



Australian Medical Association Joint Submission on *Good Medical Practice: A Draft Code of Professional Conduct (August 2008)*

This joint submission is made by the Australian Medical Association (AMA), the Australian Association of Medical Surgical Assistants, the Australian Association of Surgeons, the Australian Orthopaedic Association, the Australian Society of Anaesthetists, the Australian Society of Ophthalmologists, the Australian Society of Orthopaedic Surgeons, the Australian Society of Otolaryngology Head & Neck Surgery, the Council of Procedural Specialists, the National Association of Specialist Obstetricians and Gynaecologists, the Royal Australian College of General Practitioners, the Rural Doctors Association of Australia, and the Urological Society of Australia and New Zealand.

We cannot support the Australian Medical Council's (AMC) *Good Medical Practice: A Draft Code of Professional Conduct. Consultation document, August 2008* (the Draft Code) in its current form.

We understand from recent advice to the *Good Medical Practice* Working Group representatives that a major rewrite of the Draft Code is now planned. Given this, the following submission highlights our general concerns and principles with the aim of informing the forthcoming rewrite process.

Position and comments on the Draft Code

The Draft Code as it now stands adopts a particular position that does not represent the medical profession in its true function and behaviour as subject to its own professional ethical standards. The medical profession as a whole has its own high expectations to operate with professionalism in its engagement with patients, colleagues, and the community at large.

The Draft Code is written as though professional ethics are merely a script for interaction with a client. The medical profession has a long history of professing its ethical obligations to their patients from the time of the Hippocratic Oath to the contemporary expression and application of this in the *Declaration of Geneva* (**attached**).

Currently in Australia, the tradition continues with many medical school graduates reciting the *Declaration of Geneva* as part of the ceremony in which they participate on having achieved successful completion of their studies prior to internship.

The Draft Code conducts itself as if there is a void of these principles in the medical profession when this is absolutely not the case.

Doctors provide care for patients in the context of placing the patient's needs as a priority. Respect for the doctor-patient partnership, the doctor's position, the potential vulnerability of the patient and the doctor's holistic response to patient care are integral.

The Draft Code has departed so far from the existing essences of Medical Professionalism that we suggest it assumes to lower the core principles which are entrenched in the profession in its attempts to document prescriptively behavioural guidelines.

The document also fails to acknowledge doctors as individuals in the absence of a conscientious objection clause. This is necessary in order to respect the doctor's right to have his/her own conscience, and protects a doctor from being disadvantaged if he/she exercises their conscience when providing service.

The medical profession is often described as having a social or moral contract with society.^{i,ii} Medical professionalism encapsulates our primary commitment to serve others through an adherence to a strong ethical code based on values such as respect, altruism, integrity, excellence, collegiality, collaboration, accountability, leadership and trust.^{ii,iii}

Our patients trust us to look after them – to put their needs first. We undergo a lifetime of training and experience built upon a base of excellence and holistic knowledge of our fellow man so that we can fulfill this duty. We have high standards of ethics and professionalism and strive to live by these and are rightly expected by the community to do so.

Our profession's commitment to serve others and our high standard of ethics reflects itself in everything we do - in the way we teach, our attitude towards and interactions with patients, their family members, colleagues, allied health professionals and others and in the way we self-regulate. We expect that any additional regulatory framework, including a code of professional conduct, must be fully consistent with, and in no way undermine, our ethical standards and commitment to professionalism.

This is why we cannot support the Draft Code, as written. Through its use of prescriptive, directive, and authoritarian tone and language, the Draft Code:

- undermines medical professionalism and inhibits good medical practice;
- compromises the doctor-patient partnership; and
- patronises and alienates the medical profession.

Applying prescriptive and directive language throughout the document, particularly the persistent use of 'you must', limits doctors' ability to use their professional judgment in relation to *individual* patient circumstances. All patients are not the same – they hold different expectations, views, and values in relation to their own health care. Further, this language restricts doctors' clinical independence to act in the best interests of their patients' health needs, thus, not only compromising patient care but also undermining patient autonomy and limiting patient empowerment. Doctors strive to offer their patients advice and recommendations that serve the individual patient's own health needs while respecting that patients have a right to reject the doctor's advice or recommended treatment.

As described in the AMA's *Code of Ethics 2004. Editorially revised 2006*,

The doctor-patient relationship is itself a partnership based on mutual respect and collaboration.

Trust is the cornerstone of the doctor-patient partnership. Patients trust that their doctors will act in their best interests, to put patients' health needs first. Patients seeking health care are often vulnerable and need to know that their doctor will be able to look after their health

needs. The profession cannot support a Code of Professional Conduct that undermines this trust and compromises the doctor-patient partnership by limiting doctors' professional judgment and clinical independence as well as impeding doctors' ability to take into account the individual circumstances of each episode of patient care.

