Public Consultation

October 2011

Public consultation paper on the definition of practice

Summary

This consultation paper seeks feedback on the common *definition of "practice"* used by the 10 health professions regulated under the *Health Practitioner Regulation National Law Act* (National Law) as in force in each state and territory.

Seven of the 10 National Boards (Chiropractic, Dental, Medical, Optometry, Osteopathy, Podiatry and Physiotherapy) are currently undertaking this consultation.

Background

The implementation of the national registration and accreditation scheme established 10 National Boards responsible for regulating 10 health professions under the National Law. The 10 National Boards are:

- Chiropractors Board of Australia
- Dental Board of Australia
- Nursing and Midwifery Board of Australia
- Medical Board of Australia
- Optometry Board of Australia
- Osteopathy Board of Australia
- Pharmacy Board of Australia
- Physiotherapy Board of Australia
- Podiatry Board of Australia
- Psychology Board of Australia

From 1 July 2012, another four professions are expected to enter the Scheme. These professions will be regulated by the following Boards:

- Aboriginal and Torres Strait Islander Health Practice Board of Australia
- Chinese Medicine Board of Australia
- Medical Radiation Practice Board of Australia
- Occupational Therapy Board of Australia

One of the aims of the national registration and accreditation scheme is to deliver an efficient and effective scheme for all health professions regulated under the National Law. Where possible, the

National Boards collaborate to align standards, codes and guidelines that are common to each profession. Therefore, the National Boards have agreed to aim for a common definition of "practice".

Some National Boards have received feedback from stakeholders that the very broad definition of "practice" is causing practical difficulties and has resulted in unintended consequences. In response, seven National Boards have agreed to consult on the definition of "practice" to help them decide whether or not a change to the definition is necessary. If a change to the definition is necessary, the consultation will help the Boards to determine a new definition.

Other National Boards have not received this feedback and consider at this stage that the current definition of practice is appropriate and that any further clarification could be made through additional guidance about the circumstances when it is appropriate to hold non-practising or general registration. Accordingly, these other boards are not participating in this consultation process although will review its outcomes.

Impacts of change to the definition

The current definition of "practice" is contained in the various registration standards of each National Board, including:

- Continuing professional development
- Recency of practice
- Professional Indemnity Insurance

The National Law does not define "practice". The National Boards agreed to a common definition of practice and incorporated this into a range of registration standards. The registration standards that contain the definition of "practice" underwent public consultation in October and November 2009 and were approved by the Ministerial Council on 31 March 2010. The registration standards came into effect on 1 July 2010.

Any change to the definition of "practice" requires a change to the registration standards in which the definition is embedded. A change to a registration standard requires each Board to:

- undertake broad-ranging consultation
- consult with each other, if a Board proposes to make a recommendation to Ministerial Council about a matter that may reasonably be expected to be of interest to another National Board
- submit the registration standards to the Ministerial Council for approval. The revised or new registration standards take effect after they are approved by the Ministerial Council and after they are published on the relevant Board websites.

The National Boards have previously developed and consulted on a range of registration standards, codes and guidelines that are now in place. These clarify the National Board's expectations of health practitioners and can be accessed via the Australian Health Practitioner Regulation Agency website at: www.ahpra.gov.au. A link to the National Law is available at www.ahpra.gov.au.

Please provide feedback by email to practice.consultation@ahpra.gov.au by cob Friday 2 December 2011.

The Boards generally publish submissions on their websites to encourage discussion and inform the community and stakeholders. Please let us know if you do not want us to publish your submission, or want us to treat all or part of it as confidential.

Definition of "practice"

1. Introduction

Registered health practitioners work in various settings using their knowledge and skills as qualified health practitioners. The current definition of practice is broad. It takes into consideration the evolving nature of health care and the practice of the health professions, allowing for technological innovation and other changes to health care delivery. To limit the definition of "practice" to specified tasks, defined scopes of practice or only direct patient/client care relationships may inadvertently restrict the practice of the health professions and the delivery of health care services, contrary to the interests of the public.

