CATHOLIC HEALTH
Australia

3 August 2018

Executive Officer,
Medical, AHPRA,
GPO Box 9958,
Melbourne VIC 3001.
medboardconsultation@ahpra.gov.au

Dear Executive Officer,

Public consultation on Good medical practice

Catholic Health Australia (CHA) is Australia's largest non-government grouping of health, community, and aged care services, providing care across 80 hospitals, 25,000 aged care beds and 36,500 home and community care clients. CHA represents 83,300 employees in our sector across Australia, all of whom hold distinct and unique views. Our employees continually strive to provide the highest quality patient centred care and we support them to act professionally, ethically, and to uphold their rights and responsibilities on issues of conscience. We thank you for the opportunity to participate in this public consultation and to provide feedback on the *Draft revised Good medical practice: A code of conduct for doctors in Australia* produced by the Medical Board of Australia.

Catholic Health Australia fully supports the objectives of *Good medical practice: A code of conduct for doctors in Australia*. Guidelines are essential to facilitate overarching standards of good medical care and this document is a useful tool to guide practice and promote deeper understandings of ethical principles and professional values. CHA believes in constant reflection and revision to ensure the medical profession evolves and innovates, as such we are pleased to be involved in the process of revising the current code to ensure it maintains its relevance and acts in accordance with evolving community and cultural expectations.

While CHA fully supports the nature and intentions of the code we have some trepidation around the draft in its current form. We are concerned that terminology within the code may be misused to limit freedom of speech and impinge on the rights of individual medical professionals to publicly advocate on issues of conscience. This could create a culture of defensive medical practice and have adverse implications for patient care, safety, innovation, and advocacy. CHA offers the following feedback on the current draft code and suggestions on how the Medical Board of Australia could make amendments to mitigate these potential risks.

1. About this code

Revisions made under section one, including the addition of a list of guidelines in 1.1, explanation of the use of the code in 1.2, and clarification around what currently occurs for substitute decision makers in 1.4 are all good additions to the revised code. These changes have helped clarify issues and enhance the usability of the code.

2. Professionalism

CHA does not question importance of professional values and the need for doctors to exhibit qualities that promote community trust and respect patents rights. However, we are concerned that certain language under section two neglects to fully articulate the rights of medical professionals to act in good conscience. We disagree with the premise underpinning this clause that community trust outweighs the rights of a medical professional to freedom of speech, freedom of belief, and freedom of conscience. If a doctor's personal opinions expressed publically do not impact their practice of safe and non-discriminatory care they should not be held as an example of unprofessional practice. We are concerned that current language within the code could be misused to coerce doctors to act against their conscience.

Statements such as '*As a doctor you need to consider the effect of your comment and actions outside of work'* are problematic as they can be interpreted to limit diversity of thought, and thus the creation of innovation and robust

debate within the medical community. CHA is concerned that this statement will allow organisations or employers to police the opinions of staff if they are in opposition to their own medical agendas.

CHA is also troubled by the statement **'***If making public comment, you should acknowledge the profession's generally accepted views and indicate when your personal opinion differs'*. This statement is unclear as it does not specify who or what determines the professions accepted views. It is often the case that experts and leading medical bodies differ in what they believe to be the accepted medical position particularly on contentious and divisive issues. This is highlighted in the instance of Voluntary Assisted Dying (VAD), a controversial issue that has fuelled much debate and diversity of views within the medical profession. The Australian Medical Association (AMA) maintains a position of opposition to the practice of VAD, as does CHA, however some doctors have publically supported it.

This statement also requires further clarification as to what constitutes public comment. Is a conversation held in a work staff room considered public comment? Is an email to a group of friends? Or a Facebook post in a closed group?

CHA recommends that the Medical Board clarify language on this issue and includes a statement under this heading that recognises and supports the rights and freedoms of doctors including the freedom of conscience. Diversity of thought should be supported in the medical profession as this is how we evolve and develop new ideas.

3. Providing good care

The statement 3.2.8 *'acknowledging the profession's generally accepted views and informing your patient when your personal opinion and practice does not align with these'* again highlights the issues raised above regarding the determination of the generally accepted medical view. This statement also does not recognise, or make provision for the fact that medical opinion and practice is constantly evolving and changing. A recent example is the use of opioid treatments for chronic pain. For decade's opioid treatments were considered a key best practice treatment strategy for chronic pain. However, recently the medically accepted view has shifted as research has demonstrated the negative health risks of long term opioid use. Doctors publically questioned the generally accepted view and were able to advocate for changes to prescribing practices, culminating in legislative change limiting the sale of opioids.

