



PHARMACY GUILD
OF NEW ZEALAND

**DOCTORS AND FINANCIAL CONFLICTS OF
INTEREST CONSULTATION**
A RESPONSE

December 2011



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OF NEW ZEALAND

12 December 2011

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Sent via email to: mthorn@mcnz.org.nz

Dear Michael

Thank you for the opportunity to provide feedback on your consultation paper, "Doctors and financial conflicts of interest".

The Pharmacy Guild of New Zealand (Inc) (the Guild)¹ is a national membership organisation representing community pharmacy owners. We provide leadership on all issues affecting the sector and advocate for the business interests of community pharmacy.

Our submission contains five themes, which are explored below. The five themes are:

- The Guild strongly supports the recommendation made by the Medical Council of New Zealand (the Council) that the current standards need to be revised and strengthened and that standards need to be implemented advising doctors how to handle financial conflicts of interest and assisting them to recognise where this situation exists.
- The Guild does not believe that there are any circumstances where it is acceptable for a doctor to accept a gift or hospitality from a Health Related Commercial Organisation (HCRO). However, there may be some circumstances where doctors may accept funding from a HRCO for research purposes.
- The Guild believes the standards proposed by the Council in relation to medical education are appropriate.
- The Guild believes the proposed standards relating to the provision of care and advice is appropriate. However, the Council should work to ensure that doctors do not exploit those who are dependent on them. This can be achieved by having strict and explicit standards in place to reduce any unethical conduct.
- The Guild believes the proposed standards relating to doctors involved in the governance, management, operation and promotion of HRCOs are appropriate.

¹ For more information please visit <http://www.pgnz.org.nz>



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In summary, the Guild agrees with the Council that there are some gaps in the current standards and that the advice provided to doctors needs to be more explicit. The Guild believes the proposed standards are appropriate.

The remainder of this submission addresses each of the questions posed by the consultation paper in greater detail. We have also made some additional points, outlined under "Additional points of note".

Thank you for consulting us on this issue. If you have any questions about our feedback, please contact Guild Policy Advisor, Jasmine Freemantle, at jasmine.freemantle@pgnz.org.nz or 04 802 8205.

Yours sincerely,

Annabel Young

Chief Executive



Question 1: Are standards advising doctors how to handle financial conflicts of interest necessary?

Identifying potential conflicts of interest is difficult even for people experienced in this area. Doctors may find it difficult to identify conflicts of interest as they may lack adequate training or experience. We recommend assistance and training for doctors in identifying conflicts of interest.

The Guild believes that standards advising doctors on how to handle conflicts of interest are necessary. Doctors require more direction than provided currently about how to address areas where a conflict of interest may arise (or be seen to have arisen). It is important that doctors use suitable judgement and work to ensure patient safety. For example, doctors should not be permitted to exploit pharmacists' reliability on prescriptions for their own financial gain or place excessive patient charges on services for further financial benefit to the medical practitioner. The standards should reduce the occurrence of such issues and assist in guiding and promoting appropriate behaviour.

We also support greater training for doctors on how to handle conflicts of interest as part of the implementation of these standards.

Question 2: Do you agree with the Council that the current standards need to be revised and strengthened?

The Guild agrees with the Council that the current standards need to be revised and strengthened. Doctors should have clear expectations as to their responsibilities as health professionals. These expectations should encompass arrangements with patients, with other health professionals, and with sector representatives and organisations.

The Council's *Good medical practice: A guide for doctors* document contains current standards on areas such as the importance of doctors being honest and open about any financial dealings and that they should not exploit patients' vulnerability. However, the Guild understands that such standards are not always followed. Doctors may not appreciate situations that may oblige them to tell patients about the relationships they have which could be considered as affecting their judgement.

Where doctors are encouraging patients to use a specified pharmacy, the doctor needs to understand the need to explain all considerations that may impact on doing this, such as wishing to maintain the financial viability of the pharmacy, or the existence of a financial relationship with the pharmacy. This applies in cases where the doctor explicitly states that a patient should go to a particular pharmacy and also in cases where they send the prescription directly to a pharmacy of the doctor's choice. Being a landlord of a pharmacy must always be a relevant financial conflict of interest that should be identified to the patient.

Requests for 'key money' and non-commercial rent payments (where additional regular income is secured from a pharmacy) have also come to the Guild's attention. We believe that rents charged to pharmacies when the landlord is a doctor should be a matter which merits the attention of the Council.



The Guild is aware that some doctors have chosen to exploit pharmacies reliance on prescriptions as a significant income stream. The cost of excessive economic rents is inevitably a cost to the whole health system.

It also appears that some doctors lack understanding on the subject of financial and commercial interests. It is important that doctors are aware of legislation, such as section 42C of the Medicines Act, which refers to the restriction on authorised prescribers holding an interest in pharmacies.

