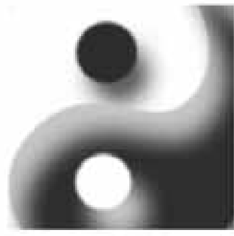

Chinese Medicine
Registration Board
of Victoria

SUBMISSION to

Health Workforce Principal Committee

Practitioner Regulation Subcommittee

From

Chinese Medicine Registration Board of Victoria

October 2008

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1.0 Executive Summary

The primary and overriding objective of the registration of health professions is to protect public health and safety.

This submission addresses the six AHMAC Criteria and present a strong case for the inclusion of Chinese medicine in the national scheme for registration of health professions.

The profession of Chinese Medicine clearly falls within the responsibility of Health Minister and poses a significant risk of harm to the health and safety of the public. This was already demonstrated by previous research and the experience of the CMRB provides further evidence. Recent scientific research demonstrates:

- that the practice of Chinese medicine is growing in popularity
- there were and continue to be risks associated with:
  - the consumption of Chinese herbal medicines and the effects of acupuncture needling, including
    - unpredictable reactions
    - predictable reactions
  - the clinical judgement of practitioners
  - the conduct of practitioners
  - the parallel use of two (complementary and mainstream) health systems.

The Chinese Medicine Registration Board (CMRB) has processed 1566 applicants for registration and refused more than 170 of these and imposed conditions on registration in more than 30 other cases. That >10% of applicants have failed to meet the minimum standard speaks for itself.

The complaints handling experience of the CMRB clearly indicates that there were matters that needed addressing and all relate to the protection of public health and safety. The rate of complaints about Chinese medicine has been consistently higher than for most other health professions.

Despite proactively contacting people to warn them about breaching the Act the CMRB has prosecuted 17 people[1] for various beaches including:

- Illegal practice
- Illegal advertising

Registration has contributed to reducing or managing some risks associated with unqualified practice and varying standards.

Self-regulation has not been an effective means of protecting consumers, and there are limitations with regard to the prospect of consumer protection via local government/skin penetration regulations.

Regulation is clearly possible to implement for Chinese medicine. Victoria established the CMRB per the same model as that for other health professions and this has now operated effectively for seven years.

Regulation is clearly practical to implement for Chinese medicine. The professional is clearly defined and there are sufficient numbers. The CMRB experience with course approval and acupuncture endorsement of other health professions provides standards and processes for easy adoption at the national level

The benefits to the public of regulation clearly outweigh the potential negative impact of regulation of Chinese medicine. Restriction of entry been demonstrated to be a benefit to

[1] And 11 others are either in progress or being considered

public safety. Whilst there has been increased cost to the profession, this is an additional argument in favour of national registration.

Additional concerns include:
- interstate practitioners being over-represented in complaints
- issues with practitioner mobility between States
- other needling practices
- continued lack of a national education standard
- that there is a need for the national scheduling process (via the SUSDP) to be reviewed in relation to Chinese medicines.

Registration in Victoria now enables the identification of practitioners with adequate training. It is in the national public interest for properly-trained practitioners to be readily identified. COAG has already agreed to establish a single national scheme of registration for health professions, as a matter of public interest. A range of policy inconsistencies which exist across Australian healthcare could be more readily addressed if all the relevant health professions are uniformly regulated.

The evidence emerging from the work of the CMRB, which is outlined in this submission, coupled with more recent scientific research, strongly supports the ongoing need for regulation, and the need for national registration.

Inclusion of Chinese medicine in the national scheme is the only appropriate response if the Government is to meet its stated commitment to:
- Protecting the public
- Establishing nationally consistent standards and systems for the regulation of the health professions.

2.0 Policy Background and Context

In 1981, the Standing Committee of the Conference of Australian Health Ministers concluded that registration of health practitioners was granted too readily. In 1992 a number of groups were deregulated in Australian jurisdictions, including naturopaths, speech pathologists and social workers in the Northern Territory. In 1995, six criteria for assessing the regulatory requirements of unregulated health occupations were adopted by AHMAC. The same Criteria is adopted in the Intergovernmental Agreement.

Chinese medicine was assessed as an occupation meeting all six AHMAC Criteria in the report, *Towards a Safer Choice*, published in 1996 and there is substantial evidence that this continues to be the case.

The research report *Towards a Safer Choice: The Practice of Traditional Chinese Medicine in Australia* investigated and reported on seven main areas:
1. the regulatory frameworks in China, other countries, and all states of Australia;
2. the profile of the Chinese medicine workforce in Victoria, NSW and Queensland including the organisations that represent practitioners;
3. the profile of patients using Chinese medicine;
4. the risks and benefits of Chinese medicine;
5. the nature of the links and referral networks between practitioners of Chinese medicine and other health care practitioners;
6. the nature of Chinese medicine education in Australia and China; and
7. the adequacy or otherwise of the current state regulatory frameworks.

Towards a Safer Choice suggested that acupuncture and Chinese herbal medicine are two modalities employed within the wider practice of Chinese medicine with risk profiles that warranted registration.

A recommendation to regulate Chinese medicine was implemented in Victoria in 2000. The rationale underlying the need to register Chinese medicine practitioners in Victoria includes:

– increasing consumer usage;
– highly varied standards for education of practitioners;
– multiple professional bodies with differing standards;
– specific risks associated with some Chinese medicine practices;
– general risks attached to the clinical judgement of the Chinese medicine practitioners who are primary health care providers treating a wide range of health disorders.

In 2003, following the Pan Pharmaceutical recall, the federal government's Expert Committee on Complementary Medicines in the Health System also recommended that all states and territories act to register Chinese Medicine as per the Victorian legislation. The specific recommendations of the Expert Committee included:

> "Governments should move more quickly to nationally consistent, statutory regulation (where appropriate) of complementary health care professions."
>
> "The Committee strongly supported the Australian Health Ministers' Advisory Council resolutions in favour of nationally consistent regulatory arrangements, the development of model legislation in one jurisdiction for application in other jurisdictions, and the AHMAC criteria for regulation of unregistered healthccupations. However, given the risks, the Committee was concerned at the delays in moving to implementation. All jurisdictions should, as soon as possible, introduce legislation to regulate Chinese medicine practitioners, based on the existing legislation in Victoria." (2003 section 5.1.1)

The Australian Government issued its response to the report in March 2005 and as health practitioner regulation remained a State and Territory responsibility at that time, stated that it would:

> *bring the recommendations of the Expert Committee relevant to healthcare practitioner regulation to the attention of the States and Territories through the Australian Health Ministers' Conference.*

In 2005 the Western Australian Minister for health issued a discussion paper as part of a consultation process into the regulation of Chinese medicine practitioners. The purpose of the consultation process was to seek comment on a proposed registration framework for Chinese medicine practitioners in Western Australia. This discussion paper explained the key issues and options, and sought the views of interested groups and individuals. Stakeholders supported the regulation of Chinese medicine in WA and it was decided that the regulation of the three modalities of acupuncturists, Chinese herbal dispensers and Chinese herbal medicine practitioners was important due to the potential for serious adverse effects arising from these practices.

In 2005 the 'Committee on the Health Care Complaints Commission' of NSW issued a Report into Traditional Chinese Medicine which recommended the registration of Chinese medicine practitioners. It said:

> "Traditional Chinese Medicine be registered in New South Wales; That registration be through protection of title; and that there should be three distinct divisions of the register: acupuncturist, Chinese herbal medicine practitioner and Chinese herbal dispenser" (p 29) (Nov 2005).

In the subsequent 2006 report "Review of the 1998 Report into 'Unregistered Health Practitioners: The Adequacy and Appropriateness of Current Mechanisms for Resolving Complaints" the committee again recommended:

> "That legislation be passed in New South Wales to register practitioners of Traditional Chinese Medicine in the divisions of acupuncturist, Chinese herbal practitioner and Chinese herbal dispenser, as recommended in the Committee's November 2005 Report" (Recommendation 3)

3.0 Criterion 1: Belongs to Health?

Is it appropriate for Health Ministers to exercise responsibility for regulating the occupation in question (or does the occupation more appropriately fall within the domain of another Ministry)?

Yes.

The profession of Chinese Medicine, including acupuncture and Chinese herbal medicine is focussed on delivering primary clinical health care to the public and therefore clearly falls within the responsibility of Health Ministers.

The occupational regulation of Chinese medicine was previously discussed at AHMAC and reports into Chinese medicine have been undertaken by health departments in Victoria, New South Wales and Western Australia.

Responsibility for registration in Victoria falls under the Minister for Health.

4.0 Criterion 2: Significant Harm?

Do the activities of the occupation pose a significant risk of harm to the health and safety of the public?

Yes.
Studies have shown that the activities of Chinese medicine practitioners (acupuncturists and Chinese herbal medicine practitioners) and Chinese herbal dispensers can cause significant morbidity and mortality. In addition, there are potential risks attached to the clinical judgement of the Chinese medicine practitioner who is primary health care provider treating a wide range of health disorders.

There is also a body of research to indicate that these healthcare practices are growing in popularity and this trend is likely to continue.

When conducted by properly-trained professionals, however, Chinese medicine can be a positive component of the health care system. It is in the hands of those with inadequate training Chinese medicine and/or those with no effective guidance and authoritative control over their practice, that it poses a significant risk to public health and safety.

4.1 What the Previous Research Said

Evidence suggests that a number of therapeutic practices used by Chinese Medicine practitioners, notably acupuncture and herbal medicine, pose a significant risk to the public

The report "Towards a Safer Choice", published in November 1996, found that significant risks occurred in the practice of Chinese medicine and that occupational regulation was appropriate. It reported on:

- Adverse events
- Clinical Judgement of the Practitioner
    - Removal of appropriate therapy
    - Incorrect diagnosis
    - Incorrect prescribing
    - inappropriate duration of therapy
    - failure to refer on where appropriate
    - failure to explain precautions associated with a particular substance
- Chinese Herbal Medicines
    - Inappropriate dosage or over-dosage

  - Failure to observe contraindications
  - Interaction between Chinese herbal medicines
  - Interaction with pharmaceuticals
- Unpredictable reactions (Type B reactions)
  - Allergy/anaphylaxis
  - Idiosyncratic reactions
- Failure of good handling and manufacture of Chinese herbal medicine
  - Misidentification
  - Lack of standardisation
  - Contamination
  - Substitution
  - Adulteration
- Acupuncture predictable reactions (Type A reactions)
  - Cross-infection
  - Trauma
  - Physiological responses
- Acupuncture unpredictable reactions (Type B reactions)
  - Metal allergy
  - Idiosyncratic reactions

The report specifically said:

Risks to the public from TCM[2] may be divided into two major categories:

- risks associated with the clinical judgement of the TCM practitioner; and
- risks related directly to the consumption of Chinese herbal medicines or the effects of acupuncture needling.

..... whilst the practice of TCM may be relatively safe in comparison to western medicine, it is not free of risk. The number and type of adverse events reported in the literature and uncovered as part of the TCM Workforce Survey provide evidence that, like all effective medical interventions, the practice of TCM contains inherent risks. The risks identified are not trivial and fatalities have occurred. .... The principal recommendation of this report is the introduction of statutory occupational regulation in the form of a restriction of title. The aim is to introduce minimal, yet sufficient, regulation to ensure adequate public safety. .... The growing usage of TCM in Australia and overseas requires the placement of appropriate legislative mechanisms and the adoption of suitable principles in education and training to ensure adequate safety and effective delivery.

