Taking care: Let's meet the decision makers

Podcast transcript

Tash Miles: Ahpra acknowledges the Traditional Owners of Country throughout Australia and the continuing connection to lands, waters and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures and Elders past, present and emerging.

Tash Miles: Welcome to *Taking care*, a podcast of Ahpra and the National Boards. I am Tash Miles and today we are talking about those very National Boards. Ahpra works with fifteen Boards across sixteen health professions and the Boards' primary role is to protect the public. Board members wear lots of hats to fulfil this function and enact their requirements of the guiding legislation. Each Board is comprised of practitioner members, people who practice their profession and community members who represent the broader public and their own prospective and backgrounds. Our two guests today will certainly be able to share more, though, so let's meet them now. We have two National Board members, Mark Marcenko is the Chair and practitioner member of the Medical Radiation Practice Board of Australia and Jen Morris is a community member of the Occupational Therapy Board of Australia. Hi both.

Mark Marcenko: Hi Tash, I am Mark Marcenko I am the Chair of the Medical Radiation Practice Board of Australia and my day job is I am the Chief Technologist at the Royal Hobart Hospital in the Nuclear Medicine Department.

Jen Morris: Thanks Tash, my name is Jen Morris and I am a community member of the Occupational Therapy Board of Australia, I live in Melbourne and my day job is working as a healthcare safety professional for SaferCare Victoria and I have been involved with Ahpra and the National Scheme since 2012 and I started off as a Community Reference Group Member and I am now a member of the Occupational Therapy Board.

Tash Miles: Mark, can you start of by telling us what Health Practitioner Boards actually do?

Mark Marcenko: We work in partnership with Ahpra and I represent the public as someone who has professional specific knowledge being a nuclear medicine technologist. We develop policies and standards for registering practitioners, we make decisions on complex registration and notification matters but I think it is really important to point out here that as a practitioner member on the Board, I don't actually represent the profession, I am just somebody with experience in nuclear medicine and I use that experience to make knowledgeable decisions and put in place safeguards for the public.

Tash Miles: What kind of decisions do you make as a Board?

Jen Morris: We make different types of decisions depending on the part of our role that we are enacting at the time. We do have sub committees on my Board and on other Boards that, for example, will make decisions about notifications that come to the Board. A notification is where somebody, whether they are a member of the public or another health practitioner, or anyone for that matter, have expressed concerns about the way that a person is practising a profession or whether they have a health impairment that may be preventing them from practicing their profession safely. If those come into the Board, our subcommittee over at the OT Board of Australia will make decision about whether or not that person needs to have certain, for example, conditions put on the way that the practice to make sure that they can practice safely. Or if there isn't any need for that, that's one type of decision we make. We also make decisions in response to what Mark said earlier, about things like whether or not certain types of courses should be considered sufficient for people to train in a profession. We call that accreditation. We also make choices

and decisions about things like our Code of Conduct and our Code of Ethics and the standards that we hold practitioners to, to ensure that they are safe to practice the profession.

Tash Miles: Great. So it is really the whole lifecycle of a health practitioner from when they study to how they practice. Then, if a complaint is made about them, you are making decisions that relate to them, and all aspects of that. Mark, how do you think that you, as a Board member, and you as a Board, affect the care that people might like to receive when they go and visit a health practitioner?

Mark Marcenko: Well primarily we set the standards of practice for registration practitioners and our expectations is that our registration practitioners provide good, safe and professional health service. For instance if you went to have an x-ray, you could be confident that the practitioner looking after you has had the appropriate skills, training and attributes to perform that x-ray safely.

Tash Miles: Jen, would you like to talk about your impact as a Board on the care that the public receive?

Jen Morris: Yes absolutely. I think particularly of interest for the OT Board for example is that occupational therapy is a wonderfully diverse and broad profession in the services that it offers. One of the things that we are constantly discussing is the scope of practice for our profession and all the types of things that occupational therapists do It is certainly within the role of the Board to provide guidelines and standards around how different types of care are provided so that if a person is engaging the services of an occupational therapist, they can be confident that that person has done a certain level of training that the Board considers appropriate. And that person, for example, has an appropriate level of English language capacity and that person is following a certain set of guidelines around conduct and ethics. If they don't, that there are processes that can be taken to address those issues. I think also for members of the public it's about knowing that there are people who both within the profession and outside of the profession prospective who are really talking all the time about what do members of the public expect when they are being treated by practitioners, when they are in contact with practitioners. Making sure that whether it is in a consultation, whether it's in the media, whether it's in any other context, that they can be confident that the practitioners are behaving in a way that is generally considered appropriate and is fitting of the position they hold in society.

Tash Miles: And that is a good segway into the fact that Boards have both community members and practitioner members. That is required by the legislation. I am wondering, Mark, whether you could talk to us about why that is important?

