https://cops.asn.au/

06/02/2023

Response to questions about the future use of data collected and held by AHPRA and general comments on the Draft Data Strategy.

COPS makes the following points in response to the above.

1. COPS notes the recognition by AHPRA that its legislative ability to collect registration data under the National Law is leading to "***growing demand for both the data we make publicly available now through existing services and what we could make available in the future subject to privacy and confidentiality obligations***".[1] It is still not clear who specifically is making these demands. The term used is "***regulators, government agencies and other entities***".[2]
2. COPS understands the value of health data to a variety of organisations both commercial and public who will seek to use that data for multiple purposes, many of which will be described as being in the public interest or for the safety of the public.
3. COPS accepts that the national registration scheme must support public safety. However, such broad objectives as "***to better protect the public***"[3] can be used to justify any number of interventions and demands for data and information.
4. It is therefore critical that appropriate and careful legislative scrutiny be applied to all such requests to ensure abuse, intentional or unintentional, does not occur and that no unintended consequences arise from regulations.
5. COPS asserts that protecting the public includes ensuring public confidence in the Australian medical profession, its international reputation for clinical excellence, its high standards and its commitment to best practice and quality assurance principles. Any steps that weaken

[1] AHPRA Public consultation paper Draft Data Strategy, p4
[2] AHPRA Public consultation paper, p5
[3] AHPRA Public consultation paper, p5

confidence in the Australian medical profession's ability to respond to the medical needs of all Australians could be considered a threat to public safety.

6. COPS further asserts that it is the responsibility of the regulator to ensure that health professionals have confidence in the integrity, fairness and justice of those regulatory requirements and disciplinary procedures which are provided for in the National Law.
7. Without such confidence, AHPRA runs the risk of eroding the profession's trust and co-operation in the regulatory decision-making process, resulting in an adversarial regulatory environment which is contrary to all principles of quality assurance and clinical best practice.

The scope of the problem

8. COPS maintains that health professionals, including medical practitioners, who are found, after **appropriate judicial due process**, to be guilty of serious professional misconduct and endangering public safety, should not remain in practice.[4]
9. It is therefore important to measure the extent of this unacceptable behaviour.
10. In regard to the medical profession, the size of the problem can be estimated by comparing the exposure of the public to medical practitioners with the number of proven convictions for serious misconduct.
11. According to AHPRA, there were **131,953 medical practitioners in Australia** in 2021/22.[5]
12. According to Medicare, the number of **Medicare rebatable transactions** (for medical services) for the financial year ending 30 June 2022 was **511,520,053**.[6] These Medicare statistics give an indication of the extremely high volume of medical services being delivered by Australian medical practitioners in any 12 month period.
13. The number of **notifications to AHPRA about medical practitioners** in the same period was **6,176** (representing **0.000012%** of those Medicare transactions). The number of **notifications that were closed by AHPR**A in that period was **5,874**.[7]
14. The **total number of notifications made to AHPRA and other health care complaints bodies** (Health Professional Councils Authority [NSW] and Office of the Health Ombudsman) was **10,873**, relating to **8,146 medical practitioners** (or 6.2% of the medical profession).[8]

[4] Professional misconduct is defined in the National Law. Timely judicial processes are required to interpret the law fairly and reasonably to ensure that all individual circumstances of any case are taken into account.
[5] AHPRA Annual Report Medical Practice in 2021/22
[6] Medicare Group Reports/ Requested MBS category by group and subgroup processed from July 2021 to June 2022, Medicare Australia website
[7] AHPRA Annual Report Medical Practice in 2021/22
[8] AHPRA Annual Report Medical Practice in 2021/22

