

WESTERN SYDNEY
UNIVERSITY



Locked Bag 1797
PENRITH NSW 2751 Australia
www.uws.edu.au

Western Sydney University
School of Medicine

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Australian Health Practitioner Regulation Agency

Re Submission on proposed new Code of Conduct for medical practitioners.

Dear AHPRA,

Your invitation to comment on the new Code of Conduct was relayed to me by medical colleagues but I missed any personal or public invitations on this important matter and eventually sought more information from you which you declined to provide.

I supervise research projects by medical students on a regular basis and am aware of very stringent rules regarding applications for surveys of opinions of the general public. For example, recently we had to go through many hoops merely to ask mothers when they introduced solid foods to their offspring, and even more hoops to enquire as to why parents did not want to have their children vaccinated.

In each application we had to introduce the topic with a clear explanation of the need for the survey. Then, under methods, we had to explain the value of the questions, how the project would be advertised, how many responses would be needed to come to any conclusions, were those responses likely to be representative of the general public, how would the questions be evaluated, who would evaluate them, how subjective interpretation would be avoided and, lastly, would there be any complications or adverse effects of asking the questions.

I expected you would have considered some of these things and would be prepared to share them in order to receive a considered reply. But that was not the case. This caused me to wonder why the 'ethics' of a field survey by the Medical Board should be less rigorous than a student survey of when a mother introduced solid foods?

In my opinion you advertised the invitation on such a serious matter very poorly and then provided no indication of how you might evaluate 'majority opinion' within the profession, let alone such a nebulous concept as 'community trust'. Nor would you disclose how you would evaluate the submissions themselves and thus arrive at a conclusion for or against the restriction of public comment. Nor would you provide any explanation of how you might quantitate 'unprofessionalism' and provide appropriate punishment. Nor did you attempt to reassure your evaluations would be free of subjective pressures. Nor did you reveal whether you had considered any 'adverse effects' your survey might incur. Indeed, your 'research methods' present a cogent example of how such surveys should not be undertaken, which, coming from the Medical Board, is hard to comprehend.

On the information you have provided, therefore, I am limited to a superficial appraisal of the general trend in the new Code. I agree, a Code is good thing and many of the paragraphs express very clearly what 'common sense' would agree is the appropriate behaviour by a doctor that might be expected by a patient.

But, under 'Professionalism', you introduce subjective issues whose values may not be commonly sensed. Your line of argument appears to conclude there should be a restriction of comment by individual doctors if that comment differs from what is perceived to be the prevailing opinion of the profession. You suggest such restriction of comment might be necessary in order to preserve 'community trust'. And, as the discussion is under the rubric of 'professionalism' and every medical practitioner is at least aware of something of the power of the Board to inflict serious punishment on transgressors, you had no need to even mention punishment. It spoke for itself.

Is it 'common sense' to conclude, however, that the community will place more trust in a medical profession whose freedom to speak openly on various issues is prohibited by fear of punishment by a Medical Board? Or, is it more likely that trust will be maintained by exhibition of a diversity of opinion? Is it not more likely the public appreciates the value of reasoned argument in allegiance to the concept that truth might emerge from dialectic struggle between thesis and antithesis. Whether truth emerges is one thing but, at very least, the public might be assured that 'honest' opinion is being expressed, and your Code of Conduct does emphasise the value of honesty!

At the moment, I believe the Australian community holds the medical profession in high regard, expecting, as the Code declares, the need for honesty and integrity. My concern is that the positive image of the profession is, in fact, likely to be reduced by the spectre of a profession controlled to uttering a Party Line by the power of punishment. Unfortunately, many metaphors from modern literature and history may be predicted to arise: will it be to the profession's advantage to have its Board likened to 'Big Brother', its investigation of transgressors to a 'Star Chamber', and its punishments as 'Stalinist'?

The next issue of concern to me is your raising the concept of 'cultural safety'. Of course, sensitivity to cultural factors must be inherent in medical practice but I think that in the way you are emphasising it and providing punishment for your judgement of infringement runs the risk of creating a weapon that can be wielded against freedom of speech, let alone medical judgement. How can female circumcision be adequately discussed if people who adhere to that cultural practice are able to complain, quite sincerely, that criticism makes them feel unsafe? What about the feelings of the Jewish community and their culture of male circumcision? What about people who are overweight when confronted with an anti-obesity campaign? Should consideration of euthanasia, late term abortion, childhood gender dysphoria etc be stifled by fear of de-registration?

Which, after criticising your undisclosed 'methods' of research, brings me to 'adverse effects'. They comprise, I believe, curtailment of freedom of academic discourse. Unfortunately, the history of medicine reveals that failure of academic discourse permits unreasonable medical practice to continue. One does not have to think further than the silence surrounding National Socialist abuses in Germany, the eugenics movement in the US, and the widespread practice of lobotomies. There are, however, examples in Australia when discourse might have been raised earlier, with positive effect eg regarding the Chelmsford and the Townsville Ward 10B psychiatric practices.

While the above examples are gross, there is a common characteristic...restriction of free speech. And that is what appears to be at stake if your proposed Code of Conduct is accepted as written. In summary, if I were judging your putative research, notwithstanding all your shortcomings in 'Methods' and, what I would consider, the impossibility of objectively assessing such nebulous concepts as community trust, I would conclude your 'Adverse effects' would outweigh any suggested advantages.

Yours sincerely

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John Whitehall MB BS BA MPH&TM DCH MRCP(UK) FRACP
Professor Paediatrics & Child Health, Western Sydney University
Mobile: 