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Submission to the Osteopathy Board of Australia

**Consultation on Guidelines:**

- Draft revised *Continuing professional development guidelines* (“CPD Guidelines”).

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## **Submission: Consultation on draft revised *Continuing professional development guidelines* (“CPD Guidelines” or “draft Guidelines”).**

### **This submission**

Osteopathy Australia appreciates this opportunity to comment on the draft.

We are pleased for the Board to publish this submission on its website. It has also been published on Osteopathy Australia’s website.

### **Osteopathy Australia**

Osteopathy Australia is the national professional body representing over 85% of osteopaths across Australia. This gives us a unique voice for representing the profession and lobbying to ensure high industry standards are established and maintained. Our core work is liaising with state and federal governments, regulatory or other statutory bodies, and key stakeholders throughout the healthcare landscape. We always welcome opportunities for input or collaboration, such as this.

### **Background**

Osteopathy Australia provides this feedback on behalf of our members with a spirit of cooperation. This reflects our desire for high professional standards that maintain and improve the quality of osteopathy in Australia. Osteopathy Australia exists to enhance and promote the profession, and everything we suggest is towards those ends.

### **Feedback**

Osteopathy Australia is pleased to put on the record our gratitude for the letter of 7 July 2014 from the OBA Chair, along with the enclosure (analysis of Osteopathy Australia’s confidential feedback to the preliminary consultation).

This responsiveness to our input is positive, commendable, and should set a precedent for the way all our submissions are considered. In terms of the process of policy-making, it is the single most encouraging development in the performance of the Board in the NRAS era. We strongly support it and hope it continues.

### **Relationship between *Standard* and *Guidelines***

The foregoing praise notwithstanding, we remain bewildered by the willingness of Boards to consult on guidelines to standards that are not yet finalised. Absent pressing and particular circumstances, we strongly advocate the settling of standards before tinkering with guidelines—either that, or totally concurrent consultation.

Osteopathy Australia is strongly of the opinion that standards made in accordance with s 38 of the National Law should contain all information needed for practitioners to comply with them.

If guidelines contain information necessary to a proper understanding of the standard to which they pertain, that information should be inserted into the Standard.

The guideline-making power in s 39 is not an alternative to the standard-making power of s 38. They have different purposes, and require different forms of approval: a Board can self-approve its guidelines, but not its own standards, which require Ministerial Council approval.

S 39 guidelines do not have to exist; s 38 standards must exist.

If the Board is using s 39 to do what should be done by s 38, that is an evasion of its responsibility to seek approval by the Ministerial Council. S 38 says:

- (1) A National Board must develop and recommend to the Ministerial Council one or more registration standards about the following matters for the health profession for which the Board is established—

[...]

- (c) requirements for the continuing professional development for registered health practitioners registered in this profession [...].

As a matter of statutory interpretation, “requirements” must be taken to mean “all requirements.”

This accords with our previous submissions in relation to the draft revised Standard, in which we strongly urge the inclusion in the Standard of all information (and only that information) that a practitioner needs in order to know how to comply.

For example, neither the current or proposed Standard contains any reference to cardiopulmonary resuscitation. Yet if you don’t do it, you don’t comply with the Standard.

We fear that by seeking to make using s 39 what should be made by s 38, presumably in an effort to avoid the administrative burden of seeking Ministerial Council approval, the Board puts an unfair and confusing regulatory burden on practitioners.

Given a choice between an administrative burden borne temporarily by the board and a regulatory burden borne by practitioners every day for their whole career, we urge the former. The Board is funded by practitioners to provide clear regulation with which compliance is as easy as possible consistent with public safety. (Besides, regulation with which compliance is easy is itself an aide to public safety.)

A board that makes a 4,843-word guideline as problematic as this one is not performing that function well at all.

### **Relationship between the *Guidelines* and *Fact Sheet***

The fundamental problem remains that the guideline insufficiently explains the standard. Length is not the issue (though it is still too long); the Board has mistakenly added length for increased clarity.

We recommend that the document be split: the Guidelines should contain only information that truly explains the obligations imposed by the Standard. Everything else, including the various recommendations, advice, hints, tips, and so forth designed to maximize the educative benefit to osteopaths, belongs elsewhere. This includes everything between 1.1 and 2.4, inclusive.

In fact (with only one caveat, discussed at point 15 below) the current [Fact Sheet on CPD](#) more succinctly and helpfully explains the standard than the draft Guideline does. Generally speaking, it is not hyperbole to suggest the Fact Sheet should be the Guidelines, and the Guidelines (augmented with what's truly necessary in the current Draft Guideline) should be the Fact Sheet.

We make this recommendation cognisant of s 41, which provides for standards, codes, and guidelines (but not fact sheets) being used in disciplinary proceedings.

