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Medical Council of New Zealand
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Doctors and Financial Conflicts of Interests: Review of Standards

Thank you for the opportunity to comment on the Medical Council of New Zealand's proposal to revise the existing standards on doctors and financial conflicts of interest. I commend the Council for taking this step in response to the recent cases you outline, which illustrate that practitioners may require more guidance in this area.

You have specifically asked for comment on whether the Council's proposed standards for medical education, provision of care and advice, research, and the governance, management, operation and promotion of HRCOs are appropriate. I will limit my comments to those matters that raise issues under the Code of Health and Disability Services Consumers Rights 1996 (the Code).

Providing care and advice

In my view, the most important principle that must be emphasised in the standards relating to financial conflicts and the provision of care and advice is that the best interests of the patient must always be paramount. The proposed standards do reflect this, but it could be stated more explicitly.

While the standards adequately reflect the need to disclose financial conflicts to consumers, it is not sufficiently emphasised that full disclosure is required in the interests of transparency and patient choice. I suggest it be explicitly stated that motives of profit and the contest for market share must not influence clinical judgement or compromise patient choice.

The second proposed standard states:

> "Act in your patients' best interests when making referrals and providing or arranging treatment or care. Do not ask for or accept any inducement, gift, or hospitality that may affect, or be thought to affect, the way you prescribe for, treat or refer patients. Similarly, offering or providing incentives to a practitioner for the referral of patients to you or your service is unethical."

I suggest that you define the word "practitioner" in this paragraph, as it is not clear whether this is in respect of registered practitioners only, as defined in the Health Practitioners Competence Assurance Act 2004 (the HPCA Act), or whether it would

include unregistered practitioners. In my view, it should cover both, and perhaps, therefore, it is better to use the language "health or disability services provider" as defined in the Health and Disability Commissioner Act 1994 (the Act), which is a wider definition than "practitioner" in the HPCA Act.

I recommend that you consider whether the offering or providing of incentives (see the last sentence of the proposed standard above) should include both real and perceived incentives. Including perceived incentives would limit a doctor from arguing that a particular form of benefit he or she is offering or providing for a patient referral is not an incentive, per se, and therefore not covered by the standards.

Engaging in research

The second proposed standard in this section provides:

> "When designing, organising or carrying out research act with honesty and integrity. Accept only payments that a properly accredited research ethics committee has approved and do not allow payments or gifts to influence your conduct …"

Ethics Committees tend to focus on the relationship between researcher and research subject, so may not cover conflicts that may arise for doctors who assist researchers with recruitment. In those circumstances, the only protection afforded by this standard appears to be that the acceptance of payments or gifts does not influence conduct. In my view, there are definite circumstances where it will never be appropriate for a doctor to receive a payment or gift in research, for example, for recruiting a patient to research, for successfully enrolling a particular number of patients, or for successfully meeting a deadline in recruiting patients (as identified in the College of Physicians and Surgeons of British Columbia's statement on *Conflict of interest arising from clinical research*.) I recommend that further consideration be given to the implications of this bullet point, and whether certain restrictions are required.

Doctors involved in governance, management, operation or promotion of a HRCO

The third proposed standard in this section provides that doctors must endeavour to ensure that information provided to practitioners, patients and regulators is clear and accurate, and includes full information about the expected risks, side effects, benefits and costs of treatments. In my view, it would be appropriate, and consistent with the Code of Health and Disability Services Consumers' Rights 1996, to add "explanation of the options available" in this list of information that should be provided.

Conclusion

It is important that patient choice and a provider's obligation to act in the best interests of their patient are not compromised in situations where a doctor has a financial conflict of interest. While the proposed standards are, for the most part, thorough and appropriate, I consider they would benefit from the minor clarifications set out above.