



MEDICAL CONSUMERS ASSOCIATION Inc.

Reg. No. INC1171602

P.O. Box 230 Balgowlah NSW 2093

31 July 2007

The Hon Tony Abbott MHR,
Minister for Health and Ageing,
Leader of the House of Representatives
Parliament House
Canberra ACT 2600

**Re: national system for the registration of health professionals
and accreditation of their training and education programs**

The Medical Consumers Association (MCA) has become aware of disturbing trends and developments in the process of building a national system for the training and accreditation of health professionals. We believe these should be brought to your attention before any changes in legislation or regulation cement these in place.

In particular, we have evidence that some of the continuing professional development requirements (CPD) that are currently in place and being proposed will seriously undermine and work against the goals of the reform. Some of these are so extreme as to violate the Council of Australian Governments (COAG) Competition Principles Agreement provisions that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of restricting competition.

MCA wants to ensure that any new legislation does not give some blanket protection that might allow abuse of competition principles to go unchecked through the normal trade practices and other avenues of redress.

We draw to your attention the fact that these matters have been put forward by many of the same lobby groups over decades, who have time and again failed to make a convincing case that ever-greater continuing education requirements serve the public interest or even do anything to raise basic standards, let alone provide better consumer protection.

What seems to be happening now is that 'horror cases' such as Victoria [2002] VSC 322, which dealt with indecent assault of a 14 year old girl by a health practitioner, are being invoked to support a case that consumers are supposedly demanding 'more protection' and that the appropriate response is somehow to 'raise the overall standard through education' rather than through punitive measures against transgressors. We are told that this could even extend to greater scrutiny of health professionals' private lives.

MCA finds such logic a complete misrepresentation of consumer interests. To put it bluntly – a pharmacist in Victoria indecently assaults a minor and the net result is that a counsellor in Cessnock folds up practice because the new mandatory CPD requirements make it economically unviable, while the Victorian culprit continues

practicing. MCA does not cite this as an exaggeration but as an actual description of what is already happening.

In the first place, many of the worst cases seem to be as much a police as a health responsibility. This means that shifting greater policing responsibilities onto practitioner-funded registration bodies may shift the burden ultimately onto health consumers. Even if costs were absorbed by the practitioners, this could lead to reduction of services. We offer the following background for your consideration.

Background

The nation's largest-ever Royal Commission, the Slattery 1990 Royal Commission, into Mental Health Services, took evidence on some of the most bizarre and neglectful treatments in our medical history. The difficulties that had prevented this coming to light resulted in a recommendation for cross-disciplinary standards and some codification of standards. It was noted that codes of conduct and the like had done nothing to set standards. It was clear that this was not to be left to the professions to police, as the Royal Commissioner specifically recommended that a Professional Conduct Division of the Supreme Court would be needed to deal with de-registration.

Over this same period, and under similar pressures to 'do something' to prevent atrocities, the NSW Department of Health, like its state and federal counterparts, was lobbied for many years by interest groups trying to make a case for ever greater 'specialist registration', rigid codes of conduct, and expensive CPD requirements. Especially in the case of the Review of the Psychologists Act, all of this was couched in terms of 'consumer protection'. The lobbyists failed to make their case. Indeed, in 1995 the NSW Ombudsman reported the irony that the original culprit who had supposedly triggered the 'reform' had been registered under the new act by the very NSW Psychologists' Registration Board that had supposedly been set up to prevent such excesses in future. The Ombudsman reported she had "...rarely dealt with a body which appears to have such a limited understanding of its administrative responsibilities and so little capacity for self-assessment".

The NSW Department of Health came to the conclusion that "mandatory continuing education should not be made a requirement for re-registration. The issue of access and equity is significant in this regard". The department's earlier Issues Paper had noted that Codes of conduct "may enshrine anti-competitive practices which do not serve the interests of consumers" that "there may be a need for checks to ensure that trivial matters are not addressed in the Code ... important matters may be overlooked" and thus recommended that "The Code is intended to be for the guidance of consumers and practitioners only". We attach a relevant extract from the Department's December 1999 report of the Review of the Psychologists Act 1989, for your consideration.

MCA's concerns are widely shared. Professions Australia, representing a broad range of technical fields within and outside health, has noted that "CPD should be based on sound educational principles. ... Consistent with the objective of protecting consumers relevant to their area of practice." Rather than supporting expensive interstate and overseas junkets, they recommend that "CPD can include the development of competencies gained through workplace learning." And they are mindful to "facilitate

the access of their members, including those in rural and remote areas, to continuing professional education opportunities. ... These guidelines should have the flexibility to allow professionals to independently decide to participate in a CPD program. ... monitoring of participation in CPD consistent with the level of risk to the consumer.” Nor have they endorsed any call for ever-escalating so-called ‘specialist’ recognition: “Any arrangements for specialist registration should not incorporate legislative restrictions on competition unless there is a demonstrable net public benefit Specialist accreditation should ideally be achieved by means of additional accreditation (administrative means) rather than separate registration under any legislation to avoid placing an unjustifiable restriction on competition within a particular profession. We have attached Professions Australia’s recommendations (Blueprint for National Registration of the Professions, April 2006) for your consideration.