### **Specific problems with the draft CPD guidelines**

1. On p. 1 there is a "Summary of requirements." Before the requirements are summarised, they should be stated. The purpose of this document is to explain to registrants what their obligations are, and these obligations must be stated unambiguously, clearly, and explicitly.
2. The registration period specified in the Summary ("from 1 December to 30 November each year") needs changing. Osteopathy Australia raised this previously:

[Osteopathy Australia] would like the "specified period" to be separate from the renewal schedule. Right now, you cannot apply to renew registration unless you have completed CPD, but you have up to the end of the CPD period to complete it. The status quo provides an unfortunate incentive for people inadvertently to make incorrect declarations in the expectation that the declaration will be rendered correct by the passage of time and the performance of CPD.

If the specified period ended a month prior to the renewal deadline, people would be in a position to complete their CPD in sufficient time to make an accurate application, and the Board would be in a position to assess those applications by auditing completed, rather than incomplete, CPD records.

[Osteopathy Australia] supports the submission of the CPD declaration of compliance once a year at the time of annual registration renewal, just that the period of compliance should have finished by the time the renewal is due.<sup>1</sup>

To this suggestion we received the response that “the declaration is for the previous 12 months and most osteopath renew close to the completion of the CPD year (i.e. November).”<sup>2</sup>

This misses the point entirely, and is not strictly true either. The declaration is this:

20. Have you met the Board's continuing professional development (CPD) standards in the past 12 months? YES  NO

 For more information, see *Continuing Professional Development* in the *Information and definitions* section of this form.

The period covered by “in the past 12 months” is the 12 months prior to the date of the declaration. If you make the declaration on October 15 2014, for example, your declaration covers the previous 12 months to *that* date. If you make the declaration on November 29, your declaration covers the previous 12 months to *that* date.

There are about 87 different 12-month periods, counting from the time registration renewals are first able to be lodged (“six to eight weeks before your registration expires,” so about October 5) up to the end of the one-month late period on December 30.

The declarations about the 12 months prior to the date of declaration may or may not be true—that is, the 25 hours of CPD may not actually have been in the period covered by the declaration.

This remains the case even if the Board were to fix up the problem with the registration form (by specifying that the period covered by the declaration is the registration period specified in the Guidelines), for reasons we explained in our preliminary consultation: since you have until November 30 to complete your CPD but your registration renewal can be lodged any date after about October 5, there’s an undesirable incentive for osteopaths inadvertently to make false declarations in the expectation that the declaration will become correct by the passage of time.

We respectfully repeat our suggestion that the “specified period,” or the “CPD year,” to be separated from the “annual registration period.”

The Board should be clarifying and simplifying the obligations and the calendar under which they pertain. Right now, it’s a muddle—and the changes proposed by the draft Guidelines do not improve the situation.

<sup>1</sup> Osteopathy Australia (then AOA) preliminary consultation on draft CPD Guideline, submitted 28 November 2013, p. 10.

<sup>2</sup> Correspondence dated 7 July 2014 from the OBA to Osteopathy Australia, p. 6.

3. The issue of mandatory topics is confusing. In the eyes of busy practitioners with waiting rooms full of patients, a system in which most “mandatory topics” can safely be ignored, and in which mandatory CPR isn’t one of the mandatory CPD topics, is a very strange system indeed.

Saying practitioners should cover different mandatory topics from year to year is sensible. But expressing this policy clarification in the way the draft does—“The board expects you to cover different mandatory topics from year to year”—is unwise. Documents of this nature should use imperatives (“you must,” “you must not”), rather than say things like “[t]he Board expects....” Under the proposed draft, the only consequence of a registrant repeating the same mandatory topic each year for an entire career would be a Board with an unmet expectation.

4. In the section “What is continuing professional development?” the Board says:

*For the purpose of the Osteopathy Board of Australia (OBA), CPD is defined as any learning undertaken by an osteopath [...] that can reasonably be expected to advance their professional development or contribute to the development of osteopathy.*

Having a definition is important. Practitioners must be able to use it as a yardstick, and audits must be conducted scrupulously in accordance with it.

The problem is that there already is a definition in the *Continuing professional development standard* (which the draft revised *Standard* does not amend), and it is different:

### Definitions

**Continuing professional development** is the means by which members of the profession maintain, improve and broaden their knowledge, expertise and competence, and develop the personal and professional qualities required throughout their professional lives.

We have criticised that definition for including personal development. But that criticism notwithstanding, Osteopathy Australia recommends that the definition (whatever it is) be given prominence within the *Guidelines*, and insists that the definition (whatever it is) be used consistently by the Board in every publication, and in every part of this publication.

The draft Guideline, published by the regulator, must take a regulatory view of CPD, so that registrants understand their regulatory obligations. Right now the document tends to indicate a pedagogic view of CPD. This has its place, but it is not in this document, which is above all “about how to meet the [...] Registration standard.”

