Proposed National Code of Conduct Response

Submitted by the National Herbalists Association of Australia (NHAA)

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Table of Contents

Executive Summary

Background and scope

The purpose of this submission is to evaluate and comment on the proposed National Code of Conduct for health care workers. The NHAA supports the development and progression of a National Code of Conduct for unregistered health practitioners and as an interim standard for herbalist and naturopaths, who are seeking professional registration through Australian Health Practitioner Regulation Agency (AHPRA).

This document has been prepared by the National Herbalists Association of Australia (NHAA), which has represented the interests of professional Western herbal medicine (WHM) practitioners and naturopaths in Australia since 1920.

The NHAA believes the establishment of a National Code of Conduct is one strand of an overall strategy to protect the public by providing an enforceable set of standards that health practitioners must adhere to, and by which the public may adjudge competent health practice.

Recommendations

As summarised in this submission, the NHAA supports the proposed National Code of Conduct, including it being applied to registered professions, with the provisions outlined below.

About the NHAA

The NHAA is a peak professional association representing appropriately qualified Western herbalists and naturopaths using herbal medicines as their primary treatment modality. It is the oldest professional association of complementary therapists, founded in 1920 with a current full membership of approximately 850 (total membership is around 1200 including student and companion members). This represents approximately one third of practising herbalists and naturopaths in Australia. The NHAA is the only national professional association specifically concerned with the practice and education of Western herbal medicine (WHM) in Australia. Members are required to adhere to the Association's Constitution and the Code of Ethics (including standards of practice). Details of the Constitution and the Code of Ethics and Standards of Practice of the Association are detailed in Appendices 1 & 2.

The primary aims of the NHAA are to:

- Promote, protect and encourage the study, practice and knowledge of medical herbalism.
- Disseminate such knowledge by talks, seminars and publications.
- Encourage the highest ideals of professional and ethical standards.
- Promote herbal medicine within the community as a safe and effective treatment option.

The vision held by the NHAA for the professional practice of herbal medicine is summarised in the following statements.

- Practitioners and the practice of herbal and naturopathic medicine are fully integrated into the primary healthcare system in Australia.
- The NHAA is recognised as the peak body for herbal and naturopathic medicine.
- Herbal and naturopathic medicine is accessible to all.
- The integrity of the profession of Western herbal medicine and naturopathy is maintained.
- The standards and quality of education of the profession continue to be promoted.
- Career opportunities and research pathways for herbalists and naturopaths are created.
- The integration of traditional medicine and evolving science is continued.

The NHAA is governed by a voluntary Board of Directors. Full members of the Association elect the Board of Directors, with each board member serving a two-year term after which they may stand for re-election.

Full members of the NHAA have completed training in Western herbal and nutritional medicine sufficient to meet the educational standards as determined by the Examiners of the Board. These standards are set in consultation with tertiary educational institutions (standards in line with but exceeding the requirements of the NSW Health Training Package), and all members must adhere to a comprehensive Code of Ethics and Continuing Professional Education (CPE) program (see Appendices 2, 3 & 4). Membership consists of practitioners of Western herbal medicine who choose to use herbal medicine as their major modality of practice including Naturopaths, GPs, Pharmacists and Registered Nurses.

The NHAA publishes the quarterly *Australian Journal of Herbal Medicine*, a peer reviewed subscription journal covering all aspects of Western herbal medicine, and holds annual seminars on herbal medicine throughout Australia. An *International Conference on Herbal Medicine* has been held every 2-3 years since 1992.

Since its inception, the NHAA and its members have been at the forefront of herbal medicine and have been influential in areas ranging from education and practice standards, to government regulation and industry standards. The NHAA has a strong commitment to achieving high educational standards in herbal medicine practice and supports the regulation of the profession.

NHAA responses

Definitions

Comment

The current National Code of Conduct (NCC) draft defines the class of those subject to the code as 'health care worker'. The NHAA believes this definition more suitable to those working within a health care organisation, rather than an independent health care professional, who we believe are the greater class of those subject to the code. Therefore we prefer the terminology adopted by the NSW and SA codes of conduct, of 'health practitioner'.