On the basis of this report, the Victorian Government established a Ministerial Advisory Committee and called for submissions on what form occupational registration should take. The results of this process including discussion of various regulatory models were detailed in the Report on Options for Regulation of Practitioners released in July 1998 and the *Chinese Medicine Registration Act* passed in 2000.

4.2 What Since?

4.2.1 Registration of qualified practitioners in Victoria

Under the *Chinese Medicine Registration Act* 2000 regulation of Chinese medicine was introduced and the registration provisions commenced on 1 January 2002. Since this time the Chinese Medicine Registration Board of Victoria has been registering Chinese herbal medicine practitioners, acupuncturists and dispensers of Chinese herbs and conducting investigations into complaints about registrants' professional conduct or fitness to practice.

The basic standard for entry into the registered profession in Victoria is based on the CMRB's assessment of qualifications and competence plus consideration of character, using a

[2] The term TCM is a direct quote and stands for Traditional Chinese Medicine; the CMRB uses the term Chinese medicine.

comprehensive information gathering process to ensure proper and full disclosure of applicants' relevant practice and personal history.

The CMRB has processed 1566 applicants for registration. Of these, 78% were registered under the transitional (grandparenting) provisions. This percentage continues to decrease over time since the transitional provisions ended on 31 December 2004 and new applicants need to complete an approved course or pass the CMRB registration examinations.

The CMRB has refused more than 170 applications and imposed conditions on registration in more than 30 other cases. The most common reason for refusal has been inadequate qualifications and training or lack of evidence of competence. In a small number of cases character issues were central. All these decisions are 'reviewable' and two decisions have been challenged – both appeals were unsuccessful (see summaries in Appendix 2).

At the most basic level, the CMRB is the keeper of minimum entry requirements - and over 10% of applicants have failed to meet this standard. The CMRB is aware, anecdotally that a number of practitioners refused registration have continued to provide services to patients using terms such as 'dry needling' – that is avoiding the registration requirements by calling what they do something other than acupuncture. It is unknown how many did not seek registration at all but are undertaking practice but without using protected titles.

Besides the direct risks of acupuncture and Chinese herbal medicine, there are the general risks associated with lack of effective regulation. Many complaints to the CMRB have related to general conduct in the health care setting. Consumers expect that health professionals will be competent and will behave in an ethical and responsible manner, however, this cannot be guaranteed in an unregulated environment. In an unregulated environment the consumer has little recourse in the event of an adverse event or breach of patient rights.

4.2.2 Complaints handled by CMRB

The CMRB investigates, and if necessary disciplines, Chinese medicine practitioners whose conduct or fitness to practise is in doubt.

4.2.2.1 Complaints Data Comparison With Other Victorian Registration Boards

A comparison with other Boards, of "Complaints per 100 registrants" is detailed in Appendix 1 from 2003 when the CMRB began receiving complaints to the 2007-8 reporting year. This is based on the data which was available from the other Boards.

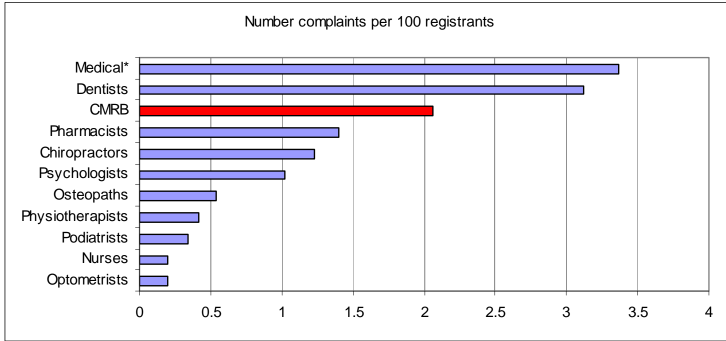
In each year the rates for Chinese medicine are consistently higher than for:
- Nurses
- Pharmacists
- Podiatrists
- Physiotherapists
- Osteopaths
- Psychologists

and in every year except 2003 for Chiropractors.

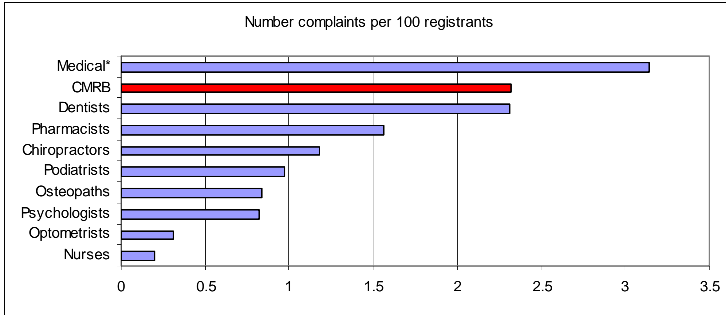
Dental practitioners have higher rates of complaints than Chinese medicine practitioners. Similarly, medical practitioners have higher rates of complaints than Chinese medicine practitioners and their data includes health, professional performance and professional conduct notifications.

The Pharmacy Board has a different procedure regarding investigations. Routine inspections of premises are conducted which may result in a notification. The figure used in the table does not include these numbers. The number provided only refers to new consumer complaints made.

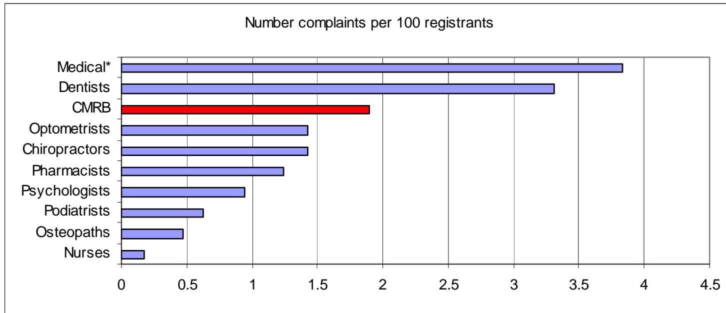
2007



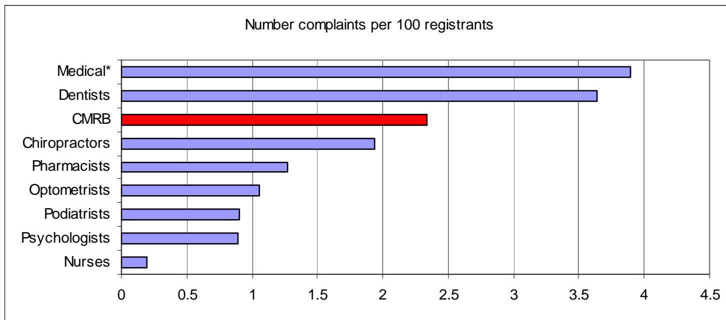
2006



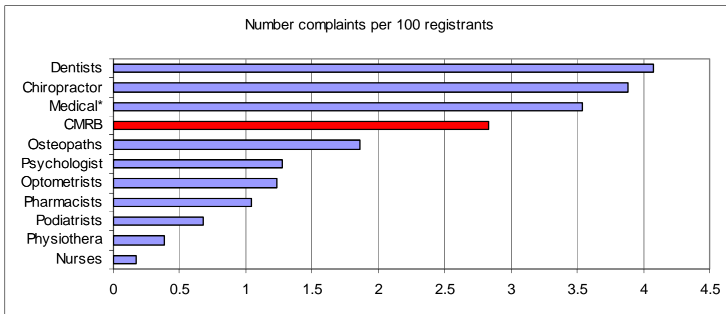
2005



2004



2003



* The Medical Board includes health, professional performance and professional conduct notifications.

4.2.2.2 Nature of Complaints

The overall numbers (123 to date) are too low for meaningful statistical analysis but common themes are:

- advertising violations
- clinical / treatment issues
- conduct and ethical behaviour issues
- offences
- registration related matters
- sexual misconduct

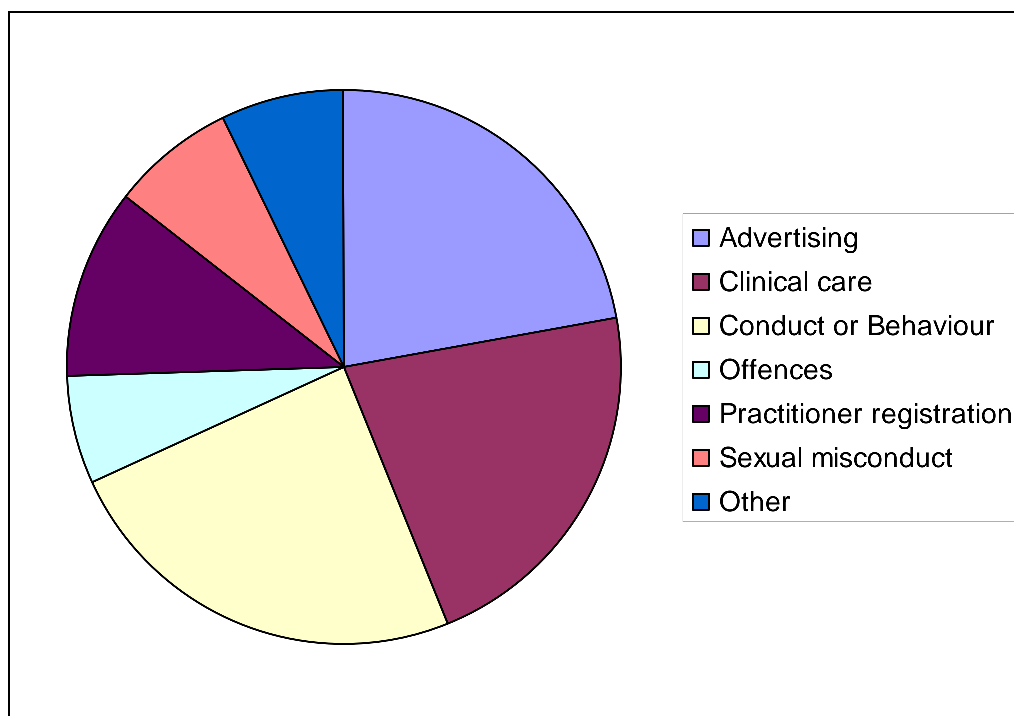
The details of issues raised by complainants to the period ending 30 June 2008, can be seen in Table 1 and this is depicted graphically in Table 2.

Table 1

Primary Nature of Complaints		Total no. & (no. of cases in progress)					
		2002/ 2003	2003/ 2004	2004/ 2005	2005/ 2006	2006/ 2007	2007/ 2008
Advertising	Testimonials, misleading or other	4	3	5	3	5 (3)	14 (10)
Clinical Care	Inappropriate clinical management					2 (1)	5 (3)
	Poor management of adverse reaction			1	1	1 (1)	2 (2)
	Incompetent treatment/consultation		1		2	2	
	Infection control breaches	3		1	1	4	
	Inadequate patient records			1			1 (1)
	Dispensing/use of illegal or contraindicated herbs		1	1			2 (2)
Conduct or Behaviour	Character issues		1	1	2		3 (3)
	Rudeness			1			2 (2)
	Lack of privacy protection	1					
	Professional association expulsion		1				
	Fraudulent use of another person's professional association number				1		
	Deception and pressure selling				1	2	
	Disputed treatment cost and outcome		1			1	
	Unsubstantiated claims					1	
	Holding out		1	2	3		6 (4)
	Exploitation or dishonesty		1		1	1	
	Fraudulent receipting/failure to provide receipt		1			2	
Offences	Fraud	5	1		2		
	Refusal to comply with health fund audit				1 (1)		
	False statements to insures				1		
						1	
Practitioner Registration	Failure to adequately insure	1	1		1	1	
	Fail to comply with conditions on registration (other)		1		1	1	
	Obtaining registration by deception				1		
	Engaging unqualified staff			3			
	Query about qualifications/false documents	5				1	
Sexual Misconduct	Sexual misconduct or sexual impropriety			1	3	2	4 (4)
	Indecent assault				1		
Other	Breach of undertakings		2			1	1
	Failure to disclose offences		2				
	OH&S breaches					1	
	Various allegations					1	1
	TOTAL	**19**	**18**	**17**	**26 (1)**	**29 (5)**	**41 (31)**

The numbers in parentheses are cases still in progress.