The current definition of practice adopted by most National Boards is as follows:

> ***Practice*** *means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a health practitioner in their profession. For the purposes of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.*

Some National Boards have received feedback from stakeholders that the very broad definition of "practice" is causing practical difficulties and has resulted in unintended consequences. For example, a senior bureaucrat, policy advisor or hospital Chief Executive Officer who is a qualified health practitioner may be deemed by the National Boards to be "practising" their profession as a result of the definition of practice. Other practitioners may not think they need to be registered for the purposes of their role, for example they have no direct patient or client contact and their jobs could be done by non-practitioners or retired practitioners involved in teaching or mentoring roles, but feel they need to be registered as a result of the current definition of practice. Practitioners who are registered in categories other than non-practising or student registration need to comply with the relevant Board's requirements for continuing professional development, recency of practice and professional indemnity insurance which involve time and financial costs. These consequences may be a disincentive for practitioners from taking on particular roles.

In response, seven National Boards are consulting on the definition of "practice" to help them decide whether or not a change to the definition is necessary. If a change to the definition is necessary, the consultation will help the Boards to determine the new definition.

In determining whether the definition of "practice" is appropriate, the provisions of the *Health Practitioner Regulation National Law Act* (National Law) as in force in each state and territory should be taken into consideration.

2. The National Law

One of the key objectives of the National Law is:

> *"to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to **practise** in a competent and ethical manner are registered."*

It is relevant to note that the National Law provides for the protection of the public through the protection of titles. Other than a few notable exceptions under Part 7, Division 10, Sub-division 2, the National Law does not define the activities that require registration as a particular health practitioner. That is, it is not a breach of the National Law for a health practitioner to use their knowledge and skills without being registered if the individual does not breach the sections of the National Law related to the protection of title or to the specific practice protections. For example, a retired practitioner teaching anatomy would not need to be registered and would not be breaching specific practice provisions.

Protection of title

Section 117 of the National Law prohibits a person from knowingly or recklessly taking or using any title that could be reasonably understood to induce a belief that the person is registered in a health profession or a division of a health profession in which the person is not registered.

Section 116 of the National Law prohibits a person who is not a registered health practitioner from knowingly or recklessly taking or using a title that, having regard to the circumstances, indicates or could be reasonably understood to indicate the person is a registered health practitioner, or authorised or qualified to practise in a health profession.

The courtesy title "Dr" is not a protected title and unregistered health practitioners may use the title, as long as in doing so, they do not induce a belief that they are a registered health practitioner.

The public National Registers of practitioners

The public National Register for each of the health professions allows the public to accurately identify who is and who is not a registered health practitioner. Practitioners who are registered must meet the registration standards set by the relevant National Board. The public can therefore be confident that a registered practitioner meets the relevant requirements for professional indemnity insurance, continuing professional development and recency of practice.

Non-practising registration

While the National Law does not define "practice", s. 75 of the National Law states:

(1) A registered health practitioner who holds non-practising registration in a health profession must not practise the profession

(2) A contravention of subsection (1) by a registered health practitioner does not constitute an offence but may constitute behaviour for which health, conduct or performance action may be taken.

Health practitioners who hold non-practising registration are not required to comply with the registration standards for professional indemnity insurance, continuing professional development or recency of practice. Health practitioners with non-practising registration may use protected titles but must take care to ensure that they do not induce the belief that they are registered in another category or division under the National Law.

The definition

Given the provisions of the National Law, seven National Boards are exploring whether the current definition of practice should be changed.

Under the current definition, a person in any role who uses their skills and knowledge as a health practitioner in their profession is deemed to be practising. This definition is not limited to direct patient/client care, but includes using professional knowledge in a direct non-clinical relationship with patients/clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession. Therefore, anyone with a qualification as a health practitioner who is working in anything related to health could be deemed to be "practising". This is regardless of whether their job could be done by someone who is not a qualified practitioner.

Stakeholders are asked to consider whether it is more appropriate to link "practice" with its impact on safe, effective delivery of services in the relevant profession. That is, to require an individual to hold a "practising" category of registration only if they are in roles that "*impact on safe, effective delivery of services in the profession".*

It can be argued that there is minimal risk to the community if practitioners are not registered, or are registered in the non-practising category if:

(1) they do not have direct clinical contact *and*
(2) their work does not "*impact on safe, effective delivery of services in the profession" and*
(3) they are not directing or supervising or advising other health practitioners about the health care of an individual(s) *and*
(4) their employer and their employer's professional indemnity insurer does not require a person in that role to be registered *and*
(5) the practitioner's professional peers and the community would not expect a person in that role to comply with the relevant Board's registration standards for professional indemnity insurance (PII), continuing professional development (CPD) and recency of practice *and*
(6) the person does not wish to maintain the title of "registered health practitioner".

