



**Unregistered Health Practitioners Code
of Conduct**

Impact Assessment Statement



IMPACT ASSESSMENT STATEMENT

TITLE OF PROPOSAL:

**Unregistered Health Practitioners
Code of Conduct**

PROPONENT:

NSW Department of Health

RESPONSIBLE MINISTER:

**The Hon Reba Meagher MP
Minister for Health**

RELEVANT ACT:

Public Health Act 1991

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1. Why is the Code of Conduct being developed?

In November 2006 the NSW Parliament passed the Health Legislation Amendment (Unregistered Health Practitioners) Act 2006. That Act made amendments to the Public Health Act 1991, the Health Care Complaints Act 1993, and the various health professional registration Acts.

Amongst other things the amendments to the Public Health Act inserted section 10AM into the Act. Section 10AM provides for the development of a code, or codes, of conduct for unregistered health practitioners.

The provisions of Part 2 of the Public Health Act, as amended by the Health Legislation Amendment (Unregistered Health Practitioners) Act 2006, apply to all persons who provide health services, whether registered or not. However an unregistered person who breaches the provisions of Part 2 of the Public Health Act and is convicted of that breach may currently continue to provide health services without restriction. Including this matter in the code of conduct ensures that relevant breaches may be dealt with by the Health Care Complaints Commission and where the practitioner represents a substantial risk to the health of members of the public the practitioner can either be banned from practice or have conditions placed on his or her practice.

The amendments to the Health Care Complaints Act provide for the Health Care Complaints Commission to investigate a complaint that an unregistered practitioner has breached the code of conduct and if satisfied that the complaint has been substantiated and the practitioner represents a substantial risk to the health of members of the public, an order can be made to either ban the person from practice or place conditions on his or her practice (a prohibition order). The powers of the Health Care Complaints Commission with respect to unregistered practitioners are, however, limited in the absence of a code of conduct.

2. Approach taken in this impact assessment statement

In developing the code of conduct a wide range of organisations and individuals have been asked for their views and suggestions. The consultation process undertaken is set out in Part 7 of this impact assessment statement.

The term *unregistered health practitioner* refers to any person who provides a health service and who is not registered under a health professional registration Act in NSW. The code of conduct will also apply to a registered health practitioner who provides health care treatment that is unrelated to their registration. In this impact assessment statement the term *unregistered health practitioner* includes registered

people who are providing treatments that are unrelated to the area of their registration.

The impact assessment statement first considers the nature of complaints about unregistered health practitioners. The statement then considers the objectives of the proposed code of conduct for unregistered health practitioners and the basis and rationale for each of the matters contained in the proposed code. The statement also examines a small number of other matters that have been considered for inclusion in the code and provides the rationale for not including those matters.

Submissions about the proposed code of conduct and the matters addressed in this impact assessment statement can be made to:

Legal and Legislative Services Branch
NSW Department of Health
Locked Bag 961
NORTH SYDNEY 2059

Submissions may also be made via email to legalmail@doh.health.nsw.gov.au

3. Unregistered health practitioners

3.1 Regulation of Unregistered Health Practitioners

Unregistered health practitioners include counsellors and psychotherapists, massage therapists, naturopaths and herbalists, as well as reiki therapists, and homeopaths. As with registered health professionals the overwhelming majority of unregistered practitioners are honest, competent and caring. However, there will always be a limited number of practitioners who represent a risk to the public because of a lack of competence, impairment or dishonesty.

Complaints about unregistered health practitioners can be made to the Health Care Complaints Commission. Under the new provisions a complaint can be made that an unregistered practitioner has breached the code of conduct, and where the complaint is substantiated and the Commission finds that the person represents a substantial risk to the health of members of the public, an order can be made to either ban the person from practice or place conditions on his or her practice (a prohibition order). The Commission can also issue a prohibition order if the person has been convicted of an offence under Part 2A of the Public Health Act, or an offence under the Fair Trading Act or the Trade Practices Act that relates to the provision of health services.