Application of this code

Comment

The NHAA believe the proposed NCC should apply to both registered and unregistered practitioners for the following reasons;

- Ease of understanding for the public of what constitutes ethical safe health practice, regardless of the type of health practitioner.
- A general understanding between health practitioners, both registered and unregistered of what constitutes safe and ethical practice, to facilitate accurate and reasonable reporting of unsafe practices.
- Provides an ease of implementation and understanding of a NCC for those professions transferring from unregistered to registered status.

The NHAA recognises there would be some challenges in this regard related to individual scope of practice, but we believe they could be readily dealt with by individual guidelines to the application of a NCC for all health practitioners.

1. Health care workers to provide services in a safe and effective manner

The NHAA concur that the NCC should include a minimum enforceable standard for the safe and ethical provision of health services. However, we are concerned that such a broad statement encompassing what constitutes safe practice in an individual health profession leaves the following unanswered questions:

- Who defines safe practice for each individual unregistered health profession?
- What level of education constitutes the baseline required to practice safely?
- What national body will provide guidance and standards with which to establish whether a health practitioner is practicing safely?

These are the questions the NHAA frequently asks when faced with proposals for codes of conduct. While we are aware that the argument for regulation of Western herbal medicine practitioners and naturopaths is beyond the scope of this discussion, we have attached our submissions to the NSW and SA Code of Conduct consultations (Appendices 5 & 6) to elaborate our concerns with the implementation of the NCC as opposed to registration of the aforementioned professions.

2. Health care workers to obtain informed consent

Comment

This is an area not previously addressed in the SA and NSW Codes of conduct, likely due to its complexity. The NHAA agree in principle that some effort should be made to address this area of ethical practice but have concerns about how any breach of this clause might be proved. The application of many health practices rely on implied or verbal consent as written consent to treatment is rarely sought. Therefore, any breach of this clause would be difficult to establish. However, we agree that there is benefit in reminding practitioners and potential clients of the need for this consent.

While a complete explanation of consent is beyond the scope of the NCC document, we recommend that a reference link should be included to the relevant legislation.

3. Appropriate conduct in relation to treatment advice

Comment

The NHAA agrees that a minimum standard in relation to the provision of treatment advice and all sub-clauses pertaining to this within the NCC should be enforceable. The NHAA would like to see the addition of the obligations of the health practitioner when the client presents having already eschewed medical treatment and continues to refuse this, despite contrary advice given by the health practitioner. For example:

- documentation of refusal of advised medical care,
- refusal to provide alternative health care,
- other

4. Health care workers to report concerns about treatment or care provided by others

Comment

The NHAA agrees there should be mandatory reporting obligations against both registered and un-registered health practitioners within the proposed NCC. This would:

- support the proposal of a NCC for all health practitioners (registered and non-registered);
- be plausible, as both the NCC and any related individual registered practitioner practice guidelines would be freely available to reference on various websites.

The NHAA believe the provision of a sub-clause against frivolous and vexatious complaints is within the scope of the document as any such complaint will likely involve the client as a witness to the conduct.

5. Health care workers to take appropriate action in response to adverse event.

Comment

The NHAA agrees with clause 5 and the sub-clauses within the NCC should be enforceable to a minimum standard without revision.

6. Health care workers to adopt 'standard precautions' for infection control.

Comment

The NHAA agrees with clause 6, enforcing 'standard precautions' as a minimum requirement within the NCC for infection control, without revision.

7. Health care workers diagnosed with an infectious medical condition.

Comment

The NHAA concurs with enforcing clause 7 as a minimum standard for those with an infectious medical condition, without revision.

8. Health care workers not to make claims to cure certain serious illnesses.

Comment

The NHAA concurs with enforcing clause 8 as a minimum standard for those who treat clients with serious illness, without revision.

