

Medical Board Code of Conduct 2020

President's message

The Medical Board's updated *Good Medical Practice: A code of conduct for doctors in Australia* came into effect on 1st October 2020.

While the Board considers that 'the 2020 updates do not significantly change expected professional standards'¹, the AMA believes that any changes are significant to doctors as the Code is used to 'assist the Medical Board in its role of protecting the public, by setting and maintaining standards of medical practice against which a doctor's professional conduct can be evaluated.'²

The AMA has played an important role throughout the Board's two-year code of conduct consultation process, advocating that the Code must provide doctors with sufficient guidance as to what is actually expected of them in a clear, operational sense so they are able to fulfill their obligations under the Code.

In addition, the Board itself must be able to interpret the Code objectively when conducting investigations to ensure outcomes are consistent and fair. This is particularly critical when non-medical investigators use the Code as an administrative tool to assess a doctor's behaviour when deciding whether a particular complaint warrants further investigation.

We are reassured that the Board has acknowledged and attempted to rectify a range of concerns raised by the AMA and other medical organisations throughout the consultation period. The Board's 2018 public consultation draft Code of Conduct, in particular, proved quite controversial, raising concerns amongst AMA members and the wider medical profession that the Board was attempting to impose standards that could inadvertently undermine medical professionalism and potentially compromise good medical practice.

A particularly controversial amendment related to doctors' ability to speak out and make public comment. We strongly argued that the Board's proposed standard could be interpreted as controlling what doctors say in the public arena by stifling doctors' right to publicly express both personal and professional opinions, while also undermining doctors' contribution to the diversity of public opinion, debate and discourse. We highlighted that just because a doctor does not hold 'the profession's generally accepted views' on a particular social matter does not indicate a lack of medical professionalism or substandard medical practice (highlighting that many doctors do not personally agree with abortion, contraception or voluntary assisted dying).

We also advocated that the Code not coerce doctors into complying with relevant laws that are inconsistent with professionally accepted standards of medical ethics in Australia. We highlighted that in 2016, despite the possibility of imprisonment, several doctors spoke publicly about conditions in immigration detention regardless of provisions in the (then) *Border Force Act* that threatened whistle blowers with up to two years imprisonment (the Act was subsequently amended). Ironically, many doctors considered the Act not only

conflicted with their ethical duties but their duties under the Board's Code of Conduct to make the care of the patient the doctor's primary concern.

The Board responded to the AMA's concerns by not only removing the proposed statement that doctors acknowledge the profession's generally accepted views when making public comment but also including a statement that while there are professional values that underpin good medical practice, all doctors have a right to have and express their personal views and values. They also removed the proposed amendment that doctors must comply with relevant laws.

Another area of major contention included proposed changes to culturally safe and respectful practice, where we advocated that practice that is 'culturally safe' is not necessarily 'medically safe' or generally accepted medical practice in Australia as exemplified by female genital circumcision or abortion based on sex-selection for non-medical purposes. The updated Code has now been amended to confirm that 'culturally safe practice, like all good medical practice, does not require doctors to provide care that is medically unsafe or inappropriate.'

The Board also extended the timeframe for public consultation following objections it was insufficient and acknowledged the need to 'provide clearer guidance to doctors and better explanations of expected professional standards.'¹

Having also taken on board additional amendments proposed by the AMA throughout the consultation, we recognise the Board's attempts to respond to our concerns along with those of the wider profession when finalising the updated Code of Conduct.

The updated Code incorporates a range of important changes for doctors including:

- an expanded section on Aboriginal and Torres Strait Islander health that now highlights the impact of colonisation and systemic racism on health and recognises that Aboriginal and Torres Strait Islanders bear the burden of gross social and health inequity;
- a new definition of cultural safety involving understanding what individual patients and/or their family believe is culturally safe while not requiring doctors to provide care that is medically unsafe or inappropriate;
- not allowing doctors to prescribe Schedule 8, psychotropic medication and/or drugs of dependence or perform elective surgery (such as cosmetic surgery), to anyone with whom they have a close personal relationship;
- a new section on discrimination, bullying and harassment, recognising these can adversely affect individual health practitioners, increase risk to patients and compromise effective teamwork;
- directing that doctors should ensure there are arrangements in place for continuing care of patients when the doctor is not available;
- a new section on career transitions addressing changing roles, reducing practice load and retiring;
- an expanded section on vexatious complaints, noting the Board may take regulatory action against a doctor who makes a vexatious notification about another health practitioner;

- an expanded section on doctors' health including a clear provision against self-prescribing;
- expanded sections on teaching, supervising and mentoring, recognising the power imbalance in these relationships.

The AMA strongly encourages all doctors to familiarise themselves with the updated Code of Conduct and contact their medical indemnity insurer should they require advice or support in relation to the Code.

Good Medical Practice: A code of conduct for doctors in Australia, October 2020 can be accessed at <https://www.medicalboard.gov.au/Codes-Guidelines-Policies.aspx>.

¹Medical Board of Australia. Media Release. *Updated Code of Conduct to Guide Doctors from October*. 27 August 2020.

²Medical Board of Australia. *Good Medical Practice: A code of conduct for doctors in Australia*. October 2020.