Without a code of conduct the ability of the Health Care Complaints Commission to take action to protect the community from those unregistered practitioners is limited.

3.2 The Extent of the Problem.

Complaints to the Health Care Complaints Commission

The Health Care Complaints Commission has the power under the Health Care Complaints Act to investigate complaints about health service providers who are not registered. While it can prosecute individuals for false or misleading conduct under section 10AN of the Public Health Act there is currently little else that it can do if a complaint about an unregistered provider is substantiated other than making adverse comments to the person themselves and potentially issuing a warning to the general public. There is no power to take action to address any other risks to public health and safety that may have been identified by the complaint.

Complaints about health practitioners in unregistered occupational groups accounted for approximately 2% of all complaints received by the Health Care Complaints Commission over the four years 2002/3 to 2005/6. While this is not a large proportion of total complaints it is not insignificant. A breakdown of those complaints by occupational category is provided in table 1:

Table 1: Complaints about unregistered health practitioners by category 2002/03 to 2005/06.

Health practitioner	2002/3	2003/4	2004/5	2005/6	Total
Alternative health provider	0	0	0	17	17
Traditional Chinese medicine	3	5	2	8	18
Counsellor/therapist	10	5	1	7	23
Naturopath	2	3	2	2	9
Psychotherapist	0	0	2	2	4
Acupuncturist	1	4	1	1	7
Occupational therapist	2	1	1	1	5
Social worker	9	8	4	1	22
Dietician/nutritionist	1	0	1	0	2
Radiographer	1	4	3	0	8
Speech pathologist	2	1	0	0	3

Source: Health Care Complaints Commission Annual Report 2005/06.

It is likely that these figures understate the size of the problem and that there are in fact many more consumers who are dissatisfied with the service they receive from unregistered health practitioners. The 1998 report of the Joint Parliamentary Committee on the Health Care Complaints Commission details a number of possible reasons for the reasonably low number of formal complaints. These include:

- Lack of knowledge of the Health Care Complaints Commission's power to investigate complaints about unregistered practitioners.

- Consumer willingness to accept the consequences of inadequate treatment.
- A lack of recognised standards by which to judge the standard or appropriateness of a treatment.

Complaints under the Public Health Act

Section 10AN of the Public Health Act provides that action may be taken against a health service provider who promotes their services in a manner that:

- is false, misleading or deceptive;
- is likely to mislead or deceive; or
- creates or is likely to create an unjustified expectation of beneficial treatment.

Whilst the Department from time to time receives complaints about alternative health services, there has been one preliminary investigation and no prosecutions under this provision. There are a number of reasons for this.

First, there has been a lack of complainants who have first hand knowledge of an alleged offence. While a number of matters have been brought to the attention of the Department these have all been by third parties who are not dissatisfied consumers, and who therefore cannot provide direct evidence of the conduct complained of.

Secondly, section 10AN concerns the advertising and promotion of health services and most matters that are brought to the Department's attention concern the sale and promotion of "therapeutic" devices and products. Health devices and products are regulated nationally by the Commonwealth's Therapeutic Goods Administration (TGA) and any action that the TGA takes regarding these devices is taken under its legislation.

4. Objectives for the Code of Conduct

The relevant amendments to the Public Health Act and the Health Care Complaints Act are designed to provide a basis for the effective enforcement of standards of conduct and practice by unregistered health practitioners. The code of conduct will ensure that the Commission has a set of standards against which to objectively assess the conduct of practitioners and that practitioners are able to be aware of those standards.

It must be acknowledged that the overwhelming majority of unregistered health practitioners practise in a competent, honest, ethical and accountable manner. However, as with all professions and occupations, there will be a small number of unregistered health practitioners who fall short of the standards of practice expected by their peers and the community.

