Australian Medicolegal College

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PROPOSED AUTHORISED HEALTH PRACTITIONER APPOINTMENT AND REGULATORY FRAMEWORK

Summary of AMLC submission

a) Short description of AMLC as a College which has one goal, that of education of medico-legal practitioners.

b) A preamble detailing the College's perception of the major role and purpose of an authorised health practitioner (AHP) working as an independent medical examiner (IME).

c) Specific answers to points raised in the draft document issued by SIRA. These emphasise the need for excellent education, training and accreditation for AHP's as IME's.

Australian Medicolegal College

PROPOSED AUTHORISED HEALTH PRACTITIONER APPOINTMENT AND REGULATORY FRAMEWORK

SUBMISSION BY THE AUSTRALIAN MEDICOLEGAL COLLEGE

INTRODUCTION

The Australian Medicolegal College (AMLC) is solely dedicated to the education, training and accreditation of medical practitioners and other professionals engaged in the assessment of compensation claimants.

PREAMBLE

There are many issues which the proposed framework raises. The most important of these is to define the role and purpose of an authorised health practitioner (AHP) when working as an independent medical examiner. The College considers that an AHP's primary objective is to produce unbiased independent medical examination reports giving all the relevant medical information for the benefit of the non-medical decision makers, including the Court.

It is vital that the AHP acting as an independent medical examiner (IME) answers the question *"Could the described accident/injury be responsible for the ongoing claimed medical illness?"* In this respect initial considerations include the following:

a. It is essential that genuinely injured people are comprehensively medically assessed, to ensure that they can be fully compensated within the various areas of financial assistance, as requested by the referrer.

b. Many incidents of claimed accidents/injuries have been found to have never occurred, ie did the injury occur as described by the claimant?

c. Advanced degenerative disease may be the major factor producing the medical condition, ie are there pre-existing conditions which are causing the symptoms and signs?

d. Claimants can magnify symptoms, which often causes incorrect medical assessments and overtreatment. However, a well-trained IME is usually able to delineate the true medical situation. This includes checking for objective evidence of exaggeration or fabrication.

There are 4 other aspects of a good analysis of all the medical issues.

1. Where there is definable post-traumatic pathology, accurate diagnosis is essential. This should be followed by assessment of treatment, using evidence-based medicine rather than only the examiner's own individual experience and perhaps personal preference or bias.

2. Rehabilitation and return to work with resumption of normal activities are very important. However, assessors must use some common sense. Scientific knowledge is very important when giving opinions such as "his maximum lifting is 1kg" or "he requires 15 hours of domestic assistance".

3. Assessment of permanent impairment is critical under the terms of NSW legislation because the AMA Guides are used for direct financial reward despite the Guides stating that it should not be used for that purpose.

   AHP doctors should be trained in the forensic science of causation. The AMA Guides require careful interpretation before a final figure can be calculated. The causative factors may include a substantial contribution from pre-existing disease. For example, a simple minor knock of a knee with advanced pre-existing osteoarthritis, cannot be regarded as a significant contributing factor when assessing the need for knee replacement. Conversely, pre-existing degenerative disease that was pain-free might not be a causative factor in a new significant injury.

4. AHP doctors should be trained in the forensic science of prognosis. Prognosis requires assessment of the future long-term outcome of the medical condition. This should be made for the benefit of the claimant, the family, the employer, the claims management team as well as the Court and other decision makers.

The AMLC is concerned that many treating and non-treating medical specialists working as IMEs fail to adopt a forensic approach or to show any forensic awareness when assessing claimants. There is no mention within the framework for this to be an essential element of assessments.

As with any other branch of medicine, there should be training and accreditation. Unfortunately, despite multiple legislative and administrative changes both for the CTP scheme and the workers' compensation system, there should be more emphasis about relevant education and accreditation, noting SIRA does hold regular seminars and forums.

SPECIFIC ANSWERS TO QUESTIONS CONTAINED IN THE PROPOSED FRAMEWORK

Question 1 on page 3 of the proposed Authorised Health Practitioner Appointment and Regulatory Framework document asks to which medical matters should the authorisation requirements in s7.52 of the Act relate? The AMLC considers the purpose of appointing AHPs is to ensure that all independent medical examinations are only carried out by trained practitioners who have appropriate expertise and experience. IME assessments may be limited to a specific medical matter such as permanent impairment, however this requires evaluation of the whole case including causation, prognosis and reasonably necessary treatment..

