

30 November 2011

The Boards

Australian Health Practitioner Regulation Agency
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SUBMISSION Public Consultation
Public consultation paper on the definition of practice

Introduction

Regulation within Australia occurs in many rooms and registered health practitioners in their work are subject to broad and diverse range of national, state and territory and local government regulatory provisions including criminal and civil law and their employer and professional association codes of conduct. Unfortunately, regulators are not unified and so a health practitioner negotiates 'nodes' of authority or influence that impact on the conduct of their profession or their delivery health care and services.

Health practitioners most want and seek clarity and consistency from any regulatory framework to assist them in compliance with the law and relevant requisites. The definition of a 'practice' for registered health practitioner is an essential element of the National Registration and Accreditation Scheme (NRAS).

Reference

Australian Health Practitioner Regulation Agency Public consultation paper on the definition of practice dated 3 October 2011

Purpose

This submission provides comment to AHPRA on its consultation paper dealing with the definition of practice.

General comments

The current definition of practice wrongly focuses on the role of a practitioner rather than what the practitioner is doing. The definition does not appear to have been subject to appropriate risk analysis and the subsequent considerations for management of any identified risks. Inevitably this has resulted

in a broad definition that is verbose, lends itself to variation in interpretation and presents as a 'catch-all'.

Clinical governance¹ is emerging major initiative to confront the conduct of the professions and the delivery and provision of safe and quality healthcare services. An operational definition² of clinical governance is:

- Clinical governance is a systematic and integrated approach to ensuring services are accountable for delivering quality health care.
- Clinical governance is delivered through a combination of strategies including: ensuring clinical competence, clinical audit, patient involvement, education and training, risk management, use of information, and staff management

Clinical and corporate governance matters overlaps in several areas and this may cause an individual, whether registered as a health practitioner or not, to be responsible for a 'duty of care' to consumers in providing or delivering safe and quality healthcare services.

AHPRA Option 1 (Existing definition)

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

The current definition of practice when applied in an operational healthcare setting makes clinical governance challenging and problematic where trained health personnel have opted not to hold registration as a health practitioner.

AHPRA Option 2 (Alternate proposed definition)

Practice means any role in which the individual uses their skills and knowledge as a health practitioner in their profession in any way that impacts on safe, effective delivery of health services.

The alternate proposed definition (Option 2) strongly focuses on the role of a practitioner. This definition also lends itself to variation in interpretation and application. The definition should focus on what a practitioner does in the conduct of their profession.

A simpler definition is needed that primarily focuses on an individual practitioner's conduct of their profession and should be informed by and be consistent with the National Law. The emphasis of the National Law is on regulation of the practitioner rather than an organisation or health services provided.

Another Option definition

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.

¹ Aust Health Rev 2008: 32(1): 10–22 An overview of clinical governance policies, practices and Initiatives Jeffrey Braithwaite and Joanne F Travaglia

² MJA 2010; 193 (10): 602-607 Can clinical governance deliver quality improvement in Australian general practice and primary care? A systematic review of the evidence. Christine B Phillips, Christopher M Pearce, Sally Hall, Joanne Travaglia, Simon de Lusignan, Tom Love and Marjan Kljakovic

Specific comments

whether or not a person needs to be registered?

Question 1: Are there any other factors that the National Boards should consider when advising whether or not a person needs to be registered?

It can be argued that there is minimal risk to the community if practitioners are not registered, or are registered in the non-practising category if:

(1) they do not have direct clinical contact and

(2) their work does not “impact on safe, effective delivery of services in the profession” and

(3) they are not directing or supervising or advising other health practitioners about the health care of an individual(s) and

(4) their employer and their employer’s professional indemnity insurer does not require a person in that role to be registered and

(5) the practitioner’s professional peers and the community would not expect a person in that role to comply with the relevant Board’s registration standards for professional indemnity insurance (PII), continuing professional development (CPD) and recency of practice and

(6) the person does not wish to maintain the title of “registered health practitioner”.

Comment

None

Direct clinical roles / patient or client health care

Question 2: Do you support this statement? Please explain your views

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.

Comment

Supported

Prior to the NRAS being enacted, each State and Territory jurisdiction defined ‘regulated health services’ within their respective registration Acts. Invariably, ‘regulated health services’ were defined as those services performed by a registered health practitioner. Those previous definitions have been repealed as part of the adoption of the National Law by States and Territories. Circumstances are such that NRAS regulates health practitioners but the regulation of health services still remain the responsibility of State and Territory jurisdictions.

Indirect roles in relation to care of individuals

Question 3: Do you support this statement? Please explain your views.

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.

