it should be explicitly stated that it is not appropriate for the doctor to undertake any form of treatment in relation to the examinee.

The Board itself engages medical practitioners to make independent assessments of doctors who may be impaired and would consider it a clear conflict of interest if those practitioners were also to institute management plans for the examinee.

The revised guidelines are now available on the Board's website.

ENGLISH LANGUAGE SKILLS REQUIREMENTS FOR REGISTRATION

All applicants for registration in NSW are required to satisfy the Board as to their competence to practise medicine. Competence is defined to include communication skills, which in turn includes English language skills.

National agreement has been reached on a standardised English language proficiency requirement which will apply to all international medical graduates seeking registration in any Australian jurisdiction from 1 July 2005.

The International English Language Testing System (IELTS) has been adopted as the benchmark, though there are a number of alternatives and exceptions envisaged.

The IELTS test is administered at least once a month by IELTS Australia and the British Council at over 230 centres worldwide. The process from sitting of exam to notification of results can usually be expected to take approximately two weeks. Further information regarding the IELTS examinations can be obtained on its website **www.ielts.org**

All Australian Medical Boards will require international medical graduates applying for registration to provide evidence of compliance with the policy when considering applications for registration. Accordingly, applicants and employers should factor in the necessary timeframes when an application is contemplated.

From 1 July 2005, all international medical graduates applying for registration will need to satisfy the Board that they have passed within the two years preceding the application, one of the following:

1. The IELTS examination (Academic module) with a minimum score of 7 achieved in each of the four components;
2. The Occupational English Test (OET) administered by Language Australia with grades A or B only in each of the four components;
3. The English language component of the United States Medical Licensing Examinations (USMLE – previously ECFMG) but not the TOEFL component of the current USMLE examination in the United States;
4. The Professional Linguistic Assessment Board (PLAB) in the United Kingdom; or
5. The New Zealand Registration Examination (NZREX) in New Zealand.

A result more than two years old will be accepted as evidence of present level of ability if accompanied by proof that a candidate has actively maintained employment as a medical practitioner in a country where English is a native or first language.

An exemption may be available to an applicant who can provide documentary evidence that English was the language of instruction in their secondary education (NOT university education).

At the Board's discretion, an exemption may be approved in special circumstances. Examples would be, but are not limited to, registration to:

(a) perform a demonstration in medical techniques; or

(b) undertake research which involves limited or no patient contact; or

(c) undertake specific postgraduate study or training while working in an appropriately supported environment which will ensure patient safety is not compromised.

Financial dealings between medical practitioner and patients

The Board has recently formulated policy which advises practitioners that engaging in financial transactions with patients may lead to findings of unsatisfactory professional conduct.

The issue arose in a matter before the Medical Tribunal in which a general practitioner had borrowed money from an elderly patient. He struck financial difficulty and was unable to repay the money and a complaint was made by the patient. The Tribunal found the practitioner guilty of professional misconduct, commenting that the case highlighted the pitfalls for a medical practitioner and the detrimental effect on a therapeutic relationship with a patient which may flow from combining therapeutic and financial aspects in the relationship between the doctor and patient.

The Tribunal considered that the medical practitioner stands in a position of trust with the patient and this trust may be abused by the establishment of financial dealings. Of course the normal remuneration process is not affected by this policy. The Board's Code of Conduct for medical practitioners also counsels against confusing the therapeutic relationship with other forms of relationship with the patient.

The Board's policy in relation to financial dealings between patient and doctor is as follows.

POLICY

- *Medical practitioners are seen by the Community as standing in a position of trust in respect of their patients.*
- *There may be a detrimental effect on a therapeutic relationship with a patient if therapeutic and financial aspects in a relationship between a doctor and patient are combined.*
- *This policy does not affect the normal remuneration process.*
- *There is a legal presumption that a financial transaction between a medical practitioner and a patient is the result of the exertion of undue influence by the practitioner on the patient.*
- *Generally speaking, it will be unsatisfactory professional conduct for a practitioner to engage in a financial transaction with a patient.*
- *There are limited circumstances in which engaging in a financial transaction with a patient will not be considered to be unsatisfactory professional conduct. This would include a situation where the patient had had independent advice, the practitioner had disclosed his/her financial circumstances and there is security provided.*
- *Practitioners should also refer to the Board's Code of Professional Conduct – Good Medical Practice concerning probity in professional practice.*

COMPLEMENTARY HEALTH CARE POLICY

Many practitioners offer complementary health care as part of the services available to their patients. For some practitioners it constitutes the bulk of their work. For others, a single modality such as acupuncture is available as an adjunct to their routine practice. Patients are likely to perceive them to be 'doctors who offer complementary health care' rather than 'complementary health practitioners who happen to be doctors'.

The term 'complementary health care' covers a wide range of modalities such as acupuncture and Traditional Chinese Medicine. For the Board's purposes, the important distinction is between proved and unproved care; rather than between conventional medicine and complementary health care.

There is a paucity of scientific evidence about complementary health care. Some modalities can be shown to be beneficial. Others are potentially harmful.

Harm, when associated with complementary health care may take the form of;

- **Direct harm**, which results in adverse patient outcome.
- **Indirect harm**, which results in a delay of appropriate treatment or in unreasonable expectations that discourage patients and their families from accepting and dealing effectively with their medical condition;
- **Economic harm**, as a result of expenditure on harmless, but inefficacious treatment or products.