Mark Marcenko: Yes, it is important to have both representative community members and practitioner members. The practitioners bring a wealth of clinical knowledge and understanding of how practice occurs. Community members bring an incredible wealth of other experience, they have to provide the community view of what is expected in health practitioners. We have been extremely lucky on our Board, and I am sure it's on all the Boards, we have had such a wealth of knowledge come to us from our community members. We have had lawyers, we have had people in marketing, we have had people who work in governments, so we have been really fortunate. Especially when we are writing our policies and stuff and we have had a lot of community members actually writing our policies. In our Board it is quite unique in a sense we have three professions that use radiation, we have got radiographers that actually take x-rays and do CT's, we have got radiation therapists who treat with radiation therapy and we have nuclear medicine where we inject radioactive material into people and then we scan them. When we are actually talking about a high end radiation therapy matter, that is not my area of expertise so in a sense I am a bit of a community member there too. I am relying on the radiation therapists that we have on our Board to guide us in our decisions. We don't differentiate on our Board either, you are all Board members and I would never introduce anybody as a practitioner member. I just introduce everybody as a 'Board member.'

Tash Miles: That is so nice to hear that everyone is just people, like all of us. Jen, would you like to talk about that kind of melting pot of opinions and perspectives that you have sitting around the Board, or in the virtual Board these days?

Jen Morris: Yes, in the virtual Board certainly these days and for the foreseeable future! Like most people we are calling in from our homes at the moment to do our work. I think what is so fantastic about this system that we have in Australia and it is enshrined in law is the requirement to have that diversity of views. Of course community member versus practitioner member is only one way that you can cut the diversity of thinking on a Board. As Mark referred to there are subsets of professions; there's genders and ages and all kinds of other things. I do feel like it is a very particularly important way of ensuring diversity on the Board because as human beings we are always members of subcultures in our life. My family has

a subculture; an ethnic group may have a subculture, and institutions and professions have subcultures as well. I work for an organisation that has a culture and Mark works for an organisation that has a culture and professions are the same. It is very important to make sure that we balance, having on the Board people who understand the culture and practices are norms within the professions: that is fundamental. It is also important to make sure we have people that, for whatever reason, as community members are just a little way outside of that particular culture or that particular subgroup so they can ask pertinent questions and challenge assumptions and challenge status quos. I guess, reflect changes in community views as they go along, because sometimes those take a little while to find their way in to profession and institutional culture. I find it really great and really exciting when I am sitting around the Board table or, Zoom table these days, with my members of my Board when they will talk about something and will sort of say, “Well, yes that’s normal,” and often it’s my job to say, “Okay, is it? And, if it is, should it be?” and many times the answer is “yes,” but I think that questions need to be asked. It is one of the great things that, not only myself but other community members on my Board and other Boards, take very seriously as part of our job.

Tash Miles: To keep talking down that kind of vein and also previously you were talking about making decisions about what is appropriate education. What is appropriate care? What are appropriate standards? Can you talk to us about how you come to those decisions, how do you reach this consensus about what standards the Boards should be set and what are those conversations like?

Jen Morris: There are lots of different factors we take into account and fundamentally we do obviously look at whatever the standards are in place at the time and if they do exist and build on that history. It doesn’t mean that we wouldn’t change them, but they are a starting point for us. We would look at our own existing standards if they do exist for whatever we are discussing and we would also look at standards in other jurisdictions, whether that is in other countries or even other professions that might have similar challenges that they might be facing that might not be health professions or they might be health professions, so we would look at those. Any research that is available, whether that is research that is done with Ahpra’s own data because there is a wealth of that now, or whether it is research in a more academic general sense. We would look at those things, certainly I always encourage the Board, and our Board is I think very good at this, to look at patterns of notifications or complaints or concerns that people have put forward to us and to other entities to see if there are things that are recurringly problematic in the profession. We might then need to add or change to the standards that we are putting forward. We also have to respond to changes in the social environment, economic environment, political environment. For example, in my Board a very obvious example would be the introduction of the NDIS and the implications of that. We don’t make determinations about NDIS activities so to speak but I guess the NDIS just changed the practice context for a lot of our practitioners in occupational therapy. We needed to be responsive to that, so changes like that are also very important as at the moment. For example, COVID-related issues have changed the practice environment for many practitioners and many working online etc and we have to be responsive to that as well.

Tash Miles: And Mark, I am sure there are some contentious issues around things like consent, do you have any examples of when it is difficult to reach that consensus?