Table 2



The complaints handling experience of the CMRB clearly indicates that there were matters that needed addressing, and all relate to the protection of public health and safety. Treatment issues were low in the first year, but as consumers became aware of registration, complaints from patients increased and in subsequent years have represented 25–50% of complaints. With many complaints, corrective actions were taken as soon as matters were brought to the practitioner's attention.

Most Chinese medicine practitioners practise as primary contact practitioners and treat a wide range of health disorders. Therefore Chinese medicine treatments have risks related to:

- disclosure of a significant amount of health-related information
- disrobing for examination and treatment
- the need to adequately explain treatment/procedures resulting in proper informed consent

Evidence of poor conduct has emerged from the work of the CMRB in areas such as

- communication
- informed consent
- privacy
- advertising
- professional boundaries
- exploitation and pressure selling
- maintenance of insurance
- compliance with conditions on registration
- accurate and honest record-keeping

4.2.2.3 Hearings

Sixteen formal hearings to date (another is still in progress) have been concerned with issues including false qualifications, advertising breaches, infection control breaches, poor record-keeping, use of unqualified staff, and sexual misconduct; all except one (Andrew Tem Foo LIM) have resulted in findings of unprofessional conduct, and impact upon the issue of public safety.

All the full decisions are published at http://www.cmrb.vic.gov.au/board/board.html
See summaries in Appendix 2.

All these decisions are 'reviewable' and two decisions (one involving a non-Victoria) have been challenged – both appeals were unsuccessful.

Of the 9 completed hearings involving Victorians, 4 relate to practitioners who are no longer registered and 2 of these involve the same practitioner. One had his registration cancelled and he was subsequently prosecuted for continued illegal practice.

In one of the non-Victorian cases:

- The CMRB dealt with multiple complaints against the same practitioner
- The practitioner is no longer registered and has failed to execute the sanctions imposed
- The CMRB reported the matter to the Health Quality and Complaints Commission in Queensland
- The CMRB continues to receive inquiries and complaints from consumers and other practitioners indicating that the same concerning practices and behaviours are continuing unabated

Ten informal hearings (3 not yet completed) and one Professional Standards Panel hearing have been completed and the CMRB uses information from these hearings to write "lessons learned". Issues have included:

- Health fund fraud
- Infection control deficiencies
- Poor patient record keeping
- Unethical sale of products
- Lack of recent practice
- False advertising
- Inappropriate conversation/professional boundary matters
- Failure to maintain professional indemnity insurance

In addition to this, when reasonable and effective to do so the CMRB seeks to resolve matters even more informally. On occasions the CMRB requests a meeting with the practitioner, to discuss aspects of their practices and to explore their understanding of the issues at stake. Whilst this approach is resource intensive, it is personal and interactive and therefore formative and effective.

4.2.2.4 Complaints against non-Victorian Practitioners

As of 30 June 2008, approximately 12% of current registered practitioners, and 28.5% of all applicants to date, are based outside Victoria. Whilst they are not required to register in Victoria, if these practitioners choose to do so, the CMRB has jurisdiction in relation to their practice. They are then required to meet all the standards and rules that apply to Victorian registered practitioners.

In the complaints data:

- **12%** of complaints have been related to non-Victorian practitioners, but
- **42%** of the formal hearings have been related to non-Victorian practitioners

With regard to the non-Victorians who have been the subject of formal hearings, none of them remains registered, and they are all free to continue practising in their own States without regard to the sanctions imposed by the Hearing Panels. The CMRB continues to receive inquiries and complaints about some of these persons, indicating that some unacceptable practices are continuing when the CMRB no longer has jurisdiction.

4.2.2.5 Prosecutions/Offence Provisions

Under the legislation, individuals using the protected titles or making claims to be qualified to practise Chinese medicine while unregistered are subject to prosecution. In the early days of registration the CMRB proactively contacted people to warn them that they were breaching the Act and invited them to register. More latterly it became necessary to cease issuing warnings and prosecute offenders.

To date, the CMRB has successfully prosecuted 17 people and 11 others are either in progress or being considered.

The legislation provides for the CMRB to carry the responsibility for investigating offences, in the interest of public health and safety. The legislation includes limited search and entry powers to ensure it can fulfil this duty. The CMRB has utilised this power on four occasions to obtain evidence that it would otherwise have been unable to obtain.

4.2.2.6 Dealing with Ill Health

There are legislative provisions for registration boards where they have reason to believe that a registered practitioner is suffering from an impairment that is or has the potential to place the health and safety of patients at risk, to deal effectively with this situation. The CMRB has dealt with one case where a practitioner was deemed to be unfit for practice.

4.2.3 Growth in the usage of Chinese medicine

A nationwide survey conducted in 2007 by Xue et al estimated that nearly 1 in 5 Australians used Chinese medicine over a 12-month period and over 10 million visits were made to acupuncturists nationally each year.

Acupuncture is being used by a range of healthcare practitioners, such as nurses, physios, etc, although Medicare covers acupuncture only for medical practitioners and not others. Cohen et al (2005) found that acupuncture was considered one of the three most popular forms of complementary medicine used by medical practitioners personally (12%), nearly one in five (18%) of them practised acupuncture and over three-quarters (76%) of medical practitioners referred their patients to acupuncturists at least once a month. Prior to later amendments, the Medical Practitioners Board of Victoria decided its registrants wanting to practise Chinese herbal medicine must be registered by CMRB and most boards sought assistance from CMRB to provide recommendations for endorsement for acupuncture (see section 7.2.3).

Overall, the evidence suggests that both acupuncture and Chinese herbal medicine have been growing practices and have a considerable degree of community acceptance.

Concurrent with the growth in use of Chinese medicine is the phenomenon of parallel use of two primary health care systems.

Use of Chinese herbal medicine in parallel with pharmaceutical drugs increases the risk of interactions between pharmaceutical drugs and Chinese herbs.

The Lin et al 2005 study into Naturopathy and Western herbal medicine showed that consumers' parallel use of the two system (conventional medicine and naturopathy/WHM) is well established in all age groups and such dual usage often continues over a prolonged time because users are often being treated for chronic illnesses or conditions, or are using complementary healthcare products to deal with the effects of medical treatments for serious health conditions. The report stated:

> *People have to navigate two systems. This produces difficulties and potential dangers if consumers do not feel that they can discuss with all practitioners their use of particular services, or if they choose not to inform all practitioners. Poor communication between GPs and naturopaths and WHM practitioners is of particular concern given that a majority of CAM patients seek care for chronic conditions (and are therefore likely to be frequent and routine users of both CAM and mainstream medical services). The reporting of adverse effects of treatments or medications in conventional medicine has received much scrutiny in recent times, and the emphasis on quality and safety could be extended in policy-making to naturopathy and Western herbal medicine.*

This is equally applicable to Chinese medicine.

4.2.4 New Evidence about Risks

There is ongoing research into various aspects of Chinese medicine some of which support the ongoing need for regulation of Chinese medicine. Examples include:

- The Bensoussan, Myers and Carlton (2000) study stated that an average of 1 adverse event for every 633 Chinese medicine consultation has been reported
- The Shenfield, Lim and Allen (2002) surveillance study conducted in Australia found that asthma-related adverse events were associated with the use of complementary and alternative medicines in children
- The Li, Moyle and Xue (2003) study states that unlike conventional drugs, the quality of herbal products can be influenced by a range of natural factors, such as climate changes, soil quality, as well as factors such as processing, harvesting, extracting procedures etc. Additionally it is difficult to define the herbal quality due to the lack of internationally accepted standards and the fact that active ingredients may not be known. It also states that an indication of the current quality of Chinese herbs on the market can be found from the data released by the State Drug Administration of Chinese government from surveys of the major specialized herbal markets in China between 2000 and 2001 which found that about 50% of raw herbs are below the national standard (Chinese pharmacopeia).
- The Mansu (2007) study shows that the range of adverse events of acupuncture practice was comparable to findings of the previous study by Bensoussan and Myers in 1996. However the practice lifetime frequency of adverse events reported by registered acupuncturists has significantly decreased. This suggests that registration can be an effective mechanism in reducing adverse events and protect public safety.

Having said this, Tomlinson, Chan, Chan and Critchley (2000) indicates that there is clear evidence that a raw herb is generally significantly less toxic than single "active ingredients" isolated from it. Despite the complexity of different ingredients, Chinese herbal medicine is generally safe when properly used.

4.2.5 Other Needling Practices

The CMRB is aware, anecdotally that a number of practitioners refused registration have continued to provide services to patients using terms such as ‘dry needling’, “Japanese needling”, “Manaka protocols”, ”Meridian therapy” and similar – that is avoiding the registration requirements by calling what they do something other than acupuncture.

Dry needling is a treatment modality practised by a range of registered and unregistered health professionals to treat musculoskeletal pain and dysfunction and involves the insertion of acupuncture needles at identified points in the patient’s body. The practice seems to be known by various names including:

- trigger point needling,
- myofascial dry needling,
- by the specific technique names such as intramuscular stimulation, deep dry needling and superficial dry needling.

The above words and terms are not captured by the HPRAct and the practices are therefore generally unregulated.

The CMRB has investigated a small number of reports and the evidence suggests that some persons in Victoria with quite low level training are practising needling techniques.

The practice of puncturing the skin with a needle raises a number of issues with regard to protection of the public. Problems can arise when needling techniques are used by poorly trained practitioners, and include risks related to:

(i) *Specific acupuncture points*: It appears that all practice groups using needling techniques do needle acupuncture points at times. Consequently there is a need to understand the risks inherent in treating certain points, e.g. induction of labour.

(ii) *Infection control*: These include skin infection, cross-infection and needle-stick injuries.

(iv) *Inadequate knowledge of anatomy*: Wrongly placed needles can cause damage to vital structures such as organs, nerves and arteries.

(iii) *Lack of awareness of the contra-indications to acupuncture.*

(iv) *Professional issues*: Potentially inadequate knowledge of professional issues such as informed consent.

Misleading or deceiving the public can occur when advertising alludes to acupuncture and when practitioners discuss use of acupuncture needles and techniques without clearly informing clients that they are not receiving Chinese medicine acupuncture (examples are available).

A growing range of healthcare professions is incorporating needling of points into their practices and there is concern within the Victorian government and the CMRB that the *Health Professions Act* 2005 is being undermined with regard to the proliferation of needling practices covered by terms such as dry needling, trigger point needling, myofascial dry needling and biomesotherapy.

The *Health Professions Act* 2005 has not been effective in controlling the growing use of needling practices within unregulated professions such as myotherapy, massage, shiatsu, homeopathy and naturopathy. Professional associations represent these fields, but membership is voluntary and policy and guidelines for needling practices are absent or inadequate.