Question 2 asks should there be specific criteria in respect of the giving of evidence in different medical matters? The AMLC contends that the provision of quality medical reports should not be based on prescriptive processes but rather be outcome driven, i.e. attainment of conclusions and opinions formed by rational assessment and whenever possible should encompass evidence-based medicine.

Question 3 asks are there any particular criteria for appointments to ensure high quality medico-legal evidence. AMLC is of the opinion that all appointed AHPs should be deemed capable of determining if the medical issues are within their areas of expertise.

However, there should be specific criteria for appointment of practitioners as AHPs, to ensure high quality medico-legal evidence. The College has developed a comprehensive training program and accreditation process for medical practitioners wishing to engage in medico-legal medicine and this would be an ideal qualification, irrespective of the applicant's prior or present treating medical discipline.

The AMLC supports the concept of a Code of Conduct for AHPs being incorporated into the Motor Accident Guidelines.

As stated above, all AHP doctors should be trained in the forensic science of causation. In respect of the Expert Witness Code of Conduct it might be relevant to refer to the ***AMA Guides to the Evaluation of Disease and Injury Causation***. This states that a medical assessor must *"provide the basis for that opinion... The opinion of an expert is no better than the reasons upon which it is based."* The IME is instructed to explain the reasoning. Apportionment should be made with a reasonable probability i.e. 51+% certainty (Page 147).

On **Page 5** of the document, there is reference under Section 7.52 (4) of the Act that an AHP may have to determine whether an injury is a minor injury for the purpose of the Act. The College is of the opinion that the present definition of minor injury does not apparently serve any specific purpose. Is it attempting to sort out those injuries which would not exceed the 10% whole person impairment threshold? This would apply not just to soft tissue injuries but to many fractures. It is important to note that some soft tissue injuries do not resolve but evolve into ratable conditions.

The College suggests that appropriate medical advice should be taken to properly define minor injury in terms of a clear intention. The College recommends that this should be obtained in conjunction with medico-legal branches of Royal Australasian College of Physicians, Faculties of Occupational and Environmental Medicine and Rehabilitation Medicine, Royal Australasian College of Surgeons, Australian Orthopaedic Association and Australian Medicolegal College.

On **Page 5** of the document under Clauses 7.143-7.151 of the Guidelines, it is stated that in order to be appointed as an AHP, a health practitioner must be suitably qualified. The comprehensive training program for medico-legal medicine is already being conducted by the College for the purpose of granting College Fellowship. The College's current syllabus is enclosed as an addendum to this submission.

On **Page 9** of the document under Complaint History Eligibility Terms is a section which states that an applicant to be an AHP cannot be accepted if the applicant has been subject to a complaint made to insurance, compensation or health authorities, government agencies or statutory bodies regarding the applicant's conduct.

It should be recognised that practitioners carrying out IMEs on referral from defendants are far more likely to have complaints made against them than IMEs engaged by the claimant. Most of them are vexatious. They may have been dismissed but under the present legislation remain on the record of practitioners. For the purposes of appointment as an AHP, prior complaints should be promptly evaluated on a case-by-case basis, and exclusion from AHP appointment should only occur if the complaints warrant it.

Under the professional conduct terms on **Page 9**, the third section states that the applicant must act without bias and in a way that does not give rise to appreciation of bias in the performance of their responsibilities. The College suggests that the AHP "must act without bias" as a term of employment and there should be no qualification of this statement.

On **Page 10** of the document under administrative terms, the sixth dot point states that the applicant must complete any training to the standard required by SIRA, within the prescribed timeframe and at the authorised health practitioner's own expense. The College suggests that its training program would be appropriate and that SIRA should be made aware of the full syllabus and modules incorporated into the program. This program also includes modules on professional ethics in IME work, the forensic science of causation, appropriate use of medical evidence ("reasons"), the science of assessing work capacity and domestic assistance needs, how to assess physical injuries where psychosocial issues co-exist, and IME doctors' considerations where medical and legal issues combine.

Under the heading of performance monitoring and quality assurance on the same page, the College concludes that some form of peer review is necessary. This should include evaluation of de-identified reports. There must be good ongoing educational training with regards to practising medico-legal medicine, just as is the case with all other medical disciplines.

The College is of the opinion that with respect to performance evaluation, emphasis should be directed towards the quality of reports rather than only quantitative evaluation. Qualitative assurance measures for IME reports that are based on peer review already exist.

Representatives of the College will be happy to meet with the directors of SIRA to further discuss the points raised. In particular the question of quality and lack of bias is far more challenging than measurement of quantity as occurs in a process-oriented scheme.

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