



OPTOMETRISTS  
ASSOCIATION AUSTRALIA

## Optometrists Association Australia

**Submission to the Optometry Board of Australia consultation on revised Code of Conduct for Optometrists, revised Guidelines for Advertising, revises Guidelines for Mandatory Notification and draft Policy on Social Media**

**May 2013**

**ABOUT OPTOMETRISTS ASSOCIATION AUSTRALIA**

*Optometrists Association Australia is a non-profit organisation registered under the Corporations Law.*

*It is a federation of the six state optometric associations and has been in existence since 1904.*

*Around 93 per cent of practising optometrists in Australia are members of Optometrists Association Australia.*

*Contact details for the National and State Division Offices are at [www.optometrists.asn.au](http://www.optometrists.asn.au).*

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## About Optometrists Association Australia (OAA)

OAA is the peak body for optometrists in Australia representing approximately 93% of registered optometrists. The Association provides information and support to optometrists to assist them in their professional practice, including clinical information and practice-related advice. The Association is committed to assisting optometrists deliver quality eye and vision care services across Australia, and provides information and support to optometrists regarding clinical practice, practice management, legal and regulatory requirements and developments within the profession, including as a key provider of Continuing Professional Development for optometrists through the six State Divisions of Optometrists Association Australia. The Association also represents the interests of optometrists to Governments and other bodies and provides information resources to the public.

As a membership organisation the Association is keen to encourage AHPRA and the OBA to provide maximum clarity in their documents to empower registrants to work within the requirements set down in the regulatory documents, including through the use of examples. Whilst we appreciate that it is not the role of AHPRA and the OBA to provide legal advice to practitioners, examples relevant to common circumstances/practitioner queries need not constitute legal advice. Our suggestions below are primarily based on questions and clarifications sought by our members.

## Submission

Optometrists Association Australia (OAA) thanks the Optometry Board of Australia (OBA; the Board) and the Australian Health Practitioner Regulation Agency (AHPRA) for the opportunity to comment on the revised Guidelines for Advertising; revised Code of Conduct for Optometrists; revised Guidelines for Mandatory Notification; and the draft Social Media Policy. We recognise these guidelines, code and policy as having important implications for the practice of optometry in Australia and welcome the opportunity to provide the following comments against each of these drafts.

### **Draft revised Code of conduct for Optometrists**

The Association believes that the Code of Conduct for Optometrists (the Code) is one of the most important documents providing important ethical guidance for the professional practise of registered optometrists. The Association welcomes the revision of the Code, and the inbuilt commitment to regular review. With minor exceptions (as detailed below), the Association supports the revisions made to the Code and believes the revised code is clear and has relevance and use to the practise of optometry in Australia. In particular, we note and welcome the specific references to electronic communications and social media within the Code as a useful reminder of the applicability of the Code to these forms of communication and marketing. We also particularly welcome the increased emphasis on “effective communication” as underpinning “every aspect of good practice” in Section 1.2.

To enhance and strengthen the Code the Association recommends a number of additions as set out below. These suggestions relate to questions that have been put to the Association by its members in relation to these matters and if clarified, the Association believes, will make it easier for optometrists to understand and abide by the Code.

- further clarity is needed within the Code to specify the implications for practising optometrists who breach the Code, including what consequential action may be taken by the OBA;
- the Code needs to specify that optometrists should ensure that any employment agreements/working arrangements they enter into support them to practise in accordance with the Code
- the Code should include an explanatory statement of requirements that relate to the provision of care through visiting or mobile services, particularly in relation to patient records and to continuity of care. Visiting and mobile services are often provided to population groups who are least connected to the healthcare system, have low health literacy and who suffer from greatest inequities in eye health outcomes and care access. This emphasises the need to ensure these services are provided in a manner that helps promote ongoing and well-integrated health care through provisions related to record keeping, follow-up care and future access to eye health services.
- the Code should include specific recommendation in the relevant section that optometrists clearly and without judgement explain the potential outcomes from not pursuing a recommended course of treatment or care pathway if the patient suggests or states that they don't intend to do so. This is important in ensuring fully informed consent and should be considered an important role of all health practitioners.