The major issues for the regulated professions are:

- the need to protect the public
- maintenance of high professional standards
- the right to practise effective needling techniques
- public perception that needling practices are acupuncture
- agreement on the standard of education needed for safe practice
- whether endorsement/certification of some kind should be required to offer needling practices as well as acupuncture.

The main issues for the unregulated professions are:

- policy development (and ethical considerations)
- educational requirements for needling practices
- practitioner compliance with professional and educational standards
- the possibility that legislation/regulations may be extended to embrace needling practices
- protection of members' rights.

There is no minimum education requirement for needling practices for either the regulated or the unregulated healthcare professions. Courses are currently incorporated into undergraduate or postgraduate programs, or offered as short courses or workshops. Length of training varies from two days to a subject spread over two semesters. The issues are:

- lack of policy
- lack of standards for a minimum education requirement for needling practices
- lack of consistency on education, even within professions
- the possibility of accreditation of needling courses.

In conclusion, this indicates that the current regulatory arrangements in Victoria are not adequate to address this issue, but points to the need to align regulation of the health professions, given the overlap in scope of practice.

5.0 Criterion 3: Existing Mechanisms Fail?

Do existing regulatory or other mechanisms fail to address health and safety issues?

Yes, other than in Victoria.

5.1 What the Previous Research Said

Towards a Safer Choice said:

During the last decade there has been a proliferation of Chinese medicine practitioners, training courses, and professional associations. It is estimated that by the year 2000 the number of Chinese medicine practitioners in Australia will double. Professional associations, concerned about the variety of qualifications amongst TCM practitioners, have made various attempts to introduce collaborative self-regulation, none of which have been successful.

Registration of Chinese medicine practitioners in Victoria was based in part on the lack of effectiveness of the regulatory framework at that time.

5.2 What Since?

5.2.1 Self-Regulation by Professional Associations

In the case of Chinese medicine, self-regulation has not been an effective means of protecting consumers. Any self-regulatory model must be able to deliver:

- Independence
- Transparency
- Accountability
- Consumer input

As per the pre-registration period in Victoria, which still exists in the other states, if a member of a professional association is disciplined and has their membership revoked there is nothing to prevent them continuing to advertise and practise and if they choose, joining or forming another association.

The CMRB has become aware of:

– members of the public making complaints to associations about practitioners who are registered, are "not necessarily" advised of their right to lodge a complaint with the CMRB
– at least one investigation conducted by an association which was based on a letter to and from the member, no contact with the other party and a result that the member was 'exonerated" of any wrong-doing; more thorough investigation by the CMRB demonstrated that there was in fact a serious case to answer
– refusal to provide the code of ethics to a person who was not a member of the association

Very little information is published by the associations in the way of:

– Complaints dealt with
– Standards and criteria for claiming competence in various modalities
– Decision-making policies or procedures

In some examples there is inadequate information about:

– Standards for "approval" of course for membership purposes

Self-regulation is ineffective due to:

– the inherent conflicts of interest of professional associations whose raison d'être is to look after the interests of their members;
– lack of consistency, accountability and transparency

- bias within professional associations (e.g. views on standards and membership criteria which favours certain groups and disadvantages others);
- inadequate independence within professional associations;
- 'governing body' appointment processes, which can be factionally controlled and vulnerable to lobbying;
- limited non-member involvement;
- lack of authority to investigate complaints (e.g. if non-member involved) ;
- inability to prevent ousted members from joining (or forming) an alternative association;
- non-reviewable nature of decisions made by professional associations except through civil action;
- variable standards between professional associations;
- membership is voluntary;
- no guarantee of compliance.

The CMRB has also observed that non-Victorian practitioners sanctioned by the CMRB have continued to practise, failed to make requested changes and maintained membership of associations.

- A NSW practitioner had registration cancelled at a formal hearing for submitting false qualifications but being based interstate never reapplied for registration, was able to continue practice and also maintain membership of a professional association
- A Queensland practitioner was cautioned against illegal advertising but being based interstate relinquished registration by not renewing and maintained membership of a professional association
- A NSW practitioner had registration cancelled for obtaining it by misrepresentation by concealing information about several past complaints of sexual misconduct; being based interstate he never re-applied for registration and also maintains membership of a professional association
- A Queensland practitioner was sanctioned for sexual misconduct and poor record-keeping but being based interstate had already relinquished registration and the panel commented that had he been registered at the time of hearing it would have imposed conditions upon his registration particularly with regard to attending further education and ethical matters and standards, and would have suspended his registration for a period; he continues to practise and maintain membership of a professional association;.

In Victoria, similar behaviours are exhibited by a small number of persons. For example:

- A practitioner relinquished registration after a formal hearing and reportedly continues administering various health treatments, performs acupuncture and apparently tells the infertility patients it is not acupuncture, in one example known, stimulated the wrong acupuncture points for the particular condition, failed to register the premises with local council for skin penetration in breach of the Health Act, prescribes and dispenses Chinese herbs but promotes the herbs used in the practice as Amazon herbs and is a member of several complementary medicine professional associations[3]
- A practitioner was the subject of 3 complaints, and two formal hearings and had registration cancelled; he then subsequently continued to practise and was successfully prosecuted at the Magistrates Court; he continues to practise health care despite one of the hearings relating to sexual misconduct

Boards have enforcement powers that professional associations do not have. For example: they are able to enforce Professional Indemnity Insurance requirements in the interest of public protection; they are able to elicit relevant information from applicants and registrants.

It is not likely that satisfactory arrangements will emerge via the activities of the professional associations as such associations have more of an advocacy than a regulatory focus.

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[3] In fact one such professional association provided a supportive reference as evidence at the formal hearing in ignorance of the allegations or evidence

5.2.2 Course Approval

Most Chinese medicine practitioners practise as primary contact practitioners and treat a wide range of health disorders. Consequently they require in-depth education and practical training commensurate with this primary health care role.

Some of the key issues which emerged from CMRB course assessments have included:
- quality assurance;
- curriculum/content issues;
- the inherent tension between gate-keeping minimum standards and promoting improvement; and
- clinical training opportunities, content and supervision.

One approval application was refused (due to quality assurance, content issues) despite it being "approved" by major professional associations. In many examples, conditions attached to approval were subsequently met and all schools have now upgraded their Chinese medicine courses to Bachelor level.

There is still no national education standard and the CMRB is aware of seven schools running Chinese medicine (Chinese herbal medicine and/or acupuncture) courses which have not been assessed or approved by CMRB. They are all offered outside Victoria and the course levels range from Diploma to Masters degree.

This does not include short courses which are offered for medical practitioners and physiotherapists[4]. Dry needling courses seem to be growing in popularity, are primarily targeted to medical practitioners, physiotherapists, chiropractors, osteopaths, myotherapists and massage therapists and are generally of 2-days duration.

The membership criteria for membership of the Australian Medical Acupuncture College is:
- Registration (or currently training) as a medical practitioner of dentist
- Completion of (or currently training in) an acupuncture course approved by AMAC

There is no publicly available list of "approved courses". One known approved course is the Graduate Certificate of Medical Acupuncture run at Monash University – it is an "Off-campus: part-time" course of one year's duration.

Chinese medicine courses (primarily in acupuncture but also in Chinese herbal medicine) being offered within Australia which:
- have not been submitted to the CMRB for approval
- would not meet the requirements of the CMRB
- are "approved" by various professional associations

Courses accredited by the State education authorities are not assessed against any agreed professional standards.

5.2.3 Health Services Commissioner (Vic) and Similar Bodies

The public has recourse to these bodies in each state, and outside Victoria currently rely somewhat on these mechanisms, but:
- the powers of such bodies are variable
- the powers of such bodies are often limited in comparison to those of registration boards.

CMRB has a complementary role to the Health Services Commissioner (Victoria) who:
- Helps people make their concerns known to health services providers.
- Assesses and clarifies problems in health services provision.
- Conciliates formally or informally, between consumers and providers of services.
- Assists in the resolution of complaints.

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[4] In recent times acupuncture courses for physiotherapists (and others) have been changed to "dry needling courses".

- Uses information obtained and lessons learned to recommend improvements to services.

In general, conciliation is the process adopted and outcomes sought fall into three categories:
1. An explanation as to what happened and why. This may also include an apology or an acknowledgement of harm suffered.
2. A change in systems, policies or protocols.
3. A claim for refund of fees, compensation, or remedial treatment.

The Victorian system relies on the HSC to facilitate the voluntary conciliation process, while relying on the Boards to investigate and deal with any matter which goes to professional conduct or fitness to practise.

The CMRB was disappointed in the 2005-06 reporting year to find that the Osteopaths Board, the Chiropractors Board and the Health Care Complaints Commission in NSW, were all unwilling to deal with a complaint from the CMRB regarding a practitioner registered in NSW. The practitioner had taken up conditional registration as an acupuncturist in Victoria then refused to submit evidence of having met the agreed conditions. The CMRB view is that falsely taking up registration is a serious matter. The CMRB has grave concerns about such a person's character, and how that person might have been using Victorian registration and holding out to the public with regard to their qualifications and competence to deliver health services, which are deemed sufficiently risky to warrant statutory regulation.

5.2.4 Skin Penetration – Health Regulations

The respective roles of health practitioner registration boards, local government Environmental Health Officers and the State Health Departments, in ensuring good infection control practices including in relation to skin penetration procedures, is variable and unclear. Even when it is clear there are inconsistencies in implementation, with difficulties such as:
- inspection of premises is only conducted when business apply for premises registration thus relying upon either the knowledge of the business of the requirements, or the business being brought to the council's attention
- local government inspectors are not knowledgeable about the practices of Chinese medicine (acupuncture) and acceptable professional standards
- sanctions for breaches of regulations are rarely implemented.

The CMRB has approached numerous local governments about breaches of the Health Act and only on one occasion, involving a repeat offender, was a local council willing to prosecute and did so jointly with the CMRB. Whilst on becoming aware of a breach, the Councils seek to then inspect and register the premises, thus ensuring that public safety is protected, the lack of enforcement via prosecution fails to create any general or specific deterrence for breaching.

Routine inspections via this regulatory model are resource-intensive, non-targeted and can give a false sense of security[5]. The issue of codes and/or standards, education of practitioners and application of sanctions for breaches is more effective.

5.2.5 Conclusion

Only statutory registration with appropriate powers and authority and an appropriate range of sanctions achieves specific and general deterrence and ultimately achieves compliance with safe standards.

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[5] The CMRB managed an infection control complaint which demonstrated false confidence having been derived from necessarily limited local government inspections

6.0 Criterion 4: Regulation Possible?

Is regulation possible to implement for the occupations in question?

Yes.

6.1 What the Previous Research Said

Acupuncture and Chinese herbal medicine are well defined therapeutic health interventions within the scope of Chinese medicine. The practices date back at least 2,000 years and there is an extensive and continuous literature that covers the theory, techniques and therapeutic scope of Chinese medicine. The level of research into Chinese medicine as a system of health care and into the medicines themselves is substantial. Much of the research, however, is in Asian languages with very little is translated into English.

6.2 What Since?

The *Chinese Medicine Registration Act* 2000 Victoria established the CMRB per the same model as that for other health professions and Chinese medicine has subsequently been brought under the *Health Professions Registration Act* 2005. That the CMRB has successfully set standards for registration and registered (or refused registration) – including setting course approval standards (and accrediting courses for registration purposes), and conducting registration examination - demonstrates that the registration of Chinese medicine practitioners is possible within the framework of health workforce regulation in Australia.