9. Health care workers not to misinform their clients

Comment

The NHAA concurs with enforcing clause 9 and its sub-clauses as a minimum standard for avoiding misinforming clients, without revision.

10. Health care workers not to practice under the influence of alcohol or drugs.

Comment

The NHAA concurs with enforcing clause 10 and its sub-clauses as a minimum standard to prevent health practice under the influence of alcohol or unlawful drugs, or drugs whose effect might impair competent practice, without revision.

11. Healthcare workers with certain mental and physical impairments.

Comment

The NHAA agrees in principle with clause 11, but has some concerns about its application being used to endorse discriminatory behaviour, and believe a codicil providing further guidelines to the application of clause 11 to that effect, should be included in the final draft. However, the NHAA does acknowledge and recognise the emphasis of the NCC on client safety.

12. Health care workers not to financially exploit clients

Comment

The NHAA concurs with enforcing clause 12 and its sub-clauses as a minimum standard to prevent the financial exploitation of clients by health care workers. We

have some concerns about the administration of the clause, as CAM practitioners have some vulnerability in the area as they include the provision of herbal medicines and nutritional supplements as a part of practice. This means they might receive from suppliers, discounts or sample medicines as a part of the commercial relationship. This is a traditional practice that occurs partly due to both the requirement for compounded medicines and prescribing individual treatment plans, and to lack of prescription based infrastructure for CAM treatments, leading to the CAM practice becoming the point of sale.

The system outlined above is currently broadly accepted within the CAM professions with no impetus to modify the practice. The NHAA believe that national regulation of Western herbalists and naturopaths may support change in this area, a possibility that further advocates for registration.

13. Health care workers not to engage in sexual misconduct

Comment

The NHAA concurs with enforcing clause 13 and its sub-clauses without revision.

14. Health care worker to comply with relevant privacy laws

Comment

The NHAA concurs with enforcing clause 14 and its sub-clauses without revision.

15. Health care worker to keep appropriate records

Comment

The NHAA concurs with enforcing clause 15 and its sub-clauses without revision.

16. Health care workers to be covered by appropriate insurance

Comment

The NHAA agrees in principle with clause 16 being enforced. Professional indemnity insurance is a requirement for all practicing full-members of all CAM associations. However, the NHAA are concerned with the term *"appropriate"* within the clause as being very ambiguous. Who decides what type and level of insurance is appropriate?

How will this be enforced? Should there be a minimum indemnity amount set by the enforcing body, or will it be deferred to professional associations? Professional associations often have group insurance contracts for their members, but level of insurance can vary widely with little thought beyond cost of policy to guide insurance amount.

The NHAA believes some clarification is required for this clause.

17. Health care worker to display code and other information

Comment

The NHAA agrees in principle with enforcing clause 17 and its sub-clauses but concede there may be occasions in practice where complying might be difficult. For example:

- where place of practice may be within clients home;
- where place of practice is temporary/ mobile on an ongoing basis;
- where practice facilities are shared by non-code regulated worker, which precludes the permanent fixture of such information.

The NHAA believes a modification to the clause to include both the display of, or provision of code and information to client, might preclude these concerns.

Items not included in the draft National Code of Conduct.

Sale of optical appliances

No Comment

Health care workers required to have a clinical basis for treatment

Comment

The NHAA agrees with the outlined discussion within the National Code of Conduct consultation paper that including this provision within the Code of Conduct:

- is fraught with complexity in relation to providing proof of treatment efficacy,
- may lead to frivolous complaints against CAM professionals by those with other agendas,
- imposes an unequal burden of proof upon non-regulated health practitioners.

Should this item be included within the National Code of Conduct, it might be framed within the context of;

- clinical practice as supported by the education standards of professional associations
- clinical practice that reflects peer accepted guidelines , and
- informed consent for treatments that are experimental or fall outside peer accepted practice.

