

I welcome the opportunity to make a submission to the Medical Board of Australia regarding Revalidation.

I have read with interest the following documents:

- *Medical Board of Australia-Media Statement Dated 16 August 2016*
- *Expert Advisory Group on Revalidation-Interim Report-Executive Summary*
- *Expert Advisory Group on Revalidation-Interim Report*
- *Options for Revalidation in Australia-Discussion Paper*

These informative documents have provided the framework on which this submission is based.

This submission will focus on two issues:

1. Issues I have with the current proposals with regard to CPD and concerns (from experience) about the way in which the Medical Board is dealt with those members of the Faculty identified as “at risk and poorly performing”.
2. Current obligations of members of the Faculty of Forensic Psychiatry with regard to continuing medical education, ongoing professional development and significant legal obligations with regard to civil medicolegal practice.

In this context it is useful to provide some background information.

The RANZCP is a membership organisation responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP currently has more than 5500 members, including more than 4000 fully qualified psychiatrists and around 1400 members who are training to qualify as psychiatrists. The RANZCP has a number of Faculties. Each faculty recognises particular areas of expertise.

Psychiatrists must be accredited by the RANZCP before they can practice. All psychiatrists are obliged to behave in accordance with the College Code of Ethics. (See attachment)

The principles are as follows:

1. *Psychiatrists shall respect the essential humanity and dignity of every patient.*
2. *Psychiatrists shall not exploit patients.*
3. *Psychiatrists shall provide the best attainable psychiatric care for their patients.*
4. *Psychiatrists shall strive to maintain confidentiality of patients and their families.*
5. *Psychiatrists shall seek valid consent from their patients before undertaking any procedure or treatment.*
6. *Psychiatrists shall not misuse their professional knowledge and skills.*
7. *Psychiatrists involved in clinical research shall comply with ethical principles embodied in national and international guidelines.*
8. *Psychiatrists shall continue to develop, maintain, and share their professional knowledge and skills with medical colleagues, trainees and students, as well as with other relevant health professionals and patients and their families.*

9. *Psychiatrists have a duty to attend to the health and well-being of their colleagues, including trainees and students.*
10. *Psychiatrists shall uphold the integrity of the medical profession.*
11. *Psychiatrists shall work to improve mental health services and promote community awareness of mental illness and its treatment and prevention, and reduce the effects of stigma and discrimination.*

The Faculty of Forensic Psychiatry

The Faculty of Forensic Psychiatry (FFP) is a body of expert psychiatrists that promotes the highest standards in professional practice, training and research pertaining to forensic psychiatry.

Forensic psychiatry

Forensic psychiatry is a psychiatric subspecialty relating to the law and the assessment of mental health in the civil and criminal justice system.

Aims

The Faculty aims to:

- *promote the objectives of the College relating to forensic psychiatry*
- *advise on training in forensic psychiatry through the subcommittee of advanced training*
- *advance and disseminate research in forensic psychiatry*
- *contribute to and promote the highest standards of professional practice.*

In addition to the College Code of Ethics, Fellows of the Faculty of Forensic Psychiatry are obliged to follow College Code with Regard to Medicolegal Reports (attachment)

In the civil area, practitioners are primarily involved in assessing claimants with regard to workers compensation claims, transport accident claims, personal liability claims, insurance claims and a variety of other similar matters.

The task of the psychiatrist in the civil area is to provide a report to the referring party responding to questions that are asked producing an opinion. The psychiatrist is provided with a variable amount of documentation. There are significant obligations with regard to seeing claimants including:

- being punctual
- being courteous
- providing adequate time for the interview
- providing appropriate accommodation including facilities for people with disabilities
- avoiding advocacy for either the claimant or the referring party
- providing a comprehensive report and opinion within a specified timeframe
- responding to request for supplemental reports
- being available for court appearances as required
- there is no treatment obligation
- confidentiality with regard to the report cannot be guaranteed

The recommendations include:

1. maintaining and enhancing the performance of all doctors practising in Australia through efficient, effective, contemporary, evidence-based continuing professional development (CPD) relevant to their scope of practice ('strengthened CPD'), and

2. proactively identify doctors at-risk of poor performance and those who are already performing poorly, assessing their performance and when appropriate supporting the remediation of their practice.

The Expert Advisory Group (EAG) proposes that medical practitioners in Australia should participate in three core types of CPD, with activities prioritised to strengthen individual performance. A summary is provided of the core types of CPD.

1. Undertaking educational activities:

1. lectures
2. conferences
3. Reading
4. research
5. supervision
6. workshops
7. grand rounds
8. online learning

2. Reviewing performance:

- (1) peer review of performance
- (2) peer-review of medical records
- (3) peer discussions of cases, critical incidents, safety and quality events
- (4) multisource feedback from peers, medical colleagues, co-workers, patients, other health practitioners.