The draft code of conduct has been prepared as a broad document with generic principles that apply to all unregistered health practitioners. The broad nature of the code is such that it is expected to be applicable to future and as yet unidentified

problems as much as it applies to current problems in the provision of health services by unregistered people.

5. The Code of Conduct

Many of the provisions of the draft code have been drawn from existing codes of conduct and practice published by health professional registration boards and associations representing both registered and unregistered practitioners. Other provisions in the draft code (for example clause 11) have been developed in response to specific problems identified by regulatory authorities such as the Health Care Complaints Commission.

5.1 *Practitioners must practise in a safe and ethical manner.*

Item 1 of the code of conduct provides that practitioners must practise in a safe and ethical manner. The basis for this item is that practitioners are to practise in a manner that does not harm their patients and in a manner that accords with the standards of behaviour that both their colleagues and the broader community regard as acceptable.

This item in the code of conduct includes a number of guiding principles as follows:

- *Practitioners are personally accountable for the provision of safe and competent care in their areas of practice. It is therefore the responsibility of each practitioner to maintain the necessary competence in that field.*

Patients consult health practitioners because of their expertise in treating illness. It is therefore essential that practitioners maintain competence in their field.

- *Practitioners must not provide health care of a type that is outside the scope of their training and experience.*

This principle follows on from the previous principle. Along with maintaining competence in their professional field, it is important that practitioners recognise the limits of their competence.

- *Practitioners must prescribe only the treatment or appliances that serve the needs of the client.*

This principle is designed to ensure that unregistered health practitioners will place the interests and health care needs of their patients first and ahead of their own financial interests.

- *Practitioners must recognise the limitations of their treatment and refer clients to other competent health care practitioners in appropriate circumstances.*

This principle is designed to ensure that unregistered practitioners refer patients on to other appropriate practitioners in circumstances where they are unable to

treat the patient's complaint or in circumstances where the treatment they are providing proves ineffective.

- *Practitioners are to encourage their clients to inform their treating medical practitioner (if any) of the treatments they are receiving.*

The medical profession has long been concerned that many people who are under the regular care of medical practitioners for serious and chronic complaints are also receiving other forms of treatment from unregistered practitioners and do not disclose that fact to their treating medical practitioner. The concerns of the medical profession are that there may be adverse interactions between some types of alternative treatment and the orthodox medicines or treatments provided. It is clear that the risks of adverse interactions will be reduced if patients make their treating medical practitioners aware of any other treatments they are receiving.

Whilst unregistered practitioners cannot ensure that their patients do inform their treating medical practitioner of the alternative treatments they are receiving they can encourage their patients to do so. Many patients may not consider it necessary or important to tell their treating medical practitioner about other treatments that they are receiving but encouragement from the practitioner providing those treatments combined with an explanation of the importance of avoiding adverse reactions is an important step in overcoming any reluctance that the patient may have.

- *Practitioners are to have a sound understanding of any adverse interactions between the therapies and treatments they provide or prescribe and any other medications, whether prescribed or not, the client may be taking.*

This principle follows on from the previous principle and relates to practitioners talking responsibility for informing themselves of any other treatments a patient may be taking and any adverse interactions that those treatments may have with any treatment they prescribe.

- *Practitioners should recommend that additional opinions and services be sought, where appropriate.*

This principle simply recognises that a patient's best interests may be served by obtaining alternate opinions from other practitioners.

- *Practitioners should assist their clients to find other appropriate health care professionals, if required.*

Again this principle recognises that in circumstances where a practitioner is unable to treat a patient due to lack of skills or expertise, or other ethical matters they should assist the patient in finding an alternative competent practitioner.

- *Practitioners must ensure that appropriate first aid is available to deal with any misadventure during a client consultation. Practitioners must obtain appropriate*

emergency assistance (eg from the Ambulance Service) in the event of serious misadventure.