The Association further recommends a number of amendments to the revised Code as follows:

- We recommend a footnote or similar be added to support practitioners to determine what the 'relevant guardianship authority' referred to in Section 1.4 may be.
- We recommend Section 3.3k is amended to read: "communicating with and providing relevant information to relevant stakeholders including members of the treating team, in accordance with patient consent requirements." The addition of the word 'relevant' in front of stakeholders is appropriate to guard against the interpretation that communication regarding patient care should be required by all members of a treating team, when this may not always be appropriate nor necessary for patient care. The additional stipulation of "in accordance with patient consent requirements" is an important reminder to ensure that requirements for effective communication with stakeholders are in accordance with requirements for patient consent to share their health information.
- We recommend that in Section 3.6c, the third dot point, as with the second, specify that this should be done to 'the best of an optometrist's ability' given that the optometrist

cannot determine another person's understanding of a concept. We further recommend that the fifth dot be amended to specify its application to guardians rather than only parents, given that parents may not always have legal guardianship of a minor. (We also note a grammatical error in the final dot point in this section which makes this point difficult to read.)

- Further in Section 3.6c we recommend further specification is given to the term "at risk" which, as it stands is without context and presumes a knowledge of the use of this terminology which may not be appropriate to new practitioners or those joining the Australian profession from overseas. Further we recommend that this point is extended to address not only those who may be 'at risk' but also those experiencing harm.
- Section 3.7 currently requires optometrists to have 'an understanding of the cultural needs and contexts of all patients to obtain good health outcomes.' The Association believes that it is not possible for any practitioner to have such a knowledge and that the important thing in facilitating culturally safe and sensitive practice is to ensure that practitioners are aware that cultural needs and contexts can impact patient health and seek to understand these in a respectful manner as appropriate to facilitate good patient care.
- Section 4.3 discusses delegation, referral and handover, seemingly with the assumption that delegation only ever involves another practitioner (language that suggests, in the context, a tertiary qualified health professional.) In optometry practise, delegation can occur to practice staff who may not be considered 'practitioners.' For example, an appropriately trained staff member may be involved in taking retinal images (this accords with NHMRC guidelines.) For this reason, we recommend that it be specified within Section 4.3 that the requirements in this section apply to any appropriately trained person whom an optometrist may delegate to.
- The second sentence in Section 4.4 on 'Teamwork' reads: 'In addition, employers are vicariously liable for the actions of their employees.' Whilst not wishing to dispute this statement, we question what the implicit meaning of this statement is within the context of 'teamwork' given its relevance here is not obvious. We recommend consideration be given to placing this statement elsewhere given its implications beyond teamwork contexts. We further recommend that further information is provided to make clear 'vicarious liability', its implications for employees and employers and its relevance within the Code.
- Section 5.2a makes the important point that health services provided should be justified by patient need and not be unnecessary or not reasonably required. We suggest this important point may be strengthened by further stipulating that this applies even if the service is offered without charge to the patient.
- Section 5.3, which addresses health advocacy, suggests that good practice involves a practitioner using their experience and influence to promote the health and wellbeing of not only their patients but of communities and populations. The Association agrees

that it is appropriate that practising optometrists use their “expertise and influence to protect and advance the health and wellbeing of individual patients.” However, the requirement that optometrists use their expertise and influence to protect and advance the health of communities and populations takes this a step further. Many optometrists take specific action to advance public health and others frame their practise to ensure that through care for individuals they can help promote the health of specific sub-populations. However, we question whether it should be incumbent on all optometrists to act as public health advocates in this way, particularly those who may be skilled clinicians and strong advocates for the health of individual patients, but who may not feel they have the knowledge and sensitivities to act more broadly as health advocates for whole communities or vulnerable populations.

- Similar to the point made above, Section 5.4, which addresses public health, requires the optometrist to participate “in efforts to promote the health of the community.” It is unclear whether this pertains more broadly than to the preventative care etc. that they will engage with in providing good care to an individual patient. As above, the Association questions the appropriateness of requiring **all** optometrists to work more broadly to promote public health.
- Section 7.1 suggests the need for a commitment to continuing professional development to meet the “demands of scientific, technological and societal changes.” The Association agrees that this is most important to maintaining professional performance and suggests this statement be further strengthened by specifying the need for practitioners to also commit to professional development with consideration of the eye health needs of the population.
- Section 8.11g addresses conflict of interest and states that good practice involves “not offering inducements to colleagues or entering into arrangements that could be perceived to provide inducements.” Many optometrists employ optometrists within the practice they own or manage. In this context it is not uncommon for optometrists to provide their employee with real or perceived inducements to ensure that they provide good quality care in a manner that enables a sustainable practice. Currently, it is not clear whether an optometrist employed by another optometrist would be considered a “colleague” for the purpose of Section 8.11g and whether such a circumstance could be seen as in breach of this Section of the Code. The Association suggests that the ability to provide inducements to staff that are in the interests of good patient care and a sustainable business model is not in itself contrary to good practice and should not be regarded as a breach of the Code. We recommend that the intent behind Section 8.11g be considered and the wording be amended to ensure an accurate reflection of this intent. If the intent is to ensure that inducements are not offered to colleagues to provide referrals, recommendations or unnecessary prescriptions, then this should be clarified.
- Section 8.12f appears to be an incomplete sentence.