3. Measuring outcomes

1. clinical audit
2. review of medical records
3. mortality and morbidity reviews
4. clinical indicators
5. comparison of individual data with local, institutional, regional datasets
6. review of individual and comparative data from de-identified large datasets e.g. Medicare, PBS

I have carefully noted the suggested activities and have tested them against the type of work done by forensic psychiatrists in the civil area. I have significance concerns about the applicability of some of these components.

There is no treatment obligation for a psychiatrist working in this area. The only records held are the notes taken during the interview and the final report and opinion. Since there is no treatment provided, issues with regard to measuring outcomes have little meaning nor do peer-review of medical records. Since forensic psychiatrist do not work in hospital settings the question of grand rounds is not appropriate. Multisource feedback is problematic and could include feedback from peers, claimants and possibly referring bodies including WorkCover insurance claims agents, the Transport Accident Commission and plaintive lawyers. However the other groups recommended are not appropriate.

I support the revised CPD program of the college as noted below, but with caveats.

The second component of the revalidation process focuses on at risk and poorly performing medical practitioners. Members of the Victorian Branch of the Faculty have had very negative experiences of this process during the last 12 months.

Two of our members have had four notifications made to AHPRA of which the first three were investigated and it seemed there was no case to answer. Each notification was with regard to the manner of the psychiatrist, no substantive issues were raised about the quality of the report or of the opinion expressed. The fourth notification for each of the two practitioners led to a practice visit with two psychiatrists involving a whole day during which time medical records of all types were accessed and the two psychiatrists sat in on interviews with claimants raising major issues with regard to privacy. The two practitioners involved found it a very stressful experience from which they learned nothing.

Members of the Victorian Branch regarded the process undertaken as draconian, expensive, time-consuming, stressful and had significant concerns about the way in which claimants' privacy was managed.

Current Obligations of Members of the Faculty of Forensic Psychiatry

The Royal Australian and New Zealand College of Psychiatrists

In 2017 it will become mandatory for all psychiatrist to be involved in the RANZCP CPD program. The College has recently revised its long established Continuing Professional Development Program.

In the context of the announcement of the initiatives to develop revalidation by The Medical Board of Australia the RANZCP determined that the CPD program should be reviewed and redeveloped to reflect a program that would enable members to satisfy any regulatory requirements without adding any extra burden. Therefore as a part of its usual processes the College undertook redevelopment of the current Continuing Professional Development (CPD) program commencing in 2014.

As part of the review the Committee for Continuing Medical Education (CCME) undertook a benchmarking exercise with other Psychiatry training bodies, other specialist medical colleges and jurisdictional requirements. A literature review was also conducted and College Fellows attended meetings and workshops held by the Medical Board of Australia and the Committee of Presidents of Medical Colleges (CPMC). The information gathered from these sources supported development of a set of underlying principles on which to base a revised CPD program, recognising the need to build trust and accountability with patients, carers and the community.

A working party was formed to review and refresh the CPD program. The review and development of the CPD program was communicated to all members through the College newsletter during 2015 and members were invited to contribute to the discussion. The communication flagged that the College was considering the inclusion of various activities including an optional activity in multi-source feedback to assist in reflection, goal setting and further skill development. The inclusion of this optional tool was later approved as part of the revised framework.

The review of the CPD program was completed in November 2015.

The redevelopment of the current framework and the provision of a user friendly and easily deciphered program was intended to provide an easier overall CPD recording, reflection and claiming process for participants. The CPD program now emphasises both self-directed education and practice improvement activities as essential elements of modern CPD, in keeping with current research. As part of the redevelopment process the Board of the RANZCP approved the following changes:

- amend the current combination of hours and credits to hours for clarity
- removal of the triennium program and a process implemented to allow for temporary breaks in CPD to be assessed for exemption on a case by case basis by the CCME
- condense the current 5 sections of the CPD framework into 4 sections, each with a required component
- include a Practice Development, Quality Improvement and Review activity
- use College templates to provide consistency when recording CPD activities.

There is no adjustment made to the minimum hours required, which remains at 50 hours annually.

In summary, the required components of the new program annually are;

- completion of a Professional Development Plan (PDP) (set at a standardised 5 hours),
- 10 hours of peer reviewed activities,
- 5 hours of a form of practice review / quality improvement activities and
- at least 25 hours of self-guided learning.

Although completion of each of these components is a requirement for Fellowship commencing in January 2017, the Program allows for substantial flexibility for members to achieve them in a variety of ways, which best suits their scope of practice.

Some of the features of the RANZCP CPD program mirror those recommended by the Medical Board and raise similar concerns.

At the moment members of the Victorian Branch of the Forensic Faculty are involved in the following activities and must meet the following obligations:

Peer Review

Most members of the Faculty of Forensic Psychiatry meet monthly in peer review groups and at those times attend presentations with regard to the area of Forensic Psychiatry and see this as part of their CPD obligations.