This principle requires practitioners to recognise that there may be situations where patients suffer misadventure at their hands or in their practices and ensure that appropriate arrangements are in place to deal with that misadventure.

5.2 Practitioners who have been diagnosed with an infectious medical condition must ensure that they practise in a manner that does not put clients at risk

Item 2 of the code of conduct requires practitioners who have an infectious medical condition to ensure that they practise in a manner that does not place their patients at risk of contracting the infectious condition. The NSW Medical Board has a policy concerning practise by medical practitioners with a blood borne virus (see www.nswmb.org.au/index.pl?page=70).

This item in the code of conduct includes a guiding principle:

- *A practitioner who has a medical condition that can be passed on to clients should take and follow advice from an appropriate medical practitioner on the steps to be taken to modify his or her practice to avoid the possibility of transmitting that condition to clients.*

This principle aims to provide guidance for practitioners with infectious diseases on the type of action they should take to minimise any risk to their patients.

5.3 Practitioners must not hold themselves out as qualified, able or willing to cure cancer and other terminal illnesses.

A large number of complaints to the Health Care Complaints Commission, the Department of Fair Trading and, to a lesser extent, the Australian Consumer and Competition Commission about alternative health practitioners relate to the advertising of products or treatments that are claimed to cure cancer and other terminal illnesses. While fair trading legislation and provisions in the Public Health Act dealing with false, misleading or deceptive advertising are able to address individual instances of this type of advertising, the processes involved in bringing these matters to conclusion can be lengthy and in many respects provide little if any ongoing protection for consumers.

Incorporating this provision in the code of conduct gives practitioners clear guidance that advertising cures for cancer and other terminal illnesses is unacceptable and will allow the Health Care Complaints Commission to take effective action to prevent a practitioner from continuing to do so.

This item in the code of conduct includes a guiding principle:

- *Practitioners may make claims as to their ability and willingness to treat and alleviate the symptoms of these diseases where the practitioner can substantiate those claims to the satisfaction of the Health Care Complaints Commission, however claims to cure these diseases must not be made.*

This guiding principle acknowledges that practitioners may legitimately make claims as to their ability to treat or alleviate the symptoms of cancer and other terminal illnesses. As with all claims made by health care practitioners any claim to be able to treat and alleviate the symptoms of such an illness must be able to be substantiated.

5.4 Practitioners who engage in skin penetration activities, as defined in section 51(3) of the Public Health Act 1991, must comply with all relevant requirements of the Public Health (Skin Penetration) Regulation 2000.

Unregistered practitioners who engage in skin penetration activities such as acupuncture or colonic lavage, are already required to comply with the relevant provisions of the Public Health (Skin Penetration) Regulation 2000. However, while a practitioner can be prosecuted for failure to comply with the regulation there is little the Health care Complaints Commission can do to ensure there is no repetition of the relevant conduct.

This item in the code of conduct is designed to expressly remind practitioners who engage in skin penetration activities, of their obligation to comply with the requirements and to allow the Health Care Complaints Commission to take effective action to prevent a practitioner who engages in skin penetration activities in an unsafe manner from continuing to do so.

This item in the code of conduct includes a guiding principle:

- *All practitioners should adopt universal infection control precautions in their practices.*

This principle is designed to remind all practitioners of the need to adopt universal infection control precautions in their practices. The adoption of universal infection control precautions is the most effective method of preventing the transmission of infectious disease between patient and practitioner and between patients.

5.5 Practitioners must not attempt to dissuade clients from seeking or continuing with treatment by a registered medical practitioner.

This item in the code of conduct is designed to ensure that practitioners do not undermine the health care treatment that patients are receiving from their medical practitioners.

All health practitioners must accept the right of patients to make informed choices about their own health care. Practitioners should not improperly interfere with patient autonomy in this respect.

