Medical Board of South Australia

Our ref: MBSA 528/08

30 October 2008

Ms Bronwyn Nardi
Chair
Practitioner Regulation Subcommittee
of the Health Workforce Principal Committee

By email: nraip@dhs.vic.gov.au

Dear Ms Nardi

Further to your request for a written submission in relation to the Registration Arrangements please find attached a submission from the Medical Board of South Australia. I take this opportunity to thank you for the extension of the 29 October 2008 deadline. If there are any points of clarification required please don't hesitate to contact me by telephone or email.

Yours faithfully

JOE HOOPER
REGISTRAR/CHIEF EXECUTIVE OFFICER

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NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS

CONSULTATION PAPER

Proposed Registration Arrangements

The Medical Board of South Australia (MBSA) wishes to make the following comments in relation to the paper:

3 Regulated professions

The MBSA notes under table 1 entitled Boards, Registers and Division of Registers that there are no divisions of the register of medical practitioners. South Australia along with other jurisdictions holds a general and specialist register. Whilst it is noted that there is general discussion of having an annotated register there is also considerable value in the Committee considering a separate specialist register with determined legal protection around the title of Medical Specialist.

There is also benefit in the public interest in terms of the transparency and reduction of any confusion as to who may be practising as a medical specialist within Australia. Currently the Committee would be aware that there are persons practising as specialists "who do not hold the necessary Australian qualifications". Indeed there are examples of practitioners practising as specialists who have also not engaged with their professional college, do not undertake regular continual practise professional development and have therefore not met the standards of those specialists who are fully qualified with their accredited specialist college. It is MBSA's view that the division of a register into a general and specialist register will resolve many of the aforementioned issues. Whilst this view is not shared by other states it is a position supported by MBSA.

4.2.1 d

Whilst there is a description on information of any complaints being made against the applicant being provided, the source of complaints goes as far as health complaints commissioners and other Commonwealth and State and Territory Bodies. The MBSA raises the following questions:

1. For what purpose is such information being made available?
2. In law if a doctor has been practising fully registered in another jurisdiction outside of the Commonwealth or in another state, what legal capacity would there be to use such information to alter that health professional's registration rights.

3. The 'signal' to 'noise' ratio of minor misdemeanors and complaints not relevant to the registration decision could be burdensome to administer.
4. The gathering of information and the impost on other health bodies or complaints agencies may be unnecessarily onerous and bureaucratic.

Therefore 4.2.1 d would require careful further consideration and limitations to information of value and high relevance to regulation.

4.2.1 g

Under *'any other information reasonably required by the responsible board'* it is suggested that specific known physical or health issues relevant to the practise of medicine may also be prescribed information required by the Board. Whilst this may be captured under (g) it may also be worth considering highlighting health as specific information within any legislation.

4.3 Criminal history checks

This matter has previously been considered by MBSA and other health professional boards. The MBSA would oppose the need for criminal history checks. Whilst the Board believes that criminal history checks are relevant, they believe this is an activity which should be undertaken by the following agencies:

1. The Department of Immigration for any IMGs entering Australia.
2. Employers who are seeking specific criminal history checks in relation to the area of practise or individual matters of relevance to that employer.
3. If undertaken by an employer they may be requested on a contemporary basis rather that on annual or other time duration basis and therefore be need specific and current.
4. The amount of information which would need to be considered by the boards would considerably delay the processing of any applications, even those of renewal.
5. It is not proven that there has been information of any particular value to affect registration decisions in those jurisdictions where criminal history checks have been commenced. Therefore whilst politically appealing it has negligible benefit for regulation purposes.
6. The burden upon the state and Commonwealth police for the undertaking of criminal check for some 600,000 health professionals on a regular basis seem overly burdensome, bureaucratic, costly and for little or any positive gain.
7. Criminal matters should be a matter of mandatory reporting by agencies and dealt with through the agencies upon notice of a breach rather than an exercise of annual checking to confirm negative results from the majority of cases.

Proposal 5.1:

The wording suggests as follows: *'It is proposed that the legislation define the qualifications for general registration to mean one or a combination of the following:'* The Board believes that registration should require successful completion of an approved course of study as a basic given requirement and then there may be a combination of supervised practice or further examination. Under the way that the proposal is written a person may seek to practise or meet the requirements of general registration merely by undertaking an approved period of supervised practise in the absence of the appropriate medical qualification. Whilst this would obviously be an absurdity, the manner in which the proposal is written lends itself to such an interpretation.