Scope of application of the National Code

Definition of a health worker

Comment

As previously stated at the beginning of our response the NHAA prefers the term *'health practitioner'* to indicate a person subject to the National code. While we have no strong objections to the term 'unregistered health practitioner', we agree there are negative connotations professionally with such a term.

Definition of health service

Comment

The NHAA believes consistency of terminology around the terms *'Health care service'* and *'health care provider'* is warranted to avoid consumer confusion and legal ambiguities. The easiest way to achieve this might be to compile an inclusive list of terms and abbreviations currently in use by all states and territories (except where the inclusion of a service has already been proved to be problematic in a legal or regulatory context).

The NHAA sees no reason to include volunteers to the definition of those who provide a health service. We believe anyone who volunteers a health service, would need to be a qualified provider anyway, and so covered under their primary health profession. Unqualified volunteers may be providing services within a health service but not of a health care nature (e.g. providing ancillary domestic services), thus irrelevant to the proposed code.

Application of a "fit and proper person test"

Comment

The NHAA is unsure of the need for a "fit and proper person test" for non-regulated practitioners. Elements of such a test are a common requirement for many registered health professionals and for those who work with children; an admission of the vulnerabilities of the public and children during the provision of some services. In the context of the practice of non-registered health professionals:

- treatments are rarely invasive,
- there is no requirement for a child to be treated unattended by a parent or guardian (though they may elect to do so),
- such a check will not yield information such as the ejection of a member from a professional association due to unprofessional conduct,
- may identify relevant criminal history.

Any perceived requirement for such a test adds to the previous observations made that support the need for the registration of Western herbalists and naturopaths. In the absence of this, such a test (e.g. police check, working with children check) could be an additional requirement for practicing full-members of associations. However the added administrative and thus financial burden of this must be considered, as professional associations, unlike registration boards, have more limited financial capacity, and already carry the administrative burden of the current pseudo-regulatory regime.

Who can make a complaint?

Comment

The NHAA support a national consistency of who can make a complaint. Based on the current state and territory provisions, we can see pros and cons of both: limiting complaints being made to those that receive the service in question, and therefore having firsthand knowledge of service provided; and allowing anyone to make a complaint, recognising that clients may be reluctant to do so for various reasons. The concern we have with allowing anyone to make a complaint is the previously recognised possibility of vexatious, misleading complaints being made for reasons other than a breach of the Code. Therefore, an alternative provision could be that only clients (and guardians/representatives) be allowed to make a complaint, except where the Commissioner identifies that a third party has explicit irrefutable evidence (or other exceptional circumstances related to public interest).

Commissioner's 'own motion' powers

Comment

The NHAA has no fixed view on 'own motion' powers of the commissioner, except to observe the current status would seem to have little effect on the implementation of the current Code per se. Therefore, this could be deferred; as the states and territories may be required to make considerable changes for the implementation of the National Code,.

Grounds for making a complaint

Comment

The NHAA believe that to prevent consumer and health practitioner confusion, grounds for making a complaint should be aligned with that of AHPRA, providing national consistency.

Timeframe for making a complaint

Comment

The NHAA believe that timeframes for complaints should also align with AHPRA. If no such timeframe has been set by the national register then there should be no set timeframe for complaints to be made.

Interim prohibition orders

Who is empowered to issue prohibition orders

Grounds for issuing a prohibition order

Right of review of a prohibition order

Penalties for breach of a prohibition order

Powers to monitor compliance with prohibition orders

Information sharing powers

Mutual recognition

Comment

While the NHAA recognises regulations relating to prohibition orders exist in Queensland, New South Wales, and South Australia, the remaining states and territories, without codes of conduct lack this regulatory infrastructure. Therefore, the opportunity should be taken to implement a nationally consistent regulatory framework around prohibition orders, ideally based on that undertaken for the registered professions. Penalties and compliance monitoring are an important part of code breach prevention and maintaining public safety. It is noted that the current penalties across the three states who currently dispense prohibition orders are

similar, and could provide a national model; while compliance monitoring is minimal and needs to be properly resourced. Nationalising this may reduce bureaucratic costs, and allow funding for compliance monitoring.

