



Australian
Dental
Council

**Australian Health Practitioner Regulation Agency
and
National Boards**

**Public Consultation Paper on the
Definition of 'Practice'**
under the Health Practitioner Regulation National Law Act 2009

SUBMISSION

by

Australian Dental Council

December 2011

1. Introduction

- 1.1 The Australian Dental Council ['ADC'] welcomes the opportunity to comment on the definition of 'practice' ['practice'] used by the Dental Board of Australia [the 'Board'] in registration standards established by the Board under of the *Health Practitioner Regulation National Law Act 2009* [the 'National Law'].
- 1.2 The ADC makes this submission as the external accreditation authority that has been assigned by the Ministerial Council to undertake the accreditation functions for the Dental Board of Australia under the National Law. The accreditation functions currently undertaken by the ADC include the accreditation of programs of study leading to registrable qualifications for dental practitioners and the assessment and examination of overseas qualified dental practitioners seeking registration to practise in Australia.
- 1.3 The consultation paper indicates that in order to provide an efficient and effective scheme for all health professions regulated under the National Law, the National Boards, including the Dental Board of Australia, have endeavoured to align standards, codes and guidelines that are common to each profession. This includes agreement on a common definition of 'practice'.
- 1.4 As the consultation paper notes, the current uniform definition of practice is very broad and is leading to reported instances of practical difficulty and unintended consequences that may be a disincentive for practitioners in taking on particular roles, contrary to the interests of the public. In the issue of concern to the ADC, this relates to the involvement of dental practitioners whose valuable skills, experience and expertise contribute in non-clinical capacities to the work of the ADC.
- 1.5 The focus of this submission is on the impact, or potential impact, of the current definition of 'practice' on the ADC in its exercise of its accreditation functions.

2. Comments on Specific Issues Raised in the Consultation Paper

Question 1: Impact on Safe, Effective Delivery of Services in the Profession

'Practice' means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a practitioner in their regulated health profession. For the purposes of this Code, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct nonclinical relationship with patients or clients, working in management, administration, education, research, advisory, regulatory or policy development roles and any other roles that impact on safe, effective delivery of health services in the health profession.

- 2.1 The ADC supports the patient centred approach that is embodied in the above definition of practice that is adopted by the Dental Board of Australia in the *Code of conduct for registered health practitioners*. The ADC acknowledges also that the definition of practice cannot be restricted to activities involving the provision of direct clinical care. However the broadening of the definition to any roles 'that impact...on health services' casts a very wide net, and the ADC would support the view that there is minimal risk to the public for registration in a 'non-practising' category for individuals who meet the criteria listed in the paper.
- 2.2 In supporting this view, however, the ADC emphasises that criterion (3):
(3) they are not directing or supervising or advising other health practitioners about the health care of an individual(s)

does not apply to dental practitioners who are engaged as Examiners in the Final (Clinical) Examination offered by the ADC. The task of the ADC Examiner is to use their professional knowledge, skill, experience and expertise to observe and assess candidates against the defined standard for the examination. They are not engaged in *directing or supervising or advising* candidates; they are not influencing, guiding or imparting standards to the candidate.

Question 2: Direct Clinical Roles/Patient or Client Health Care

When health practitioners provide advice, health care, treatment or opinion, about the physical or mental health of an individual, including prescribing or referring, it is clear that there is a level of risk to the public. The public and the practitioners' professional peers would expect that this group of health practitioners would have the qualifications and the contemporary knowledge and skills to provide safe and effective health care within their area of practice. It would be expected that these practitioners will meet the standards set by the Board and therefore should be registered.

- 2.3 The ADC supports this statement. Any dental practitioner who has a direct responsibility for the care of a patient should have registration that ensures they are qualified and have contemporary knowledge and skills, with recency of practice and professional indemnity cover, to provide the appropriate level of patient care.

Question 3: Indirect Roles in Relation to Care of Individuals

Health practitioners who are in roles in which they are directing, supervising or advising other health practitioners about the health care of individuals would also be expected to have the qualifications and contemporary knowledge and skills to do so as there is potential to alter the management of the patient/client.

- 2.4 The ADC is concerned that this statement is too broad and potentially includes individuals in corporate management (not clinical governance or management) and other roles, such as consulting, that more typically relate to groups of patients rather than individual patients, and so are remote from the responsibility for clinical care of a patient. It also would describe individuals who are not necessarily health practitioners and who would therefore not be eligible for registration. The need for registration should relate to what the individual actually does in relation to a patient rather than to the roles they occupy.

Question 4: Non-Clinical Roles/Non-Patient Care Roles

There are experienced and qualified health practitioners who contribute to the community in a range of roles that do not require direct patient/client contact and whose roles do not "impact on safe, effective delivery of services in the profession". Examples are some management, administrative, research and advisory roles.

Do you believe that health practitioners in non-clinical roles/non-patient-client care roles as described above are "practising" the profession? Please state and explain your views about whether they should be registered and if so for which roles?