6.2 Who makes registration decisions?

There is a suggestion in the recommendation that if the workload is "relatively small" a single committee may carry out multiple statutory functions spanning registration, investigation and disciplinary functions either at the national or local levels. This raises the potential of contamination of committee members in relation to the consideration of these separate matters which may be running co-jointly in relation to any single applicant. However this is also a matter that may be determined by the national board under its procedures and natural fairness requirements.

Proposal 6.2.1:

The membership of the registration committee as made in the recommendation appears significantly over-engineered in relation to the purpose and functions of registration decisions. Many registration decisions are determined on the technical and professional knowledge of the board members. Whilst it is agreed that there should be community members present for matters of opinion and as a matter of normal policy it is not necessary to have either legal representation or indeed community representation as a matter of absolute need. Therefore the committee membership should not be prescribed but determined as per local requirements. Matters of appeal to decisions or where a board as opposed to a committee may be asked to further consider the matter may of course have an expanded membership. However the technical nature of the registration committee does not require the broad membership which is included within 6.2.1.

Proposal 6.4.1: *d*

It is noted there is a recommendation if the applicant has been convicted or made the subject of criminal findings then they may be rendered an unfit applicant in the public interest to practise in the regulated profession. This proposal may be difficult to sustain in law given that a person has been punished by society for the crime and is deemed to be rehabilitated. Nonetheless one can

see the moral and perceptual arguments which may be popular for the inclusion of this recommendation in legislation. It is therefore recommended that where there are serious offences that these offences be prescribed in the legislation barring the individual from being suitable to apply for registration in a regulated profession. To leave any legislation so broad as for the individual national board to determine those offences which would render the person unsuitable for application may be fraught with legal challenge costs and variance across professions.

Proposal 6.5.2:

It is noted that legislation would require the board's decision to be referred to an appropriate review body "the relevant State or Territory tribunal" in relation to refusal of application. Presently there is a requirement in order to serve natural justice that a judicial review may be held on any board decision including the decision to refuse an application. There is no current merits review of a medical board or committee's decision. Therefore whilst the Board does not oppose the inclusion of this review it may incur an additional cost. Initial review of any refusal to do this may be held at the local committee level with a review of that by the national board as necessary or a sub-committee of the national board designated for review purposes. Therefore an interim step requiring an internal review may be a more cost efficient and expeditious way to treat initial refusals.

Proposal 6.6.1

The list of reviewable decisions noted needs to be less prescriptive. Firstly not to provide any direction in relation to review and certainly not bind the applicant to the points of review, therefore acting in the applicants interest and secondly, not to bind the board/committee or to incur a necessary and additional costs through automatic rights of review.

In other words the legislation in this regard needs to be more enabling and broad rather than prescriptive as it is presently suggested.

Proposal 7.1:

TABLE 2: PROPOSED TYPES AND SUB-TYPES OF REGISTRATION

Again the MBSA would argue for a divided register holding general and specialist registration.

Whilst the MBSA recognizes that the term specific is not ideal it holds no objection to this term. It does note under h. in Table 2 that a person is considered limited in the public interest if it so considered so by the responsible board. The MBSA would recommend that is the board and the local state or

territory minister who should provide letter of support in determination of a public interest position.

Proposal 7.3.1

In keeping with the principle supporting 7.3.1 with the increase of transparency and the better targeting of competency requirements and noting the comment about the lack of clarity about what a registrant who is non practising is and is not authorized to do, the same comments can be equally applied to those states who hold general annotated registers in terms of public lack of understanding on the clarity of the meaning of the information appearing on the register.

7.4 Student registration

The MBSA supports option 1 in relation to legislation of powers to regulate students for their whole of their medical education not just at the time they enter clinical service.

7.5 Corporate registration

The MBSA supports that corporate registration not be included as part of the national regulation scheme. However the MBSA currently does have jurisdiction over medical service providers. Whilst this is not seen to be a popular decision and MBSA has raised concerns about the inclusion of corporate registration within its jurisdiction due to significant difficulties of compliance costs and enforcement, it is nonetheless important that the practitioner regulation sub-committee does recognize the importance of the regulation of corporate health and the growing impact of corporate health on public safety. Whilst it is not recommended that a medical professional body is necessarily the appropriate regulator of corporate medicine, it nonetheless does require high level consideration as to which body would be appropriate. This does require further consideration and it may be that a national medical board is the appropriate body or may be the appropriate body to lay action against a corporate medical provider before another agency such as the Australian Competition and Consumer Commission.