External Obligations

All Victorian members of the Faculty of Forensic Psychiatry who provide reports must agree to follow the procedures outlined in The Victorian WorkCover Authority Handbook for Independent Medical Examinations (attachment) and the Transport Accident Commission Joint Medical Examination and Guidelines (attachment).

There are a number of areas of the VWA Handbook that are of particular relevance with regard to this investigation especially the following.

Service Standards

Service standards applicable to independent medical examinations are as follows:

1. Appointments:

1.2 On date of appointment, injured workers will not be kept waiting for an unreasonable period of time.

2. Conduct of examinations:

2.1 Injured workers attending Independent Medical Examinations will be interviewed and examined with care, consideration and courtesy.

2.2 Independent Medical Examinations will be conducted in accordance with recognised professional standards and applicable law.

2.3 The length of the independent medical examination will be sufficient to make a fair and comprehensive examination of the injured worker with a view to answering the questions asked by the Report Requestor.

2.4 The Independent Medical Examiner should ask the Report Requestor to contact the injured worker's treating practitioner where clarification of an issue is required. If the Independent Medical Examiner makes direct contact with the injured worker's treating practitioner, the Independent Medical Examiner must obtain the injured worker's consent in writing before contacting the treating practitioner.

The TAC Joint Medical Examination Guidelines covers a number of areas requiring examiners to follow the guidelines including:

Conduct during examination

6.18

It is expected that an examiner will treat claimants undergoing assessments with the same professional standards of care, consideration and courtesy that a private patient would expect.

Court Appearances

Members of the Victorian branch faculty have an obligation to attend court when required as expert witnesses. In this capacity they are required to follow the obligations imposed by the **Victorian Civil Procedures Act 2010**.

Civil Procedure Act 2010

Requirements for Expert Witnesses

The Civil Procedure Act 2010 ("the Act") came into effect on 1 January 2011. Its main purpose is to reform and modernise the laws, practice, procedure and processes in relation to civil proceedings in the Supreme Court, the County Court and the Magistrates' Court, and to provide for an overarching purpose in relation to the conduct of civil proceedings to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

To achieve that purpose, the Act outlines a number of overarching obligations. These apply to expert witnesses in a civil proceeding. They are:

- (i) *to act honestly.*
- (ii) *to cooperate in the conduct of civil proceedings, with the parties and the court.*
- (iii) *not to engage in conduct that is misleading or deceptive or likely to mislead or deceive.*
- (iv) *to narrow the issues in dispute.*
- (v) *to ensure costs are reasonable and proportionate (being proportionate to the complexity or importance of the issues in dispute, and the amount in dispute).*
- (vi) *to use reasonable endeavours to act promptly, and minimise delay.*

In addition, each person to whom the overarching obligations apply has a paramount duty to the court to further the administration of justice in relation to any civil proceeding in which that person is involved.

Claimants who have concerns about the way they have been dealt with by the Independent Medical Examiner or who have concerns about the content or opinions expressed in the report have several avenues to pursue in making a complaint

The Victorian Transport Accident Commission
The Victorian WorkCover authority
The Health Services Commission
The Medical Board of Victoria (a component part of AHPRA)

Conclusions

I and others believe that the current ethical guidelines, the relevant codes of conduct and an appropriate CPD program are central to maintaining the integrity of the system of medicolegal assessment. The process of medicolegal assessment is vital for the correct operation of benevolent schemes such as WorkSafe and the Transport Accident Commission. I believe that our obligation is to treat claimants with respect, dignity and courtesy. I believe it is our obligation to be aware of current literature in our field. I believe it is also our obligation to provide a comprehensive report responding to questions that are asked to assist courts and tribunals. It is our obligation to provide an expert opinion and we endeavour to do this.

In any system there must be appropriate checks and balances to make sure abuses of power are less likely and if they do occur there is a capacity to quickly recognise and redress the situation and in suitable situations provide appropriate sanctions. We are obliged to:

- follow a code of ethics
- to participate in the RANZCP CPD program including attending monthly peer review meetings
- to certify on each report that we have followed the Requirements for Expert Witnesses of the Victorian Civil Procedures Act 2010
- to conform with the Victorian WorkCover authority Handbook for Independent Medical Examinations that provides for independent review of reports and the TAC JME guidelines
- Potentially, every independent medical examiner may be subject to court appearance and cross examination
- Claimants have several avenues to register complaints with regard to their experience of

seeing an Independent Medical Examiner that can lead to significant sanctions.

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I strongly support, in principle, the proposed Revalidation process. However I believe that one size does not fit all. The types of practice undertaken by members of the faculty working in the civil area do not readily conform with the CPD requirements listed in the options paper. Furthermore although in principle very supportive of managing “at risk and poorly performing medical practitioners” our experience has been very negative. I think that this is an area that has to be approached with considerable sensitivity, bearing in mind the fundamental role of the Medical Board, if the process is to achieve credibility in the profession.

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