ROYAL AUSTRALASIAN COLLEGE OF SURGEONS

SUBMISSION TO PRACTITIONER REGULATION SUBCOMMITTEE

DECEMBER 2008

Information sharing and privacy submission
Attention: Practitioner Regulation Subcommittee

Consultation Paper - Proposed arrangements for information sharing and privacy

Introduction

The Royal Australasian College of Surgeons welcomes the opportunity to comment on the consultation paper released on 3rd November 2008.

It is important to note that the IGA itself is yet to give detailed consideration to these matters.

Given the sensitivity of the information which is to be collected, the College recognises the need for clarity in the legislation regarding information sharing and privacy.

The regulatory framework must fulfil two key functions. First, it must facilitate the flow, on a national basis, of the personal health information that the agency and Boards need to function effectively. Only that personal information which is essential to the functioning of the register should be obtained. Second, it must protect against any misuse of that information.

In designing such a framework, an appropriate balance must be reached between enabling the flow of information and protecting the confidentiality of that information.

Detailed commentary

With regard to section 1.31 of the IGA, we have previously advocated for a separate specialist register, not only for the medical profession, but for other professions where recognition as a specialist will inform and protect the public.

Proposal 3.1.2 (d) pertains to overseas registration details. In the case of medical practitioners, the Australian Medical Council and the relevant specialist Colleges will have already obtained information regarding qualifications and registration. Additionally, certificates of good standing and workplace references would be reasonable.

Regarding Proposal 3.2.1 and the provision of employer details, the College supports Option 1.

In Section 3.3, the College notes that issues of unique identification are extremely complex and may still take some time to resolve. The National E-Health Transition Authority (NEHTA) has been working on this issue since February 2006 and, while the issue has been progressed, NEHTA has still not satisfactorily completed its work. It is essential that this process is completed, and arrangements are operating in a satisfactory fashion by the registration and accreditation scheme's proposed commencement date of 1 July 2010.

Proposal 3.4.1 pertains to identity checking. In the interests of national consistency across all health professions, Option 1 is preferred.

Renewal of registration will be a significant annual event for all medical practitioners. It is therefore imperative that the process not be made unnecessarily complicated or time consuming. Accordingly, the College suggests that the proposed data collection arrangements be refined. Specifically we suggest that three items of data, the residential postcode and the two citizenship characteristics, be parts of the initial registration process.

For Australian citizens, the requirement for citizenship related information would be limited to the initial registration process. Only non-citizens would be required to provide an annual update on their visa/residency status.
These suggestions, if adopted, would reduce the annual administrative burden on practitioners, reducing the number of items sought at each renewal of registration (for Australian citizens) to just five.

The College understands and hopes that the workforce planning data will be made available publicly and in a timely manner.

In terms of Proposal 4 1.1, the College supports the categories of information proposed being made publicly available, with the previously noted preference for a separate specialist register. However, we would recommend that once a suspension is served, that this information be removed from the register. We would also expect that, as with the Victorian register, voluntary conditions on practice would not be noted.

Section 4.2 pertains to de-registered practitioners. It is proposed that the legislation provide for the names of practitioners de-registered for conduct reasons to appear on the public register, along with an indication that they have been de-registered for conduct reasons. This appears to be unduly harsh. We do not agree that it is necessary to provide such detail for an indefinite period on a public register. Rather, the College would support other options, such as including de-registered practitioners on the register with a status of de-registered but without specifying that the cause is conduct related. Alternatively, they could be removed from the public register altogether. Either of these options would serve the same purpose, without further humiliating the deregistered practitioner.

The College believes clarification is required regarding those practitioners who are de-registered for reasons other than conduct being removed from the register.

Clearer definition regarding the test for release of a practitioner's health conditions would need to be provided before the College could agree with Proposal 4.3.1. Our preference would be for the register to contain the names of practitioners who are unrestricted and those who are restricted. While the restriction itself should be in the public domain, the reasons for that restriction – whether health, performance or conduct related – need not be on the publicly available register.

The College does not support the routine release of tribunal decisions where no adverse finding has been made (Proposal 4.6.1). In these cases, the test of "in the public interest" should not apply. An important exception would be when the fact of an ongoing tribunal investigation has already been made public; in the event that there is no adverse finding, natural justice would dictate that this information be made public and the practitioner's reputation be restored.

Similarly with Proposal 4.6.2, the College supports a process in which the doctor's name and reputation is preserved and protected, until such time as an adverse finding is made. The impact of intrusive and sensationalist reporting on a doctor's reputation and practice can be substantial, and accordingly the protection of a doctor's name and reputation should be a paramount feature of any new system. Disclosure of a doctor's name should only be allowed once an adverse finding is made, or disclosure is necessary for reasons of public safety.

The College would agree with the proposal to remove old decisions from the register when they are no longer relevant.

Proposal 5.1.1, to adopt the private sector provisions of the *Privacy Act 1988* as the basis for the arrangements in the national scheme, is supported by the College.

The College would also support Proposal 5.2.1.

The College would support Proposals 7.1.1 and 7.1.2 regarding information sharing.

While the College would support the provision of information to the relevant authority where a practitioner has caused, or is causing, a significant threat to the life or health of any person, we could not support the provision of information for such ill-defined reasons as “not complying with ‘professional standards’” without thorough investigation. It is imperative that the legislation tightly define the reasons for release of information by the PSR as set out in Proposal 7.3.1.

Proposal 7.4.1 is supported.

The National Registration and Accreditation Scheme proposes that a large amount of information be made available between multiple government instrumentalities (Sections 7.3, 7.4 and 7.5 are all examples of this). The College has reservations about the extent of this bureaucratic freedom to exchange personal information and would be very concerned if one standard were to apply to health practitioners (and in particular medical practitioners) and another, less onerous standard to ordinary citizens.

The College supports Proposal 7.7.1.

Proposal 7.8.1 is not supported in its current form. A potentially adverse patient outcome must be appropriately investigated before any further action can be fairly and reasonably determined. We would recommend removing the words, “by a practitioner” from the proposal.

Proposals 7.12.1 and 7.13.1 are supported.

Proposal 8.1 is a complex area at the interface of medical practice and the law. The College would not support it.

In summary, the College supports nationally consistent processes for all health professions. The registers should identify practitioners who are registered generally in the profession and, where relevant, in a specialty of that profession. While restrictions on practice should be publicly available on the register, the College does not support proposals whereby the reasons for restriction or de-registration are available on the public register, either in the short or long term.