

Submissions received for Codes and Guidelines

Background

The *Health Practitioner Regulation National Law Act* (the National Law) as in force in each state and territory empowers a Board under s39 and s40 to develop and approve codes and guidelines to provide guidance to health practitioners it registers; and about other matters relevant to the exercise of its functions. The National Law requires the Board to ensure there is wide-ranging consultation on the content of any proposed code or guideline.

Accordingly, the Occupational Therapy Board of Australia (the Board) developed a consultation paper comprising of the common National Board guidelines for Advertising and Mandatory Notifications, together with the Code of Conduct for Registered Health Practitioners.

The consultation paper preamble noted that the proposed code and guidelines are common across the 10 health professions that are currently regulated under the National Registration and Accreditation Scheme (NRAS) and have been in place since the start of the scheme on 1 July 2010. Preliminary drafts were subject to extensive public consultation so the proposed codes and guidelines had the benefit of having been tested through their implementation for the 10 health professions currently regulated.

The consultation paper sought feedback on:

1. Draft Guidelines on Advertising

This includes what is acceptable advertising, such as factual statements about the services a profession provides. The Guidelines also define what is unacceptable, such as not disclosing risks associated with a treatment. The Guidelines clarify the acceptable use in advertising of titles, warning statements, advertising of price and how to complain about a breach of the Guidelines.

2. Draft Code of Conduct for Registered Health Practitioners

Addressing issues like providing good care, effective communication, confidentiality and privacy, informed consent, adverse events and open disclosure, maintaining professional boundaries, health records, conflicts of interest, and financial and commercial dealings.

3. Draft Guidelines for Mandatory Notifications

These guidelines explain the situations when a health practitioner or their employer must notify the Board through the Australian Health Practitioner Regulation Agency (AHPRA) about a registered health practitioner's misconduct. There are four types of misconduct: intoxication, sexual misconduct, impairment, and significantly departing from accepted professional standards.

Submissions

A total of 11 submissions were received during the 7-week consultation period. Submissions which were approved for website publishing are available at the Board's website:

www.occupationaltherapyboard.gov.au/News/Past-Consultations.aspx

Draft Advertising Guidelines

The National Law includes obligations in relation to advertising by registered health practitioners (see s133). The ten National Boards have developed advertising guidelines that clarify the Boards' expectations of practitioners in this area. The guidelines were implemented from the start of the NRAS on 1 July 2010 and apply to each of the ten professions currently regulated under NRAS. The guidelines are accessible on their Board websites and through the AHPRA website.

As the National Law obligations regarding advertising will also apply to the occupational therapy profession from 1 July 2012, the Board considers it appropriate to implement the current advertising guideline to help guide the profession.

The Board noted that the submissions received supported the Advertising Guidelines. The Board considered the issues raised by submissions and formed the following opinion:

- The inclusion of "social media" to the broad definition of advertising. The Board noted that cross-board work is underway on a Social Media Policy for all nationally regulated professions which will provide further guidance on this issue.
- Section 5 (d) in the guideline "what is unacceptable advertising" notes use of testimonials or purported testimonials, no change will be proposed to be made to clarify this in the definition.
- Section 4 of the guideline "what is acceptable advertising" provides indicative examples of what may constitute acceptable advertising. Subsequently no change will be proposed to be made to clarifying consent or using reputable research given that these issues are already captured.
- AHPRA will consider proposed changes for all 14 professions to consider regarding the Australian Government's position paper on the promotion of therapeutic goods. The 2012 NRAS professions (which include occupational therapy) will be able to consider the effect of this position paper in due course which may result in further changes to this guideline.

Draft Code of Conduct for Registered Health Practitioners

The common Code of Conduct developed by the 10 National Boards seeks to help and support registered health practitioners to deliver effective health services within an ethical framework. Practitioners have a duty to make the care of patients or clients their first concern and to practise safely and effectively.

Maintaining a high level of professional competence and conduct is essential for good care.

The Code contains important standards for practitioner behaviour in relation to:

- providing good care, including shared decision making
- working with patients or clients
- working with other practitioners
- working within the health care system
- minimising risk
- maintaining professional performance
- professional behaviour and ethical conduct
- ensuring practitioner health
- teaching, supervising and assessing.

Occupational therapists commonly work within ethical and professional conduct frameworks – some are set by their employers, others by professional associations. With the move to national registration, there is an opportunity for the Board to develop a common and national code of conduct to guide the profession, and to clarify the Board's expectations of registrants.

The Board considers it appropriate to use the current common Code of Conduct as a basis to help guide the profession with one change (i.e. the removal of the reference to information about government funded interpreter services being available on the Australian Government Department of Immigration and Citizenship website at section 3.3 (i) of this code).

In addition, whilst support for the draft Code of Conduct was noted, the Board agreed that some alteration should occur, these are summarised as follows:

- for section 1.2 “professional values and qualities” the addition of the term non-discriminatory was agreed: Good practice is centred on patients or clients. It involves practitioners understanding that each patient or client is unique and working in partnership with patients or clients, adapting what they do in a non-discriminatory manner to address the needs and reasonable expectations of each person.
- In section 2.2 the addition of the term “good care” was agreed to be put forward:
 - o) evaluating practice and the decisions made in good care.
- In section 4.4 “teamwork” support for students and supervisees was agreed to be put forward as follows:
 - g) including support for students and practitioners receiving supervision within the team.

No change was agreed following requests for a reference to association-specific policies, standards or codes. The Board considered this was inappropriate as non-members cannot access this information.

The Board considered but decided not to adopt further general feedback received on this code.

Draft Guidelines for Mandatory Notifications

The Board noted that the submissions received reflected support for the draft Guidelines for Mandatory Notifications.

Clarification on the wording for the first and last points under Section 4 “exceptions to the requirement of practitioners to make a mandatory notification” were agreed to be put forward to correct typographical errors, to read as:

- is employed; for example, a contractor employed by a professional indemnity insurer...
- is a treating practitioner, practising in Western Australia.

Finally, the Board noted the submission of the Occupational Therapy Board of New Zealand and it was resolved to investigate any possible harmonization of policies and standards with them.

Recommendation

Based on the above considerations the Board has agreed to publish the current codes and guidelines that are common across the 10 currently regulated health professions.

As the Board has however made careful consideration of the submissions received, and that whilst these changes do not substantively alter the content, the Board notes that they will improve clarity and workability. These changes will therefore be commended to AHPRA for consideration by all Boards, as part of the general review timed for late 2012.