Publication of prohibition orders and public statements

Comment

The NHAA believes the publishing of prohibition orders a vital part of maintaining public safety. However, we have concerns over the publishing of interim prohibition orders as they might be overturned after the formal review process. Therefore, we believe an opportunity to rectify this practice in some states or territories through a national publishing regime should be considered.

Application of interstate prohibition orders

Comment

The NHAA believe that interstate prohibition orders must be enacted nationally for the protection of the public. This supports the recommendation for the National publishing of prohibition orders. This will prevent the cross border movement of undesirable health practitioners, which has been demonstrated in the past.

The NHAA has no recommendation on how this might be instituted but note that Queensland has begun working on this and may provide a regulatory blueprint (post evaluation and review).

Information sharing powers

Comment

The NHAA agree that information sharing powers need to be implemented across all states to assist in the investigation for and enactment of prohibition orders.

Implementation- Administrative arrangements

Mutual recognition

Comment

The NHAA agree that Option 3 outlined in the National Code Consultation paper is the most useful way to manage mutual recognition requirements but agree that cost and oversight of the register is prohibitive. Therefore, initially Option 2 may be most realistic to implement. As mentioned in the discussion of mutual recognition, there are not a large number of prohibition orders implemented, so compliance is unlikely to be a large burden for the host state.

General Comments

The NHAA has observed the broadening of the proposed code of conduct beyond that of those previously adopted by NSW and SA with interest. We note that this broadening of scope combined with the complexities surrounding nationalising the issue and management of prohibition orders has resulted in the recommendation of a national register for this purpose. The result (ironically) is an increase in the pseudo-regulatory framework for the unregistered practitioner. The NHAA finds this frustrating as we promote and seek registration for Western herbalists and naturopaths to foster public safety and to protect practice and title.

While The NHAA believe a national code of conduct for unregistered health practitioners is useful to promote public safety, we believe it is incomplete without regulating national education standards, national practice guidelines, and protection of title through statutory registration for Western herbal medicine practitioners and naturopaths, as recommended by the La Trobe Report (Linn et al 2005). The lack of these underpinning professional requirements result in the difficulty of establishing the more complex examples of professional misconduct relating to clinical practice, outlined upon multiple occasions within the discussion document.

Therefore, the NHAA state that in the absence of national registration for Western herbalists and naturopaths, the proposed NCC with the recommendations outlined within this submission included, is an acceptable interim measure. .

References

Lin V et al. 2005. *The Practice and Regulatory Requirements of Naturopathy and Western Herbal Medicine.* School of Public Health, La Trobe University, Bundoora. Available at www.health.vic.gov.au/workforce/pracreg/naturopathy

Appendices

Appendix 1 - NHAA constitution

http://www.nhaa.org.au/index.php?option=com_content&view=article&id=457&Itemid=415 and attached as a separate file.

Appendix 2 - NHAA Code of Ethics and Standards of Practice

http://www.nhaa.org.au/index.php?option=com_content&view=article&id=81&Itemid=76 and attached as a separate file.

Appendix 3 - NHAA Continuing Professional Education Guide

http://www.nhaa.org.au/images/stories/CPE%20Guide%202012.pdf and attached as a separate file.

Appendix 4 - NHAA Continuing Professional Education Diary

http://www.nhaa.org.au/images/stories/CPE%20Diary%20Print%202012.pdf and attached as a separate file.

Appendix 5 – NHAA Response to NSW unregistered Practitioners Code of Conduct.

http://www.nhaa.org.au/mediareleases/be-informed/government-industry-submissions/819-unregistered-health-practitioner-code-of-conduct-january-2008 and attached as a separate file.

Appendix 6 – NHAA Response to SA Bogus, Unregistered and Deregistered Health Practitioners

http://www.nhaa.org.au/mediareleases/be-informed/government-industry-submissions/314-sa-bogus-a-unregistered-practitioners-april-2008 and attached as a separate file