Overall, the draft Guideline is inconsistent with the literature review commissioned by the National Boards. The key lesson of the literature review is that while CPD can,

in some circumstances, result in increased knowledge, its capacity to alter professional performance is limited, and its capacity to affect patient outcomes is minimal.<sup>3</sup>

We therefore wonder about the wisdom of tying CPD activities so closely to “improving patient safety and health concerns” (p. 3), as desirable as this might seem.

For example, saying “appropriate learning activities are evidence based activities that encourage or enhance evidence based clinical practice” (p. 3) seems to imply that CPD without an evidence base would not be an “appropriate learning activity.” Yet we know from the literature review that there is hardly any evidence base for the effectiveness of CPD in the first place.

5. Osteopathy Australia would be pleased if the suggestion on p. 5 that “[in determining your learning needs it is important to be honest with yourself” could be omitted. The suggestion that osteopaths lack self-awareness or insight into their professional skills and abilities, including their shortcomings, is at odds with Osteopathy Australia’s understanding of our members.
6. We suggest a self-explanatory drafting improvement in 3.1, thus (deletions struck through; additions in bold):

*If you ~~are~~ **become** registered part-way through a registration period you must complete six hours of CPD for every three months of registration remaining in the registration period.*

7. The first sentence in the second paragraph of 3.1, “Pro rata does not apply to part-time practitioners,” is wrong and misleading. The provisions of the preceding paragraph emphatically do apply to part-time practitioners. What doesn’t apply to them is any discount on the number of hours. Contrary to the first sentence of the second paragraph of 3.1, the Board actually means: *if you are a part-time practitioner, you must still perform 25 hours of CPD.*
8. Along with the definition of CPD, Section 3, Compliance, forms the heart of the document. In 3.2, the Board says any request for exemption from CPD requirements “must be submitted in writing.”
  - a) To whom must this request be submitted?
  - b) By what means should the written request be communicated?
  - c) To what precise address should requests be sent?

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<sup>3</sup> See *Continuing Professional Development to maintain competency and achieve improvements in practice: a systematic review* (The Joanna Briggs Institute, Faculty of Health Sciences, The University of Adelaide, for the Australian Health Practitioner Regulation Agency, November 2012), especially pp. 28-31.

The great difficulty practitioners have in contacting the Board and AHPRA will form one aspect of our submission to the Australian Health Workforce Ministerial Council's review of NRAS later this year, but in the meantime it would be very desirable for the Board to inform us precisely how it would like to receive correspondence of this nature. Our strong preference is for emails that are acknowledged and given unique reference numbers that are supplied to the registrant.

In Osteopathy Australia's view, online forms (such as "web inquiries") are not acceptable modes of communication between registrants and the Board unless they generate immediate acknowledgment, include unique reference numbers, include a copy of the correspondence submitted by online form, and are promptly dealt with by real people with suitable training.

9. The calendar problem mentioned in (2) above is obviously relevant and critical to Section 2.3, "Failure to comply." The Board should be crystal clear about auditing. The current Guideline says "[f]rom 2012, the Board will also conduct a random annual audit of CPD compliance on a sample of registered osteopaths."

We seek the following information:

- a) What are the outcomes of the 2012 and 2013 random audits?
- b) How many osteopaths were audited?
- c) How many were found not to comply?
- d) Were any renewal applications refused on this basis?
- e) Were any of Section 3.2's dot-point requirements that the Board can impose imposed?
- f) What other information did the audit yield?

We appreciate that CPD requirements are being phased in, and that the guidelines were always going to be revised. We support revision. But information about the audits already performed is essential to well-informed revision of the guidelines, and the draft Guidelines must contain more information about the audit process.

10. Can the Board confirm that all audits will judge the CPD record by the Standard and Guidelines *in force at the time the CPD was performed*, not the Standard and Guidelines in force at the end of the CPD year, or any subsequently reissued version? We appreciate that this means a five year record of CPD would be judged by a variety of permutations, but judging performance in accordance with the rules in place at the time is the only fair way.

11. Section 3.4 is problematic.

The Board will appreciate that most osteopaths will routinely perform far more CPD than is actually necessary to record, and that they want to be sure that they record only CPD that satisfies their obligations. The first sentence of 3.4 therefore needs amendment thus (additions in bold):

*You must maintain an up-to-date portfolio of completed CPD activities **that meet the standard** – a CPD record folder – and keep the portfolio for five years.*

The reason for this amendment is that there should be no obligation to record all CPD.

There is also the problem of what the actual record is called. Is it a “portfolio”? Is it a “record”? Is it a “record folder”? Is it (as the sample form indicates) a “CPD annual summary form”? The Board should decide, and be consistent across all documents and in all advice given in correspondence and by telephone.

