



AMA Victoria submission to AHPRA's consultation on *Guidelines for the regulatory management of registered health practitioners and students infected with blood-borne viruses*

AMA Victoria welcomes the opportunity to provide input into the draft *Guidelines for the regulatory management of registered health practitioners and students infected with blood-borne viruses*. This is an important set of guidelines that may have a significant impact upon doctors.

Is a guideline necessary?

AMA Victoria supports the introduction of guidelines for the regulatory management of registered health practitioners and students infected with blood-borne viruses.

Formal guidelines, such as the ones proposed, provide a clear and consistent framework for health practitioners to work within and allow for consistent decision making by doctors, employers and the Medical Board of Australia (MBA).

Is the content of the guidelines helpful, clear and relevant?

AMA Victoria has provided detailed comments in Attachment 1.

Is there any content that needs to be changed, added or deleted in the guidelines?

An advanced discussion of anti-discrimination and privacy legislation would be beneficial to ensure that those relying on the guidelines are fully aware of their privacy and anti-discrimination rights and responsibilities.

In particular the guidelines should refer to:

- The *Fair Work Act 2009* as this covers discrimination based on disability (such as the impairment related to a blood-borne virus),
- The *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*, which took effect in March 2014, as this covers the holding and releasing of health information, and
- Relevant *Occupational Health and Safety Acts* that mention employer responsibility in protecting their workers from exposure to blood-borne virus.

AMA Victoria has also provided further detailed comments in Attachment 1.

Do you agree with the proposal that Boards expect registered health practitioners to comply with CDNA guidelines for the management of health practitioners infected with a blood-borne virus? That includes following advice on their scope of practice based on the CDNA guidelines.

AMA Victoria views the proposal that registered practitioners be expected to comply with Communicable Diseases Network Australia (CDNA) guidelines as sensible.

The CDNA provides expert advice on blood-borne virus and is best placed to advise on measures relating to exposure control.

Given that medical practitioners are being directed to follow their guidelines AMA Victoria believes it would be valuable for the MBA to seek assurances from the CDNA that they will heed any submission the MBA might make to the future revision of these guidelines.



Do you believe that there is any conflict between these guidelines and any other guidelines for the management of practitioners infected with a blood-borne virus? Is there any conflict with any obligations that may arise in the workplace?

AMA Victoria would like to highlight the potential conflict where a practitioner has a blood-borne virus but does not undertake exposure prone procedures in their practice. In the absence of any behavioural risk or professional risk derived from medical practice, AMA Victoria believes that medical practitioners should be under no requirement to have regular blood tests or disclose their blood-borne virus (BBV) status where there is no evidence of harm or risk to the public.

There is a further potential risk under the *Fair Work Act 2009*, the *Privacy Amendment (Enhancing Privacy Protection) Bill 2012*, and relevant *Occupational Health and Safety Acts* where details of a practitioner's infection are disclosed. The Board will need to remain mindful of the practitioner's rights under these pieces of legislation and ensure they are protected, particularly where a practitioner has not knowingly endangered the public.

A third potential conflict is that some hospitals and other facilities will have their own internal guidelines on managing health workers with blood-borne viruses which may contradict some aspects of these proposed guidelines. This duplication has the capacity to create confusion amongst practitioners and employers and could lead to unintended breaches in the new guidelines. It is important that this duplication does not exist and AMA Victoria would suggest that once these guidelines are formally adopted they be communicated to all health service providers to ensure that all practitioners are relying on the same, correct guidelines.

Once the guidelines are finalised and published, they should also be communicated to the Deans of Medical Schools to ensure that the information is incorporated into the advice being provided to students. The Medical Deans' policy on infectious disease has not been updated since 2001¹ and may contain significant differences in the advice provided to medical students. It is important that aspiring doctors are provided with the correct information during their training to ensure that they are well aware of their rights and responsibilities in practise.

Is it reasonable and appropriate for the Board to take regulatory action only if a practitioner who is infected with a blood-borne virus is placing the public at risk?

Given the Board's key role is protecting the public, AMA Victoria believes that it is reasonable for the Board to take regulatory action when a practitioner is placing the public at risk. As with any Board action it is important that the rights of the medical practitioner are maintained and respected as much as possible.