Question 1: Are there any other factors that the National Boards should consider when advising whether or not a person needs to be registered?

Direct clinical roles / patient or client health care

When health practitioners provide advice, health care, treatment or opinion, about the physical or mental health of an individual, including prescribing or referring, it is clear that there is a level of risk to the public. The public and the practitioners' professional peers would expect that this group of health practitioners would have the qualifications and the contemporary knowledge and skills to provide safe and effective health care within their area of practice. It would be expected that these practitioners will meet the standards set by the Board and therefore should be registered.

Question 2: Do you support this statement? Please explain your views.

Indirect roles in relation to care of individuals

Health practitioners who are in roles in which they are directing, supervising or advising other health practitioners about the health care of individuals would also be expected to have the qualifications and contemporary knowledge and skills to do so as there is potential to alter the management of the patient/client.

Question 3: Do you support this statement? Please explain your views.

Non-clinical roles / non-patient-client care roles

There are experienced and qualified health practitioners who contribute to the community in a range of roles that do not require direct patient/client contact and whose roles do not "*impact on safe, effective delivery of services in the profession*". Examples are some management, administrative, research and advisory roles.

Question 4: Do you believe that health practitioners in non-clinical roles / non-patient-client care roles as described above are "practising" the profession? Please state and explain your views about whether they should be registered and if so for which roles?

Education and Training

Experienced health professionals are vital to the education and training of health professionals. Their roles in education have an impact on safe and effective delivery of health services both directly and indirectly.

Question 5: For which of the following roles in education, training and assessment should health professionals be registered?

- Settings which involve patients/clients in which care is being delivered ie when the education or training role has a direct impact on care, such as when students or trainees are providing care under the direction, instruction or supervision of another practitioner
- Settings which involve patients/ clients to demonstrate examination or consulting technique but not the delivery of care
- Settings which involve simulated patients/clients
- Settings in which there are no patients/clients present

Are there any other settings that are relevant and if so, what are your views about whether health practitioners should be registered to work in these settings?

Please explain your views.

3. Options for consideration

In determining whether the current definition of "practice" is appropriate the following options are proposed.

Option 1 – No change

Practice *means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a health practitioner in their profession. For the purposes of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.*

The current definition of "practice" captures all activities and settings in which an individual with qualifications as a health practitioner might be involved professionally. It protects the public by requiring health practitioners to be registered and to meet the registration standards.

Question: Do you support this option? Please explain your views.

Option 2 – Change the definition to emphasise safe and effective delivery of health care

As stated above, the current definition of "practice" captures the various settings in which a health practitioner may use his or her knowledge and skills and provides for the changing nature of health care delivery.

The current definition could be changed to place the emphasis on safe and effective delivery of health care.

> ***Practice*** *means any role in which the individual uses their skills and knowledge as a health practitioner in their profession in any way that impacts on safe, effective delivery of health services.*

Question: Do you support this option? Please explain your views.

Other Options

There may be other options that the National Boards have not put forward at this stage, such as maintaining the current definition but providing further guidance on when a practitioner needs to be registered and the circumstances when non-practising registration will be appropriate. Stakeholders are asked to provide feedback on any alternatives to the above options.

4. Conclusion

The National Law distinguishes between “practising” and “non-practising” registration. However, it does not define “practice”. The common definition of “practice” has been embedded into the 10 National Boards’ registration standards. While some stakeholders have not expressed concern about the current definition, feedback has confirmed there have been unintended consequences for some practitioners and their employers.

The common definition of “practice” allows qualified health practitioners to be eligible for registration if they can meet the registration standards. However, the broad definition has caused difficulties for some practitioners who have been forced to retain or reapply for registration when they believe this is not otherwise necessary.

With the exception of a few specific examples, the National Law does not define activities that require registration. The safeguards in the National Law relate to the protection of title and the requirement for National Boards and the Australian Health Practitioner Regulation Agency (AHPRA) to maintain publicly available registers of practitioners so that the public identify whether or not an individual is registered.

A number of questions to clarify the issues and two options have been proposed. The National Boards invite submissions about these and any other options.

The National Boards will consider all submissions and then decide whether or not to change the current definition of practice or to consult further on the issues raised. If a change is proposed, the registration standards will need to be revised and then submitted it to Ministerial Council for approval.