All complementary health care may cause indirect harm. An example of a modality causing direct harm is the use of herbal remedies in circumstances where the active ingredients are poorly identified and understood. Modalities that cause direct or indirect harm are of great concern to the Board, given its public protection role. Economic harm is important to the Board because of the ethical aspects of providing patients with unnecessary and ineffective care.

All registered medical practitioners should be aware of the Board's policy on complementary health care.

POLICY

1. Medical practitioners who offer complementary health care are accountable to the NSW Medical Board for the full range of conventional and complementary health services that they provide.
2. The Board's Code of Conduct; Good Medical Practice (currently awaiting Ministerial approval) applies to all aspects of a registered medical practitioner's practice. In particular, practitioners providing complementary health care must ensure that they;
   - have demonstrable current knowledge and skills in their area of practice;
   - act honestly and only in their patient's best interests;
   - provide patients with sufficient information to allow them to make informed choices at all stages of their assessment, investigation and treatment;
   - are honest in relation to financial and commercial matters. Section 36 of the Medical Practice Act, as amended also provides guidance in relation to pecuniary interest and accepting or offering a benefit for a referral or recommendation.
   - keep medical records that comply with regulatory standards;
   - assess patients by;
     - (a) taking a pertinent history and performing an appropriate physical examination, sufficient to make, or confirm, a generally recognised diagnosis, meeting the standard of practice generally expected of the profession;
     - (b) investigating when necessary, ensuring that patients are not denied access to generally recognised investigation modalities;
     - (c) reaching a diagnosis that reasonable medical practitioners would reach, supported by the information available;
   - treat patient by;
     - (a) advising them of any conventional treatment options, their risks, benefits and efficacy, as reflected by current knowledge;
     - (b) providing an honest account of the risks, benefits and efficacy of a recommended treatment.
3. A doctor who recommends an unproved treatment rather than one with proved effectiveness must have broad professional support in doing so, as well as the patient's fully informed consent; or must be prepared to argue, with evidence, that the treatment is safe and that the patient will not be harmed in any way by withholding conventional therapy.

PATIENT SELECTION AND COSMETIC SURGERY

In 1999 the Health Care Complaints Commission submitted a report to the Minister for Health on Cosmetic Surgery in New South Wales. A number of recommendations flowed from that report. One of these was that cosmetic surgery providers should be reminded of the need to give consumers objective information about the risks and benefits of alternative treatment options, including treatment options for complications. The recommendation went on to state that the information should follow a medical examination and assessment of the treatment options that were most suitable for the consumer.

The Medical Board emphasises the importance of these obligations which apply to all medical practitioners, including those engaged in cosmetic surgery. The principles underlying the recommendation are fundamental to good practice, and failure to observe them can lead to both civil action for failure to obtain proper consent as well as disciplinary action for unsatisfactory professional conduct.

All the elements of this recommendation are covered in the Board's proposed Code of Conduct on "Good Medical Practice" which can be found on the Board's website.

THE REGISTER ON THE INTERNET

The NSW Medical Practice Act requires the Board to keep a public Register of registered medical practitioners in NSW. The Act was amended in 2000 to provide for the Register to be displayed on the Internet. Many Boards, including the New Zealand Medical Council, the Western Australian Medical Board, the South Australian Medical Board and the Queensland Medical Board currently display their Registers on their websites. The New South Wales Medical Board will be moving to display a selection of information from the Register on its website in the second half of 2005.

INFORMATION TO BE DISPLAYED ON THE INTERNET

The information that will be displayed about each practitioner registered in NSW will be as follows:

- Name
- Registered address (suburb only)
- Qualifications, awarding institution and year of award
- Category of registration i.e. general, conditional, retired, non-practising
- Conditions (other than health conditions)

This set of information was agreed to in discussions held with the AMA and the Privacy Commissioner.

REGISTERED ADDRESS

The Board currently holds one registered address for each practitioner to which all correspondence is sent. This address is also available to the public unless a request for suppression has been accepted. Only the suburb of this address will be available on the Board website.

It is a legislative requirement that a current address is always held by the Board, and an incorrect or out of date address may lead to a doctor being removed from the Register for non payment of fees.

This address may be a post office box if required.

The Board is currently undertaking a major review of its database and planned modifications will include provision to hold two addresses for a practitioner if the practitioner so chooses. The Board will advise practitioners when this facility is available, but in the meantime you must ensure a single valid address is registered with the Board.

BERNIE AMOS AO, MBBS FRACP FRACMA

It is with great sadness that the Board notes the death of Bernie Amos on 9 May 2005.

Bernie was the President of the Board between 1983 and 1989 when he relinquished the Presidency to take up the position of Director-General of Health in New South Wales. He returned as a member of the Board from 1993 to 1998 after stepping down from the Director-General position.

During his presidency, Bernie was responsible for the 1987 amendments to the Medical Practitioners Act, 1938, which significantly altered the composition of the Board, clearly establishing its independence from political influence either from government or the profession, and established its charter to protect the public of New South Wales.

The legislation, which marked the culmination of the doctors' dispute of the mid-1980s, established the Board as an independent statutory authority responsible for its own administration and finance, and set up a completely new regulatory structure which has been the model for most other health professions in New South Wales.

At the completion of his term as a Board member, Bernie continued his participation in Board activities as a member of various committees and disciplinary and other bodies, where his patience, wisdom and compassion were an enormous asset.

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