- Section 9.2c recommends an optometrist should consider what immunisation may be required for them personally given their role in health care. The Association supports this addition to the Code, and suggests the importance of immunisation is further emphasised by including a note to the effect that optometrists with managerial or operational responsibilities should also consider immunisation requirements of their practice staff.

One aspect of the revised guidelines provides particular concern to the Association. Section 3.13 discusses boundaries and suggests that providing care to those with whom an optometrist has a close personal relationship may be inappropriate and provides guidance for a practitioner who chooses to/ is required to, provide care to those with whom they have a close relationship. The Association agrees with this aspect of the Code, noting however, that the use of the word 'choose' may be misleading, particularly in circumstances where accessibility of alternate services means no real choice may be available to the patient or optometrist in a manner timely to the care required.

This section, however, could be read as contravening Section 8.2c on professional boundaries which suggests that "sexual or other personal relationships" with previous clients are "usually inappropriate."

Section 8.2c could also be read as suggesting that if a personal relationship with a patient has developed it is inappropriate to end the professional relationship and continue the personal relationship, despite the sentiment of Section 3.13 seeming to suggest this may be the most appropriate course of action if an optometrist does not feel they can treat the patient in accordance with the good practice recommendations outlined in that section.

Further, the notion that an optometrist shouldn't develop a personal relationship with a former patient may unnecessarily and inappropriately impinge on a practitioner's private life. Providing this guidance within the Code also unnecessarily exposes health practitioners at risk of breaching the Code, despite the likelihood that they are providing care in an ethically upstanding manner that otherwise accords with the Code.

We recommend that Section 8.2c be removed or amended to focus more on the intent of protecting vulnerable patients, perhaps with wording along the lines of the following: "Good practice involves: Being sensitive to the vulnerabilities of patients, and maintaining an awareness of and respect for this in any relationships or dealings with previous patients".

**Draft Social Media Policy**

In principle, the Association supports the approach of including general guidance in the draft policy with appropriate cross-referencing to the Guidelines for advertising and Code of Conduct. As noted, with regard to the Guidelines for Advertising and Code of Conduct for optometrists, we believe there are a number of opportunities to strengthen the guidance provided through each of these as it pertains to social media.

The draft policy is brief and essentially states that when using social media practitioners are beholden to act in accordance with their Code of Conduct and uphold the National Law in relation to advertising. There are an extremely limited number of practical examples provided to assist practitioners in interpreting how to act in accordance with these professional obligations when using different social media.

The draft policy is, however, aligned with the regulatory role of the OBA and we do not believe that in itself it is inappropriate as a policy document. However it is of limited use and relevance to practitioners; further guidance is needed to support practitioners to readily understand how to use social media in a manner that accords with their professional Code of Conduct and with the National Law.

This is particularly the case given the relative newness of this communication medium, its potential applicability to communications with colleagues, current and future patients, and its ongoing evolution. Whilst some guidance is provided through specific points and examples in the Guidelines for Advertising and the Code of Conduct for Optometrists there are numerous circumstances where it may be difficult for practitioners to determine in reference to these documents the appropriate and legal use of social media, for example, the appropriateness of being a 'friend' on Facebook with a current or former patient via either a personal or professional profile, given that this may or may not be perceived as constituting a 'personal relationship' as referred to in the Code of Conduct for optometrists.

We note that the current approach includes a recommendation for practitioners to seek additional guidance regarding the legal and appropriate use of social media from their professional bodies and the like. We have concerns that this places an unfair onus on professional Associations to act as interpreters of AHPRA's policy. We suggest that given the number of professions to whom this has relevance an alternative and preferable approach would be for AHPRA to develop a detailed guideline on the use of social media to complement the policy and assist practitioners comply with the policy. The Association believes that this can be undertaken in a manner that accords with the regulatory role of the National Boards which commonly extends to providing guidance regarding how to act in accordance with the National Law, as well as Board codes and policies.

The Association believes that social media can be used effectively to promote better health behaviours and improved health outcomes and to facilitate professional networking that can support quality clinical practice. It would be a missed opportunity to promote better health if

the outcome of the lack of detail and practical guidance provided through this policy, was that practitioners felt the need to limit their professional engagement with use of social media.

### **Draft Revised Guidelines for Advertising**

The Association notes that changes have been made since the preliminary consultations which have addressed some concerns the Association has had with the current Guidelines for Advertising (the Guidelines) and with the previous version of the draft revised guidelines, primarily by providing greater clarity on points made.