Do you have any other comments on the guideline?

AMA Victoria believes that there may be some additional complications created by relying on the CDNA guidelines in this document. Some of the key information that readers may be seeking will be found in the CDNA guidelines and not in this proposed document increasing the workload and administrative burden for doctors. This problem could be significantly reduced by the provision of more detail in the summaries of the CDNA guidelines and ensuring that where the AHPRA guidelines are made available they are accompanied by easy access to the CDNA guidelines.

¹ <http://www.medicaldeans.org.au/wp-content/uploads/Infectious-Disease-Policy.pdf>



The decision to adopt nationally consistent guidelines across all 14 Boards, whilst valuable, may create additional workload and delays. Members of many of the 14 registered professions will never be involved in exposure prone procedures and these guidelines will be irrelevant to their daily practice. Seeking final approval from all 14 Boards may also further delay the release of this document and likely increase the administrative costs associated with its preparation. The MBA should consider releasing guidelines designed for the medical profession that meets their specific needs.

AMA Victoria would also like to highlight the potential value in engaging with specialist occupational physicians to work in collaboration with many clinical disciplines, regulators and employers and to advise on and manage cases where a practitioner may be have a blood-borne virus. Specialist occupational physicians are experts in the overall prevention and management of occupational infections and can provide valuable information and support to workplaces and doctors.



Attachment 1: Detailed comments and suggestions about the text of the draft guidelines

The comments below are linked to the existing text. The text has been reproduced, with page references, comments and suggested changes inserted into the text.

Page 1 and first part of page 2 (pages 8 and 9 of full consultation document)

About the National Boards and AHPRA.

This introductory section seems unnecessary and may distract many readers. These three introductory paragraphs could be omitted as they will be redundant if the suggestion that the guidelines be issued by each board individually (as already applies to the guidelines for "Good Medical Practice") is adopted.

About these guidelines, Who needs to use these guidelines, and What is the purpose of these guidelines?

The first two sections contain much the same material. The third section could usefully be combined with the first two and covered under a single heading, making the document shorter and easier to follow. AMA Victoria suggests that all three be combined as follows:

About these guidelines - proposed new/replacement text

These guidelines have been developed by the Medical Board under section 39 of the National Law (*see attachment*). The guidelines address the regulatory management of medical practitioners and students who are infected with blood-borne viruses (*currently hepatitis B, hepatitis C and HIV*) and are directed to:

- medical practitioners registered under the National Law
- medical students registered under the National Law, and
- specialist medical practitioners who are treating health practitioners or students who are infected with a blood-borne virus.

Education providers and *health care* employers may also bring the guidelines to the attention of their students and employees respectively.

In brief, these guidelines:

- inform all practitioners that they must comply with the Communicable Diseases Network Australia (CDNA) guidelines, *Australian National Guidelines for the management of health care workers known to be infected with blood-borne viruses*, as currently published and as revised in the future. The guidelines are available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/cda-cdna-bloodborne.htm>
- explain the circumstances *in which* a medical practitioner treating a registered health practitioner or student may have a responsibility to notify the relevant Board of their patient's infective status, and



- provide information on the range of actions that a Board may take if it receives a notification that a registered health practitioner or student is infected with a blood-borne virus **and may be impaired**.

These guidelines take a risk-based approach to the regulatory management of practitioners with a blood-borne virus. Practitioners who are not impaired as defined in the National Law can continue to practice their profession as long as they comply with the CDNA guidelines that are in place at the time.

Page 2 (page 9 of full consultation document)

The section in the middle of the page, commencing with the words “Impairment under the National Law etc” is mostly about the regulatory role and powers of the MBA and might be better placed in the later section headed “The Board’s response” on page 4 (i.e. page 11). Suggested placement and words have been added in on page 4.

To reduce repetition, we suggest the following changes on page 2

What is not covered in these guidelines?

These guidelines are **restricted to** registered health practitioners and students infected with blood-borne viruses. They do not include guidance for registered health practitioners and students with other infectious diseases, **who should be aware** that **many** infections can be transmitted in other ways and they should refer to and comply with relevant current infection control guidelines **entitled *Australian Guidelines for the Prevention and Control of Infection in Healthcare*** issued by the National Health and Medical Research Council (NHMRC).

