AUSTRALIAN MEDICAL COUNCIL
INCORPORATED
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PRODUCTIVITY COMMISSION REVIEW OF MUTUAL RECOGNITION SCHEMES

Overview

The Australian Medical Council (AMC) is the national standards body for medical education and training. The AMC purpose is *to ensure that standards of education, training and assessment of the medical profession promote and protect the health of the Australian community.* The major functions of the AMC include:

- the accreditation of medical schools and courses (basic medical qualifications) in Australia leading to registration [1]
- the accreditation of specialist medical education and training in Australia
- the assessment of International Medical Graduates (IMGs) for non-specialist registration and, in conjunction with the Specialist Medical Colleges, for registration as specialists
- the development of nationally consistent approaches to medical registration.

The AMC has been involved with Mutual Recognition since its inception in 1992. The AMC was given the responsibility of developing the national computer network of medical registers (the National Compendium of Medical Registers [NCMR]) to facilitate the implementation of mutual recognition for medical practitioners.

Through its Standing Committee, the Joint Medical Boards Advisory Committee (JMBAC), the AMC has worked closely with Medical Boards on mutual recognition related issues. The membership of the JMBC consists of the Presidents/Chairs and the Chief Executive Officers/Registrars of the State and Territory Medical Boards.

The JMBAC, within its charter, has developed national policies relating to the registration of medical practitioners to underpin the Mutual Recognition scheme. These include:

- National English Language Proficiency Policy for International Medical Graduates (2005)
- National Identification Validation Standard for Medical Registration Applicants (2006)
- National Policy on Flagging of Registration Entries [Alerts] (2007)
- National Policy on Certificates of Registration Status (2007)
- National Policy on Technology Based Patient Consultations (2007)
- National Policy on the Verification of Medical Qualifications for Registration (2007)

Response to the Productivity Commission Issues Paper

Section 4 – Interaction with Other Legislation

A major limitation with the current Mutual Recognition (MR) scheme, when it was implemented in 1992, had been the lack of integration with other related legislation, such as, in the case of medicine, the various *Poisons Acts*. Although the MR scheme provided for the exchange of

[1] The AMC also reviews and accredits medical schools in New Zealand for registration in Australia.

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information between jurisdictions, the failure to harmonise provisions within jurisdictions could result in gaps in information that was provided to Medical Boards in other jurisdictions. In at least one state the authority that monitored the *Poisons Act* was not obliged to inform the relevant Medical Board when it had imposed restrictions on the prescribing rights of individual practitioners. When these practitioners sought to move interstate under MR, the Board concerned was not aware of the restrictions and could not notify the Board in the second jurisdiction.

The proposed Council of Australian Governments (COAG) initiatives for a single national registration scheme for health professionals will address many of the cross jurisdictional issues that presently arise with the regulation of the health professions. However, experience with the MR scheme highlights the need to ensure that all related legislation is harmonised with the new national registration framework to ensure that public safety is maintained.

Section 4 – Exemptions and Exclusions

The JMBAC of the AMC supports the continuation of the exclusion of medical practitioners under the provisions of the *Trans Tasman Mutual Recognition Arrangement (TTMRA).* The JMBAC would also like to clarify with the Productivity Commission, that the ***general registration*** of New Zealand medical practitioners in Australia is not automatic and that an application process exists for this procedure, essentially the same procedure that applies to Australian medical graduates registering to practise medicine in Australia.

Trans Tasman Mutual Recognition Arrangement

In discussion on this issue the JMBAC provided clear support for retaining the exclusion of medical practitioners under the TTMRA. This support stems from the fact that not all medical practitioners, registered in New Zealand, would necessarily be at a standard equivalent to that of medical practitioners granted *general registration,* to practise in Australia. This arises from the fact that New Zealand applies different standards to the recognition of some International Medical Graduates to those applying in Australia.

Should MR become available to medical practitioners registered in New Zealand, it may be necessary to allow for additional conditions to be imposed to facilitate mutual recognition, given the difference in standards for recognition of International Medical Graduates. The conditional registration of medical practitioners in such circumstances is a public protection mechanism.

