

## Guideline: Consultation draft

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29 September 2010

### Responsibilities of pharmacists when practising as proprietors

#### Introduction

This guideline has been developed by the Pharmacy Board of Australia under section 39 of the Health Practitioner Regulation National Law Act 2009. The guideline provides guidance to pharmacists in relation to a matter of professional practice not set down in the legislation or a registration standard which can be used in proceedings under the Act as evidence of what constitutes professional conduct or practice for the health profession.

The relevant sections of the National Law are attached.

#### Who needs to use this guideline?

This guideline is developed to provide guidance to registered pharmacists or those seeking to become registered pharmacists. It applies to all registered pharmacists eligible to own or hold a proprietary interest in a pharmacy business.

#### Summary of guideline

A registered pharmacist who is a proprietor must maintain an awareness of the manner in which his or her pharmacy business is being conducted and, where necessary, intervene to ensure that the practice of pharmacy is conducted in accordance applicable laws and guidelines.

#### Guideline

The policy of the Board is that prima facie, a pharmacist who owns a pharmacy is practising pharmacy, given that ownership of a pharmacy business is a role that impacts on safe, effective delivery of services in the profession and involves use of professional skills.

If the owner or partner-in-ownership pharmacist, is not the pharmacist usually in charge of that pharmacy, he or she must regularly determine how the practice of pharmacy is being conducted to be satisfied it is in accordance with any applicable state, territory or Commonwealth law applicable to the practice of pharmacy, with any relevant Pharmacy Board of Australia guidelines and with good pharmaceutical practice. If the proprietor finds otherwise, he or she must intervene to ensure that the pharmacy business is conducted properly.

For the purposes of this guideline, determining how the pharmacy business is conducted includes:

- understanding the range of goods sold and services provided, at the pharmacy including non-traditional and novel goods and services; for example, teeth whitening products and pathology collection services

- ensuring that the pharmacy is resourced suitably and that staff members are trained sufficiently to sell goods and provide services
- understanding the liability associated with the sale of goods and the provision of services
- maintaining a direction over the kinds of services being provided and goods being sold, particularly those known to be subject to abuse or misuse and
- ensuring business procedures and policies established by the proprietor/s are being followed.

The pharmacist proprietor must ensure that procedures and policies relevant to the conduct of the pharmacy are documented and available within the pharmacy.

An owner or partner-in-ownership of a pharmacy cannot abdicate his or her professional obligations, even if that partner is silent operationally or present only infrequently. This applies to pharmacists who own a pharmacy, or pharmacies, in all forms of business structures.

### Definitions

Proprietary interest means a legal or beneficial interest and includes a proprietary interest as a sole proprietor, as a partner, as a director, member or shareholder of a company and as the trustee or beneficiary of a trust.

### References

A recognition of this principle is acknowledged in the decision of the Supreme Court Judge in the case of David Loewy and Sandra Loewy v The Pharmacy Board of Victoria, [1991] VSC 113 01.

## Attachment A

### General provisions

#### Health Practitioner Regulation National Law Act 2009

#### Division 3 Registration standards and codes and guidelines

#### 39 Codes and guidelines

A National Board may develop and approve codes and guidelines—

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

Example: A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

#### 40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website—
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect—
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

#### 41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.