There is a well established system of education and regulation in China. Hong Kong and Singapore has also recently adopted comprehensive statutory registration schemes for Chinese medicine and Malaysia is late into the process. Others such as Canada, various states in the USA and New Zealand regulate acupuncture practice.

7.0 Criterion 5: Regulation Practical?

Is regulation practical to implement for the occupation in question?

Yes.
Registration of Chinese medicine was implemented in Victoria in 2000, with three division of the Register[6], and the CMRB has been functioning effectively since. The preferred national regulatory option is for statutory registration of Chinese medicine practitioners and dispensers by a national statutory registration board based on the model of registration enacted in Victoria.

7.1 What the Previous Research Said

Towards a Safer Choice said:

A number of factors ….. demonstrate that self-regulation is not a practical alternative to occupational regulation of Chinese medicine practitioners. … (and the case was made for regulation) …… there are sufficient numbers in the occupation to fund occupational regulation in the three states reviewed[7]. It is uncertain whether there are sufficient numbers in other Australian States and Territories to fund registration boards in each State, however, a number of regulatory options are available that could disperse these costs.

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[6] Divisions of Acupuncture, Chinese herbal medicine and Chinese herbal dispensers
[7] This was Victoria, NSW and Queensland

7.2 What Since?

Clearly it has been practical to effectively regulate Chinese medicine in Victoria since 2002 and it is notable that Victorian registrants have been funding expensive proceedings to deal with non-Victorian practitioners who have been over-represented in formal hearings (see section 3.2.2.4).

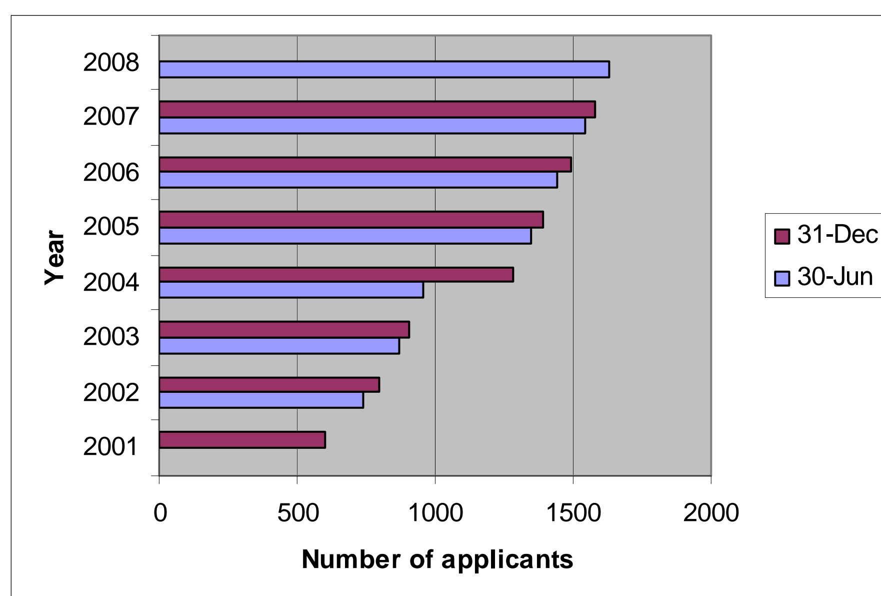
7.2.1 Numbers of Practitioners

In 2001, based on a call for *Expressions of Interest* (EOI) for registration as a Chinese medicine practitioner or Chinese herbal dispenser which was conducted with the assistance of the professional associations. The CMRB anticipated 300-400 applications for registration.

In fact, this was exceeded by the end of 2001 before implementation date on 1 January 2002, doubled by the end of 2002 and tripled by the end of the grandparenting period on 31 December 2004.

This indicates that there were considerably more persons practising Chinese medicine than initially thought, or in the 2008 ABS report on social trends.

Table 3



Although the number of practitioners is unlikely to be evenly distributed across Australia, NSW and Queensland can be expected to have large numbers, and the total number of practitioners in Australia can be estimated to be more than 3 times the number in Victoria.

This indicates that the members of the profession are readily definable. Of the currently registered practitioners:

- 59 % are registered in both acupuncture and Chinese herbal medicine
- 38 % are registered in just acupuncture
- 3 % are registered in just Chinese herbal medicine
- <1 % are registered in just Chinese herbal dispensing

National registration is recommended to ensure that health professions are regulated uniformly. The administrative benefits of national registration will address the previous concerns about financial viability for the smaller states.

7.2.2 Course Approval

The CMRB course approval guidelines set out the expected learning outcomes and established an independent course assessment process to conduct detailed and rigorous reviews of courses. These standards are very detailed and published on the CMRB website (see http://www.cmrb.vic.gov.au/registration/cmcoursestudy.html) .

The course approval guidelines were prepared by the CMRB in accordance with the recommendations of the Higher Education Council (National Board of Employment, Education and Training). According to the Council's 1996 report[8], an accreditation process should:

- include all stakeholders;
- be open, consultative and consensus-building about future program developments;
- be transparent to all parties;
- as far as possible, mesh the external registration requirements and public safety aspects with internal academic priorities;
- monitor implementation of recommended changes after the accreditation of the program is approved;
- involve an ongoing cycle of review; and
- be focused on the achievement of objectives, maintenance of academic standards, public safety requirements, and good outputs and outcomes (rather than on the detailed specification of curriculum content).

Independent Course Approval Panels (CAPs) conduct the approval process assessing against the CMRB 's Guidelines. A CAP consists of 3-5 persons and may include:

- one educationalist;
- one or two Chinese medicine practitioners;
- one or two Chinese medicine academics; and
- one graduate (if any) from the course being assessed for approval.

Independent, external review of courses of study, and the quality of their graduates, is desirable to ensure that the educational standards of all courses remain at an acceptable level. The process of review and approval of courses of study enables the CMRB to:

- establish standards that must be met by graduates in order to be eligible for registration;
- encourage the continuing development of educational courses to effectively prepare graduates for entry to the profession;
- provide regular feedback to education providers on the contemporary needs of the public and the profession;
- establish a mechanism for educational providers and the profession to respond to the CMRB's 'approval' criteria and its related recommendations; and
- provide a channel of communication between legislators, regulators, educators and the profession in deciding the best ways of dealing with the ever-changing issues that arise in professional regulation and education.

Eighteen courses have been approved being offered by five institutions, although:

– one school has since closed
– a number of these courses have over time been superseded by higher level courses

One of these institutions also runs its approved courses at its Queensland campus and Masters level courses attract interstate and overseas students who consequently become eligible for registration and practice in Victoria.

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[8] The Council's December 1996 report, *Professional Education and Credentialism,* identifies what is considered to be 'good practice' and defines program review and accreditation processes.

The Guidelines were revised and re-issued in 2006 and provide a suitable standard and process for easy adoption at the national level.

Details of approved courses are published at
http://www.cmrb.vic.gov.au/registration/approvedcourses.html

7.2.3 Endorsement of Other Professions

The Schedule attached to section 111 of the *Chinese Medicine Registration Act* 2000 provided for consequential amendments to other Acts, to allow various registered health practitioners to use certain protected titles without having to be registered by the CMRB. This is permitted as long as their own registration board is satisfied that they have satisfactorily completed a course of study or training that qualifies them to practise Chinese medicine.

From 1 January 2005, chiropractors, dental practitioners, nurses, medical practitioners, optometrists, osteopaths and physiotherapists (and under the HPRAct also podiatrists) all had to be 'endorsed or noted' by their own board to call themselves an acupuncturist (or to be registered under the CMR Act). In addition, pharmacists can be endorsed by their board to use, sell and supply Schedule 1 herbs.

Boards came to an agreement about co-operating in order to achieve a common standard. CMRB has assessed over 20 applications on behalf of the Physiotherapists Registration Board and Osteopaths Registration Boards. The CMRB has also worked closely with the Nurses and Dental Practitioners Registration Boards in relation to 'notating/endorsing' nurse and dental acupuncturists but no applications have yet been received.

More recently the CMRB has commenced discussion with these boards about the standards to be applied in the future. The Victorian Physiotherapists Board will now only grant endorsement if applicants have done a CMRB-approved course. CMRB also recently met with the Medical Practitioners Board of Victoria (MPBV) to discuss the endorsement of medical practitioners who practise acupuncture. CMRB issues were focused on transparency and standards and/or level of training. The CMRB has referred a number of unendorsed medical practitioners to the MPBV for unlawfully advertising as acupuncturists.

Again this provides a suitable standard and process for easy adoption at the national level.

8.0 Criterion 6: Benefits Outweigh?

Do the benefits to the public of regulation clearly outweigh the potential negative impact of such regulation?

Yes.

8.1 What the Previous Research Said

Towards a Safer Choice concluded that the benefits outweigh the negative effects.

The potential negative impacts included:
- Restriction of entry to the profession
- Increase in costs of entry by raising minimum standards
- Stifling innovation and interaction between different groups of health practitioners
- Increase in costs to individuals and the community by passing on (to consumers) increased costs of education, insurance and regulation itself

This was balanced against the major benefits of registration which were that it can:

- Help protect the public by promoting the standards established through various national bodies for professionally trained, competent and safe practitioners
- Promote the public's right of access to the health care of their choice, by providing a mechanism for identifying practitioners who should be safe and competent
- Facilitate cross-referral amongst different types of health practitioners and promote the integration of patient care
- Provide enforceable sanctions against practitioners whose practice is incompetent or unethical
- Provide a mechanism for identifying those practitioners who can safely use scheduled substances.

It was concluded that the potential negative impacts were clearly outweighed by the benefits to the public.

8.2 What Since?

The CMRB is not aware of any evidence of the negative impacts having manifested in a manner which would detract from the conclusion that the benefits outweighed this impact.

8.2.1 Restriction of Entry

Restriction of entry has occurred but is a benefit to public safety as the most common reason for refusal of registration has been inadequate qualifications and training or lack of evidence of competence and in a small number of cases character issues.

8.2.2 Cost

The registration fees for Chinese medicine have been amongst the highest in the health professions in Victoria. This has been largely attributable to:

- Establishment costs (although the CMRB received a start-up grant)
- Costs (associated with workload) of developing policies, procedures and systems for the first time – a cost which continues to date
- High legal expenses associated with disciplinary and offence proceedings – possibly due to the "newness" of regulation of Chinese medicine

Many practitioners who did not previously, are now required to have professional indemnity insurance as a pre-condition of registration.

Victorian registrants have been funding expensive proceedings to deal with non-Victorian practitioners who have been over-represented in formal hearings (see section 3.2.2.4)

Although the CMRB has reduced registration fees for new graduates these added costs have been more difficult for this group. The CMRB has no evidence that the added costs have been passed onto the public, although this might be assumed.

The increased costs, and the subsidisation by Victorians referred to above, of course, are an additional argument in favour of national registration.

8.2.3 Scheduled Chinese Herbs

There is a need for the national scheduling process (via the SUSDP) to be reviewed in relation to Chinese medicines. Under the current arrangements, access to some Chinese herbs affected by schedules 2, 3 and 4 is limited to medical practitioners and pharmacists and denied to Chinese medicine practitioners and researchers who have training and expertise in their use. This is an anomaly in the system that neither benefits consumers nor facilitates research.

In Victoria provision was made under the *Chinese Medicine Registration Act* 2000[9] to establish a separate schedule (Schedule 1) to include therapeutic but potentially toxic herbs that should only be prescribed or dispensed by appropriately trained and registered practitioners. There is potential for such a system to be adopted nationally, but this is dependent upon other jurisdictions establishing appropriate registration processes for practitioners.

