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PRIVATE & CONFIDENTIAL

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Blood Borne Virus Guidelines Consultation

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Dear Sir/Madam

Thank you for your e-mail dated 4 April 2011 and for the opportunity to provide feedback on the draft guidelines on management of blood borne viruses.

We note that you have invited feedback on the guidelines generally as well as responses to five specific questions. This submission will address the guidelines generally and then the specific questions.

We endorse the development and implementation of these guidelines as an important step in setting standards to be observed by medical practitioners both for their own benefit and the benefit of the public. We acknowledge that the objective of the *Health Practitioner Regulation National Law Act 2009* ("the National Law") is to provide for the protection of the public by ensuring only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are registered.

These guidelines therefore need to achieve the required balance between protection of the public and the protection of the basic rights afforded to medical practitioners and medical students who may be infected with blood borne viruses.

It is important that in the implementation of these guidelines that there is clarity on how these guidelines fit in with the current legislative requirements and the common law and that the guidelines do not mandate certain actions by medical practitioners which are not in fact legal or ethical requirements.

We have some limited comments for your consideration in relation to the guidelines as follows:

1. We note that the Communicable Diseases Network Australia (CDNA) is about to re-publish the National Standards for health care workers. Although we acknowledge that the role of the Medical Board of Australia ("the Board") differs to that of the CDNA we recommend that the Board guidelines await the publication of the CDNA's standards to ensure consistency. We expect that many of the aspects covered by the CDNA guidelines will be equally applicable to the Board's guidelines.

2. Definition of Blood Borne Virus

- We recommend that the definition of blood borne virus currently located at the end of the guidelines should appear (together with the related definitions of HBeAg, HBsAg, HBV, HCV and HIV) following paragraph 1 ('Introduction').

3. Section 3 - Summary of These Guidelines

- There appears to be inconsistency with some of the terminology used in the guidelines. In particular we note that in Clause 2 of the guidelines reference is made to "*registered medical practitioners*" (which includes registered medical students). Elsewhere in the document the term "*medical practitioner(s)*" is used or "*infected practitioners*".

To the extent that the guidelines are intended to distinguish between a specific group, for example "medical students" and/or "infected practitioners" then that should be clearly spelt out. Unless there is a deliberate reason to distinguish a group(s) we recommend consistent terminology be used. For example paragraph 2 of Clause 3 of the guidelines can be reworded as follows:

'Registered medical practitioners who are infected with blood borne viruses have the same rights of confidentiality as other patients'.

- In the following paragraph reference is made to an 'independent medical practitioner'.

The use of this word may cause some confusion, namely that the practitioner may believe that they need to consult a medical practitioner who is not their usual general practitioner or physician. We assume the reference to "independent" is intended to refer to anyone but themselves. Given the final sentence of that paragraph the word 'independent' can and should be removed.

4. Section 5 - Responsibilities of all Medical Practitioners and Medical Students

- We recommend the Board consider amending the first sentence to make it clear that medical practitioners and medical students should know their HIV, HBV and HCV antibody status only if they perform or intend to perform exposure prone procedures.
- Likewise the recommendation that medical students undergo testing for blood borne viruses should only arise at a time when they will need to perform exposure prone procedures as part of their training. This protects the practitioner (including medical students) from having to disclose their antibody status when there is otherwise no need to do so where they are not performing exposure prone procedures.
- There may be difficulties with a requirement that registered medical practitioners and students be immunised against blood borne viruses where a vaccine is available. The subject practitioner or student may oppose being vaccinated or immunised due to cultural beliefs and/or personal beliefs about vaccinations. The guideline as currently worded takes that into account by not mandatorily requiring vaccination.
- Although it is a clinical matter we refer to the sentence in the third paragraph where it is stated that it is not necessary for practitioners to stop performing exposure prone procedures after the exposure unless they are found to have become infected with a blood borne virus.

This seems to place patients at risk of infection where the results of any testing are unknown. It might be preferable for the practitioner to stop performing exposure prone procedures after potential exposure until such time as the required testing has been performed and cleared the practitioner of any blood borne virus.

- We note that the guidelines are also directed to employers of registered medical practitioners. While we do not recommend imposing an obligation on employers there may be some benefit in the Board providing direction to employers by way of general recommendations.

