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Medical Board of Australia
Public Consultation Paper Submissions

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Consultation on complementary and unconventional medicine and emerging treatments

In February 2019 the Medical Board of Australia released a Public Consultation Paper inviting "feedback on options for clearer regulation of medical practitioners who provide complementary and unconventional medicine and emerging treatments".

It noted "concerns have been raised by stakeholders about this area of practice, suggesting that additional guidance for medical practitioners is needed to support safe practice and ensure safeguards for patients".

The Board invited feedback on a series of issues and options outlined in the discussion paper.

The Cosmetic Physicians College of Australasia, the leading representative body for medical practitioners practicing non- or minimally- invasive cosmetic medical treatments in Australasia, considers patient safety the most important issue in all oversight and regulation of the nation's medical profession.

CPCA's responses to the Board's questions are as follows:

1: Do you agree with the proposed term 'complementary and unconventional medicine and emerging treatments'? If not, what term should be used and how should it be defined?

CPCA response: The College believes the scope of the attempt to encompass a significant array of items and procedures is too broad to be contained in a single definition. The College believes there should be three separate definitions: (A) Complementary; (B) Unconventional; and (C) Emerging Treatments.

2: Do you agree with the proposed definition of complementary and unconventional medicine and emerging treatments – 'any assessment, diagnostic technique or procedure, diagnosis, practice, medicine, therapy or treatment that is not usually considered to be part of conventional medicine, whether used in addition to, or instead of, conventional medicine. This includes unconventional use of approved medical devices and therapies.' If not, how should it be defined?

CPCA response: There should be distinct differences in definitions, and more precise analysis of both each definition, as well as how each topic should be governed.

3: Do you agree with the nature and extent of the issues identified in relation to medical practitioners who provide 'complementary and unconventional medicine and emerging treatments'?

CPCA response: Once again, there are significant differences to consider for each topic. For example, in relation to aesthetic procedures, the use of PRP versus stem cell therapy. There is significant evidence that PRP and PPP have specific factor activations.

4: Are there other concerns with the practice of 'complementary and unconventional medicine and emerging treatments' by medical practitioners that the Board has not identified?

5: Are safeguards needed for patients who seek 'complementary and unconventional medicine and emerging treatments'?

CPCA response: The College believes the domain of therapeutic claims lies with the Therapeutic Goods Administration and the Therapeutic Goods Act. It is unclear why the Medical Board of Australia is entering into a field that is beyond its expertise and jurisdiction, and the terms of reference.

"The Board agreed to look at this area of practice, to determine the concerns and issues, define the size and nature of the issues, and scope potential options for addressing these concerns"

CPCA response: While it is reasonable to assume the issues exist, the Discussion Paper does not quantify the trends or the size (number) of Notifications regarding CUE treatments that raise risk, or have caused injury, by Medical Practitioners; nor does the Paper compare the size of these issues to those involving other registered health practitioners such as Pharmacists, Chinese Medicine operatives and Nurse Practitioners as registered Health Practitioners. There is a significantly broader community, outside of Registered Health Practitioners, such has Homeopaths, Naturopaths, and public access to advertisements of direct on-line sales of vitamins, minerals and supplements. There is clear evidence that the Therapeutic Goods Administration has a clear policy which prohibits making claims of therapeutic benefit, which includes Medical Practitioners.

It is also unclear how the Board's financial and logistical resources will be able to independently investigate alleged transgressions, if the 'nature of the issues' is of a significant size. In particular, the Discussion Paper does not specify what proportion of the 'nature of the issues' is confined to medical practitioners.

The Australian Health Practitioners Regulation Agency oversees for example, the Pharmacy Board of Australia; and Pharmacies are by far, without requiring quantification, the largest agencies who sell, supply, recommend complementary, unconventional treatments and products that have dubious therapeutic benefit, while exaggerating and/or pretending this to be so.

In summary, the College supports many of the notions within the Discussion Paper. However the notions are the jurisdiction of the TGA, which is highly active in all areas of therapeutic claims - not just those involving medical practitioners, but for any entity, business or individuals who sell, supply or administer services and products that claim to offer therapeutic benefit.

6: Is there other evidence and data available that could help inform the Board's proposals?

7: Is the current regulation (i.e. the Board's *Good medical practice*) of medical practitioners who provide complementary and unconventional medicine and emerging treatments (Option 1 below) adequate to address the issues identified and protect patients?

CPCA response: The current regulation that pertains to 'promoting', or advertising a regulated health service adequately addresses the practice of medical practitioners who provide patients with substances and/or procedures that are complementary, unconventional and/or emerging therapies under the Health Practitioners National Law Act and Guidelines for Advertising a regulated health service.

