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To whom it may concern

The Royal Australian College of General Practitioners thanks the Australian Health Ministers' Advisory Council for the opportunity to make a submission on mandatory reporting requirements under the *Health Practitioner Regulation National Law* (the National Law). The current mandatory reporting arrangements have been of serious concern to the RACGP and its members since the inception of the National Law in 2009.

This very important review considers the interests of patient safety and practitioner wellbeing. These are not competing or mutually exclusive interests, but complementary ones. Removing a barrier that prevents registered health practitioners seeking healthcare improves rather than reduces patient safety. It is always preferable that practitioners receive the healthcare they need, rather than seek to hide issues through fear of being reported by their treating health practitioner.

Considering the need for reform of mandatory reporting arrangements

Health practitioner suicide and mental health

The 153 confirmed suicides of health practitioners in Australia between 2011 and 2014 is an unacceptably high figure.¹ The 2013 beyondblue National Mental Health Survey of Doctors and Medical Students provides context to this issue:

- compared to the general population or other professional groups, doctors reported significantly higher levels of psychological distress is of concern, and is particularly pronounced in younger doctors
- thoughts of suicide are significantly higher in doctors than other professionals or the general population
- only one-third of the survey sample was comfortable asking for help with mental health issues
- around a third of the survey sample also reported that concern about impact on registration and right to practice was a barrier to seeking help for anxiety or depression.²

The fear of loss of career or reputation that can arise from the current mandatory reporting regime (with the exception of Western Australia) creates a barrier. No other individual in Australia is subject

to such barriers to seeking the health treatment they need. It is also clear that current mandatory reporting arrangements are in conflict with the code of conduct for doctors, which stresses the need for openness and trust to develop a partnership with patients.

The impact mandatory reporting has on health practitioner aversion to seeking the healthcare they need is evident in both the beyondblue survey, and anecdotal feedback the RACGP has received from members. For example, the RACGP's understands that some doctors have sought treatment in Western Australia as treating practitioners are exempt from mandatory reporting.

Western Australian model and patient safety

Information contrasting relevant practitioner notifications in Western Australia to other states and territories would assist all stakeholders to understand the impact of the Western Australian exemption from mandatory reporting on patient safety. Such an analysis could assist the RACGP and other stakeholders to understand the outcomes of the Western Australian model in comparison to other state and territories with mandatory reporting obligations for treating practitioners.

Our answers to the Questions for Consultation are provided below.

Which option would provide the optimal nationally consistent approach to mandatory reporting that both protects the public and supports practitioners to seek treatment for their health conditions as soon as possible?

The RACGP submits that the optimal solution must remove all barriers to a health practitioner seeking the healthcare they need. A treating practitioner should not be obliged to report the medical condition or other impairment of a registered health practitioner under their care. There should be no distinction between the treatment of a registered health practitioner and that of a patient from any other occupation. Just like all other people living in Australia, a health practitioner receiving treatment should be entitled to strict confidentiality from their treating practitioner.

None of the options presented in the discussion paper would preclude colleagues or employers from making a report should they observe or become aware of an impairment or behaviour that leads them to conclude the public is at risk. The RACGP is not aware of any cases of malpractice or misconduct of practitioners that have become known through the reporting of their treating practitioner. Such misconduct has generally been exposed through the observations and reporting of other health professionals and ancillary staff, or presentation to an Emergency Department for an acute condition.

A nurse at Bundaberg Hospital in Queensland exposed Dr Jayant Patel's malpractice. The NSW conviction of mutilation and charges of manslaughter against Dr Graeme Reeves did not come because of the reports of a treating physician. At the beginning of 2017, 'Dr Sarang Chitale' (real name 'Mr Shyam Acharya') was exposed as an imposter in the NSW Health system. An exemption mandatory reporting laws for a treating health practitioner would not have made a difference in these cases.

The RACGP has responded to all options presented in the discussion paper.

Option 1: Treat impairment matters and other notifiable conduct identically, requiring treating practitioners to report any notifiable conduct.

This option reflects the current mandatory reporting requirements in most state and territories and does not fit with the priorities of supporting patient safety, and equity of healthcare access for health practitioners.