8.2.4 Benefits to Date in Victoria

Registration in Victoria now enables the identification of practitioners with adequate training. It is in the public interest for properly-trained practitioners to be readily identified. Statutory registration delivers public access to reliable information about all registered practitioners. By default, persons offering similar services who are not on the public register can also be distinguished.

Unqualified and unethical practitioners have now been dealt with.

Conditions have been imposed on some practitioners often requiring them to undertake further training.

The CMRB receives inquiries about unregistered Chinese medicine practitioners outside Victoria and can anecdotally report that there is dissatisfaction with the lack of assurances about those practitioners.

Boards can use existing mechanisms to deal with 'practice outside area of competence' as professional conduct. This enable Boards to deal with examples such as offering unorthodox or unproven therapies.

8.2.5 Benefits of a National System

8.2.5.1 Public Policy Consistency

COAG has already agreed to establish a single national scheme of registration for health professions, as a matter of public interest. An effective system needs to include:

1. Registration,
2. Standards setting, and
3. Disciplinary provisions

If the case can be made for Chinese medicine at all, as has been done in Victoria and with the benefits now observable, then in the interests of the Australian public it must be implemented nationally. Furthermore, the experience in Victoria demonstrates the extent to which the practice of Chinese medicine interfaces with other health professions.

It does not makes sense for individual states (such as Western Australia) to undergo a similar process to Victoria only to later be required to achieve national alignment. Lack of national registration also:

- undermines freedom of movement of service providers and the principle of mutual recognition – see section 8.2.
- allows different standards, within and across jurisdictions (see next section)

In addition, currently a range of policy inconsistencies exist across Australian healthcare such as:

- Medicare payments for acupuncture services from the least qualified acupuncturists;
- Variations from State to State with regard to access to treatment services via organisations such as TAC, WorkSafe, etc.

These inconsistencies and inequities could be more readily addressed if all the relevant health professions are uniformly regulated.

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[9] Superseded by the Health Professions Registration Act 2005

See section 5.2.1 regarding 'title-avoidance' by some practitioners. Protection of title is a limited form of protection and if a small number of persons elect to continue potentially harmful practices using alternative words and titles, co-ordination across regulatory authorities is important.

Generally, if people who have a complaint do not know of the existence of a particular Board, they will find their way to the Health Services Commissioner or the Ombudsman's Office or a professional association (which may refer people directly to the relevant Board when appropriate). A national system involving ALL the currently regulated professions (fully or partially) and others over time will improve the process for consumers. The growing importance of responding to consumer needs and improving quality of services dictates that a nationally consistent and comprehensive approach be adopted.

8.2.5.2 Endorsement of Other Professions

The CMRB has already assessed applications on behalf of the Physiotherapists and Osteopaths Boards and also worked closely with the Nurses and Dental Practitioners Registration Boards regarding the potential 'notation/endorsement' of nurse or dental acupuncturists.

Most Boards have been committed to ensuring that similar standards apply to all acupuncturists but the CMRB has been unable to:

- Engage with the Chiropractors Board of Victoria - although it understands that in latter years it has set the same standard as CMRB – its only course approved for endorsement now is the Master of Applied Science (Acupuncture) offered at RMIT
- Ascertain the actual standard applied by the Medical Practitioners Board of Victoria; CMRB met with the Medical Practitioners Board of Victoria (MPBV) in early 2008 to discuss the endorsement of medical practitioners who practise acupuncture; CMRB issues were focused on transparency and standards and/or level of training; the CMRB has referred a number of unendorsed medical practitioners to the MPBV for unlawfully advertising as acupuncturists

Outside Victoria, of course, there are effectively no controls over the standards of education and training for the practise of acupuncture by other health professions.

This illustrates the risk of different standards, within and across jurisdictions.

In light of the policy inconsistencies which exist across Australian healthcare referred to in 7.2.5.1, and the large federal health budget amount spent on acupuncture this goes directly to the point of standard-setting and the need for a national process.

9.0 Risks of Not Including Chinese Medicine

9.1 General Implications

At best, if Chinese medicine is not regulated equivalently with other health professions, this will:

- Fail to protect the public
- Fail to deliver nationally uniform legislation, and require inefficient processes later on to achieve consistent approach to regulation
- Continue to expose the public outside Victoria to unacceptable risks

At worst, it could result in deregistration of Chinese medicine in Victoria and re-entry of:

- persons who abandoned the practice due to the introduction of registration
- persons previously refused registration
- persons previously sanctioned by the CMRB
- unregistered persons prosecuted by the CMRB

9.2 Border Issues

Currently interstate practitioners have difficulty coming to practise Chinese medicine in Victoria because they usually have not completed an approved course, and with the lack of registration in their home states, registration via mutual recognition is not possible. This undermines freedom of movement of service providers and the principle underpinning mutual recognition. It is also inequitable when these practitioners sometimes have qualifications which would have enable them to be registered in Victoria under the transitional provisions which only applied for three years.

In locations near State borders there is a lack of consistency with regard to the confidence that the public can rely on with regard to the bonafides of Chinese medicine practitioners.

Addressing cross-jurisdictional issues and reducing duplication of effort is highly desirable.

10 .0 Concluding Remarks

The primary objective of the regulation of health practitioners is to protect the public. Since the passage in Victoria of the *Chinese Medicine Registration Act* 2000, the experience of the CMRB illustrates:

- that there were considerably more persons practising Chinese medicine than initially thought with over 1500 applications for registration received
- 200 plus refused or forced to meet conditions
- 124 complaints received since the first complaint was received on 29 August 2002
- Rates of complaints consistently higher for Chinese medicine than most of the other regulated professions
- 17 persons prosecuted (and many more warned) and 11 others either in progress or being considered.
- Effective dealing with serious transgressions and facilitation of improvements to practices

The issues which have emerged validate the decision to regulate Chinese Medicine and the CMRB experience has demonstrated the value of having such a Board to ensure that minimum standards of qualifications, competence and conduct in health care are enforced, in the interest of protecting public health and safety.

Registration is designed to ensure that registrants are qualified and competent and that consumers can identify which practitioners are registered and are consequently required by law to have insurance, to abide by proper standards of practice, and are subject to sanctions if they engage in poor practice or misconduct.

The CMRB has demonstrated that the policy decision to register Chinese medicine practitioners was warranted. The CMRB strongly supports the introduction of legislation to register Chinese medicine practitioners in other states, based on the Victorian model. Statutory registration provides an effective means of protecting the public by enabling the identification of *bona fide* practitioners and recourse to the Board in the event of unsatisfactory treatment or conduct of a practitioner. This can only enhance consumer confidence and benefits. The legislation also allows the Board to effectively establish and regulate matters such as educational standards, advertising and standards of practice etc.

A similar view has been taken in a number of other countries where these practices are regulated by law (see section 5.1). In May 2008 the UK *Report to Ministers from The Department of Health Steering Group*[10] states:

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[10] Department of Health Steering Group for the Statutory Regulation of acupuncture, herbal medicine and traditional Chinese medicine practitioners established by Jane Kennedy, then Minister of State in the Department of Health, in June 2006

> *there is an urgent need to proceed without delay with the statutory regulation of practitioners of acupuncture, herbal medicine, traditional Chinese medicine and other traditional medicine systems*

This followed several previous inquiries and reports since 2000 and was based on key criteria that included risk to the public through poor practice, the existence of a voluntary regulation system and a credible, if incomplete, evidence base.

With the nationally consistent approach to the registration of the healthcare professions, this is an opportune moment to implement the recommendations of the Expert Committee, the Committee on the Health Care Complaints Commission and of the earlier report "Towards a Safer Choice" to establish a national system for the registration of Chinese Medicine practitioners based on the model proven successful in Victoria.

Inclusion of Chinese medicine in the national scheme is the only appropriate response if the Government is to meet its stated commitment to:

- Protecting the public
- Establishing nationally consistent standards and systems for the regulation of the health professions.

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Appendix 1 – Comparison of Complaints Rates with Other Boards

2007

Board	New Complaints	Number of registrants	Number complaints per 100 registrants
Chiropractors	13	1054	1.23
Optometrists	2	1020	0.20
Psychologists	61	5987	1.02
Dentists	127	4068	3.12
Medical*	674	20003	3.37
Nurses	169	83233	0.20
Physiotherapists	20	4762	0.42
Osteopaths	3	551	0.54
Podiatrists	3	876	0.34
Pharmacists	75	5365	1.40
CMRB	20	973	2.06

2006

Board	New Complaints	Number of registrants	Number complaints per 100 registrants
Chiropractors	12	1020	1.18
Optometrists	3	978	0.31
Psychologists	47	5730	0.82
Dentists	91	3938	2.31
Medical*	603	19188	3.14
Nurses	162	80726	0.20
Osteopaths	4	479	0.84
Podiatrists	8	822	0.97
Pharmacists	82	5255	1.56
CMRB	20	862	2.32

2005

Board	New Complaints	Number of registrants	Number complaints per 100 registrants
Chiropractors	14	986	1.42
Optometrists	14	986	1.42
Psychologists	50	5347	0.94
Dentists	125	3771	3.31
Medical*	714	18664	3.83
Nurses	136	78748	0.17
Osteopaths	2	427	0.47
Podiatrists	5	795	0.63
Pharmacists	65	5248	1.24
CMRB	16	843	1.90

2004

Board	New Complaints	Number of registrants	Number complaints per 100 registrants
Chiropractors	18	928	1.94
Optometrists	10	947	1.06
Psychologists	45	5075	0.89
Dentists	132	3628	3.64
Medical*	703	18016	3.90
Nurses	150	77144	0.19
Podiatrists	7	780	0.90
Pharmacists	64	5040	1.27
CMRB	16	685	2.34

2003

Board	New Complaints	Number of registrants	Number complaints per 100 registrants
Chiropractors	32	824	3.88
Optometrists	11	895	1.23
Psychologists	61	4815	1.27
Dentists	144	3533	4.08
Medical*	623	17603	3.54
Nurses	126	75879	0.17
Physiotherapists	15	3974	0.38
Osteopaths	6	322	1.86
Podiatrists	5	735	0.68
Pharmacists	51	4919	1.04
CMRB	18	637	2.83

Appendix 2 Case Studies

FORMAL HEARINGS

All the full decisions are published on the web at www.cmrb.vic.gov.au/board/board.html

Victorians

REZA GHAFFURIAN KERMANIPOUR 30 August 2007

At a formal hearing Dr Ghaffurian agreed that he had engaged in unprofessional conduct in relation to his practice of Chinese medicine by:

- making misleading claims in relation to qualifications,
- use of testimonials and failing to follow a direction from the Registrar of the CMRB,
- targeting cancer patients and promotion of 'cancer products',
- use of remote consultations and
- his dispensing and labelling of herbal medicines practices.

He also agreed the activities in (iii) and (iv), involved unprofessional conduct of a serious nature.

A panel found that (ii) also amounted to unprofessional conduct of a serious nature. The panel further found that (i) and (v) amounted to unprofessional conduct not of a serious nature.
It determined that:

- in relation to each of the five findings of unprofessional conduct Dr Ghaffurian be cautioned against repetition and reprimanded.
- an aggregate fine of $4,000 be imposed in regard to the three findings of unprofessional conduct of a serious nature
- in regard to the three findings of unprofessional conduct of a serious nature, that a condition be placed on Ghaffurian's registration whereby he be required to, for a period of 12 months commencing on 1st October 2007, attend fortnightly one hour sessions at his own expense with an experienced practitioner mentor chosen in consultation with the CMRB, such practitioner mentor to report to the CMRB at the end of the 12 months period.