Further, the profession cannot support a Code that raises unrealistic patient expectations regarding what doctors 'must do' in a given circumstance. This is unfair to both doctors and patients (as well as patients' family members and carers). Doctors cannot be placed in the ethically tenuous position of choosing between following the 'rule' of the Code or acting in their individual patient's best interests.

A Code of Professional Conduct must reflect and be responsive to the realities of day-to-day medical practice – where patients are individuals with their own unique circumstances and where medicine is practiced in a variety of settings (including solo practices, corporate practices, private and public hospitals, aged care facilities, and other settings). The persistent use of 'you must' throughout the document does not allow for diversity in patient circumstances or in workplace settings – effectively placing unrealistic demands on doctors.

Finally, the prescriptive, directive, and indeed authoritarian language sets a tone that patronises and alienates the medical profession, failing to recognise doctors' professionalism and commitment to the primacy of patient care. The authoritarian language sets a tone that deprecates the medical profession, casting doubt on doctors' professionalism by implying that doctors will act in their own self-interest and do the wrong thing by their patients unless directed otherwise. This undermines public confidence in the behaviour of doctors and demoralises and antagonises the profession.

The role of a Code of Professional Conduct

A Code of Professional Conduct must support and promote medical professionalism, facilitate good medical practice, and support the doctor-patient partnership.

It must serve the individual doctor by guiding them in their relationships with patients and in their roles as patient advocates.

It must serve the profession in its own self-regulation by establishing a set of professionally accepted standards of conduct that medical boards and others can use, along with relevant codes and guidance such as the AMA's *Code of Ethics*, in any individual assessment of professional conduct. Such a Code also provides a good defence for doctors who are asked to explain and justify their decisions and actions.

Finally, whilst a Code of Professional Conduct must be accepted and upheld by the profession, it must serve the public by protecting patients and informing them, their family members, carers, and the wider community of the professionally accepted, accountable standards of behaviour they can expect from the profession.

We strongly advocate that a Code of Professional Conduct must support and promote medical professionalism, facilitate good medical practice, and support the doctor-patient partnership by:

- guiding doctors in their relationships with patients and in their roles as patient advocates;

- supporting doctors' professional judgment and clinical independence;
- responding to individual patient circumstances and diverse work settings; and
- respecting doctors and the wider medical profession.

Recommendations

We strongly recommend that the AMC rewrite the Draft Code of Professional Conduct, removing the prescriptive, directive, and authoritarian language and tone. In turn, ensuring that the Code promotes medical professionalism, facilitates good medical practice, and supports the doctor-patient partnership.

As part of rewriting the Code, we recommend that it be made clear in the introduction that the Code is a supportive, and not exhaustively prescriptive, document. Doctors should continue to apply their professional judgement in relation to individual patient circumstances. Where a statement in the Code continues to pose an 'absolute' requirement on doctors (eg., 'you must'), then it must be applicable to all situations and circumstances. Such an overriding duty must be reasonable, appropriate, and measurable so that it does not inadvertently inhibit the doctor's duty to act in their patients' best interests.

Whilst recognising the important role of social justice in health care, for example, in relation to allocation of limited resources, the Code must not undermine doctors' professional judgement and capacity to advocate for the best interests of the individual patient.

We recommend that the *Good Medical Practice* Working Group be appropriately consulted, and their agreement sought, prior to releasing any further revised drafts of the Code for public consultation.

The Working Group should also be appropriately consulted, and their agreement sought, in relation to approving a final version of the Code. If the finalised version of *Good Medical Practice* is to be released publicly, this should be accompanied by relevant education campaigns, targeted at the profession as well as the public, explaining the status, purpose, and intended application of the Code.

The AMC must clarify how the Code fits in with the National Registration and Accreditation Scheme (National Registration). There are overlapping legislative developments currently undertaken as part of National Registration including mandatory reporting. This may prove confusing to doctors, patients, and the wider public who may not be overly familiar with the current national registration process.

Finally, any further development of the Draft Code must continue to be undertaken with strong representation from the medical profession.

Conclusion

To reiterate, we have no objection to the principle of a national Code of Professional Conduct. It is important to get the Code of Professional Conduct right so that doctors can continue to put their patients' interests first – this is the core of our professionalism.

We look forward to further developments of the Draft Code.

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ⁱ Cruess RL, Cruess SR, Johnston SE. Professionalism: an ideal to be sustained. *The Lancet* 2000;356:156-159.

ⁱⁱ Royal College of Physicians. *Doctors in society. Medical professionalism in a changing world*. Report of a Working Party, December 2005.

ⁱⁱⁱ Medical Professionalism Project. Medical Professionalism in the New Millennium: A Physician's Charter. *Ann Intern Med* 2002;136:243-246.