

Friday, 27 June 2014

By email: [medboardconsultation@ahpra.gov.au](mailto:medboardconsultation@ahpra.gov.au)

Dear Executive Officer, Medical, AHPRA

MDA National appreciates the opportunity to provide submissions in relation to the following AHPRA core registrations standards:

1. Registration standard: Professional indemnity insurance
2. Registration standard: Recency of practice

Established in 1925, MDA National is one of Australia's leading providers of medical defence and medico-legal advocacy services. With over 25,000 members, it works in close partnership with the medical profession on a wide range of issues which have the potential to adversely impact upon the practice of our Members, and the medical profession as a whole.

Registration standard: Professional indemnity insurance

**Retroactive cover** – The revised standard continues to be silent on the concept of retroactive cover. The standard states that a practitioner is required to have appropriate and adequate insurance arrangements during the current period of registration but does not define what adequate or appropriate indemnity is. Given the Professional Indemnity environment in Australia is all claims made it would be helpful to have the Medical Board of Australia ("The Board") standards define what it considers to be appropriate and adequate indemnity and whether the expectation is that the practitioner has cover for all areas of their current practice as well as past practice. If a doctor takes out a policy without retroactive cover but has indemnity for the period of registration is that adequate and appropriate? The revised wording alludes to a requirement to have indemnity for the preceding period of registration but does not outline that the practitioner should have access to indemnity for the whole period of registration.

MDA National use the terminology of "retroactive cover" which is cover that extends to the medical practitioners' past practice, and is included in their current policy of insurance.

**Run Off Cover** - The standard at 5(a) states that the insurance for private practice must include run off cover. It may help to clarify that the medical practitioner must purchase/ have access to run off cover for their prior practice once they cease practising. This is outlined in the definition of run off but would be clearer if the wording did not state that the insurance must include run off.

The definition of run-off cover in the standard is:

***"Run-off cover means insurance that protects a practitioner who has ceased a particular practice against claims that arise out of or are a consequence of activities that were undertaken when he/she***

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*was conducting that practice. This type of cover may be included in a PII policy or may need to be purchased separately."*

MDA National use the terminology of "run-off" cover to specify insurance coverage for past practice once the medical practitioner is no longer practicing. This is relevant because medical practitioners should be aware that due to the claims made nature of Professional Indemnity Insurance, they require run-off cover after they cease practicing.

The reference in the Board's definition of run-off as, *"insurance that protects a practitioner who has ceased a particular practice"* may be misleading. MDA National submits that the standard should provide a definition of retroactive cover and explain that insurance must include retroactive cover which provides cover for all past practice for which the medical practitioner is not otherwise insured. If a medical practitioner ceases to practice, she/he will require run-off cover after they cease practicing unless or until she/he becomes eligible for ROCS.

The standard at 5 (b) states the practice contexts and the usual nature of insurance cover include:

*"employment in the public sector or contractual arrangements-cover under a master policy or legalisation-may have cover under a master policy or be covered by legislation"*

MDA National submits that this section should make reference to public hospital indemnity arrangements rather than 'legislation'. The public hospital indemnity arrangements vary considerably between states, territories and health services. It may be of assistance to medical practitioners to note that the arrangements often differ from one hospital to another and they should obtain confirmation of their indemnity status prior to commencing work and arrange appropriate insurance if it is not provided through the public hospital.

Further, we submit that it would be advisable to clarify in the standard, that if there is no access to indemnity from the State then appropriate indemnity should be arranged from a Private insurer. The current wording is ambiguous as it states legislation in the context of indemnity and assume this means State Indemnity .

The standard at 5 (e) states a:

*"practitioner working overseas- a medical practitioner registered in Australia but practising exclusively overseas must make a declaration to the Board but is not required to provide evidence of professional indemnity insurance".*

MDA National submits that medical practitioners who are registered in Australia but are practising exclusively overseas, do not need to hold a current Professional Indemnity Insurance in Australia but, should check with their jurisdiction and ensure that they have appropriate local cover. These medical practitioners do require run-off cover for their past practice in Australia.

In relation to the questions posed:

- From your perspective, how is the current registration standard working?

It appears to be working acceptably well, but additional clarity could be provided.

- Is the content and structure of the draft revised registration standard helpful, clear, relevant and more workable than the current standard?

MDA National proposes that an alternative definition of run-off cover and an additional definition of retroactive cover be incorporated in the revised standard:

**Retroactive cover** means insurance for potential claims arising from your practice prior to the inception of your professional indemnity policy for which you do not otherwise have cover. Australian law requires all professional indemnity insurance cover to be provided on a 'claims-made' basis and all approved insurers provide retroactive cover

**Run-off** cover means insurance that protects a practitioner who has ceased practice in Australia against claims that arise out of or are a consequence of activities that were undertaken when he/she was conducting that practice. This type of cover may be included in a Professional Indemnity Insurance policy or may need to be purchased separately.

- It is proposed that the draft revised standard is reviewed every five years or earlier if required. Is this reasonable?

MDA National submits that it would be preferable to review the standard in 3 years rather than 5 years. This ensures that the standard reflects the changes to the Medical Indemnity environment.

#### Registration standard: Recency of practice

MDA National submits that further clarity is required regarding how the proposed Recency of Practice minimum hours requirements might operate.

#### **Issue 1:** *Defining relevant practice for inclusion into minimum hour requirements*

It is unclear what activities a medical practitioner can count towards these minimum hour requirements - for example, is time spent on CPD activities included?; where a medical practitioner is self-employed, what constitutes their hours of work?

It is MDA National's view that given that Practice is broadly defined in the Consultation paper as being "any role, whether remunerated or not, in which the individual uses their skills and knowledge as a medical practitioner in their health profession", the activities that a medical practitioner can count towards their minimum number of hours recency of practice requirements should be broadly defined, including activities such as CPD.

#### **Issue 2:** *Minimum hour requirements where a medical practitioner has more than one scope of practice*

It is unclear whether medical practitioners with more than one scope of practice are required to meet the minimum hour requirements for each of their areas of scope of practice.

Clarification will need to be provided by the Board as to whether a medical practitioner will have to fulfil these minimum hour requirements for each 'scope of practice' they practice in.

For example, will a Medical Administrator who also practices as a Psychiatrist have to complete 152 hours per year in *each* scope of practice to maintain minimum registration standards, or will they simply have to provide an aggregate of 152 hours totalled across both areas of practice?

It is MDA National's view that simplicity should prevail and a medical practitioner should only be required to complete the minimum hour requirements for recency of practice as a single four by 38-hour week (152 hour) equivalent irrespective of how many fields or scope of practice they practice in.

MDA National welcomes the opportunity to provide submissions or participate in further dialogue in relation to the review of AHPRA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Deborah Jackson', with a stylized, cursive script.

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