3.4.3 **'***Good Medical Practice involves upholding your duty to your patient and not discriminating on medically irrelevant grounds, including race, religion, sex, gender identity, sexual orientation, disability or other grounds, as described in anti-discrimination legislation'.*
The language of the above statement is ambiguous and would benefit from amendments. Race, religion, sex, gender identity, sexual orientation and disability are often medically relevant and do impact how a doctor appropriately treats a patient in a medical setting. We suggest the replacement of the phrase 'medically irrelevant grounds' with the substitution 'not discriminating on the basis of….etc.'

We also contend that in order to honour and protect the rights of doctors to act with good conscience and uphold ethical and religious freedoms the word 'directly' should be removed from statement *3.4.6 'Being aware of your right to not provide or directly participate in treatments to which you conscientiously object,'*. This would better reflect the statement 3.4.7 '*Not allowing your moral or religious views to deny patients access to medical care, recognising that you are free to decline to personally provide or participate in that care'.* Distinctions between discrimination and the right of a professional to opt out of particular treatments should be clarified.

4. Working with patients

The statement in 4.5.2 does not effectively communicate that 'valid authority' may differ between States as it is a legal regulation determined by State laws. CHA contends that additional language is needed to explain this statement. Further clarification and allowances should also be included in situations where a patient is unable to communicate and difficulties emerge in identifying the responsible person, or appropriate legal documentation.

Under section 4.13 End-of-Life Care, point 4.13.1 *'Taking steps to manage a patient's symptoms and concerns in a manner consistent with their values and wishes'* should be expanded to recognise the complex nature of end-of-life care and the difficulties of appropriately understanding and managing patients requests during this period. End-of-life requests are often driven by complex psychosocial issues or can be made under duress or coercion. We believe that specialist palliative care professionals have the unique skillset and training required to manage such circumstances and should be consulted within this period.

CHA also contends that the code should be stronger on the issue of transparency of doctors' fees. *4.5.3 Ensuring that your patients are informed about your fees and charges, d*oes not go far enough. It is not sufficient to merely ensure that patients are informed of fees it should also be an ethical obligation of doctors to charge fees that are fair and reasonable. While the code does state that it is an ethical obligation that doctors do not exploit *10.13.1 patients' vulnerability or lack of medical knowledge when providing or recommending treatment or services,'* which may be interpreted to include the charging of excessive fees, it is not made explicitly clear. CHA believes that further statements are needed within the code that specifically relate to the obligation of doctors to charge fees that are fair and reasonable.

7. Working within the healthcare system

7.3 Health Advocacy

Health advocacy is an essential component of ensuring a safe and effective medical system. CHA is concerned that the current expression of some statements within the draft code will restrict doctors engaging in public debate to the detriment of health advocacy and public health agendas. The language of the code should encourage innovative thought, not supress free speech particularly in areas where health messaging is driven by social, political, or competing agendas, such as drug companies promoting certain medications for clinical trials. The advancement of good medical practice requires doctors to feel supported to publically review outdated policies or call for greater evidence when needed. The code should encourage doctors to advocate on behalf of the profession and not fear disciplinary action or have their professionalism questioned for acting in good conscience.

CHA aims to ensure that our Australian Health system remains one of the world's best, with professionals continuing to provide high quality, safe, ethical, and patient centred care. We are grateful for the opportunity to work with the Medical Board of Australia and contribute to the continued development of professional standards within the Australian medical system. We support the intentions of the current draft code however feel that further clarification is needed on a number of key issues outlined above, to ensure that doctors rights and freedom of speech are protected. It is vital to create and environment where health advocacy and public debate are encouraged to ensure patients are informed, and the Australian health system continues to evolve and remain one of the best in the world.

Should you have any questions, or require further information on any aspect of our submission, please do not hesitate to contact me directly: [redacted] or email [redacted].

Regards,

[redacted]

Suzanne Greenwood LLM LLB FAIM MAIDC MCHSM
Chief Executive Officer
Catholic Health Australia