

S H Lai

7 October 2011

Dear AHPRA and CMBA members,

I am writing to object to the Pre-2008 condition for the Grandparent category proposed by AHPRA's Chinese Medicine Board (CMBA) in the draft paper published in September 2011.

I

The condition would effectively put an Advanced Diploma holder like myself, who is currently practicing LEGALLY, but would not have accumulated 5 full years of practice by 2015, out of business.

I would lose my only source of income, after investing time and financial resources into the study for an Advanced Diploma which, up until the new requirements become effective, is an acceptable qualification to practice, being recognized by all professional bodies and most major health funds.

My hundreds of clients would not be able to get treatment from me. That would mean tens of thousands of people losing access to their usual TCM practitioners like myself. Surely this is not in the interest of the public.

My reputation as a TCM practitioner would be damaged.

II

The Pre-2008 condition would make the legislation 'RETROSPECTIVE' which is blatantly unjust. This form of autocratic legislative practice is rare, if not unheard of, in a civilized, democratic and developed administration like

Australia.

III

The 2007/2008 dividing line is arbitrary and unjustifiable. If the Victorian process of ‘putting all known colleges on notice that Advanced Diplomas would not be approved at all after the end of 2007 ‘ is the basis for the timeline, then it is clear that the arbitrary dividing line is a mistake borne out of:

- a) confusion/ignorance about the legal boundaries between State Legislations and Federal Legislations**
- b) unfamiliarity with the legislative process**

These assertions call into question the competency of the Board.

If no sound logic can be provided for the basis of the 2007/2008 timeline, then one could only arrive at the conclusion that the dividing line satisfies a pre-determined agenda not disclosed to the public, which calls into serious question:

- the Board’s credibility**
- the sincerity of the consultation process**

IV

If, indeed, all known colleges, including those outside of Victoria, were put on notice by an authority at the Federal level, then I ask the Board to present a copy of the communication and the recipient list.

If the notice originated from the Victorian Chinese Medicine Board, then it clearly did not have the authority outside the jurisdiction of Victoria, let alone dictating national legislations.

If this ‘putting on notice’ pre-determined the national registration requirements, then the Government has failed to communicate such an important decision to Advanced Diploma holders and students.

Furthermore, I ask that the Government explain the legal grounds for pre-determining future legislations as the ‘pre-determination’ is an act of contempt that undermines the legislative process.

Finally, I ask that the Government provide its definition of ‘putting on notice’ and its implications.

Is ‘putting on notice’ part of an established legislative process?

V

The Pre-2008 condition would knowingly put unreasonable burden - financially, professionally and personally - on practitioners who are currently operating legitimate businesses in Australia. The proposed transitional condition violates the fundamental principle of law making.

VI

If the 2007-2008 dividing line is aimed at protecting the public, I ask that the Board make available to the public evidence to prove that:

a) the standards of Advanced Diploma qualifications had indeed declined to an unacceptable level from 1 January 2008 compared to 31 December 2007 and prior, to the extent that allowing those graduating after 31 December 2007 would pose danger to the public. To the end, I ask that the Board make available to the public the published, legislated standards that were used to measure the acceptability of the Advanced Diploma qualifications from 1 January 2008 and prior.

b) the number and seriousness of Chinese Medicine related medical incidents involved more Advanced Diploma holders who graduated after 31 December 2007.

Without such proof, the argument that the 2007-2008 timeline protects the public could not be established.

VII

If the 2007-2008 timeline were based on the value of clinical experience, then it contradicts with the proposed ‘automatic’ acceptance of an inexperienced degree holder versus the proposed rejection of an experienced practitioner without a university degree.

CONCLUSIONS

- 1) Unless the Board provides proof that the ‘putting on notice’ it referred to as a basis for the 2007/2008 dividing line is part of a legal process authorized by the Federal Government, then it would appear that the Board has mistakenly based such an important decision affecting the livelihoods and future livelihoods of numerous people on casual communications that one can only sensibly refer to as ‘anecdotal’.**
- 2) If the Victorian registration process were taken as a blueprint for national standards, surely the more facilitating spirit in which Victoria transitioned those without a recognized university degree by allowing six years between 2002-2008 should be observed. Setting the pre-2008 condition for Advanced Diploma holders is only as rational as drawing a line on the sand post. The Board appears to have taken the 2008 element completely out of context.**
- 3) The transitional conditions set out for current and future practitioners without a recognized university degree are unnecessarily harsh and punitive. No considerations appear to have been given for the impact and stress the conditions would cause them, at both professional and personal levels.**
- 4) The ‘automatic’ assumption that a recognized degree holder makes a better Chinese Medicine practitioner discriminates against practitioners without such a**

qualification and puts them in a disadvantageous position in the registration process.

- 5) Given that Chinese Medicine is widely used in Australia and it isn't regulated in most States, the tight timeline for the Board selection, the draft paper and the consultation indicates a rushed process. The rushed nature is evident in the draft paper as it does not appear to be well thought through and its impact on people affected carefully considered.**

Recommendations:

- 1) The arbitrary and unfair pre-2008 condition be removed for Advanced Diploma holders so post-2008 graduates satisfy the 'Grandparent' category without further requirements attached.**
- 2) Allow five years for the transition. Allow Advanced Diploma holders who graduate up to 30 June 2017 to be recognized in the 'Grandparent' category without further requirements attached.**
- 3) Adopt a facilitating rather than punitive spirit in the transitional strategy. Take into account the hardship that the legislation could bring to Chinese Medicine practitioners and students, through no fault of their own. Find means to reduce the burdens while staying focused on the ultimate objective of the exercise, rather than creating burdens to satisfy unsubstantiated personal views, however strongly-held these views are and however senior the office these individuals hold.**

The notion that, setting harsher transitional conditions and disqualifying more current practitioners, would better serve the primary motives of the national registration process, is misconstrued.

- 4) Be genuine and sincere about the consultation process.**

Acknowledge and address the concerns of those affected rather than focusing on defending the Board's flawed positions.