There should be no statement or implication that the record folder (or whatever it is called) must be a physical object. The Board should state that the record may be electronic or web-based, so long as evidence of it that will satisfy an audit can be produced.

At 2.3 the Board says the following must be “clearly evident to any reviewer:

- type of activity
- subject/topic
- purpose, and
- number of hours the activity took to undertake.”

Osteopathy Australia suggests that the date of the activity also be clearly evident. How else can an item be said to have been in the registration period?

We also suggest that, instead of “purpose,” the word “relevance” be used at 2.3. The test of an activity’s compliance is not its purpose but its *relevance*, as it was in previous Guidelines.

This accords with 1.2 (“[a]ll CPD should be relevant to your professional work as an osteopath”) and with the “R” in the SMART principle specified at 2.2.

12. We are disappointed to note the removal of the request for feedback from practitioners. Page 16 of the current *Guidelines* contains a statement that is commendably open and responsive:

*The Board has established a CPD process that it believes is fair and flexible and able to adapt to your lifestyle and development needs. However, we realise that in practice you may encounter difficulties with the process or you may identify areas for improvement. The OBA encourages you to send us your comments and suggestions.*

This statement is important as much in tone as in effect. We hope the scheme will be sufficiently fair and flexible, but the most important thing isn’t really flexibility but clarity.

13. We are pleased to note the removal of the recommendation that “at least eight hours of CPD is spent learning with others.” However, we note that the category still

exists on the sample forms. There is certainly a place for a mixture of learning with others and by oneself, but if there is no recommendation for any amount of these (and there shouldn't be), there is no relevance to specifying these categories in the record. Indeed specifying these categories in the sample record risks the implication that there are required amounts of each.

14. We previously sought a clarification that time spent in breaks within a CPD course is acceptable, on the grounds that it can be a valuable means of discussing recently acquired knowledge, and an opportunity to evaluate the clinical relevance of recently acquired knowledge. We noted that the previous draft, quite appropriately, said that it is not acceptable to include travel time to and from a course.

Instead of clarifying the issue of time in breaks, the Board has deleted the prohibition on counting travel time. Could the Board please clarify the former and reinstate the latter?

15. The continued existence of CPR as an annual requirement, and first aid as a three-yearly requirement, is of concern to our members. At the very least they deserve total clarity about their obligations. The Guideline is commendably clear that time spent at first aid and CPR courses cannot be counted towards the 25 hours.

However the Fact Sheet says this:

Firstly, osteopaths must maintain a current first aid certificate at the minimum standard of a Senior First Aid (level 2) certificate or equivalent, which is updated every three years, with the CPR component being updated every 12 months. This is a stand-alone annual requirement and does not count towards the total of 25 hours of CPD learning.



What precisely does "this" refer to? Because the clause is singular ("this is a stand-alone requirement") some members interpret this to mean only the CPR component cannot count towards the 25 hours.

This exemplifies our observation that efforts by the Board to publish consistent documents are continually hampered by its pattern of consulting on guidelines to standards when the standards aren't settled, and never formally consulting on the fact sheets at all.

We restate our view that first aid is not properly a subject for continuing professional development. It does not fit into the Standard's definition of CPD, and does not fit into the draft Guideline's definition as learning that advances professional development.

We raised this point in previous consultation:

The AOA accepts that first aid is a necessary skill for a health professional. The AOA would be happy if maintenance of a Senior First Aid (level 2) certificate or equivalent were made a stand-alone requirement of registration for every regulated health profession.

However, first aid, which is normally understood as the initial care provided to victims of accidents or illness by people with no clinical training, is not part of an osteopath's professional development.<sup>4</sup>

If the Board wishes to accept this advice, it should do so by using s 38 (2)(c), not s 39. S 39 is for a Board to make codes and guidelines "to provide guidance to the health practitioners it regulates" and "about other matters relevant to the exercise of [the Board's] functions," not to issue practitioners with mandatory requirements they must meet in order to maintain registration.

In response to this suggestion, we were told that the Australian Commission on Safety and Quality in Health Care has published a consultation paper on one of its ten National Safety and Quality Health Service Standards: *Standard 9: Recognising and Responding to Clinical Deterioration in Acute Health Care*.

This NSQHC standard is about escalating care in response to clinical deterioration. It certainly has relevance for osteopaths, but we fail to see its relevance to first aid. In fact the distinction is precisely the distinction to which have previously drawn the Board's attention.

Osteopathy Australia thanks the Board for incorporating much of our previous commentary and advice on this subject, and for considering this submission in productive and profession-enhancing spirit in which it is made.

We will be pleased to assist the Board in providing additional assistance, clarification, or elaboration. For further information, please contact Samuel Dettmann, Policy Advisor, on 02 9410 0099.



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<sup>4</sup> Osteopathy Australia (then AOA) preliminary consultation on draft CPD Guideline, submitted 28 November 2013, p. 9.