In essence, a patient who seeks information, in whatever form, from a medical practitioner, is entitled to believe that the medical practitioner will observe: Guidelines for advertising regulated health services:

"material issued to patients or clients during consultations when this material is designed to provide the person with clinical or technical information about health conditions or procedures, and when the person is given adequate opportunity to discuss and ask questions about the material ***The information should not refer to services by the practitioner that could be interpreted as promoting that practitioner's services, as opposed to providing general information to the patient or client about a procedure or practice."***

Essentially, where the medical practitioner personally promotes a service or product that is likely to provide a direct financial benefit to the medical practitioner that is attained from that product or service, this constitutes advertising. This situation is unlike the prescribing of a scheduled medication or other therapeutic substances that do not return a financial benefit to the medical practitioner. In the case of promoting, during consultation or other means direct to the patient, of a service or product that provides a direct financial benefit to the medical practitioner, and the therapeutic benefit cannot be scientifically proven, there is a potential therefore for two unprofessional acts - 'Promoting' and misleading advertising.

Both these offences are adequately covered by the existing guidelines and regulations.

8: Would guidelines for medical practitioners, issued by the Medical Board (Option 2 above) address the issues identified in this area of medicine?

CPCA response: The College acknowledges the issues of false and misleading therapeutic claims are pandemic worldwide. Defining restrictions on all areas arising from these concerns is the jurisdiction of the TGA, and placing restrictions upon what is the smallest sector (by proportion) of the problem as caused by medical practitioners, appears to be a task that is not only logistically and financially burdensome, but beyond the scope of jurisdiction of the Medical Board of Australia.

9: The Board seeks feedback on the draft guidelines (Option 2) – are there elements of the draft guidelines that should be amended? Is there additional guidance that should be included?

CPCA response: The College believes investigating, analysing and policing of alleged unprofessional conduct, or professional misconduct, regarding CUE issues would present a formidable task for the Board to conclude independently. The College, while agreeing the issues exists, suggests the Board (as a component of AHPRA) would be best placed to refer alleged offences to the TGACC, which would investigate such matters with its appropriate authority, expertise and resources to evaluate claims of therapeutic benefit. Again, the College emphasises the largest offences of this nature are committed by many other health practitioners such as Pharmacists. The question of medical practitioners offering, selling and/or administering services and/or products that claim to have therapeutic benefit, but which are not supported by reliable data, focuses here only upon medical practitioners. Medical practitioners committing these offences are likely to be significantly over-shadowed by offences by other health practitioners and non-health practitioners.

Finally, under Section 150 of the Health Practitioners National Law Act, the Medical Board of Australia already has significant powers to cause immediate suspension of a medical practitioner where impending injury or undeniable serious threat to patient safety exists. That is sufficient power - and already exists to fulfil the obligations of protection of the public.

10: Are there other options for addressing the concerns that the Board has not identified?

11: Which option do you think best addresses the issues identified in relation to medical practitioners who provide complementary and unconventional medicine and emerging treatments?

Option 1 - Retain the status quo of providing general guidance about the Board's expectations of medical practitioners who provide complementary and unconventional medicine and emerging treatments via the Board's approved code of conduct.

CPCA response: The College, again, acknowledges the problems exist; however focusing upon medical practitioners, when the TGA focuses on the broader community including health practitioners, does not require the Medical Board of Australia to alter the status quo.

Option 2 - Strengthen current guidance for medical practitioners who provide complementary and unconventional medicine and emerging treatments through practice-specific guidelines that clearly articulate the Board's expectations of all medical practitioners and supplement the Board's *Good medical practice: A code of conduct for doctors in Australia.*

CPCA response: Strengthening current guidance fails to reduce the major proportion of selling or administering treatments, that are purported to have therapeutic benefit, in the broader community. Strengthening current guidance is not limited to writing guidelines. The resources used to investigate matters that are already the jurisdiction of authorities such as the TGA, represents a waste of resources with little or no benefit, and would distract the Board from issues where there is a definite history of injury (such as two cases in NSW of

permanent vision loss from dermal filler injections carried out without supervision) the risks of which continue to exist. Such injuries could have possibly been avoided had the Board listened to its own advice, and the overwhelming advice of the medical professionals, when publishing new guidelines for cosmetic procedures in October 2016.

In conclusion, as noted at the beginning of our response the CPCA considers patient safety the most important issue in all administrative oversight and regulation of the nation's medical industries.

To that end, the CPCA believes the recent Federal Court action relating to the Therapeutic Goods Act (Secretary of the Department of Health v. Peptide Clinics Pty Ltd) in exercising powers against an organisation with medical practitioner ties regarding compounding ingredients into supplements sold directly to the public is an example where the TGA is correctly implementing and enforcing its key roles in both "prioritising public safety" and acting "in the public interest".

Similarly, the CPCA believes the MBA should direct its resources into clear areas of "public safety and public interest" which require its attention - not into areas where the appropriate body has shown medical competence.

Yours faithfully
COSMETIC PHYSICIANS COLLEGE
OF AUSTRALASIA

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On behalf of the CPCA Secretariat