Comment

Not supported

People who exercise corporate and clinical governance roles and responsibilities in both the government and non-government sectors clearly would be captured in the above scenario, some of whom are not registered health practitioners or necessarily related a professional group. The extension of indirect roles could easily be extended to include matters related to groups of patients. Legitimate sovereign prerogatives could be impeded by the practical application of the statement. The need for the registration a person engaged in directing, supervising or advising health practitioners should be related to what that person is doing rather than related to a nominated role.

Non-clinical roles / non-patient-client care roles

Question 4: 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?

Non-clinical roles / non-patient-client 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.

Comment

Not supported

Health practitioners in non-clinical roles / non-patient-client care roles, as described above, are not “practicing” the profession. If registration as a health practitioner is required to fulfill their role or job than it follows the practitioner needs both recency of practice (practised at least within the last 5 years) and currency of practice (can practise the profession competently and safely). A health practitioner who does not engage directly with patient care or delivery should not be considered as practicing their profession. The current definition is too broad and potentially subverts the intention of the National Law and removes the assumed safeguards placed by an employer and the public interest by using a registered health practitioner.

Education and Training

Question 5: For which of the following roles in education, training and assessment should health professionals be registered?

Comment

It could be argued it holds greater significance in the duties being performed rather than the role of the person or setting where it takes place.

- ***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***

Comment

Registration should apply but not if the examiner is only observing and assessing the delivery technique of the service provider ie ADC examiner assessing an internationally trained dental practitioner who is undertaking clinical component of their assessment

- ***Settings which involve patients/ clients to demonstrate examination or consulting technique but not the delivery of care***

Comment

Registration should apply as examining and consulting should be considered as part of providing or delivery of care. Registration should not apply the person if they are only providing a lecture with or without audio-visual enhancement however demonstration of the technique on a patient or instruction to a practitioner performing the technique would require registration of the provider or instructor.

- ***Settings which involve simulated patients/clients***

Comment

Registration should be required in a healthcare setting or context but not applicable in other training related scenarios eg emergency management practice.

- ***Settings in which there are no patients/clients present***

Comment

Registration not required if mannequin or other non-human simulations

Are there any other settings that are relevant and if so, what are your views about whether health practitioners should be registered to work in these settings?

Please explain your views

Comment

None

Options for consideration

Question: Do you support this option? Please explain your views.

Option 1 – No change

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

The current definition of “practice” captures all activities and settings in which an individual with qualifications as a health practitioner might be involved professionally. It protects the public by requiring health practitioners to be registered and to meet the registration standards.

Comment

Not supported

The current definition of practice does not appear to have been subject to a COAG-based risk analysis and with subsequent considerations for management. Inevitably this has resulted to a broad definition that is very verbose and lends itself to variation in interpretation. .

Question: Do you support this option? Please explain your views.

Option 2 – Change the definition to emphasise safe and effective delivery of health care

As stated above, the current definition of “practice” captures the various settings in which a health practitioner may use his or her knowledge and skills and provides for the changing nature of health care delivery.

The current definition could be changed to place the emphasis on safe and effective delivery of health care.

Practice means any role in which the individual uses their skills and knowledge as a health practitioner in their profession in any way that impacts on safe, effective delivery of health services.

Comment

Not supported

The proposed alternate definition (Option 2) strongly focuses on the role of a practitioner. This definition also lends itself to variation interpretation and application.

Other Options

There may be other options that the National Boards have not put forward at this stage, such as maintaining the current definition but providing further guidance on when a practitioner needs to be registered and the circumstances when non-practising registration will be appropriate. Stakeholders are asked to provide feedback on any alternatives to the above options.

Comment

A simpler definition is needed that primarily focuses on an individual practitioner’s conduct of their profession and that is informed by and consistent with the National Law. The emphasis on the National Law is on the regulation of the practitioner rather than the organisation or health service provided.

Another Option definition

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.

Conclusions

Health practitioners most want and seek clarity and consistency from any regulatory framework to assist them in compliance with the law and relevant requisites. The current definition of practice wrongly focuses on the role of a practitioner rather than what the practitioner is doing.

The current definition of practice does not appear to have been subject to appropriate risk analysis and the subsequent considerations for management of identified risks. Inevitably this has resulted to a broad definition that is verbose, lends itself to variation in interpretation and presents as a ‘catch-all’.

The proposed alternate definition (Option 2) strongly focuses on the role of a practitioner. This definition also lends itself to variation in interpretation and application.

A simpler definition is needed that primarily focuses on an individual practitioner’s conduct of their profession and that is informed by and consistent with the National Law. The emphasis of the National Law is on the regulation of the practitioner rather than the organisation or health services provided.

Recommendation

Adoption of a revised definition of practice that focuses on what the health practitioners is doing rather than emphasizing a role of setting.

Another option definition

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.

Yours sincerely,

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