General Registration of New Zealand Medical Practitioners

Currently provision exists for graduates of New Zealand medical schools, that have been accredited by the AMC, to apply for general registration in Australia, in the same way that any graduate of an AMC accredited medical school in Australia may apply for registration. However, as indicated above, such an application would not automatically lead to general registration, as the Medical Boards may impose additional conditions or educational requirements, such as completion of an approved internship or period of supervised practice. This process permits medical boards to ensure that those medical practitioners from New Zealand, applying for general registration, are at a standard that would be equivalent to an Australian medical practitioner who applies for and is successful in obtaining general registration.

Section 5 – Occupations: Differences between Jurisdictions

The Mutual Recognition scheme operated on the principle that the standards applying to the practice of an occupation in one jurisdiction should be sufficient to allow an individual registered in that jurisdiction to practise in that occupation in any other jurisdiction in Australia, subject only to notifying the relevant registration authority in the second jurisdiction.

In terms of medical practitioners, the equivalence of occupations has never been a major issue, since Health Ministers had agreed in 1991, before the implementation of the MR scheme, on national standards for general registration and the registration of specialists. However, in the time since the MR scheme was implemented, there has been a steady divergence of legislation and regulatory practice. A recent audit of registration arrangements for medical practitioners by the National Health Workforce Taskforce found that despite the various efforts to achieve some consistency in arrangements considerable variation continues to exist across the states and territories concerning legislative requirements for the registration of doctors in relation to:

- registration processes, including checking of identity and qualifications
- reporting obligations on registrants
- availability of information on public registers
- powers of Medical Boards regarding investigations and disciplinary matters.

In the case of the health care sector, it is expected that the implementation of the COAG national registration and accreditation scheme from 1 July 2010 should alleviate the current variation in legislative provisions and administrative practices. However, many of these variations appears to have arisen in response to particular local/jurisdictional issues and it is unclear how the new national arrangements will accommodate these "local" needs/responses within a nationally consistent framework.

Conditions and Pre-requisites

All Medical Boards conduct a variety of regulatory programs, in addition to their complaints and disciplinary systems. These programs include health or impairment programs, and programs designed to address questions of substandard performance. On a literal reading of Section 33 of the *Mutual Recognition Act*, it could be argued that conditions or sanctions imposed as a result of Health or Performance programs (which are described as non-disciplinary or remedial programs) would not automatically apply in other jurisdictions. However, as a practical matter, medical boards take a broad view of the word "disciplinary" in this provision, and are prepared to apply all conditions across jurisdictional boundaries.

These programs are in the main intended to protect the public, whilst at the same time maintain in the health workforce, a medical practitioner placed under the scrutiny of some form of condition, either voluntary or imposed. The two largest (numerical registrants) Medical Boards have well defined and clear processes for managing doctors using these health or performance programs. Below are overviews from the New South Wales Medical Board and the Medical Practitioners Board of Victoria in relation to these processes. All other state and territory Medical Boards have similar process in place. The processes adopted by the medical boards of New South Wales and Victoria are described below for reference purposes.

The Medical Board of New South Wales has clear guidelines describing its performance program:

> *'The Performance Program, introduced in October 2000, represents the culmination of intensive research, consultation and development. The Medical Board aims to ensure practitioners' fitness to practise, and the Performance Program is central to this aim. The Program is designed to complement the existing conduct and health streams by*

providing an alternative pathway for dealing with practitioners who are neither impaired nor guilty of professional misconduct, but for whom the Board has concerns about the standard of their clinical performance.

The program is designed to provide an avenue for education and retraining where inadequacies are identified, while at all times ensuring that the public is properly protected. It is designed to address patterns of practice rather than one-off incidents unless the single incident is demonstrative of a broader problem.

The professional performance of a registered medical practitioner is defined to be unsatisfactory if it is below the standard reasonably expected of a practitioner of an equivalent level of training or experience. In addition, the Board has set out its expectations of registered medical practitioners in its document 'Good Medical Practice: Duties of a Doctor Registered with the NSW Medical Board.'

