



HEALTH SERVICES
COMMISSIONER

ACT Human Rights Commission

4 January 2012

Professor Charlie Xue
Chair
Chinese Medicine Board of Australia
AHPRA
GPO Box 9958
MELBOURNE VIC 3001

By email: chinesemedicineconsultation@ahpra.gov.au

Dear Professor Xue

I write regarding the consultation being conducted by the Chinese Medicine Board of Australia, in relation to the proposed advertising guidelines, codes of conduct for registered health practitioners and guidelines for mandatory notifications.

I note that the Board considers it appropriate to implement the current guidelines and codes developed by the ten National Boards and agree that this is an appropriate way forward. I do not have any specific comment in relation to additional guidance that may be necessary for the Chinese Medicine Board.

In relation to the Board's draft provisions about record keeping, I note the Board proposes that the practitioner generally be responsible for translation costs, but that when a practice closes the burden of translation would be shifted to consumer. I recommend that the Board familiarise itself with the *ACT Health Records (Privacy and Access) Act 1997*. This Act establishes a regime for record keeping in the ACT, including a schedule of fees that are payable when a practice closes. Health practitioners are, by law, unable to charge more than the scheduled fee. Translation costs in the ACT cannot, therefore, be passed on to the consumer as proposed by the Board.

I write primarily to draw the Board's attention to the regime in place in the ACT for handling notifications and joint decision making.

The Legislative Assembly amended the National Law in the ACT to ensure that the legislation is human rights compliant and to preserve the ACT complaints handling model that operated between the Territory registration boards and the ACT Health Services Commissioner prior to the commencement of the National Law.

The legislation provides for the Commissioner, as well as AHPRA, to undertake investigation of notifications/complaints about health practitioners' standards of practice. In practice, the receiving agency is generally the one to conduct the assessment and/or investigation, although it needs to be noted that the legislation places referral of the matter to the Commissioner above investigation of the complaint by the National Boards in the event of any disagreement.

Another modification is in relation to joint consideration processes. In all States and Territories joint consideration takes place between the Health Complaints Entity and the relevant board (represented by AHPRA) on receipt of a complaint to determine which body will handle the matter. In the ACT a further joint consideration process is undertaken following an investigation (either by the Commissioner or AHPRA). Central to this joint consideration is that, when the National Board and the Commissioner could not come to an agreement regarding actions to be taken, the most serious action proposed by either of them prevails.

In order to facilitate joint consideration of complaints there is provision for the National Boards to provide copies of reports and other information to the Commissioner and vice versa. This ensures that the parties can be satisfied that investigations are conducted in an independent and impartial manner, without any perceptions of bias.

While there is no requirement under the National Law as to how often joint consideration takes place, in practice fortnightly meetings generally occur between the ACT State Manager of AHPRA (as delegate of the Boards) and the ACT Health Services Commissioner. Those meetings are held at either AHPRA's offices or at the ACT HSC's office, with the location, chairing and minuting duties rotated between the two. These regular meetings do not preclude the opportunity in urgent circumstances for joint consideration meetings to occur over the telephone or via other suitable technology.

I believe the scheme operates well in the ACT but would welcome a meeting with the Board to clarify any concerns that you may have.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mary Durkin', with a long horizontal flourish extending to the right.

Mary Durkin PSM
ACT Health Services Commissioner