The Association welcomes the revised Guidelines as providing optometrists with detailed guidance regarding the application of the National Law to the promotion of their clinical services. Generally, given the complexity of the space and the many variables to be considered, we believe the Guidelines are useful and provide greatest possible clarity. However, we do believe there are a number of opportunities to enhance the clarity and usefulness of the Guidelines to practising optometrists:

- Appendix 1 notes that advertising includes promotion via social media and that social media includes discussion forums and message boards. The Association suggests it is not clear whether the definition of advertising includes promotion or discussion of services on online or email discussion groups or forums that are 'closed' to the public and restricted to health professionals (in this instance, optometrists) only. We suggest this would be useful clarity to provide to practitioners through the Guidelines.
- To support compliance with the National Law and with legislation administered by the Therapeutics Goods Administration we recommend that either Section 8.3 or Appendix 4 be amended to note how practitioners can quickly ascertain what products are regulated by the TGA.

The Association notes that Section 6.4.1 of the Guidelines regarding the use of titles enable practitioners to use the title 'Dr' provided that, if the practitioner is not a medical doctor, sufficient clarity to this effect is given to the public. Noting that there has been some controversy regarding this provision, the Association wishes to note its support for it. Reports from our members suggest that the use of the title in accord with the Guidelines has not proven misleading to the public and provides an avenue for them to highlight their commitment to professional service and patient care.

The Association further notes that, to the best of our knowledge, the advertising provisions of the National Law as they apply to optometry and all other health professions are currently untested.

Appropriate and timely information regarding breaches of the National Law may provide further guidance to the advertisers of health services regarding compliance with the National Law. The Association encourages AHPRA to establish a process to actively communicate the outcomes of



any investigation finding a breach of the National Law which may be instructive to other advertisers to, at a minimum, regulated health professionals.

### **Guidelines for mandatory notifications**

In general the Association believes that the current Guideline for mandatory notifications (the Guidelines) have been working reasonably well. The Association notes that changes have been made following the preliminary consultation on these Guidelines which have addressed minor concerns the Association has had with them, particularly through the provision of greater clarity regarding the notification processes and the mandatory notification obligations of registered health practitioners. Overall, the Association supports the proposed revisions, though also offer the following recommendations to further enhance the Guidelines:

- The mandatory notifications Guideline begins with a clear outline that identifies who needs to use the Guideline, the context for such guidelines to exist and an introduction section. This includes specifying that the National Law requires “practitioners, employers and education providers to report ‘notifiable conduct’ as defined in s.140 of the National Law.” The Association recommends that this section be enhanced with an overview of notifiable conduct as specified under the National Law and which is discussed in greater detail in the Guideline content. This would provide context for a practitioner reading the Guideline in a linear fashion and improve understanding of the types of conduct and impairment that triggers a mandatory notification from the outset.
- Noting that the revised Guideline provide greater clarity than earlier iterations, the Association suggests that further detail regarding the notification process would strengthen the Guideline and be in the interest of patient safety. For example, section 7 does not specify whether a mandatory notification can be made anonymously, or provide any indication of the time commitment or the use of personal information of those making a (non-anonymous) notification. While we note a registered practitioner is legally mandated to notify once a certain threshold is reached we believe this additional detail would further enhance the Guideline.
- As noted by the Association in the preliminary consultation, while the Guideline specifies exemptions to the requirements of practitioners to make a mandatory notification in section 4, it remains unclear from the examples provided whether registered practitioners employed by peak professional bodies to provide advice are exempted from notification. In the case of Optometrists Association Australia, optometrists are employed by the Association to provide confidential advice on clinical, practice, regulatory and legal matters, often alongside a professional indemnity insurer, as a service to members. Whilst not employed or engaged exactly as detailed in section 4, Association optometrists do provide advice on similar issues in the course of supporting members in a manner often presumed to be confidential by the optometrists seeking advice. The Association believes that optometrists employed in this capacity should be considered exempt from the mandatory notification requirements when performing this role. We believe that such an exemption is in the interests of public safety and a robust notification system, and the wording of section 4 should reflect this.

Further, such wording would provide the conditions for members of a peak professional body to seek confidential advice and be informed of their responsibilities relating to the National Law and their relevant National Board guidelines.

The Association also wishes to note, appreciating it may not be within the remit of the Guideline to address, its belief that the exemption that specifies that treating practitioners in Western Australia are not required to make mandatory notifications in relation to their patients who are also health professionals should be expanded to include treating practitioners in all states and territories. Such an exemption is more likely to encourage care-seeking/help-seeking behaviour by the practitioner who would become the patient and allows more open and honest communication in the practitioner-patient relationship. Ultimately this would be most likely to serve public safety most effectively.