Comment: It would also be useful for the reader to provide a direct link to the NHMRC Australian Guidelines for the Prevention and Control of Infection in Healthcare.

Pages 2 and 3 (pages 9 and 10 of full consultation document)

Care needs to be taken that the following sections do not conflict with the CDNA guidelines. One option to consider is to reproduce here some or all of the detailed summary of CDNA guidelines and then only add additional advice that the MBA believes is necessary.

The tracked comments below are intended to draw attention to possible inconsistencies and to suggest additional matters for consideration. If an earlier suggestion is accepted, the entire document of course will need to be amended to make the guidance specific to medical practitioners and medical students.

General guidance for all registered health practitioners and students

- Registered health practitioners and students have a responsibility to prevent the transmission of blood-borne viruses from themselves to their patients.
- Registered health practitioners and students have a responsibility to protect themselves from transmission of blood-borne viruses.
- All registered health practitioners and students must comply with the CDNA guidelines for health practitioners infected with blood-borne viruses. The current guidelines are at <http://www.health.gov.au/internet/main/publishing.nsf/Content/cda-cdna-bloodborne.htm>>



- All registered health practitioners and students **who undertake or may undertake exposure prone procedures** should know their blood-borne virus status. If they have a blood-borne virus, they must seek and accept expert advice on the safe limits of their practice and must comply with the CDNA guidelines.
 - Comment: “Knowing” one’s status for **all** practitioners is problematic. The CDNA guidelines only recommend that those who undertake, or may be required to undertake, exposure prone procedures need to be tested annually. This is consistent with the view of the Royal Australasian College of Surgeons. The CDNA guidelines fall just short of stating that those who undertake exposure prone procedures **MUST** be tested annually. AMA Victoria does not believe it is appropriate to require every medical practitioner to undertake yearly BBV testing, particularly where they are not involved in exposure prone activities.
- All registered health practitioners and students who **undertake or may undertake** exposure prone procedures should be vaccinated against any blood-borne virus for which there is a commercially available vaccine. Vaccination should be done at the start of employment or studies if the practitioner or student does not have documented evidence of pre-existing immunity.
- All registered health practitioners and students should be tested for blood-borne viruses following every sharps injury and/or exposure to body fluids, secretions and excretions, and must follow current post exposure protocols for the management of sharps injuries and/or exposure to body fluids, secretions and excretions.
 - Comment: It would be valuable for the document to link directly to current post exposure protocols or to advise doctors where they can access these.
- Health practitioner students and trainees who are likely to be required to perform exposure prone procedures as part of their studies or training must undergo testing for blood-borne viruses before, or on entry to the program of study or training. If the student or trainee is found to be infected with one or more blood-borne viruses, they should be assessed by a suitably qualified medical practitioner and if they are potentially infectious, should seek counselling on career options.
 - Comment: This is an example of how trying to have a single document for all health professionals can create confusion. If the above dot point was directed towards medical students only, the wording could be more precise. The paragraph also appears to exclude the common situation of junior doctors [before they commence specialty training] being involved in exposure prone procedures.
- Students enrolled in dental programs are required to perform exposure prone procedures during their course of study. Dental students with a blood-borne virus would not be able to undertake these procedures and therefore could not meet the minimum requirements of an approved program of study that leads to registration. They are therefore not able to continue with the program of study.
- Registered health practitioners and students who perform exposure-prone procedures must be tested for blood-borne viruses as described in the CDNA guidelines.
 - Comment: It would be useful to place the definition of exposure prone procedures in the body of the text rather than as a footnote as this is the central issue for blood borne viruses. It is preferable that the reader not



have to search for the definition/explanation. If the MBA released their own guidelines (rather than the proposed ones for all 14 Boards) it would also be appropriate to include the section of the CDNA guidelines that outlines BBV testing requirements.

Pages 3 and 4 (pages 10 and 11 of full consultation document)

The following suggestions are made to improve clarity and consistency.

