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Re: Doctors for Refugees (D4R) response to the Medical Board of Australia's 'Good Medical Practice: A code of conduct for doctors in Australia'

Doctors for Refugees is an organisation, registered with the Office of Fair Trading NSW, whose members are Australian doctors, medical students and other health professionals. D4R works to improve access to medical advice and treatment for refugees and asylum seekers in Australian immigration detention centres and offshore regional processing centres. We share the assertion of the Australian Medical Association and the Public Health Association of Australia that refugees seeking asylum in Australia have the same rights to health as other Australians. It is therefore hoped that the rights of refugees in offshore detention are prioritised in the same manner as that of patients being cared for in Australia.

The following concerns and recommendations pertain to the line in section 2.1 of the Medical Board of Australia's 'Good Medical Practice' code that states that, ***'They must be honest, ethical and trustworthy and comply with relevant laws'*** (MBA, 2018).

The Medical Board's Code of Conduct has its basis on the 1947 World Medical Association agreements which were formed in the aftermath of the second world war when systematic gross abuses took place under the national laws at the time. That medical professionals were found to be complicit in these and subsequent human rights violations around the world is of particular repugnance to the general community who rightly expect doctors and the care they provide to be a safe place away from the horrors of persecution (personal or communal).

The WMA agreements reiterated the ethical framework for doctors that had been provided by the Hippocratic Oath long ago – that our duty is always with the patient, irrespective of movements of the day. Currently the political currents in Australia are in part directed largely towards refugees and, for at least the past decade, we have seen ever-changing laws that curtail progressively basic rights and freedoms recognized and committed to by Australia. In 2015 the federal

government passed a law that made doctors who advocate for their refugee patients liable to face up to two years imprisonment. Our group, Doctors for Refugees, challenged this law in the High Court a year later. A major basis for our argument was that this Medical Board's Code - the Code that doctors had sworn to uphold and advocate for the rights of their patients - could not be overridden by the vagaries of domestic laws. The government eventually backed down on this law and had that problematic section repealed.

Now the proposal is for the Code itself to be changed so it bows to domestic laws. It is difficult to know what is motivating this. Other than the doctors who publicly stated in 2015 that they would continue to advocate for refugee patients despite the newly passed law, there have been no cases that we know of where other laws have been threatened by doctors adhering to the code of medical conduct. Therefore, the Code has never had to spell out compliance with domestic laws before. In addition, the protection for the exercise of conscience and beliefs (and related rights) is central to the practice of professions and the full exercise of citizenship.

Although health providers have been exempted from the ABFA 2015, the lack of transparency surrounding the healthcare services for refugees is an ongoing barrier to care of patients, especially in offshore detention. The protection of doctors' ability to speak freely on the issue of refugee health therefore remains of paramount importance to D4R. Conditions in detention centres are precipitating and perpetuating factors for a range of physical and mental health problems, and accordingly doctors with D4R may continue to resist the ABFA in the interests of refugee welfare.

Furthermore, we are extremely concerned that this proposal has been rushed through with a very short consultation time and without every doctor in Australia being notified, as the various changes could potentially affect any one of us.

We are also concerned with the paragraph:

If making public comment, you should acknowledge the profession's generally accepted views and indicate when your personal opinion differs. Behaviour which could undermine community trust in the profession may be considered unprofessional.

Medical practitioners, as in the rest of the community, hold a wide range of views on areas such as euthanasia, assisted reproduction and abortion as well as many others. To adopt a code that requires a medical professional to conform to the accepted view of the day, at risk of being classified as 'unprofessional', could reasonably be seen to stifle free speech. There is a significant history of the medical establishment changing its held view on medical conditions and syndromes. Substantial advances in medicine have been made by those willing to step outside the conventional view and approach health issues from a different perspective. Free and informed scientific discussions about these differences ensure that medicine remains safe and progressive.

We believe that the following recommendations will allow other sections of the MBA's Code of Conduct to be maintained. We would like to express our support for the statement that 'Community trust in the medical profession is essential.

Every doctor has a responsibility to behave ethically to justify this trust.' (MBA, 2018, 2.1) The recommended changes would support doctors that chose to behave ethically and professionally, even when legislation does not support prioritisation of patient health. This would also allow doctors to prioritise 'qualities such as integrity, truthfulness, dependability and compassion,' (MBA, 2018, 2.1) and to ensure that "appropriate systems are in place for raising concerns about risks to patients,' (MBA, 2018, 8.2.5). The proposed changes would also allow doctors to more effectively engage with the 'Public Health' subsection of the Code of Conduct including the recommendation that doctors should be 'participating in efforts to promote the health of the community and being aware of your obligations in disease prevention, screening and reporting notifiable diseases' (MBA, 2018, 7.4.2). It is hoped that the Medical Board of Australia's value of effective public health promotion propels change of the Code of Conduct. In particular, it is hoped that these changes support the concept that patient care and advocacy should be driven by the historically developed principles of the medical profession, rather than the legislation of the time.

RECOMMENDATIONS

1. Doctors should be encouraged to advocate for change to legislation that obstructs their ability to prioritise patient health
2. Doctors should be able to speak freely and without threat or intimidation or fear of reprisal about the conditions in detention centres or matters relating to refugees or other related matters, as long as these do not threaten the privacy and confidentiality of the individual.
3. Doctors should be able to exercise their rights as citizens in an open society in light of domestic and international law protecting human rights and, in particular the inherent dignity and equal and inalienable rights of all persons and the rights to the freedom of thought, conscience, religion, expression, opinion, association and participation.

REFERENCES

1. *International Covenant on Civil and Political Rights* (1966) , ICCPR opened for signature 19 December, 1966, entered into force for Australia, 13 November, 1980).
2. *Good medical practice: A code of conduct for doctors in Australia* (2018), Medical Board of Australia, Public consultation paper.

Sincerely,

The Executive Committee of Doctors for Refugees

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