There may be instances where a practitioner has genuine concern that the medical treatment a patient is receiving is not in the patient's best interests. In these circumstances it may be appropriate for the practitioner to contact the treating medical practitioner to discuss their concerns. In some extreme cases the concern

may be so great as to warrant the practitioner contacting the Health Care Complaints Commission to discuss their concerns.

This item in the code of conduct includes the following guiding principles:

- *Practitioners must accept the rights of clients to make informed choices in relation to their health care.*

All health practitioners must accept the right of patients to make informed choices about their own health care.

- *Practitioners should communicate and co-operate with colleagues and other health care practitioners and agencies in the best interests of their clients.*

Where a practitioner has concerns that the treatment a patient is receiving from another health care practitioner is not in the patient's best interests the practitioner should communicate those concerns with that other practitioner.

- *If a practitioner has serious concerns about the treatment provided to a client by another practitioner it is appropriate that those concerns are referred to the Health Care Complaints Commission.*

Any instance where a practitioner has serious concerns about the treatment being provided to a patient by another practitioner, for example about the safety of the treatment, they should refer those concerns to the Health Care Complaints Commission.

5.6 Practitioners must not practise under the influence of alcohol or other drugs.

The intent of this item is self-explanatory.

This item in the code of conduct includes the following a guiding principles:

- *Practitioners must recognise that practising under the influence of alcohol or illicit drugs may place their clients at risk.*

It is axiomatic that a practitioner who is under the influence of drugs or alcohol may place the safety of his or her patient at risk.

- *Practitioners who are taking prescribed medication must obtain advice from the prescribing practitioner on the impact of that medication on their ability to practise and refrain from treating clients in circumstances where their ability is, or may be, impaired.*

There are a number of prescription and over the counter medications that may individually or in combination with other medications impair the ability of a health practitioner to safely provide services to their patients. Practitioners should seek advice from their prescribing practitioner and/or pharmacist on any side effects of those medications.

5.7 A practitioner must not practise whilst suffering from a physical or mental impairment, disability, condition or disorder that detrimentally affects, or is likely to detrimentally affect, his or her ability to practice and which places clients at risk of harm.

Again this item in the code of conduct is self-explanatory.

This item in the code of conduct includes a guiding principle:

- *Addiction to alcohol or other drugs, whether prescription or otherwise, may constitute an impairment.*

Dealing with addiction to drugs or alcohol in this manner in the code is consistent with the treatment of this type of addiction in those health professional registration Acts that contain provisions for dealing with impaired practitioners. In each of those Acts, such as the Medical Practice Act 1992 and the Nurses and Midwives Act 1991, habitual drunkenness or addiction to a deleterious drug is considered to be a physical or mental disorder.

5.8 Practitioners must not financially exploit their clients.

This item in the code of conduct is designed to ensure that those practitioners who exploit the trust that patients place in them, in order defraud those patients, may be disciplined and where necessary excluded from practice.

This item in the code of conduct includes the following guiding principles:

- *Practitioners must not accept financial inducements or gifts for referring clients to other practitioners or to the suppliers of medications or therapeutic goods or devices.*

Accepting financial inducements for referring patients to particular practitioners or suppliers of goods or medications may indicate that a practitioner is motivated by self-interest to make those recommendations or referrals. It is noted that the Medical Practice Act 1992 provides that it is unsatisfactory professional conduct for a medical practitioner to accept a benefit for a referral or recommendation.

- *Practitioners must not offer financial inducements or gifts in return for client referrals from other practitioners.*

Offering financial inducements to other practitioners for the referral of patients may induce those practitioners to place their own financial self-interest above the best interest of their patients. It is noted that the Medical Practice Act 1992 provides that it is unsatisfactory professional conduct for a medical practitioner to accept a benefit for a referral or recommendation.

5.9 Practitioners must not diagnose or treat an illness or condition without an adequate clinical basis.

This item in the code of conduct follows on from the previous item and requires practitioners to base their treatments on clinical grounds and the health needs of the patient.