Guidance for registered health practitioners and students with blood-borne viruses

- All registered health practitioners and students who are infected with a blood-borne virus should be under the regular care of a suitably qualified specialist medical practitioner, such as an infectious diseases physician, specialist gastroenterologist and hepatologist or similar. They must seek and accept their specialist's advice on the safe limits of practice. If the infected practitioner does not comply with the treating doctor's advice, the treating doctor may have a mandatory obligation to report the infected practitioner to the Board.
 - Comment: Many gastroenterologists no longer have experience in viral hepatitis. AMA Victoria would suggest that 'gastroenterologist' be omitted or that the guidelines make specific mention of expertise in viral hepatitis. If the MBA has no examples of specialists who might be deemed "similar", we would further suggest omitting this word.

Page4 (page 11 of full consultation document)

As suggested earlier, text from page 2 (page 9) might be usefully placed here as an explanation of why the MBA will make these responses. We have added this text below in a modified form.

The Board's response to a registered health practitioner or student with a blood-borne virus

The Board's response to any notification of a medical practitioner or medical student who carries a blood borne virus is directed at the question as to whether that person's capacity to practise is impaired. Impairment under the National Law is defined as:

in relation to a person, means the person has a physical or mental impairment, disability, condition or disorder (including substance abuse or dependence) that detrimentally affects or is likely to detrimentally affect—

- (a) for a registered health practitioner or an applicant for registration in a health profession, the person's capacity to practise the profession; or*
- (b) for a student, the student's capacity to undertake clinical training—*
 - (i) as part of the approved program of study in which the student is enrolled;*
 - or*
 - (ii) arranged by an education provider.*

The definition requires that the person has a disability, condition or disorder such as infection with a blood-borne virus AND that infection affects or is likely to detrimentally affect their capacity to practise (if they are a practitioner) or their capacity to undertake clinical training (if they are a student).

As long as a practitioner with a blood-borne virus is complying with the CDNA guidelines, they are not putting the public at risk and their capacity to practise the profession is not



effected. Therefore, they are unlikely to be considered to be 'impaired' and meet the threshold for Board action.

Comment: The use of the word "unlikely" in the last sentence suggests some ambivalence and may create unwarranted confusion or anxiety. AMA Victoria recommends amending the final sentence to read "Unless there are other circumstances raising a question of impairment, the practitioner will not be subject to action by the Board"?

The Board recognises that registered health practitioners and students with a blood-borne virus have the same right to privacy as other individuals with an infectious disease or other illness. Registered health practitioners and students who comply with these guidelines are unlikely to need to be notified to the Board. Even if a notification is made, the Board is unlikely to take any regulatory action if they are assured that the registered health practitioner or student has complied and will continue to comply with the CDNA guidelines and is therefore not placing the public at risk.

- There is no requirement for registered health practitioners or students with blood-borne viruses to notify the Board that they are infected with a blood-borne virus if they are following their treating practitioner's advice and have complied with and are continuing to comply with the CDNA guidelines.
 - Comment: This dot point is really part of guidance to practitioners and should be under the section "*Guidance for registered health practitioners and students with blood-borne viruses*" and only repeated here, if felt necessary.
- Unless there is another condition (e.g. **cognitive or other impairment**), a registered health practitioner or student with a blood-borne virus who is practising within the limits defined by the CDNA guidelines and is following accepted infection control measures, is not placing the public at risk and therefore does not need to be notified to the Board.
 - Comment: Likewise this is really part of the advice to treating specialists and should be given under that heading. AMA Victoria recommends removing the reference to cognitive impairment associated with HIV to avoid possible stigmatization of HIV patients
- If the Board receives a notification about a registered health practitioner or student with a blood-borne virus, it may seek additional information to assess the risk to the public that the practice of the practitioner or student poses. This additional information might include:
 - asking the practitioner or student whether they are willing to obtain a report from their treating medical practitioner. The Board would seek advice on whether the registered health practitioner or student poses a risk to the public, given their status and their scope of practice and/or
 - asking the practitioner or student to undergo a health assessment with a suitably qualified independent specialist/s who will report to the Board. The registered health practitioner or student would be given a copy of the report in accordance with the relevant provisions of the National Law.
 - Comment: The two possible actions listed above should only come into play if there is a notification made alleging impairment of the practitioner. This needs to be made much clearer.



Page 4 (page 11 of full consultation document)

A minor change to the heading is suggested for clarity and consistency.

Guidance for treating specialist doctors