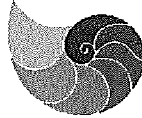

HEALTH SERVICES
COMMISSIONER
ACT Human Rights Commission

Australian Health Practitioner Regulation Agency
guidelinesconsultation@ahpra.gov.au

Dear AHPRA

Thank you for the opportunity to comment on a range of draft common guidelines and the draft revised *Code of Conduct* for most of the Boards.

As AHPRA is aware, the ACT Health Services Commissioner is the ACT's *Health Complaints Entity*. In addition to the complaint jurisdictions common to other States and Territories, the Commissioner has a specific legislated role to deal with complaints about registered health practitioners, and Boards are unable to make decisions in relation to conduct and performance matters except through joint consideration with the Commissioner.

I will limit my comments to the draft revised G*uidelines for mandatory notifications*, and the *Code of Conduct*.

Guidelines for mandatory notifications
I note the draft additional paragraph concerning mandatory notifications on page 53 of 76 of the Consultation Paper, which refers to situations where the only risk is to the practitioner him or herself.

While I agree with the intent of the paragraph, I believe that further guidance is warranted regarding the need to carefully consider in each case whether the risk of harm to self may translate, directly or indirectly, into risk of harm to the public. The importance of undertaking that balanced assessment should in my view be reinforced.

The ability for a potential notifier to appropriately balance the considerations on an ongoing basis may be more or less reliable in differing circumstances. While a Health Department may have the staffing and support infrastructure to assess and assist an employee on an ongoing basis (and may therefore be able to confidently assert that risk of harm does not translate into risk to the public, or act swiftly if that dynamic changes), a practitioner's treating GP, or perhaps an employer in a smaller scale enterprise, may not be similarly equipped. I suggest that the examples need to be expanded to include different situations, for example, where the practitioner is in a sole practice compared to someone working in an environment that provides substantial oversight.

Code of Conduct
Based on the Commission's experience with Board approaches to dealing with notifications, I suggest that the *Code of Conduct* make specific reference to the Code not being the definitive source of guidance in terms of establishing the reasonableness of performance or conduct. I suggest that the document refer to the importance and relevance of College

standards, other specialty-specific authorities, related other sources of standards and the relevance of peer opinion, against which conduct or performance can be measured. Such references could fit within the current *1.1 Use of Code*.

I note that 8.2 addresses *Professional Boundaries* across all professions and welcome the suggested expansion to the Code in this respect. I also note that some Boards have developed specific guidelines in terms of sexual misconduct and related issues, in addition to their Codes of Conduct, which expand on what is considered unacceptable in their particular profession. For example, the Medical Board has a document entitled *Sexual Boundaries: Guidelines for Doctors*, while the Osteopathy Board has *Osteopathy Guidelines Sexual and Professional Boundaries*. I recommend that 8.2 provide cross references to those specific guidelines. I also recommend that each Board be encouraged to develop specific sexual and professional boundary guidelines.

Thank you again for the opportunity to comment.

Yours sincerely

Mary Durkin
Health Services Commissioner

30 May 2013