15. **58.2%** of all closed notifications to AHPRA lodged about medical practitioners **resulted in no further action by the regulator**.
16. **47 notifications to AHPRA** (0.8% of closed notifications about medical practitioners) **resulted in registration being surrendered, suspended or cancelled.**
17. **323 notifications** (5.5%) **resulted in conditions being imposed or an undertaking being accepted**, while **1,873** (31.9%) were **referred to another body** or retained by a health complaints entity.
18. According to AHPRA's Annual Report 2022, **complaints concerning clinical care made up 44.7% of notifications** (approx. 2,760) about medical practitioners. 14.1% of notifications were about communication, 9.7% about medication, 7.6% about documentation, 3% about behaviour, 2.6% about boundary violation, 2.6% about health impairment and 11.7% other.
19. According to a study of Sexual Misconduct by Health Professionals in Australia 2011-2016, "***notifications alleging sexual misconduct by health practitioners are rare***".[9] However, the study concludes that for those affected, the negative impact is severe.
20. According to the Independent Review of the use of chaperones to protect patients in Australia (2017),[10] **39 doctors** (out of a total of **107,831 practising doctors, or 0.00036%**)[11] were **subject to chaperone conditions** at January 2017, including 20 general practitioners, two psychiatrists, two neurologists, one dermatologist, one ophthalmologist and 13 medical practitioners without specialist registration. Of this total, **40% (15) resulted from disciplinary action after proven sexual misconduct**, whilst **60% (24) were imposed as an immediate action while allegations of sexual misconduct were being investigated**.
21. The above statistics confirm that serious professional misconduct by medical practitioners is very rare. Hence any regulatory response involving the whole of the profession needs to be proportionate to the extent of the problem and based on solid legal foundations.
22. The protection of the public also requires the timely and thorough investigation of serious complaints in order to quickly and accurately identify those cases where regulatory action needs to be taken. Confidence in the ability of regulation to protect both the public and innocent health practitioners is enhanced when complaints are dealt with promptly, fairly and efficiently.

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[9] **Sexual misconduct by health professionals in Australia 2011-2016: a retrospective analysis of notifications to health regulators,** Marie M Bismark, David M Studdert, Katinka Morton, Ron Paterson, Matthew J Spittal, Yamna Taouk, *Medical Journal of Australia* Vol 213, Issue 5, pp218-224

[10] Independent review of the use of chaperones to protect patients in Australia, commissioned by the Medical Board of Australia and the Australian Health Practitioner Regulation Agency, Report by Prof Ron Paterson, February 2017

[11] Medical Board Report Registration Data Table December 2017
https://www.medicalboard.gov.au/News/Statistics.aspx

Proposed future direction for the public register

23. The consultation paper has outlined several areas where additional information "***may be of value to practitioners, the public, employers and others***".[12]
24. Currently medical practitioners have a legal obligation to submit requested information to AHPRA if they wish to be registered. It is important that this regulatory authority to collect information not be abused or used for unauthorised purposes.
25. The information currently gathered is based on the original authorised purpose of AHPRA as a national registration agency. The co-operation of the Australian medical profession has been based on the premise that information collected was for the purpose of registration and not for any other purpose.
26. It would appear from the consultation paper that AHPRA is seeking to extend its authorised purpose to become a data collection agency on behalf of other parties.
27. An agency such as AHPRA, which operates outside of any single jurisdiction, reports to no single Minister, and has been given the registration function for over 805 000 health practitioners, should not have its original purpose extended without a full public review of the reasons for such an extension being necessary and legislative debate at both Federal and State levels as to who is seeking access to this information and for what purposes and to what commercial benefit if any.
28. Where an agency of government is given both broad objectives and a wide scope, outside any single jurisdiction, there are always concerns that this authority can be, intentionally or unintentionally, diverted into unauthorised purposes.
29. The current domestic and international threats to Australia's cyber-security are well known to legislators and all those involved in protecting essential data. Health data, or any data associated with the delivery of Australian healthcare, has national security implications and hence should not be gathered or requested by anyone, including regulatory agencies, without a strong case being made for the intended purpose and how that meets the national interest.
30. Furthermore, Australia has not been immune from tragedies where health professionals have lost their lives at the hands of disturbed patients. This tragedy has not only affected