Mark Marcenko: Again, the vast majority of health practitioners are good, safe, ethical practitioners so we are quite fortunate in that. But there are occasions where there are some practitioners who struggle to apply ethical concepts. Consent, as you were saying, is a really interesting one. Every scan that I do personally I have to explain what is going to happen and after the explanation I actually need to ask permission from the patient or client to go ahead. It is not implied consent anymore. We have had considerable notifications where poor communication has caused the problem. I would like to put it out there one more time because we have done it in about a hundred newsletters but people making jokes at the wrong time causes a lot of problems. There are people there who are sick, they go to get treatment or they go to get diagnostic studies done and someone says a joke at the wrong problem. As Jen was talking about earlier, there is a code of conduct and it is explicitly explained in there. That is probably one of the big issues that people making jokes at an inappropriate time.

Tash Miles: Jen?

Jen Morris: Yes, I thought it might be worth picking up on the consent question, Tash, because certainly as a community member on one of these Boards, and I think other community members have had similar experiences, one of the issues of contention I would say would be what the standard for informed consent with respect to healthcare-related treatment is meant to be. My perspective very much is that if anyone wants to look it up there is a very famous legal case from 1992 called Rogers v Whitaker in which the High Court in Australia essentially decided, I am simplifying, but essentially decided that when a health

practitioner is getting consent from a patient or a client, that the standard that they have to apply in deciding whether or not to disclose certain risks of the treatment that is being proposed. They have to apply a standard of: what would a patient in this person's position want to know? What would they consider to be a material risk to them? And that is different to different types of people? If you are a surgeon, for example, the risk that might affect the dexterity of your hands is really significant to you and so that is the standard that is supposed to be applied according to the court. However I do find in healthcare in general in Australia, often an older standard is still applied. This sort of notion of what would a reasonable practitioner have thought was worth saying? But that is a very practitioner-centric idea of what consent is about. Whereas the standard is meant to be more a patient-centered idea of what would the patient want to know, instead of what would a practitioner say. We do have conversations about that and what the standard should be and how we apply that.

Tash Miles: I guess it's about a kind of double layer of empathy, right? As a health practitioner you would need to be empathetic to your patient, and as a Board member you need to be empathetic to all of the people involved and who are affected by the practice of the profession that you regulate. I am wondering, Mark, if you could talk to us about how as a Board member you keep in touch with these community views and mindsets, trends that are happening? Obviously you are making decisions that can affect the practice. How do you stay in touch and reinvigorate that empathy for all people who are touched by the Medical Radiation Practice Board and its decisions?

Mark Marcenko: Many Board members are practitioners as well and they work in different hospitals. I always like hearing what is happening in different hospitals because you can kind of get focused. You think that what is happening at the Royal Hobart Hospital that's the standard and that's the norm and it is really good to hear what other people are doing. Community members also have connection with the community with health consumer views. When we develop policies and standards we engage with community and health consumer groups, we engage with governments, universities, health practitioners. We seek their views on what is the best way to regulate. Whenever we have any policy, we go out to public consultation and we take everything we get back in to consideration. We basically have a look and that is how we make our decisions. I think we did our capability document this year and it is really interesting because we put capabilities in there this year. The last time we did it was three years ago and there are certain scans and certain isotopes that weren't even invented back then! They weren't even being used so medical imaging. It is such a fast changing world that we have to keep on top of everything.

Tash Miles: Jen, could you talk about how you stay in touch across the changing landscape?

Jen Morris: Yes, absolutely, I think for me it is actually my primary job. You might see my primary job is to turn up to Board meetings and do the Board work. But I do make a really significant effort, because I have a consumer representative role in my life as well, to really connect with the entities that work with consumer reps and consumer and community members in other contexts as well. We have a national peak body, for example, a consumer health forum and then we have state and territory entities that do similar work all around Australia. I make sure to connect with the events and the networks that those organisations have put together. I am very active in those groups and I also try to make sure that it is not a secret to anyone in my life that I have this role and that people feel able to speak to me about it and tell me about their experiences. I think the other thing I feel really privileged by is I work professionally in a role where I work alongside health practitioners, as well, on a very equal basis in the office. I like to really listen to them about what it is like to be a health practitioner whether they are an OT, whether they are a nurse, and try and get time to understand their life. In my role I also do work in investigations where we look in to situations where patients might have experienced preventable harm in a health service. In that role I do speak to a lot of patients who have had what we would consider to be some of the worst experiences that can unfortunately happen to people in healthcare. I have developed a lot of empathy for what that is like for them and how those things can happen. We do also speak to the people who are involved in that, for whom those events are traumatic, too, because they didn't wish harm upon the person. I think that really helps me to develop both an intellectual understanding of how these things happen, but also an empathy about what that is like to live through for everybody.

Tash Miles: To face the reality that sometimes things don't go right, and we need to deal with what we call notifications or complaints about health practitioners. Mark, I am wondering if you could talk about what happens when things go wrong in healthcare and when people raise a concern. What would the Board's role in that process be?

