

Dear colleagues,

The issue raised here last week on the disclosure of complaints to the Medical Board of Australia prompted a keen response from members and a rather rapid and encouraging backdown from the Board. In light of this there is another matter I wish to highlight that is at least as important. One brief mention in a newspaper this week drew my attention to a public consultation paper on the draft revised code of conduct for doctors. It is worthy of this group's attention and relates to what I consider to be perhaps the master value in any society: the right to think and communicate freely. The draft code and call for submissions can be found here:

<http://www.medicalboard.gov.au/News/Current-Consultations.aspx>

Note that submissions close today, Friday 3 August.

The primary concern is with section 2.1, "Professionalism." A change is proposed that clearly restricts the expression and thus the thought of doctors by rendering unspecified and hypothetical comments or views as potentially in breach of the code, construing them as "unprofessional" conduct punishable by deregistration, which if breached (as with any ordinance) could result in prison. This document is an amendment to one drafted in 2009 which I confess had not read until yesterday. There are numerous criticisms to be made, for instance that it is prescriptive, overly detailed, largely states the obvious, is somewhat patronising and generally comes across as a well-meaning bureaucratic exercise at best. But these are second-order concerns compared to the inherent restrictions and proscriptions on free thought and expression.

In providing the background and justification for this revision, no compelling case is made, certainly none based on any evidence of harm to anyone. Rather the bases given are that it is "due for review and in keeping with good practice," and to be in line with another professional code. The consultation paper insists that "The Board is not proposing significant changes to the current code." I don't doubt the sincerity of the authors but little could be further from the truth. Doctors are being told what to say, and given firm guidance on what not to say. In section 2.1 "Professionalism," paragraph 1 reads:

*While individual doctors have their own personal beliefs and values, there are certain professional values that underpin good medical practice.*

Am I alone in anticipating an unwritten sentence that would follow effortlessly here?: *"Conversely, there are certain personal values that do not underpin good medical practice."* Paragraph four is where the explicit concerns arise:

*"Community trust in the medical profession is essential. Every doctor has a responsibility to behave ethically to justify this trust. The boundary between a doctor's personal and public profile can be blurred. As a doctor, you need to acknowledge and consider the effect of your comments and actions outside work, including online, on your professional standing and on the reputation of the profession."*

I tend to concur with most of these statements, even the unsolicited fatherly advice in sentence three. The paragraph continues, well-meaning but sinister:

*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 is at odds with good medical practice and may be considered unprofessional."*

There I have a real problem. These two sentences may be sage advice, or be essential to ignore, but on what authority does *anyone*, least of all an arm of the state have the right to instruct us on how we must couch our public comments? The inclusion of such a directive in this document means that a doctor NOT having done so is an entirely reasonable target for complaint, following which the process alone is significant punishment. That a doctor's mere utterances may be considered "unprofessional" by the state leaves open the prospect of deregistration on the basis of the opinion of a mere bureaucracy. Then there are the practical and semantic issues: just what are the "accepted views" on a given issue? Name the issue, how to define accepted and accepted by whom, by what subset of the profession? Almost immediately it becomes impossible to answer or unequivocally defend accusations of having breached this section.

Society has many deep, ancient and structural problems; it deserves scrutiny, critique and resistance. There are many contentious issues, disenfranchised groups and many more suffering, alienated individuals - how to help any of them is a crucial and complex question that no one I've heard of has ever had an answer for but for which doctors (among many others) have an

important voice. We like all people must be free to contribute without any risk at all of having our rights or reputations destroyed by a body with an essentially arbitrary authority. On many important topics, there is the approved or unsanctioned opinion (correct or incorrect perhaps) but the alternative or minority views must be heard very clearly, not least because some crucial new perspective may emerge. A century turned Galileo and Copernicus from heretics to genius after all.

To be clear, there are many comments a doctor or anyone could make that are nasty, wrong or beyond the pale - the appropriate sanction for which is a social one, not legal or professional. That person should be held to account by the public and their colleagues, should be debated and rebutted, scorned even (though not by a twitter lynch mob by the way.) But the state has no business removing their livelihood for all but the most clear and proximal evidence of imminent or actual harm. Its far from ideal, but the cost of the alternative is far too great.

There are further criticisms to be made of the 2009 document and its amendments. Overall, it seems driven by a certain moralism that proscribes or forbids behaviour, rather than being expressed in the form of a set of ethics and principles that are a call to good and strong action. There is the tradition that doctors follow implicitly, explicitly and imperfectly after Hippocrates, which emerged through a slow and lasting consensus; the medical board's code is a well-meaning but inadequate attempt at a codification of this powerful pledge.

The public needs protection from the excesses, hubris and abuses of the medical profession and many others. As insiders we all know that a lot of poor or problematic practice goes on despite the various professional codes whether for doctors, journalists or politicians for that matter. We know the doctors we would refer our families to - or suggest they avoid - just one indication of how such codes do virtually nothing for public safety and well-being, despite their intention or appearances. Our own families get better medical care because we know how to seek the best opinions, to be warmly sceptical and maintain a degree of scrutiny over the doctors we and our families consult. Encouraging a culture such as this amongst the general public would do far more good, fostering their agency and autonomy, keeping us all on our toes. It is much harder to do that than redraft a code of conduct of course.

Regardless, I don't want these overall criticisms to outweigh the central concerns that have prompted me to put my head above the parapet on this issue. But there is a time and a place to try to speak truthfully and carefully and just see what happens. You could say I'm being dramatic, paranoid even or engaging in hyperbole but if the machine ratchets one tooth further where will we be?

Comments or criticism are welcome but most importantly if you are moved one way or the other by this diatribe, write to the board with your endorsement of or protest at the proposed changes.

Submission close today after all. Either way, read Kafka's *The Trial* if you haven't already.

Regards,  
Ben Goodfellow.

An addendum: In the above I have chosen to focus on the incursions on free expression in the draft proposals however on reflection, the sections on culture are of almost equal concern. Very briefly, not all elements of all cultures are equal. To take two extreme but relevant examples, black magic and female genital mutilation are features of some cultures that are of course not compatible with good medical care in our society and as such, the spirit and detail of the sections in the draft giving precedence to families and individuals determining what is of cultural relevance to them should be excluded from any code of conduct in my view.