The Board may wish to consider inserting a separate section for employers providing them with a number of broad recommendations. The topics that may be covered include:

- As an employer, ensuring that medical practitioners are fully informed about the infection risks involved in undertaking procedures; and
- Educating their employees about recommended infection control procedures.
- As far as reasonably possible having the facilities available for medical practitioners who perform exposure prone procedures to obtain confidential testing and counselling for HIV, HBV and HCV in a timely manner.

5. Section 6 - Medical Practitioners and Medical Students who are infected with a blood borne virus

- Advising medical practitioners and students infected with blood borne viruses that they "*must never rely on their own assessment of the risk that their condition may pose to patients*" seems to be somewhat conflicting with the requirement in the preceding sentence that they review their practice of medicine, health risk and health status. In our experience the vast majority of medical practitioners make appropriate assessments of the risk(s) their health may pose to themselves and others. We recommend that the final sentence of the first paragraph in Section 6 be worded as follows:

"They should obtain and follow the advice of their treating specialist doctor rather than rely solely on their own assessment of the risk that their condition may pose to patients"

- In the following paragraphs regarding medical practitioners' and students' right to confidentiality and in particular the exception to this, we note Section 140 of the National Law only requires mandatory notification to the Australian Health Practitioner Regulation Agency if the practitioner is placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment (which would include a blood borne virus).

The current wording of the guidelines suggests that a mandatory notification will be triggered if the public is placed at risk. It is vital that the Guidelines are consistent with the legal requirements of the National Law and we suggest the subject sentence should be revised to read:

'The exception to this is if through their practice they are putting the public at risk of substantial harm for example by breaching these guidelines in which case they must be reported to the Board via the Australian Health Practitioner Regulation Agency.'

6. In answer to the five (5) questions posed we offer the following responses:

- 1) This is a clinical decision and as a medical indemnity insurer we are not in a position to comment.
- 2) It is reasonable to expect that medical practitioners and medical students infected with blood borne viruses will comply with the guidelines and specialist advice. In our view it is not necessary to impose conditions on their registration unless the practitioner places the public at risk of substantial harm by practising in an unsafe manner.

There are appropriate processes and safeguards already in place that enables the Board to monitor medical practitioners and students infected with blood borne viruses and to take immediate action if necessary to prevent the medical practitioner from practising unsafe medicine.

In particular we refer to the current application for general registration and renewal of registration which requires medical practitioners to declare whether they have an impairment that is likely to detrimentally affect their capacity to practise the profession and to provide further details.

Furthermore the Board has powers pursuant to the National Law to take appropriate action and monitor the health of medical practitioners, for example Section 156 (the power to take immediate action), Section 169 – Requirement for Health Assessments and Section 181 – Establishment of health panels.

- 3) This is a clinical issue and we are not in a position to comment.
- 4) Only registered medical practitioners that may place the public at risk of substantial harm because of their practise should be monitored by the Board. This may include a requirement to provide results of testing for blood borne viruses to the Board at intervals or for a period agreed or determined by the Board.

To require all medical practitioners infected with a blood borne virus to be monitored by the Board would be an inappropriate and unnecessary invasion of their privacy. We make this comment on the understanding that medical practitioners who do not perform exposure prone procedures do not place the public at risk of infection.

It is reasonable for the Board to assume that registered medical practitioners with blood borne viruses will act appropriately with respect to their practise.

Even if they perform exposure prone procedures these guidelines impose appropriate obligations on these practitioners, namely:

- The requirement to consult their own treating medical practitioner and adhering to any advice from treating medical practitioners to modify their practice.
- The need to be aware and informed about their own infective status

For the reasons previously stated it is not appropriate to impose additional monitoring obligations on medical practitioners infected with blood borne viruses and who perform exposure prone procedures.

We confirm our view that additional monitoring would only be required for those medical practitioners who place the public at risk.

To the extent this question requires clinical input we are not able to comment.

- 5) We believe that the Board's powers in the National Law and the scope of these guidelines adequately protect the public from potential infections and also protect the medical practitioners and medical students. We do not feel that there is any further measure the Board needs to take in this regard.

We trust that the feedback contained in this letter is helpful and can be used constructively in the guideline development process.

Please let us know if we can be of any further assistance.

Yours sincerely



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