The causes of poor performance are many and varied. Professional isolation and inattention to continuing professional development are common contributing factors. On occasions, doctors present with adequate knowledge, but an inability to apply it in their day to day practice. This may be due to external, 'distracters' such as illness and financial stress which may influence practitioner performance in the short or longer term.[2]

The Medical Practitioners Board of Victoria also has performance programs:

On 1 July 2003, the Board was granted additional powers that enable it to work with medical practitioners who are performing unsatisfactorily in a constructive and non-disciplinary way. This investigative pathway is intended to support the profession to maintain high professional standards while the Board meets its responsibility to protect the public. The performance pathway helps medical practitioners avoid the Board's disciplinary procedures and is designed to be flexible and to facilitate negotiation with the medical practitioner concerned.

These powers allow the Board to arrange for an independent peer assessment of medical practitioners who are believed to be performing unsatisfactorily, to identify whether there are deficiencies in performance and if so, to define the deficiencies. The doctor who is found to be performing unsatisfactorily will be encouraged to take remedial action in order to remain in safe, active and useful medical practice.[3]:

Although individual Medical Boards have provisions to impose conditions and undertakings, these may not always provide the level of protection required across jurisdictional boundaries because of the impact of the MR scheme. The recent audit of legislative provisions and policies in relation to medical registration by the National Health Workforce Taskforce found that there appeared to be some confusion about the status of undertakings under the *Mutual Recognition Act.* The audit found:

Where a board has entered into an undertaking with ...an impaired registrant, or has applied conditions to their registration but without a disciplinary hearing, it appears that under the Mutual Recognition Act, the undertakings or conditions cannot be applied in a second jurisdiction without the agreement of the practitioner and may not become apparent from a search of the first jurisdiction's register.[4]

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[2] http://www.nswmb.org.au/index.pl?page=6
[3] http://medicalboardvic.org.au/content.php?sec=31
[4] National Health Workforce Taskforce draft options paper *Sharing of Information Across Jurisdictions Regarding Medical Practitioners* May 2008.

Jurisdiction Shopping and Hopping

The potential for individual practitioners to use the MR scheme to circumvent conditions or requirements remains a concern under the current multi-jurisdictional regulatory environment. This highlights the need to ensure consistency of standards and policies across jurisdictions. In the case of medicine, there were examples of IMGs, who are required to complete 12 months of supervised training after passing the AMC examination, using the MR scheme to by-pass this condition. The individuals were able to apply for and were granted general registration in jurisdictions with workforce shortages or more liberal application of the supervised practice requirements. They would then re-apply for general registration under MR in the original state of residence and circumvent the supervised practice requirement.

Over time this problem has diminished as Medical Boards become more aware of mutual obligations imposed by the MR scheme. Under the new COAG national registration and accreditation scheme, jurisdiction shopping should be avoided. However, the potential for the "local" (standing) committees of the National Profession Specific Boards to adopt different approaches to resolve individual cases remains and issue and will require careful monitoring by the National Boards if inconsistencies and problems are to be avoided.

Shift to National Licensing

There is no doubt that the move to a single national licensing scheme will address many of the limitations imposed by the current multi-jurisdictional environment. In the case of medicine, the requirement for a practitioner to hold current registration in each jurisdiction in which he or she provides clinical treatment to a patient is seen to impose unnecessary costs and barriers to the provision of health services. This has a particular impact on:

- rural locum relief services across state boundaries
- provision of services by bodies such as the Royal Flying Doctors Service
- telemedicine services.

Although there have been a number of attempts to address the problem of multi-jurisdictional registration, many of these have run into problems as a result of the MR scheme. The 2004 proposal to develop a scheme for national portability of registration stalled because of the impact of MR on the capacity of individual Boards to impose sanctions or conditions and the withdrawal of portability as a result of conditions being imposed.

Section 7 - Overseas Models of Mutual Recognition

The AMC understands that the current MR scheme in Australia closely follows the model developed in the European Union. This model has significant advantages over other models of mutual recognition because of the enabling legislation which underpins the scheme. In Canada, the Provinces have adopted principles for a mutual recognition scheme. However, in the absence of enabling legislation to give effect to the MR scheme, which would take precedence over the existing Provincial legislation, the Canadian MR scheme does not appear to have made the progress that has been achieved in the Australian and in the EU mutual recognition models.

Canberra
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