The Council of Australian Governments’ Meeting (Communiqué, 13 April 2007) announced arrangements for “a new national system for the registration of health professionals and the accreditation of their training and education programs for implementation by July 2008”. COAG cited goals of “workforce responsiveness, flexibility, sustainability and innovation, mobility ... Individual registration and accreditation decisions will remain the responsibility of the professions. Community representatives will play a key role in the new scheme.” MCA wants to assist in the community role primarily by making sure that supposed ‘consumer concerns’ are not invoked in support of measures which have already been long and well examined and rejected due to lack of evidence. We believe that some of the CPD requirements fall into this category.

Conclusion

MCA has spoken to practitioners who are either on the verge of leaving the health professions due to onerous and unrealistic requirements or have already left. We remind lawmakers that those who merely vote with their feet, give up and take up a new career are seldom heard from. They do not join consumer or professional lobby groups, so they usually have no voice. While not as dramatic as the farmer who commits suicide, it is for many a ‘career suicide’ for someone who has spent as much as 6 years of tertiary education just to gain entry level. It is certainly a loss to the community as there is said to be a growing need for mental health and general health practitioners to deal with the ageing population and the pressures on the rural sector.

MCA would be grateful for a chance to engage in discussion about proposed changes that bear on health practitioners. We have extensive experience since 1977 and have much material that would be of relevance.

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Appended extract from NSW Health Department's December 1999 report of the Review of the Psychologists Act 1989

8. OTHER CONSIDERATIONS ARISING UNDER THE COMPETITION PRINCIPLES AGREEMENT

8.1 Maintenance of Professional Standards - Continuing Competency

One of the primary objectives of the Act is to provide consumers with information about the ongoing competence of registered professionals. While this objective can be achieved through the setting of registration requirements and the disciplinary system, many have argued, including the HCCC, Royal Commission into Deep Sleep Therapy and the Australian Psychological Society, this could be further enhanced through introduction of requirements for:

- < mandatory continuing education (MCE); and/or
- < annual competency assessment of registrants.

The Issues Paper did not support the introduction of continuing competency assessment on the basis that the complaints system is sufficient to monitor ongoing competence of practitioners. Most submissions argued that there is no need for such a system noting it would be impractical given the diverse areas of practice of professionals. While some advocated the need for competency assessment to ensure that standards are maintained, no matters resulting in disciplinary action have involved lack of competence. The cost of annual competency assessment cannot be justified.

A number of submissions argued participation in continuing education should be a requirement for re-registration. Such a requirement, it is said, ensures that practitioners maintain their standards. The Issues Paper noted that such a requirement should only be introduced where there is a problem with professionals failing to maintain standards as there is little point in making participation in continuing education mandatory where professional associations and professionals already recognise their professional responsibilities

A substantial number of submissions support MCE, arguing that the rapid rate of change and the need for consumer information justifies such a system. However, none of the submissions demonstrated that practitioners are currently ignoring their responsibilities. Contrary to this position, a large number of submissions that supported continuing education in principle opposed making it mandatory for various reasons including: cost and lack of access for rural/remote practitioners.

On balance, the Department is of the view that mandatory continuing education should not be made a requirement for re-registration. The issue of access and equity is significant in this regard. However, at present consumers have no means of determining whether practitioners seek to maintain skills at an appropriate level, particularly when in private practice. It is therefore proposed that the Act be amended to enable the Board (or a committee) to develop guidelines on voluntary continuing

education. Practitioners that meet the minimum number of hours for accreditation could then advertise that they have met the Board's guidelines for continuing education in the previous year. This would ensure that consumers have access to information, without the adverse impacts identified in submissions. This approach has recently been proposed in Queensland for all health professionals.

To raise awareness of the importance of continuing education activities, it is also proposed to require registrants to provide the Board with details of continuing education activities undertaken in the previous twelve months at renewal time.

By operating on a voluntary basis, the system would not lead to the exclusion of practitioners from the market with the potential for adverse impacts on competition. While practitioners would incur costs of participating in the system, the Department is of the view that these are offset by the benefits to consumers through the availability of information to assist them in making informed decisions regarding practitioners.

While professional associations are able to carry out this role, many registered practitioners are not members of such bodies. In the absence of the voluntary system, consumers would have no means of establishing whether practitioners who are not members of professional associations have sought to maintain the skills at an appropriate level.

Recommendation 18

That the Act provide for a system of voluntary continuing education on the basis it will have significant benefits for consumers by providing additional information and will further achieve the objectives of the legislation