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By Email: guidelinesconsultation@ahpra.gov.au

Re: Consultation on common guidelines and Code of conduct

The Australian Dental Association Inc. (ADA) welcomes the opportunity to provide comments on the common guidelines (Guidelines) and Code of conduct.

The new layout and text of the revised documents are an improvement on the previous versions and assist health practitioners to better understand their responsibilities in relation to advertising, conduct and notifications as required under the Health Practitioner Regulation Act National Law. Furthermore, they encourage the reader to source other documents for more detail.

Guidelines for Advertising

In general, the ADA is supportive of the proposed Guidelines for advertising regulated health services. It supports restrictions that ensure advertising of health services reflects the calibre and status of health professionals. However, there are some issues the ADA has concerns about.

The ADA is concerned that, under these Guidelines, health practitioners will be held accountable for comments on third party/public websites (i.e. sites unrelated to any website created by the health professional) made by others regarding their services. It is unreasonable and unfair to make practitioners responsible where testimonials may be published on third party websites without the practitioner's knowledge or approval.

It is noted that the Guidelines suggest that the practitioner "must take reasonable steps" to have unsolicited testimonials removed once they become aware of them. The Guideline says practitioners must take reasonable action "within the practitioners' power, such as directly removing, or requesting removal, of the testimonials". These are worthwhile directions but the ADA suggests that some guidance be given as to what would constitute awareness of testimonials and what would constitute the "reasonable steps" to be taken. Many public sites provide ready access to the public to post testimonials but those that operate such sites provide little if any opportunity to remove undesirable posts. In these circumstances it is hoped that a practitioner who is unsuccessful in having a testimonial removed will not be held accountable for the posting.

The issue of the use of testimonials is complex. In modern society, appropriate validated testimonials are accepted for services in the nature of accommodation and the like, but are inappropriate for health services. However, a policy which opposes the use of testimonials seems to be difficult, if not impractical, to police.

Further consideration may be required to permit their use but perhaps only under more prescriptive guidelines.

Google reviewers are an example of the issues of impractical policing. Practitioners have no control whatsoever over Google, which has its own policy on public responsibility relating to not interfering and removing reviews. Individuals are free to rate services without reference to the practitioner. In such cases to hold the practitioner responsible for what is published is unreasonable.

The ADA was recently involved in such a case on behalf of a member and attempted to negotiate the removal of the review from the Google website. Repeated attempts to speak to a staff member at Google Australia have been unsuccessful.

Additionally, the use of third parties, for example by health funds, to circumvent legislation needs to be addressed.

The ADA is supportive of the additional advice, placed in the appendix, relating to advertising therapeutic goods. This provides greater clarity to practitioners in relation to their responsibilities and where to find further information without the level of unnecessary detail that is included in the current version.

In section 6 – “Obligations under the National law and other legislation” – and subsequent to that section Appendix 2, the ADA notes that the Guidelines make no reference to the Privacy Act 1988 and the SPAM Act 2003. The ADA would recommend that these key pieces of legislation are referenced in the Appendix at the very least.

The ADA wishes to make a specific comment in relation to the use of titles (Section 8.2). The ADA is aware of a number of non-dentist practitioners who are making use of the title ‘doctor’ in their advertising. It is the ADA’s view that the Dental Board of Australia should implement a policy similar to the Psychology Board of Australia so that dental practitioners may only use such a title if they are a registered dentist or are a dental practitioner holding a doctoral qualification from an approved higher education provider or an overseas institution with an equivalent accreditation status. This will prevent the potential to mislead members of the public.

To ensure compliance with the guidelines, the ADA suggests that AHPRA and/or the DBA prosecute practitioners it believes are in breach of the guidelines. The ADA strongly suspects that the many instances of inappropriate advertising are attributable to a lack of policing the guidelines by the authorities.

In relation to section 8.2.3, the ADA is concerned that AHPRA is restricting practitioners from advertising that they belong to a professional body. Belonging to a professional body demonstrates a commitment to maintaining links with peers, adhering to professional standards, policies and codes of conducts and indicates to consumers that the practitioner will practise their profession in accordance with the high standards laid down by the professional body. This section should make specific reference to the appropriateness of belonging to a professional body rather than discouraging practitioners.

Code of Conduct

Again the sentiments expressed in the Overview are both noble and worthy of mention. The reference to both ethical and legal obligations is supported.