This item in the code of conduct includes a guiding principle:

- *Services and treatments provided by practitioners must be designed to maintain or improve the client's health or wellbeing and must not be provided for the sole purpose of financial gain.*

The diagnosis of illness and prescription of treatments must be done with the patient's interests in mind rather than the financial interests of the practitioner. This of course does not mean that practitioners may not charge a fee for their services. The level of any fee charged is a matter entirely for negotiation between the practitioner and patient and is in no way regulated by the code of conduct.

5.10 Practitioners must not engage in any form of misinformation or misrepresentation in regard to the products or services they provide or as to their qualifications, training and professional affiliations.

This item in the code of conduct is designed to ensure that practitioners do not mislead or misinform their patients about their services or the products they supply or about their education, qualifications and professional memberships.

Patients are often at a disadvantage in establishing the bona-fides of claims made by practitioners as to the training and qualifications they have. Patients are also at a disadvantage in determining the validity of claims that may be made as to the registration or listing of products or medications with the Therapeutic Goods Administration. Furthermore patients are in most cases unlikely to understand the distinction between a product/medication that has been registered with the TGA and one that has been listed. Practitioners must not exploit this lack of knowledge to gain a financial advantage.

This item in the code of conduct includes the following guiding principles:

- *Practitioners must provide factual information about their services and products, qualifications, training and professional affiliations.*

Many patients, in determining whether to obtain health care services, request information about training, qualifications and other matters from prospective practitioners. Practitioners should provide that factual information.

It is noted that in terms of registered health professionals, such as medical practitioners and dentists, much of this information is available on public registers that may be accessed via the internet.

- *Practitioners must not make claims, either directly or in advertising or promotional material, about the efficacy of treatment where those claims cannot be substantiated.*

In keeping with the requirement to only provide factual information it is important that practitioners not make claims about their treatments that cannot be substantiated. (See also item 4.3 of the code of conduct.)

5.11 Practitioners must not engage in any form of sexual or improper personal relationship with a client.

The NSW Medical Board's policy on sexual misconduct provides that it is

an absolute rule that a medical practitioner who engages in sexual activity with a current patient is guilty of professional misconduct.

The same standard of conduct applies to other registered health professionals, for example the Psychologists Registration Board policy on sexual behaviour in professional relationships provides that

"A psychologist who engages in sexual conduct with a person who is presently consulting them in their professional role will be regarded as exhibiting conduct at the severest level of disapprobation in breach of all customary Codes of Ethics and Conduct, and clearly generating a well-founded judgment of professional misconduct. "

The bases for such a strict approach to sexual relationships with patients include that:

- the professional relationship relies on a high degree of trust between practitioner and patient
- practitioners and patients are often in close physical and emotional proximity;
- patients are often in a vulnerable position;
- the community expects high levels of integrity from health practitioners; and
- personal involvement with a patient may cloud a practitioner's judgement.

The community is entitled to expect a similarly high level of integrity and conduct from unregistered health practitioners.

This item in the code of conduct includes a guiding principle:

- *Practitioners must not engage in sexual or other close personal relationships with their clients and should endeavour to ensure that a suitable period of time elapses between the conclusion of any therapeutic relationship and the commencement of any close personal or sexual relationship.*

It is not possible to specify a particular period of time that must elapse between the end of a therapeutic/professional relationship and the commencement of a personal or sexual relationship. Practitioners who find themselves

contemplating personal relationships with former patients should seek the advice of senior colleagues in addressing any concerns in this area.

5.12 Practitioners must comply with privacy law in relation to their clients' personal information.

While compliance with privacy laws is required by those individual laws there is no mechanism to prevent a practitioner who repeatedly breaches privacy laws from continuing to practice. Adopting this matter in the code of conduct will allow the Health Care Complaints Commission to investigate complaints that privacy laws have been breached and if the Commission is satisfied that the complaint has been substantiated and the practitioner represents a substantial risk to the health of members of the public, take action to protect the public from further breaches.

