Response to the Public Consultation paper on the definition of practice

1. The Australian Doctors' Fund (ADF) has read the Consultation paper dated October 2011 published by the Australian Health Practitioner Regulation Agency (AHPRA)

2. The ADF recommends that the Medical Board of Australia (MBA) can help remedy "unintended consequences" that have arisen since the inception of national registration by implementing two urgent reforms, namely, adopting a new definition of medical practice (specifically for medical practitioners) as recommended in this submission, and simultaneously creating a new category of registration for senior active doctors.

3. **New Definition proposed by Dr Bruce Shepherd AM, Chairman, Australian Doctors' Fund**

   "Medical practice means any role in which qualified medical practitioners use their professional discretion within the limits of their knowledge, training, and skill as medical practitioners for the direct or indirect benefit of patients."

4. **Recognition of professional discretion**
   The inclusion in the definition of the recognition that the exercise of professional discretion is at the heart of competent medical practice should be noted. This term incorporates the professional traits of continuous self evaluation and the demonstrated reality that medical practitioners in good standing continually demonstrate the ability to work within their competencies. It also demonstrates the reality that failure to properly exercise professional discretion at any age constitutes a serious breach of professional standards.

5. **Need for a new registration category of Senior Active Doctor**
   The ADF also maintains that the absence of a category of registration for Senior Active Doctors is a major defect impacting on problems with the definition of practice. This should be remedied urgently. This defect could be remedied by replacing the current closed category, Limited registration (occasional practice) with a new category for Senior Active registration which encourages senior doctors to continue to contribute to the profession.

Background and Analysis

1. Since the inception of national registration, the ADF has maintained that the inclusion of the Australian medical profession in a **'one-size-fits-all' national registration system is flawed**. This case was outlined in our submission of 13 February 2009, "No Compelling Case for COAG/IGA model of National Registration & Accreditation".[1]

2. It is therefore no surprise to the ADF that AHPRA has now conceded that its imposed uniform definition of practice "**is causing practical difficulties and has resulted in unintended consequences**".[2]

3. AHPRA now seeks consultation on how this defect can be remedied and proposes a number of options.

4. The ADF has examined these options and has concluded that **none of the options proposed by AHPRA in the Discussion Paper will correct the inherent flaws** caused by the imposition of one definition of practice across essentially diverse and separate roles in the delivery of health care.

5. Furthermore, it is incumbent on AHPRA to acknowledge that sensible, safe, and effective regulation requires recognition of the diverse and unique role of the medical profession. Imposed "group definitions of practice" work against this principle.

6. In regard to the current definition of practice, **the ADF strenuously objects to the use of the term 'client' to describe a patient.** Such terminology is inherently dismissive of a patient's special needs as a sufferer. It casts a cancer sufferer in the same predicament as a conventional customer of an accounting firm or legal office. "Reducing medicine to economics makes a mockery of the bond between the healer and the sick".[3] The use of this term may even fit the circumstances described by Professor Paul Komesaroff as "indifferent callousness".[4] It should be replaced with patient in any definition of medical practice.

7. The other inherent defect in the current definition of practice, is the **omission of any reference to the fact that medical practice involves the continual exercise of professional discretion. The term 'professional discretion' acknowledges that medical practice is more than the mere application of knowledge, training and skill. It requires specific and precise judgement not only about clinical need but most importantly the doctor's limitations and constraints in meeting that need i.e. a**

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[1] No compelling case for COAG/IGA model of National Registration & Accreditation, www.adf.com.au
[2] Public Consultation paper on the definition of practice 3/10/2011, p3
[3] The New language of medicine, NEJM, 13/10/2011, Pamela Hartzband, MD & Jerome Groopman, MD
[4] Komesaroff, Paul A. "Experiments in Love and Death. Medicine, Post Modernism, microethics, and the Body.", Melbourne University Press, 2008, p 150

trained neurosurgeon exercises professional discretion in regard to patients presenting with obstetric/gynecological problems. Such patients will be referred to an O&G specialist.

8. The ADF also maintains that **failure to protect the title of doctor and surgeon** for specific and exclusive use of medical practitioners in relation to health care delivery **is an inherent flaw in the model**. The ADF also notes that in other jurisdictions the use of titles doctor, surgeon, specialist and physician have been traditionally protected for public safety purposes.[5]

9. In the case of the medical profession, the current definition of practice creates major uncertainties for doctors who are not on the general register but may be called upon to use their knowledge, training and skills in some capacity either in professional activities or by assisting members of the community in some way. The definition means that any activity remotely related to a doctor's knowledge, skill or training could be classed as practising the profession whilst not being on the register. This is unsatisfactory and is generating needless uncertainty upon some of our most eminent and senior doctors. Furthermore transitional arrangements to support this group are now closed and due to expire in 2013.

10. To resolve the above problem, the ADF recommends immediate action in 2 areas.

    a. the adoption of a simplified specific definition for medical practice which is wide enough to embrace the diversity of roles within the medical profession. The proposed definition is as follows:

    "Medical practice means any role in which qualified medical practitioners use their professional discretion within the limits of their knowledge, training, and skill as medical practitioners for the direct or indirect benefit of patients."

    b. the creation of a registration category for Senior Active doctors which could be approached by opening the current closed classification for Occasional Practice and removing sunset clauses.

11. **The ADF believes the Medical Board of Australia should be a stand alone Board**. The MBA should set its own definition of medical practice in harmony with the traditions, culture and contribution that doctors make to the treatment and care of sufferers. Forsaking all others the MBA must ensure that medical standards in Australia are not held captive to the blind pursuit of what could be described as "reductionist's ideology" via imposed uniformity and the denial of the diversity, culture and special role of Australia's Medical Profession.

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[5] Oklahoma definition of practicing medicine

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8/11/2011