The Preamble on the Code of Conduct (page 5) says:

"An issue which has attracted mixed feedback is the section on end of life care. Some feedback was received that this section should be deleted as it is not relevant to all professions. Other feedback was that the section was relevant to practitioners who may from time to time have a terminally ill patient as well as those working specifically in end of life care. The section has been deleted from the shared code but feedback is invited about whether it should be reinstated, perhaps with some qualifying wording about its application."

All practitioners may be faced with terminally ill patients from time to time. This section should remain in the document as it may provide some useful guidance.

There are a number of sections in the revised Code which appear unnecessary or confusing.

Section 1.3 includes a statement in relation to the cultural diversity of Australia. This section seems out of place and should either be removed or act as introductory paragraphs in section 3.7.

The ADA has previously advised that the reference to vicarious liability in Section 4.4 appears to be a narrow interpretation of 'vicarious liability', which of itself is not explained. The statement implies there are implications for professional indemnity insurance and it seems to be oblivious to legislation that might exist at a state or territory level such as the *Queensland Personal Injuries Proceedings Act 2002* where the treating practitioner, not the employer, is named and accountable. Further, it is not in all cases that an employer is vicariously liable for the actions of their employees, and this should be made clear. Referring to "practitioners who are employers" could imply that non practitioner employers (e.g. State government health services or dental corporates) are not vicariously liable for the actions of their employees.

"Section 3.15 Closing or relocating a practice" reads:

"When closing or relocating a practice, good practice involves:

- a. giving advance notice where possible
- b. facilitating arrangements for the continuing care of all current patients, including the transfer or appropriate management of all patient records while following the law governing privacy and health records in the jurisdiction."

This section has no guidelines if a practitioner dies or retires without a successor in relation to the storage of patient records. It is impractical for records to be stored or managed by a retiree or a surviving spouse.

In "Section 8.4 Health records" it states:

"Maintaining clear and accurate health records is essential for the continuing good care of patients or clients. Practitioners should be aware that some boards have specific guidelines in relation to records. Good practice involves:

- a. *keeping accurate, up-to-date factual, objective and legible records that report relevant details of clinical history, clinical findings, investigations, information given to patients or clients, medication and other management **in a form that can be understood by other health practitioners and without using profession-specific shorthand**"*

In relation to the underlined text, AHPRA itself uses profession-specific shorthand and does so inconsistently, for example, ACCC, TGA, TGACC, DBA, Cwlth and later Clth and later again Cth, ACL, TPA. The use of profession-specific terms ensures effective communication between professionals. Therefore the words "**and without using profession-specific shorthand**" should be deleted.

Social Media Policy

Given that the Policy refers users to the Advertising Guidelines, it is critical that these Guidelines are amended to recognise social media as a non-traditional form of advertising with limited control over an

individual's capacity to regulate content about the health practitioner or the services they provide. Liability and penalties should also be reviewed to be consistent with the variant nature of social media as a form of advertising. As such this policy should be incorporated under the Guidelines for advertising, and not be a separate policy.

The ADA has developed a guide for dental practitioners who choose to have an online presence, *Websites & Social Media in the Professional Environment: A practical guide to navigating the world of social media* (guide – **Attachment A**). The ADA urges AHRPA to consider the scope of platforms and use of online channels outlined in the guide when refining the draft policy. The ADA recommends AHPRA's draft policy to refer to this document or similar as an example of best practice.

Guidelines for Mandatory Notification

The ADA supports the additional text clarifying the circumstances that trigger a mandatory notification in relation to practising while intoxicated by alcohol or drugs.

As we have indicated previously, the ADA has ongoing concerns with the requirement for mandatory reporting of notifiable conduct by practitioners who are treating another health practitioner. It would appear that those concerns have been recognised in respect of Western Australia (WA). However, the rest of the country has more stringent requirements imposed in relation to mandatory reporting by patients. Obligations imposed outside WA have the potential for practitioners to avoid treatment for their condition for fear of being reported. If this was to occur then it places the public, being treated by that practitioner, at risk of receiving compromised care. The ADA would encourage AHPRA to lobby State and Territory governments through the Australian Health Ministers' Council to alter the National Law in their jurisdictions to reflect that which exists in WA.

If you seek any further information or wish to discuss in more detail any of the issues raised in this submission, please contact Mr Robert Boyd-Boland on ceo@ada.org.au or 02 9906 4412.

Yours sincerely,

A handwritten signature in black ink that reads "Karin Alexander". The signature is written in a cursive, flowing style.

Dr Karin Alexander
President