This item in the code of conduct includes the following guiding principles:

- *Practitioners must comply with the requirements of relevant NSW and Commonwealth privacy laws such as the Health Records and Information Privacy Act 2002 (NSW) and the Privacy Act 1988 (Cth).*

This principle simply seeks to inform practitioners of the relevant privacy laws.

- *Client records must be stored securely such that unauthorised access is prevented.*

This principle simply seeks to ensure that practitioners understand the need to keep patient records in a safe and secure environment. Clause 9 of the Medical Practice Regulation 2003 imposes a similar obligation on medical practitioners.

5.13 Practitioners must maintain accurate, legible and contemporaneous clinical records of each client consultation.

The health care record is the basic vehicle for communication among members of the health care team. Records are also kept for a variety of purposes, many unrelated to the care of the individual patient, for example, to satisfy accreditation standards, legal requirements, or for accounting and tax purposes.

These non-patient purposes may distract practitioners from the primary purposes of the patient record, which are:

- To provide access to relevant information about the patient's care, history, test results and the like.
- To ensure continuity of care as responsibility for the patient is transferred between carers.
- As an audit tool to monitor quality of care.

Accurate, legible and contemporaneous records are also an extremely valuable tool for a practitioner to use in addressing patient concerns about their treatment or in defending themselves against allegations of negligence.

This item in the code of conduct includes a guiding principle:

- *Client records must be properly maintained with adequate information of a professional standard.*

The patient record should fully document the patient's course of care and provide all relevant information necessary to ensure the safe and effective delivery of health care, it should include:

- The identity of the practitioner who made the record, and the patient it relates to.
- Complete, legible notes of treatment and care given, any medications recommended or provided, tests ordered and test results.
- Accurate statements of fact, or statements of clinical judgement or inquiry, made contemporaneously with the patient consultation.
- Relevant dates, and the content of consultations, discussions, and advice or information given to the patient.
- No material rendered unreadable, or erasures.
- Diagnoses, details of any treatment plan or ongoing course of care.
- Details of any allergies, adverse events, and relevant patient history of any of these.
- Copies or other record of consents to treatment given by the patient.
- Sufficient information in a form that enables other practitioners to deliver health care, safely and promptly.

The amount of detail contained in the record should be appropriate to the complexity and significance of the patient's case. Obviously a record that contains abbreviations or cryptic notations that can only be subsequently deciphered by the practitioner who made them is of limited value.

5.14 Practitioners must ensure appropriate indemnity insurance arrangements are in place in relation to their practices.

Appropriate indemnity insurance ensures that patients who are injured as a result of misadventure associated with health care are able to receive fair and sustainable compensation. The costs to a seriously injured patient can be substantial and in the absence of adequate compensation through insurance arrangements these costs are born by the individual and their family and by society as a whole due to additional calls on the social security system, the public health care system and other government services. The practitioner concerned may also bear significant, possibly financially crippling costs, associated with defending legal action and in the paying compensation to an injured patient.

This item in the code of conduct includes a guiding principle:

- *Practitioners should seek appropriate professional advice as to the level of coverage that is appropriate for their individual circumstances. Professional associations may be able to assist practitioners in this area*

The range of health care practitioners covered by the code of conduct is so great and varied that it is not possible for the code to specify a level of cover that should be held. Therefore practitioners should seek their own advice on this matter and relevant professional and industry associations may be able to assist. In this context it is noted that, with the exception of medical practitioners, the Health Care Liability Act 2001 does not specify the amount of professional indemnity insurance registered health professionals must hold.

6. Matters not included in the Code of Conduct

6.1 Practitioner/Client contracts

The Australian Counselling Association recommended that consideration be given to including in the Code a requirement that practitioners enter into contracts with their clients setting out the terms of the relationship including fees, services offered and confidentiality issues.