ABBIE LI 17 April 2007.

A panel found that Ms Li had engaged in infamous conduct in a professional respect in providing sexual services as part of Chinese medicine practice and providing a false receipt for the purpose of health fund rebates, such infamous conduct also constituting unprofessional conduct of a serious nature. The panel determined that Ms Li be reprimanded and fined the sum of $8,000.

The panel found that she had engaged in unprofessional conduct of a serious nature in false receipting practices. The panel determined that Ms Li be reprimanded and fined the sum of $8,000.

The panel found that she had engaged in unprofessional conduct not of a serious nature in failing to notify the CMRB of her change of address within 14 days after that change breaching Section 20 of the Act. The panel determined that Ms Li be reprimanded.

The panel found that she had engaged in unprofessional conduct of a serious nature in failing to take and produce medical records. The panel determined that Ms Li be fined the sum of $2,000.

The panel also determined that Ms Li's repeated impediments in delaying the hearing, not providing the CMRB with required information in a timely manner, and not co-operating with the CMRB, was unprofessional conduct not of a serious nature and reprimanded her for this pattern of behaviour.

The panel commented that as Ms Li was not registered with the CMRB at the time of hearing, the only sanctions open to the panel by way of determinations after making its findings were reprimands and fines.

Appeal

This finding and determination was unsuccessfully appealed to the Victorian Civil and Administrative Tribunal. On 22 November 2007 Senior Member Robert Davis confirmed the findings and determination from the formal hearing and awarded costs in favour of the CMRB in excess of $18,000.

ANTONIA DIAS-RUHL 28 March 2007

A panel found that Ms Ruhl had engaged in serious unprofessional conduct, via

- conduct that is false, misleading or deceptive and/or that creates an unreasonable expectation of beneficial treatment through making misleading representations to her patients and prospective patients on promotional material about a variety of matters.
- breach of the CMRB's advertising guidelines in a number of serious respects
- use of testimonials in breach of the Act despite warnings from the CMRB
- conducting professional consultations with patients by phone without ever having seen them

The panel found Ms Ruhl had engaged in other unprofessional conduct not of a serious nature. The panel determined that Ms Ruhl be cautioned, reprimanded, fined $5,000 and that conditions be placed on her registration.

BILL SAKELLARIS Six days concluding on 24 April 2007

The allegations arose from the treatment of a young female ("Ms AA") principally for symptomatic relief of headaches and back, shoulder and period pain in 2005.

Mr Sakellaris was found by a panel to have engaged in unprofessional conduct of a serious nature in respect of allegations:

- Conducting treatment of Ms AA in such a way as to cause Ms AA serious distress, embarrassment and concern.
- Providing Ms AA with treatment that was unnecessary and not reasonably required for her health or well-being.
- Failing to obtain her consent and/or wear gloves to render treatment on or near an intimate area of Ms AA' body.

The Panel found unprofessional conduct not of a serious nature in the circumstances in respect of allegations:

- Failing to make contemporaneous treatment notes during or immediately after consultations.
- Failing to correctly issue receipts for consultations.
- Failing to issue receipts for all consultations.
- Forming an inappropriate relationship with the patient.

The panel determined that Mr Sakellaris be cautioned, that he be reprimanded, and that certain conditions be imposed on his registration. Additionally he was fined the sum of $5,000.

The panel made useful comment about the desirability and manner of providing for patient privacy, the appropriateness in this case of certain massage practices, the obtaining of informed consent, the correct way to create and manage patient records, proper receipting practices and the need to maintain professional boundaries.

DAVID SUNG SOO HONG 31 August 2006

A panel found Mr Hong to be in breach of section 48(1)(a) of the *Chinese Medicine Registration Act 2000* in that he had by act and omission, engaged in unprofessional conduct of a serious nature.

Specifically Mr Hong was found to have breached the Standards of Practice for Acupuncture – Health (Infectious Diseases) Regulations 1990 *and the* CMRB*'s Draft* Infection Control Guidelines for Acupuncture (CMRB 2004) *in that he had:*

- Inserted acupuncture needle/s through a patient's clothing
- Failed to swab and clean skin prior to skin penetration procedure
- Treatment rooms which were fully carpeted
- Failed to have a hand basin in a treatment room
- Failed to have a "hands-off" basin in certain treatment rooms
- Failed to wash his hands before and/or after rendering skin penetration treatment
- Failed to wash his hands before or after contact with different clients
- Failed to wear gloves while carrying out acupuncture treatments
- Failed to cease practice at his "Nunawading" clinic from 13 July 2006 onwards after advice from the Registrar of the CMRB
- Failed to cover carpet in treatment rooms with appropriate plastic covering as advised by the Registrar.

The Hearing Panel determined that Mr Hong undertake at his own cost further education being three separate courses/units of study within a CMRB approved course in the areas of Professional Issues, Infection Control (theory and practical) including Microbiology and Needle Techniques including proper disrobing procedure

The Panel further determined to impose conditions on the registration of Mr Hong of the requirement of four audit inspections including two inspections without notice to Mr Hong.

Mr Hong was also fined the sum of $3,000.

The panel further noted its disappointment with Mr Hong's reluctance to take steps to improve his professional performance until after legal action was taken against him.

ROBERT ZHAO 22 March 2006

A panel found Mr Zhao to have engaged in unprofessional conduct in continuing to practice without professional indemnity insurance from 27 June 2005 until 7 August 2005. In the particular circumstances involved it found such conduct to be conduct not of a serious nature.

The panel further found that Mr Zhao had engaged in unprofessional conduct of a serious nature in not making full disclosure to his professional indemnity insurer in answering certain of the questions in the proposal for insurance cover completed by him in August 2005.

The panel determined that Mr Zhao be **reprimanded** in respect of the matters found to constitute unprofessional conduct not of a serious nature. The panel further determined that a **fine of $1000** be imposed on Mr Zhao, in respect of the matters found to be unprofessional conduct of a serious nature.

ROBERT ZHAO 24 November 2005, 7 December 2005, 22 February 2006

A panel found Mr Zhao to have engaged in unprofessional conduct of a serious nature in his treatment of a patient. The findings were based on findings of fact. These facts included a failure by the practitioner to supply a gown or other item to protect the patient's modesty, remaining present while the patient removed her clothes, asking inappropriate questions about the patient's body and sexual partners, and making a variety of inappropriate and non-consented to physical contacts with intimate parts of the patient's body.

The hearing panel determined to cancel the practitioner's registration effective immediately. It further determined that the practitioner is not eligible to reapply for registration until 2007. The panel commented that the CMRB will no doubt consider the panel's findings at that time.

1 June 2007 – also prosecuted
Despite Mr Zhao's registration being cancelled following a formal hearing in March 2006, he pleaded guilty in the Magistrates Court at Melbourne on 1 June 2007 to a variety of offences arising from his use, during 2007, of the title acupuncturist. He was convicted and fined $15,500. He was also ordered to pay $4,500 towards the CMRB's legal costs.

YA-CHANG (DAVID) YAO 25 October 2004
A panel found Mr Yao to be in breach of section 16 of the *Chinese Medicine Registration Act*, in that he had obtained registration in the acupuncture division.by fraud or misrepresentation. Mr Yao when applying for registration as a practitioner in both divisions of the register had submitted a false qualification purporting to be a graduation certificate for a five year undergraduate course in acupuncture, moxibustion and massage at Shanghai College of Traditional Chinese Medicine. The hearing panel found that the CMRB had relied on the false qualification in its decision to grant registration in the acupuncture division. Mr Yao's registration in the acupuncture division has been cancelled, as required by section 16.

The hearing panel also fined Mr Yao $4,000 as a result of a finding that he had engaged in unprofessional conduct of a serious nature, being of a lesser standard than that which might reasonably be expected of a registered practitioner by his peers and professional misconduct. The conduct complained of was that, knowing he had submitted the false qualification to the CMRB, he continued to conceal the falsity of the qualification after he became registered; that during the preliminary investigation into the complaint he falsely asserted the genuineness of the false qualification; that after registration he continued to be a member of a professional association having (albeit prior to becoming registered) knowingly submitted the false qualification to the association and that he had attempted to increase his chances of obtaining provider status with a health fund by supplying the false qualification to that fund.

SAFET (SANI) BADIC 9 March 2004
A panel found Mr Badic to be in breach of section 16 of the *Chinese Medicine Registration Act*, in that he had obtained registration by fraud or misrepresentation. Mr Badic had, when completing his application for registration, failed to disclose findings of guilt in 1994 and 1996, in a Magistrates Court. Mr Badic's registration has been cancelled, as is required by section 16.

Non-Victorians
These persons can continue to practise interstate without sanction, despite clear concerns about risk to public revealed through the disciplinary actions of the CMRB.

None of them is now registered in Victoria.

JIRONG ZHANG (Qld) 29 and 30 October 2007
The panel found that Mr Zhang had engaged in unprofessional conduct of a serious nature and professional misconduct. It determined that Mr Zhang's registration be suspended for 4 months from 1 February 2008, that fines totalling $15,000 be imposed, that he be reprimanded and a condition be imposed requiring him to undergo a course of education in ethics and the side effects of Chinese herbs. The findings about conduct arose from certain factual findings.

The existence of a conflict of Interest

- Mr Zhang was a director of a company which ran a business which sold certain products to his patients who were not informed of this connection.

False and misleading use of titles

- Mr Zhang held himself out as highly qualified through improper use of titles such as Professor and Doctor and reference to medical and other qualifications. There was evidence patients relied on these assertions. Expert evidence accepted by the panel was that the bulk of these additional qualifications were derived from "degree mill" institutions and of questionable quality.

Use of testimonials

- Testimonials, the use of which is prohibited, have a propensity to mislead patients and create unrealistic expectations.
- Through warnings given by the CMRB's registrar Mr Zhang was aware of the CMRB's views. He continued to advertise using what he called "patient stories". Patients relied on these testimonials.

Unreasonable expectation of beneficial treatment created through wrongful claims about:

- No side effects.
- Quick recovery.
- 80% success rate in giving up smoking.
- Success with previous patients via use of "patient stories."

Poor prescription/medication information

- Mr Zhang's prescribing did not adequately set out the dosage and active ingredients of the products (very important information for other e.g. medical practitioners) – there is a responsibility on the practitioner to make this clear.

Poor management and adverse reactions

- Assistants must be identified to the patient, be properly trained and the patient must consent to them treating the patient. After inserting acupuncture needles Mr Zhang left the patient alone without checking and allowed removal of needles by unqualified staff (wrongly claimed to be "supervised" by the practitioner) without consent.
- Did not inform patients they were being placed on a detoxification program or of the possible adverse side effects of treatment and medication.
- Failed to follow up adverse patient reactions.

DANIEL SONG YUN HE (Qld) 26 September 2007

After complaint made to the CMRB by a patient, a formal hearing panel found that this practitioner was in breach of the provisions of the *Chinese Medicine Registration Act 2000* in that he had engaged in unprofessional conduct of a serious nature. Specifically the panel found that Mr He's conduct:

- Displayed a gross lack of sensitivity to the patient's privacy, modesty and dignity;
- Was characterised by sexualisation, indecency and a breach of trust of the practitioner-patient relationship;
- Involved salacious discussion of parts of the anatomy of both the patient and other patients;
- Included utilisation of inappropriate language;
- Involved a failure to afford any form of modesty protection to the patient;
- Included himself undoing a patient's bra and touching of the anatomy of a near naked patient without sound clinical reason and in circumstances of indecency;
- Was not characterised by any attempt to communicate the proposed conduct (of touching of the breast) on the part of Dr He nor any attempt to obtain consent for such conduct before he touched the breast;
- Was demeaning, embarrassing and distressing for the patient.

