



AMA

**STATE LEGISLATIVE RESPONSES
TO THE CORPORATISATION OF
MEDICAL PRACTICE**

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Introduction

A growing number of doctors in Australia are considering or have decided to enter into contractual arrangements to provide medical services as independent practitioners within corporate medical practices. These developments have given rise to debate within the profession and the community over the implications for the practice of medicine in Australia.

Much of this debate has focussed on the importance of maintaining the clinical independence of doctors working in corporates and the potential impact of vertical integration on the cost and nature of medical service delivery. This debate has prompted governments in a number of States to amend medical registration legislation aimed at addressing public and professional perceptions over the nature of corporate medical practice.

Medical registration legislation in each State generally requires doctors to behave ethically and properly. A failure to behave in these ways is often referred to as “unsatisfactory professional conduct” and may be grounds for suspension or deregistration. The requirement to behave in an ethical and proper manner goes some way to protecting doctors and patients and could be interpreted as a prohibition on certain practices, such as doctors receiving inducements to refer.

Recent changes to legislation in some Australian States go further and explicitly address matters associated with corporate medical practice. Those changes are outlined below. In States and Territories where there has not been any legislative response Medical Boards and Courts may be influenced in their interpretation of what constitutes “unsatisfactory professional conduct” by the changes to legislation in other States.

New South Wales

The *Medical Practice Amendment Act, 2000* was passed by both Houses of the New South Wales Parliament in June 2000. It received Royal Assent on 7 July 2000, and commenced on 1 October 2000.

The *Medical Practice Amendment Act 2000* specifically addressed the issue of corporatisation in the following ways:

- The definition of unsatisfactory professional conduct was extended to include over-servicing, giving or receiving inducements to refer and failure to declare a pecuniary interest in making a referral;
- Non-medical directors of corporations providing medical services can now be fined or disqualified if they are a party to the unsatisfactory professional conduct or professional misconduct of a medical practitioner;
- Non-medical directors of corporations providing medical services can now be fined or disqualified if they are a party to the provision of unnecessary or excessive medical services; and

- Medical practitioners and non-medical directors of corporations providing medical services are prohibited from offering or accepting benefits or inducements for patient referrals.

Queensland

The *Medical Practitioners Registration Act 2001* has been passed by Parliament but has not yet come into effect.

The *Medical Practitioners Registration Act 2001* specifically addressed the issue of corporatisation in the following ways:

- Persons providing medical services through a business name or a corporation will be required to notify the Medical Board of the entity's name and the name and address of the principals or directors of the entity.
- Non-medical directors of corporations providing medical services can now be fined or disqualified from operating a medical practice if they aide or abet conduct of a medical practitioner that is a ground for disciplinary action; and
- Medical practitioners and non-medical directors of corporations providing medical services are prohibited from offering or accepting benefits or inducements for patient referrals.

Northern Territory

The Northern Territory has not made a legislative response to the issue of corporatisation.

Western Australia

The Western Australian Government recently commissioned a review of the *Medical Act 1894*. The Medical Act Review Working Party made recommendations to the following effect in March 2001.

- Medical corporations should be required to obtain authorisation from the WA Medical Board;
- The Medical Board should have the power to refuse to authorise a medical corporation if it has concerns regarding the reduction of clinical autonomy of doctors employed by that corporation which will affect the quality of patient care;
- The Medical Board should have the power to make conditional the authorisation of a medical corporation;
- It should be an offence to incite a medical practitioner to unprofessional conduct;

- It should be an offence to offer or accept (or induce a medical practitioner to offer or accept) a benefit or inducement for patient referrals.

These recommendations are still under consideration.

South Australia

The South Australian *Medical Practice Bill 2001* is still before the South Australian Parliament. The Bill includes provisions that regulate non-medically qualified providers including:

- A requirement that registered medical practitioners who are employed by or in a business partnership with unregistered persons inform the Medical Board of South Australia of the names of their employers or business associates;
- A new offence for persons who exert undue influence over a medical practitioner to provide a medical service in an unsafe or unprofessional manner.

Victoria

The Victorian Department of Human Services has put out a paper "*Regulation of Medical Practitioners and Nurses in Victoria – a Discussion Paper*" which addresses possible legislative responses to the issue of corporatisation and inducements to refer. The Department is awaiting submissions, after which it may decide whether further regulation is required in Victoria.

Tasmania

Tasmania has not made a legislative response to corporatisation nor does it appear that the Tasmanian Government is considering making a response.

Australian Capital Territory

The ACT has not made a legislative response to corporatisation nor does it appear that the ACT Government is considering making a response.

Conclusion

The legislative changes outlined in this paper represent State Government responses to the corporatisation of medical practice. It is important that doctors working in corporate medical practice familiarise themselves with these changes and ensure they comply with all legislative requirements in the conduct of their practice.

If you would like further advice on this issue, or up to date information on legislative changes, please contact your AMA State/Territory office or the Workplace Policy Department of the Federal AMA at the contact details below.

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