This matter has not been included in the draft Code for a number of reasons including:

- Practicality;
- Lack of any evidence of a direct link between such contracts and standards of patient care; and
- No similar obligation is placed on registered practitioners.

6.2 Membership of a recognised professional body

The Australian Hypnotherapist's Association has recommended that the Code require all unregistered practitioners to be members of a "recognised representative body".

This matter has not been included in the draft Code for the following reasons:

- It is likely that the inclusion of this matter in the Code would require the Minister for Health, the Director-General of Health or possibly the Health Care Complaints Commissioner to recognise organisations for the purposes of the provision. As membership of such a body would effectively be compulsory and such decision could have extremely important ramifications for any existing or proposed professional body and a body denied recognition may seek to challenge any such decision on administrative law grounds.
- No similar obligation is placed on registered practitioners.

6.3 NSW Health Code of Conduct and the Australian Institute of Radiography's Guidelines for professional conduct for Radiographers, Radiation Therapists and Sonographers

The Australian Institute of radiography has expressed the view that in order for the Code to have any meaning for the professions that it represents and to provide the

community with sufficient safeguards the Code should incorporate the NSW Health Code of Conduct and the Australian Institute of Radiography's Guidelines for professional conduct for Radiographers, Radiation Therapists and Sonographers (the AIR Guidelines).

These matters have not been included in the draft code for the following reasons:

- The NSW Health Code of Conduct, as set out in the Department of Health's Policy Directive 2005-626, is a document of some 43 pages that sets out a framework for the conduct of all staff employed within the NSW Health system. The NSW Health Code of Conduct has been developed to assist staff by providing a framework for day-to-day decisions and actions while working in Health Services. The Code is also designed to
 - state the standards expected of staff within Health Services in relation to conduct in their employment,
 - assist in the prevention of corruption, maladministration and serious and substantial waste by alerting staff to behaviours that could potentially be corrupt or involve maladministration or waste,
 - provide a resources list to assist staff to gain further information or more detailed guidance.

Accordingly the matters covered in the NSW Health Code of Conduct are of far greater scope than the type of matter intended to be covered by the code of conduct for unregistered practitioners.

- The NSW Health Code of Conduct applies to the employees of the NSW Health system and many of its provisions are not readily applicable to practitioners who are self-employed and practise solely within the private sector.
- The matters dealt with in the AIR Guidelines are, where they go beyond the matters covered in the draft Code of Conduct for unregistered practitioners, written in a manner that is specific to people working in the areas of radiography, radiation therapy and sonography. It is not appropriate to include these in a generic code of conduct that is designed to apply broad standards to all unregistered health practitioners.

7. Consultation

7.1 Consultation undertaken

The following organisations and individuals have been consulted during the preparation of the draft code of conduct:

- Australian Institute of Radiography
- Australian Acupuncture and Chinese Medicine Association
- Australian Hypnotherapists Association
- Australian Traditional Medicine Association
- National Herbalists Association of Australia
- Allied Health Alliance
- Psychotherapy and Counselling Federation of Australia
- Australian Medical Association NSW
- Medical Services Committee

- Australian Register of Homeopaths
- Australian Natural Therapists Association
- OT Australia
- Health Care Complaints Commission
- Association of Remedial Masseurs
- NSW Medical Board
- Office of Fair Trading
- Australian Counselling Association
- Professor Michael Weir, Law Faculty, Bond University
- Ms Vicki Mortimer, School of Biomedical and Health Sciences, University of Western Sydney

7.2 Proposed consultation process

This impact assessment statement and the draft Public Health (General) Amendment Regulation 2007 will be placed on public display for a period of six weeks to allow submissions to be made. The organisations and individuals listed above will be contacted individually and asked to comment and advertisements will be placed in major daily newspapers circulating in New South Wales and in the NSW Government Gazette.

8. Attachment

Proposed Public Health (General) Amendment Regulation 2007.