We are happy to discuss specific examples with the Council but have not included these in this document as the inequality of the prescriber-pharmacist relationship makes it very difficult for specific formal complaints to be laid. We note that it is difficult for pharmacists to complain anonymously as it is often too easy to tell where the complaint originated from.

Some doctors require more direction in how to behave ethically than others. More explicit guidelines on how to appropriately address conflicts of interest should help those that require additional assistance.

Question 3: Are there any circumstances where it would be acceptable for a doctor to accept a gift, funding or hospitality from an HRCO?

The Guild believes that there are no circumstances where it would be acceptable for a doctor to accept a gift or hospitality from a HRCO. Accepting gifts or hospitality would compromise a doctor's judgement consciously or unconsciously which would not be in the best interests of patients. The influence of HRCOs on doctors may not be in the best interests of maintaining relationships with other health professionals and the current focus on creating and maintaining multidisciplinary primary health care teams.

There may be a place for doctors to accept funding from HRCOs in the case of medical research. Medical research can absorb a significant amount of resources and in such cases it may be appropriate for doctors to accept funding for that research. We understand that such funding is transparent and publicly acknowledged, as noted below.

Question 4: If "yes", under what circumstances and what standards should be in place to mitigate the influence such gifts, funding or hospitality might have on the doctor's prescribing and treatment decisions?

Clear explicit standards must be in place when doctors choose to accept funding for medical research. A doctor's priority must be their patient's health and wellbeing. Doctors must ensure that their prescribing and treatment is in the best interests of their patients. Prescribing and patient treatment should not be influenced by a HRCOs financial contribution to medical research. The standards must also ensure that any relationship with the medical industry is transparent and publicly acknowledged.



Question 5: Are the standards proposed by the Council in relation to medical education appropriate?

The standards proposed by the Council in relation to medical education are appropriate. The proposed standards explicitly guide doctors in such a way as to ensure the standards are understood. The proposed standards state that doctors cannot “accept any fee, gift, offer of entertainment or reward for seeing a representative from a health related commercial organisation in a promotional capacity.” This is a very explicit standard that would be difficult to easily misconstrue. The standards also put the responsibility on doctors who are involved in organising continuing professional development (CPD) activities. The responsibility of ensuring scientific validity and objectivity of those standards is placed on the doctors involved in organising those events.

The standard which relates to sponsorship states “acceptance should usually be restricted to those situations in which you will make a formal contribution to the gathering and where the expenditure is no more than you would spend if you were required to pay yourself” is less explicit and may need further thought as the wording of “usually” is open to a greater degree of interpretation. However, this standard does mention that in all cases a doctor should obtain agreement from their employer and organising committee, and declare sponsorship in their presentation and in any material promoting their attendance. The requirement to declare sponsorship ensures transparency which is necessary to retain professional standards.

Question 6: Declaring a conflict of interest may ensure transparency, but it will not necessarily mitigate the undue influence that a sponsored CPD event may have on the behaviour of doctors who attend. Should there be additional requirements on doctors in this situation? If so, what should those requirements be?

The Guild does not believe additional requirements are necessary in relation to sponsored CPD events. The proposed standards include doctors not being able to accept any fee, gift or offer of entertainment. These will limit any products displaying commercial logos or other material that doctors can take home or use in the workplace. A reduction in these products will regulate the number of times in which the doctors are susceptible to seeing promotional activity outside of the CPD event. This will in turn reduce the likelihood of doctors being subconsciously influenced by the commercial organisations promotional activity.

Also important is the proposed standard concerning doctors who are involved in organising CPD being responsible for the ensuring scientific validity, objectivity and completeness of those activities. Its implementation will reduce the likelihood of events being organised for the purpose of promotional activities as opposed to those organised for educational reasons.



Question 7: Are the proposed standards relating to the provision of care and advice appropriate?

The proposed standards relating to the provision of care and advice are appropriate. The standard to “act in your patient’s best interests” and not “asking for or accepting any inducement, gift or hospitality that may affect, or be thought to affect, the way you prescribe for, treat or refer patients” enforces the importance of patients continuing to come ahead of any other perceived benefit, financial or otherwise.

“[N]ot selling medicines, medical devices, supplements or other products to patients” is another proposed standard which is supported by the Guild. This standard reduces the likelihood of doctors selling medicines or supplements for the purpose of financial gain as opposed to for the clinical benefit of patients. The Guild also supports the proposed standard for doctors who have a financial interest in a retirement home to not usually provide primary care services to patients at that home. That standard ensures that patient safety is always prioritised in that it will reduce the number of doctors who have a financial interest in a retirement home from providing primary care services to the patients in that retirement home.

Question 8: In some communities it may be difficult for a person who is financially dependent on a doctor (such as a pharmacist) to make a complaint about unethical conduct. How can the Council ensure that doctors do not exploit those who are dependent on them for income?