The panel further found that Mr He's recordkeeping was unsatisfactory and fell short of what is to be expected of a registered practitioner, particularly in regard to:

- The multiple absences of any documentation for attendances by the patient between 2001 and 2003;
- The problematic nature of the entry for a particular date;

- The absence in the two existing entries of any or any adequate information in respect of a variety of important matters, including: observations, medical history, diagnoses, treatment principles and adequate contact details;
- The multiple unsatisfactor justifications and rationalisations for the state of his records advanced by Dr He to the CMRB investigator.

The panel also found that the practitioner had exhibited no remorse, had made a series of unfounded allegations against the patient and had developed no insight into the problematic aspects of his conduct.

Mr He was cautioned in relation to his behaviour with the patient and fined $4,000. He was reprimanded for his poor recordkeeping and fined an additional amount of $2,000.

The panel commented that had Mr He been registered at the time of hearing (he was not) it would have imposed conditions upon his registration particularly with regard to attending further education and ethical matters and standards, and would have suspended his registration for a period.

Appeal

VCAT affirms the decision of the CMRB 's hearing panel and orders Song Yun HE to pay the CMRB 's costs

ANDREW TEM FOO LIM (W.A)
A formal hearing resulted in the practitioner being found not to have engaged in unprofessional conduct. The allegation was that Mr Lim obtained registration through fraud or misrepresentation by giving a false answer by answering question 'no' in respect of complaints received by a health complaints body. Although the panel found the evidence of Mr Lim not wholly satisfactory, in applying the Briginshaw test the panel considered whether it was comfortably satisfied that that Mr Lim obtained his registration by fraud and misrepresentation. It decided it could not be comfortably satisfied that Mr Lim intended to fraudulently or misrepresent his situation on the form. Although it is not central to a panel's role to make statements not directly related to the outcome of a hearing, the panel was of the view that it was fair to state that Mr Lim needs to ensure that he has a better understanding and appreciation of his registration matters and any paper work that he needs to complete to ensure that such problems can not arise again in the future.

WATSON ZHU (NSW) 20 February 2006
A panel determined Mr Zhu to be in breach of section 16 of the *Chinese Medicine Registration Act*, in that he had obtained registration by fraud or misrepresentation. The hearing panel found that Mr Zhu had, when completing his application for registration, wrongly denied having ever been the subject of a complaint to the Health Services Commissioner of Victoria or to any similar health complaints body in Victoria or elsewhere and also to having ever been suspended or expelled from any professional association of Chinese Medicine for breach of its Code of Ethics or Memorandum and Articles of Association, either in Victoria or elsewhere. The panel found that Mr Zhu in fact had four prior complaints made against him to the Health Services Commissioner of NSW and that he had been suspended from AACMA. The panel also found that he knew or was reckless to the probability that the answers would be relied upon by the CMRB for assessment in granting registration. Mr Zhu's registration was cancelled, as is required by section 16.

There was a further complaint that Mr Zhu had obtained his registration with the CMRB by fraud or misrepresentation in knowingly supplying a false qualification in support of his application for registration. The panel found that Mr Zhu did not knowingly submit a false qualification, and no determination was made against him on the basis of the qualification supplied.

The panel also found that the Mr Zhu had engaged in unprofessional conduct of a serious nature in that he knowingly answered a question falsely and that he continued to conceal the falsity of his answers despite there being four previous separate complaints against him to the NSW Health Care Complaints Commission and a suspension from a professional association. The panel determined to cancel his registration and fine him $3,000.

HUI QIN JIANG 16 October 2003

The hearing panel found Ms Jiang had supplied, as part of her application for registration, a certificate of membership of a professional association which had been granted to her based on forged overseas qualifications obtained by her. The panel determined that Ms Jiang had obtained registration with the CMRB by fraud or misrepresentation. As a result of this determination the CMRB was obliged by section 16(4) of the Act to cancel Ms Jiang's registration.

The panel further found that Ms Jiang had, through her wrongly obtained membership of the professional association, acquired provider status with a health fund, and that her patients accordingly obtained health fund rebates, Ms Jiang being mindful of the benefit to her practice of her patients being able to claim rebates for services provided to them by her. The panel determined that Ms Jiang engaged in unprofessional conduct of a serious nature being:

- of a lesser standard than that which the public might reasonably expect of a registered practitioner;
- of a lesser standard than that which might reasonably be expected of a registered practitioner by her peers;
- and professional misconduct.

The panel suspended her registration for nine months and imposed a fine of $1,000.

GEN XI PAN (Qld) 11 August 2003

Hearing Panel found that Mr Pan, a registered practitioner in Queensland, was guilty of unprofessional conduct of a serious nature with regard to advertising. He was issued with a caution.

LAWRENCE CHING LI (NSW) 4 August 2003

A Hearing Panel found that Mr Li acted unprofessionally in supplying an applicant for registration with a signed testimonial which was false as to the skills and experience of the applicant. The Panel made a finding of unprofessional conduct of a serious nature. Notwithstanding the seriousness of the conduct, the Panel was not inclined to interfere with Mr Li's registration as he now lives in Sydney and intends to practice there. There is no registration legislation in New South Wales, so deregistration or imposition of conditions would serve no purpose other than to gratuitously discredit him. Accordingly the Panel gave Mr Li a caution, warning him that his failure to improve his command of English was a contributing factor in his "careless" failure to check the testimonials written by Ms G and is a problem that could easily arise again in a different context, such as in the proper maintenance of patient records.

UNSUCCESSFUL APPEALS AGAINST REGISTRATION DECISIONS

CHONG CHUN WANG

Ms Chong Chun WANG submitted that her qualification (a Bachelor degree in Chinese medicine from a recognised university in China) was substantially equivalent or based on similar competence to a course of study approved by the CMRB and that she should therefore be registered under s5(b).

Senior Tribunal Member Davis gave time to understanding the history of the applicant and, in particular, her history in relation to her practice of Chinese medicine. He decided that the CMRB is not required to create and publish, in advance, the policies its uses to guide its proper interpretation of the Act. The CMRB did not act improperly in applying its March 2005 policy to

Ms Wang's application received in January 2005. Any CMRB policies or guidelines, as such, can however be considered or disregarded by VCAT. It is the only the Act itself which must be considered.

Davis in deciding that the applicant's qualification was inadequate for registration stated that it is important for Chinese medicine practitioners to be competent in the practice of Chinese medicine, but also important to be conversant with the legal responsibilities, ethics, and standards of their profession and have a clear understanding of the Australian healthcare system. With regard to Ms Wang's qualification, Senior Member Davis determined that there were significant deficiencies.

He also stated that even if Ms Wang satisfied the requirements for registration, in his opinion her lack of English proficiency would disallow registration. Having the benefit of observing her English skills over two days of hearing proceedings, his view was that her English was not of a standard to be expected of Chinese medicine practitioners in Australia.

With regard to what inquiries the CMRB should be expected to make of a qualification submitted as "equivalent" to an approved qualification, Davis stated that the CMRB should have to do no more than look at the material before it and make "reasonable inquiries". Reasonable inquiries might include telephone contact with overseas institutions. However, he also noted that the applicant completed her course in Shandong University in 1986 and it would be necessary to look at the precise courses that the applicant completed. That would be a very difficult thing to do after 20 years.

The full VCAT decision is available on the internet at http://www.austlii.edu.au/au/cases/vic/VCAT/2006/23.html and also on the CMRB's website at http://www.cmrb.vic.gov.au/board/board.html

RICHARD MALTER

Mr Malter submitted that his qualifications were substantially equivalent or based on similar competence to a course of study approved by the CMRB and that she should therefore be registered under s5(b). Mr Malter relied in part on his experience and references by certain persons, and put a view that the CMRB should not solely concern itself with section 5(b) or the question of equivalence of courses.

Senior Member Davis at the commencement of the appeal accepted the submission put to him by the CMRB that in interpreting section 5(b), the sole issue for determination was whether the applicant's qualifications were substantially equivalent or based on similar competencies to the course of study approved by the CMRB. He stated in his decision that it was his view that the words "based on similar competencies to a course of study approved by the CMRB" must be to a course of study, it cannot be read as practical experience alone. The courses of study claimed by Mr Malter as the basis for registration included a Diploma in Shiatsu from the Oriental Therapies East West College of some 1218 hours which he completed on 10 December 2004, a Dry Needling course which is part of an Advanced Diploma of Remedial Massage and a course entitled "Acupuncture & Electro-Therapeutics Research" conducted by the School of International Affairs at Columbia University, New York on 4-7 November 2006.

Senior Member Davis found that the claimed courses were not approved or substantially equivalent or based on similar competencies to an approved course. He further found as a fact that the applicant had done 39 hours of supervised clinical training, whereas the simplest course approved by the CMRB which is an Advanced Diploma of Acupuncture requires 594 hours of supervised clinical training. Further, the courses that the applicant had undertaken have not included a number of subjects that are required for the Advanced Diploma of Acupuncture. Davis stated that the applicant in his own material admitted he has not done training in courses involving Diagnosis in Chinese Medicine, Channel and Acupuncture Point Theory, Needling Theory and Practice. He also admits that he has not done a course in Internal Medicine, Gynaecology and Obstetrics, Paediatrics, Traumatology and Dermatology.

Senior Member Davis ordered Mr Malter to pay costs to the CMRB as he considered that his appeal had no tenable basis in fact or law and that it was fair to order him to pay the respondent's costs.

The full VCAT decision is available on the internet at http://www.austlii.edu.au/au/cases/vic/VCAT/2007/815.html and also on the CMRB's website at http://www.cmrb.vic.gov.au/board/board.html

PROSECUTIONS

The CMRB prosecutes people for breaching the title and advertising protection provisions of the *HPR Act* and formerly the *CMR Act*. Such significant action, whilst clearly a function of the *HPR Act* and therefore a responsibility of the CMRB, is never taken lightly. Such prosecutions are conducted in the Magistrates Court of Victoria, the proceedings of which are open to the public. The CMRB has decided that it is in the public interest that it publish summaries of prosecutions on its website.

Below is a list of the 17 prosecutions to date. Fuller details arte available at http://www.cmrb.vic.gov.au/board/board.html

4-Sep-08	Ms Yuki Murata
16-Apr-08	Mr Hongtao David Guo
5-Mar-08	Mr Li Wong
1-Jun-07	Ms Mariana Massa
1-Jun-07	Mr Robert Zhao
25-Jul-07	Dr Run Shan Wu
25-Jul-07	Mr Yi Ping Gu
25-Jul-07	Dr Xiao Wei (May) Zhou
26-Jul-06	Mr Khai Hung Truong
25-Jul-06	Ms Janine Kreltszheim
25-Jul-06	Ms Teresa Oates
7-Sep-05	Mr Christopher Bourke
20-Jul-05	Mr Hamish Reid
20-Jul-05	Ms Lena Puckey
9-Feb-05	Mr Zoltan Kovacs-Orovec
1-Dec-03	Mr Steven Moar
22-Oct-03	Ms Doris Lees (also known as Edna Wood)