- 2.5 The ADC questions the need for a practising form of registration, with the associated obligations for recency of practice/CPD and professional indemnity cover, for dental practitioners where their work does not involve any form of direct clinical practice or direct impact on patient care. Dental practitioners in non-clinical/non-patient roles are not 'practising' their profession as commonly understood and so a 'practising' form of registration is not appropriate. Where an employer, for example, sees the need for a registered dental practitioner to undertake a role, then public interest and safety are protected through registration requirements. Where this is not the case, then the employer carries responsibility for the necessary safeguards.
- 2.6 The comments that follow in response to Question 5 are also relevant here.

Question 5: Education and Training

Experienced health professionals are vital to the education and training of health professionals. Their roles in education have an impact on safe and effective delivery of health services both directly and indirectly.

For which of the following roles in education, training and assessment should health professionals be registered?

- *Settings which involve patients/clients in which care is being delivered, ie when the education or training role has a direct impact on care, such as when students or trainees are providing care under the direction, instruction or supervision of another practitioner*
- *Settings which involve patients/clients to demonstrate examination or consulting technique but not the delivery of care*
- *Settings which involve simulated patients/clients*
- *Settings in which there are no patients/clients present.*

2.7 The scope of the introductory statement for this question is very broadly on 'health services' rather than a focus on patient care. The ADC does not question the appropriateness of registration as a requirement for dental practitioners engaged in education or training where they have a direct responsibility for patient care. However, where there is no direct responsibility for patient care the ADC does not support a requirement for the practitioner to be registered in a practising category.

2.8 The ADC does not see that a practising category of registration should apply for dental practitioners for the purpose of examining for the ADC, when they are examining, where the examiner is involved only in observing and assessing the candidate who is undertaking the clinical component of their assessment. In this situation examining is not part of the provision of clinical care.

2.9 We have reproduced below extracts from the ADC Policy on *Selection Criteria for Clinical Examiners*:

1. REQUIREMENTS

- 1.1 *Examiners must be registered dentists in Australia or New Zealand in good standing.*
- 1.2 *Examiners must have a minimum of five years experience in general dental practice or in their area of specialty.*
- 1.3 *Examiners will generally be currently in active practice.*
- 1.4 *For those in academic posts a minimum of three sessions a week of patient contact is required.*
- 1.5 *An examiner not meeting the criteria may be appointed if considered by the ADC to bring unique attributes to the role by virtue of experience or standing in the profession.*

2. ATTRIBUTES

- 2.1 *Examiners can be expected to display a commitment to continuous improvement in their own working practice.*
- 2.2 *To ensure the examination's credibility with candidates, examiners need to have acceptable levels of factual knowledge, clinical experience, experience in non-clinical aspects of practice, familiarity with current literature and awareness of current issues and developments in the profession.*
- 2.3 *The skills required of an examiner are not necessarily the same as those involved in treating patients or in teaching. They include:*
 - *Reliability (in both the scientific and behavioural senses of the word);*
 - *The ability to interpret and apply agreed marking schedules;*
 - *The ability to make consistent and unbiased judgments, and to rank-order candidates;*
 - *The ability to make and justify pass/fail decisions;*
 - *Effective functioning in small and large groups;*
 - *Combining courtesy and sensitivity to candidates with the necessary degree of challenge;*

- *Flexibility to adapt examining style to individual candidates; and*
- *Capacity to contribute and respond to long-term policy changes.*

2.10 The ADC believes these criteria are appropriate and relevant and have served the ADC, the profession and the public well in the assessing and examining aspect of the ADC's accreditation functions for the Dental Board of Australia. This includes the ability of the ADC to make appointments of examiners from dental practitioners under criterion 1.5 above. In the view of the ADC, it would be contrary to the public benefit and have a negative impact on this aspect of the ADC's accreditation functions, and hence on the regulatory role of the Dental Board, if the definition of 'practice' were to restrict the ability of members of the dental profession in this category from being able to continue to contribute their valuable experience and expertise in the exercise of this accreditation function.

3. Proposed Definition

3.1 As stated in the consultation paper, one of the key objectives of the National Law is:

*to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to **practise** in a competent and ethical manner are registered.*

3.2 The ADC supports a patient centred approach and a definition of 'practice' that is more in keeping with the provision of clinical care where the responsibility for care lies with the relevant dental practitioner. The current definition is very wordy and broad and inevitably lends itself to variation of interpretation and application.

3.3 In his submission to the consultation paper Dr Murray Thomas proposes a definition in the following terms:

Practice means to exercise a health practitioner's skills, knowledge and judgment in the conduct of their profession to deliver or provide safe and quality health services.

The ADC believes there is merit in considering a definition similar to this less complex statement for a practising category of registration with its focus on what the registered practitioner is actually doing in relation to delivery of clinical care, rather than on their role or organisational setting.

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