Operating a pharmacy business which is dependent on prescriptions (generated by prescribers) creates a dynamic that can be open to exploitation. This perceived inequality and dependence can leave pharmacists in a difficult situation where there is a need to balance a doctor’s unethical conduct with the viability of their business. It is difficult to see a way to make it possible for pharmacists to complain to the Council in a safe way. Ultimately, it is the professionalism of the prescriber that is the key to any future solution.

The Guild recommends that standards are implemented so that doctors are subjected to disciplinary action if they have exploited a pharmacist’s reliability on their prescriptions as an income stream. We have difficulty in seeing a way to explicitly achieve this, other than the importance of cultural norms within the medical profession.

Unacceptable doctor behaviour ruins any likelihood of maintaining collegiality, and negates the current strategy of promoting multidisciplinary primary health care teams. This could possibly lead to negative impacts on patient safety, such as if the doctor refused to take any professional calls from the pharmacist in result of a complaint. It is therefore important that the doctors involved in such behaviour are subjected to adequate disciplinary action to curb misconduct in the future.

Although a pharmacist can file a complaint with the Council regarding a doctor’s unethical behaviour, taking such action would likely have a negative affect on their pharmacy business. If a doctor thinks it is acceptable to exploit a pharmacy’s dependence on prescriptions, then there may



be little preventing that doctor from encouraging their patients to go to another pharmacy once a complaint has been made and the doctor notified.

Good prescribing practice, published by the Council in April 2010, states "you must not pressure patients to use a particular pharmacy, personally or through an agent, nor should you disparage or otherwise undermine patients' trust in a pharmacy or pharmacists by making malicious or unfounded criticisms." Although this statement has been published and is readily accessible, it appears that not all doctors are adhering to it.

Question 9: Are the proposed standards relating to research appropriate?

The Guild believes the proposed standards relating to research are appropriate. The proposed standards mention that conflicts of interest could result in unreliable and biased research. As research involves funding and time, it would be unwise for doctors to ignore this proposed standard. The proposed standards also mention that the doctor is to act with honesty and integrity and not allow payments or gifts to influence their conduct. This proposed standard acknowledges the fact that gifts may have influenced doctors conduct in the past and that this is no longer acceptable. Another proposed standard includes three main points that the doctor must ensure at the trial stage of research, such as ensuring any risks to which the patient is exposed are reasonable and that patients are able to give their full informed consent. This ensures that patients are fully informed of risks before participating in research. The proposed requirement to clearly state any relationship a doctor has to organisations providing funding for such studies puts doctors in a position where they must honestly divulge any conflict of interest.

Question 10: Are the proposed standards relating to doctors involved in the governance, management, operation and promotion of HRCOs appropriate?

We have identified a trend towards general practitioners being employees of commercial entities, rather than owning their own business. We think this is a significant change that appears to be affecting the way that doctors see themselves and their patient relationships. Other professions face this issue and there are significant examples of professionals (lawyers and accountants, for instance) leaving their employment because they were asked or expected to take actions that they believed were inconsistent with their own professional obligations. Ultimately, medical practitioners face the same potential for unresolvable tensions between the expectations of their employer and their own professional standards. The Council needs to consider how the professionalism of doctors is buttressed in this environment.

The Guild believes the proposed standards relating to doctors involved in the governance, management, operation and promotion of HRCOs are appropriate. Responsibility and accountability is put on the shoulders of doctors, which reinforces the importance of them ensuring that the information provided is clear, accurate and includes full details about the expected risks,



side effects, benefits and costs of treatment for patients. The doctor is then obliged to be honest not only to patients, but also to other practitioners and regulators. This would reduce the likelihood of additional costs being added to treatments in some organisations which may not be added by other organisations. As this standard refers to the provision of accurate information to regulators, this further enforces the need to be transparent in the operation and promotion of HRCOs.

It is pertinent that doctors make their objections known if a decision made by their employer will put a patient at risk of serious harm. This proposed standard emphasises that the safety of the patient is to always be prioritised over other organisational decisions. The doctors involved would also be aware that they could be liable if they do not let their objections be known.

The proposed standards promote the ethical behaviour of doctors regardless of their involvement in governance, management, operation and promotion of HRCOs.

Additional points of note

It may be necessary to develop CPD programmes for doctors to ensure they are fully aware of what conflicts of interests are, how conflicts can affect their own practice and prescribing habits, and how these conflicts can impact on other health professionals as well as on patient outcomes. Increased awareness should reduce the potential for some unethical behaviour in the future.

The Guild suggests that there should be a process whereby representative bodies can channel examples and trends of particular problems and raise these issues with the Council. This would further increase awareness of how conflicts of interest are handled by doctors and the effect conflicts have on other health professionals and patients.