Mark Marcenko: The Board hears complaints about practitioners and in some instances, as Jen was saying earlier, we will caution the practitioner. In other instances we can put conditions on their registration, things like practising under supervision, or a condition that they see their treating practitioner.

Some have to blow breathalyser at the beginning and at the end of each shift. We do get regular notifications and in very serious matters, the Board refers these on to a Tribunal and, where necessary, to the police, or though usually it is the police that are informing us of some wrong doings with the practitioner.

Tash Miles: Do you have an example that you could share with us about a complaint that has been raised?

Mark Marcenko: Well I like to call this one the horse whisperer. We had someone apply for registration and they were coming from the Middle East. They had worked for the last ten years and they had a prestigious name of a hospital that they had worked at. On further investigation we went to check it out. She had forgot the word 'equine' in front of hospital! This person had been x-raying horses for the last ten years and she wrote on her Stat Dec that she her recency of practice was fine. The matter actually went to a Tribunal and she was found guilty and basically she had lied on her application. It wasn't really lying but the Tribunal found that by omitting the word 'equine' that was in a sense a lie. Basically it goes to the fit and proper person, she still was registered but she had to go under a period of supervision because now she was x-raying humans. That is a good one and I can talk about that because, as I said, it was it was aTtribunal ruling.

Tash Miles: Things that you never thought you would see or hear about I am sure! We hear from practitioners that sometimes there can be a fear of the National Boards and the power that they can yield, for example by deregistering practitioners. Mark, could you dispel any myths, or talk to us about what actually happens and how often people are deregistered?

Mark Marcenko: Yes, I think I actually like the word 'notification'. People actually notify the Board that there is some potential unprofessional behaviour happening. I think it is really important, Jen touched on it earlier, that we are not actually out there to punish people. What we do is we get a notification, say for instance that someone has a concerns about someone's mental health. They put a few examples up and there is a notification. Then what we do is we can actually ask for a health assessment and then the Board gets the health assessment back. Then we try to put measures in place to mitigate any risk because part of the National Law is assess to healthcare. If we start pulling everybody out and deregistering everybody then you can have areas where there is no access to healthcare. What we are trying to do is put measures in place that makes somebody once again a safe practitioner. As I said that is the very last step and usually never gets to that step.

Tash Miles: Sometimes a complaint is raised and there isn't any action that comes out of it. Jen, what happens from there, are there still opportunities for people to learn and reflect even if there is no regulatory action taken?

Jen Morris: Absolutely. We really do encourage all of our practitioners to consider a notification as an opportunity to reflect on their practice. It is the Board's position and it is our remit in the legislation that we are to take action around a practitioner when we think that they pose a certain level consistently of risk to the public. We might decide that is not the case, but that doesn't mean that this one off thing that has happened was less than ideal. There still may be opportunities for that person to learn. Certainly with our Board when that happens, where we think it is appropriate which is not always the case we will give the practitioner some feedback on the fact that this might be a learning opportunity for them. What some of the areas of practice that they might want to look into are, and how they could be supported to do that. We had someone recently for example who had raised a concern about the quality of a report that an occupational therapist had provided. We didn't believe, with all the evidence that we had, that that person was necessarily performing at a level that was significantly poor enough for us to act but we did think that the report could have been improved. We have been in communication with that practitioner via Ahpra staff to say maybe there are some things you could look into about how you could improve your report writing. We gave some examples of our concerns about the quality of that report. We are really trying to turn it in to a supportive reflection opportunity for those practitioners so that they don't have to find themselves in front of us again. I think is the outcome we want for everybody, because in the end it is not about catching out practitioners, it is just about ensuring people are safe. It is just as important as it is to ensure the safety of everybody.

Tash Miles: That is your key role and it is about upholding the profession and the healthcare in Australia so that everyone is safe. Where do you think regulation is going in the future? How are we going to continue to keep the public safe?

Mark Marcenko: It is interesting I think the COVID thing as we were talking about earlier, about how we are a virtual healthcare out there now. Things are changing. It is going to be more difficult in some ways because people are providing healthcare from other countries and how do you regulate another country? You go online and there are psychologists and you don't know where they are at and are they going to give mad advice. I think it is something that we are going to really take a hard look at and it is something we are starting to look at now. Technology has just expanded so much! I have been on the Board since 2011 and it has changed so much since then.

Tash Miles: Thank you to our guests, Mark and Jen for your insights and stories. It is certainly interesting to look behind the curtain and see the people who make the important decisions for public safety through the effective regulation of health practitioners.

Jen Morris: Thanks very much, Tash.

Mark Marcenko: Thanks Tash and thanks Jen.

Tash Miles: And thank you for listening to this episode. We encourage you to subscribe to *Taking care* in your preferred podcase player. We also have episodes and transcripts available on the website www.ahpra.gov.au.If you have any feedback please contact us at communications@ahpra.gov.au. See you next time.