To support patient safety and equity of access for health practitioners, the National Law needs to be amended to:

- to remove all barriers to a registered health practitioner seeking medical treatment
- ensure there is no distinction between the treatment of a registered health practitioner and that of a patient from any other occupation.

Requiring treating practitioners to report any notifiable conduct will not increase the number of registered health practitioners seeking help or prevent health practitioner suicides. The 153 confirmed health practitioner suicides between 2011 and 2014 is likely the tip of the iceberg and is an unacceptable figure.

Option 2: Complete exemption for treating practitioners from the requirement to report all forms of notifiable conduct in respect of their practitioner patients. Under this model, there would be no statutory requirement for a treating practitioner to report a reasonable belief that a practitioner has behaved in a way that constitutes notifiable conduct if this belief arose in the course of providing health services to the practitioner.

The RACGP supports Option 2 as stated above. Complete exemption for treating practitioners from the requirement to report all forms of notifiable conduct regarding their registered health practitioner patients is the only option that will actually support health practitioners to seek the healthcare they need.

We understand that the treating practitioner will still have the right to 'make a voluntary notification in accordance with their professional and ethical obligations to protect the health and safety of the public.' Although still leaving a potential question mark for health practitioners seeking healthcare, the RACGP appreciates that this is due to professional obligations outside of mandatory reporting laws.

Option 3: Exempt treating practitioners from the requirement to report impairment matters if the impairment matter will not place the public at substantial risk of harm.

Option 3 provides an exemption from mandatory reporting requirements if the treating practitioner considers the impairment will not place the public at substantial risk of harm. However, it will not give a patient full confidence that they can seek treatment without risking their career. As outlined, colleagues and employers, not the treating health practitioner, generally detect behaviour that puts the public at risk. These colleagues would still be able to report any concerning behaviour.

The RACGP agrees with comments in the discussion paper that the threshold for reporting past notifiable conduct will remain a deterrent for registered health practitioners from seeking treatment. Alternatively, it could prevent the treating health practitioner from understanding the full extent of the issue at hand or the possible implications of their patient's impairment or behaviour.

Option 4: Exempt treating practitioners from the requirement to report impairment matters and to only require reporting of other forms of notifiable conduct where there is a current or future assessment that these types of notifiable conduct are likely to occur.

Similar to Options 1 and 3, Option 4 will continue to present a deterrent to registered health professionals seeking healthcare – particularly for any health practitioner with chronic mental health issues. Additionally, it places the onus on the treating practitioner to predict, using professional judgement and knowledge of their patient's previous behaviour, whether notifiable conduct will occur during the treatment or in the future, presumably post-treatment. Fear of notification based on speculation, however well-informed, again presents a barrier to registered health practitioners seeking treatment and disclosure.

Should any changes be made to the preferred option or are there other options not considered here?

Registered health practitioners are entitled to the same absolute confidentiality from their treating practitioners as the remainder of the Australian community; there should be no distinction. If additional options are identified by other stakeholders, the RACGP stresses the need to apply the criteria established for consideration of options provided in the discussion paper:

- removal of all barriers to a registered health practitioner seeking help
- ensure there is no distinction between the treatment of a registered health practitioner and that of a patient from any other occupation.

Should there be any changes to the mandatory reporting obligations in respect of students?

All patients must be able to have confidence that their treatment is confidential. This should not alter according to qualification, occupation, wealth, age, status or any other factor. The RACGP notes that deterring medical students from seeking help during their training contradicts any efforts to intervene early or to reduce stigma around mental health issues. Medical students reported to beyondblue that they perceived that doctors with a history of anxiety or depression were less likely to be appointed than other doctors.²

I hope the RACGP's response to the discussion paper is of assistance to this important review. If you have any further queries or comments regarding this correspondence, please contact myself or Mr Roald Versteeg, on (03) 8699 0408 or at roald.versteeg@racgp.org.au

Yours sincerely



Dr Bastian Seidel
President

References:

1. Parnell S. 'Disincentive' stops medics seeking help. *The Australian*. 4 August 2017.
2. beyondblue. National Mental Health Survey of Doctors and Medical Students. Melbourne: beyondblue. 2013