AUSTRALIAN MEDICAL ASSOCIATION
ABN 37 008 426 793
T | 61 2 6270 5400
F | 61 2 6270 5499
E | info@ama.com.au
W | www.ama.com.au
42 Macquarie St Barton ACT 2600
PO Box 6090 Kingston ACT 2604

11/63

Dr Joanna Flynn
Chair
Medical Board of Australia
PO Box 9958
MELBOURNE VIC 3001

Dear Dr Flynn

Draft guidelines for medical practitioners and medical students infected with blood-borne viruses

Thank you for the opportunity to comment on the draft guidelines.

The AMA acknowledges the Medical Board of Australia has responsibility to protect the public by ensuring that only medical practitioners who are competent and safe to practice are registered.

At the outset, we would like to make our views clear that the Board must not de-register any medical practitioner simply because the Board has become aware that the medical practitioner is infected with a blood-borne virus.

Every day, medical practitioners face the risk of being infected by their patients. They understand the risks of cross-infection, as do the managers of the health care organisations in which medical practitioners provide medical care.

Minimising the risk of infection in the delivery of health care is well governed by the application of the *Australian Guidelines for the Prevention and Control of Infection in Healthcare 2010* (the Australian Guidelines) and other related documents and various health care accreditation standards and processes. Medical practitioners work closely with health care organisations to ensure the safety of patients and all health care workers. This includes taking appropriate steps to re-organise the provision of medical services if a medical practitioner is infected with a blood-borne virus until it is safe for him or her to return to usual practice.

There is no need to de-register the medical practitioner because they have a blood-borne virus. Nor is there a need to change a medical practitioners' registration status by limiting their registered scope of practice to reflect the arrangements that have been put in place at the service delivery level while the medical practitioner remains infected. To do so would create a lot of unnecessary paperwork for the medical practitioner, the health care organisation, the Medical Board and the Australian Health Practitioner Regulation Agency.

We do not think it is necessary for the Board to provide "guidance to registered medical practitioners and registered medical students who are infected with blood-borne viruses about how to prevent the transmission of the infection to patients". This guidance is already well provided in the Australian Guidelines. Further, there is a risk that the Board's guidelines will be inconsistent with the Australian Guidelines and the arrangements health care organisations have in place to meet accreditation standards for infection control and risk management. This may have the unintended consequence of increasing the risk to patients if there is confusion about which guidelines take precedence.

Consequently, the threshold question for the AMA is where the role of the Board begins and ends in regulating the scope of practice of medical practitioners who are infected with a blood-borne virus in isolation from the way this issue is managed by medical practitioners and the health care organisations in which they practice. If the Board has any role, it should be to assist the medical practitioner to manage their illness so that he or she can return to full practice quickly.

The AMA notes the Medical Board of Australia *Guidelines for mandatory notifications* states:

> However, a practitioner who has a blood borne virus who practises appropriately and safely in light of his or her condition and complies with any registration standards or guidelines and professional standards and protocols would not trigger a notification.

The inclusion of item **8 Notifications about impairment** in the draft guidelines only serves to muddy the waters about when medical practitioners are required to make mandatory notifications. The AMA recommends this section be removed as the *Guidelines for mandatory notifications* stand in their own right.

The draft guidelines use language like "medical practitioners and medical students should know their HIV, HBV and HCV antibody status", "… should obtain and follow the advice of their treating specialist doctor" and "A specialist medical practitioner must ascertain whether the infected practitioner or student is viraemic, using the most sensitive tests that are commercially available". Accordingly, it is difficult to identify the specific actions that would constitute a breach of the guidelines and trigger an investigation by the Board.

Given the Board recognises that it is possible to practice safely while infected with a blood-borne virus, it would be useful if the Board could clearly articulate the specific actions of medical practitioners that the Board intends the guidelines apply to, and the exact actions the Board would take to limit their scope of practice.

The Board may choose to do this by reference to the Australian Guidelines which already:

- classify procedures according to the level of perceived risk of infection;
- categorise exposure prone procedures according to the likelihood of the medical practitioner becoming injured during the procedure and where the exposure of the patient's open tissues to the medical practitioner's blood may go unnoticed;
- provide advice on exposure prone procedures in specific areas of clinical care; and
- provide advice on exclusion periods for health care workers with acute infections.

In terms of applying the final guidelines that the Board decides upon, the draft guidelines are unclear about the requirements the Board will place on registrants and the Board's processes for dealing with registrants who are infected. The following issues will need to be resolved and be explicitly and clearly explained to all registrants:

- the specific actions of registrants that would constitute a breach of the guidelines, e.g. failing to be tested every 12 months, failing to seek medical attention, performing category 3 exposure prone procedures while knowingly infected ;

- how the Board expects to be notified of alleged breaches of the guidelines, e.g. self reporting, notifications from pathology laboratories and health care organisations;

- how and when the registrant will be notified that they are being investigated for alleged breaches of the guidelines;

- the investigative processes the Board will use e.g. require the registrant to provide pathology reports, require the healthcare organisation in which the registrant practices to provide details of how the infection is being managed;

- the process that will be in place for the registrant to be heard e.g. provide the registrant with an opportunity to explain the arrangements they and the health care organisation have put in place;

- the specific actions the Board might take following an investigation;

- what role the Australian Health Practitioner Regulation Agency will have in these matters e.g. taking notifications, conducting investigations and reporting to the Board;

- the obligations registrants have to verify their infection status with the Board and how frequently e.g. all registrants have to declare their infection status at annual renewal.

The AMA would urge the Medical Board to ensure that there is a consistent approach to dealing with registrants with blood-borne viruses across all the health practitioner groups regulated under the National Law. It is appropriate that the Medical Board take the lead on this to ensure there is a standardised approach across all registered health practitioners that takes account of, and does not override, the arrangements in place in health care organisations to manage infection control.

Finally, the draft guidelines recognise that there is a greater risk that a medical practitioner will be infected by a patient, than there is of a practitioner infecting a patient. This risk could be mitigated by making *infection status* a mandatory field in the personally controlled electronic health record that all health practitioners will have access to. The AMA urges the Board to make recommendations to Government about this in order to protect patients and health practitioners from avoidable cross infection.

Given the significant impact these guidelines may have on registrants and the lack of clarity about the Board's intentions to regulate registrants on this issue, the AMA recommends that the Board issue a second draft of the guidelines for further consultation.

If you have any questions about this submission, or wish to discuss any aspects of it further, please contact Belinda Highmore, Senior Manager, Medical Practice and eHealth Section.

Yours sincerely

Dr Andrew Pesce
President

25 May 2011