[12] Consultation paper, p9

psychiatrists but other specialists writing medico-legal reports have also been tragically killed.[13]

31. The safety of health practitioners must also be a major consideration in any decision to publish personal information to the public. The consultation paper, although mentioning privacy, makes no reference to this important consideration of practitioner safety.
32. It is for the above reasons that COPS maintains that there should be no additional requirements on medical practitioners to supply information to AHPRA that is not necessary for their registration.
33. Furthermore, where disciplinary matters are to be published on the registration database, this should only apply to those cases which have been the subject of a judicial process and judicial outcome which has gathered all the facts and exercised due process under the principles of administrative law.
34. It is a critical error to consider the registration database as the only instrument available to regulators to protect the public. **AHPRA already has the legislative authority under the National law to assess any practitioner at any time and to remove health practitioners from practice if they are considered by AHPRA to be a danger to the public**.
35. Further safeguards include the ability of any member of parliament or Minister or Shadow Minister to exercise the right of parliamentary privilege to raise in the parliament any matters of public concern, including threats to public safety from health practitioners, products or services. Recent debate around the outcomes of cosmetic surgery clearly demonstrates that our legislators are active in the parliament to protect the public and request action to address safety concerns. The system works.
36. Of major concern are suggestions that AHPRA use the registration process for "***further practitioner and/or consumer generated information about a registered health practitioner***".[14] This suggestion runs the risk of two outcomes, namely the solicitation of glowing testimonials by or on behalf of the healthcare professional, or the generation by aggrieved individuals or groups of false or exaggerated negative ratings.
37. Patients who are influenced to choose doctors using these consumer ratings would presumably have the right to sue the regulator or obtain redress should their clinical outcome not match their expectations arising from the ratings on the AHPRA website. Likewise, the health professional would presumably have the right of legal redress for

[13] Ken Blanch, *The Rampage of Killer Kast* (Jack Sims; Qld, 2005)
[14] Consultation paper, p9

damage to professional reputation arising out of incorrect, biased or malicious information published that is contrary to key principles of administrative law.

38. Medical and other health practitioners writing reports which assess injury and/or are required for a legal process may find themselves most at risk from an organised negative consumer rating campaign.

Data sharing proposals

39. COPS notes that the AHPRA register of health professionals currently produces a number of specialised reports that can be utilised by authorised government agencies and the public. These reports provide accurate and helpful statistics to healthcare planners. COPS believes this is the appropriate use of such data by AHPRA and it is transparent as to what AHPRA is providing publicly, hence maintaining a standard of appropriate privacy of individual information.
40. The consultation paper makes no compelling case to extend data sharing arrangements other than a claim that "***recently there has been a growth in the volume and complexity of requests for our data***".[15]
41. COPS reiterates the point that AHPRA is a registration agency, not a data collection agency. There is no end to the potential demand for data from governments and commercial sources. However, given the nature of AHPRA's governance being outside any single jurisdiction, clear boundaries and limits must be established.

Data analytics

42. COPS maintains that the consultation paper makes no compelling case for a specific application of data analytics that would assist it to be more efficient in its registration and notification processes.
43. The use of data analytics can be highly controversial and abuse, even with good intentions, runs a high risk of undermining confidence in the regulation and registration process.
44. COPS re-emphasises the fact that AHPRA answers to no single jurisdiction and has no single accountable Minister who can represent the public interest and who is directly accountable for the functioning of AHPRA. AHPRA is essentially free of the accountability that other government agencies operate under.

[15] Consultation paper, p11

Conclusion

COPS has major concerns with the ambitions of AHPRA's Draft Data Strategy and the lack of safeguards that arise from AHPRA sitting outside any single jurisdiction and the authority and accountability of any single Minister.

There is a potential for creeping, and some would say galloping, broadening of powers and objectives which will make AHPRA a data collection agency for unspecified third parties.

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