

6 June 2011

Dr Joanna Flynn
Chair
Medical Board of Australia
GPO Box 9958
MELBOURNE VIC 3001

By Email: medboardconsultation@aphra.gov.au

Dear Dr Flynn

BLOOD-BORNE VIRUS GUIDELINES

Thank you for the opportunity to provide a submission in relation to the Medical Board of Australia's Draft "Guidelines for medical practitioners and medical students infected with blood-borne viruses" ("Draft Guidelines").

As you are aware, MDA National is one of Australia's leading providers of medical defence and medico-legal advocacy services. MDA National works in close partnership with the medical profession on a wide range of issues which impact on medical practice. In addition to its advocacy and advisory services, MDA National's insurance subsidiary (MDA National Insurance) offers insurance policies to MDA National's members which provide cover for the cost of investigations of professional misconduct and for claims for compensation by third parties. The MDA National insurance policy provides medical practitioners with \$20 million of civil liability cover as well as a range of other professional risk covers.

In this submission, MDA National has confined its comments to the medico-legal aspects of the Draft Guidelines.

MDA National submits that medical practitioners and students should have the same right to access confidential testing, counselling and treatment as the general population. MDA National agrees with the statement in the Draft Guidelines that practitioners infected with blood-borne viruses have the same rights of confidentiality as all other patients and the only exception to this is if through their practice, they are putting the public at risk.

In response to the consultation paper:

Question 2

Is it reasonable to expect that medical practitioners and medical students infected with a blood-borne virus will comply with the Board's guidelines and their treating specialist doctors' advice, or should they have conditions imposed on their registration that prevent them from performing exposure prone procedures?

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MDA National submits that if the infected practitioner is responsibly complying with the advice of their treating practitioner, and following the Board's and other relevant guidelines, then it is unnecessary to routinely impose conditions on their registration that prevent them from performing exposure prone procedures.

It is our submission that if conditions were routinely imposed on practitioners with blood-borne viruses, there is the potential for this information to become available to the general public, which would clearly be a breach of patient confidentiality as well as potentially causing significant personal implications for the practitioners involved. MDA National believes this risk may arise even if the conditions imposed on the practitioner's registration were only 'Health Conditions', with the specific conditions not listed on the public Registers of Practitioners.

It is our further submission that there is a significant and real risk of discrimination against these practitioners, and the possibility that practitioners may minimise, or even avoid testing for fear of this information becoming available to the general public, employers and/or colleagues.

Question 4

Which of the following groups of medical practitioners infected with a blood-borne virus should be monitored by the Board and if so, how? For example, should they be required to provide regular results of tests to the Board?

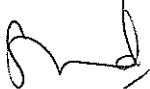
- a. all registered medical practitioners; or
- b. only registered medical practitioners who perform exposure prone procedures;
or
- c. only registered medical practitioners that may place the public at risk of harm because of their practice.

MDA National submits that only registered medical practitioners that may place the public at risk of harm because of their practice should be monitored by the Board.

In summary, MDA National supports a co-operative approach, rather than an enforcement approach as the most appropriate way of ensuring patient safety. We note that the Communicable Diseases Network Australia also recommends this approach with respect to medical practitioners and medical students infected with blood-borne viruses.

Thank you for the opportunity to provide a response to the consultation paper. We look forward to discussing these issues further.

Yours sincerely



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